

SUREME COURT OF INDIA

K. Rajagopala Reddy

Vs.

K. Kumaraswami Reddy

(S.M.Sikri, R.S. Bachawat and K.S. Hegde JJ.)

14.02.1969

JUDGMENT

SIKRI, J.

1. This appeal by special leave is directed against the judgment of a Division Bench of the Andhra Pradesh High Court dismissing the appeal from the judgment of the learned Single Judge allowing the application under art. 226 of the Constitution filed by K. Kumaraswami Reddy, respondent before us, and quashing the order of Government (No. G.O.MS. 1696 dated December 17, 1961) as being without jurisdiction. This order came to be passed under the following circumstances.

2. The Nayudupet Panchayat Samithi at its meeting held on January 30, 1960, by majority of 23 votes to 9 resolved that a Primary Health center should be located at village Doravarisa-tram. The President of Mallam Panchayat Samithi represented to the Government against this resolution and desired that the Health center should be located at Mallam village. On April 21, 1960, the District Collector, agreeing with the opinion of the District Health Officer and the District Medical Officer, recommended that the Primary Health center should be located at Mallam. The Nayudupet Panchayat Samithi was apprised of these developments but the Saraithi at its meeting held on June 2, 1960, by a majority of 25 members to 7, affirmed its previous resolution. The dissenting members approached the Government and so did the President and the members who were in the majority. On June 11, 1960, the Government by its order G.O.Ms. No 838 dated June 11, 1960; declared that the resolution of the Nayudupet Panchayat Samithi was not proper and that Mallam should be selected for the location of the Primary Health center. Accordingly, acting Under section 72 (1) of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (A. P. Act XXXV of 1959) hereinafter referred to as the Act the Government modified the resolution of the health center of Nayudupet Block in Mallam village. The Health center was opened at Mallam on July 4, 1960. It appears that as the Panchayat Samithi refused to sanction money for its running it ceased to function after a week.

3. A representation was made by the President Nayudupet. Panchayat Samithi, Under section 72(3) of the Act, seeking review of the order of the Government dated June 11, 1960, but the Government declined to review its order on July 7, 1960. A petition under Article 226 (W. P. 621 of 1960) was then filed in the Andhra Pradesh High Court challenging the order of the Government, dated July 7, 1960, but it was subsequently dismissed as withdrawn by the Andhra Pradesh High Court on October 28, 1960.

4. On February 23, 1961, the Government issued a letter to the President of the Panchayat Board. Mallam, stating that they proposed to reconsider their previous decision and asked him to forward his representation, if any, Under section 72(3). The Director of Medical Services and the Director of Public Health were also asked on that date to give their opinion regarding the proposal of the Government to review their earlier order. The District Collector was also asked to submit his report. The Director of Public Health supported the new proposal to locate the Primary Health center at Doravarisatram and suggested that instead of a health center a dispensary be set up at Mallam. The Director of Medical Services also agreed with this new proposal. It appears that the District Collector was, on the whole, of the opinion that the Health center be retained at Mallam. As there was difference of opinion, the Government asked an officer of the Secretariat to submit a report and directed the Commissioner of Panchayat Raj to make a report. The Commissioner of Panchayat Raj submitted his report on November 3, 1961. After considering all these reports the Government passed the impugned order on December 17, 1961-The impugned order recites the previous enquiries made and then states in paras 5 and 6 as follows :

"5. From the report of the Commissioner of Panchayat Raj the following fresh facts which were not within the knowledge of Government at the time of issuing orders in G. O. Ms. No. 838, Planning and Local Administration dated 11.6.1960 have now been brought to their notice.

(i) that by locating the Primary Health center at Dorava- risatram a large area with a population of 15,185 spread over 26 villages would be served, whereas a population of only 7191 spread over 18 villages would benefit if the center were to be located at Mallam.

(ii) then even without a Primary Health center Mallam is now comparatively better served with medical facilities than Doravarisatram.

(iii) that should the primary Health center be located at Mallam it would not be accessible to the people in the western zone of villages during the monsoon. It would also not be possible for the medical Officer and staff in charge of the Primary Health center to visit the villages and sub-centers in that area. The position would be far more advantageous if the center is located at Dorovarisatram as most of the villages in that area would be accessible almost throughout the year.

(6.) After a careful consideration of the facts stated above, the Government have, under the provisions of Sub-section (3) of Section 72 of the said Act decided to, and hereby review their earlier orders issued in the G.O. first read above in the larger interests of the people living in Nayudupet Samithi Block and direct as follows:--

(i) that the Primary Health center at Mallam be converted into a regular dispensary for utilising the contribution already paid by the people of the establishment of the Primary Health center, and

(ii) that the Primary Health center of Nayudupet Block be located at "Doravarisatram subject to the usual conditions governing the establishment of Primary Health center in Andhra Area."

5. The learned Single Judge, with whom the Division Bench agreed, came to the conclusion that the three grounds mentioned in the order did not disclose any new material facts which were not before the Government when it passed its first order dated June 11, 1960. Regarding the first item of fresh facts given in para 5 of the impugned order the learned Single Judge observed:--

"As to the first ground viz., the figures of the population of the two groups of villages, it is to be seen from the record that the Block Development Officer of Nayudupet, in his report dated 9-4-1960, had furnished the particulars of the population of Mallam and Doravarisatram. The Distt. Health Officer and the District Medical Officer have also given the particulars of population. The Collector forwarded those reports to the Government with his report dated 21-4-1960. It cannot, therefore, be said that the Government were generally unaware of the relative population figures. "

6. It seems to us that the learned single Judge did not appreciate the position of the Government because, according to the Government, the fact which was a fresh fact and not within its knowledge at the time of issuing the order dated June 11, 1960, was the comparative figures of the population which would be served if the Primary Health center was located at Doravarisatram. The figure of 15, 185 was not the population of the village Doravarisatram but of 26 villages around it.

7. We would like to observe that in a matter where the issue is whether the Government was unaware of certain facts at the time when an order was passed, and this assertion is made not only on an order but also in an affidavit, the onus lies heavily on a petitioner who challenges this fact especially when malafides of the Government is not established, in this particular case there is no doubt that many high officers have been consulted and most of them have supported the location of the health center at Doravarisatram, and the Government has acted bonafide. In such cases it must also be remembered that the Minister or the Secretary taking the final decision may not be aware of some facts at the time of passing an order although these facts may exist on some part of the file which may not have been pointedly brought to his notice.

8. In this case it has not been shown to us that the relative populations of the villages around Doravarisatram and Mallam, which would be benefited by the location of the health center, were known to the Government. It seems to us that the learned Single Judge was wrong in taking this as the ground for quashing the order dated December 17, 1961.

9. Section 72(3) of the Act gives power to Government to review its order "if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact." It seems to us that the Government made a mistake within Section 72 (3) when it passed its first order. At any rate that order was passed in ignorance of a material fact.

10. In view of our conclusion on this point it is not necessary to deal with the other grounds given in para 5 of the Government order dated December 17, 1961 set out above. It is also not necessary to deal with the question whether the power of review Under section 72(3) is a judicial power or not.

11. The learned counsel for the respondent urged before us that we should quash the impugned order of the Government on the ground that the Government had no jurisdiction to review the order passed on June 11, 1960; because it had already refused to review that order on July 7, 1960, when it dismissed the representation of the President of the Nayudupet Panchayat Samithi. The same point was raised before the High Court. The learned Single Judge held that the order dated July 7, 1960 could not be taken, in law, to have the effect of having reviewed the order dated June 11, 1960. We agree with the conclusion of the learned Single Judge.

In the result the appeal is allowed, the judgments of the Division Bench and the learned Single Judge set aside and the application under Article 226 dismissed. The parties will bear their own costs throughout.

