HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.31956 of 2016

ORDER:

This writ petition is filed seeking a writ of Mandamus challenging the orders in Roc.No.A52580/E-171918/16, dated 09.09.2016 passed by the third respondent, wherein and whereby the cheque drawing power of the petitioner, as Sarpanch of Gangolu Gram Panchayat, was withdrawn without specifying the period.

2. Heard Sri K.Rathangapani Reddy, learned counsel for the petitioner and learned Assistant Government Pleader for Panchayat Raj and Rural Development (Andhra Pradesh) appearing for the respondents.

3. A perusal of the record reveals that the petitioner was elected as Sarpanch of Gangolu Village of Gopalapuram Mandal, West Godavari District, in the year 2013. A perusal of the record further reveals that on 10.08.2016 the third respondent issued a show-cause notice calling for the explanation from the petitioner making certain allegations against her as to misappropriation of Gram Panchayat funds. On 27.08.2016 the petitioner submitted a detailed explanation. Being not satisfied with the explanation submitted by the petitioner, the third respondent passed the impugned order on 09.09.2016 by suspending the cheque power of the petitioner indefinitely.

4. The predominant contention of the learned counsel for the petitioner is that the third respondent has no right whatsoever to suspend the cheque power of the petitioner indefinitely in view of

Rule 42(1) of the Rules relating to Certain Taxes and the Lodging of Moneys received by the Gram Panchayat and Payment of Moneys from the Gram Panchayat Fund promulgated in G.O.Ms.No.30, Panchayat Raj, Rural Development and Relief (PTS.III) Department, dated 20.01.1995 (hereafter referred to as, the Rules). He further submitted that the third respondent passed the impugned order without considering the explanation of the petitioner objectively.

5. *Per Contra*, the learned Assistant Government Pleader strenuously submitted that the petitioner without exhausting the statutory remedy provided under G.O.Ms.No.30, dated 20.01.1995, straightaway filed the present writ petition and therefore the writ petition is not maintainable. She further submitted that the third respondent has considered the explanation submitted by the petitioner and passed the impugned order.

6. As contended by the learned Assistant Government Pleader, the writ petition may not be maintainable if the impugned order has been passed in accordance with law. The crucial question that arises for consideration is whether the third respondent has passed the impugned order in accordance with law or not. To substantiate the arguments, learned counsel for the petitioner has drawn the attention of this Court to Rule 42 of the Rules. In order to appreciate the rival contentions, it is apposite to extract Rule 42(1) hereunder:

> "The District Panchayat Officer concerned may, for sufficient reasons to be recorded in writing prohibit by an order any Sarpanch from drawing the moneys of the Gram Panchayat for such period as may be specified in such order."

7. This Court is very much conscious that while exercising jurisdiction under Article 226 of the Constitution of India, this Court shall not lightly interfere with the order of suspension passed by a competent authority discharging quasi judicial functions unless it is contrary to the law or ex-facie illegal.

8. Sub-rule (1) of Rule 42 consists of two parts. The first one is – the District Panchayat Officer is empowered to suspend the cheque power of the Sarpanch of the Gram Panchyat by mentioning sufficient reasons for the same; the second one is - the District Panchayat Officer has to indicate specific period of suspension.

9. A perusal of the above Rule clearly demonstrates that the District Panchayat Officer is not empowered to suspend the cheque power of the petitioner indefinitely. It gives a caution to the District Panchayat Officer to satisfy himself that there are sufficient grounds to suspend the cheque power of the democratically elected Sarpanch of the Gram Panchayat and that he shall specify the period of suspension. If the District Panchayat Officer passes an order by suspending the cheque power of the Sarpanch without following the above two ingredients, such an order is not sustainable under law. As rightly pointed out by the learned counsel for the petitioner, the third respondent has not assigned reasons much less cogent and valid reasons while passing the impugned order dated 09.09.2016. Besides the same, passing of such an order is contrary to the letter and spirit of Sub-rule (1) of Rule 42. The learned counsel for the petitioner also drawn my attention to the decision of this Court in ***Somagani***

Venkata Subbamma v. District Panchayat Officer, Krishna District[1] wherein it was held at para 9 as follows:

> 'In this case, the petitioner herein was prohibited from drawing the Gram Panchayat funds permanently and completely, which is not contemplated under Rule 42(1) of the Rules. For this reason, the writ petition has to be allowed.'

The facts of the case on hand are almost identical to the facts of the case cited supra.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, the impugned order dated 09.09.2016 passed by the third respondent is not in accordance with law and therefore, it is liable to be set aside. In view of the fact that the impugned order is not sustainable in law, the contention of learned Assistant Government Pleader that the petitioner, without exhausting the statutory remedy, straightaway filed the writ petition, cannot be countenanced.

11. Accordingly, the Writ Petition is allowed, at admission stage, by setting aside the order in Roc.No.A52580/E-171918/16, dated 09.09.2016 passed by the third respondent. However, setting aside of the impugned order does not preclude the third respondent to pass appropriate orders in accordance with law by fixing the time of suspension. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21.09.2016
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[1] 2006 (4) ALD 1