

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.C.NO.1659 OF 2017

ORDER

This contempt case is filed alleging violation of interim order dated 16.12.2016, wherein and whereby, this court suspended the proceedings in Memo No.6295/CPR& RD/D1/2016 dated 01.12.2016.

The case of the petitioner is that he is 4th ward member of Dakkanuru Gram Panchayat. As the posts of Sarpanch and Upa-Sarpanch, fell vacant, due to death of the incumbents occupying the said posts, a special meeting was conducted on 03.09.2016 by gram panchayat, on the directions of Panchayat Secretary, and in the said meeting, the petitioner was elected by majority, as Upa- Sarpanch. But in the minutes of the meeting, it was wrongly recorded by the Panchayat Secretary, that the petitioner was elected as temporary Sarpanch, and vide his letter dated 24.09.2016, the 2nd respondent – Commissioner was informed that the petitioner was elected as Sarpanch. The post of Sarpanch, which fell vacant, is a reserved post and the petitioner does not belong to reserved category. The 2nd respondent – Commissioner vide his letter dated 01.12.2016 required the 3rd respondent – Panchayat Secretary to submit proposal for appointment of a Temporary Sarpanch who belongs to same community of reserved category. Aggrieved by the said proceedings dated 1.12.2016, the petitioner filed the writ petition in W.P.No.43921 of 2016.

The grievance of the petitioner is that in the absence of elected Sarpanch and Upa Sarpanch, as a stop gap arrangement, the 2nd respondent - Commissioner in exercise of jurisdiction under Section 26(3) of the Andhra Pradesh Panchayat Raj Act, 1994, has to appoint Temporary Sarpanch, but in the present case, he failed to exercise the said power; and on the contrary, ignoring his election as Upa- Sarpanch, sought the 3rd respondent, under the impugned proceedings, to submit proposals for appointment of a Temporary

Sarpanch to gram panchayat, who belongs to the reserved category. In other words, the grievance of the petitioner appears to be that though the post of Sarpanch in question is for a reserved category, as a stop gap arrangement, as he was elected as Upa-Sarpanch, his case ought to have been considered and the impugned proceedings are thus illegal.

By interim order dated 16.12.2016 in W.P.M.P.No.54187 of 2016 in W.P.No.43921 of 2016, this court granted interim suspension of the proceedings dated 1.12.2016.

The learned counsel for the petitioner submits that the petitioner is discharging the functions of Upa Sarpanch and though this court has suspended the impugned proceedings dated 1.12.2016, cheque power has not be restored/ given to the petitioner and thereby the functioning of the office of the Upa Sarpanch, has not been restored, and this amounts to violation of interim orders of this court.

The learned Assistant Government Pleader for Panchayt Raj, based on the averments made in the counter affidavit, submits that the resolution of the Gram Panchayat dated 03.06.2009, which the petitioner is relying on, is proposal for appointment of the petitioner as Temporary Sarpanch. The 2nd respondent – Commissioner, in exercise of his jurisdiction under Section 26(3), has to appoint Temporary Sarpanch to a Gram Panchayt, in the absece of Sarpanch and Upa Sarpanch. But in the present, no such orders have been issued appointing the petitioner as Temporary Sarpanch. As the Sarpanch of Dakkanur Gram Panchcayt is reserved to schedule caste category, and as the petitioner does not belong to the said category, in order to safeguard the constitutional rights, the 2nd respondent – Commissioner, by the impugned proceedings dated 1.12.2016 required the 3rd respondent – Panchayat Secretary, to submit proposals for appointment of Temporary Sarpanch, who belongs to the same community of reserved category. He stated that for appointment of Upa Sarpanch, procedure is

contemplated under G.O.Ms.No.172, P.R & R.D (Elec. & Rules) dated 10.05.2006. As the petitioner is not elected in terms of the said G.O., his claim that he is elected as Upa Sarpanch, is incorrect. The learned counsel submits that after the interim suspension granted by this court, no further proceedings have been taken and thus there is no violation of the interim orders of this court and hence the contempt case may be dismissed.

From the above, it could be seen that the respondents are disputing that the petitioner was elected as Upa Sarpanch pursuant to resolution of Gram Panchayat dated 03.09.2016. Perusal of resolution of Gram Panchayat dated 03.09.2016 goes to show that petitioner was elected as temporary Sarpanch, but not Upa-Sarpanch. But it is for the 2nd respondent to exercise jurisdiction under Section 26(3) of the Act. By the impugned proceedings dated 1.12.2016, the 2nd respondent- Commissioner, in order to exercise his jurisdiction under Section 26(3) of the Act, required the 3rd respondent – District Panchayat Officer, to submit proposals for appointment of Temporary Sarpanch, as the post of Sarpanch fell vacant. This court by interim order, suspended the said proceedings. As per the averments made in the counter affidavit, no further action has been taken in pursuance of impugned proceedings. The averments made in the counter affidavit, have not been disputed by the petitioner by filing any reply affidavit. In these circumstances, it cannot be said that there is any violation of interim order of this court.

The issue in the impugned proceedings pertains to appointment of Temporary Sarpanch and the same is pending in the writ petition. As regards election of Upa Sarpanch, the Andhra Pradesh Panchayt Raj (Election of Upa Sarpanch of a Gram Panchayat) Rules, 2006, issued under G.O.Ms.No.172 dated 10.05.2006, provides for the procedure. Rule 7 of the said Rules contemplates the procedure for filling up of a casual vacancy in the office of Upa Sarpanch, within a period of thirty days from the date of occurrence of such vacancy. The learned Assistant Government Pleader for Panchayt Raj submits

that the competent authority under the Rules is the 3rd respondent - District Panchayat Officer. In the present case, posts of Upa Sarpanch and Sarpanch are vacant since, 2016. It is not known why the said authority has not taken any steps to fill up the casual vacancy as per the procedure under the Rules, which arose due to the death of Sarpanch and Upa Sarpanch in the year 2016. Therefore, it is expected of the said authority to follow the procedure under the Rules, for filling up the post of Upa Sarpanch in question within reasonable time.

With the above observation, the contempt case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:26—02—2018

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