

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.214 OF 2016

JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Challenge is to the order, dated 11-03-2016 passed by the Hon'ble Single Judge in W.P. No.5593 of 2016, besides seeking

a direction not to conduct Siddipet Municipal Council Elections by merging Gadcherlapally Gram Panchayat in the Municipality. W.A.M.P. No.700 of 2016 is filed by the appellants requesting to issue a direction to the respondents not to conduct Municipal Council Elections of Siddipet Municipality by including Gadcherlapally village, pending disposal of the writ appeal.

2. In W.P. No.5593 of 2016, ten villagers belonging to Gadcherlapally sought the relief of *mandamus* declaring the action of the respondents in issuing G.O.Ms.No.15 Panchayat Raj and Rural Development (Pts.II) Department, dated 13-02-2016, de-notifying Gadcherlapally Gram Panchayat and G.O.Ms.No.45, Municipal Administration & Urban Development (C) Department, dated 13.2.2016, merging it into Siddipet Municipality as arbitrary, illegal and set aside the same. Interim prayer

sought by the petitioners was to suspend both the Government Orders pending disposal of the said writ petition.

3. As could be seen from the respective Government Orders, the Government notified the villages, viz., Prashanthnagar, Narsapur, Rangadhampally, Gadcherlapally, Imambad and Hanuman Nagar to merge into Siddipet Municipality. Admittedly, two different departments of the State of Telangana govern the de-notification and merger. The said Government Orders were issued by the respective departments. The villagers of other five villages have also filed writ petitions.

4. At the stage of admission of all the six writ petitions, the common order under challenge was passed refusing to grant interim order of suspension of both the Government Orders, *prima-facie*, opining that the Scheme of the Telangana Municipalities Act, 1965 and the Andhra Pradesh Municipalities (inclusion or exclusion of areas into/from the limits of Municipalities/Nagar Panchayats) Rules, 2006 (for short 'the Rules, 2006'), do not contemplate either notice or hearing to every individual villager for either de-notifying the villages or merging them with the municipality and the Government Orders were issued by the Government in exercise of its power under Sub-rule (2) of Rule 12 of Andhra Pradesh Gram Panchayats (Declaration/ De-notification/Constitution of

Villages) Rules, 2007 (for short 'Rules 2007') relaxing Sub Rule (2) of Rule 12 of the Rules, 2007 which provides for an opportunity of showing cause against the proposal for de-notifying the villages and merging them with the Municipality. The writ petitions were, thus, directed to be posted after two (02) weeks for admission while observing that if any further steps are taken, all such steps would be subject to out-come of the said writ petitions. It is stated that the aforesaid Rules of 2006 and 2007 and the A.P. Panchayat Raj Act, 1994 and the A.P. Municipalities Act, 1965 are adopted by the State of Telangana.

5. The legality of the order is questioned agitating the following grounds:

- i) Issuance of aforesaid Government Orders (G.Os.), on one and the same day, is arbitrary and illegal in view of the common order, dated 03-01-2014, rendered in W.P. No.2558 of 2012 and batch by another Single Judge of this Court holding a set of similar G.Os. earlier issued on 21-01-2012 as *per se* illegal and attained finality as the common order remained unchallenged.
- ii) There has been infraction of Rule 5 (v) of the Rules, 2006 for non-adherence to procedure contemplated by the said provision in giving

ten days time for receiving objections, but the impugned G.Os. have been issued on the 9th day itself.

- iii) There has been violation of the provision of Rule 3 (i) (a) (e) of the Rules, 2006 since the villages sought to be merged in the municipality were situate at a distance of more than three kilometres from municipal office.
- iv) There has been discrimination in merging the six villages for the reason that the villages which were abutting the municipality were left untouched, whereas the villages which were situate beyond three kilometres were merged.
- v) The impugned G.Os. have been issued only to nullify the effect of the judgment passed in W.P. No.2558 of 2012 and batch, dated 03-01-2014.
- vi) The principles of natural justice shall prevail even though relaxation power is exercised notice must be given to the affected.

The appellants would ventilate their grievance that the aforesaid grounds were not considered by the Hon'ble Single Judge while passing the order challenged herein.

6. During the course of hearing, the appellants have filed W.A.M.P. No.743 of 2016 seeking to implead the Telangana State Election Commission as a party to the proceedings. By order, dated 23-03-2016, the said petition was allowed and, consequently, the Telangana State Election Commission is arrayed as 7th respondent.

7. On behalf of Respondent No.7 - the Telangana State Election Commission, counter affidavit was filed by the Secretary of the Election Commission both in W.A.M.P. No.700 of 2016 and writ appeal, stating that notification No.624/TSEC-2ULBS/2016, dated 20-03-2016 was issued to elect the members of the Wards of Siddipet Municipality and the programme was notified in the annexure to G.O.Ms.No.254, Municipal Administration & Urban Development (ELEC.I) Department, dated 10-06-2013. It is stated that out of 34 Wards, elections are scheduled to be held in 28 Wards on 06-04-2016, and in the remaining 6 wards, the candidates were declared as unopposed. Relevant steps were taken for conducting elections to Siddipet Municipality which details, though, elaborated are unnecessary to advert in deciding the controversy herein.

i) It is stated that this Court in W.P. No.10395 of 2015 and batch, passed interim order, dated 13-08-2015

directing the respondents not to conduct elections of Siddipet Municipality by including Prashant Nagar, Gardcherlapally, Narsapur, Imambad, Humayun Nagar and Ranga Dhanepally Gram Panchayats and, thus, it could not proceed further to conduct elections, and when these writ petitions were disposed of as infructuous, by orders, dated 11.03.2016, since pre-election activities were already completed and since the State Government also expressed its readiness for holding elections, it has issued the aforesaid notification for conducting elections.

A specific plea is raised stating that the appellants have not challenged the notification issued in G.O.Ms. No.254, Municipal Administration and Urban Development (Elec.I) Department, dated 10-06-2016 for division of Siddipet Municipality into 34 wards.

ii) It is stated that it has referred to the bar imposed under Article - 243 ZG of the Constitution as to interference by Courts in electoral matters and placed reliance on the decision of the Hon'ble Supreme Court in **Anugrah Narain Singh and another v. State of U.P. and others**^[1] and yet another decision in **Boddula Krishnaiah and another v. State Election Commissioner, A.P., and others**^[2] in order to substantiate its stand that the relief sought for by the appellants is not tenable and, thus, sought to reject the request.

8. Heard Sri M. Rama Rao, learned counsel for the appellants, learned Advocate General for the State of Telangana for respondent Nos.1 to 6 and Sri G. Vidyasagar, learned senior counsel assisted by Sri P. Sudheer Rao, learned Standing Counsel for respondent No.7.

9. Learned counsel for the appellants besides insisting on the grounds, referred to in the above, would, submit that in view of the common order, dated 03-01-2014, rendered by the Hon'ble Single Judge in W.P. No.2558 of 2012 and batch setting aside the G.O.Ms. Nos.13 and 28, both dated 21-01-2012, six Gram Panchayats merged with Town Municipality Siddipet would suffer demerger and attained the original status of Gram Panchayats, the Government ought to have appointed a Special Officer under Section 143 (3) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act, 1994'), and since no Special Officer was appointed, it accounts for infraction of Section 143 (3) of the Act, 1994.

i) It is also his submission that the appellants have locus to maintain the writ petition placing reliance on the judgment rendered by a Hon'ble Single Judge of this Court in **Kurapati Bangaraiah and others v. Government of Andhra Pradesh**^[3]. Concerning significance of issue of publication in the official gazette,

he placed reliance on the decision of the Hon'ble Supreme Court in **I.T.C. Limited v. Collector of Central Excise, Bombay**^[4] to the effect that a notification becomes operative on its publication in official gazette.

ii) The learned counsel would submit that though, relaxation power is exercised by the Government relaxing the provisions of sub-rule (2) of Rule 12 of Rules, 2007, still, adherence to principles of natural justice by issue of notice to the Gram Panchayats or the Villages cannot be given a go-bye and places reliance on the decisions in **Mangilal v. State of Madhya Pradesh**^[5], **S.T. Sadiq v. State of Kerala and others**^[6] and **Shaik Magbul Basha v. State of Andhra Pradesh and others**^[7].

iii) In the context of invoking extra-ordinary power under Article 226 of the Constitution of India, the learned counsel, while contending that no other remedy is available as election process was only commenced on 20-03-2016 by issue of notification, the relief sought for by filing writ petition Nos.5293 of 2016 and batch challenging G.O.Ms.Nos.15 and 45, both dated 13-02-2016, was the only remedy available to the appellants for redressal of their grievance and, therefore, it cannot be said that the writ petitions and the instant writ appeal are not

maintainable, placing reliance on the decisions in **Shri Shreewanti Kumar Choudhary v. Shri Baidyanath Panjiar**^[8]; **Bar Counsel of Delhi and another v. Surjeet Singh and others**^[9]; **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and others v. State of Maharashtra and others**^[10]; and **Ramchandra Ganpat Shinde and another v. State of Maharashtra and others**^[11].

10. The learned Advocate General would contend that only basing on the resolutions passed by the six Gram Panchayats requesting for merger with Siddipet Municipality, the impugned G.Os. and two sets of earlier G.Os. were issued which were challenged by filing writ petitions and disposed of by this Court as two sets of batch cases.

i) He would submit that the villagers have no *locus-standi* to challenge the impugned G.Os. and only Gram Panchayats have right to question. He would further submit that six Gram Panchayats after merger by issuance of G.O.Ms. Nos.13 and 28, both dated 21-01-2012, continued to be part and parcel of Siddipet Municipality and number of programmes have been implemented.

ii) He would further submit that G.O.Ms. No.542,

dated

16-02-2008 was issued introducing an amendment to the Rules, 2006 vesting the power in the Government to relax any of the Rules contained therein, and since the impugned G.Os. herein were issued in exercise of relaxation power, without questioning the source of power, the writ petitions and the instant writ appeal are not maintainable.

iii) He would also submit that since election notification was issued on 20-03-2016, there is express bar to interference by Courts in election matters under Article - 243 ZG of the Constitution of India and places reliance on a decision of Hon'ble Supreme Court in **Manda Jaganath v. K.S. Rathnam and others** ^[12].

iv) It is also the submission of the learned Advocate General that since the instant writ appeal is filed challenging the order passed by the Hon'ble Single Judge in one of the six writ petitions and non-challenging of the other five orders passed by the learned Single Judge, would operate as *res judicata*. Therefore, placed reliance on the judgments in the cases of PIL Nos.359, 360, 368 and 369 of 2013 rendered by this Court.

11. Sri G. Vidya Sagar, learned senior counsel for respondent No.7 would submit that since G.O.Ms. No.254, dated 10-06-2013, has not been under challenge at any

point of time, it is not open for the appellants to seek stay of elections.

i) He would submit that subsequent to the order, dated 03-01-2014, in W.P. No.2558 of 2012 and batch, all the six GramPanchayats continued to be part of Siddipet Municipality and the second set of writ petitions in W.P. Nos.21609 of 2015 and batch filed challenging similar set of G.Os. in G.O.Ms.No.14 and G.O.Ms.No.9, dated 14-10-2014, were dismissed as infructuous on 11-03-2016.

ii) Learned counsel also lays emphasis on the bar to interference by Courts in electoral matters mandated by Article - 243 ZG of the Constitution of India. He would submit that there has been no stay of delimitation. He places reliance on the decisions in **Boddula Krishnaiah's Case** (Supra 2) and **Anugrah Narain Singh's Case** (Supra 1) to substantiate his submission that the grounds agitated by the appellants to stall elections are not justified as the election process is set in motion by issue of notification, dated 20-03-2016.

12. The learned Advocate General while giving a reply to arguments advanced in W.A.M.P. No.700 of 2016, would submit that there has been no arbitrary exercise of

power of relaxation of Sub-Rule (2) of Rule 12 of the Rules, 2007. He placed reliance on the decision of the Hon'ble Supreme Court in **Calcutta Gas Company (Proprietary) Limited v. State of West Bengal and others**^[13], as to the existence of the right is the foundation to exercise the jurisdiction.

13. In the light of the grounds raised in the writ appeal, in our view, the question that falls for consideration is whether the order under challenge in the instant writ appeal suffers from vice of any illegality.

14. Elaborate arguments have been advanced by the learned counsel for the appellant, the learned Advocate General and the learned Senior Counsel for the 7th respondent adverted to herein before. But, at the outset we are of the view that the grounds agitated can only be gone into in the writ petition, but not in the instant writ appeal preferred against an interim order.

However, touching the submission that all grounds put-forth in the writ petition and the submissions made thereon were not considered while passing the interim order, we opine that at the stage of arriving at whether the petitioners made out a *prima facie* case to entitle for the interim relief, only the principal aspect which is of vital significance would be examined, and, therefore, that cannot be a ground to attack the order challenged herein.

15. Turning to the legality or otherwise of the order impugned in this writ appeal, learned counsel for the appellants would submit that by virtue of the orders, dated 03-01-2014, passed in W.P. No.2558 of 2012, by the Hon'ble Single Judge of this Court and the period of six (6) weeks mentioned in the order granting *status quo*, after expiry of six (6) weeks, during which period, the *status quo* was ordered to be maintained, six (6) Gram Panchayats merged into Municipality, suffered de-merger and attained the status of individual Gram Panchayats and the Government instead of appointing a Special Officer or a person in-charge or a committee of persons-in-charge to a Gram Panchayat, under Sub-Section (3) of Section 143 of Act 1994, to exercise powers and functions of Gram Panchayat until the members and Sarpanch elected thereof assume office, ought not to have proceeded with issue of second set of Government Orders in G.O. Ms. Nos.9 and 14, dated 14.10.2014, and the subsequent G.O. Ms. Nos.15 and 45, dated 13.02.2016, which have been questioned in the writ petitions.

16. It is according to him that the very power exercised by the Government for relaxation of Rule 12(2) of Rules 2007 is arbitrary and *per se* illegal, as it is intended to defeat the common order passed in W.P. No.2558 of 2012 and batch cases.

17. It is also his submission that the appellants are questioning exercise of power but not the source from which the power emanated, and, therefore, the Hon'ble Single Judge was not right in observing that that part of the Rule of 2007 Rules, which confers powers on the Government for relaxation of Rules is not under challenge, and, therefore, the question of examining 'whether the Government can exercise such power, has not fallen for consideration' and, thereby, declining to grant suspension of G.O.Ms. Nos.15 and 45 by way of an interim order.

18. We have perused G.O. Ms. Nos.15 and 45 issued by the Government of Telangana, Panchayat Raj & Rural Development (Pts-II) Department and Municipal Administration and Urban Development (C) Department, respectively, dated 13.02.2016, and Rule 12 of 2007 Rules.

19. The concluding portion of Sub-Rule (2) of Rule 12 of 2007 Rules, reads thus:

“Power shall be vested with the Government for relaxation of Rules contained in this order.”

20. Sub-Rule (2) of Rule 12 deals with procedural requirement mandating the Government to afford an opportunity of showing cause against the proposal of

issuing a notification under Clause (f) of Sub-Section (2) of Section 3 of the Act, 1994 to the Gram Panchayat which will be affected by issue of such notification to indicate its decision within a period of ten (10) days from the date of receipt of show cause notice and consider the objections, if any, of such Gram Panchayat. Proviso annexed thereto vests power with the Government to pass such orders as deemed fit to give effect to the proposal, if no reply is received from the Gram Panchayat within the time frame.

21. At this stage, we are also of the *prima facie* opinion that the power conferred in the Government for relaxation of rules by Rule 12 of Rules 2007 would become absolute unless the same is challenged. Thus, relaxation rule enables the Government to dispense with the compliance of requirement of sub-rule (2) thereof.

22. A perusal of G.O. Ms. No.15 issued by the Panchayat Raj & Rural Development (Pts-II) Department, dated 13.02.2016, would show that it refers to issuance of orders by relaxation of Rule 12(2) of the Gram Panchayat (declaration of villages) Rules 2007, in respect of six (6) Gram Panahcyats merged into Siddipet Municipality.

Clause '6', reads thus:

“In the above circumstances and after taking advice from the learned Advocate General the Government after careful examination of the matter have decided to relax the procedural requirements provided under Rule 12(2) Andhra Pradesh Gram Panchayats (declaration of Villages) Rules 2007 with regard to issuance of notices to the aforesaid

six villages before cancellation of notification issued constituting the said villages.”

23. Thus, at this stage, we are of the *prima facie* opinion that issuance of G.O. Ms. Nos.15 and 45 by dispensing with the procedural requirements of sub-rule (2) of Rule 12 of 2007 rules is not in violation of any of the rules of 2007 Rules.

24. The Hon’ble Single Judge has referred to the submission of the learned Advocate General that since the Gram Panchayats were not in existence, it was not possible for them to follow the procedure contemplated by sub-rule (2) of Rule 12 of 2007 Rules, and that, that has been the reason that the Government had no objection to relax the said rules on the basis of the resolutions passed by the Gram Panchayats seeking their merger into Municipality.

25. In the aforesaid backdrop, the Hon’ble Single Judge observed that when the part of the rule under 2007 Rules, conferring relaxation power on the Government is not challenged, the question of examining whether the Government can exercise such power has not fallen for consideration. While dealing with an alike fact-situation the Hon’ble Division Bench of this Court in Public Interest Litigation Nos.359, 360, 368 and 369 of 2013 by order, dated 29.07.2013, held that “.... It is the decision of the Government that some areas should be brought within the

Municipal Area so as to bring them within the urban life. This policy decision, unless it is absolutely mala fide and with an oblique motive, cannot be examined by the Court...”

26. We, therefore, find that there is absolutely no infirmity in declining to grant interim order prayed for by the appellants in the writ petition and, therefore, we are not inclined to withhold the same.

27. Viewed from yet another angle, the order under challenge, in our view, cannot be interfered with. At the cost of repetition, we would like to mention that the instant writ appeal was preferred on 16.03.2016, also making an application in W.A.M.P. No.700 of 2016 seeking interim relief to issue a direction to the respondents not to conduct election for Siddipet Municipality by including Gadcherlapally village pending disposal of the writ appeal.

28. Counter was filed on behalf of respondent Nos.1 to 6.

29. When the arguments were taken up in the writ appeal itself with the consent of both counsel, on 20.03.2016, Notification No.624/TSEC-ULBS/2016, dated 20.03.2016, was issued by the Telangana State Election Commission calling upon the registered voters of the Siddipet Municipality to elect members of the Wards and

notified election programme indicating it in the annexure annexed thereto. Thus, process of election commenced on 20.03.2016 by issuance of the said notification. Thereafter only, W.A.M.P. No.743 of 2016 was filed on 22.03.2016 to implead Telangana State Election Commission as respondent No.7, since an objection was taken earlier that in the absence of Telangana State Election Commission as a party to the proceeding, the very relief seeking a direction not to conduct elections to Siddipet Municipality by including Gadcherlapally Village is misconceived.

30. Now, further question that falls for consideration is when election process is set in motion, whether the appellants can maintain the interim relief sought in W.A.M.P. No.700 of 2016 and also the same relief sought in the instant writ appeal itself besides seeking to set aside the order under challenge.

31. On that aspect of the case, the consistent submission made by the learned Advocate General and the learned Senior Counsel for respondent No.7 has been that Article 243-ZG of the Constitution of India imposes a bar to interference by Courts in electoral matters, and, therefore, there is no justification for stalling the elections to Siddipet Municipality. To fortify their submission, reliance was placed on the decisions rendered by the Hon'ble Supreme Court in **Anugrah Narain Singh's Case**

(Supra 1) and **Boddula Krishnaiah's Case** (Supra 2).

32. The Hon'ble Apex Court in the context of examining the scope and applicability of the bar under Article 243-ZG, observing that when election being held after a long lapse of time, the High Court had no jurisdiction to entertain writ petitions challenging the same and postpone the election process, held in paragraph No.14 in **Anugrah Narain Singh's Case** (Supra 1), thus:

“14. There are several reasons why these arguments of the writ petitioners should not have been upheld. The High Court overlooked the fact that no municipal election had been held in the State for nearly ten years and the dates of the elections were fixed under the direction given by the High Court in another case. Importance of holding elections at regular intervals for panchayats, municipal bodies or legislatures cannot be overemphasised. If holding of elections is allowed to be stalled on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have right to elect their representatives to the local bodies. As a result of the order of the High Court, elections that were going to be held to the local bodies after a long lapse of nearly ten years were postponed indefinitely. It was pointed out by this Court in the case of *Lakshmi Charan sen v. A.K.M. Hassan Uzzaman*, that (SCC p.703, para 21)

“... the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations”.

33. In **Boddula Krishnaiah's Case** (Supra 2), the

Hon'ble Supreme Court, while examining the question whether the High Court would be justified in interfering with the election process, restated the principles emphasized in the case of **Anugrah Narain Singh** (Supra 1) held in paragraph No.11, thus:

“11. Thus, it would be clear that once an election process has been set in motion, though the high Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal.”

34. The very same proposition has been reemphasized in **Manda Jaganath's Case** (Supra 12) and in **Election Commission of India v. Ashok Kumar and others** ^[14], by the Constitution Bench of the Hon'ble Supreme Court.

35. Therefore, we are of the view, that not only the interim relief sought by the appellants in W.A.M.P. No.700 of 2016 cannot be granted, but also the very relief to set aside the order under challenge and give direction to the respondents not to conduct elections by including the Gadcherlapally Village in Siddipet Municipality in view of constitutional bar engrafted through Article 243-ZG.

36. We would like to observe in the submission of

the learned counsel for the appellants that since it is premature to file an election petition, and the only remedy open to them is to question by seeking *Mandamus* under Article 226 of the Constitution of India, in our view, is of no assistance to advance the appellants' case in seeking the relief. In that view of the matter, we feel it unnecessary to refer to the decisions relied on by the learned counsel on that aspect of the case.

37. When examined intrinsically, the respective submissions made by the learned counsel for the appellants, the learned Advocate General and the learned Senior Counsel for the 7th respondent, we find that even at this stage, there appears to be a patent defect in maintaining the writ petition. The defect being omission to challenge G.O.Ms.No.254, dated 10.06.2013, issued by the Municipal Administration and Urban Development (Elec.1) Department, relating to re-division of Siddipet Municipality into 34 wards which was notified in the official Gazette on 12.06.2013. The said G.O. was issued subsequent to issuance of G.O.Ms.No.28 and G.O.Ms. No.13 dated 21.01.2012, which were challenged in W.P.No.2558 of 2012 and batch of writ petitions, of course, disposed of on 03.01.2014.

38. When the second set of writ petitions were filed in W.P.No.10395 of 2015 and batch, G.O.Ms.No.254 was

not under challenge. Even in the present set of writ petitions, challenge is only to G.O.Ms.No.15 and G.O.Ms.No.45 dated 13.02.2016, but G.O.Ms.No.254 dated 10.06.2013 is not challenged. We, therefore, are of the prima facie opinion that the very maintainability of the writ petition from which the instant appeal arises is doubtful.

39. The appellants in the instant appeal are not just questioning the order passed in the writ petition, but also sought a further relief in the form of issue of a direction to the respondents not to conduct Siddipet Municipal council elections by merging Gadcherlapally Grampanchayat into the Town Municipality, Siddipet.

40. In the writ petition, the main relief sought is to set aside G.O.Ms.No.15 and G.O.Ms.No.45 dated 13.02.2016 issued by the respective departments denotifying the Gadcherlapally Gram Panchayat and merging it into Siddipet municipality, as arbitrary and illegal. Thus, the relief sought by the appellants in the instant appeal travels beyond the scope of the relief sought in the writ petition. Thus, it accounts for yet another defect, which in our view touches the very maintainability of the instant writ appeal. When an objection was taken by the respondent Nos.1 to 6 during the course of hearing of the writ appeal, that the State Election Commission is not a party and in the absence of

the Telangana State Election Commission as a party, seeking such a relief by the appellants is misconceived, then only the appellants have come up with filing of WAMP No.743 of 2016 on 21.03.2016 i.e., subsequent to the issuance of notification No.624/TSEC/ULBS/2016 on 2003.2016, while requesting to implead Telangana State Election Commission as 7th respondent, in an attempt to rectify the defect.

41. But, however, the relief to issue a direction to the respondent not to conduct Municipal Council Elections of Siddipet Municipality by including Gadcherlapally Village, is not introduced in the relief portion of the writ petition.

42. Adverting to other grounds agitated in the writ appeal and canvassed during the course of arguments by the learned counsel for the appellants touching the infraction of the provisions of Rule 3(1) (a) and (e) of the Rules 2006, we would like to observe that there has been variation with regard to details furnished by the appellants and respondent Nos.1 to 6 as to the distance from the six (6) Gram Panchayats to Siddipet Municipality. Since we are confronted with the legality of interim order in the instant writ appeal, we are not inclined to adjudicate upon it as the same can be examined in the writ petition.

43. Likewise, even the ground that the Government

resorted to pick and choose method and in the said process left untouched certain villages, which are abutting the Siddipet Municipality outer limit can only be gone into in the writ petition.

44. Even, the further ground that the principles of natural justice cannot be given a go-bye even while exercising relaxation power, also requires advertence in the writ petition including the ground that the impugned G.Os. have been issued only to nullify the effect of the judgment passed in W.P. No.2558 of 2012, dated 03.01.2014, and the decisions on which learned counsel for the appellants placed reliance in support of these grounds.

45. Further ground touching *locus standi* of the appellants to maintain the writ appeal, the learned counsel for the appellants placed reliance on a decision of the Hon'ble Single Judge of this Court in **Kurapati Bangaraiah's Case** (Supra 3), and in reply thereto, the learned Advocate General places reliance on the decision of a Division Bench of this Court in **D. Venkata Rushi Reddy v. The Divisional Panchayat Officer, Anantapur,**^[15], submitting that this Court ruled that the notification issued by the Collector bifurcating a village from a panchayat and constituting it as a separate Gram Panchayat can be challenged only by the concerned Gram Panchayat but not by any individual. The said

aspect also can be gone into the writ petition. Incidentally, it is also the submission of the learned

counsel for the appellants that on account of merger of all six Gram Panchayats into town Municipality Siddipet, the benefit of schemes, such as MGNREGA are deprived and the list of the schemes have also been mentioned. Even the learned Advocate General would submit that since 2012 immediately after merger of all six Gram Panchayats into Siddipet Municipality, crores of amount has been invested in developing these areas, and respondent Nos.1 to 6 have also given a list, which all can be examined in the writ petition.

46. One of the contentions advanced by the learned Advocate General has been, that the principle of *res judicata* would operate for the reason that the appellants in the instant appeal alone challenged that part of the common order, but the petitioners in other writ petitions, which relate to the other five Gram Panchayats, respectively, since not challenged the order, the same would attract principle of *res judicata* which disentitles the appellants in maintaining the instant writ appeal. Since on merits, we held in the above, the order under challenge does not suffer from any illegality and that the appellants are not entitled to the other part of relief claimed in the

instant appeal, in our view, it is unnecessary to examine the said aspect.

47. For the aforesaid reasons, the Writ Appeal is dismissed.

There shall be no order as to costs.

48. As a sequel thereto, W.A.M.P. No.700 of 2016 and other Miscellaneous Applications, if any, pending stand dismissed.

G. CHANDRAIAH, J

**A. SHANKAR NARAYANA,
J**

April 7, 2016.

MGR/KSM/PV

[\[1\]](#) . (1996) 6 SCC 303
[\[2\]](#) . (1996) 3 SCC 416
[\[3\]](#) . 2015 (5) ALD 622
[\[4\]](#) . (1996) 5 SCC 538
[\[5\]](#) . 2004 (2) SCC 447
[\[6\]](#) . (2015) 4 SCC 400
[\[7\]](#) . 2016 (1) ALD 650
[\[8\]](#) . AIR 1973 SC 717
[\[9\]](#) . AIR 1980 SC 1612
[\[10\]](#) . (2001) 8 SCC 509
[\[11\]](#) . (1993) 4 SCC 216
[\[12\]](#) . (2004) 7 SCC 492

[\[13\]](#) . AIR 1962 SC 1044 (1)

[\[14\]](#) . (2000) 8 SCC 216

[\[15\]](#) . 1996 (1) ALD 76 (DB)