

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

Writ Appeal No.194 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.M.P.No.4056 of 2017 in W.P.No.3414 of 2017 dated 02.02.2017 whereby the order of the District Collector, Ranga Reddy dated 09.01.2017 was suspended pending disposal of W.P.No.3414 of 2017.

The order under appeal records the submissions of the learned Senior Counsel, appearing on behalf of the 4th respondent-writ petitioner, that the impugned order of the District Collector dated 09.01.2017 was contrary to the provisions of Section 249 of the A.P.Panchayat Raj Act, 1994 (for short "the Act"); without framing necessary charges, the District Collector had resorted to removal of the 4th respondent-writ petitioner from the post of Sarpanch; and the explanation offered by the 4th respondent-writ petitioner was not taken into consideration while passing the impugned order. The Learned Single Judge observed that, having heard the learned counsel on either side, he was of the opinion that the matter required consideration by the High Court. Thereafter, he directed interim suspension as prayed for.

Heard Sri A.Sudershan Reddy, learned Senior Counsel appearing on behalf of the appellant (4th respondent in the writ petition) and Sri S.Satyam Reddy, learned Senior Counsel appearing on behalf of the 4th respondent-writ petitioner.

Sri A.Sudershan Reddy, learned Senior Counsel appearing on behalf of the appellant, would submit that Section 249(1) of the Act only requires the Sarpanch to be put on notice and to be given an opportunity of being heard; the said provision does not contemplate an enquiry being caused; a copy of the report of the Divisional Panchayat Officer, which formed the basis for taking action against the 4th respondent-writ petitioner, was supplied to her; the order impugned in the writ petition is a reasoned order; the order reflects numerous opportunities being given to the 4th respondent-writ petitioner; in her explanation dated 03.01.2017, the 4th respondent-writ petitioner did not seek any further time to produce the measurement books; based on the documents submitted by her, the District Collector came to the conclusion that, as against the amounts referred to in show cause notice i.e Rs.2,05,14,386/-, the 4th respondent-writ petitioner had failed to submit measurement books and bills for Rs.35,34,054/-; serious allegations of misappropriation and failure to submit bills are held established against an elected Sarpanch; as an order of removal is passed by the District Collector pursuant thereto, in the exercise of his powers under Section 249(1) of the Act, no interference was called for, more so at the stage of admission of the Writ Petition; the order, in effect, grants the main relief sought for in the writ petition; such an order ought not to have passed by the Learned Single Judge without assigning reasons; the order under appeal does not even record the satisfaction of the Learned Single Judge that it is necessary to interfere with the impugned order; except a vague averment in the writ affidavit that the 3rd respondent had influenced the officials, and had got a report from the Divisional

Panchayat Officer alleging that she had misappropriated a sum for Rs.2,05,14,386/-, no allegations of malice are made in the writ petition; it is only during the course of hearing, were these allegations of malice been made; and, in the light of the serious allegations of failure to submit bills and misappropriation of a sum of Rs.35,34,054/-, the Learned Single Judge erred in interfering with the order impugned in the writ petition.

On the other hand Sri S.Satyam Reddy, learned Senior Counsel appearing on behalf of the 4th respondent-writ petitioner, would submit that the remedy of the appellant was to file a petition seeking vacation of the interim order; the 4th respondent-writ petitioner, who belongs to S.C (Women) Category, took charge as a Sarpanch in August 2013; some of the allegations levelled against her relate to a period prior to her taking charge as a Sarpanch; she has been harassed ever since she took office, and the appellant has resorted to this method to have her removed from service; elected officials cannot be subjected to such whimsical action by the officials concerned; it is only because the 4th respondent-writ petitioner had refused to join the political party in power in the State, was this action being taken against her; *mala fides* are writ large in the face of the impugned order; non-availability of bills and vouchers does not mean that the 4th respondent-writ petitioner had misappropriated the said amount; it is not even the case of the officials concerned that no works had been executed; no opportunity of being heard was given to the 4th respondent-writ petitioner before a report was submitted by the Divisional Panchayat Officer; and, the Learned Single Judge, in these facts

and circumstances, was justified in interfering with the order of removal.

As the writ petition is still pending on the file of this Court, and this appeal is preferred only against the interlocutory order passed therein, we are conscious that no observations should be made which would prejudice either party in the writ petition pending before the Learned Single Judge. We make it clear that the opinion expressed by us, in this judgment, is only a *prima facie* view, and is made only in the context of the elaborate submissions made by learned Senior Counsel on either side.

As noted hereinabove, the order under appeal neither records reasons nor does it disclose the basis for the satisfaction of the Learned Single Judge that it was necessary to interfere with the order impugned in the writ petition. The contentions of the learned Senior Counsel, appearing on behalf of the 4th respondent-writ petitioner, are recorded in the order under appeal as (1) the impugned order of the District Collector dated 09.01.2017 is contrary to the provisions of Section 249 of the Act; (2) without framing necessary charges, the District Collector resorted to removal of the 4th respondent-writ petitioner from the post of Sarpanch; and (iii) the explanation offered by the writ petitioner was not taken into consideration while passing the impugned order.

It is relevant to note that the interim order under appeal does not even record the 4th respondent-writ petitioner having alleged malice against the official respondents. Before we consider whether the contentions urged by the learned Senior Counsel before the Learned Single Judge, *prima-facie*, justified interference

with the order removing the respondent-writ petitioner as the Sarpanch, that too at the stage of admission of the writ petition, even without putting the respondents in the Writ Petition on notice, and without giving them an opportunity of filing a counter affidavit, it is necessary to deal with the submission of Sri S.Satyam Reddy, learned Senior Counsel, that an appeal, under Clause 15 of the Letters Patent, is not maintainable against the interim order passed by the Learned Single Judge, and the remedy of the appellant is only to file a petition seeking vacation thereof.

In **Union of India v. Govt. of Tamilnadu**¹, the Division Bench of the Madras High Court held that interlocutory orders which decide matters of moment, or affect vital and valuable rights of the parties and which work serious injustice to the party concerned, constitute a judgment against which an appeal would lie under Clause 15 of the Letters Patent. In **Kakinada Smart City Corporation Ltd. v. M/s.Wadia Techno Engineering Services Ltd.** (Common Judgment in W.A.No.1080 of 2016 and W.P.No.27840 of 2016 dated 27.10.2016), a Division Bench of this Court, after referring to the judgments of the Supreme Court in **Shah Babulal Khimji v. Jayaben D. Kania**² and **Midnapur Peoples Coop. Bank Ltd. v. Chunilal Nanda**³, the order of the Division Bench of the Jharkhand High Court in **Bharat Cooking Coal Ltd. v. Dev PL (JV), Dhanbad**⁴, and the order of the Division Bench of the Madras High Court in **Union of India v. Govt. of Tamilnadu**¹, observed that the law laid down in the aforesaid judgments were that, even where the interim order passed by the

¹ 2013 Indlaw Mad.832

² AIR 1981 SC 1786

³ (2006) 5 SCC 399

⁴ 2014 Indlaw JHKD 294

Learned Single Judge does not finally decide an issue but materially and directly affects the appellant, it can be regarded as a judgment under Clause 15 of the Letters Patent as it affects the vital and valuable rights of the parties and causes serious injustice to them. The order under appeal, whereby the respondent-writ petitioner was put back in office as a Sarpanch after suspending the order of removal passed by the District Collector holding her guilty of misappropriation and failure to submit bills for Rs.35,34,054/-, has not only decided matters of moment but works serious injustice to public interest. We see no reason, therefore, to non-suit the appellant and relegate him to the remedy of filing a petition to vacate stay, more so since the effect of the order of the Learned Single Judge is to grant the 4th respondent-writ petitioner the relief which could, ordinarily, have been granted only after the writ petition is finally heard and allowed.

The action taken against the 4th respondent-writ petitioner is under Section 249 of the Act. Section 249(1) of the Act stipulates that if, in the opinion of the District Collector, the Sarpanch has (i) wilfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; or (ii) abused his position or the powers vested in him; or (iii) is guilty of misconduct in the discharge of his duties; or (iv) persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body, or has become incapable of such performance, the Collector may remove such Sarpanch after giving him an opportunity of submitting his explanation. Section 249(1) of the Act only requires the District Collector to give the Sarpanch

concerned the opportunity to submit an explanation. There is no requirement thereunder for an enquiry to be caused, for evidence to be adduced by the Sarpanch, for her to be afforded the opportunity to cross-examine witnesses, or for charges to be framed followed by an enquiry being caused in this regard. We may not be understood to have held, even *prima facie*, that such an opportunity should not be afforded to a Sarpanch. All that we are holding is that Section 249(1) of the Act does not expressly so stipulate.

The documents placed before us show that a notice was issued to the 4th respondent-writ petitioner on 04.01.2016 calling upon her to show cause why action should not be taken against her as per Section 249(1) of the Act, and calling for her explanation. The show cause notice records the misappropriated amount as Rs.2,05,14,386/- plus recovery amount of Rs.2,79,853/-. The appellant herein invoked the jurisdiction of this Court, by way of W.P.No.35585 of 2016, questioning the action of the District Collector, in not passing final orders pursuant to the show cause notice dated 04.01.2016 issued to the 4th respondent herein, as unjust and arbitrary. In his order dated 16.11.2016, the Learned Single Judge observed that both the State of Telangana and the District Collector have been affording opportunity after opportunity to the 4th respondent herein either for perusing the record or for submitting explanation to the notice from time to time; and the exercise undertaken shall be continued only by issuing show cause notices. Based on the statement of the Learned Government Pleader for Panchayat Raj, the Learned Single Judge held that, as the circumstances warrant, a final decision

should be taken within four weeks from the date of receipt of a copy of the order.

The documents placed for our perusal also contain a copy of the report of the Divisional Panchayat Officer dated 26.10.2015 informing the District Panchayat Officer that a show cause notice could be given to the Sarpanch and the Village Secretary for misuse of funds of Rs.2,05,14,386/- and that, in addition, Rs.2,79,853/- should be recovered. Several other allegations are made against the Panchayat Secretary, with regards grant of permission for construction of buildings. As the order removing the Sarpanch from office is in issue in this writ petition, it is wholly unnecessary for us to examine the allegations made against the Panchayat Secretary. Suffice it to note that, after the show cause notice was issued, the 4th respondent-writ petitioner submitted her representation dated 24.02.2016 seeking 15 days time to give her explanation. This was followed by her letter dated 14.03.2016 seeking permission to verify the Gram Panchayat records which were lying with the Divisional Panchayat Officer to enable her to submit her explanation.

The District Panchayat Officer, by proceedings dated 06.07.2016, informed the 4th respondent-writ petitioner that the records of the Gram Panchayat may be verified in the office of the Divisional Panchayat Officer, and to submit her reply to the show cause notice within 8 days. Thereafter, the District Panchayat Officer issued memo dated 19.12.2016 informing the 4th respondent-writ petitioner that the records of the Gram Panchayat should be verified in the office of the District Panchayat Officer on 21.12.2016. The 4th respondent-writ petitioner, by letter dated

22.12.2016, informed the District Collector that issuance of a show cause notice, that there was misappropriation of funds from Gram Panchayat, was incorrect and unjustified; if an enquiry was conducted in her presence, and in the presence of the Panchayat Secretary, the facts would come to light; all the records of the Gram Panchayat were available in the office of the District Panchayat Officer; she had not misappropriated any funds; and he should consider her request and do justice to her. Thereafter, by letter dated 30.12.2016, the 4th respondent-writ petitioner informed the District Panchayat Officer that the measurement book Nos.1486/AH/1, 1483/AH/1, 1489/AH/1 and 1350/AH were not available; she was submitting measurement book No.1350/AH; the books Nos.1486/AH/1, 1483/AH/1, 1489/AH1 and 1350/AH were available with the concerned Assistant Engineer/Deputy Executive Engineer; and she would submit the above books on 03.01.2017 in his office.

Thereafter, by letter dated 03.01.2017, the 4th respondent-writ petitioner informed the District Panchayat Officer that the measurement book Nos.1486/AH/1, 1483/AH/1, 1489/AH/1 and 1350/AH were not available in the office of the Gram Panchayat, and the same were obtained from the concerned officers and submitted for further action. It is not even the 4th respondent-writ petitioner's case, in her reply letter dated 03.01.2017, that there were any other measurement books which were not made available to her.

The order impugned in the writ petition is dated 09.01.2017 wherein the District Collector has recorded the entire correspondence aforementioned, besides a few other letters. After

examining the writ petitioner's explanation and the record, the District Collector found that proper records were maintained for a sum of Rs.1,72,60,185/-; the 4th respondent-writ petitioner had failed to submit measurement books and bills for Rs.35,34,054/-; and, therefore, it was proved that she had misappropriated a sum of Rs.35,34,054/-.

While the submission of Sri S.Satyam Reddy, learned Senior Counsel, that these records are required to be maintained by the Panchayat Secretary (who is the executive authority under the Act), and not by the Sarpanch, and several circulars have been issued by the Government in this regard, are again matters which are required to be examined in the writ petition, suffice it to note that, in none of the letters addressed by her to the officials concerned, has the 4th respondent-writ petitioner taken such a plea.

Allegations of malice are easier made than established. It is only if specific allegations of malice are made, and the person against whom malice is alleged is made a respondent *eo nomine* in the writ petition, would this Court be justified in examining the plea of malice (**State of Bihar v. P.P.Sharma**⁵). In the absence of specific allegations against any of the official respondents, and as none of the respondents have been arrayed as parties *eo nomine*, it would be difficult for us to agree with the submission of Sri S.Satyam Reddy, learned Senior Counsel, that malafides are writ large on the face of the impugned order.

It is not as if the impugned order was passed immediately after a show cause notice was issued. While the show cause notice is dated 04.01.2016, the impugned order removing the Sarpanch

⁵ AIR 1991 SC 1260

from office was passed on 09.01.2017 i.e more than one year after the show cause notice was issued. Even this order was passed pursuant to the directions of the Learned Single Judge in W.P.No.35585 of 2016 dated 16.11.2016.

Sri S.Satyam Reddy, learned Senior Counsel, has placed before us a copy of the recovery statement whereby a sum of Rs.35,34,054/- is said to be recoverable from the 4th respondent-writ petitioner which shows that, for several amounts, neither measurement books nor bills and vouchers were produced.

The allegations levelled against the Sarpanch are grave and serious in nature. Whether the material on record is sufficient to hold that the 4th respondent-writ petitioner has acted in contravention of clauses (i) to (v) of Section 249(1) of the Act justifying the order of removal being passed, are matters for examination in the writ petition. This Court would not, ordinarily, interfere with an order passed by the District Collector under Section 249(1) of the Act removing a Sarpanch from office for serious allegations such as those levelled against the respondent-writ petitioner in the impugned order. While we may not be understood to have held that, in no case can such an order be passed, we are satisfied that such an order could not have been passed at the stage of admission of the Writ Petition, that too without affording the respondents therein an opportunity of filing their counter affidavit and to place the relevant records before this Court. In any event the Learned Single Judge ought to have recorded his satisfaction that the case before him was of such an exceptional nature as to warrant interference, and to put the Sarpanch in office suspending the order of removal, at the stage of

admission of the Writ Petition. No such satisfaction has been recorded in the order under appeal.

The order under appeal is, accordingly, set aside and W.P.M.P.No.4056 of 2017 in W.P.No.3414 of 2017 is restored to file. Sri A.Sudershan Reddy, learned Senior Counsel, appearing on behalf of the appellant (4th respondent in the writ petition), undertakes on his behalf to file a counter affidavit within two weeks from today. Learned Government Pleader for Panchayat Raj submits that a counter affidavit would also be filed on behalf of respondents 1 to 3 within two weeks. It is open to the Learned Senior Counsel, appearing on behalf of the respondent-writ petitioner, to request the Learned Single Judge to take up the W.P.M.P. for grant of interlocutory relief any day after two weeks from today. Needless to state that the W.P.M.P. shall be examined on its own merits, and in accordance with law, without being influenced by any observations made by us in this order.

The Writ Appeal stands disposed of accordingly. The 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)

13th February, 2017
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE DR JUSTICE SHAMEEM AKTHER



Writ Appeal No.194 of 2017

Date: 13.02.2017

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