

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 25459 of 2016

Order:

The petitioners are the erstwhile Panchayat Secretaries, Junior Assistants and Bill Collectors. There was an allegation that they were involved in inflating the annual income for the years 1987-88, 1988-89 and 1989-90 of the Gram Panchayats where they worked and furnished reports to the District Collector showing that the annual income of each Gram Panchayat was more than Rs.60,000/-. They got support from the Extension Officers, Office Superintendents and District Panchayat Officers apart from respective Sarpanches and were successful in getting sanction orders from the District Collector for creation of additional posts of Junior Assistants-cum-Bill Collectors by falsification of records. On earlier occasion charge sheets were filed under the provisions of the Prevention of Corruption Act, 1988 on the file of the District and Sessions Judge-cum-Special Judge for ACB Cases, Visakhapatnam in CC Nos.38 of 1995 to 84 of 1995. When the accused filed discharge applications, an order was passed on 25.01.2001 discharging the accused from the offences under the provisions of the Prevention of Corruption Act and giving liberty to the prosecution to file charge sheets before the competent Court for trying the offences under the provisions of the Indian Penal Code. Against the said order, the prosecution preferred Criminal Revision Cases before this Court in CrI.RC Nos.594 of 2001 and 818 of 2001 to 863 of 2001 and all the Revision Cases were dismissed by a common order dated 29.04.2010. As a result of such common order, the discharge order passed by the trial Court has become final. After disposal of the above Criminal Revision Cases, the Director General, ACB, in his letter dated 26.11.2010 informed the Government that the Government can proceed against the accused persons for the alleged offences in a competent Criminal Court having jurisdiction under the Indian Penal Code. By that time, out of 116 accused officers, 7 expired, 9 retired, 32

were not traceable, 23 are in service and remaining 45 (Sarpanches) are living in their respective villages. The Government, accordingly, examined the case and requested the Commissioner of Panchayat Raj and Rural Employment, Hyderabad /District Collector, East Godavari District to direct the Civil Police to investigate and prosecute the surviving accused officers by memo dated 07.05.2011. The District Collector, East Godavari District, accordingly, addressed a letter to the Superintendent of Police, East Godavari District by enclosing the list of accused officers with their addresses for the purpose of investigation. The Government thought it fit to entrust the case to CBCID and, accordingly, issued G.O.Rt.No.913, Panchayat Raj and Rural Development (VIG.III) Department, dated 19.09.2015. The same is challenged in the present Writ Petition.

2. Learned counsel for the petitioners submits that when the trial Court passed an order way back in the year 2001 the Government cannot issue the present order after 15 years and subjecting the petitioners to criminal prosecution is a vexatious act of the Government. He further submits that the alleged offence against the petitioners was in fact an authorised action supported by Government Orders issued from time to time.

3. There is no doubt that the trial Court passed a common order discharging the accused officers in respect of the offences under the provisions of the Prevention of Corruption Act, but gave liberty to the prosecution to initiate proceedings under the provisions of the Indian Penal Code. The Revision Cases filed against the said order came to an end only on 29.04.2010. Thereafter, steps were taken by the Government and the present impugned GO was issued on 19.09.2015 entrusting the case to CBCID for investigation and prosecution of the accused officials and non-officials including the private persons. Such entrustment of the case cannot be interdicted at the instance of the accused persons, more so when a detailed order was passed by the

trial Court in the earlier round of litigation on 25.01.2001. This Court cannot exercise the discretionary power under Article 226 of the Constitution of India for setting aside the impugned G.O.Rt.No.913, dated 19.09.2015 when the Government has taken a conscious decision depending on the facts of the case.

4. The Writ Petition is, accordingly, dismissed at the admission stage. However, any observations made in the present order shall not be taken as a finding on the merits of the case. There shall be no order as to costs.

5. As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A.
Date: 30.08.2016
Nsr

RAMALINGESWARA RAO, J