

(1995) 06 AP CK 0031

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 11378 and 11931 of 1995

Pabba Ramesh

APPELLANT

Vs

State of A.P., Panchayat Raj, Rural Development and Relief
Departments and Others
 G. Prasad Vs The Govt. of
A.P. and Others

RESPONDENT

Date of Decision : 28-06-1995

Acts Referred:

Andhra Pradesh Gram Panchayats (Declaration of Village) Rules, 1994 — Rule 10
Andhra Pradesh Panchayat Raj Act, 1994 — Section 3(2)
Constitution of India, 1950 — Article 226

Citation : (1995) 3 ALT 508 : (1995) 2 APLJ 411

Hon'ble Judges : Syed Shah Mohammed Quadri, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : R. Subhash Reddy, in W.P. 11378/95 and Y. Rama Rao, in W.P. 11931/95, for the Appellant; R. Subhash Reddy, in W.P. 11931/95, Govt. Pleader for Respondent Nos. 1 to 6 and Y. Rama Rao, in W.P. 11378/95, for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ petitions arise out of the orders passed by the State of Andhra Pradesh-first respondent here in-in G.O.Rt.No. 1189 Panchayat Raj, dated 7th June, 1995. W.P. No. 11378 of 1995 (hereinafter referred to as "the first writ petition") is filed by the person-in-charge of Shivampet Gram Panchayat of Medak District praying this Court to declare the action of the respondents therein in seeking to hold the elections to the Gram Panchayat, Shivampet by including the voters of Gudur Village and Tribal Tandas as illegal and contrary to the said G.O. W.P. No. 11931 of 1995 (hereinafter referred to as "the second writ petition") is filed by one of the residents of Gudur Village, Shivampet Gram Panchayat, who is a candidate for the post of Sarpanch of Shivampet Gram Panchayat, praying this Court to issue a writ of certiorari to call for the records relating to the said G.O. and to quash the same.

2. As the facts giving rise to these two writ petitions and the questions involved are common, we have heard them together and are passing a common order in these cases.

3. To appreciate the questions involved in these cases, it would be apt to notice the facts giving rise to these writ petitions. The petitioner in the first W.P. is the Person-in-charge of Gram Panchayat, Shivampet. The Commissioner/ District Collector, Medak, issued Notification..... dt.7-6-1995 bifurcating Shivampet Gram Panchayat by deleting Thimmapur, Chinna Gottumukkala and Eidullapur Villages and declaring them as Gram Panchayats for purposes of Section 3(2) of the A.P. Panchayat Raj Act, 1994 (for short "the Act"). It appears that even before the issuance of the said Notification, the person-in-charge of Shivampet Gram Panchayat filed a representation before the Commissioner requesting him to bifurcate Gudur Village from the said Gram Panchayat. That representation was however not disposed of, and subsequently no notification was issued in respect of the bifurcation prayed for. The person-in-charge then filed a revision under Rule 10 of the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 1994 (for short the "Rules").

4. By the impugned J. Government issued orders bifurcating Gudur as a separate Gram Panchayat on 7-6-1995.

5. Sri Subhash Reddy, learned Counsel for the petitioner in the first writ petition, contends that once an order is passed by the Government bifurcating Gudur Village as a separate Gram Panchayat, it was incumbent on the Election Officer - respondent No. 5 - to give effect to the order of the Government; but the election was being conducted including Gudur as a Village of Gram Panchayat Shivampet, therefore, directions may be issued to the respondent to hold elections in accordance with the said G.O.

6. Sri Rama Rao, learned Counsel for the petitioner in the second writ petition, submits that the order of the Government is wholly without jurisdiction - firstly the revision was not maintainable under Rule 10 of the said Rules and secondly because the State Election Commissioner has issued directives that the orders passed by the Government on or before 7-6-1995 bifurcating or amalgamating any villages should not given effect to. In any event, submits the learned Counsel, the election notification was issued on 7-6-1995, therefore the election process cannot be interfered with either by the Government or by this Court.

7. In view of the above submissions, the short question that arises for consideration is, whether the order of the Government passed in the impugned G.O. can be given effect to by issuing a writ of this Court.

8. This question necessarily leads to examination of the issue of maintainability of revision by the Government.

9. From the above narration of facts, it is clear that there was no notification of the collector u/s 3(2) of the Act which alone could be questioned in revision

under Rule 10 of the Rules. Rule 10 of the Rules reads as follows:

"Where a notification for the declaration of a village has been issued by the Commissioner, it shall be open to any Gram Panchayat affected to prefer revision petition to the Government through the Commissioner within fifteen days from the date of publication of such notification and the Government, may pass such order thereon as they may deem fit."

10. From a persual of the Rule extracted above, it is evident that (1) a revision lies against a notification making declaration of a village by the Commissioner; (2) the affected Gram Panchayat alone can prefer the revision; (3) that such a revision has to be filed through the Commissioner; and (4) a revision ought to be filed within 15 days from the date of publication of the Notification.

11. In so far as the requirements 1,2 and 4 are concerned, in our view they are mandatory; without there being a notification duly declaring a village issued by the Commissioner, there would be no cause to approach the Government under Rule 10. It is equally clear that the Gram Panchayat alone would be the affected party and can file a revision. In our view, advisedly the rules keep an individual away from seeking remedy under Rule 10 as in the matter of declaration of villages and elections of Gram Panchayat, the Body affected would be Gram panchayat but not any individual and if individual residents are given the right to approach the revisional authority, the whole process of election and the administration of villages would be brought to a grinding halt and would be adversely affected.

12. Even the learned Government Pleader is not able to support the order, in our view, rightly, with regard to Shivampet.

13. So far as the requirement of submission of the revision through the Commissioner is concerned, that cannot be said to be mandatory because it is a procedural aspect and having regard to the urgency of the situation, noncompliance of this requirement would not make the revision incompetent.

14. It is obvious that the period of limitation prescribed is the basic requirement and the revision ought to be filed within the prescribed period.

15. Admittedly, in this case, no Notification was issued by the Commissioner with regard to the bifurcation of Gudur Village from Shivampet Gram Panchayat. Therefore, no revision could have been filed on the ground that the resolution seeking bifurcation of Gudur has not been disposed of. In such a case, the remedy of the aggrieved person lies somewhere else but not under Rule 10 of the Rules.

16. From the above discussion, it follows that the revision itself was incompetent, therefore, the impugned order is without any jurisdiction. It is needless to emphasise that the revisional power has to be exercised after notice and affording reasonable opportunity of being heard to the affected party and / or a party in whose favour the order under revision has been passed. This Court will

not exercise its jurisdiction under Article 226 of the Constitution of India to enforce an order which is passed without jurisdiction or which is passed in violation of Principles of Natural Justice.

17. There is yet another reason which has to be taken into consideration in exercise of the discretionary power under Article 226 of the Constitution in this case and that is, that the Election Commissioner has issued directives on 8-6-1995 to all the District Collectors in the State, which reads thus:

"It has been brought to the notice of the State Election Commission that even after the date of Notification of the elections to the Gram Panchayats, the Government have been issuing orders bifurcating or amalgamating villages, thereby interfering with the election process, which is therefore a serious irregularity. All the Collectors are hereby informed that they shall not act upon the orders of the Government received on or after the date of Notification i.e., 7-6-1995, either amalgamating or bifurcating the villages and further they are directed to hold the elections to the Gram Panchayats as obtaining on the date of notification by the State Election Commission, i.e., on 7-6-1995."

18. A plain reading of the directives would make it apparent that the Collectors were precluded from acting upon the orders passed by the Government and received by the Collectors on or after the date of election Notification i.e., 7-6-1995. This is based on a broader principle that once election process has commenced, it should not be interfered with, as held by the Supreme Court in S.T. Muthusami Vs. K. Natarajan and Others, ..

19. For the aforementioned reasons, the relief sought in W.P. No. 11378/95 cannot be granted by this Court, the writ petition is liable to be dismissed and it is accordingly dismissed and the second writ petition, W.P. No. 11931 / 95, has to be allowed and it is accordingly allowed. No costs.