
(2009) 10 AP CK 0039

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17009 of 2009

Polisetty Satyanarayana and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 14-10-2009

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 187, 187(1), 187(5), 187(6)

Citation : (2009) 6 ALD 627 : (2009) 6 ALT 771 : (2009) 4 APLJ 174

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V. Jithender Rao, for the Appellant; G.P. for Panchayat Raj for Respondent No. 1, M. Prabhakar Rao, S.C. for Zilla Parishad for Respondents 2 and 3 and None appeared, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This Court ordered notice before admission on 18-8-2009.

2. 2nd respondent filed counter affidavit and a reply affidavit also had been filed.

3. This Court issued rule nisi on 9-10-2009.

4. Heard Mr. Srinivas Reddy representing Sri Jitender Rao, the learned Counsel representing writ petitioners, the learned Assistant Government Pleader for Panchayat Raj representing R.1 and Sri M.Prabhakar Rao, the learned Counsel representing R.2 and R.3.

5. This writ petition is filed for a Writ of Mandamus declaring the decision of the 3rd respondent - Committee in allotting Z.P. funds for various works as mentioned in Ex.P.1 - the copy of details of works to which sanction of funds from Z.P. funds for the year 2009-10 and Ex.P.2 - the copy of details of works and funds sanctioned from RRM, the action of the 1st and 2nd respondents in implementing the said illegal decision of the 3rd respondent Committee as illegal, arbitrary, unjust and contrary to provisions of A.P. Panchayat Raj Act, 1994 (in

short referred to as "the Act" for the purposes of convenience) and consequently set aside the same and pass such other suitable orders.

6. Mr. Srinivas Reddy representing Sri Jitender Rao, the learned Counsel representing the writ petitioners had taken this Court through the various works specified in Ex.P.1 - the copy of details of works to which sanction of funds from Z.P. funds for the year 2009-10 and Ex.P.2 - the copy of details of works and funds sanctioned from RRM, filed along with the Writ Petition and would maintain that in the light of the clear language of Section 187(6) of the Act unless the decisions of the Standing Committees shall be subject to ratification by the general body of the Zilla Parishad which shall have the power to approve, modify, rescind or reverse them, the said works cannot be further proceeded with unless such due ratification by the general body of the Zilla Parishad is obtained. The learned Counsel also pointed out to the contents of the reply affidavit as well. The learned Counsel also relied on certain decisions to substantiate his submissions.

7. Per contra, the learned Assistant Government Pleader for Panchayat Raj and Sri M. Prabhakar Rao had taken this Court through the contents of the counter affidavit filed by the 2nd respondent and would maintain that in the light of the facts and circumstances no relief prayed for as such can be granted in the present Writ Petition. However, the learned Assistant Government Pleader for Panchayat Raj and also Sri M. Prabhakar Rao would submit that u/s 187(6) of the Act, the decisions of the Standing Committees shall be subject to ratification by the general body of the Zilla Parishad which shall have the power to approve, modify, rescind or reverse them, and there cannot be any doubt whatsoever relating to this legal position.

8. Heard the Counsel.

9. The relief prayed for in the Writ Petition already had been specified supra. Ex.P.1 - copy of details of works to which sanction of funds from Z.P. funds for the year 2009-10 and Ex.P.2 - copy of details of works and funds sanctioned from RRM, Ex.P.3 - copy of abstract of all works for the year 2009-10 and Ex.P.4 - copy of news reported in Andhra Bhoomi, West Godavari District Edition with translated version also had been placed before this Court. The contents thereof being self-explanatory, need not be dealt with in elaboration.

10. It is the case of the petitioners that the writ petitioners are the Z.P.T.C. Members elected from Veeravasaram, Nidamaru, Pentapadu and Undrajavaram, Iravavaram Zilla Parishad Territorial Constituencies of W.G. District in the elections held on 2-7-2006. The present Writ Petition is filed to declare the decision of the 3rd respondent Committee in allotting funds of Z.P. for various works without approval of General Body as contemplated u/s 187(6) of the Act and the action of the 1st and 2nd respondents in implementing the said decisions as illegal, arbitrary, contrary to the provisions of the Act and for consequential relief.

11. Further it is averred that the 4th respondent who was elected as Z.P.T.C. Member from Dwearaka Tirumala was elected as Chairman, Zilla Parishad, W.G. District. Subsequently, he was elected as MLA from Tanuku Legislative Assembly Constituency of West Godvari District in the general elections held in April, 2009 and resigned to the Membership of Z.P.T.C, Dwaraka Tirumala, as well as Z.P. chairman at 3.00 p.m., on 30-5-2009 after he was declared elected as MLA by the Returning Officer. But after his resignation as Z.P. chairman, the members of the 3rd respondent Committee and the 4th respondent in the capacity of its Chair Person taken decision to distribute funds of Zilla Parishad to a tune of Rs. 7.10 crores for taking up various works.

12. Further it is averred that as per Section 187(1) of the Act, for every Zilla Parishad there shall be constituted Standing Committees, namely (i) Standing Committee for Planning and Finance, (ii) Standing Committee for Rural Development, (iii) Standing Committee for Agricultural, (iv) Standing Committee for Education and Medical Services, (v) Standing Committee for Women Welfare, (vi) Standing Committee for Social Welfare and (viii) Standing Committee for Works. The Standing Committees will decide issues/works to be taken up within the Zilla Parishad, the said decision will be included in the agenda to be discussed by the General Body of Z.P. As per Section 187(6) of the Act, the decisions of the Standing Committees shall be subject to ratification by the General Body of the Z.P. which shall have the power to approve, modify, rescind or reverse them. As per Section 187(5) of the Act, the 1st respondent - District Collector shall have right to participate in the meetings of all Standing Committees without voting rights.

13. It is also stated that in the present case the decision of the 3rd respondent Committee for taking up various works was not included in the agenda and no General Body meeting was conducted for its approval. But the 3rd respondent Committee without any power had taken decision to allot funds for various works as mentioned in Ex.P.1 and Ex.P.2 without the approval of General Body as contemplated u/s 187(6) of the Act. The 3rd respondent Committee decided to distribute the funds of the Z.P. in irrational manner without taking into consideration of the needs and necessities of various areas and the said decision is taken only to see that their men will be benefited by doing the works. The said decision came to light only in the month of July and the same was questioned by the petitioners, but it was assured by the Hon"ble District Minister - Sri Vatti Vasantha Kumar that the said decision of the 3rd respondent Committee will not be implemented unless approved by the General Body. The 1st respondent also refused to interfere in the matter saying that already the Hon"ble District Minister had assured about its implementation.

14. Further it is averred that though it was assured by the 2nd respondent that the decision of the 3rd respondent Committee will not be implemented unless it is approved by the General Body, but funds have been sanctioned and work orders are also issued behind back without knowledge of the Z.P. members. The

total annual income of the Zilla Parishad had been allotted for spending within first two months of the financial year by the 3rd respondent Committee without approval of the General Body as contemplated u/s 187(6) of the Act. The said decision of the 3rd respondent Committee in deciding to allot funds for various works is contrary to law and against the provisions of the Act. Hence the said decision is liable to be set aside and the action of the respondents 1 and 2 is not justified especially in implementing such illegal decisions. In the said circumstances, the writ petitioners approached this Court by filing the present Writ Petition.

15. In the counter affidavit filed by the 2nd respondent specific stand had been taken that the writ petitioners 4 and 5 are Standing Committee members and they have approved the decision of the Standing Committee without any dissent by scribing their signatures to the resolutions. Hence they cannot file the present Writ Petition.

Further it is averred that it is a fact that the 4th respondent herein was elected as Z.P.T.C. Member, Dwaraka Tirumala and was elected as Chairman, Zilla Parishad, West Godvari District. Subsequently, he contested in Assembly elections and elected as MLA from Tanuku Assembly Constituency of West Godvari District in the General Elections held in April, 2009 and the results declared on 16-5-2009. The 1st to 7th Standing Committee meetings were conducted on 30-5-2009 from 10-30 a.m., to 3.00 p.m. under the Chairmanship of the existing Chairman as he is continuing as Chairman till his resignation. The 7th Standing Committee for Works convened its meeting on 30-5-2009 at 2.15 p.m., and in the said meeting the Standing Committee unanimously sanctioned the works for the year 2009-10 as per the allocation of General Funds of the Zilla Parishad for Rs. 615.00 lakhs as detailed below:

S.	Grant	Allocation	20%	Total	Works	Estt.	Costs	Balance	No.	(Rs. in Excess
	Availability	sanc-	(Rs. in	(Rs.in	lakhs)	(Rs. in	(Rs. in	tioned	lakhs)	lakhs)
lakhs)	1.	35%	General	215.25	43.05	258.30	90	227.04	31.26	Fund
2.	9%	Drinking	55.35	11.07	66.42	9	21.25	45.17	Water	Funds
3.	15%	Women	92.25	18.45	110.70	44	118.15	-7.45	Welfare	Funds
4.	16.2%	S.C.	69.70	13.94	83.64	15	38.15	45.49	Funds	5.
6.6%	S.T.	32.80	6.56	39.36	2	4.00	35.36	Funds	_____	

Total 465.35 93.07 558.42 160 408.59 149.83

16. Further it is averred that an amount of Rs. 227.04 lakhs was sanctioned out for Rs. 258.30 lakhs under 35% General Funds, an amount of Rs. 21.25 lakhs was sanctioned out of 66.42 lakhs under 9% Drinking Water funds, an amount of Rs. 118.15 lakhs was sanctioned out of Rs. 110.70 lakhs under 15% Women Welfare Funds, because all these are building works, which were not completed in the stipulated time, hence the payment for these works was continued in the future year also. An amount of Rs. 38.15 lakhs was sanctioned out of Rs. 83.64 lakhs under 16.2% S.C. Funds and an amount of Rs. 4.00 lakhs was sanctioned out of Rs. 39.36 lakhs under 6.6% S.T. Funds allocated for the year 2009-10. It

is also stated that out of Rs. 710.00 lakhs sanctioned, only Rs. 408.59 lakhs belongs to the General Funds of the Zilla Parishad and the balance are the works sanctioned from various other funds i.e., State Finance Commission Grant: 23 works with Estimate cost of Rs. 72.20 lakhs, Education Contingencies Grant: 10 works with Estimate cost of Rs. 26.00 lakhs and 66 works with Estimate Cost of Rs. 230.00 lakhs from Rural Roads Maintenance Grant. Regarding RRM Grant the Executive Engineers concerned will send the grant requirement proposals to the Chief Engineer, RIAD, Hyderabad after completion of the works and the payments are made through Pay & Accounts Officer, Eluru. Further it is also stated that one Karumuri Venkata Nageswara Rao, the then Chairperson resigned to his post of Z.P.T.C. Member, D. Tirumala and as well as to the post of Chairperson, Zilla Praja Parishad, West Godvari District, Eluru on 30-5-2009 at 5.00 p.m. Therefore, it is totally incorrect and false to say that after resignation to the post of Chairman by the 4th respondent, the meeting was convened.

17. It is also averred that as per Section 187(1) of the Act, for every Zilla Parishad there shall be constituted seven standing Standing Committees and the 7th Committee of works will sanction the works to be taken up within the Zilla Parishad. It is also stated that the decision of Standing Committee was referred to General Body for formal ratification and the same will be ratified in due course as the Resolution itself unanimously passed. Under Sub-section (6) of Section 187 of the Act will come into force when there is a dissent made by some members of the Standing Committee while passing the Resolution. In other words, while passing the Resolution by Standing Committee when there is a dissent by some members and though the Resolution was passed by majority members, the same shall be referred to General Body for ratification, modifications, approval, rescind or reverse the same. But, here is a case where the Standing Committee of Zilla Parishad unanimously passed the resolution and therefore no ratification is required by the General Body as contemplated under Sub-section (6) of Section 187 of the Panchayat Raj Act. Further it is stated that as printed in the Manual of Members of Mandal Parishads printed by A.M.R.APARD, A.P., Hyderabad, Government issued orders vide G.O.Ms. No. 24, Panchayat Raj Department, dt. 12-1-96, permitting the PR bodies to accord administration sanctions for works according to the scales prescribed as follows: Zilla Parishad Standing Committees upto 5 lakhs, Zilla Parishad General Body upto 10 lakhs and the Government is competent to sanction the works exceeding Rs. 10 lakhs and the Government is competent to sanction the works exceeding Rs. 10 lakhs.

18. It is further averred that as per the Government Orders issued vide G.O.Ms. No. 24, dt.12-1-96, works upto Rs. 5.00 lakhs were accorded administrative sanction in Standing Committee of the Zilla Parishad and all the subjects discussed in the Standing Committees are coming to review in the Zilla Parishad General Body. In view of the said G.O., the works upto Rs. 5.00 lakhs estimate costs are put up for approval of the Standing Committee and above Rs. 5.00 lakhs were sent for approval to General Body. The works were sanctioned as per

the needs and necessities and also as per the request of the Peoples Representatives of Z.P.T.C.s, M.L.As., M.L.Cs., MPs., and concerned Executive Engineers and that it is not true that the said decision came to light only in the month of July. It is a fact that the works were discussed in the Standing Committee meeting held on 30-5-2009 itself and unanimously approved by the Works Standing Committee. After that only the administrative sanction orders were issued by the Chief Executive Officer, and the same were transmitted to the concerned Executive Engineers. In turn, the Executive Engineers take the technical sanctions & Agreements and got the works will be grounds. All the works sanctioned in the above said meeting were already grounded.

19. Further it is also averred that the total annual income of the Zilla Parishad will be approximately from Rs. 6 to Rs. 7 crores, accordingly, allocations will be given for various heads for Rs. 558.42 lakhs, out of which Rs. 408.59 lakhs works, were sanctioned in the Standing Committee meeting held on 30-5-2009, leaving a balance of Rs. 149.83 lakhs. As per the Government Orders, all the works sanctioned by the Standing Committee are having the estimated cost of below Rs. 5.00 lakhs and unanimously approved by the Standing Committee and hence there is no need to obtain the approval of the General Body again as prescribed in G.O.Ms. No. 24, dt.12-1-96. It is also stated that the implementation of the decisions of the Standing Committee by the 1st and 2nd respondents is not illegal, and it is also stated that the District Collector - 1st respondent is only having right to participate in the meeting without voting powers u/s 187(5) of the Act and there is no role of District Collector in implementing the decision of the Standing Committee.

20. Further specific stand had been taken that that it is totally false to say that the concerned District Minister given assurance that the decision of the Standing Committee will be referred to the General Body. Inasmuch as the 2nd respondent never given any assurance that the decisions of the Standing Committee will be referred to the General Body for ratification. As each work sanctioned by the Standing Committee is below Rs. 5.00 lakhs, there is no need to refer the said decision to the General Body for ratification as contemplated under G.O.Ms. No. 24 dt.12-1-96. It is also incorrect to say that without there being any agenda, the Standing Committee passed the resolution on 30-5-2009. The Standing Committee meetings were conducted as per the business rules and absolutely there is no irregularity in convening the Standing Committee meetings. The allegations made in para 6 of the affidavit filed in support of the Writ Petition also had been denied.

21. In the reply affidavit filed, the material allegations made in the counter affidavit of the 2nd respondent, sworn to by one Kumara Swamy again had been denied. It is averred that the 5th petitioner being a Member of the Standing Committee works signed on the Attendance Register when he attended the meeting on 30-5-2009. Neither his signature nor the signatures of the other members of the Committee were obtained in the Minutes Book, in which

resolutions are entered. Signatures of the members who attended the meeting are obtained in the Attendance Register even before the meeting commences. It is also not true to allege that the petitioner No. 4 and 5 approved the decision of the Standing Committee without any dissent by scribing their signatures to the resolutions. The 4th petitioner is a member of the Standing Committee works. Therefore, the question of the 4th petitioner dissenting does not arise. Insofar as the 5th petitioner is concerned, he attended the meeting on 30-5-2009 in which there was no discussion about the allotment of funds for works mentioned in Ex.P.1 and Ex.P.2. The resolutions were entered in the Minutes Book after the meeting was over without the knowledge of the members of the Committee. Further, the signatures of the members were not obtained on the Minutes Book. Therefore expression of dissent by the 5th respondent does not arise. Therefore, it cannot be said that the petitioner No. 4 and 5 cannot file the above Writ Petition. Assuming without admitting that petitioners No. 4 and 5 approved the decision, the decision cannot be given effect to unless it is ratified by the General Body of Zilla Parishad. The allegation that the Writ Petition is not maintainable as the State is not made a party is misconceived. For the relief sought for in the Writ Petition, there is no need to make the State as party to the proceedings.

22. Further it is averred in para 4 of the reply affidavit that the allegation that in the meeting held on 30-5-2009, the Standing Committee unanimously sanctioned works, is not true and correct. As already stated above, there was no discussion on allotment of funds for the works mentioned in Ex.P.1 and Ex.P.2 and the resolutions were entered by the 4th respondent and the Chief Executive Officer in the Minutes Book later on. The allocation of funds for the works is not uniform. It is only to benefit certain persons in whom the 4th respondent has interest. Such huge funds could not have been allocated only to certain Mandals thereby neglecting other Mandals in the Zilla Parishad. In any event, the said decision cannot be given effect to unless ratified by the General Body of Zilla Parishad. It is also reiterated that the 4th respondent as the Chair Person of the Standing Committee with a view to benefit persons in whom he has interest allotted funds to the works mentioned in Ex.P.1 and P.2. The said action is highly arbitrary and illegal. The allegation that the decision of the Standing Committee was referred to the General Body for formal ratification and the same will be ratified in due course as the resolution itself is unanimously passed is not true and correct. The decision has not been forwarded to the General Body. The General Body meeting of the Zilla Parishad was held on 19-7-2009. The Minister for Village Development, Mr. V. Vasantha Kumar, Minister for Arogya Sree, Mr. P. Satyanarayana, the 1st respondent, the Deputy Chief Executive Officer, M.P., the 4th respondent, M.L.Cs., Z.P.T.C. Members etc., attended the meeting.

23. Further it is averred that in the agenda circulated, there is no mention about the ratification of the decision taken by the Standing Committee with regard to the works mentioned in Ex.P.1 and Ex.P.2. By the time the meeting was held, this petitioner and other petitioners came to know about the allocation of funds at the behest of the 4th respondent and the Chief Executive Officer, and that therefore

this petitioner raised the said issue in the meeting. The Minister for Village Development assured this petitioner that the funds shall not be released unless the decision of the Standing Committee is ratified by the General Body. Unless the resolution is forwarded and is ratified by the General Body, funds cannot be allocated nor funds can be released or works can be grounded. Therefore the allegation that all the works sanctioned have been grounded is untenable. In fact, only about 5% of the works have been commenced. Rest of the works are yet to be commenced. If a report is called from the 1st respondent, the said aspect would be clarified. Even if the works have been sanctioned and grounded as alleged, the works cannot be proceeded with unless the decision is ratified by the General Body. The allegation that once the decision of Standing Committee is unanimous, no ratification is required is unsound and untenable as per Law. Section 187(6) of the Act clearly states that the decisions of the Standing Committee shall be subject to the ratification of the General Body of the Zilla Parishad which shall have the power to approve, modify, rescind or reverse them. The situation as stated by the deponent is not contemplated under the said section. The allegation that as per G.O.Ms. No. 24, Panchayat Raj Department, dt. 12-1 -96, works upto Rs. 5 lakhs can be sanctioned by the Standing Committee of the Zilla Parishad and that each of the works approved in the meeting on 30-5-2009 are not above Rs. 5 lakhs and in view of the same ratification of General Body is not required is not true and correct. The works that have been approved in the meeting on 30-5-2009 are to the tune of approximately Rs. 6 to Rs. 7 crores. Therefore, ratification of the General Body is a pre-requisite before the works are allotted and commenced. Therefore the said G.O. is not applicable. In any event, the said G.O. cannot restrict or enlarge the scope of a substantive provision of the Act.

24. Further it is stated that the allegation that the works were sanctioned as per the needs and necessities and also as per the request of the Peoples Representatives is not true and correct. The manner in which the works are allotted only in certain Mandate would indicate that the allocation of work is not uniform. The allegation that the Standing Committee meetings were conducted as per Business Rules is not true and correct. Proper procedure was not followed and the signatures of the members were not obtained in the Minutes Book in which resolutions were entered after the meeting by the 4th respondent and the Chief Executive Officer. Further it is reiterated that the Minister as already stated assured that the decision will be referred in the General Body. However, the same has not been referred and the 2nd respondent is now taking a plea that in view of the provisions of the said G.O., the decision of the Standing Committee need not be referred in the General Body which totally misconceived.

25. These are the respective stands taken by the parties in the affidavit filed in support of the Writ Petition, in the counter affidavit filed by the 2nd respondent and also the reply affidavit filed by the petitioners as well.

26. Section 187 of the Act deals with Standing Committees of a Zilla Parishad.

Section 187(6) of the Act specifies that the decisions of the Standing Committees shall be subject to ratification by the general body of the Zilla Parishad which shall have the power to approve, modify, rescind or reverse them. No doubt, Sri M. Prabhakar Rao, the learned Counsel representing the contesting respondents would maintain that the substantial portion of the works had been completed, but however, the said fact had been denied by Mr. Srinivasa Reddy representing Sri Jitender Rao, the learned Counsel representing writ petitioners. But however, it is not in serious controversy that the ratification by the General Body of the Zilla Parishad in relation to the decisions of the Standing Committees in this regard had not been obtained as on today. This aspect is not in serious controversy. It is needless to say that if any works had been already proceeded with, even in such a case may be that it would be subject to the further ratification to be made by the General Body of the Zilla Parishad as contemplated by Section 187(6) of the Act. The learned Counsel representing writ petitioners also placed strong reliance on *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, and *Babaji Kondaji Garad Vs. Nasik Merchants Co-operative Bank Ltd., Nasik and Others*, . The principles relating to the interpretation of the statutes being well-settled, these decisions need not be considered in elaboration and there cannot be any controversy relating to the propositions laid down in the decisions aforesaid.

27. The main grievance of the writ petitioners is that the further steps relating to these works cannot be further proceeded with unless and until there is ratification by the General Body of the Zilla Parishad as contemplated by Section 187(6) of the Act. As specified supra, there cannot be any doubt or controversy whatsoever that when the statute ordains a particular thing to be done, the same to be normally taken as mandatory and if any action is done contrary thereto, such action is to be held to be invalid or illegal, the same not being in accordance with law. There cannot be any doubt, whatsoever, that as contemplated by Section 187(6) of the Act, the decisions of the Standing Committees shall be subject to ratification by the General Body of the Zilla Parishad which shall have the power to approve, modify, rescind or reverse them. The words "which shall have the power to approve, modify, rescind or reverse them" and also the words "shall be subject to ratification by the general body of the Zilla Parishad" would assume lot of importance in this regard. Hence, this Court is of the considered opinion that the respondents are bound to follow the procedure contemplated by Section 187(6) of the Act. The same being mandatory, unless and until the said procedure is followed, no further steps can be taken in this regard.

28. Accordingly, in the light of the respective stands taken by the parties in the affidavit filed in support of the Writ Petition, counter affidavit and also the reply affidavit as well and further the material placed before this Court - Ex.P.1, Ex.P.2, Ex.P.3 and Ex.P.4, this Court is satisfied that the writ petitioners are bound to succeed and accordingly, the Writ Petition is hereby allowed. No order as to costs.