

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL No. 314 OF 2015

DATE: 21.04.2015

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Between:

Andhra Pradesh (Residuary) Olympic Association,
Rep., by its General Secretary, Tirupati.

... Appellant

And

Visakhapatnam District Olympic Association,
Rep., by its Secretary, Visakhapatnam,
& others.

... Respondents

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT APPEAL No. 314 of 2015

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JUDGMENT: (Per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

Sri D. Prakash Reddy, learned Senior counsel appearing for the respondent/writ petitioner, upon instructions submits that his client is accepting the notice of

the appeal. Sri S. Satyam Reddy, learned Senior counsel appearing for the 5th respondent, also takes notice of the appeal. Learned counsel appearing for the 2nd and 3rd respondents also takes notice of the appeal. All the learned counsel stated that the appeal should be disposed of today itself without observing any formalities.

It appears that the learned Single judge has passed interim order as prayed for. The prayer in the interim relief is as follows:

“..... High Court may be pleased to restrain the respondents 1 to 3 from recognizing any other association including respondent No.5 as the State Olympic Association for the State of Andhra Pradesh except the one that is formed from bifurcation of the 4th respondent association with the resultant office bearers after the completion of elections scheduled to the respective associations on 19.04.2015 or any other adjourned date pending disposal of the main Writ Petition No.10256 of 2015.”

While reading the above prayer in juxtaposition of the prayer of the writ petition we find nothing is left to decide at the time of final hearing of the writ petition. No reasons have been assigned as to why the ad interim order without any notice is required. We do not find any assessment of prima facie case and balance of convenience in this matter have been made. This sort of interim order was not encouraged by this Court and following the decision of the Supreme Court in the case of **Shiv Kumar Chandha vs. Municipal Corporation of Delhi** this Court in the case of **P. Gayazuddin and others vs. The State of Andhra Pradesh, rep., by its District Collector, YSR District, Kadapa** has not been accepted the same. In paragraph 8 of the said judgment it is stated as follows:

“It is thus clear that ordinarily the Court shall not grant any injunction or interim relief as prayed for without issuing notice to the adversary, but the Legislature has carved out an exception when without issuing a notice, an order of injunction can be passed. The word ‘shall’, succeeding the word ‘Court’ in the proviso, clearly denotes that it is mandatory. The Court has to form an opinion with reasons that the object of granting injunction would be defeated by delay, in event prior notice is served, then in that case, without giving any notice to the opposite party, an ad interim ex parte order can be passed. According to us, it is not a mere legal formality and it is the duty of the Court. But, we feel that in which case and under what circumstances, an ad interim order can be granted is the duty of the Court to examine and take decision. In this case, the Hon’ble Trial Judge has not recorded any reasons as a result, has failed to discharge the duty as mentioned in the proviso. The Court has to act on the assistance of the learned Lawyers and we think that

such assistance was not rendered properly as a result mandatory requirement envisaged in the law has not been fulfilled. On this ground alone we would have set aside the order and remanded for fresh hearing. We think in this case instead of taking recourse to the sort of measure, we examine this case whether ad interim order was warranted at all.

We think that the aforesaid ratio will forcefully be applicable in this case also. We therefore set aside the impugned interim order and allow the appeal. We request the learned Single Judge to hear on the question of grant of interim relief, as all the parties have received the notice. We also request the learned Single Judge to fix a date in the next week on this issue. Obviously, this time the learned Single Judge would be in a position to understand the prima facie case, counter case and balance of convenience. In this appeal the question of maintainability of writ petition has also been taken on various counts. It would be open for the appellant to agitate the same, if so advised. In the meantime, we feel that in the interest of justice and to avoid multiplicity of judicial proceedings there will be an order directing the appellant to give prior 72 hours notice to the writ petitioner in the event any decision is to be taken on the issue involved in the writ petition. In the said notice it must be specifically mentioned about the nature of the decision to be taken. On receipt of such notice it would be open for the writ petitioner to pray for suitable interim relief and direction from the learned Single Judge. We have not decided or recorded anything on the merit of the case. All points are kept open.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 21.04.2015

