
(2021) 10 TEL CK 0016

In the Telangana High Court

Case No : Writ Petition Nos. 22616, 22640, 22668 Of 2021

K.Shoba And Others

APPELLANT

Vs

District Collector (Panchayat Raj Wing)

RESPONDENT

Date of Decision : 18-10-2021

Acts Referred:

Telangana Panchayat Raj Act, 2018 — Section 2(39), 15, 15(1), 15(8), 15(9), 15(10), 30, 32, 35(2), 37, 37(1), 37(5), 37(6), 70(4), 113, 114

Citation : (2021) 10 TEL CK 0016

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Allowed/Dismissed/Allowed

Judgement

1-a) W.P.No.22616 OF 2021 is filed by the Petitioners/Ward Members of the 2nd Respondent to quash the show cause notice No 153/2021/Pts.1 to 6, dated 06.09.2021 issued by the 1st Respondent with regard to suspension of the Petitioners and to issue consequential direction to the Respondents to permit the Petitioners to continue as Ward Members till January 2024.

1-b) W.P.No.22640 of 2021 is filed by the Petitioner/Sarpanch to quash the show cause notice No.153/2021/A1/Pts.1, dated 06.09.2021 issued by the 1st Respondent with regard to removal of the Petitioner from the office of Sarpanch of the 2nd Respondent Gram Panchayat and issue consequential direction to the respondents to permit the Petitioner to continue as Sarpanch for the elected tenure.

1-c) W.P.No.22668 of 2021 is filed by the Petitioner/Upa-Sarpanch seeking to quash the show cause notice No.153/2021/A1/Pts.2, dated 06.09.2021 issued by the 1st Respondent with regard to suspension of the Petitioner from the office of Upa-Sarpanch of the 2nd Respondent Gram Panchayat and issue consequential direction to the respondents to permit the petitioner to continue as Upa-Sarpanch of the 2nd respondent Gram Panchayat for the elected tenure.

2. Heard Sri Vedula Venkataramana, learned Senior Counsel representing Sri D.B.Chaitanya, learned counsel for the Petitioners, learned Government Pleader for Panchayat Raj appearing for Respondent Nos.1, 3 and 4 and Sri P.Venugopal, learned Senior Counsel, representing Sri T.Sudhakar Reddy, learned counsel appearing for the 5th Respondent and Sri G.Narender Reddy, learned Standing Counsel appearing for the 2nd Respondent and perused the record.

3. FACTS OF THE CASE

i) The 1st Respondent had issued impugned notices dated 06.09.2021 to the Sarpanch, Upa-Sarpanch and the Ward Members, the respective petitioners herein asking them to show cause as to why action should not be initiated against them in violation of Sections 113, 114 and 37(1) and 37(5) of the Telangana Panchayat Raj Act 2018 (for short, 'the Act')Act. 7 days time was given to them to submit their explanations.

ii) The charges leveled against the Sarpanch are as follows:-

"Charge No.1:-As per CCTV footage, video & audio footage, it is observed that, the Sarpanch has distributed Rs.50,000/-(Rupees Fifty Thousand Only) to each ward member in between 12.30P.M. to 12.34PM on 25.03.2021. The distribution of amount among body members in the Gram Panchayat Office shows their illegal and corrupt practices.

Charge No.2: After assuming the charge as Sarpanch, 12 Unauthorised Layouts have been established in Kistareddypet of Ameenpur, the Sarpanch has failed to stop these layouts and violated the Section 113 of the Act.

Charge No.3: After assuming charge as Sarpanch, Gram Panchayat Kistareddypet, 62 Unauthorised buildings are being constructed; the Sarpanch has failed to stop these constructions and violated the Section 114 of the Act.

Charge No.4: Some of the Buildings are demolished in the April, 2021 as special drive, started again. Even after several times demolition drive taken up to remove illegal floors, construction of illegal floors are still going on i.e. they took permission for G+2 from Gram Panchayat and constructing G+3, G+4. This shows Gram Panchayat body failed to stop the illegal constructions as per Section 114 of the Act.

Charge No.5: A.Krishna, Sarpanch, Gram Panchayat, Kistareddypet, has not cooperated with the Panchayat Secretary and Gram Panchayat Staff to stop the illegal structure and obstructed the duties of them."

iii) The charges leveled against the Upa-Sarpanch are as follows:-

"Charge No.1:-As per CCTV footage, video & audio footage, it is observed that the Sarpanch has distributed Rs.50,000/-(Rupees Fifty Thousand Only) to each ward member in between 12.30P.M. to 12.34PM on 25.03.2021. The distribution of amount among body members in the Gram Panchayat Office shows their illegal and corrupt practices.

Charge No.2: Some of the Buildings are demolished in the April, 2021 as special drive started again. Even after several times demolition drive taken up to remove illegal floors. Construction of illegal floors are still going on i.e. they took permission for G+2 from Gram Panchayat and constructing G+3, G+4. This shows Gram Panchayat body failed to stop the illegal constructions as per Section 114 of the Act.

Charge No.3: After assuming charge of Upa-Sarpanch, 12 Unauthorised Layouts have been established in the Gram Panchayat, Kistareddypet of Ameenpur. The Upa Sarpanch has failed to stop these layouts and violated the Section 113 of the Act.

Charge No.4: After assuming the charge of the Upa-Sarpanch, Gram Panchayat Kistareddypet, 62 unauthorized buildings are being constructed; the Upa-Sarpanch has failed to stop these constructions and violated the Section 114 of the Act.

Charge No.5: Sri Md.Fayeem, Upa Sarpanch, Gram Panchayat, Kistareddypet, has not cooperated with the Panchayat Secretary and Gram Panchayat Staff to stop the illegal structure and obstructed the duties of them."

iv) The Charges leveled against the Ward Members are as follows:-

"Charge No.1:-As per CCTV footage, video & audio footage, it is observed that the Sarpanch has distributed Rs.50,000/-(Rupees Fifty Thousad Only) to each ward member in between 12.30P.M. to 12.34PM on 25.03.2021. The distribution of amount among body members in the Gram Panchayat Office shows their illegal and corrupt practices.

Charge No.2: Some of the Buildings are demolished in the April, 2021 as special drive started again. Even after several times demolition drive taken up to remove illegal floors. Construction of illegal floors are still going on i.e. they took permission for G+2 from Gram Panchayat and constructing G+3, G+4. This shows Gram Panchayat body failed to stop the illegal constructions as per Section 114 of the Act.

4. CONTENTIONS OF THE PETITIONERS

i) The 1st Respondent has no jurisdiction to issue impugned show cause notices to the Upa-Sarpanch and the Ward Members as per Section 37(5) of the Act.

ii) In respect of Upa-Sarpanch, there is procedure to move No Confidence Motion in the event of losing of confidence on him.

iii) Section 30 of the Act, deals with the procedure for moving No Confidence Motion, whereas, the 1st Respondent cannot invoke jurisdiction under Section 37(1) of the Act, by way of issuing the impugned notices. Therefore, the 1st Respondent is not having jurisdiction to issue impugned notices and as such the issuance of the said impugned notices, dated 06.09.2021 issued in respect of the Upa-Sarpanch and the Ward Members have to be set aside.

iv) With regard to the Sarpanch, the 1st Respondent without forming any opinion and without coming to independent satisfaction, issued the impugned show cause notice, dated 06.09.2021.

v) The 1st Respondent has also referred the report of the 3rd Respondent in the said show cause notice, dated 06.09.2021. Basing on the report of the 3rd Respondent, the 1st Respondent cannot issue show cause notice.

vi) The 1st Respondent has to form an independent opinion for the purpose of issuing the notice under Section 37(5) of the Act.

vii) The 1st Respondent has to come a conclusion with regard to abusing of position or powers vested on the Petitioner as Sarpanch of the village and that his continuation in office would be detrimental to the interest of the concern Gram Panchayat or the inhabitants of the Village. Without coming to such conclusion, the 1st Respondent has issued the impugned show cause notice. Therefore, the impugned show cause notice is liable to be set aside.

viii) Placed reliance on the principle laid down by the then High Court of Andhra Pradesh in D. Sathi Reddy Vs. Commissioner, Panchayat Raj A.P., Hyd. AIR 2000 AP 91.

ix) With the said submissions, learned Senior Counsel sought to set aside the impugned notices issued to the Petitioners in all the Writ Petitions.

5. CONTENTIONS OF RESPONDENT NOS.1, 3 AND 4

i) As per Section 2(39) and Section 15 of the Act, the Sarpanch includes Upa - Sarpanch. Therefore, the 1st Respondent is having power to issue show cause notice in respect of Upa-Sarpanch and also Ward Members. Section 2(39) defines Sarpanch as a person elected as a Sarpanch under Section 15. Section 15(1) to 15(8) discusses the procedure of elections and the qualifications for contesting. Section 15(9) and Section 15(10) provide for the election of Upa- Sarpanch. Nowhere in the provision it is stated that Sarpanch includes Upa - Sarpach.

ii) The Petitioners herein, instead of submitting explanations to the show cause notices, filed the present Writ Petitions. There is procedure laid down under the Act, to challenge the order to be passed by the 1st Respondent pursuant to the show cause notices. Instead of availing the said alternative remedy, the Petitioners have filed the present Writ Petitions.

iii) The 1st Respondent, basing on the contents of the complaints submitted by the Ward Members and villagers of the said village and on the report submitted by the 3rd Respondent, formed an opinion in issuing the impugned show cause notices to the petitioners herein.

iv) There are serious allegations against all the Petitioners.

v) The contention of the petitioners, Surpanch, Upa-Sarpanch and

Ward Members of the 2nd Respondent-Gram Panchayat, would be detrimental to

the interest of the 2nd Respondent and inhabitants of the said village. Therefore, the 1st Respondent had issued the impugned show cause notices to all the Petitioners.

vi) There is no irregularity or illegality in issuance of the impugned notices to the Petitioners.

vii) Writ Petitions are not maintainable challenging the show cause notices.

viii) With the said submissions, learned Government Pleader sought to dismiss all the three Writ Petitions.

6. CONTENTIONS OF THE 5TH RESPONDENT

i) The villagers of the 2nd Respondent-Gram Panchayat submits that there are serious allegations against all the Petitioners herein.

ii) On the complaint lodged by the 5th Respondent, the 1st Respondent has called for report from the 3rd Respondent, who in turn, submitted his report dated 30.08.2021. Therefore, the 1st Respondent has issued show cause notices to the Petitioners herein.

iii) Instead of submitting explanations to the said show cause notices, the Petitioners have filed the present Writ Petitions.

iv) There is procedure laid down under the Act with regard to passing of orders pursuant to the impugned show cause notices and filing of an appeal under Section 37(6) of the Act.

v) Instead of submitting their explanations to the impugned show cause notices, the Petitioners herein have filed the present Writ Petitions.

vi) With the said submissions, he sought to dismiss the writ Petitions.

FINDING OF THE COURT

7. In view of the above said submissions, the point that falls for consideration before this Court is whether the 1st Respondent is having power to issue the show cause notices under Section 37(5) of the Act to Sarpanch, Upa-Sarpanch and Ward Members.

8. To decide the said lis, it is apt to refer certain provisions of the Act which are relevant. Section 2 (39) of the Act deals with the definition of Sarpanch which is as follows:

'Sarpanch' means the Sarpanch of Gram Panchayat, elected under Section 15.

9. Section 15(1) to (8) of the Act deals with the procedure for election of Sarpanch and Section 15(9) and (10) of the Act for Upa - Sarpanch.

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)

4).....

5).....

6).....

7).....

8).....

(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).....

10. The procedure laid down under Section 37(6) of the Act with regard to passing of orders pursuant to the impugned show cause notices and filing of an appeal, which is as follows:-

(6) Any Sarpanch aggrieved by an order of removal passed by the District Collector under Sub-Section(1), or by an intimation under sub-section (2) may, within thirty days from the date receipt of the order or as the case may be the intimation, prefer an appeal to the Gram Panchayat Tribunal.

11. It is relevant to note that the election of Sarpanch and Ward Members of Gram Panchayat is a direct election and election to the Upa Sarpanch is indirect election. Against Upa Sarpanch, there is procedure to move No Confidence Motion. The Procedure is specified under Section 30 of the Act, which reads as follows:-

Section 30: Motion of no confidence in Upa-Sarpanch:-

30. (1) A motion expressing want of confidence in the Upa-Sarpanch, may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one half of the total number of members of the Gram Panchayat, and further action on such notice shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the Upa-Sarpanch:

Provided further that no such notice shall be made against the same Upa-Sarpanch more than twice during his term of office and the second no-confidence motion shall not be initiated before the expiry of two years from the date of first no-confidence motion. Motion of no-confidence in Upa-Sarpanch.

Explanation: - For the removal of doubt, it is hereby declared that for the purpose of this section the expression 'total number of members' means, all the members who are entitled to vote irrespective of any vacancy existing in the office of such members at the time of meeting:

Provided that a suspended office bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) If the motion is carried with the support of at least one half of the total number of members, the District Collector shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy.

Explanation:- For the purpose of this section, in the determination of one half of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one.

12. It is relevant to note that Section 32 of the Act, deals with the duties and responsibilities of the Sarpanch which reads as follows:-

32. (1) The Sarpanch shall,-

(a) exercise all the powers and perform all the functions specifically conferred or imposed on the Sarpanch by this Act or the rules made thereunder;

(b) exercise administrative control over the Panchayat Secretary and supervise his work for the purpose of implementation of the resolutions of the Gram Panchayat or any committee thereof;

(c) incur contingent expenditure up to such limit as may be fixed by the Government from time to time and authorize payment and refunds with the approval of Gram Panchayat;

(d) act only within the terms of sanction given in any resolution of the Gram Panchayat;

(e) maintain sanitation in the village;

(f) take up plantation and maintain Green coverage in the village;

(g) for the purpose of effective functioning of the Gram Panchayat, the Sarpanch shall reside in the village and visit the Gram Panchayat office regularly.

(2) Failure of Sarpanch in performing the duties prescribed in sub-section (1) shall result in removal of the Sarpanch by the District Collector after providing him due opportunity for explanation.

The Upa Sarpanch is second/Joint Signatory to the cheques of Gram Panchayat. The Upa Sarpanch does not have any independent power to act on behalf of the Gram Panchayat.

13. As per Section 70(4) of the Act, all cheques against the Gram Panchayat fund shall be signed jointly by the Sarpanch and Upa Sarpanch. All orders related to the above will be issued by the Sarpanch on behalf of the Gram Panchayat.

14. Section 37(5) of the Act deals with the powers of the District Collector, to remove Sarpanch and intimating deemed removal, which is extracted as follows:-

"(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 sub-section 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."

15. A perusal of the impugned show cause notices issued to the petitioners herein would reveal that on the complaints lodged by the 5th Respondent and the villagers of the 2nd Respondent-Gram Panchayat, the 1st Respondent had

called for report from 3rd Respondent who in turn submitted his report. Basing on the said complaints and report of the 3rd Respondent, the 1st Respondent formed an opinion and issued impugned show cause notices to the Petitioners herein.

16. As stated above, there is no provision under the Act to issue show cause notices to the Upa Sarpanch and Ward Members of Gram Panchayat. Section 37 of the Act deals with the removal of the only Sarpanch but not with regard to removal of Upa Sarpanch and Ward Members. As stated above, the election of Upa Sarpanch is indirect election and there is procedure for removal. Though, prima facie, there are serious allegations against the Upa Sarpanch and Ward Members, there is no procedure prescribed under the Act, to remove them from the post of Upa Sarpanch and Ward Members by the 1st Respondent by way of initiating procedure. At the cost of repetition, as discussed supra, Section 37 of the Act deals with the removal of the Sarpanch only.

17. Learned Government Pleader, referring to Section 2(39) and Section 15 of the Act, would submit that Sarpanch includes Upa Sarpanch. But Section 15 of the Act deals with the election of Sarpanch and Upa Sarpanch. As discussed supra, Section 15(1) to (8) deals with election of Sarpanch and Section 15(9) and (10) deals with the election of Upa Sarpanch. Thus, the Act is silent with regard to removal of Upa Sarpanch and Ward Members by the 1st Respondent. If the Ward Members lost confidence on the Upa Sarpanch, they have to move No Confidence Motion under Section 30 of the Act whereas, in the present case, on the complaint given by the 5th Respondent and villagers of the 2nd Respondent, the 1st Respondent has issued the present impugned show cause notices.

18. In Reserve Bank of India Vs. Peerless General Finance and Investment Company Limited 1987(1) SCC 424, it was held by the Apex Court that interpretation must depend on the text and context. They are the bases of interpretation. One may well say if the text is texture, context is what gives the colour. Neither can be granted. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

19. The Hon'ble Apex Court in Nelson Motis v. Union of India (1992) 4 SCC 711 held as follows :-

8. The language of sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable cases in India and in England, the expression used in the statute alone declares the intent of the legislature. In the words used by this Court in *State of U.P. v. Dr Vijay Anand Maharaj* [(1963) 1 SCR 1 : AIR 1963 SC 946 : 45 ITR 414] when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Therefore, as the language of Section 37(5) is clear, the contention of learned Government Pleader that Sarpanch includes Upa - Sarpanch is not sustainable. The impugned show cause notices issued against the Ward Members and Upa - Sarpanch were issued without jurisdiction and are liable to be set aside.

20. With regard to Sarpanch, it is relevant to note that Section 37 of the Act, deals with the procedure to remove Sarpanch. The 1st Respondent on consideration of complaints, submitted by the 5th Respondent, villagers of the 2nd Respondent-Gram Panchayat and also the report of the 3rd Respondent formed an opinion and framed specific charges against the Sarpanch of the 2nd Respondent-Gram Panchayat. Accordingly, referring to the same, he has issued show cause notice dated 06.09.2021 to the Sarpanch of the said village framing specific charges and called for explanation from him within 7 days from the date of receipt of the said show cause notice.

21. The Hon'ble Apex Court, in *Bhikhubhai Vitlabhai Patel v. State of Gujarat* (2008) 4 SCC 144 relying on the principle in *Barium Chemicals Ltd. v. Company Law Board* AIR 1967 SC 295 held as follows -

29. In *Barium Chemicals Ltd. v. Company Law Board* [AIR 1967 SC 295] this Court pointed out, on consideration of several English and Indian authorities that the expressions "is satisfied", "is of the opinion" and "has reason to believe" are indicative of subjective satisfaction, though it is true that the nature of the power has to be determined on a totality of consideration of all the relevant provisions.

30. This Court while expressly referring to the expressions such as "reason to believe", "in the opinion of" observed:

"63. ... Therefore, the words, 'reason to believe' or 'in the opinion of' do not always lead to the construction that the process of entertaining 'reason to believe' or 'the opinion' is an altogether subjective process not lending itself even

to a limited scrutiny by the court that such 'a reason to believe' or 'opinion' was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

22. Further, in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chennai* (2005) 7 SCC 627, the Hon'ble Apex Court held that formation of opinion is based on subjective satisfaction and the same has to be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones.

23. In *Barium Chemicals* (Supra) the Supreme Court observed the following -

28. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out.

Therefore, it is clear from the principle laid down by the Apex Court that an opinion can be formed only by application of mind which should be based on relevant materials. In other words, relevant factors and available information should be considered before forming an opinion.

24. As discussed supra, the 1st Respondent had issued the impugned show cause notice to the Sarpanch basing on the complaint of the 5th Respondent and villagers of the 2nd Respondent Gram Panchayat and also on the report of the 3rd Respondent. Therefore, the contention of Sri Vedula Venkataramana, learned Senior Counsel, that the 1st Respondent has to form an opinion independently without referring to the complaints and the report of the 3rd Respondent-DPO, cannot be accepted and the said contention is not sustainable. The 1st Respondent, being the District Collector cannot come to an opinion on his own without material. Therefore, he has relied upon the complaint of the 5th Respondent, villagers of the 2nd Respondent - Gram Panchayat and also report of the 3rd Respondent-DPO and has formed an opinion basing on the same and issued the impugned show cause notice specifically mentioning the same and also framed the charges. Therefore, according to this Court, there is no illegality in issuing the impugned show cause notice to the Sarpanch of the villagers by the 1st Respondent. Therefore, on the said ground, the impugned show cause notice cannot be set aside.

25. The 1st Respondent has to form an opinion by applying his mind, as held by the Apex Court. An application of mind should be based on relevant material. In other words, relevant factors of material available should be considered before forming an opinion. In the present case, the impugned show cause notices are

issued by the 1st Respondent, on perusal of the material on record i.e. the complaints of the 5th Respondent, villagers and the report of the 3rd respondent. Therefore, the contention of Sri Vedula Venkataramana, learned Senior Counsel that the 1st Respondent had issued the impugned show cause notice without consideration of the material, without forming an independent opinion is unsustainable.

26. The Sarpanch, aggrieved by an order of removal to be passed by the 1st Respondent under Section and 37(5) of the Act or by an intimation under Sub Section 2 of Section 35 of the Act, within 30 days from the date of receipt of the order or as the case may be, to be intimated preferring an appeal to the Gram Panchayat Tribunal. Therefore, there is specific procedure prescribed under the Act. Thus, there is alternative and efficacious remedy available to the petitioner herein under the Act. The petitioner herein, instead of availing the same, filed the present writ petition.

27. In the result, the W.P.No.22616 of 2021 and W.P.No.22668 of 2021 are allowed. The impugned show cause notices dated 06.09.2021 issued by the 1st Respondent against the Petitioners/Ward Members and Upa-Sarpanch with regard to their suspension from their positions from the 2nd Respondent Gram Panchayat, is hereby set aside.

and

The Writ Petition vide W.P.No.22640 of 2021 is hereby dismissed.

There is no order as to costs.

28. As a sequel, miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.