

(2002) 08 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14175 of 2002

K. Srinivas Rao

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 3, 4

Citation : (2002) 5 ALD 393 : (2004) 4 ALT 660

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Y. Venkat Sastri, for the Appellant; Government Pleader for Panchayat Raj for Respondent No. 1, Additional Advocate-General for Respondent No. 2 and V.V. Prabhakara Rao, SC for State Election Commission, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—This case illustrates as to how public interest litigations pursued in half-hearted manner would scuttle the democratic Process.

2. Pulluru is a Gram Panchayat in Krishna District. It comprised of village of Pulluru proper and several hamlets, such as, Laxminagarapuram, Kothagudem and Kothamangapuram. Before the General Elections for the Gram Panchayat held in 1995, proposals were initiated for bifurcating the Pulluru Gram Panchayat and for constituting a new Gram Panchayat for Kothamangapuram. A notice to that effect was issued on 24-4-1995 by the District Collector, the 2nd respondent herein. Pulluru Gram Panchayat had agreed for the proposal and passed resolution to that effect. On the basis of this resolution and in the absence of any objection, the 2nd respondent issued final notice dated 12-5-1995 forming the Kothamangapuram Gram Panchayat, through proceedings dated 4594/94/Panchayats-8, dated 12-5-1995.

3. Two residents of the village filed WP No. 10987/95, questioning the bifurcation. The writ petition was disposed of by a Division Bench of this Court,

through order dated 22-11-1995. While the proceedings referred to in the order related to bifurcation of Pulluru Gram Panchayat, the order read as though it related to bifurcation of Seetharampuram Gram Panchayat into Seetharampuram and Marribandam. The petitioners in that writ petition appear to have been satisfied by getting the election to Gram Panchayat stayed. They did not evince any interest either to get the order corrected or to take further steps.

4. Thereafter, another person by name Vajrala Kumar Reddy filed WP No. 16896 of 2000, complaining that failure on the part of the respondents in passing the final order with regard to bifurcation and non-compliance with the directions contained in WP No. 10987/95 is illegal and arbitrary. In that writ petition, the respondents pleaded that their inaction in the matter was only on account of the mentioning of the name of a different village vis-a-vis the notification dated 12-5-1995, This Court referred to these contentions and ultimately, through order dated 2-1-2002, directed the 2nd respondent herein to pass appropriate orders, in accordance with the directions of this Court in WP No. 10987 of 1995 as well as the relevant provisions of the A.P. Panchayat Raj Act (for short "the Act") and the rules made thereunder.

5. The 2nd respondent took his own time in taking further steps. It was only on 16-3-2002 that he addressed the 1st respondent i.e., the Government, seeking clarification as to whether it was permissible to pass final orders on the basis of the preliminary notification issued on 24-4-1995. The 1st respondent after two months, informed the 2nd respondent, through letter dated 3-6-2002, that it is not permissible to issue final notification since the rules relating to bifurcation of Gram Panchayat issued in G.O. Ms. No. 515 dated 17-8-1994 have been rescinded through G.O. Rt. No. 1634, PR & R.D. Department, dated 12-10-2001. It was further stated that under the latter G.O., ban was imposed on bifurcation of Gram Panchayats. Having received such a communication, the 2nd respondent has passed orders dated 5-7-2002 withdrawing the notification 12-5-1995. Thus, the mess created by the enthusiastic petitioners in WP No. 10987/95 and the indifferent officials of the respondents has deprived the villagers of erstwhile Pulluru Gram Panchayat of two elections.

6. In this writ petition, the petitioner challenges the proceedings dated 5-7-2002 on several grounds. According to the petitioner, once the notification dated 12-5-1995 was set aside by this Court in WP No. 10987/95, the question of the 2nd respondent withdrawing the same does not arise. As regards the basis pleaded for not proceeding with the matter of bifurcation of Pulluru Village, the petitioner contends that the bifurcation of Pulluru Village does not come in the purview of ban and the respondents cannot take advantage of their inaction.

7. In the counter affidavit filed by the respondents, the various proceedings referred to above have been stated. It is pleaded that in view of the rescission of the Rules contained in G.O. Ms. No. 515 dated 17-8-1994, it is no longer possible to undertake the bifurcation.

8. Heard Sri Y. Venkata Sastri, learned Counsel for the petitioner and the learned Additional Advocate-General for the respondents.

9. It is the failure on the part of the petitioners as well as the respondents in WP No. 10987/95 to place the relevant and correct facts before this Court that gave rise to all these complications. The short order passed therein reads as under:

"This writ petition is filed questioning the order of the District Collector, Krishna, dated 12-5-1995 bifurcating Seetharampuram Panchayat into Seetharampuram and Marribandam as separate Gram Panchayats.

The learned Government Pleader stated that the rules have been promulgated governing the field of the bifurcation. These rules were not in force at the time when the Collector passed the impugned order. Therefore, we set aside the impugned order and direct the respondents to examine the issue afresh by applying the rules and provisions of the Act and pass appropriate orders by giving ample opportunity to the Gram Panchayat concerned.

The writ petition is accordingly allowed. No costs."

10. Firstly, when the writ petition was disposed of, this Court proceeded on the footing that what was involved was bifurcation of Seetharampuram, whereas the impugned notification related to Pulluru village. Secondly, on a representation made by the Government Pleader that when the impugned order therein i.e., notification dated 12-5-1995 was passed, no rules framed and the rules governing the bifurcation were promulgated thereafter this Court has set aside the notification dated 12-5-1995 and directed the respondents to pass fresh orders in accordance with the new rules.

11. The fact, however, remains that the Rules relating to bifurcation were promulgated on G.O. Ms. No. 515, dated 17-8-1984. In the preliminary as well as the final notifications dated 24-4-1995 and 12-5-1995 respectively, G.O. Ms. No. 515 dated 17-8-1994 was specifically referred to along with the relevant provisions of the Act and several G.Os., having a bearing on the subject. But for the representation that the rules were framed after the impugned order, this Court would certainly have examined the validity of the notification dated 12-5-1985 with reference to the rules contained in G.O. Ms. No. 515. It was only on the representation that the rules relating to bifurcation came to be framed subsequent to the order dated 12-5-1995, the impugned notification was set aside and fresh orders were directed to be passed. Since it emerges that not only the rules relating to bifurcation existed as on the date of the order dated 12-5-1995, but the said order was passed strictly in accordance with these rules, the sole basis for setting aside that order ceases to exist. But for the indifferent attitude on the part of the petitioners and the respondents to instruct their respective Counsel, such a glaring mistake would not have occurred.

12. Ordinarily, once a notification is set aside by an order of the Court, such notification cannot survive. However, this case presents a peculiar situation. The

adjudication "was with specific reference to a different village and on totally irrelevant set of facts placed before it. In a way the order in WP No. 10987/95 is a combination of per incuriam and sub-silentio. It is per incuriam because the existence of the rules as to bifurcation as on the date of notification was not noticed at all and sub-silentio because the question as to whether the notification violated any of the criteria prescribed under the rules, was not dealt with.

13. Per incuriam and sub silentio are exceptions to the concept of stare decisis. Sir John Salmond in his Treatise on Jurisprudence has aptly stated the circumstances under which a precedent can be treated per incuriam.

"A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute, i.e., delegated legislation. This rule was laid down for the House of Lords by Lord Halsbury in the leading case (London Street Tramways v. L.C.C. (1898) A.C.375) and for the Court of Appeal it was given as the leading example of a decision per incuriam which would not be binding on the Court (Young v. Bristol Aeroplane Co. Ltd (194) K.B. at 729 (C.A.)). The rule apparently applies even though the earlier Court knew of the statute in question, if it did not refer to, and had not present to its mind, the precise terms of the statute. Similarly, a Court may know of the existence of a statute and yet not appreciate its relevance to the matter in hand; such a mistake is again such incuria as to vitiate the decision. Even a lower Court can impugn a precedent on such grounds." (Salmond on Jurisprudence 12th Edition Pages 151 and 152).

C.K. Allen, in "Law in the Making" (page 246) analyses the concept of per incuriam as under:

"Incuria means literally "carelessness", which apparently is considered less uncomplimentary than ignorantia; but in practice per incuriam appears to mean per ignorantiam. It would almost seem that ignorantia juris neminem excusat - except a Court of law, Ignorance of what? The example given in the actual rules in Young's case {Young v. Bristol Aeroplane Co. Ltd (194) K.B. at 729 (C.A.)} is ignorance of a statute, or of a rule having statutory effect (such as a rule of the Supreme Court (Lancaster Motor Co. Ltd. v. Bremith Ltd. (1941) 1 KB. 675)), which would have affected the decision if the Court had been aware of it,

One of the exceptions to the principle of stare decisis is where the Court gives a decision per incuriam because the provisions of a statute or the authority of a case have not been brought to their attention (Lord Goddard, CJ, in Moore v. Hewitt (1947(2) All. ER 270). The concept gets attracted either when an important provision of law eluded the attention of the Court or where the Court was allusive to such provisions while rendering the decision. Instances of per incuriam may also arise where the decision is rendered ignoring a binding precedent.

14. The principle of sub silentio would arise; once again, in the words of Sir John Salmond:

"when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court."

The law in India, on the subject is, on the same lines.

15. The facts of the present case, as narrated above, would clearly demonstrate that; firstly, the Court was not informed that the Rules as to bifurcation were very much in existence by the time the order impugned therein came to be passed. Secondly, it was not demonstrated that the impugned order violated any of the provisions contained in the relevant rules. Hence, both the concepts of per incuriam and sub-silentio get attracted. This cumulative effect of these two concepts is that the notification dated 12-5-1995 cannot be said to have been set aside.

16. It is true that these concepts are to be invoked with utmost caution and not as a matter of course. The application of these concepts is comparable to administration of Schedule "E" drugs (Drugs and Cosmetics Rules, 1945). If administered after a thorough diagnosis and under perfect supervision, such toxic and poisonous drugs, may cure the disease and save life; whereas any misadventure may cost a life, which was otherwise secure. The care and caution to be taken in applying these concepts is by no means inferior in degree. The fact that a second view is possible as regards a decision rendered earlier does, by no means, provide a justification to ignore it, by branding the same as per incuriam. It should be evident from an analysis of the judgment in question, that a crucial provision of statute or delegated legislation, having an important bearing on the subject-matter, was not brought to its notice at all, and that the Court did not take the same into account while rendering its decision.

17. No doubt even the petitioner, obviously knowing his limitations, did not complain about the inconsistency as to facts and incongruity in presentation before the Court in WP No. 10987/95 and the outcome thereof. However, if the Court comes to know that an order passed by it was as a result of unnoticed certain vital provision of law, and if it is realised that, but for such an omission, the result would not have ensued, the Court cannot remain a silent spectator. The Court has not only a right, but a duty to correct such mistakes as to facts and the result thereof; lest a message spreads that once an order is procured from the Court, by deliberate or inadvertent misrepresentation of facts, it is the end of the matter.

18. Normally, when such situation emerges, the aggrieved parties approach the Court and take steps to put the record straight. As observed earlier, on one hand, there were petitioners who felt that with the stay of elections, their purpose is more than served; on the other hand, there were the Government agencies,

which did not care to present the correct facts. The result for such indifference has costed two elections, which were provided for under the Constitution of India. Since, the mistake that has crept into the order has given rise to one after the other violations, this Court feels that it is a fit case to take the view that, in the facts and circumstances of the case, the notification dated 12-5-1995 cannot be said to have been set aside.

19. Though the impugned order, the 2nd respondent has withdrawn the notification dated 12-5-1995. If in fact the said notification was set aside by this Court, the question of its withdrawing the same does not arise. Further, even if the 2nd respondent was of the view that having regard to a reference to a different village, the order of this Court in WP No. 10987/95 cannot be said to have set aside the notification, the question of the 2nd respondent himself setting aside the same does not arise. The reason is that there is no power conferred upon him under the Act or the rules to revoke or withdraw the notification once issued. The only basis for withdrawing the same is stated to be rescission of the rules contained in G.O. Ms. No. 515, dated 17-8-1994. Even such a ground is incompatible, if the rules as to bifurcation stood rescinded, what all happens is that there will be no basis for undertaking further bifurcations. Under no circumstances, such a rescission would enable the 2nd respondent to withdraw the bifurcation, which has already been effected. This Court is prompted to come to this conclusion for a further reason that in the order in WP No. 10897/96, no finding was recorded as to violation of any provisions of law in undertaking bifurcation. At any rate, it has been observed in the preceding paragraphs that, the notification dated 12-5-1995 cannot be said to have been set aside by this Court.

20. Having regard to the facts and circumstances of the case referred to above, the impugned order dated 5-7-2002 is set aside, it is held that the erstwhile Pulluru Gram Panchayat stood bifurcated into Pulluru and Kothamangapuram Gram Panchayats, through notification dated 12-5-1995, issued by the 1st respondent, u/s 3 of the Act read with the rules contained in G.O. Ms. No. 515, dated 17-8-1994, as they stood then.

21. Since the elections to both the Gram Panchayats viz., Pulluru and Kothamangapuram, could not be held both in 1995 as well as in 2001, on account of pendency of various proceedings, it is directed that the respondents shall take steps to hold the elections to the said two Gram Panchayats, viz., Pulluru and Kothamangapuram, within a period of three months from the date of receipt of a copy of this order.

22. The writ petition is allowed to the extent indicated above. No costs.