

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.8031 OF 2015

ORDER:

This writ petition is filed seeking *Writ of Mandamus* declaring the action of the 5th respondent in passing the resolution dated 16.03.2015 appointing the 6th respondent as temporary Sarpanch as illegal, arbitrary and contrary to the provisions of the Panchayat Raj Act, and Rules and for a consequential direction to set aside the same.

The case of the petitioner is that he is the resident of Shivampet Gram Panchayat and also the member of Gram Panchayat. While so, due to sudden death of elected Sarpanch and also the Ward Member, the posts felt vacant and the respondent authorities are under obligation to fill the vacancies within 100 days from the day of casual vacancy, but till today, no steps were taken to fill the vacancies. Instead, the respondent No.5 with other ward members of Gram Panchayat passed a resolution dated 16.03.2015 appointing the 6th respondent as temporary Sarpanch which is in violation of the procedure prescribed under Section 26(3) of Panchayat Raj Act, 1994. Challenging the impugned resolution dated 16.03.2015, the present writ petition is filed.

Learned counsel for the petitioner submits that there can be appointment of temporary Sarpanch by the Commissioner by exercising power under Section 26(3) of the Act and no resolution can be passed for such purpose. He also submits that the resolution passed on 16.03.2015 is not in accordance with Section 26(3) of the Act.

On the other hand, Sri P.Raghavender Reddy, learned Standing counsel for respondents 4 and 5 produced written instructions stating that the 3rd respondent has addressed a letter dated 26.02.2015 to the 4th respondent directing him to conduct meeting for purpose of proposing the name of the person, who is to be appointed as temporary Sarpanch. In pursuance to the same, meeting was held on 15.03.2015 and the proposal made in the meeting

was sent to the 3rd respondent who in turn addressed a letter to District Collector and the District Collector in turn would address the same to the Commissioner for appointment of temporary Sarpanch. In view of the same, meeting is held only to propose the name of the candidate to be appointed as temporary Sarpanch.

Section 26(3) of the Act reads as follows:

“When a Sarpanch is under suspension or when the office of Sarpanch is vacant or the Sarpanch has been continuously absent from jurisdiction for more than 15 days or is restrained by an order of a Court from exercising the powers and performing the functions of the Sarpanch or is incapacitated for more than fifteen days and the Upa-Sarpanch also is under suspension or there is either a vacancy in the office of Upa-Sarpanch or the Upa-Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Upa-Sarpanch or is incapacitated for more than fifteen days, the powers and functions of the Sarpanch shall devolve on a member of gram panchayat appointed by the Commissioner in this behalf.

The member so appointed shall be styled as the temporary Sarpanch and he shall exercise the powers and perform the functions of the Sarpanch until a new Sarpanch or Upa-Sarpanch is declared elected or either the Sarpanch or the Upa-Sarpanch ceases to be under suspension or returns to jurisdiction or ceases to be restrained by an order of a Court or recovers from his incapacity, as the case may be.”

Admittedly, the Commissioner has the power to appoint temporary Sarpanch and in this case it is stated that no appointment is made in pursuance to the resolution passed by the Gram Panchayat. It is also stated that the proposal will be sent to the Commissioner for taking action as per Section 26(3) of the Act. In view of the same, since no temporary Sarpanch is appointed as on today, it is for the competent authority to take steps under Section 26(3) of the Act for appointment of temporary Sarpanch.

With the above direction, the writ petition is disposed of. No costs. As a sequel, miscellaneous petitions, pending, if any shall stand closed.

A.RAJASHEKER REDDY, J

31.03.2015

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