

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No. 20921 of 2015

DATED 28th September, 2015

BETWEEN

S.Muni Bhushan

...Petitioner

And

The State of Andhra Pradesh,

Rep. by its Principal Secretary, Societies Department,

Secretariat, Hyderabad and ors.

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No. 20921 of 2015

ORDER:

Heard learned Counsel for the petitioner and learned Government Pleader for Respondents 1 and 2.

The petitioner claims to be the life member of the third respondent-Club registered under the provisions of the A.P. Societies Registration Act. The petitioner states that there are 1700 members in the third respondent-club and though there is no provision for constitution of an ad-hoc committee, however,

an ad-hoc committee is running the third respondent-club and it issued a notice on 25.6.2015 to him (petitioner) prohibiting his entry into the third respondent-Club. Challenging the same, the petitioner filed the present Writ Petition.

The learned Counsel for the petitioner submits that there is no provision for constitution of ad-hoc committee and the impugned action taken by the said ad-hoc committee is illegal. He submits that the order dated 25.6.2015, which was served on the petitioner on 26.6.2015, was issued without prior notice and hence principles of natural justice are violated. When this Court pointed out as to how the present Writ Petition is maintainable against third respondent-Club, the learned Counsel for the petitioner relied on Paragraph 7 of the decision of the Apex Court in ***Harbanslal Sahnia Vs. Indian Oil Corporation*** {(2003) 2 SCC 107}, wherein it was held as follows:

“ So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged [See *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.*, (1998) 8 SCC 11. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

He also relied on paragraph 33 of the decision of this Court in ***Muni Krishna Vs. State Election Commissioner*** {2015 (2) ALT 500} where in it was held as follows:

“In my opinion the said decision has no application to the facts of the present case in as much as violation of principles of natural justice is not the only ground for entertaining a Writ Petition when there is an alternative remedy available to the petitioner. The decision in *Guwahati Carbon Limited* (7 supra) indicates that there can be other circumstances where Writ Petition can be entertained notwithstanding the existence of an alternative remedy. In

Harbanslal Sahnia v. Indian Oil Corpn. Ltd., the Supreme Court has indicated other situations where Writ Petition can be entertained even though there is an alternative remedy by declaring:

‘ 7..... In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks (1998(8) SCC 1).”

The argument of the learned Counsel for the petitioner is totally misconceived as it is based on the assumption that this Writ Petition is maintainable in spite of availability of alternative remedy. But this Court is not inclined to entertain the Writ Petition as against the third respondent which is not a State nor discharging any statutory functions.

Accordingly the Writ Petition is dismissed at the admission stage. Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 28th September, 2015.

Msnr_x