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In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 40667 and 41232 of 2014 and 653 of 2015

Govindu Venkata Sivananda Murthy — APPELLANT

Vs

The State of Andhra Pradesh and Others — RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:
Constitution of India, 1950 — Article 162, 243G, 243-G, 40

Citation : (2015) 6 ALD 91 : (2016) 1 ALT 140

Hon'ble Judges : A. Rajasekhar Reddy, J

Bench : Single Bench

Advocate : O. Manoher Reddy, Taddi Nageswara Rao and C. Nageshwara Rao, for the Appellant

Final Decision : Dismissed

Judgement

A. Rajasekhar Reddy, J.—As the issue involved in all these writ petitions is one and the same, they are being disposed of by way of this common order.

2. All these writ petitions are filed assailing the G.O. Ms. No. 135, Panchayat Raj and Rural Development (R.D.I) Department, dated 17.09.2014 issued by the first respondent. All the writ petitioners in W.P. Nos. 40667 and 41232 of 2014 are elected Sarpanches of Srikakulam and Vizianagaram Districts respectively whereas the writ petitioner in W.P. No. 653 of 2015 is the Municipal Chairperson, Jaggayyapeta Municipality, Krishna District.

3. The case of the petitioners in W.P. Nos. 40667 and 41232 of 2014 is that the Government has issued G.O. Ms. No. 135, dated 17.09.2014, stating that the Self Help Group members and Group Social activists mentioned in the committees constituted for grant of pensions will be nominated by the concerned District Minister. By virtue of the 73rd Amendment to the Constitution, a new part IX has been added to the Constitution consisting of Articles 243 to 243-O and XI schedule has also been added with effect from 24.04.1993 and that the said amendment is intended to give effect to Article 40 of the Directive Principles

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of the State Policy, which directs the State to take steps to organize village panchayats and vest them with such powers and authority as may be necessary to enable them to function as units of local self Government. Article 243-G of the Constitution of India provides the responsibilities of Panchayats as preparations of plans and implementations of scheme for economic developments and social justice. After the 73rd Amendment of the Constitution of India, the Government has issued various G.Os empowering the Sarpanches of the Gram Panchayats to take a decision for effective development of the villages and also in respect of various development programmes that have been taken up at the village level. By virtue of such G.Os., the Sarpanches had an effective role in the selection of beneficiaries in respect of the various Social Welfare Schemes notified by the Government either under the Central funds or under the States Funds.

4. By virtue of G.O. Ms. No. 135, Panchayat Raj and Rural Development (R.D.I) Department, dated 17.09.2014, Gram Panchayat Pensions Committee has been constituted with the Sarpanch as the President, MPTC as one of the member, two members from Self Help Group and Gram Panchayat Secretary as the member convener and that the Self Help Group Members and Group Social activities mentioned in the above committee will be nominated by the concerned District Minister. By said clause, the role of the Sarpanch, who is elected to the Panchayat is minimal, is only a figure head in the committee with no say with regard to the composition of the committee. By the impugned G.O, the object under Article 40 of the Constitution of India to endow the Gram Panchayat with such powers and authority to function as units of local self Government is lost.

5. That the Erstwhile State of Andhra Pradesh has issued G.O. Ms. No. 571, dated 26.12.2007 with regard to the devolution of the powers and functions of the Panchayat institutions in respect of subject relating to rural development. The issuance of the said G.O. was necessitated in view of the 73rd Constitution Amendment. The subsequent G.O. issued in G.O. Ms. No. 238, dated 01.08.2009, which amended the earlier G.O. Ms. No. 350, dated 31.08.2006, provides the composition of the Committee and in the said committee, the Sarpanch and the Chairman, one member from the elected ward members of the Gram Panchayat, one Women member from among Self Help Group, one person of the village, who is having interest in the developmental activities and the Panchayat Secretary is the member convener. The Government has also issued G.O. Ms. No. 791, dated 07.11.2013, with regard to the various functions which are assigned to the Gram Panchayat. In the impugned G.O, there is no reference of the aforesaid G.Os. That even after the A.P. State Reorganization Act, the G.Os which were issued earlier also operate and there is no justification on the part of the 1st respondent in issuing the impugned G.O. and empowering the District Minister to nominate the members of the committee and only making the Sarpanch of the Gram Panchayat as a figure head to the said committee. The impugned G.O. in so far empowering the District Minister to nominate the members of the committee without assigning any role to the elected Sarpanches of the Gram Panchayat is being challenged as illegal and is violative of Article

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243-G of the Constitution of India.

6. In W.P. No. 653 of 2015, G.O. Ms. No. 135, Panchayat Raj and Rural Development (R.D.I) Department, dated 17.09.2014 the nomination of the members of the Municipal Ward Pensioners Committee and the Municipalities Pensions Committee by the District Minister, is being challenged as there would be likelihood of bias while recommending persons to be eligible for pensions. As the impugned G.O. shows that the elected members, social activists and self help group members will be a committee to scrutinize, there would be likelihood of political interference, without proper verification and that the same would be based on political considerations. No criterion is laid down for nominating a person to the committees. That while the petitioner was the President of the Municipality Pensions Committee, one person by name Mr. Yalamanchili Venkata Raghavendra Rao, a councilor of TDP from 5th Ward and a candidate for chairpersonship on behalf of the TDP, who lost against petitioner, is nominated as a member and one Ex-councilor of TDP in ST category and two active members in the TDP have been appointed as Members from the category of social activists. In the list of ward committees, the elected ward member of the YSRCP are appointed as President and various defeated candidates on behalf of the TDP are appointed by the concerned District Minister showing them in the category of SHG or Social Activists and whereas in the case of elected TDP councilors in a ward, the defeated candidates of the YSRCP are not appointed in the committees. That as the nominated members are more in number, practical differences cropped up and continues to exist in the verification by the committees and their recommendations, due to which many eligible persons are being eliminated. Under the guise of the committees the leaders of the TDP are recommending the names of the persons who are sympathizers of their party and that there is no power or discretion to the appellant committee to which the petitioner is the President. That the power and discretion to the Ward Pension Committee and the Municipal Pension Committee is totally without any proper guidelines and there is every scope for political interference and bias and sought to set aside the impugned G.O.

7. Counter affidavit is filed in W.P. Nos. 40667 and 41232 of 2014 by the first respondent denying the averments made in the affidavits filed in support of the writ petitions stating that writ petitions are misconceived as no statutory or fundamental rights of the petitioners have been infringed/abridged. The impugned G.O. is neither violative of Article 243-G nor the procedure contemplated under the G.O. is against the letter and spirit of the Constitution with regard to the powers and functions of the local bodies/panchayats. That the nomination of the members from the Self Help Groups and Social activists by the concerned District Minister would not dilute the role of the elected Sarpanch, as the said process was mooted for the purpose of involving the community and for inclusion of all the gender and social classes. On experience and for administrative reasons, the concerned District Minister is considered for such activity, as the District Minister is an office elected by the people. The

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constitution of committee is so framed firmly for upholding the democratic principles wherein two elected local body representatives and a Government servant are inducted in the committee. Provision is also made for the pensioners to appeal against Gram Panchayat/Ward Committees decision to Mandal/ Municipal Pension Committees and above. The petitioners have no locus standi to question the impugned G.O. much less executive decisions for implementation of welfare scheme. Clause 6 of the impugned G.O. shows that the procedure for verification of eligibility of existing pensioners and collection of application for new pensions is stated and that MPDO/Municipal Commissioner have the last say and that a fool proof method has been adopted in identifying the pensioners. The District Minister, who is undertaking the exercise of nominating the members is also a Public Representative having been duly elected and in fact with wider bracket of electorate, when compared to the Sarpanch. The averment that the impugned G.O. is issued without referring to the earlier G.Os., is of no consequence. There is nothing irrational or unreasonable in the impugned G.O. and prayed to dismiss the writ petitions.

8. In addition to the averments in the above counter affidavit, the first respondent filed counter in W.P. No. 653 of 2015 denying the averments mentioned in the writ affidavit of the petitioner. It is stated that the aim and object of the impugned G.O. is that the eligible pensioners can receive pension without any cumbersome process near the place of their residence. No constitutional provision has been breached, much less the Constitutional Amendment. Aadhar is not mandatory or compulsory, they being eligible for pension, no pension is being denied for not holding of Aadhar card. The eligibility criterion of determination of BPL (Below Poverty Line) people is specifically given in the G.O. itself and Aadhar card is not a criterion for inclusion exclusion. The writ petition is politically motivated.

9. Counter affidavit is also filed by the 4th respondent in W.P. No. 653 of 2015 reiterating the averments of the counter affidavit of the 1st respondent.

10. Heard Sri O. Manohar Reddy, Sri Tadi Nageshwara Rao, Sri C. Nageswara Rao, learned counsel for the petitioners, learned Advocate General for the State of Andhra Pradesh.

11. Sri O. Manoher Reddy, as well as Sri C. Nageshwar Rao, learned counsel for the petitioners submits that by conferring power of nomination of Committee members on the District Ministers, the role of the Sarpanch who is elected to the Panchayat is made minimal and he will be left as figure head in the committee with no say with regard to the composition of the committee. The purpose of the 73rd Amendment to the Constitution of India by introducing Article 243G is defeated; that in similar circumstances, this Court has struck down. In support of his contention, he relied on the judgment reported in Allada Bhaskara Rao and others v. Government of Andhra Pradesh and others. Sri Tadi Nageshwar Rao adopted the arguments of Sri O. Manoher Reddy and Sri C. Nageshwar Rao.

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12. On the other hand, learned Advocate General appearing on behalf of the State submits that Article 243-G of the Constitution of India is only an enabling provision of the Constitution, as such, impugned G.O. cannot be held to be in violative of the said Article. In view of the same, the writ of mandamus cannot be issued to direct the legislature to enact law basing on the same. He further submits that the power of the State Legislature to legislate on a subject relating to an entry in State List or Concurrent List is well governed by specific provisions and hence it cannot be said that by introduction of Article 243G by 73rd Constitutional Amendment the power to legislate relating to those entries is any way curtailed since Article 243G cannot override Articles 245 and 246 and these provisions are to be harmoniously construed. In support of his contention, he relied on the judgment reported in Ranga Reddy District Sarpanches Association and others v. Government of A.P and others and also decision of Hon''ble Supreme Court in Civil Appeal No. 8137 of 2003 (State of U.P. and another v. Zilla Parishad Ghaziabad and another).

13. The main ground on which all these writ petitions are filed is that the impugned G.O. Ms. No. 135, Panchayat Raj and Rural Development (R.D.I) Department, dated 17.09.2014 is violative of Article 243-G read with Eleventh Schedule of the Constitution of India. For the purpose of better understanding, it is relevant to extract Article 243-G and Eleventh Schedule of the Constitution of India.

243G. Powers, authority and responsibilities of Panchayats-Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with respect to-

"(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

1[ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.

2. Land improvement, implementation of land reforms, land consolidation and soil conservation.

3. Minor irrigation, water management and watershed development.

4. Animal husbandry, dairying and poultry.

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5. Fisheries.

6. Social forestry and farm forestry.

7. Minor forest produce.

8. Small scale industries, including food processing industries.

9. Khadi, village and cottage industries.

10. Rural housing.

11. Drinking water.

12. Fuel and fodder.

13. Roads, culverts, bridges, ferries, waterways and other means of communication.

14. Rural electrification, including distribution of electricity.

15. Non-conventional energy sources.

16. Poverty alleviation programme.

17. Education, including primary and secondary schools.

18. Technical training and vocational education.

19. Adult and non-formal education.

20. Libraries.

21. Cultural activities.

1Added by the Constitution (Seventy-third Amendment) Act, 1992, s. 4 (w.e.f. 24-4-1993).

22. Markets and fairs.

23. Health and sanitation, including hospitals, primary health centres and dispensaries.

24. Family welfare.

25. Women and child development.

26. Social welfare, including welfare of the handicapped and mentally retarded.

27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.

28. Public distribution system.

29. Maintenance of community assets.]

Added by the Constitution (Seventy-third Amendment) Act, 1992, sec. 4 (w.e.f.

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24-4-1993).

A careful analysis of the Article makes it clear that the directives envisaged by Article 243-G are discretionary in nature."

14. The impugned clause in the impugned G.O. Ms. No. 135, PR and RD (RD.I) Department, dated 17.09.2014 reads as follows:

"Gram-panchayat, Municipal Ward and Municipal Corporation Division Pensions Committee (Including (1) BC, (1)SC and (1)ST in each committee)

(Table)

Gram-panchayat Pensions Committee Municipal Ward Pensions Committee Municipal Corporation Division Pension s Committee Sarpanch- President Ward Member President Corporator- President MPTC-Member SHG members-2 members SHG Members- 2 members SHG Members 2 members Social Activists -3 members Social Activists 3 members Social Activists -2 members Bill Collector- Member convener Bill Collector Member convener Gram-Panchayat Secretary- Member Convener --

The Self Help Group Members, and Group Social Activists mentioned in the above Committees will be nominated by the concerned, District Minister (s) and the nomination process shall be completed immediately.

15. A perusal of the aforesaid Government Order shows that it is a policy of the State Government and it is intended to secure dignified life to all the poor and vulnerable, particularly the old and infirm and to support their minimum needs to bring happiness in their lives. Petitioners are aggrieved by the clause in the G.O. to the extent of the Self Help Group Members and Group Social activists mentioned in the above committee will be nominated by the concerned District Minister. By virtue of such a clause in the G.O, the role of the Sarpanch, who is elected to the Panchayat is minimal and is only a figure head in the committee, who has no role in the composition of the committee and that the said exercise is against the Constitutional amendment, which envisages that the Panchayat should be vested with such powers and authority as may be necessary to enable them to function as units of local self government. As a result of which, there is every likelihood of political bias in nominating members to the committee and in recommending the names of the persons to be eligible for pensions.

16. The apprehension of the petitioners in the writ petitions is only general in nature and that they have not brought to the notice of this Court about the alleged bias that has been committed by the Government in implementing the impugned G.O. Preservation of status of the Sarpanch as the figurehead of the Committee while nullifying his role in its formation, is alone cannot be considered. The District Minister, who is also a public representative having been duly elected having wider bracket of electorate when compared to the Sarpanch, is undertaking the exercise of nominating the members. No factual foundation had been laid down by the petitioners to show that illegality has been committed

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by the Government by issuing the impugned G.O. Therefore, the contention of the petitioners that the nomination of the members from the Self Help Groups and social activists by the District Minister would dilute the role of the elected Sarpanch, cannot be accepted.

17. This Court in Allada Bhaskara Rao and others v. Government of Andhra Pradesh and others (supra), it is observed as under:

"23. The State Government had, in fact, recognized that the Constitution Seventy-third Amendment provides for strengthening and revitalizing the Panchayat Raj institutions so that they can subserve the needs of the teeming millions that live in the rural areas. G.O. Ms. No. 571 Panchayat Raj and Rural Development (RD.III) Department dated 26.12.2007 referred to the enactment of the Andhra Pradesh Panchayat Raj Act, 1994 reflecting the spirit of the Constitutional mandate, identification of ten core subjects to be devolved to the Panchayat Raj institutions by demarcating official responsibility basing on the subsidiary principle and the implementation of National Rural Employment Guarantee Scheme being devolved on the Panchayat Raj institutions. If that were the spirit of devolution of the State Government, the impugned Government Order No. 274 is not in tune with such declared objective."

In the above Judgment, the Hon''ble Division Bench has struck down the impugned Government Order, by virtue which, the provision for submission of the names of the local persons by the Panchayat Secretary/village Secretary in consultation with the Sarpanch, was deleted authorizing the Mandal Parishad Development Officer to submit the names of the Committee Members to the District Collector, who will in turn take the approval of the District In-charge Minister, for reconstitution of the Village Level Implementation-cum-Monitoring Committee at a Gram Panchayat Level in respect of various activities under INDIRAMMA Programme.

In the present case on hand, the concerned District Minister will nominate the Self Help Group Members and Group Social Activists mentioned in the Committees, which cannot be said to be illegal as arbitrary, as the petitioners allegations are only apprehensions.

18. The Hon''ble Apex Court in Civil Appeal No. 8137 of 2003 held as follows:

"13.

14... In our opinion, this provisions is only an enabling provision, it enables the Legislature of a State to endow the Panchayats with certain powers. Hence, the Legislature of a State is not bound to endow the Panchayats with the powers referred to Article 243-G, and it is in its discretion to do so or not. At any event there is no mention of the public distribution system in Article 243-G of the Constitution. Thus, it is evident that the High Court has taken a view that the provision of Article 243-G is merely an enabling provision, and it is not a source of legislation. This view seems to be in consonance with the law laid down by this

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Court in Uttar PradeshGram Panchayat Adhikari Sangh and Others Vs. Daya Ram Saroj and Others, (2006) 13 SCALE 442 : (2007) 2 SCC 138 : (2007) 1 SCC(L&S) 773 : (2006) SCR 581 Supp : (2007) 2 SLJ 451 , wherein an observation has been made that Article 243-G is an enabling provision as it enables the Panchayats to function as institutions of self-government. Further, this Court noted that such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider conditions and to make laws accordingly. It is also open to the State to eliminate or modify the same.

15. Therefore, it is apparent that Article 243-G read with Eleventh Schedule is not a source of legislative power, and it is only an enabling provision that empowers a State to endow functions and devolve powers and responsibilities to local bodies by enacting relevant laws. The local bodies can only implement the schemes entrusted to them by the State."

19. In Ranga Reddy District Sarpanches Association and others v. Government of A.P and others (supra), it is clearly held that Article 243-G read with Eleventh Schedule of the Constitution of India is only an enabling provision and no mandamus can be issued for enacting law. When once Article 243-G of the Constitution of India is enabling provision, the Hon''ble Larger Bench held that the provisions of the Andhra Pradesh Panchayat Raj Act, are not in contravention of Article 243-G of the Constitution. When once the Article 243-G of the Constitution is enabling provision, petitioners cannot challenge the impugned G.O. in violation of said enabling provision.

In view of the same, the question of finding that the impugned G.O. is in violation of Article 243-G of the Constitution of India does not arise. Moreover, in the present case on hand, the petitioners are also the members of the subject Committees and the petitioners cannot say that they should only be involved in the constitution of the Committees. The petitioners are unable to show which provision of the Constitution or which provision of enactment is violated by the issuance of the impugned G.O. The State Government has taken a policy, to form the Pension Committee to provide pensions to all the eligible persons, duly eliminating the ineligible cases.

The allegations of the writ petitioners about the political affiliation of themselves and others whose interest they purport to represent and the impugned Government Order being motivated with a mala fide intention to exclude them from the selection of the beneficiaries, are unsupported and unsubstantiated by any data on record. Consequently, any extraneous consideration in the issuance of the impugned Government Order making it vitiated by any malice in law or colourable exercise of power cannot be considered.

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Another contention of the learned counsel for the petitioners that impugned Government Order is issued without referring to the earlier G.Os., is of no consequence as long as the petitioners are unable to substantiate as to how the impugned G.O. is illegal Order. The impugned G.O. is the policy of the Government, which is issued for the benefit of the poor and vulnerable persons of the society.

Article 162 of the Constitution of India provides for the extent of executive power of the State, which reads as follows:

"162. Extent of executive power of State.

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof."

Since the executive power of the State Executive is coextensive with that of the State Legislature, it follows that the State Executive may make rules regulating any matter within the legislative competence of the State Legislature, without prior legislative authority, except where a law is required because the Rules so framed would violate any provisions of the Constitution which requires legislation. As such, it cannot be said that the State Government has violated any of the provisions of the Constitution much less Article 243-G read with Eleventh Schedule in issuing impugned G.O.

For the said reasons, I am not inclined to interfere with the impugned G.O. issued by the Government and these writ petitions are accordingly, dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand dismissed.

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