

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17093 OF 2016

ORDER:

The writ petition is filed challenging the proceedings dated 28.05.2016, issued by the 2nd respondent under Section 249(6) of A.P. Panchayat Raj Act, 1994 (for short, "the Act"), suspending the petitioner from the post of Surpanch, Arigipalem Gram Panchayat, Vepada Mandal, Vizianagaram District, for a period of three months.

The challenge is principally based on the following two grounds:

- i) Prima facie there is no suggestion or finding recorded by the 2nd respondent as required under Section 249(6) of the Act with respect to the charges which have been levelled against the petitioner more particularly as required with respect to wilful omission/refusal to carry out the orders of the 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.
- ii) The second ground urged by the learned counsel for the petitioner is that the impugned order sets out the various allegations which have not been part of the show cause notice particularly with respect to financial irregularities.

On the other hand, Sri G.U.R.C. Prasad, learned counsel appearing for the respondents 5 and 6 disputes the arguments of the petitioner's counsel that the order travels beyond the show cause notice by pointing out that the 2nd respondent in its order had categorically held that an enquiry to be conducted within a period of three months for taking further action against the petitioner. The enquiry is in relation to the allegations which are part of the order. He further submits that it is only a suspension pending enquiry and does not call for interference as a further enquiry is to be made as contemplated under Section 249(6) of the Act. By making a reference to Section 249(6) of the Act, he submits that when there is an effective alternative remedy of appeal available, the writ

petition should not be entertained.

On the other hand, the learned counsel for the petitioner points out that Section 249(6) of the Act is only in relation to the final orders that may be passed with respect to the interim suspension orders.

Having considered the rival submissions and on a careful perusal of the order dated 28.05.2016 leave no manner of doubt that except recording the allegations commencing whereas there is no prima facie conclusion or a finding recorded warranting suspension of the petitioner as a Surpanch which is the prerequisite in terms of Section 249(6) of the Act. In those circumstances, the order dated 28.5.2016 is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the order dated 28.05.2016. However, it is left open for the 2nd respondent-District Collector to pass appropriate orders in the matter after taking into consideration of the material that has been placed by the petitioner within a period of four weeks from the date of receipt of copy of the order. It is needless to mention that the petitioner shall be afforded a reasonable opportunity of hearing before passing any orders as required under the proviso to Section 249(6) of the Act. No order as to costs.

As a sequel to disposal of the writ petition, WP.M.Ps if any pending shall stand disposed of as infructuous.

CHALLA KODANDA RAM, J

Dated:07.06.2016

Note:

Issue CC in three days.

B/o.

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