REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8540-8541 OF 2022

The State of Andhra Pradesh & Anr. ..Appellants

Versus

Varla Ramaiah etc. ..Respondents

J U D G M E N T

M.R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned interim order passed by the High Court for the State of Andhra Pradesh at Amravati in I.A. No.1/2020 in Writ Petition No.6562 of 2020 and Writ Petition No.6711 of

2020 by which while admitting the writ petitions the High Court has stayed all further proceedings pursuant to the G.O. Rt. No.1411 dated 26.06.2019 and G.O. Rt. No.344 dated 21.02.2020, the State of Andhra Pradesh has preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under:

2.1 By virtue of G.O. issued on 26.06.2019, the State Government appointed a Cabinet Sub-Committee to examine the allegations of corruption against members of the erstwhile Government. On 27.12.2019, the Cabinet Sub-Committee submitted an interim report recording a *prima facie* finding about certain allegations. During the meeting held on 27.12.2019, the Sub-Committee also resolved to consider handing over the investigation to the CBI/CID/Lokayukta. On the basis of the report, vide the second G.O. dated 21.02.2020, the State set up the SIT to undertake an

investigation of these allegations. The said decision was ratified by the Cabinet during its meeting held on 04.03.2020. The head of the SIT thereafter wrote to the Government on 21.03.2020 that the matter had wide-spread ramifications and therefore was required to be handed over to a Central Agency such as the CBI. Accordingly, vide letter dated 23.03.2020 the State Government requested the Central Government to refer the matter to the CBI. On 13.07.2020, the State expressly gave its consent to the exercise of powers by the Delhi Police Establishment within the State of Andhra Pradesh, such that the CBI may conduct such an investigation in respect of the scam involving Andhra Pradesh State Fibre Net Ltd.

2.2 At that stage, the original writ petitioners challenged both G.O. dated 26.06.2019 and the subsequent G.O. dated 21.02.2020 before the High Court by way of the present Writ Petition No.6562 of 2020 and Writ Petition

No.6711 of 2020. The State filed applications for the impleadment of the Union of India and the Enforcement Directorate, since it wished to have these allegations investigated by a Central Agency. The High Court rejected the impleadment applications. However, thereafter by the impugned interim order the High Court has stayed all further proceedings pursuant to the aforesaid two GOs. Hence, the present appeals.

3. Shri S. Niranjan Reddy, learned Senior Advocate appearing on behalf of the State of Andhra Pradesh has submitted that High Court has stayed the further proceedings of the respective G.Os mainly on the following grounds:

> "1. Rule of law demands continuity and a new Government cannot be permitted to overturn the decisions of the previous Government.
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> 2. That the Government, in exercise of its executive powers,

does not have an 'inherent' power of review.

3. That there was 'no lacuna or gap' that needed to be filled and that State could therefore not have exercised its executive power.

4. That Complainant and Investigator being the same, there is likelihood of bias;

5. That Powers to constitute a Commission/SIT ought to be sparingly used even by the Courts. Therefore, the said restriction is applicable to the Government with even more vigour."

3.1 It is submitted that all the aforesaid grounds are completely unsustainable. It is submitted that the High Court has not properly appreciated the fact that the question was not whether the policies of the previous Government ought to be continued. It is submitted that the question was whether alleged acts of corruption/misfeasance alleged

against the previous Government ought to be investigated. It is submitted that the High Court has not properly appreciated the fact that there were wide spread allegations of corruption and, thus, allegations were required to be investigated and, therefore, a Committee was accordingly constituted to inquire into the acts of corruption/misfeasance and there was no other mala fide intention.

3.2 It is submitted that the High Court has not properly appreciated that the respective G.Os were issued by the State Government in exercise of its executive powers and as such were not to review the earlier decisions taken by the previous Government. It is submitted that the act of conducting investigation cannot be termed as a 'review' in the sense in which the High Court has understood.

3.3 It is submitted that the High Court has not properly appreciated the fact that as such the constitution of the SIT pursuant to the G.Os

can only be said to be fact finding itself to inquire into the misdeeds/acts of corruption/misfeasance alleged against the previous Government.

3.4 Number of other submissions have been made by learned Senior Advocate appearing on behalf of the appellant – State on merits of the respective G.Os and the scope and ambit of the Sub- Committee/SIT.

3.5 It is further submitted that as such the State did not act with a mala fide intention as projected before the High Court. It is submitted that in fact the State proposed to have the allegations inquired by the Central Agency for which the letter dated 23.03.2020 was addressed by the State Government to the Central Government to refer the matter to the CBI. It is submitted that, therefore, there was no inherent bias.

4. Present appeals are vehemently opposed by the learned Senior Advocate appearing on behalf of the original writ petitioners. Number of submissions have been made on merits by Shri Siddharth Dave, learned Senior Advocate appearing on behalf of the respondents – original writ petitioners.

4.1 It is submitted by Shri Siddharth Dave learned Senior Advocate appearing on behalf of the original writ petitioners that as such the present appeals are against the interim order/stay granted by the High Court and the main writ petitions are yet to be considered, decided and disposed of by the High Court.

4.2 It is submitted that the stay granted by the High Court has been continued since more than 2 years and, therefore, this Court may not examine the merits of the matter and leave the merits of the matter to be decided by the High Court in the pending writ petitions.

5. Having heard learned Senior Advocates appearing on behalf of the respective parties and after taking into consideration the reasoning given by the High Court while staying the further proceedings pursuant to the G.Os dated 26.06.2019 and 21.02.2020, we are *prima facie* of the opinion that some of the reasoning given by the High Court while staying the further proceedings pursuant to the aforesaid two G.Os. may not be germane, more particularly, when the High Court has observed that the new Government cannot be permitted to overturn the decisions of the previous Government.

5.1 Learned Senior Advocate appearing on behalf of the State is justified in submitting that the High Court has misinterpreted and/or misconstrued the aforesaid two G.Os and treated and/or considered the same as overturning the decisions of the previous Government. If the aforesaid two G.Os are considered, it can be seen that the same

cannot be said to be overturning the earlier decisions taken by the previous Government and/or to review the decisions taken by the previous Government. The Sub-Committee and the SIT have been constituted to inquire into the allegations of acts of corruption and misfeasance of the previous Government.

5.2 However, there may be certain other aspects which are required to be considered by the High Court in the pending writ petitions, more particularly, with respect to the terms of the reference of the Committee. The High Court has also not considered various contentions raised before us based upon the decisions of this Court on legal aspects. The fact that the first petitioner (now appellant) had made a request to the Central Government vide letter dated 23.03.2020 to refer the matter to the CBI followed by the consent given on 13.07.2020 has not been taken into consideration.

5.3 In our view, the High Court ought not to have granted an interim stay when it was not required as the entire matter is at a premature nascent stage. The Central Government is yet to take a call on the letter and the consent given by the first petitioner (now appellant). It would have been better, had the High Court permitted the parties to complete the pleadings, and thereafter, decided the writ petitions one way or the other by affording ample opportunity to the parties before it.

5.4 It has also been brought to our notice that the petitioners (now appellants) did file an application to implead the Union of India and the Enforcement Directorate. The aforesaid application was dismissed by a separate order dated 16.09.2020 *inter alia* holding that the presence of the proposed respondents was not required. The aforesaid approach of the High Court, especially when the main writ petitions are yet to be disposed of, and the request made by the petitioners (now appellants) being

under consideration, ought not to have been adopted. Perhaps, the respondents/writ petitioners themselves could have made Union of India as a party to the writ petitions as the decision on the letter of the petitioner (now appellant) dated 23.03.2020 would have a bearing on the *lis* before the High Court. There is no doubt in our mind that the Union of India is a proper and necessary party to be arrayed as a respondent in the writ petitions.

6. For the reasons aforesaid, we are inclined to set aside the orders dated 16.09.2020 in I.A. 1/2020 and I.A. 2/2020, while making it clear that we have not expressed anything on the merits of the case. The High Court is expected to decide and dispose of the writ petitions on merits and in accordance with law, without being influenced by any of the observations made in our order. Considering the issues governing the facts and law, the High Court may make an endeavour to dispose of the writ petitions finally within a period of 3 months

from the date of receipt of the copy of this judgment. The proposed respondent i.e., Union of India in I.A. 2 of 2020 which was dismissed by the High Court is directed to be added as a respondent in the writ petitions and its views will have to be taken note of.

7. The appeals stand allowed. The miscellaneous applications are closed. No order as to costs.

.....J.
(M.R. SHAH)

.....J.
(M. M. SUNDRESH)

New Delhi,
May 03, 2023.