
(2010) 04 AP CK 0092

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27009 of 2009

Yerneni Kusuma

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002 — Rule 12
Andhra Pradesh Panchayat Raj Act, 1994 — Section 16, 17, 18, 19, 2(12)
Constitution of India, 1950 — Article 226, 243C(2), 243C(5), 243G, 243H

Citation : (2010) 5 ALT 1

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

Bench : Single Bench

Advocate : B. Adinarayana Rao, for the Appellant; Spl. Govt. Pleader for A.G. for Respondent Nos. 1 to 3 and Palle Nageswara Rao, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is Sarpanch of Kodada Gram Panchayat, Nalgonda District. Fourth respondent is Upa-Sarpanch. Petitioner was suspended by the District Collector by proceedings dated 23-09-2009 in exercise of powers u/s 249(6) of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act) for a period of three months. Petitioner preferred an appeal before the Government. By G.O.Rt. No. 1657, PR and RD Department, dated 13-11-2009, the Government confirmed the order of District Collector. Assailing the same, petitioner invoked jurisdiction of this Court under Article 226 of Constitution of India seeking a writ of Mandamus declaring the order of suspension passed by the District Collector as confirmed by the Government as illegal and arbitrary and contrary to the provisions of the Act.

2. The brief fact of the matter is as follows. The office of Sarpanch of Kodada Gram Panchayat is reserved for women. Petitioner was successfully contested in the Election 2006 securing a margin of 7,860 votes. Fourth respondent is Upa Sarpanch and petitioner appears to be at loggerheads. There appears to be

attempts on the part of fourth respondent to topple petitioner. He submitted a complaint to the District Collector alleging that petitioner sent land development layouts to the Director of Town Planning (DTCP) ignoring the relevant Rules. The District Panchayat Officer, DPO (third respondent herein) conducted enquiry on 27-06-2009, during which, petitioner pleaded ignorance of compliance with Layout Rules and Guidelines. She also pleaded that she is not responsible as it is a Panchayat Secretary who obtained her signature and sent copies to DTCP for technical approval. At that stage, by proceedings dated 03-07-2009, District Collector restricted cheque drawing powers of petitioner, which were directed to be counter signed by DPO and Divisional Panchayat Officer (DLPO), Miryalaguda. In addition thereto, the District Collector directed the District, Town and Country Planning Officer (District Officer) and DLPO to submit a report. They sent report on 18-07-2009 to the effect that the Sarpanch did not forward the layout proposals to competent authority as required under Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002 (Layout Rules, for brevity) (1) (These rules were promulgated by Government in exercise of powers u/s 268(1) and 268(2)(i)(17) of the Act - vide G.O.Ms. No. 67, dated 20-06-2002), that the Sarpanch allowed the layouts with 20 to 30 feet roads demarcated therein and that 10% land towards Gram Panchayat Development was also allowed to be sold as per information furnished by Sub Registrar Office (SRO).

3. It is further case of petitioner that while enclosing a copy of the Joint Report referred to hereinabove, the District Collector issued a show cause notice dated 21-07-2009 calling upon petitioner to submit explanation with regard to six charges, within fifteen days as to why she should not be suspended from her post for a period of three months as per Section 249(6) of the Act. Petitioner submitted explanation on 03-09-2009. The same was forwarded to the Joint Committee consisting of District Officer and DLPO. They sent their report vide letter dated 14-09-2009 giving their remarks. Considering the same, the District Collector passed the order dated 23-09-2009 suspending the petitioner for a period of three months. As noticed supra, the petitioner then preferred an appeal. The Government considered the appeal of petitioner and by impugned Government Order, dismissed the appeal.

4. This Court admitted the matter on 14-12-2009 and passed interim orders for a limited period. The interim suspension was extended on 24-12-2009 and on 07-02-2010 the same expired. In the meanwhile, Deputy Secretary to Government in Panchayat Raj Department filed counter affidavit opposing the writ petition. When the matter was listed at the interlocutory stage, having regard to the fact that the submissions for the purpose of interlocutory application and main case being the same, the writ petition itself is heard finally and is being disposed of by this order.

5. Counter affidavit makes the following allegations. Petitioner committed repeated lapses by approving layout plans in contravention of Layout Rules and

thus abused powers u/s 25(b), (c) and (g) and Section 49(2) of the Act. She acted against the interest of Gram Panchayat Committee. The Gram Panchayat resolved to send layouts to District Officer, instead she herself gave approval without sending to District Officer causing loss to Gram Panchayat. u/s 25 of the Act, Sarpanch has to exercise administrative control over Panchayat Secretary (executive authority) and therefore, she cannot disown the responsibility for the lapses and illegalities. The District Collector on an independent examination considering the report of the Joint Committee placed her under suspension. She filed an appeal before the Government. In the meanwhile, she filed W.P. No. 21653 of 2009. The same was disposed of by this Court directing the Government to dispose of the appeal. Thereafter, the Government examined the matter with reference to the records and noticed that eleven (11) layout applications signed by Panchayat Secretary and petitioner, covering an extent of Acs.142 of agricultural land. Petitioner in collusion with real estate developers approved the layouts in violation of the Rules. In nine (9) layouts, 10% of land was earmarked for public use. This was also allowed to private individuals. In 35 other layouts, no land was set apart for public use. Thus the Gram Panchayat is deprived of 55,000 square yards, the cost of which runs into Crores of Rupees. The levy was not paid to Revenue Department for conversion of agricultural land. Thus, petitioner persistently defaulted in performing the duties causing loss to the Gram Panchayat and therefore, the appeal was dismissed.

6. The details of preliminary enquiry report conducted by DPO and Joint Committee of District Officer and DLPO are also referred to in the counter affidavit. The petitioner's counsel submits that the former is exclusively concerned u/s 249 (6) of the Act from the District Collector. He abdicated power and appointed a Joint Committee. In the absence of independent enquiry by the District Collector, there is improper exercise of power vitiating the impugned order. Nextly, it is urged that the District Collector has not applied mind. Under the provisions of the Act and the Layout Rules, it is the Panchayat Secretary who has to sign the layouts and even if there are any lapses, the Sarpanch cannot be made responsible for the same. It is also contended that unless and until grounds for removal of Sarpanch u/s 249(1) exists, the power u/s 249(6) cannot be exercised. Counsel for petitioner relies on D. Sathi Reddy Vs. Commissioner, Panchayat Raj A.P., Hyd. and others, . Per contra, the Special Government Pleader in the office of Advocate General submits that the District Collector considered the matter independently and passed orders. Even if the matter was referred to at the pre-show cause notice and post-show cause notice to other officials to look into the matter, the same does not vitiate the impugned order nor it amounts to non-application of mind. The power to remove the Sarpanch u/s 249(1) and the power to suspend the Sarpanch u/s 249(6) are independent of each other and merely because further enquiry was not conducted pursuant to pre-suspension show cause notice, the same does not invalidate the order of suspension.

7. Two issues need to be considered. First, interface and interplay between Sub-

sections (1) and (6) of Section 249 and secondly, the question whether impugned Government Order is not valid. A plain reading of Section 249(7) reveals that u/s 249(7) of the Act no appeal is provided against an order of suspension and such appeal is available only against an order of removal u/s 249(1) of the Act. The Sarpanch who is aggrieved by an order of suspension passed by the District Collector may have to invoke Section 264 which empowers the Government to either suo motu or on application from aggrieved person, entertain a revision by the Government. Needless to mention that an order of suspension u/s 249(6) of the Act passed by the District Collector is operative only for a period of three months, unless and until it is extended by the Government for a further period of three months. In such an event, the remedy would be to file a Revision u/s 246(3) of the Act. Therefore, this Court observes that hereafter the Government may do well to keep this in mind, while entertaining appeals against the orders passed by the District Collectors u/s 249(6) of the Act.

8. For the purpose of ready comparative reading, Sections 249(1) and 249(6) are juxtaposed hereunder.

----- Powers of Government to remove Sarpanch, President or "Chairperson" etc. -----	249.
(1) If in the opinion of the District Collector the Sarpanch or of the opinion that a Sarpanch or the Upa-Sarpanch or any member of a opinion of the Government the Gram Panchayat or the Government President or the Vice-President or are of the opinion that any as the case may be, the President or Vice-President or the "Chairperson" or the "Chairperson" or Vice-Chairperson",- "Vice-Chairperson" or any member of a Mandal Parishad or Zilla (i) willfully omitted or refused Parishad willfully omitted or to carry out the orders of the refused to carry out the orders of Government for the proper working Government for the proper working of the concerned local body; of the concerned local body or or abused his position or the powers vested in him, and that the (ii) abused his position or the further continuance of such person powers vested in him; or in office would be detrimental to the interests of the concerned local (iii) is guilty of misconduct in body or the inhabitants of the the discharge of his duties; or village, Mandal or District, the District Collector or as the case (iv) persistently defaulted in the may be, Government may, by order, performance of his functions and suspend such Sarpanch or duties entrusted to him under the Upa-Sarpanch or President or Act to the detriment of the Vice-President or as the case may functioning of the concerned local be, the "Chairperson" or body or has become incapable of "Vice-Chairperson" or member from such performance. office for a period not exceeding three months, pending The Collector or as the case may investigation into the said be, the Government, may remove charges and action thereon under such Sarpanch or Upa-Sarpanch, the foregoing provisions of this President or Vice-President or as section: the case may be the "Chairperson" or the "Vice-Chairperson", after	(1) If in the opinion of the (6) If the District Collector is District Collector the Sarpanch or of the opinion that a Sarpanch or the Upa-Sarpanch and in the a Upa-Sarpanch or any member of a opinion of the Government the Gram Panchayat or the Government President or the Vice-President or are of the opinion that any as the case may be, the President or Vice-President or the "Chairperson" or the "Chairperson" or Vice-Chairperson",- "Vice-Chairperson" or any member of a Mandal Parishad or Zilla (i) willfully omitted or refused Parishad willfully omitted or to carry out the orders of the refused to carry out the orders of Government for the proper working Government for the proper working of the concerned local body; of the concerned local body or or abused his position or the powers vested in him, and that the (ii) abused his position or the further continuance of such person powers vested in him; or in office would be detrimental to the interests of the concerned local (iii) is guilty of misconduct in body or the inhabitants of the the discharge of his duties; or village, Mandal or District, the District Collector or as the case (iv) persistently defaulted in the may be, Government may, by order, performance of his functions and suspend such Sarpanch or duties entrusted to him under the Upa-Sarpanch or President or Act to the detriment of the Vice-President or as the case may functioning of the concerned local be, the "Chairperson" or body or has become incapable of "Vice-Chairperson" or member from such performance. office for a period not exceeding three months, pending The Collector or as the case may investigation into the said be, the Government, may remove charges and action thereon under such Sarpanch or Upa-Sarpanch, the foregoing provisions of this President or Vice-President or as section: the case may be the "Chairperson" or the "Vice-Chairperson", after

Provided that no order under this giving him an opportunity for Sub-section shall be passed unless explanation. the person concerned has had an opportunity of making a Provided that the proceedings representation against the action initiated under this sub-section proposed; may be continued notwithstanding the fact that the Sarpanch or Provided further that it shall be Upa-Sarpanch, President or competent for the Government to Vice-President, or as the case may extend, from time to time, the be, the "Chairperson" or period of suspension for such "Vice-Chairperson" ceased to hold further period not exceeding three office by resignation or otherwise months, so however that the total and shall be concluded within two period of suspension shall not years from the date of such exceed six months: cessation and where on such conclusion the authority competent Provided also that a person to remove him, records a finding suspended under this sub-section after giving an opportunity of shall not be entitled to exercise making a representation to the the powers and perform the person concerned that the charge functions attached to his office or charges proved against him arc and shall not be entitled to sufficient for his removal then attend the meetings of the the provision of Sub-section (3) concerned local body except a shall apply to the person against meeting held for the consideration whom such finding is recorded. of a no-confidence motion.

9. The plain reading of Section 249(1) and 249(6) of the Act would show that the factors or conditionalities which attract the extreme action of removal or suspension of Sarpanch appear to be the same. In comparison with each other the two sub-sections stipulate the conditionalities which are shown in the following table.

----- Removal of Sarpanch under Suspension of Sarpanch under Section 249(1) Section 249(6) -----	
(i) willful omission or refusal to (i) willful omission or refusal to carry out the orders of the carry out the orders of the Government Government	
(ii) abuse of position or powers (ii) abuse of position or powers	
(iii) misconduct in the discharge (iii) - of duties	
(iv) (a) Persistent default in (vi) (a) continuance is detrimental performance of functions and duties to the interest of Panchayat and under the Act to the detriment inhabitants of the village of the Panchayat	
(b) incapacity to perform the office (b) - of Sarpanch	

10. Section 249(6) enables the District Collector to suspend Sarpanch "pending investigation into the charges/allegations" (conditionalities in Section 249(6)) and action thereon under the provisions of Sub-sections (1) to (5) of Section 249. Section 249(1) and (4) which empower removal of Sarpanch are

substantive provisions referable to "investigation into charges and action thereon" as contemplated u/s 249(6). Sub-sections (2), (3) and (5) are only procedural in nature. Therefore, on a true construction of Section 249(1) and Section 249(6), the conclusion is irresistible that unless and until the action is contemplated u/s 249(1) and (4) and investigation is launched towards that goal, the exercise of power u/s 249(6) is not warranted. Suspension of a Sarpanch, is by itself, not a serious punishment because such suspension can be operative at the instance of the District Collector for a period of three months and at the instance of Government for a further period of six months but not exceeding six months. If ultimately after investigation into the charges, the Sarpanch is exonerated, the incumbent gets reinstated in the office. This is made clear by second (sic. third) proviso to Sub-section 249(6) which is to the effect that a person under suspension shall not be entertained till (sic. entitled to) exercise the powers and perform the functions attached to the office though he/she shall be entitled to attend the meetings held for consideration of "no confidence motion". This is also further made clear that the suspension has to be preceded by an opportunity of making representation to be given to the person. In a given case, the show cause notice for removal u/s 249(1), can itself be a show cause notice that must precede order of suspension.

11. In Sathi Reddy, a Division Bench of this Court considered the importance of local bodies like Panchayats Mandal Parishads and Zilla Parishads after insertion of Constitution (Seventy-third) Amendment Act, 1992 and statutory barriers that operate while proceedings are initiated for removal or suspension of Sarpanch. Having regard to the language of Section 249(1) of the Act, this Court also considered the nature of enquiry that is to be conducted. The relevant observations are as follows.

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 (then 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 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. ...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 Sub-section (1) gives a right to the Sarpanch to receive a copy of the enquiry report even without therebeing a demand by him.

12. Counsel for the petitioner relies on Kalari Nagabhushana Rao Vs. The Collector, Panchayat Wing, Guntur and Others, , Polepally Laxmaiah Vs. State of A.P. and Others, Rekapalli Krishna Vasu v. State of A.P. 2005(5) ALD 276 and Bollepelli Shankar v. Government of A.P. 2009 (1) ALD 837, in support of the plea that an order of suspension without application of mind and without reasons is unsustainable. After perusing all the Judgments, this Court observes that there cannot be any dispute with the proposition. A quasi-judicial authority while exercising original jurisdiction or appellate jurisdiction is bound to apply mind and give reasons on various issues that are identified for quasi-judicial consideration. The reasons need not be elaborate nor such authorities who in most of the cases are not legally trained are not expected to appreciate the nuances and subtleties of law. If a quasi-judicial authority determines the facts, determines the principles applicable and applies the principles to determined facts in a reasonable manner, the Court of judicial review is precluded from considering the issue. The possibility of a second or third view in determining the facts and applying the principles of the facts is not ordinarily within the purview of judicial review, Insofar as determining the principle of law applicable to the case squarely falls within the species of "error of law" and amenable to judicial review. If a quasi judicial authority misconstrued the law, the Court can always set right. In any view of the matter, the judicial review cannot act as an appellate authority.

13. In the case on hand, petitioner was issued a show cause notice, dated 21-07-2009. She was asked to submit explanation on six charges. These mainly related to contravention and violation of Layout Rules, deviation from the prescribed procedure in according sanction to 44 layouts, default in performance of functions and duties u/s 25(g) of the Act, acting detrimental to the interest of Gram Panchayat, in that not earmarking 10% of layout land to be given to Gram Panchayat and connivance in the sale of public utility land with the layout owners.

14. As noticed supra, the pre-show cause notice, preliminary enquiry report was obtained from District Officer. The said report was also enclosed to the show cause notice. As held in Sathi Reddy (2 supra), the District Collector is well within his powers to cause an enquiry into allegations made at pre and post-show cause notice stage, before it passing the order u/s 249(6). Therefore, no exception can be taken to the procedure nor this Court is impressed with the submission that the District Collector merely relied on the report of the Joint Committee of District Officer and DLPO.

15. The issue of show cause notice along with ten enclosures which formed the

basis of the charges is sufficient compliance with the first proviso to Section 249(6) of the Act. A reading of Section 249(1) and 249(6) would show that "if the District Collector is of the opinion that for the reason of conditions mentioned in the relevant sub-section, he can initiate action either for removal and/or suspension". The opinion has to be arrived in an objective manner as the statute itself provides guidance.

16. The issue therefore is whether there is objective consideration before arriving at the opinion that the Sarpanch either flouted Government Orders, abused his powers vested in him and therefore his continuance in the office is detrimental in the interest of Panchayat.

17. The show cause notice requires petitioner to answer six charges. It may be reiterated that all of them related to abuse of powers and functions of the office of Sarpanch, in that there is a gross violation of Layout Rules while according sanction to 44 layouts like not submitting to the District Officer, not obtaining prior approval, not earmarking 10% of the common areas to be endowed to Panchayat, allowing such 10% area to be sold and not exercising proper abuse and the statutory provisions of the Act.

18. A perusal of the affidavit accompanying the writ petition and during oral submissions of the counsel, there seems to be not much of serious demur to these. The counsel, however, submits that it is a Panchayat Secretary who played the role in obtaining the signature of petitioner. Such submission cannot be accepted. Part IX of the Constitution confers constitutional status to local bodies at village level, intermediate level and District level. The elected head of these bodies - be it Sarpanch, Mandal President or Chairman, Zilla Parishad draw sustenance and strength from Articles 243C (2) and (5), 243G, 243H of Constitution and various provisions of the Act referred to hereinafter.

Section 25 confers powers on Sarpanch and reads as under.

25. Powers and functions of the Sarpanch: (1) Save as otherwise provided by or under this Act, the Sarpanch shall:

(a) make arrangements for the elections of the Upa-Sarpanch within one month from the date of occurrence of the vacancy;

(b) have full access to the records of the Gram Panchayat;

(c) exercise administrative control over the Executive Authority, if there is one, for the purpose of implementation of the resolutions of the Gram Panchayat or any committee thereof;

(d) exercise all the powers and perform all the functions specifically conferred or imposed on the Sarpanch by this Act or the rules made thereunder;

(e) have power to require any Executive Authority of any village within the jurisdiction of the Gram Panchayat to furnish any information on any matter falling within such categories as may be prescribed in respect of such village or

any person or property therein, required for the purpose of this Act;

(f) intimate to the District Panchayat Officer, every case where any member has incurred any disqualification under Sections 16 to 20; and

(g) act only within the terms of sanction given in any resolution of the Gram Panchayat.

19. The Panchayat Secretary appointed to each Gram Panchayat is the Executive Authority as per Section 2(12). Such executive authority shall exercise powers u/s 32, which reads as under:

32. Functions of the executive authority: The executive authority shall:

(a) be responsible for implementing the resolutions of the gram panchayat and of the Committee thereof;

Provided that where the executive authority considers that a resolution has not been legally passed or is in excess of the powers conferred by this Act or that if carried out, it is likely to endanger human life or health or the public safety, the executive authority shall:

(i) where he is the Sarpanch, directly;

(ii) where he is not the Sarpanch through the Sarpanch, refer the matter to the Commissioner for orders, and his decision shall be final;

(b) control all the officers and servants of the gram panchayat;

(c) exercise all the powers and perform all the functions specifically conferred or imposed on the executive authority by or under this Act and subject to all restrictions and conditions imposed by or under this act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfillment of the purpose thereof.

20. Section 33 of the Act confers Emergency Powers on the Sarpanch. In addition to these, various Statutory Rules, for instance (i), Finance Rules which promulgated in G.O.Ms. No. 30, 20-01-1995; (ii) Rules relating to holding of Meeting of Gram Sabha promulgated vide G.O.Ms. No. 162, dated 04-04-1997 and (iii) Rules for conduct of Proceedings of the Gram Panchayat etc confer power on Sarpanch. Panchayat Secretary is the authority to implement the resolutions of the Gram Panchayat and shall perform all the functions specifically conferred under the Act. Therefore, the Sarpanch cannot be heard to say that he/she is not responsible if any decision of Gram Panchayat is detrimental to the local body or does not subserve public interest. It is trite to observe that after Constitution (Ninety-second) Amendment Act, Article 243G and XI Schedule entrusts the safety, welfare, well-being, development and overall equality of life of the people to the Gram Panchayats. Therefore, the argument that it is the Sarpanch who signed the illegal layouts is an argument of desperation to be rejected.

21. The Rules in Part "A" (Rules 3 to 13) of the Layout Rules are detail enough to leave any doubt as to method and manner of making application, considering the application, maintaining minimum requirements in the layouts and duties, powers and functions of the Gram Panchayat and Sarpanch. Rule 12 makes the contravention of Layout Rules punishable and also authorized the DPO to issue subtle instructions to executive authority. Appreciated in the light of these Rules, the opinion arrived at by the District Collector is unassailable. Further more, against the order of the District Collector, petitioner preferred appeal (This Court considers it as Revision). Therefore, the Collector's order no more survives on the principle of Doctrine of Merger. The judicial review in this writ petition would be with reference to the revisional order and the so called infirmities and alleged illegalities in the Order of the District Collector are not under review (See Kunhayammed v. State of Kerala, V. Sudhakara Rao v. State of Andhra Pradesh and A.P. Co-operative Societies Employees' Union v. Government of Andhra Pradesh). The Government considered the matter and a perusal of the Order shows that there is proper application of mind and proper application of law. The writ petition, therefore, is devoid of any merit and is liable to be dismissed.

22. In the result, for the above reasons, the writ petition is dismissed. There shall be no order as to costs.