

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

W.P.NO.8180 OF 2017

O R D E R

This writ petition filed under Article 226 of the Constitution of India challenges the proceedings of the 2nd respondent – District Collector in R.C.No.1373/2015/A2(P) dated 27.11.2015 withdrawing the cheque power of the petitioner, who is the Sarpanch of Inagaluru Grampanchayat, of O.D. Cheruvu Mandal, Anantapur District.

Heard Sri P.Ramakrishna, the learned counsel for the petitioner and the learned Government Pleader for Panchayatraj.

The District Panchayat Officer, Penukonda issued notice in Rc.No.1373/2015/A2(P) dated 9.10.2015 asking the petitioner to show cause as to why the cheque power should not be withdrawn and why the disciplinary action should not be initiated. In response to the said show cause notice, petitioner submitted an explanation on 14.10.2015. Thereafter, the District Collector vide proceedings dated 27.11.2015 had withdrawn the cheque power of the petitioner herein.

The principal contention advanced by the learned counsel for the petitioner is that under Rule 42 of the Rules notified vide G.O.Ms.No.30, Panchayat Raj dated 20.11.1995, the District Panchayat Officer of the concerned district is the authority competent to withdraw the cheque power and not the District Collector and the District Collector is the appellate authority.

It is further submitted by the learned counsel for the petitioner that facts and circumstances of the case also do not warrant withdrawal of the cheque power.

On the other hand, it is submitted by the learned Government Pleader for Panchayatraj that there is no illegality, nor there is any procedural irregularity and after issuing the show notice and considering the explanation submitted by the petitioner, the impugned proceedings came to be passed by the District Collector.

In this context it is appropriate to refer to sub rules 1 and 2 Rule 42 under G.O.Ms.No.30 dated 20.11.1995, which reads as under:

(1) 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.

Provided that no such order shall be passed unless opportunity of making representation has been given to the Sarpancha concerned.

(2) Any Sarpanch aggrieved by an order passed by the District Panchayat Officer concerned under Sub-rule (1) may prefer an appeal in writing to the District Collector concerned within seven days of the receipt of the order and the decision of the District collector thereon shall be final.

According to sub rule (1) of Rule 42 of the above said Rules, the District Panchayat Officer concerned after providing an opportunity of making representation to the Sarpanch concerned, may pass order by recording sufficient reasons, prohibiting him/her from drawing the moneys of the Gram panchayat, for a specific period and under sub rule (2), the District Collector is the appellate authority.

In the instant case, the District Collector passed the order under challenge, though the show cause notice was issued by the District Panchayat Officer. In this context it may be appropriate to refer to the judgment of this court in W.P.No.27659/2005 dated 24.3.2006, wherein it was held as under:

“In this case, the petitioner 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.”

In the instant case also, the impugned order came to be passed withdrawing the cheque drawing power of the petitioner herein for an unlimited period. Therefore, the said decision is squarely applicable to the facts of the present case.

In fact Rule 42 enables the District Panchayat Officer to pass orders withdrawing the cheque power of the Sarpanch. In the instant case, as noted above, the District Collector exercised the said power to withdraw the cheque power. On this count also, the impugned order is liable to be set aside.

For the foregoing reasons, the writ petition is allowed and the impugned proceedings dated 27.11.2015 passed by the District Collector (P.R.) Anantapur, is set aside. No order as to costs.

It is made clear that this order will not preclude the respondents from proceeding in accordance with law.

Miscellaneous petitions pending if any, shall stand closed.

A.V.SESHA SAI ,J

DATE:20—03—2017

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