

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.15116 of 2016

ORDER :

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue a writ or order/ s more particularly one in the nature of Writ of Mandamus declaring the order bearing Memo no.10270/ Pts.I/ A2/ 2015-10 dated 11-4-2016 passed by the first respondent confirming an order of removal, of petitioner as Sarpanch of Aleru Grama Panchayat in Nalgonda district, passed by the second respondent vide proceedings no.1986/ 14-b1(Pts) dated 28-12-2015, as being illegal, arbitrary and unconstitutional; and be pleased to pass such other order/ s as this hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard Sri S.Satyam Reddy, learned Senior Counsel for the petitioner and learned Government Pleader for Panchayat Raj appearing for the respondents and perused the prayer in the writ petition with supporting affidavit and the impugned proceedings of the 1st respondent-Government of Telangana, through its Special Chief Secretary, Panchayat Raj & Rural Development Department, in the appeal order/memo bearing No. 10270/ Pts.I/ A2/ 2015-10 dated 11-4-2016, confirming the order of removal of the petitioner as Sarpanch of Aleru Grampanchayat, Nalgonda District, passed by the 2nd respondent-District Collector vide proceedings bearing No.1986/ 14-B1(Pts) dated 06.10.2015 referred in the prayer of the writ petition as if dated 28.12.2015 and also perused the expressions of the Single Judges of this

Court in Polepally Laxmaiah v. State of A.P.¹ and Rekapally Krishna Vasu v. State of A.P.² and the decisions referred therein.

By the impugned original proceedings of the 2nd respondent removing the petitioner from the post of Sarpanch of Aleru Village Panchayat, for the illegalities and irregularities committed in discharge of duties with mis-demeanor and misappropriation based on allegations supra, by referring to 13 enclosures, which include the explanation of the petitioner for the show cause notice on four charges framed.

Insofar as charge Nos.3 and 4 concerned, the 2nd respondent-District Collector (Panchayat Wing) himself sought for additional report of the 3rd respondent- Divisional Panchayat Officer, Bhongir, for the material on record in relation to charge Nos.3 and 4 concerned incomplete to come to any conclusion. However, the impugned proceedings are passed pursuant to the said report of the 3rd respondent dated 08.06.2015. However, the fact remains from perusal of the impugned order also that the additional report is not supplied to the petitioner, much less, by calling for any explanation thereon also if at all to consider as an additional material to the impugned disciplinary proceedings, more particularly, to take such a recourse of the penal action of removal of the Sarpanch duly elected from the post. Thus, so far

¹ 2009(4) ALD 756

² 2005(5) ALD 276

as charge Nos.3 and 4 concerned, the conclusion of the same is proved that too, without supply of the said material and without calling for explanation on its face unsustainable.

Even coming to charge Nos.1 and 2, so far as charge No.2 concerned, it is in relation to spending of Rs.27,52,223/- out of 13th Finance Commission Funds and there is account for what was drawn and spent of Rs.27,50,856/- but for to the balance of Rs.1,367/-. Though a misappropriation is a misappropriation, however, once such a huge amount is involved out of which, what not covered by bills or accounting is a small and minor amount, it could have been considered the explanation in this regard also. Leave it as it is.

Coming to the first allegation, it is regarding the spending of Rs.11,29,610/- for the street lighting and other appliances to the entire area of the Grampanchayat concerned, the allegation is there is no maintenance of accounts for spending, thereby, the finding is the Sarpanch mis-appropriated. It is the submission of the learned Government Pleader for Panchayat Raj also with reference to the enquiry report and other material including the subsequent order of the Principal Secretary to the Government, with reference to the counter-affidavit filed by the 2nd respondent that the petitioner created fake bills of non-existence entities, as if the material purchased. The petitioner once shown from the bills of purchased from X or Y or Z as the case may be, to say that such X or Y or Z not in existence, there

must be a material for the Authorities to pass the orders atleast by sending through registered post to the addresses covered by the bills, if at all particulars furnished and if at all returned of no such entity existence, to conclude by shifting the burden on the petitioner to show from *prima facie* non-existence, how to believe to come to such a conclusion. However it is not there.

Having regard to the above, by treating the impugned order as a provisional suspension pending enquiry, the respondents are directed to conduct a further enquiry by supplying a copy of the report of the 3rd respondent-Divisional Panchayat Officer also to the petitioner and call for explanation and take recourse specifically in proof of the charges, with detailed discussion charge wise.

Accordingly, the Writ Petition is disposed of, directing the respondent-Authorities to complete the enquiry within two months from the date of receipt of copy of this order and if the respondent-Authorities could not complete the enquiry within the aforesaid period, the suspension order ceases its force. To avoid any complaint of non-cooperation of the petitioner, The petitioner is directed to appear before the 2nd respondent-District Collector for enquiry on 07.07.2017 and on that day, the respondent-Authorities shall supply the 3rd respondent's additional enquiry report also and from that the petitioner shall submit an explanation within one week thereafter and after that an enquiry shall be conducted and orders to be passed. Needless

to say, from what is the submission of deposit of half of the amount covered by the charges to be invested in fixed deposit and if at all the petitioner is not liable for any amount to be payable, the entire amount with interest to be refunded to her from the result of the final order.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:29-06-2017
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Note:
L.R. Copy to be marked - yes





HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION No.15116 of 2016

%29.06.2017

#Between:

Kandagatla Nirmala

...Petitioner

AND

1. The Government of Telangana thru its Special Chief Secretary
Panchayat Raj & Rural Development Dept, Secretariat, Hyderabad and
two others

... Respondents

!Counsel for the petitioner : Sri S.Satyam Reddy

Counsel for the respondents: Learned Government Pleader
for Panchayat Raj

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>Head Note:

? Cases referred:

¹ 2009(4) ALD 756

² 2005(5) ALD 276

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two others

... Respondents

Counsel for the petitioner : Sri S.Satyam Reddy

Counsel for the respondents: Learned Government Pleader
for Panchayat Raj

DATE OF JUDGMENT PRONOUNCED: 29.06.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/ No |
| 3 | Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? | Yes/ No |





HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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