

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

CASE NO.WRIT PETITION No.28711 of 2014

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Between:

Rokkam Surya Prakash Rao,
S/o. Bhaskar Rao,
Aged 53 years, Occ: Sarpanch,
Kurudu Gram Panchayat,
Kotabommali Mandal,
Srikakulam District.

.. Petitioner

AND

The State of A.P.,
Rep. by its Secretary,
Panchayat Raj Department,
Secretariat Buildings, Hyderabad & 6 others

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 23.07.2015

SUBMITTED FOR APPROVAL:

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? | Yes/No |
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- 2 Whether the copies of judgment may be marked to Law Reports/Journals Yes/No
- 3 Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

The petitioner is an elected Sarpanch of Kurudu Gram Panchayat of Kotabommali Mandal, Srikakulam District. Alleging that in violation of the Government instructions, the petitioner is indulging in misusing of the funds, proceedings were initiated under Rule 40(2) of Rules relating to Taxes other than those specified under Section 71 of the Panchayat Raj Act, 1994 (for short, 'the Act') notified vide G.O.Ms.No.30, Panchayat Raj, Rural Development and Relief, dated 20.01.1995. Pending enquiry, in exercise of the power vested in II Proviso to Rule 42(1) of G.O.Ms.No.30, Panchayat Raj, Rural Development and Relief, dated 20.01.1995, the power to withdraw the money is suspended. Aggrieved thereby, this writ petition is filed.

2. Though the order of suspension of withdrawal power was passed on 11.09.2014, according to the learned counsel for the petitioner, so far, there is no progress in the enquiry and so far, no notice is issued to the petitioner and

the situation remains as it was on 11.09.2014.

3. Counter affidavit was filed as early as in December, 2014. The counter affidavit is silent on the further action initiated in pursuant to the proceedings, dated 11.09.2014. Earlier, the matter was adjourned to enable the learned Government Pleader to obtain instructions. The learned Government Pleader states that so far, no instructions are furnished.

4. Against order of suspension of cheque power, right of appeal is provided in Sub-rule 2 of Rule 41(2) G.O.Ms.No.30, Panchayat Raj, Rural Development and Relief, dated 20.01.1995, and without availing the same, this writ petition is filed. Ordinarily, the writ Court does not entertain the writ petition, if petitioner has an effective and efficacious remedy in the form of appeal created by statute, but having regard to the fact that even though an order of suspending power to withdraw Gram Panchayat funds was passed on 11.09.2014, there is no progress in conducting of enquiry as required. In the facts of this case, this Court is not inclined to relegate petitioner to prefer appeal at this stage. It is seen that even if enquiry is conducted and final orders are passed, the cheque power can be withdrawn for a specified period. Therefore, in the guise of pending enquiry, if an order is passed withdrawing the cheque power, such withdrawal cannot be for unspecified period and for no justifiable reason, the said enquiry can be kept pending for such a long time. The very action defeats the object of the Panchayat Raj Act, 1994, and the various provisions of the Panchayat Raj Act, 1994, dealing with powers and responsibilities exercisable by various authorities. Thus, there is no justification to keep the power to withdraw the funds of Gram Panchayat by Sarpanch for such a long time.

5. Having regard to the same, the impugned order, dated 11.09.2014, is set aside. However, the respondents shall take immediate necessary action to conclude the enquiry as proposed and finalize the issue after affording due opportunity to the petitioner.

6. The Writ Petition is allowed accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 23rd July, 2015

Note: Issue C.C. by one (1) week.

(B/o.)

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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Date: 23rd July, 2015

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