

(1963) 11 AP CK 0005
In the Andhra Pradesh High Court
Case No : W.A. No. 82 of 1962

K. Raja Gopalareddy and Others	Vs	APPELLANT
E. Kumaraswamy Reddy and Others		RESPONDENT

Date of Decision : 18-11-1963

Acts Referred:

Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 — Section 62, 72, 72(1), 72(3)
Constitution of India, 1950 — Article 226

Citation : AIR 1964 AP 318

Hon'ble Judges : P. Chandra Reddy, C.J;Gopalrao Ekbote, J

Bench : Division Bench

Advocate : P. Babulu Reddy and I. Koti Reddy, for the Appellant; G. Balaparmeswari Rao and T. Venugopala Reddy and 3rd Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ekbote, J.

1.This is an appeal from a judgment of Seshachalapathi, J., given on 31st August, 1962. The facts which give rise to this appeal are that the Block Planning and Development Committee of the Nayudupeta Block could not arrive at a decision as to where the Primary Health Centre should be located. That Committee therefore left it to be decided by the statutory Panchayat Committee which was to be formed under the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 35 of 1959, hereinafter called the Act. We are not concerned with the previous history of this controversy. It is sufficient to say that the Nayudupet Panchayat Samithi came into existence with effect from 1-11-1959. At its meeting held on 30-1-1960 the Panchayat Samithi by a majority of 23 votes to 9 resolved that the Primary Health Centre should be located at Doravarisathram. The resolution was thereafter forwarded to the Government. The writ petitioner who was the President of Mallam Panchayat Board represented to the

Government against the resolution of the Panchayat Samithi taken on 30-1-1960, and made a demand that the Health Centre should be located at Mallam village.

Upon that representation the Government through their letter dated 10-3-1960 asked the District Collector to submit his opinion in that behalf. The Collector gave an elaborate reply on 21-4-1960 and recommended that the Health Centre should be located at Mallam. He referred to the report of the District Health Officer, wherein it was stated that Mallam was an interior village adjacent to the sea coast, that it was backward in area, that no medical aid was available within a radius of five miles, that there was in the coastal villages Malaria in an endemic form and that the people residing there have to go for medical help either to Nayudupet or Salurpet. Regarding the claims of Doravarisathram the Collector again referring to the District Health Officer stated that the village is situated on the Grant Trunk Road between Nayudupet and Sularpet, that it was in one extremity of Navudupet Block, that there was no buildings readily useful for the Health Centre as in Mallam, and that if the Health Centre is located in Doravarisathram, it would serve the people in Doravarisathram and those in the villages surrounding it, which were within a very short distance from Sularpet on one side and Nayudupet on the other, where Medical facilities already existed. The District Medical Officer was of the same opinion. The Collector agreeing with the opinion of the local officers, as stated earlier, recommended that the Primary Health Centre should be located at Mallam.

2. In view of the said report of the Collector the Government through their letter dated 20-5-1960 asked the Block Development Officer, Nayudupet Samithi to ascertain the views of the Panchayat Samithi apprising them of the technical opinion regarding the location of the Primary Health Centre in Mallam in preference to Doravarisathram.

3. This communication of the Government was considered by the Panchayat Samithi at its meeting held on 2-6-1960. Thirty two members were present. By a majority of 25 members to 7 the Panchayat Samithi re-affirmed its previous decision taken on 30-1-1960 and reiterated their demand that the Health Centre should be located at Doravarisathram and not at Mallam. The writ petitioner along with six others who had recorded their dissenting votes approached the Government, The members of the Samithi who had already voted for the establishment of the Primary Health Centre at Doravarisathram similarly approached the Government through a petition. The President of the Nayudupeth Panchayat Samithi separately wrote to the Government advocating the claim of Doravarisathram. It is relevant to state that in these communications all the details which are required to take the decision in that regard have been elaborately stated.

4. After considering the reports and various representations the Government through G. O. Ms. 838 dated 11-6-1960 declared that the resolution of the Panchayat Samithi for establishing the Primary Health Centre in Doravarisathram

is not proper and that Mallam should be selected for the location of the Centre. Accordingly in exercise of the powers conferred by Sub-section (1) of Section 72 of the Act the Government modified the resolution of the Nayudupet Panchayat Samithi dated 30-1-1960 and directed the location of the Health Centre of Nayudupet Block in Mallam village of that Block.

5. In pursuance of the above said G. O. the Health Centre was opened at Mallam on 4-7-1960. It started functioning Immediately,

6. The President and some other members of the Nayudupet Panchayat Samithi made a representation u/s 72 (3) of the Act seeking a review of the order of the Government dated 11-6-1960. The Government declined to review through their order dated 7-7-1960.

7. It appears that a member of the Nayudupet Panchayat Samithi along with the President of Kattuvapalle Panchayat filed" writ petition No. 621-60 in this Court on 5-9-1960 challenging the validity of the order of the Government dated 7-7-1960 through which the Government had declined to review the earlier order. That writ petition however was subsequently withdrawn. It was accordingly dismissed by this Court on 28-10-1960.

8. The Government, however, on 23-2-196? issued a letter to the President of the Panchayat Board, Mallam stating that in view of some representation the Government proposed to consider its previous decision and agree with the majority view of, the Panchayat Samithi that the Centre should be located in Doravarisathram. It was mentioned in the said letter that the reconsideration of the earlier order which was passed entirely on technical opinion is justified in addition from the point of view of the public opinion and also convenience. The Mallam Panchayat therefore was greeted u/s 72 (3) of the Act to forward the representation, if any, against the proposal of the Government to locate the Health Centre at Doravarisathram. Similar communications were addressed to the Director of Medical Services and to the Director of Public Health asking them to submit their opinion regarding the proposal of the Government to review their earlier order. The District Collector, Nellore, also was directed to submit his report. The Director of Public Health sent his remarks through a letter dated 26-4-1961 based on the opinion of the District Officer, to the Government that he agreed with the proposal of the Government to review their earlier order and locate the Health Centre at Doravarisathram. He however suggested that the shift in the Health Centre should be effected only after providing alternative medical aid to the Mallam group of villages by transferring a Local Fund dispensary of Durgarajapatnam to Mallam and upgrading it into an Allopathic Dispensary, and that if it is not possible, the Health Centre should not be removed from Mallam. The Director of Medical Services agreed with the view of the Government that the Centre should be located at Doravarisathram. The District Collector however in his letter dated 1-3-1961 stated that the location of the Centre at Doravarisathrain might improve the existing medical facilities to the nearby villages, while the location of the Centre at Mallam will practically provide

new facilities for 45 to 50 villages which do not now have any medical assistance. It may be justifiably gathered from that letter that the Collector's view was for the retention of the Health Centre at Mallam.

9. The President of the Mallam Panchayat submitted the explanation of the Panchayat on 10th March, 1961, detailing the reasons why the Government should not review their earlier order, and pressing again for the claims of Mallam.

10. In view of the differing opinions the Government deputed a responsible officer of the Secretariat to submit a report after inspection of the villages. That report appears to have been submitted in June, 1961. Despite that report the Government directed the Commissioner of Panchayat Raj to make a report. Accordingly the Commissioner submitted his report on 3rd November, 1961.

11. The Government through their order G. O. Ms. 1096 dated 17-12-1961 reviewed their earlier order u/s 72 (3) of the Act and directed that the Health Centre at Mallam be converted into a regular dispensary by utilising the contributions already made by the people of "Mallam for the establishment of the Health Centre and that the Health Centre of Nayudupeth Block be located at Doravarisathram, subject to

"the usual conditions governing the establishment of Health Centres in Andhra area.

12. The writ petitioner assailing the validity of the abovesaid order of the Government filed W, P. 1376 of 1961 which came up for consideration, before Seshachalapathi, J. The learned Judge allowed the writ petition and issued a writ of mandamus directing the respondents Nos. 1 and 2 to forbear from removing the Primary Health Centre now located at Mallam to Doravarisathram or to any other place in the Nayudupet Panchayat Samithi. The learned Judge found that the Government had no jurisdiction to review their earlier order, as it cannot be said that the preliminary facts which entitle the Government to review existed. It is this view of the learned Judge which is challenged in this appeal.

13. The principal contention of Mr. Babula Reddy, the learned Counsel for the appellants, is that the order of the Government reviewing their earlier order was based on a finding of fact that certain material facts were not within their knowledge when G. O. Ms. 838 of 11-6-1960 was passed. It was not open for this Court to interfere in such order as the existence or otherwise of the material facts entitling the Government to review was a part of the decision of the Government and was not a collateral and preliminary fact the existence of which alone can give jurisdiction to the Government to review their earlier order. His submission is that the Government was the final authority in deciding the question whether they were ignorant of the material facts which entitle them to review u/s 72 (3) of the Act. It is not open to this Court to go into the existence or otherwise of such facts. The learned Judge according to him has erred when he found that from the record it could not be said that the Government was ignorant of the material facts on the basis of which they decided to review. He

also urged that the earlier order of the Government was not of a quasi-judicial nature, but was purely of an administrative character and that therefore the Government could administratively review that order at any time they desire.

In order to appreciate the merits of these contentions it is necessary to read Section 72 of the Act, under which the earlier order of the Government was passed. Section 72 reads as follows: -

"72 (1) The Government may, either suo motu or on an application from any person interested, call for and examine the record of a Panchayat Samithi or a Zilla Parishad or of their Standing Committees in respect of any proceeding to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein; and, if, in any case, it appears to the Government that any such decision or order should be modified, or reversed or remitted for reconsideration, they may pass order accordingly;

Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

(2) The Government may stay the execution of any such decision or order pending the exercise of their powers under Sub-section (1) in respect thereof.

(3) The Government may suo motu at any time or on an application received from any person interested, within ninety days of the passing of an order under Sub-section (1), review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions contained in the proviso to Sub-section (1) and in Sub-section (2) shall apply in respect of any proceeding under this Sub-section as they apply to a proceeding under this Sub-section (1).

(4) Every application preferred under subsection (1) or Sub-section (3) of this Section shall be accompanied by a fee of fifteen rupees."

14. We must first consider the contention that the order of the Government dated 11-6-1960 was of an administrative character. It is clear from a reading of Section 73 that that order was made in exercise of the provisional powers of the Government. It cannot now be in doubt that a Tribunal which exercises appellate or revisional powers functions as a judicial or quasi-judicial body having a duty to act judicially. Even if it is an administrative body, in such case it has the duty to act judicially. In *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, dealing with a similar question their Lordships of the Supreme Court observed:

"But, Section 9 of the Act has laid down a regular hierarchy of authorities, one above the other, with the right of hearing appeals or revisions. Though the Act and the rules do not, in express terms, require reasoned orders to be recorded, yet, in the context of the subject-matter of the rules, it becomes necessary for the several authorities, to pass, what are called "speaking orders". Where there is a right vested in an authority created by statute, be it administrative or quasi-

judicial, to hear appeals and revisions, it becomes its duty to hear judicially, that is to say, in an objective manner, impartially and after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it."

Their Lordships went on to observe at page 808 (of SCJ) : (at p. 407 of AIR):

"But the juxtaposition of the two parallel highest Tribunals, one in respect of predominantly civil cases, and the other in respect of predominantly revenue cases (without attempting any clear-cut line of demarcation), would show that the Excise Appellate Authority was not altogether an administrative body which had no judicial or quasi-judicial functions."

At page 809 (of SCJ) : (at p. 408 of AIR) it was observed:

"Thus, on a review of the provisions of the Act and the rules framed thereunder, it cannot be said that the authorities mentioned in Section 9 of the Act, pass purely administrative orders which are beyond the ambit of the High Court's power of supervision and control."

The power of review conferred upon the Government u/s 72 (3) is manifestly referable to the orders passed by the Government u/s 72 (1). As stated above, the power to examine in appeal or revision any decision OF order of an inferior Tribunal, and any orders passed after such examination, is in essence a judicial power. In *Raman and Raman Ltd. Vs. The State of Madras and Others*, their Lordships of the Supreme Court referring to the terms of Section 64(a) of the Motor Vehicles Act which are almost identical with Section 72 (1) of the Act observed that the power conferred on the Government under that Section is clearly a judicial power. We have therefore no doubt that the power to review conferred upon the Government u/s 72(3) of the Act partakes of the same character. It must therefore be exercised, as stated above, on judicial considerations and within the definitive limits of the statutory provision authorising such review. Any review therefore of an order passed in exercise of the powers of revision would be an order of quasi-judicial nature, in exercise of which the Tribunal has a duty to act judicially. That being the nature of the order of the Government passed in review it cannot be doubted that this Court has jurisdiction to interfere in such orders if it is found that the Government has exceeded in their jurisdiction or had no jurisdiction to review the order. We experience no difficulty in rejecting the contention that the impugned order is an administrative order and therefore the learned Judge was not authorised to interfere in that order.

15. The next question is whether or not the earlier order was passed in ignorance of any material facts is a question for the exclusive determination of the Government. The submission is that any determination of such question is not a collateral fact, the existence of which might affect the jurisdiction of the Government. We are unable to accept this contention. The power to review an order passed u/s 72 (1) has been conferred on the Government "if it was passed

by them under any mistake, whether of law or of fact, whether in ignorance of any material fact." Two things which immediately leap to the eye are that the statute does not confer on the Government power to decide the existence of such preliminary fact conclusively and secondly, any determination of the existence of such fact is not left to the subjective satisfaction of the Government. Both these features direct to the conclusion that the jurisdiction to review any order passed u/s 72 (1) can be exercised only when it is found while acting judicially that such an order was passed, under any mistake, whether of fact or of law, or in ignorance of any material facts.

16. This naturally raises the question regarding the meaning and scope of the collateral questions and the distinction between the merits of the case and preliminary or collateral jurisdictional questions. It is now axiomatic that an error of law or fact committed by a judicial or quasi-judicial Tribunal cannot, in general, be impeached unless the erroneous determination relates to a matter on which the jurisdiction of that body depends, In other words, one of the grounds for the issue of a writ can be that the inferior Court or Tribunal has erroneously decided a collateral question which led to an assumption of jurisdiction which did not exist, or unless an error of law is apparent on the face of the record. These principles govern judicial review not only of the findings of inferior judicial or quasi-judicial Tribunals *stricto sensu*, but also of the findings of the administrative bodies which are held to be acting in a judicial capacity. Whether such a Tribunal is conferred with original or appellate jurisdiction is not of much significance. Granting that such a Tribunal is acting judicially or quasi-judicially within the limits of its jurisdiction, the limits of its jurisdiction are usually determined. A clear distinction has always been recognised between errors committed within jurisdiction and errors which go to the root of jurisdiction. There is no warrant for the assumption that when the Legislature empowers any inferior Tribunal to enquire into certain facts, it intended that the Tribunal's conclusion on every one of those facts shall be unimpeachable. Often it is reasonable to infer that the Legislature has intended to demarcate two areas of enquiry, the Tribunal's proceedings within, one area being conclusive and within the other area impeachable, If the contention put forward by the appellant that every finding of such Tribunal would be conclusive is accepted, then it would provide inferior Tribunals with too strong temptation to assume functions that they were not intended to fulfil and would reduce the concept of judicial review almost to vanishing point. It is therefore reasonable to suppose that such a Tribunal can be said to have jurisdiction to enquire into a question for the purpose of giving a decision on it, but it would be deemed to have acted without or in excess of its jurisdiction, if the question was one which went to the root of its jurisdiction and which in the opinion of the High Court it had decided wrongly. In such cases the want of jurisdiction is due to the absence of some particular fact or facts upon the existence of which the jurisdiction arises. It may also arise from the absence of some elements essential for proceeding.

17. It is now a firmly settled principle of law that a Court of inferior jurisdiction

cannot give itself jurisdiction by an erroneous decision on a matter on which its jurisdiction depends. In *Rex v. Shoreditch Assessment Committee* (1910) 2 KB 859 at p. 880 Farwell, Lord Justice observed :

"No Tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction; such question is always subject to review by the High Court, which does not permit the inferior Tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise. Subjection In this respect to the High Court is a necessary and inseparable incident to all Tribunals of limited jurisdiction; for the existence of the limit necessitates an authority to determine and enforce it : it is a contradiction in terms to create a Tribunal with limited jurisdiction and unlimited power to determine such limit at its own will and pleasure -- such a Tribunal would be autocratic, not limited -- and it is immaterial whether the decision of the inferior Tribunal on the question of the existence or non-existence of its own jurisdiction is founded on law or fact;....."

Citing the leading authority of *Coleridge, J., in Bunbury v. Fuller* (1853) 113 LLJ 9, in *White and Collins v. Minister of Health* (1939) 2 KB 838 observed:

"It seems almost self-evident that the Court; which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which the existence of the jurisdiction relied upon depends. If this were not so, the right to apply to the Court would be illusory."

Lord Goddard, C. J., summed up the position in *Rex v. Fulham Hammersmith and Kensington Kent Tribunal, Ex parte Zerek* (1951) KB 1 as follows:

"..... if a certain state of facts has to exist before an inferior Tribunal have jurisdiction, they can enquire into the facts in order to decide whether or not they have jurisdiction, but cannot give themselves jurisdiction by a wrong decision upon them; and this Court may, by means of proceedings for certiorari, enquire into the correctness of the decision."

In *Raman and Raman Ltd. Vs. The State of Madras and Another*, Imam, J., observed:

"There may be cases where the jurisdiction of an inferior tribunal may depend upon the fulfilment of some condition precedent or upon the existence of some particular fact.

Such a fact is collateral to the actual matter which the inferior tribunal has to try and the determination whether it exists or not is logically and in sequence prior to the determination of the actual question which the inferior tribunal has to try. In such a cases in certiorari proceedings, a Court can enquire into the correctness of the decision of the inferior tribunal as to the collateral fact and may reverse that decision if it appears to it, on the materials before it, to be erroneous.

There may be tribunals, however, which by virtue of legislation constituting them, have the powers to determine finally the preliminary facts on which the further exercise of their jurisdiction depends. With respect to them, in such cases, their decision even if wrong on facts or law, cannot be corrected by a writ of certiorari. In cases where the fact in question is a part of the very issue which the inferior tribunal has to enquire into, a Court will not issue a writ of certiorari, although the inferior tribunal may have arrived at an erroneous conclusion with regard to it."

18. It is thus dear that the determinations of the Tribunal which go to their jurisdiction and which, as stated above, are reviewable, are usually termed as preliminary or collateral questions. S. A. De Smith in his book "Judicial Review of Administrative Action" referring to the decided cases at page 69 defines a preliminary or collateral question to be one "that is collateral to the merits" or "the very essence of the enquiry"; it is "not the main question which the tribunal has to decide". It has also been described as one that is "extrinsic to the adjudication impeached".

19. It is true that no satisfactory test has been suggested for distinguishing matters which go to the roots of jurisdiction from matters which, go to the merits, but some rough and ready formulae have been suggested in order to give substance to the supervisory authority of the High Court. It is not our intention to enumerate these generalisations here; it is sufficient for the purpose of our present enquiry to say that the questions which are collateral to the merits of the case or the questions which are extrinsic, or it is not the main question to be decided on the merits of the case. Then such a question unless the law directs otherwise, is a collateral or preliminary question.

20. In *R. v. Commissioner for Special Purposes of the Income Tax*. 1888 21 QBD 313 Lord Esher, M. R., in a much-quoted passage observes :

"When an inferior Court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament (legislature), the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with, a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of "facts exists as well as the jurisdiction, on finding that it does exist to proceed further or do something "more."

21. It will thus be clear from the abovesaid discussion that three classes of situations may arise. Firstly, a Tribunal may have to enquire into a question and

its findings thereon are conclusive, because they are not preliminary and collateral to the merits. Secondly, a Tribunal may have to enquire into a question and its finding thereon are reviewable, because they are preliminary or collateral to the merits. Thirdly, a Tribunal may have to enquire into a question which is preliminary or collateral, but its findings thereon may be conclusive because of the wording of the relevant legislation. Broadly where a matter collateral to the merits is to be proved "to the satisfaction of" the competent authority: the scope of judicial review in this third class of situation is the same as in the first class of situation, and the two are often confused with each other although they are analytically distinct.

22. In order therefore to find out in regard to collateral or preliminary questions whether the decision of the Tribunal in such matters has been treated as conclusive, the relevant statutory provisions have to be carefully examined in each case. If the law contemplates that the inferior Tribunal must adjudicate, conclusively, upon the existence or otherwise of the state of fact on which its power to decide a certain matter depends, then the issue as to the existence of the facts is one directly for the decision of the inferior Tribunal and in spite of the fact that the matter is of a preliminary nature, does not become a collateral issue. Hence, the decision of the inferior Tribunal on the preliminary matter cannot be questioned as being erroneous before the Court of certiorari in such cases, although such decision is de hors the merits of the case. See *Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers*, .

23. But if the law does not make the existence of the preliminary facts an issue for the conclusive decision of the Tribunal, the facts will be of a collateral nature and the decision of the Tribunal with regard to the existence of the facts will not be immune from attack in certiorari proceedings. The principle that certiorari Court cannot question the decision of the inferior Tribunal on the ground of its erroneous decision, applies only with reference to questions which are placed by the law within the ambit of the authority of the Tribunal to decide conclusively upon. The principle does not apply to a collateral matter, that is to say, a matter which is not placed by the law within such ambit of authority. See *Province of Bombay Vs. Kusaldas S. Advani and Others*, .

24. It can be broadly stated that in granting powers to so decide the Legislature employs what is called "subjective" type of formula such as "in the opinion of," "if it appears" or "if the Tribunal is satisfied". It indicates an intention that the act of the competent Tribunal on the existence of jurisdictional facts should not be subject to judicial review. A careful analysis of decided cases, however, shows that the reviewing Court has accepted the abovesaid formula in regard to executive or administrative functions but has shown marked reluctance to concede the ouster of the power of review in cases of judicial or quasi-judicial Tribunals.

25. If we examine Section 72 (3) in the light of the principles enunciated above, it becomes manifestly clear that what that Section requires is that the power to

review can be exercised only if certain collateral or preliminary facts exist and the existence or otherwise of such collateral or preliminary facts has not been left by that Section to the subjective type of formula nor the decision thereupon is stated to be conclusive. The Inescapable conclusion therefore is that if the Government wants to review any order passed u/s 72 (1) of the Act, they must first by way of collateral or preliminary facts find, on the basis of the available record, that the earlier order sought to be reviewed was passed by them under a mistake, whether of law or of fact, or in ignorance of the material facts. It follows that the Government cannot by a wrong decision on such collateral or preliminary issue assume jurisdiction to review any order passed earlier u/s 72 (1). and if the Government erroneously assumes jurisdiction by deciding a collateral issue wrongly, this Court is entitled in an appropriate case to remove such order under Article 226 of the Constitution of India. We are therefore deeply of the opinion that while reviewing the order, the Government functions as a quasi-judicial authority, in exercise of which, they have a duty to act judicially. Before the power of review could be exercised by the Government it must be proved that the order sought to be reviewed was made under a mistake or in ignorance of material facts. In other words, the mistakes referred to in that Section are the foundation for the exercise of that power. In our judgment they constitute jurisdictional facts. Unless therefore those jurisdictional facts exist, the power to review cannot be exercised. This Court has a right to find out whether the collateral or preliminary issue has been properly and correctly determined, which affects the jurisdiction of the Government.

26. Having found this we are called upon to consider whether the finding of the learned Judge that there was no question of ignorance of any material facts as the Government was fully aware of all the relevant and material facts at the time when they gave the earlier decision, is correct or not. The learned Judge, went into the whole record and in our opinion quite correctly. In order to find out whether the grounds on which the Government reviewed their earlier order constitute "ignorance of material facts". The learned Judge assumed that the facts referred to in the final order are material facts. Nevertheless he came to the conclusion that all those facts were part of the record when the first order locating the Health Centre at Mallam was passed. After carefully going through the relevant record we are satisfied that the conclusion of the learned Judge is quite correct. In fact it was not contended that the so-called facts of which the Government was ignorant did not form part of the record when the earlier decision was given.

What was contended was that the appellant was not provided with an opportunity before the learned Judge to (sic) the facts were not before the Govt. at the time when the earlier order was passed. We do not find any substance in this contention. In the writ application it was clearly contended that Government was wrong in reviewing the order on the ground that they were ignorant of the material facts. We are told that the concerned record was read out in the open Court. It cannot therefore be said that the appellant had no opportunity and we

cannot therefore accept that contention. The learned Advocate could not point out even here that the finding in that behalf of the learned Judge is incorrect. We entirely agree with the observation of the learned Judge that all the considerations set out are expressly contained in a resolution passed by the Panchayat Samithi on 2-6-1960 and in view of that resolution and other relevant material it cannot be said that the considerations set out in the show-cause notice dated 22-2-1961 were either unknown to the Government before passing the G.O., or that the Government made the order in the said G.O. under a misapprehension or in ignorance of any material facts. After all the grounds on which the Government reviewed the order are so common, from the nature of which it cannot be said that the Government were unaware of it. It is unnecessary to make a reference to the relevant record in order to show that the Government were quite aware of all the relevant material facts at the time when the first order was passed. It is sufficient to say that we entirely agree with the conclusion of the learned Judge in that regard that it cannot be said that the Government were unaware when they passed the G. O. Ms. 838. The inescapable conclusion therefore is that the collateral or the preliminary issue decided by the Government is erroneous. The Government assumed jurisdiction which did not exist to review the order. The order therefore in our opinion was made without jurisdiction, and has been rightly removed by an order under Art. 226 of the Constitution, by this Court.

27. It was finally argued by Mr. Babulu Reddy, the learned Counsel for the appellants, that G. O. Ms. 838 was itself not a valid order and the intention of the impugned G.O. is merely to put the matters right. He submits that if the impugned G.O. is struck down, it would only mean that this Court would be resuscitating the illegal G. O. Ms. 838. He relied in that connection on a decision of the Madras High Court in *M. Kali Mudaliar Vs. A. Vedachala Mudaliar and Others*, .

We feel that the argument is based on a misconception in regard to the validity of the G. O. Ms. 838. The contention of Mr. Babulu Reddy is that the rules for establishment and maintenance of the Primary Health Centre by Panchayat Samithi came into force on 23-1-1961. The Government therefore could have modified the resolution of the Panchayat Samithi not u/s 72(1) of the Act but only under S. 62 of the Act. True it is that Section 62 empowers the Government to cancel or suspend the resolution of a Panchayat Samithi or a Zilla Parishad. That power of the Government however can be exercised only in a case where the resolution is not legally passed or is in excess or abuse of the powers under this Act or any other law, or on its execution it is likely to cause danger to human life, health or safety or is likely to lead to a riot or affray. Section 72 confers, on the other hand powers of revision and review on the Government. Under the Section the Government either suo motu or on application may call for and examine the record of a Panchayat Samithi and can modify, annul or reverse or remit for re-consideration any decision or order of the Panchayat Samithi.

What is argued by the learned Counsel for the appellants is that the words "decision" or "order" do not take in "resolution". His submission is that inasmuch as the Act makes a specific provision in regard to modification or annulment of a resolution, that specific provision should override the general provision of Section 72. We do not find any force in this contention, firstly because it is not quite correct to say that Section 62 is a special provision in regard to resolutions and Section 72 is a general provision not applicable to resolutions. It may not be ignored that any decision or order which, is made by the Panchayat Samithi as a statutory body can only be through a resolution. If the Government intends to modify or remit any such decision or order of the Samithi which does not come within the ambit of Section 62 of the Act, it cannot be seriously argued that the Government ceases to have any power in such a case, because in such a case Section 62 would naturally be attracted. The principle of *generalia specialibus non derogant* is not applicable in this case. Maxwell on Interpretation of Statutes at page 168 states:

"It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one, that is, one directed towards a special object or a special class of objects. A, general later law does not abrogate an earlier special one by mere implication. *Generalia specialibus non derogant*, or, in other words, "where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation..... that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special act, or, what is the same thing, by a local custom. Having already given its attention to the particular subject and provided for it, the Legislature is reasonably presumed not to intend to alter "that special provision by a subsequent general enactment unless that intention be manifested in explicit language, or there be something which shows that the attention of the Legislature had been turned to the special Act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one."

Reading Sections 62 and 72 together we have no hesitation in reaching the conclusion that while Section 62 provides for the modification of a resolution in limited cases, Section 72 confers a wide power on the Government which is appropriately called as a power to revise or review. There may be some overlapping between the two Sections, but it does not mean that the Legislature did not want to provide anything in regard to resolutions further than what they have provided in Section 62. If that was the intention, the existence of Section

72 authorising the Government to revise or review the decision or order which can be taken only through resolutions of a Panchayat Samithi or other statutory bodies mentioned in that Section would be nugatory. Any construction which leads to that must certainly be avoided. It is manifest from a reading of the earlier order of the Government that it was passed under Section 72(1) of the Act. The power to review also was exercised u/s 72(3). It is idle therefore to suggest that the Government had no power to pass any order u/s 72(1), or review it u/s 72(3). The earlier order therefore cannot be considered as bad in law, nor the order reviewing it can be stated to fall without Section 72(3). Quashing the order of review therefore does not in our opinion amount to reviving a bad order, as Section 62 in our opinion was not applied correctly by the Government to the present case. The present case would only attract Section 72 of the Act and the Government correctly exercised their powers under that Section.

28. Lastly it was contended that while quashing the order the learned Judge directed beyond the scope of the writ petition, the respondents 1 and 2 to forbear from removing the Health Centre at Mallam to Doravarisathram or to any other place in the Nayudupet Panchayat Samithi. We find no substance in this contention also. From a reading of the order it becomes clear that that direction is confined to any action taken in pursuance of G. O. Ms. 1696 of 17-12-1961 and does not go in any manner beyond that.

29. For all the reasons which we have endeavoured to give we find no substance in this appeal. It is consequently dismissed with costs. Advocate's fee Rs. 100/-.