
(2000) 02 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2454 of 2000

Buntupally Pathana

APPELLANT

Vs

District Collector, East Godavari Dist. and another

RESPONDENT

Date of Decision : 25-02-2000

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 249(6), 26(1)
Constitution of India, 1950 — Article 226

Citation : AIR 2000 AP 258 : (2000) 2 ALD 773 : (2000) 2 ALT 172

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. K. Venkataramaiah, for the Appellant; Government Pleader for Panchayat Raj, for the Respondent

Judgement

V.V.S. Rao, J. 1. The petitioner is an Upa-Sarpanch of Yeleswaram Gram Panchayat in East Godavari District. Assailing the proceedings of the first respondent in Roc.No.596/99-A, dated 3-2-2000, he filed this writ petition under Article 226 of the Constitution of India praying for a writ in the nature of certiorari to quash the impugned order by holding the same as illegal arbitrary, mala fide, politically influenced and unjust and against the interests of Panchayat at large and for a consequential direction to the first respondent to hold a detailed enquiry on the allegations against the second respondent.

2. The averments made in the affidavit accompanying the writ petition are as follows:

The second respondent was elected as Sarpanch to the Gram Panchayat of Yeleswaram in the year 1994. Since the beginning of his tenn, the second respondent has been resorting to various financial irregularities, corrupt practices and misuse of powers. Therefore, the petitioner, who is Upa-Sarpanch, elected to the said Gram Panchayat in the year 1994, gave a complaint to (he first respondent, bringing all the misdeeds and corrupt practices of the second respondent to his notice. Some of the Acts of malfeasance and misfeasance as

disclosed in the affidavit are that though the second respondent is drawing advances from Jawahar Rozgar Yojana (JRY) funds he did not execute the work, that he has committed irregularities in purchase of uniform material to the Sweepers and misused the money, that without permission from the concerned authorities he auctioned "rain trees" in the village and misappropriated the money, that he purchased the electrical equipment of inferior quality for exorbitant rates contrary to rules to make illegal benefits, and that he illegally approved the layouts of AMG and RMC Public School which action, is being referred to the Director of Town Planning as per resolution of Gram Panchayat.

3. The first respondent issued a show-cause notice dated 23-10-1999 to the second respondent calling upon him as to why action should not be taken against the Sarpanch. After receiving the reply/ explanation dated 30-10-1999 from the second respondent, the first respondent issued proceedings in Roc.No.596/99-AI, dated 24-1-2000 under sub-section (6) of Section 249 of the A.P. Panchayat Raj Act, 1994 (for brevity "the Act") keeping the second respondent under suspension from the office of the Sarpanch, Yeleswaram for a period of three months. By the same proceedings the first respondent also directed the second respondent to hand over complete charge of the office of the Sarpanch to the petitioner herein with directions to the petitioner to exercise powers and perform the functions of Sarpanch under sub-section (1) of Section 26 of the Act until further orders. In accordance with the order dated 24-1-2000, the petitioner took charge as "incharge Sarpanch" on 30-1-2000 and continuing as such.

4. After 24-1-2000, it is alleged that the first respondent did not conduct any fresh enquiry and did not examine anybody. No fresh material was gathered nor produced by the second respondent before the first respondent but the first respondent issued proceedings in Roc.No.596/99-AI, dated 3-2-2000 revoking the earlier suspension order dated 24-1-2000. Assailing the same the present writ petition is filed.

5. Shri K. Venkataramaiah, learned Counsel for the petitioner submits that the order passed by the first respondent is illegal and without any basis. It is his submission that the first respondent passed the impugned order for political considerations and due to influence exerted by the second respondent and, therefore, the impugned order is illegal arbitrary and against public interest. The learned Counsel invited the attention of the Court to the various allegations extracted in the annexure to the suspension order dated 24- 1 -2000 and would submit that it is not at all desirable to revoke the suspension order and again reinstate the second respondent as Sarpanch which would amount to allowing him to resort to fresh illegalities and corrupt practices.

6. I have heard the Assistant Government Pleader for Panchayat Raj. She submits that the petitioner has no locus standi to question the order passed by the District Collector and that there is no illegality in first respondent passing the order revoking suspension order.

7. The main submission of the learned Counsel for the petitioner is that the order of revocation passed by the first respondent is not in accordance with law. As per the provisions of sub-section (6) of Section 249 of the Act, if the District Collector is of the opinion that a Sarpanch wilfully omitted or refused to carry out the orders of Government for the proper working of the concerned local body or abused his position or the powers vested in him, and that the further continuance of such person in office would be detrimental to the interests of the concerned local body, or the inhabitants of the village, the District Collector may by order, suspend such Sarpanch from office for a period not exceeding three months pending investigation into the said charges and action thereon. When a Sarpanch is placed under suspension for three months in accordance with sub-section (6) of Section 249 of the Act, sub-section (I) of Section 26 of the Act permits the Upa-Sarpanch to exercise powers and perform the functions of the Sarpanch till the expiry of the period of suspension.

8. The power and jurisdiction of the District Collector to pass an order of suspension as well as revoke such suspension order is conceded. It is not the submission of the learned Counsel that the first respondent has passed an order without jurisdiction. It is his submission that the order of revocation is not in accordance with law. I am afraid, I cannot accept the submission. After issuing the show-cause notice dated 23-10-1999, the first respondent received the explanation of the second respondent on 30-10-1999. After considering the explanation and connected records, the first respondent came to a conclusion that the second respondent failed to rectify the irregularities committed by him in the administration of Yeleswaram Gram Panchayat. Therefore, the second respondent was placed under suspension for a period of three months.

9. A reading of the impugned order dated 3-2-2000 shows that the second respondent again approached the first respondent by filing an application duly explaining the circumstances warranting revocation of the suspension orders. In view of the circumstances explained by the second respondent, the first respondent revoked the orders of suspension passed earlier. I do not find any infirmity in the orders passed by the first respondent on 3-2-2000 revoking the suspension. When the order of suspension is passed under sub-section (6) of Section 249 of the Act on the ground that the Sarpanch failed to carry out the orders of the Government for the proper working of the concerned local body, the said suspension order can always be revoked by the District Collector if the Sarpanch shows reasons that in fact the orders passed by the Collector are implemented or that the mistakes pointed out are rectified. Therefore the impugned order cannot be held to be illegal.

10. It is next contended by the learned Counsel for the petitioner that by the impugned order, the petitioner herein is also directed to hand over the complete charge of the office of the Sarpanch to the second respondent immediately in the presence of Executive Officer, Yeleswaram. A feeble attempt is made by the learned Counsel for the petitioner that though his client is not enamoured of the

position of "incharge Sarpanch," it is not proper for the District Collector to again put the second respondent in the saddle of Gram Panchayat administration when there are serious allegations against him. As per sub-section (1) of Section 26, the Upa-Sarpanch can be authorised to exercise the powers or perform functions of Sarpanch during the period of suspension of the Sarpanch. Further, even by the order dated 24-1-2000, when the second respondent was placed under suspension, the petitioner herein was authorised to be Sarpanch until further orders. In my considered opinion, the petitioner herein cannot be said to have any grievance, especially when the Collector has considered the various allegations and revoked the suspension order. It is needless to point out that an Upa-Sarpanch has no say in matters of suspension of Sarpanch or removal of a Sarpanch. It is for the Competent Authority to take action having regard to the various parameters of law.

11. For the above reasons, the writ petition is dismissed as devoid of merits at the admission stage with costs quantified at Rs.1,000/-.