

(1968) 11 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 2165 of 1968

Mallihal Village Panchayat

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 12-11-1968

Acts Referred:

Citation : AIR 1969 Kar 345

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Judgement

Somnath Iyer, J.—This writ petition concerns a controversy about the location of a Primary Health Centre financed by the Government of India in the district of Shimoga. The choice of the State Government was a village known as Arebiliohi, and the petitioner who is a resident of a village called Kallihal asks us for a direction that it should be established in Maresettihalli.

2. The petitioner's complaint is that the selection overlooked the opinion of the previous health Minister Dr. Nagappa Alva and other officers such as the Deputy Commissioner and the District Health Officer who thought that Marasettihalli was better than Arebiliohi.

3. But the choice of the site is an administrative function, and if the State Government thought that one site was more suitable than the other, this Court has no power to interpose its own view on that matter.

4. But it was contended that the selection of Arebiliohi was an act of reprisal by the then Chief Minister Mr. Nijalingappa whose candidate at the last General Election was not supported by the petitioner, and that the truth of this allegation in the petitioner's affidavit was not controverted by the production of a counter-affidavit.

5. But it is not in every case in which an allegation of such mala fides is not repudiated in a counter affidavit, that we should accept it as true. Whether there

is a counter affidavit or not we should be guided by the facts and probabilities, and when we so examine the matter, it appears to us that the imputation against Mr. Nijalingappa is quite unfounded.

6. The records shown to us by Mr. Chandrashekhara, the learned Government Pleader, demonstrate that the selection was preceded by a consideration of the relevant factors and a visit to the site by the new Health Minister who eventually concurred in the choice after mediation between the rival aspirants by Mr. Nijalingappa produced no useful results.

7. The decision of the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, on which Mr. Narayana depended, can be of no assistance to him since that case turned on the question whether on the facts of that case, Government had the power to make the impugned order.

8. We, therefore, dismiss this Writ Petition.

9. No costs.

10. Petition dismissed.