

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY
+ W.P.(PIL) No.30 of 2022 & W.P.No.40739 of 2022

% Date: 07-02-2023

W.P.(PIL) No.30 of 2022

Ambadi Anji Yadav
S/o Ambadi Yadaiah,
aged about 36 years. Occ: Agriculture/Social Activist,
R/o 10-38, Anthireddyguda Village, Nandigama Mandal,
Ranga Reddy District
Aadhar No 7234 5924 5341
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... Petitioner

v.

\$ The State Election Commission,
Hyderabad and others

... Respondents

! Counsel for the petitioner : Mr. Ponnam Ashok Goud;
Mr. Venkat Goundla

^ Counsel for respondent No.1 : Mr. Ajay Kumar Kulkarni, counsel
representing Mr. P.Sudheer Rao,
SC for State Election Commission

Counsel for respondent Nos.2 to 4: Mr. Parsa Ananth Nageswar Rao,
GP attached to the office of AG

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➤ HEAD NOTE:

? CASES REFERRED:

(2011) 10 SCC 106

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P.(PIL) No.30 of 2022 & W.P.No.40739 of 2022

COMMON ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Ponnam Ashok Goud and Mr. Venkat Goundla, learned counsel for the petitioners; Mr. P.Sudheer Rao, learned Standing Counsel for State Election Commission representing respondent No.1; and Mr. Parsa Ananth Nageswar Rao, learned Government Pleader attached to the office of the learned Advocate General representing respondents No.2 to 4 in WP (PIL) No.30 of 2022 and respondents No.2 to 5 in W.P.No.40739 of 2022.

2. Since the subject matter of both the writ petitions is the same, those have been heard together and disposed of by this common order.

3. Question for consideration is regarding holding of election to the office of Sarpanch in Anthireddiguda Gram Panchayat, which has been carved out from Nandigam Gram Panchayat after the elections in January, 2019.

4. Facts lie within a very narrow compass. For the sake of convenience, we have taken up W.P.(PIL) No.30 of 2022 as the lead case.

5. Following the intervention of this Court *vide* the order dated 19.06.2018 passed in I.A.No.1 of 2018 in W.P.No.12113 of 2018, State of Telangana in Panchayat Raj and Rural Development Department had issued G.O.Ms.No.41 dated 03.11.2020 carving out Anthireddiguda Gram Panchayat from the existing Nandigam Gram Panchayat in Ranga Reddy District. Pursuant thereto, the District Collector of Ranga Reddy District appointed the Mandal Parishad Development Officer, Nandigam Mandal as Special Officer of the newly carved out Gram Panchayat on 20.11.2020. He had also appointed the Panchayat Secretary of Nandigam Gram Panchayat as incharge Panchayat Secretary of the newly formed Anthireddiguda Gram Panchayat.

6. Allegation made is that though the new Gram Panchayat was constituted on 03.11.2020, no elections have been held in the said

Gram Panchayat. Therefore, prayer has been made for a direction to the respondents to conduct elections to the newly formed Anthireddiguda Gram Panchayat.

7. Respondent No.1 *i.e.*, State Election Commission, Telangana has filed counter-affidavit. It is stated that respondent No.1 had conducted ordinary elections to the Gram Panchayats in the State of Telangana including Nandigam Gram Panchayat in January, 2019; thereafter District Collector, Ranga Reddy District had forwarded the proposal for formation of a new Gram Panchayat *viz.*, Anthireddiguda Gram Panchayat by carving out the same from the existing Nandigam Gram Panchayat on 27.03.2018; in this connection, Writ Petition No.12113 of 2018 was also filed. By the order dated 19.06.2018 passed in I.A.No.1 of 2018 in W.P.No.12113 of 2018, this Court had directed the respondents to take further action in terms of the recommendations made by the District Collector for formation of Anthireddiguda Gram Panchayat. It was thereafter that G.O.Ms.No.41 dated 03.11.2020 was issued amending Schedule-VIII of the Telangana Panchayat

Raj Act, 2018 (briefly 'the Act' hereinafter), constituting a new Gram Panchayat called Anthireddiguda Gram Panchayat comprising the survey numbers specified therein. District Collector by proceedings dated 20.11.2020 had also appointed Sri Giriraj, Mandal Parishad Development Officer as Special Officer of the newly constituted Anthireddiguda Gram Panchayat. Panchayat Secretary of Nandigam Gram Panchayat was made incharge Panchayat Secretary of the newly constituted Anthireddiguda Gram Panchayat.

8. It is stated that W.P.No.9018 of 2021 was filed assailing the appointment of Special Officer. However, the said writ petition was dismissed holding that Special Officer was appointed in exercise of powers conferred under Section 136 of the Act.

9. It is further stated that panchayat election to Nandigam Gram Panchayat was held for fourteen wards; after formation of Anthireddiguda Gram Panchayat, eight wards out of fourteen wards of Nandigam Gram Panchayat became wards of

Anthireddiguda Gram Panchayat; term of the elected body is for five years; consequent upon formation of Anthireddiguda Gram Panchayat, eight ward members, who were earlier ward members of Nandigam Gram Panchayat and who have now become ward members of Anthireddiguda Gram Panchayat shall continue to be the elected members of Anthireddiguda Gram Panchayat till expiry of the term of five years; however, Sarpanch elected for Nandigam Gram Panchayat continues to be the Sarpanch of Anthireddiguda Gram Panchayat; election to the office of Sarpanch of Anthireddiguda Gram Panchayat could not be conducted since the election to such office is required to be conducted simultaneously with the election to the ward members; therefore, State Government in exercise of powers conferred under Section 136 of the Act had issued notification dated 20.11.2020 appointing Special Officer to conduct the affairs of Anthireddiguda Gram Panchayat. Ultimately, it is contended that election to the office of Sarpanch of Anthireddiguda Gram Panchayat can only be held when the next

general elections to the Gram Panchayats in the State of Telangana are conducted.

10. Respondent No.2 has also filed counter-affidavit wherein he has referred to Article 243E of the Constitution of India and contended that every Panchayat unless sooner dissolved under any law for the time being in force shall continue for five years from the date appointed for its first meeting, and no longer. That apart, reference has been made to Section 4 of the Act to contend that a Gram Panchayat shall be deemed to have been constituted for every village specified in Schedule VIII on and from the date following the date on which the present term of the elected body expires. Reference has also been made to Sections 14 and 15 of the Act whereafter it is contended that election to the office of Sarpanch in Anthireddiguda Gram Panchayat is not legally permissible in the midstream. It will have to await till general elections are held to all the Gram Panchayats in the State of Telangana.

11. In the course of hearing, similar submissions have been made by learned counsel for the parties. Therefore, it is considered not necessary to refer to in detail, the submissions made. However, the submissions so made have received the due consideration of the Court.

12. Facts are not in dispute. As already seen above, elections to the Gram Panchayats in the State of Telangana including Nandigam Gram Panchayat were conducted in January, 2019. After the aforesaid elections were over, following intervention of this Court, Anthireddiguda Gram Panchayat was constituted by the Government *vide* G.O.Ms.No.41 dated 03.11.2020 carving out the same from the existing Nandigam Gram Panchayat. Nandigam Gram Panchayat had fourteen elected ward members. Following creation of the new Gram Panchayat, eight of the ward members of Nandigam Gram Panchayat had become ward members of Anthireddiguda Gram Panchayat. Since there is no Sarpanch or Upa-Sarpanch in the new Gram Panchayat, the District Collector has appointed the Mandal Parishad Development Officer,

Nandigam Mandal as the Special Officer to conduct affairs of the new Gram Panchayat.

13. Stand taken by the respondents in the present proceedings is that elections to the office of Sarpanch cannot be held now in the midstream because the legal provisions do not provide for holding of such elections. It would have to await till general elections are held to all the Gram Panchayats.

14. Let us test the correctness of the above stand taken by the respondents. Part IX was inserted in the Constitution by the 73rd Amendment 1992 comprising Articles 243 to 243(O). The underlined purpose for insertion of Part IX in the Constitution is to create democratic decentralization in aid of local self government. Part IX has given constitutional recognition to the concept of village administration with the aid of local self government. Panchayat raj is now a constitutional mandate.

14.1. Article 243B of the Constitution of India postulates that in every State, Panchayats shall be constituted at the village,

intermediate and district levels. Composition of Panchayats is dealt with in Article 243C of the Constitution of India.

15. Article 243E of the Constitution of India deals with duration of Panchayats *etc.* Article 243E of the Constitution of India reads as under:

243E. Duration of Panchayats, etc

(1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed-

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Panchayat would have continued

is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat for such period.

(4) 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.

15.1. Thus, what clause (1) of Article 243E of the Constitution of India says is that every Panchayat shall have a tenure of five years from the date of its first meeting unless sooner dissolved. Clause (2) says that no amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level which is functioning immediately before such amendment till expiry of its duration as specified in clause (1). Clause (3) deals with holding of election to constitute a Panchayat. As per Clause (4), 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.

16. Article 243K of the Constitution of India provides that elections to the Panchayats including superintendence, direction and control as well as preparation of electoral rolls to the Panchayats shall be vested in the State Election Commission.

17. Following the constitutional mandate under Part IX of the Constitution of India, Telangana Panchayat Raj Act, 2018 (already referred to as 'the Act' hereinabove) has been enacted.

18. Section 3 of the Act deals with declaration of a village for the purposes of the Act. On the other hand, Section 4 deals with constitution of Gram Panchayats for villages and their incorporation. From a reading of Section 4 of the Act, more particularly sub-section (1) thereof, it is discernible that every village specified in Schedule VIII of the Act should have a Gram Panchayat.

19. Section 14 of the Act deals with term of office of members. It says that the term of office of members elected at ordinary

elections shall be five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary elections; for every casual vacancy, election shall be held and the term shall be for the remainder of the five-year period.

20. Election and term of office of Sarpanch or Upa-Sarpanch is dealt with in Section 15 of the Act. Sub-section (1) thereof says that there shall be a Sarpanch for every Gram Panchayat, who shall be elected in the prescribed manner by the persons whose names appear in the electoral roll for the Gram Panchayat from among themselves. Ofcourse, he must be atleast 21 years of age. As per sub-section (2) thereof, election of the Sarpanch may be held at the same time and in the same place as the ordinary elections of the members of the Gram Panchayat. Sub-section (3) says that term of office of the Sarpanch, who is elected at an ordinary election, shall be five years from the date of the first meeting of the Gram Panchayat after the ordinary election. Thus, what is discernible is that election to the office of Sarpanch is a direct one; all the eligible electors of the village will vote and elect him; he is not to be

indirectly elected by the ward members from amongst themselves. As per sub-Section (4), in case of vacancy in the office of Sarpanch, there shall be fresh election under sub-section (1) and the person so elected as Sarpanch shall hold office for the remainder of the five year term. However, clause (5) prohibits holding of election to any casual vacancy in the office of the Sarpanch within six months of the ordinary election. Sub-section (7) mandates that the Sarpanch shall be an *ex-officio* member of the Gram Panchayat and shall be entitled to vote at meetings of the Gram Panchayat. Since sub-sections (1) to (7) of Section 15 of the Act being relevant, the same are extracted hereunder:

15. (1) There shall be a Sarpanch for every Gram Panchayat, who shall be elected in the prescribed manner by the persons whose names appear in the electoral roll for the Gram Panchayat, from among themselves. A person shall not be qualified to stand for election as Sarpanch, unless he is atleast twenty-one years of age:

Provided that a Member of the Legislative Assembly of the State or a Member of the Legislative Council of the State or of either House of Parliament who is

elected to the office of Sarpanch or Upa-Sarpanch shall cease to hold such office unless within one month from the date of election to such office he ceases to be a Member of the Legislative Assembly of the State or a Member of the Legislative Council of the State or of either House of Parliament by resignation or otherwise.

(2) The election of the Sarpanch may be held at the same time and in the same place as the ordinary elections of the members of the Gram Panchayat.

(3) Save as otherwise expressly provided in, or prescribed under this Act, the term of office of the Sarpanch who is elected at an ordinary election shall be five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary election.

(4) Subject to the provisions of sub-section (5), any casual vacancy in the office of the Sarpanch shall be filled within one hundred and twenty days from the date of occurrence of such vacancy, by a fresh election under sub-section (1); and a person elected as Sarpanch in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(5) Unless the Commissioner otherwise directs, no casual vacancy in the office of the Sarpanch shall be filled within six months before the date on which the ordinary election of the Sarpanch under sub-section (1) is due.

(6) The provisions of sections 20 to 27 shall apply in relation to the office of the Sarpanch as they apply in relation to the office of an elected member of the Gram Panchayat.

(7) The Sarpanch shall be an ex-officio member of the Gram Panchayat and shall be entitled to vote at meetings of the Gram Panchayat

21. Before we proceed to Section 136 of the Act, let us analyse the relevant provisions of Section 15, which we have extracted above. In sub-section (1) there is a positive mandate that there 'shall' be a Sarpanch for every Gram Panchayat. The legislature has consciously used the word 'shall' in sub-section (1) making it a mandatory requirement. It will be obligatory to have a Sarpanch for every Gram Panchayat. In contra-distinction to the language employed in sub-section (1), if we look at sub-section (2), the legislature has used the word 'may' instead of the word 'shall' Sub-

section (2) says that election of the Sarpanch 'may' be held at the same time and in the same place as the ordinary election of the members of the Gram Panchayat. Therefore, what is deducible is that while it is obligatory for each Gram Panchayat to have a Sarpanch, it may not be obligatory to hold election of Sarpanch at the same time along with the members of the Gram Panchayat. This is made more clear when we refer to sub-section (4) which says that any casual vacancy in the office of Sarpanch shall be filled within 120 days from the date of occurrence of such vacancy by a fresh election under sub-section (1) and a person elected as Sarpanch in any such vacancy shall hold office for the remainder period of the five year term. Here also, the legislature has consciously employed the word 'shall' to emphasize the importance of the office of Sarpanch which could be further seen from sub-section (7) which says that not only the Sarpanch shall be an *ex-officio* member of the Gram Panchayat, he shall also be entitled to vote at meetings of the Gram Panchayat. A conjoint reading of sub-sections (1) to (7) of Section 15 of the Act would make it

abundantly clear that the intention of the legislature is that every Gram Panchayat shall have a Sarpanch; the Statute does not contemplate a situation where a Gram Panchayat can be without a Sarpanch.

22. Proceeding to Section 136 of the Act, we find that it is a special provision in case of Gram Panchayats. As per sub-section (1) thereof, when a local area is notified as a village under Section (3), for the first time, the District Collector shall appoint a Special Officer to exercise the powers and perform the functions of the Gram Panchayat and its Sarpanch until the members and Sarpanch thereof, who are duly elected, assume office. As per sub-section (2), the Special Officer shall cause arrangements for the election of the members of the Gram Panchayat to be made before such date as may be fixed by the Commissioner in this behalf. Sub-section (3) says that the Government or an officer authorized by the Government shall appoint a Special Officer or a person-in-charge or a committee of persons-in-charge to a Gram Panchayat if, for any reason, the

process of election to such Gram Panchayat is not completed. As per sub-section (4), the Special Officer or person-in-charge or the committee of persons-in-charge appointed under sub-section (3) shall exercise powers and perform the functions of the Gram Panchayat and its Sarpanch until the members and Sarpanch are elected. Therefore, from a conjoint reading of sub-sections (1) to (4) of Section 136 of the Act, it is evident that appointment of Special Officer is only a stop-gap arrangement. Special Officer is appointed to conduct the affairs of the Gram Panchayat and its Sarpanch till such time elections are held to the office of Sarpanch and members of the Gram Panchayat.

23. Adverting to the facts of the present case, what we find is that the new Gram Panchayat has been constituted midstream. While eight ward members of Nandigam Gram Panchayat have been made ward members of Anthireddiguda Gram Panchayat, there is no Sarpanch of the newly carved out Gram Panchayat inasmuch as election to the office of Sarpanch is from amongst the eligible voters of the Gram Panchayat and it is a direct election not

confined to election amongst the ward members. As already noted above, the statutory mandate is that each Gram Panchayat including the newly carved out Gram Panchayat shall have a Sarpanch. There cannot be a vacuum. Law does not contemplate a situation of vacuum to continue. In a situation such as this, the *doctrine of necessity* may have to be applied.

24. In **Lalit Kumar Modi v. Board of control for Cricket in India**¹, Supreme Court has held that the *doctrine of necessity* is a common law doctrine and is applied to tide over situations where there are difficulties as law does not contemplate a vacuum. Though the doctrine of necessity is often invoked in cases of bias where there is no other authority or judge to decide the issue, however, the said doctrine has evolved over the years. It is now applied not only to judicial matters, but also to quasi-judicial and administrative matters. Therefore, applying the aforesaid doctrine and on a purposive interpretation of Section 15 of the Act, we are of the view that the State cannot shy away from holding election to

¹ (2011) 10 SCC 106

the office of Sarpanch in the newly carved out Anthireddiguda Gram Panchayat.

25. Accordingly, we direct the respondents to carry out the necessary exercise for holding of election to the office of Sarpanch in Anthireddiguda Gram Panchayat. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

26. Both W.P.(PIL) No.30 of 2022 and W.P.No.40739 of 2022 are accordingly allowed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 30.01.2023

Note:
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