

(2020) 12 TEL CK 0005
In the Telangana High Court
Case No : Writ Petition No. 12659 Of 2020

Miryala Mahendar

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

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

Citation : (2020) 12 TEL CK 0005

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : Venkateswarlu Gummadavelly, G. Narender Reddy

Final Decision : Allowed

Judgement

Petitioner challenges the order dated 15.07.2020 which suspended him from the post of Upa Sarpanch of Perkapally Gram Panchayat for a period of

six months. The said order was made under Section 37(5) of the Telangana Panchayat Raj Act, 2018 by the 3rd respondent - District Collector.

The petitioner was issued a show cause notice alleging that he, being the Upa Sarpanch and authorised to sign Cheques as co-signatory, failed to sign

the cheques relating to payment of salaries of Multi-purpose workers, and electricity consumption charges, which act amounts to non-compliance of

his legitimate duties and also not in the interest of the gram panchayat; and therefore, sought explanation as to why he should not be kept away from

the affairs of the gram panchayat. The petitioner is stated to have submitted his explanation. After consideration of the explanation and also after

considering the report of the District Panchayat Officer, he was stated to have suspended for a period of six months.

In the affidavit filed in support of this Writ Petition, the petitioner averred that

false charges were framed against him as he questioned the unauthorised and illegal activities of the Sarpanch and also due to political rivalry. It is also averred that out of five material documents which he sought under the Right to Information Act, only three documents were furnished which is violation of the principles of natural justice in the conduct of inquiry.

The 6th respondent â?? Panchayat Secretary filed a counter-affidavit on behalf of the gram panchayat denying the averments of the petitioner. It was asserted that the gram panchayat convened a meeting of the Committee with seven Ward Members and passed a Resolution to make a complaint to the District Collector with respect to non-cooperation of the petitioner. Pursuant to the complaint, a preliminary enquiry was conducted by the 3rd respondent by issuing the show cause notice and as per the record, the petitioner had apparently not filed any explanation even after lapse of one month. It is further asserted that under Section 70 of the Act, cheques of the gram panchayat have to be signed by the Sarpanch and the Upa Sarpanch and, under Section 71, it is the duty of the gram panchayat to make payment of salaries, allowances, etcetera; and once the gram panchayat passes a Resolution, the petitioner being Upa Sarpanch and a Member of the Body cannot refuse to carry out the said Resolution. It is also stated that in the present case, the petitioner failed to sign the cheques which amounts to non-implementation of the Resolution of the gram panchayat. Hence, he prayed for dismissal of the Writ Petition.

At the time of admission, interim order was made on 18.08.2020, suspending the impugned order, on the ground that no notice was issued to the petitioner under Section 37(5) and there was no assertion in the impugned order that suspension is pending investigation into omissions and refusal of the petitioner to carryout the orders of the government.

Learned counsel for the petitioner, though not pleaded, submits that Upa Sarpanch is not the Sarpanch for all practical purposes and thus, Section 37(5) has no application to the Upa Sarpanch.

Learned Government Pleader for Revenue appearing on behalf of the District Collector, drawing attention to definition of â??Sarpanchâ??

enumerated under Section 2(39), would submit that there being no separate procedure for election of â??Sarpanchâ?? and â??Upa Sarpanchâ??,

Upa Sarpanch also gets governed within the definition of 'Sarpanch', in terms of Section 15(9) as he is also an elected member. There is no distinction between 'Sarpanch' and 'Upa Sarpanch' except with respect to the functions to be discharged by them and both are responsible for discharge of their respective functions on behalf of the gram panchayat. The learned Government Pleader further submits that this Court not being an appellate authority and in view of there being no explanation of the petitioner to the show cause notice, the decision of the Collector does not warrant interference.

Heard learned Standing Counsel for the gram panchayat Sri G. Narender Reddy.

Having regard to the respective submissions, at the outset, it may be noted that the petitioner having failed to avail the opportunity of submitting his explanation to the show cause notice had practically disabled himself to canvass anything with respect to the merits of the matter on facts. That being only ground, the learned counsel for the petitioner having realised the same, and further considering the fact that this Court has time and again held that this Court is not the Appellate Authority over the affairs of the gram panchayat or on the orders passed under Section 37(5) raised the issue of inapplicability of Section 37(5) on the ground that the petitioner is 'upa sarpanch'.

One may notice the definition of 'Sarpanch' in Section 2(39) which reads thus:

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

Under the scheme of Panchayat Raj Act, the gram panchayat consists of elected members, co-opted members and a Sarpanch. From among the

elected members, in terms of Section 15(9), one of the members shall be elected to be the Upa Sarpanch by the gram panchayat. While

'Sarpanch' gets elected directly by the voters, 'Upa Sarpanch' gets elected by the ward members. The training to be undergone and the

functions to be discharged by the Sarpanch and the Upa Sarpanch delineated under the Act is same. There is no separate provision made dealing with

'Upa Sarpanch'. Further, it may be noted that the purpose of suspension power to be exercised by the Collector under Section 37 is to ensure

uninterrupted smooth functioning of the gram panchayat and not as a

punishment. This view was taken by this Court in Writ Petition No. 12778 of 2020. Hence, the contention of the learned counsel for the petitioner that the provision under Section 37(5) does not apply to Upa-Sarpanch is liable to be rejected.

However, in the facts of the present case, for one instance of non-cooperation of signing cheques, suspension of the petitioner for a period of six months cannot be said to be justified in the context of Section 37(5). Hence, the impugned order is set aside and the matter is remanded to the District

Collector for consideration afresh with respect to the desirability of suspending the petitioner for a period of six months.

The Writ Petition is allowed accordingly. No costs. Consequently, the miscellaneous Petitions, if any stand closed.