IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISIDICTION)
WEDNESDAY ,THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY
:PRESENT:
THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

I.A No. 1 OF 2020
IN
WP NO: 6562 OF 2020 AND 6711 OF 2020

I.A No. 1 OF 2020 IN WP NO: 6562 OF 2020

Between:
Varla Ramaiah, S/o. Isaac,

...Petitioner
(Petitioner in WP 6562 OF 2020
on the file of High Court)

AND

1. The State of Andhra Pradesh, rep. by its Chief Secretary to the State, General Administration (Cabinet. I) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The State of Andhra Pradesh,, rep. by its Principal Secretary, General Administration (SC.D) Department, Secretariat, Velagapudi, Amaravathi, Guntur District.

...Respondents
(Respondents in-do-)

Counsel for the Petitioner : M/S BHARADWAJ ASSOCIATES
Counsel for the Respondents :GP FOR GENERAL ADMINISTRATION

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased pleased to grant stay of all further proceedings pursuant to G.O.Rt.No.1411, dated 26.06.2019 and G.O.Rt.No.344, dated 21.02.2020 issued by the General Administration Department, pending disposal of the writ petition and grant Pending disposal of WP No. 6562 of 2020, on the file of the High Court.

I.A No. 1 OF 2020 IN WP NO: 6711 OF 2020

Between:
Alapati Rajendra Prasad, S/o. Sri.Siva Rama Krisimaiah,

...Petitioner
(Petitioner in WP 6711 OF 2020
on the file of High Court)

AND

1. The State of Andhra Pradesh,, Rep. by its Principal Secretary, General Administration (SC.D) Department, A.P. Secretariat at Velagapudi, Amaravati, Guntur District
2. The State of Andhra Pradesh,, Rep. by its Chief Secretary, General Administration (Cabinet.I) Department, A.P. Secretarial at Velagapudi, Amaravati, Guntur District
3. The Special Investigation Team, Constituted under G.O.RT.No.344 GA (SC.D) Dept., dt.21.2.2020 Rep. by its Head, O/o.Director General of Police, Mangalagiri, Guntur District
4. The Director General of Police (HOPF), Police Head Quarters, Mangalagiri, Guntur District

...Respondent(s)
(Respondents in-do-)

Counsel for the Petitioner :M/s. SODUM ANVESHA
Counsel for the Respondent Nos.1 & 2:GP FOR GENERAL ADMINISTRATION
Counsel for the Respondent Nos.3 & 4:GP FOR HOME

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to stay of all further proceedings of the Respondents in pursuance of G.O.RT.No.344 General Administration (SC.D) Department, dt.21.2.2020 of the 1st Respondent, pending disposal of WP No. 6711 of 2020, on the file of the High Court.

The court while directing issue of notice to the Respondents herein to show cause as to why this application should not be complied with, made the following order.(The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

IA.No.1 of 2020

in

WRIT PETITION Nos. 6562 and 6711 of 2020

COMMON ORDER:

Since common questions of fact and law arise and the challenge is to the same two Government Orders viz., G.O.Rt.No.1411, dated 26.06.2019 and G.O.Rt.No.344, dated 21.02.2020, both these matters were taken up for admission together. Even though the Writ Petitions were listed for admission, very extensive arguments were advanced by the two learned Senior Counsels appearing for the petitioners and the learned Advocate General appearing for the State.

The prayer in W.P.No.6562 of 2020 is to issue a writ of Mandamus declaring that the impugned Government Orders in G.O.Rt.No.1411 dated 26.06.2019 and G.O.Rt.No.344 dated 21.02.2020 are illegal, arbitrary and without jurisdiction etc.

In W.P.No.6711 of 2020, G.O.Rt.No.344 dated 21.02.2020 is challenged and in the said process issues are also raised about G.O.Rt.No.1411, dated 26.06.2019. Therefore, the net effect in these writ petitions is a challenge to the two Government Orders. The fundamental challenge is on the ground that the successor Government cannot change the policies of the predecessor Government.

With the consent of the parties and for the admission of the writs, the learned senior counsel Sri Vedula Venkata

Ramana commenced his arguments. The primary submission of the learned senior counsel is that the current Government in power in the State of Andhra Pradesh wishes to conduct a review of virtually every decision taken by the Government in power in the period 2014-2019 by virtue of the two Government Orders. He points out that in G.O.Rt.No.1411, dated 26.06.2019, the terms of reference are mentioned in para 8. He draws the attention of this Court to paras 8(a) to 8(m) and argues that if the cabinet sub-committee goes into the 14 issues [8(a) to 8(m)], virtually every single decision taken by the previous Government in power would be subject to review. He also points out that apart from policy decisions, this would also amount to a review of the day to day decisions that were taken by the Government in power in 2014-2019. He also points out that a residuary power is also kept in sub-clause 8(o) to consider "any other issue". Learned senior counsel argues that such a power of review of virtually every decision of the previous Government is not traceable to any statute. He submits that the Constitution of India is absolutely silent about this power of review. It is his contention that the State Cabinet cannot constitute a committee to review the earlier Government's decision as this would lead to anomalous situation where the State Government would end up being the complainant and also the Investigating Agency. It would also lead to a situation where orders signed by the Governor of a State in 2014-2019 pursuant to the advice of the Cabinet

would be scrutinized by the next Governor of the State on the basis of the advice of the Cabinet in 2019 - 2024. It is also his contention that the terms of reference of this Cabinet sub-committee are so wide and vast that they suffer from the vice of an inherent vagueness as he submits anyone and anything can be brought within its ambit. He points out that such a power of review is not given to the Government in power itself and that a Cabinet sub-committee cannot be empowered to undertake such an investigation. He points out that the executive power of the State does not extend beyond its legislative power and that neither the List 2 nor List 3 of the 7th schedule of the Constitution of India empower the State to pass such Government Orders. He argues out that the impugned Government Orders are issued for political and extraneous purposes and that they are not issued in public interest. He forcefully submits that there is no such precedent in India's political history of the review of every decision let alone in this State's history. It is his contention that both in law and fact and because of an absence of a statutory power, the Government Orders are bad in law.

In continuation of this, Sri Veera Reddy, learned senior counsel appearing for the petitioner in W.P.No.6711 of 2020 adopts the arguments of the learned Senior Counsel for the petitioner in earlier writ petition. He also draws the attention of this Court to the fact that pursuant to G.O.Rt.No.1411, G.O.Rt.No.344 was issued on 21.02.2020 by which

investigation was entrusted to a specialized agency called the Special Investigation Team (SIT) on the recommendation of the Hon'ble Speaker of the Legislative Assembly. Learned senior counsel also raises the issue that the power of review is a power to be derived from a statute. It is his contention that such a wide power of review is not even available to the Courts or to other authorities. He draws the attention of this Court to the various provisions of the Constitution of India and argues that the legislative power and the executive power are co-terminus and that the executive power does not extend to this extent. He also points out that without even a crime being registered, the investigation has begun. He submits that unless and until a crime is registered, the investigation cannot commence. Learned senior counsel draws the attention of this Court to the language used in G.O.Rt.No.1411 and G.O.Rt.No.344 to show that the Government has already come to a conclusion that there are financial irregularities, fraudulent transactions (G.O.Rt.No.344) and unbridled corruption, ruthless exploitation of the resources, grabbing of land, environmental destruction, serious mismanagement of the State's financial system (G.O.Rt.No.1411). The learned senior counsel submits that the Cabinet sub-committee constituted under G.O.Rt.No.1411 has submitted a primary report which is visible in G.O.Rt.No.344. This was discussed in the State Assembly and thereupon the Hon'ble Speaker of the assembly directed further investigation. According to the learned senior

counsel, this power to issue directions for investigation or to form a SIT is not available to the Speaker of the House. It is his alternate submission that if *prima facie* material is available, there is no reason forthcoming why a crime is not yet registered. He argues that only after a crime is registered, there can be an investigation. The fact that there is a report submitted indicates that a part of the investigation is completed. He also questions the constitution of the SIT and argues that a SIT cannot be classified as Police Station under the relevant provisions of the Criminal Procedure Code. Lastly, on facts, he submits that in an implead petition (I.A.No.2 of 2020) which has been filed in W.P.No.6562 of 2020, the State sought to add the Union of India, Enforcement Directorate and the Joint Director, Enforcement as parties. He refers to a notification dated 13.07.2020 and a letter dated 20.07.2020 by which permission under Section 6 of the Delhi Special Police Establishment Act, 1946 was accorded and the CBI was requested to investigate cases, registered against Andhra Pradesh State Fiber Net Ltd. (APSFL), in Crime Nos.25 and 26 of 2019. He draws the attention of the Court to a report submitted by the Cabinet sub-committee in this regard and points out that investigation has therefore progressed and a request is also made to the CBI. Therefore, learned senior counsel argues that the continuance of the SIT is no longer a necessity, that it is redundant but the same is being continued for extraneous political reasons.

The Learned Advocate General appearing on behalf of the State vehemently opposes the submissions made by both the senior counsels. He argues that when large scale fraud is perpetuated and when decisions affecting the States' economy and survival were taken contrary to law and to favour a few; the State has a bounden duty to protect the interest of the citizens and to enquire into the matter. He states that the power of review is inherent in the State. Apart from that he also raises an issue about the *locus standi* of the petitioners to file the writ petitions. He submits that neither of the petitioners in these cases have the *locus standi* to espouse the cause. He submits that neither of them was affected by the passing of the Government Orders or the constitution of the SIT. It is his contention that a writ petition is filed to protect the political interest of the party in power in 2014-2019 and not to espouse a personal right that was infringed. He draws the attention of this Court to the affidavits filed in support of the writ and points out that both the petitioners are members of a political party which headed the Government from 2014-2019 and that they are espousing the cause of their political leaders in order to stop a genuine investigation. He argues that a reading of the affidavit would show that they do not have a right in law to seek a Mandamus. Apart from that learned Advocate General also argues that neither of the petitioners has an authorization from their party to espouse the cause of the political party. Therefore, his submission is that as the

writs are not filed in public interest or by an affected party. they should be rejected. He also argues that neither of the petitioners has pointed out that there is a legal prohibition for issuing these two Government Orders or constituting the SIT. He also argues that the Executive power of the State extends to all the matters of which it has legislative competence and so, he argues that the constitution of the SIT and or the earlier G.O. are valid. He also points out that a letter was addressed to the A.P. High Court to constitute special Courts, but as no decision was received on this; further crimes were not registered because of lack of a Court. He states that as there is no designated Court, the State had to request the CBI and other statutory enquiry agencies to take up the further investigation. Relying upon the case law, learned Advocate General argues that once there is abuse of power and fraud etc., this Court should not come in the way and should allow the process of investigation to go further. He also submits that there is no bias or prejudice merely because the State is the complainant.

In reply to the above submissions, Sri Vedula Venkata Ramana states that review implies a re-examination or a correction of the mistake made but under certain circumstances only by the person who made the mistake. Hence, he submits that a Government in power in 2019-2024 cannot review all the decisions of a Government in power in 2014-2019. He traces the power of review to the review

exercised by Courts and argues that review is available in limited circumstances only. He also states that as per Indian jurisprudence, every crime is a crime against the State and the State prosecutes the offender but now the State is both the prosecutor and the complainant. He states that even under the Commissions of Inquiry Act, 1952, a commission appointed can only enquire into specific pin pointed actions and they do not undertake sweeping enquiries.

Coming to the question of *locus standi*, learned senior counsel submits that the concept of *locus standi* has undergone a change and in constitutional remedies, the Court should not rely on the age old doctrines and should look at the irregularity or illegality. He argues that the terms of reference of this particular Cabinet sub-committee and later the SIT team are so wide that virtually everybody in any way associated with the Government or the party in power in 2014-2019 would be an affected party. So he also submits that the petitioners are affected and interested parties.

Sri Veera Reddy also continues the argument in the same lines and points out that earlier cases SIT were appointed by Courts or under the other enactments after a crime was registered, but in the case on hand, he points out that even before a crime is registered, investigation has started. He also points out that under the Commission of Inquiries Act, the accused is given an opportunity to present his case before the fact finding concludes which is being denied here. On the

question of *locus standi*, the learned senior counsel also supports the argument of the petitioner's counsel in the earlier writ petition.

CONSIDERATION BY THE COURT:-

Since this Court is only looking into the question of admission of the writs at this stage, it is not proposing to go into the depth of all the issues raised. At this stage of admission, the Court should be able to form a *prima facie* opinion that a case is made out for admission of the writ, and then the Court should consider whether an interim order is to be passed or not.

Keeping this in view, the overall submissions of all the learned counsel are being considered. It is also made clear at the very outset that only *prima facie* opinions are being expressed at this stage.

The essential prayers in these writ petitions question the Government Orders in G.O.Rt.No.1411 and G.O.Rt.No.344. As mentioned earlier, in G.O.Rt.No.1411, the Government that has come to power in 2019 constituted a Cabinet sub-committee consisting of five Ministers and one bureaucrat. The terms of reference are contained in para 8(a) to 8 (m). They were given the power to review the policies, programmes, projects, institutions, tender procedures, MOUs, Letters of Intents, Joint Ventures executed or launched, review various corporations and societies, consultancies, consultants,

allotment of lands, mining, leases of investments in power sector and infrastructure projects, omissions and commissions which led to the misery of farmers, youth, SC, ST minorities etc., to review major public private partnerships, Information Technology projects, major projects like Polavaram, CRDA, Roads, Railways and also the role of political leaders and Officials in designing and implementing policies, projects, programmes and administrative decisions. Residuary power is also there to add any other issue. Therefore, an *ex-facie* reading of the G.O.Rt.No.1411 shows that Cabinet committee has been given the power to review virtually every decision taken in the preceding five years by the then Government in power. Subsequently, it appears that the Cabinet sub-committee has submitted a report highlighting certain procedural, legal and financial irregularities, fraudulent transactions with various projects including the CRDA. After a discussion of this report, the Speaker of the Legislative Assembly directed an investigation into the subject matter and a Special Investigation Team was formed with a number of police Officers. These are the Government Orders and the factual matrix that is the subject matter of the writ petitions.

Before going into the issues this Court feels it necessary to note that the definition of a "State" is still not very precise and the problem is compounded by the use of the words STATE and GOVERNMENT interchangeably. However, the people who run and man the STATE namely the GOVERNMENT are given

the reins of power by the ultimate sovereigns -THE PEOPLE. The peoples' representatives get elected and they run the Government. They are the temporary trustees of the power that is given to them to rule as per law. The "Government" as a concept is in a way static and forever like Alfred Lord Tennyson's Brook - and " men may come and men may go, but the Government goes on forever". This is the concept which is more often then lost sight of by the people holding the reins of power. The temporary trustees only rule for a fixed period of time in a democracy.

Aharaon Barack the former Chief Justice of Israel in his book 'THE JUDGE IN A DEMOCRACY' defines the 'DEMOCRACY' as having two main or nuclear values which are crucial for a democracy-

1- The sovereignty of the people expressed through periodic free elections called the 'FORMAL ASPECT OF DEMOCRACY.'

2- The rule of values which comprises of separation of powers, rule of law, judicial independence, human rights, social objectives like public peace and appropriate behaviour like reasonableness, good faith etc., which he calls the 'SUBSTANTIVE ASPECT of DEMOCRACY'. These are also very similar to the role given/assigned to a government by our Constitution also.

Therefore, any Government that has been given the reins of power or the temporary trusteeship will have to be elected and will have to abide by and follow the rule of values or the rule of law which is the substantive aspect of democracy. This is also what is expected of the Government by our Constitution.

This Court is therefore proceeding to analyse in seriatim the submissions made by all the parties against the backdrop of these two principles. The first is satisfied and there is a duly elected government. As far as the second substantive aspect is concerned in the present scenario this Court has to see - What is the law on these issues? Whether the action was taken correctly or is the power exercised correctly and whether the actions are reasonable?

1) **RULE OF LAW and CONTINUITY-** The main issue that has to be kept in mind by the rulers is the concept of the rule of the law and the adherence to the law by everyone particularly the persons in power. Time and again the Hon'ble Supreme Court of India has held that succeeding Governments cannot for political reasons relook at or overlook the projects/decisions/policies initiated by the previous Government.

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In ***State of Haryana v. State of Punjab and another***[1], it has held as follows:

> ".....They forget for a moment that the constitution conceives of a Government to be manned by the representatives of the people, who get themselves elected in an election. The decisions taken at the governmental level should not be so easily nullified by a change of government and by some other political party assuming power, particularly when such a decision affects some other State and the interest of the nation as a whole. It cannot be disputed that so far as policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding government must be held duty bound to continue and carry on the unfinished job rather than putting a stop to the same."

More than once this issue has been clarified. It has been held in ***A.P.Dairy Development Corporation Federation v B. Narasimha Reddy***[2] as follows:

> '40. In the matter of the Government of a State, the **succeeding Government is duty-bound to continue and carry on the unfinished job of the previous Government, for the reason that the action is that of the "State", within the meaning of Article 12 of the Constitution, which continues to subsist** and therefore,

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[1] (2002) 2 SCC 507

[2] (2011) 9 SCC 286 (at page 306)

> it is not required that the new Government can plead contrary to the State action taken by the previous Government in respect of a particular subject. The State, being a continuing body can be stopped from changing its stand in a given case, **but where after holding enquiry it** came to the conclusion that action was not in conformity with law, the doctrine of estoppel would not apply. Thus, unless the act done by the previous Government is found to be contrary to the statutory provisions, unreasonable or against policy, the State should not change its stand merely because the other political party has come into power. "Political agenda of an individual or a political party should not be subversive of rule of law." The Government has to rise above the nexus of vested interest and nepotism, etc., as the principles of governance have to be tested on the touchstone of justice, equity and fair play. The decision must be taken in good faith and must be legitimate."

Even in the judgment cited by the State, particularly, in ***Jitendra Kumar v. State of Haryana***[3] it was held as follows:

> Mr. Dwivedi has drawn our attention to a decision of this Court in ***State of Karnataka and Anr. v. All India Manufacturers Organisation and Ors. MANU/SC/2206/2006 : AIR2006SC1846*** wherein it was held:
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> > 66. Taking an overall view of the matter, it appears that there could hardly be a dispute that the Project is a mega project which is in the larger public interest of the State of Karnataka and merely

[3] (2008) 2 SCC 161

> because there was a change in the Government, there was no necessity for reviewing all decisions taken by the previous Government, which is what appears to have happened. That such an action cannot be taken every time there is a change of Government has been clearly laid down in State of U.P. v. Johri Mal and in State of Haryana v. State of Punjab where this Court observed thus:
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> > [I]n the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, **the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same."**

These decisions make it very clear that the successive Governments cannot simply overlook or decide to overturn the decisions taken by the predecessor government particularly for political or partisan reasons. Consistency and certainty in governance are the qualities needed to ensure the progress of the State. On the whims and fancies of political parties and for political reasons, policies should not be changed except in limited cases like blatant violation of law, clear fraud etc. This is the law of land as laid down by Hon'ble Supreme Court of India more than once and is binding on every person including elected representatives. If they chose to ignore the law of the land, this Court will have to step in remedy or rectify the situation. The power of judicial review is also an integral part of the separation of powers as envisaged by our Constitution and this system of checks and balances is introduced to check the incorrect or malicious use of the discretionary power by

the Government and is a part of the substantive part of democracy mentioned earlier. It becomes the bounden duty of this Court to step in if it finds that the law of the land was not followed or that the actions of the State are arbitrary etc.

Para 4 of G.O.Rt.No.1411, dated 26.06.2019, is reproduced here –

> "4. Unfortunately, governance during the past five years was characterised by unbridled corruption, ruthless exploitation of natural resources – land, water resources, mines, etc. – for private gain, avaricious grabbing of land from small and marginal farmers, especially those belonging to the weaker sections, large scale displacement of poor families from their habitations, thoughtless and needless environmental destruction, privatisation of public institutions, politicisation of the government machinery, complete neglect of farmers, youth, weaker sections, and minorities, and above all, serious mismanagement of the financial system. All these factors together have pushed the state into dark ages that were never experienced in the history of this State."

The G.O. is issued in the name of the Governor of the State by the Chief Secretary himself. The language used in this para makes it apparent that by that date itself the successor government was of the opinion that the offences were already committed. Phrases / words like "unbridled corruption; avaricious land grabbing; serious mismanagement of the financial system etc., are used. The question then arises -was this action genuine/fair/reasonable and not motivated by political considerations? Can this opinion be reached by the successor government without holding a proper enquiry as mentioned in para 40 of the decision in ***AP Dairy Development***

Corporation Federation case (2 supra) is the question that begs for an answer. Nothing is on record to show that by this time the Government had adequate material to come to these conclusions.

2) POWER OF JUDICIAL REVIEW OF POLICY DECISIONS:-

The learned Advocate General vehemently argued that the power of review cannot be used for reviewing "policy decisions". While it is true that the Honourable Supreme Court of India has held that economic, scientific, engineering, defence policies and the like which are crafted by experts in the field should be lightly interfered but in certain judgments, the Hon'ble Supreme Court of India itself has clearly held that the power of review is necessary in order to control or to rein in unfettered discretion. In the well-known case of ***Kumari Shrilekha Vidyarthi v. State of U.P.***[4], it was held as follows:

> "25. In Wade's Administrative Law, 6th Ed., after indicating that 'the powers of public authorities are essentially different from those of private persons', it has been succinctly stated at pp. 400-401 as under:
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> **...The whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.**
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> There is nothing paradoxical in the imposition of such legal limits. It would indeed be paradoxical if they were not imposed. Nor is this principle an oddity of British or American law : it is equally prominent in French law. Nor is it a special restriction which fetters only local

[4] (1991) 2 SCC 212

> authorities : it applies no less to ministers of the Crown. Nor is it confined to the sphere of administration : it operates wherever discretion is given for some public purpose, for example, where a judge has a discretion to order jury trial. It is only where powers are given for the personal benefit of the person empowered that the discretion is absolute. Plainly this can have no application in public law.
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> **For the same reasons there should in principle be no such thing as unreviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is what is the scope of judicial review, and in a few special cases the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere.(Emphasis supplied)**

This was a case of circular issued by the State of U.P., under its executive power, but Hon'ble Supreme Court held that the sweep of Article 14 takes into its fold the circular issued under executive power also.

In ***M.P. Oil Extraction and Ors. v. State of M.P.***[5], the Hon'ble Supreme Court held as follows:

> "The executive authority of the State must be held to be within its competence to frame policy for the administration of the State. **Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes in conflict with any statutory provision, the Court cannot and should not**

[5] (1997) 7 SCC 592

> **outstep its limit and tinker with the policy decision of the executive functionary of the State."**

Similarly, in ***Union of India (UOI) v. Dinesh Engineering Corporation***[6], in para 12 also it was held as follows:

> "There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to a policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. **But then this does not mean that the courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record."**

Thereafter, the Hon'ble Supreme Court proceeded to scrutinize the policy. Hence this Court holds that the power to review policy decisions is also available to this Court and failure to do so would amount to the abdication of this Courts constitutional duty.

3) WHETHER THE POWER TO REVIEW IS AN INHERENT POWER OR NEEDS STATUTORY BACKING:-

The framers of the Constitution gave the Supreme Court of India the power to review its judgments under Article 137 of the Constitution of India. The Supreme Court of India then framed its own rules for review. Order XLVII of the Supreme Court Rules, 2013 states that the Supreme Court can review

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[6] (2001) 8 SCC 491

its judgment or order on the grounds mentioned under Order XLVII Rule (1) C.P.C. for civil matters and in criminal proceedings it can review only on the ground of error apparent on the face of the record. In addition, the application should be filed within 30 days from the date of the order and should be accompanied by the certificate of the AOR. Only written arguments can be filed. Order XLVII of the C.P.C. mentions a few grounds only for seeking a review. As far as the criminal proceedings are concerned, the only ground for review is an error apparent on the face of the record. The power of review was not given to the High Courts by the Constitution. A Constitution Bench in ***Shivdeo Singh and Ors. v. State of Punjab***[7] held that nothing in Article 226 of the Constitution of India prevents a High Court from exercising the power of review. This Bench held that the power of review can be exercised since the High Court is a Court of plenary jurisdiction, to prevent mis-carriage of justice or to correct grave and palpable error committed.

This Court is setting out these matters in detail to show even the Courts of the land which are the ultimate arbiters of law have self-imposed restrictions on the exercise of the power of review. It is not a power that is available for the mere asking. In fact, in the inimitable language of Justice Krishna Iyer, as held in ***M/s. Northern India Caterers (India) Ltd. v.***

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[7] AIR

Governor of Delhi[8] -- "A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon."

This Court also derives support from ***Patel Narshi Thakershi and Ors. v. Pradyumansinghji Arjunsinghji***[9], wherein it was held as follows:

> "4. The first question that we have to consider is whether Mr. Mankodi had competence to quash the order made by the Saurashtra Government on October 22, 1956. It must be remembered that Mr. Mankodi was functioning as the delegate of the State Government. The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government.
>
> **It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.**
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> No provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

Therefore, this Court *has to prima facie* hold that a right of review is not a right "inherent" in every Government as argued by the learned AG and is in fact a "conferred" power through or by a statute.

Even the highest Courts of land have a limited power of review to be exercised in certain well defined situations only. In fact if such an unbridled power is available as suggested it

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[8] (1980) 2 SCC 167

[9] 1971 (3) SCC 844

can lead to abuse as every 5 years after the elections the decisions can be reviewed. An elected body of Ministers, who more often than not are guided by political considerations, should have greater restrictions in reviewing decisions of the previous governments. As pointed out in ***Kumari Shrilekha Vidyarthi'***s case (4 supra), by referring to the passage from Wades Administrative Law, absolute discretion and unbridled power can lead to abuse. If the power is also exercised at the mere whims and fancies (*ipsi dixit*) the Court will interfere.

***Ipsi dixit* as per Legal Dictionary :**

> (Latin, He himself said it.) An unsupported statement that rests solely on the authority of the individual who makes it."

Legal Definition of *ipse dixit*:

> "An assertion made but not proved."

Ipse dixit* as per The Law Lexicon *:

> "He said it himself, i.e., there is no other authority for it. A dogmatic saying or assertion."

4) EXTENT OF THE STATES EXECUITVE POWER etc.-

Next issue that was urged by the learned counsel is that the Executive Power of the State is co-terminus with the power as per Article 162 of the Constitution of India. Neither of the learned counsels had any dispute with this proposition but it was argued that executive instructions cannot be greater than the legislative function. Learned Advocate General on the other hand while agreeing with the scope and ambit of executive

power, argued that if there is a gap / lacuna of if the field is unoccupied, executive instructions can be issued to supplement the legislative instructions or law.

It is also settled law that executive instructions can be used to supplement but not to supplant the law. However, this Court does not *prima facie* find that there is any lacuna or a gap which needed to be filled up through executive instructions. The existence of the power in List 2 of the 7th Schedule is not in doubt but what is important is the need for the exercise of this power? Is it being exercised for valid and genuine reasons? This Court feels that enough power and law to back the power are available to the State to cause investigation into these alleged offences through the existing police set up etc., without issuing these instructions to form a cabinet sub-committee or a SIT. It is not the respondents case that the police department of the State and its wings are not working properly or are not answering to the current Government. No reason is forthcoming why another sub-committee had to be created which in turn through the Speaker of the House directed the creation of a special team. This is an issue on which there is no clarity. The need for the committee and the source of power of the Speaker to issue the directions are not clarified. There is no "gap" in the opinion of this Court for which executive instructions are necessary to supplant the law. The need or the necessity to refer these cases as a "special

class" to the SIT or for the formation/constitution of the Special Courts is also not satisfactorily explained.

5) INHERENT BIAS - As pointed out by Sri Vedula Venkata Ramana this is a peculiar case where the State is the complainant and the State itself is the Investigating Officer/Agency. He points out that in a normal criminal case, an offence is regarded as a crime against the State and the State prosecutes the offender. But in this case, the learned senior counsel points out that the State is both the complainant and the investigator. He submits that this is a clear case of inherent bias.

In reply to this, the learned Advocate General relied upon a recent judgment of the Hon'ble Supreme Court of India in Special Leave Petition (Criminal) Diary No.39528 of 2018, dated 31.08.2020 to argue that merely because the complainant and the Investigating Officer are one and the same, the proceedings cannot be said to be biased. However, a reading of this judgment which is under the NDPS Act makes it clear that the Honourable Supreme Court did not overrule the proposition that if the informant and the investigator are one and the same, the trial is vitiated. The Supreme Court after reviewing the entire law particularly under the NDPS Act etc., came to the conclusion that this is a matter to be decided on a case to case basis. This is an issue which in the opinion of this Court needs to be examined further during the course of the main hearing of the writ petitions. This Court is of the

prima facie opinion that as for both the complainant and the investigator are one there is likelihood of bias/prejudice.

Apart from this the terms of reference as per the G.O. are also extremely wide and open ended which supports the submission of inherent bias. Virtually every decision of the previous Government can be looked into and reviewed. Such open ended terms of reference can lead to abuse as there is unfettered discretion given to the Sub committee to investigate and review every decision.

6) INVESTIGATION AND FIR- The other important point which is raised by both the learned senior counsel appearing for the petitioners is that in the normal criminal procedure, investigation only commences after the FIR is registered.

In the case on hand, learned senior counsel Sri Veera Reddy relying on ***Ashok Kumar Todi vs Kishawar Jahan***[10] points out that the cabinet sub-committee has come to the conclusion after its investigation, that certain offences have taken place and therefore, they directed the constitution of SIT. In G.O.Rt.No.344, there is a reference of the first report of the cabinet sub-committee which talks of **financial irregularities and fraudulent transactions.** Therefore, learned senior counsel points out that the investigation has preceded the report and the registration of the crime.

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[10] (2011) 3 SCC 758

Apart from this even in cases where the highest Court is asked to direct the CBI to investigate a case, the Supreme Court has clearly said that it can do so after recording a prima facie opinion that an offence has been made out and that the cause of justice will be promoted. Therefore, there is a self restricting barrier created which has to be crossed before the Court decides to direct such an investigation. Needless to say such an opinion is formed only after the material is available and is scrutinised. The same does not appear to be the case here. G.O.Rt.No.1411 was issued on 26.06.2019 using very strong allegations of wrong doings. The Cabinet Sub Committee later appears to have submitted a report on 27.12.2019 and then G.O.Rt.No.344 was issued on 21.02.2020 constituting a SIT. A letter was sent to the AP High Court on 28.02.2020 to notify special Courts to try the offenders. Soon thereafter a letter was sent to the Secretary Government of India on 23.03.2020 to send the same to the CBI for investigation. The writ petitions were filed on 06.03.2020 and on 10.03.2020. The reasons for this change in stand is in the *prima facie* opinion of this Court – not satisfactorily explained.

Even where prayers are made for a Court appointed investigation/SIT etc., the Supreme Court has said it is a power which has to be sparingly exercised to ensure a fair investigation etc., and to bypass the regular police machinery. There is no whisper anywhere why the SIT had to be constituted while ignoring the existing machinery.

This Court also notices the fact that despite the very serious nature of the allegations and the strong language used in G.O.Rt.No.1411 or in G.O.Rt.No.344, and the time that has elapsed a couple of cases only are actually registered as on the date of the hearing. No cogent reason is forthcoming for this "progress". One reason offered by the State is that the Government has addressed a letter to the High Court of Andhra Pradesh to constitute Special Courts, but since they did not receive any permission from the High Court of Andhra Pradesh on the administrative side, further progress could not be made. Other than one letter disclosed and a reminder in July 2020 the follow up action is not clear on this.

In the *prima facie* opinion of this Court, this explanation does not really justify the lack of progress. The mere fact that Special Courts were not notified does not mean that the State was totally helpless in proceeding further against the alleged accused or even registering the crimes. The request to the CBI to investigate and the in principle approval were given in July, 2020, long after these two writs were filed and the actions under two G.Os., were challenged. As pointed out by the Learned counsels the request to the CBI and the notification under Sec 6 of the DSPE Act is only with regard to one company called APSFL and certain alleged offences with regard to that and a reference of the alleged offences with regard to the land pooling, land purchases in the Amaravati area. Other than these, none of the other issues which are mentioned in the

G.O.Rt.No.1411 are referred to the CBI also. As per the learned counsels this delay is also a *prima facie* pointer to the fact that the State did not till date unearth any cogent material in its investigation that would justify the constitution and or the continuation of the SIT or the cabinet sub-committee with such wide power of review. More than a year has elapsed from the date of passing G.O.Rt.No.1411 (29-06-2019), and as per the counsels no progress, let alone measurable progress as on the date of hearing has been made on the alleged irregularities / offences so graphically described in the G.O. and for issues mentioned in paras 8 (a) to 8 (n) of the terms of reference in the G.O. Despite the resources at its command the learned Counsels submit that the State could not file any tangible material to show that actionable wrongs were committed under heads 8(a) to 8 (h) of the terms of reference by the previous government. This Court finds *prima facie* strength in these submissions. Sri Veera Reddy in fact submits that the slow progress coupled with the request to the CBI makes the SIT redundant also.

7) *LOCUS STANDI* –

The learned Advocate General raised an issue of the *locus standi* of the petitioners. He argued that neither of the petitioners had the *locus standi* to file the writs and alternatively it was also pointed out that they were filing the case on behalf of their political party without any authorization. This Court notices that the question of *locus*

standi has undergone a change, and the rigid rule of a "person effected" has been considerably easened. The powers of Cabinet sub committee as constituted by the G.O. are also so wide that anybody connected with the party in question could be an affected party as the terms of reference include the role of the political leaders. The petitioner in W.P.No.6562 of 2020 was a General Secretary of the party and a politburo member. The petitioner in W.P.No.6711 of 2020 was a MLA and former Minister.

Therefore, in view of the circumstances of this case it can be said that the petitioners are persons likely to be affected. In addition, it was submitted that there was no express authorisation from the petitioners' party to espouse the cause. This is an academic issue now but it is not a ground to throw out the entire case as this a procedural rule only and is in fact a curable defect. Hence this Court holds that the issue of locus need not deter this Court at this stage.

CONCLUSIONS –

Before concluding this Court recalls the words of Justice Venkatachailah who held as follows in ***R C Poudyal v. Union of India***[11].

> "Mere existence of a constitution, by itself, does not ensure constitutionalism or a constitutional culture. It is the political maturity and traditions of a people that import meaning to a Constitution which otherwise merely embodies political hopes and ideals." (para 128)

[11] 1994 Suppl (1) SCC 324

Hence, as this Court finds that the "substantive aspects of a democracy" are not *prima facie* fulfilled namely:

(1) that as per the rule of law/ law of the land the successor Government must follow the policies of its previous Government as per the judgments of the Supreme Court quoted above and can only deviate for certain strong and clear reasons which are not yet clearly visible in this case.

(2) that the power of review is not a carte blanche or an open invitation to a State Government to review every single decision of the previous Government and it can only be exercised in certain limited scenarios which are not apparent as on date as per the material on record.

(3) that the power of review is also a power to be "conferred" by a statute and is not "inherent" in a Government and as on date the State did not trace the said power of review to any statute.

(4) that matters of "policy" can also be reviewed by the Courts if they are based upon the *ipse dixit* of the Government or if they are unreasonable, arbitrary, in contravention of the law etc.

(5) that despite the widest possible terms of reference, and the passage of time tangible progress has not been made in the investigation of the alleged offences as per the disclosed

material to justify the constitution and the continuance of the cabinet sub-committee or the SIT.

6) that the procedural lacuna and issues arising therefrom like investigation before registration of a crime, separation of these class of offences and the request for special Courts etc., issue of inherent bias / prejudice due to the State being the complainant and investigator and unfettered power of review / very wide terms of reference etc., are also *prima facie* made out.

Hence this Court holds that the petitioners have made out a case for admission of the writ petitions. For all the reasons mentioned above they have also made out a case for an interim relief as prayed for. Therefore, there shall be a stay of all further proceedings in pursuance of G.O.Rt.No.1411, dated 26.09.2019 and G.O.Rt.No.344 dated 21.02.2020.

Sd/- K. TATA RAO
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To

1. The Chief Secretary, General Administration (Cabinet. I) Department, State of Andhra Pradesh, Secretariat, Velagapudi, Amaravathi, Guntur District.
2. The Principal Secretary, General Administration (SC.D) Department, State of Andhra Pradesh, Secretariat, Velagapudi, Amaravathi, Guntur District.
3. The Director General of Police, Spl. Investigation Team, Mangalagiri, Guntur District
4. The Director General of Police, (HOPF), Police Head Quarters, Mangalagiri, Guntur District
5. One CC to M/s Bharadwaj Associates, Advocate [OPUC]
6. One CC to M/s. Sodum Anvesha, Advocate (OPUC)
7. Two CCs to GP for General Administration ,High Court of Andhra Pradesh. [OUT]
8. Two CCs to GP for Home ,High Court of Andhra Pradesh. [OUT]
9. One spare copy

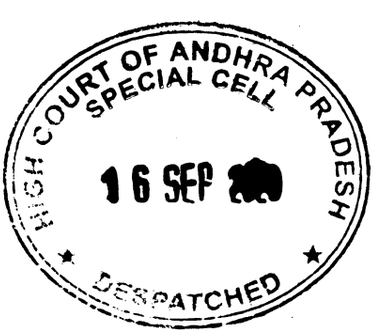
TVR

HIGH COURT

DVSSJ

DATED:16/09/2020

ORDER



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WP NO: 6562 OF 2020 AND 6711 OF 2020

INTERIM STAY