
(1999) 04 AP CK 0026
In the Andhra Pradesh High Court
Case No : WA No. 2143 of 1998

A. Raghunath Rao

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Andhra Pradesh Gram Panchayats (Declaration of Village) Rules, 1994 — Rule 3, 4
Andhra Pradesh Panchayat Raj Act, 1994 — Section 3
Constitution of India, 1950 — Article 226

Citation : (1999) 4 ALD 160 : (1999) 3 ALT 347

Hon'ble Judges : P. Venkatarama Reddi, J; A. Hanumanthu, J

Bench : Division Bench

Advocate : Mr. G. Vivekanand, for the Appellant; Government Pleader for Panchayat Raj, Mr. P. Raghavender Reddy and Mr. P. Gangaiah Naidu, for the Respondent

Judgement

P. Venkatarama Reddi, J

1. This is the 3rd and 4th round of litigation concerning the bifurcation of Seetharampuram Gram Panchayat and Constitution of separate Gram Panchayat for Marribandam in Krishna District. As long back as in 1972, Marribandam revenue village was excluded from Mirzapuram Gram Panchayat and included in Seetharampuram Gram Panchayat. In the year 1995, the District Collector issued notification calling for objections for the proposed bifurcation of Seetharampuram Gram Panchayat and constituting separate Gram Panchayat for Marribandam village. The Gram Panchayat of Seetharampuram passed a resolution opposing the same. But the Collector issued a Notification on 12-5-1995 confirming the proposal. Writ Petition No.10225 of 1995 filed by the said Grama Panchayat was allowed by this Court on the short ground that the Collector failed to give any reasons while passing the impugned order. The Collector was directed to consider the matter afresh and pass appropriate orders. Thereafter, some proceedings were initiated by the Government under a mistaken impression which were later on dropped. It is not necessary to refer to that part of the story. The District

Collector acting as Commissioner under the Andhra Pradesh Panchayat Raj Act (hereinafter referred to as "the Act") heard the parties and passed orders on 25-11-1996 confirming the proposal to bifurcate Seetharampuram Gram Panchayat. Against the order of the Collector dated 25-11-1996, Writ Petition No.26872 of 1996 was filed - this time by the appellant herein, but not by the Gram Panchayat. As there was some controversy as to what is the exact distance between Seetharampuram and Marribandam, the Court appointed an Advocate-Commissioner during the pendency of the Writ Petition and he reported that the distance is 1.2 Kms. The Division Bench pronounced the judgment on 30-12-1997 once again setting aside the order of the Collector and remanding the case to him for fresh consideration, on the ground that sufficient reasons were not given in the impugned order in support of the conclusion recorded by the Collector. It was also observed that certain instructions of the Government were followed by the Collector while passing the impugned order without disclosing the contents thereof. In fact, we find that the said instructions have no material bearing on the merits of the case. It was only a formal communication. Be that as it may, the order of the Commissioner/ Collector dated 25-11-1996 was set aside and the Commissioner was directed to pass orders giving reasons in support of his findings after giving an opportunity of hearing to the parties concerned. The Division Bench adverted to the argument based on the distance factor. Having noticed that there is discrepancy between the distance as noticed by the Advocate-Commissioner and as continued in the report of the Revenue Divisional Officer dated 15-10-1996, the learned Judges of the Division Bench observed as follows :

".... Since it is only a fact finding exercise which is not possible for us exercising the jurisdiction under Article 226 of the Constitution, we are not inclined to delve much upon this aspect. But, we wish to add that as per the Rules and the Instructions issued by the Government with regard to bifurcation of villages, the distance is not the sole determining factor for passing an order of bifurcation. If the geographical features, communication facilities or the financial position of a particular village warrant bifurcation and if the Collector is of the opinion, basing on the material available before him, that the interests of the village will be better safeguarded by bifurcating that village from the existing Gram Panchayat, he can as well pass orders bifurcating the village by giving special reasons for the same."

2. Thereafter, the Collector passed the impugned order on 16-9-1998 reiterating the earlier decision. After referring to the discrepancy in the distance as mentioned above, the Collector did not record any conclusion on this aspect. However, he felt that having regard to the pattern of developmental activities and expenditure thereon, population, area of ayacut and the wishes of Marribandam residents, bifurcation of Marribandam from Seetharampuram Gram Panchayat would be conducive to the public interest and, therefore, the orders issued earlier have to be implemented. Against this order, the appellant herein filed another writ petition viz., WP No.27673 of 1998. The learned single Judge

held that the petitioner can no longer raise the plea that the distance between Seetharampuram and Marribandam is less than 2 Kms. in view of the observations of the Division Bench in WP No.26872 of 1996 and therefore rejected the main contention advanced on behalf of the writ petitioner (appellant herein). However, the learned single Judge set aside the impugned proceedings dated 16-9-1998 and remanded the matter to the Collector to pass the orders afresh on the technical ground that the Collector committed an error in taking a decision to implement the orders passed earlier which were in fact set aside earlier. What is required to be done by the Commissioner/Collector under the single Judge's order is to issue a fresh Notification excluding Marribandam from Seetharampuram Grama Panchayat and to declare the Marribandam revenue village as a village for the purpose of A.P. Panchayat Raj Act in terms of Section 3 of the Act. There is no need to take a fresh decision on merits inasmuch as the learned single Judge has confirmed the view taken by the Collector. This factual position is not in dispute. That is the reason why the appellant is aggrieved by the order of the learned single Judge.

3. The main thrust of the argument of the learned senior Counsel - Mr. M.V. Ramana Reddy appearing for the appellant is that the rule relating to distance factor contained in A.P. Gram Panchayat (Declaration of Villages) Rules, 1994 as amended in G.O. 232 dated 18-4-1995 is not satisfied in the instant case and therefore, the decision taken by the Commissioner in disregard of the mandatory requirement of 2 Kms. distance, is vitiated by illegality. The Commissioner, be it recalled, did not express his final opinion on the question of distance though the Commissioner noted different versions in this regard.

4. By G.O. Ms. No.232 (P.R.) dated 18-4-1995, the Government directed the partial modification of the earlier orders that the bifurcation shall be considered if the following criteria are satisfied.

(1) If the distance between the areas to be bifurcated is not less than 2 Kms.,

(2) If the population is one thousand, or more and

(3) Number of Gram Panchayats in MPTC may not exceed three after bifurcation/ amalgamation as far as practicable; and the income criteria as specified in G.O. Ms. No.515 dated 17-8-1994 was deleted.

5. It is further made clear that consent of the affected Gram Panchayat is not necessary.

6. The G.O. by its tenor appears to be in the nature of the executive instructions. However, the rules were amended by G.O. Ms. No.272 dated 18-5-1995 within a month thereafter, Rule 4 was amended substituting 2 Kms. for 3 Kms.,

Rule 4 after its amendment reads as follows :

"Any hamlet of a revenue village declared as a village under Rule 3 lying within a distance of 2 Kms., irrespective of its population and income shall ordinarily be

included in that village."

The proviso is also important, it reads as :

"Provided that the Commissioner, for special reasons such as geographical features, communication facilities or viability, may declare one or more such hamlets into a separate village."

7. There is some contrast between the language employed in G.O. Ms. No.232 and the Rules as amended by G.O. Ms. No.272, dated 18-5-1995. The words "not less than" though contained in the executive instructions issued by the Government were not incorporated in that form while issuing amendments to the Rules, a month later. Moreover, Rule 6 was substituted by a new Rule which now reads as follows :

"If a local area comprised in a revenue village or villages which is beyond a distance of two kilometers from that Revenue village or villages, as the case may be, and has a population of one thousand and more, shall be declared as a separate village".

(the word "which" seems to be superfluous).

8. In the previous writ petition, the learned Judges of the Division Bench having noticed the revised guidelines in G.O. 232 dated 18-4-1995 and having referred to the argument of the learned Counsel that bifurcation cannot be done unless the distance is more than 2 Kms., made the observation as extracted above viz., that "the distance is not the sole determining factor for passing an order of bifurcation" and the geographical features, communication facilities, financial position of a particular village can form the basis for bifurcating the village. In other words, in taking the above view, the Division Bench placed reliance on the proviso to Rule 4. The view expressed by the Division Bench is based on a consideration of the relevant provisions. Whether or not such a view is correct and whether the Division Bench should have given effect to the distance criterion as laid down in G.O. Ms. No.232 dated 18-4-1995 need not be answered by us in this writ petition. Suffice it to observe that the decision cannot be said to be "per incuriam" as contended by the learned Counsel for the appellant. The view may be right or wrong, but it binds the parties to the dispute in a subsequent round of litigation on the principle of res judicata. The limited ground on which the remand was ordered was two fold : (1) No reasons were disclosed in support of the opinion formed by the Commissioner, and (2) the Government's instructions were purportedly followed without disclosing what they were. The Division Bench left it free to the Collector to arrive at a decision based on the proviso to Rule 4, without giving paramount importance to the distance criterion. On remand, the Collector after hearing the parties again passed a fresh order giving relevant reasons supported by statistical data. That order is in conformity with the Division Bench judgment which as already observed, cannot be ignored or disregarded in the subsequent writ proceedings between the same parties.

9. We therefore see no merit in the writ appeal. In the view we have taken, it is not necessary for us to refer to the decisions cited by the learned Counsel for the appellant dealing with the doctrine of "per incursion" and interpretation of the words "not less than" occurring in G.O. Ms. No.232.

10. The writ appeal is dismissed. No costs.