

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT

PUBLIC INTEREST LITIGATION No.212 OF 2015

DATED: 31.08.2015

Between:

Uppada Siva reddy

... Petitioner

and

The Union of India and others

... Respondents

**THE HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V.BHATT**

PUBLIC INTEREST LITIGATION No.212 of 2015

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PC: (per the Hon'ble The Acting Chief Justice Dilip B. Bhosale)

In this Public Interest Litigation, the petitioner seeks the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 6th respondent in issuing the G.O.Rt.No.63, dated 20.05.2015, in respect of Greenfield International Airport (BIACL) at Bhogapuram, Vizianagaram District and the G.O.Ms.No.44, dated 21.4.2015, issued by the 7th respondent for nullifying the resolutions of Gram Sabhas in contravention of Land Acquisition Act, and intending to acquire huge land from small and middle class farmers disproportionately, declaring huge investment without any financial resources, budgetary allocation, assurance, future vision, and intentionally paving opportunity to realtors and land mafia, without following due process of law, is illegal, arbitrary, violative of principles of natural justice and also violation of Articles 14, 16, 21 and 300-A of Constitution of India, consequently cancel the proposal of setting up of Greenfield International Airport at Bhogapuram, Vizianagaram District, by setting aside the G.O.Rt.No.63, dated 20.5.2015 passed by the 6th respondent and G.O.Ms.No.44, dated 21.4.2015 passed by the 7th respondent, in the ends of justice.”

We have heard learned counsel for the petitioner. He invited our attention to G.O.Ms.No.44, dated 21.04.2015

issued by the 7th respondent and submitted that this G.O. nullifies the resolutions passed by Gram Sabhas opposing the setting up of Greenfield International Airport at Bhogapuram, Vizianagaram District, for which, the 7th respondent proposed to acquire large extent of land of the agriculturists in those villages. He submitted that proposal to set up international airport is without any financial resources, budgetary allocation, assurance, future vision and intentionally paving opportunity to realtors and land mafia without following due process of law. He could not and did not submit the grounds on which the petitioner challenges G.O.Ms.No.44, dated 21.04.2015. The relevant portion of G.O.Ms.No.44 reads thus:

“As per the existing provisions of Andhra Pradesh Panchayat Raj Act, 1994, necessary proposals from the Commissioner, Panchayat Raj & Rural Development, Andhra Pradesh, Hyderabad through the District Panchayat Officers concerned / District Collectors concerned have to be received for cancellation of Resolutions passed by the Gram Panchayats in the State under sub-section (1) of Section 246 of Andhra Pradesh Panchayat Raj Act, 1994. But due to this, it takes lot of time to cancel the Resolutions at Government level by following the due procedure.

2. In the reference read above, the State Investment Promotion Board (SIPB) in its meeting held on 09.12.2014 under the chairmanship of Hon’ble Chief Minister has discussed various investment proposals. Among other proposals, on the Single Window Issues for setting up of Industries, the SIPB has decided to delegate the powers to the District Collectors for cancellation of the Resolutions (rejections) passed by the Gram Panchayats.

3. Government after careful examination of the matter in detail, have decided to delegate the powers to cancel or suspend resolutions in respect of Gram Panchayats only conferred under Section 246(1) the Andhra Pradesh Panchayat Raj Act, 1994 to the District Collectors in exercise of the powers conferred under Section 260 of the Andhra Pradesh Panchayat Raj Act, 1994.

4. Accordingly, the following notification will be published in an Extraordinary issue of Andhra Pradesh Gazette on 23.4.2015:-

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of Section 260 of Andhra Pradesh Panchayat Raj Act, 1994, the Government hereby delegate the powers to cancel or suspend the Resolutions in respect of Gram Panchayats only, to the District Collectors concerned, under sub-section (1) of section 246 Andhra Pradesh Panchayat Raj Act, 1994.”

From bare perusal of this order, it is clear that in exercise of the powers conferred by sub-section (1) of Section 260 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short ‘the Act’), the Government has delegated the powers to cancel or suspend the resolutions in respect of Gram Panchayats only, to the District Collectors concerned. Sub-section (1) of Section 246 of the Act empowers the Government to cancel any resolution passed by Gram Panchayat. We have perused the provisions contained in Section 246 of the Act. It would be relevant to reproduce the same for better appreciation of the ground of challenge as raised by the petitioner, which reads thus:

“Sec. 246. Power to cancel or suspend resolution of a Gram Panchayat, Mandal Parishad or a Zilla Parishad:-

(1) The Government may either *suo motu* or on a reference made to them by the Executive Authority or Mandal Parishad Development Officer or as the case may be, the Chief Executive Authority, in the manner prescribed by order in writing cancel any resolution passed by a Gram Panchayat, Mandal Parishad or a Zilla Parishad 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 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 on 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.”

This provision empowers the Government, to either *suo motu* or on reference cancel any resolution passed by a Gram Panchayat, Mandal Parishad, or Zilla Parishad or any Standing Committee of a Zilla Parishad, if in their opinion such resolutions are passed in contravention of Clauses (a), (b) and (c) of sub-section (1) of Section 246 of the Act. Sub-section (2) of Section 246 provides that 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. Sub-section (3) empowers to suspend the resolution on any of the grounds related to in Clause (c) of sub-section (1) if

immediate action is necessary to suspend such resolution.

From a plain reading of the provisions contained in Section 246 of the Act and G.O.Ms.No.44, dated 21.04.2015, it is clear that the Government has simply delegated its power to the Collector to comply with the procedure contemplated by Section 246 for cancellation or suspension of the resolutions passed by the Gram Panchayat. The resolutions of the Gram Panchayat are not yet cancelled or suspended. The power of the Government under Section 246 is not in dispute. In view thereof, this part of the prayer, in our opinion is premature and cannot be considered and examined in the instant petition. We keep all contentions of the parties open to be raised, if the resolutions are cancelled or suspended and if they decide to challenge such order, in appropriate proceedings.

Insofar as challenge for setting up of international airport at Bhogapuram is concerned, it is raised on three grounds by learned counsel for the petitioners. He submitted that the proposed international airport is not required since there is already an airport at Visakhapatnam to cater the domestic and international needs. Secondly, he submitted that selection of location, which is abutting the sea, is wrong, and thirdly, he submitted that the extent of land proposed to be acquired for the airport is more than what is actually required. None of the grounds can be examined in writ jurisdiction of this Court since the Court has no expertise to reach any conclusion on the decision of the Government to establish Airport at particular location or in

respect of the extent of land required for the same. It is a matter of policy which Government seems to have taken on the basis of the experts' advice and the future needs. The Court cannot substitute its opinion and direct the Government to either cancel the proposal of setting up of international airport or to change the location. Hence, this challenge also in our opinion fails.

It is settled by the Supreme Court in **BALCO EMPLOYEES UNION v. UNION OF INDIA**^[1] that the function of the Court is to see that lawful authority is not abused, but not to appropriate to itself the task entrusted to that authority. It is also well settled that a public body invested with statutory powers must take care not to exceed or abuse its powers. It must act in good faith and reasonably. In **STATE OF M.P. v. NARMAD BACHAO ANDOLAN AND ANOTHER**^[2], the Supreme Court stated that

“The Court cannot strike down a policy decision taken by the Government merely because it feels that another would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or Constitutional provisions or arbitrary or irrational or an abuse of power.”

In the present case the learned counsel for the petitioner could not point out as to why the decision of the State Government to set up the International Airport is either contrary to statutory or constitutional provisions or arbitrary

or irrational or an abuse of power. The decision is taken under the Andhra Pradesh Capital Region Development Authority Act, 2014 and it is a part of the Capital development set up for the State of Andhra Pradesh after its bifurcation.

Learned counsel for the petitioner could not and did not make it clear as to why he was challenging G.O.Rt.No.63, dated 20.05.2015. In respect thereof the only contention urged by him was that the proposed international airport at Bhogapuram is not required/necessary. When we asked him a question if the location is changed, whether he has any objection to the contents of G.O.Rt.No.63, his answer was in the negative. Hence, we do not find any ground whatsoever, worth considering, the challenge to G.O.Rt.No.63.

In the circumstances, the petition fails and dismissed as such summarily.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

31st AUGUST, 2015.

S.V. BHATT, J

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[\[1\]](#) (2002) 2 SCC 333

[\[2\]](#) (2011) 7 SCC 639