
(2005) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14977 of 2005

Rekapalli Krishna Vasu

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 249(1)
Constitution of India, 1950 — Article 14, 226, 311(2)

Citation : (2005) 5 ALD 276

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; Government Pleader for Panchayat Raj for the Respondent Nos. 1 to 4, M. Prabhakar Rao (SC), for the Respondent No. 5 and C. Raghu, for the Respondent No. 6, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This writ petition is filed by Rekapalli Krishna Vasu with a prayer to issue writ of certiorari or order or direction in the nature of a writ calling for the records resulting in the impugned order dated 4-7-2005 in G.O. Ms. No. 1229 of Panchayat Raj and Rural Employment, PTS-II, Department and set aside the same as arbitrary, discriminatory and violative of Article 14 of the Constitution of India and principles of natural justice.

2. Smt. B. Kamala Kumari, the 6th respondent was elected as Sarpanch of Pamarru Gram Panchayat and she assumed charge as such on 23-8-2001. The Tax Payers and Town Development Society submitted a complaint dated 25-7-2003 to various authorities including the District Collector, (Panchayat Division) Machilipatnam, Krishna District-3rd respondent complaining misuse of Gram Panchayat funds and incurring expenditure contrary to the rules by the 6th respondent. A writ petition being W.P. No. 23070 of 2003 came to be filed by the Tax Payers and Town Development Society seeking a direction to the District Collector-3rd respondent to take action on the complaint presented by it against

the 6th respondent as per the provisions of A.P. Panchayat Raj Act, 1994 (for short "the Act" for brevity). An interim order dated 3-11-2003 came to be passed in the said writ petition restraining the State Bank of India from permitting the 6th respondent to operate bank account without the counter signature of the District Panchayat Officer. The District Collector-3rd respondent instructed the Divisional Panchayat Officer, Gudivada-4th respondent to conduct an enquiry into the several allegations made against the 6th respondent and submit a report. Accordingly, the Divisional Panchayat Officer submitted report and thereupon, the District Collector exercising powers u/s 249(1) of the Act issued show-cause notice to the 6th respondent as to why she cannot be removed from the post of Sarpanch of Gram Panchayat. The 6th respondent submitted explanation and the District Collector requested the Divisional Panchayat Officer to verify the explanation and offer his remarks. The Divisional Panchayat Officer submitted his remarks on 17-11-2004. After considering the explanation of 6th respondent and the remarks submitted by the Divisional Panchayat Officer, Gudivada, the District Collector proceeded to pass orders exercising powers conferred u/s 249(1) of the Act and removed the 6th respondent from the post of Sarpanch of Pammaru Gram Panchayat and directed the 6th respondent to handover official responsibility and records to the temporary Sarpanch petitioner herein. The 6th respondent filed an appeal being Appeal No. 14089/CPR/D1/2004, before the Commissioner Panchayat Raj and Rural Development, Hyderabad. The appellate authority set aside the order of the District Collector on the ground of non-furnishing copy of the Enquiry Report of the Divisional Panchayat Raj Officer, Gudivada, to the 6th respondent and remitted back the matter to the District Collector for supplying the Enquiry Report and take further action in accordance with the provisions of the Act. The writ petitioner questioned the order passed by the appellate authority by filing revision before the Government. The Government issued interim stay under Memo No. 2904/Pts.II/A1/2005-1, dated 2-3-2005 of the operation of the order passed by the appellate authority. The petitioner filed W.P. No. 8235 of 2005 assailing the Memo No. 2904/Pts.E/A1/2005-1, dated 2-3-2005 whereunder the Government granted stay of the order passed by the appellate authority pending revision, The said writ petition came to be disposed of with a direction to the Government to dispose of the revision within two weeks from the date of receipt of a copy of the order. In pursuance of the direction given by the High Court in the above writ petition, the Government disposed of the revision confirming the order issued in Appeal No. 14089/CPR/D1/2004, dated 11-2-2005 and vacated the stay order vide G.O. Ms. No. 1229 dated 4-7-2005. Hence, this present writ petition.

3. The 6th respondent filed counter-affidavit. It is stated in the counter-affidavit that the District Collector-3rd respondent without independent application of mind has passed the removal order dated 30-11-2005 and therefore, the order passed by the appellate authority remitting back the matter to the District Collector for fresh disposal is legal and proper. I deem it appropriate to refer

Paras 14 and 15 of the counter-affidavit and they are thus:

"I submit that basing on the said illegal reports the third respondent District Collector had issued a Show-Cause Notice dated 18-8-2004. I have submitted a detailed explanation to the said Show Cause Notice stating all the facts. I have also specifically contended that I have not misappropriated any amounts and all acts have been done with the prior approval of Panchayat Board. Surprisingly, the 3rd respondent District Collector instead of examining the explanation himself had directed the Divisional Panchayat Officer to examine my explanation and submit a report. The Divisional Panchayat Officer without any authority under the Act is stated to have submitted a Report dated 17-11-2004 to the Collector. A copy of the said Report dated 17-11-2004 prepared by Divisional Panchayat Officer after I submitted my explanation is not served upon me. Nor the Divisional Panchayat Officer had afforded any opportunity to me in the course of preparing the said Report. Obviously the Divisional Panchayat Officer had prepared the said Report under the influence of Ex. Sarpanch Sri Matta Ramulu.

I further submit that the District Collector who is the Competent Authority to conduct the enquiry without serving a copy of the report dated 17-11-2004 prepared by Divisional Panchayat Officer, relying upon the same, without independent application of mind had passed the removal order dated 30-11-2004 proceedings Rc.No. 2975 of 2002 PAN.5. It is pertinent to mention here that a perusal of the Order dated 30-11-2004 does not show anywhere that the District Collector has examined the records. It only states that the Divisional Panchayat Officer has examined the records. Therefore, the order passed by the District Collector dated 30-11-2004 is illegal."

4. Heard K.G. Kannabiran, the learned Senior Counsel appearing for the petitioner and the Government Pleader for Panchayat Raj appearing for the respondents 1 to 4 and Sri D. Prakash Reddy, the learned Senior Counsel appearing for the 6th respondent.

5. The learned Senior Counsel appearing for the petitioner submits that the ground on which the appellate authority set aside the order of the District Collector and remanded the matter back for fresh disposal is unsustainable. In elaborating arguments he submits that non-furnishing a copy of the Enquiry Reports submitted by the Divisional Panchayat Officer cannot be a ground to set aside the order of the District Collector, since the 6th respondent failed to show any prejudice caused to her on non-supply of the report submitted by the Divisional Panchayat Officer. He further submits that the District Collector has applied his mind to the material brought on record and considered the explanation submitted by the 6th respondent and pass the order removing the 6th respondent from the post of Sarpanch and therefore, the order of the District Collector cannot be found fault. In support of his submissions reliance has been placed on the decisions of our High Court in Ch. Anitha v. State of Andhra Pradesh 2001 (2) ALD 358 (DB) and the decision of Supreme Court in State of U.P. Vs. Harendra Arora and Another,

6. The learned Senior Counsel appearing for the 6th respondent submits that the order passed by the District Collector does not indicate the application of mind and therefore, the order of the remand passed by the appellate authority as confirmed by the revisional authority cannot be interfered by this Court in exercise of power under Article 226 of the Constitution of India. He further submits that the order of the District Collector is apparent that he simply endorsed the findings recorded by the Divisional Panchayat Officer and no material has been perused by him to form his own opinion as to the charges leveled against the elected Sarpanch-6th respondent which is sine quo non in ordering removal of the elected Sarpanch in exercise of the powers u/s 249(1) of the Act. To buttress his submissions reliance has been placed on the decisions of our High Court in D. Sathi Reddy Vs. Commissioner, Panchayat Raj A.P., Hyd. and others, W.P. No. 23758 of 2004, dated 17-2-2005 (J. Anuradha v. Government of Andhra Pradesh, Department of Panchayat Raj and Ors.).

7. Before dwelling on the rival contentions of the parties, I deem it appropriate to have brief resume of facts of the case.

8. The Tax Payers and Town Development Society, Pamarru submitted representation dated 25-7-2003 to the District Collector, making certain allegations against B. Kamala Kumari, Sarpanch of Pamarru Gram Panchayat-6th respondent. The District Collector directed the Divisional Panchayat Officer, Gudivada, to conduct an enquiry and submit report. The Divisional Panchayat Officer submitted report dated 14-5-2004. Basing on the report of the Divisional Panchayat Officer a show-cause notice came to be issued to the 6th respondent, seeking explanation as to why she cannot be removed from the post of Sarpanch of Gram Panchayat u/s 249(1) of the Act. The 6th respondent submitted explanation which came to be forwarded to the Divisional Panchayat Officer for his remarks. The Divisional Panchayat Officer submitted his remarks and thereafter, the District Collector considered the explanation submitted by the 6th respondent and connected records and issued proceedings RC.No. 2975/2002 Pan.5, dated 30-11-2004 removing the 6th respondent from the post of Sarpanch. The 6th respondent challenged the order of the District Collector by filing the appeal before the appellate authority i.e., Commissioner Panchayat Raj and Rural Development, Hyderabad. The appellate authority set aside the order of the District Collector on the ground of non-supply of the Enquiry Report of the Divisional Panchayat Officer to the 6th respondent. The writ petitioner challenged the order of the appellate authority before the Government by way of revision and the revision ended in dismissal.

9. The learned Senior Counsel appearing for the petitioner submits that the ground on which the appellate authority set aside the order of the District Collector i.e. non-supply of the Enquiry Report is not sustainable since the 6th respondent has failed to establish any prejudice caused to him because of non-supply of the Enquiry Report of the Divisional Panchayat Officer. He placed reliance on the decision of our High Court in Ch. Anitha's case stated (supra). It

has been held in the cited decision that mere violation of principles of natural justice does not vitiate the impugned action, unless prejudice is shown to have been caused to be accrued by the said action. In Harendra Arora's case stated (supra) it has been held that if a delinquent is not suffered any prejudice by non-furnishing of the report the same would not vitiate the order of the punishment. It is observed in Para 12 of the above referred decision as follows:

"Thus, from the case of ECIL it would be plain that in cases covered by the constitutional mandate i.e., Article 311(2), non-furnishing of Enquiry Report would not be fatal to the order of punishment unless prejudice is shown. If for infraction of a constitutional provision an order would not be invalid unless prejudice is shown, we fail to understand how requirement in the statutory rules of furnishing copy of the Enquiry Report would stand on a higher footing by laying down that question of prejudice is not material therein".

10. There cannot be any quarrel with regard to the proposition of law laid down in the above referred decisions. Reverting to the facts of the case, the District Collector-3rd respondent referred the explanation of the 6th respondent to the Divisional Panchayat Officer-4th respondent for his report. The District Collector after receiving the report, rather it can be called as remarks on the explanation offered by the 6th respondent, proceeded to pass orders. If the District Collector has formed his opinion basing on the material, his order removing the 6th respondent from the post of Sarpanch cannot be found fault. Let me now refer the relevant portions of the order of the District Collector to know whether he has independently applied his mind to the material placed on record or simply endorsed the views expressed by Divisional Panchayat Officer in his report/remarks. The concluding two paras in the order passed by the District Collector need to be noted to know whether he independently applied his mind to form opinion or not, which are thus:

"After verification and consideration of the explanation submitted by the Sarpanch of Pamarru Gram Panchayat vide reference third cited above, and the remarks submitted by the Divisional Panchayat Officer, Gudivada, it is proved that the said Sarpanch has misappropriated the Gram Panchayat Funds to a tune of Rs. 23,53,777/- and spent to a tune of Rs. 35,24,571/- in violation of the Rules and Regulations. Consequently it is proved that the Sarpanch of Gram Panchayat had deliberately misappropriated the powers vested in her.

Basing on the above facts, duly exercising the powers conferred u/s 249(1) of Andhra Pradesh Panchayat Raj Act, 1994, the District Collector (Panchayat Wing) Krishna District hereby remove Smt. Bommareddi Kamalakumari from the post of Sarpanch of Pamarru Gram Panchayat. The said Sarpanch is hereby directed to handover her official responsibilities and records to the temporary Sarpanch. The Temporary Sarpanch of Pamarru Gram Panchayat is hereby directed to takeover charge from the present Sarpanch and to function as Sarpanch till further orders are issued in the matter".

11. It is apparent on record that the District Collector endorsed the conclusions arrived by the Divisional Panchayat Officer. No reasons are assigned by the District Collector in drawing the conclusion that the 6th respondent misappropriated Gram Panchayat Funds. A detailed explanation has been submitted by the 6th respondent to the show-cause notice. The order passed by the District Collector does not speak as to how the explanation offered by the 6th respondent was found to be insufficient. In such a situation, the only reasonable conclusion is that the District Collector has been simply carried away with remarks submitted by the Divisional Panchayat Officer and the impugned order is not the outcome of his own opinion. What is required u/s 249(1) of the Act is that the District Collector has to form his own opinion on application of mind to the material on record. A similar question has come up for consideration in W.P. No. 23758 of 2004 dated 17-2-2005. Wherein it is observed as follows:

"On a reading of the above provision, it is clear that the Sarpanch can be removed when the District Collector is of the opinion that the same is necessary for any one of the five grounds specified under Sub-section (1) of Section 249 of the Act. Undoubtedly formation of such opinion by the District Collector must be based on application of mind to the material on record and the same shall be apparent from the order itself. In the case on hand, the 2nd respondent failed to assign any reasons in support of his conclusion that the petitioner has misused her powers vested under the Act, but merely relied on the report of the Divisional Panchayat Officer, dated 9-8-2004 stating that all the charges are held proved. In the absence of recording any reasons, it cannot be held that the 2nd respondent has applied his mind to the charges levelled against the petitioner or his explanation".

12. The above referred decision aptly applies to the facts of the case on hand. The District Collector except endorsing the remarks submitted by the Divisional Panchayat Officer on the explanation offered by the 6th respondent has not formed his own opinion which is sine quo non to remove the elected Sarpanch in exercise of powers conferred u/s 249(1) of the Act.

13. In view of the above discussion, I find the order of the appellate authority as well as revisional authority in remitting the matter back to the District Collector-3rd respondent for fresh disposal cannot be said to be perverse.

14. Accordingly, the writ petition fails and the same is hereby dismissed. No order as to costs.