

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.1498 OF 2017

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.30884 of 2017 dated 13.09.2017. The appellant herein filed the Writ Petition seeking a writ of *certiorari* to call for the proceedings dated 05.09.2017 on the file of the District Collector (Panchayat), Siddipet, and to set aside the same as being illegal, arbitrary, unjust, in violation of principles of natural justice and contrary to the provisions of Section 249 of A.P. Panchayat Raj Act, 1994 (for short 'the Act').

Facts, to the limited extent necessary, are that the appellant was elected as a Sarpanch of the Kukunoorpalli Gram Panchayat, in the elections held on 23.07.2013, for a period of five years. On the basis of a complaint lodged against him on 28.03.2017, a notice was issued to the appellant on 29.07.2017, under Section 249 (1) of the Act, calling upon him to show cause. The appellant, however, submitted his reply to the show cause notice only on 04.09.2017. The second respondent passed an order on 05.09.2017 placing the appellant under suspension for a period of three months pending enquiry, invoking Section 249 (6) of the Act.

In the Order under appeal, the learned Single Judge held that a perusal of the order of the District Collector dated 05.09.2017 showed that as many as five allegations were levelled against the appellant, including his involvement as an accused in three criminal cases, and in granting permission for construction of houses in government land; these allegations were required to be enquired into by the competent authority; and, in view of the nature of allegations, it could not be said

that the impugned order, passed by the second respondent, was illegal. While expressing his disinclination to entertain the Writ Petition, the learned Single Judge permitted the second respondent to conduct an enquiry giving due opportunity to the appellant to complete the same within the period of suspension, and to pass orders in accordance with law. Aggrieved thereby, the present appeal.

Sri L.Prabhakar Reddy, learned counsel for the appellant, would submit that the allegations levelled against the appellant would not fall within the ambit of Section 249 (1) of the Act; the finding recorded in the impugned order, that there were three criminal cases pending against the appellant, is erroneous as the appellant was acquitted in two of those criminal cases; the Order, impugned in the Writ Petition, is based on the reports of the Panchayat Officer and the Commissioner, copies of which were not furnished to the appellant; unlike Public Servants, who would be entitled to get back their salary and remuneration later on their suspension being revoked, a Public representative would not be compensated later even if his suspension is later held to be illegal; and a higher degree of misconduct must be established for a public representative to be placed under suspension.

When we asked him whether the appellant had sought copies of the reports of the District Panchayat Officer and the Commissioner, in his reply to the show cause notice dated 04.09.2017, Sri L.Prabhakar Reddy, learned counsel for the appellant, would fairly state that the appellant did not. If that be so, the appellant's complaint regarding violation of principles of natural justice, necessitating the order of suspension being set aside, does not merit acceptance as, on his own volition, the appellant has furnished his reply to the show cause notice without seeking a copy of these two reports. The complaint regarding violation of principles of natural justice must, therefore, fail.

Though the appellant has been acquitted in two of the three criminal cases, the fact remains that the third criminal case is still pending. Further, among the allegations levelled against him, is that he had unauthorizedly and illegally taken Rs.6,000/- (Rupees Six Thousand only) from an applicant, who had sought permission for building construction, as gratification for the grant of such permission. While Sri L.Prabhakar Reddy, learned counsel for the appellant, insists that this allegation is false, these are all matters which are required to be considered during the course of the enquiry initiated against the appellant herein under Section 249(1) of the Act. On the question whether or not the order of suspension is valid, this Court would, ordinarily, proceed on the premise that the allegation levelled against the public servant, who is placed under suspension, are true. For allegations of illegal gratification, it cannot be said that an order of suspension is unwarranted.

The contention that the allegations levelled against the appellant would not fall within the ambit of Section 249 (1) of the Act is only to be noted to be rejected. Clauses (ii) and (iii) of Section 249 (1) of the Act enable action to be taken against a Sarpanch if he has abused his position or the powers vested in him, or is guilty of misconduct in the discharge of his duties. The allegation of illegal gratification would satisfy both clauses (ii) and (iii) of Section 249 (1) of the Act. This contention must also fail.

With regards the contention that the nature of allegations, in cases where the Public Servant is placed under suspension, must reflect a higher degree of misconduct, does not also mere acceptance. An elected Sarpanch represents the entire populace of the village. A higher degree of probity is expected of such public representatives, as their election to the public office of Sarpanch is to enable them to serve

all the people in the village, and not seek illegal gratification for what they are required in law to discharge.

Reliance is placed by the learned counsel for the appellant on the judgment of a learned Single Judge of this Court in ***Polepally Laxmaiah vs. State of A.P. and others***¹. In the said case, a Sarpanch of a Gram Panchayat was removed from office. In this context, a Learned Single Judge of this Court observed that the drastic power under Section 249 (1) of the Act must be exercised strictly in accordance with law; the second respondent had not independently examined the matter, and arrived at his own conclusions; and, therefore, the order stood be vitiated. Unlike an order of removal which ousts the Sarpanch from his office permanently, an order of suspension, as is evident from Section 249(6) of the Act itself, is initially only for a period of three months. A Sarpanch is placed under suspension under Section 249(6) only during the pendency of the enquiry under Section 249(1) of the Act. It is only after the conclusion of the enquiry proceedings, and if the Sarpanch is found guilty of the charges levelled against him, would the question of passing an order of punishment, under Section 249 (1) of the Act, arise. An order of suspension, pending enquiry, cannot be equated to an order of punishment of removal from the office of the Sarpanch.

Sri L.Prabhakar Reddy, Learned Counsel for the appellant, would submit that, instead of placing the appellant under suspension, the District Collector should have retained him in office withdrawing his cheque drawing powers. While the District Collector is conferred such a power, this Court would not, in the exercise of its jurisdiction under Article 226 of the Constitution of India, substitute its views for that of the District Collector. It is only if the order of the District Collector is

¹ 2009 (4) ALD 756

held to be wholly unjustified or perverse, would interference be called for. The appellant is alleged, among others, to have received illegal gratification of Rs.6,000/- for grant of permission to construct a building which allegation, if proved in the enquiry initiated against him, would amount to a grave and serious misconduct on his part. It cannot, therefore, be said that the District Collector was not justified in placing the Appellant under suspension. Suffice it to observe that, in case the appellant submits an application seeking revocation of his suspension and, instead, to withdraw his cheque signing powers, the competent authority shall consider the same in accordance with law.

We make it clear that, in terms of the order of the learned Single Judge, the enquiry shall be completed within the period of suspension of the appellant, uninfluenced either by the observations made in the order under appeal or in the order now passed by us. Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed.

Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

11th October, 2017
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