
(2000) 07 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17554 of 1998

Ch. Gopala Reddy

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 21-07-2000

Acts Referred:

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

Citation : (2000) 6 ALD 652 : (2001) 1 ALT 392

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Mr. P.B. Vijaya Kumar, for the Appellant; Government Pleader for Panchayat Raj and Mr. Raja Reddy, Koneti, for the Respondent

Judgement

1. Petitioner seeks a writ of mandamus declaring Section 3 of the A.P. Panchayat Raj Act and the Rules made by G.O. Ms. No. 515, dated, 17-8-1994 as unconstitutional. He also seeks to declare G.O.Ms.No.232, dated 18-4-1995 and G.O. Ms. No.225, dated 11-4-1995 and the consequential order of the first respondent in G.O. Rt. No.763, dated 28-5-1998 as also the order of the 3rd respondent in Roc. 3843/95-G.1, dated 3-6-1998 as illegal, and arbitrary.

2. On 21-7-1998, this Court while admitting the writ petition, passed the following interim order in WPMP No.20935 of 1998:

"G.P. for Panchayat Raj takes notice for respondent Nos.1 to 3 and sought two weeks lime for filing counter.

Prima facie the impugned order dated 28-5-1998 passed by the Government appears to be in violation of the orders passed by this Court in WP No. 10950 of 1995 dated 13-12-1996. As such, there shall be an interim suspension of the operation of the impugned order, pending further orders.

However, the person in-charge-Divisional Panchayat Officer is allowed to continue as person in-charge, pending further orders, of the main village".

3. Subsequently, on 30-9-1999 this Court passed the following common order in WVMP No.2635 of 1999 (filed by the official respondents 1 to 3) and WVMP No.683 of 1999 (filed by the 4th respondent):

""Having regard to the facts and circumstances of the case, the interim suspension granted on 21-7-1998 is made absolute. Post the writ petition itself for final hearing."

4. Two persons-D. Sritiivasarao and Gariganti Thattayya - residents of Nallamothuvaripalem filed WPMP No.9762 of 2000 to implead them as respondents 5 and 6, and a petition in WVMP No. 1133 of 2000 to vacate the interim order dated 21-7-1998.

5. One B. Venkatarama Rao, a resident of Karapalem filed WPMP No.13796 of 2000 to implead him as respondent No.7. He also filed WVMP No.1426 of 2000 to vacate the interim order dated 21-7-1998.

6. The implead applications viz., WPMP Nos.9762 and 13796 of 2000 are ordered. That is how the matter is before me.

7. The controversy in this writ petition is that originally Nallamothuvaripalem Gram Panchayat is a composite Gram Panchayat consisting of Yetravanipalem, Kothanandyapalem, Patha Nandyalame and Nallamothuvaripalem villages. Since none of the respondents or the petitioner disputed the factual matrix of the case, I am not going into the same. Even though the petitioner questioned the constitutionality of Section 3 of the A.P. Panchayat Raj Act and G.O. Ms. No.515, Panchayat Raj and Rural Development Departments dated 17-8-1994 and G.O. Ms. No.232 and 225, dated 18-4-1995 and 11-4-1995 respectively, the learned Counsel for the petitioner submitted that the petitioner has not pressed the same, and has confined himself to the extent of alleged impropriety or conduct of the 1st respondent-Government in allowing the revision petition and not initiating proposals by the District Collector. To that a limited extent only the petitioner is confining his prayer and the petitioner's Counsel requested the Court to observe that as and when need or occasion arises the petitioner is entitled to challenge the constitutionality of Section 3 of the A.P. Panchayat Raj Act. For this reason, I am not narrating the facts elaborately.

8. The petitioner filed this writ petition challenging the bifurcation of Nallamothuvaripalem Gram Panchayat. The orders passed by the Government 1st respondent in G.O. Rt. No.763, dated 28-5-1998 is the issue now before this Court for decision as to whether that order is correct and whether it is in accordance with the order dated 13-12-1996 in writ petition No. 10950 of 1995, and whether there is any procedural irregularity committed by the respondents.

9. Petitioner earlier filed writ petition No,10950 of 1995 as an individual and as a person-in-charge of the village. He opposed the show-cause notice issued by the District Collector, Guntur, for bifurcation of the three villages and the District Collector seems to have rejected the proposals of bifurcation by proceedings

dated 12-5-1995. Challenging this order, one R. Sundararamireddy respondent No.4 in the present writ petition filed a revision petition before the Government of Andhra Pradesh-1st respondent. By order dated 31-5-1995, the 1st respondent allowed the revision petition for bifurcation of the Gram Panchayat as prayed for by respondent No.4. Questioning that revisional order dated 31-5-1995, writ petition No.10950 of 1995 was filed. That writ petition was allowed quashing the impugned order, observing thus:

"The learned Counsel for the 4th respondent submits that it may be left open to the 3rd respondent to take appropriate proceedings for bifurcation of the village if the circumstances so warrant. It is needless to mention that this order does not preclude the authorities under the Act from taking such action as is open to them in law."

10. Thereafter on 27-4-1998, notice was given to the petitioner and other Gram Panchayats and after hearing all the parties and perusing the record, Government allowed the revision petition and ordered for quadrification of the said Gram Panchayat into four Gram Panchayats, viz., Nallamothuvaripalem, Kothanandaipalem; Patlianandiahpalem and Yatravaripalem. The Government further directed that the District Collector shall take further action in this regard.

11. The argument of the Counsel for the petitioner is that the re-hearing of the revision petition is bad because the Court never said that the revision petition should re-heard. The meaning of the direction in the last paragraph of the earlier judgment, extracted above, is that the District Collector has to initiate fresh proceedings from the beginning and the Collector must give reasonable opportunity again to all concerned. As the revisional orders are already quashed, the Government has no power to reopen the revision once again. Instead of reopening the revision petition, the District Collector ought to have initiated fresh proceedings for quadrification of the Gram Panchayat. According to the Counsel for the petitioner, the Commissioner has no power to initiate proceedings and it is only the District Collector who is having power under the A.P. Panchayat Raj (Declaration of Villages) Rules, 1994.

12. Counsel for the itnpleaded respondents 5 and 6 contended that the petitioner has no locus standi to file the present writ petition. Petitioner misused some funds of the Gram Panchayat. The proviso to Rule 4 of the Rules says 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. So, the Commissioner is competent to issue proceedings. The Commissioner or Panchayat Raj and Rural Development in his Letter No.30757/CPR/C2/1997, dated 15-12-1997, requested the Government to issue notices to the Gram Panchayat and all other concerned before passing orders on bifurcation of the Gram Panchayat, Nallamothuvaripalem and the said letter was cited as reference No. 7 in G.O. Rt. No.763, dated 28-5-1998. The proposal was sent on 15-12-1997 and the High Court never said that the Government has no power to reopen the revision. After receiving notices and participating in the revision

proceedings before the Government, the petitioner cannot take a plea that the revision is not maintainable and he is estopped from taking such a plea. In fact, the District Collector has already recommended the proposals and the Government has every authority to issue the proceedings and there is no illegality or irregularity in the orders passed by the Government on 28-5-1998. This litigation is a frivolous one and intended to stall the quadrification of the Gram Panchayat and to put the public to hardship.

13. Counsel for the impleaded 7th respondent supported the argument of the Counsel for respondents 5 and 6. He argued that in a democracy the wish of the people is more important rather than the procedural wrangles; except the petitioner and some other Panchayats, everybody agreed to the quadrification of the Gram Panchayat; and for the sake of the petitioner, the bifurcation should not be stalled.

14. The short question to be decided is whether the Commissioner for Panchayat Raj is not competent to initiate the proposals for constituting a separate village?

15. A perusal of the order dated 28-5-1998 shows that even though in paragraph-4 it is stated that the revision petition is allowed, in the earlier references and in the body of the order it is stated that the Commissioner of Panchayat requested the Government to issue notices to the Gram Panchayat and all other concerned before passing orders on bifurcation of the Gram Panchayat. That shows that under Rule 4, the power is vested with the Commissioner and his proposals are there. In the earlier order also this Court allowed the writ petition and quashed the impugned order basically because there is no notice to the affected parties. When all the parties including the petitioner have participated at the hearing of the revision, it is not open to the petitioner agitate that the proposal ought to have been initiated by the third respondent-District Collector.

16. Now coming to the question whether the Commissioner for Panchayat Raj is empowered to initiate proposals for constituting a separate village, it is useful to notice the proviso to Rule, 4 of the A.P.Gram Panchayats (Declaration of Villages) Rules, 1994 issued in G.O. Ms. No.515, Panchayat Raj Department, dated 17-8-1994. It runs thus:

"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".

17. From a reading of the above proviso, it is clear that the power to declare one or more hamlets-which are earlier included in a village-into a separate village(s) vests in the Commissioner. Thus, the Commissioner for Panchayat is empowered to make a declaration, subject of course to his satisfaction regarding the fulfilment of the stipulated conditions for such a declaration. The petitioner has no quarrel with regard to the desirability and propriety in issuing the declaration. When once the Commissioner is vested with the power to make a declaration, it

must necessarily follow, unless there is anything to the contrary in the statutory rules, that the Commissioner is invested with the power to take all the steps necessary to give effect to his powers. There is nothing in the rules and nothing has been shown by the petitioner that the power to initiate the proposals is exclusively conferred on the District Collector or that such a power has been excluded from the Commissioner of Panchayat Raj. Therefore, the contention of the petitioner that the proposals must be initiated by the District Collector alone and not the Commissioner for Panchayat Raj is misconceived and without any foundation. Hence, the said contention is rejected.

18. Already the Government considered all the aspects and as per the request of the villagers and for the convenience and welfare of the villagers, the Government has taken a decision to quadrificate the villages. No hardship is caused to the petitioner. In fact, the petitioner has conceded that he is not opposing the quadrification of the villages. The writ petition is dismissed. The interim order dated 21-7-1998 passed in WPMP No.20935 of 1998 is vacated. No costs.