

(2009) 04 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27264 of 2008

Polepally Laxmaiah

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 249, 249(1), 249(4)
Constitution of India, 1950 — Article 226

Citation : (2009) 4 ALD 756 : (2009) 5 ALT 398

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Ramakrishna Reddy, for the Appellant; G.P. for Panchayat Raj for Respondent Nos. 1 to 6 and M. Raja Malla Reddy, for the Respondent

Judgement

L. Narasimha Reddy, J.—The petitioner was elected as Sarpanch of the Gudur Gram Panchayat of Miryalaguda Mandal, Nalgonda District, in the year 2006. The District Collector, Nalgonda, the 2nd respondent herein, initiated proceedings u/s 249 of the A.P. Panchayat Raj Act, 1994 (for short "the Act"), against the petitioner. On the basis of a complaint submitted by the Upa Sarpanch and certain Members of the Gram Panchayat, a show cause notice, dated 09.04.2007, was issued, in which six charges were framed. The petitioner submitted his explanation, on 04.05.2007. On receipt of the explanation, the 2nd respondent called for remarks of the Divisional Panchayat Officer, Miryalaguda, the 4th respondent herein, through the District Panchayat Officer, Nalgonda, the 3rd respondent herein. On a consideration of the same, he passed an order, dated 09.07.2007, directing removal of the petitioner from the office of Sarpanch. The petitioner filed an appeal before the 1st respondent. The appeal was dismissed through orders in G.O.Rt. No. 1764, dated 24.11.2008. The same is challenged in this Writ Petition.

2. The petitioner contends that the 2nd respondent did not examine the matter by himself and simply by making a reference to the remarks offered by the

Divisional Panchayat Officer, the order of removal was passed. He further contends that the 1st respondent did not take into account the principal contention, namely non-application of mind, by the 2nd respondent.

3. The 6th respondent filed a counter-affidavit supporting the impugned proceedings.

4. Sri V. Ramakrishna Reddy, learned Counsel for the petitioner, submits that the impugned order discloses a clear case of non-application of mind. He contends that, except reproducing the charges framed against the petitioner, the explanation submitted by him and the remarks offered by the Divisional Panchayat Officer, the 2nd respondent did not examine the matter by himself and mechanically passed the order of suspension.

5. Learned Government Pleader for Panchayat Raj and Sri M.Raja Malla Reddy, learned Counsel for the 6th respondent, on the other hand, submit that the 2nd respondent examined the matter in a very objective and detailed manner and arrived at a proper conclusion. They contend that the very fact that extensive reference is made by the 2nd respondent to the charges, explanation and remarks, discloses that he dealt with the matter in dispassionate manner.

6. As many as six charges were framed against the petitioner, on the basis of the complaint submitted by the 6th respondent and others. They relate mostly to the alleged failure of the petitioner, to account for certain amounts drawn by him. On receiving the show cause notice, dated 09.04.2007, the petitioner submitted his explanation on 04.05.2007, with reference to each charge. The show cause notice and the explanation submitted by the petitioner were forwarded to the 4th respondent for his remarks. After taking the same into account, the 2nd respondent passed the impugned order.

7. Section 249 of the Act confers exclusive power upon the 2nd respondent to direct removal of Sarpanch. A detailed procedure is prescribed. Neither the District Panchayat Officer, nor the Divisional Panchayat Officer, figures anywhere in the scheme under the Section. If the 2nd respondent has called for remarks either from the 3rd respondent, or the 4th respondent, it is in the process of satisfying himself, as to the correctness or otherwise of the allegations.

8. Sub-section (4) thereof clearly mandates that the satisfaction must be that of the District Collector, before he passes order of removal of an elected representative. It hardly needs any emphasis that compliance with the provision must be ensured before the drastic step of removal is resorted to.

9. In the instant case, as many as six charges were framed against the petitioner. A perusal of the proceedings, dated 09.07.2007, issued by the 2nd respondent, discloses that he reproduced each charge, the explanation submitted by the petitioner and the remarks offered by the Divisional Panchayat Officer. Such a course was repeated in respect of every charge. It is only after extracting the charge, explanation and remarks in respect of six charges, that the 2nd

respondent offered his remarks under a separate head, namely, "Remarks of Collector (Panchayat Wing) Nalgonda", the first paragraph of which, reads as under:

As per the Remarks and Letter No. A1/88/07, dated 06.06.2007 of the Divisional Panchayat Officer, Miryalguda, the charges Nos. 1, 2, 3 and 4 levelled against Sri Polepalli Lakshmaiah, Sarpanch, Gram Panchayat, Gudur are proved. Charge Nos. 5 and 6 are not proved. Therefore, it emerges that the Charges Nos. 1, 2, 3 and 4 levelled against the Sarpanch are proved.

10. Even this cannot be said to be an adjudication or determination of the matter. It is nothing but summing up all the charges with reference to the remarks offered by the 4th respondent. The only portion of the order, which, if at all, reflects the application of mind by the 2nd respondent, reads as under:

In view of the above facts, orders are hereby passed duly removing Sri P.Lakshmaiah, Sarpanch, Gram Panchayat, Gudur from the post of Sarpanch, u/s 249(1) of A.P.P.R. Act, 1994. These orders will come into effect immediately.

11. This hardly constitutes compliance with Section 249 of the Act. It has already been mentioned that exercise of a drastic power of this nature must be objective and strictly in accordance with law. There was absolutely nothing to indicate that the 2nd respondent has independently examined the matter and arrived at his own conclusions. He simply went by the remarks offered by the 4th respondent. For all practical purposes, the conclusions against the petitioner were arrived at by the 4th respondent, and the 2nd respondent did nothing more than incorporating the same in his own proceedings. The 1st respondent was supposed to examine, whether the prescribed procedure was followed by the 2nd respondent.

12. While exercising power under Article 226 of the Constitution of India, this Court would be slow to interfere with the findings of facts. The emphasis would be mostly upon ensuring compliance with the prescribed procedure. Once it has emerged that the order of removal is not the result of an independent application of mind and is contrary to the procedure prescribed u/s 249 of the Act, there is no alternative, except to set aside the impugned order. The 2nd respondent has to undertake the exercise, afresh, and any order passed by him must reflect an application of mind by himself, rather than summarizing the charges, explanation, and remarks offered by a different agency. The interest of the State can be protected by directing that the petitioner shall operate funds of the Gram Panchayat, only with the counter-signature of the 4th respondent.

13. Hence, the Writ Petition is allowed and the impugned proceedings are set aside. The 2nd respondent is directed to pass fresh orders within a period of three months, in the manner indicated above. The petitioner shall be entitled to function as Sarpanch, in the meanwhile, but he shall operate the accounts, only with the counter-signature of the 4th respondent herein.

14. There shall be no order as to costs.