

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.637 of 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal is preferred, under Clause 15 of the Letters Patent, against the order passed by the Learned Single Judge in W.P.No.7260 of 2018 dated 12.03.2018. The 5th respondent herein filed the Writ Petition seeking a mandamus to declare the order of suspension dated 17.02.2018, passed by the District Collector, Warangal suspending him from the office of Sarpanch of the 4th respondent-Gram Panchayat, as illegal, without jurisdiction and in violation of principles of natural justice, apart from being *mala fide* and a colourable exercise of power. By the order under appeal, the Learned Single Judge set aside the order of suspension. Aggrieved thereby, the 5th respondent in the writ petition has preferred this appeal.

Facts, to the limited extent necessary, are that the 5th respondent-writ petitioner was elected as a Sarpanch of Alankanipet Gram Panchayat during the general elections held in July, 2013. A complaint in F.I.R.No.85 of 2017 was lodged against him for the offences punishable under Sections 353, 390, 323 and 506 read with Section 34 of I.P.C. He was arrested and remanded to judicial custody. Thereafter, a show cause notice was issued on 15.07.2017 to which the 5th respondent-writ petitioner submitted a detailed explanation on 25.07.2017. It is the case of the 5th respondent-writ petitioner that, even without considering his explanation, the order of suspension was passed in August, 2017 suspending him from holding the office of Sarpanch for a period of

three months. The 5th respondent-writ petitioner filed W.P. No.26646 of 2017 and, by order dated 11.08.2017, the impugned order of suspension was suspended. The authorities were, however, directed to continue the enquiry. Pursuant thereto, the 5th respondent-writ petitioner continued to hold the office of Sarpanch.

Thereafter, another show-cause notice dated 12.12.2017 was issued for which the petitioner again submitted a detailed explanation on 20.12.2017. Yet another notice dated 30.01.2018 was issued under Section 249(1) or (6) of the Telangana Panchayat Raj Act, 1994 (for short "the Act") asking the petitioner to show-cause why action should not be initiated against him, for placing him under suspension, as he was arrested on the allegation of obstructing the Executive officer (PR&RD), Nekonda from discharging his official duties. The 5th respondent-writ petitioner submitted his explanation on 06.02.2018 denying the allegations. However, the impugned order of suspension came to be passed on 17.02.2018 invoking the power under Sections 249(6) and 258 of the Act, questioning which the present writ petition was filed.

In the order under appeal the Learned Single Judge observed that Section 258 of the Act was narrow and limited in its scope; it only gave such protection as was available to a public servant, in the discharge of his functions, to a Sarpanch; it was a deeming provision, and could not, therefore, be expanded beyond what it was intended to provide; the protection conferred under Section 258 on a Sarpanch is only that of a public servant in the discharge of his duties; it did not bring in either other service benefits or liabilities attached to the service of a public servant; and the

District Collector was not vested with the power to suspend the 5th respondent-writ petitioner on the ground that he was in judicial custody. The Learned Single Judge observed that, as the action of the District Collector was *ultra vires* Section 249(6) of the Act, the impugned order was liable to be set aside.

The order placing the 5th respondent-writ petitioner under suspension was pursuant to the show cause notice dated 30.01.2018 which reads thus:

“In the reference 1st cited EO(PR&RD) Nekkonda has submitted report stating that the Upa Sarpanch and Ward Members of Gram Panchayat, Alankanipet Mandal, Nekkonda have lodged a complaint against Sri Idampaka Parakasham, Sarpanch, Gram Panchayat, Alankanipet that he is not taking development works, with the result Gram Panchayat is badly hampering. Moreover, the Sarpanch attempt to murder Sri Suram Raji Reddy, Ex-Sarpanch, Alankipet and FIR filed against the Sarpanch under Section 307 for which they have requested to take necessary action against the Sarpanch.

After careful examination of the report submitted EO (PR&RD) Nekkonda it is seen that FIR filed against Sri Idampaka Prakasham, Sarpanch Gram Panchayat, Alankanipet under Section 307 for attempt to murder Sri Suram Raji Reddy, Ex.Sarpanch, Gram Panchayat, Alankanipet and was arrested and remand to judicial custody for a period of 14 days. In the past also FIR filed against him when he obstructed the duties of EO (PR&RD) which conducting enquiry with the complaint given by Upa Sarpanch and ward Members and duly following due procedure he was placed under suspension. As per Hon’ble High Court orders the suspension orders revoked and departmental enquiry conducted. Further process is under progress. In the meanwhile the above said incident occurred.

In view of the above, Sri Idampaka Prakasham, Sarpanch, Gram Panchayat, Alankanipet Mandal, Nekkonda is hereby directed to show cause why action should not be initiated against him under Section 249(1) or (6) of APPR Act, 1994 since as per Section 258 of APPR Act, 1994, Sarpanch, Upa Sarpanch or members of Gram

Panchayat shall be deemed to be a Public Servant. His reply should reach this office within (7) days from the date of receipt of this memo, otherwise further action will be initiated as per APPR Act, 1994 without prior intimation as per the records available in this office.”

It is evident from the aforesaid proceedings that the 5th respondent-writ petitioner was called upon to show cause why action should not be initiated against him under Section 249(1) or (6) of the Act, since Section 258 of the Act deemed him to be a public servant; and since he was in judicial custody for a period of 14 days, he was liable to be placed under suspension similar to that of a public servant.

Section 249(6) of the Act confers power on the District Collector to place a Sarpanch under suspension. Section 249(6) enables such a power to be exercised only in cases where (i) the Sarpanch wilfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body; or (ii) abused his position or the powers vested in him. While the aforesaid two contingencies are in the alternative, Section 249(6) requires the District Collector to also satisfy himself that the further continuance of such Sarpanch in office would be detrimental to the interests of the concerned local body, or the inhabitants of the village. Section 249(6) of the Act, however, stipulates that the Sarpanch shall not be placed under suspension for a period exceeding three months, pending investigation into such charges, and action thereon being taken under the foregoing provisions i.e under Section 249(1) of the Act. Under the first proviso thereto, no order under Section 249(6) shall be passed,

unless the person concerned has had an opportunity of making a representation against the action proposed.

Section 258 of the Act deems a Sarpanch of a Gram Panchayat to be a public servant within the meaning of Section 21 of the Indian Penal Code. The said provision only confers the protection of a public servant on a public representative, including the Sarpanch of a Gram Panchayat. Section 258 of the Act does not, *per se*, make the Sarpanch of a Gram Panchayat a public servant in all respects. Unless the Statute, or the Rules made thereunder, explicitly confer power on the District Collector to place a Sarpanch under suspension, on his being kept in detention for a period exceeding 48 hours, he cannot be placed under suspension on this ground.

Under Rule 8(2)(a) of the Classification, Control and Appeal Rules (for short “the Rules”), a Government servant is deemed to have been placed under suspension by an order of the authority competent to place him under suspension, with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours. It is because Rule 8(2)(a) specifically creates a fiction, and requires a Government servant to be under suspension, if he is kept under suspension for a period exceeding 48 hours, is the Government servant deemed to be under suspension consequent on his detention exceeding 48 hours. Rule 8(2)(a) of the Rules does not, automatically, apply to a public representative, in the absence of a similar provision in this regard being stipulated either under the Act or the Rules made thereunder. Section 258 of the Act only deems a Sarpanch to be a public servant for the limited purposes

of the Act. In effect, the said provision confers a similar protection on a Sarpanch akin to a public servant in the discharge of his functions under the Act. It is only if a specific provision is made, either in the Act or in the Rules made thereunder, for a public servant either to be placed or to be deemed to have been placed under suspension, on his detention for a period exceeding 48 hours, could that have been a ground for the respondent-writ petitioner to be placed under suspension. We are in complete agreement with the opinion expressed by the Learned Single Judge that the order of suspension is illegal, and *ultra vires* the provisions of Section 249(6) of the Act.

While we find considerable force in the submission of Sri S. Rahul Reddy, learned counsel for the 5th respondent-writ petitioner, that the District Collector had passed the impugned order of suspension, even without taking note of the reply submitted by the 5th respondent-writ petitioner to the show cause notice, it is wholly unnecessary for us to dwell on this issue, since we are satisfied that the Learned Single Judge was justified in setting aside the order of suspension, holding that Section 258 of the Act has no application.

That, however, does not mean that the 5th respondent-writ petitioner can avoid an enquiry being caused against him, for the power to impose punishment under Section 249(1) of the Act is independent of the power to place a Sarpanch under suspension under Section 249(6) of the Act. Sri S. Rahul Reddy, learned counsel for the 5th respondent-writ petitioner, would submit that the 5th respondent-writ petitioner would fully cooperate in the enquiry, and make available all such records as are required by

the enquiry officer. Suffice it, therefore, to make it clear that it is open to the District Collector to take all such steps, as are available to him in law, to ensure that the enquiry, initiated against the 5th respondent-writ petitioner, is continued unhindered, and is completed at the earliest.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

23rd April, 2018
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