

• THE HON'BLE SRI JUSTICE A.V.SESHA SAI

± WRIT PETITION No.35709 OF 2014

% 29th December, 2016.

WRIT PETITION No.35709 OF 2014

Golkonda Ramulu, S/o.Narsaiah,
Age 45 years, Occ: Surpunch,
Ameerpet Village,
Maheshwaram Mandal,
Ranga Reddy District.

.. PETITIONER

VS.

\$ Tonta Ramulu, S/o. Salaiah,
Age: 50 years, Occ: Agriculture,
R/o. Ameerpet Village, Maheshwaram Mandal,
Ranga Reddy District and 8 others

.. RESPONDENTS

! Counsel for the petitioner : Sri M.Srinivasa Rao

^ Counsel for the respondents : Sri K.V.Bhanu Prasad
G.P. for Panchayat Raj

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> Head Note:

? CITATIONS: (2010) 5 ALD 589

THE HON'BLE SRI JUSTICE A.V. SESA SAI**WRIT PETITION No.35709 OF 2014****ORDER:**

This writ petition, filed under Article 226 of the Constitution of India, challenges the order dated 26.03.2014, passed by the Court of the Principal District Judge, Ranga Reddy District, L.B.Nagar at Hyderabad, in I.A.No.669 of 2014 in O.S.No.155 of 2014 and the consequential proceedings issued by the District Collector, vide order bearing No.589/2014-A2-(P), dated 13.11.2014.

2. Heard Sri M.Srinivasa Rao, learned counsel for the petitioner, learned Government Pleader for the Panchayat Raj and Sri K.V.Bhanu Prasad, learned counsel for the 1st respondent/election petitioner, apart from perusing the material available before the court.

3. Petitioner herein is an elected Sarpanch of Ameerpet Grampanchayt, Maheswaram Mandal, Ranga Reddy District and he got elected as the Sarpanch in the elections held on 23.07.2013. The 1st respondent herein filed O.P.No.155 of 2014 on the file of the Court of the Principal District Judge, Ranga Reddy District and also filed I.A.No.669 of 2014 under subsection (2) of Section 22 of the A.P.Panchayat Raj Act, 1994, praying for *ad interim injunction* to restrain the petitioner herein from holding the office, exercising the

powers and performing the functions as Sarpanch of Ameerpet Gram Panchayat. The learned Principal District Judge, by way of an order dated 26.03.2014, granted *ad interim injunction* against the petitioner herein. As a consequence of the said order passed by the learned Principal District Judge, the District Collector vide order bearing No.589/2014-A2(P), dated 13.11.2014, directed the Upa Sarpanch of Gram Panchayat to discharge the additional functions as Sarpanch. The said orders passed by the learned District Judge and the District Collector are under challenge in the present writ petition.

4. According to the learned counsel for the petitioner, the order under challenge is erroneous, contrary to law, without jurisdiction and violative of the provisions of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act'). It is further contended by learned counsel that the ad interim injunction order granted, which is impugned in the present writ petition, tantamounts to granting main relief without being proceeded by any enquiry. It is further submitted that the court below grossly erred in granting injunction, which is not authorized by law and contrary to subsection (2) of Section 22 of the Act. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgment of this Court in **G.Janaki Ramudu Vs. State of Andhra**

Pradesh and another¹, wherein this Court, at paragraph No.7, held as under:

*“7. In **N. Tirupataiah (supra)** this Court held that neither the executive authority nor the District Panchayat Officer is conferred with any power to determine the truth or validity of the complaint and straight away disqualify the elected member. Keeping in view this dictum, this Court permitted the petitioner to approach the District Court by treating order dated 10.03.2010 purporting to disqualify him as a notice for a decision by the District Court. Once a dispute is raised before the District Court by the elected member of the Gram Panchayat, he is entitled to continue as such as if he has not incurred any disqualification, till the dispute is adjudicated by the District Court. In my opinion, there was no need for the petitioner to file I.A.No.652 of 2010 at all because his right to continue as Sarpanch flows from the statutory mandate under the above mentioned provision and there is no need for a direction to be given by the Court before which the dispute is pending for his continuance.”*

5. On the contrary, it is contended by the learned counsel for the 1st respondent that there is no illegality nor there exists any infirmity in the impugned orders and in the absence of the same, the orders under challenge are not amenable for any judicial review under Article 226 of the Constitution of India.

¹ (2010) 5 ALD 589

6. In the above background, now the point that arises for consideration of this Court in the present writ petition is:

Whether the order passed by the learned Principal District Judge, granting *ad interim injunction* in favour of the 1st respondent and against the petitioner is sustainable and tenable and whether the same is in accordance with the provisions of A.P.Panchayat Raj Act, 1994?

7. The information available before this Court manifestly discloses that in the elections held on 23.07.2013, the petitioner herein got elected as Sarpanch of Ameerpet Gram Panchayat, Maheswaram Mandal, Ranga Reddy District. The sum and substance of the case of the 1st respondent in the election O.P. is that the election and further continuation of the petitioner in the post of Sarpanch, attracts the disqualification as stipulated under Section 19 of the Act. The Provision of law, which is germane and relevant for the purpose of resolving the issue in the present writ petition, is Section 22 of the A.P.Panchayat Raj Act, 1994. The said provision of law reads as under:

“22. Authority to decide questions of disqualification of members :

(1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to

the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the [District Court] having jurisdiction over the area in which office of the gram panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.”

8. A reading of subsection (2) of the Section 22 of the above said provision of law, in vivid terms, demonstrates that pending decision by the District Court, the member shall be entitled to act as if he is qualified or were not disqualified. In the instant case, admittedly the election O.P. filed by the 1st respondent is still pending consideration for a decision.

Even before arriving at a decision in the election O.P., the learned District Judge, granted *ad interim injunction*, restraining the petitioner herein from functioning as Sarpanch and subsequently, the District Collector issued the impugned proceedings dated 13.11.2014, directing the Upa-Sarpanch to discharge the additional functions as Sarpanch. This Court finds sufficient force in the submission of the learned counsel for the petitioner that the learned Principal District Judge passed the order under challenge in contravention of the subsection (2) of Section 22 of the Act. In view of the language employed under Section 22 of the Act, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned orders passed by the learned Principal District Judge and the consequential proceedings issued by the District Collector cannot be sustained in the eye of law and are without jurisdiction.

9. For the aforesaid reasons, writ petition is allowed, setting aside the order dated 26.03.2014 passed by the Court of the Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, in I.A.No.669 of 2014 in O.S.No.155 of 2014 and the consequential proceedings issued by the District Collector – 2nd respondent herein vide order bearing No.589/14-A2(P), dated 13.11.2014.

10. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

29.12.2016
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Note: L.R.copy to be marked.
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