

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 32412 OF 2015

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

Vijayawada Municipal Corporation is the petitioner in this Writ Petition, which was directed against the order passed by the Andhra Pradesh Administrative Tribunal in O.A. No. 1566 of 2015.

The 1st respondent herein, who has retired from service as a Deputy Executive Engineer, instituted the said O.A. Sri P.V. Krishnaiah, learned counsel accepted notice on his behalf and hence, with the consent of both the parties, we are disposing of this Writ Petition at the admission stage itself.

Ms. Jhansi, learned Standing Counsel for Vijayawada Municipal Corporation would submit that the Andhra Pradesh Administrative Tribunal has allowed the O.A. at the admission stage itself instead of providing a fair chance and a reasonable opportunity to the petitioner Corporation to contest the case.

We are a little surprised that the Andhra Pradesh Administrative Tribunal has passed an order allowing the O.A. at the admission stage itself. It is, no doubt, true that the said order has been passed after hearing the learned Standing Counsel for the Corporation. It is also equally true that the learned Standing Counsel is required to be delivered one set of pleadings before the case is taken up for hearing by the Tribunal, but the above said arrangement is only intended to enable the Standing Counsel to secure detailed instructions in the matter or quicken the process of affecting service on the contesting respondent, but certainly, that procedure cannot be a substitute for affecting service on the parties to a */is*. The very purpose of putting a party to a */is* on notice by the Court is not only to bring to the notice of the party about the institution of a case but also by specifically bringing it to the notice of the said party the contents of the averments/pleadings set up against it. It is one thing for a party to become aware about the institution of a case and it would be altogether a different thing for the same party to note the contents of the pleadings set up against it. Both are not the same. A fair and reasonable opportunity to defend a cause is a

fundamental ingredient of the process of judicial decision-making. That is the reason why Courts seldom dispense with service of notice on the parties concerned before it proceeds to decide the *lis* itself. Courts would had rather wait for time for ensuring service of the pleadings than proceeding in a hurry and rendering a judgment which could be fraught with risk and danger of not having considered effectively the defence, which is liable to be offered by such a party. In view of this legal philosophy, which, unfortunately, appears to have escaped the attention of the Tribunal in the instant case, when it allowed the O.A. at the admission stage, as the notice of motion was already delivered to the Standing Counsel, we would consider the order passed by the Tribunal on 24.03.2015 as not wholly sustainable. Therefore, we are required to set aside such an order, but however, the Courts are entitled to pass an *ex parte* interim order. An *ex parte* interim order is not liable to be construed as to have been passed in violation of the principles of natural justice because passing an *ex parte* order, based upon the facts and circumstances prevailing in a particular case, is essentially intended for prevention of miscarriage of justice any further. That is the reason why, granting *ex parte* interim orders is considered as a concomitant and inherent power vested in Courts unless expressly barred by any statute or by a convention it has stood the test of time over the long period of time.

Therefore, to save the situation, we would prefer to characterize the order passed by the Tribunal on 24.03.2015 in O.A.No. 1566 of 2015 as an *ex parte* interim order, so that the petitioner herein, if so advised, can immediately contest the O.A. and seek the said order to be either vacated or modified suitably.

Preserving the said liberty to the petitioner herein, this Writ Petition stands disposed of. No costs.

We only hope and trust that the Andhra Pradesh Administrative Tribunal will spare some consideration for taking up the O.A., on out of turn basis, as it involves a retired public servant.

Consequently, the miscellaneous applications, if any shall also stand disposed of.

NOOTY RAMAMOHANA RAO, J

ANIS, J

06th October 2015

ksld

