

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.41078 OF 2014

ORDER :

The writ petition is filed for a *Mandamus* declaring the action of the 3rd respondent in issuing the proceedings dated 07.11.2014, whereby the cheque power of the petitioner was restricted, as illegal and arbitrary and consequently direct the 4th respondent to restore the cheque power of the petitioner without any conditions.

The case of the petitioner is that she was elected as a 'Sarpanch' on 31.07.2014 to Devapudi Gram Panchayat of Mudinepalli Mandal of Krishna District and that the District Panchayat Officer-3rd respondent, issued proceedings dated 7.11.2014, under Rule 42(1) of the A.P.Panchayat Raj Act, 1994 (for short '*the Act*'), imposing condition on the cheque power exercised by the petitioner, at the instance of political rivalries and also basing on certain allegations. By the said impugned proceedings the petitioner was also asked to submit explanation within a period of ten days. It is stated that the Gram Panchayat in its meeting held on 17.11.2014, discussed about the impugned proceedings and passed a resolution stating that 'Sarpanch' was not responsible for the alleged irregularities but Panchayat Secretary is only responsible. The said resolution was also forwarded to the 3rd respondent. But, till date, no final orders are passed. The impugned order restricting the cheque power of the petitioner is still continuing. Aggrieved by the same the petitioner filed an appeal before the 3rd respondent, but no orders are passed, so far.

Learned counsel for the petitioner submits that the petitioner is not responsible for the alleged irregularities mentioned in the impugned order dated 07.11.2014, and that it is the Panchayat Secretaries who are responsible for the irregularities. He also referred item No.4 of the statement annexed to the impugned proceedings, which shows the details of mis-appropriation of funds, wherein it is stated that for all the four items shown in the statement the Panchayat Secretaries are responsible. Learned counsel for the petitioner states that the impugned order does not specify the amount misappropriated by the petitioner for which petitioner's cheque power is restricted.

On the other hand learned Government Pleader for Panchayat Raj submits that appeal lies to the District Collector against the impugned order and that the impugned order is only a show cause notice.

Sri Ravi Cheemalapati, learned Standing Counsel takes notice on behalf of respondents 4 and 5.

A perusal of the impugned proceedings dated 07.11.2014 show that the 3rd respondent-District Panchayat Officer exercised his power under Proviso (2) of Rule 42(1) of A.P.Panchayat Raj Act, 1994 and issued show cause notice. The petitioner should have filed explanation to the same stating all the facts, instead, he sent the Gram Panchayat Resolution dated 17.11.2014 to the 3rd respondent.

As per Rule 42(2) of the Act, appeal lies only against the final orders passed under Rule 42(1), but not against the interim order passed under proviso-2 of Rule 42(1) of the Act.

The 3rd respondent should have passed final orders under Rule 42(1) of the Act, by taking into consideration the resolution of the Gram Panchayat or should have asked the petitioner to file further explanation, if any. Instead, the 3rd respondent kept the matter pending for more than two months. Since the allegations regarding the irregularities are mentioned in the impugned notice and since the 3rd respondent is entitled to invoke proviso-2 of Rule 42(1) of the Act, it cannot be said that the 3rd respondent has no jurisdiction. However, the interim arrangement made pending final decision cannot continue for long time and it cannot curtail the powers of the elected representatives for a long period since the same hampers development works as well as violates the mandate under the Constitution of India.

In view of the same, it is open for the petitioner to file explanation to the impugned proceedings, raising all the contentions within a period of six weeks from today and the 3rd respondent is directed to pass final orders within a period of one week there after. If the 3rd respondent does not pass any final orders within a period of one week from the date of filing explanation by the petitioner, the 3rd respondent shall permit the petitioner to exercise cheque power without any conditions, until he passes final orders under Rule 42(1) of the Act.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

28.01.2015

t k.