# Godde Venkateswara Rao vs Government Of Andhra Pradesh And Others on 11 October, 1965

## Equivalent citations: 1966 AIR 828, 1966 SCR (2) 172, AIR 1966 SUPREME COURT 828, 1966 2 SCJ 270 1966 2 SCR 172, 1966 2 SCR 172, 1966 2 SCR 172 1966 2 SCJ 270, 1966 2 SCJ 270

## Bench: J.R. Mudholkar, R.S. Bachawat

PETITIONER:
GODDE VENKATESWARA RAO

Vs.

RESPONDENT:
GOVERNMENT OF ANDHRA PRADESH AND OTHERS

DATE OF JUDGMENT:
11/10/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
MUDHOLKAR, J.R.
BACHAWAT, R.S.

CITATION:
1966 AIR 828 1966 SCR (2) 172
CITATOR INFO :
RF 1973 SC2720 (9)
F 1976 SC 578 (33)
R 1982 SC 149 (962)
RF 1991 SC2160 (31)

ACT:
Andhra Pradesh Panchayat Samithis and Zilla Parishads Act (35 of 1959), ss. 62 and 72-Scope of-Rules under-Validity of.
Constitution of India, 1950, Art. 226-Who can file petition under.

HEADNOTE:
In order to promote rural welfare, the respondent had given administrative directions for dividing districts into Blocks and for the appointment of Block Planning and Development Committees. In pursuance of those directions, a primary

health centre was inaugurated in a village in November 1958 in accordance with the resolution of the Block Planning and Development Committee. One of the conditions which the village had to comply with was that it should give 2 acres of land free and a cash contribution of at least Rs. 10,000. Since the amount was not paid by the village, the Block Planning and Development Committee, resolved to shift the primary health centre to another village with the consent of the representatives of the first village. The second village chosen, satisfied the condition regarding land and. cash contribution on 27th July 1959 and thereafter, on 31st July 1959 the first village also satisfied the condition. In August 1959 the Committee by a resolution decided to locate the contra at the second village, but the respondent directed that the matter should be decided by the Panchayat Samithi, as by the time, the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 had come into force and a Panchayat Samithi had been established for the concerned Block. Though in May 1960, the Panchayat Samithi at first resolved to have the centre at the first village, and though the said resolution was approved by the respondent, the Panchayat Samithi finally, by its resolution on 29th May 1961, cancelled its earlier resolution and resolved to locate the centre at the second village. On 7th March 1962, the respondent set aside the resolution of May 1961 of the Panchayat Samithi on the ground that it did not get the requisite support of 2/3rd majority. On 18th April, 1963, the respondent reviewed its previous order on the ground that the saki order was made under a mistaken impression that the health centre was permanently located at the first village, and directed that the centre should be located in the second village.

The appellant, who was the representative of the first village in all the proceedings, filed an application before the High Court under Art. 226 of the Constitution for quashing the Government order dated 18th April 1963. The petition was dismissed by the High Court.

In appeal to this Court, the appellant contended that : (i) Assuming the first Government order dated 7th March 1962 was made under s. 72(1) the impugned order dated 18th April, 1963 reviewing the first, was invalid: in as much as the prerequisite for the exercise of the power of review, namely, the existence of a mistake of fact or law or the ignorance of any material fact, was not satisfied, (ii) the first Government order was made under s. 62 of the Act, and therefore could not be reviewed by the impugned order under s. 72 and (iii) the impugned order was invalid, because it was made without giving an opportunity to the party prejudiced thereby. The respondent raised a preliminary objection that the appellant

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had no personal right in the matter and therefore had no locus stand to file the application, and also urged, that

the impugned order was neither made under s. 62 nor under s. 72. of the Act, but that it was really passed under the rules made by the respondent in exercise of the power conferred on it under s. 69 of the Act read with s. 18(2) and that therefore, no question -of review would arise at all as the respondent passed the final order in regard to the location of the health centre.

HELD : (i) The appellant had the right to maintain the application.

Ordinarily, the petitioner who seeks to file an application under Art. 226 should be one who has a personal or individual right in the subject matter of the petition. The personal right need not be in respect of a proprietary interest : it can also relate to an interest of a trustee. In exceptional cases, a person who has been pre-judicially affected by an act or omission of an authority can file a petition even though he has no proprietary or even fiduciary interest in the subject-matter. The appellant was the president of the Panchayat Samithi of the first village. He was also the president of a committee for collecting contributions from the villagers for setting up the health Centre. His conduct, the acquiescence on the part of the members of the committee, and the treatment meted out to him by the authorities, support the inference that he was authorised to act on behalf of the committee which was in law, the trustee of the amounts collected. The appellant, therefore, had been prejudiced by the impugned order and his petition under Art. 226 was maintainable. [181 F]

(ii)A reading of s. 18 of the Act with the Schedule shows that under the Act the statutory power to establish and maintain primary health centers is vested in the Panchayat Samithi, and there is no provision vesting the said power in the Government. Under s. 69 of the Act, the Government can only make rules for carrying out the purposes of the Act; it cannot under the guise of rules, convert an authority with power to establish a primary health centre into only a recommendatory body. It cannot, by any rule, vest in itself a power which under the Act vests in another body. It is one thing to say that the exercise of the power by the Samithi is regulated by the rules, but another thing, to deprive it of that power in the matter of location of the health centre and confer that power on the Government. Therefore, the Rules, in so far as they make the Panchayat Samithi a mere recommendatory body, are inconsistent with the Act, and so the impugned order could not be sustained under the authority of the Rules [183 F]

(iii)Assuming that the first order was made under s. 72(1) the respondent was right when it said in the impugned order, that it made a mistake of fact in passing its earlier order on a misapprehension that there was a permanent location of the centre at the first village. The centre was never permanently located in the first village, it was only located' there subject to certain conditions which were not

fulfilled [188 F]

(iv)But, an analysis of the first order of the respondent demonstrates that it was nothing more than a cancellation of the resolution passed by the Samithi on 29th May 1961. The fact that the word "cancel" is not used and s. 62 was not mentioned in the order could not make it anytheless an order cancelling the resolution. Therefore, the order was, one made under s. 62 and could not be reviewed by the impugned order under s. 72. [187 A-B]

Section 62 confers a special power on the Government to cancel a, resolution passed by the Samithi, by an order in writing, if in its opinion;

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such resolution is not legally passed or is in excess or abuse of the power conferred by the Act, after giving to the Samithi an opportunity for explanation. Section 72(1) confers a wide power of revision on the Government. On the principle of general a specialities non derogant the case provided for under s. 62 must be excluded from the operation of s. 72. It follows that the order reviewed fell under the scope of s. 62 and that in could not be reviewed under s. 72, for s. 72(3) enables the Government only to review an Order made under s. 72(1). Further, the impugned order could not be sustained as being itself an order under s. 62 of the Act. The respondent, in exercise of that power, cancelled the resolution of the Samithi by its earlier order, and therefore qua that order had become functus officio. It could not be review not could s. 13 of the Madras General Clauses Act, 1891 be invoked, because, that section, which enables the Government to exercise its power from time to time as occasion requires. cannot apply to an order made in exercise of a quasi-judicial power under s. 62. [184 H-158 B; 187 D-E]

(v) Since the impugned order was made without giving an opportunity as required by s. 72 to the appellant or to the committee, who were the representatives of the first village, and who were prejudicially affected by it, the order was bad. [189 A-B]

The High Court, however, rightly refused to exercise its "extraordinary discretionary, power because, if it had quashed the impugned order. it would have restored the illegal order of 7th March 1962. That order was also illegal because it was made without giving notice to the Panchayat Samithi is required by s. 62. [189 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 755 of 1965. Appeal by special leave from the judgment and order dated September 7. 1964 of the Andhra Pradesh High Court in Writ Appeal No. 8 of 1964.

S. T. Desai, N. V. Suryanarayana Murthy,R. Thiagarajan and K. Jayaram, for the appellant.

P. Ram Reddy and A. V. Rangam, for respondent No. 1. S. V. Gupte, Solicitor-General and A. V. V. Nair, for respondent No. 4.

The Judgment of the Court was delivered by Subba Rao, J. This is an appeal by special leave against the judgment of a Division Bench of the Andhra Pradesh High Court in a Letters Patent appeal confirming that of a single Judge of that Court dismissing a petition filed by the appellant under Art. 226 of the Constitution for issuing a Writ of certiorari quashing the order of the Government of Andhra Pradesh dated April 18, 1963, under s. 72 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959, (Act No. XXXV of 1959), hereinafter called the Act.

At the outset it will be convenient to survey the facts leading up to this appeal in their chronological order. For the promotion of rural welfare, the Government of Andhra Pradesh initiated Community Development Programme in the said State. Pursuant to that Programme, each district in the State was divided into Blocks, called Community Development Blocks. Chintalapudi Taluk in the West Godavari District was one of such Blocks. A Block Planning and Development Committee was appointed for each Block and a District Planning and Development Committee for each district. All this was done by the Government by issuing administrative directions; indeed, the said Committees were only advisory bodies and the ultimate power vested in the Government. One of the activities of the said Committees was to constitute Primary Health centres in each district. On March 22, 1957, the Government of Andhra Pradesh issued a notification laying down broad principles for guidance in the selection of places for the location of Primary Health Centres. One of the said principles relevant to the present enquiry may be noticed at this stage and that is, the village selected for locating such Centre was expected to give 2 acres of site free and 50% cash contribution which would not be less than Rs. 10,000/-. On April 8, 1958, the Block Planning and Development Committee, Chintalapudi, resolved unanimously, modifying its earlier resolution, to have the Primary Health Centre at Dharmajigudem village, as there were High Schools and education facilities there. On November 7, 1958, the Collector of the District formally inaugurated the Primary Health Centre at Dhanmajigudem. On July 11, 1959, the said Committee passed two resolutions, among others. Under resolution 3 it recorded with appreciation the donation of 50 cents of land by Achyutharamaiah, the Block Committee Member, towards site for the Primary Health Centre to be located at Dharmajigudem and appealed to the members of the Block Committee to see to the remittance of the cash contribution of Rs. 10,000/- immediately. Presumably because that something happened at the meeting immediately after the said resolution was passed indicating that there would be no response in that direction, another resolution was passed by the said Committee recording that, as the villagers of Dharmajigudem had failed to pay the said contribution for the last 8 months, the Primary Health Centre located in that place be shifted to and established permanently at any other suitable village where land and cash contributions were forthcoming. On July 13, 1959, i.e., 2 days after the aforesaid resolution, the Block Development Officer wrote a letter to the appellant, who was the President of the village panchayat, inform-

17 6 ing him that he had not taken any steps for the realization of the contribution so far and that if the required contribution was not realized before the end of the month steps would be taken -to shift

the Primary Health Centre to some other place. It may be noticed at this stage that the Block Development Officer, who had to implement the resolution of the Committee, had outstand his powers in writing a letter in derogation of the terms of the resolution of the Committee dated July 11, 1959. On July 16, 1959, the appellant and others of Dharmajigudem informed the Block Development Officer that it was not possible for them to collect the amount and that there was no objection to the shifting of the Centre from their village to any other place. On July 17, 1959, the Block Development Officer wrote to the people of Dharmajigudem that as they were unable to pay the said amount, the said Centre would be shifted to Lingapalem. On July, 27, 1959, the 4th respondent, Rangarao, representing Lingapalem village deposited Rs. 10,000/- with the Block Development Committee and also donated 2 acres of land for the purpose of locating the said Centre in the said village. On July 31, 1959, on behalf of Dharmajigudem, Venkateswara Rao, the appellant, deposited the sum of Rs. 10,000/- in the Sub-Treasury and K. V. Krishna Rao donated 2 acres of land and delivered possession of the same to the Block Development Officer. On August 14, 1959, the said Committee, after reviewing the previous history of the location of the Primary Health Centre and after noticing that both the villages deposited the amount-one on July 27, 1959 and the other on July 31, 1959-and after considering the competing claims, resolved unanimously to have the Primary Health Centre located permanently at Lingapalem and to request the authorities concerned to shift it from Dharmajigudem to Lingapalem at an early date. One important fact to be noticed in this resolution is that it was recorded therein that the representatives of Dharmajigudem assured the representatives of Lingapalem that they not only gave up their efforts to have the Primary Health Centre at Dharmajigudem but also unanimously agreed to have it located at Lingapalem. It was further recorded therein that the villagers of Lingapalem paid up the entire contribution enthusiastically and that too after obtaining the concurrence of the villagers of Dharmajigudem and also on an assurance that the latter gave up the idea of having the Primary Health Centre at Dharmajigudem. It would, therefore, be noticed that this resolution for locating the Primary Health Centre at Lingapalem was passed after the representatives of the two villages settled their disputes. On September 18, 1959, the Act came into force and under s. 3 thereof a Panchayat Samithi was constituted for Chintapudi. On January 7, 1960, the Government informed the Collector of West Goda- vari District that the question of shifting the Primary Health Centre from Dharmajigudem to Lingapalem should be left to the decision of the Panchayat Samithi constituted under the Act. The President of the Panchayat Samithi, Chintalapudi Block, was requested to place the resolution dated August 14, 1959, of the Block Planning and Development Committee before the Panchayat Samithi for reconsideration and submit a report to the Government through the Chairman, Zilla Parishad, West Godavari. It may be noticed that after the passing of the Act, what was being done administratively was sought to be placed on a statutory basis. On May 28, 1960, the Chintalapudi Panchayat Samithi held its meeting and resolved that the Primary Health Centre should be permanently located at Dharmajigudem; and the said resolution was communicated to the Government. On July 6, 1960, the Government approved the proposal of the Chintalapudi Panchayat Samithi to locate the Primary Health Centre permanently at Dharmajigudem. On January 23, 1961, the Rules framed by the Government in exercise of the powers conferred on it under s. 69 of the Act came into force. On February 22, 1961, on a representation made to the Government that the meeting of the Panchayat Samithi held on May 28, 1960, was irregular on the -round of inadequate notice, the Government decided not to interfere with those proceeding under s. 72 of the Act. On May 12, 1961, the Panchayat Samithi at a special meeting, on the ground that the

meeting held on May 28, 1960, was not held in accordance with r. 4(1) of the Rules for the conduct of business, in exercise of the power given to it under r. 15 thereof, cancelled all the resolutions passed by the meeting of the Samithi on May 28, 1960. On May 29, 1961, the Samithi passed another resolution adopting all the resolutions which it cancelled on May 12, 1961, except the resolution to locate the Primary Health Centre at Dharmajigudem. In regard to the location of the said Centre it resolved to locate it at Lingapalem. On March 71, 1962, the Government made an order holding that there was no valid reason for shifting the Primary Health Centre from Dharmajigudem to Lingapalem and directing the Block Development Officer to take action accordingly. The main reason given for that order was that the Primary Health Centre was already func- tioning at Dharmajigudem and a Health Centre once established should not be shifted to another place within the Block unless the Panchayat Samithi resolved by two- thirds majority of the members present at the meeting as required under r. 7 of the Rules and that the resolution dated May 29, 1961, was not supported by the requisite majority. On April 18, 1963, i.e., about a year after the earlier order, the Government passed another order wherein it held that it passed the previous order dated March 7, 1962, on a mistaken impression that it was a case of shifting the Primary Health Centre from one place where it was permanently located to another, while the correct position was that in the instant case the Primary Health Centre was not permanently located by the Government and, therefore, the resolution passed by the Panchayat Samithi on May 29, 1961, fell within r. 2 of the Rules and not under r. 7 thereof. In that view, it directed that the said Centre should be located permanently in Lingapalem village in accordance with the resolution of the Panchayat Samithi dated May 29, 1961.

A resume of the said facts leads to the following factual position. Before the Act came into force, the Primary Health Centre was inaugurated at Dharmajigudem presumably subject to the condition that the said village would comply with the conditions laid down by the administrative directions, governing the location of a Centre. One of the important conditions was that the village seeking to have the Centre should give 2 acres of land free and 50% cash contribution which would not be less than Rs. 10,000/-. The said amount was not paid by Dharmajigudem village with the result the condition was not complied with. With the consent of the representatives of the village of Dharmaji- gudem, the Block Planning and Development Committee resolved to shift the Primary Health Centre from Dharmajigudem to Lingapalem. The Lingapalem village satisfied the conditions on July 27, 1959. Thereafter, Dharmajigudem village also satisfied the said conditions on July 31, 1959. On August 14, 1959, the said Committee by a resolution decided to locate the Centre at Lingapalem, but the Government directed the matter to be decided by the Panchayat Samithi, as by that time the Act had come into force and the Panchayat Samithi for the Block had been established. Though on May 28, 1960, the Panchayat Samithi at first resolved to have the Centre at Dharmajigudem and though the said resolution was approved by the Government, the said Panchayat Samithi finally by its resolution dated May 29, 1961, cancelled its earlier resolution and resolved to locate the Centre it Lingapalem. On March 7, 1962, under s. 62 of the Act the said resolution of the Panchayat Samithi was set aside by the Government on the ground that it did not get the requisite support of two-thirds majority. But on April 18, 1963, the Government reviewed its previous order, under s. 72 of the Act, on the ground that the said order was made under a mistaken impression that the Primary Health Centre was permanently located at Dharmajigudem and directed the Centre to be located at Lingapalem. It will, therefore, be seen that though the Health Centre was formally inaugurated at Dharmajigudem before the Act came into force, there was not and could not have been a permanent

location of the Centre at that place, as the condition precedent was not compiled with. After the Act came into force, though the Panchayat Samithi at first approved of the location of the Centre at Dharmajigudem, it cancelled the resolution and decided to locate it at Lingapalem. The Government, on a misapprehension of fact, set aside that order, but when it came to know of the mistake it reviewed its earlier order and directed the location of the Centre at Lingapalem. The question is whether on these facts the Government had jurisdiction to make the order which it did in exercise of its powers under s. 72 of the Act.

The appellant, who was the representative of the village of Dhartnajigudem in all the said proceedings, filed an application before the High Court under Art. 226 of the Constitution for quashing the said order of the Government. The said application was, in the first instance, heard by a single Judge of the High Court and he dismissed it. On appeal, a Division Bench of the High Court confirmed it. Hence the appeal.

Mr. Desai, learned counsel for the appellant, raised before us the following points : (1) The order of the Government cancelling the resolution dated May 29, 1961, was made under s. 62 of the Act and, therefore, the said order could not be reviewed under s. 72 thereof. (2) Assuming that the said order dated March 7, 1962, was made under s. 72(1) of the Act, the order dated April 18, 1963, reviewing the said order was invalid inasmuch as the prerequisite for the exercise of the power of review thereunder, namely, the existence of a mistake of fact or law or the ignorance of any material fact, was not satisfied. (3) The order dated April 18, 1963, was also invalid, because it was made without giving an opportunity to the party prejudiced thereby of making a representation against the making of the said order.

Mr. Ram Reddi, learned counsel for the State of Andhra Pra- desh, raised a preliminary objection that the appellant had no personal right in the matter of the location of the Primary Health Center and, therefore, he had no locus stand to file an application under Art. 226 of the Constitution. lie argued that the order of the Government dated March 7, 1962, was not simply a cancella-

lion of a resolution made by the Panchayat Samithi, but a composite order giving directions to the Block Development Officer and, therefore, it fell directly within the scope of s. 72 of the Act; and, as the said order was made under a misapprehension that there was a permanent location of the Health Centre at Dharmajigudem, the Government had jurisdiction to review the same under S. 72(3) of the Act. He would further contend that even if the order dated March 7, 1962, was passed under s. 62 of -the Act, the said order being an administrative one, the Government had jurisdiction to review the same under s. 62 itself when the mistake was discovered or brought to its notice. In addition he raised before us a new point which was not argued either before the single Judge or, on appeal, before the Division Bench. of the High Court. He would say that the impugned order was neither made under s. 62 or under S. 72 of the Act, but it was really passed under the relevant Rules made by the Gov- ernment in exercise of the power conferred on it under s. 69 of the Act, read with sub-s. (2) of s. 18 thereof, where under the ultimate authority under the Act to locate the Health Centre was the Government, though on the recommendation of the Panchayat Samithi. In this view, the argument proceeded, no question of review would arise at all, for the Government passed the final order in regard to the location of the Primary Health Centre at Lingapalem. The learned

Solicitor General, appearing for the 4th respon- dent, supported Mr. Ram Reddi on all the points and further elaborated that aspect of the argument which related to the construction of the order made by the Government on March 7, 1962.

The first question is whether the appellant had locus standi to file a petition in the High Court under Art. 226 of the Constitution. This Court in The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal(1), dealing with the question of locus standi of the appellant in that case to file a petition under Art. 226 of the Constitution in the High Court, observed "Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking (1) [1962] Supp. 3 S.C.R. 1, 6.

a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right..... The right that can be enforced under Art. 226. also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

Has the appellant a right to file the petition out of which the present appeal has arisen ? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs. 10,000/- and deposited he same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Centre at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorized to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Art. 226 of the Constituiton. This Court held in the decision cited supra that "ordinarily" the petitioner who seeks to file an application under Art. 226 of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest : it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Art. 226 of the Constitution at his instance is, therefore, maintainable.

Now, we shall first take the new argument advanced by Mr. Ram Reddy for the first time before us, for, if that was accepted, the appeal would fail. Briefly stated, his contention was that the order of the Government dated April 18, 1963, was not made either under s. 62 or under s. 72 of the Act, but

was made only under the Rules made by the Government in exercise of its power under s. 69 of the Act. To appreciate this contention it will be useful to notice the relevant rules.

Under r. 2, the Panchayat Samithi only recommends to the Government the place for locating the said Centre. Under r. 3 (11), in the case of conflict between the relevant authorities in regard to the location of a Health Centre, the Govemment's order shall be final. Under's. 6, a Primary Health Centre once established shall not ordinarily be shifted to another place except by the Government on the recommendation of the Panchayat Samithi on the basis of a resolution passed by it by two-thirds of the member,, of the Panchayat Samithi present at the meeting. Even in such a case the Government has no power to direct the shifting of a Primary Health Centre established in one place to another, if the contribution from the people had been accepted and is in deposit. It is clear from the said rules that the ultimate authority to locate the Primary Health Centre or to direct its shifting from one place to another is the Government. On the basis of the said rules, learned counsel contended that the High Court missed the real point, presumably on the arguments advanced before it, and pro- ceeded to consider the validity of the impugned order in terms of s. 72 of the Act. The circumstance, the argument proceeded, that the Government in its orders referred neither to s. 62 nor to s. 72 of the Act or did not give any notice to parties as prescribed theretinder clearly indicates that the Government acted only under the said relevant rules. This argument so stated appears at the first blush to be unanswerable. But a scrutiny of the relevant provisions of the Act shows that the said rules are inconsistent with the provisions of the Act and they cannot possibly override the statutory power conferred on the Panchayat Samithi.. Under s. 18 (1) of the Act, subject to the provisions of the Act, the administration of the Block shall vest in the Panchayat Samithi; and under sub-s. (2) thereof the Panchayat Samithi shall exercise the powers and- perform the functions specified in the Schedule. When we refer to the Schedule it will be seen &,at the following entry is found under the heading "Health and Rural Sanitation", "Establishing and maintaining Primary Health Centre and Maternity Centres". It is manifest that under the Act the statutory power to establish and maintain Primary Health Centres is vested in the Panchayat Samithi. There is no provision vesting the said power in the Gov-

ernment. Under s. 69 of the Act, the Government can only make rules for carrying out the purposes of the Act; it cannot, under the guise of the said rules, convert an authority with power to establish a Primary Health Centre into only a recommendatory body. It cannot, by any rule, vest in itself a power which under the Act vests in another body. The rules, therefore, in so far as they transfer the power of the Panchayat Samithi to the Government, being inconsistent with the provisions of the Act, must yield to s. 18 of the Act.

Realizing this difficulty, the learned Solicitor General, who appeared for the 4th respondent, made an attempt to reconcile the relevant rules with the provisions of s. 18 of the Act. He argued -that s. 18 of the Act conferred a power on the Panchayat Samithi to establish and maintain Primary Health Centres, whereas the Rules provided for the location or shifting of the Centres. This argument does not appeal to us. A Primary Health Centre cannot be established in vacuum; it must be established in some place. The Rules deprive the Panchayat Samithi of the power to select a place for establishing a Primary Health Centre and make it a re- commendatory body with final powers in the Government. The Rules also confer a power on the District Medical Officer and the District Health

Officer in the matter of location of the Centre and give the Government the final voice, if there is any conflict between -those officers and the Panchayat Samithi. Even in regard to shifting of the Primary Health Centre, the Government's voice is final under the Rules. It is one thing to say that the exercise of the power by the Panchayat Samithi is regulated by the Rules, but another thing to deprive it of that power in the matter of location of the Primary Health Centre and confer the said power on the Government. We, therefore, hold that the Rules, in so far as they make the Panchayat Samithi a mere recommendatory body, are inconsistent with the Act. This may be the reason why in the High Court the Government did not think fit to sustain the order under the authority of the Rules. The next question is whether the order dated April 18, 1963, can be sustained under s. 72 of the Act. Section 72 of the Act reads :

> Power of revision and review by Government:
>
> (1) The Government may either suo motu or on an application from any person interested, call for and examine the record of a Panchayat Samithi or a Zilia Parishad or of their Standing Committees in respect of any proceeding to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein; and, if, in any case, it appears to the Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass orders accordingly Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.
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> (3) The Government may suo motu at any time or on an application received from any person interested within ninety days of the passing of an order under subsection (1), review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions contained in the proviso to sub-

section (1) and in sub-section (2) shall apply in respect of any proceeding under this sub- section as they apply to a proceeding under subsection (1)."

Sub-section (1) of S. 72 of the Act confers a wide power on the Government to revise any decision or order passed in any proceeding under the Act. Sub-section (3) thereof confers a power on the Government to review the order made under sub- s. (1) thereof if it was passed by the Government under any mistake, whether of fact or of law, or in ignorance of any material fact. To attract sub-s. (3), the order sought to be reviewed should have been made under sub-s. (1). To appreciate the scope of S. 72(1) of the Act, it is necessary to compare the said sub-:section with S. 62 of the Act. Under S. 62(1), the Government may, by order in writing, cancel any resolution passed by a Panchayat Samithi, if in its opinion such resolution is not legally passed or is in excess or abuse of the powers conferred by or under the Act or for any other reasons mentioned therein. Under sub-s. (2) of S. 62, the Government shall, before taking action under sub-s. (1) thereof shall give the Panchayat Samithi or the Zilla Parishad, as the case may be, an opportunity for explanation. Section 72 confers a general power on the Government; and on its terms, if there was no other section, it can

cancel a resolution of a Panchayat Samithi. But, S. 62 of the Act confers a special power on the Government to cancel a resolution passed by a Panchayat Samithi in the cir-

cumstances mentioned therein. The principle generalities specialities non derogant compels us to exclude from the operation of S. 72 the case provided for under s. 62. If so construed, it follows that if the order reviewed fell under the scope of s. 62, it could not be reviewed under s. 72, for s. 72(3) enables the Government only to review an order made under sub-s. (1) -of S. 72. So, the learned counsel for the State as well as for the 4th respondent made a serious effort to bring the order of the Government dated March 7, 1962, within the terms of s. 72(1) of the Act. As the argument turns upon the terms of the said order, it may conveniently be read at this stage :

> Government of Andhra Pradesh Planning and Local Administration Department. MEMORANDUM NO. 1354/Prog.11/61-2 dated 7-3-1962. Sub Community Development Programme-Chintalapudi Block
>
> -Shifting of Primary Health Centre from Dharmajigudeni to Lingapalem--Orders issued.
>
> Ref. 1. Representation of Sri G. Punneswararao and others dated 31-6-1961.
>
> 2. Letter from Collector, West Godavari, No. 01.5642/61 dated 22-9-1961.

The Panchayat Samithi, Chintalapudi, at its meeting held on 25-8-1960 unanimously resolved to locate the Primary Health Centre at Dharmajigudem. Later, the Panchayat Samithi at its meeting held on 29-5-61 resolved to shift the Primary Health Centre permanently to Lingapalem village. The President, Dharmajigudem Panchayat., and others have represented to Government against acceptance of the resolution passed by the Samithi at its meeting held on 29-5-1961. This representation has been carefully examined by the Government in consultation with the Collector, West Godavari.

Under Rule 6 of the Rules for the establishment and maintenance of Primary Health Centres by Panchayat Samithis made under the provisions of the Panchayat Samithis and Zilla Parishads Act, 1959, the Primary Health Centre once established shall not ordinarily be shifted to another place within the Block unless the Samithi resolves by 2/3rd majority of the members present at the meeting as required under rule 7 of the said rules. In the present case the Primary Health Centre was already functioning at Dharmajigudem and the resolution of the Panchayat Samithi dated 29-5-1961 did not get the requisite support of the Samithi Members as required under rule 7. In the above circumstances, the Government consider that there are no valid reasons for shifting the Primary Health Centre from Dharmajigudem to Lingapalem. The Block Development Officer, Chintalapudi, is directed to take action accordingly.

Sd/- B. Pratap Reddi.

Deputy Secretary to Government.

It was said that the said order did not mention the section whereunder it was passed, that it did not cancel any resolution, that it did not in terms approve or disapprove any resolution, that it considered other orders issued and finally gave a direction to the Block Development Officer to take action in accordance with the terms of the order. In short, the argument of the learned counsel was that the order was not for the cancellation of the resolution of the Panchayat Samithi but one made in terms of s. 72 of the Act. We are not impressed by this argument. The preamble to the order clearly mentions that the Panchayat Samithi Chintala- pudi, it its meeting held on May 29, 1961, resolved to shift the Primary Health Centre permanently to Lingapalem village. Then it states that the President of the Dharmajigudem Panchayat and others had represented to the Government against the acceptance of the said resolution. The order then records that the Government had carefully considered the said representation. Then it gives the reason that the said resolution was bad inasmuch as that under r. 6 of the Rules the Primary Health Centre once established should not ordinarily be shifted to another place within the Block, unless the Panchayat Samithi resolves by two-thirds majority of the members of the Samithi present at the meeting as required by r. 7 of the Rules. Then it point-. out that the Primary Health Centre was functioning at Dharmajigudem and, therefore, the resolution, not having the support of the requisite majority, did not comply with r. 7 of the Rules. For the said reasons the order concludes that there were no valid reasons for shifting the Primary Health Centre from Dharmajigudem to Lingapalem. The Gov-

ernment then gives the consequential directions to the Block Development Officer to take action accordingly. An analysis of the order demonstrates beyond any reasonable doubt that it is nothing more than a cancellation of the resolution passed by the Panchayat Samithi on May 29, 1961. The mere fact that the order does not use the expression "cancel" will not make it any the less an order cancelling the resolution. We, therefore, hold that the order of the Government dated March 7, 1962, was one made under s. 62 of the Act and, therefore, it could not be reviewed under s. 72 thereof.

The learned counsel for the State then contended that the order dated April 18, 1963, could itself be sustained under S. 62 of the Act. Reliance is placed upon s. 13 of the Madras General Clauses Act, 1891, whereunder if any power is conferred on the Government, that power may be exercised from time to time as occasion requires. But that section cannot apply to an order made in exercise of a quasi- judicial power. Section 62 of the Act confers a power on the Government to cancel or suspend the resolution of a Panchayat Samithi, in the circumstances mentioned therein, after giving an opportunity for explanation to the Panchayat Samithi. If the Government in exercise of that power cancels or confirms a resolution of the Panchayat Samithi, qua that order it becomes functus officio. Section 62, unlike s. 72, of the Act does not confer a power on the Government to review its orders. Therefore, there are no merits in this contention.

Before we leave s. 62 of the Act, it may be noticed that the order dated March 7, 1962, was passed by the Government without giving notice to the Panchayat Samithi. It was in violation of the mandatory provision of sub-s. (2) of s. 62 which says that the Government shall, before taking action under sub-s. (1), give the Panchayat Samithi an opportunity for explanation. This opportunity was not given and, therefore, that order was not legal.

Now let us assume that the said order was made under sub-s. (1) of s. 72 of the Act. Two objections were raised against the validity of the order reviewing the previous order, namely, (i) there was no mistake of fact or law, and (ii) the said order, which was prejudicial to Dharmajigudem village, was made without giving an opportunity to the representatives of the said village of making a representation. The order gives in extension the history of the dispute between Dharmajigudem and Lingapalem in the matter of location of the Primary Health Centre. It points out that all the earlier resolutions of the Panchayat Samithi were cancelled and Sup .C/66-13 the only outstanding resolution was that of May 29, 1961, whereunder the said Centre was directed to be located permanently at Lingapalem. Then it proceeds to say that the order dated March 7, 1962, was passed on a mistaken impression that it was a case of shifting the Primary Health Centre from one place where it was permanently located to another, while the correct position was that the place where the Primary Health Centre was to be located permanently had not till then been decided by the Government. In that view, in supersession of the order issued by it on March 7, 1962, it directed that the said Centre should be located permanently at Lingapalem as per the resolution of the Panchayat Samithi dated May 29, 1961. No doubt the statement in that order, namely, that the place where the Primary Health Centre was to be located permanently had not so far been decided by the Government, if taken out of context, may appear to be an incorrect statement, for the Government by it-, order dated July 6, 1960, approved the proposal of the Panchayat Samithi, Chintalapudi, to locate the Primary Health Centre permanently at Dharmajigudem. But an analysis of the various orders passed by the Panchayat Samithi and the Government discloses, as we have already indicated, that the Primary Health Centre was never permanently located at Dharmajigudem, that before the Act it was located therein subject to certain conditions which were not fulfilled, that after the Act the Panchayat Samithi, though it passed a resolution on May 28, 1960, approving the location of the said Centre permanently at Dharmajigudem and though it was approved by the Government by its order dated July 6, 1960, cancelled its earlier resolution in accordance with law on May 29, 1961 and voted for locating the Centre at Lingapalem. Therefore, the Government was right when it said in its order that it made a mistake of fact in passing its earlier order on March 7, 1962, on a misapprehension that there was a permanent location of the Centre at Dhar- majigudem.

But there is another flaw in the order of the Government dated April 18, 1963, i.e., it made the order without giving an opportunity to the representatives of Dhartnajigudem who were prejudicially affected by the said order. Learned counsel for the State said that the appellant could not be considered to be a party prejudicially affected by that order. But, as we have stated earlier, the appellant was the President of the Committee which collected the amount, he was representing the village all through and he also deposited the prescribed amount with the Block Development officer. The Government should have, therefore, given notice either to him or to the Committee, which was representing the village all through for the purpose of securing the location of the Primary Health Centre in their village. The order made in derogation of the proviso to sub-s. (1) of s. 72 of the Act is also bad.

The result of the discussion may be stated thus : The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently

at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under s. 72 of the Act to review an order made under s. 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963 ? If the High Court had quashed the said order, it would have restored an illegal order-it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

In the result, the appeal is dismissed, but, in the circumstances of the case, without costs.

Appeal dismissed.