THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (PIL) No.8 of 2017

ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The petitioners claiming themselves to be social workers have filed this writ petition by way of Public Interest Litigation being aggrieved by creation of new districts in the State of Telangana. The petitioner's contention is that the formation of new districts is contrary to the statutory provisions as contained in the Telangana Districts (Formation) Act, 1974 and the Telangana Districts (Formation) Rules, 2016.

2. Section 3 of the Telangana Districts (Formation) Act, 1974 reads as under:-

> "**3. Division of State into districts, formation of new districts and alteration of areas, boundaries or names of existing districts:-**
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> (1) The Government may, by notification, from time to time, for the purposes of revenue administration, divide the State into such districts with such limits as may be specified therein; and each district shall consist of such revenue divisions and each revenue division shall consist of such mandals and each mandal shall consist of such villages as the Government may, by notification from time to time, specify in this behalf.
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> (2) The Government may, in the interests of better administration and development of the areas, by notification,

from time to time, and with effect on and from such date as may be specified therein:-

(a) form a new district, revenue division or mandal by separation of area from any district, revenue division, or mandal or by uniting two or more districts, revenue divisions or mandals or parts thereof or by uniting any area to a district, revenue division or mandal or part thereof;

(b) increase the area of any district, revenue division or mandal;

(c) diminish the area of any district, revenue division or mandal;

(d) alter the boundaries of any district, revenue division or mandal;

(e) alter the name of any district, revenue division or mandal;

(3) The areas, boundaries and names, of the districts, revenue divisions, taluks, firkas and villages in the State existing at the commencement of this Act shall be deemed to have been notified under sub-section (1) and shall continue until they are altered by the Government or the Commissioner of Land Revenue, as the case may be.

(4) The Commissioner of Land Revenue may, in the interests of better administration and development of the areas and subject to such rules as may be prescribed, by notification, group or amalgamate any two or more revenue villages or portions thereof so as to form a single new revenue village or divide any revenue village into two or more revenue villages, or increase or diminish the area of any revenue village, or alter the boundaries or name of any revenue village.

> (5) Before issuing any notification under this section, the Government or the Commissioner of Land Revenue, as the case may be, shall publish in such manner as may be prescribed, the proposals inviting objections or suggestions thereon from the persons residing within the district, revenue division, mandal or village who are likely to be affected thereby within such period as may be specified therein, and shall take into consideration the objections or suggestions, if any, received.
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> (6) Any notification under this section may contain such supplemental, incidental and consequential provisions (including provisions as to adaptation and construction of laws) as the Government or the Commissioner of Land Revenue, as the case may be, may deem necessary.
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> (7) Notwithstanding anything contained in sub-section (5), Government may issue notification under sub-section (1) to form a new District, Revenue Division, Mandal, Village in variance to the proposals notified under sub-section (5)."

3. The aforesaid statutory provision of law empowers the State Government to create new district, revenue division or mandal by uniting two or more districts, by increasing the area of any district, by diminishing the area of any district or even change the boundaries of the district, revenue division or mandal. The petitioners have prayed for quashment of G.O.Ms.No.240, Revenue (DA-CMRF) Department, dated 11.10.2016. The petitioners' grievance is that the

representations from the public at large have not been looked into and the petitioners want quashment of the G.O.Ms.No.240, dated 11.10.2016.

4. The petitioners have not been able to establish *mala fides,* extraneous consideration or arbitrariness in the matter of creation of new districts, revenue divisions or mandals and therefore, in the absence of *mala fides,* extraneous consideration or arbitrariness, the judicial review cannot be exercised keeping in view the peculiar facts and circumstances of the case.

5. The Hon'ble Supreme Court of India in the case of **J.R.Raghupathy v. State of A.P.,**[1], in paragraphs 5, 6, 9, 18, 19 and 31 has held as follows:-

> "**5.** Myriad are the facts. It is not necessary for us to delve into the facts in any detail. It would suffice for our purposes to touch upon the facts in some of the cases to present the rather confusing picture emerging as a result of conflicting directions made by the High Court. It appears that Raghuvir, J. relied upon the underlying principle emerging from his earlier decision delivered on behalf of himself and Sriramulu, J. in the *Gram Panchayat*, *Chinna Madur* v. *Government of Andhra Pradesh* [(1986) 1 Andh WR 362 : (1986) 1 Andh LT (Notes) 48] which he calls as the 'Chandur principle'. In that case following the earlier decision of the High Court where a

[1] (1988) 4 SCC 364

place called Chandur was not shown in the preliminary notification for formation of a taluk, but was chosen to be the place of location of the Taluk Headquarters in the final notification, it was held that in such a case publication of the final notification could not be sustained and it was for the Government to give reasons for such deviation. The decision proceeded on the principle that where guidelines are issued regulating the manner in which a discretionary power is to be exercised, the government is equally bound by the guidelines. If the guidelines were violated, it was for the Government to offer explanation as to why the guidelines were deviated therefrom. We are afraid, there is no such inflexible rule of universal application. The learned Judges failed to appreciate that the guidelines issued by the State Government had no statutory force and they were merely in the nature of executive instructions for the guidance of the Collectors. On the basis of such guidelines the Collectors were asked to forward proposals for formation of Revenue Mandals and for location of Mandal Headquarters. The proposals so forwarded by the Collectors were processed in the Secretariat in the light of the suggestions and objections received in response to the preliminary notification issued under Section 3(5) of the Act and then placed before a Cabinet Sub-Committee. The ultimate decision as to the place of location of Mandal Headquarters was for the Government to take. It cannot be said that in any of the cases the action of the Government for location of such Mandal Headquarters was mala fide or in bad faith or that it proceeded on extraneous considerations. Nor can it be said that the impugned action would result in arbitrariness or absence of fair play or discrimination.

6. We must next refer to the facts in a few illustrative cases. In the *Gram Panchayat*, *Chinna Madur case* [(1986) 1 Andh WR 362 : (1986) 1 Andh LT (Notes) 48] although in the

preliminary notification issued under Section 3(5) of the Act for formation of Devaruppalla Mandal, Chinna Madur was proposed as the Mandal Headquarters, the revenue authorities in the final notification declared Devaruppalla as the Mandal Headquarters. In the writ petition, the High Court produced the records and it showed that both Devaruppalla and Chinna Madur provided equal facilities as to communication, transport, veterinary hospital, bank, school etc. and secured 15 marks each. The Government preferred Devaruppalla as Chinna Madur was inaccessible in some seasons as that village was divided by two rivers from rest of the villages. Devaruppalla besides is located on Hyderabad-Suryapet Highway which was considered to be a factor in its favour. After reiterating the Chandur principle that it is for the Government to give reasons for such deviation, the learned Judges declined to interfere, observing:

> "In the instant case, the record produced shows the authorities considered the comparative merits of Devaruppulla and Chinna Madur. The revenue authorities applied the correct indicia of accessibility in all seasons. Other facilities of the two villages were discussed at length in the record. Having regard to the overwhelming features in favour of Devaruppulla the village was declared as headquarters."

We have referred to the facts of this case because it highlights the approach of the High Court and it has assumed to itself the function of the government in weighing the comparative merits and demerits in the matter of location of the Mandal Headquarters.

9. It will serve no useful purpose to delineate the facts in all the cases which follow more or less on the same lines. We are of the opinion that the High Court had no jurisdiction to sit in appeal over the decision of the State Government to locate the Mandal Headquarters at a particular place. The decision to locate such headquarters at a particular village is

dependent upon various factors. The High Court obviously could not evaluate for itself the comparative merits of a particular place as against the other for location of the Mandal Headquarters. In some of the cases the High Court declined to interfere saying that the Government was the best judge of the situation in the matter of location of Mandal Headquarters. However, in a few cases the High Court while quashing the impugned notifications for location of Mandal Headquarters issued under sub-section (5) of Section 3 of the Act on the ground that there was a breach of the guidelines, directed the Government to reconsider the question after hearing the parties.

18. Broadly speaking, the contention on behalf of the State Government is that relief under Article 226 of the Constitution is not available to enforce administrative rules, regulations or instructions which have no statutory force, in the absence of exceptional circumstances. It is well settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. The law on the subject is succinctly stated in Durga Das Basu's *Administrative Law*, 2nd Edn., at p. 144:

> "Administrative instructions, rules or manuals which have no statutory force, are not enforceable in a court of law. Though for breach of such instructions, the public servant may be held liable by the State and disciplinary action may be taken against him, a member of the public who is aggrieved by the breach of such instructions cannot seek any remedy in the courts. The reason is, that not having the force of law, they cannot confer any *legal* right upon anybody, and cannot, therefore, be enforced even by writs under Article 226."

The learned author however rightly points out at p. 145:

> "Even though a non-statutory rule, bye-law or instruction may be changed by the authority who made it, without any formality and it cannot ordinarily be enforced through a court of law, the party aggrieved by its non-enforcement may, nevertheless, get relief under Article 226 of the

> Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fair play or discrimination, — particularly where the authority making such non-statutory rule or the like comes within the definition of 'state' under Article 12."

In *G.J. Fernandez case* [(1967) 3 SCR 636: AIR 1967 SC 1753] the petitioner submitting the lowest tender assailed the action of the Chief Engineer in addressing a communication to all the tenderers stating that even the lowest tender was unduly high and enquired whether they were prepared to reduce their tenders. One of them having reduced the amount of his tender lower than the lowest, the Chief Engineer made a report to the Technical Sub-Committee which made its recommendations to the Major Irrigation Projects Control Board, the final authority, which accepted the tender so offered. The High Court dismissed the writ petition holding that there was no breach of the conditions of tender contained in the Public Works Department Code and further that there was no discrimination which attracted the application of Article 14. The question that fell for consideration before this Court was whether the Code consisted of statutory rules or not. The so-called Rules contained in the Code were not framed under any statutory enactment or the Constitution. Wanchoo, C.J. speaking for the court held that under Article 162 the executive power of the State enables the government to issue administrative instructions to its servants how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. It was further held that non-observance of such administrative instructions did not give any right to a person like the appellant to come to court for any relief on the alleged breach of the instructions. That precisely is the position here. The guidelines are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner

in which they should formulate their proposals for formation of a Revenue Mandal or for location of its headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper. It must be stated that the guidelines had no statutory force and they had also not been published in the official gazette. The guidelines were mere departmental instructions meant for the Collectors. The ultimate decision as to formation of a Revenue Mandal or location of its headquarters was with the Government. It was for that reason that the Government issued the preliminary notification under sub-section (5) of Section 3 of the Act inviting objections and suggestions. The objections and suggestions were duly processed in the Secretariat and submitted to the Cabinet Sub-Committee along with its comments. The note of the Collector appended to the proposal gave reasons for deviating from the guidelines in some of the aspects. Such deviation was usually for reasons of administrative convenience keeping in view the purpose and object of the Act i.e. to bring the administration nearer to the people. The Cabinet Sub-Committee after consideration of the objections and suggestions received from the Gram Panchayats and members of the public and other organisations as well as the comments of the Secretariat and the note of the Collector came to a decision applying the standards of reasonableness, relevance and purpose while keeping in view the object and purpose of the legislation, published a final notification under sub-section (5) of Section 3 of the Act. There is nothing on record to show that the decision of the State Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations. In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its headquarters in the

nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it.

19. It would be convenient at this stage to deal with the arguments of Shri Seetharamaiah that the action of the Government in the matter of location of Mandal Headquarters amounted to misuse of power for political ends and therefore amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. The learned counsel mainly relied upon certain English decisions starting from *Padfield* v. *Minister of Agriculture, Fisheries and Food* [LR 1968 AC 997: (1968) 1 All ER 694: (1968) 2 WLR 924] down to *Council of Civil Service Unions* v. *Minister for the Civil Service* [(1984) 3 All ER 935 (HL)]. What we call "purely governmental function", it is said, is nothing but exercise of "discretion derived from the royal prerogative". The learned counsel contends that ever since the judgment of Lord Denning in *Laker Airways Ltd.* v. *Department of Trade* [LR 1977 QB 643: (1976) 3 WLR 537] the myth of executive discretion in relation to prerogative powers no longer exists. The learned counsel equated prerogative and statutory powers for this purpose, saying that in both cases alike the courts will not review the proper exercise of discretion but will intervene to correct excess or abuse. According to him, the prerogative powers of the Crown in England are akin to the executive functions of the Union and the States under Articles 73 and 162 of the Constitution, on which we refrain from expressing any final opinion. Prima facie, it seems to us that the executive powers of the Union and the States under Articles 73 and 162 are much wider than the prerogative powers in England. We would refer to a couple of English decisions from amongst those to which we were referred to during the arguments.

> **31.** 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 Headquarters 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 headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of headquarters 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 Panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub-Committee directed that the Mandal Headquarters 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."

In the light of the aforesaid Judgment, the scope of interference by this Court is very limited. The State Government has taken a policy decision for creating new districts in the year 2016 and we are in the year 2022.

6. The apex Court in the case of **State of Uttar Pradesh v. Chaudhari Ran Beer Singh**[2], in similar circumstances, in paragraph 13 has held as under:-

> "**13.** Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in *Ram Milan case*, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government."

7. In the considered opinion of this Court, the petitioners have not been able to point out infringement of any fundamental right and the creation of new districts, revenue divisions or mandals is purely a policy decision of the State Government. The G.O.Ms.No.240, dated 11.10.2016 has been issued strictly in consonance with the Telangana Districts

[2] (2008) 5 SCC 550

(Formation) Act, 1974 and the Telangana Districts (Formation) Rules, 2016 and therefore, this Court does not find any reason to interfere with the policy decision of formation of new districts.

8. Resultantly, the Public Interest Litigation is dismissed.

Pending miscellaneous applications, if any, shall stand closed.

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SATISH CHANDRA SHARMA, CJ

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ABHINAND KUMAR SHAVILI, J

01.04.2022
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