THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.29 of 2018

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.42818 of 2017 dated 18.12.2017. The appellant herein filed the writ petition seeking a mandamus to declare the action of the District Collector, Medchal in issuing the order of suspension dated 04.12.2017, without giving her any notice of the enquiry or a copy of the alleged enquiry report, as arbitrary and illegal.

In the order under appeal the Learned Single Judge observed that the appellant-writ petitioner had earlier filed W.P.No.6087 of 2017, which was allowed on 14.03.2017; aggrieved thereby, the matter was carried in appeal; the Division Bench, by its order in W.A.No.419 of 2017 dated 06.04.2017, held that the judgment in **D.Sathi Reddy vs. Commissioner, Panchayat Raj, Andhra Pradesh**[1] does not apply to the case of suspension under Section 249(6) of the A.P.Panchayat Raj Act, 1994 (for short "the Act"), as it is only pending further enquiry; and, while setting aside the order of the Learned Single Judge, the Division Bench had directed the District Collector to take action in terms of Section 249(1) of the Act and to pass final orders.

While rejecting the challenge to the order of suspension on the ground of violation of principles of natural justice, the Learned Single Judge observed that suspension was only a temporary measure, which was resorted to pending passing of final orders

[1] 1999(5) ALT 535 (DB)

under Section 249(1) of the Act; the appellant-writ petitioner had admitted and acknowledged grant of permission for construction; relying on the judgment of the Supreme Court in **Ajit Singh vs. Financial Commissioner and Secretary to Government**[2] the appellant-writ petitioner had contended that no opinion was formed as envisaged under Section 249(6) of the Act; in the impugned order, it was clearly held that the appellant-writ petitioner had misused her position in granting permission; and, in such circumstances, he was not inclined to interfere with the order of suspension. The District Collector was directed to pass final orders in terms of Section 249(1) of the Act within a period of three months.

Before us, Sri S.Satyam Reddy, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit that the District Collector had failed to form the requisite opinion under Section 249(6) of the Act; the requirement of forming an opinion under the said provision is on two grounds both of which are required to be satisfied; the District Collector should have formed the opinion (i) that the Sarpanch had misused her position or the powers vested in her; and (ii) that her further continuance in office would be detrimental to the interests of the Gram Panchayat; while the District Collector has formed an opinion regarding the first limb, that the appellant-writ petitioner had misused her position, he has not recorded his satisfaction as to whether continuance of the Sarpanch in office would be detrimental to the Gram Panchayat concerned; on this short ground, both the order under appeal and the order impugned in the writ petition

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[2] (2009) 16 SCC 308

necessitate being set aside; and the Learned Single Judge ought not to have prescribed a time frame within which the enquiry under Section 249(1) of the Act should be conducted, and action should be taken pursuant thereto.

In **Ajit Singh[2],** the appellant was suspended from the office of Sarpanch in the exercise of the powers conferred by Section 51(1)(a) of the Haryana Panchayat Raj Act, 1994. Section 51(1)(a) permitted suspension of a Sarpanch where a case against him, in respect of any criminal offence was under investigation, enquiry or trial, if in the opinion of the Director or Deputy Commissioner concerned the charge made, or proceeding taken against him, was likely to embarrass him in the discharge of his duties or involved mortal turpitude or defect of character. This provision was construed by the Supreme Court as a pre-condition for forming an opinion that the charge made or proceeding taken against the Sarpanch was likely to embarrass him in the discharge of his duties or involved mortal turpitude or defect of character. On the ground that the order of the competent authority has not referred to any such opinion, the order of suspension was set aside.

In the case on hand, the District Collector has, in the impugned order, after examining the report submitted by the Extension Officer, Panchayat Raj and the Village Development Officer, observed that the Sarpanch had misused her position and had given permission for illegal construction. On the ground that the appellant-writ petitioner had misused her position, the District Collector placed her under suspension for a period of three months. It is not contended before us that the District Collector has failed to record his satisfaction that the Sarpanch has misused

her position. The order impugned in the writ petition reflects the District Collector having arrived at such a satisfaction. The very fact that the District Collector was satisfied that such misuse of office necessitating suspension of the Sarpanch is evident from the order of suspension itself for, if the District Collector was not satisfied that such misuse of office necessitated suspension, it was wholly unnecessary for him to have placed the appellant-writ petitioner under suspension. The mere fact that the impugned order does not explicitly refer to the District Collector's satisfaction that the continuance of Sarpanch in office is detrimental to the interests of Gram Panchayat is of no consequence, since such satisfaction is implicit in the order placing her under suspension.

Section 51(1)(a) of the Haryana Panchayat Raj Act, 1994 is distinct from Section 249(6) of the A.P.Panchayat Raj Act, 1994. Reliance placed on **Ajit Singh[2]** is, therefore, misplaced. In any event the scope of interference, in an intra-Court appeal, is extremely limited and save cases where the order under appeal suffers from a patent illegality, no interference is called for. We find no such infirmity in the order under appeal.

The Learned Single Judge has, in the order under appeal, directed early completion of the enquiry within three months evidently to ensure that the appellant-writ petitioner is not kept under suspension for an unduly long period. Since it is the appellant-writ petitioner who filed the Writ Petition, and she did not seek any such relief, it was not necessary for the Learned Single Judge to have issued such a direction.

The order of the Learned Single Judge, to the limited extent he fixed a time frame of three months for completion of the

enquiry, is set aside and is upheld in all other aspects. Suffice it to make it clear that we have not expressed any opinion on the time frame within which the enquiry should be conducted and completed, and it is open to the authorities concerned to complete the enquiry as expeditiously as possible, and in accordance with law.

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

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

18th January, 2018
JSU

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AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
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Date: 18.01.2018

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