

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.35805 OF 2016

ORDER:

The petitioner prays for Mandamus declaring the proceedings dated 17.10.2016 and continuing respondent No.4 as Sarpanch on the strength of order of 1st respondent dated 15.10.2016, as arbitrary, illegal and contrary to the Panchayat Raj Act (for short 'the Act').

The circumstances relevant for the disposal of the writ petition are as follows:

On 10.10.2016, the 2nd respondent suspended 4th respondent/ Sarpanch of Bahadurpalli Gram Panchayat. The 4th respondent admittedly filed appeal against the order of suspension dated 10.10.2016 before the 1st respondent. The 1st respondent vide Government Memo No.10482/Pts./AI/2016-1 dated 15.10.2016 granted stay of suspension of 4th respondent. Consequent thereto, the 2nd respondent issued proceedings impugned in this writ petition.

The counsel for petitioner places strong reliance upon the decision in Yerneni Kusuma v. Government of Andhra Pradesh¹ to contend that against order of suspension, no appeal under Section 249(6) of the Act is maintainable. As the very appeal is not maintainable, grant of stay by 1st respondent is totally illegal and without jurisdiction.

¹ 2010 (6) ALD 737

At request of Special Government Pleader, the case was adjourned from 25.10.2016 to 31.10.2016 to produce the record in Government Memo dated 15.10.2016.

The learned Special Government Pleader has placed the record before the Court and as matter of fact by perusing the record, submits that the 4th respondent in fact, presented an appeal. He further submits that though appeal is not maintainable, still the Government has power under revisional jurisdiction to entertain and grant appropriate relief to 4th respondent. He alternatively submits that as the stay order is granted, by treating the case filed by the 4th respondent as appeal, the matter may be remitted to Government for fresh consideration and disposal.

Mr.S.Satyam Reddy submits that the challenge in the writ petition is not complete and if a procedural informative is noted against the 4th respondent, the same yardstick is to be applied to petitioner as well, for the petitioner has not challenged the order of stay dated 15.10.2016 passed by the Government.

Counsel appearing for the respondents having regard to the *ratio* laid down in Yerneni Kusuma's case (supra), submit that appeal is not maintainable. The issue for consideration in the instant case is whether the representation of 4th respondent as appeal can be entertained by the 1st respondent, the order of stay granted on 15.10.2016 and consequently implemented by the 2nd respondent is legal and tenable?

The answer to the above question can be given by excerpting paragraph 7 of Yerneni Kusuma's case (supra)

“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 under Section 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 under Section 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 under Section 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 under Section 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 under Section 249(6) of the Act.”

This Court is not proposing to examine the merits on which the 4th respondent desires appropriate relief from the 1st respondent. The effect of suspension of suspension is only by the order dated 17.10.2016. The challenge to order dated 17.10.2016 can be treated as inclusive of challenge to order of stay dated 15.10.2016.

Be that as it may, for the view this Court is proposing to take, the issue is not considered on merits.

Writ petition is ordered. Proceedings dated 17.10.2016 and 15.10.2016 are set aside and matter remitted to 1st respondent for consideration of representation of 4th respondent within its power

and for passing appropriate orders within three days from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date: 02.11.2016

Note:

CC forthwith.

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