

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

W.P.No.28533 of 2017

Between:

Smt.Gattam Kasturi Bai and others.

...Petitioners

And

The State of Andhra Pradesh, rep. by its
Principal Secretary, Municipal & Urban Development
Department, A.P. Secretariat, Velagapudi,
Guntur district and others.

...Respondents

DATE OF JUDGMENT PRONOUNCED: 24.10.2017

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No

2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No

3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

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

W.P.No.28533 of 2017

% 24.10.2017

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...Petitioners

VERSUS

\$ The State of Andhra Pradesh, rep. by its
Principal Secretary, Municipal & Urban Development
Department, A.P. Secretariat, Velagapudi,
Guntur district and others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioners : Sri Kowturu Pavan Kumar

^ Counsel for Respondent No.1 : G.P. for Municipal Administration

^ Counsel for Respondents 2 & 3 : Sri Nimmagadda Venkateshwarlu

? Cases referred:

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

W.P.No.28533 of 2017

ORDER:

In the present writ petition, challenge is to the Resolution bearing CR.No.488 dated 31.7.2017 passed by Tiruvur Nagar Panchayat.

2. The petitioners herein are the elected members of Tiruvur Nagar Panchayat. On the allegation that the petitioners herein behaved disorderly in the Council, the Respondent Nagar Panchayat passed the impugned resolution, suspending the petitioners herein for a period of three months under Section 51 of A.P. Municipalities Act, 1965.

3. Heard Sri Kowturu Pavan Kumar, learned counsel for the petitioners and Sri Nimmagadda Venkateshwarlu, learned Standing Counsel, appearing for Respondents 2 and 3-Tiruvuru Nagar Panchayat.

4. It is contended by the learned counsel for the petitioners that the questioned resolution is highly illegal, arbitrary, unreasonable, without jurisdiction and violative of Article 14 of the Constitution of India, besides being contrary to the provisions of A.P. Municipalities Act, 1965 (for short 'the Act'). It is the further submission of the learned counsel that the very initiation of action on the basis of the resolution proposed by the Vice Chairman is impermissible and opposed to the provisions of Section 51 of the Act. It is also the submission of the learned counsel that in the absence of any allegation of persistent and wilful obstruction of business of the house, the Respondent Nagar Panchayat grossly erred in invoking the provisions of Sub-section (5) of Section 51 of the Act. It is further contended that without exhausting the provisions under Sub-sections (3)

and (4) of Section 51 of the Act, the Respondent Nagar Panahcyat grossly erred in placing the petitioners under suspension under Sub-section (5) of Section 51 of the Act.

5. On the contrary, it is vehemently contended by the learned Standing Counsel for Respondent Nagar Panchayat that the present writ petition, filed under Article 226 of the Constitution of India, is not maintainable in view of availability of alternative remedy under Section 59 of the Act. It is also the submission of the learned Standing Counsel that Sub-sections (3) and (5) of Section 51 of the Act are two different and distinct provisions and they are independent and it is open for the Respondents to invoke any one of the same on the basis of gravity of the situation. It is also the submission of the learned Standing Counsel that the impugned action is strictly in accordance with the provisions of Sub-section (5) of Section 51 and that after the Chairman named the members who behaved disorderly, the impugned resolution was taken up and passed and as such, the contention contra advanced by the learned counsel for the petitioners cannot be sustained.

6. In order to consider various issues raised on behalf of the petitioners and the Respondent Nagar Panchayat, it may be apposite to refer to the provisions of A.P. Municipalities Act, which are *mutatis-mutandis* applicable to Nagar Panchayats also by virtue of Section 2A of the Act. The provision of law, which is germane for resolving the issues on hand is Section 51 of the Act. The said section reads as under:

“Section 51 - Presidency of Council and Chairperson

1[(1) (a) Every meeting of the council shall be presided over by the Chairperson; in his absence by the Vice-chairperson and in the absence of both the Chairperson and the Vice-chairperson by a

member included in the panel of temporary Chairperson prepared in the manner specified in clause (b). Where no such temporary Chairperson is also present and, if there is quorum, one of its members may be chosen by the meeting to preside for the occasion.

(b) At the first meeting in every year, of the council, the Chairperson may nominate from amongst the elected members a panel of not more than four temporary Chairpersons, any one of whom may preside at any meeting of the council in the absence of the Chairperson and the Vice-chairperson in the order in which they are nominated in the panel. The panel of temporary Chairpersons so nominated shall, remain in force until a new panel of temporary Chairpersons is nominated].

(2) The Chairperson shall preserve order and shall decide all points of order arising at or in connection with meetings. There shall be no discussion on any point of order and the decision of the Chairperson on any point of order shall, save as otherwise expressly provided in this Act, be final.

(3) (a) Where the conduct of a member is in the opinion of the Chairperson disorderly, he may direct that such member shall withdraw from the meeting of the council and such member 2[- -] shall thereupon withdraw and shall not be allowed to attend for the remainder of the day's meeting.

(b) If any member 2[- -], who has been ordered to withdraw, continues to remain in the meeting, the Chairperson may take steps to cause him to be removed.

(4) The Chairperson may, in the case of grave disorder arising in any meeting, suspend the meeting for a period not exceeding three days.

Explanation.--Chairperson in this section and Section 52 includes the Vice-chairperson, temporary Chairperson or member presiding for the occasion.

3(5) (a) The Chairperson may, if he deems it necessary, name a member who disregards the authority of the chair or abuses the rules,

bye-laws or regulations of the Council by persistently and wilfully obstructing the business thereof.

(b) If a member is so named by the Chairperson, the Chairperson shall at meeting of the council forthwith put the question that the member or (naming him) be suspended from functioning in the council as such for a period not exceeding three consecutive months reckoned from the date of that meeting:

Provided that the council may, at any time resolve that such suspension be terminated.

(c) A member suspended under this sub-section shall forthwith withdraw from the precincts of the council".

7. It is very much evident from the above provision of law that there are three steps indicated by the legislature to deal with disorderly behaved members. The first step is stipulated under Sub-section (3) and as per the said provision of law, in the event of Chairperson finding disorderly behaviour on the part of member, such member can be asked not to attend the meeting for the rest of the day. Sub-section (4) deals with second step, which categorically stipulates that in the case of grave disorder arising in any meeting, the Chairperson is empowered to suspend such member for the period not exceeding three days. The third and ultimate step which can be taken by the Chairperson is stipulated under Sub-section (5). The condition precedent for pressing into service the said provision of law is that there should be persistent and wilful obstruction of the business of the house by the members. In the instant case, it is not at all the case of the Respondents herein that the petitioners herein behaved disorderly in previous meetings. Therefore, the impugned action of keeping the petitioners under suspension for a period of three months straightway as per clause (b) of Sub-section (5) of Section 51 of the Act is totally one

without jurisdiction. The legislature stipulated the above three steps, obviously keeping in view that the said power should not be utilised or used in an unbridled and unfettered manner. Therefore, the contention advanced contra by the learned Standing Counsel that it is open for the Council to choose either Sub-section (3) or Sub-section (5), in the considered opinion of this Court can, neither be sustained nor countenanced. Therefore, it can be safely concluded that the impugned action which culminated in the resolution passed by the Nagar Panchayat, suspending the petitioners herein for a period of three months is without jurisdiction and cannot be sustained and is liable to be set aside.

8. Yet another contention advanced by the learned Standing Counsel is that in view of availability of alternative remedy under Section 59 of the Act, the present writ petition is not maintainable. Since this Court is of the opinion that the impugned action is totally one without jurisdiction, the said provision of law does not debar the petitioners from invoking the jurisdiction of this Court under Article 226 of the Constitution of India by way of present writ petition.

9. It is also significant to note that the Respondent Nagar Panchayat passed the impugned resolution on 31.7.2017, suspending the petitioners herein for a period of three months and the present writ petition came to be filed on 23.8.2017. The said period of suspension is coming to end by the end of this month. On this ground also, at this length of time, this Court does not find any justification to reject this writ petition on the ground of alternative remedy under Section 59 of the Act. Therefore, the contention of the learned Standing Counsel on the ground of maintainability is rejected. The impugned action is undoubtedly will have

lot of impact on the career of the petitioners herein who are elected representatives of the people, as such, strict compliance of the provisions of law needs to be observed.

10. For the aforesaid reasons, the writ petition is allowed, setting aside the Resolution bearing CR.No.488 dated 31.7.2017 issued by Tiruvur Nagar Panchayat Council. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 24.10.2017

Note:

L.R. copy be marked.
B/o
DA





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



24.10.2017

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