

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.3264 of 2016

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DATED : 04.02.2016

Between:

N. Nageswara Rao S/o.Venkateswara Rao,
Hindu, Aged 38 yrs, Ex-Field Assistant,
(MGNREGS), R/o.Bandipalem Village,
Jaggaiahpeta Mandal, Krishna District.

.. Petitioner

AND

The State of A.P.,
Rep. by its Principal Secretary,
Panchayat Raj & Rural Development Department,
A.P. Secretariat at Hyderabad & 4 others

.. Respondents

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The Court made the following:

HON’BLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

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Heard Sri Narasimha Rao Gudiseva, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the respondents 1 and 2 and Sri M.S.R. Chandra Murthy, learned Special Counsel for respondents 3 to 5. With the consent of all the learned counsel, the writ petition is taken up for final disposal.

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2. The petitioner is a Field Assistant under the control of the Project Director, District Water Management Agency, Vijayawada, Krishna District (4th respondent). Alleging grave illegalities against the petitioner, proceedings were initiated on 10.12.2015 calling upon the petitioner to submit his explanation. It appears that petitioner was informed to hold personal hearing on 28.12.2015. According to the petitioner, the petitioner received the said notice only on 01.01.2016, i.e., after the date fixed for personal hearing and immediately after receipt of the said notice, the petitioner appeared before respondents 4 and 5 and made oral representation to grant some more time for submitting his explanation to the show cause notice. This writ petition is filed challenging the proceedings, dated 09.01.2016 (printed in the proceedings as 09.01.2015), holding that the petitioner has misappropriated along with others and towards his share, an amount of Rs.3,61,828/- should be recovered and criminal prosecution should be launched. Learned counsel for the petitioner submits that this amounts to taking a final decision even before the proceedings are concluded by following the due process and such action of the respondents is illegal. Learned counsel for the petitioner further submits that in fact, criminal case is already registered.

3. Learned Special Counsel, on instructions, submits that notice is issued informing the petitioner that personal hearing would be held on 03.02.2016 and it is open to the petitioner to appear before the competent authority on the date fixed. Learned Special Counsel submits that whenever there is an allegation of misappropriation of amount exceeding Rs.1,00,000/-, it is mandatory to initiate criminal prosecution and there is no illegality in initiation of criminal prosecution.

4. As seen from the material on record and on appreciation of the contentions urged by both the learned counsel, it is to be noted that the charges levelled against the petitioner relate to alleged misappropriation. The disciplinary proceedings are yet to be finalized. As fairly submitted by the learned Special Counsel, it is decided to conduct personal hearing. Thus, as of now, no orders are passed on the charges levelled against petitioner in the show cause notice, dated 10.12.2015. It is, therefore, premature to hold that the petitioner is guilty of misappropriation and to take consequential action. Thus, the order, dated 09.01.2016 (typed as 09.01.2015), is *ex-facie* illegal and cannot be acted upon. The order, dated 09.01.2016, is, accordingly, set aside.

5. Since it is decided to hold personal hearing, the petitioner shall appear on the date fixed, on receipt of the order. Before the date fixed for personal hearing, the petitioner shall furnish the list of documents he is relying upon or which are necessary for proper defence of the petitioner. The petitioner shall submit an application well in advance to the Project Director, District Water Management Agency, Vijayawada, Krishna District (4th respondent) at any rate within one week from the date of receipt of this order. The documents requested shall be furnished and by following the due procedure, the disciplinary proceedings shall be concluded. Till the proceedings are finalized no recovery shall be effected.

6. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 4th February, 2016

Note : Issue c.c. by tomorrow.

B/o.

Rds

