(2016) 09 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 22027 and 26065 of 2016.

Gorrela Mekala Varthaka Sangham and another - Petitioners @HASH State of Andhra Pradesh Rep. by its Principal Secretary, Panchayath Raj and Rural Development Department, Secretariat, Hyderabad and three Others

Date of Decision : 08-09-2016

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 105, Section 248, Section 264
Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 270 : (2017) 1 AndhLD 83

Hon'ble Judges : Sri. Challa Kodanda Ram, J.

Bench : Single Bench

Advocate : Sri. Sitaram Chaparla, Advocate, for the Petitioner; Government Pleader for Panchayat Raj and Rural Dev (AP), for the Respondent Nos. 1 and 2; Sri. Ravi Cheemalapati, Standing Advocate for Gram Panchayat, for the Respondent No. 3; Sri. K.S. Murthy, Advoca

Final Decision : Allowed

Judgement

Sri. Challa Kodanda Ram, J. - Since the parties and the issue involved in both the writ petitions are one and the same, they were heard together and being disposed of by this common order. The parties as arrayed in W.P.No.22027 of 2016 are referred to hereinafter as such for the sake of convenience.

2. Aggrieved by the proceedings in Memo No.796/Pts.III/A1/2016, dated 01.07.2016 issued by the 1st respondent, these Writ Petitions are filed.

3. The case of the petitioners is that the 1st petitioner is a Registered Society viz., Gorrela Mekala Varthaka Sangham, engaged in organising of fairs for selling and buying of goats, sheep and goods. The 2nd petitioner is the President of the 1st petitioner Society. The 1st petitioner Society claims that they are owners of the land in an extent of Ac.0-92 cents situated in R.S.No.808/1 of Tadepalli Grampanchayat and had obtained license for the period from 2012-2013 to 2015-2016 for running a private market for selling and buying sheep and goats. Originally, the name of the Society was Sri Krishna Mekala Gorrela Varthaka

Sangham and later the same was changed to the present one. The 3rd respondent-Pedatadepalli Gram Panchayat passed resolution on 06.05.2016 as an agenda Item No.2 by taking notice of the change of name of the Society and further, to renew the license, subject to the condition of the petitioner society paying 15% of license fee on the income of the Society. Pursuant to the resolution, on 09.06.2016, the 3rd respondent-Gram Panchayat, Pedatadepalli issued license permitting the petitioner to carry on the business and by Memo No.7796/Pts.III/A1/2016, dated 15.06.2016, the Principal Secretary to Government-1st respondent directed the District Panchayat Officer to implement Resolution No.2, dated 06.05.2016 passed by the 3rd respondent. While the things stood thus, the 4th respondent appeared to have approached the Hon''ble Minister for Panchayat Raj Department, Government of Andhra Pradesh by filing a revision questioning the proceedings dated 15.06.2016 issued by the Principal Secretary to Government, Panchayat Raj & Rural Development Department and the Hon''ble Minister granted Stay on 24.06.2016, pursuant to which the impugned memo dated 01.07.2016 was issued staying the Resolution No.2, dated 06.05.2016 passed by the 3rd respondent and also keeping in abeyance the Memo dated 15.06.2016. The petitioner is aggrieved by the memo dated 01.07.2016, hence questioning the same, he filed the writ petition.

4. Counter affidavits are filed by the 1st respondent as well as 4th respondent and the 2nd petitioner filed reply affidavit therefor.

5. Learned counsel for the petitioner submits as follows:

(I) The revision filed by the 4th respondent before the 1st respondent against the Memo dated 15.06.2016 is not maintainable as the power of revision is not available with the 1st respondent under Section 264(1) of the Panchayat Raj Act, 1994 (in short "the Act"). The revision power is available with the 1st respondent only against the proceedings issued by its subordinates, in that view of the matter, the revision does not lie against the Memo dated 15.06.2016.

(II) Proceedings in Memo No.7796/Pts.III/A1/2016, dated 15.06.2016 was issued by the 1st respondent in exercise of the power, which is traceable to Section 248 of the Act and as such, keeping in abeyance the same in an Application filed under Section 264 of the Act, is not maintainable and consequently, the orders passed are non-est in law, having been passed by the 1st respondent without jurisdiction.

(III) Even assuming such revision is maintainable, at best, the 1st respondent could have passed the orders staying the Memo No.7796/Pts.III/A1/2016, dated 15.06.2016 under Section 264(2) of the Act, but could not have stayed Resolution No.2 and consequent issuance of the licenses by the 3rd respondent dated 06.05.2016 and 09.06.2016.

(IV) The 4th respondent could not have filed revision questioning Resolution No.2, dated 06.05.2016 of the 3rd respondent, inasmuch as, 4th respondent had invoked the jurisdiction of the Commissioner by filing the Appeal under Section

105 of the Act, which is pending and in that view of the matter, the very entertaining of the revision is improper and illegal and consequently the orders are unsustainable.

6. On the other hand, learned Government Pleader for respondents 1 and 2, contends that the Order made by the 1st respondent is traceable to Section 264(1) of the Act and at any rate, the same is only the interim order and the petitioner can as well contest the same by approaching the 1st respondent. The learned Government Pleader asserts that the 1st respondent has power and jurisdiction under Section 264 of the Act.

7. Sri K.S. Murthy, learned counsel appearing for the 4th respondent, by reiterating the averments of the counter, submits that Memo No.7796/Pts.III/A1/2016, dated 15.06.2016 passed by the Principal Secretary is not a Memo passed by the Government and the Principal Secretary to Government has no authority to direct the District Panchayat Officer to ensure the implementation of Resolution No.2 passed by the 3rd respondent on 06.05.2016, depriving the right of the appeal of the 4th respondent, which in fact was pending before the Commissioner. Inasmuch as, Memo No.7796/Pts.III/A1/2016, dated 15.06.2016 of the Principal Secretary is not the proceedings issued by the Government in exercise of the power under Section 248 of the Act, as under the Andhra Pradesh Government Business Rules and Secretariat Instructions, only the concerned Minister is authorised under Section 264 of the Act. He further contends that the appeal filed by the 4th respondent questioning the resolution dated 06.05.2016 was virtually made infructuous on account of the Memo No.7796/Pts.III/A1/2016, dated 15.06.2016 of the Principal Secretary. Learned counsel also refers to various factual aspects and the pendency of a Civil Suit filed by the 4th respondent against the petitioners. He further contends that the Minister being the authority and authorised to exercise powers under Section 264 of the Act under the Andhra Pradesh Government Business Rules and Secretariat Instructions the impugned Memo does not call for interference and thus prays for dismissal of the Writ Petition.

8. The facts being not in dispute, certain legal provisions may be referred to -

Section 248 - Power of Government to issue directions?(1) Notwithstanding anything contained in this Act, it shall be competent for the Commissioner or the Government to issue such directions as they may consider necessary to the Executive Authority, Mandal Parishad Development Officer or the Chief Executive Authority for the proper working of the Gram Panchayat, Mandal Parishad, or as the case may be, the Zilla Parishad or for the implementation of the resolutions thereof and the Executive Authority, Mandal Parishad Development Officer or as the case may be, the Chief Executive Authority shall implement those directions, failing which, he shall be liable for disciplinary action under the relevant rules.

(2) The Sarpanch of the gram panchayat, the President of Mandal Parishad or as the case may be, the Chairperson of the Zilla Parishad shall ensure that the

Executive Authority Mandal Parishad Development Officer or as the case may be. the Chief Executive Authority implements the directions issued by the Government under sub-section (1) and shall not do anything in derogation to the directions of the Government aforesaid. The Sarpanch, the President or the Chairperson who contravenes the provisions of this section shall be deemed to have wilfully omitted or refused to carry out the orders of the Government for the proper working of the Gram Panchayat, Mandal Parishad or as the case may be, the Zilla Parishad within the meaning of Section 249.

Sec. 264 - Power of Review and Revision by Government ?(1) The Government may, either suo motu or on application from any person interested, call for and examine the record of a gram panchayat, Mandal Parishad or a Zilla Parishad or of its Standing Committees or of any authority, officer or person, in respect of any proceeding to satisfy themselves as to regularity of such proceeding or the correctness, legality or propriety of any decision or orders passed therein and, if in any case, it appears to the Government that any such decision or order should be modified, annulled or reversed or remitted for reconsideration, they may pass orders accordingly :

Provided that the Government shall not pass any order prejudicial to any party unless such party has had an opportunity of making a representation.

(2) The Government may stay the execution of any such decision or order pending exercise of their powers under sub-section (1) in respect thereof.

(3) The Government may suo motu at any time or on an application received from any person interested within ninety days of the passing of an order under sub-section (1), review any such order if it was passed by them under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions contained in the proviso to sub-section (1) and in subsection (2) shall apply in respect of any proceeding under this sub-section as they apply to a proceeding under sub-section (1).

(4) Every application preferred under sub-section (1) shall be accompanied by a fee of fifteen rupees.

9. At the outset, it may be noted that 4th respondent had invoked the jurisdiction of the 1st respondent specifically filing a revision, thus the provision that has been invoked is obviously Section 264(1). The revision power has been invoked on the premise that the Memo dated 15.06.2016 was issued in the name of Principal Secretary to Government, who is not authorised to issue the said Memo and the Principal Secretary being subordinate to the Government, the revision is maintainable. The heading of the petition filed before the 1st respondent reads as "Revision filed before the Hon''ble Minister for Panchayat Raj, Sri Ch. Ayyanna Patrudu, Government of Andhra Pradesh." However, in the counter affidavit filed on behalf of the 4th respondent, in Para No.7, it is averred that "I submit that the Government has power to review when wrong order is passed." In other words the 4th respondent in the counter affidavit has taken a

stand contrary to the material on record and the power that has been invoked. In the counter affidavit filed by the 1st respondent, in Para No.7, the representation of the 4th respondent was treated as revision. However, the learned Government Pleader in the course of argument asserts that the order is traceable to the review power under Section 264(3) of the Act. If one accepts the contention in the counter affidavit, ignoring the revision, the order passed by the 1st respondent can be traced only to the power under Section 264 (3) of the Act. The power under Section 264(3) of the Act can be exercised only against the orders made/proceedings issued in exercise of the power under section 264(1) of the Act. In the present case, there is no order made by the 1st respondent under Section 264(1) of the Act and on the other hand, the order is made under Section 248 of the Act as it is a direction issued in the name of Principal Secretary for implementation of the resolution of the 3rd respondent Gram Panchayat. In such circumstances there being no order under section 264(1), an be no review under Section 264(3) of the Act.

10. In this context, the argument of the learned counsel for the 4th respondent that the Memo dated 15.06.2016 is not the order issued by the 1st respondent Government cannot also be accepted. Firstly, it is not the case of the 1st respondent Government in the counter or even in the impugned order that the same was not issued by the Government. On the contrary, in the counter affidavit filed on behalf of the 1st respondent, in para No.7, it was categorically stated that "It is submitted that taking into consideration of above mentioned grounds, the revision petition was considered and orders were issued by the Government staying the resolution No.2, dated 6.5.2016 passed by the Pedetadepalli Gram Panchayat, Tadepalligudem (M), West Godavari District, pending enquiry and also kept in abeyance of Memo No.7796/Pts.III/A1/2016, dated 15.06.2016, which was issued by the respondent No.1 (Government)."

11. In the light of the stand taken by the 1st respondent that it was an order made by the Government and as the 1st respondent did not assert in the counter affidavit that the Memo dated 15.06.2016 of the Principal Secretary to the Government is not an order made by the 1st respondent, the argument of the petitioners that the Memo dated 15.06.2016 is not made by Government cannot be accepted. Though Rule 24 of the Andhra Pradesh Government Business Rules and Secretariat Instructions is brought to the notice of the Court, same has no application in the present set of facts. A combined reading of Rules 22 and 23 of the Andhra Pradesh Government Business Rules and Secretariat Instructions prima facie disclose various Secretaries, Administrative heads of the Departments are authorised to deal with the matters except those are required to be dealt by the Minister. As it is not necessary for this Court to enter into these aspects there is no elaborate discussion that has been made in the present case. At any rate, there is no specific Rule which has been brought to the notice of this Court on that aspect. In the light of the discussion, the Memo dated 15.06.2016 made in the name of the Principal Secretary can be traced to power under Section 248 of the Act and in that view of the matter, the purport of

exercise of the revision power by the 1st respondent is not sustainable in law and is liable to be set aside.

12. Further, the contention of the learned counsel for the 4th respondent that the Memo dated 15.06.2016 jeopardise the right of the 4th respondent in Appeal cannot also be accepted as on the date of 15.06.2016, there was no stay granted in appeal filed by the 4th respondent before the Commissioner under Section 105 of the Act. However, the implementation of the Resolution dated 06.05.2016 by the 3rd respondent, which was, in fact, given effect to on 09.06.2016 by the 3rd respondent obviously would be subject to the orders that may be passed by the appellate authority under Section 105 of the Act.

13. In the result, subject to the above observations, the Writ Petitions are allowed setting aside the order dated 01.07.2016 passed by the 1st respondent and further quashing the revision proceedings before the 1st respondent. There shall be no order as to costs.

14. Consequently, Miscellaneous Petitions, if any pending, in these Writ Petitions shall stand closed.