

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.889 of 2011

ORDER.

The petitioners herein with a view to continue to retain the Head Quarters of Gram Panchayat Office at Maddivarigondi and not change the Head Quarters to Kamathampally, Gandlapenta Manal, Anantapur District have filed the instant Writ Petition. In other words, the petitioners challenge the change of Head Quarters accepted through G.O.Rt.No.85, Panchayat Raj and Rural Development (Pts.IV) Department, dated 19.01.2009.

For the purpose of appreciating the grounds canvassed vis-a-vis the scope of judicial review of this Court under Article-226 of the Constitution of India, this Court finds it convenient to reproduce the G.O.Rt produced in the Writ Petition, which reads thus:

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

PANCHAYATS –Gram Panchayat-Changing the Head Quarter from Gram Panchayat Maddivarigondi to Kamathampalli Gandlapenta Mandal, Anantapur District-Orders-Issued.

PANCHAYT RAJ AND RURAL DEVELOPMENT (Pts.IV)
DEPARTMENT

G.O.Rt.No.85

Dated:19.01.2009

Read the following

(1) From the CPR & RE, Hyd, Lr.No.7143/CPR&RE/D3/07, dt 07.9.07.

(2) From the Collector (PW) Anantapur, Rc.No.8001.07/A5-Pts., dt 07.5.07.

(3) From the Commissioner, PR & RE, Hyd Lr.No.7143/CPR & RE/D1/07, dt 19.7.2008.

“In the reference 1st read above, the Commissioner, Panchayat Raj and Rural Employment has sent a proposal for changing the Head Quarters from Gram Panchayat Maddivarigondi to Kamathampalli, Gandlapenta Mandal, Anantapur District.

In the reference 2nd read above, the District Collector, Anantapur has sent resolution No.2 dated 14.4.2007 passed by Maddivarigondi Gram Sabha resolving for changing of Head Quarters of Maddivarigondi Gram Panchayat to Kamathampalli Gram Panchayat.

Government after careful examination of the proposal of the Commissioner, Panchayat Raj and Rural Employment, Hyderabad hereby accord permission under Rule-1 of the Rules issued in G.O.Ms.No.227, (PR & RD (Pts.II) Dept, dated 13.4.1995 for changing of Head Quarters of Maddivarigondi Gram Panchayat to Kamathampalli Gram Panchayat, Gandlapenta Mandal, Anantapur District.

The Commissioner, Panchayat Raj and Rural Employment, Hyderabad and the Collector, Anantapur District shall take necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

Sd/-xxxxxxx

SECRETARY TO GOVERNMENT

Office of the District Panchayat Officer,

Anantapur Dt:06.02.2009.

//True Copy//

R.F.No.800/07/A3(Pts).

Copy communicated to Panchayat Secretary, Gram Panchayat, Maddivarigondi, Extension Officer (PR & RD),

Gandlapenta and Divisional Panchayat Officer, Penukonda
to take further necessary action in the matter.

M.Radhakrishna,
District Panchayat Officer,
Anantapur.”

Mr. K.Venkat Rao contends that the Head Quarters of the Gram Panchayat has been at Maddivarigondi for several decades. The first petitioner in fact donated Ac.0.12 cents of land for constructing the office of Gram Panchayat. After accepting the donation from first petitioner, the Gram Panchayat in fact has laid foundation from the sanctioned amount however the construction is not completed. Therefore, the change of Head Quarters of Gram Panchayat from Maddivarigondi to Kamathampally is arbitrary, illegal and contrary to the Andhra Pradesh Panchayat Raj Act, 1994 (for short ‘the Act’). He prays for setting aside G.O.Rt.No.85.

Mr. G.Seshadri and Mr. O.Manohar Reddy submit that the scope of judicial review in the matters of establishment of Head Quarters of either a Mandal Praja Parishad or Gram Panchayat is no more *res integra*, the relocation is in accordance with the procedure stipulated by A.P. Panchayat Raj Act (for short ‘the Act’) and for the proposition and scope of judicial review in establishing Headquarters rely upon the decision of the Supreme

Court in *R.Raghupathy and Ors Vs. State of A.P. & Ors*¹.

Therefore, they pray for dismissing the Writ Petition.

With the assistance of learned counsel appearing for the parties, I have perused the operative portion of the decision relied upon and for appreciating the scope of judicial review vis-a-vis establishment of Head Quarters of either a Mandal Praja Parishad or Gram Panchayat, the following observations of the Supreme Court in *R.Raghupathy* (cited supra) are exerted.

“The effect of all these decisions is admirably summed up by Grahama Aldous and John Aler in their Applications for Judicial Review, Law and Practice thus:

There is a general presumption against ousting the jurisdiction of the Courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the government's claim is bona fide. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative and inherently un-reviewable but since the speeches of the House of Lords in Council of Civil Service Unions Vs. Minister for CM Service (1984 (3) All ER 985) this is doubtful. Lords Diplock, Scarman and Roskil appeared to agree that there is no general distinction between powers, based upon whether

¹ AIR 1988 SC 1681

their source is statutory or prerogative but that judicial review can be limited by the subject matter of a particular power in that case national security. Many prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogative relating to the civil service where national security is not involved. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest.

Much of the above discussion is of little or academic interest as the jurisdiction of the High Court to grant an appropriate writ, direction or order under Article-226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England. Most of the cases in which the English Courts had earlier enunciated their limited power to pass on the legality of the exercise of the prerogative were decided at a time when the Courts took a generally rather circumscribed view of their ability to review Ministerial statutory discretion. The decision of the House of Lords in *Padfield's case* (1968 AC 997) marks the emergence of the interventionist judicial attitude that has characterized many recent judgments. In view of the recent decision of the House of Lords in *Council of Civil Service Unions* (1984-3 All ER 935), it would be premature to conclude that in no circumstances would the Courts be prepared to apply to the exercise by the Crown of some non-statutory powers the same criterion for review as would be applicable were the discretion conferred by statute. In the ultimate analysis, the present trend of judicial opinion in England on the question as to whether a prerogative power is reviewable or not depends on whether its subject

matter is suitable for judicial control. All that we need is to and this part of the judgment by extracting the cautionary note administered by H.W.R.Wade in his Administrative Law, 5th Edn. at p.352 in these words:

“On the one hand, where Parliament confers powers upon some Minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not that of the Court. Whether the discretion is exercised prudently or imprudently, the authority’s word is to be law and the remedy is to be political only. On the other hand, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the Courts take their warrant to impose legal bounds on even the most extensive discretion.

We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Head Quarters and quashed the impugned notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience or that the Head Quarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of Head Quarters by the Government by the issue of the final notification under Sub-section-(5) of Section-3 of the Act was on a consideration by the Cabinet Sub-committee of the proposals submitted by the Collectors concerned and the objections and

suggestions received from the local authorities like the Gram Panchayat and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub-committee directed that the Mandal Head Quarters should be at place X rather than place Y as recommended by the Collector concerned, in a particular case, the High Court would not have issued a writ in the nature of Mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners.”

The petitioners herein challenge G.O.Rt.85 on the ground that land has already been donated, steps were taken for construction of Gram Panchayat building and at that stage of the matter, change of Head Quarters of Gram Panchayat is arbitrary, illegal and contrary to the Act.

I have already exerted G.O.Rt impugned in the Writ Petition.

From the G.O.Rt impugned in the Writ Petition, it is clear that the change of Head Quarters of Gram Panchayat from Maddivarigondi to Kamathampally is first taken up by the Gram Panchayat, a resolution was passed and forwarded to District Collector for onward transmission to the Commissioner of Panchayat Raj and the Government. The District Collector and the Commissioner, who are vested with the discretion and after examining the resolution, have accepted the resolution of the

Gram Panchayat and issued the G.O.Rt impugned in the Writ Petition.

The petitioners if at all desired continuance of Head Quarters of Gram Panchayat at Maddivarigondi, they ought to have pursued the remedies available against the resolution passed by the Gram Panchayat. Once a decision is taken by the Gram Panchayat and change of Head Quarters is accepted by the Government through G.O.Rt impugned in the Writ Petition, no tenable ground in fact is made out. Further, the scope of judicial review in matters of establishment of Head Quarters of either a Mandal Praja Parishad or Gram Panchayat is well settled. No other ground is canvassed. Writ Petition fails and is accordingly, dismissed.

Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE S.V.BHATT

06th March, 2017

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