

(1997) 11 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2692 of 1997

C. Dayakar Reddy and others

APPELLANT

Vs

District Collector-Cum-Chairman, The Watershed Dev.
Committee, Mahaboobnagar and others

RESPONDENT

Date of Decision : 14-11-1997

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 309

Citation : AIR 1998 AP 170 : (1998) 4 ALD 705

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. C.B. Ram Mohan Reddy, for the Appellant; Government Pleader, for Irrigation and Mr. A. Narshima Reddy, for the Respondent

Judgement

1. The petitioners in the instant writ petition pray for issuance of an appropriate writ particularly one in the nature of Writ of Mandamus declaring the action of the respondents in constituting the Watershed Committee of Tarnikal village, Kalwakurthy Mandal, Mahabubnagar district by order as published in the press dated 5-2-1997 as illegal, arbitrary and unconstitutional. The petitioners also pray for issuance of necessary consequential direction to the respondents to constitute the Watershed Committee in accordance with Rule 4.13 of Rules by constituting Gramasabha and in accordance with Rule 4.14 of the Rules.

2. All the petitioners herein are the residents and agriculturists of Tarnikal village. They are aggrieved by the action of the respondents in constituting the executive body of Watershed Committee for the village Tarnikal

3. It is required to notice that the Central Government and the State Government with a view to develop sub-soil water (sic resources) launched a scheme called "Water Shed Area Development Scheme" in the backward districts in the State of Andhra Pradesh. Mahaboobnagar is one of the most backward districts in the State which, is covered by the scheme. According to the scheme, the funds are provided by Ministries of Rural Development, Government of India and also by

the State Government under D.P.A.P., D.D.P. and I.W.D.P. Schemes. The scheme will be in force for a period of four years. This particular village Thernikal is in the identified Mandals in the District. The scheme provides for constitution of District Level Committee and also Watershed Association at the village level. The Association constituted at the village level is required to be registered under the Societies Registration Act. It shall have to be a body corporate and incharge of the village level for the proper implementation of the scheme and utilisation of funds allotted for the purpose of developing sub-soil water resources. The District Level Committee is headed by the Collector as the Chairman. The Village Level Watershed Committee is required to be constituted and for such purpose, the meeting of Gramasabha has to be convened where the members to the Village Committee shall be chosen.

4. The complaint in the instant writ petition is that the local M.L.A without even the assistance of the gramasabha as contemplated under Rule 13 of the Rules suggested the names of his henchmen to the Watershed Committee. The villagers, in this regard have stated to have raised objections about the illegal and high-handed action of the M.L.A. The Committee at the village level, according to the petitioner, is not properly constituted and "constituted contrary to the Rules". The petitioners, for the aforesaid reason, rely upon the scheme and the booklet issued by the District Village Development Project, Mahaboobnagar District, Government of Andhra Pradesh. The Court's attention is also invited to a representation stated to have been made by the villagers to the District Collector, Mahaboobnagar on 20-1 -1997. The same is not signed by any person muchless the petitioners.

5. It is state in categorical terms in the said representation that a gramasabha was convened and held on 27-1-1997 for the purpose of constituting Watershed Committee in the village. The local M.L.A. is stated to have participated. It is alleged that in the said meeting that "the M.L.A. has misused his powers by provoking the police officials who lathi-charged on the villagers". He has not taken into consideration the opinion of the majority of the villagers and also made them. He acted as the presiding person and constituted Chairman and President.

6. In the counter-affidavit filed by the respondents who have got themselves impleaded, it is stated in categorical terms that a gramasabha meeting was convened for the purpose of constituting the committee and the committee was duly constituted and gramasabha meeting itself was called for the purpose of choosing the committee.

7. One important aspect required to be noticed is that the local M.L.A. against whom serious allegations are made is not impleaded as party respondent. No credence whatsoever can be given to the averments made in the affidavit filed in support of the writ petition, so far as they are made against the local M.L.A. It is also required to notice that in the unsigned representation stated to have been submitted to the District Collector, it is stated that a gramasabha was convened

for the purpose of identifying the members to the Watershed Committee of the village. But in the said meeting, the local M.L.A. had acted in a highhanded manner. In the affidavit filed in support of the writ petition, it is stated that no gramasabha was convened for the purpose of identifying and choosing the members to the Watershed Committee. There is apparent contradiction in the averments made in the affidavit and the application stated to have been filed before the District Collector.

8. Be that as it may, there are no rules I framed whatsoever either by the State Government or by the Central Government prescribing the mode and method of, constituting of the Committee. The mode and method of constituting and selecting the Committees at various levels is provided by a scheme. The scheme is printed in the form of a bulletin to the information of the general public. The scheme framed is not with reference to any statute as such. It is thus clear that there is neither any Statute nor any Rules framed under any Statute regulating the mode and method of constitution of the Committee. The duties and responsibilities of the members of the Committee is also not specified by any statute. The instructions contained in the booklet characterised by the petitioners as the "Rules" are in the nature of broad and general guidelines as to how the Committees at village levels are required to be constituted. The guidelines do not create any corresponding rights in any of the villagers or beneficiaries of the scheme nor those guidelines create any obligation and impose any duties upon the respondents. It is one of those developmental schemes intended for the better management and utilisation of sub-soil water resources. Even according to the guidelines, the Watershed Committee after its constitution is required to be registered as a Society under the Societies Registration Act. The body thus constituted either at the village level or the District level is not a statutory body nor constituted under any Statute.

9. The question that arises for consideration is as to whether a Writ of Mandamus would lie in case of violation of any guidelines?

10. It is settled law, guidelines and instructions which are not framed under any Statute and in exercise of any statutory power have no statutory force and do not give rise to any legal right in favour of an aggrieved person and cannot be enforced. Mere infraction of any of the guidelines would not give rise to cause for issuance of a Writ of Mandamus. It would be entirely a different thing, if such administrative instructions confer a justiciable right in favour of an aggrieved person, may be even an administrative order may confer rights and impose duties. Such is not the case on hand. The so-called guidelines do not confer any justiciable right upon any person.

11. In G.J. Fernandez Vs. State of Mysore and Others, , the Apex Court observed as follows:

"Taking first the contention with respect to the Code not being followed in the matter of tenders, the question that arises is whether this Code consists of

statutory rules or not. The High Court has observed that the so-called rules in the Code are not framed either under any statutory enactment or under any provision of the Constitution. They are merely in the nature of administrative instructions for the guidance of the department and have been issued under the executive power of the State. Even after having said so, the High Court has considered whether the instructions in the Code were followed in the present case or not. Before however we consider the question whether instructions in the Code have been followed or not, we have to decide whether these instructions have any statutory force. If they have no statutory force, they confer no right on anybody and a tenderer cannot claim any rights on the basis of these administrative instructions. If these are mere administrative instructions it may be open to Government to take disciplinary action against its servants who do not follow these instructions but non-observance of such administrative instructions does not in our opinion confer any right on any member of the public, like a tenderer to ask for a writ against Government by a petition under Article 226. The matter may be different if the instructions contained in the Code are statutory rules. Learned Counsel for the appellant is unable to point out any statute under which these instructions in the Code were framed. He also admits that they are administrative instructions by Government to its servants relating to the Public Works Department. But his contention is that they are rules issued under Article 162 of the Constitution. Now Article 162 provides that "executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws". This Article in our opinion merely indicates the scope of the executive power of the State; it does not confer any power on the State Government to issue rules thereunder. As a matter of fact wherever the Constitution envisages issue of rules it has so provided in specific terms. We may for example, refer to Article 309, the proviso to which lays down in specific terms that the President or the Governor of a State may make rules regulating the recruitment and the conditions of service of persons appointed to service and posts under the Union or the State. We are therefore of opinion that Article 162 does not confer any power on "the State Government to frame rules and it only indicates the scope of the executive power of the State. Of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. It is not in dispute that there is no statute which confers any authority on the State Government to issue rules in matters with which the Code is concerned; nor has any provision of the Constitution been pointed out to us under which these instructions can be issued as statutory rules except Article 162. But as we have already indicated, Article 162 does not confer any authority on the State Government to issue statutory rules. It only provides for the extent and scope of the executive power of the

State Government, and that coincides with the legislative power of the State Legislature. Thus under Article 162, the State Government can take executive action in all matters in which the Legislature of the State can pass laws. But Article 162 by itself does not confer any rule making power on the State Government in that behalf. We are therefore of opinion that instructions contained in the Code are mere administrative instructions and are not statutory rules. Therefore, even if there has been any breach of such executive instructions that does not confer any right on the appellant to apply to the Court for quashing orders in breach of such instructions. It is unnecessary for us to decide whether there has been in fact a breach of any instruction contained in the Code with respect to tenders and we do not therefore so decide. But assuming that there has been any breach that is a matter between the State Government and its servant, and the State Government may take disciplinary action against the servant concerned who disobeyed these instructions. But such disobedience did not confer any right on a person like the appellant, to come to Court for any relief based on the breach of these instructions. It is for this reason that we are not referring to the Code, though the High Court did consider whether there was any breach of these administrative instructions and came to the conclusion that there was no breach. In the view we take it is unnecessary for us to consider this, for we are of opinion that no claim for any relief before a Court of law can be founded by a member of the public, like the appellant, on the breach of mere administrative instructions." In *J.R. Raghupathy and Others Vs. State of A.P. and Others*, , the Apex Court observed that "it is well settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force which do not give rise to any legal right in favour of the petitioner". In the said case, number of writ petitions were filed by grampanchayaths and individuals questioning the legality of formation and location of Mandal Headquarters on the ground that such constitution and formation was contrary to guidelines issued by the Government. This Court interfered setting aside the final notification issued by the Government for location of Mandal Headquarters in some cases holding that there was breach of guidelines issued by the Government. Adverting to that issue the Apex Court observed that "the High Court would not have issued a writ in the nature of Mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal rights in favour of the writ petitioners".

12. In the instant case, the guidelines upon which reliance is placed by the learned Counsel for the petitioners are not even in the nature of administrative instructions. They are various items forming part of the scheme as to how the committees are required to be constituted for the purpose of implementation of the scheme. The members of the Committee cannot be said to be holding any public office as such. Even if it is to be assumed that the constitution of Watershed Committee for the village in question is contrary to the guidelines, no Writ of Mandamus would lie to set aside the constitution of the Committee. In my

considered opinion, the writ petition is totally misconceived.

13. Even otherwise, the facts as narrated in the affidavit do not give rise to any cause for filing the writ petition. The averments do not inspire any confidence. The whole tirade in the writ petition is directed against the local M.L.A. who is stated to have acted in highhanded manner in constituting the Committee. Nothing is stated as to in what manner the respondents have failed to discharge their duties or obligation in law. The averments made in the affidavit are self serving in nature. The petitioners merely indulged in speculative litigation.

14. For all the above reasons, I do not find any merit whatsoever in the writ petition. The writ petition is accordingly dismissed. Consequently interim stay granted on 17-2-1997 stands vacated. No costs.