

W.P.No. 8966/02.

Smt. G.Anjanamma

and

1. Secretary to Government, Panchayat Raj & Rural

Rural Development (Elections Dept.)

2. Chief Executive Officer, Zilla Parishad, Anantapur.

3. The Mandal Parishad Development Officer,

Bukkarayasamudram Mandal, Anantapur Dist.

4. The Dist. Collector, and Dist. Election Authority, Anantapur.

5. The State Election Commission, Buddabhabavan, Secunderabad.

...Petitioner

...Respondents

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any appropriate writ or orders to declare the action the 1st respondent in issuing the G.O.Ms.No. 139, Dt. 24-4-2002 is illegal, contrary to the law and disobedience of the Court Order. Hence it may be set aside/suspend.

For the Petitioner : Mr. B.Bhaskar Reddy, Advocate.

For the Respondent 1 and 4 : Addl. Advocate General.

For the Respondent No. 2 and 3 : Mr. P. Raghavendra Reddy, SC for Zilla Parishad.

For the Respondent No. 5 : Mr. V.V. Prabhakar Rao, Advocate

THE COURT MADE THE FOLLOWING ORDER :

Contd...3

*THE HON'BLE THE CHIEF JUSTICE SRI DEVINDER GUPTA

AND

*HON'BLE SRI JUSTICE A.GOPAL REDDY

+WRIT PETITION NOS.979 AND 8966 OF 2002

% 27th March, 2003.

\$ G.Anjanamma

and

Secretary to Govt, Panchayat Raj & Rural Development

| Counsel for the petitioner. : Sri B.Bhaskar Reddy

✓ Counsel for the respondents : Addl Advocate-General

> Gist:

CONSTITUTION OF INDIA - Art 243E

A.P. GRAM PANCHAYAT RAJ ACT, 1994 - S 154

The term of the members of Mandal Panchayat cannot be extended beyond the period of 5 years from the date of holding of first meeting of the Mandal Panchayat after the elections.

HELD:

Under the aforesaid provision the member elected at an ordinary election is entitled to hold office for a term of 5 years from the date of first meeting of the Mandal Panchayat held after the said ordinary election. Such a provision in the Act is made in view of the constitutional provisions contained in Article 243E of the Constitution of India. Part IX of the Constitution deals with panchayats and clause (1) of Article 243E in clear terms provides that every panchayat unless sooner dissolved under any law for the time being in force, shall continue for 5 years from the date appointed for its first meeting and no longer. The last words "no longer" therein are material in order to interpret the provisions in the Act that Mandal Panchayat shall continue only for a period of 5 years from the date appointed for its first meeting and no longer. The only constitutional provision which enables panchayat to continue for a longer period is clause (4) in Article 243E ...

There is neither any provision in the Act nor any authority vests in the Government which enables it to issue Government order like the one dated 24-4-2002 extending the term of the members of the Mandal Panchayat beyond the period of the last date viz., 27-2-2002 which has necessarily to be fixed with reference to the first meeting of the Mandal Panchayat after the election. The date cannot be extended in any circumstances.

> HEAD NOTE:

? Cases referred: --

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Petitioners in writ petition No.979 of 2002 are members of the Mandal Parishad, Bukkarayasamudram, Anantapur district. First ordinary elections to Mandal Parishads in Anantapur district were held during 1995. In so far as Mandal Parishad of Bukkarayasamudram Mandal, elections were held in February, 1997. First meeting of the Mandal Parishad, Bukkarayasamudram Mandal after the ordinary election, was held on 27-2-1997. In terms of Section 154 of the A.P. Gram Panchayat Raj Act, 1994 (hereinafter referred to as "the Act") the members were entitled to hold the office for a term of 5 years from the first meeting of the Parishad after ordinary election i.e., upto 27-2-2002.

With respect to other Mandal Parishads, term of 5 years was expiring in 2000. G.O.Ms.No.86 Panchayat Raj and Rural Development (Elections) Department, dated 13-3-2000 was issued appointing special officers in respect of all Mandal Parishads including the Mandal Parishad, Bukkarayasamudram Mandal. The District Collector, Anantapur issued proceedings dated 18-3-2000 stating that according to clause (ii) of Section 154 of the Act, term of the elected members of the Mandal Parishads in the district expired on 17-3-2000 and as the elections to the Mandal Parishads were not held there was no possibility of elected representatives continuing beyond the said term. In order to overcome this difficulty Government promulgated Ordinance No.3 of 2000, dated 5-2-2000, providing for administration of the Mandal Parishads by the special

ORAL ORDER:

(per The Hon'ble The Chief Justice Sri Devinder Gupta)

action on the part of the Government having issued Government
18 months due to the mistake alleged to have been committed. This
elected body of Bukkarayasamudram Mandal for the period lost i.e.,
Department, directing the District Collector, Anantapur to reinstall the
issued by Panchayat Raj & Rural Development (Elections)
petition has been pending. On 24-4-2002, G.O.Ms.No.139 was
While issuing notice, status quo was directed to be maintained. Writ
The writ petition came up before the Court on 23-1-2002.

months from 27-2-2002.

Mandal Parishad, Bukkarayasamudram for another period of 18
consequential direction was sought to continue the members of the
arbitrary and contrary to the provisions of Section 154 of the Act and
extending the term for another period of 18 months/as not legal, and
seeking direction declaring the action of the respondents in not
to make deficit
not continue in office. Therefore, on 21-1-2002 writ petition was filed
14-9-2001 members of Mandal Parishad, Bukkarayasamudram could
body to continue upto 27-2-2002. Thus from 17-3-2000 to
proceedings were issued by the Government allowing the elected
their posts about 18 months earlier. On 14-9-2001, however,
members of Mandal Parishad, Bukkarayasamudram had to relinquish
and the petitioners in writ petition No.979 of 2000 alleged that
to the concerned authorities but no remedial measures were taken
have expired on 27-2-2002. Though attention to this fact was drawn
Bukkarayasamudram Mandal had not come to an end, which would
Mandal, the term of the elected members of the Mandal Parishad,
when the special officer was appointed even for Bukkarayasamudram
officers until the next ordinary elections were held. As on the date

order on 24-4-2002 is under challenge in writ petition No.8966 of 2002. This petition also came up before the Court on 7-5-2002 on which date the status quo was directed to be maintained by the parties.

Both the writ petitions were taken up for consideration today. In so far as writ petition No.979 of 2002 is concerned, the same, in view of the Government order dated 24-4-12002 which is under challenge in writ petition No.8966 of 2002, has been rendered infructuous.

There is a preliminary objection raised by Sri O.Manohar Reddy,

that the latter petition is liable to be dismissed only on the ground that the affected persons viz, the members who are entitled to continue by virtue of the impugned Government order dated 24-4-2002 have not been implied as party to the petition. He states that he represents the elected members who are petitioners in writ petition No.979 of 2002. No doubt the elected members of the Mandal Parishad are not party in writ petition No.8966 of 2002 but the said members are represented by the counsel and are parties in writ petition No.979 of 2002. Therefore, mere non-impleading them as party in writ petition No.8966 of 2002 will not be fatal to the maintainability of the writ petition.

The sole question arising for determination in the subsequent petition is about the competency of the Government in having issued the impugned Government order under the provisions of the Act.

Section 154 of the Act reads as under:

Term of office of member of Mandal Parishad - Save as otherwise provided in this Act:-

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- (i) An ex-officio member of the Mandal Parishad shall hold office so long as he continues to hold the office by virtue of which he became such ex-officio member;
- (ii) A member elected at an ordinary election or a co-opted member shall hold office for a term of 5 years from the date appointed by the A.P. Election Commissioner for local bodies for the first meeting of the Mandal Parishad after the said ordinary election.

Under the aforesaid provision the member elected at an

ordinary election is entitled to hold office for a term of 5 years from the date of first meeting of the Mandal Parishad held after the said

ordinary election. Such a provision in the Act is made in view of the

constitutional provisions contained in Article 243E of the Constitution

of India. Part IX of the Constitution deals with panchayats and

clause (1) of Article 243E in clear terms provides that every

panchayat unless sooner dissolved under any law for the time being

in force, shall continue for 5 years from the date appointed for its

first meeting and no longer. The last words "no longer" therein are

material in order to interpret the provisions in the Act that Mandal

Parishad shall continue only for a period of 5 years from the date

appointed for its first meeting and no longer. The only constitutional

provision which enables panchayat to continue for a longer period is

clause (4) in Article 243E which reads as under:

Duration of panchayats, etc:

.....
A panchayat constituted upon the dissolution of a panchayat before

the expiration of its duration shall continue only for the remainder of the

period for which the dissolved panchayat would have continued under clause

(1) had it not been so dissolved.

In the instant case the Mandal Parishad was not dissolved by

any order. In fact Mandal Parishad could not work because of certain

Government order issued by the Government but later, on realizing the mistake, another proceedings were issued by virtue of which members of the Mandal Parishad were continued to function till 27.2.2002. There is neither any provision in the Act nor any authority vests in the Government which enables it to issue Government order like the one dated 24.4.2002 extending the term of the office of the members of the Mandal Parishad beyond the period of the last date viz., 27.2.2002 which has necessarily to be fixed with reference to the first meeting of the Mandal Parishad after the election. The date cannot be extended in any circumstances. The learned Additional Advocate-General contended that there is no prohibition in the Act prohibiting the Government from extending the time and the impugned Government order is legal and valid. We cannot accept this submission in view of the provisions contained in clause (1) of Article 243E of the Constitution which say that panchayat shall continue for 5 years and no longer from the date appointed for its first meeting.

Consequently, writ petition No.979 of 2002 is dismissed as infructuous and writ petition No.8966 of 2002 is allowed thereby quashing and setting aside the Government order dated 24.4.2002 declaring that the term of the members of the Mandal Parishad Bukkarayasamudram came to an end on 27.2.2002. In view of the fact that the writ petitions were pending and there was order of status quo, it is made clear that the declaration given by us today that the term of members of the Mandal Parishad,

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Bukkarayasamudram Mandal expired on 27-2-2002, will not invalidate any actions taken by the Mandal Parishad till date.

That Rule Nisi in W.P.No. 8966/2002 has been made absolute as above.

Witness the Hon'ble Devinder Gupta, the Chief Justice on this Thursday the twenty seventh day of March, Two thousand and Three.

SD/- S. VARALAKSHMI
ASST. REGISTRAR

SECTION OFFICER

TRUE COPY

To

One Fair Copy to the Honourable Sri Devinder Gupta, the Chief Justice
(for his Lordships Kind Perusal)

One Fair Copy to the Honourable Sri Justice A. Gopal Reddy
(for his Lordships Kind Perusal)

1. The Secretary, Government of Andhra Pradesh, Panchayat Raj and Rural Employment Dept., Secretariat, Hyderabad.

2. The Chief Executive Officer, Zilla Parishad, Anantapur.

3. The Mandal Parishad Development Officer, Bukkarayasamudram Mandal, Anantapur Dist.

4. The Dist. Collector, and Dist. Election Authority, Anantapur.

5. The State Election Commission, Buddabhavan, Secunderabad.

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7. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

8. The Secretary, A.P. Advocate's Association Library, High Court Building, Hyderabad.

9. 2 CCs to the Adml. Advocate-General, High Court of A.P., Hyderabad.

10. 1 CC to Mr. V.V. Prabhakar Rao, Advocate

11. 1 CC to Mr. M.R. Tagore, Advocate

12. 1 CC to Mr. O. Manohar Reddy, Advocate.

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T/By: GBC

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DISMISSING THE W.P.
NO. 979/2002 AND ALLOWING
THE W.P. NO. 8966/2002.

W.P. NOS. 979 & 8966 OF 2002

JUDGMENT

DATED: 27-3-2003

15/4/03