

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

W.P.No.2575 of 2017

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed by the District Collector (Panchayat Wing), Nalgonda District/second respondent herein vide proceedings No.5690/2016-B1 (Pts.), dated 19-01-2017.

2. Petitioner herein is the Sarpanch of Nakrekal Gram Panchayat, Nalgonda District and she got elected, as such, in the election held on 05.12.2015. On the basis of the complaint made by the fifth respondent/ Upa Sarpanch and 16 Ward Members, the District Collector/second respondent herein issued a show-cause notice bearing No.5690/2016-B1(P.W)-2 dated 16.12.2016 and framed the following charges under Section 249 (6) of the A.P. Panchayat Raj Act, 1994:

"Charge No.1:-

Smt. Pannala Rangamma, Sarpanch of Grampanchayat, Nakrekal, Nakrekal Mandal, is required to conduct Gram Panchayat Committee meetings every month as per the Grampanchayat Act. But after the adjourned meeting on 10.08.2016, though 90 days time has lapsed after seizure of records, no meetings have been conducted. The same is in contravention of the provisions of the Andhrapradesh Panchayat Raj Act, 1994 and she committed abuse of official duty.

Charge No.2:-

Smt. Pannala Rangamma, Sarpanch, Nakrekal Grampanchayat, Nakrekal Mandal has spent grampanchayat funds to a tune of Rs. 41,74,006/- without any certification in contravention of Rules. Hence, the same is objectionable."

3. In response to the above show-cause notice and the charges contained therein, petitioner herein submitted an explanation dated 03.01.2017, denying the said allegations and requesting to drop further action in the matter. Subsequently, vide order dated 19.01.2017, the District Collector suspended the petitioner from the office of Sarpanch under Section 249 (6) of the Panchayat Raj Act, 1994 for three months. Challenging the validity and the legal sustainability of the said order of suspension, the present writ petition has been filed.

4. Counter affidavit, deposed by the District Panchayat Officer is filed on behalf of the respondents 1 to 4, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action. By virtue of the order in WPMP.No.3598 of 2017, Upa-Sarpanch of the Gram Panchayat came on record as the respondent No.5.

5. Heard Sri V.Rama Krishna Reddy, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the respondents 1 to 4 and Dr.Smt.J.Vijaya Laxmi, learned counsel for the 5th respondent apart from perusing the material available on record.

6. Submissions/contentions of the learned counsel for the petitioner:

6.1. The order impugned is a non-speaking order and is completely bereft of any reasons.

6.2. The District Collector, having called for the explanation of the petitioner, failed to consider the contents of the explanation.

6.3. Except extracting the remarks of the Divisional Panchayat Officer, no independent appreciation of the issue was undertaken by the District Collector.

6.4. There is no formation of opinion by the District Collector as per the provisions of Sub-Section (6) of Section 249 of the Panchayat Raj Act.

6.5. The impugned action is also violative of the principles of natural justice as the remarks dated 16.01.2017 of the Divisional Panchayat Officer are not furnished to the petitioner.

Learned counsel for the petitioner in support of his submissions takes the support of the Judgments in *POLEPALLY LAXMAIAH v. STATE OF A.P.*¹, *D.SATHI REDDY v. COMMISSIONER, PANCHAYAT RAJ A.P., HYD.*² and *M.KAVITHA v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS*³.

7. Submissions/contentions of the learned Government Pleader and the learned counsel for the 5th respondent:

7.1. In view of the availability of alternative remedy of revision under Section 264 (1) of the Panchayat Raj Act, 1994, the present writ petition is not maintainable.

7.2. Under Section 249 (6) of the Panchayat Raj Act, the District Collector is empowered to suspend the Sarpanch.

7.3. Since the petitioner utterly failed to follow the law while dealing with the Grampanchat funds, the District Collector is perfectly justified in passing the order under challenge.

7.4. Since the impugned order of suspension is only an interim measure, petitioner herein has to face the enquiry under Section 249(1) of the Panchayat Raj Act, 1994 and the questioned order is

¹ 2009 (5) ALT 398

² 1999 (5) ALD 681 (DB)

³ 2010 (5) ALD 750

well speaking order, as such, the same warrants no interference of this Court.

7.5. In view of the availability of alternative remedy of Revision to the State Government under Section 264(1) of the Panchayat Raj Act, 1994, the present writ petition is not maintainable under Article 226 of the Constitution of India.

The learned Government Pleader in support of his case places reliance on the judgments in *B.CHANDRASEKHAR AND ORS v. GOVT. OF A.P., SECRETARIAT, HYDERABAD AND ORS*⁴, *NALLA MALLA REDDY v. M.MUTYALU GOUD AND OTHERS*⁵, *YERNENI KUSUMA v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS*⁶, *JANAGAMA SHANKARAI AH v. GOVERNMENT OF ANDHRA PRADESH AND OTHERS*⁷ and order in *W.A.194 of 2017, DATED 13.02.2017*.

8. Submissions/contentions of the learned counsel for the fifth respondent:

8.1. There is no illegality nor there exists any procedural infirmity in the impugned order and in the absence of the same, the order is not amenable for any judicial review under Article 226 of the Constitution of India and the petitioner is not entitled for any indulgence of this Court.

8.2. As the respondent authorities afforded complete opportunity to the petitioner herein, petitioner herein cannot complain of violation of the provisions of Section 249 and the principles of natural justice.

⁴ 1997 (6) ALD 93

⁵ 2002 (1) ALD 387 (DB)

⁶ 2010 (6) ALD 737

⁷ 2011 (1) ALD 251

9. In the above backdrop, now the issues that emerge for consideration of this Court are:

1. Whether the present writ petition is maintainable in view of the availability of the alternative remedy under Section 264 (3) of the Panchayat Raj Act, as contended by the learned Government Pleader?

2. Whether the order impugned order is in accordance with the provisions of Section 249 of the Panchayat Raj Act, 1994 and whether the District Collector followed and adhered to the principles of natural justice?

10. Issue No.1:

In order to answer this issue, touching upon the maintainability of the writ petition, it would appropriate to refer to Section 264 (1) of the Panchayat Raj Act, 1994, which reads as under:

“264. Power of review and revision by Government:- (1) The Government may, either suo motu or on application from any person interested, call for and examine the record of a Gram Panchayat, Mandal Parishad or a Zilla Parishad or of its Standing Committees or of any authority, officer or person, in respect of any proceeding to satisfy themselves as to regularity of such proceeding or the correctness, legality or propriety of any decision or orders passed therein and, if in any case, it appears to the Government that any such decision or order should be modified, annulled or reversed, or remitted for reconsideration, they may pass orders accordingly:

Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

11. It is the contention of the learned Government Pleader and the learned counsel for the fifth respondent that in view of the above provision of law, the present writ petition is not maintainable and the petitioner is required to avail the said alternative remedy and cannot maintain the present writ petition directly before this Court. On the other hand, it is the submission of the learned counsel for the petitioner that the petitioner herein cannot be non-suited on the ground that the impugned order is revisable

under Section 264 (1) in view of the patent contravention of the mandatory provisions of Section 249 and the principles of natural justice.

In support of the said stand, the learned counsel places reliance on the judgments in *WHIRLPOOL CORPORATION v. REGISTRAR OF TRADE MARKS, MUMBAI*⁸, *MOHAMMED ISHAQ v. S.KAZAM PASHA AND ANOTHER*⁹ and *MIDWEST GRANITE PVT. LTD., HYDERABAD GOVERNMENT OF A.P*¹⁰.

12. In the instant case, it is the categorical case of the petitioner that the respondents did not afford complete opportunity to the petitioner and did not furnish the copy of the remarks of the Divisional Panchayat Officer dated 06.01.2017 formed the basis for the District Collector to pass the impugned order. It is absolutely not the case of the respondents that they furnished the same. In this context, it is important to note that as per the first proviso to Section 249 (6) of the Panchayat Raj act, it is incumbent and obligatory on the part of the District Collector to afford opportunity. This opportunity as stipulated in the said provision of law, is not a mere formality and is required to be followed and adhered to scrupulously in its true letter and spirit as the impugned action undoubtedly tarnishes the image of the representative of the people for whom the confidence of the people is the foundation of the career. A reading of the impugned order vividly shows that the District Collector relied on the (remarks dated 6.01.2017) of the Divisional Panchayat Officer, but the same was not furnished to the petitioner. Therefore, the impugned action, in the considered opinion of this court is evidently in violation of the principles of natural justice. In view of the ration laid down in the above referred judgments and for the reasons recorded above, the contention against the maintainability of the writ

⁸ (1998) 8 SCC 1

⁹ (2009) 12 SCC 748

¹⁰ 2013 (4) ALD 556

petition advanced by the learned Government Pleader and the learned counsel for the unofficial respondents cannot be sustained and the issue is answered, holding that the writ petition is maintainable.

13. Issue No.2:

In order to consider this issue, it would be apt to refer to Section 249 (6) of the Panchayat Raj Act, 1994, which reads as follows:

249(6) If the District Collector is of the opinion that a Sarpanch or a Upa-Sarpanch or any member of a Gram Panchayat or the Government are of the opinion that any President or Vice-President or the "*Chairperson*" or "*Vice-Chairperson*" or any member of a Mandal Parishad or Zilla Parishad willfully 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 or Upa-Sarpanch or President or Vice-President or as the case may be, the "*Chairperson*" or "*Vice-Chairperson*" or member from office for a period not exceeding three months, pending investigation into the said charges and action thereon under the foregoing provisions of this section:

Provided that no order under this sub-section shall be passed unless the person concerned has had an opportunity of making a representation against the action proposed:

Provided further that 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:

Provided also that a person suspended under this sub-section shall not be entitled to exercise the powers and perform the functions attached to his office and shall not be entitled to attend the meetings of the concerned local body except a meeting held for the consideration of a no-confidence motion.

14. The above provision of law enables and empowers the District Collector to place the Sarpanch under suspension for a period not exceeding three months under three contingencies viz., (1) when there is omission or refusal to carryout the orders of the Collector (2) When there is abuse of the position and (3) when further continuation is detrimental to the concerned local body or the inhabitants of the village. The said provision also mandates in clear terms the formation of opinion by the District Collector as regards the existence of the said contingencies.

15. A reading of the impugned order demonstrates that the District Collector, except extracting the remarks of the Divisional Panchayat Officer, did not undertake any process of appreciation of the issues raised in the explanation, independently nor the impugned order discloses any formation of opinion which is *sine quo non* for exercising the jurisdiction and power of suspension under sub-Section (6) of Section 249 of the Panchayat Raj Act. Another significant aspect which needs to be noted is that the questioned order is a non-speaking order and is completely bereft of any reasons.

16. Coming to the judgments cited by the learned counsel for the petitioner_ in the case of *POLEPALLY LAXMAIAH (supra 1)*, this Court at paragraphs 7, 8 and 11 held as under:

“7. Section 249 of the Act confers exclusive power upon the 2nd respondent to direct removal of Sarpanch. A detailed procedure is prescribed. Neither the District Panchayat Officer, nor the Divisional Panchayat Officer, figures anywhere in the scheme under the Section. If the 2nd respondent has called for remarks either from the 3rd respondent, or the 4th respondent, it is in the process of satisfying himself, as to the correctness or otherwise of the allegations.

8. Sub-section (4) thereof clearly mandates that the satisfaction must be that of the District Collector, before he passes order of removal of an elected representative. It hardly needs any emphasis that compliance with the provision must be ensured before the drastic step of removal is resorted to.

11. This hardly constitutes compliance with Section 249 of the Act. It has already been mentioned that exercise of a drastic power of this nature must be objective and strictly in accordance with law. There was absolutely nothing to indicate that the 2nd respondent has independently examined the matter and arrived at his own conclusions. He simply went by the remarks offered by the 4th respondent. For all practical purposes, the conclusions against the petitioner were arrived at by the 4th respondent, and the 2nd respondent did nothing more than incorporating the same in his own proceedings. The 1st respondent was supposed to examine, whether the prescribed procedure was followed by the 2nd respondent.”

17. In the case of *D.SATHI REDDY (supra 2)*, this Court at paragraphs 10 and 11, held as under:

“10. The power under Section 249 of the Act enables the District Authority to remove an elected Sarpanch. The power has to be exercised with due care and caution. It

has to be exercised with abundant circumspection. If the power is exercised either by the original authority or the appellate authority in a laconic or routine manner without application of mind such action shall be set aside. The rules of fair play should appear to have been followed scrupulously at every stage. At the stage of issuing a show-cause notice at the stage of consideration of the explanation of the Sarpanch and at the stage of passing the final order under sub-section (1) of Section 249 of the Act or the appellate order under sub-section (7) of Section 249 of the Act, the action should be informed of reasons and fairness.

11. We have mentioned that the power to remove a person from an elected office is an extra-ordinary power. Before exercising such power the competent authority should have all the necessary material. The competent authority should consider after due application of mind that the factors mentioned in clauses (i) to (iv) of sub-section (1) of Section 249 or either of them exists, then only the competent authority can pass an order removing the Sarpanch. The existence of the factors or either of them mentioned in clauses (i) to (iv), is essential and mandatory precondition for exercise of the power of removal. Not only that the law further says that the recalcitrant Sarpanch shall be given an opportunity for explanation. The opportunity for explanation is not a "make-believe" opportunity of just serving a show-cause notice in all situations. There may be situations where before issuing a show-cause notice the District Collector conducts enquiry or gets an enquiry done. In such an event the show-cause notice which obviously is based on such an enquiry is no show-cause notice at all if the material (enquiry report) based on which the show-cause notice is issued, is not supplied to the Sarpanch who is sought to be removed. Before further examining this aspect it is helpful to notice sub-section (1) of Section 249 of the Act:

"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-Sarpanch and in the opinion of the Government the President or the Vice-President or as the case may, the Chairman or the Vice-Chairman,--

(i) wilfully 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:" (proviso is omitted).

A reading of sub-section (1) of Section 249 shows that a Sarpanch can be removed when:

(a) he has wilfully disobeyed the orders of the Government;

(b) when he is guilty of misconduct in discharge of his duties;

(c) when he abused the powers vested in him under the Act;

(d) when he failed to perform his functions and duties to the detriment of the Panchayat and; or

(e) when he has become incapable of performing his functions and duties."

18. In the case of *M.KAVI THA (supra 3)*, this Court at paragraph 15,

held as under:

"15. In the present case, though the petitioner was placed under suspension on 11.11.2009 and this Court did not interdict further proceedings being initiated as contemplated under Section 249(6), by investigating the charges against the petitioner and commencing action

under Section 249(1), no further action was taken. The authorities proceeded on the assumption that the power exercised under Section 249(6) was an independent one whereby they could suspend the petitioner without reference to any further action under Section 249(1) of the Act of 1994. This approach is not in keeping with the scheme of the provision.”

19. Coming to the judgments cited by the learned Government Pleader in the case of *B.CHANDRASEKHAR AND ORS (supra 4)*, this Court at paragraphs 8 and 9 held as under:

”8. Apparently, the impugned proceedings and the order of suspension under the provision were based on two grounds mentioned in the annexure. There cannot be any doubt that the first ground comes within the expression of abuse of power or misuse of powers vested in such persons as one of the ingredients *supra*. The second ground, on the face of it, point out the misbehavior or misconduct in allegedly manhandling the Executive Officer, Junior Assistant and Watchman of the Gram Panchayat on a particular day. It is true that there is no such ingredient of such misconduct or any misconduct becoming the basis to pass such orders. But, if the Sarpanch or Upa Sarpanch or a Member of the managing Committee of the Gram Panchayat, who are expected to behave as the model citizens of the village, manhandles an officer or the officials of the Gram Panchayat, working under their own control, it would be *pro tanto* unbecoming of the person holding such authority. Although it may be one instance or a sample of the conduct of the person, the authority will think whether it would be proper for such persons with such unbecoming conduct to be allowed to perform such functions and the responsibility and conduct added to the fundamental behavior expected of such persons holding the authority to rule the whole Gram Panchayat in the concept of Panchayat Raj dreamt or envisaged under the object and purposes of the Act. In such a situation, the question would be whether the continuance of such persons in the office would be detrimental to the office of the concerned local body etc.

9. The respondent No.2 in the respective impugned proceedings clearly gave a finding that the continuance of the petitioners in such office would be detrimental to the interests of the Gram Panchayat and public. How such a finding was influenced may not always be expected to be any appeal and that the allegations mentioned in annexure regarding such an event of manhandling the Executive Officer and the officials of the Gram Panchayat must have been a determining factor to come to such conclusion. Quite independent of that, examining such a ground alone, such persons to continue in the office with such an unbecoming conduct would be inevitably detrimental to the interests of the Gram Panchayat and also the public at large. In that way, the basis on which the impugned orders and the impugned proceedings were passed affirms one of the ingredients of the provision *supra*. In that view of the matter, this Court holds that the impugned orders of suspension have really been passed within the pari

material and implication of sub-section (6) of Section 249 of the Act.”

20. In the present case, no such contingencies are existing, as such, the judgment would not render any assistance to the case of the learned Government Pleader.

21. In the case of *NALLA MALLA REDDY (supra 5)*, at paragraphs 9 and 10, this Court held as under:

“9. Such a direction, as has rightly been contended by Mr. Venkataramana, is wholly without jurisdiction. In this view of the matter, we are of the opinion that a further opportunity of hearing to the Sarpanch may not be necessary, as before the Collector he had admitted the charges levelled against him. Further grant of an opportunity to the Sarpanch could end in useless formality. In any event, the finding of the Collector having been upheld by the Commissioner, interference therewith is permissible only if it could have been proved by reason of purported violation of the principles of natural justice Sarpanch had been substantially prejudiced. Such is not the case.

10. It is now well settled, having regard to the principles adumbrated in Section 58 of the Indian Evidence Act, the facts admitted need not be proved. Principles of natural justice must be extended only where it is necessary. Prejudice doctrine in the realm of Audi Alteram Partem has come to stay. Principle of natural justice must be applied in situational flexibility (See K.L. Tripathi v. State Bank of India [MANU/SC/0334/1983](#)). In V. Rajamalliah v. High Court of A.P., [MANU/AP/0367/2001](#) : 2001(3)ALD625 (DB), a Division Bench of this Court while dealing with the question that the Enquiry Officer has followed the procedure prescribed in Civil Services (CCA) Rules of 1963 instead of subsequent Rules of 1991, which are holding the field at the relevant time held that there are no material differences between the two procedures and no prejudice is shown to have been caused to the delinquent. The Bench meeting the contention of the delinquent's Counsel that in the enquiry conducted by the Enquiry Officer, the Enquiry Officer first examined the petitioner and later examined the witnesses produced by the disciplinary authority, without even supplying the list of witnesses examined by the disciplinary authority before they were examined in the course of the enquiry, and this procedure is not in consonance with the well established procedure in a departmental enquiry and also regulations governing the departmental enquiry observed:

12. Coming to the third contention of the learned Counsel for the petitioner, it is true that ordinarily the disciplinary authority should examine its witnesses first in support of

the change. In the instant case, it is admitted that the enquiry Officer examined the delinquent-petitioner in the first instance. It is also alleged that no list of witnesses of the disciplinary authority was furnished to the petitioner before they were produced before the Enquiry Officer for examination. As quite often said and reiterated by the Courts, procedure is hand-made of justice and it is essentially meant to advance justice. It is not the case of the petitioner that on account of this departure in the procedure, the petitioner could not effectively cross-examine the witnesses produced on behalf of the disciplinary authority. If that was the case, he ought to have made complaint to the Enquiry Officer in that regard or before the disciplinary authority or before the High Court on administrative side. Though the fact of the Enquiry Officer examining the petitioner in the first instance was stated in the Memorandum of Appeal before the High Court, no prejudice on that count was pleaded in the Memorandum of Appeal.”

22. The ratio laid down in the above judgments also is not helpful to the learned Government Pleader since in the above case the allegations were admitted unlike in the present case.

23. In the case of *YERNENI KUSUMA (supra 6)*, at paragraph 12, this Court held as under:

“12. Counsel for the petitioner relies on *Kalari Nagabhushana Rao v. The Collector, Panchayat Wing* [MANU/AP/0102/1978](#) : 1978 (2) ALT 217 : AIR 1978 A.P. 444, *Polepally Laxmaiah v. State of A.P.* [MANU/AP/0305/2009](#) : 2009 (5) ALT 398 : 2009 (4) ALD 756, *Rekapalli Krishna Vasu v. State of A.P.* [MANU/AP/0445/2005](#) : 2005(5) ALD 276 and *Bollepelli Shankar v. Government of A.P.* [MANU/AP/0059/2009](#) : 2009 (1) ALD 837, in support of the plea that an order of suspension without application of mind and without reasons is unsustainable. After perusing all the Judgments, this Court observes that there cannot be any dispute with the proposition. A quasi-judicial authority while exercising original jurisdiction or appellate jurisdiction is bound to apply mind and give reasons on various issues that are identified for quasi-judicial consideration. The reasons need not be elaborate nor such authorities who in most of the cases are not legally trained are not expected to appreciate the nuances and subtleties of law.

If a quasi-judicial authority determines the facts, determines the principles applicable and applies the principles to determined facts in a reasonable manner, the Court of judicial review is precluded from considering the issue. The possibility of a second or third view in determining the facts and applying the principles of the facts is not ordinarily within the purview of judicial review, Insofar as determining the principle of law applicable to the case squarely falls within the species of "error of law" and amenable to judicial review. If a quasi judicial authority misconstrued the law, the Court can always set right. In any view of the matter, the judicial review cannot act as an appellate authority."

24. The above decision would not be helpful to the learned Government Pleader, since in the instant case the District Collector did not assign any reasons.

25. In *JANAGAMA SHANKARAI AH (supra 7)*, at paragraphs 13, 16 and 18, this Court held as under:

"13. In the instant case, it is to be noticed that the order of suspension is dated 8th of June 2010. A comprehensive reading of the provisions relating to removal under Section 249(1) and the power of suspension conferred on the District Collector under Section 249(6) of the Act, it is clear that when it is noticed by the competent authority that the Sarpanch is abusing the powers vested in him, or when he is of the opinion that further continuance of such person in office is detrimental to the interest of the local body, he is empowered to pass an order of suspension for the period not exceeding three months, pending investigation into the said charges. The phrase 'pending investigation into the charges' is to be construed in the generic sense that when the respondents have started collection of facts and the evidence against the petitioner on the charges to be framed, it can be said that the investigation is started. The phrase 'pending investigation' is to be clearly distinguishable from 'pending inquiry into the charges'. The term 'investigation' is broader term, which can be used when the authority starts collecting the facts and evidence in support of the allegations, but so far as the word 'charge' signifies an accusation made in a legal manner on the conduct of omission or commission by the person charged. In that view of the matter, merely because when it is not stated in the order that pending

inquiry into the charges under Section 249(1) of the Act, it cannot be said that such an order passed by the competent authority for suspension of a Sarpanch for a period of three months is either illegal or arbitrary. In a given situation, if the competent authority comes to the opinion that Sarpanch is abusing his position and the powers vested in him, and further continuation of such person would be detrimental to the interest of the local body, at first instance, he can pass an order of suspension for a period of three months, pending collection of further evidence and facts, so as to initiate any further action under Section 249(1) of the Act. The power under Section 249(6) cannot be construed only as an action for suspension pending inquiry into the charges under Section 249(6) of the Act. Under Section 249(6) of the Act, in view of the prima facie conclusions arrived at, the authority is empowered to pass an order of suspension for a period of three months, and that too, by giving proper opportunity as contemplated under proviso to Section 249(6) of the Act. The proviso to Section 249(6) of the Act clearly clarifies that the power of suspension can be resorted to in the situations, which warrant under Section 249(6), for passing an order of suspension for a period of three months only. The language used 'pending investigation into the said charges' in Section 249(6) of the Act, is in generic sense and to be construed as collecting the further facts and evidence on the allegations made against the Sarpanch. It need not necessarily be construed as an action only pending inquiry into the charges by framing charges under Section 249(1) of the Act, when the District Collector, who is the competent authority, comes to the conclusion that the Sarpanch is abusing the powers vested on him and continuance of such person is detrimental to the interest of the local body, as an immediate measure, he can pass an order of suspension for a period of three months. In that view of the matter, having regard to the facts of the case on hand and as much as the order of suspension is passed very recently i.e. on 8th of June 2010, it cannot be said that as no proceedings are initiated under Section 249(1) of the Act, the order passed under Section 249(6) itself is either illegal or arbitrary.

16. The further contention of the learned Counsel for petitioner that proceedings are initiated against the petitioner, as he has not allowed the erection of statue of the local Legislator's father, who is Minister in the present **Government**, also cannot be accepted. Though allegations are made against the Member of Legislative Assembly, in which, the Grampanchayat, Kataram falls, but he is not even made a party to this writ petition, in the absence of which, there cannot be any basis to support the case of the petitioner that on such pressure exerted by the local MLA, the order of suspension is passed. From the counter affidavits filed on behalf of the

official respondents, it is clear that there were allegations against the petitioner, and also there are representations made by the Ward Members of the very Grampanchayat, numbering about 10, to the District Collector, complaining the illegalities and misappropriation of funds of Grampanchayat by the petitioner, and based on the same, at first instance, the District Panchayat Officer has conducted an inquiry, and having come to the conclusion that there is misappropriation of the Grampanchayat funds and the petitioner has committed certain irregularities, the 2nd respondent-District Collector has initiated proceedings under Section 249(6) of the Act, and then the impugned order is passed. In that view of the matter, it cannot be said that as the petitioner has not permitted the erection of the statue of the local Legislator's father, such an action is resorted to, only at the instance of the said Legislature. When such serious allegations are made, the same cannot be countenanced in the absence of making such Legislator as a party-respondent, giving him an opportunity to controvert the said allegations. From the counter affidavit filed on behalf of the official respondents, it is clear that it is a case of abuse of power by the petitioner as Sarpanch of the Grampanchayat, and having considered the explanation filed by the petitioner, the 2nd respondent has correctly passed the order of suspension, suspending him for a period of three months.

18. The writ petition is devoid of merit and it is accordingly dismissed. No order as to costs.”

26. The above judgment also ~~would~~ not render any assistance to the learned Government Pleader in view of the factual and circumstantial variation.

27. At the hearing, learned Government Pleader and learned counsel for the 5th respondent places reliance on the judgment of the Division Bench of this Court in W.A.No.194 of 2017. In the said case, an order of removal of Sarpanch by the District Collector was questioned and as against the interlocutory order, the said writ appeal was filed before this Court. A Division Bench of this Court remanded the matter, intermeddling with the writ petition, setting aside the interlocutory order on the ground that without affording any opportunity to the respondents to file counter, the said order was passed. In the

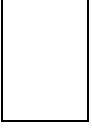
considered opinion of this Court, the said judgment also would not render any assistance to the respondents herein.

28. In view of the above findings recorded and having regard to the law laid down in the above judgments cited by the learned counsel for the petitioner, this Court has absolutely no scintilla of hesitation to hold that the impugned order is patently in contravention of the mandatory provisions of Section 249 (6) of the Panchayat Raj Act, 1994. At the cost of repetition, it is to be noted that the power of suspension conferred on the District Collector to suspend a representative of the people is required to be used with great amount of care, caution and circumspection and cannot be resorted to in a mechanical manner as the reputation of the representative of the people is involved.

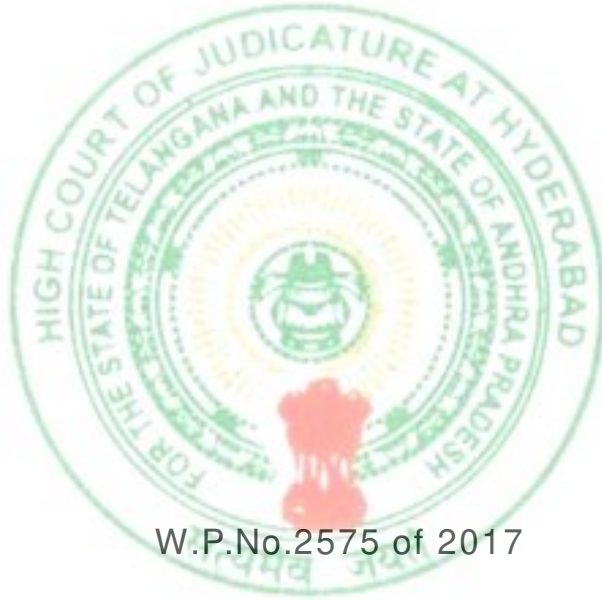
29. For the aforesaid reasons, writ petition is allowed, setting aside the order passed by the District Collector to the extent of charge No.2 and the matter is remanded for independent assessment and for passing appropriate orders in accordance with law, after giving notice and opportunity of hearing to all the stake holders. It is further made clear that the finding of the District Collector as regards Charge No.1 is not disturbed and is intact. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:07.03.2017
grk



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



W.P.No.2575 of 2017

Dated:7th March, 2017

grk