

• THE HON'BLE SRI JUSTICE A.V.SESHA SAI

+ WRIT PETITION No.10238 OF 2013

% 15th December, 2016.

WRIT PETITION No.10238 OF 2013

A.Jalaiah, S/o.Rambothlu,
Hindu, Age 40 years,
Kattavaripalem Village,
Kondepi Mandal,
Prakasam District.

.. PETITIONER

VS.

\$ The Government of A.P., rep. by its
Principal Secretary,
Panchayat Raj & Rural Development
Secretariat, Hyderabad and 6 others

... RESPONDENTS

! Counsel for the petitioner : Sri M.Subba Reddy

^ Counsel for the respondents : Sri M.Vidya Sagar
Sri G.Seshadri
G.P. for Panchayat Raj

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THE HON'BLE SRI JUSTICE A.V. SESA SAI**WRIT PETITION No.10238 OF 2013****ORDER:**

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed by the 1st respondent – State Government, vide G.O.Ms.No.15, Panchayat Raj and Rural Development (Pts.IV) Department, dated 25.03.2013 and the consequential notification issued by the District Collector, Prakasam District, Ongole – 3rd respondent herein, vide Roc.No.1660/2010(Pts)A2, dated 25.03.2013.

2. Heard Sri M.Subba Reddy, learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj for the respondents 1 to 4, Sri G.Seshadri, for the respondents 5 and 6 and Sri M.Vidyasagar, learned counsel for the 7th respondent, apart from perusing the material available before the Court.

3. According to the petitioner, he is an Ex-Vice President of Kondepi Gram Panchayat. Earlier, when there was a request for bifurcation of Kondepi Gram Panchayat into Kondepi and Kattavaripalem Gram Panchayats, the District Collector refused the said request by way of an order dated 15.05.1995. Assailing the validity of the said order, the then Member of the Legislative Assembly, preferred revision before the State

Government. The State Government, vide G.O.Rt.No.1133, Panchayat Raj and Rural Development Relief (PTS.IV) Department, dated 03.06.1995, allowed the said revision, directing bifurcation of Kondepi Gram Panchayat. Challenging the said order, one Smt.Chettemmareddi Pullamma, Ex. Person-in-charge of Kondepi Gram Panchayat, filed W.P.No.11021 of 1995, before this Court and the said writ petition was allowed by this Court on 05.12.1995, remanding the matter back to the 1st respondent for fresh disposal.

4. Thereafter, the State Government vide G.O.Rt.No.909, Panchayat Raj and Rural Development Relief (PTS.IV) Department, dated 06.07.1996, ordered bifurcation of Kondepi Gram Panchayat and assailing the validity of the said order, Smt.Ch.Pullamma, filed W.P.No.14085 of 1996. The said writ petition was allowed by this Court, by way of order dated 05.08.1996, setting aside the orders of the Government.

5. By way of G.O.Ms.No.150, dated 25.03.2013, the 1st respondent – State Government, ordered bifurcation of Kondepi Gram Panchayat and the formation of Kattavaripalem as a new Gram Panchayat. As a consequence of the said order passed by the State Government, the 3rd respondent – District Collector, issued a notification vide Roc.No.1660/2010(Pts)A2, dated 25.03.2013.

6. In the above background, challenging the validity and legal sustainability of the said orders passed by the State Government ordering bifurcation and the consequential notification issued by the 3rd respondent, the present writ petition came to be filed.

7. This Court, while ordering '*Rule Nisi*' on 04.04.2013, in W.P.M.P.No.12715 of 2013, ordered suspension of the orders impugned. Responding to the '*Rule Nisi*', Ex-Surpanch of Kondepi Gram Panchayat, one Sri R.Koteswara Rao, filed an application W.P.M.P.No.19278 of 2013, seeking his impleadment as 7th respondent in the writ petition. This Court allowed the said application by way of an order dated 25.06.2013 and consequently, the 7th respondent stood impleaded.

8. A counter affidavit is filed by the 7th respondent, denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action. No counters are filed by the rest of the respondents, opposing the writ petition, though this Court admitted the writ petition, as long back as on 04.04.2013.

9. It is contended by the learned counsel for the petitioner that the questioned orders are highly illegal, arbitrary, unreasonable and opposed to the very spirit and object of the

provisions of A.P.Panchayat Raj Act, 1994 and the Andhra Pradesh Gram Panchayats (Declaration of Village) Rules, 2007. It is further submitted that since the State Government did not assign any reasons, much less valid reasons, in the order impugned, the impugned orders are liable to be set aside. It is also the submission of the learned counsel that the impugned action is in deviation to Rules 6 and 9 of the Rules. It is the further submission of the learned counsel that since the Gram Sabha passed a resolution opposing the bifurcation, the impugned action cannot be sustained.

10. On the contrary, it is contended by the learned counsel for the 7th respondent that there is no illegality nor there is any procedural infirmity in the impugned action and in the absence of the same, the action impugned is not amenable for any judicial review under Article 226 of the Constitution of India. It is also the submission of the learned counsel that strictly adhering to the relevant provisions of law, the State Government and the District Collector issued the impugned orders, as such, no interference of this Court is warranted under Article 226 of the Constitution of India. It is further submitted that since the Gram Panchayat unanimously passed a resolution on 04.04.2012 in favour of bifurcation, the impugned action cannot be faulted. It is also submitted that duly taking into consideration the viability of

Kattavaripalem, State Government ordered bifurcation. It is also submitted that the Government also took into consideration the income, population and distance, while ordering bifurcation.

11. Learned Government Pleader and the learned standing counsel for the respondent – Kondepi Gram Panchayat, have also supported the submissions made by the learned counsel for the 7th respondent.

12. In the above backdrop, now the issue which this Court is called upon to consider and answer in the present writ petition is:

“Whether the impugned orders passed by the respondents 1 and 3 are sustainable and tenable and whether the same are in accordance with law?”

13. The information available before this Court manifestly discloses that earlier when there was an attempt by the 1st respondent – State Government, to bifurcate Kondepi Gram Panchayat, vide G.O.Rt.No.909, dated 06.07.1996, one Smt.Ch.Pullamma, filed W.P.No.14085 of 1996, before this Court. This Court by way of an order dated 05.08.1996, allowed the said writ petition, quashing the said order of bifurcation passed by the State Government. After waiting for more than six years, once again basing on the resolution dated 04.04.2012, passed by the respondent – Kondepi Gram

Panchayat, headed by the Special Officer and the consequential proposal from the Commissioner of Panchayat Raj and Rural Employment, the State Government by way of G.O.Ms.No.150, Panchayat Raj and Rural Development (Pts.IV) Department, dated 25.03.2013, ordered bifurcation of Kondepi Gram Panchayat into Kondepi and Kattavaripalem Gram Panchayats. As a consequence of the said orders of bifurcation passed by the 1st respondent, the Collector and District Magistrate – respondent No.3 herein, issued a notification vide Roc.No.1660/2010(Pts)A2, dated 25.03.2013. According to the learned counsel for the petitioner, the said orders are contrary to Section 3 of A.P.Panchayat Raj Act, 1994 and Rules 6 and 9 of the Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules 2007.

14. On the contrary, it is the contention of the learned counsel for the 7th respondent that the State Government passed the impugned order strictly in accordance with the Act and Rules referred to above.

15. In order to resolve the issue, it would be appropriate to refer to the relevant provisions of the Act and Rules. Chapter-I of the A.P.Panchayat Raj Act deals with the Constitution, Administration and Control of Gram Panchayats and Section 3 of the A.P.Panchayat Raj Act deals with the procedure, which needs to be adhered to while ordering formation and bifurcation. As per sub-section (2) of Section 3

of the Act, it is obligatory on the part of the State Government to take into consideration the financial viability of the Gram Panchayat to be newly created before bifurcation.

16. In exercise of powers conferred under sub-sections (1) and (2) of Section 3 read with sub-section (1) of Section 268 of A.P.Panchayat Raj Act, 1994, the Government of Andhra Pradesh framed the Rules, called Andhra Pradesh Gram Panchayats (Declaration of Villages) Rules, 2007. The Rules which are germane for adjudication of the issue in the present writ petition are Rules 6 and 9, which read as under:

“6. If a local area comprised in a revenue village or villages which is not in the Scheduled Areas, is beyond a distance of 3 K.Mts, from that revenue village or villages, as the case may be, and, has a population of three thousand in Andhra Area and one thousand and more in Telangana Area and an Income of rupees three thousand and above per annum in the Andhra Area and rupees one thousand and five hundred and above per annum in the Telangana Area, it may be declared as a separate village:

Provided that, for the reasons to be specified in the notification, any such local area, which is beyond a distance of three kilometers may, irrespective of its population and income also be declared as separate village:

Provided further that the Government, for special reasons, such as geographical features, communication facilities or viability, may declare one or more revenue villages which are at a

distance of three kilometers or less into a separate village, irrespective of its population and income.

9. *Where it becomes necessary to take action under sub-section (2) of section 3 of the Act, to exclude from a village any local area or include in village any local area or unite two or more villages or parts of villages or to alter the boundaries of any villages or to alter the name of any village in giving effect to these rules, the Government shall, before issuing a notification therefor, give the Gram Panchayat, which will be affected by the issue of such notification, an opportunity of showing cause against the proposal to indicate its decision within a period of ten days from the date of receipt of the show cause notice and consider the objections, if any, of such Gram Panchayat;*

Provided that where a Special Officer has been appointed to exercise the powers and perform the functions of the Gram Panchayats and its Sarpanch and Executive Authority, such Special Officer shall be given the aforesaid opportunity and the Special Officer shall make his representation within a period of ten days from the date of receipt of the show-cause notice after taking into consideration the views expressed by the members of the Gram Sabha at a special meeting convened for the purpose;

Provided further that if no reply to the show cause notice from the Gram Panchayat or the Special Officer is received within the period aforesaid, the Government shall pass such orders as deemed fit to give effect to the proposal.”

17. A reading of the above provisions of law makes it very much clear that the authorities are competent to form a new Gram Panchayat for any area beyond 3 Kilometres from the revenue village, which has population of three thousand in Andhra area and one thousand and more in Telangana area and income of rupees three thousand and above per annum in Andhra area and rupees one thousand and five hundred and above per annum in Telangana area. Second *proviso* to Rule 6 enables the State Government to form a new Gram Panchayat even without reference to the distance of three kilometres as mentioned above for the special reasons. Rule 9 obligates the existence of resolution by the Gram Sabha wherever there is a Special Officer.

18. A perusal of the impugned order shows that the population of Kattavaripalem village is 1888 and income is Rs.50,000/- and distance between Kondepi and Kattavaripalem is 1.550 kilometres. Obviously, the population and the distance are not in consonance with Rule 6. However, for the reasons to be recorded, the State Government can dispense with the said distance rule of three kilometres. It is also significant to note that as per Rule 9, it is obligatory on the part of the Special Officer to convene a Gram Sabha and to obtain a resolution. In the instant case, it is the categorical case of the petitioner herein that on 14.04.2012, the Gram Sabha passed a resolution, opposing

bifurcation. The impugned order refers to only a resolution dated 04.04.2012 passed by the Gram Panchayat, signed by the Panchayat Secretary and the Special Officer, but not the resolution of the Gram Sabha.

19. It is also evident from the impugned order passed by the State Government that as mandated under Rule 6, the State Government did not record any special reasons for bifurcation and formation of new Gram Panchayat i.e., Kattavaripalem. It is a settled and well established principal of law that when the law mandates a particular thing to be done in a particular manner, the same should necessarily be done in the said manner and there should not be any deviation from the same. In the instant case, the authorities followed the said principle in breach. Therefore, having regard to the facts and circumstances of the case and taking into consideration the submissions of the learned counsel for the petitioner and the 7th respondent and learned Government Pleader and standing counsel for the respondent Gram Panchayat, this Court is of the considered opinion that the ends of justice would be served if the matter is remitted to the 1st respondent – State Government for fresh consideration, in accordance with law, after giving notice and opportunity of being heard to all the stakeholders.

20. For the aforesaid reasons, writ petition is allowed, setting aside the G.O.Ms.No.150, Panchayat Raj and Rural

Development (Pts.IV) Department, dated 25.03.2013 and the consequential notification issued by the District Collector, vide Roc.No.1660/2010(Pts)A2, dated 25.03.2013 and the matter is remitted to the 1st respondent – State Government for fresh consideration, in accordance with law, after giving notice and opportunity of hearing to all the stakeholders. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

21. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

15.12.2016
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Note: L.R.copy to be marked.
B/o.SS

A.V.SESHA SAI, J

