

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION NO. WRIT PETITION Nos. 2834 and 3902 of 2015

Between :

Puramsetti Satya Ramesh S/o Manga Rao
Upa Sarpanch of Tirumalayapalem
Gram Panchayat, Gopavaram mandal,
East Godavari district ... Petitioner

Vs.

The State of AP
Rep by its Principal Secretary,
P R Department, Secretariat, Hyderabad and others
.... Respondents

JUDGMENT PRONOUNCED ON : 14.9.2015

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THE HON’BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : yes
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : yes
See fair Copy of the Judgment ? :

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*** HON'BLE SRI JUSTICE P.NAVEEN RAO**

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.... Respondents

!Counsel for the petitioner: Sri C Ramachandra Raju

Counsel for the Respondents 1 & 2: G.P. for Panchayat Raj (Andhra)

Counsel for Respondent No.3 : Sri T.V.Jaggi Reddy

<Gist :

>Head Note:

? Cases referred:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 2834 and 3902 of 2015

COMMON ORDER:

Petitioner in W.P. No 2834 of 2015 is Upa-Sarpanch of Tirumalayapalem Gram Panchayat and petitioners in W.P. No. 3902 of 2015 are residents of the Tirumalayapalem village. In both writ petitions, petitioners challenge the orders of the District Panchayat Officer, Kakinada East Godavari district

dated: nil-10.2014 signed on 4.2.2015 reviewing his earlier order and restoring the power to withdraw the monies through bankers cheques by the Sarpanch-3rd respondent.

2. Heard Sri C.Ramachandra Raju, learned counsel for petitioner, learned Government Pleader for Panchayat Raj (Andhra) for respondents 1 and 2 and Sri T V Jaggi Reddy for third respondent.

3. Sri C Ramachandra Raju, learned counsel for petitioners contended that based on the complaint given by Upasarpanch and villagers alleging misuse of funds of the Gram Panchayat and misappropriation, show cause notice was issued to 3rd respondent calling upon him to submit explanation on the allegations why action should not be initiated against him. Since, 3rd respondent did not respond to the show cause notice, having given sufficient time, District Panchayat Officer, has passed orders on 30.9.2014 withdrawing the cheque power vested in Sarpanch. On the same day, he issued another show cause notice calling upon the Sarpanch to show cause as to why he should not be suspended on account of alleged misappropriation of the funds. 3rd respondent filed his explanation to the said show cause notice. On consideration of the said explanation, orders are

passed and signed on 4.2.2015 reviewing the earlier order of suspension of cheque power dated 30.9.2014.

4. Learned counsel submits that the order signed on 4.2.2015 is ex-facie illegal and same is without power and jurisdiction. According to learned counsel, as per Rule 42 of the Rules notified by G.O.Ms No. 30 (PR & RD) dated 20.5.1995, the District Panchayat Officer has got power to suspend cheque drawing power of the Sarpanch, pending enquiry and by way of final order. The order dated 30.9.2014 is a final order passed by him and once he passed final order, he become functus officio and has no power to withdraw or review the said order. Aggrieved Sarpanch has remedy by way of appeal under Rule 42 (2) of the Rules to the District Collector. Whereas in the instant case, no such appeal was preferred. Learned counsel further contends that as evident from the averments made in para 10 of the counter filed by second respondent, second respondent has passed orders at the instance of higher authorities and it would also disclose total non-application of mind and absence of independent application of mind.

5. Learned Government Pleader submits that since allegations against Sarpanch were not proved the cheque drawing power was restored vide impugned proceedings dated 4.2.2015 with counter signature of Mandal Parishad Development Officer. He further states that against the impugned order, an appeal lies before the District Collector and without availing the alternative remedy, the present writ petition is filed, which is not maintainable.

6. Learned counsel for third respondent contends that Sarpanch was wrongly implicated and having realized his earlier mistake the cheque drawing power is restored. There is no illegality or irregularity in the said orders.

In view of the order impugned, 3rd respondent did not prefer appeal to the District Collector against withdrawal of cheque drawing power.

7. Having regard to the mandate of Rules notified vide G O Ms No.30 dated 20.5.1995, it is a fact that 3rd respondent did not file any explanation to the show cause notice first issued, and therefore based on available record final order was passed on 30.9.2014.

8. The issue for consideration in these writ petitions is that once an order is passed by the District Panchayat Officer under Rule 42, whether District Panchayat Officer can review his own decision or pass further orders in supercession of the earlier orders passed by him.

9. Plain reading of Rule 42 would show that power to suspend cheque power is vested in District Panchayat Officer at the interlocutory stage, pending enquiry and on culmination of enquiry. Once final order is passed by him, right of appeal is provided under Sub Rule 2 of Rule 42 to the District Collector. Thus, scheme of Rules would show that rules do not envisage power of review in District Panchayat Officer. He becomes functus officio once final order is passed under Rule 42 of the Rules. He cannot over reach the statutory mandate and assume power which is not vested in him. He has to exercise his power within the four corners of statutory provision which vests in him such power.

10. The order impugned in the writ petition would goes to show that the District Panchayat Officer while considering the explanation submitted by 3rd respondent to the show cause notice issued on 30.09.2014 on the issue as to why he should not be suspended from his duties as Sarpanch, went beyond the scope of the show cause notice and passed orders restoring the cheque drawing power on the Sarpanch. This amounts to reviewing his earlier order withdrawing cheque power of Sarpanch dated 30.9.2014. From the reading of the provision in Rule 42, course of action adopted by the District Panchayat Officer is ex-facie illegal. As Rules do not vest any power of review, the question of reviewing the earlier decision and restoring cheque power is wholly illegal, without power and competency.

11. Further reading of para 10 of the counter filed by him also shows total non application of mind and absence of independent application of mind when such a decision was taken. When statutory authority exercises powers vested in him by Act or Rules, he has to independently exercise his power; and apply his mind based on the facts on record. He cannot be influenced by the directions of the higher authorities. Thus, on that ground also the order impugned is not sustainable.

12. For the aforesaid reasons, the impugned order is set aside and writ petitions are allowed. However, it is open for the 3rd respondent to work out remedies available to him under the law. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 14.9.2015
TVK

NOTE: L R COPY TO BE MARKED-- YES

HON'BLE SRI JUSTICE P.NAVEEN RAO

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