
(2021) 12 TEL CK 0048
In the Telangana High Court
Case No : Writ Appeal No. 571 Of 2021

A. Krishna

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 15-12-2021

Acts Referred:

Telangana Panchayat Raj Act, 2018 — Section 37(1), 113, 114

Citation : (2021) 12 TEL CK 0048

Hon'ble Judges : Satish Chandra Sharma, CJ;N. Tukaramji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present writ appeal has been filed by Mr. A.Krishna, Sarpanch, Kistareddypet Gram Panchayat, Ameenpur Mandal, Sanga Reddy District, being aggrieved by the order dated 18.10.2021 passed in W.P.No.22640 of 2021 by the learned Single Judge.

The facts of the case reveal that the appellant before this Court is an elected Sarpanch of the Kistareddypet Gram Panchayat, Ameenpur Mandal, Sanga Reddy District and a show cause notice was issued on 06.09.2021 by the Collector in exercise of powers conferred under Section 37(1) of the Telangana Panchayat Raj Act, 2018 (hereinafter referred to as "the Act"). The appellant preferred a writ petition before this Court challenging the show cause notice on the ground that the Collector under Section 37(1) of the Act is required to form an opinion in the matter of removal of a Sarpanch and the Collector in a mechanical matter has issued the show cause notice based upon the complaints of the villagers and the report of the Divisional Panchayat Officer and therefore, as the show cause notice was not issued with an independent mind that too without forming an opinion, it deserves to be set aside.

The learned Single Judge has dismissed the writ petition holding that after receiving the complaint, a report was called from the Divisional Panchayat Officer

and after due application of mind and after forming an opinion based upon the material, the Collector has issued the show cause notice and therefore as the writ petition was only against a show cause notice, the same has been dismissed.

This Court has carefully gone through the judgment passed by the learned Single Judge dismissing the writ petition as well as the show cause notice. The show cause notice issued by the Collector is reproduced as under:

"Government of Telangana

Office of the District Panchayat Officer, Sangareddy

No:153/2021/A1-Pts-1 Dated: 06.09.2021

Sub:- Gram Panchayat - Sarpanch, Gram Panchayat Kistareddypet of Ameenpur Mandal-Distribution of amount in the Gram Panchayat - Failed to stop the illegal constructions in the Gram Panchayat - Notice for removal u/s. 37(1) of the PR Act - Explanation called for - Reg.

1. Application dt. 25.08.2021 of Sri Donti Ashok, 2nd Ward Member and villagers of Gram Panchayat Kistareddypet of Ameendpur Mandal.
2. Lr.No.29/2021/A1-Pts., dt.30.08.2021 of the Divisional Panchayat Officer, Sangareddy.
3. Show cause notice No.153/2021/A1-Pts., Dt.15.04.2021 of the District Collector (PT.Wing), Sangareddy.

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Through the above reference 1st cited, Sri D. Ashok Mudiraj, 2 Ward Member and villagers have made certain allegation on the Sarpanch and Upa-Sarpanch Gram Panchayat Kistareddypet of Ameenpur Mandal and requested to take necessary action in the matter.

As per the report of the Divisional Panchayat Officer, Sangareddy, the following charges have been framed against Sri A. Krishna, Sarpanch, Gram Panchayat Kistareddypet of Ameenpur Mandal.

Charge 1:

As per CCTV footage video and audio footage, it is observed that, the Sarpanch has distributed Rs.50,000.00 (Rupees Fifty thousand only) to each ward member in between 12.30 pm to 12.34 pm on 25.03.2021. The distribution of amount among body members in the Gram Panchayat Office show their illegal and corrupt practices.

Charge 2:

After assuming the charge of the Sarpanch, 12 unauthorized layouts have been established in the Gram Panchayat Kistareddypet of Ameenpur, the Sarpanch has failed to stop these layouts and violated the section 113 of Panchayat Raj Act.

Charge 3:

After assuming the charge of the Sarpanch, Gram Panchayat Kistereddypet, 62 unauthorized buildings are being constructed; the Sarpanch has failed to stop these constructions and violated the section 114 of Panchayat Raj Act.

Charge 4:

Some of the buildings which are demolished in the April, 2021 as special drive, started again. Even after several times demolition drive taken up to remove illegal floors. Construction of illegal floors are still going on i.e., they took permission for G+2 from Gram Panchayat and constructing G+3, G+4. This shows Gram Panchayat body failed to stop the illegal constructions as per section 114 of Panchayat Raj Act, 2018.

Charge 5:

Sri A. Krishna, Sarpanch, Gram Panchayat Kistareddypet has not cooperated with the Panchayat Secretary and Gram Panchayat staff to stop the illegal structure and obstructed the duties of them.

Therefore, Sri A. Krishna, Sarpanch, Gram Panchayat, Kistareddypet of Ameenpur Mandal is hereby show caused as to why you shall not be removed from the post of Sarpanch under sub-section (1) of Section 37 of TSPR Act, 2018 on the above charges. His explanation should reach to this office within (7) days from the date of receipt of this show cause notice. Failing which, it will be viewed seriously and further action will be taken under Section 37(1) of TSPR Act, 2018.

(By order)

for Collector (Pt. Wing), Sangareddy."

The show cause notice reveals that a large number of complaints have been received against the Sarpanch relating to irregularities (finance irregularities also) and the Collector by way of abundant action has called for the report from the Divisional Panchayat Officer. The Collector after going through the complaints and after forming an opinion after taking into account the report of the Divisional Panchayat Officer has framed charges and thereafter, a show cause notice has been issued. The statutory provisions governing the field as contemplated under Section 37(1) of the Act is reproduced as under:

"37(1) If in the opinion of the District Collector the Sarpanch,-

- (i) omitted or refused to carry out the orders of the District Collector or Commissioner of Government for the proper working of the concerned Gram Panchayat; 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) is guilty of embezzlement of Gram Panchayat Funds; or

(v) persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the Gram Panchayat or has become incapable of such performance;

The District Collector may remove such Sarpanch after giving him an opportunity for explanation."

The aforesaid statutory provision of law makes it very clear that the Collector is competent to issue a show cause notice to take final decision in the matter and the same has been done in the present case. It is nobody's case that without issuing any show cause notice, the Collector is going ahead with the removal of the Sarpanch. The Apex Court in the case of Union of India and another vs. Kunisetty Satyanarayana Appeal (Civil) No.5145 of 2006, dt. 22.11.2006 has held as under:

"It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Shulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001 (10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc. The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

In the light of the aforesaid judgment, as the show cause notice has been issued by an authority jurisdictionally competent to do so, the question of entertaining the writ petition and the writ appeal, which is at the stage of show cause notice, do not arise.

Resultantly, this Court is of the opinion that the learned Single Judge was justified in dismissing the writ petition and therefore, this Court does not find any reason to interfere with the order passed by the learned Single Judge.

Accordingly, the writ appeal is dismissed.

Miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.