

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER

Writ Appeal No.480 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.2575 of 2017 dated 07.03.2017. The 1st respondent herein filed the Writ Petition questioning the proceedings of the District Collector dated 19.01.2017, exercising his powers purportedly under Section 249(6) of the A.P. Panchayat Raj Act, 1994 (for short "the Act"), and in suspending her from the office of Sarpanch of Nakrekal Gram Panchayat, Nalgonda District, as illegal and arbitrary.

Facts, to the limited extent necessary, are that a show cause notice was issued to the 1st respondent-writ petitioner on 16.12.2016 levelling two allegations against her. Thereafter a report dated 09.12.2016 was submitted by the Divisional Panchayat Officer to the District Panchayat Officer wherein the allegations, levelled against the 1st respondent-writ petitioner, was elaborated. It is only after receipt of the report dated 09.12.2016 that the 1st respondent-writ petitioner submitted her explanation dated 03.01.2017 denying the allegations, and requesting that further action be dropped. The District Collector, by proceedings dated 19.01.2017, exercised his powers under Section 249(6) of the Act, and suspended the 1st respondent-writ petitioner from the office of the Sarpanch.

In the order under appeal the Learned Single Judge observed that the appellants did not afford the 1st respondent-writ petitioner a complete opportunity; the remarks of the Divisional Panchayat Officer dated 06.01.2017, which formed the basis for the District Collector to pass the impugned order, were not furnished to the 1st respondent-writ petitioner; under the proviso to Section 249(6) of the Act it was incumbent and

obligatory on the part of the District Collector to afford an opportunity; this opportunity was not a mere formality, and was required to be followed and adhered to scrupulously in its true letter and spirit, as the impugned action undoubtedly tarnished the image of public representatives for whom confidence of the people was the foundation of their career; the impugned order showed that the District Collector had relied on the remarks dated 06.01.2017 of the Divisional Panchayat Officer which were not furnished to the 1st respondent-writ petitioner; and the impugned action was in violation of principles of natural justice.

The Learned Single Judge further observed that Section 249(6) of the Act empowered the District Collector to place the Sarpanch under suspension for a period not exceeding three months under three contingencies viz., (i) when there is omission or refusal to carry out the orders of the District Collector; (ii) when there is abuse of position; and (3) when further continuation is detrimental to the concerned local body or the inhabitants of the village; a reading of the order of the District Collector, except extracting the remarks of the Divisional Panchayat Officer, showed that he did not undertake any process of appreciation of the issues raised in the explanation independently, nor did the impugned order disclose formation of opinion which is the *sine quo non* for exercising the jurisdiction and power of suspension under Section 249(6) of the Act; and the order is a non-speaking order, and is completely bereft of reasons.

The Learned Single Judge, after referring to several judgments including **D. Sathi Reddy vs. Commissioner, Panchayat Raj A.P, Hyd**¹, observed that the impugned order was in contravention of the mandatory provisions of Section 249(6) of the Act; and the power to suspend a public representative is required to be used with a 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.

¹ 1999(5) ALD 681 (DB)

While allowing the writ petition, and setting aside the order passed by the District Collector to the extent charge No.2 was concerned, the Learned Single Judge remanded the matter for the independent assessment of the District Collector, and for passing appropriate orders in accordance with law after giving a notice and an opportunity of hearing to all the stake holders. The Learned Single Judge also made it clear that the finding of the District Collector, as regards Charge No.1, was not disturbed and was intact.

As the District Collector has himself observed that allegation No.1 was not established, we are concerned in this appeal only with allegation No.2. It is necessary to note that, while a notice was issued to the 1st respondent-writ petitioner on 16.12.2016 calling upon her to show cause why she should not be terminated as a Sarpanch under Section 249(1) of the Act, the impugned order of suspension refers to the reports of the Divisional Panchayat Officer dated 18.11.2016 and 09.12.2016. Failure to furnish copies of these reports and the remarks of the Divisional Panchayat Officer, according to Sri C.V. Mohan Reddy, learned Senior counsel appearing for the 1st respondent-writ petitioner, is in violation of principles of natural justice.

Learned Government Pleader for Panchayat Raj would draw our attention to the assertion in the affidavit, filed in support of the writ petition, that a copy of the report dated 09.12.2016 was furnished along with the show cause notice. The 1st respondent-writ petitioner's grievance is that, while a copy of the report dated 09.12.2016 was furnished to her, a copy of the report dated 18.11.2016, was not.

The report dated 09.12.2016, submitted by the Divisional Panchayat Officer, Nalgonda to the District Panchayat Officer, Nalgonda, refers to his earlier report dated 18.11.2016 and, thereafter, narrates in detail over 47 instances of violation on the part of the 1st respondent-writ petitioner. Thereafter the said report contains a summary of the violations to the effect that the objected amount is Rs.41,74,006/-, out of

which gram panchayat staff salaries of Rs.25,69,429/- was paid without budget provision, and against rules, which was objectionable. A copy of this report of the Divisional Panchayat Officer dated 09.12.2016 has, admittedly, been furnished to the 1st respondent-writ petitioner. It is only thereafter that the 1st respondent-writ petitioner submitted her reply to the show cause notice, vide her letter dated 03.01.2017, wherein she furnished a detailed explanation to the allegations, and has elaborately referred to each of the alleged violations referred to in the report of the Divisional Panchayat Officer dated 09.12.2016. As a copy of the report dated 09.12.2016 was furnished to the 1st respondent-writ petitioner, based on which the impugned order was passed, failure to furnish the earlier report dated 18.11.2016 is of little consequence.

The other contention is with regards failure of the District Collector to furnish a copy of the remarks of the Divisional Panchayat Officer dated 16.01.2017. The District Collector called upon the Divisional Panchayat Officer to submit his remarks to the explanation submitted by the 1st respondent-writ petitioner. A perusal of the remarks column, in the impugned order shows that no further information, apart from what was referred to earlier, is reflected therein.

In the order impugned in the Writ Petition, whereby the 1st respondent-writ petitioner was placed under suspension, the District Collector has noted the abstract of the remarks of the Divisional Panchayat Officer that, as against the total objected amount of Rs.41,74,006/-, Rs.2,94,795/- related to the period prior to the date on which the Sarpanch took charge of her office; the balance of Rs.37,22,101/- related to the period when the 1st respondent-writ petitioner held office, out of which salaries and payment of gram panchayat staff was Rs.25,69,429/-, expenditure incurred against rules and procedural lapses was Rs.9,16,776/-, and the objectionable expenditure was Rs.3,92,976/-. After observing that the Sarpanch was a public servant under Section 29 I.P.C, and in terms of Section 25 of the

Panchayat Raj Act she had to exercise administrative control over the executive Authority, the District Collector held that the Sarpanch had incurred expenditure against rules and procedural lapses for Rs.9,16,776/-, and an objectionable amount of Rs.3,92,976/-; and she was responsible for these lapses. While the remarks of the Divisional Panchayat Officer dated 16.01.2017 refers to salaries and payment of gram panchayat staff being contrary to the rules, which is for a sum of Rs.25,69,429/-, the District Collector has based his satisfaction on the other two items i.e of Rs.9,16,776/- and Rs.3,92,976/- and not on the amount paid towards salaries of gram panchayat staff of Rs.25,69,429/-. It does not appear that the remarks of the Divisional Panchayat Officer formed the basis of the order passed by the District Collector. While compliance with principles of natural justice is essential, it must also be born in mind that principles of natural justice is not a mere ritual or an empty formality, and it is only if the 1st respondent-writ petitioner has suffered substantial prejudice thereby, would interference be justified. In the facts and circumstances of the present case, we are satisfied that failure of the District Collector, to furnish the respondent-writ petitioner a copy of the remarks of the Divisional Panchayat Officer, is not fatal.

We are, however, satisfied that the order of the District Collector necessitates being set aside for non-compliance of the conditions stipulated in Section 249(6) of the Act. As is noted in the order under appeal, Section 249(6) of the Act requires the District Collector to form an opinion on whether (i) the Sarpanch has wilfully omitted or has refused to carry out the orders of the Government for the proper working of the concerned Gram Panchayat or (ii) the Sarpanch has abused her position or powers vested in her. After forming his opinion that either one of the aforesaid two conditions stipulated in Section 249(6) have been fulfilled, the District Collector is thereafter required to form an opinion whether, fulfilment of either one of the aforesaid two conditions, would render further continuation of the Sarpanch in office detrimental to the

interests of either (i) the Gram Panchayat or (2) the inhabitants of the Village. It is only after formation of such opinion, is the District Collector empowered to place the Sarpanch under suspension pending investigation into the charges, that too initially only for a period not exceeding three months.

While formation of opinion, and the satisfaction to be arrived at, is that of the District Collector, and this Court would not be justified, while exercising jurisdiction under Article 226 of the Constitution of India, to substitute its opinion for that of the District Collector, the order placing the Sarpanch under suspension must reflect the satisfaction of the District Collector of the fulfilment of the conditions stipulated in Section 249(6) of the Act. The order, impugned before the learned Single Judge, does not disclose the District Collector having formed the requisite opinion or having arrived at the required satisfaction. The order, impugned before the Learned Single Judge, cannot therefore be upheld. Suffice it to make it clear that, as has been recorded by the Learned Single Judge himself in the order under appeal, neither the order under appeal nor the order now passed by us shall preclude the District Collector, to the extent allegation No.2 is concerned, from passing an order afresh in accordance with law.

The Writ Appeal stands disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

17th April, 2017
JSU

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER**



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Date: 17.04.2017

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