
(2021) 12 TEL CK 0044

In the Telangana High Court

Case No : Writ Appeal Nos. 610, 586, 587 Of 2021

District Collector, And 2 Others

APPELLANT

Vs

Md.Fayeem, And Another

RESPONDENT

Date of Decision : 15-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Telangana Panchayat Raj Act, 2018 — Section 2(39), 15, 37(5)

Citation : (2021) 12 TEL CK 0044

Hon'ble Judges : Satish Chandra Sharma, CJ;N. Tukaramji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Regard being had to the controversy involved in the aforesaid cases, they were heard together and are being decided by a common order.

The facts of W.A.No.610 of 2021 are reproduced as under:

The present W.A.No.610 of 2021 is arising out of common order dated 18.10.2021 passed in W.P.No.22616 of 2021 and batch by the learned Single Judge.

The facts of the case reveal that writ petitions were preferred by Ward Members of Kistareddypet Gram Panchayat, Ameenpur Mandal, Sangareddy district i.e., W.P.No.22616 of 2021 and by Md. Fayeem, Upa-Sarpanch i.e., W.P.No. 22668 of 2021 being aggrieved by the show cause notice issued by the Collector, Sangareddy district under Section 37(5) of the Telangana Panchayat Raj Act, 2018 (hereinafter referred to as "the Act").

The show cause notice was issued for placing the Ward Members and Upa-Sarpanch under suspension. A ground was raised before the learned Single Judge that the show cause notice has been issued by an authority not jurisdictionally competent to do so and in those circumstances, the learned Single Judge has allowed the writ petitions. The statutory provision governing the field as

contained under Section 37(5) of the Act is reproduced as under:

"37(5) If the District Collector is of the opinion that a Sarpanch of a Gram Panchayat omitted or refused to carry out the orders of Government for the proper working of the concerned Gram panchayat or abused his position or the powers vested in him, and that the further continuance of such person in office would be detrimental to the interests of the concerned Gram Panchayat or the inhabitants of the village, the District Collector, by order, suspend such Sarpanch from the office for a period not exceeding six months, pending investigation into the said charges and action thereon under the foregoing provisions of this Section;

Provided that no order under this sub-section shall be passed unless the person concerned has had an opportunity of making a representation against the action proposed:

Provided further that it shall be competent for the Commissioner to extend, from time to time, the period of suspension for such further period not exceeding six months, so however that total period of suspension shall not exceed twelve months:

Provided also that a person suspended under this subsection shall not be entitled to exercise the powers and perform the functions attached to his office and shall not be entitled to attend the meetings of the concerned Gram Panchayat except a meeting held for the consideration of a no-confidence motion."

The aforesaid statutory provision of law makes it very clear that a District Collector is competent to place a Sarpanch under suspension for a period not exceeding six months pending investigation into the charges relating to irregularities. The learned Single Judge has arrived at a conclusion that Section 37(5) does not empower the Collector to place the Ward Members and Upa-Sarpanch under suspension.

Learned Government Advocate has vehemently argued before this Court that the definition under the Act as contained under Section 2(39) defines Sarpanch as a person elected as Sarpanch under Section 15. She has drawn the attention of this Court towards Section 15, which provides for a provision for election of Sarpanch as well as Upa-Sarpanch. Section 2(39) and Section 15 are reproduced as under:

"2(39) 'Sarpanch' means the Sarpanch of Gram Panchayat, elected under Section 15.

15. Election and term of office of Sarpanch or Upa Sarpanch.

(1) There shall be a Sarpanch for every Gram Panchayat, who shall be elected in the prescribed manner by the persons whose names appear in the electoral roll for the Gram Panchayat, from among themselves. A person shall not be qualified to stand for election as Sarpanch, unless he is at least twenty-one years of age:

Provided that a Member of the Legislative Assembly of the State or a Member of the Legislative Council of the State or of either House of Parliament who is elected to the office of Sarpanch or Upa-Sarpanch shall cease to hold such office unless within one month from the date of election to such office he ceases to be a Member of the Legislative Assembly of the State or a Member of the Legislative Council of the State or of either House of Parliament by resignation or otherwise.

(2) The election of the Sarpanch may be held at the same time and in the same place as the ordinary elections of the members of the Gram Panchayat.

(3) Save as otherwise expressly provided in, or prescribed under this Act, the term of office of the Sarpanch who is elected at an ordinary election shall be five years from the date appointed by the Commissioner for the first meeting of the Gram Panchayat after the ordinary election.

(4) Subject to the provisions of sub-section (5), any casual vacancy in the office of the Sarpanch shall be filled within one hundred and twenty days from the date of occurrence of such vacancy, by a fresh election under sub-section (1); and a person elected as Sarpanch in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

(5) Unless the Commissioner otherwise directs, no casual vacancy in the office of the Sarpanch shall be filled within six months before the date on which the ordinary election of the Sarpanch under sub-section (1) is due.

(6) The provisions of Sections 20 to 27 shall apply in relation to the office of the Sarpanch as they apply in relation to the office of an elected member of the Gram Panchayat.

(7) The Sarpanch shall be an ex-officio member of the Gram Panchayat and shall be entitled to vote at meetings of the Gram Panchayat.

(8) A person shall be disqualified for election as Sarpanch if he is in arrears of any dues, otherwise than in a fiduciary capacity to a Mandal Praja Parishad, or if is interested in a subsisting contract made with or any work being done for, the Mandal Praja Parishad within whose jurisdiction the Gram Panchayat is situated or any other Gram Panchayat within the jurisdiction of that Mandal Praja Parishad:

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in, -

(i) A company as a mere shareholder but not as a director, or

(ii) Any lease, sale or purchase of immovable property or any agreement for the same; or

(iii) An agreement for the loan of money or any security for the payment of money only; or

(iv) Any newspaper in which any advertisement relating to the affairs of any of the aforesaid Gram Panchayat is inserted.

Explanation:- For the removal of doubt it is hereby declared that where a contract is fully performed it shall not be deemed to be subsisting merely on the ground that the Mandal Praja Parishad has not performed its part of the contractual obligation.

(9) For every Gram Panchayat one of the members shall be elected to be Upa-Sarpanch by the Gram Panchayat, in the prescribed manner. If at an election held for the purpose, no Upa-Sarpanch is elected, fresh election shall be held: Provided that before an election of Upa-Sarpanch is held, every casual vacancy in the office of an elected member of a Gram Panchayat shall be filled.

(10) A special meeting for the election of the Upa-Sarpanch shall be called on the same date on which the results of the ordinary elections to the Gram Panchayat have been published. The notice of the meeting for election of Upa-Sarpanch shall be given to the members so elected by affixture of the same on the notice board at the office of the Gram Panchayat, immediately after such publication:

Provided that if, for any person, the election of the Upa-Sarpanch is not held on the date aforesaid the special meeting for the election of the Upa-Sarpanch shall be held on the next day, whether or not it is a holiday observed by the Gram Panchayat:

Provided further that the State Election Commission may, from time to time, for reasons to be recorded in writing direct or permit the holding of the election of the Upa-Sarpanch on any other day."

Her contention is that Sarpanch includes Upa-Sarpanch and Ward Members and therefore, once Section 37(5) provides for suspension of Sarpanch, the Collector is jurisdictionally competent to place the Ward Members and the Upa-Sarpanch under suspension.

This Court has carefully gone through the aforesaid statutory provision of law. The election to the post of Sarpanch is a direct election. The election to the post of Upa-Sarpanch is an indirect election. The Act nowhere says that the definition of Sarpanch is an inclusive definition including Upa-Sarpanch and Ward Members also and therefore, when the statute does not provide for suspension of Upa-Sarpanch and Ward Members by the Collector under Section 37(5) of the Act and since no other statutory provision of law has been brought to the notice of this Court by the learned Government Advocate which empowers the Collector to place the Upa-Sarpanch and the Ward Members under suspension, the learned Single Judge was justified in allowing the writ petitions preferred by Upa-Sarpanch and the Ward Members.

The learned Senior counsel, who has also filed writ appeal W.A.No.586 of 2021 on behalf of Danti Ashok (the complainant), who is one of the Ward Members, has vehemently argued before this Court that there is a remedy of filing reply to

the show cause notice and thereafter, if any adverse order is passed, there is a remedy of preferring an appeal. He has placed reliance upon the judgment of the Hon'ble Supreme Court delivered in the case of Union of India vs. Kunisetty Satyanarayana SLP (C) No.16572 of 2006 dt. 22.11.2006. The relevant paragraphs of the judgment are reproduced as under:

"It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Shulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001 (10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc. The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show cause notice or charge sheet.

No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

The aforesaid judgment makes it very clear that the High Court can quash a charge sheet or show cause notice if it is found to be wholly without jurisdiction. In the present case, the show cause notice is certainly without jurisdiction and therefore, in the light of the judgment, which has been relied upon by the learned counsel for the respondents in the writ petitions, the learned Single Judge was justified in allowing the writ petitions.

Reliance has already been placed upon the judgment delivered in the case of Commissioner of Central Excise vs. M/s. Krishna Wax Private Limited Civil Appeal No.8609 of 2019, dt. 14.11.2019. The civil appeal was dismissed as it was only against the show cause notice in the matter of payment of service tax. In the present case, the statute is very clear and the notice has been issued by an

authority not having the jurisdiction and therefore the judgment again does not help the respondent State nor Mr. Donti Ashok in the present writ appeal.

Reliance has also been placed upon the Telangana General Clauses Act, 1981, and the powers of the Telangana District Collectors as well as G.O.Ms.No.77, dated 22.01.1968.

In the considered opinion of this Court once the Act does not provide for placing the Upa-Sarpanch and Ward Members under suspension and no specific provision has been brought to the notice of this Court authorising the Collector to place them under suspension, the question of interference with the orders passed by the learned Single Judge does not arise.

Accordingly, the writ appeals are dismissed.

Miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.