

**IN THE HIGH COURT OF ANDHRA PRADESH**

WEDNESDAY, THE SIXTH DAY OF MARCH  
TWO THOUSAND AND NINETEEN



**PRESENT**

**THE HONOURABLE THE ACTING CHIEF JUSTICE SRI C.PRAVEEN KUMAR**  
**AND**  
**THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**WP(PIL) NO: 231 OF 2013**

**Between:**

1. Samatha (a Registered Non-Profit NGO) Rep. by its Director, Ravi Rebba Pragada, S/o. R.K. Rao, aged 40 years R/ o. 14-37-9, Krishna Nagar, Maharanieta, Visakhapatnam
2. Dr. E.A.S Sarma,, S/o. E.Lakshmi Narayana Aged 70 years, R/o. 14-40-4/1, Gokhale Road Maharanieta, Visakhapatnam.

**... PETITIONERS**

**AND**

1. Union of India, rep. by its Secretary, Ministry of Environment & Forest, Paryavaran, CGO complex Lodi Road, New Delhi.
2. Union of India, rep. by its Secretary, Tribal Welfare Department New Delhi.
3. Cabinet Secretary, Union of India , Kendriya Sadan New Delhi

**... RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of WRIT OF MANDAMUS declaring the action of the Respondent No.1 in reducing the role of gram sabha and in issuing proceedings F. NO. 11-9 / 98-FC(PT) dated 05-02-2013 in precluding the Gram sabha from decision making process when certain projects are initiated in the forest tribal scheduled areas is illegal and unconstitutional and consequently set aside the proceedings dated 05-02-2013 issued by the first respondent after declaring that the Gram Sabhas in forest, Tribal and scheduled areas shall continue to be consulted and their consent be taken as contemplated under the Schedule Tribes and other Traditional Forest Dwellers Recognition of Forest Rights Act 2006 and the Panchayats (Expansion to the scheduled areas) Act 1996

**I.A. NO: 1 OF 2013(WPPILMP. NO: 363 OF 2013)**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the proceedings F.No.11-9/98-FC(PT) dated 05-02-2013 pending disposal of the Writ Petition

**Counsel for the Petitioner:SRI. K. S. MURTHY**

**Counsel for the Respondents: SRI. A. VENKATESWARA RAO, ASST. SOLICITOR GENERAL**

**The Court made the following: ORDER**

**THE HON'BLE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR**

**AND**

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**PUBLIC INTEREST LITIGATION NO.231 OF 2013**

**ORDER:** *(Per the Hon'ble Sri Justice M. Satyanarayana Murthy)*

This writ petition under Article 226 of the Constitution of India is filed by the petitioners – Samatha (a registered non-profit NGO) and Dr. E.A.S. Sarma, challenging the proceedings F.No.11-9/98-FC(pt) dated 05.02.2013 in precluding the Gram Sabha from decision making process when certain projects are initiated in the forest tribal scheduled areas as illegal and unconstitutional.

It is the case of the petitioners that, proceedings F.No.11-9/98-FC(pt) dated 05.02.2013 were issued taking away the requirement to consult Gram Sabha in the scheduled areas for construction and other works where forest land is involved.

According to the petitioners, in terms of Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (for short, the 'PESA Act'), the Grama Sabha has to be consulted and for approval of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level. The Grama Sabha is responsible for identification or selection of persons as beneficiaries under the poverty alleviation and other programmes. But, the proceedings are contrary to the provisions of PESA Act, more particularly, Section 4(e) and therefore, the proceedings are liable to be struck down.

The respondent filed counter narrating several facts. But, finally admitted in the counter filed by Central Government at paragraph No.21 as follows:

"Notwithstanding the MoEF guidelines dated 5<sup>th</sup> February, 2013, authorities responsible for implementation of PESA Act in the State and Central Government are required to ensure consultation with the Gram Sabha or the Panchayats at the appropriate level, as required under the PESA Act, even in case of projects like construction of roads, canals, laying of pipelines, optical fibres and transmission lines etc., in scheduled areas where linear diversion of use of forest land in several villages is involved."

Similarly, respondent No.2 filed counter raising same contentions, admitting the requirement of process of consultation with Grama Sabha while approving certain projects, at paragraph 49. The relevant portion is extracted hereunder:

"The Circular dated 5.2.2013 of Respondent No.1, insofar as it provides for differentiated procedure for 'linear projects' would appear to be contrary to the Forest Rights Act, the Forest Rights Rules, and constitutional provisions. Insofar as the aforesaid Circular dated 05.02.213 issued by Respondent No.1 is sought to be implemented in Scheduled Areas governed by Article 244 and the Fifth Schedule of the Constitution and PESA, there is an enhanced probability that such circulars would fall foul of such special dispensation, in addition to being contrary to the Forest Rights Act."

In view of these admissions made in the counter, filed by both parties, issue to be decided is whether the proceedings in F.No.11-9/98-FC(pt) dated 05.02.2013 are in consonance with Section 4(e) of PESA Act.

Section 4(e) of PESA Act deals with powers of Gram Sabha for approval of plans and projects and selection of beneficiaries. According to Section 4, notwithstanding anything contained under

Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-

(e) every Gram Sabha shall-

- i. approve of the plans, programmes and projects for social and economic development before such plans, programmes and projects are taken up for implementation by the Panchayat at the village level;
- ii. be responsible for the identification or selection of persons as beneficiaries under the poverty alleviation and other programmes;

When Section 4 of PESA Act prohibits State from passing any legislation, inconsistent with the special features of schedule tribes, enumerated in Section 4 (a) to (o), the proceedings issued by the Central Government in F.No.11-9/1998-FC(pt) dated 03.08.2009 is contrary to Section 4(e) of PESA Act, since the consultation with Gram Sabha is dispensed with. But, added few words to the exceptions which says that "where it affects the culture, etc". This exception is not available under Section 4 of PESA Act.

Even assuming for a moment that the circular was issued subject to affecting cultural rights, etc, referred in these proceedings, but, that was not the purport of Section 4 which totally prohibits passing any registration either by State or Central Government, inconsistent with Clauses (a) to (o) of Section 4 of PESA Act.

On the other hand, respondents 1 and 2 in their counters categorically admitted that the proceedings are contrary to provisions of PESA Act and therefore, no further adjudication is required, in view of their clear admissions.

In any view of the matter, a bare reading of Section 4 of PESA Act, it is clear that the proceedings issued are inconsistent with the features enumerated in Clauses (a) to (o) of Section 4 of PESA Act and such proceedings are liable to be set-aside.

In the result, the writ petition (public interest litigation) is allowed, quashing proceedings in F.No.11-9/98-FC(pt) dated 05.02.2013 passed by the first respondent.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

**Sd/- I. NAGALAKSHMI**  
**ASSISTANT REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

**To,**

1. The Secretary, Ministry of Environment & Forest, Union of India, Paryavaran, CGO complex Lodi Road, New Delhi.
2. The Secretary, Tribal Welfare Department, Union of India, New Delhi.
3. The Cabinet Secretary, Union of India, Kendriya Sadan New Delhi
4. One CC to Sri. K.S. Murthy, Advocate (OPUC)
5. One CC to Sri. A. Venkateswara Rao, Asst. Solicitor General Advocate (OPUC)
6. Two CD Copies.

**PM**

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