

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.8046 OF 2008

ORDER:

The case of the petitioner is that he was Sarpanch and he was issued show-cause notice dated 17-11-2007 by the 3rd respondent under Section 265(1) of A.P.Panchayat Raj Act (for short "the Act") for recovery of the amounts alleged to be misappropriated and the petitioner filed reply dated 03-12-2007 and in pursuance of the same, the 3rd respondent passed orders on 29-12-2007 ordering recovery of amount of Rs.4,70,408/-. Aggrieved by the same, the petitioner preferred appeal before the 1st respondent-Government under Section 265(3) of the Act and the 1st respondent confirmed the said order by G.O.Rt.No1.512, dated 28-03-2008. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 3rd respondent stating that the enquiry is conducted and basing on the same, orders under Section 265(1) of the Act was passed by duly issuing show-cause notice and conducting enquiry against the petitioner.

Learned counsel for the petitioner submits that as per Section 265(1) of the Act, it is the 2nd respondent who is competent to order for recovery. But the 3rd respondent without jurisdiction passed orders of recovery and said aspect was raised before the 1st respondent, but without considering the same issued impugned G.O.Rt No.512, dated 28-03-2008.

He also submits that enquiry has not been conducted under Section 249 of the Act and the basis for issuance of show-cause notice was report submitted by the respondent-authorities is not supplied to the petitioner and as such the orders passed basing on such report which was not supplied to the petitioner, is in violation of principles of natural justice as held by this Court in the judgment of **D.Sathi Reddy v. Commissioner, Panchayat Raj, Andhra Pradesh, Hyderabad¹**.

Heard learned Assistant Government Pleader for Revenue.

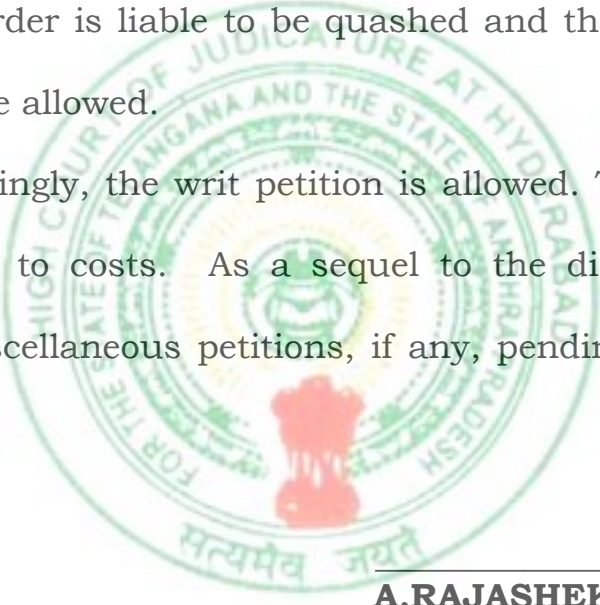
It is to be seen that in the counter affidavit, it is stated that the Government issued G.O.Ms.No.119, dated 01-04-2008 withdrawing the powers exercised by the Commissioner, Panchayat Raj and Rural Development, Hyderabad under Sub-Section 7 of Section 249(1) of the Act, which were delegated by the Government in G.O.Ms.No.639, dated 28-10-1995. In view of the same, the 2nd respondent has no power to entertain the appeal under Section 249(1) of the Act. The said G.O. is nothing to do with the powers to be exercised under Section 265(1) of the Act and more so, G.O.No.119 was issued on 01-04-2008 and impugned order is passed on 29-12-2007. As such, on the face of it, the 3rd respondent has no power to initiate orders for recovery under Section 265(1) of the Act and the petitioner has specifically

¹ 1999(5) ALD 681 (DB)

raised in the grounds of appeal before the 1st respondent as well as in the writ affidavit that the report on which show-cause notice was issued is not served on the petitioner, which is in violation of principles of natural justice. The aspect was not dealt in the appellate order nor disputed by the respondent in the counter affidavit, which goes to show that the impugned order is passed in violation of principles of natural justice as laid down in the judgment cited supra.

In view of the facts and circumstances of the case, the impugned order is liable to be quashed and the writ petition is liable to be allowed.

Accordingly, the writ petition is allowed. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.



A.RAJASHEKER REDDY,J

13-07-2017
Nvl

