

## Janagama Shankaraiah Vs The Government of Andhra Pradesh and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Aug. 4, 2010

**Acts Referred:** Andhra Pradesh Panchayat Raj Act, 1994 " Section 249, 249(1), 249(6)

**Citation:** (2011) 1 ALD 251 : (2010) 6 ALT 167 : (2010) 3 APLJ 216

**Hon'ble Judges:** R. Subhash Reddy, J

**Bench:** Single Bench

**Advocate:** Mummaneni Srinivas Rao, for the Appellant; G.P. for Panchayat Raj and Rural Development for Respondents 1 to 4 and E. Madan Mohan Rao, for Respondents 5 and 6, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

R. Subhash Reddy, J.

In this writ petition, the petitioner has challenged the validity of the order, dated 8th June 2010, passed in

Proceedings No. A6/2440/10-Panch, by the 2nd respondent-District Collector, in exercise of powers u/s 249(6) of A.P. Panchayat Raj Act,

1994. By the aforesaid order, the petitioner is suspended from the post of Sarpanch of Kataram Grampanchayat, for a period of three months,

pending investigation into the allegations made against him.

2. The Kataram Grampanchayat is a body constituted under the provisions of the A.P. Panchayat Raj Act, 1994. The petitioner was elected as

Sarpanch of the said Grampanchayat on 29.07.2006. There were certain complaints made against him with regard to misuse of his powers and

misappropriation of funds of the Grampanchayat. Several allegations are made against the petitioner mainly on the ground that he has incurred the

expenditure on various accounts without recording the said works in the Measurement Book, without any resolution of the Grampanchayat, and

also without administrative sanction. It is also alleged that the petitioner was granting permits without collecting the necessary charges from the

applicants and he has also not produced the vouchers and bills for the expenditure, which he has incurred.

3. Basing on the aforesaid allegations, at first instance, a show cause notice was issued to the petitioner vide Notice, dated 23rd of June 2008,

issued in Proceedings No. A6/2440/08-Panch, by giving details of the alleged misappropriated amounts and mentioning the other charges of

misuse of his powers as the Sarpanch of Grampanchayat. For the aforesaid show cause notice, the petitioner has submitted his explanation, dated

17.07.2008. After filing of explanation by the petitioner, a further report was called for from the Divisional Panchayat Officer and on considering

the explanation filed by the petitioner and the report of the Divisional Panchayat Officer, having come to the conclusion that the petitioner has

misappropriated an amount of Rs. 2,11,964/-, and by recording a further finding that he has issued permits contrary to the Rules and thus violated

the provisions of the A.P. Panchayat Raj Act, 1994, he is placed under suspension for a period of three months.

4. In the affidavit filed in support of the writ petition, it is stated by the petitioner that as he is a candidate belonging to Telugu Desam party, on the

influence exerted by the ruling party people, the impugned order is passed against him, on false allegations. It is stated that the Grampanchayat of

Kataram is within the Constituency of the local Legislator, who is also a Minister in the Government. It is alleged that as the petitioner has not

agreed to the erection of the statue of the father of the said Minister, he exerted influence on the District Collector, and hence, the impugned order

of suspension is passed against him. It is pleaded that the order impugned is contrary to the judgment of this Court in W.P. No. 24320 of 2009,

dated 9th February 2010, and further, the order is passed by the 2nd respondent without considering his explanation and also without jurisdiction.

5. Counter affidavit is filed by the 3rd respondent-District Panchayat Officer. In the counter affidavit, while denying the various allegations made by

the petitioner, it is stated that the petitioner was elected as Sarpanch of Grampanchayat, Kataram during the elections to the Grampanchayat held

on 29.07.2006, on non-party basis. It is stated that the petitioner is under wrong impression that the ruling party Government is taking steps for

removal of all the elected Sarpanchas belonging to Telugu Desam Party. It is averred in the counter that the Government has not interfered with the

lawful functions of Sarpanchas. Coming to the facts of the case, it is stated that 10 Ward Members of the Grampanchayat, Kataram have

complained before the District Collector about the misuse of Grampanchayat funds and several other irregularities committed by the petitioner in

granting permissions for constructions and also in conduct of auction of weekly cattle market. Based on such complaint, an inquiry was ordered,

wherein, it was found that the petitioner has misappropriated an amount to the tune of Rs. 2,11,964/-, besides committing other irregularities.

Therefore, the impugned order is passed. Specifically, it is pleaded in the counter that no single instance is referred by the petitioner, wherein, an

action is taken at the behest of the ruling party member of the Legislative Assembly against any of the Sarpanchas, who have not involved in

misappropriation of Grampanchayat funds. It is stated that the petitioner is under wrong impression that as he is opposed to the Hon"ble Minister

for Higher Education, for erection of statue of his father, he has exerted influence on the Collector for passing this order. It is stated that after

conducting detailed inquiry into the allegations made against the petitioner, as it was found that he has misappropriated the Grampanchayat funds to

the tune of Rs. 2,11,964/-, after giving show cause notice and after considering the explanation filed by the petitioner, the impugned order is

passed.

6. A separate counter affidavit is also filed by the impleaded respondents 5 and 6, in similar lines, denying the various allegations made by the

petitioner and it is stated that in view of the proved allegations against the petitioner, the 2nd respondent has exercised his powers u/s 249(6) of the

A.P. Panchayat Raj Act, 1994, pending action u/s 249(1) of the Act. While pleading that respondent No. 2 is a competent authority for passing

such an order, it is stated that the allegation made by the petitioner that the impugned action is politically motivated one, is a baseless allegation

made by the petitioner to circumvent the allegation of misappropriation made against him. In the counter, it is stated that the judgment, dated 9th

February 2010, passed by this Court in W.P. No. 24320 of 2009, cannot be made applicable to the facts of this case.

7. Heard learned Counsel for petitioner Sri M. Srinivasa Rao, and the learned Government Pleader appearing for respondents 1 to 4 and Sri E.

Madan Mohan Rao, appearing for respondents 5 and 6.

8. It is contended by Sri M. Srinivasa Rao, learned Counsel for petitioner, that there is no authority or jurisdiction for passing the impugned order

of suspension, to the 2nd respondent in exercise of power u/s 249(6) of the A.P. Panchayat Raj Act, 1994, as much as no proceedings are

initiated u/s 249(1) of the Act. It is submitted that the power u/s 249(6) of the Act is the power of suspension only pending inquiry into the charges

to be inquired u/s 249(1) of the Act, and as much as no proceedings are initiated u/s 249(1) of the Act, the 2nd respondent has got no authority

for passing the impugned order. It is further submitted that the explanation filed by the petitioner is not considered and without considering the

same, by recording a finding that the petitioner has misappropriated the funds of Grampanchayat to a tune of Rs. 2,11,964/-, this impugned order

is passed. In support of his argument, the learned Counsel for petitioner has relied on the judgments of learned Single Judges of this Court in W.P.

No. 24320 of 2009, dated 9th February 2010, W.P. No. 27009 of 2009, dated 29.04.2010 and in W.P. No. 25461 of 2009, dated

16.07.2010.

9. On the other hand, it is contended by the learned Government Pleader for Panchayat Raj, appearing for respondents 1 to 4, and also Sri E.

Madan Mohan Rao, appearing for respondents 5 and 6, that in view of the proved allegations of misappropriation and misusing of powers by the

petitioner-Sarpanch, an inquiry is conducted and a show cause notice is also issued to the petitioner, and the 2nd respondent, having not satisfied

with the explanation filed by the petitioner, in view of the proved allegations, has invoked his powers u/s 249(6) of the A.P. Panchayat Raj Act,

1994, and as such, there are no grounds to interfere with the same. It is submitted by the learned Government Pleader that when the 2nd

respondent-District Collector is of the opinion that the petitioner has abused the powers vested on him, and that further continuance of such person

in office is detrimental to the interest of the local body, the petitioner is placed under suspension for a period of three months, pending investigation

into the charges. It is submitted by the learned Government Pleader that the power u/s 249(6) of the Act cannot be construed as an interim power

pending inquiry into the charges u/s 249(1) of the Act. It is submitted by the learned Government Pleader that the word "investigation" used u/s

249(6) of the Act, is in the generic sense, and as such, even before issuing any proceedings u/s 249(1) of the Act, the competent authority is

empowered to place the Sarpanch under suspension for a period of three months in exercise of powers u/s 249(6) of the Act. It is submitted by

the learned Government Pleader that the petitioner has grossly misused his powers and spent huge amounts of the local body without even

recording such works in the Measurement Books and without taking approval from the competent authorities, as such, having not satisfied with the

explanation offered by him, and in view of the serious allegations made against him, as the 2nd respondent-District Collector is of the opinion that

his further continuance in office would be detrimental to the interest of the Grampanchayat, he is placed under suspension.

10. To consider the said submissions made by the learned Counsel appearing for the parties as referred above, it is appropriate to refer to the

provisions u/s 249 of the A.P. Panchayat Raj Act, 1994. u/s 249(1) of the Act, the Collector is empowered to order for removal of Sarpanch, in

the event of the following four eventualities, after giving him an opportunity for filing his explanation:

(i) If the Sarpanch wilfully omitted or refused to carry out the orders of the Government for the proper working of the local body; or

(ii) If the Sarpanch abused his position or the powers vested in him; or

(iii) If the Sarpanch is guilty of misconduct in the discharge of his duties; or

(iv) If the Sarpanch persistently defaulted in the performance of his functions and duties entrusted to him under the Act to the detriment of the

functioning of the local body or has become incapable of such performance.

11. Similarly, u/s 249(6) of the Act, only in case of two eventualities, namely, wilful omission and refusal to carry out the orders of the Government

for the appropriate working of the local body, and in case the Sarpanch abuses the position and powers vested on him, an order of suspension can

be passed by the Collector u/s 249(6) of the Act. Even for passing an order u/s 249(6) of the Act, under the proviso contained therein, an

opportunity is provided for making a representation against the proposed action, before passing the order of suspension. It is to be noticed that u/s

249(6) of the Act, the 2nd respondent is empowered to suspend the Sarpanch for a specific period of three months and as per the 2nd proviso to

Section 249(6), Government is empowered to extend such suspension for a further period of three months only. A reading of the comprehensive

provision u/s 249(6) of the Act makes it clear that a Sarpanch can be placed under suspension by the District Collector only for a period of six

months, but not more than that. Thereafter, there is power conferred on the Government to extend it for three more months only.

12. In the instant case, it is submitted by the learned Counsel Sri M. Srinivasa Rao, appearing for petitioner, that unless the charges are under

investigation by initiating proceedings u/s 249(1) of the Act, no order of suspension can be passed u/s 249(6) of the Act. In the judgment in the

case of Smt. B. Shasikala v. The District Collector (Panchayat Wing), Karimnagar W.P. No. 24320 of 2009, dt. 09.02.2010 a learned Single

Judge of this Court has held that the power u/s 249(6) is only exercised as a measure pending inquiry or investigation into the charges framed u/s

249(1) of the Act. Similar contentions were advanced in the case of Yerneni Kusuma v. Government of Andhra Pradesh W.P. No. 27009 of

2009, dt. 29.04.2010. Even in the said judgment also, it was held that unless the action is contemplated u/s 249(1) of the Act, and investigation is

launched towards that goal, exercise of power u/s 249(6) is not warranted. But however, in the said writ petition, when similar order was passed

placing the Sarpanch under suspension for a period of three months in exercise of powers u/s 249(6) of the Act, the said order was confirmed by

dismissing the writ petition. However, in the case of M. Kavitha v. The Government of Andhra Pradesh W.P. No. 25461 of 2009, dt. 16.07.2010

also, relying on the judgments referred above, a learned Single Judge of this Court, having regard to the facts in the said case, by recording a

finding that though the suspension proceedings were dated 11.11.2009, no further action was taken, allowed the writ petition by a judgment, dated

16th July 2010.

13. In the instant case, it is to be noticed that the order of suspension is dated 8th of June 2010. A comprehensive reading of the provisions relating

to removal u/s 249(1) and the power of suspension conferred on the District Collector u/s 249(6) of the Act, it is clear that when it is noticed by

the competent authority that the Sarpanch is abusing the powers vested in him, or when he is of the opinion that further continuance of such person

in office is detrimental to the interest of the local body, he is empowered to pass an order of suspension for the period not exceeding three months,

pending investigation into the said charges. The phrase "pending investigation into the charges" is to be construed in the generic sense that when the

respondents have started collection of facts and the evidence against the petitioner on the charges to be framed, it can be said that the investigation

is started. The phrase "pending investigation" is to be clearly distinguishable from "pending inquiry into the charges". The term "investigation" is

broader term, which can be used when the authority starts collecting the facts and evidence in support of the allegations, but so far as the word

"charge" signifies an accusation made in a legal manner on the conduct of omission or commission by the person charged. In that view of the

matter, merely because when it is not stated in the order that pending inquiry into the charges u/s 249(1) of the Act, it cannot be said that such an

order passed by the competent authority for suspension of a Sarpanch for a period of three months is either illegal or arbitrary. In a given situation,

if the competent authority comes to the opinion that Sarpanch is abusing his position and the powers vested in him, and further continuation of such

person would be detrimental to the interest of the local body, at first instance, he can pass an order of suspension for a period of three months,

pending collection of further evidence and facts, so as to initiate any further action u/s 249(1) of the Act. The power u/s 249(6) cannot be

construed only as an action for suspension pending inquiry into the charges u/s 249(6) of the Act. u/s 249(6) of the Act, in view of the prima facie

conclusions arrived at, the authority is empowered to pass an order of suspension for a period of three months, and that too, by giving proper

opportunity as contemplated under proviso to Section 249(6) of the Act. The proviso to Section 249(6) of the Act clearly clarifies that the power

of suspension can be resorted to in the situations, which warrant u/s 249(6), for passing an order of suspension for a period of three months only.

The language used "pending investigation into the said charges" in Section 249(6) of the Act, is in generic sense and to be construed as collecting

the further facts and evidence on the allegations made against the Sarpanch. It need not necessarily be construed as an action only pending inquiry

into the charges by framing charges u/s 249(1) of the Act, when the District Collector, who is the competent authority, comes to the conclusion

that the Sarpanch is abusing the powers vested on him and continuance of such person is detrimental to the interest of the local body, as an

immediate measure, he can pass an order of suspension for a period of three months. In that view of the matter, having regard to the facts of the

case on hand and as much as the order of suspension is passed very recently i.e. on 8th of June 2010, it cannot be said that as no proceedings are

initiated u/s 249(1) of the Act, the order passed u/s 249(6) itself is either illegal or arbitrary.

14. In the judgment in the case of Smt. B. Shasikala (supra), the order of suspension was passed on 24.10.2009, and while delivering the

judgment on 9th February 2010 i.e. after a period of about four months, the learned Single Judge, having come to the conclusion that the record

did not disclose that any further action was taken u/s 249(1) of the Act, has quashed the order of suspension. Further, in the case of Yerneni

Kusuma (supra), when such similar contention is advanced, the writ petition was dismissed by a learned Single Judge of this Court by a judgment,

dated 29th of April 2010. Although it is pointed out by the learned Counsel for petitioner that in the said judgment, the learned Single Judge has

held that unless and until the action is contemplated u/s 249(1) of the Act, and investigation is launched towards that goal, exercise of power u/s

249(6) is not warranted, but having regard to the material gathered and allegations made, findings recorded on the charges framed against the

petitioner with regard to the alleged misuse of funds to the tune of Rs. 2,11,964/-, and also granting permissions irregularly for making

constructions, it cannot be said that the action is not contemplated. If the word "investigation" is understood in the generic and broader sense,

collection of material and evidence in support of the allegations against the petitioner, it can definitely be said that the investigation is lodged

towards the charges to be framed against the petitioner. Further, in the case of M. Kavitha (supra), a learned Single Judge of this Court, having

noticed that although the petitioner therein was placed under suspension on 11.11.2009, but thereafter, no further action was taken, has allowed

the writ petition by a judgment, dated 16th of July 2010. The judgments relied upon by the learned Counsel for petitioner would not render any

assistance in support of his case, having regard to the facts and circumstances of this case, particularly in view of the fact that three months period

is also not expired after placing the petitioner under suspension.

15. The further contention of the learned Counsel for petitioner that the explanation submitted by the petitioner was not considered, also cannot be

accepted. For each of the charges, the explanation filed by the petitioner is referred to. Having considered such explanation and being not

convinced on such explanation, the respondents have passed the impugned order by recording a finding that the petitioner, as Sarpanch of

Grampanchayat, has misutilised huge amount of Rs. 2,11,964/- from the Grampanchayat, and also committed irregularities in granting permits

contrary to the Rules framed under the A.P. Panchayat Raj Act, 1994. In that view of the matter, it cannot be said that the explanation offered by

the petitioner is not considered by the 2nd respondent before passing the order of suspension.

16. The further contention of the learned Counsel for petitioner that proceedings are initiated against the petitioner, as he has not allowed the

erection of statue of the local Legislator's father, who is Minister in the present Government, also cannot be accepted. Though allegations are

made against the Member of Legislative Assembly, in which, the Grampanchayat, Kataram falls, but he is not even made a party to this writ

petition, in the absence of which, there cannot be any basis to support the case of the petitioner that on such pressure exerted by the local MLA,

the order of suspension is passed. From the counter affidavits filed on behalf of the official respondents, it is clear that there were allegations against

the petitioner, and also there are representations made by the Ward Members of the very Grampanchayat, numbering about 10, to the District

Collector, complaining the illegalities and misappropriation of funds of Grampanchayat by the petitioner, and based on the same, at first instance,

the District Panchayat Officer has conducted an inquiry, and having come to the conclusion that there is misappropriation of the Grampanchayat

funds and the petitioner has committed certain irregularities, the 2nd respondent-District Collector has initiated proceedings u/s 249(6) of the Act,

and then the impugned order is passed. In that view of the matter, it cannot be said that as the petitioner has not permitted the erection of the statue

of the local Legislator's father, such an action is resorted to, only at the instance of the said Legislature. When such serious allegations are made,

the same cannot be countenanced in the absence of making such Legislator as a party-respondent, giving him an opportunity to controvert the said

allegations. From the counter affidavit filed on behalf of the official respondents, it is clear that it is a case of abuse of power by the petitioner as

Sarpanch of the Grampanchayat, and having considered the explanation filed by the petitioner, the 2nd respondent has correctly passed the order



of suspension, suspending him for a period of three months.

17. For the aforesaid reasons, I do not find any illegality in the order passed by the 2nd respondent-District Collector, suspending the petitioner

from the post of Sarpanch for a period of three months.

18. The writ petition is devoid of merit and it is accordingly dismissed. No order as to costs.