

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.20111 of 2010

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, assails the order passed by the District Collector (Panchayat Wing), Nalgonda – 2nd respondent vide proceedings No.178/2010-B1(Pts), dated 09-08-2010.

Heard, Sri K. Jagadhishwar Reddy, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for respondents 1 to 4 and 6 and Sri C. Srinivas, learned counsel for the 5th respondent.

In the elections held for Raigiri Gram Panchayat, Nalgonda District in the year 2006, the petitioner herein was elected as Sarpanch. While the petitioner was working as Sarpanch the District Collector – 2nd respondent issued a show cause notice bearing No.178/2010-B1(Pts.), dated 21-04-2010, asking the petitioner to show cause as to why an amount of Rs.12,05,513/- should not be recovered by leveling as many as nine (9) allegations.

In response to the said show cause notice, on 26-05-2010, the petitioner herein submitted his explanation, denying the charges and requesting to drop further action. Thereafter the District Collector – 2nd respondent issued an order vide proceedings No.178/2010-B1(Pts.), 15-07-2010, directing the petitioner to pay a sum of Rs.1,71,821/-.

According to the petitioner, he remitted the said sum of Rs.1,71,821/- to the Gram Panchayat funds vide challans, dated 15-07-2010 and 29-07-2010.

On 15-07-2010, the District Collector vide proceedings, dated 15-07-2010 granted opportunity to the petitioner to follow the conditions issued in G.O.Ms.No.67 PR&RD, dated 26-02-2002. Last paragraph of the said notice reads as under:

“In view of the above, the Sarpanch, Gram Panchayat, Raigiri of Bhongir Mandal was given one more opportunity to follow the conditions issued in G.O.Ms.No.67 PR & RD, dated 26-02-2002 like transfer of 10% land to Gram Panchayat and other charges to be payable by developers to Gram Panchayat are to be paid and proposals shall be sent to the District Town & Country Planning Officer, Nalgonda within (15) days, otherwise action will be initiated for removal from the Office of the Sarpanch, Gram Panchayat, Raigiri.”

On 09-08-2010, the petitioner herein informed the District Collector about the compliance of the directions issued in the notice, dated 15-07-2010. Subsequently, the District Collector – 2nd respondent herein by virtue of an order vide proceedings No.178/2010-B1(Pts), dated 09-08-2010 ordered removal of the petitioner from the post of Sarpanch under Section 249 (1) of A.P. Panchayat Raj Act, 1994 (for

short, 'the Act'). The validity of the said order of removal is under challenge in the present writ petition.

It is contended by learned counsel for the petitioner that the impugned order of removal passed by the District Collector is highly illegal, arbitrary and in total violation of principles of natural justice. It is further contended that the impugned order of removal was not preceded by any show cause notice for removal as contemplated under Section 249 (1) of the Act. It is further stated that earlier show cause notice, dated 21-04-2010 issued under Section 265 (1) of the Act cannot be construed as show cause notice under Section 249 (1) of the Act as the said proceedings attained finality by virtue of proceedings, dated 15-07-2010 asking the petitioner to deposit the amount.

On the contrary, it is vehemently contended by learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned action, as such, the impugned order is not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended by learned Government Pleader that only after giving complete opportunity to the petitioner, the 2nd respondent – District Collector passed the impugned order of removal.

In the above background, now the issue that emerges for consideration of this Court is:

Whether the impugned order of removal passed by the 2nd respondent – District Collector, dated 09-08-2010 is sustainable and tenable and the same is in consonance with the provisions of A.P. Panchayat Raj Act, 1994?

The information available before this Court manifestly discloses that earlier the District Collector issued a show cause notice admittedly under the provisions of Section 265 (1) of the Act and the said notice was issued in connection with recovery of the amount. In fact, pursuant to the order, dated 15-07-2010 the petitioner herein remitted the said amount as directed in the proceedings, dated 15-07-2010.

The information further discloses that subsequently on 15-07-2010 the District Collector by virtue of proceedings No.178/2010-B1(Pts.), granted opportunity to the petitioner to follow the conditions issued in G.O.Ms.No.67 PR & RD, dated 26-02-2002 like transfer of 10% land to Gram Panchayat and other charges to be payable by developers to Gram Panchayat.

In fact, on 09-08-2010, the petitioner herein addressed letters to the District Collector and District Town and Country Planning Officer, Nalgonda, indicating the action taken pursuant to the notice, dated 15-07-2010.

On 09-08-2010, the present impugned order came to be issued by the 2nd respondent – District Collector. Admittedly,

no opportunity was given to the petitioner under Section 249 (1) of the Act. In this context it may be appropriate to refer to the said provision of law to the extent of its relevance:

“249. Powers of Government to remove Sarpanch, President or Chairman etc.:-

(1) If in the opinion of the District Collector the Sarpanch or the Upa-Sarpach and in the opinion of the Government the President or the Vice-President or as the case may be, the Chairman or the Vice-Chairman,-

- i. willfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or*
- ii. abused his position or the powers vested in him; or*
- iii. is guilty of misconduct in the discharge of his duties; or*
- iv. persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body or has become incapable of such performance:*

The Collector or as the case may be, the Government, may remove such Sarpanch or Upa-Sarpanch, President or Vice-President or as the case may be the Chairman or the Vice-Chairman after giving him an opportunity for explanation.

It is very much evident from a reading of the above said provision of law that before resorting to the action of removal of Upa-Sarpanch it is mandatory on the part of the District

Collector to give opportunity to the person concerned by giving notice and opportunity of being heard.

In the instant case, basing on the earlier proceedings, dated 15-07-2010 and the show cause notice preceding the same under the provisions of Section 265 (1) of the Act obviously the District Collector passed the impugned order.

In the considered opinion of this Court the said exercise undertaken by the District Collector is contrary to the provisions of A.P. Panchayat Raj Act, 1994 in general and Section 249 (1) of the Act in particular.

Therefore, the impugned order, removing the petitioner from the post of Sarpanch cannot be sustained in the eye of law in the absence of any notice and opportunity under Section 249 (1) of the Act.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the District Collector (Panchayat Wing), Nalgonda – 2nd respondent vide proceedings No.178/2010-B1(Pts), dated 09-08-2010. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SESA SAI, J

October 25, 2016

Pn

THE HON'BLE SRI JUSTICE A.V. SSHA SAI



WRIT PETITION No.20111 of 2010

October 25, 2016