

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.38133 of 2016

ORDER:

Heard Mr.M.Ravindranath Reddy for petitioner, learned Government Pleader for respondents 1 to 4 and Mr.M.S.Prasad learned senior counsel for respondents 8 and 9.

The petitioner challenges Roc.No.1655/2016 G9 dated 07.10.2016 removing the petitioner as Sarpanch of Lingaraopalem Gram Panchayat, Edlapadu Mandal, Guntur District, as illegal and unsustainable.

Counsel appearing for parties have made detailed submissions on one hand against proceeding dated 07.10.2016 and on the other supporting proceeding dated 07.10.2016. Admittedly, on 21.10.2016, the petitioner against the proceeding impugned in the writ petition, filed appeal before 1st respondent under Section 249(7) of the A.P. Panchayat Raj Act, 1994. The petitioner also moved an application praying for suspension of proceeding dated 07.10.2016. The petitioner relies for grant of suspension of impugned proceeding upon Section 249(7) and also the Government Memo No.2909/Pts.II/76-I dated 28.02.1977 which reads thus:

“A minimum interval of thirty days should be allowed between the date of publication of the notification and the date of removal so that the aggrieved persons can avail of the benefit of appeal under section 50(4) and the postponement of the date of removal pending decision on such appeal.”

The submission of counsel for petitioner is that the 1st respondent has not passed orders within 30 days from 08.10.2016 and with the expiry of 30 days, the notification issued by 2nd respondent comes into operation thereby the petitioner who is duly elected by the people, pending appeal will be prevented from functioning as such. Therefore, prays for granting suspension of proceeding dated 07.10.2016 pending appeal before the 1st respondent.

Learned Government Pleader makes a statement that as on date, the application for suspension filed by the petitioner is not considered and further submits that except the order filed as Ex.P.1 in the writ petition, there is no separate order which can be treated as supplementing reasons for the conclusions recorded in the order under appeal before the 1st respondent.

Sri M.S.Prasad vehemently opposes consideration of the prayer for grant of suspension of impugned order, firstly on the ground that the charges against petitioner relate to misappropriation of panchayat funds, there is enough material warranting removal and the writ petition is filed before the expiry of 30 days period stipulated under Memo 2909/Pts.II/76-I dated 28.02.1977. He prays for dismissal of the writ petition.

To appreciate the controversy in the appeal, this Court broadly has taken note of the notice issued dated 25.02.2016, the order passed by the 3rd respondent withdrawing the cheque power of petitioner, the appeal filed by the petitioner against the order of

2nd respondent and also the fact that no order was passed till date as and when the remedy of appeal is availed.

After considering the allegations in the notice dated 25.02.2016 and also the annexure enclosed to the order dated 07.10.2016, this Court is satisfied that prima facie case for grant of suspension pending appeal is made out.

This Court has taken note of principal objection against maintainability of the writ petition during the pendency of appeal, but admittedly no order has been passed as on date on the application filed for suspension. This Court considers it appropriate to avoid further litigation in the matter and having considered the prima facie case and balance of convenience, suspends the proceeding dated 07.10.2016.

The 1st respondent is directed to dispose of the appeal filed by petitioner as expeditiously as possible preferably within three months from the date of receipt of a copy of this order by giving opportunity to the petitioner as well as the contesting respondents in this behalf.

Having regard to the objections raised by the petitioner against the order impugned in the writ petition, this Court is constrained to observe that the 1st respondent in its capacity as the appellate authority calls for the entire record, examine each one of the objections of petitioner and dispose of the appeal strictly in accordance with law and by considering the material available in this behalf. It is made clear that this Court shall not be understood as expressing any view on merits of the matter.

The writ petition is ordered. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S. V. BHATT, J

Date:07.11.2016
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