
(1958) 08 AP CK 0015
In the Andhra Pradesh High Court
Case No : Writ Petition No. 639 of 1954

Chintapalli Lakshmaiah

APPELLANT

Vs

Collector of Krishna and Others

RESPONDENT

Date of Decision : 26-08-1958

Acts Referred:

Citation : AIR 1960 AP 104

Hon'ble Judges : Satyanarayana Raju, J;Basi Reddy, J

Bench : Division Bench

Advocate : K. Ramachandra Rao and G. Bhaskara Rao, for the Appellant; 2nd Govt. Pleader and P.P. Surya Rao, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This is a petition under Article 226 of the Constitution, for the issue of a writ of certiorari to quash the order of the District Collector, Krishna in D. Dis. No. A-2-17048/58 dated 27th September, 1954.

2. The facts which have given rise to this petition may be briefly stated. One Bethapudi Satyanandam was the village munsif of Nandigamalanka, in the Kaikalur Taluk of the Krishna District. On 29th July 1938, he was dismissed from service with a bar order that, "no undivided member of his family should be appointed to the post during his life-time. In the year 1944, the petitioner was appointed to act as the village munsif of Nandigamalanka. On 21st November 1951, Satyanandam died. On 22nd January 1952, the widow of Satyanandam applied to "the Tahsildar, Kaikalur Taluk requesting that her minor son Kotaiah, then aged 13 years, might "be registered as the office-holder.

The Tahsildar transmitted this request to the Revenue Divisional Officer, Gudivada, who by an order dated 14th November 1952, registered Kotaiah as the heir of the last holder and appointed the petitioner as Deputy to perform the duties of the office of village munsif. Subsequently the mother and guardian of the minor registered office-holder made a representation to the Revenue

Divisional Officer that she had not nominated the petitioner as Deputy and that she was not consulted when he was appointed. On 9th April 1954, the Revenue Divisional Officer cancelled the earlier order dated 14th November 1952 and appointed one Devadattam, the person nominated by the mother of the minor officeholder, as Deputy. Aggrieved by that order, the petitioner preferred an appeal to the District Collector, Krishna.

On 3rd July 1954, the District Collector set aside the order of the Revenue Divisional Officer on the ground that he was not competent to revise a final order passed by his predecessor. On 19th July 1954, the mother and guardian of the registered minor office-holder preferred an appeal to the District Collector against the original order of the Revenue Divisional Officer, dated 14th November 1952, appointing the petitioner as deputy.

In the appeal petition, she averred that she was not aware of the appointment and that the delay, if any, in the presentation of the appeal might be condoned. Notice of this appeal was given to all the parties including the petitioner. On 27th September 1954, the District Collector, Krishna, condoned the delay in the filing of the appeal and after considering the contentions of the parties, set aside the order of the Revenue Divisional Officer appointing the petitioner as deputy. The petitioner challenges the correctness of this order.

3. In support of the petition Mr. K. Ramachandra Rao has argued that the order appointing the petitioner to perform the duties of village munsif during the minority of the registered office-holder had become final and the District Collector had no jurisdiction to set aside that order in appeal.

4. In *Ramachandra Row v. Seshiah* 1957 2 AnW. R. 106 a Division Bench of this Court consisting of Chandra Reddy, J. (as he then was) and Umamaheswaram J., held that u/s 3 of the Regulation VII of 1828 the District Collector has jurisdiction to revise an order of the Sub Collector or Assistant Collector even after it had been given effect to. In *K. Nagarathnammal Vs. S. Ibrahim Saheb and Another*,) a Full Bench of the Madras High Court took the same view. Having regard to these decisions, the contention of the petitioner cannot be accepted.

5. It is next argued that the District Collector had no jurisdiction to condone the delay in the presentation of the appeal filed by the mother of the minor office-holder. This contention is also unsustainable by reason of the decision of the Division Bench in 1957-2 Andh. WR 106, that it is always open to a court or Tribunal to condone delay if the person concerned is able to convince it that there is sufficient cause for excusing the delay and the filing of a formal petition is not a necessary condition for the exercise of that power.

6. The learned counsel for the petitioner next submitted that paragraph 9 of Board's Standing Order No. 148, which requires that "in making appointment of a person to discharge the duties of the office of the village munsif during the minority of the registered holder regard should be had to the wishes of the minor's near relatives", is only a departmental direction and non-compliance

with it does not render the appointment of the petitioner invalid. In support of this contention the decision of Mr. Justice Bhimasankaram in Prabhakara Rao v. District Collector, Nellore 1958 1 AnW. R. 164 has been relied upon. There the learned Judge observed; "It is true that under Board's Standing Order No. 148 paragraph 9, there is a direction that in making appointments of persons to discharge the duty of the office (of the karnam) during the minority of a registered holder, the wishes of the minor's guardian are to be consulted. But it cannot be said that an appointment made without such consultation " is void. It is only a departmental direction and non-compliance with it does not render the appointment invalid, because the power of appointment is vested by the statute in the Collector. I am far from saying that it is riot desirable or necessary that the guardian's wishes should be consulted. But want of such consultation does not, in my opinion, invalidate the appointment. That is to say, the appointment is perfectly valid even it made by the Revenue Divisional Officer or the Collector without even consulting the guardian. If that he, as I conceive the true view, then the petitioner cannot complain that the Collector did not give him notice". Actually in the case before him, the learned_ Judge reached the conclusion that the minor's guardian had an opportunity of making his representation and that was tantamount to consultation.

7. The provision in the Madras Hereditary Village-Offices Act 1895, governing the appointment of deputies is contained in Section 10(5) which reads;

"When the person who would otherwise be entitled to succeed to an office is a minor, the Collector, shall register the minor as the heir of the last holder and appoint some other person qualified under Sub-section (1) to discharge the duties of the office until the person registered as heir, on attaining majority or within three years thereafter, is qualified under Sub-section (1) to discharge the duties of the office himself, when he shall be appointed thereto. If the person registered as heir under this Sub-section remains disqualified under Sub-section (1) for three years after attaining majority, he shall be deemed to have forfeited his right to the office. On such forfeiture or on his death the vacancy shall be filled up in accordance with the provisions of this section as it he was the last holder of the office".

8. Board's Standing Orders 145 to 157, which deal with village officers, are contained in Chapter XIV. As stated in para 2 of B. S. O. No. 145, all matters provided for by law are contained in the first part of the Chapter, namely, Board's Standing Orders 146 to 154, and matters dealt with by executive order in the second, namely, Board's Standing Orders 155 to 157. Paragraph S of B. S. O. No. 148 deals with registration of minors and appointment of deputies. The requirement with regard to the consultation of the minor's family is contained in paragraph 9. The emoluments of the deputy are given in paragraph 10 and the duty of the deputy to instruct the minor is provided by paragraph 11.

9. From a reading of these orders and from the fact that paragraph 9 of B. S. O. No. 148 is contained in part I, which deals with matters provided by law, it is

clear that B. S. O. No. 148 paragraph 9 is a statutory rule, evidently framed under the powers vested in the Board of Revenue.

10. Section 20 of the Act provides that the Board of Revenue may make rule in regard to-

"(X) any other matters calculated to enhance the efficiency of the village service".

The requirement that the wishes of the minor's guardian should be consulted as provided by paragraph 9 is with a view to secure a suitable person, who will look after the interests of the minor officeholder and train him to discharge his duties efficiently when he comes of age and is undoubtedly a matter calculated to enhance the efficiency of village service and is thus within the ambit of Clause (x) of Section 20. It follows that Board's Standing Order No. 148 is within the rule making power vested in the Board of Revenue by Section 20 of the Act,

11. Learned Counsel for the petitioner, however, urged that clause (x) of Section 20 speaks of village service while Section 3 of the Act enumerates village munsif in the category of Village offices". According to him, there is a distinction between "village service" and "village office" and he relied upon Sub-section (4) of Section 3 of the Act as furnishing an indication of such distinction. It is no doubt true that Sub-section (4) of Section 3 speaks of hereditary offices of village artisans and village servants, The expression "village services," understood in its natural and ordinary meaning, comprehends all classes of village offices by whatever name they are known.

12. For the above reasons, we hold that the petitioner is not entitled to any relief. This Writ petition is, therefore dismissed with costs. Advocate's fee Rs. 100/-.