

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.38192 of 2015

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Dated 24th November, 2015

Between:

G.Ravi

...Petitioner

And

The State of Andhra Pradesh, rep.by its Principal Secretary, Panchayat Raj and Rural Development Department, Secretariat, Hyderabad and others

...Respondents

Counsel for the petitioner: Sri Vedula Venkataramana

for Sri S.Dushyanth Reddy

Counsel for the respondents: Additional Advocate General (AP)

The Court made the following:

ORDER:

Show-cause notice issued by respondent No.1 vide Memo bearing No.10374/Mdl.II/A2/2015, dated 19.11.2015, is the subject matter of this writ petition.

The facts, in brief, leading to the filing of this writ petition are that the petitioner was elected as Chairman of Zilla Parishad of YSR Kadapa District on 05.7.2014. The pleadings of the petitioner show that he belongs to the main opposition party in the State of Andhra Pradesh. An enquiry was instituted on 06.07.2015 appointing the Collector, YSR Kadapa District to enquire into certain allegations made by the President of the Telugu Desam Party (Ruling Party) of, YSR Kadapa District. The said order was questioned by the petitioner in W.P.No.21465 of 2015. This Court by order dated 14.07.2015, has suspended the said order. Later, based on the report of the District Collector, respondent No.1 has issued proceeding, dated 13.07.2015, suspending certain resolutions passed by the Zilla Parishad, YSR Kadapa District. The said proceeding was also questioned by the petitioner, the Vice Chairman and another vide W.P.No.22221 of 2015 and batch and this Court by order, dated 22.07.2015, has suspended the same. By the impugned Memo, respondent No.1 while forming *prima facie* opinion that the petitioner in collusion with the then CEO has manipulated the records of the ZPP as if such resolutions have been passed, that the petitioner by communicating the tentative list of the purported committees to the then CEO has violated the provisions of law including Section 187 of the A.P.Panchayat Raj Act, 1994 (for short 'the Act') r/w Rule 3 of the A.P.(Conduct of Election of Members of Standing Committees of ZPs) Rules, 1995 and that the petitioner has failed to constitute the committees by conducting elections for the effective functioning of the Zilla Praja Parishad and thereby defeating the very object for which the Local Bodies have been provided for under the Constitution of India and violated the mandatory provisions of law including Section 187 of the Act r/w Rule 3 of the A.P.(Conduct of Election of Members of Standing Committees of ZPs) Rules, 1995. Respondent No.1 has proposed to hold an enquiry under Section 249 of the Act and accordingly called upon the petitioner to submit his explanation to the charges levelled in paras 9, 11 and 17 of the notice within 15 days of receipt of the same.

Sri Vedula Venkataramana, learned Senior Counsel appearing for the petitioner, submitted that the show-cause notice suffers from malice in law as the whole action has emanated at the instance of the President of the ruling party of the YSR Kadapa District. He has further submitted that most of the allegations upon which the impugned show-cause notice was issued are subject matter of as many as three separate writ petitions out of which in two cases, this Court has granted

suspension of the order of respondent No.1. The learned Senior Counsel further submitted that as the formation of opinion is *sine qua non* for exercise of power under Section 249 of the Act, the show-cause notice should not have been issued without holding a prior enquiry and that the proposal to hold an enquiry at this stage runs contrary to the scheme underlying the said provision.

I have heard the learned Additional Advocate General (AP).

As regards the allegation of mala fides, it is premature for this Court to delve into this aspect because no order adverse to the interests of the petitioner has been passed so far. Ordinarily, Courts will not interdict further action proposed under a show cause notice unless it finds inherent lack of jurisdiction in the authority which issued the show cause notice. While allegations of mala fides are certainly relevant in the context of examining an order passed by an authority against a person, for the limited purpose of testing the legality or otherwise of the show cause notice, ordinarily the Court will not probe into the allegations of mala fides at the show cause notice stage.

On a reading of Section 249 of the Act, this Court is of the opinion that where commissions and omissions against an elected representative, such as Sarpanch, Upa-Sarpanch, President or Vice-President, Chairman or Vice-Chairman of the local bodies, as the case may be, are alleged, and an opinion is formed by the competent authority in that regard, it is empowered to issue a show cause notice proposing action as envisaged by that provision. If, in the process of taking a final decision, the competent authority acts with malice that can always be challenged by the aggrieved party by availing an appropriate legal remedy. Therefore, I do not find any merit in the submission of the learned Senior Counsel that the impugned show cause notice is not in conformity with the provisions of Section 249 of the Act.

As regards the submission of the learned Senior Counsel that the issues raised in the show cause notice are subject matter of dispute in W.P. Nos.21465, 22221 and 27999 of 2015, a perusal of the show cause notice shows that respondent No.1 has taken care to see that it is not considering the District Collector's report dt.10.07.2015 and the CEO's report dt.10.08.2015, which obviously mean that it is not proposing to refer to and rely upon any of the aspects which are subject matter of the above writ petitions. If, contrary to what is expressly mentioned in the impugned show cause notice, respondent No.1 is influenced by any of those aspects, the

petitioner is entitled to challenge the legality or otherwise of such order.

The learned Senior Counsel submitted that as the whole action of respondent No.1 is aimed at dislodging the petitioner, he will be running the risk of being sent out of the office, the moment an adverse order is passed, if he submits himself to the jurisdiction of respondent No.1. I am afraid, I cannot accept this submission. Even if the petitioner has reason to think that the action of respondent No.1 is politically motivated and mala fide, the petitioner is not remediless. As a democratically elected representative, he is entitled to avail legal remedies, in the event an order adverse to his interests is passed. However, to ensure that such legal remedies that may be availed by the petitioner cannot become a *fait accompli*, in the interest of justice, respondent No.1 shall not give effect to the order that may be passed by it, in the event it is adverse to the interests of the petitioner, for a period of one month from the date of receipt of such order by the petitioner.

On the analysis as above, without expressing any opinion on the sustainability or otherwise of the allegations made in the impugned show cause notice, the writ petition is dismissed with the direction to respondent No.1 not to give effect to the order that may be passed by it, in the event it goes against the interests of the petitioner, for a period of one month from the date of receipt of the said order by him, to enable him to avail appropriate legal remedies.

As a sequel to dismissal of the writ petition, W.P.M.P. No.49148 of 2015 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

24th November, 2015

VGB/BNR