

(1961) 08 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No. 1154 of 1959

Panchakarla Kutumba Rao and
Another

APPELLANT

Vs

P. Pamideowara Rao M.L.A. and
Others

RESPONDENT

Date of Decision: Aug. 9, 1961

Acts Referred:

- Andhra Pradesh Panchayat Samithis and Zilla Parishads (Amendment) Act, 1983 - Section 1, 2(b), 3, 3(i), 4
- Constitution of India, 1950 - Article 226

Citation: AIR 1962 AP 136

Hon'ble Judges: P. Chandra Reddy, C.J; Srinivasa Chari, J

Bench: Division Bench

Advocate: V.S. Ramachandrarao, for the Appellant; G. Bhaskara Rao, for 1st Respondent, 3rd Govt. Pleader, for 3rd Respondent, for the Respondent

Final Decision: Dismissed

Judgement

P. Chandra Reddy, C.J.

This is a petition under Art. 226 of the Constitution for the issuance of a writ in the nature of quo warranto to call upon the first and second respondents to show by what authority they claim their respective offices of the President and Vice-President of the Bantumilli Panchayat Samithi.

2. By notification dated 28-9-1959 and published in the Andhra Pradesh Gazette dated 1-10-1959, the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959, (XXXV of 1959) (hereinafter referred to as the Act) was enforced in the Krishna District with effect from 2-10-1959. The area consisting of Malleswaram and Nandamur was declared to be a block as defined in Sec. 2(b) of the Act in G. O. No. 932, Planning and Development dated 3-10-1959. Bantumilli Panchayat Samithi was

constituted by the Government of Andhra Pradesh with effect from 1-11-1959 under Sec. 3(i) of the Act. The election of members of the Panchayat samithi was held on 24-10-1959 at a duly convened meeting of the members of the Panchayat samithi. On that very date, the Revenue Divisional Officer issued a notice under Sec. 7(2) of the Act calling for a special meeting of the panchayat samithi on 28-10-1958 at its office for the election of the President and Vice-President. On 28-10-1959 the members of the Panchayat samithi elected the first respondent as the President and the second respondent as the Vice-President.

3. The election of the President and the Vice-President is challenged before us in this writ petition by a person who is a member of the panchayat and who took part in the election on the ground that the election of the President and Vice-President took place before the constitution of the samithi, which is contrary to the relevant provisions of the Act and that the members did not take oath of allegiance before the election, as contemplated by the Act. According to the learned counsel for the petitioner, elections for the President and Vice-President should be conducted only after the panchayat samithi was constituted and elections held prior to that contravene the provisions of the Act and therefore, should be declared null and void.

4. We do not think that this argument has any substance. Section 6 of the Act recites :

1. The Collector shall, on a date not later than the date appointed for the constitution of the Panchayat Samithi under Sec. 3, or, subject to the provisions of sub-sec. (3) of sec. 3, on every occasion when the Panchayat Samithi is re-constituted, convene at the office of the Panchayat Samithi at the appointed time a special meeting of the members of the Panchayat Samithi specified in Clauses (i) and (ii) of sub-section (1) of Sec. 4 after giving them a notice in writing of not less than ten clear days of such meeting for the election of the members specified in Cl. (iii) of sub-sec. (1) of Sec. 4.

x x x

5. It is manifest that a meeting for the election of members should be held before the date appointed for the constitution of the panchayat samithi. Therefore, it is obligatory on the part of the authorities concerned to convene a special meeting of the members of the panchayat samithi for purposes contemplated by that section. Similarly, Sec. 7 enacts :

1. x x x

2. As soon as may be after the election of the members specified in Cl. (iii) of sub-sec- (1) of Sec. 4, a meeting of the Panchayat Samithi for electing the President and the Vice-President shall be convened by the Collector and the election shall be held in the prescribed manner. The President shall be elected first and after he is

elected, the vice-President shall be elected. For the election of the President, the Collector or any gazetted officer of the Government authorised by the District Collector in this behalf, and for the election of the Vice-President, the President shall preside at such meeting.

6. It is plain from the section quoted that the election of the President and Vice-President should be held after the election of the members specified in Cl. (iii) of sub-sec. (1) of Sec. 4. The process of election of the President and the Vice-President also must be completed before the constitution of the samithi. This intendment of the Legislature becomes clear when we compare Secs. 6 and 7 with sec. 37(2) which recites:

As soon as may be after the constitution of a Zilla Parishad under sec. (1) of sec. 36, a meeting of the Zilla Parishad for electing the Chairman and the vice-Chairman shall be convened by the District Collector and the election shall be held in the prescribed manner. The Chairman shall be elected first and after he is elected, the Vice-Chairman shall be elected. For the election of the Chairman, the District Collector and for the election of the Vice-Chairman, the Chairman shall preside at such meeting.

7. It is seen that when the Legislature wanted that the election should take place after the constitution of the institution, appropriate language was employed. This section also throws light on the intention of the Legislature and furnishes a clue to the interpretation of section 7. In view of the clear manifestation of the intention of the Legislature as expressed in Sec. 7, it is futile to contend that there could be no valid meeting of the members for purposes envisaged in that section before the constitution of the samithi.

8. We, therefore, repel this argument advanced on behalf of the petitioner.

9. The contention that there was no valid oath-taking is equally untenable. What was urged by the learned Counsel for the petitioner was that there could be no meeting at all of the members before the constitution of the samithi, and consequently, any oath taken at a meeting before the constitution of the samithi is ineffective. We have already held that the meeting of the members of the samithi has to take place before the constitution of the samithi. If that were so, oath must be administered before the meeting commenced. Hence, there is no force at all in this point either and it has to be rejected. There is another ground for the dismissal of this petition. The petitioner took part in the elections at all stages without raising any objection. That being so, it is not open to him now to question the validity of the elections.

10. In the result, the writ petition fails and is dismissed with the costs of the Government Pleader. Advocate's fee Rs. 100/- (Rupees one hundred).