

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

WRIT PETITION No.2758 of 2017

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj & Rural Development.

This Writ Petition is filed under Article 226 of the Constitution of India for the following relief:

“ to issue appropriate writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in not disposing of the appeal filed by the petitioner against the order passed by the 2nd respondent in removing the petitioner as Sarpanch of Diwancheruvu Gram Panchayat vide Roc.No.6178/2015/A5, dt.18-12-2016 as wholly illegal arbitrary and in violation of Principles of natural justice and consequently set aside the order passed by the 2nd respondent in Roc.No.6178/2015/A5, dt.18-12-2016 as the same is passed in violation of principles of natural justice and contrary to the provisions of Sec.249(6) of A.P.Panchayat Raj Act, 1994, in the interest of justice and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Petitioner herein got elected as Sarpanch Dewancheruvu Gram Panchayat, Rajanagaram Mandal, East Godavari District, in the elections held in the month of October, 2014. Earlier, the petitioner filed W.P.No.35302 of 2006 before this Court and the said Writ Petition was disposed by this Court on 20.10.2016. Operative portion of the said order reads as under:

“The circumstances are undisputed. The legal effect and the period of suspension are clearly spelt out in Section 249 of the Act. The inaction of respondents in reinstating the petitioner is contrary to the spirit of

Section 249 of the Act. The petitioner is elected Sarpanch. Hence, respondents 2 and 3 are directed to dispose of the representation dated 23.09.2016 within two weeks from the date of receipt of a copy of this order. Petitioner is given liberty to communicate a copy of this order along with copy of representation within one week for expeditious decision.”

A show cause notice bearing ROC No.6178/2015/A2 dated 22.10.2016 was issued by the District Collector, East Godavari District, under sub-section (1) of Section 249 of AP Panchayat Raj Act, 1994 (for short ‘the Act’), calling upon the petitioner to show cause as to why the petitioner should not be removed from the office of the Sarpanch. Petitioner herein submitted an explanation to the said show cause notice on 10.11.2016. Thereafter, the District Collector passed an order vide proceedings in ROC No.6178/2015/A5 in the month of December, 2016, in File No.DPO-MPF0GF/5/2016-JA (A5)-DPOEG under Section 249 (1) of the Act, ordering removal of the petitioner from the office of the Sarpanch on the ground that he committed misappropriation of Gram Panchayat and 13th Finance Commission funds to the tune of Rs.78,80,755/- apart from committing other irregularities in the administration of the Gram Panchayat.

Assailing the validity of said order passed by the District Collector, petitioner herein filed a statutory appeal under the provisions of sub-section (7) of Section 249 of the Act on 02.01.2017 before the 1st respondent and along with the same he also filed an application, seeking suspension of the order passed by the District Collector. In the above background, complaining

inaction on the part of the first respondent in disposing of the appeal, the present Writ Petition is filed.

According to the learned counsel for the petitioner, the order of removal passed by the District Collector on 18.12.2016 is highly illegal, arbitrary and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Act. It is also his submission that that there is absolutely no justification on the part of the first respondent in keeping the appeal pending without passing any orders either in the interlocutory application or in the main appeal. It is further submitted that the very order of removal passed by the District Collector is unwarranted as the report submitted by the Sub-Collector finds only the Upa-Sarpanch and Secretary responsible for the alleged misappropriation, but not the petitioner directly.

On the contrary, it is submitted by the learned Government Pleader that since the petitioner herein has already availed the alternative remedy of appeal before the State Government and as the same is pending consideration, the petitioner herein is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is further submitted that since the allegations are very grave in nature, no interference of this Court is warranted under Article 226 of the Constitution of India in view of pendency of the appeal. It is further submitted that having filed the appeal, it is not open for the petitioner to file the present writ petition.

There is absolutely no dispute regarding the fact that as against the order of removal passed by the District Collector, the

petitioner herein filed a statutory appeal under sub-section (7) of Section 249 of the Act and the same is pending consideration before the 1st respondent. It is also a fact that along with said appeal, the petitioner herein also filed an interlocutory application, seeking suspension of the order of removal passed by the District Collector. It is not the case of the petitioner herein that the order of removal is violative of the principles of natural justice and suffers from inherent lack of jurisdiction.

As the appeal is pending consideration before the first respondent, this Court is not inclined to meddle with the order of removal and to grant any relief in favour of the petitioner in the present writ petition.

In the above circumstances, the Writ Petition is disposed of, directing the first respondent to pass appropriate orders in the appeal preferred by the petitioner on 02.01.2017 against the orders of the District Collector vide proceedings dated 18.12.2016, after giving a notice and opportunity of hearing to the petitioner, within a period of three months from the date of receipt of a copy of this order.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No order as to costs.

JUSTICE A.V.SESHA SAI

01.02.2017
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