
(2006) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27659 of 2005

Somagani Venkata Subbamma

APPELLANT

Vs

District Panchayat Officer and Another

RESPONDENT

Date of Decision : 24-03-2006

Acts Referred:

Andhra Pradesh Gram Panchayats Rules, 1964 — Rule 42, 42(1), 42(2)

Andhra Pradesh Panchayat Raj Act, 1994 — Section 2(12)

Criminal Procedure Code, 1973 (CrPC) — Section 164, 364

Citation : (2006) 4 ALD 1 : (2006) 2 APLJ 75

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : C. Raghu, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner is a Sarpanch of Dokiparru Gram Panchayat in Gudlavalleru Mandal of Krishna District. She was elected in 2001. On an allegation that she contributed a sum of Rs. 50,000/- from out of Gram Panchayat funds to Mandal Panchayat funds, without proper approval from the higher authorities, action was initiated under Rule 42 of the Rules relating to taxes and lodging of monies and payment of monies by the Gram Panchayat, promulgated in G.O. Ms. No. 30, dated 20-1-1995 (hereinafter called, the Rules). A show-cause notice was issued on 19-7-2005. The petitioner submitted explanation on 30-8-2005. After considering the same, the first respondent issued the impugned order bearing proceedings No. 3065/04 Pt.5, dated 12-9-2005, permanently prohibiting the petitioner from drawing monies of the Gram Panchayat. This order is assailed in the writ petition. A counter-affidavit is filed by the second respondent justifying the impugned order. It is stated that the Mandal Parishad Development Officer accorded the administrative sanction on 22-10-2002 for an estimated outlay of Rs. 3,00,000/- to Dokiparru Gram Panchayat and the Gram Panchayat paid a sum of Rs. 50,000/- to Mandal Parishad without obtaining the approval of Commissioner of Panchayat Raj as per guidelines in G.O. Ms. No. 987

PR (Pts-IV), dated 12-11-1979. Therefore, the petitioner was prohibited from drawing the Gram Panchayat funds.

2. The learned Counsel for the petitioner raised two contentions. First, the contends that under Rule 42(1) of the Rules, the District Panchayat Officer concerned may pass an order prohibiting the executive authority from drawing monies from the Gram Panchayat. After amendment to Section 2(12) of the Andhra Pradesh Gram Panchayat Act, 1994, by the Andhra Pradesh (Amendment) Act 22 of 2002, the executive authority is Panchayat Secretary, and therefore, the District Panchayat Officer cannot suspend the cheque drawing powers of the Sarpanch. Secondly, the learned Counsel would urge that under Rule 42(1) of the Rules, the District Panchayat Officer has no power to permanently prohibit a Sarpanch from drawing monies of the Gram Panchayat. Per contra, the learned Assistant Government Pleader submits that at relevant time, when rules were made, whenever there is no executive authority, as such, the Sarpanch alone is the executive authority, and therefore, the District Panchayat Officer can suspend the cheque drawing powers of the Sarpanch as well. Secondly, he submits that the petitioner has an effective alternative remedy under Rule 42(2) of the Rules to file an appeal before the District Collector against the impugned order, and therefore, the writ petition is not maintainable.

3. Insofar as the first contention of the learned Counsel for the petitioner in E.V. Raghava Reddy v. The District Panchayat Officer 2003 (1) DT 269 (AP), is concerned, I have already taken a view that Rule 42(1) of the Rules enables the District Panchayat Officer to prohibit even the Sarpanch from drawing the Gram Panchayat Funds. Further, it is brought to the notice of this Court that by G.O. Ms. No. 444, dated 29-12-2005, the Government of Andhra Pradesh, amended Rule 42(1) of the Rules by substituting the words "executive authority" by words "Sarpanch". Therefore, there is no necessity to adjudicate this issue. Insofar as the other submission is concerned, a reading of Rule 42(1) of the Rules would show that it is not competent for the District Panchayat Officer to prohibit the Sarpanch from drawing Panchayat funds permanently. The provision enables the authority to prohibit the Sarpanch from drawing funds only "for such period as may be specified in the order". The authority, therefore, cannot suspend cheque drawing powers of Sarpanch permanently.

4. It is a basic principle of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. Such principle was first laid down in Taylor v. Taylor 1875 (1) Ch.D 426 . This principle: which may be called "Taylor principle" is well-settled. A reference may be made to AIR 1936 253 (Privy Council) (2), Gujarat Electricity Board Vs. Girdharlal Motilal and Another, , State of Gujarat Vs. Shantilal Mangaldas and Others, , Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, and The Govt. of A.P. and Another Vs. Hanumanth Kali Vara Prasad Babu Chemicals (P) Ltd. and Another, .

5. In *Taylor v. Taylor* (supra), Justice Jessel M.R. laid down the principle as under :

When a statutory power is conferred for the first time upon a Court and the mode of exercising it is pointed out, it means that no other mode is to be adopted... on a great varieties of Acts where application has been directed to be by petition, and it has been laid down that being the mode appointed by the Act which conferred the jurisdiction, it must exercise the jurisdiction according to the provisions of the Act. In the same way, when the Statute says who is the person to petition, it means that the person or persons so described, and no others, shall be entitled to petition, otherwise any one interested might petition under the general principle that when powers are to be exercised by a Court of law any person interested in calling those powers into execution is entitled to come before the Court, and the only reason for putting in such a section is to show that is not the meaning of the Legislature, but that the right of calling for the exercise of the powers shall be confined to the persons so described.

(emphasis supplied)

6. The principle was reiterated in *Nazir Ahmed v. Emperor* (supra). The Hon'ble Supreme Court in *G.E. Board v. Giridharlal* (supra) and *State of Gujarat v. Shantilal* (supra) laid down that when power is conferred by the Legislature prescribing the mode for exercise of power, it must be exercised only in that manner and in no other manner. In *Ramchanda v. Govind* (supra) after referring to *Taylor v. Taylor* (supra), *Nazir Ahmed v. Emperor* (supra) it was laid down as under :

A century ago, in *Taylor v. Taylor* (1875 1 Ch.D 426, Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in AIR 1936 253 (Privy Council) , and later by this Court in several cases, *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh* , , *Deep Chand Vs. The State of Rajasthan* , , to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies "where indeed, the whole aim and object of the Legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes, 11th Edn., pp.362-363.

7. The same principle was again reiterated in *Shiv Kumar Chadha v. Municipal Corporation of Delhi* (supra). In *Babu Verghese and Others Vs. Bar Council of Kerala and Others* , , referring this principle the Supreme Court laid down as under:

It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* (supra)

which was followed by Lord Roche in Nazir Ahmad. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.

This rule has since been approved by this Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and again in Deep Chand Vs. The State of Rajasthan, . These cases were considered by a three-Judge Bench of this Court in State of Uttar Pradesh Vs. Singhara Singh and Others, and rule laid down in Nazir Ahmad's case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by Courts and has also been recognized as a salutary principle of administrative law.

8. A Division Bench of this Court in Government of A.P. v. H.K.V.P.B. Chemicals (P) Limited (supra) applied the same principle in invalidating the order of the Commissioner of Excise in imposing penalty exceeding the penalty prescribed under the relevant provisions.

9. In this case, the petitioner herein was prohibited from drawing the Gram Panchayat funds permanently and completely, which is not contemplated under Rule 42(1) of the Rules. For this reason, the writ petition has to be allowed.

10. Accordingly, the writ petition is allowed. It shall, however, be open to the first respondent to take appropriate action against the petitioner in accordance with law. No costs.