

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Appeal No.1273 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.No.33689 of 2016 dated 03.11.2016. The appellant-writ petitioners questioned the proceedings of the 1st respondent dated 23.09.2016 as arbitrary and illegal.

By his proceedings dated 23.09.2016 the 1st respondent, in the revision petition filed by the 4th respondent herein, decided to conduct a hearing in the case under Section 264(1) of the A.P. Panchayat Raj Act, 1994 (for short "the Act") and pending final orders to revoke the suspension order issued by the District Collector, East Godavari District against her. The Commissioner of Panchayat Raj was directed to take further action in the matter.

An inspection report was submitted by the Divisional Panchayat Officer, Amalapuram recording several irregularities in the administration of the Gram Panchayat. Pursuant thereto, a notice was issued to the 4th respondent on 13.04.2016 regarding misappropriation of the funds of the 13th Financial Commission to Rs.5,45,667/- for the year 2014-15, and Rs.6,01,333/- for the year 2015-16, which totals to Rs.11,47,000/-, and Rs.3,88,829/- for the year 2014-15 which comes to a total sum of Rs.15,13,829/- contrary to the rules and without getting approvals from the concerned officers on the stock registers and vouchers by the Panchayat Secretaries at that time and the Sarpanch jointly; as a Sarpanch she had misappropriated and made irregularities in administration; Rs.15,13,829/- had been misappropriated; and the 4th respondent was called upon to show cause within ten days as to why action should not be taken against her.

Thereafter by proceedings dated 09.06.2016, the 4th respondent was informed that she had incurred expenditure for Rs.6,04,464/- and that failed to show the bills and vouchers in the enquiry; her explanations was not satisfactory; the expenditure was incurred with a *mala fide* intention and for personal gains and that she had misused her powers; and, as she had misappropriated a sum of Rs.6,04,464/-, suspension orders were being issued under Section 249(6) of the Act suspending her from the post of Sarpanch of the Gram Panchayat for a period of three months.

Aggrieved thereby, the 4th respondent preferred a revision to the 1st respondent. She also filed W.P.No.19478 of 2016 questioning the said order. By order dated 21.06.2016, the W.P.M.P. filed by her to suspend the order of suspension dated 09.06.2016 was dismissed. However, this Court made it clear that the order did not preclude the petitioner therein from approaching the revisional authority against the said order passed under Section 249(6) of the Act and the revisional authority was directed to decide the same uninfluenced by any of the observations made in the order.

Pursuant to the aforesaid order of this Court, the 4th respondent preferred a revision, which resulted in the impugned order dated 23.09.2016 being passed. In the order under appeal, the learned Single Judge noted that the memo dated 23.09.2016 was suspended on 30.09.2016; with the completion of three months from the date of passing of the suspension order, there was no cause for continuation either by the petitioners or 4th respondent and a challenge to memo was unnecessary and unsustainable. While dismissing the writ petition, the Learned Single Judge made clear that he had not considered the allegations against the 4th respondent or examined the explanation of the 4th respondent on the pending charges before the 2nd respondent and that it was for the competent authority to proceed further in the matter, if circumstances warrant, in accordance with law.

Section 249 of the Act confers powers on the Government to remove a Sarpanch. Under Clause (6) thereof, if the District Collector is of the opinion that a Sarpanch had wilfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body 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 local body or the inhabitants of the Village, Mandal or District, the District Collector or as the case may be, Government may, by order, suspend such Sarpanch for a period not exceeding three months, pending investigation into the said charges and action thereon under the foregoing provisions of the Section. Under the second proviso thereto, it shall be competent for the Government to extend, from time to time, the period of suspension for such further period not exceeding three months, so however that the total period of suspension shall not exceed six months.

While the order of suspension dated 09.06.2016 expired on 08.09.2016, the impugned order passed by the 1st respondent to revoke the order of suspension was passed on 23.09.2016, which order was suspended by the learned Single Judge in the interim order passed in W.P.M.P.No.23887 of 2016 in W.P.No.19478 of 2016. The second proviso to Section 249(6) of the Act permits the total period of suspension, including the original period of three months, for a period of six months, which would expire by 08.12.2016 i.e within two days from today.

By our order dated 25.11.2016, we had directed the 1st respondent to submit a report to this Court of the reasons why such grave and serious allegations of misappropriation levelled against the 4th respondent had not even been examined and why no decision had been taken pursuant to the report submitted by the District Collector recommending extension of the period of suspension.

On Sri N.Sridhar Reddy, learned counsel for the 4th respondent, pointing out that action was also initiated against the two Panchayat

Secretaries, who were placed under suspension but were subsequently reinstated into service, we had directed the Principal Secretary to also detail in his report as to why the Government has chosen to show such undue indulgence to this elected representative and the Panchayat Secretaries, when serious allegations of misappropriation were still pending enquiry before the District Collector.

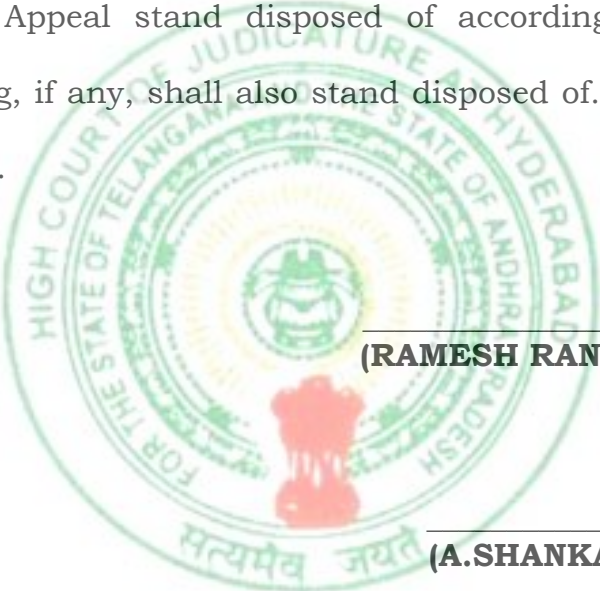
In his report dated 02.12.2016, the In-charge Principal Secretary has informed this Court that the District Collector, in his report dated 20.07.2016, had informed that the Sarpanch had committed serious financial and procedural irregularities in the administration of P.Gannavaram Gram Panchayat to a tune of Rs.6,04,464/-; on examining the revision petition filed by the Sarpanch it was decided to conduct a hearing with all concerned and it was also decided to revoke the suspension order; after examining the report of the District Collector it was decided to conduct a hearing in which all concerned were asked to attend; the District Collector had sent another report dated 22.10.2016 stating that the order of suspension had not been implemented; the revision petition is pending for hearing before the Government and as he was on leave from 30.09.2016 to 31.10.2016 and from 10.11.2016 to 10.12.2016 the revision petition would be heard thereafter and final order would be passed in the revision petition filed by the Sarpanch; the District Collector is the competent authority to conduct enquiry against the Sarpanch and the Commissioner of Panchayat Raj is the competent authority to conduct enquiry against the Panchayat Secretaries; the District Collector has completed the enquiry into the charges levelled against the Sarpanch; disciplinary action has been initiated against the Panchayat Secretaries by the Commissioner; they have been transferred from P.Gannavaram Gram Panchayat; and, they have been reinstated into service pending disciplinary proceedings against them.

In so far as the case of the 4th respondent is concerned, the second proviso to Section 249(6) of the Act prescribed a maximum period of

suspension of six months which is due to expire in a couple of days. It is evident, therefore, that the very revision petition filed by the 4th respondent before the 1st respondent would be rendered infructuous thereafter.

As disciplinary proceedings are said to have been initiated by the Commissioner of Panchayat Raj against the Panchayat Secretaries, and the Collector is said to have completed the enquiry against the Sarpanch, we consider it appropriate to dispose of the writ appeal directing both the Commissioner of Panchayat Raj and the District Collector to take action, in accordance with law, at the earliest, and in any event, within three month from the date of receipt of a copy of this order.

The Writ Appeal stand disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.



(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

06th December, 2016
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AND
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Date: 06.12.2016