

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

WRIT PETITION No.33156 OF 2012

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed by the District Collector (Panchayat Raj Wing), Srikakulam – 2nd respondent herein, vide proceedings Rc.No.816/12 P2, dated 30.04.2012 and the consequential File Notice bearing Rc.No.____/2012, dated __.05.2012, issued by the Mandal Parishad Development Officer, Veeragattam Mandal, Srikakulam District – 4th respondent herein.

2. Heard Sri G.Tuhin Kumar, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the respondents 1 to 3 and Sri Ravi Cheemalapati, learned standing counsel for the 4th respondent, apart from perusing the material available before the Court.

3. Petitioner herein functioned as Sarpanch of Bitiwada Gram Panchayat, Veeragattam Mandal, Srikakulam District, during the period from 23.08.2006 to 22.08.2011. Alleging misappropriation of Gram Panchayat funds, the District Collector (Panchayat Raj Wing), Srikakulam, issued a show-cause notice bearing Rc.No.816/11 P2, dated 17.03.2012. In response to the said show-cause notice, on 09.04.2012, petitioner herein submitted his explanation

stating that he spent the funds and got the works executed without any irregularities and due to negligence of the engineering officials, the same were not recorded within time. In the said explanation, petitioner herein also requested the authorities to cause enquiry into the works undertaken also. Thereafter, the District Collector – 2nd respondent herein passed an order vide proceedings Rc.No.816/12 P2, dated 30.04.2012, confirming the allegation and appointed the Mandal Parishad Development Officer as Revenue Recovery Officer, as per the provisions of Revenue Recovery Act. As a consequence of the said order passed by the District Collector on 30.04.2012, the Mandal Parishad Development Officer – 4th respondent herein, issued a final notice, asking the petitioner to show-cause as to why the amount should not be recovered from the personal properties of the petitioner within three days.

4. Challenging the validity and legal sustainability of the said order passed by the District Collector on 30.04.2012 and the consequential Final Notice dated __.05.2012 issued by the Mandal Parishad Development Officer, the present writ petition came to be filed.

5. It is contended by the learned counsel for the petitioner that the orders impugned are highly illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and principles of natural justice. It is further submitted by

the learned counsel that without considering the explanation offered by the petitioner on 09.04.2012 and without affording any opportunity of being heard to the petitioner, the respondents herein resorted to the impugned action, as such, the impugned action is liable to be declared as illegal and arbitrary.

6. On the contrary, it is contended by the learned Government Pleader and the learned Standing Counsel for the 4th respondent that there is no illegality nor there exists any procedural infirmity in the impugned action and in the absence of the same, the impugned action is not amenable for any judicial review under Article 226 of the Constitution of India. It is further submitted that only after considering the explanation offered by the petitioner, the respondents herein passed the orders under challenge, as such, it is not open for the petitioner to make any complaint of violation of principles of natural justice.

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

“Whether the impugned action on the part of the respondents is sustainable and tenable?”

8. There is absolutely no controversy on the reality that in response to the show-cause notice dated 17.03.2012, issued by the District Collector, the petitioner herein submitted his explanation, on 09.04.2012, stating that he spent the

amounts and got the works executed as per the procedure and did not commit any irregularities and due to the negligence on the part of the engineering officials, the works executed were not recorded at appropriate time. It is further clear from the explanation that the petitioner herein requested the respondents to cause enquiry with regard to the works undertaken.

9. A perusal of the order dated 30.04.2012, passed by the 2nd respondent – District Collector, in clear and vivid terms, discloses that the 2nd respondent did neither refer to the explanation offered by the petitioner nor considered the contents of the same and on the other hand completely placed reliance on the report of the Divisional Panchayat Officer, Palakonda and fixed the liability, while appointing the Mandal Parishad Development Officer as Revenue Recovery Officer, under the provisions of the Revenue Recovery Act.

10. Having called for explanation and having received the same, this Court absolutely does not find any justification on the part of the 2nd respondent – District Collector, in totally ignoring the explanation offered by the petitioner. It is also evident from the impugned order that though the petitioner herein specifically requested the District Collector to cause enquiry into the works said to have been undertaken by him, there is no material forthcoming as to the enquiry, if any, undertaken by the District Collector, after submission of the

explanation by the petitioner herein except referring to the earlier report of the Divisional Panchayat Officer. Thus, the mode and the manner in which the respondent authorities proceeded with the issue is undoubtedly in total violation of the principles of natural justice.

11. It is a settled and well established proposition of law that if any action on the part of the authorities has civil consequences, the same is required to be preceded by notice and opportunity of hearing to the persons likely to be affected by such action. In the instant case, the same is conspicuously absent. In these circumstances, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the impugned orders passed by the respondents 2 and 4 herein cannot be sustained in the eye of law and the orders are totally in deviation to the principles of natural justice.

12. For the aforesaid reasons, writ petition is allowed, setting aside the order passed by the District Collector (Panchayat Raj Wing), Srikakulam – 2nd respondent herein, vide proceedings Rc.No.816/12 P2, dated 30.04.2012 and the consequential File Notice bearing Rc.No.____/2012, dated __.05.2012, issued by the Mandal Parishad Development Officer, Veeragattam Mandal, Srikakulam District – 4th respondent herein and the matter is remitted to the 2nd respondent – District Collector, for fresh consideration in

accordance with law, after considering the explanation submitted by the petitioner and by issuing notice and opportunity to the petitioner herein.

13. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

27.12.2016

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