

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

WRIT PETITION No.3936 OF 2017

ORDER:

The order of suspension of Sarpanch/petitioner herein passed by the District Collector, Malkajgiri – respondent No.2 herein vide proceedings No.690/17-A1 (Panchayats), dated 01.02.2017, is under challenge in the present Writ Petition.

2. According to the petitioner, he got elected as Sarpanch of Narapally Gram Panchayat, Ghatkesar Mandal, in the elections held in the month of August, 2013 and he belongs to Scheduled Tribe Community and is an illiterate person. Pursuant to a report submitted by the Divisional Panchayat Officer, the District Collector, Ranga Reddy District, issued a show-cause notice bearing No.6901/2015-A2(P), dated 04.01.2016, asking the petitioner to show cause as to why action should not be taken against him under Section 249 (6) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Act'). In response to the said show-cause notice, petitioner herein submitted his explanation. Thereupon, the District Collector/respondent No.2 herein passed an order vide proceedings No.690/17-A1(P), dated 01.02.2017, suspending the petitioner for a period of three months. The legal sustainability of the said order of suspension is under challenge in the present Writ Petition.

3. Counter affidavit is filed by District Panchayat Officer, Ranga Reddy District – respondent No.3 on his behalf and on behalf

of respondent Nos.1, 2 and 4 also, denying the averments made in the affidavit filed in support of the Writ Petition and in the direction of justifying the impugned action.

4. Upa-Sarpanch of Narapally Gram Panchayat filed W.P.MP.No.5239 of 2017 to implead himself as party respondent to the Writ Petition and the same is allowed vide separate order.

5. Heard Sri S. Satyam Reddy, learned Senior Counsel, appearing for the learned counsel on record for petitioner, Ms. K.V. Rajasree, learned Government Pleader for respondent Nos.1 to 4, Sri G. Narender Reddy, learned Standing Counsel for respondent No.5, and Sri Palle Nageswar Rao, learned counsel appearing for impleaded respondent No.6, apart from perusing the material available before this Court.

6. The contentions/submissions of the learned Senior Counsel appearing for the petitioner are:

- 1) The impugned order is highly illegal, arbitrary, unreasonable, violative of Article 14 of the Constitution of India and opposed to the very spirit and object of the provisions of Section 249 (6) of the Act.
- 2) In the facts and circumstances of the case, the order of suspension is unwarranted.
- 3) The order of suspension is a non-speaking order and is completely bereft of any reasons for formation of opinion as per Section 249 (6) of the Act.

4) The impugned order is in total violation of the principles of natural justice as the report of the Divisional Panchayat Officer was not furnished to the petitioner.

5) No constructions took place pursuant to the permission granted and the petitioner herein issued a letter on 15.03.2016 to the person in whose favour permission was granted with a request to him not to make any construction unless proper permission is obtained.

6) The show-cause notice is also completely bereft of any particulars and the details of the alleged irregularities, and the mistake committed is only a *bona fide* one without any bad intention.

7) The contentions/submissions of the learned Government Pleader and Sri Palle Nageswar Rao, learned counsel for impleaded respondent No.6, are:

1) In view of the availability of alternative remedy of revision under Section 264 (3) of the Act, the present Writ Petition filed under Article 226 of the Constitution of India is not maintainable.

2) Since the petitioner herein accepted the guilt, he is not entitled to any indulgence of this Court nor he can complain as to the violation of principles of natural justice on the ground of non-supply of the report of Divisional Panchayat Officer.

3) If the petitioner is ignorant of the Rules, he could have consulted the officers and on the other hand, he abused his position by granting permission.

In support of his submissions/contentions, learned Government Pleader placed reliance on the judgments of this Court in **B. Chandrasekhar and others v. Govt. of A.P., Secretariat, Hyderabad and others¹**, **Nalla Malla Reddy v. M. Mutyalu Goud and others²**, **Yerneni Kusuma v. Government of Andhra Pradesh and others³** and **Janagama Shankaraiah v. Government of Andhra Pradesh and others⁴**.

8. In the above background, now the issue that emerges for consideration of this Court is:

“Whether the impugned order of suspension is tenable and sustainable and whether the present Writ Petition filed under Article 226 of the Constitution of India is maintainable in view of the provision of Section 264 (3) of the Act.”

9. The provision of law which is germane and relevant for the purpose of resolving the issue in the present Writ Petition is Section 249 (6) of the Act, which reads as follows:

“249. Powers of Government to remove Sarpanch, President or “Chairperson” etc.:-

... ..

(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

¹ 1997 (6) ALD 93

² 2002 (1) ALD 387 (DB)

³ 2010 (6) ALD 737

⁴ 2011 (1) ALD 251

member of a Mandal Parishad or Zilla Parishad wilfully 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.”

10. As per the above provision of law, a Sarpanch of a Gram Panchayat can be placed under suspension for a period of three months by the District Collector pending investigation into the charges and the action thereon under the forgoing provisions of the aforesaid Section, which deals with removal. It is also required to be noted that under three contingencies as stipulated therein, the said power can be exercised by the District Collector. They are:

- 1) Wilful omission or refusal to carry on the orders of the Government for proper working of the concerned local body.
- 2) Abuse of position or powers vested.
- 3) Further continuance of such person in the office would be detrimental to the interests of the concerned local body or inhabitants of the Village.

The said provision of law also mandates in clear terms the formation of opinion by the District Collector as to the existence of said mandatory contingencies in a given case.

11. In the instant case, the District Collector issued a show-cause notice, obviously on the basis of a report of Divisional Panchayat Officer, dated 09.09.2015. It is evident from the said notice that the Divisional Panchayat Officer pointed out that without authority the petitioner/Sarpanch accorded building permission. In response to the said show-cause notice issued by the District Collector, the petitioner herein submitted an explanation stating that it

is true that he issued permission for construction of house in favour of one Sri Md. Ghiasuddin, S/o. Md. Gulam Dastagiri and Sri Md. Afzal Rabbani, S/o. Md. Gulam Dastagiri and that earlier in the year 2000, the Sarpanch of Korremul granted permission and the same was renewed by Sarpanch of Narapally. It is further stated that the said individuals did not complete the construction and they approached the Gram Panchayat once again. It is also stated that the petitioner herein asked them to meet the Secretary. It is also stated that the said individuals came back and informed the petitioner herein that the Secretary was not available and Sarpanch can also grant permission and shown the permissions granted earlier by the Sarpanch. It is further stated that under those circumstances, he signed on the permission. It is also stated that because of the same, the Gram Panchayat did not lose anything financially and the LRS is not required as the land is in Gramakantam and that he collected Rs.36,280/- vide receipt No.571, dated 24.04.2015. It is also stated in the said explanation that the petitioner herein does not know how to write English or Telugu and in view of the signatures of the earlier Sarpanchs, he signed. Eventually, in the said explanation, petitioner requested the District Collector to withdraw the show-cause notice treating the same as first mistake and that the same would not be repeated in future.

12. Thereafter, the District Collector passed order vide proceedings, dated 01.02.2017, suspending the petitioner from the

office of the Sarpanch. As per the provision of Section 249 (6) of the Act, no order under the said provision of law shall be passed unless the person concerned has had an opportunity to make representation against the action proposed.

13. In the instant case, the District Collector issued the show-cause notice asking the petitioner to offer his explanation. There is absolutely no dispute with regard to the fact that the petitioner herein offered explanation to the said show-cause notice. As stated supra, in the said explanation, the petitioner brought to the notice of the District Collector a number of aspects. The opportunity of making representation as stipulated under Section 249 (6) of the Act is not a mere formality and is required to be adhered to in its letter and spirit. In the instant case, having called for the explanation and having received the same, the District Collector did not consider any one of the contents in the explanation offered by the petitioner. A perusal of the order under challenge, in clear and vivid terms, would disclose the same. Except indicating the explanation of the petitioner herein as one of the references in the impugned order, the District Collector did not undertake any exercise to consider the explanation offered by the petitioner. On the other hand, he relied upon the remarks of the Divisional Panchayat Officer completely. The mode and manner in which the District Collector considered the issue is totally in violation of the mandatory provisions of Section 249 (6) of the Act. It is also the submission of the learned Senior Counsel for the petitioner that

while dealing with the representative of the people, that too when the action has penal consequence, the authorities are supposed to be careful enough and are required to adhere to the provisions of law strictly and this Court finds sufficient force in the said submission of the learned Senior Counsel, because the action under the above provision of law would undoubtedly affect the reputation of representative of the people. Therefore, this Court has absolutely no scintilla of hesitation nor any traces of doubt to hold that the manner adopted by the District Collector while considering the issue can neither be approved nor countenanced. In view of the same, this Court is of the opinion that the matter requires reconsideration by the District Collector.

14. The judgments cited by the learned Government Pleader, in the facts and circumstances of the case, would not render any assistance to the respondents herein. As there is violation of principles of natural justice in the present case, the argument of the learned Government Pleader that in view of the availability of alternative remedy of revision to the State Government, the present Writ Petition cannot be maintained before this Court cannot be approved.

15. For the aforesaid reasons, the Writ Petition is allowed setting aside the order of suspension, dated 01.02.2017, passed by the District Collector and the matter is remitted back to respondent No.2 for fresh consideration after giving notice and opportunity of hearing to the petitioner and after considering the explanation of the petitioner

strictly in accordance with the provisions of Section 249 (6) of the Act. The report of the Divisional Panchayat Officer, which formed the basis for the District Collector to issue the show-cause notice, should also be made available to the petitioner herein.

16. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed. No costs.

A.V. SESA SAI, J

February 16, 2017

Note: Issue C.C. by 20.02.2017.
B/O.MD

