

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

WRIT PETITION No.6087 of 2017

ORDER:

This writ petition filed, under Article 226 of the Constitution of India, challenges the order passed by the Collector (Panchayathi), Siddipet District, dated 16-02-2017.

Heard, Sri V. Ramakrishna Reddy, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for respondents 1 to 4 and Sri T. Chandrasekhar, learned counsel for the 5th respondent, apart from perusing the material available before this Court.

The petitioner is the Sarpanch of Kothur Gram Panchayat, Mulugu mandal, Siddipet District, Telangana State. The District Collector, Siddipet issued a show cause notice bearing Rc.No.79/2017-A1, dated 04-02-2017 calling upon the petitioner herein to show cause as to why action should not be taken under Section 249 (6) of the Panchayat Raj Act, 1994 (for short, 'the Act'). In response to the said show cause notice, the petitioner herein submitted an explanation on 14-02-2017. Thereafter the District Collector passed an order vide proceedings No.79/2017-A1, dated 16-02-2017 suspending the petitioner from the office of Sarpanch for a period of three (3) months under

Section 249 (6) of the Act. This writ petition challenges the validity and the legal sustainability of the said order.

A counter-affidavit deposed by the District Collector, Siddipet is filed denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action. An implead party petition vide WPMP No.8746 of 2017 came to filed by Sri P. Swamy, claiming to be the in-charge Sarpanch and the same is allowed vide separate order.

It is contended by learned counsel for the petitioner that the impugned order of suspension passed by the District Collector is highly illegal, arbitrary, un-reasonable and opposed to the very spirit and object of the provisions of Section 249 of the Act. It is further contended that by learned counsel for the petitioner that the impugned action is also contrary to principles of natural justice. It is further submitted that without supplying the copy of the report, dated 03-02-2017 said to have been submitted by the Panchayat Extension Officer, Siddipet District, Siddipet – 4th respondent herein, though the petitioner sought the same in the explanation, the District Collector passed the order under challenge. It is also submitted by learned counsel for the petitioner that in the explanation, dated 14-02-2017 the petitioner herein categorically stated about the availability of

records with the Gram Panchayat Office under the custody of Panchayat Secretary but the same was not considered by the District Collector.

In support of his submissions/contentions learned counsel for the petitioner places reliance on the judgment of this Court in case of **D. SATHI REDDY V. COMMISSIONER, PANCHAYAT RAJ, A.P., HYDERABAD AND OTHERS**¹.

On the contrary, it is submitted by learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned action and the District Collector passed the order under challenge strictly in accordance with the provisions of Section 249 (6) of the Act. It is also submitted by learned Government Pleader that since the District Collector issued show cause notice and afforded opportunity of filing explanation for the same, the petitioner herein cannot complain the violation of principles of natural justice. It is further submitted by learned Government Pleader that in view of the availability of alternative remedy of revision to the State Government under Section 264 (1) of the Act, the present writ petition is not maintainable.

In support of his submissions/contentions learned Government Pleader places reliance on the judgment of this Court in case of **B. CHANDRASEKHAR AND OTHERS V.**

¹ 1999 (5) ALD 681 (DB)

GOVERNMENT OF A.P. SECRETARIAT, HYDERABAD AND OTHERS².

It is contended by learned counsel for the 5th respondent that in view of the serious allegations against the petitioner herein the official respondents herein are perfectly justified in passing the order of suspension, which is impugned in the present writ petition.

In the above background, now the issues that emerge for consideration of this Court are:

1. *Whether the order of suspension, dated 16-02-2017 passed by the District Collector is sustainable and tenable?*
2. *Whether the writ petition is liable to be dismissed on the ground of availability of alternative remedy of revision under Section 264 (1) of the Act?*

The provision of law, which is germane and relevant for the purpose of adjudicating the issue on hand in the present writ petition, is Section 249 of the Act. Section 249 (6) of the Act reads as under:

“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

² 1997 (6) ALD 93

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.”

A reading of the above provision of law makes it very much manifest that under three contingencies the District

Collector is empowered to exercise the power of suspension of the Sarpanch namely 1) Willful omission or refusal to carry out the orders of Government for the proper working of the concerned local authorities, 2) abuse of position or the powers vested in Sarpanch and 3) further continuance of such person in office would be detrimental to the interests of the concerned local body or the inhabitants of the village.

The said provision of law also mandates formation of opinion of District Collector in the said direction. Proviso to Sub-section 6 of Section 249 of the Act also mandates that no order of suspension shall be passed unless the person concerned has had an opportunity of making a representation against the action proposed.

In the instant case, the petitioner herein is representative of people and he is an elected Sarpanch of Gram Panchayat. In the considered opinion of this Court the opportunity as mandated in the above proviso cannot be construed as a mere formality and it should be an opportunity in its true letter and spirit. For a representative of the people credibility in the minds of people is of paramount significance. Any action under this provision of law would undoubtedly undermine the image of the persons concerned. Therefore, the authorities while exercising their powers under

this provision of law are required to deal with the issues with great amount of care, caution and circumspection.

In the instant case, there is absolutely no evidence on record to show that the respondents herein furnished the copy of the enquiry report said to have been submitted by the 4th respondent herein on 03-02-2017, which obviously formed basis for the District Collector to pass the order under challenge.

In this context, it may be appropriate to refer to the Division Bench judgment of this Court, 1st cited, wherein this Court at paragraph No.12 while dealing with the provisions of Section 249 of the Act, held as under:

“12. It is clear that except in situations mentioned at (a) and (e) above, the Collector may cause an enquiry to be done by the officials of the Panchayat Department. If the enquiry report is the basis for issuing a show-case notice, there cannot be an adequate opportunity for the Sarpanch to submit the explanation without a copy of the enquiry report being supplied. Therefore, the words "after giving him an opportunity for explanation" appearing in sub-section (1) of Section 249 of the Act should be interpreted as casting a duty on the District Collector to supply a copy of the enquiry report to the Sarpanch. Further, the subsection (1) gives a right to the Sarpanch to receive a copy of the enquiry report even without there being a demand by him.”

In the instant case also the respondent authorities did not supply a copy of the report of the 4th respondent herein, which obviously formed the basis for the District Collector to pass the order under challenge. Therefore, the impugned action cannot be sustained, in the eye of law.

Yet another submission made by learned Government Pleader is that in view of the availability of the alternative remedy of revision to the State Government under the provisions of Section 264 (1) of the Act, the present writ petition is not maintainable.

In the instant case, as observed supra, the respondent authorities did not furnish a report of the 4th respondent, dated 03-02-2017 before passing the order under challenge. In the considered opinion of this Court the same is a patent violation of principles of natural justice. Therefore, the alternative remedy of revision as stipulated under Section 264 (1) of the Act is not a bar for approaching this Court under Article 226 of the Constitution of India. Hence, the said contention of the learned Government Pleader is also rejected. The judgment, 2nd cited, relied on by the learned Government Pleader, in view of the judgment of the Division Bench as mentioned supra, would not render any assistance to the learned Government Pleader in the facts and circumstances of the case.

For the aforesaid reasons, the writ petition is allowed, setting aside the order of suspension passed by the District Collector vide proceedings No.79/2017-A1, dated 16-02-2017 and the matter is remitted back to the District Collector for fresh consideration, in accordance with law, after giving notice and opportunity of hearing and after furnishing copy of the report of the 4th respondent, dated 03-02-2017, to the petitioner. There shall be no order as to costs.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

March 14, 2017

PN

A.V. SESA SAI, J



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



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