

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

WRIT PETITION No.44010 of 2016

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the order passed in the name of District Panchayat Officer, East Godavari, Kakinada vide proceedings Rc.No.5112/2014-A4, dated -11-2016.

Heard, Sri K. Chidambaram, learned counsel for the petitioner and learned Government Pleader for Panchayat Raj for respondents, apart from perusing the material available before this Court.

The District Panchayat Officer, East Godavari, Kakinada issued a show cause notice bearing Rc.No.5112/2014-A9, dated 13-02-2015 asking the petitioner to show cause as to why he should not be suspended from the office of Sarpanch while referring to a report said to have been submitted by the Divisional Panchayat Officer, Kakinada saying that the petitioner misappropriated an amount of Rs.2,39,337/-.

Responding to the said show cause notice, the petitioner herein submitted a representation, stating that he spent the amounts as per the directions of Panchayat Secretary and sought time to submit explanation to the said show cause notice on the ground that the Secretary was not available for verification of the records. Thereafter the District Panchayat

Officer, East Godavari, Kakinada – 3rd respondent herein passed an order vide proceedings Rc.No.5112/2014/A9, dated 16-04-2015, withdrawing the cheque power of the petitioner herein.

Assailing the said order passed by the 3rd respondent, the petitioner herein filed W.P.No.18953 of 2015 before this Court. In this said writ petition, this Court in WPMP No.24516 of 2015 passed the following interim order, dated 26-06-2015:

“As seen from the provision contained in Section 249 (6) of Panchayat Raj Act, 1994, the District Collector is vested with power to suspend the Sarpanch for a period of three months pending investigation of such charges. A show cause notice was issued by the 3rd respondent, as to why the petitioner should not be suspended. The petitioner submitted his explanation. The final order now passed is impugned in this writ petition. Instead of suspending the petitioner as originally contemplated, cheque power is withdrawn. Prima facie, even withdrawal of cheque power can be made without specifying the time limit, provided when an enquiry or investigation is pending. A bare reading of the order impugned in the writ petition would show that it is a final order. Even according to Rule 42 of the rules notified vide G.O.Ms.No. 30 dated 20.01.1995, time limit has to be specified for withdrawing the cheque power. Thus, prima facie, the order is not valid and deserves to be suspended.

Having regard to the above, the operation of proceedings Rc.No.5112/2014/A9 dated 16.04.2015 is suspended.

Notice.”

The said writ petition is pending before this Court.

Now, by way of an order vide proceedings Rc.No.5112/2014-A4, dated -11-2016 the District Panchayat Officer ordered suspension of the petitioner for a period of three (3) months. The validity and the legal sustainability of the said suspension order is under challenge in the present writ petition.

A counter-affidavit deposited by the 3rd respondent is filed, denying the allegations filed in support of the writ petition and in the direction of justifying the impugned action.

According to the learned counsel for the petitioner, the order under challenge is violative of Article 14 of the Constitution of India and Section 249 of A.P. Panchayat Raj Act, 1994. It is further submitted that there is absolutely no justification on the part of the District Panchayat Officer to pass the order under challenge after one and half years of withdrawing the cheque power. It is further stated that the respondents did not issue any fresh show cause notice and the order passed by the District Panchayat Officer is totally one without jurisdiction. It is further pointed out by learned counsel that there is no basis for the respondents herein and there is no plausible explanation also forthcoming with regard to the variation in the amount indicated in the show cause

notice issued earlier on 13-02-2015. It is further stated that since the entire record is admittedly with the Panchayat Secretary, the respondent authorities ought not to have resorted to the impugned action without verifying the records.

On the contrary, it is vehemently contended by learned Government Pleader that the order impugned is in accordance with the provisions of Section 249 of the A.P. Panchayat Raj Act, 1994 and the petitioner herein is required to face the enquiry under the provisions of the A.P. Panchayat Raj Act, 1994.

The information available before this Court manifestly discloses that earlier the District Panchayat Officer issued a show cause notice, dated 13-02-2015, indicating the report of the Divisional Panchayat Officer stating that the petitioner herein misappropriated a sum of Rs.2,39,337/-. There is also no dispute as regards the fact that the petitioner herein sought time to file explanation to the said show cause notice. Without responding to the said request made by the petitioner the District Panchayat Officer passed an order, withdrawing the cheque power of the petitioner herein. The said order is under challenge in W.P.No.18953 of 2015 and this Court suspended the said order. There is absolutely no reason for the respondents and no plausible explanation is forthcoming from the respondents as to why they kept quiet till November,

2016 to issue the present order of suspension. It is also required to be noted that as per Section 249 (6) of the A.P. Panchayat Raj Act, 1994 the competent authority to suspend the Sarpanch is a District Collector. First proviso to Section 249 (6) of the A.P. Panchayat Raj Act, 1994, in clear and unequivocal terms, mandates that no order under said sub-section shall be passed unless the person has had an opportunity of making a representation against the action proposed.

It is settled and well established proposition of law that when a statute directs a particular act to be performed in a particular manner the same is required to be done in such a manner only and any deviation from the same would render the action invalid. In the considered opinion of this Court the opportunity as stipulated under the first provision to Section 249 (6) of the A.P. Panchayat Raj Act, 1994 is not a mere formality and it needs to be adhered to in its true letter and spirit.

Another significant aspect which needs mention in this context is that in the show cause notice, dated 13-02-2015 which is sought to be made a basis for present impugned action, the District Panchayat Officer indicated an amount of Rs.2,39,337/-. But curiously in the present impugned order ...-11-2016 the amount indicated is scaled down to

Rs.73,408/-. No reason is also forthcoming as regards the said variation. It is also important to note that even as per the impugned order the entire records are with the Panchayat Secretary. Therefore, obviously without verifying the records the respondents have resorted to the impugned action. Therefore, this Court has absolutely no traces of doubt to hold that the impugned order is neither sustainable nor tenable in the eye of law.

For the aforesaid reasons, the writ petition is allowed, setting aside the order vide proceedings Rc.No.5112/2014-A4, dated -11-2016. However, this order will not preclude the respondents from proceeding, in accordance with law, after giving notice and opportunity of being heard to the petitioner herein.

Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.V. SESA SAI, J

January 25, 2017

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



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