

*** THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

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+ WRIT PETITION No.30035 of 2014

% Dated 23.06.2015

Sabbella Somi Reddy.

... PETITIONER

VERSUS

**\$ The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Municipal Administration & Urban Development
(Elec.1) Department,
Secretariat Buildings Hyderabad and others.**

...RESPONDENTS

! Counsel for the Petitioner: MR. G.Vivekanand

**^ Counsel for the Respondents: The Government Pleader for
Municipal Administration-1st
& 2nd respondents
The Government Pleader for
Panchayat Raj- respondents 3
to 6
Sri Vedula Srinivas for
Respondents 7 to 9**

>HEAD NOTE:

? Cases referred

^[1] AIR 1966 SC 828 (FB)

2 1999 (3) ALT 227

3 (2004) 6 Supreme Court Cases 800

4 (1978) 1 Supreme Court Cases 405

The Court made the following:

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.30035 OF 2014

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in issuing G.O.Ms.No.188, Municipal Administration & Urban Development (ELEC.I) Department, dated 13.09.2014, thereby cancelling the notification issued in G.O.Ms.No.443, Municipal Administration & Urban Development (Elec.I) department dated 29.11.2012, wherein Anaparthi village was constituted as Nagar Panchayat and the consequential G.O.Ms.No.136, dated 18.09.2014, constituting Anaparthi Gram Panchayath, as illegal and arbitrary and contrary to the provisions of the A.P. Municipalities Act, 1965 (for brevity 'the Act of 1965') and Rules relating to A.P. Transitional Area and Smaller Urban Areas (Fixation of Criteria) Rules, 1995, (for short 'the Rules of 1995') as amended from time to time and consequently to set aside the same.

2. The petitioner is a resident and voter of Anaparthi Village and Mandal, East Godavari District. Anaparthi village was a Gram Panchayat for several decades. Pursuant to the letter from the Commissioner & Director of Municipal Administration dated 28.05.2009, calling for proposals for formation of New Municipalities and Nagar Panchayats in East Godavari District, the Collector & District Magistrate, East Godavari, Kakinada sought a report from the District Panchayat Officer, East Godavari District. Thereafter, the District Panchayat Officer called for a report from the Divisional Panchayat Officer, Rajahmundry with respect to Anaparthi village along with other villages. Basing on the said report, the D.P.O by his proceedings dated 21.10.2009 submitted proposals stating that the

requirements under the rules are fulfilled for constituting Anaparthi Gram Panchayat as Nagar Panchayat recommended the proposal for formation of Anaparthi Nagar Panchayath. Basing on the same, the Collector & District Magistrate, East Godavari, Kakinada sent his recommendations to the Commissioner & Director of Municipal Administration, Hyderabad dated 10.12.2009 recommending to constitute Anaparthi as Nagar Panchayat along with another five villages as the said villages fulfilled the norms prescribed in G.O.Ms.No.39, Municipal Administration and Urban Development Department (Elec.II) (M.A) dated 03.02.1995 and as amended in G.O.Ms.No.567, dated 10.09.2009.

3. The Commissioner & Director of Municipal Administration by his proceedings dated 15.12.2009 reported to the Government that the criteria laid down in the rules is satisfied to upgrade Anaparthi Gram Panchayat as Nagar Panchayat. By virtue of which, the Government provisionally decided to upgrade Anaparthi Gram Panchayat as Nagar Panchayat, issued show-cause notice dated 16.06.2011 to the Gram Panchayat asking them as to why the resolution No.48, dated 08.10.2009 passed by it cannot be cancelled. Aggrieved by the said show-cause notice, W.P.Nos.18228 and 21032 of 2011 were filed and same were disposed of on 02.03.2012 and 22.07.2011 respectively permitting the Gram Panchayat to submit its reply within 30 days and the Government was directed to consider the same on merits and pass appropriate orders in accordance with law. The Government after considering the objections raised by the Gram Panchayat, decided to upgrade the Anaparthi Gram Panchayat as Nagar Panchayat and issued G.O.Ms.No.373 P.R & R.D (Pts.IV) Department, dated 29.11.2012, thereby cancelling the notification issued declaring the Anaparthi Village as Gram Panchayat so as to upgrade the same as Nagar Panchayat. The Government has also issued G.O.Ms.No.443 Municipal Administration & Urban Development (Elec.I) Department

dated 29.11.2012, thereby constituting Anaparthi Gram Panchayat as Anaparthi Transitional Area (Nagar Panchayat).

4. Aggrieved by the aforesaid G.Os, one Sri Goluguri Bapiraju, the then Sarpanch, Anaparthi Gram Panchayat filed W.P.No.37309 of 2012 and upon its dismissal with liberty to file fresh Writ Petition, he filed W.P.No.23242 of 2013, wherein interim suspension was granted. However, the said writ petition was dismissed as withdrawn on 21.07.2014. Pursuant to the dismissal of W.P.No.23242 of 2013, the status of Anaparthi Nagar Panchayat was restored.

5. While so, the petitioner made several representations i.e., on 28.07.2014 and 04.08.2014 to the 1st and 6th respondents to conduct elections to the Anaparthi Nagar Panchayat and they have also made representation to the State Election Commission for conducting elections for the said village. In response thereto, the Secretary, State Election Commission addressed letter dated 04.08.2014 to the Commissioner & Director of Municipal Administration, to take immediate steps to notify elections to Anaparthi Nagar Panchayat. Subsequently, the Commissioner & Director of Municipal Administration, by his proceedings dated 06.08.2014 posted the Municipal Commissioner, Mandapeta as Full Additional Charge for the post of Municipal Commissioner, Anaparthi Nagar Panchayat.

6. That the Government issued impugned G.O.Ms.No.188, Municipal Administration & Urban Development (Elec.I) Department dated 13.09.2014, thereby cancelling the notification issued in G.O.Ms.No.443, MA & UD. (Elec.I) Department, dated 29.11.2012, under which Anaparthi was constituted as Nagar Panchayat. The Government also issued consequential order in G.O.Ms.No.136, Panchayat Raj & Rural Development (PTS.III) Department, dated 18.09.2014 thereby restoring the original status of Anaparthi as Anaparthi Gram Panchayat by cancelling G.O.Ms.No.373, dated 29.11.2012. Questioning the same the present writ petition is filed.

7. Counter affidavit is filed by the first respondent denying the averments made in the affidavit filed in support of the writ petition stating that when the Government issued G.O.Ms.No.188, MA & UD Department, dated 13.09.2014 cancelling the earlier notification issued in G.O.Ms.No.443, MA & UD Department, 29.11.2012 under which Anaparthi Gram Panchayat was notified as Nagar Panchayat, one Goluru Papiraju filed W.P.No.23242 of 2013 wherein this Court passed interim suspension and subsequently the same was dismissed as withdrawn on 21.07.2014. On the representation of the villagers of Anaparthi Gram Panchayat to the Government for conducting of elections to the said Gram Panchayat, State Election Commission has issued notification dated 14.07.2014 to conduct elections to Anaparthi Gram Panchayat along with other Gram Panchayats in the State of Andhra Pradesh. When the election programme is going on, the Sarpanch, who is the writ petitioner in W.P.No.23242 of 2013 has withdrawn the same, thereby the State Election Commission was constrained to cancel the election notification to the Anaparthi Gram Panchayat, as the earlier G.Os, which were stayed by this Court came into force consequent upon the dismissal of the writ petition as withdrawn by the writ petitioner. That the State Election Commission has reserved the post of Sarpanch of Anaparthi Gram Panchayat in the present election to the Scheduled Caste candidates and with a view to Scheduled Caste people to become Sarpanch of the Gram Panchayat in the said election. As per the provisions of Sub-section (1) of Section 3-A of the Act of 1965, the Government may, by notification, abolish any municipality to which this Act applies, wherein the opinion of the Government it is not financially sound or for such other reasons as may be recorded in writing. After considering the representation of the villagers of Anaparthi Gram Panchayat, by exercising the powers envisaged under the provisions of Sub-section 1 of Section 3-A of the Act of 1965, the government has issued

G.O.Ms.No.188, MA & UD Department dated 13.09.2014 cancelling the earlier notification issued in G.O.Ms.No.443, MA & UD Department dated 29.11.2012 and that unless stay is vacated, the Government will sustain serious loss and prejudice.

8. Additional counter affidavit is filed by the 1st respondent reiterating the averments in the counter affidavit and stated that previously the Government issued G.O.Ms.No.216, P&R Department, dated 07.06.2008, de-notifying the Anaparthi Gram Panchayat and also issued G.O.Ms.No.402, MA & UD Department dated 07.06.2008 constituting Anaparthi Nagar Panchayat. Aggrieved by the same, W.P.Nos.20643 & 12147 of 2008 were filed and same were allowed on 18.11.2008 on the ground that the impugned G.Os do not satisfy the criteria prescribed under Rule 2 of the Rules of 1995. 1995 Rules were framed by the Government in exercise of its powers under Section 326 read with Section 2(42-a) of the Act of 1965 and the same were amended vide G.O.Ms.No.567, dated 11-09-2009 and as per the said G.O, the criteria to satisfy an area as a transitional area stood changed. The amendment under this G.O was challenged before this Court in W.P.No.30886 of 2011 & batch, wherein this Court passed interim order on 23.11.2011 directing the Government to continue the process of implementing the G.O, but no final decision shall be taken on the basis of the said G.O and this order was continued till the Rules of 1995 were superseded by the Rules of 2013. By inadvertence and due to oversight Government issued G.O.Ms.No.443, dated 29.11.2012 specifying Anaparthi as a Nagar Panchayat.

9. The 4th respondent filed counter affidavit reiterating the averments in the counter affidavit of the 1st respondent and stated that certain villagers of Anaparthi have made a representation before the government requesting to cancel the Orders issued in G.O.Ms.No.373, dated 29.11.2012 and G.O.Ms.No.443, dated 29.11.2012 as Anaparthi Gram Panchayat is a rural based village and there are no trappings of

a municipality and they will be put to serious inconvenience if it is upgraded and as such taking into consideration of the representation of the villagers, the Government issued G.O.Ms.No.188, dated 13.09.2014 cancelling the notification issued G.O.Ms.No.443, dated 29.11.2012 for restoration of Anaparthi as Gram Panchayat. Consequently, keeping in view of the above facts, the Panchayat Raj Department has also issued orders in G.O.Ms.No.136, PR & RD (Pts.III) Department, dated 18.09.2014 cancelling the de-notification issued in G.O.Ms.No.373, PR&RD (Pts.IV) Department, dated 29.11.2012, so as to restore the original status as Anaparthi Gram Panchayat. That the petitioner may prefer a revision petition before the Government within the stipulated time in terms of Rule 10 of G.O.Ms.No.542, PR & RD, dated 03.12.2007.

10. Counter affidavit is filed by the 7th respondent on his behalf and also on behalf of 8th and 9th respondents stating that they are residents of Anaparthi village and Mandal, East Godavari District and reiterated the contentions of the first and fourth respondents.

11. As per G.O.Ms.No.567, MA & UD Department, dated 11.09.2009, the criteria to satisfy an area as a transitional area stood changed and amendment under the above GO was challenged in W.P.No.30886 of 2011 & batch, wherein this Court passed interim order on 23.11.2011 directing the Government to continue the process of implementing the G.O, but no final decision should be taken on the basis of the said G.O and this order was continued till the Rules of 1995 were superseded by the Rules of 2013. Despite the same, the State Government issued G.O.Ms.No.443, MA & UD Department dated 29.11.2012 by specifying Anaparthi as a Nagar Panchayat by applying the criteria as laid down under G.O.Ms.No.567, dated 11.09.2009.

After withdrawal of W.P.No.23242 of 2013 on 21.07.2014, these respondents approached the Government to withdraw the earlier G.Os.

i.e., G.O.Nos.373 PR & RD Department dated 29.11.2012 as well as G.O.Ms.No.443, MA & UD Department dated 29.11.2012 and that the Government has taken a decision to continue Anaparthi village as Gram Panchayat by cancelling the earlier G.Os. Pursuant to the said decision, the 1st respondent issued G.O.Ms.No.188, MA & UD Department, on 13.09.2014, cancelling the earlier G.O.Ms.No.443, dated 29.11.2012 whereby Anaparthi is ceased to be a Nagar Panchayat and the 6th respondent issued G.O.Ms.No.136 PR & RD Department dated 18.09.2014, whereby G.O.Ms.No.373 PR & RD Department dated 29.11.2012 has been cancelled, as they are illegal, as a result of which, Anaparthi village is continuing as a Gram Panchayat. The Government has acted in a prudent and legitimate manner by issuing G.O.Ms.Nos.136 and 188 cancelling the earlier G.O.Ms.Nos.373 and 443 respectively, since they are illegal and sought to dismiss the writ petition.

12. Sri O.Manohar Reddy, learned counsel appearing for Sri G.Vivekanand, learned counsel for the petitioner apart from reiterating submissions in the writ petition, contends that the Government after satisfying the criteria laid down in the Rules of 1995, issued G.O.Ms.Nos.443 and 373 both dated 29.11.2012 and now, without calling for any reports or without holding that the recommendations and reports submitted by the authorities are erroneous, could not have issued the impugned G.Os. He contends that the issuance of impugned G.Os., is without application of mind by the concerned authorities and mere representation of the villagers, cannot form basis for issuance of impugned G.Os, when the Government has already satisfied and issued earlier G.Os for upgradation of Anaparthi as Nagar Panchayat.

13. On the other hand, learned Government Pleader for Municipal Administration apart from reiterating the stand in counter submits that by virtue of powers conferred under Sub-Section 1 of

Section 3-A of the Act of 1965, the Government has issued impugned G.Os. In support of his contentions, he relied on the judgment reported in **Gadde Venkateswara Rao v. Government of Andhra Pradesh and others**^[1].

14. On the other hand, Sri Vedula Srinivas, learned counsel for the respondents 7 to 9 submits that G.O.Ms.No.443 MA & UD and G.O.Ms.No.373, dated 29.11.2012 are itself illegal, since the criteria prescribed under G.O.Ms.No.567 could not have been taken as the basis by the Government while issuing G.O.Ms.Nos.443 and 373, dated 29.11.2012. Now, if the impugned G.Os. in the present writ petition are quashed, illegal G.Os. i.e., G.O.Ms.Nos. 443 and 373, dated 29.11.2012 would revive and this Court will not exercise its jurisdiction under Article 226 of the Constitution of India for restoring the illegal G.Os. In support of his contention, he relied on the judgments reported in **Abdul Sattar and another v. District Collector, Nizamabad and another**^[2] and **State of Uttaranchal through Collector, Dehradun and another v. Ajit Singh Bhola and another**^[3].

15. A perusal of G.O.Ms.No.443 MA & UD dated 29.11.2012 shows that pursuant to the recommendations of the Commissioner and Director of Municipal Administration, Hyderabad in his letter dated 15.02.2009 and in view of the provisions contained in the Rules of 1995 issued in the G.O.Ms.No.39, MA & UD (Elec.II) Department dated 03.02.1995, the Government after careful examination of the matter have decided to constitute the areas covered under erstwhile Anaparthi Gram Panchayat in East Godavari District as Anaparthi Nagar Panchayat. Even though this Court granted interim suspension in W.P.No.23242 of 2013, the same was ultimately dismissed as withdrawn on 21.07.2014. There was no challenge to the said G.Os by anybody, as such, the same have become final and the status of Anaparthi Nagar Panchayat was restored.

16. Rules of 1995 have been amended by virtue of G.O.Ms.No.567, dated 11.09.2009. Division Bench has passed interim order on 23.11.2011 in WPMP No.38313 of 2011 in WP No.30886 of 2011 permitting the Government to continue the process under G.O.Ms.No.567, dated 11.09.2009, but no final decision would be taken on the basis of the G.O., until the next date of hearing. Ultimately, W.P.No.30886 of 2011 was dismissed as withdrawn on 30.07.2013.

G.O.Ms.No.567, dated 11.09.2009 under which Rules are framed is not suspended. The decision for constitution of Anaparthi Nagar Panchayat was taken when the amended Rules issued under G.O.Ms.No.567, dated 11.09.2009 are in force, as such, it cannot be said that the decision for issuing G.O.Ms.Nos.443 and 373, dated 29.11.2012, after considering the reports and recommendations of the authorities, in the interest of public at large, as illegal.

17. Section 3(2)(f) of the A.P. Panchayat Raj Act, 1994 reads as follows:

“3. Declaration of a village for the purpose of this Act:

(1).....

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

(a)....

(b)...

(c)...

(d)...

(e)...

(f) cancel a notification issued under sub-section (1).”

Section 3-A of the A.P. Municipalities Act, 1965 reads as follows:

“Section 3-A Abolition of Municipalities: (1) The Government may, by notification, abolish any municipality to which this Act applies, where in the opinion of the Government it is not financially sound or for such other reasons as may be recorded in writing: -

Provided that-

(a) the Government shall, before they issue such notification, communicate to the municipal council the grounds on which they

propose to do so, fix a reasonable period for the municipal council to show cause against proposal and consider its explanations and objections, if any.

(b) the notification shall contain a statement of the reasons of the Government and shall be laid before the Andhra Pradesh Legislative Assembly.”

Though the power is exercised by the Government by invoking the above provisions, but no report is called for and the so called reason given for issuance of impugned G.Os is the representations of the villagers of Anaparthi Village. The G.O.Ms.Nos.373 and 443, dated 29.11.2012 have been issued by the Government after calling for the reports from the Commissioner & Director of Municipal Administration, the District Collector, The District Panchayat Officer and the Divisional Panchayat Officer. Though the then Gram Panchayat passed resolution opposing the upgradation, the Government after analyzing the proposals, reports and recommendations, issued the aforesaid G.Os., constituting Anaparthi as Nagar Panchayat, in the larger interest of the people of the area. It is not the case of 1st respondent that the decision to issue impugned G.Os is on the ground that it is not financially sound. Though in the counter it is pleaded that by oversight G.O.Ms.No.443, dated 29.11.2012 is issued but impugned G.Os does not speak about the same. It is settled principle of law, by way of counter reasons cannot be supplemented into the impugned order. In **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others** ^[4], wherein it is held as follows:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a

statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older."

Now, the Government, without any basis, cannot come to a different conclusion. Moreover, while issuing the impugned G.Os., the Government has not even called for any reports or objections from the concerned for cancelling the earlier G.Os., i.e., G.O.Ms.Nos.373 and 443, dated 29.11.2012. The other reasons given for coming to such conclusion is Scheduled Castes population in the Anaparthi village has got the chance to hold the post of Sarpanch in their village for the first time after Independence. There is no basis for holding that the Anaparthi Village is a rural based village and there are no trappings of a Municipality and that the villagers will be put to serious inconvenience if it is upgraded. If the Government wants to reserve the said post for Scheduled Caste person, it can reserve the same in accordance with law, even if Anaparthi Village is constituted as Nagar Panchayat. As such, G.O.Ms.Nos.373 and 443, dated 29.11.2012 are not illegal. Though Section 3-A of the Act of 1965, conferred power on Government, but the same has to be exercised in a reasonable manner. It is not the case of the Government that the criteria laid down for constitution of a Nagar Panchayat is not satisfied.

18. It is pertinent to note here that after withdrawal of the W.P.No.23242 of 2014 by the then Sarpanch of Anaparthi Gram Panchayat, the status of Anaparthi Nagar Panchayat was restored and the G.O.Ms.Nos.373 and 443, dated 29.11.2012 have become final and attained finality as there is no challenge against the same.

19. The contention of the learned Government Pleader and learned counsel for the respondents 7 to 9 that this Court cannot set aside

impugned GOs., which gives rise to revival of an illegal G.Os. i.e., G.O.Ms.No.373 and 443 dated 29.11.2012 cannot also be accepted, since the G.O.Ms.Nos.373 and 443, dated 29.11.2012 are not illegal, as the same are issued by the Government after careful consideration of the issue, basing on the reports and recommendations of the authorities.

In view of the above, it can safely be concluded that impugned G.Os. have been issued without any application of mind by the Government and the same are hereby quashed.

Accordingly, writ petition is allowed setting aside the G.O.Ms.No.188, MA & UD (Elec.I) Department, dated 13.09.2014 and G.O.Ms.No.136, PR & RD (Pts.III) Department dated 18.09.2014. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions pending, if any, in this writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

23.06.2015

Note: LR copy to be marked.

B/o.kvs

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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Date: 23.06.2015

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[\[1\]](#) AIR 1966 SC 828 (FB)

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