

(2002) 01 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1969 of 1999

Rajulapati Venkateswara Rao

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Andhra Pradesh General Clauses Act, 1891 — Section 18, 246, 246(1), 246(3), 247
Andhra Pradesh Gram Panchayats Act, 1964 — Section 46
Andhra Pradesh Panchayat Raj Act, 1994 — Section 276, 276(2)
Constitution of India, 1950 — Article 226

Citation : (2002) 01 AP CK 0036

Hon'ble Judges : S.R. Nayak, J;L. Narasimha Reddy, J

Bench : Division Bench

Advocate : A. Ramanarayana, for the Appellant; Government Pleader for R1 to R3 and C. Hanumantha Rao, for R-4, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This writ appeal is filed by the unsuccessful writ petitioner assailing the validity and legality of the order of the learned single judge dated 16.11.1997 made in Writ Petition No. 1014 of 1999.

2. The petitioner is the Upa Sarpanch of the Ayyanki Gram Panchayat. The 4th respondent, Smt. Bandi Syamala made an application to the Gram Panchayat on 10.9.1997 for sanction of the plans for the construction of a poultry shed. The said application was considered and rejected by the Gram Panchayat vide its resolution dated 12.6.1998 opining that if the 4th respondent is permitted to establish the poultry farm, that would cause noise and air pollution and thereby it would affect the health of the residents of the village. It appears, the 4th respondent approached the District Collector, Krishna, the 1st respondent herein making a grievance against the above action of the Gram Panchayat. The District Collector, Krishna by his proceedings dated 25.9.1998 directed the Gram Panchayat to consider the application of the 4th respondent afresh. In other words, impliedly, the District Collector set aside the resolution of the Gram

Panchayat dated 12.6.1998. As directed by the District Collector, the Gram Panchayat again considered the application of the 4th respondent and by its resolution dated 10.11.1998 rejected the application. This led to the 4th respondent again approaching the District Collector making grievance against the action of the Gram Panchayat. Acting on the representation of the 4th respondent, the District Collector by his order dated 26.11.1998, cancelled the resolution of the Gram Panchayat dated 10.11.1998 and appointed Sri Vasudeva Rao, Extension Officer(Pts), Movva Mandal, Movva as the Special Officer and directed him to grant the application made by the 4th respondent. The said Special Officer as directed by the District Collector passed a consequential order on 3.12.1998 granting application of the 4th respondent. The appellant herein filed writ petition praying for the following relief:

"Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an appropriate writ or order, more particularly in the nature of writ of Mandamus declaring the proceedings of the 1st respondent in his ROC.2264/98, dt. 25.9.98 and the consequential show cause Notice No.2264/98, dt. 26.11.98 and the resultant Resolution No.133, dt. 3.12.1998 passed by the 3rd respondent is illegal and void and issue consequential direction to the 4th respondent not to start any poultry farm in R.S. No.278/1 of Ayyanki Village, Movva Mandal, Krishna District."

3. In the writ petition, the petitioner contended that the impugned orders passed by the District Collector and the Special Officer are ex-facie illegal and without authority of law. It was also contended that establishment of the poultry farm in the place now permitted by the District Collector and the Special Officer would not be in the health interest of the residents of the village.

4. Opposing the writ petition, the District Collector as well as the 4th respondent filed counter affidavits. In the counters, it was contended that the writ petitioner cannot be treated to be an aggrieved party because none of his rights are affected or impaired by the impugned action of the District Collector and the Special Officer. As regards merit, it was contended that the District Collector was justified in directing the Special Officer to grant the application filed by the 4th respondent. The District Collector also in his counter opposed the writ petition.

5. The learned single judge dismissed the writ petition both on preliminary objection raised by the 4th respondent and also on merits. The learned judge has opined that the writ petition is not maintainable at the instance of the Upa Sarpanch of the Gram Panchayat, particularly, in the context of the allegation made by the 4th respondent that he was set up by a rival owner of the poultry farm situated in the village. On merits also, the learned judge found that the place in which the poultry farm is permitted to be established is quite away from the village and beyond the existing poultry farms and in that view of the matter the Gram Panchayat was not justified in rejecting the plan submitted by the 4th respondent. The learned judge while dismissing the writ petition also took into

account the consequence of allowing the writ petition and opined that if the writ petition were to be allowed, the 4th respondent would incur heavy financial loss and prejudice. In the result, the learned single judge dismissed the writ petition. Hence, this writ appeal by the unsuccessful writ petitioner.

6. Sri A. Ramnarayana, learned counsel appearing for the appellant would contend that the learned single judge has failed to appreciate the contention raised in the writ petition that the District Collector in passing the impugned order cancelling the resolution of the Gram Panchayat and directing the Special Officer to grant application of the 4th respondent acted without authority of law. The learned counsel would contend that provisions of Section 8 and 18 of the A.P. General Clauses Act and that Section 276 of the Andhra Pradesh Panchayat Raj Act, 1994, (for short 'the Act') would not authorize the District Collector to pass the order impugned in the writ petition. The learned counsel would highlight that after the enactment of the Act, only the State Government is competent to annul the resolution passed by the Gram Panchayat by virtue of its power u/s 246 of the Act. The learned counsel would contend that the State Government alone u/s 247 of the Act could appoint a Special Officer. The learned counsel, assailing the correctness of the view taken by the learned single judge relating to the locus standi of his client, would contend that the writ petitioner is not only the resident of the village in which the poultry farm is permitted to be located but also an elected representative of the Gram Panchayat and furthermore, at the relevant point of time, he was holding a responsible elected position of Upa Sarpanch in the administration of the Gram Panchayat and he was also a party to the resolution passed by the Gram Panchayat which was cancelled by the District Collector by the impugned proceeding. The learned counsel would conclude by contending that keeping all these facts in mind, it cannot be said that the petitioner has no locus standi to assail the validity of an ex-facie, illegal, unauthorized order passed by the District Collector and the consequential order issued by the Special Officer.

7. Sri C.Hanumantha Rao, learned counsel appearing for the 4th respondent, on the other hand, would quite strenuously contend that the writ petition is liable to be dismissed in limine, because, the writ petitioner without exhausting legal remedy available to him u/s 264 of the Act has rushed to this Court, and on that count itself, the writ petition should have been dismissed. Secondly, the learned counsel would contend that the view taken by the learned single judge is just and legal and it does not warrant any interference. The learned Government Pleader appearing for the State authorities would also support the order of the learned judge.

8. After hearing the learned counsel for the parties and perusing the order of the learned single judge, we are of the considered opinion that the impugned order made by the District Collector cannot be traced to any authority granted by any of the provisions of the Act. However, it is the contention of the 4th respondent as well as the Government Pleader that the authority of the District Collector to

pass the impugned order can be traceable to the saving clause incorporated in Section 276(2) of the Act which deals with repeal and savings read with Section 46 of the A.P. Gram Panchayat Act. Sub-section (2) of Section 276 reads:

"On such repeal the provisions of Sections 8 and 18 of the Andhra Pradesh General Clauses Act, 1891 shall apply."

9. Sub-section (2) of Section 276 provides that on repeal of the provisions of the A.P. Gram Panchayat Act, 1964, provisions of Section 8 and 18 of the A.P. General Clauses Act, 1891 would apply. Therefore, it becomes necessary to notice the provisions of Sections 8 and 18 of the A.P. General Clauses Act also. They read:

"8. Effect of repealing an Act:

Where any Act, to which this Chapter applies, repeals any other enactment, then the repeal shall not-

(a) affect anything done or any offence committed, or any fine or penalty incurred or any proceedings begun before the commencement of the repealing Act; or

(b) revive anything not in force or existing at the time at which the repeal takes effect; or

(c) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(e) affect any fine, penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(f) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such fine, penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed

18. Reference to provisions in Acts repealed and reenacted:-

Where an Act repeals and reenacts, with or without modification, all or any of the provisions of a former Act, references in any other Act to the provisions so repealed shall be construed as references to the provisions so re-enacted, and if notifications have been published, proclamations or certificates issued, powers conferred, forms prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into, licences or permits granted, and other things duly done, under the provisions so repealed, the same shall be deemed, so far as the same are consistent with the provisions so reenacted, to have been respectively published, issued, conferred, prescribed, defined

established, made, entered into, granted or done under the provisions so reenacted."

10. It is nobody's case that the District Collector passed the impugned order by virtue of the provisions of Section 8 of the General Clauses Act read with Section 276(2). Similarly, Section 18 of the General Clauses Act does not confer any power on the District Collector to pass the impugned order after the A.P. Panchayat Raj Act was brought into force with effect from 22.4.1994. Before the enactment of Andhra Pradesh Panchayat Raj Act, 1994, u/s 46 of the Gram Panchayat Act, the Commissioner under Sub-section (1) as well as the District Collector under sub-section (3) thereof had the power to suspend or cancel the resolutions etc., passed by the Gram Panchayat. The provision corresponding to Section 46 of the Gram Panchayat Act in the Act is Section 246. Section 246 of the Act reads:

"(1) The Government may either suo motu or on a reference made to them by the Executive Officer or Mandal Parishad Development Officer or as the case may be, the Chief Executive Officer, in the manner prescribed by order in writing cancel any resolution passed by a Gram Panchayat, Mandal Parishad, or a Zilla Praishad or any Standing Committee of a Zilla Parishad if in their opinion such resolution.

(a) is not legally passed; or

(b) is in excess or abuse of the powers conferred by or under this Act, or any other law; or

(c) on its execution is likely to cause danger to human life, health or safety or is likely to lead to a riot or affray.

(2) The Government shall, before taking action under sub-section (1), give the Gram Panchayat, Mandal Parishad or the Zilla Parishad as the case may be; an opportunity for explanation

(3) If in the opinion of the District Collector, immediate action is necessary to suspend a resolution of any of the grounds referred to in clause (c) of sub-section (1), he may make a report to the Government and the Government may, by order in writing, suspend the resolution.

11. It needs to be emphasized that under the Gram Panchayat Act, the power to cancel the resolution etc., as pointed out supra, vested in the Commissioner and the District Collector, but not in the State Government; whereas under the Act, the State Government alone is conferred with the power under sub-section (1) thereof to cancel any resolution passed by the Gram Panchayat and other local bodies referred to therein in three situations enumerated in clauses (a), (b) & (c) by passing resolution.

12. Sub-section (3) of Section 246 empowers the District Collector to submit a report to the Government in a case where he is of the opinion that immediate

action is necessary to suspend the resolution on any of the grounds referred to in clause (c) of sub-section (1), and it further provides that if he makes such report to the State Government, the Government on consideration of the same would pass an appropriate order. Therefore, the District Collector u/s 246 is not at all an authority to cancel the resolution of the Gram Panchayat. There is no controversy that the District Collector cancelled the resolution of the Gram Panchayat after the A.P. Panchayat Raj Act, 1994 came into force. Therefore, we find force in the contention of the appellant/writ petitioner that the impugned order passed by the District Collector is one without authority of law. The 4th respondent's counsel was not in a position to trace the authority of the District Collector to cancel the resolution of the Gram Panchayat.

13. Similarly, we do not find any merit in the contention of the learned counsel for the 4th respondent that the writ petition filed by the Upa Sarpanch is not maintainable. It is true that in the affidavit filed in support of the writ petition it is not claimed specifically that it is filed as a public interest litigation. The Court is undoubtedly entitled to consider whether a petition presented before it under Article 226, in a given fact-situation of the case could be treated as a public interest litigation or not. It is true that the petitioner, generally speaking, cannot be said to be an aggrieved person, for, by the impugned proceeding of the District Collector, none of his legal rights or interests are impaired or affected. But, the petitioner being the resident of the village, being an elected representative of the Gram Panchayat and at the relevant point of time holding a responsible elected post of Upa Sarpanch, is undoubtedly entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution by way of public interest litigation and seek appropriate legal remedies. It is not necessary for us to burden our opinion with the case law. Suffice it to state that the Constitutional Courts in recent times have been expanding the dimension of locus particularly in the field of public interest litigations. Apparently, an illegal action taken by a public authority is brought to the notice of this Court under Article 226 and it may not be appropriate for the Court to decline to entertain the writ application on technicalities to perpetuate apparently an illegal public wrong.

14. Though, it seems from the order under appeal that it was alleged before the learned single judge that the writ petitioner was set up by the rival poultry farm owner, to sustain that factual plea, there is absolutely no supporting pleading or proof. We pointedly asked the learned counsel for the 4th respondent to take us through the pleading of the 4th respondent where the above allegation is made. The learned counsel was not in a position to draw our attention to any part of the counter affidavit where such allegation is made. Therefore, the contention put forth before the learned single judge has no support of the plea or the proof.

15. Since we have opined that the impugned order passed by the District Collector is one without authority of law, there is no need for us to consider the factual issue whether public injury would be caused by permitting the 4th respondent to establish the poultry farm in the place now chosen by her or not.

We keep that question open to be decided at an appropriate stage by appropriate authority or Court.

16. In the result, we allow this writ appeal and set aside the order of the learned single judge and quash the impugned proceeding of the District Collector as well as that of the Special Officer. No costs.

17. However, this order shall not preclude the 4th respondent from pursuing the legal remedies available to her against the resolutions of the Gram Panchayat dated 12.6.1998 and 10.11.1998.