

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

WRIT PETITION NO.33606 of 2014

Between :

Smt K.Ammulamma w/o. K.Rama Raju, Age 32 years,
Occu: Sarplanch, r/o. Yelamanchili village and post,
Kotabommali Mandal, Srikakulam District

.... Petitioner

And

The Government of Andhra Pradesh, rep.by its
Principal Secretary, Panchayat Raj Department,
Secretariat, Hyderabad and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 20.08.2015

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SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers may : No
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes
To Law Reporters/Journals :
3. Whether Their Lordship wish to see the fair : No
Copy of the Judgment ? :

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.33606 of 2014

ORDER :

The petitioner is elected as Sarpanch of Yelamanchili Gram Panchayat. Alleging that she was involved in financial irregularities, the cheque drawing power of the petitioner was withdrawn temporarily by the District Panchayat Officer vide his order dated 20.08.2014. Aggrieved by the order of suspension of cheque withdrawing power, the petitioner preferred appeal to the District Collector. However, the District Collector, without considering the appeal on merits, simply remitted the matter to the District Panchayat Officer vide proceedings dated 15-09-2014 asking the District Panchayat Officer to look into the grievance and to take appropriate decision. Aggrieved thereby this writ petition is filed.

2. Heard learned counsel for petitioner Sri M.Viswanadham, learned Government Pleader for Panchayat Raj (AP).

3. Based on a complaint made to the Minister for Labour and Employment alleging grave illegalities against the petitioner by former Sarpanch of Gram Panchayat, District Panchayat Officer was directed to look into the issue of financial irregularities in Yelamanchili Gram Panchayat. The District Panchayat Officer in turn directed the Divisional Panchayat Officer to enquire into the matter and submit a report. The Divisional Panchayat Officer conducted enquiry in the presence of Sarpanch, Ward members, Panchayat Secretary and others and submitted his report. The Divisional Panchayat Officer, *prima facie*, found misuse of funds of Gram Panchayat. Based on the said report of the Divisional Panchayat Officer, the District Panchayat

Officer passed orders of withdrawing cheque power vested in Sarpanch of the village vide the orders impugned herein.

4. In Prajavani dated 25.08.2014, petitioner requested to enquire into the issue of withdrawing of cheque power of the petitioner. Accordingly, the District Panchayat Officer directed the Divisional Panchayat Officer to re-verify the matter and submit a report. Accordingly, the Divisional Panchayat Officer re-verified the records and submitted report reiterating his earlier view. In the mean time, petitioner appealed to the District Collector against withdrawal of cheque power and requested for restoration of cheque power. The District Collector by his letter dated 15.09.2014 directed the District Panchayat Officer to inform the petitioner the action taken thereon.

There is no further progress in the matter after the letter of the District Collector dated 15.09.2014.

5. In exercise of power vested in the District Panchayat Officer under second proviso to Rule 42(1) of the Rules Relating to Certain Taxes & Lodging of Moneys Received By The Gram Panchayat and Payment of Money From the Gram Panchayat Fund notified vide G.O.Ms.No.30 Panchayat Raj, Rural Development and Relief, dated 20.1.1995, (for short referred to as the Rules) the order of withdrawal of cheque power is resorted to. The order is silent as to how long such withdrawal would operate and further course of action required to be taken against the petitioner. No final orders are passed in accordance with Rule 42(1) of the Rules. In other words, Sarpanch is denied of power to withdraw funds of Gram Panchayat for one year.

6. Gram Panchayat is an important organ of the democratic institutional structure established in the country. It is granted financial autonomy within the frame work of the Constitution of India and the Panchayat Raj Act. Sarpanch of the Gram Panchayat is the head of that institution. He is required to discharge his duties and

responsibilities within the well codified rules and regulations and the Panchayat Raj Act. Supervisory role is assigned to District Panchayat Officer/District Collector to ensure that Panchayat Raj institutions in the District do not over step and indulge in illegal activities defeating the very object of establishing such institutions.

7. The State Government launches various schemes for over all development of living standards of all sections of the society. It provides funds to implement the schemes. At the grass root level, Gram Panchayat plays significant role in utilizing the funds and in implementing the schemes. Sarpanch of the Gram Panchayat is vested with power to supervise utilization of funds provided. He is also granted power to withdraw the funds of Gram Panchayat and utilize them. How to withdraw and utilize those funds is well codified. In the scheme of Panchayat Raj system taking away this power from Sarpanch is an extraordinary power vested in the District Panchayat Officer. It cripples the functioning of Sarpanch drastically. Thus, under the scheme of Panchayat Raj system taking away such power has to be resorted to in exceptional circumstances. However, litigation generated in this Court would show such power is resorted to as a matter of course and more as political expedition. The case on hand is classic example.

8. Three essential requirements to pass final orders under Rule 42 (1) of the Rules are, (1) The District Panchayat Officer must be satisfied with the necessity to withdraw cheque power of Sarpanch. He should record reasons in support of such decision; (2) Must afford due opportunity to the Sarpanch on the allegations; and (3) Must specify the period during which such power can be withdrawn.

9. A reading of Rule 42 of the Rules makes it clear that the rule making authority is conscious of consequences of exercise of such power, on the Gram Panchayat. Thus, sufficient safeguards are

provided. The safeguards provided in Rule 42, act as check on District panchayat Officer to ensure, he does not transgress his powers and cripple functioning of Gram Panchayat. Even after following due process, withdrawal of cheque power is for a limited period. Scheme of the Rule also shows that it is intended to be exercised when minor irregularities are noticed on the functioning of Sarpanch. If Sarpanch commits grave illegalities, the Act and the Rules empower competent authority to remove him from the post. It is thus clear that exercise of power to cripple the functioning of Sarpanch has to be in exceptional circumstances and is for a limited period. When main provision of Rule 42 only enables to withdraw money drawing power of Sarpanch for a limited period, it is necessary and expedient to infer that exercise of power to order to withdraw money withdrawing authority of Sarpanch pending passing final orders shall be for a very short period and that final decision has to be taken expeditiously and within a specified time. In the instant case, no final decision is taken so far. It appears petitioner is not put on notice. No justification is shown as to why the issue is kept pending so far.

10. The impugned action defeats the very object of giving autonomy to the Panchayat Raj institution. The Gram Panchayat is a democratic institution at the grass root level and Sarpanch shall have the functional autonomy in discharging the responsibility as Sarpanch. Unless Sarpanch is unseated from the post, he is entitled to exercise all his powers that enjoyed on him by the Act. Utilization of funds of Gram Panchayat for various development activities is essential and important component of the discharge of duties by the Sarpanch. Thus, when Sarpanch is denuded of such power, it has to be for valid reasons and as envisaged in Rule 42 for a specified period only.

11. The District Collector is vested power to entertain appeal against withdrawal of cheque power. In the instant case, the District Collector

abdicated his power and remitted the matter for passing further orders by the District Panchayat Officer, against whose decision of withdrawal of cheque power, appeal was preferred by the petitioner. As a statutory appellate authority, it is mandatory for him to consider the grievance and take a decision on his own and cannot pass on to take such decision to the very same authority.

12. The material on record and the manner in which the issue is handled by the authorities give impression that deliberately petitioner is harassed and humiliated based on the complaint given by former Sarpanch.

13. For all the above stated reasons, the order impugned is not sustainable and is accordingly set aside. However, it is made clear that setting aside of this order does not come in the way of taking further action as warranted by law against petitioner on the alleged illegalities committed by him.

14. Accordingly, the writ petition is allowed. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 20.08.2015
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HONOURABLE SRI JUSTICE P.NAVEEN RAO

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