

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.14667 of 2023

ORDER:

An interesting point, which arises for consideration in this writ petition, is whether the petitioner, who is the sole Ward Member of Sivunipally Gram Panchayat, Station Ghanpur Mandal, Jangaon District, can be appointed as temporary Sarpanch in terms of Section 38(3) of the Telangana Panchayat Raj Act, 2018 (for short 'the Act').

2. Sivunipally Gram Panchayat comprises of 14 wards. Election notification was issued on 12.01.2019 for conducting elections of Sivunipally Gram Panchayat along with other Gram Panchayats in the State of Telangana. However, elections were not held to the post of Sarpanch and 14 ward members as no nominations were filed. None of the villagers, except the petitioner, was interested in contesting to the post of Sarpanch and 14 ward members, as they were agitating against the Government authorities for not undertaking development activities in the village. Second election notification was issued on 12.02.2019 for conducting elections to the Sivunipally Gram Panchayat. The petitioner filed nomination on 16.02.2019 to the post of Ward Member for Ward No.8 and he was declared as elected by a majority of 43 votes over his rival candidate, Smt. Gandla Jyothi, on 28.02.2019.

3. It is stated that the petitioner was issued Form No.XXIX by the Returning Officer as "*duly elected Ward Member of the Gram Panchayath*" and since then, the petitioner continued as ward member. The post of Sarpanch and other ward members remained vacant and no steps were taken by the respondent authorities to conduct elections to the said vacant posts. The respondent No.2 appointed respondent No.5-Divisional Panchayat Officer as Special Officer of the Gram Panchayat on 10.06.2020 by relieving previous in charge Special Officer i.e. Assistant Director of Agriculture.

4. Learned counsel for the petitioner submitted that petitioner is entitled to be appointed as temporary Sarpanch as per the provision under Section 38(3) of the Act. The petitioner submitted representation dated 18.06.2019 to the District Collector requesting to appoint him as Temporary Sarpanch in the absence of elected Sarpanch and Upa-Sarpanch of the Gram Panchayat. The respondent No.2 merely made an endorsement over the same on 23.07.2019 and forwarded it to the respondent No.4. However, no action was taken. Hence, the petitioner submitted further representations to the respondent No.2 on 16.08.2019 and 03.02.2020. As nothing was informed to the petitioner, he was constrained to file the WP.No.5455 of 2021 and this Court, by order dated 11.01.2023, directed the District Panchayat Officer to examine the representation under Section 38(3) of the Act.

Respondent No.4 through proceedings in Rc.No.412/2019/A/G dated 31.01.2023 rejected the representation of the petitioner without referring to Section 38(3) of the Act and by referring to unconcerned Sections 2(14) and 136(3) of the Act.

5. Learned counsel further submitted that the petitioner once again filed WP.No.8973 of 2023 and this Court by order dated 03.04.2023 directed the District Collector to consider the representation of the petitioner in accordance with the provisions of the Act. The respondent No.2 passed order dated 04.05.2023 in a mechanical manner by confirming the earlier order dated of the respondent No.4 dated 31.01.2023. He submitted that the impugned order dated 04.05.2023 is passed in violation of Articles 40 and 243-B of the Constitution of India and Section 38(3) of the Act. Learned counsel for the relied upon the decisions of this Court in **S. SYEDA v. COLLECTOR (PANCHAYAT WING), GUNTUR**¹ and **AMBADI ANJI YADAV v. STATE ELECTION COMMISSION, HYDERABAD**².

6. Learned Government Pleader for Panchayat Raj submitted that the body of the Gram Panchayat was not constituted. The petitioner, being the lone ward member, cannot claim himself to be a Gram Panchayat. A situation where a lone elected person

¹ 2004 (6) ALT 1 (DB)

² 2023 (1) ALT (REV.) 252 (DB)

constitutes Gram Panchayat is not contemplated under the provisions of the Act or by any logic or legal precedent. He further submitted that Upa-Sarpanch can become a Sarpanch when the post of Sarpanch falls vacant. A ward member can at best become an Upa-Sarpanch, when the post of Upa-Sarpanch falls vacant in terms of Section 38 of the Act, but not a Sarpanch.

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

8. In **AMBADI ANJI YADAV's** case (2 supra), the issue involved was regarding conduct of election to the newly carved gram Panchayat. In **S. SYEDA's** case (1 supra), the issue involved was regarding continuation of Upa-Sarpanch as in-charge Sarpanch. The aforesaid decisions do not have bearing on the facts of the instant writ petition.

9. Section 38 of the Act reads as follows:

"38. Devolution and delegation of Sarpanch's powers and functions and filling up of vacancies in the office of Sarpanch.—(1) When the office of Sarpanch is vacant, the Upa-Sarpanch shall exercise the powers and perform the functions of the Sarpanch until a new Sarpanch is declared elected and assumes office.

(2) If the Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Sarpanch, or is incapacitated for more than fifteen days, his

powers and functions during such absence, restraint or incapacity shall devolve on the Upa-Sarpanch.

(3) When the Sarpanch is under suspension or when the office of Sarpanch is vacant or the Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Sarpanch or is incapacitated for more than fifteen days and the Upa-Sarpanch also is under suspension or there is either a vacancy in the office of Upa-Sarpanch or the Upa-Sarpanch has been continuously absent from jurisdiction for more than fifteen days or is restrained by an order of a Court from exercising the powers and performing the functions of the Upa-Sarpanch or is incapacitated for more than fifteen days, the powers and functions of the Sarpanch shall devolve on a member of Gram Panchayat appointed by the Collector in this behalf.

The member so appointed shall be styled as the temporary Sarpanch and he shall exercise the powers and perform the functions of the Sarpanch until a new Sarpanch or Upa-Sarpanch is declared elected or either the Sarpanch or the Upa-Sarpanch ceases to be under suspension or returns to jurisdiction or ceases to be restrained by an order of a court or recovers from his incapacity, as the case may be.

10. It is clear from Section 38(3) of the Act that a ward member can be appointed as a temporary Sarpanch to perform functions of a Sarpanch when office of Sarpanch and office of Upa-Sarpanch is vacant, until Sarpanch or Upa-Sarpanch is declared elected or who are suspended or recovers from his incapacity, as the case may be. The contention of the learned Government Pleader that the Gram Panchayat would be deemed to be validly constituted only if elections are conducted to the post of Sarpanch and all the 14 ward

members and the petitioner, being a lone ward member, cannot claim for appointment as temporary Sarpanch and this would amount to declaring the petitioner, lone ward member, as Gram Panchayat, though appears to be logical and valid at the first blush, on a close scrutiny of Section 38 of the Act, such argument is held to be unsustainable.

11. It is stated by the respondent No.2 in the impugned order that as per Section 2(14) of the Act, Gram Panchayat means a body constituted for local administration of a village under the Act and a body means more than one person and a single person cannot become a body. For whatever reasons, elections were not conducted to the post of Sarpanch and 13 ward members and the respondent authorities have not taken steps to conduct elections. Thus, the post of Sarpanch and Upa-Sarpanch continued to be vacant. In their wisdom the respondents went ahead and conducted election to ward No.8 wherein the petitioner contested and declared as elected. Thus, it cannot be said that the petitioner, though elected, would have no role to play in the Gram Panchayat. An election to constitute a panchayat shall be conducted in terms of Article 243 E of the Constitution of India. The object of insertion of Part IX of the Constitution [Articles 243 to 243(o)] was to decentralise democratic set ups at the grassroot levels and promote local self Government at various levels. By not conducting election

to the vacant post of Sarpanch and 13 ward members, the respondents failed to discharge the Constitutional mandate and they cannot take advantage of their own wrong.

12. Learned Government Pleader has not referred to any provision of law or judicial precedent to support his contention that a lone elected ward member of a Gram Panchayat cannot be appointed as temporary Sarpanch. Hence, the impugned order is arbitrary and against the spirit of Part-IX of the Constitution of India.

13. In view of the above, the writ petition is allowed and the impugned order dated 04.05.2023 is set aside. The respondent No.2 is directed to appoint the petitioner as Temporary Sarpanch until the posts of Sarpanch and Upa-Sarpanch are filled. However, in the peculiar facts and circumstances of the case, all cheques to be signed by the petitioner shall be counter-signed by the respondent No.5.

The miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

October 20, 2023
DSK

B. VIJAYSEN REDDY, J