



HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE EIGHTH DAY OF MAY

TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION NO: 642 OF 2020

Between:

1. Gaddam Koteswaramma, W/o.China Kotaiah,
Aged about 72 years, Occ- Household,
Rio. Keerthivaripalem village,
Vadarevu Gramapanchayat,
Chirala Mandal, Prakasam District.

...PETITIONER(S)

AND:

1. State of Andhra Pradesh, Rep. by its Principal Secretary to Government,
Panchayat Raj and Rural Development Department, Secretariat,
Velagapudi, Amaravati,
Guntur District.
2. Commissioner, Panchayat Raj and Rural Development Department,
Government of Andhra Pradesh,
Guntur, Andhra Pradesh.
3. Secretary, State Election Commission, Andhra Pradesh, Vijayawada,
Krishna District.
4. District Collector, Prakasam District at Ongole.
5. District Panchayat Officer, Prakasam District at Ongole.
6. Mandal Parishad Development Officer, Mandal Parishad Office, Chirala
Mandal, Prakasam District.
7. Mandal Extension Officer (PR andRD), Mandal Parishad Office, Chirala
Mandal, Prakasam District.
8. Vadarevu Gramapanchayat, Rep. by its Panchayat Secretary,
Vadarevu Gramapanchayat and Village, Chirala Mandal, Prakasam
District.

...RESPONDENTS

Counsel for the Petitioner(s): NAGA PRAVEEN VANKAYALAPATI

**Counsel for the Respondents: GP FOR PANCHAYAT RAJ RURAL DEV
(AP)**

The Court made the following: ORDER



*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

+ W.P. No.642 of 2020

% 08.05.2020

Between:

Gaddam Koteswaramma, W/o. China Kotaiah,
Aged about 72 years, Occ: Household
R/o. Keerthivaripalem Village,
Vaderevu Gramapanchayat,
Chirala Mandal, Prakasam District.

.... Petitioner

AND

State of Andhra Pradesh,
Rep. by its Principal Secretary to Government,
Panchayat Raj and Rural Development Department,
Secretariat, Velagapudi, Amaravati
Guntur District.
and seven others

.... Respondents

! Counsel for Petitioners : Sri V. Naga Praveen

^ Counsel for Respondents 1, 2 & 5 : learned Advocate General
representing the
respondents 1, 2 & 5

^ Counsel for Respondent No.3 : Sri V.V.Prabhakara Rao,
Standing Counsel

^ Counsel for Respondent No.4 : learned Government
Pleader for Revenue

^ Counsel for Respondents 6 to 8 : Sri V.Vinod K Reddy

< Gist:

> Head Note:

? Cases referred:

- 1) 1996 (1) ALD 76 (DB)
- 2) MANU/SC/0433/1972 = AIR 1972 SC 1917
- 3) MANU/SC/0667/1975 = (1975) 1 SCC 421
- 4) MANU/SC/0092/2003 = AIR 2003 SC 1533
- 5) MANU/SC/0312/1960 = AIR 1961 SC 751

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO****WRIT PETITION No.642 of 2020****ORDER:**

The petitioner seeks Writ of *Mandamus* declaring G.O.Ms.No.243 Panchayat Raj and Rural Development (E&R) Department dated 31.12.2019 issued by the 1st respondent in so far as bifurcating Keerthivaripalem village from the 8th respondent Gram Panchayat and merging the same with Burlavaripalem Gram Panchayat without following the procedure contemplated under A.P Panchayat Raj Act, 1994 (for short "**PR Act**") and rules framed thereunder as illegal, arbitrary and without jurisdiction and consequently to set aside G.O.Ms.No.243.

2. The petitioner's case is thus:

a) Petitioner is a resident of Vodarevu Gram Panchayat and earlier worked as Sarpanch of the said Gram Panchayat.

b) Keerthivaripalem village falls within Vodarevu Gram Panchayat and both of them come under Epurupalem Revenue Village. Total population of Vodarevu Gram Panchayat is nearly 7000, whereas its constituent village Keerthivaripalem's population is 1117. While so, the Burlavaripalem Gram Panchayat consists of two villages – Burlavaripalem Village and Perlivaripalem Village and the total population of said Gram Panchayat is 4000. The distance between Vodarevu Gram Panchayat and Keerthivaripalem village is 1 KM from Panchayat Office. However, geographically



Keerthivaripalem village is almost a part and parcel of Vodarevu Gram Panchayat. Vodarevu Gram Panchayat is having communication, transport, schools and medical facilities, which are extended to Keerthivaripalem village. Whereas the distance between Keerthivaripalem village and Burlavaripalem village is nearly 5 KMs and it is difficult to reach Burlavaripalem village as there is no proper transport facility due to lack of proper road between the two villages. Moreover, reserve forest is located in between these two villages. The revenue survey numbers of both the villages are also different.

c) The petitioner and others came to know that the 7th respondent forwarded a proposal to the District Panchayat Officer, who is the 5th respondent vide ROC.No.11/2019 dated 28.11.2019 stating that the 8th respondent passed a resolution dated 25.11.2019 resolving that it has no objection for merging the Keerthivaripalem village with Burlavaripalem village. The said proposal shows no enquiry was conducted in the village. Hence, the said proposal is illegal. While so, the District Panchayat Officer in turn issued proceedings in Roc.No.269/2019 (Pts)A4, dated 25.11.2019 and forwarded the draft report to the 2nd respondent. In the said proceedings the factual aspect, such as, the distance between Burlavaripalem and Keerthivaripalem was not mentioned.

d) Thereafter, 1st respondent issued G.O.Ms.No.243 dated 31.12.2019 bifurcating Keerthivaripalem village from 8th respondent



and merging the same with Burlavaripalem Gram Panchayat. For bifurcation of any village and issuance of notification, the procedure as contemplated under G.O.Ms.No.542 dated 03.12.2007 such as conduction of grama sabha, hearing the objections etc. have to be followed. The Grama Sabha is to be conducted in accordance with section 6 of PR Act. The 8th respondent issued a notice on 23.12.2019 (which is ante dated). In fact, notice was issued on 27.12.2019 and on the same day itself, Grama Sabha was conducted and resolution was passed resolving bifurcation of Keerthivaripalem from 8th respondent. Thus, conducting of Gram Sabha on 27.12.2019 without giving sufficient time of ten days is not in accordance with G.O.Ms.No.542. No wide publicity in the village was given about the proposed Grama Sabha. Further, the geographical distance between Keerthivaripalem and Burlavaripalem was not at all taken into consideration. Immediately after knowing about the resolution passed by 8th respondent, the petitioner and others made a representation not to bifurcate Keerthivaripalem village from Vodarevu Gram Panchayat, but no action was taken on the said representation. Some of the villagers filed W.P.No.20163 of 2019 praying to set aside the resolution passed by 8th respondent dated 25.11.2019. The said petition was disposed of on 13.12.2019 giving liberty to the petitioners to challenge the same before the State Government in accordance with Section 246 of PR Act. Thereafter, the petitioner



filed W.P.No.20885 of 2019 praying to direct the respondent not to bifurcate Keerthivaripalem Village. However, by the time the matter came up for admission, the impugned G.O.Ms.No.243 was passed. Hence, the petitioner withdrew the said writ petition by obtaining liberty to file a fresh writ petition.

Hence the present writ petition.

3. The office of learned Advocate General took notice on behalf of respondents 1, 2 & 5; Sri V.V.Prabhakara Rao, learned Standing Counsel took notice on behalf of 3rd respondent; learned Government Pleader for Revenue took notice on behalf of 4th respondent and Sri V.Vinod K Reddy, learned Standing Counsel took notice on behalf of respondents 6 to 8.

4. No counters are filed by the respondents, but oral arguments were addressed.

5. Heard.

6. Severely fulminating G.O.Ms.No.243 dated 31.12.2019 issued by the 1st respondent in so far as reconstituting the Vodarevu and Burlavaripalem Gram Panchayat by bifurcating Keerthivaripalem village from Vodarevu GP and merging the same with the Burlavaripalem as illegal, learned counsel for the petitioner would argue that since long Keerthivaripalem village was a part of Vodarevu



GP and in view of its short distance of 1 KM from the Panchayat headquarters, the Keerthivaripalem village, geographically became part and parcel of Vodarevu GP. All the facilities that are available to Gram Panchayat headquarters are also extended to the said village. He would further submit that so far as Burlavaripalem GP is concerned, it is far off from Keerthivaripalem, the distance being 5 KMs. Transportation between these two places is difficult one, as there is no frequent bus facility and there is no proper road facility either. Alongside, thick reserve forest is located between Burlavaripalem and Keerthivaripalem, which will make journey unsafe and hazardous. Due to all these natural stumbling blocks, it is not desirable to bifurcate Keertivaripalem from Vodarevu GP and append to Burlavaripalem.

(a) He would further argue that in the matter of bifurcation, the respondent authorities have not scrupulously followed the guidelines issued under A.P. Gram Panchayat (Declaration of Village) Rules, 2007 (for short “**Rules 2007**”) notified under G.O.Ms.No.542 dated 03.12.2007. In expatiation, he would submit that as per Rule 9 of Rules 2007, when the Government proposes to bifurcate a village from Gram Panchayat and merge with either Municipal Corporation or Municipality or any other Gram Panchayat, it shall, before issuing notification, afford an opportunity to the concerned Gram Panchayat, which is effected by such notification to show cause against the



proposal of the Government for such bifurcation within a period of ten days from the date of receipt of show cause notice and consider such objections of the Gram Panchayat. He would further argue that when a Gram Panchayat is not headed by the elected body and is being administered by a Special Officer, in such event also the Government shall afford an opportunity to the Special Officer and the Special Officer shall make his representation within ten days from the date of receipt of show cause notice after taking into consideration the views expressed by the members of the Grama Sabha held at a special meeting convened for this purpose. Learned counsel would thus strenuously argue, in either case of Gram Panchayat being headed by its elected body or functioned through the Special Officer, hearing its voice through Panchayat resolution or through Grama Sabha is a must before issuing notification of bifurcation. Bringing to the notice of this Court that during the relevant period, tenure of elected body was over and Vodarevu GP was functioning through the Special Officer, learned counsel would submit that mandatory provisions of conducting Grama Sabha, ascertaining the views of the public and then forwarding representation with true facts were all made a mockery by the respondents.

(b) In expatiation, referring to G.O.Ms.No.243, learned counsel would submit that in Para-3 of the said G.O., it is mentioned as if the Commissioner of PR & RD (3rd respondent) vide his letter dated



24.12.2019 has informed to the 1st respondent that the District Panchayat Officer, Prakasam has submitted a report to him stating that Gram Sabhas were conducted in three Gram Panchayats namely 1) Vodarevu; 2) Burlavaripalem and 3) Epurupalem and resolved that they have no objection to bifurcate / reconstitute their Gram Panchayats so as to constitute two new Gram Panchayats namely, Boyavaripalem and Sai Colony Gram Panchayats and requested to issue further orders in the matter.

(c) Learned counsel would submit that going by the facts mentioned in Para-3, one would expect that Gram Sabha must have been held in Vodarevu GP prior to 24.12.2019 because the Commissioner's letter dated 24.12.2019 referred about holding of Gram Sabha in Vodarevu and two other Panchayats. However, the Panchayat Secretary of Vodarevu issued a general notice to the villagers of Vodarevu GP on 23.12.2019 stating that Grama Sabha would be conducted on 27.12.2019 at 4.00 p.m. presided over by the Special Officer to discuss about bifurcation of Keerthivaripalem from Vodarevu GP. Learned counsel thus stated that indeed Gram Sabha was held only on 27.12.2019. Even prior to that date, the Commissioner sent letter dated 24.12.2019 as if Grama Sabha was held at Vodarevu wherein it was resolved that there was no objection for bifurcation. Basing on the said information of the Commissioner, the 1st respondent has passed G.O.Ms.No.243, which is illegal and



contrary to the Rule 9 of Rules 2007. He thus, prayed to allow the writ petition.

7. In oppugnation, learned Government Pleader for Panchayat Raj in support of G.O.Ms.No.243 argued that the bifurcation of Keerthivaripalem was made in accordance with procedure prescribed in Rules 2007 and there was no deviation as claimed by the petitioner. He argued that if at all the bifurcation caused any loss or injustice, the Vodarevu GP, would have taken steps to file revision before the Government as contemplated under Rule 10 of Rules 2007 or a writ petition of the present nature. However, the 8th respondent did not take any steps in that regard which is a clear indicative that it felt no dissatisfaction. Therefore, the petitioner being an individual cannot espouse the cause of 8th respondent. In this regard, he placed reliance on the judgment of the High Court of Judicature at Hyderabad in *D.Venkata Rushi Reddy Vs. The Divisional Panchayat Officer, Anantapur and others*¹.

8. The point for consideration is, **whether the impugned G.O.Ms.No.243 suffers the vice of illegality or violation of mandatory procedure contemplated under A.P. Gram Panchayat (Declaration of Village) Rules, 2007 and thus liable to be set aside?**

¹ 1996 (1) ALD 76 (DB)

**9. POINT:****Statutory Rules:- Whether mandatory or directory in their application – Legal implication of their violation.**

The impugned G.O.Ms.No.243 PR & RD (E&R) Department dated 31.12.2019 stipulates among others, reconstitution of three Gram Panchayats, namely, 1) Vodarevu, 2) Burlavaripalem and 3) Epurupalem in Chirala Mandal, Prakasam District of which what is germane for this writ petition is the proposed reconstitution of Vodarevu and Burlavaripalem Gram Panchayats inasmuch as village Keerthivaripalem is being bifurcated from Vodarevu GP and merged with Burlavaripalem GP.

10. The creation of a village by carving out from a revenue village or hamlet thereof of a Mandal; forming a new village by separating a local area from any village or uniting two or more villages or parts of villages or uniting any local area to a part of any village; increasing the local area of any village, diminishing the local area of any village, altering the boundaries of any village; altering the name of any village, cancelling the notification issued earlier to create a village etc. are all within the statutory power of a State Government conferred under Section 3 of PR Act.



11. While Section 3 (1) gives the power to create a village from out of a Revenue village and a hamlet thereof of a Mandal, Section 3(2) lends power to accomplish other tasks, such as, separating a local area from any village to form a new village, or uniting two or more villages to create a new village, increase or diminish the local area of any village, alter the boundaries of the village, alter the name of any village, cancel the notification issued under Section 3 (1) etc.

Thus, it is manifest that the present act of the Government under the impugned G.O.Ms.No.243 falls within the domain of Section 3 (2) of PR Act.

12. The Government have, in exercise of the rule making power conferred on it under Section 3 r/w 268 of AP PR Act, framed Rules for creation or changing the contours of a village under Section 3 as discussed supra. These rules are called **Andhra Pradesh Gram Panchayat (Declaration of Villages) Rules, 2007** and they were notified through G.O.Ms.542 Panchayat Raj & Rural Development (PTS.IV) Department dated 03.12.2007.

(a) The above rules expound the conditions required for notifying a village. For instance, Rule 3 says that every revenue village, in areas other than scheduled areas, with a population of 3000 and more and with an income of Rs.3,000/- and above per annum in A.P and population of 1000 and more and with an income of



Rs.1,500/- and above per annum in Telangana area shall be declared as a village.

(b) Rule 4 lays down that any hamlet of a revenue village which is declared as a village under Rule 3, lying within a distance of 3 KMs shall ordinarily be included in that village irrespective of the population and income of that hamlet. Provided that the Government for special reasons, such as, geographical features, communication facilities or viability may declare one or more such hamlets into a separate village.

(c) Rule 6 lays down that if a local area comprised in a revenue village or villages, which is not in the scheduled area, is beyond a distance of 3 KMs from the revenue village or villages and has population of 3000 in A.P and 1000 and more in Telangana area and an income of Rs.3,000/- and above per annum in the A.P and Rs.1,500/- and above per annum in Telangana may be declared as a separate village.

(d) Rules 9 and 10 are germane for our case. They read as follows:

“9. Where it becomes necessary to take action under sub-section (2) of Section 3 of the Act, to exclude from a village any local area or include in village any local area or unite two or more villages or parts of villages or to alter the boundaries of any villages or to alter the name of any village in giving effect to these rules, the Government shall, before issuing a notification therefor, give the Gram Panchayat, which will be affected by the issue of such notification, an opportunity of showing cause against the proposal to indicate its decision within a period of ten days



from the date of receipt of the show cause notice and consider the objections, if any, of such Gram Panchayat;

Provided that where a Special Officer has been appointed to exercise the powers and perform the functions of the Gram Panchayats and its Sarpanch and Executive Authority, such Special Officer shall be given the aforesaid opportunity and the Special Officer shall make his representation within a period of ten days from the date of receipt of the show-cause notice after taking into consideration the views expressed by the members of the Gram Sabha at special meeting convened for the purpose.

Provided further that if no reply to the show cause notice from the Gram panchayat or the Special Officer is received within the period aforesaid, the Government shall pass such orders as deemed fit to give effect to the proposal.

10. Where a notification for the declaration of a village has been issued by the Government, it shall be open to any Gram Panchayat affected to prefer revision petition to the Government through the Commissioner, within fifteen days from the date of publication of such notification and the Government, may pass such orders thereon as they may deem fit.”

13. When the State Government proposes to act under Section 3 (2) of AP PR Act, Rule 9 comes into operation which postulates that the Government shall, before issuing notification, give the Gram Panchayat, which is going to be affected by such a notification, an opportunity to show cause against the proposed decision of the State Government within a period of ten days from the date of receipt of the show cause notice and then consider the objections of such Gram Panchayat. The word ‘shall’ employed in this Rule denotes mandatory form of this provision, obviously because composition of a village is going to be effected and hence the concerned Gram



Panchayat will be the affected party. Apart from statutory mandate, principles of natural justice also require the State Government to put the concerned Gram Panchayats in notice of such proposal. This is the procedure to be followed when the affected Gram Panchayat is represented an elected body i.e. Sarpanch and members.

14. Then, the proviso to Rule 9 contemplates a different situation i.e. when the State Government proposes to act under Section 3 (2) of AP PR Act, while the regular elected body of Gram Panchayat exhausted its tenure. In such an event, the Special Officer, who is functioning in the place of regular body shall be given an opportunity and he shall make his representation within ten days from the date of receipt of show cause notice, after taking into consideration the views expressed by the members of the Grama Sabha held at a special meeting convened for that purpose. Thus, the State Government is obligated to issue show cause notice to the Special Officer giving him ten days time for making his representation within which time, he shall convene the Grama Sabha in terms of Section 6 of AP PR Act and ascertain the views expressed by the members of the Grama Sabha and submit through his representation.

15. The vehement argument of the petitioner is that the procedure mandated under Rule 9 was given a total go-by and even before the scheduled date of Grama Sabha, the District Panchayat Officer, who



is the 5th respondent herein has addressed a letter to the Commissioner, PR & RD as if Grama Sabha was conducted and the villagers of Vodarevu resolved that they had no objection for bifurcation of Keerthivaripalem village from Vodarevu GP and merge with Burlavaripalem GP. In fact, Panchayat Secretary issued a general notice dated 23.12.2019 that the Grama Sabha would be convened on 27.12.2019 at Vodarevu GP Office to discuss about the bifurcation of Keerthivaripalem village. However, impugned letter was sent by 5th respondent even on 24.12.2019 itself, which is nothing but a fraud on the entire villagers of Vodarevu GP. The argument of learned GP would imply that he has not given much prominence to Rule 9, but in terms of Rule 10, he argued that if at all any grievance was caused due to bifurcation, the Gram Panchayat of Vodarevu ought to have filed revision petition before the Government and the petitioner has no locus. It is in this context, the question is whether the A.P Gram Panchayat (Declaration of Village) Rules, 2007, particularly Rule 9 is mandatory or only directory and advisory.

Delegated or Sub-ordinate Legislation:

16. The Rules 2007 are statutory rules framed in exercise of the powers conferred under Section 3 (1) and (2) r/w 268 (1) of AP PR Act. These rules are a piece of subordinate legislation or delegated legislation. One of the important factors contributed for the delegated



legislation is the paradigm shift in State's function from *laissez faire* to welfare state. While adopting the *laissez faire* doctrine, State's intervention was minimal in economic and entrepreneurial activities. It resulted in human misery as exploitation of the weaker and labour by the mighty rich and businessmen increased. The offshoot of this system was the hazardous work conditions, growth of child labour, widespread poverty and most importantly the concentration of the wealth in few hands. It was then realized that the State should take up proactive measures to ameliorate the social and economic conditions of the poor. This approach opened vistas for a new role of the State. In course of time, the concept of social welfare state was propounded and adopted by the State. It concentrated its policies towards securing its citizens, the required means of livelihood, equal distribution of material resources etc. With the increase in the welfare measures, many public enterprises have taken birth and State's administrative activities were also increased tremendously. It also necessitated legislation of various industrial, socio-welfare and other regulatory laws. The Law has been accepted as an instrument of socio economic change and development in the democratic societies and gradually the demand for law became practically insatiable. It created tremendous pressure on the legislative houses, for, the task of formulating various laws precisely and pellucidly rests on them. However, since the legislative body is preoccupied with other important tasks of



administration of the Government, laying policies etc., it was neither feasible nor practicable for it to enact the entire piece of legislation. Further, on a given subject, it may not have required scientific and technical knowledge. Therefore, legislature has invented the technique of delegation of its legislative powers. Under this method, the legislature used to lay down broad policies and principles on the law it enacts, leaving the task of shaping and formulating details in the form of Rules and regulations to the concerned Administrative Agency. In due course, the phenomena of delegated legislation or subordinate legislation has become an important branch of Administrative Law. In a number of judgments, the origin and importance of delegated/sub-ordinate legislation has been discussed.

17. In *Tata Iron and Steel Co.Ltd. vs. The Workmen and others*², delineating the circumstances which necessitated legislature to adopt the technique of delegated legislation and its limitations, the apex Court observed thus:

10. Now, the increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances, which cannot always be foreseen, in implementing our socio-economic policy, pursuant to the establishment of a welfare State as contemplated by our Constitution, have rendered it convenient and practical, nay, necessary, for the legislatures to have frequent resort to the practice of delegating subsidiary or ancillary powers to delegates of their choice. The parliamentary procedure and discussion in getting through a legislative measure in the legislatures is usually time-consuming. Again, such measures cannot provide for all possible contingencies because one cannot visualize various permutations and combinations of human

² MANU/SC/0433/1972 = AIR 1972 SC 1917



conduct and behavior. This explains the necessity for delegated or conditional legislation. Due to the challenge of the complex socio-economic problems requiring speedy solution the power of delegation has by now, as per necessity, become a constituent element of legislative power as a whole. The legal position as regards the limitations on this power is, however, no longer in doubt. The delegation of legislative power is permissible only when the legislative policy and principle is adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the legislature. The legislature, it must be borne in mind, cannot abdicate its authority and cannot pass on to some other body the obligation and the responsibility imposed on it by the Constitution.

18. In *Sukhdev Singh and others vs. Bhagat Ram and others*³, the question fell for the decision of Hon'ble apex court was whether regulations framed under Oil and Natural Gas Commission Act, 1959; the Industrial Finance Corporation Act, 1948 and Life Insurance Corporation Act, 1956 have the force of law. In this context, the Supreme Court observed that Rules, Regulations, Schemes, Bye-laws, orders are the facets of delegated legislation and they have the force of parent legislation. The observations are as follows:

xxxx 12. Rules, Regulations, Schemes, Bye-laws, orders made under statutory powers are all comprised in delegated legislation. The need for delegated legislation is that statutory rules are framed with care and minuteness when the statutory authority making the rules is after the coming into force of the Act in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.

x x x x

14. Subordinate legislation is made by a person or body by virtue of the powers conferred by a statute. Bye-laws are made in the main by local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or resorting to their undertakings. Regulations may determine the class of cases in which the exercise of the statutory power by any such authority constitutes the making of statutory rule.

³ MANU/SC/0667/1975 = (1975) 1 SCC 421



15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires. The reason is that it goes to the root of the power of such corporations and the declaration of nullity is the only relief that is granted to the aggrieved party.

16. In England subordinate legislation has, if validly made, the full force and effect of a statute, but it differs from a statute in that its validity whether as respects form or substance is normally open to challenge in the Courts.

*17. Subordinate legislation has, if validly made, the full force and effect of a statute. That is so whether or not the statute under which it is made provides expressly that it is to have effect as if enacted therein. If an instrument made in the exercise of delegated powers directs or forbids the doing of a particular thing the result of a breach thereof is, in the absence of provision to the contrary, the same as if the command or prohibition had been contained in the enabling statute itself. Similarly, if such an instrument authorises or requires the doing of any act, the principles to be applied in determining whether a person injured by the act has any right of action in respect of the injury are not different from those applicable whether damage results from an act done under the direct authority of a statute, *Re Langlois and Biden* (1891) 1 Q.B. 349 and *Kruse v. Johnson* (1898) 2 Q.B. 91.*

19. In *St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and others*⁴, the Supreme Court observed thus:

10. A Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.

⁴ MANU/SC/0092/2003 = AIR 2003 SC 1533



20. In *The State of Uttar Pradesh and others vs. Babu Ram*

Upadhyas⁵, the apex court observed thus:

"Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation" : see Maxwell "On the Interpretation of Statutes", 10th edn., pp. 50-51.

21. The above jurimetrical jurisprudence expounds that the rules, regulations, bye-laws etc., framed under the delegated power of a statute will have the statutory force as that of a parent Act. Viewing in that manner, the inescapable conclusion is that the Andhra Pradesh Grama Panchayats (Declaration of Villages) Rules, 2007 which were framed by exercising the powers conferred under sub section (1) and (2) of Section 3 r/w. Section 268 of PR Act have the same statutory power as that of the parent enactment. Thus, it is needless to emphasis that any order or executive fiat made in violation of these rules is liable to be struck down. In the instant case, the impugned G.O.Ms.No.243 dated 31.12.2019 would read as if the District Panchayat Officer, Prakasam District informed the Commissioner, PR & RD as if Grama Sabhas were conducted in Vodarevu, Burlavaripalem, Epurupalem in Chirala Mandal, Prakasam District wherein the villagers resolved that they had no objection to bifurcate/reconstitute their Grama Panchayats. The Commissioner PR & RD inturn in his Lr.No.1003040/CPR&RD/D1/2019 dated

⁵ MANU/SC/0312/1960 = AIR 1961 SC 751



24.12.2019 intimated this fact to the Government and accordingly the Government passed the impugned G.O.

22. As rightly submitted by learned counsel for petitioner, since the Commissioner addressed letter to the Government on 24.12.2019 one would expect that Grama Sabhas for the above Grama Panchayats particularly Vodarevu Grama Panchayat must have been held prior to 24.12.2019. However, the facts is otherwise. The copy of the general notice issued by Panchayat Secretary of Vodarevu Grama Panchayat on 23.12.2019, which is filed by petitioner, would show that the Grama Panchayat would be held on 27.12.2019 at 4:00 P.M at the Grama Panchayat office to be presided over by the Special Officer Sri R. Venkateswarlu to discuss about the intended bifurcation of Keerthivaripalem Village from Vodarevu Grama Panchayat and to include in Burlavaripalem Grama Panchayat. The authenticity of the said notice dated 23.12.2019 is not disputed by the respondent authorities. Thus, it is clear that the Grama Sabha was scheduled to be held only on 27.12.2019. However, much prior to it, the District Panchayat Officer informed to the Commissioner, PR & RD as if Grama Sabha was already held and inturn Commissioner informed the said fact to the Government through his letter dated 24.12.2019. The act of the authorities, it must be said, a fraud on the statutory rules and utter disdain to the opinion of the villagers of Vodarevu



Grama Panchayat who are effected by the proposed bifurcation. A Grama Sabha is in the nature of a plebiscite. The proviso to Rule 9 clearly postulates that the Special Officer shall take into consideration the views expressed by the members of the Grama Sabha convened for that purpose and then make his representation to the concerned authorities. However, even before the schedule date of Grama Sabha, the letter was sent to the Government falsely stating as if the Grama Sabha was convened and the villagers expressed no objection for bifurcation of Vodarevu Grama Panchayat. Since the impugned G.O went against the mandatory procedure laid under Rule 9 of Rules 2007, the said G.O is liable to be set aside so far as it relates to the bifurcation of Keerthivaripalem village from Vodarevu Grama Panchayat is concerned.

23. In this context, the argument of learned Government Pleader that if aggrieved, Vodarevu Grama Panchayat could have filed Revision Petition by following Rule 10, but the petitioner has no *locus* cannot be countenanced. It must be noted that during the relevant period, there was no regular elected body for Vodarevu Grama Panchayat and it was administered by the Special Officer. Therefore, the question of Grama Panchayat filing a Revision Petition before the Government in terms of Rule 10 does not arise. That apart, there is a gross infraction of Rule 9. Hence, the said argument does



not hold water. Consequently, the decision in **D. Venkata Rushi Reddy's** case (1 *supra*) has no application.

24. In the result, this Writ Petition is allowed and the impugned G.O.Ms.No.243 Panchayat Raj and Rural Development (E&R) Department, dated 31.12.2019 in so far as it relates to bifurcating Keerthivaripalem Village from Vodarevu Grama Panchayat, Chirala Mandal, Prakasam District and merging with Burlavaripalem Grama Panchayat is set aside. However, this order will not preclude the concerned authorities from initiating the proceedings to make such bifurcation by strictly following the governing law and rules. No costs.

As a sequel, interlocutory applications, if any pending, shall stand closed.

U. DURGA PRASAD RAO, J

08.05.2020

**Note: LR copy to be marked
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