

(2000) 12 AP CK 0011
In the Andhra Pradesh High Court
Case No : Writ Petition No. 13197 of 1999

Kodimi Rajamma

APPELLANT

Vs

Principal Secretary, Home (Courts-A) Department

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 12
Scheduled Districts Act, 1874 — Section 6

Citation : (2001) 1 ALT 396

Hon'ble Judges : V. Eshwaraiah, J

Bench : Single Bench

Advocate : K. Manikyala Rao, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Eshwaraiah, J.—The Petitioner-a Scheduled Tribe filed this Writ Petition to issue a Writ of Certiorari calling for the records connected with G.O.Ms.No. 406, Home (Courts-A) Department dated 27-06-1990 and to quash the same as illegal and without jurisdiction.

2. The petitioner is residing in a Scheduled Area of Nallakunta Village, Bhadrachalam Mandal, Khammam District. Right from the British rule till date a number of special enactments and regulations are made for the Scheduled areas for administration of Agency Tracts and the ordinary Civil Courts have no jurisdiction over the Scheduled Areas and the provisions of the Civil Courts are also not made applicable in those areas till recently.

3. For the administration of Agency Tracts, the Scheduled Districts Act, 1874 (Act No. 14 of 1874) (hereinafter referred to as "Scheduled Districts Act") was enacted. The said Act came into force in each of the notified Scheduled Districts and the Scheduled areas. Section 6 of the Scheduled District Act reads as follows:--

"6. Appointment of Officers and Regulation of their procedure:-- The Local Government may from time to time--

(a) appoint officers to administer Civil and Criminal Justice and to superintend the settlement and collection of the public revenue, and all matters relating to rent, and otherwise to conduct the administration, which the Scheduled Districts;

(b) regulate the procedure of the officers so appointed: but not so as to restrict the operation of any enactment for the time being in force in any of said districts;

(c) direct by what authority any jurisdiction, powers or duties incident to the operation of any enactment for the time being in force in such district shall be exercised or performed."

Under Section 6 of the Scheduled Districts Act, the Governor made The A.P. Agency Rules, 1924 (for short "Agency Rules") for the administration of Agency Tracts and for regulation of the procedure of the officers appointed to administer them. As per the Agency Rules, 3-tier system of the Agency Tracts are contemplated i.e., Agency Munsif, Agency Divisional Officer and Agent to the State Government. The Collector of the concerned District of the concerned Scheduled Area is designated as Agent to the State Government. The Agency Courts have the power to try all suits of civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. As per the pecuniary jurisdiction conferred on the Agency Courts, the Agency Munsif shall have cognizance of suits for moveable and Immovable properties not exceeding in value of Rs. 500/-, Agency Divisional Officer not exceeding the value of Rs. 5,000/- and exceeding the value of Rs. 5,000/- the Agent to the State Government. The Agency Divisional Officer means the officer in-charge of the revenue sub-division, which is wholly, or partly agency. The Courts of Agency Munsif is subordinate to the Agency Divisional Officer and the Courts of Agency Divisional Officers are subordinate to the Agent to the State Government. The Agent to the State Government is empowered to appoint any of his subordinates or with the sanction of the State Government any other duly qualified person as Agency Munsif to exercise in such places and within such portion of the Agency tract within his district as he may consider proper the jurisdiction vested in the District Munsif in the ordinary tracts of the State subject to the modifications contained in the rules. But there is no such power for the Agent to the State Government to appoint any of his subordinates as Agency Divisional officer. As per the Scheme of the Scheduled Districts Act and the Agency Rules made thereunder by the Governor for the administration of Agency tracts and for regulation of the procedure of the officers appointed to administer them, the Agency Munsif, Agency Divisional Officer and the Agent to the State Government are alone vested with the respective judicial powers as stated above in the Scheduled areas and none else can exercise the judicial powers in the Scheduled areas excepting the Agency Munsif, Agency Divisional Officer and Agent to the State Government.

4. That being the legal position in so far as the Scheduled Areas are concerned, the State Government of Andhra Pradesh issued G.O.Ms.No. 406, Home (Courts-A) Department dated 27-06-1990 constituting Mobile Courts in the Scheduled Areas and certain areas in which Scheduled areas are also included in the interest of the people inhabiting in remote and interior areas as the present system of the Courts situated at the District or Divisional headquarters are found to be not accessible to those people and difficult for them to go to those Courts because of high expenditure involved which they cannot afford, and therefore, sanction was accorded for establishing the Mobile Courts, in the first instance, in each of the districts of Warangal, Karimnagar, Medak, Nizamabad, Mahaboobnagar, Adilabad, Visakhapatnam, East Godavari and Khammam with headquarters indicated therein. The headquarter of Khammam District is indicated at Bhadrachalam. The Government has sanctioned the creation of the temporary posts for the said Mobile Court for the period upto 28-02-1991 or till the need ceases, whichever is earlier for each of the Mobile Courts in the said Districts. It is the contention of the learned Counsel for the petitioner that the establishment of the Mobile Court not only conferring the jurisdiction over the plain areas, but also over the Scheduled Areas is illegal and contrary to the Scheduled Districts Act and the Agency Rules. According to Para 12 of the G.O.Ms.No. 406 dated 27-06-1990, the Sub Divisional Magistrate of the Mobile Courts at Chintapalli, Rampachodavaram and Bhadrachalam will exclusively deal with the cases arising in the Agency areas of the concerned districts. The existing Sub-Collectors or R.D.Os. having jurisdiction of the Agency areas are relieved of the judicial functions so far as the said Agency areas are concerned. The Mandal Revenue Officers in the Agency Areas will, however, continue to exercise the existing judicial powers as Agency Munsif. The said Sub-Divisional Magistrate of the Mobile Courts is empowered to try the civil suits and criminal cases also. It is clear from the Paras 12 and 14 of the said G.O. that the judicial powers of the Agency Divisional Officers have been taken away and conferred on the Mobile Courts in respect of certain Agency areas.

5. The petitioner contends that the said Government Order establishing the Sub-Divisional Magistrate of the Mobile Courts in so far as the Agency areas are concerned, in taking away the powers of the Sub-Divisional Officer in exercising the civil and criminal justice and conferring the same on the Sub-Divisional Magistrate of the Mobile Courts is illegal and contrary to the Scheduled Districts Act and Agency Rules. As per Section 6 of the Scheduled Districts Act, the Local Government may from time to time appoint officers to administer civil and criminal justice in the Scheduled Districts and regulate the procedure of the officers so appointed, but not so as to restrict the operation of any enactment for the time being in force in any of the said Districts. As per the Rules made u/s 6, officers have already been appointed i.e., Agency Munsif, Agency Divisional Officer and Agent to the Government to administer the civil justice. The Government may regulate the procedure of the officer so appointed for the time being in force in Scheduled Districts, but the Government cannot restrict the

judicial functions of the Agency Divisional Officers who have been appointed and functioning under the Scheduled Districts Act and Agency Rules. The action of the Government in taking away the judicial functions of the Agency Divisional Officer and constituting a Mobile Court is illegal and contrary to the Act and the Rules. It is further submitted that the said G.O. is also not issued in exercise of any of the powers of the Scheduled Districts Act or the Agency Rules, and therefore the function of the Mobile Courts in the Scheduled Area is without jurisdiction and contrary to law. Admittedly, the said G.O. is not issued in exercise of powers of the A.P. Civil Courts Act. It is also further stated that the issuance of the said Government Order is without any authority of law and unconstitutional. Even though the said G.O. was issued sanctioning temporary posts only till 28-02-1991, and even after the expiry of the said period, the Mobile Courts are illegally functioning without any authority of law and the order of the Government in G.O.Rt.No. 1611, Home (Courts-A) Department dated 28-06-1995 according sanction for further continuance of the temporary Mobile Court in Khammam District together with its staff is only extended upto 30-09-1995 and even that period is also over, and therefore, the functioning of the Mobile Court in Khammam District is illegal and without any authority of law.

6. The petitioner submits that on account of constitution of Mobile Court at Bhadrachalam, the inhabitants in Bhadrachalam, who are mainly tribal people, are suffering from the illegal orders rendered by the Mobile Court as the said Sub-Divisional Magistrate is neither a law graduate nor having any special knowledge of the agency laws and no justice is being done to the Scheduled Tribes.

7. The learned Government Pleader submits that in exercise of the powers u/s 6 of the Scheduled Districts Act, 1874 read with A.P. Agency Rules, 1924 and u/s 12 of the old Criminal Procedure Code, 1898, G.O.Ms.No. 406, Home (Court-A) Department dated 27-06-1990 has been issued establishing the Mobile Court and appointing the Sub-Divisional Magistrate and the staff and temporary posts were sanctioned and created upto 28-02-1991 which was extended by G.O.Rt.No. 1611 (Home-Courts) Department dated 28-06-1995 for further period upto 30-09-1995. It is neither stated in the counter nor produced any records to show that the said period has been extended for further continuance of the Mobile Courts together with staff which expired by 30-09-1995. The learned Counsel appearing for the respondents submits that the Mobile Court and the entire staff is continuing illegally without any orders of the Government, and therefore, the said Mobile Court cannot function without any lawful orders. It is also not known in the absence of any order according sanction for further continuance of the said Mobile Court in Khammam District together with staff, how they are eligible to draw the pay and allowances.

8. In view of the efflux of time and as the said Government Orders have not been extended sanctioning further continuance of temporary Mobile Courts together with the staff, the question of quashing the orders in G.O.Ms.No. 406, dated 27-06-1990 and extended orders in G.O.Rt.No. 1611 dated 28-06-1995

does not arise as any continuance of Mobile Courts pursuant to the said unextended order is illegal and without any authority of law. If for any reason, the Government is inclined for further continuance of the Mobile Courts presided over by an unqualified Sub-Divisional Magistrate, the powers to administer the civil and criminal jurisdiction of Agency Divisional Officers as per the Agency Rules may be entrusted to the qualified Judicial Officers on deputation from the Judicial Department.

9. I, therefore, do not propose to decide the legality or otherwise of the validity of the said orders as the said orders are no more in force and continuance of any Mobile Courts and the staff pursuant to the said orders is illegal and without any authority of law. Therefore, the powers conferred on the Sub-Divisional Magistrate of the Mobile Courts will revert back to the concerned Sub-Divisional Officers and it will be open for them to exercise Civil and Criminal administration of justice hitherto exercised by them before the constitution of the temporary Mobile Courts,

10. The Writ Petition is accordingly disposed of. No costs.