

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.21221 OF 2017

ORDER:

Heard learned counsel for petitioner, learned Government Pleader for respondents 1 to 5 and learned counsel for sixth respondent.

The petitioner was elected as Sarpanch of Kubadpuram Gram Panchayat, Rajupalem Mandal, Guntur District in the elections held in the year 2013. He assumed office of Sarpanch on 02.08.2013. The period of post is five years. While so, the sixth respondent lodged a complaint on 06.03.2017 to the District Collector raising several allegations against the petitioner. It appears that the Divisional Panchayat Officer submitted a report to the District Panchayat Officer on 28.04.2017 and on the basis of the said report, when a show cause notice was issued to the petitioner on 23.06.2017 prohibiting the petitioner from drawing general funds, S.F.C., 13th Finance Commission and other funds lodged with Sub Treasury and the Bank concerned temporarily, and asking the petitioner to show cause as to why he should not be prohibited from drawing of moneys of the Gram Panchayat under Rule 41 of the Rules relating to Certain Taxes and other Lodging of Moneys received by the Gram Panchayat and Payment of Money from the Gram Panchayat Fund (the Rules, for brevity), the present writ petition is filed.

This Court, by order, dated 30.06.2017, granted interim suspension on the ground that the said order is contrary to Rule 42 of the Rules read with Section 249 of the Panchayat Raj Act and G.O.Ms.No.30, dated 20.01.1995. The said order has been in operation till today.

A counter affidavit is filed by the sixth respondent/complainant, but no counter affidavit is filed by the Government.

Rule 42 of the Rules relating to Certain Taxes and other Lodging of Moneys received by the Gram Panchayat and Payment of Money from the

Gram Panchayat Fund, which is relevant for the purpose of the present case, is as follows.

42. (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 Sarpanch concerned.

Provided further that the District Panchayat Officer may issue an interim direction to the Sarpanch not to draw the moneys of the Gram Panchayat pending the exercise of his powers under this sub-rule.

(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.

(3) Every order passed under sub-rule (1) shall specify the name of the person or the authority who shall draw the moneys of the Gram Panchayat during the period during which the Sarpanch is prohibited from drawing such moneys.

(4) A copy of every order under sub-rule (1) or sub-rule (2) shall be communicated to all banks and treasuries in which the moneys of the Gram Panchayat are lodged.

(5) On and from the date of receipt of such order by any bank or treasury, no payment shall, for the period specified in such order, be made to the Sarpanch who is prohibited by such order from drawing the moneys of the Gram Panchayat.

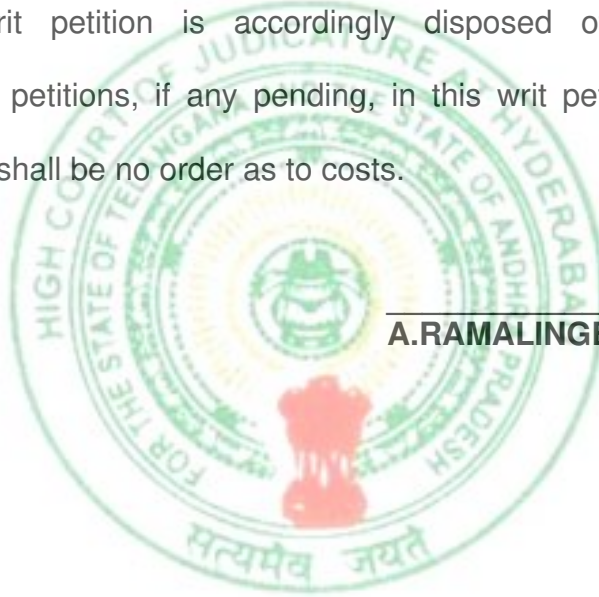
(Subs. By G.O.Ms.No.444, P.R.R.D., dt.29.12.2005)

The present order is passed prohibiting the petitioner from drawing moneys pending final orders to be passed pursuant to the show cause notice. The power to pass interim orders is also vested with the District Panchayat Officer as could be seen from the reading of the above Rule. Since this is a show cause notice, this Court is not inclined to entertain the writ petition, but the learned counsel for the petitioner submits that the District Panchayat Officer has already pre-judged the issue and show

cause notice is a mere formality. Since this is a show cause notice, it is open to the petitioner to submit his explanation to the show cause notice with regard to the utilisation of funds and the third respondent without pre-judging the issues, shall take an objective consideration of the explanation and pass appropriate orders in accordance with law, within a period of thirty days from the date of submitting the explanation by the petitioner. The petitioner is given fifteen days time to submit an explanation from the date of receipt of a copy of this order. In view of the suspension granted by this Court, the said suspension order shall continue till the orders passed by the third respondent.

The writ petition is accordingly disposed of. Consequently, miscellaneous petitions, if any pending, in this writ petition, shall stand closed. There shall be no order as to costs.

13.09.2017
pln



A.RAMALINGESWARA RAO, J