

(2010) 11 AP CK 0011
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1253 of 2003

The State of A.P. and Another

APPELLANT

Vs

K. Srinivas Rao and Another

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 3, 3(1), 3(2)
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21

Citation : (2011) 1 ALT 315

Hon'ble Judges : Sanjay, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : A.A.G, for the Appellant; Y.V. Sastry, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—This appeal under Clause 15 of the Letters Patent is filed at the instance of State of Andhra Pradesh and District Collector, Krishna district at Machilipatnam, aggrieved against the judgment of the learned Single Judge in W.P. No. 14175 of 2002 dated 13.8.2002, allowing the writ petition filed by the first Respondent herein, under Article 226 of the Constitution of India, wherein inter-alia sought for a mandamus directing the District Collector Krishna district at Machilipatnam not to make any elections to the composite Pulluru Gram Panchayat without passing the orders after examining the issue with reference to the rules in force as on the date of the order dated 22.11.1995 in W.P. No. 10987 of 1995 followed up by the other orders dated 2.1.2002 in W.P. No. 16896 of 2000 and without reference to subsequent rescinding of the rules or the imposition of the ban on bifurcation in G.O.Ms. No. 163 PR and RD dated 8.5.2002 and by declaring the action of the first Respondent in Memo No. 26611/Pts.IV.A1/2002-1 dated 3.6.2002 and the proceedings of the second Respondent District Collector dated 5.7.2002 as arbitrary, illegal, unconstitutional, null and void and set aside the same.

2. While allowing the writ petition, the order dated 5.7.2002 was set aside holding that erstwhile Pulluru Grampanchayat stood bifurcated into two, namely, Pulluru and Kothamangapuram Grampanchayats, through the notification dated 12.5.1995 issued by the first Respondent u/s 3 of the A.P. Panchayat Raj Act, 1994 (Act 13 of 1994) (hereinafter referred to as "the Act") read with the Rules contained in G.O.Ms No. 515 dated 17.8.1994, as they stood then. Further, the learned single Judge with a deep anguish observed as to how the process of elections are being scuttled by taking recourse to Public Interest Litigations pursued in the half hearted manner, as a result the elections to both the Grampanchayats i.e., Pulluru and Kothamangapuram could not be held in 1995 as well as in the year 2001, on account of pendency of various such proceedings. Hence, directed the Respondents in the writ, including the Appellants herein, to take steps to hold elections to said two Grampanchayats viz., Pulluru and Kothamangapuram within three months.

3. Heard the learned Additional Advocate General, on behalf of Appellants and Sri. Y.V. Sastry, Sri M.N. Narasimha Reddy, Sri V.V. Prabhakara Rao and Sri R. Radhakrishna Reddy, appearing on behalf of Respondents.

4. The facts on the back drop, though in brief which necessitate for due consideration of the questions, as they arise, are that under G.O.Ms. No. 232 PR & RD (Pts.IV) Department, dated 18.4.1995 the Government in the process of bifurcation and amalgamation of the Grampanchayats in general and acting on certain representations from the public, considered it necessary to extend the time for filing applications for bifurcation and amalgamation after 22.4.1995 and reiterating that any consideration should be made on an application only but not suo-mutu, subject however to the satisfaction of the following criteria;

- 1) If the distance between the area to be bifurcated is not less than 2 Kms.
- 2) If the population is 1000 or more
- 3) The number of Grampanchayats in a Mandal Parishad Territorial Constituency may not exceed three after bifurcation/amalgamation as far as practicable.
- 4) The income criteria as specified in G.O.Ms. No. 515 PRRD & R (Mdl.I) Department dated 17.8.1994 is deleted.

5. Further, it was clarified that it is not necessary to have a resolution of the Grampanchayat to the proposed bifurcation but it would be enough if an opportunity of a show cause notice, as prescribed is given to the Grampanchayat providing an opportunity to it to set its view on the proposed bifurcations. Accordingly, a show cause notice in file No. 3228/94/PAN.B dated 24.4.1995 was issued by the District Collector to bifurcate the Pulluru Grampanchayat separately as Pulluru and Kothamangapuram Grampanchayats. As per the resolution dated 2.5.1995 of the Grampanchayat concerned, the said proposal was acceded to. Acting on the said resolution and specifying the total area in-between with certain deviations final orders were issued, as a result of those proceedings

dated 12.5.1995 newly Kothamangapuram Grampanchayat came into existence. Challenging the said final notification and bifurcation, Sri G Nageshwar Rao and Sri J Prakash have filed a writ in W.P. No. 10987 of 1995 and this Court granted interim stay. However, later on, the said writ petition was disposed of by Division Bench of this Court, on the representation made from both sides across the Bar, as per the orders dated 22.11.1995 setting aside the said bifurcation orders dated 12.5.1995 and directing the Respondents to examine the issue afresh by applying the rules and provisions of the Act. However, it is the case as set-forth from both the sides, surprisingly, that though the challenge in the said writ proceedings pertain to bifurcation of Pulluru Grampanchayat as Pulluru and Kothamangapuram Grampanchayats, however, the order reads as if dealing a case of bifurcation of Sitarampuram Grampanchayat into Sitarampuram and Marribandam Grampanchayats. Later, since no orders are forthcoming in terms of the above orders, another writ in W.P. No. 16896 of 2000 was filed and the same was disposed of by orders dated 2.1.2002 directing the authorities to take appropriate decision with regard to preliminary notification issued for bifurcation of Polluru Grampanchayat and constitution of Kotha Mangapuram Grampanchayat. Subsequently, the District Collector, as per the proceedings dated 16.3.2002 requested the Government to issue instructions in respect of implementation of the orders of this Court. Accordingly, the State Government issued memo No. 2661/Pts.II/A1/2002-1 dated 3.6.2002 requested the District Collector to withdraw the proposed bifurcation proceedings and conduct elections as per the rules in force. Following the said instructions, the District Collector as per proceedings dated 5.7.2002, withdrew the proceedings since Rules in G.O.Ms. No. 515 dated 17.8.1994 were rescinded in G.O.Ms. No. 163 dated 8.5.2002 and a general ban was imposed on bifurcation of Gram Panchayats in G.O.Rt. No. 1634 PR & RD (Pts.IV) Department dated 12.10.2001. This had led to filing another writ by Sri K Srinivas Rao in W.P. No. 14175 of 2002 assailing the withdrawal proceedings dated 5.7.2002 and the said writ petition was allowed by the learned single Judge as per the orders dated 13th August, 2002 directing the authorities to take steps to conduct elections to two Grampanchayats i.e., Pulluru and Kothamangapuram Grampanchayats within three months from the date of receipt of the order. Aggrieved by the same, the present appeal in W.A. No. 1253 of 2003 is filed, wherein the Division Bench of this Court by its orders dated 7.8.2003, granted interim stay of the operation of the order of the learned single Judge. Later on, when the said appeal came up for hearing before the Division Bench, on the representation across the Bar to the effect that the notification which was subject matter of challenge in W.P. No. 14174 of 2002 was withdrawn and recording the same, the appeal was dismissed as infructuous as per the orders dated 11.6.2007, with a further clarification that the interim orders granted on 7.8.2003 are vacated. Subsequently, pointing out the mistake committed in making incorrect representation about the withdrawal of the proceedings, the State filed a Review petition in Review WAMP No. 1945 of 2009 and the same was allowed as per the orders dated 3.8.2009 and main appeal was restored back to file and it is this appeal, which has come up now

and again heard on merits from both sides.

6. Reverting to the factual matrix, it is noticed that after contest by the State, the Appellants herein in the writ in W.P. No. 14175 of 2002, which is under challenge, the learned single Judge allowed mainly on the ground that there has been failure on the part of the Petitioners and Respondents therein viz., the Appellants is placing the correct facts in W.P. No. 10987 of 1995, stating that the subject matter involved was taken as if that of a bifurcation of Sitarampuram village, whereas, factually the impugned proceedings are in regard to Pulluru and Kothamangapuram villages, and further there has been a representation on behalf of the then Government Pleader that the rules governing the bifurcation were promulgated after this Court set aside the notification dated 1.5.1995. Therefore, it was observed by the learned Single Judge that if really the rules were framed after the impugned orders, Court could have examined the validity of the notification dated 12.5.1985 with reference to rules in G.O.Ms. No. 515 dated 17.8.1994. But, it is only as a result of such representation made on behalf of the Government by the learned Government Pleader, the notification dated 12.5.1995 was set aside and fresh orders were directed to be passed. Either way, the assumption and the representation are wrong. The fact remains that the rules relating to bifurcation existed as on the date of the order dated 12.5.1995 and it was in accordance with the said rules. Therefore, the basis on which it was sought to be rested does not exist. The learned single Judge has categorically noted that but for the indifferent attitude on the part of the Petitioners and Respondents to instruct their respective Counsel, such glaring mistake could not have been occurred. Coming back to the resultant consequence which can follow, applying the principles of *per incuriam* and *sub silentio*, since the subject matter for the adjudication was with reference to a totally different village on a total different set of facts and further the Court was not informed of the reality of Rules as bifurcation being very much in existence by the date of impugned orders and not demonstrating that the impugned order violated any of the rules and therefore the cumulative effect of these two concepts is that notification dated 12.5.1995 cannot be stated to have been set aside and it holds good for all purposes. Therefore, it is a fit case to take view that in the facts and circumstances, notification dated 12.5.1995 cannot be held to have disturbed. Thus, under the impugned proceedings, the said notification dated 12.5.1995 was sought to be withdrawn, but in fact, the said notification was set aside by the Court and therefore the question of withdrawal does not arise. The learned single Judge proceeded on the premises that there is no specific power conferred upon the authorities under the Act or the Rules to revoke or withdraw the notification once issued, hence, the orders in challenge dated 5.7.2002 are set aside with a specific finding that erstwhile Pulluru grampanchayat stood bifurcated into two, like Pulluru and Kothamangapuram grampanchayats, therefore notification issued on 12.5.1995 by the Government u/s 3 of the Act read with rules under G.O.Ms. No. 515 dated 17.8.1994 stands. Ultimately direction was given as stated above to conduct elections to both the

grampanchayats. Hence, the present appeal.

7. On behalf of the Appellants, while attacking the correctness of the orders under appeal, it was contended that bifurcation of the grampanchayat is a legislative function and no writ lies under Article 226 of the Constitution of India. Further, the notification dated 12.5.1995 in bifurcating Pulluru grampanchayat into Pulluru and Kothamangapuram grampanchayats is not given effect to in view of the interim orders passed in WPMP No. 13490 of 1995 in W.P. No. 10987 of 1995 dated 2.5.1995 and the final orders were passed on 22.11.1995. It was further contended that in view of the ban imposed against the bifurcation vide G.O.Rt. No. 1034 dated 12.10.2001, the impugned action could not have been upheld to fall back on such bifurcation. It was further contended that having regard to rescinding of the rules and the schemes, it could not possibly be given effect to and more so in view of the specific instructions issued by the Government vide memo No. 26611/Pts.IV.A1/2002-1 dated 3.6.2002 and consequent withdrawal by the District Collector in proceedings No. 4594/99 Pts.8 dated 12.5.1995. The findings of the learned single Judge that the orders in W.P. No. 14175 of 2002 and 10987 of 1995 cannot be stated to have been suffered from the doctrine of per incuriam and subsilentio, since they have no application. That apart, the directions given to hold elections to both the grampanchayats is not sustainable on the facts and circumstances.

8. Submitting on behalf of the Respondents, it has been tried to support the orders allowing the writ and holding that the new grampanchayats have already come into being and therefore there is no warrant to interfere.

9. We have heard in detail from both sides apart from perusal of the entire record. The question which ultimately boils down for consideration is as to what is the effect of the proceedings dated 5.7.2002 and the orders of this Court dated 22.11.1995, apart from the question as to whether there exist any power to withdraw the notification issued u/s 3 of the Act and the Rules made thereunder. Further, how far and to what extent the doctrine of per incuriam and subsilentio would have an effect and vitiate the orders of this Court. On the back of the checkered events, there is no serious dispute including the various Court proceedings and the orders passed. The proposal to the proposed bifurcation commenced by a notification issued on 24.4.1995 by the District Collector and the final notification was issued on 12.5.1995 constituting both the grampanchayats. Though the challenge was made to the said proceedings, the writ was disposed of by Division Bench of this Court on 22.11.1995 in W.P. No. 10987 of 1995 wherein the challenge was as against such bifurcation. It is this notification which was sought to be withdrawn by the proceedings dated 5.7.2002. That apart, the rules as observed were very much in existence and it is only in pursuance of such legal set up and the scope the action was taken. It cannot be said that in any way the proceedings are either not in terms of the statute made thereunder or without any jurisdiction. Neither any contra is pointed out even in these hearings.

10. The learned single Judge sought to proceed as if the bifurcation withdrawal has not been meddled with in view of the erroneous representation and the orders passed thereon and it continued to subsist, applying the principles of per incuriam and subsilentio. Though the learned single Judge sought to get over the orders passed in W.P. No. 14175 of 2002 dated 13th August, 2002, but, however, once again the very same proceedings dated 5.7.2002 were set aside under the orders under challenge in this appeal, but no other specific reason or ground referred to for such finding. The other reason as shown for setting aside the proceedings dated 5.7.2002 is exclusively on the observations and findings that there exist no power or any provision under the provisions of A.P. Panchayat Raj Act, 1994 to withdraw or amend the notification once issued.

11. The observation of the learned Single Judge in the order that there is no provision under the said Act for withdrawal of any notification issued is not really correct. It is to be noticed that Section 3(2)(f) of the said Act specifically empowers the government to withdraw any such notification. For convenience sake, the same is extracted hereunder:

3. (2) The [Government] may, by notification and in accordance with such rules as maybe prescribed in this behalf-

....

(f) Cancel a notification issued under Sub-section (1).

12. This is in addition to the powers which normally presume to exist for withdrawal of any notification under the provisions of General Laws Act.

13. Further, the power to withdraw is an incidental one to the power to issue and therefore it could not have been said that there is any necessity as such under a statute to cater a provision for withdrawal. The power to issue a notification includes a power to withdraw the notification, u/s 21 of the General Clauses Act, 1897 which is in para-materia with the A.P. General Clauses Act, which holds that contemplated power to issue, include power to amend, follow or rescind orders or bye-laws. Hence, once a power is traced to a provision under the statute for issuance of notification, it amply connotes and confers powers and jurisdiction to withdraw the same or meddle with it in any manner as may warrant or expedient. Therefore, it does not detain us further to hold that a statute-provision-power to withdraw need not specifically be provided for. Suffice to say that the provisions of General Clauses Act are intended and would cater to the need amply and wholly. Therefore, it is not correct to say that there exists no power to withdraw a notification once issued. Except on the ground of want of power, no other reason or other aspect has been pointed out as to how the withdrawal proceedings get affected or vitiated. No doubt, as pointed out by the learned single Judge himself that there has been total wrong mis-interpretation on the part of both the sides including the Law Officers of the State Government, who hold a very responsible position and supposed to assist the Courts in a more pragmatic and truthful manner, rather than fall for any such leading or

misleading. Further it is curious to note that even though the said orders are passed as long back as on 13.8.2002, no attempt is made on behalf of the Appellant/State to mend the situation by filing appropriate applications to correct or to seek clarifications or directions as need warrant or expedient. There is total lull and silence on the part of the Appellants herein in simply keeping tight lip and hands folded and now it cannot turn around and say that the said orders are to be over looked. Both the parties especially the Appellants themselves are wholly and squarely responsible for imbroglio created-whoever on their behalf is responsible needs no sympathy or excuse. Be that as it may, the fact that there is a clear attempt on the part of the State itself to withdraw would only go to show that the earlier notification remains in all its forces with all the force unhindered and un-hampered with. Apparently, the State also has been under the impression that there is no interdiction in respect to the said notification issued earlier, be it as a result of erroneous or misrepresentation or misconception, which show that a ride is lightly taken by the State itself. In the circumstances, since we are of the view that even applying the principles of per incuriam and subsilentio, if that order does not considered to be legally remain, then necessary consequences would be to fall back to the pre-existing situation. It is not denied by any of the sides that there has been a mistake and mistake at the instance of both the parties. Even if we apply the principles of sub silentio, the only corollary which we could follow is that this said judgment cannot have the effect in the manner in which it has been pronounced in view of the very basic lack of the facts which required to be dealt with. Since the judgment is based on totally erroneous facts, it cannot have any force. Therefore, even giving a go-bye to or over looking the said judgment, it does not follow that the very same relief could be granted in setting aside the proceedings in these proceedings since there is no challenge to these proceedings in the manner in which it could have been done in the earlier proceedings. The present proceedings are wholly narrow in its conspectus, and therefore, the learned Single Judge could not have dealt with the orders and set at naught. They seek to abide by the fact that the withdrawal notification is not in any way hampered or disturbed. Even in this appeal no argument is advanced or any ground is raised against the validity of the proceedings dated 5.7.2002 is concerned nor there is any prayer in this regard from proper quarters. Therefore, even applying the principles of per incuriam and subsilentio the corollary is that withdrawal notification dated 5.7.2002 is very much remains valid and undisturbed. In that view, it follows that there has been no bifurcation nor any formation of any new grampanchayat from out of the existing grampanchayat. Both Pulluru and Kothamangapuram continue to remain joint, together. If that be so, it follows that the question of holding any elections to two grampanchayats separately or to treat them as separately, does not arise and is not warranted.

14. For the foregoing reasons, the orders of the learned single Judge dated 13.8.2002 in W.P. No. 14175 of 2002 are hereby set aside and accordingly the appeal is allowed. No costs.