

(1999) 08 AP CK 0070

In the Andhra Pradesh High Court

Case No : WA No's. 1805 of 1826 of 1998

D. Sathi Reddy

APPELLANT

Vs

Commissioner, Panchayat Raj A.P., Hyd. and others

RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 249, 249(1), 249(7), 25
Constitution of India, 1950 — Article 226, 243B, 243C, 245, 40

Citation : AIR 2000 AP 91 : (1999) 5 ALD 681 : (1999) 5 ALT 535

Hon'ble Judges : M.S. Liberhan, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. M.V. Ramana Reddy, for Prattipati Venkateshwarlu, for the Appellant; Mr. K. Pratap Reddy, for A. Narasimha Reddy and Government Pleader, for the Respondent

Judgement

V.V.S. Rao, J.—These two writ appeals are against the same judgment of the learned single Judge dated 24-9-1998 in Writ Petition No.24801 of 1998. The Writ Appeal No. 1805 of 1998 is filed by the petitioner in the said Writ Petition. The Writ Appeal No.1826 of 1998 is filed by the respondent Nos.5 to 9 in the said writ petition. The parties are referred to herein as they were arrayed in the writ petition. A few facts which are necessary for the disposal of these writ appeals are as follows:

The petitioner (appellant in Writ Appeal No.1805 of 1998) was elected as Sarpanch of the Peerzadiguda Gram Panchayat for a second consecutive term. He belongs to Congress party. The 2nd respondent issued a show-cause notice in Roc. No.B2/1495/97 dated 16-6-1997 alleging infraction of subsection (1) of Section 249 of the A.P. Panchayat Raj Act, 1994 (hereinafter referred to as "the Act"). Even before the petitioner could give explanation, the 2nd respondent issued another show-cause notice in Roc.No.B2/1495/97, dated 19-1-1998- In the show-cause notice "the 2nd respondent framed nine charges. These inter alia relate to sanctioning of lay-outs which are not in accordance with law and failure on the part of the petitioner to effect demolition of certain structures. It is

important to notice that after receiving complaints from the Upa-Sarpanch and some members of the village, the 2nd respondent caused an enquiry to be made by the Extension Officer (Panchayats), Hayathnagar as well as the District Panchayat Officer, Ranga Reddy District. Both these officials conducted enquiry on 19-11-1997 and on 23-12-1997 and submitted a report. The enquiry report submitted by these officials is the basis for issuing show-cause notice dated 19-1-1998 and the petitioner was asked to show-cause as to why he shall not be removed from the office of the Sarpanch.

2. The petitioner submitted explanation on 1-2-1998. He denied charge Nos.1, 2, 3, 4, 6, 8, 9 and 10. Regarding charge Nos.5 and 7, he gave reasons justifying his action. He also explained that the complaints made by the members of the Gram Panchayat are politically motivated and, therefore, any show-cause notice based on enquiry into the complaints is not warranted. The 2nd respondent-the District Collector and competent authority, issued proceedings No.B2/1495/97, dated 18-4-1998 ordering that the notification appended to the said proceedings be published in the office of the Gram Panchayat, Peerzadigua and the Sarpanch was directed to hand over the complete charge to Upa Sarpanch. The appended notification in proceedings No. B2/1495/97, dated 22-4-1998 says that as per the details under each charge in the annexure appended to the notification, the charges are held proved and that the Sarpanch has wilfully committed or refused to carry out or disobeyed the provisions of the Act and the Rules and has abused the power vested in him and, therefore in exercise of the powers under sub-section (1) of Section 249 of the Act, the District Collector ordered removal of the petitioner.

3. Aggrieved by the orders of the District Collector the petitioner filed writ petition - being Writ Petition No.12122 of 1998. The same was disposed of by this Court on 13-4-1998 directing the petitioner to file an appeal provided under the Act within a period of one week and the Commissioner of Panchayat Raj, the 1st respondent was directed to dispose of the appeal within a period of three months. The order of the Collector was directed to be kept in abeyance for a period of one week. Thereafter on 2-5-1998 the petitioner filed an appeal before the 1st respondent. Before the appellate authority the petitioner contended that the District Collector has not applied mind before passing the orders of removal and that without giving an opportunity the orders were passed which violate the principles of natural justice. Be that as it may, along with the appeal the petitioner filed an application seeking stay of the operation of the order of the District Collector. As no orders are passed by the appellate authority, he filed another Writ Petition - being Writ Petition No. 13207 of 1998. This Court, by order dated 5-5-1998, in WP MP No.15952 of 1998 in Writ PetitionNo.13207 of 1998, directed the Commissioner to dispose of the application for stay within a period of two weeks and in the meanwhile this Court ordered maintenance of status quo. At this stage, the respondent Nos.5 to 9 along with four other members of the Gram Panchayat got impleaded in the said writ petition. They filed applications for vacating the interim orders passed by this Court on

5-5-1998. A learned single Judge of this Court vacated the interim orders. Aggrieved by the same a Letters Patent Appeal - being Writ Appeal No.1009 of 1998 was filed by the petitioner. A Division Bench of this Court, by an order dated 13-6-1998 disposed of the Writ Appeal directing the Commissioner of Panchayat Raj to dispose of the appeal within a period of two weeks and ordered status quo as on that date till the disposal of the appeal by the Commissioner. However, the petitioner was directed not to interfere with the affairs of the Gram Panchayat in any way whatsoever and he was also injuncted not to participate in the proceedings of the Gram Panchayat or utilise any of the funds till the disposal of the appeal by the Commissioner.

4. The 1st respondent-appellate authority, under sub-section (7) of Section 249 of the Act passed orders in Roc.No.2694/B2/97, dated 24-8-1998. Before the appellate authority the petitioner contended that the report of the District Panchayat Officer which is the basis for show-cause notice and consequential action was not supplied to him that the charges framed against him are vague and no specific grounds are made out there under and thirdly there was no physical verification done by the enquiring officials. The appellate authority held that though the District Collector based the show-cause notice on the joint enquiry report there is no necessity to furnish the report dated 26-6-1997 to the petitioner and that as the petitioner did not respect the orders of the High Court and withdrawn an amount of Rs.6.61 lakhs besides approving the layouts in 1998 the appeal deserves to be dismissed. Accordingly the appeal was dismissed.

5. The petitioner then approached this Court by filing Writ Petition No.24801 of 1998 praying for writ of mandamus declaring the proceedings of the 2nd respondent dated 18-4-1998 (22-4-1998) as confirmed by the 1st respondent by order dated 24-8-1998 as arbitrary, illegal and to set aside the same. Before the learned single Judge the senior Counsel for the petitioner contended that neither the original authority nor the appellate authority has applied its mind while exercising its powers u/s 249 of the Act. No proper opportunity was given to the petitioner in that the report of the enquiry officials was not supplied to him thereby denying him opportunity to make an effective explanation which is pre-condition for exercise of power under sub-section (1) of Section 249 of the Act and, therefore rules of natural justice are not totally complied with. The learned single Judge rejected the contention of the petitioner that he is entitled to be supplied with a copy of the report which is the basis for removal order. The learned single Judge however agreed with the other contention that both the authorities have not at all applied mind before arriving at the opinion which is sine qua non for exercising the power of removal and held as follows:

".....Unless the Collector and the Appellate Authority were of the opinion that one of the four sub-clauses of Section 249(1) of the Act was present, action under that section cannot be taken. In the charges as well as in the order passed by the two authorities, there is absolutely no reference or mention as to which of the sub-clauses were made ground for invoking the power. Sub-clause (i) of

Section 249(1) of the Act refers to wilful omission or refusal by the Sarpanch to carry out orders of Government. Obviously this sub-clause was not invoked in the instant case. Second sub-clause envisages that the Sarpanch has abused his position or powers vested in him. Section 25 of the Act refers to powers and functions of the Sarpanch. It does not appear from the reading of the order that any of these powers or functions are alleged to have been abused. It has to be remembered that powers vested in the Sarpanch are referred to in sub-clause (2). The Collector as well as Appellate Authority were required to reach a finding that the Sarpanch abused his position or power vested in him. No such finding is recorded. The third sub-clause refers to the misconduct in discharge of the duties by the Sarpanch. Therefore, any misconduct alleged has to be in discharge of the duties. There is no finding anywhere as to which act of the petitioner amounted to misconduct in discharge of duties *P. Kondal Reddy v. District Collector*, 1988 (2) APLJ 487 may be referred. Fourth sub-clause refers to persistent default in performance of the functions and duties entrusted to the Sarpanch under the Act to the detriment of the function of the local body. Obviously this was not the nature of the proceedings initiated against the petitioner."

6. The learned Counsel for the respondent Nos.5 to 9 relying on the judgment of the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, contended before the learned single Judge that the finding of fact recorded by the duly constituted Tribunals cannot be challenged, that adequacy or sufficiency of the evidence led on the point and the inference drawn there from is beside the purview of judicial review and that as per the provisions of sub-section (1) of Section 249 of the Act there is no necessity to supply the copy of the enquiry report. While holding that the Court is not reappreciating the evidence on the conclusions, the learned single Judge held that both the authorities failed to apply their mind to the basic fact as to whether Section 249(1) of the Act has been fulfilled or not. Further, the learned single Judge held:

".....Merely because some charges were issued and the authorities found that the said charges were proved does not necessarily mean that the case falls within the sub-clauses of Section 249(1) of the Act. The reading of the charges which were issued to the petitioner shows that most of the charges were regarding alleged permission granted by the petitioner for certain construction or the failure of the petitioner to pull down the illegal construction. The duties and functions of the Sarpanch will have to be construed by the authority to find out as to whether it is the duty of the Sarpanch to grant permission for layout or to pull down the illegal construction."

7. The learned single Judge has also held that when the application of mind by the duly empowered authorities is *ex facie* not clear the requirements of sub-section (I) of Section 249 of the Act are not attracted and such situation results in incurable infirmity in the orders under judicial review. Therefore, the learned single Judge allowed the writ petition. The orders of the District Collector and the Commissioner were set aside and the matter was remitted back to the District

Collector for passing fresh orders keeping in view the observations made in the judgment. The learned single Judge also directed that status quo be maintained as ordered by the Division Bench of this Court in Writ Appeal No. 1009 of 1998.

8. As already mentioned, the petitioner filed Writ Appeal No. 1805 of 1998 in so far as the judgment of the learned single Judge went against him and the respondent Nos. 5 to 9 filed Writ Appeal No.1826 of 1998. The learned senior Counsel for the petitioner Sri K. Pratap Reddy made the same submissions which were argued before the learned single Judge. In addition, he also contended that the appellate authority has relied on totally new ground in respect of which the petitioner was not put on notice. He also contends that the order of the learned single Judge to maintain status quo as ordered by the Division Bench in Writ Appeal No. 1009 of 1999 is not warranted especially when the learned single Judge was pleased to set aside the orders of the original authority as well as the appellate authority. The learned senior Counsel Sri M. V. Ramana Reddy appearing for the appellants in Writ Appeal No.1826 of 1998 submits that the power of judicial review under Article 226 of the Constitution cannot be exercised as an appellate power and as the learned single Judge adverted to the various factual aspects, the same is vitiated by error. The District Collector gave ample opportunity to the petitioner to explain the irregularities committed by him and after considering the explanation, gave a finding on all the ten charges that the petitioner has committed irregularities and hence this Court cannot reappraise the evidence. Further, the learned senior Counsel contends that the conditions precedent for exercise of power u/s 249 of the Act were complied with by both the authorities and therefore, no interference is called for. According to the learned senior Counsel for the respondents by substituting its opinion to the opinion of the lower authorities this Court has not exercised the power under Article 226 of the Constitution in a proper manner. Lastly, it is contended that even if the order of the primary authority for any reason is not sustainable this Court ought to have remanded the matter to the appellate authority and not to the primary authority.

9. In the facts and circumstances of this case the following points arise for consideration:

(1) Whether the 2nd respondent acted illegally or contrary to the provisions of sub-section (1) of Section 249 of the Act ?

(2) Whether it is obligatory on the part of the competent authority to supply a copy of the enquiry report to the delinquent Sarpanch of the Gram Panchayat, when the show-cause notice containing the charges is based on the enquiry report;

(3) What is the scope of judicial review of the orders passed by the authorities u/s 249 of the Act?

(4) Whether the order of the learned single Judge in remanding the case to the District Collector to decide the matter afresh. While ordering maintenance of

status quo, is not justified?

(5) To what relief?

Point No. 2:

The Village Panchayats as units of local self-Government in rural areas were creation of a statute. These Panchayats were created by relevant statutes and did not enjoy the Constitutional protection. Though Article 40 appearing in the Directive Principle of the Constitution, obligates the State to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government, much head-way could not be made. To rectify this situation by the Constitution (73rd Amendment) Act, 1992 a new Part IX was introduced. This part deals with the Panchayats. Thus Constitutional status was given to the Village Panchayats. Under Article 243-B of the Constitution, it shall be the duty of the State to constitute Village Panchayats. Article 243-C speaks of composition of Panchayats and provides that the State, by law, may provide for representation of the Chairpersons of the Panchayats, who shall be elected in the manner as the Legislature of the State may provide in the Panchayats at the intermediate level and at the district level. Therefore, after the Constitution 73rd Amendment, a Sarpanch of the Gram Panchayat is a Constitutionally recognised office. The Sarpanch is elected by direct election and shall hold office for a period of five years He has statutory functions to perform u/s 25 of the Act. The Upa-Sarpanch is elected by the members of the wards of the Panchayat. As per Section 245 of the Act a Upa-Sarpanch of the Panchayat may be removed by a motion of no confidence duly passed by the majority of the members of the Panchayat. In the fitness of the things, as the Sarpanch is elected by all the persons whose names appear in the electoral list for the Gram Panchayats, there is no provision for removing Sarpanch by a moton of no confidence. The democratically elected Sarpanch is, however subject to the powers of the District Collector who can remove him from the office of the Sarpanch. Therefore the power of the District Collector under sub-section (I) of Section 249 of the Act insofar as it deals with the removal of the Sarpanch is an extra-ordinary power which is to be exercised with due care and keeping in view the letter and spirit of the provisions of law.

10. The power u/s 249 of the Act enables the District Authority to remove an elected Sarpanch. The power has to be exercised with due care and caution. It has to be exercised with abundant circumspection. If the power is exercised either by the original authority or the appellate authority in a laconic or routine manner without application of mind such action shall be set aside. The rules of fair play should appear to have been followed scrupulously at every stage. At the stage of issuing a show-cause notice at the stage of consideration of the explanation of the Sarpanch and at the stage of passing the final order under sub-section (1) of Section 249 of the Act or the appellate order under sub-section (7) of Section 249 of the Act, the action should be informed of reasons and fairness.

11. We have mentioned that the power to remove a person from an elected office is an extra-ordinary power. Before exercising such power the competent authority should have all the necessary material. The competent authority should consider after due application of mind that the factors mentioned in clauses (i) to (iv) of sub-section (1) of Section 249 or either of them exists, (hen only the competent authority can pass an order removing the Sarpanch. The existence of the factors or either of them mentioned in clauses (i) to (iv), is essential and mandatory precondition for exercise of the power of removal. Not only that the law further says that the recalcitrant Sarpanch shall be given an opportunity for explanation. The opportunity for explanation is not a "make-believe" opportunity of just serving a show-cause notice in all situations. There may be situations where before issuing a show-cause notice the District Collector conducts enquiry or gets an enquiry done. In such an event the show-cause notice which obviously is based on such an enquiry is no show-cause notice at all if the material (enquiry report) based on which the show-cause notice is issued, is not supplied to the Sarpanch who is sought to be removed. Before further examining this aspect it is helpful to notice sub-section (1) of Section 249 of the Act:

"249. Powers of Government to remove Sarpanch, President or Chairman etc:--
(1) if in the opinion of the District Collector the Sarpanch or the Upa-Sarpanch and in the opinion of the Government the President or the Vice-President or as the case may, the Chairman or the Vice-Chairman,--

(i) wilfully omitted or refused to carry out the orders of the Government for the proper working of the concerned local body; 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) persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the functioning of the concerned local body or has become incapable of such performance; the Collector or as the case may be, the Government, may remove such Sarpanch or Upa-Sarpanch, President or Vice-President or as the case may be, the Chairman or the Vice-Chairman after giving him an opportunity for explanation:" (proviso is omitted).

A reading of sub-section (1) of Section 249 shows that a Sarpanch can be removed when:

(a) he has wilfully disobeyed the orders of the Government;

(b) when he is guilty of misconduct in discharge of his duties;

(c) when he abused the powers vested in him under the Act;

(d) when he failed to perform his functions and duties to the detriment of the Panchayat and;or

(e)when he has become incapable of performing his functions and duties.

12. It is clear that except in situations mentioned at (a) and (e) above, the Collector may cause an enquiry to be done by the officials of the Panchayat Department. If the enquiry report is the basis for issuing a show-cause notice, there cannot be an adequate opportunity for the Sarpanch to submit the explanation without a copy of the enquiry report being supplied. Therefore, the words "after giving him an opportunity for explanation" appearing in sub-section (1) of Section 249 of the Act should be interpreted as casting a duty on the District Collector to supply a copy of the enquiry report to the Sarpanch. Further, the subsection (1) gives a right to the Sarpanch to receive a copy of the enquiry report even without there being a demand by him.

13. The District Collector issued two show-cause notices, one on 18-8-1997 and another on 19-1-1998. In both the show-cause notices the District Collector refers loan enquiry report submitted by the Extension Officer (Panchayats), Hayathnagar and the enquiry report submitted by the District Panchayat Officer. There is no other material before the District Collector. The show-cause notice is based on the enquiry reports which were initiated to enquire into the complaints made by the Upa-Sarpanch and some members of the Gram Panchayat. The petitioner submitted an explanation and based on the explanation the District Collector passed orders on 18-4-1998/22-4-1998 removing him from the office of the Sarpanch. Against this the petitioner preferred an appeal before the 1st respondent. Before the 1st respondent the petitioner specifically contended that the report of the enquiry officers submitted to the District Collector on 26-6-1997 was not given to him and therefore, the proceedings are not properly initiated. This objection was overruled by the appellate authority saying that though the District Collector based the show-cause notice mainly on the joint enquiry report, there is no necessity to furnish the report, dated 26-6-1997.

14. The learned senior Counsel for the petitioner contends that when the statute directs that opportunity shall be given, the same shall be adequate opportunity to enable the person to make effective explanation. As there cannot be effective explanation to meet the charges without the enquiry report there was no adequate opportunity, and therefore, the orders of the District Collector dated 18-4-1998/22-4-1998 are vitiated. He relied on the judgment of a Constitution Bench of the Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, to support his contention. At Paragraph.(7) the Supreme Court held:

"Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural justice it follows that the statutory rules, any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject....."

15. The learned Counsel for the respondents submits that as show-cause notice is issued to the Sarpanch enabling him to file explanation, the requirement of sub-section (1) of Section 249 of the Act has been complied with and, therefore, there cannot be any obligation on the part of the District Collector to supply a copy of the enquiry report. It is his submission that this Court may not be inclined to read such requirement into the provisions of subsection (1) of Section 249 of the Act. We are afraid we cannot agree with the learned Counsel for the respondents. In the celebrated case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , a Constitution Bench of the Supreme Court while holding that hearing is a must where civil consequences ensue, observed as follows:

"65. It was argued based on rulings relating to natural justice, that unless civil consequences ensued, hearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the audi alteram partem rule. This submission was supported by observations in Ram Gopal Chaturvedi Vs. State of Madhya Pradesh, . Union of India (UOI) Vs. Col. J.N. Sinha and Another, . Of course, we agree that if only spiritual censure is the penalty temporal laws may not take cognizance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, by passing verbal booby-traps? "Civil consequences" undoubtedly cover infraction of not merely property or personal rights but of civil liberties material deprivations and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence....."

16. In S.N. Mukherjee Vs. Union of India, a , a Constitution Bench of the Supreme Court while holding that the requirements of recording reasons can be regarded as one of the principles of natural justice which govern the exercise of power by administrative authority, further observed in Paragraph 38:

"The rules of natural justice are not empty rules. The extent of their application depends upon the particular statutory framework where under jurisdiction has been conferred on the administrative authority. With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the Legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement....."

17. From a consideration of the authorities to which a reference is made above, we have no hesitation in holding that in any of the situations as mentioned in subsection (1) of Section 249 of the Act. If the competent authority is placing reliance on any report before issuing a show-cause notice the Sarpanch shall have to be supplied with a copy of such report. Failure to do so would not be a sufficient compliance with the principles of natural justice for various reasons

stated hereinabove. Therefore, point No.2 is accordingly answered in favour of the petitioner.

Point No. 1:

The learned single Judge observed that unless the Collector considers the matter with reference to the factors mentioned in sub-section (1) of Section 249 of the Act, it cannot be said that the District Collector has formed an opinion. Formation of the opinion by the District Collector has to be preceded by due application of mind which only means recording of reasons. The recording of reasons in the context of Section 249 is nothing but with reference to clauses (i) to (iv) in sub-section (1) of Section 249 of the Act which we have analysed above. We have perused the order passed by the District Collector - the original authority and the order passed by [he Commissioner of Panchayat Raj - the appellate authority. We have no reason to take a view different from the view taken by the learned single Judge which we have extracted above. Therefore it has to be held that both the authorities have not applied their mind before forming opinion in regard to the existence or non-existence of the essential preconditions for passing an order of removal against the petitioner. Accordingly, point No. 1 is answered in favour of the petitioner.

Point No. 3

The learned senior Counsel for the respondent Nos.5 to 9 strenuously and vehemently contended that judicial review is not an appeal. It is an extraordinary power to see whether the decision making process suffers from any illegality, impropriety or irrationality. The learned senior Counsel further submitted that though perversity in recording a finding of fact, or a finding of fact based on no evidence is an error of law which can be corrected by judicial review, the Court should not entertain a challenge on the ground that there was insufficient or inadequate material before the authorities or on the ground that the evidence was insufficient for recording a finding. To support this submission the learned Counsel placed reliance on the oft quoted dictum of the Supreme Court in the celebrated case in *Syed Yakoob v. Radhakrishnan*'s case (supra). In the said case a Constitution Bench of the Supreme Court, with the majority of 4 : 1 held as follows:

".....A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals: these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued wherein exercise of jurisdiction conferred on it the Court or Tribunal acts illegally or improperly, as for instance it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an

appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court....." (emphasis supplied)

18. In *Syed Yakoob v. Radhakrishnan* 's case (supra) the Constitution Bench clearly held that an error of law which is apparent on the face of the record is both an illegality and an impropriety which is amenable to judicial review. If the authority or the Tribunal has recorded a finding of fact which is based on no evidence it is error of law and judicial review is available to correct the same on the ground of illegality and impropriety. If the finding of fact is perverse, it is also an error of law and can be rectified in judicial review. If the District Collector fails to follow the procedure contemplated under sub-section (1) of Section 249 of the Act, there is error of law apparent on the face of record. Even while following the provisions of sub-section (1) of Section 249 of the Act if the District Collector fails to supply a copy of the enquiry report based on which charges are framed then also it is an error of law. If the District Collector while issuing a show-cause notice along with a copy of the enquiry report based on which charges are framed, and passes an order in disregard of the essential pre-conditions in clauses (i) to (iv) or either of them the District Collector will be committing the illegality and impropriety. Therefore in either view of the matter we are of the considered opinion that the learned single Judge was right in coming to the conclusion that the 2nd respondent-the original authority and the 1st respondent-the appellate authority failed to apply their mind to the basic fact as to whether the requirement of sub-section(1) of Section 249 of the Act has been fulfilled or not."

19. For another reason also the contention of the learned senior Counsel for the respondents should be rejected. A provision in a statute requiring the issue of a notice or giving an opportunity before passing an order which results in civil consequences has to be held as a mandatory provision. In this case we have held that the show-cause notice without the enquiry report is not sufficient

compliance with the mandatory provision of giving an opportunity to offer an explanation. Therefore, before passing the impugned order the District Collector has not followed the mandatory prescription of law. In view of this the submission of the learned senior Counsel for the respondents that the learned single Judge has reappreciated the evidence has no force and we reject the same. Hence Point No.3 is decided accordingly.

Point No.4;

The learned Counsel for the respondent Nos. 5 to 9 contended that the learned single Judge committed a mistake when he remanded the matter to the District Collector - the original authority. According to the learned Counsel as there was sufficient material the matter ought to have been remanded to the Commissioner of Panchayat Raj - the appellate authority. On the contrary, the learned Counsel for the petitioner submits that the Commissioner of Panchayat Raj has relied on a new ground while rejecting the appeal and, therefore, the order of the Commissioner also suffers from serious incurable defect. In view of this it is submitted by the learned Counsel for the petitioner that the order of the learned single Judge in remanding the matter to the District Collector is justified.

20. We find considerable force in the contention of the learned Counsel for the petitioner. The Commissioner of Panchayat Raj rejected the contention based on non-supply of the enquiry report. While doing so, the 1st respondent also held that the petitioner has violated the directions of the authorities and granted approval for the lay out in the Bibi Saheb Nagatha land case. The Commissioner further held that contrary to the directions of the High Court the petitioner has withdrawn an amount of Rs.6.61 lakhs. Admittedly the petitioner was never put on notice in relation to these two charges. But the Commissioner relied on these two circumstances while rejecting the appeal. Therefore, the learned single Judge is justified in remanding the matter to the District Collector. Point No.4 is therefore decided against respondent Nos.5 to 9.

21. The learned Counsel for the petitioner as well as the learned Counsel for the respondent Nos.5 to 9 are aggrieved by the direction of the learned single Judge to maintain status quo. The learned Counsel for the petitioner submits that when both the orders were set aside it is only proper that the petitioner should be continued as Sarpanch of the Gram Panchayat. However, the learned Counsel for the respondents submits that when the order of the District Collector as well as the order of the appellate authority are set aside and when the matter is being remanded to the District Collector, in view of the serious charges the learned single Judge ought not to have allowed the petitioner to function as Sarpanch. We feel persuaded with the contention of the learned Counsel for the petitioner. The order of the District Collector as well as the order of the Commissioner for Panchayat Raj are set aside by the learned single Judge on the ground that both the authorities have failed to apply their mind and that the requirements of sub-section (1) of Section 249 of the Act were not fulfilled. Therefore, except the two show-cause notices issued on 18-8-1997 and 19-1-1998 nothing subsists.

Therefore in the facts and circumstances of the case we feel constrained to observe that it is proper that the petitioner shall be allowed to function as Sarpanch of the Peerzadiguda Gram Panchayat without any let or hindrance. Such an arrangement shall not prejudice the respondents. If there are any allegations of contravention of the provisions of the Act and if the petitioner is guilty of any of the conditions in clauses (i) to (iv) of sub-section (1) of Section 249 of the Act it is always open to the 1st respondent to take appropriate action as per law.

Point No. 5:

For the above reasons the Writ Appeal No.1805 of 1998 is partly allowed and the Writ Appeal No.1826 of 1998 is dismissed. The matter is remitted back to the 2nd respondent viz., the District Collector (Panchayat Wing), Ranga Reddy District for passing fresh orders keeping in view the observations made in this judgment. The respondent Nos.5 to 9 shall pay the costs of the petitioner which we quantify at Rs.2,000/- (Rupees two Thousand only).