

**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT APPEAL No.755 of 2018

JUDGMENT: *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The challenge in this Writ Appeal at the instance of the writ petitioner is the order dated 26.04.2018 in W.P.No.15080/2018 passed by a learned Single Judge of this Court, disposing the writ petition with a direction to the 5th respondent i.e, S.P Tirupati Urban District, to consider the representation if any, filed by the Secretary of Konathaneri Gram Panchayat, Chittoor District and dispose of the same after due consultation with the Assistant Director of Fisheries, Fisheries Department, Chittoor within two weeks from the date of receipt of such representation.

2) The factual matrix is thus:

a) The appellant herein is the writ petitioner, who is the Sarpanch of Konathaneri Gram Panchayat. She sought for a writ of mandamus declaring the action of respondents 5 to 8, who are the police officials in not providing police-aid to enable the petitioner to discharge her lawful functions as Sarpanch of Konathaneri Gram Panchayat including exercise the fishing rights in Pedda Konathaneri Tank and Chinna Konathaneri Tank situated in petitioner Gram Panchayat as illegal and contrary to Section 139 of A.P Panchayat Raj Act, 1994 and for a consequential direction to respondents 5 to 8 to provide police-aid to petitioner Gram Panchayat to discharge its lawful functions and direct unofficial

respondents not to interfere with the fishery rights of petitioner Gram Panchayat in the aforesaid two tanks.

b) Before learned Single Judge, the Government Pleader for Home (AP) submitted that the Secretary of Gram Panchayat ought to have represented the cause of fishermen and Sarpanch is not competent to seek any relief and if the Secretary of Gram Panchayat approaches police with proper representation, they are prepared to act on the said representation in accordance with the procedure established by law.

c) Recording the aforesaid submission, learned Single Judge disposed of the writ petition directing the 5th respondent to consider the representation if any filed by the Secretary of the petitioner Gram Panchayat and dispose of the same after due consultation with the Assistant Director Fishers, Fisheries Department, within two(2) weeks from the date of receiving representation.

Hence the appeal.

3) Heard both sides.

4) The main plank of argument of learned counsel for petitioner is that without there being any legal basis, the Government Pleader for Home argued before the learned Single Judge as if the Sarpanch is not competent to complain to the police to provide police-aid for exercising fishing rights in the two tanks and it was sought to project as if the Secretary alone was competent in that regard. Learned counsel would submit that learned Single Judge placing implicit reliance on the said argument, gave direction to S.P, Tirupati Urban to consider the representation if any filed by the

Secretary of the Gram Panchayat and dispose of the same. Learned counsel would lament that the aforesaid argument and the order in the writ petition would manifest a negative connotation as if the Sarpanch or for that matter, Gram Panchayat have no power to lodge complaint with the police seeking police-aid in terms of Section 139 of Andhra Pradesh Panchayat Raj Act, 1994. He would argue that as per the said Act, Panchayat Secretary is only an employee of the Executive of Gram Panchayat and he is Subordinate to Gram Panchayat and his duty is only to effectuate the resolutions, directions and instructions of the Gram Panchayat but he has no independent authority or power to take decisions of his own. That being the law, the impugned order places the Panchayat Secretary on a higher pedestal than the Gram Panchayat and if the order in the writ petition were allowed to be continued, it will have negative consequences on the smooth administration of the Panchayat. He thus prayed to allow the appeal.

5) Per contra, learned Government Pleader for Home would argue that by virtue of Section 30 of A.P Panchayat Raj Act, Secretary of the petitioner Gram Panchayat, who is appointed as Executive Authority shall represent the petitioner Gram Panchayat and therefore, he alone is authorized to present complaint to the police for extending police-aid and therefore, learned Single Judge has rightly directed the 5th respondent to consider the representation if any filed by the Secretary of the petitioner Gram Panchayat and dispose of the same and the said order is legally perfect and needs no intervention.

6) In the light of above rival arguments, the point for determination is

“Whether there are merits in this appeal to allow?”

7) **POINT:** In the light of respective arguments, the scheme of the A.P Panchayat Raj Act, 1994 to the extent it is germane for considering the powers and responsibilities of Gram Panchayat vis-a-vis Panchayat Secretary, needs to be scrutinized.

8) Section 139 of the Act lays down that every police officer in whose jurisdiction, the village is situated, shall be bound to assist the Gram Panchayat and its officers and servants in the exercise of their lawful authority. This Section only speaks in terms of the duty of the police officer to provide assistance to the Gram Panchayat and its officers and servants, who comes under the jurisdiction of the said police officer. The question is, on behalf of Gram Panchayat, who is authorized to set the criminal law into motion so as to seek assistance of the jurisdictional police. Precisely, it is whether the Sarpanch, who is representing the Gram Panchayat or the Secretary, who is the Executive Authority.

a) When the scheme of the Act is perused, **Section 2(28-A)** defines the term “Panchayat Secretary”, which means the Panchayat Secretary appointed under Section 30.

b) **Section 2(37)** defines Sarpanch. A Sarpanch means, the Sarpanch of a Gram Panchayat elected under Section 14.

Thus the basic difference between the two terms is that while the Secretary is an appointed employee, the Sarpanch is an elected representative of the people of the Gram Panchayat.

c) **Section 4** speaks about constitution of Gram Panchayats for villages and their incorporation. According to sub-Section (2), subject to the provisions of this Act, the administration of the village shall vest in the Gram Panchayat but the Gram Panchayat shall not be entitled to exercise functions expressly assigned by or under this Act or any other law to its Sarpanch or executive authority or to any other local authority or other authority. Sub-Section (3) lays down that every Gram Panchayat shall be a body corporate by the name of the village specified in the notification issued under Section 3 and shall have perpetual succession and a common seal.

Thus Section 4 would propound that the administration of the village vests in the Gram Panchayat, except those functions which are specifically assigned to Sarpanch or executive authority or to any other local authority or other authority.

d) Then **Section 25** speaks of the powers and functions of the Sarpanch thus:

“Section 25 - Powers and functions of the Sarpanch

Save as otherwise provided by or under this Act, the Sarpanch shall--

- a) make arrangements for the elections of the Upa-Sarpanch within one month from the date of occurrence of the vacancy;*
- b) have full access to the records of the gram panchayat;*
- c) exercise administrative control over the Executive Authority, if there is one, for the purpose of implementation of the resolutions of the gram panchayat or any committee thereof;**

- d) *exercise all the powers and perform all the functions specifically conferred or imposed on the Sarpanch by this Act or the rules made thereunder;*
- e) *have power to require any Executive Authority of any village within the jurisdiction of the gram panchayat to furnish any information on any matter falling within such categories as may be prescribed in respect of such village or any person or property therein, required for the purpose of this Act;*
- f) *intimate to the District Panchayat Officer, every case where any member has incurred any disqualification under Sections 16 to 20; and*
- g) *act only within the terms of sanction given in any resolution of the gram panchayat.”*

e) Then **Section 30** deals with appointment of executive authority for Gram Panchayats. It lays down thus:

“30. Appointment of Executive Authority for certain gram panchayats.--

(1) A whole time or a part-time Executive Authority shall be appointed by the Commissioner for any gram panchayat or for any group of contiguous gram panchayats which may be notified by him in this behalf:

Provided that before notifying a group of gram panchayats under this sub-section, the Commissioner shall obtain the approval of the Government.

(2) In the case of every gram panchayat not so notified and also in the case of any gram panchayat so notified if there is no Executive Authority incharge, the Sarpanch of the gram panchayat shall, subject to such rules as may be prescribed, exercise the powers and perform the functions of the Executive Authority .

(3) Save as otherwise prescribed, no Executive Authority appointed under sub-section (1) shall undertake any work unconnected with his office without the sanction of the Government.

(4) The Executive Authority shall be subordinate to the gram panchayat.”

f) **Section 32** deals with functions of executive authority. It lays down thus:

“Section 32 - Functions of the executive authority

The executive authority shall--

(a) be responsible for implementing the resolutions of the gram panchayat and of the Committee thereof:

Provided that where the executive authority considers that a resolution has not/been legally passed or is in excess of the powers conferred by this Act or that if carried out, it is likely to endanger human life or health or the public safety, the executive authority shall--

(i) where he is the Sarpanch directly;

(ii) where he is not the Sarpanch, through the Sarpanch, refer the matter to the Commissioner for orders, and his decision shall be final;

(b) control all the officers and servants of the gram panchayat:

(c) exercise all the powers and perform all the functions specifically conferred or imposed on the executive authority by or under this Act and subject to all restrictions and conditions imposed by or under this Act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfillment of the purpose thereof.”

9) Thus a cumulative study of Sections 25, 30 and 32 of the Act, will give an understanding that an executive authority i.e, the Secretary of Panchayat is Subordinate to Gram Panchayat and the Sarpanch, who is the head of the Gram Panchayat, exercises administrative control over the executive authority for the purpose of implementation of resolutions of Gram Panchayat or any committee thereof and seek any information from the executive authority. Further, the executive authority is generally responsible

for implementing the resolutions of Gram Panchayat and the committee thereof.

10) Thus in our view, the scheme of the Act places the elected body of Gram Panchayat i.e, Sarpanch and other members on a higher pedestal than the appointed executive authority. The Gram Panchayat headed by the Sarpanch looks after the administration of the village, whereas the executive authority i.e, the Panchayat Secretary convenes the meetings with the approval of the Sarpanch and is also responsible for implementing the resolutions of the Gram Panchayat. In ***Calingapatnam Gram Panchayat v. State of Andhra Pradesh and others***¹, a question arose before a learned Single Judge as to whether a Gram Panchayat is represented by the Sarpanch or the Panchayat Secretary. Learned Judge opined thus:

“Para 3: Under Section 30 of the Panchayat Raj Act a whole time or a part-time Executive Officer, if appointed for a Gram Panchayat, shall be the Executive Authority and in the absence of such appointment in respect of any Gram Panchayat, the Sarpanch shall exercise powers and perform the functions of the Executive Officer. Under Section 32(a) of the Panchayat Raj Act, the Executive Authority shall be responsible for implementing the resolutions of the Gram Panchayat and the Committee thereof. As rightly pleaded by the learned Senior Counsel appearing for the petitioner, the Panchayat Raj Act does not expressly confer power on the Executive Officer appointed as Secretary of the Gram Panchayat to represent the Gram Panchayat or bar the Sarpanch from representing the Gram Panchayat.”

11) So on a conspectus of the scheme of the Act and the precedential jurisprudence, we find force in the submission of learned counsel for appellant. The Government Pleader for Home was not correct in arguing before the learned Single Judge that

¹ 2016 (3) ALT Pg.63

Sarpanch was not competent to seek any relief and if Secretary of Gram Panchayat approached the police with proper representation, they would act in accordance with law. Consequently, the order of learned Single Judge placing reliance on the aforesaid argument is, to the extent of observing that the representation if any filed by the Secretary of the petitioner-Gram Panchayat, which gives a connotation as if the Secretary of petitioner Gram Panchayat alone is empowered to make representation or complaint to the police, cannot be sustained.

12) In the result, this Writ Appeal is allowed and the order of the learned Single Judge is modified to the effect that 5th respondent shall consider the complaint/representation, if filed by the Sarpanch of the petitioner-Gram Panchayat or by its Secretary authorized by the resolution in this behalf and dispose of the same after due consultation with the Assistant Director of Fisheries, Fisheries Department, Tirupati, Chittoor, within two(2) weeks from the date of receipt of such representation. No costs.

As a sequel thereto, miscellaneous applications pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

ABHINAND KUMAR SHAVILI, J

Date: 17.05.2018
Scs/Murthy