

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.10601 OF 2019

DATED :03.06.2019

Between :

Beri Eshwar S/o.Kistaiah,
Age : 37 yrs, Occu : Surpanch,
Gundlapochampally Grampanchayat,
R/o.4-70/3, Gundlapochampally Village,
Medchal Mandal, Medchal-Malkajgiri District.

..

Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Municipal Administration Department,
Secretariat Building, Saifabad,
Hyderabad & others.

..

Respondents

This court made the following :

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ORDER :

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration for Respondent No.1, learned Government Pleader for Panchayat Raj for respondent No.2 and learned Government Pleader for Revenue for respondent No.3.

2. Petitioner was the Surpanch of Gundlapochampally Grampanchayat, who was elected in General Elections held on 04.05.2014. The term of the said office was for five years. This Grampanchayat along with several other Grampanchayats are now upgraded as Municipalities. On such up-gradation, the Tahsildar, Medchal is now appointed as in-charge Municipal Commissioner after the expiry of term of Grampanchayat. Admittedly, the term of Grampanchayat expired and petitioner ceases to be the Surpanch.

3. In this writ petition, petitioner challenges the order of Government issued on 01.08.2018 appointing the in-charge Municipal Commissioner to Gundlapochampally Municipality along with other municipalities as a consequent to up-gradation and formation of Municipalities.

4. According to learned counsel the impugned decision is not valid on two grounds. Firstly, Section 74 of the Telangana Municipalities Act, 1965 (for short 'the Act') is relied on to make such appointment whereas, the said provision is not applicable. Therefore, on that ground alone the order is liable to be set

aside. Secondly, as an ex-surpanch petitioner is also qualified to be appointed as in-charge Municipal Commissioner and therefore, petitioner ought to have been considered before appointing any other person.

5. In support of his contentions, learned counsel for the petitioner placed reliance on the provision in Section 62 (6) and Section 62 (A) of the Act.

6. Dealing with the second aspect, it is seen that Section 62 (6) of the Act, is not applicable to the case on hand. The said provision is applicable to deal with contingency where the existing elected municipal council cease to function and new municipal council is not constituted. In the case on hand, it is not the existing municipal council. But the existing Grampanchayat upgraded as Municipality. Similarly, Section 62 (A) of the Act deals with contingency where the elections could not be held to the existing Municipality.

7. Situation in this case is governed by Section 7 of the Act. According to this Section when new Municipality is constituted, the Government is competent to appoint special officer to discharge the duties and perform the functions of the council. Non-abstante clause makes it clear that this section applies notwithstanding any other provision in this Act. Therefore, no other provision is applicable governing the situation as in this case. Further on the first aspect of the contention, though Section 74 may not be applicable to the case on hand, when power to appoint is traceable to Section 7 the order impugned cannot be held as illegal merely because a wrong provision is mentioned.

8. Learned counsel for the petitioner sought to contend that as the word 'Person' is not defined, there is no prohibition to appoint the Surpanch as person in-charge. There is no right vested in the outgoing Surpanch of the Grampanchayat to be appointed as person in-charge even if there is a Grampanchayat. When there is no such right vested in him, he cannot insist as a matter of course to appoint him as in-charge Commissioner consequent to up-gradation of Grampanchayat into Municipality. Every Grampanchayat has a Panchayat Secretary, who is the Executive head. The Commissioner is Executive head of the Municipality. Public servants alone are appointed to these posts. In the absence of duly formed Municipal Council, the Commissioner discharges all the functions of the Municipality. Political person cannot be appointed to executive posts. In the case on hand, the Tahsildar of the Mandal is appointed as in-charge Municipal Commissioner to discharge the executive functions of the Commissioner. As no right is vested in the outgoing Surpanch, the action of the respondent-Government in appointing the Tahsildar of the concerned Mandal as in-charge Commissioner cannot be held as vitiated or *per se* illegal. Therefore, I see no merit in the contentions of the learned counsel for petitioner.

9. Accordingly, the Writ Petition is dismissed. Pending miscellaneous petitions, if any, shall stand closed.

3rd June, 2019
Rds

P.NAVEEN RAO,J