

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

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AND

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THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

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WRIT PETITION No. 38544 of 2015

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ORDER: (per Hon'ble Sri Justice G. Chandraiah)

This writ petition is filed for a Writ of Certiorari calling for the records pertaining to the orders dated 22.07.2015 in MA No.1216 of 2015 in OA No.8695 of 2011, and the orders dated 26.02.2015 in OA No.8695 of 2011, on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, and to set aside the same. The petitioner herein is the applicant and the respondents 1 to 5 herein are the respondents before the Tribunal. For the sake of convenience, the parties will be referred to as they were arrayed before the Tribunal.

2. Brief facts of the case are as follows:

The applicant filed the aforesaid OA seeking to call for the records pertaining to Memo No.2412/LWS/B2/GHMC/2011/1344, dated 10.12.2010 of the 1st respondent, and the Memo No.3111/Vig.II(2)/2011-1 dated 22.08.2011 issued by the 5th respondent, along with the Enquiry Report dated 12.04.2010 and set aside the same as contrary to APCS (CCA) Rules and violative of principles of natural justice.

When the said OA came up for hearing on 26.02.2015, there was no representation for the applicant, thereby the OA was dismissed for non-prosecution. The applicant filed MA No.1216 of 2015 seeking restoration of the OA by setting aside the dismissal order dated 26.02.2015. The ground taken in the said MA was that the advocate for the applicant suffered food poisoning and hence there was no representation on 26.02.2015 when the matter was called. The Tribunal

dismissed the said MA observing that the applicant's advocate is said to have been suffering from food poisoning from 24.02.2015 and therefore requested another advocate to represent the matter, but the other advocate also could not represent due to heavy work in other Court. The Tribunal further recorded that it was not the first time that there was default. On 13.02.2015 also there was no representation and the matter was adjourned to 24.02.2015. Even on that day, the applicant's advocate was absent and there was no representation and therefore the matter was directed to be listed under the caption of "For Dismissal" on the next day. Again on 26.02.2015, the applicant's counsel was absent and there was no representation and further no supporting document with regard to the ill health of the advocate of the applicant was placed on record and hence the OA was dismissed for default; and therefore the MA which was filed for restoration of OA, also ended in dismissal.

Aggrieved by the dismissal of the aforesaid OA and the consequential restoration petition, the applicant approached this Court with this writ petition.

3. Heard both the learned counsel.

4. Learned counsel for the petitioner/applicant submits that it is true that he is the counsel for the applicant in the said OA and that he suffered food poisoning on the date when the OA was listed for hearing and hence he could not represent the matter though the matter was listed under the caption "For Dismissal". And, immediately after noticing the dismissal order, an application viz. MA No.1216 of 2015 was filed for restoration of the OA, but the same was also dismissed and that he could not produce supporting documents to substantiate his plea of ill health. The learned counsel further submits that the Tribunal did not ask him to provide supporting documents and as is the practice followed in the Tribunal he stated the reasons for his absence on the

date of dismissal of the OA, and had the Tribunal asked him to file supporting documents evidencing his ill health, he would have filed and therefore the dismissal of OA for non-prosecution and also the restoration application, though he stated the reasons for non-representation on that day, is violation of principles of natural justice.

5. Mr. Pasham Krishna Reddy, learned Government Pleader, submits that the matter may be remanded back to the Tribunal for passing orders in accordance with law.

6. Having regard to the facts and circumstances of the case, we are of the view that no doubt the OA came to be dismissed for default; but however, in the MA, the learned counsel for the petitioner/applicant stated reasons for his absence on the day of dismissal of the OA and the learned counsel for the petitioner also submits that had the Tribunal asked for production of supporting documents to substantiate his plea of ill health, he would have filed supporting documents evidencing his plea of ill health on the day of dismissal of the O.A.

7. In that view of the matter, the impugned orders are set aside and the matter is remanded back to the Tribunal for passing orders, in accordance with law, after giving opportunity to both the sides.

8. The writ petition is, accordingly, disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

04th December, 2015
ksm

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