

(1974) 12 AP CK 0011
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2310/72

I. Sreeramulu

APPELLANT

Vs

B.D.O. Panchayat Samithi, Bhadrachalam and others

RESPONDENT

Date of Decision : 19-12-1974

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 12(1)

Citation : (1974) 12 AP CK 0011

Hon'ble Judges : S. Obul Reddi, C.J.; K. Madhava Reddy, J

Bench : Division Bench

Advocate : M.R.K. Chowdary, for the Appellant; K. Raghava Rao and G. Venkatadri, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Mr. S. Obul Reddi, Chief Justice

1. The president of the Bhadrachalam Panchayat Samithi has filed the writ petition questioning the continuance of respondents 2 to 8, Ex officio-members of the Samithi, on the ground that they are not qualified to sit as Ex-officio members of the panchayat Samithi in view of the further proviso added to sub-section (1) of section 12 of the Andhra Pradesh Gram Panchayat Act, hereinafter referred to as "the Act" which lays down that the Sarpanch of every Gram Panchayat in the Scheduled areas shall be elected from among the members of the Gram Panchayat belonging to the schedule Tribes. There are 21 Gram Panchayats in the Bhadrachalam Panchayat Samithi and the Bhadrachalam Samithi is wholly situated in a scheduled area. Under the proviso added by G. O. Ms. No. 268 dated 21-5-1969, only those tribals, who are elected as Sarpanchs of the respective Gram Panchayats are eligible to become sarpanchs of the Gram Panchayats in the Scheduled area. It is the case of the petitioner that as all the 21 Gram Panchayats are situated wholly within a scheduled area, only members of the scheduled Tribes are competent to be elected as Sarpanchs of the Gram Panchayats and consequently become Ex-officio members of the Panchayat

Samithi, Admittedly, Respondents 2 to 8 do not belong to any of the Scheduled Tribes. They were elected as Sarpanchs of the respective Panchayats on the strength of Memorandum No. 3146/Samithis 1/70-I dated 8-6-1970 issued by the Government suspending G.O. Ms. No. 268 dated 21-5-1969. That G.O. was suspended because of the interim orders made by this Court suspending the operation of that G.O. during the pendency of Writ petition No. 1719 of 1970. The validity of the impugned G.O. Ms. No. 268 was later upheld by this court and the writ petition was dismissed. What is contended on behalf of Respondents 2 to 8 is that in as much as G.O. Ms. No. 268 dated 21-5-1969 was not in force on account of that G.O. having been suspended by the Government under Memo. No. 8-6-1970, they were eligible to be elected as Sarpanchs of the respective Gram Panchayats, and by virtue of that office to become Ex-officio members of the Panchayat Samithi.

2. What has now to be determined by in is whether memo. No. 3146 dated 8-6-1970 suspending G. O. Ms. No. 268 Dt. 21-5-1969 conferred a right which members of the non-Scheduled tribes did not otherwise possess under the Act so as to get themselves elected as Sarpanchs and then become Ex-officio member of the Panchayat Samithi. The memo reads :

The High Court of judicature of Andhra Pradesh in C.R.P., No. 7166/70 in W.P. No 1719/70 have ordered, among others that the operation of the G.O. cited be suspended pending further orders of the High Court on the Writ petition. As a result of this, even a non-tribal is now eligible to be elected as a President and Vice-President of the Panchayat Samithi in the Schedule areas. The elections to all Panchayat Samithis in the Scheduled areas may therefore be conducted keeping the High Court's orders in view.

3. The High Court had merely suspended G.O. Ms. No. 268 pending determination of its validity in the writ petition. No rights can possibly accrue to the petitioners in that writ petition beyond the date of disposal of the Writ petition. It is the final order in the writ Petition that governs the right of the parties and not the interim order made pending disposal of the Writ petition. When once the G. O. is upheld by this court, it follows that whatever interim relief was given earlier, that will have no effect after the passing of the final orders in the writ petition. Therefore, Memo. No. 3146 dated 8-6-1970 issued by the Government cannot confer any rights on the non-tribals, nor can it take away or abridge the rights conferred upon the scheduled Tribes by the statute.

4. Section 12 (1) of the Act deals with the election of sarpanch and Upa-sarpanch. It is a mandatory provision. Every Gram Panchayat must have an elected Sarpanch and Upa Sarpanch. The election is to be held in the manner prescribed. The Governor of Andhra Pradesh, in exercise of the powers conferred upon him by sub-paragraph (1) of paragraph 5 of the fifth Schedule to the Constitution of India, directed, that the Act shall apply to the Scheduled areas subject to the modification indicated in the further proviso added to sub-section (1) of section 12. That proviso is in these terms.

provided further that the sarpanch for every Gram Panchayat in the Scheduled areas shall be elected from among the members of the Gram Panchayat belonging to the scheduled Tribes.

5. That proviso was notified in G.O. Ms. No. 268 dated 21-5-1969 and it came into force with effect from that date. From that date onwards, only a member of the scheduled tribe was eligible to be elected as sarpanch in the scheduled areas and not one not belonging the scheduled tribe. That being the case, it must be held that the election of a member of non-scheduled tribe where atleast one member of that schedule tribe is available in a Gram Panchayat, would be void ab initio as it would be against the statutory requirements.

6. It is now to be considered as to the effect of the said proviso in the case of a Gram Panchayat where there is no member belonging to a scheduled tribe. Mr. MRK Chowdary, learned council for the petitioner, contends that the election of Respondents 2 to 8 must be held to be void as they are all non-tribals. It is not in dispute that there is no tribal members in the Gram Panchayats of Bhadrachalam and Gundala, Respondent No. 3 is the Sarpanch of Gundala Gram Panchayat; and Respondent No. 4 is the Sarpanch of Bhadrachalam Gram Panchayat. The question, therefore, is when there is not even a single member belonging to the scheduled tribes in a Gram Panchayat situated wholly in a scheduled area, whether by virtue of the proviso to section 12 (1), a member of a non-schedule tribe is ineligible for election as Sarpanch. Section 12, as has already been noticed, makes it obligatory to elect one of its members as Sarpanch and another as Upa-sarpanch for every Gram Panchayat.

7. Section 4 provides for the constitution of a Gram Panchayat for a village or villages and it comes into being on the date of publication of the notification and it is mandatory that every Gram Panchayat shall elect one of its members as Sarpanch and one other as Upa-Sarpanch. Therefore, when once a Gram Panchayat is constituted, the election of Sarpanch cannot be avoided on the ground that there is no number belonging to the scheduled tribe in that Gram Panchayat declared to be a part of wholly scheduled area. We may also notice in this connection Section 4 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act which provides for composition of Panchayat Samithis. This section, to the extent material, reads.

4. (1) Every Panchayat Samithi shall consist of the following members, namely:--

(i) in the Andhra Area, the president of every panchayat and in the Telangana area, the Sarpanch of every panchayat and the president of every town committee in the Block, ex-officio:--

8. If Section 4 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act is read with section 12 (1) of the Act, the intention of the legislature becomes clear. What the legislature intended is that every Gram Panchayat shall be represented by its sarpanch or the president, as the case may be, on the panchayat samithi. It cannot be attributed to the Legislature that, if there is no

member of a scheduled tribe in any particular Gram Panchayat as its member, it intended to exclude a member not belonging to a scheduled tribe from being elected as sarpanch and thus acquire ex-officio membership of a Panchayat Samithi. The proviso added by the Governor is only to give representation to the scheduled tribes on a Gram Panchayat so that one of its members could be elected as Sarpanch, thus entitling him to become an ex-officio member of a Panchayat Samithi. It cannot also be attributed to the Governor, when he added the proviso that he intended to deprive representation to a Gram Panchayat Samithi if a member of a scheduled tribe was not available for election as Sarpanch of the Grampanchayat. The proviso added by the Governor merely declares that, from among the members of the Gram Panchayat belonging to the Scheduled Tribes, the sarpanch shall be elected. The proviso does not say that, in the event of there being no member of a scheduled tribe in a Gram Panchayat, a non-tribal cannot be elected as sarpanch. It could not have been the intention of the Governor to have Gram Panchayat without a sarpanch or a Upa-sarpanch, as that would be contrary to the mandatory requirements of section 12 (1) of the Act. Admittedly, in the Gram Panchayats represented by respondents 2, 5, 6, 7 and 8, there were members belonging to the scheduled tribes. In view of the proviso added by the Governor, any election of a sarpanch other than that of a tribal, into panchayat where there is a tribal member will be wholly void. It, therefore, follows that respondents 2, 5, 6, 7 and 8 have no authority to continue as Ex-officio members of the Bhadrachalam Panchayat Samithi, or as Sarpanch of their respective Gram Panchayats. So far as respondents 2 and 4 who represent Gundala and Bhadrachalam Gram Panchayats respectively are concerned, they will be entitled to continue as Sarpanchs and consequently as Ex-officio members of the Panchayat Samithi in view of what has been held by us above.

9. In the result, a writ of quo warranto shall issue against respondents, 2, 5, 6, 7 and 8 as they have no right to continue as Sarpanchs of their respective Gram panchayats and become Ex-officio members of the Panchayat Samithi in view of G.O.Ms. No. 268 dt. 21-5-1969. In the result, the writ petition is allowed in so far as it relates to respondents 2, 5, 6, 7 and 8 and dismissed in so far as it relates to respondents 3 and 4. No costs. Advocate's fee Rs. 100/-