

APHC010120252009



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3483]

WRIT PETITION NO: 1550/2009

Between:

C.narayana

...PETITIONER

AND

State Of A P 4 Others and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.P V KRISHNAIAH

Counsel for the Respondent(S):

1.GHANI A MUSA (SC FOR ACB SPL PP)

2.GP FOR REVENUE

3.GP FOR GENERAL ADMINISTRATION

4.THE ADVOCATE GENERAL

CORAM: THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE RAVI CHEEMALAPATI

DATE : 25.04.2025

ORDER

(Per Sri Justice Ravi Cheemalapati)

Challenge laid in this writ petition is to the Memo No.404/SC/D/96-1, dated 06.05.1996 being discriminative, insulates the corrupt practices and deters the Anti-Corruption Bureau officials from initiating enquiries, laying

traps and registering cases against the officers of the All India Services and Heads of Departments.

2. Heard Sri P.V.Krishnaiah, learned counsel for the petitioner, and Smt. S.Pranathi, learned Special Government Pleader for State.

3. Sri P.V.Krishnaiah, learned counsel for the petitioner, while reiterating the contents of the writ affidavit would contend that the impugned memo would serve as a bullet proof protection to the officers of the all India Services and Heads of Departments and would encourage them to adopt corrupt practices without fear, since it restrains the Anti-Corruption Bureau officials from proceeding against them without obtaining orders from the Hon'ble Chief Minister. Further, the said memo discriminates the IAS and non-IAS cadre officers. Therefore, the same is liable to be quashed.

4. On the other hand, Smt. S.Pranathi, learned Special Government Pleader, while reiterating the contents of the counter-affidavit would contend that the memo impugned in this writ petition was issued to sort out the anomaly in the earlier instructions issued vide Memo No.163/SC.D/83-2, dated 30.03.1983 and to make it to be in conformity with the Andhra Pradesh Government Business Rules and Secretariat Instructions. She would further contend that the executive orders of all the State Governments, which were in

violation of the decision of the Hon'ble Supreme Court in ***Vineeth Narayan vs. Union of India***¹ had become inoperative and unconstitutional. She would further contend that no sanction for investigation is required but for prosecution as per Section 19 of the Prevention of Corruption Act. In view of the same, the writ petition being meritless is liable to be dismissed.

5. Perused the material available on record and considered the submissions made by learned counsel for the parties.

6. The memo impugned would indicate that as per the instructions contained in para 1(3) of Govt. Memo No.163/SC.D/83-2, dated 30.03.1983 read with Memo No.163/SC.D/83-3, dated 10.06.1983, which were reiterated in Govt.Memo No.735/SC.D/87-1, dated 27.04.1988, the Director General Anti-Corruption Bureau shall obtain prior permission of the Chief Secretary, before initiating preliminary or regular enquiry or registering a case or laying a trap in respect of the officers of the All India Services and Heads of Departments.

7. Thereafter, the Government having found that the said instruction is not in conformity with the provisions of Business Rules 32(1)(xxi) of the

¹. AIR 1998 SC 889

Andhra Pradesh Government Business Rules and Secretariat Instructions, amended the said instruction, through the impugned memo, as follows:

" The Director-General, Anti-Corruption Bureau, A.P., Hyderabad will send confidential reports in respect of All India Service Officers and Heads of Departments to the Chief Secretary, who will obtain the orders of Chief Minister, thereon."

8. The Hon'ble Supreme Court in ***Vineeth Narayan vs. Union of India*** (supra 1) while considering the legality of the single directive issued by the Government of India to Central Bureau of Investigation that they shall obtain sanction of the designated authority to initiate the investigation against officers above a certain level held thus:

"**45.** Obviously, where the accusation of corruption is based on direct evidence and it does not require any inference to be drawn dependent on the decision-making process, there is no rational basis to classify them differently. In other words, if the accusation be of bribery which is supported by direct evidence of acceptance of illegal gratification by them, including trap cases, it is obvious that no other factor is relevant and the level or status of the offender is irrelevant. It is for this reason that it was conceded that such cases, i.e., of bribery, including trap cases, are outside the scope of the Single Directive. After some debate at the Bar, no serious attempt was made by the learned Attorney General to support inclusion within the Single Directive of cases in which the offender is alleged to be in possession of disproportionate assets. It is clear that the accusation of possession of disproportionate assets by a person is also based on direct evidence and no factor pertaining to the expertise of decision-making is involved therein. We have, therefore, no doubt that the Single Directive cannot include within its ambit cases of possession of disproportionate assets by the offender. The question now is only with regard to cases other than those of bribery, including trap cases, and of possession of disproportionate assets being covered by the Single Directive."

9. In view of the above observations, the executive orders of the State Governments in violation thereof had become inoperative, illegal and unconstitutional. As a corollary, the instructions contained in the impugned memo in contradistinction to the observations made by the Hon'ble Supreme Court would not survive. Further, as rightly stated in the counter affidavit, necessity of prior sanction provided in Section 19 of the Prevention of Corruption Act, 1988 is only for prosecution but not for investigation.

10. In view of the observations made in the decision referred to above and the language employed in Section 19 of the Prevention of Corruption Act, 1988, nothing survives for adjudication in this writ petition and the same is liable to be dismissed.

11. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

RAVI CHEEMALAPATI, J

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