

(2003) 03 AP CK 0115

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 979 and 8966 of 2002

A. Kadirappa and Others

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 154
Constitution of India, 1950 — Article 243E

Citation : (2003) 3 ALD 242 : (2003) 3 ALT 270 : (2003) 2 APLJ 184

Hon'ble Judges : Devinder Gupta, C.J.;A. Gopal Reddy, J

Bench : Division Bench

Advocate : O. Manohar Reddy, in WP No. 979 of 2002 and B. Bhaskar Reddy, in WP No. 8966 of 2002, for the Appellant; A.A.G. for Respondent Nos. 1 and 4, P. Raghavendra Reddy, SC for Respondent Nos. 2 and 3, V.V. Prabhakar Rao and M.R. Tagore, in WP No. 979 of 2002, for the Respondent

Judgement

Devinder Gupta, C.J.—Petitioners in Writ Petition No. 979 of 2002 are members of the Mandal Parishad, Bukkarayasamudram, Anantapur district. First ordinary elections to Mandal Parishads in Anantapur district were held during 1995. Insofar as Mandal Parishad of Bukkarayasamudram Mandal, elections were held in February, 1997. First meeting of the Mandal Parishad, Bukkarayasamudram Mandal after the ordinary election, was held on 27-2-1997. In terms of Section 154 of the A.P. Gram Panchayat Raj Act, 1994 (hereinafter referred to as "the Act") the members were entitled to hold the office for a term of 5 years from the first meeting of the Parishad after ordinary election i.e., up to 27-2-2002.

2. With respect to other Mandal Parishads, term of 5 years was expiring in 2000. G.O. Ms. No. 86 Panchayat Raj and Rural Development (Elections) Department, dated 13-3-2000 was issued appointing special officers in respect of all Mandal Parishads including the Mandal Parishad, Bukkarayasamudram Mandal. The District Collector, Anantapur issued proceedings dated 18-3-2000 stating that according to Clause (ii) of Section 154 of the Act, term of the elected members of the Mandal Parishads in the district expired on 17-3-2000 and as the elections

to the Mandal Parishads were not held there was no possibility of elected representatives continuing beyond the said term. In order to overcome this difficulty Government promulgated Ordinance No. 3 of 2000, dated 5-2-2000, providing for administration of the Mandal Parishads by the special officers until the next ordinary elections were held. As on the date when the special officer was appointed even for Bukkarayasamudram Mandal, the term of the elected members of the Mandal Parishad, Bukkarayasamudram Mandal had not come to an end, which would have expired on 27-2-2002. Though attention to this fact was drawn to the concerned authorities but no remedial measures were taken and the petitioners in Writ Petition No. 979 of 2002 alleged that members of Mandal Parishad, Bukkarayasamudram had to relinquish their posts about 18 months earlier. On 14-9-2001, however, proceedings were issued by the Government allowing the elected body to continue up to 27-2-2002. Thus from 17-3-2000 to 14-9-2001 members of Mandal Parishad, Bukkarayasamudram could not continue in office. Therefore, on 21-1-2002 writ petition was filed seeking direction declaring the action of the respondents in not extending the term for another period of 18 month to make deficit as not legal, and arbitrary and contrary to the provisions of Section 154 of the Act and consequential direction was sought to continue the members of the Mandal Parishad, Bukkarayasamudram for another period of 18 months from 27-2-2002.

3. The writ petition came up before the Court on 23-1-2002. While issuing notice, status quo was directed to be maintained. Writ petition has been pending. On 24-4-2002, G.O. Ms. No. 139 was issued by Panchayat Raj and Rural Development (Elections) Department, directing the District Collector, Anantapur to reinstall the elected body of Bukkarayasamudram Mandal for the period lost i.e., 18 months due to the mistake alleged to have been committed. This action on the part of the Government having issued Government order on 24-4-2002 is under challenge in Writ Petition No. 8966 of 2002. This petition also came up before the Court on 7-5-2002 on which date the status quo was directed to be maintained by the parties.

4. Both the writ petitions were taken up for consideration today. Insofar as Writ Petition No. 979 of 2002 is concerned, the same, in view of the Government order dated 24-4-2002 which is under challenge in Writ Petition No. 8966 of 2002, has been rendered infructuous.

5. There is a preliminary objection raised by Sri O. Manohar Reddy, that the latter petition is liable to be dismissed only on the ground that the affected persons viz., the members who are entitled to continue by virtue of the impugned Government order dated 24-4-2002 have not been impleaded as party to the petition. He states that he represents the elected members who are petitioners in writ petition No. 979 of 2002. No doubt the elected members of the Mandal Parishad are not party in Writ Petition No. 8966 of 2002 but the said members are represented by the Counsel and are parties in writ petition No. 979 of 2002. Therefore, mere non-impleading them as party in writ petition No. 8966

of 2002 will not be fatal to the maintainability of the writ petition.

6. The sole question arising for determination in the subsequent petition is about the competency of the Government in having issued the impugned Government order under the provisions of the Act, Section 154 of the Act reads as under:

Term of office of member of Mandal Parishad :--Save as otherwise provided in this Act:-

(i) An ex-officio member of the Mandal Parishad shall hold office so long as he continues to hold the office by virtue of which he became such ex-officio member;

(ii) A member elected at an ordinary election or a co-opted member shall hold office for a term of 5 years from the date appointed by the A.P. Election Commissioner for local bodies for the first meeting of the Mandal Parishad after the said ordinary election.

7. Under the aforesaid provision the member elected at an ordinary election is entitled to hold office for a term of 5 years from the date of first meeting of the Mandal Parishad held after the said ordinary election. Such a provision in the Act is made in view of the constitutional provisions contained in Article 243-E of the Constitution of India. Part IX of the Constitution deals with panchayats and Clause (1) of Article 243-E in clear terms provides that every panchayat unless sooner dissolved under any law for the time being in force, shall continue for 5 years from the date appointed for its first meeting and no longer. The last words "no longer" therein are material in order to interpret the provisions in the Act that Mandal Parishad shall continue only for a period of 5 years from the date appointed for its first meeting and no longer. The only constitutional provision which enables panchayat to continue for a longer period is Clause (4) in Article 243-E which reads as under;

Duration of panchayats, etc:

.....

A panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued under Clause (1) had it not been so dissolved.

8. In the instant case the Mandal Parishad was not dissolved by any order. In fact Mandal Parishad could not work because of certain Government order issued by the Government but later, on realizing the mistake, another proceedings were issued by virtue of which members of the Mandal Parishad were continued to function till 27-2-2002. There is neither any provision in the Act nor any authority vests in the Government which enables it to issue Government order like the one dated 24-4-2002 extending the term of the office of the members of the Mandal Parishad beyond the period of the last date viz., 27-2-2002 which has necessarily to be fixed with reference to the first meeting of the Mandal Parishad

after the election. The date cannot be extended in any circumstances. The learned Additional Advocate-General contended that there is no prohibition in the Act prohibiting the Government from extending the time and the impugned Government order is legal and valid. We cannot accept this submission in view of the provisions contained in Clause (1) of Article 243-E of the Constitution which say that panchayat shall continue for 5 years and no longer from the date appointed for its first meeting.

9. Consequently, Writ Petition No. 979 of 2002 is dismissed as infructuous and writ petition No. 8966 of 2002 is allowed thereby quashing and setting aside the Government order dated 24-4-2002 declaring that the term of the members of the Mandal Parishad, Bukkarayasamudram came to an end on 27-2-2002. In view of the fact that the writ petitions were pending and there was order of status quo, it is made clear that the declaration given by us today that the term of members of the Mandal Parishad, Bukkarayasamudram Mandal expired on 27-2-2002, will not invalidate any actions taken by the Mandal Parishad till date.