

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.25955 OF 2019

ORDER:

The relief sought for in the Writ Petition is to declare the action of the 3rd respondent-District Collector District Collector (Panchayat Raj Section), Warangal Urban in issuing proceedings in RC. No.1148/A2/2019 dated 14.11.2019 whereby the petitioner who is elected as Upa-Sarpanch of Nandanam Gram Panchahayat of Inavolu Mandal, Warangal urban, was suspended in terms of provisions of Section 37 (1)(v) and Section 37(5) of Telangana Panchayat Raj Act, 2018, as being illegal, arbitrary and contrary to the provisions of the Act with a consequential prayer to set aside the same.

Heard learned counsel for the petitioner and learned Government Pleader for Panchayat Raj.

It is contended by the Learned Counsel for the petitioner that the petitioner herein did not countersign the cheques that were to be issued in connection with the various works carried out in the village under the 30 day programme due to irregularities and brought the same to the notice of the 4th respondent by her representation dated 26.10.2019 and called upon the said authority to look into the same. Learned Counsel for the petitioner also submitted that by the said representation, the petitioner while requesting the 4th respondent to enquire into the various acts of misappropriation of public funds, has mentioned that upon the said authority looking into the matter, and finding the same in

order, the petitioner would counter sign the cheques that are to be issued.

Learned counsel for the petitioner would submit that despite the petitioner giving such a representation to the 4th respondent, the 3rd respondent has issued a show cause notice to the petitioner on 03.11.2019, calling upon the petitioner to show cause within seven days as to why the petitioner should not be removed from the post of Upa-Sarpanch for not counter signing the cheques intentionally in respect of the works undertaken in the Gram Panchayat under the 30 day programme. The learned counsel submits that in response to the notice issued, the petitioner furnished her explanation vide reply dated 08.11.2019 whereby the petitioner has drawn attention to the representation given by the petitioner on 26.10.2019 and submitted that if the authority enquires into the various issues raised therein and upon such enquiry if the respondent authority finds the said works were done without any irregularity and directs the petitioner to countersign the cheques, she would abide by the same. Thus, the learned counsel for the petitioner submits that the petitioner never refused to countersign the cheques and since the payments to be made being public money, the petitioner brought to the notice of the respondent authorities about the manner in which the funds are being misused which needed to be looked into by the authorities concerned. It is submitted by the learned counsel for the petitioner that the authorities instead of looking into the representation of the petitioner had issued the show cause notice and without considering the reply given by the petitioner in proper perspective has issued the impugned proceeding. By drawing

attention of this court to the impugned order passed by the 3rd respondent, the learned counsel for the petitioner submits that the said order clearly shows non-application of mind on the part of the 3rd respondent as he merely observed that the petitioner has not given any specific reply and acted contrary to the Government orders and the provisions of Telangana Panchayat Raj Act, and has thus, violated in discharging her duties. Based on such finding recorded, the 3rd respondent authority suspended the petitioner from the post of Upa-Sarpanch by the impugned proceeding for a period not exceeding six months. Learned counsel also further submits that by the impugned proceedings, the 3rd respondent exceeded jurisdiction as the said proceeding does not indicate that such suspension of the petitioner is pending enquiry as contemplated under the provisions of the Act.

On the other hand, Learned Government Pleader supports the impugned order and submits that the various works that were undertaken at Gram Panchayat level under 30 day programme are all essential works for which payment is to be released immediately and by the act of petitioner not counter signing the cheques, the payments could not be released for the works that were done which was being complained by the Sarpanch and other members of the Gram Panchayat.

As seen from the impugned order passed by the 3rd respondent, the same is passed in exercise of powers conferred on the said authority under Section 37 (1)(v) which deals with the persistent default in the performance of the functions and duties entrusted to the Sarpanch/Upa-Sarpanch under the Act to the

determent of the functioning of the Gram Panchayat. The show cause notice which is issued to the petitioner does not indicate that the petitioner has been persistently defaulted in performance of her functions as Upa-Sarpanch which is a prerequisite for conferring power on the District Collector to remove the Sarpanch. Further, the impugned proceeding also refers to the provision of Section 37(5) for placing the petitioner under suspension for a period not exceeding six months. However, the impugned proceeding does not indicate such suspension of the petitioner is pending any investigation as provided under Section 37(5) of the Act. Thus, the impugned order passed by the 3rd respondent is clearly in violation of the provisions of the Act and is liable to be set aside. However, it is open for the authorities to pass order afresh after taking into consideration the explanation offered by the petitioner and also by giving due consideration to the issues raised by the petitioner in her representation dated 26.10.2019, reference of which has been made in the explanation submitted to the show cause notice.

Accordingly, the Writ Petition is allowed with above direction.

No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 04.12.2019
MRKR