

(1999) 11 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1014 of 1999

Rajulapati Venkateswara Rao

APPELLANT

Vs

District Collector, Krishna Dist. and others

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Andhra Pradesh General Clauses Act, 1891 — Section 18, 8

Andhra Pradesh Panchayat Raj Act, 1994 — Section 246, 247, 276(2), 46, 47

Citation : (2000) 1 ALD 104 : (2000) 1 ALT 757

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : Mr. A. Ramanarayana, for the Appellant; Government Pleader, for Panchayat Raj, Mr. D. Srinivas, Mr. N.V. Suryanarayana Murthy, for Venkat Rangadass Kanuri, for the Respondent

Judgement

1. This writ petition is filed by the petitioner seeking a writ of mandamus declaring the proceedings of the first respondent dated 25-9-1998 and the consequential show-cause notice dated 26-11-1998 and also the resultant resolution passed by the third respondent on 3-12-1998 as illegal and void and consequentially direct the fourth respondent not to construct a poultry farm in RS No.278/1 of Ayyanki village, Movva Mandal, Krishna District.

2. It is stated that the petitioner is the Vice-President of Ayyanki Gram Panchayat. The fourth respondent filed an application on 10-9-1997 for sanction of the plans before the Executive Officer of the Gram Panchayat, Ayyanki for the construction of a poultry sheds. The said application was rejected by the Gram Panchayat by its resolution dated 12-6-1998 as the establishment of the poultry farm would be the source of air as well as noise pollution to the residents of the village. It is further stated that the first respondent without hearing anybody and without issuing any show-cause notice issued proceedings dated 25-9-1998, cancelling the resolution of the Gram Panchayat and directed the third respondent to approve the plan submitted by the fourth respondent. Even thereafter also the third respondent Gram Panchayat passed resolution on

10-11-1998 refusing permission. Thereafter the second respondent herein has issued a show-cause notice upon the Gram Panchayat why the Gram Panchayat shall not be dissolved for having violated the orders of the District Collector and passed resolution on 10-11-1998 approving the plans for the proposed poultry farm of the fourth respondent. Aggrieved by the said proceedings of the first and second respondents the petitioner has approached this Court alleging that the respondents 1 and 2 have violated the fundamental duty cast upon them under the provisions of the Constitution of India. The learned Counsel for the petitioner contended that under the provisions of Sections 246 and 247 of the Andhra Pradesh Panchayat Raj Act, 1994, it is only the Government that has got power either to cancel or suspend the resolution passed by the Gram Panchayat or to take action in default of the Gram Panchayat and as no such powers are vested in the first respondent, the action of the first respondent is without jurisdiction. The learned Counsel also contended that the construction of a poultry farm adjacent to the village is prohibited and the resolution passed at the instance of the first respondent, sanctioning the plan for the construction of the poultry farm violates the fundamental duties cast upon the respondents 1 and 2. Therefore, the said actions of the respondents are liable to be set aside.

3. For the respondents 1 and 2, a counter has been filed opposing the contentions of the petitioner. In the counter it is stated that the land on which the proposed poultry farm is to be established is an agricultural land surrounded by another six poultry farms and the third respondent Gram Panchayat rejected the permission for the construction of the poultry farm at the instance of one Harinatha Babu who is an existing poultry farm owner. It is also stated that it is not for the Gram Panchayat to consider whether the setting up of the poultry farm is objectionable on health grounds as per the Government Orders in G.O. Ms. No.748, dated 4-7-1978 and G.O. Ms. No.332, dated 3-7-1985, it is only the Medical and Health Department which has to certify whether it is objectionable or not. It is only Medical and Health and the Animal Husbandry Departments which have to certify regarding the objections on health and environmental grounds. It is also stated that as the third respondent Gram Panchayat failed to implement the directions of the first respondent, the Extension Officer was appointed as Special Officer who was directed to pass a resolution approving the plans and in the presence of the Special Officer, Gram Panchayat passed resolution approving the plans submitted by the fourth respondent for the construction of the poultry farm. The said poultry farm is situated in the agricultural lands far away from the village and in fact it was proposed to set up at the place where there are already existing poultry farms.

4. The fourth respondent also filed a counter denying all the allegations and has also stated that the action of the third respondent Gram Panchayat in not approving the plans submitted by her was on account of an at the instance of the rival poultry farm owners. It was also stated by the fourth respondent that in spite of specific directions of the first respondent, the Gram Panchayat disobeyed the directions and passed resolution contrary to the directions,

rejecting the plans submitted by her. Thereafter the first respondent in exercise of the powers vested in him passed orders appointing the Special Officer who was directed to pass resolution approving the plans. As the fourth respondent was establishing the poultry farm far away from the village and in the agricultural lands where there are already existing poultry farms, the said establishment of the poultry farm would not cause any environmental or noise pollution. It is further stated that in order to cause loss to the fourth respondent, the petitioner has filed this writ petition and obtained an interim order as a result of which the fourth respondent was not able to proceed with the construction even though she was sanctioned a loan of Rs.7.5 lakhs.

5. Form the above rival contentions the dispute that arose for consideration is whether the first respondent has got jurisdiction to appoint a Special Officer as well as to cancel the resolution of the third respondent and further directing the Special Officer to pass resolution approving the plans submitted by the fourth respondent for the construction of poultry farm.

6. During the course of hearing, for the query from the Bench, the learned Counsel for the petitioner has submitted that the writ petition is a sort of probono public to see that the fourth respondent should not establish poultry farm. Though it was stated in the writ petition that the establishment of a poultry farm by the fourth respondent would cause air and noise pollution to the residents of the village, at the time of hearing the petitioner's Counsel has raised legal contentions stating that under the provisions of Sections 246 and 247 of the Andhra Pradesh Panchayat Raj Act, 1994 the first respondent has no power and it is only the Government that has got power. This objection was replied by the respondent's Counsel stating that Section 276 of the Andhra Pradesh Panchayat Raj Act provides for repeal and savings and by virtue of sub-section (2) of the said section, on repeal of the Gram Panchayat Act, provisions of Sections 8 and 18 of the Andhra Pradesh General Clauses Act shall apply. By virtue of those provisions the provisions of the Gram Panchayat Act which are not inconsistent to the provisions of the Panchayat Raj Act would continue to apply till fresh provisions are made in their place. The learned Counsel also contended that the equivalent provisions under the Andhra Pradesh Gram Panchayat Act, 1964 are Sections 46 to 50 where the Government was vested with the powers to take action against the defaulting Gram Panchayat and such powers were delegated in favour of the Collector. The provisions of Sections 46 to 50 of the Andhra Pradesh Gram Panchayat Act provide for suspension or cancellation of resolution as well as taking appropriate action against the defaulting Gram Panchayat and such power was vested under the provisions with the Government or Commissioner but those powers were delegated to the Collector. The corresponding provisions under the Panchayat Raj Act are Sections 246, 247 etc., and by virtue of Section 276(2) of the Andhra Pradesh Panchayat Raj Act read with the provisions of the Andhra Pradesh General Clauses Act the delegated powers continue and the Collector has got power to exercise for cancellation or suspension of the resolutions of the Gram Panchayat as well as to take action

against the defaulting Gram Panchayat.

7. Apart from the above the learned Counsel for the fourth respondent relied upon two decisions of the Supreme Court, one in the case of *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , and the other in the case of *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , In both the above decisions it was held that the competitor has no locus standi to challenge the grant of permission. In the case of *N.R. and F. Mills (supra)*, which was a case of rice mills under the Rice Milling Industry (Regulation) Act, the issue was whether the sanction for change obtained after shifting of the rice mill can be questioned by a competitor in the trade? It was held in that decision that the competitor has no locus standi to challenge the grant of permission. Similarly, in *J.M. Desai's case (supra)*, which arose under the Bombay Cinema Rules, 1954, wherein the issue was, who can raise objection with reference to the grant of no objection certificate for obtaining B-Form licence, it was held by the Supreme Court that in order to have locus standi to invoke certiorari jurisdiction, the petitioner should be an aggrieved person and the Act and the Rules do not confer any substantive and justifiable right on a rival in cinema trade apart from the option in common with the rest of the public to lodge an objection in response to the notice published under Rule 4. It was also held that the proprietor of cinema theatre holding a licence for exhibiting cinematograph films has no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of the grant of No Objection Certificate to the rival trader.

8. From the above it is clear that a rival trader or an existing poultry farm owner, has no locus standi to object the grant of permission for the construction of a poultry farm by the fourth respondent. In fact it was alleged by the fourth respondent that the petitioner has no locus standi as he was a member of the Gram Panchayat though the resolution might have been passed as per the directions of the first respondent. Apart from that it was also stated that the petition was filed at the instance of the existing poultry farm owners and in fact it was alleged though not stated in the affidavit that the petitioner himself owns a poultry farm. Without going into these allegations a copy of the topographical plan filed before the Court shows that the proposed poultry farm is coming up away from the village beyond the existing poultry farms, from the village. If the proposed poultry farm is coming beyond the existing poultry farms, I do not think that there was any justification for the Gram Panchayat to reject the plan submitted by the fourth respondent. From the factual issues, it is clear that the action of the Gram Panchayat was only motivated in order to cause loss to the 4th respondent may be at the instance of the rival existing poultry farm owners, including himself.

9. Further, as I have already held that the first respondent has got the jurisdiction when the third respondent Gram Panchayat failed to comply his orders to appoint a Special Officer as well as to get the resolution passed as per

his directions. The present writ petition is devoid of merits and only speculative in nature and in the above circumstances I do not find any merit in the contentions advanced by the petitioner's Counsel.

10. Writ petition is therefore dismissed with costs quantifying two sets, of Rs. 1,000/-(one thousand) each, one to the official respondents and the other to the fourth respondent.