
(1981) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No"s. 933 and 1334 of 1981 and W.A. No. 275 of 1981

K. Nagabhushanam and Others

APPELLANT

Vs

Collector, Krishna Distirct and Others

RESPONDENT

Date of Decision : 05-09-1981

Acts Referred:

Andhra Pradesh Gram Panchayats (Declaration of Village) Rules, 1969 — Rule 12
Andhra Pradesh Gram Panchayats Act, 1964 — Section 232, 3, 3(1), 3(2)
Andhra Pradesh Municipalities Act, 1965 — Section 3
Constitution of India, 1950 — Article 14, 226, 40

Citation : AIR 1982 AP 123

Hon'ble Judges : Alladi Kuppaswami, C.J;P. Ramachandra Raju, J

Bench : Division Bench

Advocate : V.T.M. Prasad and K. Jagannadha Rao, for the Appellant; Advocate General, Govt. Pleader and D. Venkata Reddy, for the Respondent

Judgement

P. Ramachandra Raju, J.—Bhavanipuram, Patamata and Gunadala are three Gram Panchayats constituted under the Gram Panchayats Act in the vicinity of Vijayawada Municipality. These three Panchayats come within the definition of local area as defined in Sec. 2, sub-section (20) of the A. P. Municipalities Act, 1965 (hereinafter called the "Municipalities Act") The Government, by G. O. Ms. No. 819 (Municipal Administration) dated 13-8-1979 issued under Sec. 3 (1) (b) of the Municipalities Act, declared its intention to include the aforesaid local areas within the limits of Vijayawada Municipality and invited objections thereto from the residents of the local area or tax-payers of the Municipality in accordance with S. 3 (2) of the Municipalities Act. The Collector, Krishna, by his proceedings, R.O.C. No. 9083/79-55 dated 14-8-1979 informed the Gram Panchayats that in view of the proposal to merge the local areas comprised in the Gram Panchayats in the Vijayawada Municipality, the notification constituting the three Gram Panchayats is proposed to be cancelled. He invited objections from the Gram Panchayats as contemplated by R. 12 (1) (2) of the A. P. Gram Panchayats (Declaration of Village) Rules, 1969. The three Gram Panchayats filed their

objections before the Collector who, by his order R.O.C. No. 9083/79-S1, dated 27-9-1979, cancelled the notification constituting the above Gram Panchayats with effect from the afternoon of 30-9-1979. The Government of Andhra Pradesh, in its Memorandum No. 3471/Panchayats IV/A1/79 dated 5-10-1979, suspended the aforesaid notification of the Collector in exercise of its powers under Sec. 232 of the Gram Panchayats Act. Later the government by its G.O.Ms No. 125 (Municipal Administration) dated 10-2-1981 after rejecting the objections received to its notification dated 13-8-1979, confirmed the inclusion of the areas of the three Gram Panchayats aforesaid in the limits of Vijayawada Municipality. The Collector, by his proceedings R.O.C. No. 9073/79-S1 dtd 20-2-1981 directed the Special Officer, Vijayawada Municipality, to take charge of all the records of the Gram Panchayats from their respective Executive Officers. The Sarpanches of Patamata and Gunadala have filed W. P. No. 933/81, seeking a writ of certiorari to quash the proceedings of the Collector, Krishna, made in R.O.C. No. 7083/79-S1, dated 14-8-1979 and the consequential orders of the Collector, Krishna made in R.O.C.No. 9083/79-S1 dtd 27-9-1979 and R.O.C. No. 9083/-S1 dated 20-2-1981. The Bhavanipuram Rate-payers" Association by its President filed W. P. No. 1334/81, seeking an appropriate writ for setting aside the notification in G.O.Ms. No. 125 (Municipal Administration) dated 10-2-1981.

2. There does not appear to be much dispute as to the facts, but as a great deal rests on the proper inference to be drawn from these facts, they may be stated chronologically as follows. During 1976, a proposal was under consideration of the Government that the Vijayawada Municipality should exercise some control over the Patamata Gram Panchayat so far as building regulations are concerned. The proposal was rejected on the ground that it affects the autonomy of Gram Panchayats Bhavanipuram, Patamata and Gunadala Gram Panchayats have become practically and integral part of Vijayawada for which, master plan was prepared to regulate the building activity within the municipal limits. As these Gram Panchayats were outside the municipal area, the master plan could not be enforced in those areas. The Government, in its G.O.Ms. No. 819 (Municipal Administration) dated 13-8-1979, declared its intention to include within the limits of Vijayawada Municipality the areas comprised in Bhavanipuram, Patamata and Gunadala villages. The G. O. was issued after getting approval of both the Ministers for Municipal Administration and Panchayat Raj. In terms of the G.O., the Collector, Krishna was also requested to take necessary action to issue proceedings for denotification of the affected Panchayats and also for excluding the areas in question from the respective Gram panchayats after following the procedure prescribed so as to enable the Government to issue the final notification including the local areas of the said Gram Panchayats within the limits of Vijayawada Municipality and report the fact to Government immediately. On 13-8-1979 the following telegram was issued by the Municipal Administration Department to the Collector. Krishna.

"The Government have approved the proposal forwarded in your letter No. 9448/78 dated 15-9-179 regarding inclusion of certain areas in the limits of

Vijayawada Municipality in G.O.Ms. No. 819 (M. A) dated 13-8-79 and preliminary notification under s. 3 (1) (b) of the A. P. M. Act, 1965 is being published on 13-8-79. Please issue show cause notice required under r. 12 (2) of the A. P. G. P. (Declaration of Village) rules, 1969 to the affected gram panchayats today itself."

The Collector, after referring to the government's telegram dated 13-8-1979, issued the proceedings R. O. C. No. 9685/79-S5 dated 14-8-1979 stating:

"It is proposed to merge the entire area comprised in the Gram Panchayats noted in column (2) of the statement within the Municipalities mentioned in column (3) thereof and as a result to cancel the notifications issued constituting the said Gram Panchayats either under s. 3 (1) of the Andhra Pradesh Gram Panchayats act, 1964, as amended, or under the correspondent provision of the repealed Acts.

Now, therefore, the above Gram Panchayats are directed under R. 12 (1) (ii) of the Rules issued in B.O.Ms.No. 364 Planning & Panchayat Raj dated 10-7-1969, as amended to file their objections, if any , to the proposal in question by means of a resolution before 27-8-1979.

The above Gram Panchayats are informed that in the event of their failure to file their objections, if any, within the time allowed further action will be taken ex parte".

There was a further telegram dtd 17-8-1979 issued to the Collector by the Panchayat Raj Department to the following effect:

"Refer G.O.Ms. No. 819 (M. A) dated thirteenth August 1979 and telegram dated thirteenth August 1979 of Housing Municipal Administration and Urban Development Department(.) Expedite action under R. 12 of Rules issued for declaration of Village Rules, 1969(.)"

On 24-8-1979, the Municipal Administration Department requested the Collector to furnish to the Government copies of the show cause notice issued by him and the replies received from the affected Gram Panchayats with his remarks immediately so that the Government may have time to consult the Director of Municipal Administration also in the matter. The Sarpanchas of the three villages then presented a memorandum dtd 9-9-1979 to the Minister-in-charge of Municipal Administration and requested him to drop the proposal to include the three villages in the municipality. The Minister, by an endorsement made by him on 9-9-1979 on that representation, stayed the inclusion of the three gram Panchayats in the Vijayawada Municipality until further orders. This endorsement was addressed to the Secretary, Municipal Administration, but the stay order was not ultimately communicated to anybody. The Department referred the matter back to the Minister with the following note:

"With reference to the orders of the Minister (Endowments & Municipal Administration), it is submitted that in the G.O., cited only a preliminary

notification has been issued calling for objections or suggestions. Six weeks" time is allowed for receipt of these objection/suggestions. Final orders will be issued before 1-10-1979 after considering the objections/suggestions, if any, received within the six weeks" time allowed. In view of this, there is no need to grant stay orders now. For orders whether the petitioners may be informed that their representation will be taken into consideration before issuing final orders in the matter. May be circulated to Minister (Endowments and Municipal Administration) for information and orders.

The Secretary made the following note on 12-9-1979:

"This should be enough, as there is nothing to be stayed now and the points made by them can be taken into account at the time of finalising the issue. (This note received approval of the Minister for Municipal Administration on 17-9-1979)."

The Government was faced with the difficulty as to how they should deal with a situation where the Collector cancelled the notification of the three Gram Panchayats, but final decision has not been arrived at by the Government as to the inclusion of those denotified local areas in the Vijayawada Municipality and was of the view that as no stay orders have been issued, the question of vacating such stay order does not arise. (the stay order referred to in the note dated 25-9-1979 had obviously reference to the stay order earlier passed by the Minister for Municipal Administration on 9-9-1979). On 26-9-1979, the Secretary to Government, Municipal Administration Department gave the following telegram to the Collector, Krishna:

"Refer Government Memo No. 2489/J2/79-M. A. Dated 24-8-1979 and telegram No. 2488/J2/79 dated 19th instant-orders denotifying Patamata, Gundala, Bhavanipuram Gram Panchayts for inclusion in Vijayawada Municipality.....to take effect from the afternoon of 30th instant should reach the Government before 30th instant positively so that final notifications can be issued by the Government before 30th instant so as to enable the above areas to come within the Municipal limits with effect from 1st Oct. Please take personal interest and ensure despatch if the above orders by a special messenger to reach the Government by 30th instant positively."

The Collector, Krishna, by his notification R.O.C. No. 9083/79-S1 dated 27-9-1979, cancelled the notification constituting the Gram Panchayats, by passing the following order"

(operative portion only extracted).

"By this office reference first cited the (1) Gunadala, (2) Patamata, (3) Bhavanipuram Gram Panchayats in Vijayawada taluk were asked to show cause as to why the notifications issued constituting those Gram Panchayats should not be concealed with a view to merge them with the neighbouring Vijayawada Municipality.

All the three Gram Panchayats objected to the proposal on the ground that their merger with the Municipality would result in enhanced taxation with no proportionate increase in Civil amenities.

After careful examination of the matter, it is considered that the objections by the Gram Panchayats which have opposed the proposal do not merit acceptance as the proposed merger is in the larger interest of the welfare of the residents of the three Gram Panchayats.

Now, therefore, in exercise of the powers conferred under S. 3 (2) (F) of the Andhra Pradesh Gram Panchayats Act, 1964, as amended, read with G. O. Ms. No. 64 Panchayat Raj dated 30-1-64 and under r. 12 (1) (ii) of the Rules issued in G.O.Ms. No. 364 P. & P. R. dt. 10-7-69 as amended, I, the Collector, Krishna, hereby cancel the Notifications issued under S. 3 91) of the said Act or the corresponding provisions of the repealed Act constituting the above Gram Panchayats with effect from the afternoon of 30-9-1979 subject to the following conditions.

XX XX XX" The Ministers for Municipal Administration and Panchayat Raj have noted on 28-9-1979 and 29-9-79 that the proposals to include the three villages in Vijayawada Municipality be dropped for the present as in their view, the objections raised by the Sarpanchas of the said villages were reasonable. The Government was, therefore, faced with the difficulty as to how they should meet the situation when the Collector has already cancelled the notification with effect from the afternoon of 30-9-1979. After taking advice from the Law Department, the Government exercised its suo motu powers of revision under Sec. 232 of the Gram panchayats Act and suspended the operation of the cancellation of the notification by the order of the Minister for Panchayat Raj dated 5-10-1979. The said order was communicated in the following manner:

"Sub; Panchayats - Certain Gram Panchayats in Vujayawads taluk Krishna dt Merger with the Vijayawada Municipality - Cancellation of the Notifications - Suspended - Orders issued.

Ref: Notification R.O.C.No. 9083/79/S1 dated 27-9-1979 of the Collector (Pt. Wing) Krishna.

2. Revision petition filed by Sarpanchas of Gram Panchayats, Gunadala, Patamata Bhavanipuram and the Public of the Panchayats.

Under provisions of Sec. 232 of the A. P. Gram Panchayats Act, 1964, the operation of the Notification issued by the Collector, Krishna in the reference first cited is hereby suspended pending passing of final orders on the revision petition filed by the Sarpanchas of Gunadala, Patamata, Bhavanipuram Gram Panchayats and the public of the Panchayats."

Consideration by the Government of the objections regarding the inclusion of the local areas within the municipal limits of Vijayawada Municipality was taken up again in April, 1980 and ultimately by G.O.Ms. No. 125 (M. A.) dated 10-2-1981

the Government after considering the objections raised against the proposal, confirmed the inclusion of the three Gram Panchayats in the limits of Vijayawada Municipality. In its material terms, the G.O., reads as under (only operative portions extracted)

"In G.O. Ms No. 819 (M. A.) dated 13-8-1979, a preliminary notification was issued declaring the intention of the Government to include the areas specified in the schedule to the notification appended to it within the limits of Vijayawada Municipality and invited objections, if any, against the said proposal. The notification was published in the Andhra Pradesh Gazette dated 13-8-1979.

2. The Government having examined the objection received from the Sarpanchas and other villagers have been considered and it is finally decided to overrule them as being untenable and they hereby confirm the inclusion of the areas specified in the Schedule in the notification referred to above in the limits of Vijayawada Municipality."

The Collector, Krishna, by his proceedings R.O.C. NO. 9083/79-S1 dated 20-2-1981 directed the Special Officer, Vijayawada Municipality, to immediately take charge of all the records of the said Gram Panchayats from the concerned Executive Officers and he also directed the concerned Executive Officers or the sarpanchas to hand over the complete records to the Special Officer, Vijayawada Municipality, or his nominee forthwith.

3. Section 3 of the A. P. Municipalities Act reads as follows: (only relevant portions extracted).

"Constitution of Municipalities:-

(1) The Government, by notification in the Andhra Pradesh Gazette, shall, in the case of a local area with a population of not less than twenty five thousand and may, in any other case, declare their intention- (a) to constitute such local area as a municipality; or (b) to include within a municipality any local area in the vicinity thereof and defined in such notification; or (c) to exclude from a municipality any local area comprised therein and defined in such notification.

(2) Any resident of a local area or taxpayer of a municipality, as the case may be, in respect of which any such notification has been published may, if he desires to object to anything therein contained, submit his objection in writing to the government within six weeks from the publication of the notification and the Government shall take all such objections into consideration.

(3) When six weeks from the publication of the notification have expired, and the government have considered the objections, if any, which have been submitted, they may, as the case may be, by notification in the Andhra Pradesh Gazette, declare to be a municipality or include in or exclude from a municipality, the local area or any portion thereof.

(4) The provisions of this Act and the rules, bye-laws, orders or notifications

made thereunder and any resolution passed by a council shall come into force in or cease to apply to, any municipality or part thereof, as the case may be, on the date to be specified by the Government in the notification under sub-section (3);

Provided that nothing in this sub-section shall affect the date from which, and the period of levy, if any, for which, any tax or fee is liveable under this Act.

(5) Where any local area which is within the jurisdiction of any other local authority is constituted as or included in a municipality, the Government may pass such orders as they may deem fit as to the transfer to the council of such municipality, or disposal otherwise, of the assets or institutions of any such local authority in the local area and as to the discharge of the liabilities, if any, of such local authority relating to such assets or institutions.

(6) Where any local area is excluded from a municipality and included within the jurisdiction of any other local authority, the Government may pass such orders as they may deem fit, as to the transfer to such local authority or disposal otherwise of the assets or institutions of such municipality in the local area and as to the discharge of the liabilities, if any, of such municipality relating to such assets or institutions."

Section 2 (20) defines "Local Area" as including any town , village, hamlet, bazaar, station or other area or any group of the same in the immediate neighbourhood of one another but does not include a cantonment governed by the Cantonments Act, 1924, S. 1 (2) of the gram Panchayats Act extends to the whole of the State of Andhra Pradesh except, among other things, the municipalities governed by the law relating to the municipalities for the time being in force in the State. S. 3 of the Gram Panchayats Act reads as follows; (only relevant portions extracted).

"Declaration of a Village for the purpose of this Act:-

(1) The commissioner may, by notification, and in accordance with the rules made by the Government in this behalf, declare any revenue village or hamlet thereof or any part of a revenue taluk to be a village for the purpose of this Act, and specify the name of the village.

Explanation:- For the purpose of this sub-section, the expressions "revenue taluk" and " revenue village" shall mean respectively any local area which is recognised as a taluk or village in the revenue accounts of Government after excluding the area, if any, included in-

(a) a municipal corporation governed by the Hyderabad Municipal Corporation Act, 1955 (Act II of 1955);

(b) a municipality governed by the law relating to Municipalities for the time being in force in the State;

(c) a mining settlement governed by the Andhra Pradesh (Telangana Area) Mining Settlements Act, 1956 (Act XLIV of 1956);

(d) a cantonment governed by the Cantonments Act, 1924 (Central Act 2 of 1924).

(2) The Commissioner may, by notification and in accordance with such rules as may be prescribed in this behalf:- (a) form a new village by separation of local area from any village or by uniting two or more villages or parts of villages or by uniting any local area to a part of any village;

(b) increase the local area of any village;

(c) diminish the local area of any village;

(d) alter the boundaries of any village;

(e) alter the name of any village;

(f) cancel a notification issued under sub-section (1):

Provided that before issuing a notification under this sub-section the Commissioner shall give the Gram Panchayat which will be affected by the issue of such notification, an opportunity of showing cause against the proposal and consider the objections, if any, of such Gram Panchayat".

Rule 12 of the A. P. Gram Panchayats (Declaration of Village) rules, 1969, introduced for the first time by G.O.Ms. No. 312, dated 11-4-1977 reads as under:

"(1) It shall be competent for the commissioner to cancel a notification under clause (f) of sub-section (2) of S. 3 in the following circumstances, namely:-

(i) where it is proposed to constitute a municipality for the village declared under sub-sec. (1) of s. 3 or part thereof;

(ii) where a village declared under sub-sec. (1) of S. 3 or part thereof is proposed to be merged in a neighbouring municipality and the residual area is not, in the opinion of the commissioner, a viable unit for continuing as a gram panchayat;

(iii) where the revenue village or part thereof declared as a village under sub-section (1) of s. 3 of the said Act ceases to be revenue village due to submersion or depopulation and the necessity for a gram panchayat ceases;

(iv) where it is found in the actual working that the gram panchayat for the village declared under sub-sec. (1) of s. 3 cannot function efficiently as a viable unit of local self-government.

(2) The commissioner shall, before issuing a notification under clause (f) of sub-sec. (2) of S. 3 of the Act, give to the gram panchayat which will be affected by the issue of such notification, an opportunity of showing cause against the proposal and consider the objections, if any, of such Gram Panchayat".

4. Broadly stated, the following are the main submissions made by Mr. V. T. M.

Prasad, learned counsel appearing for the writ petitioners in W. P. No. 933/81 and Mr. K. Jagannadha Rao, learned counsel appearing for the writ petitioner in W. P. No. 1334/81. The collector, Krishna, who acted as Commissioner under Sec. 3 of the Gram Panchayats Act read with the A. P. Gram Panchayats (Declaration of Village) Rules, 1969 is a quasi-judicial authority and in issuing the proceedings under R.O.C No. 9083/79-S1 dated 14-8-1979 and R.O.C. No. 9083/79-S1 dated 27-9-1979, abdicated his functions to act as an independent statutory authority and surrendered his judgment to the dictates of the Government and both these proceedings have no legal validity. The proceeding of the collector in R.O.C. No. 9083/79-S1 dated 27-9-1979 is not a speaking order. The said proceedings have been issued at the behest of the Government without the Commissioner applying his independent mind to the objections filed before him on behalf of the Gram Panchayats and several residents of the three villages before he overruled those objections. The said proceedings of the collector were in violation of the stay earlier granted by the Government. The government exercising its functions under Sec. 3 of the A. P. Municipalities Act is also a statutory authority, discharging quasi-judicial functions, G.O.Ms. No. 125 (Municipal Administration) dated 10-2-1981 is invalid (because) firstly, it is not a speaking order and secondly that it has not considered the various objections raised before the Government by the residents of the local areas which were proposed to be included within the municipality and thirdly, that the said G.O. was passed without vacating the stay granted by the Government on 5-10-1979 under Sec. 232 of the Gram Panchayats Act. The three Gram panchayats have been functioning as effective local units of self-government and the Government has no jurisdiction to destroy the continuance of these Gram panchayats with a view to include them in an adjoining municipality. Such an action offends the directive principles of the State policy as adumbrated under Art. 40 of the Constitution of India.

5. The learned Advocate-General has supported the proceedings of the Collector and the notification of the Government by submitting that both, the Collector, acting as Commissioner under the Gram Panchayats Act, and, the Government have acted only in discharge of their administrative functions. Both the authorities have dealt with the objections by applying their minds thereto and the commissioner also applied his independent mind and did not act at the behest of the government. What all the authorities have done in discharging their statutory duties have been done in compliance with the statutory directions. Both the authorities have given genuine consideration to the objections and did not deal with those objections with any pre-determined mind. There could be and there was no stay order prior to the collector's notification in R.O.C. No. 9083/79-S1 dated 27-9-1979. There was no revision filed by anybody u/s 232 of the Gram Panchayats Act. The stay granted by the Government in its memorandum No. 3471/Panchayats IV/A1/79 dated 5-10-1979 was only intended to provide for the interval between the Collector's order dated 27-9-1979 and G.O.Ms. No. 125 (Municipal Administration) dt. 10-2-1981 and

the said stay stood vacated when the Government issued G.O.Ms. No. 125 dated 10-2-1981:

6. A reading of s. 3 of the A. P. Municipalities Act leaves, no doubt, whatsoever that the government in declaring their intention to include the local areas within Vijayawada Municipality and in considering the objections raised by the residents of the local area or tax-payers of the municipality or in notifying after considering such objections including the local areas in the municipality, are discharging only their administrative functions. True, they have an obligation to consider the objections filed before them either by the residents of the local area or by the tax-payers of the municipality, but that obligation by itself does not constitute the government a quasi-judicial authority. It is alike an administrative function which the collector acting as Commissioner is discharging in making the proposal to cancel a notification issued under sub-section (1) of s. 3 of the Gram panchayats Act and in cancelling such notification after considering the objections raised by the concerned gram Panchayats to the said proposal. The obligation on the part of the Commissioner to consider such objections does not make him a quasi-judicial authority. S. 232 of the G. P. Act, no doubt, confers on the government a power of revision, but the existence of such revisional powers in the Government does not constitute the Commissioner acting under the G. P. Act a quasi-judicial authority. R. 12 of the Declaration of Village rules enables the Commissioner to cancel a notification where it is proposed to merge the Panchayat in a neighbouring municipality. In *Franklin v. Minister of Town Planning* (1947) 2 all ER 289, the House of Lords had occasion to deal with an analogous provision under the New towns Act, 1946. The said Act, while enabling the Minister to make an order designating a particular area as the site of the proposed new town, cast an obligation on him to invite objections and consider them and pass the final order. The House of Lords held that no judicial or quasi-judicial duties were imposed on the Minister and the duties are purely administrative, but the Act prescribed certain methods or steps in the discharge of that duty. In *V. Perumal Vs. State of Madras and Another*, it was held that the function of the Government in constituting a municipality is administrative in nature and it is not necessary for the Government to give their reasons for the order. We, accordingly, hold that neither the collector nor the Government were discharging any judicial or quasi-judicial functions in passing the impugned proceedings or notification and that such proceedings or notification were issued by them in their administrative capacities.

7. It is not disputed that under the gram Panchayats Act, the collector, Krishna, who is constituted the commissioner for the purposes of the Gram Panchayats Act, is an independent statutory authority. It is, however, argued that in issuing the cancellation notification, the collector did not exercise his independent judgment but abdicated his statutory function and acted at the behest of the Government.

8. We are satisfied that the request to the Collector to issue notifications for

cancelling the notification of the affected Panchayats contained in G.O.Ms. No. 819 and in the telegram dated 13-8-1979 issued by the Municipal Administration Department and the telegram dated 17-8-1979 issued by the Panchayat Raj Department and the letter of the Municipal Administration Department dated 24-8-79 are all in the nature of necessary administrative steps to be taken before the concerned Panchayats are denotified for being included within Vijayawada Municipality.

9. The notification of the Collector in R.O.C. No. 9083/79-S1 dated 27-9-1979 was made a day after the telegram dated 26-9-1979 was issued to the Collector by the Secretary to Government, Municipal Administration Department. The contents of the telegram have been earlier extracted by us and the proper inference to be drawn is that the collector issued the impugned proceedings shortly after he received that he issued the notification after he received the telegram does not necessarily indicate that the Collector abdicated his functions and issued the notification only in compliance with the directions given to him in the aforesaid telegram. There was some urgency felt by the government to include the three Panchayats in the Vijayawada Municipality with effect from the afternoon of 30th Sept., as the first half year 1979-80 ends by 30th Sept. In their counter, the Government have denied that they have issued any mandate to the Collector to take a decision one way or the other. The question of including these three panchayats in Vijayawada Municipality has been pending for some time past and the Collector, who had earlier issued the show cause notice under R. 12 of the Declaration of Village Rules, would have considered the objections and come to the conclusions by exercising his own independent judgment that these three local areas should be denotified under the Gram Panchayats Act for being included in Vijayawada Municipality. We accordingly reject the submission made by the learned counsel or the petitioners that the collector, in issuing the cancellation notification, acted at the behest of the Government and did not exercise his functions as an independent statutory authority.

10. The Collector in cancelling the notification by his order dated 27-9-1979 has summarised, though tersely the objections raised by the Gram Panchayats to the proposal of the merger in the Municipality and expressed himself:

"After careful examination of the matter it is considered that the objections by the Gram Panchayats which have opposed the proposal do not merit acceptance as the proposed merger is in the larger interest of the welfare of the residents of the three Gram Panchayats."

The Government while issuing G.O.Ms. No. 125 (Municipal Administration) dated 10-2-1981 stated:

"The Government have examined the objections received from the Sarpanchas and (objections from) other villagers have been considered and it is finally decided to overrule them as being untenable and they hereby confirm the inclusion of the areas specified in the Schedule in the notification referred to

above in the limits of Vijayawada Municipality.

The learned counsel for the petitioners submitted that both the orders are not speaking orders and do not give any indication as to in what manner they have considered the objections raised as untenable and that for want of detailed reason given by the Commissioner in his cancellation notification, the petitioners are prejudiced in even taking the matter in revision under S. 232 of the Gram panchayats Act and the Collector's notification should, therefore, be treated as non est. These impugned notifications have been issued by the Government and by the Collector in exercise of their administrative functions. Both the impugned notifications show that the objections have been duly considered. There is no provision in any of the Acts that the objectors have to be given any personal hearing. One cannot expect the authorities to give detailed reasons for the orders passed by them while discharging their administrative functions. No principles of natural justice have, therefore, been violated. The three Gram panchayats are so immediately located adjoining the Vijayawada Municipality limits that an outsider visiting any of these three Gram Panchayats will only feel that he is in Vijayawada and not in the limits of any Gram Panchayats. The residents of these Gram Panchayats have gained all the privileges of living in an urban area without a corresponding liability on their part to contribute a higher property, professional or other municipal taxes and without feeling any restraints on the building activity in these three Gram Panchayats. We accordingly hold that the absence of detailed reasons in the two impugned notifications does not in any manner, invalidate those notifications. The very fact that the Government who dropped the proposal at one time, later felt the need to include the three Gram Panchayats in the Vijayawada Municipality is itself a circumstance to indicate that all that could be said in favour of continuing the three Gram panchayats has been said and the ultimate decision to cancel the notification arrived at by the Collector has been arrived at by him independently and the Government had given due weight to all the objections raised by the Gram Panchayats before it decided to include the Gram Panchayats within Vijayawada Municipality. We are satisfied that both the Collector and the Government have acted fairly and reached just decisions in cancelling the notification of the three Gram panchayats and in including them in the Vijayawada Municipality.

11. The petitioner's learned counsel made a further submission that in no circumstances, the commissioner can cancel a notification under Sec. 3 (2) (f) of the Gram Panchayats Act so long as the Gram Panchayat concerned has been satisfactorily functioning as a viable unit of the local self-Government. To accede to this submission is to ignore R. 12 of the Declaration of Village Rules. True, the Collector acting as Commissioner has to further the objects of the Gram panchayats Act and the interests of the Gram Panchayat. The Legislature has thought fit to empower the Commissioner to cancel a notification issued by him under Sec. 3 (1) of the Gram panchayats Act in the several circumstances enumerated in R. 12 of the Declaration of Village Rules. When a Gram Panchayat is sought to be included within an adjoining municipality, it is equally competent

for the Collector to cancel the notification of the Gram Panchayat. The Municipality exercising its control over the local area or the Gram Panchayat exercising its control over that area are alike different units of self-Government. The principles of self-Government are not violated in any manner if the Gram Panchayat is denotified and if that local area is included within the adjoining municipality. We do not also find any force in the submission made by the petitioner" counsel that the denotification violates in any manner Art. 40 of the Constitution. The obligation of the State to organise village panchayats and to endow them with such power or authority as may be necessary to enable them to function as units of self-government is their only when the local area continues to be a village. When the notification constituting the gram panchayat itself is cancelled for valid purposes so as to include it within an adjoining municipality, Art. 40 of the constitution does not come in the way of the Government in including the local area within the limits of the adjoining municipality.

12. Another submission made is that R. 12 of the Declaration of Village rules offends Art. 14 of the Constitution. It is stated that Gram Panchayats constituted at places further away from Municipalities can never be denotified but that Gram Panchayats adjoining municipalities run the risk of their notifications being cancelled. The notifications can be cancelled in terms of R. 12 in cases where it is proposed to constitute a municipality for a village or where it is proposed to merge the village in a neighbouring municipality. All the villages cease to be a revenue village due to submersion or depopulation or where it cannot function efficiently as a viable unit of local self-government. The classification, in our view, has been made on a rational basis. We find nothing in rule 12 as violating in any manner Art. 14 of the Constitution.

13. The main submission made by the learned counsel for the petitioners is that until the notification constituting the three villages as Gram Panchayats was cancelled, the Government has no jurisdiction to include them in the Vijayawada Municipality. The Collector, had no doubt, issued a notification dated 27-9-1979 cancelling the previous notification constituting the three villages into Gram Panchayats. But this later notification was stayed by the order of the government dated 5-10-1979 and the said stay order was never vacated. Hence the position was as if the notification dated 27-9-1979 was not in existence on the date when the villages were included in the Municipality under G.O.Ms. No. 125, D/- 10-2-1981.

14. The learned Advocate-general on the other hand contended that the right of the Government to include a local area within a Municipality under S. 3 of the A. P. Municipalities Act should not be made to depend upon the cancellation of the notification of a Gram Panchayat made by the Collector. On a reading of the relevant provisions of the Municipalities Act and the Gram Panchayats Act, we are not prepared to hold that a cancellation of the notification under the Gram Panchayats Act need not be made before a local area comprised in the Gram

Panchayat is included in a Municipality.

15. In *Prakasam Nagar Co-operative house construction Society Ltd v. Government of Andhra Pradesh* (1966) 2 AnWR 458, the question arose whether without excluding any area from the Gram Panchayat, that area can be included within a Municipality. There, a certain local area from Pidingoyya Panchayat was included in the Rajahmundry Municipality without issuing any notification u/s 3 of the Gram Panchayats Act, cancelling the notification earlier issued constituting Pidingoyya as a Panchayat, Jaganmohan Reddy, J., (as he then was) held:-

"It is obvious from a reading of Sec. 3 of the Gram Panchayat Act that an area which has to be excluded from a Panchayat must be excluded in accordance with Sec. 3 (2) by the Commissioner issuing a notification after giving the Gram Panchayat affected by the issue of such notification an opportunity of showing cause against the proposal and consider the objections, if any, of such Gram panchayat. Prima facie, if the area is not excluded from the Gram Panchayat, it cannot be included in the District Municipality, because the same area cannot be subject to the administrative jurisdiction of both these bodies. It is obvious that the Legislature could not have intended to permit such a situation to arise which will single out such a local area subjecting it to a heavy burden namely that both the Municipality as well as the Panchayat will be able to levy taxes, if the area is included in the Panchayat as well as in the district board and the local area will have to bear the burden of tax imposed by both these bodies.....

No doubt, subsequent to the filing of the writ petition, the Government have issued a notification under Sec. 3 excluding this particular area from the Gram Panchayat. All that is necessary now to do is to include the same after giving an opportunity to the local inhabitants under sub-section (2) of S. 4 of the District Municipalities Act in the District Municipality of Rajahmundry, but that must be done irrespective of the present notification, that is, the present notification cannot retrospectively be deemed to have validity merely because later after have validity merely because later after the publication of the notification under S. 4 of the District Municipalities Act without excluding the area, that area has now been excluded. The impugned notifications, therefor, are held to be not valid."

It is evidently to cover situations like this that r. 12 of the Declaration of Village Rules, 1969 was introduced subsequently by G.O.Ms. No. 312 dated 11-4-1977. In *Bhat Viswanath v. State of A. P.* 1960 ALT 719 Umamaheswaram, J., considered the question whether the State Government was entitled to include the villages of Gujarathipeta and Fazilbegupeta within the Srikakulam Municipal limits and held that the State Government has such power. We have examined the material papers in the said case and we find that the local Government expressed its intention to include Gujarathipeta in the Srikakulam Municipality in its G.O.Ms. No. 1209 (Local Administration) dated 7-6-1950 and also issued notices to the Panchayat and the District Board, North Visakahapatnam to show

cause under the relevant provisions of the Local Boards Act why the notification constituting Gujarathipeta village should not be cancelled and the area withdrawn from the District board, North Visakahapatnam. It was only after considering such notices issued both to the Gram Panchayat and the District Board that the Local Government decided to cancel the notification and withdraw the area from the District Board and include it within Srikakulam Municipality. The omission to mention Sec. 5 (3) of the madras Local Boards Act while issuing G.O.Ms. No. 1209 (Local Administration) dated 7-6-1950 was held not to invalidate the notification in any manner. It is abundantly clear from the aforesaid facts that the cancellation of the notification concerning Gujarathipeta area was made in accordance with the provisions of the Local Boards Act then in force.

16. The Judgment of Umamaheswaram, J., in the Srikakulam Municipality case (1960 Andh Lt 719) (supra) is not, therefore, an authority for the proposition that the Government can include a local area in an adjoining municipality without cancelling the notification by observing the procedure prescribed under Sec. 3 (2) (f) of the gram Panchayats Act read with R. 12 of the Declaration of Village rules. In the presence of those specific provisions of the Gram Panchayats Act providing for the power of the Commissioner to cancel a notification where that village is proposed to be merged in a neighbouring municipality, it is futile to contend that the Government can still act in exercise of its powers under Sec. 3 of the A. P. Municipalities Act in disregard of S. 3 (2) of the Gram Panchayats Act read with R. 12 of the Declaration of Village Rules. The provisions of the Municipalities Act and the Gram Panchayats Act have to be harmoniously read together and we have no hesitation in rejecting the submission made by the learned advocate General that the provisions of the Municipalities Act have any primacy over the provisions of the A. P. Gram Panchayats Act. The Government can include the local areas within a municipality only after the notification of the Gram Panchayat u/s 3 (1) of the Gram Panchayats Act has been validly cancelled. In fact, the Government in its counter proceeded on the footing that such a cancellation is a necessary formality to be observed before the Gram panchayat is included within the municipal limits.

17. A Division Bench of this Court consisting of Kuppuswami, J. (As he then was) and P. A. Choudary, J. in Anwar Begh v. State of A. P. in W.P. No. 6598/79 dated 27th Nov., 1979 had occasion to consider the validity of the initial proposal and final order of merger of the local area of Mallayapalem Gram panchayat into the Gudivada Municipality. The learned Advocate-General has relied on certain observations made by the said Bench in that judgment as also on the observations made by the same Bench on 7-3-1980 in review W. P. M. P. No. 10644/79. Both the learned counsel appearing for the petitioners have submitted that those observations require reconsideration and as supporting their submissions, have relied upon the observations made by Amareswari, J., in her order dated 9-4-1981 in W. P. Nos. 933 and 1334/81. It has, therefore, become necessary to notice the facts in W. P. No. 6598/79 in some detail.

18. The State government in that case declared its intention to include a portion of the area of Mallayapalem Gram panchayat into the Gudivada Municipality by G.O.Ms. No. 825 dated 13-8-1979. The Collector, Krishna, cancelled the earlier notification constituting Mallayapalem into a Gram Panchayat by his order dated 26-9-1979. The writ petition was filed challenging the validity of the aforesaid order of the district Collector dated 26-9-1979. The Division Bench observed that the District Collector, Krishna apparently mistook the intention of the government contained in G.O.Ms. No. 825 dated 13-8-1979 as a desire to include the entire area covered by the Mallayapalem Gram panchayat into the Gudivada Municipality and held that the action of the District Collector in cancelling the notification constituting Mallayapalem Gram Panchayat was not justified by the circumstances of the case. It accordingly, set aside that portion of the collector's order relating to the erstwhile Mallayapalem Gram Panchayat area which the Government did not include in the Gudivada Municipality by its subsequent G.O.Ms. No 691 (M> A>) dated 30-9-1979. No express reference was made to R. 12 of the Declaration of Village rules. The Division Bench would appear to have kept in view R. 12 (1) (ii) of the Declaration of Village Rules in holding that the cancellation of notification affecting the entire Mallayapalem Gram Panchayat to include only a part thereof within Gudivada Municipality was bad, but that such cancellation notification was valid only in relation to the area forming part of Mallayapalem Gram panchayat merged within Gudivada Municipality. R. 12 (1) (ii) of the rules provides for the power of the Collector to cancel a notification where either the entire Gram panchayat is proposed to be merged in a neighbouring municipality or where part only of the Gram Panchayat is proposed to be merged in a neighbouring municipality and the residual area is not, in the opinion of the Commissioner, a viable unit for continuing as a Gram panchayat. In the impugned Collector's notification dated 26-9-1979, no reference was made by the Collector that in his opinion, the residual part of Mallayapalem Gram Panchayat was not a viable unit for continuing as a Gram Panchayat. That was why, the Bench observed:-

"It is true that the District Collector acting as the Commissioner for Panchayat Raj, has power to cancel the earlier notification constituting the Mallayapalem Gram panchayat. But that power can be exercised by the collector only for a statutory purpose and only on the assumption that the continuance of the Mallayapalem Gram Panchayat is no longer called for by the circumstances."

The following observation was also made in the said judgment:-

"the suggestion of the petitioners that before this area is included in the Gudivada Municipality, that area must have been excluded from the purview of the Mallayapalem Gram Panchayat does not appear to be correct in view of the language of S. 3 (1) (c) of the A. P. Municipalities Act. The word "local area" occurring in S. 3 (1) (c) of the A. P. Municipalities Act does not necessarily mean an area which does not form part of any Gram Panchayat. In other words, under s. 3 (1) (c) of the A. P. Municipalities Act, it is competent for the government to

include an area which constitutes a part of a Gram panchayat into a Municipality."

Having held that the cancellation notification of Mallayapalem Gram panchayat was valid to the extent of that portion of the Gram Panchayat which was included within the Gudivada Municipality, there was no further need for the Bench to have observed that such exclusion of the area from the Mallayapalem Gram Panchayat was not a condition precedent before such excluded area could be included within the Gudivada municipality. The further observation made by the Bench that the issuance of G.O.Ms. No. 691 (M A.) dated 30-9-1979 is clearly supportable on the strength of S. 3 (1) (c) of the A. P. Municipalities Act has to be appreciated in the background of the facts in which such observation came to be made. By the date G.O.Ms. No. 691 (M. A.) dated 30-9-1979 was issued by the State government the cancellation notification issued by the Collector was already there and there was no further impediment in the way of the Government from treating the excluded area as a local area to be included within the Gudivada Municipality. We, accordingly, consider the observation made by the Bench that it was not necessary to exclude any area from the gram panchayat before it is included in a municipality as obiter.

19. In rev. W. P. M. P. No. 10644/79, the petitioners in W. P. No. 6598/79 sought a review of that judgment on the ground that the procedure prescribed u/s 3 of the A. P. Gram panchayats Act was not followed and that, therefore, there was no valid cancellation. In support of that submission, reliance was placed on the judgment of Jagan Mohan Reddy, J. (As he then was) in the Rajahmundry Municipality case (1966-2 Andh WR 458) (supra). This specific submission for invalidating the cancellation notification issued by the Collector does not appear to have been argued when the Bench rendered its judgment dated 27-11-1979. The Review Petition was dismissed, amongst other grounds, also on the ground:-

"In any case, we do not consider that this is a matter for review."

There are, however, the following observations made in this judgment which remain to be considered:

"a reading of s. 3 of the Municipalities Act would clearly show that the Municipalities Act envisages, in constituting a new Municipality or enlarging the area of an existing Municipality, the possibility of inclusion of an area, which already forms part of a local authority into that Municipality. It is, therefore, clear that the Municipalities Act covers this situation and therefore all that a Court should do is to find out the meaning of the language. Courts cannot treat this as "Casus Omissus". The Municipalities Act provides for certain procedural safeguards in S. 3 itself. According to S. 3, a notice must be given by the government and a hearing must also be accorded by the government to the parties likely to be affected by the proposed action. Such a notice and hearing would be confined to the objects of the Municipalities Act. This is a complete procedure provided by the Municipalities Act and for its operation it cannot be made to depend upon the provisions of the gram Panchayats Act. The scope of S.

3 of the gram Panchayats Act is limited to according a hearing by the commissioner of the Panchayat Raj to the Gram panchayat for the purposes of the Gram panchayats Act. In other words, acting under the Gram panchayats Act, the Commissioner cannot ask the Gram panchayat to show cause why a certain area shall not be excluded for the purpose of the Municipalities Act. It is for that reason we find that there is no provision incorporating the machinery provided for under S. 3 of the gram panchayats Act in the Municipalities Act. The Legislature clearly avoided overlapping in the powers of the State Government under S. 3 of the Municipalities Act and those of the commissioner under S. 3 of the gram panchayats Act. If the present argument of the learned counsel is accepted, the inclusion of a local area, which already forms part of a Gram panchayat into a Municipality, becomes impossible. As we have seen, a commissioner under the gram panchayats act can only issue a notice under s. 3 of the gram Panchayats act to the Gram Panchayat for the purposes of the gram panchayats Act. Objections can also be considered by the commissioner of the gram panchayat within the scope of the Gram panchayats Act. Thus, the issuance of the notice as well as the disposal of the basis which is relevant for the purposes of the gram Panchayat (sic). But the issuance of the notice and hearing of objections under Sec. 3 of the Municipalities Act would be guided by wholly different considerations viz., the constitution of Municipality and the inclusion of a local area in that Municipality inasmuch as the commissioner acting under the Gram panchayats Act is not intended to be an instrument for implementing or working out the purposes of the Municipalities Act, it is reasonable to assume that it is not within the purview of the Commissioner of the gram panchayat under Sec. 3 of the Act to take into account the considerations which are relevant for the purpose of the Municipalities Act. This would clearly show the untenability of the petitioners' contention that both the Acts must be read together. If the petitioners' contention that both the Acts must be read together. If the petitioners' argument is accepted, there would not be any legal way of excluding a local area forming part of a Gram panchayat for the purpose of including the same into the Municipality under s. 3 of the A. P. Municipalities Act, because under Sec. 3 of the gram panchayats Act, no notice on that basis can be issued by the Panchayat commissioner."

After referring to the judgment of Jaganmohan Reddy, J. in the Rajamundry Municipality case (1966-2 Andh WR 458) (supra), the Bench proceeded to observe:

"the assumption of the learned Judge that the Commissioner can issue a notification u/s 3 (2) of the gram panchayats Act proposing exclusion of the local area for the purpose of its inclusion in the Municipality is, in our opinion, not founded on the language of Section 3 (2) of the Gram panchayat Act. The Commissioner of the Panchayat Raj, acting under Sec. 3 of the Gram Panchayats Act, can only act for the purposes of the Gram panchayats Act. The gram panchayat Act is in no way concerned with the constitution of a Municipality or inclusion of a certain area in that Municipality. It follows therefore that the

commissioner of the Panchayat Raj cannot propose to exclude a local area constituting a part of Gram panchayat for the purpose of its being included in the Municipality."

It is manifest that rule 12 of the Declaration of Village rules had not been brought to the notice of the Bench. The Declaration of Village rules were also framed under the rule-making power of the State Government under s. 217 of the gram Panchayats Act. Section 3 of the gram Panchayats Act provides for the power of the Commissioner to cancel a notification issued under sub-sec. (1). Rule 12 of the Declaration of village Rules makes a specific provision that it shall be competent for the Commissioner to cancel a notification where a village or part thereof is proposed to be merged in a neighbouring municipality. The observations quoted above would not have been made if only Rule 12 of the Declaration of Village Rules was brought to the notice of the Divisions Bench when it decided Rev. W. P. M. P. No. 10644/79. Amareswari, J. while hearing these writ petitions, was correct in holding that it is not permissible to include a local area not excluded from the Gram panchayat in a neighbouring municipality and that the observations made by the Bench have the effect of producing anomalous results. Though Rule 12 of the Declaration of Village Rules was not there, Jaganmohan Reddy, J. in the Rajahmundry Municipality case (1966-2 Andh WR 458) (supra) held on a construction of Sec. 3 of the Municipalities Act that there should be a cancellation of notification under S. 3 of the gram panchayats Act before the village or part thereof is included in a neighbouring Municipality. The observations of the division Bench made in Rev. W. P. M. P. No. 10644 of 1979, that the judgment of Jaganmohan Reddy, J., in the Rajahmundry Municipality case (supra) was not correctly decided, have to be treated as made Per Incuriam and are for that reason not binding. We, therefore, negate the contention of the learned Advocate-General that it was permissible for the Government to include the three villages of Patamata, Gunadala and Bhavanipuram in the Vijayawada Municipality even in the absence of a notification by the Collector cancelling the earlier notification constituting them into Gram panchayats.

20. It, therefore, becomes necessary for us to consider the submission made on behalf of the petitioners that the notification of the Collector dated 26-9-1979 cancelling the earlier notification was stayed by the order of the Government and before the stay order was vacated, the Government had no jurisdiction to include them in the Vijayawada Municipality.

21. From the facts narrated at the commencement of this judgment, it is clear that no Revision petition u/s 232 of the Gram panchayats Act as such was filed against the order of the collector dated 27-9-1979. On a perusal of the file which led to the stay order dated 5-10-1979, it is clear that the government stayed the cancellation notification as they wanted to avoid the anomaly pointed out by Jaganmohan Reddy, J., in the Rajahmundry Municipality case (1966-2 Andh WR 458) (supra), as by then, the Government had not yet taken the decision to

include the three villages within the limits of the Vijayawada Municipality. The learned counsel for the petitioners are not therefore right in their submission that the stay order dated 5-10-1979 was stay granted in a revision petition filed under S. 232 of the gram panchayats Act. It is no doubt, true, a reference is made to a Revision Petition filed by the Sarpanchas in the order of the Government dated 5-10-1979, but this is an obvious mistake. The petition filed by the Sarpanchas was a petition before the Minister for Municipal Administration and not a Revision Petition under s. 232 of the Gram panchayats Act. Merely because that petition was referred to as a Revision Petition it does not entitle the petitioner to submit that they had in fact filed such a Revision Petition under S. 232 of the gram panchayats Act and that the stay order was made on such a revision petition filed by them. In this view of the matter, the decision in *Narayanavalasa Gram Panchayat v. Government of Andhra Pradesh* (1976) 2 APLJ 391, does not help the petitioners in any manner. There, in fact, a revision petition was filed by the affected Gram Panchayats and the Government which granted a stay order, vacated the stay on a representation made by a member of the Legislative Assembly without giving an opportunity to the affected Gram Panchayat. Such is not the case here as the petitioners did not file any such revision before the Government under S. 232 of the gram Panchayats Act and the stay granted by the Government, was not in any such revision petition but to enable the Government to avoid the anomaly following the cancellation notification before the Government took its decision to include the three Gram Panchayats in the Vijayawada Municipality viz., that in the intervening period, the three villages would neither be Panchayats nor form part of the Vijayawada Municipality. When G.O.Ms. No. 125 dated 10-2-1981 was issued, this stay granted by the Minister for Panchayat Raj dated 5-10-1979, came to an end. We, therefore, reject the contention urged on behalf of the petitioners that the Government had no jurisdiction to issue the impugned order without vacating the stay granted by the order dated 5-10-1979.

22. In the result, both the Writ Petitions are dismissed. No further orders are necessary in W. A. 275 of 1981. The parties, in the circumstances, are directed to bear their respective costs.

23. Oral applications are made for leave to appeal to the Supreme Court in these Writ Petitions. We do not consider any substantial question of law of general importance required to be considered by the Supreme Court is involved in these Writ Petitions. The applications are rejected.

24. Oral applications for suspension of the operation of the judgment are also made. We see no reason to suspend the operation of the judgment. Dismissed.

25. Petitions dismissed.