

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

W.P.Nos.3414 and 18192 of 2017

COMMON ORDER:

Since these writ petitions are interrelated and as the parties are also the same, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. In W.P.No.3414 of 2017, challenge is to the order of removal of the petitioner from the office of Sarpanch of Bowrampet Grampanchayat, Medchal-Malkajigiri District passed by the District Collector (Panchayat Wing), Medchal-Malkajigiri District/second respondent herein vide proceedings Rc.No.20/2016-A1(Pts.W), dated 09.01.2017.

3. W.P.No.18192 of 2017 assails the action of the State Government in entertaining the revision filed by the third respondent herein, who is the petitioner in W.P.No.3414 of 2017, against the order of the District Collector dated 09.01.2017, which is impugned in W.P.No.3414 of 2017.

4. Heard Sri S.Satyam Reddy, learned Senior Counsel representing Smt.K.V.Rajasree, learned counsel for the petitioner on record in W.P.No.3414 of 2017 and for the third respondent in W.P.No.18192 of 2017, learned Government Pleader for Panchayat Raj for the official respondents and Sri A.Sudersana Reddy, learned Senior counsel appearing for Sri Pottigari Sreedhar Reddy, learned counsel for the respondent No.4 in W.P.No.3414 of 2017 and the petitioner in W.P.No.18192 of 2017.

5. According to the petitioner in W.P.No.3414 of 2017, she belongs to Scheduled Caste Community and got elected as Sarpanch of Bowrampet Grampanchayat with a majority of 1000 votes in the election held in the year

2013. Respondent No.4 in W.P.No.3414 of 2017 and who is the petitioner in W.P.No.18192 of 2017 is the Upasarpanch. It is the case of the petitioner in W.P.No.3414 of 2017 that she was not allowed to hoist the national flag in the Grampanchayat Office, which prompted her to lodge a complaint with the police and Dindigal police registered Crime No.524 of 2016 on 13.10.2016 and the Assistant Commissioner of Police, Petbasheerabad has filed a charge-sheet against the Upasarpanch on 26.11.2016. It is also stated that on the influence of the Upasarpanch, the Divisional Panchayat Officer submitted a report, alleging that the petitioner mis-appropriated Rs.2 crores. The District Collector issued a show-cause dated 04.01.2016, asking the Sarpanch of the Grampanchayat to show-cause as to why action should not be taken under Section 249 (1) of the Panchayat Raj Act, 1994. It is further stated that the Sarpanch responded to the same by way of a reply dated 22.12.2016. Thereupon, the District Collector passed an order vide proceedings dated 09.01.2017, ordering removal of the petitioner in W.P.No.3414 of 2017 from the office of the Sarpanch.

6. Pending W.P.No.3414 of 2017, the State Government vide Memo No.11999/Pts.1/A2/2016-4, dated 23.05.2017, granted interim stay of the proceedings of the District Collector dated 09.01.2017 on a revision filed by the Sarpanch against the order of removal passed by the District Collector dated 09.01.2017. This Court, on 07.06.2017, granted interim suspension of the said memo dated 23.05.2017.

7. Learned Senior Counsel Sri S.Satyam Reddy contends that the order of removal passed by the District Collector on 09.01.2017 is highly illegal, arbitrary, unreasonable, violative of the principles of natural justice and opposed to the very spirit and object of the provisions of the Panchayat Raj Act, 1994. He further contends that the report of the Divisional Panchayat

Officer which is the basis for the District Collector to pass the impugned order was submitted to the District Collector without affording any opportunity to the petitioner and the said action is a patent violation of the principles of natural justice. It is further argued by the learned Senior Counsel that the District Collector did neither framed the charges nor the impugned order of removal does say that the petitioner in W.P.No.3414 of 2017 misappropriated the amount and it only says that the petitioner did not produce proper bills and MBs to know the genuineness of the expenditure incurred by the Grampanchayat. It is further submitted that the records are in the custody of the third respondent. Learned senior counsel further submits that the objections taken by the authorities are highly unsustainable and untenable and cannot stand for judicial scrutiny.

In support of his submissions and contentions, learned counsel places reliance on the judgments of this Court in *D.SATHI REDDY v. COMMISSIONER, PANCHAYAT RAJ A.P., HYDERABAD AND OTHERS*¹, *POLEPALLY LAXMAIAH v. STATE OF A.P.*² and *REKAPALLI KRISHNA VASU v. STATE OF A.P. AND OTHERS*³.

8. On the contrary, learned Senior Counsel Sri A.Sudershan Reddy, appearing on behalf of the 4th respondent in W.P.No.3414 of 2017 and the petitioner in W.P.No.18192 of 2017 and the learned Government Pleader for Panchayat Raj, contend that there is no illegality nor there is any procedural infirmity in the impugned action of removal of the petitioner and in the absence of the same, the order of removal is not amenable for any judicial review under Article 226 of the Constitution of India; that the District Collector passed the order of removal only after duly observing the principles

¹ 1999 (5) ALD 681 (DB)

² 2009 (4) ALD 756

³ 2005 (5) ALD 276

of natural justice; that the petitioner in W.P.No.3414 of 2017 is not entitled for any relief from this Court under Article 226 of the Constitution of India as the charge of misappropriation stood proved against her. In addition to the above submissions advanced commonly by the learned Senior Counsel and the learned Government Pleader, the learned Senior Counsel Sri A.Sudershan Reddy contends that the State Government grossly erred in granting stay of the operation of removal order pending writ petition before this Court.

9. In the above background now the issues that emerge for consideration of this Court under Article 226 of the Constitution of India are_

1. Whether the order of removal dated 09.01.2017 passed by the District Collector is sustainable and tenable and whether the same warrants any interference of this Court under Article 226 of the Constitution of India?
2. Whether the State Government is justified in issuing Memo dated 23.05.2017, granting stay of proceedings of the District Collector, pending W.P.No.3414 of 2017?

10. The career of the representatives of the people depends obviously on their reputation in the minds of the public and the trust and confidence which the people repose on them. Their spotless and unblemished conduct undoubtedly takes them to the heights and any sort of allegation undoubtedly diminishes their career graph and tarnishes and undermines their image. Therefore, while dealing with the issues pertaining to the representatives of the people, the authorities are required to act very cautiously and carefully and with great amount of circumspection. The issues in the present writ petitions are required to be examined, verified and resolved in the light of the same.

11. Petitioner in W.P.No.3414 of 2017 got elected as Sarpanch of Bowrampet Grampanchayat in a direct election held in the year 2013 with a

majority of 1000 votes. The Divisional Panchayat Officer, pursuant to the directions of the District Panchayat Officer, submitted a report vide letter No.458/2015-A(Pan.), dated 26.10.2015, recommending to issue show-cause notice for a sum of Rs.2,05,14,386/- and for recovery of Rs.2,70,853/-. The said report of the Divisional Panchayat Officer obviously formed the basis and foundation for the District Collector to issue the show-cause notice dated 04.01.2016. It is the specific case of the petitioner in W.P.No.3414 of 2017 that the Divisional Panchayat Officer did neither issue any notice nor given any opportunity of being heard before submitting the said report against her. The said averment is not controverted in the counter affidavit filed on behalf of the official respondents. A perusal of the order of removal patently reveals that the District Collector placed reliance on the report of the Divisional Panchayat Officer for arriving at the impugned conclusions. It is settled law that any action which has civil consequences must necessarily be preceded by a notice and opportunity of being heard to the persons likely to be effected by such action. In the instant case, the official respondents, in the considered opinion of this Court, adhered to the said cardinal principle of law in breach. Therefore, it can be safely concluded that the impugned action of removal of the Sarpanch is in total violation of the principles of natural justice. It is also the submission of Sri S.Satyam Reddy, learned Senior Counsel that the District Collector grossly erred in taking action without framing any definite charges against the petitioner in the show-cause notice dated 04.01.2016. This Court finds sufficient force in the said submission of the learned Senior Counsel. A reading of the show-cause notice dated 04.01.2016, in vivid terms, shows that the District Collector except referring to the report of the Divisional Panchayat Officer, who obviously conducted enquiry behind the back of the petitioner in W.P.No.3414 of 2017, did not frame any definite charges against the petitioner for taking action against the

petitioner under Section 249 (1) of the Panchayat Raj Act. In the definite opinion of this Court the charges are required to be definite and clear and should not be omnibus and ambiguous in nature and the said ambiguity is undoubtedly fatal to any disciplinary action.

12. In response to the show-cause notice dated 04.01.2016, petitioner submitted an explanation on 22.12.2016, denying the allegations. In the said explanation the Sarpanch stated that the Grampanchayat records for the years 2013-2014 and 2014-2015 were audited and expenditure for every withdrawal was mentioned in the cash book and the Sarpanch took objection for the report against the expenditure for salaries to the staff. The petitioner also brought to the notice of the District Collector that the enquiry officer did not verify the records in her presence and instead took away the records and further stated that if the records were verified in her presence the realities would have come out. Petitioner also requested the enquiry in the presence of the Panchayat Secretary and for verification of the records in his presence. She also brought to the notice of the District Collector that the show-cause notice was issued on the complaint of one Mr.Virendra Reddy, who is not a resident of Bowrampet Grampanchayat. Petitioner also stated that the majority ward members resolved to give permission against her will and she did not sign on the same. Even according to the impugned order, though the amount was shown initially as Rs.2,07,94,239/- in the show cause notice, the amount eventually found being Rs.35,34,054/- saying that the same is not supported by any MB records and bills. The impugned order of removal does not indicate the heads under which the said amounts fall. This casual way of consideration of the issue can neither be countenanced nor approved by this Court. It is also noteworthy, as pointed out by the learned Senior Counsel Sri S.Satyam Reddy, that the District Collector did not consider the explanation and the contents of the same. In this context, it may be

appropriate to refer to the relevant provision of law under which the District Collector passed the order of removal. Section 249 of the Panchayat Raj Act empowers the District Collector to remove the Sarpanch of the Grampanchayat. The said provision of law mandates the District Collector in clear and unequivocal terms that the same should be preceded by an opportunity. In the considered opinion of this Court, the said opportunity is not a mere formality and the same needs to be adhered to in its true letter and spirit. In the instant case, the respondent authorities failed to adhere to the said statutory mandate by not furnishing the report of the Divisional Panchayat Officer, which was taken as the basis for passing the order of removal. The authorities shall not loose sight of the crucial aspect that the power under this provision of law is not the power conferred on the authorities to inflict the punishment and on the other hand it is required to be kept in mind that this power is primarily to safeguard the public funds only.

13. Coming to judgments cited by the learned counsel for the petitioner in W.P.No.3414 of 2017_ in the case of *D.SATHI REDDY (supra 1)*, a Division Bench of this Court while placing the reliance on the judgment of the Constitutional Bench of the Hon'ble Apex Court in the case of *SYED YAKOOB v. RADHAKRISHNAN*⁴, at paragraphs 18 and 19, held as under:

“18. In Syed Yakoob v. Radhakrishnan 's case (supra) the Constitution Bench clearly held that an error of law which is apparent on the face of the record is both an illegality and an impropriety which is amenable to judicial review. If the authority or the Tribunal has recorded a finding of fact which is based on no evidence it is error of law and judicial review is available to correct the same on the ground of illegality and impropriety. If the finding of fact is perverse, it is also an error of law and can be rectified in judicial review. If the District Collector fails to follow the procedure contemplated under sub-section (1) of Section 249 of the Act,

⁴ AIR 1964 SC 477

there is error of law apparent on the face of record. Even while following the provisions of sub-section (1) of Section 249 of the Act if the District Collector fails to supply a copy of the enquiry report based on which charges are framed then also it is an error of law. If the District Collector while issuing a show-cause notice along with a copy of the enquiry report based on which charges are framed, and passes an order in disregard of the essential pre-conditions in clauses (i) to (iv) or either of them the District Collector will be committing the illegality and impropriety. Therefore in either view of the matter we are of the considered opinion that the learned single Judge was right in coming to the conclusion that the 2nd respondent-the original authority and the 1st respondent-the appellate authority failed to apply their mind to the basic fact as to whether the requirement of sub-section(1) of Section 249 of the Act has been fulfilled or not.

19. For another reason also the contention of the learned senior Counsel for the respondents should be rejected. A provision in a statute requiring the issue of a notice or giving an opportunity before passing an order which results in civil consequences has to be held as a mandatory provision. In this case we have held that the show-cause notice without the enquiry report is not sufficient compliance with the mandatory provision of giving an opportunity to offer an explanation. Therefore, before passing the impugned order the District Collector has not followed the mandatory prescription of law. In view of this the submission of the learned senior Counsel for the respondents that the learned single Judge has reappreciated the evidence has no force and we reject the same. Hence Point No.3 is decided accordingly.”

14. In the case of *POLEPALLY LAXMAIAH (supra 2)*, this Court at paragraphs 10 to 12 held as under:

“10. Even this cannot be said to be an adjudication or determination of the matter. It is nothing but summing up all the charges with reference to the remarks offered by the 4th respondent. The only portion of the order, which, if at all, reflects the application of mind by the 2nd respondent, reads as under:

In view of the above facts, orders are hereby passed duly removing Sri P.Lakshmaiah, Sarpanch, Gram Panchayat,

Gudur from the post of Sarpanch, under Section 249(1) of A.P.P.R. Act, 1994. These orders will come into effect immediately.

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.

12. While exercising power under Article 226 of the Constitution of India, this Court would be slow to interfere with the findings of facts. The emphasis would be mostly upon ensuring compliance with the prescribed procedure. Once it has emerged that the order of removal is not the result of an independent application of mind and is contrary to the procedure prescribed under Section 249 of the Act, there is no alternative, except to set aside the impugned order. The 2nd respondent has to undertake the exercise, afresh, and any order passed by him must reflect an application of mind by himself, rather than summarizing the charges, explanation, and remarks offered by a different agency. The interest of the State can be protected by directing that the petitioner shall operate funds of the Gram Panchayat, only with the counter-signature of the 4th respondent.”

15. In the case of *REKAPALLI KRISHNA VASU (supra 3)*, this Court at paragraph 11, held as follows:

“11. It is apparent on record that the District Collector endorsed the conclusions arrived by the Divisional Panchayat Officer. No reasons are assigned by the District Collector in drawing the conclusion that the 6th respondent misappropriated Gram Panchayat Funds. A detailed explanation has been submitted by the 6th respondent to the show-cause notice. The order passed by the District Collector does not speak as to how the explanation offered by the 6th respondent was found to be insufficient. In such a situation, the only reasonable

conclusion is that the District Collector has been simply carried away with remarks submitted by the Divisional Panchayat Officer and the impugned order is not the outcome of his own opinion. What is required under Section 249(1) of the Act is that the District Collector has to form his own opinion on application of mind to the material on record. A similar question has come up for consideration in W.P. No. 23758 of 2004 dated 17-2-2005. Wherein it is observed as follows:

"On a reading of the above provision, it is clear that the Sarpanch can be removed when the District Collector is of the opinion that the same is necessary for any one of the five grounds specified under Sub-section (1) of Section 249 of the Act. Undoubtedly formation of such opinion by the District Collector must be based on application of mind to the material on record and the same shall be apparent from the order itself. In the case on hand, the 2nd respondent failed to assign any reasons in support of his conclusion that the petitioner has misused her powers vested under the Act, but merely relied on the report of the Divisional Panchayat Officer, dated 9-8-2004 stating that all the charges are held proved. In the absence of recording any reasons, it cannot be held that the 2nd respondent has applied his mind to the charges levelled against the petitioner or his explanation".

16. In the instant case also the authorities followed the above principles of law in breach. Therefore, this Court has no hesitation to hold that the impugned order of removal passed by the District Collector on 09.01.2017 cannot be sustained in the eye of law. Accordingly, the issue No.1 is answered in favour of the petitioner in W.P.No.3414 of 2017.

17. Coming to the issue No.2- In W.P.No.18192 of 2017, the action of the State Government in entertaining the revision filed by the Sarpanch pending W.P.No.3414 of 2017 before this Court is challenged. In the considered opinion of this Court, since this Court already seized of the matter in W.P.No.3414 of 2017, the State Government ought not to have entertained the revision against the orders of the District Collector. Therefore, the said

revision is hereby ordered to be rejected and the order impugned in W.P.No.18192 of 2017 stands declared as of no consequence.

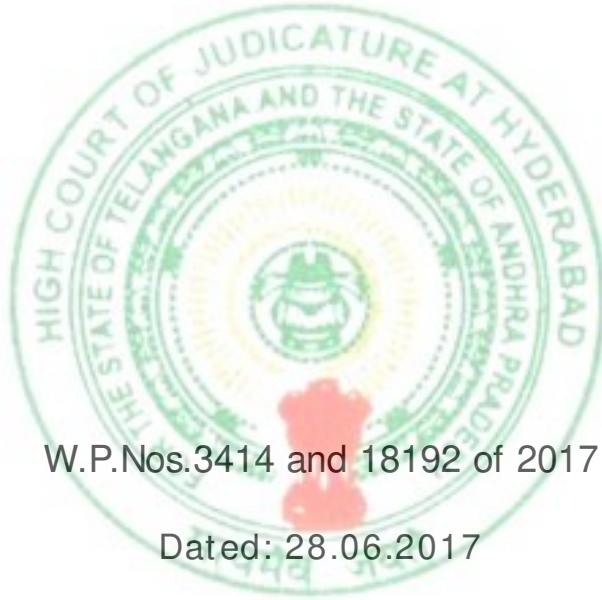
18. For the aforesaid reasons, W.P.No.3414 of 2017 is allowed, setting aside the order of removal of the petitioner from the office of the Sarpanch vide proceedings Rc.No.20/2016-A1(Pts.W), dated 09.01.2017 passed by the District Collector. It is also made clear that this order will not preclude the respondent authorities from framing definite charges as per law and from proceeding further with the matter, in accordance with law, in the light of the observations made *supra*.

19. W.P.No.18192 of 2017 is allowed, ordering rejection of the revision pending before the State Government. It is further declared that the impugned Memo No.11999/Pts.1/A2/2016-4, dated 23.05.2017 stands declared as of no consequence in view of the orders passed in W.P.No.3414 of 2017. As a sequel, the miscellaneous petitions in both the writ petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date:28.06.2017
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A.V.SESHA SAI, J

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



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