

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

WRIT APPEAL No.1019 of 2016

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P.No.20665 of 2016 dated 12.07.2016. In the order under appeal, the learned Judge noted the submission, made by the learned Special Government Pleader appearing on behalf of the learned Advocate General, that neither the Principal Secretary, Agriculture & Co-operative Department, nor the Honourable Minister was conferred with the power to pass the impugned order.

Having noted this submission made by the learned Special Government Pleader, the learned Judge observed that, once it is admitted that either the Honourable Minister or the Principal Secretary had no manner of right with respect to issues governing the no confidence motion, interference with matters covered under the statute would be ultra vires the power of either the Principal Secretary or the Minister; interference of Ministers, where they are not conferred with jurisdiction under the Statute, apart from encouraging disgruntled elements and people who had access with Ministers, would also put enormous pressure on Courts as such acts would be challenged as ultra vires; the arguments of the learned Special Government Pleader that, passing of the orders by the Minister was on account of ignorance or wrong guidance could not be accepted; a Minister holding a cabinet rank is either deemed to be aware of, or to be made aware of, the settled principles, more so with respect to jurisdiction and scope of power which he can

exercise; even assuming that the Minister is not so aware, the 1st respondent, being the Principal Secretary, ought to be aware of and is duty bound to educate the public representative of the scope of power which he exercises, and ought to exercise; there cannot be any ignorance especially by administrative officers who are manning the State and, in whose hands, the entire affairs of the State and lives of people are placed by entrusting governance; the impugned memo dated 22.06.2016 was ultra vires as it was passed without authority; and blameworthy conduct was of the 1st respondent, or the one who had directed him to pass such an order without jurisdiction. While allowing the Writ Petition, the 1st respondent was directed to pay costs of Rs.10,000/-.

While the order of the learned Single Judge, to the extent the memo dated 22.06.2016 was set aside, has not been put in issue before us, the learned Special Government Pleader would submit, placing reliance upon the judgment of a Division Bench of the Calcutta High Court in **Manindra Chandra Nandy vs. Aswini Kumar Acharyya**¹, that every illegal order would not justify imposition of costs; and, as the learned Judge has failed to assign reasons for imposition of costs, the order, to the extent costs of Rs.10,000/- were imposed, necessitated being set aside.

In **Manindra Chandra Nandy**¹, Justice Asutosh Mookerjee, speaking for the Division Bench, observed that, in the case before them, no reasons had been assigned in support of the order for award of costs. As noted hereinabove, the learned Judge has assigned reasons for coming to the conclusion that costs of Rs.10,000/- should be imposed. As noted hereinabove, the

¹ Volume 60 Indian Cases 337

Learned Judge held that the Principal Secretary to the Government must be aware of and was duty bound to educate the Honourable Minister on the scope of the power which he exercised, and ought to exercise. When we asked the learned Special Government Pleader whether the Principal Secretary had pleaded ignorance of such an order being passed, the learned Special Government Pleader would fairly state that, since he was directed to do so by the Minister, the Principal Secretary had passed the order impugned in the writ petition. It does appear that the Principal Secretary had passed the order, impugned in the Writ Petition, on the directions of the concerned Minister, despite being aware that neither the Minister nor he had jurisdiction to entertain an application of this nature.

An intra-court appeal, under Clause 15 of Letters Patent, is not entertained for the mere asking or as a matter of course. Save patent illegality in the order under appeal, no interference is called for. We are satisfied that the order of the Learned Single Judge does not suffer from any such infirmity.

The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)