

(2002) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2767 of 2001

A. Kamaladhar Gupta and Others

APPELLANT

Vs

Govt. of India and Others

RESPONDENT

Date of Decision : 07-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 47

Citation : AIR 2002 AP 326 : (2002) 2 ALD 396 : (2002) 2 ALT 418

Hon'ble Judges : Ar. Lakshmanan, C.J;G. Rohini, J

Bench : Division Bench

Advocate : Malla Reddy, for the Appellant; S. Suryaprakash Rao, V. Viswanadham and P. Sharada and Government Pleader, for General Administration, for the Respondent

Judgement

Ar. Lakshmanan, C.J.—Heard Mr. Malla Reddy, learned senior Counsel appearing on behalf of the Writ Petitioners, learned Government Pleader for General Administration Department, Mr. V. Vishwanadham, Mr. Suryaprakash Rao and Ms. P. Sharada appearing for the respective respondents.

2. The petitioners are social workers. They have deep concern towards development and welfare of citizens more particularly downtrodden people. According to them they have been undertaking various welfare activities keeping in view the public interest. A few welfare activities initiated by them have been detailed in paragraph 2 of the affidavit filed in support of the writ petition. The petitioners claim that they have also been doing social work by protecting the State interest and Revenue and also serving the needy people whenever there is exigency. The petitioners submit that the Government of India, the first respondent herein sponsored a Scheme popularly known as Integrated Low Cost Sanitation Scheme (hereinafter called "the Scheme"). The second respondent, Government of Andhra Pradesh Municipal Administration and Urban Development Department, represented by Principal Secretary has issued G.O. Ms. No. 386, dated 17-7-1992 creating 5th respondent herein as a Company under the

provisions of the Companies Act, 1956 for channelling of loans and subsidy from Hyderabad Urban Development Corporation (HUDCO) to the Municipalities for implementation of the Scheme in the State of Andhra Pradesh. The 3rd respondent is Commissioner and Director of Municipal Administration who is Ex-Officio Managing Director of 5th respondent. The fourth respondent is the Engineer-in-Chief, Public Health, which is the authority to approve type and design of the construction submitted by the Engineers. The fifth respondent, Andhra Pradesh Urban Finance and Infrastructure Development Corporation Limited is a Company incorporated under the provisions of the Companies Act, 1956. The sixth respondent is Regional Chief HUDCO, Hyderabad, designated as agency to release both subsidy and loan component. The seventh respondent is Regional Director-Appellate Commissioner, Municipal Administration, Warangal, which has got supervisory and functional jurisdiction. The eighth respondent is the District Collector of Adilabad District. The ninth, tenth and eleventh respondents are Commissioner of Municipality, Municipal Engineer and Manager of the Municipality, Nirmal Town, Adilabad District respectively who are directly connected with the Scheme in all respects and are parties to the implementation of the Scheme insofar as Nirmal Town is concerned. The present writ petition is confined only to the implementation of the Scheme in Nirmal Town.

3. The writ petition is being filed as public interest litigation for protecting Public Interest and preventing public injury. It has been filed seeking enforcement of fundamental rights of weaker sections who are unable to enforce their fundamental rights on account of their ignorance, illiteracy poverty and lack of knowledge in the schemes while challenging the unauthorised action of the respondents in implementing the beneficial schemes floated by the Government of India for the welfare of the downtrodden people at large so as to improve their poor sanitary conditions prevailing in the State of Andhra Pradesh and more particularly in Nirmal Town. The Scheme is aimed at abolishing the practice of manual handling of night soil and liberation of scavengers. The purpose of the Scheme is to convert dry latrines into water seal pour flush latrines. The Government of Andhra Pradesh in its efforts to implement various measures to ameliorate the living conditions of scavengers and to improve poor sanitary conditions have implemented the scheme. Under this programme the beneficiary has to contribute for construction of a sanitary latrine depending on his income group and subsidy will be sanctioned to the beneficiary based on his income. The benefit under the Scheme was been extended only to the economically weaker sections whose monthly income does not exceed Rs. 1,250/-. Under the said Scheme, the Government of India contributed its subsidy of 45%; HUDCO contributed 50% of the required amount in the form of loan; and the remaining 5% is the beneficiary's contribution. The beneficiary i.e., the owner of a latrine-less house shall submit his application in the prescribed proforma for construction of a latrine through the concerned Municipality by enclosing required documents, viz., Agreement, Advances Receipt and willingness to entrust the work to a Municipal Contractor, Latest Property Tax Receipt, Demand Draft for

the contribution payable by the beneficiary, an extract of ration card and certificate of income issued by the concerned Mandal Revenue Officer and passport size photos. The applications shall be entertained strictly from House owners whose names are found in the survey register and who are served with notices for construction of new latrines. The received applications in full shape have to be forwarded to concerned Assistant Engineer for inspection and report who shall inspect the premises and submit his report regarding construction of new latrine and the availability of space for construction of a new latrine. Subsequently all the applications have to be scrutinised by the Municipal Engineer to ensure that the applicant satisfies all the requirements. Thereafter, all the applications, which are in order, shall be placed before the Municipal Council for sanction of subsidy and loan for construction of new latrines. After the proceedings are issued to the beneficiary sanctioning the unit, all the particulars shall be entered in a register. As far as inspection is concerned, the Municipal Engineer shall make inspection and ensure that the units are constructed as per the type and design approved by the Engineer in-Chief, Public Health, the 4th respondent herein. It is mandatory on the part of the respondents to obtain Satisfactory Completion Certificate from the beneficiary. According to the petitioners, the 9th respondent is also under legal obligation to inspect personally atleast 20% of units before payment is made to the Contractor. This apart, the 9th respondent is also under obligation to submit progress report to the 7th respondent enabling him to submit a consolidated report to the 1st and 2nd respondents. It is equally mandatory on the part of the 7th respondent to make inspection of all the municipalities within his jurisdiction every month and ensure that the units are constructed as per the guidelines issued by the Government and that the funds so released under the Scheme are utilised properly.

4. It is the case of the petitioners that in the final list selected by the respondents 9 to 11, there are applications from dead persons, Government employees, RCC Building owners, Multistoried building owners, Non-existing house numbers, non-existing persons i.e., benami names etc. The petitioners allege that the respondents have also issued cheques in favour of the persons mentioned above for the reasons best known to them totally contrary to the guidelines contemplated under the Scheme. This apart, the respondents have issued bearer cheques for the total Scheme amount in lumpsum instead of paying the amounts in instalments in a phased manner basing on the progress of the construction. As such, it is submitted by the learned senior Counsel appearing on behalf of the petitioners that the action of the respondents in implementing the Scheme has resulted in heavy loss both the Government as well as to actual beneficiaries who are genuinely eligible and entitled for the benefit of the scheme. It is also further submitted that on various dates, District Edition of Telugu Daily Newspaper Eenadu gave prominent coverage in respect of the irregularities committed by the respondents in implementing the beneficial schemes, which are narrated in paragraph 9 onwards in the affidavit filed in support of the writ petition. According to the petitioners, respondents have

forced them to bring the said irregularities to the notice of this Court and to seek protection to the public money meant for public cause. According to them, large-scale irregularities have been committed by the respondents 9 to 11 who have abused their power in implementing the Scheme, which is against the public policy. According to them, accountability on the part of the respondents is lacking in implementing the beneficial Scheme floated by the Government of India to meet the constitutional goals/objects. It is submitted by the learned Counsel for the petitioners that the power of the respondents has not been exercised to meet the spirit and object of the Scheme though they are under legal obligation to do the same. On the contrary, they have exercised the said power arbitrarily and made payments to the ineligible persons irregularly. Thus, according to the petitioners, the respondents 9 to 11 have conspired together and misappropriated the amounts and thereby committed criminal breach of trust. As such it is necessary to conduct investigation/enquiry by a Government agency. It is also alleged that the said investigation is necessary in view of the fact that several other persons are behind this irregularity. The said action of the respondents has resulted in violation of fundamental rights of the citizens as the right to healthy life is an integral part of the Right to Life guaranteed under Article 21 of the Constitution of India. The petitioners have also obtained certified copies of List of Beneficiaries filed by the respondents 9 to 11 in CrI. MP No. 927 of 2000 on the file of the Judicial Magistrate of First Class, Nirmal and placed the same before us for scrutiny. Under these circumstances, the petitioners state that they are compelled to file this writ petition bringing to the notice of this Court certain irregularities committed by the respondents in implementing the Scheme. They allege that the respondents extended the benefits under the Scheme to the ineligible persons. Despite the fact that various newspapers with sufficient material to substantiate the irregularities that were committed, have published news items, the respondents have not taken even notice of the said irregular, improper and arbitrary sanctions and payments made under the Scheme to the ineligible persons and that their inaction in taking steps to rectify the irregularities has driven the petitioners to this Court. Along with the writ petition, the petitioners have placed before this Court material papers containing a copy of the guidelines; Copy of G.O. Ms. No. 386, dated 17-7-1992; copy of the Status Report; copy of the Newspaper Clipping; and the copy of lists of bogus persons (at pages 53 to 82); copy of the list of Government Employees who were selected as beneficiaries (at pages 83-84); copy of the list of dead persons as beneficiaries (at page 85); and copy of the list of beneficiaries filed by the implementing authorities (at pages 86 to 203). Our attention was invited to the relevant documents at the time of hearing of the writ petition.

5. A counter-affidavit was filed by the respondents 1 to 5 and 7 duly sworn in by one Sreeranga Chary, Joint Director of respondent No. 3 in the writ petition. According to him, most of the averments in the writ petition are vague and incorrect and hence they are denied. It is also submitted that the writ petition is not maintainable either in law or on facts and the same is liable to be dismissed.

However for the purpose of ascertaining the truth of the allegations made by the petitioners it is beneficial to refer to paragraph 7 of the counter-affidavit, which is reproduced hereunder:

"It is to submit that as per this office instructions the District Project Officer, Office of Regional Director-cum-Appellate Commissioner of Municipal Administration, Hyderabad has conducted cent per cent Verification and submitted the report to this office. As per the verification report the dead persons namely (1) Gundrath Nursing, H.No. 6-2-14 at Serial No. 162 at Chintakuntawada, (2) Gundrath Sayanna, H.No. 6-8-118 at Serial No. 173 and (3) Badripedda Rajanna, H.No. 6-1-33 at Serial No. 164 were the beneficiaries in the Scheme. The District Project Officer has stated that he has personally verified the above units and talked to their legal heirs and found that the three units were given in the name of dead persons and the units were very much constructed and the legal heirs are accepting the fact that they received the money for the units that are constructed under the scheme and they are also willing to repay the loan component. It so happened that the property tax of the above houses was in the names of the above expired persons and their legal heirs being a joint family have not applied for mutation of the property tax. So, by mistake the beneficiaries" list contained the names of the above three dead persons instead of their legal heirs names. Recently verification of the ILCS units constructed in Nirmal Municipality were conducted. The contention of the petitioners that no single latrine was constructed in reality is totally incorrect. The Verification Officer has reported that out of 3174 units said to have been constructed 1944 units were in existence, payment was made for 345 old units and that 885 units were not traced by the Verification Officer and his team. The Municipal Commissioner, Nirmal is instructed to rectify the defects noticed. In pursuance of the report submitted by the District Project Officer, the department has contemplated the disciplinary action against the erring officers and the department will take appropriate action under law. Explanation of the persons responsible for these irregularities has also been called for and further action will be taken after receipt of their explanation".

6. It is seen from the above paragraph that as per the verification report, dead persons namely Gundrath Nursing at serial No. 162 and Gundrath Sayanna at serial No. 173 and Badripedda Rajanna at serial No. 164 were the beneficiaries in the Scheme who are dead persons. The District Project Officer has also personally verified the above units and talked to their legal heirs and found that the said three units were given in the name of dead persons and the units were very much constructed and the legal heirs are accepting the fact that they received the money for the units that are constructed under the Scheme and they are also willing to repay the loan amount. It is also stated that The Verification Officer has reported that out of 3174 units said to have been constructed 1944 units were in existence, payment was made for 345 old units and that 885 units were not traced by the Verification Officer and his team. It is also stated that the Municipal Commissioner, Nirmal has instructed to rectify the

defects noticed. In pursuance of the report submitted by the District Project Officer, the department has contemplated disciplinary action against the erring officers and the department would take appropriate action under law. Explanation of the persons responsible for the irregularities has also been called for and further action would be taken after receipt of their explanation. It is also submitted in Para 9 that basing on the Cent Per cent Verification Report, the Municipal Commissioner, and Municipal Engineer and the then In-Charge Municipal Commissioner had been called upon to explain the reasons for the lapses in the implementation of ILCS programme in Nirmal Municipality and the Municipal Commissioner was also instructed to rectify the defects pointed out in Cent Per cent Verification Report and to furnish the names of Nodal Officers responsible for the financial irregularities. Rectification report and other reports called for are awaited.

7. However, in the counter-affidavit filed by one M. Sambasiva Rao, the respondent No. 9 on behalf of respondents 9 to 11, sworn on 10th July, 2001, there is total denial of the allegations made by the petitioners in the writ petition. The 9th respondent is working as Commissioner of Nirmal Municipality. In Para 10 of the counter-affidavit, while denying the allegations made in Para 8 of the Writ Affidavit, it is stated that the selection of beneficiary has been made by the Nodal Officer on the spot as and when the beneficiary submitted an application for construction of latrine in their house. The procedure was adopted strictly in accordance with the Government Circular and instructions. However, the payments have been made in the shape of cheques to the beneficiaries after completion of the entire units based on the certificate given by the NHC and on the report of sanctioning authority i.e., Nodal Officer of the concerned Ward. It is also stated that as per the application submitted by the beneficiary, spot sanction has been given by the Nodal Officer for construction of individual latrines. As per instructions issued vide Roc. No. 498/98/B3, dated 29-12-1998, the procedure has been simplified for according spot sanction orders and for speedy completion and construction of low cost sanitation of individual household toilets. Therefore, it is submitted that there is no scope to verify the ownership of the persons. However the house stands in the name of the said persons and the successors have constructed the toilets based on the report of the NHC. The payments have been made by cheques through Nodal Officer appointed and no irregularities have been made by the respondents Nos. 9 to 11. The procedure has been strictly followed for implementation of the Scheme as per Government circulars and guidelines. The other allegations made in the writ petition have also been denied.

8. A perusal of the two counter-affidavits filed by the respondents 1 to 5 and 7 on the one hand and the counter affidavit filed by the respondents 9 to 11 on the other gives two different pictures. The respondents 1 to 5 and 7 in their counter-affidavit have clearly pointed out that certain beneficiaries are dead persons, that certain units were also given in the name of dead persons, that the units were very much constructed and the legal heirs are accepting the fact that they

received the money for the units that are constructed under the Scheme and that they are also willing to repay the loan component. The grievance of the petitioner in this writ petition is that even though the counter-affidavit has been filed in the Registry as far back as 21st September, 2000, no action has been taken against the erring officials as yet who have contravened the Scheme and extended the benefit of the Scheme to the persons who are not eligible to avail of the benefits extended in favour of them. In our opinion, it is a fit case for initiating action against all the erring officials who are responsible for not implementing the Scheme in its letter and spirit.

9. Mr. Malla Reddy, learned senior Counsel submitted that since it is a serious matter an enquiry/investigation ought to be initiated into the irregularities and the whole matter has to be entrusted to the CBI and not to the State police authorities since the State police authorities will be having soft corner for their own colleagues who are also serving in different departments in the State level and the District level. We are unable to accept the said contention. If the enquiry/ investigation is entrusted to the CBI it will only reflect on the competence and the capacity of the State Police regarding investigation of such matters. We place on record that we have faith and confidence on the State police. Therefore, we direct the Chief Secretary of the Government of Andhra Pradesh to entrust the matter for enquiry/investigation and for launching prosecution etc., to a senior most police officer in the State for investigating into this scam and for bringing the officers who have violated the provisions of the Scheme to book. We hope and trust that the Government will act in the right direction in the matter. We are sorry to place on record that when a laudable Scheme-Integrated Low Cost Sanitation Scheme-is introduced by the Union of India, and entrusted for its implementation to the State authorities, it is the duty of the State to act according to the expectation of the Union of India. It is the duty of the State not only to raise the level of nutrition and the standard of living of the citizens but also to improve public health as enshrined under Article 47 of the Constitution of India. In our view, the implementing authority, in utter disregard to the procedure and the guidelines contemplated under the Scheme, sanctioned amounts as admitted in the counter-affidavit filed by the respondents 1 to 5 and 7 to ineligible persons and thus violated the true spirit and object of the Scheme. The Scheme though obligates the respondents to inspect the construction of units and thereupon sanction the amounts basing on the progress of the construction, at no point of time, either of the respondents inspected the same and acting in collusion with each other they had finalised the Scheme violating its norms and guidelines. In our opinion, it is a fit case for issuing a mandamus directing the second respondent, the Government of Andhra Pradesh, Municipal Administration and Urban Development Department, Finance and Planning (Plng. PMU), Secretariat, Hyderabad:

(i) to fix up the responsibility on the concerned persons/officers/implementing authorities who had extended the benefits of the Scheme illegally, arbitrarily and in violation of the guidelines of the Scheme in favour of ineligible persons;

(ii) to order for prosecution of the persons who had extended the benefits of the Scheme in favour of ineligible persons which had resulted in misappropriation of the funds;

(iii) to initiate appropriate proceedings for recovery of the amounts from ineligible persons who had appropriated the amounts clandestinely from the implementing authorities by virtue of the irregular sanctions made by the respondents 9 to 11 in the interests of justice.

10. We hope and trust that the Chief Secretary, Government of Andhra Pradesh would entrust the enquiry/investigation of the whole matter to a specially deputed senior most police officer in the State who would take expedient steps for launching prosecution etc., after taking necessary assistance from the District Collector and other officers of the State. The writ petition is ordered accordingly. There shall be no order as to costs.