

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N. BALAYOGI

Writ Appeal No. 366 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 39143 of 2017 dated 18.1.2018.

The appellants herein are respondents 9 and 10 in the Writ Petition. They are aggrieved by the order passed by the learned Single Judge setting aside the resolution passed by the Garla Gram Panchayat on 6.11.2017 recommending setting up of two wine shops in their village. The 1st respondent herein filed W.P. No. 39143 of 2017 to declare the resolution dated 6.11.2017 passed by the Garla Gram Panchayat, recommending setting up of two wine shops in their village, as illegal and in violation of the statutory rules.

Rule 4(iv) of the Andhra Pradesh Panchayats Extension to Scheduled Areas (PESA) Rules, 2011 (hereinafter referred to as "the PESA Rules"), which are applicable to Gram Panchayats in tribal areas, prescribes 1/3rd of the total voters in the Gram Panchayat as the quorum of the Gram Sabha, of which 50% must consist of members of the Scheduled Tribes. On the ground that the quorum required for passing the resolution was not available, and licence for liquor shops could not be granted to persons who do not belong to the subject Gram Panchayat, the resolution of the Gram Sabha was subjected to challenge before this Court. The figures recorded, in the order under appeal, clearly disclose a lack of quorum.

Sri P.V. Ramana, learned counsel for the appellants (respondents 9 and 10 in the Writ Petition), would submit that, as the total number

of Scheduled Tribe voters in Garla Gram panchayat are less than the prescribed quorum, the PESA Rules are un-workable, and these rules should therefore be read down since the subject Gram Sabha can never pass a valid resolution as it can never secure the stipulated quorum for a valid Gram Sabha to be held. As long as the PESA rules are in force, the stipulation therein of a quorum necessitates strict adherence. The validity of the said Rules was not under challenge in the Writ Petition, and it would be wholly inappropriate for us, therefore, to examine whether or not the rule is un-workable and, if so, whether the rule should be read down.

The other ground on which the recommendation of the Gram Sabha was set at naught by the Learned Single Judge, in the order under appeal, is for violation of Rule 8(i)(b) of the PESA Rules. Rule 8(1)(b) of the PESA Rules stipulates that a licence, for establishing a liquor shop, can be granted only to local Scheduled Tribes. Rule 3(ii) of the said Rules stipulates that a village may consist of a habitation/hamlet or groups thereof comprising of a community or communities managing their affairs in accordance with their traditions and customs. The fact that the appellants herein (respondents 9 and 10 in the Writ Petition) are not residing within the limits of Garla Gram Panchayat is not in dispute.

Sri P.V. Ramna, learned counsel for the appellants, would contend that the word “local Scheduled Tribe” would mean a member of the Scheduled Tribe residing anywhere in the Scheduled/Agency area. We must express our inability to agree. As has been noted by the learned Single Judge, in the order under appeal, Rule 3(ii) prescribes that a village may consist of a habitation/hamlet or groups thereof, comprising of a community or communities managing their affairs in accordance with their traditions and customs; and Rule 8(i)(b), which

stipulates that a licence should be granted only to local Scheduled Tribes, must be read in conjunction with Rule 3(ii). When so read, it is clear that a person would fall within the ambit of a “local Scheduled Tribe” only if he is a member of the Scheduled Tribe from the very same Gram Panchayat, and not from any other Gram panchayat even if it be within the Scheduled/Agency area.

In proceedings, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The Writ Appeal fails and is, accordingly, dismissed. Suffice it to make it clear that the order now passed by us shall not disable the 1st respondent-writ petitioner from approaching the Government, and ventilating his grievance before them.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(N. BALAYOGI, J)

8th March, 2018

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