

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

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WRIT APPEAL No.745 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 in Writ Petition No. 23232 of 2016 dated 19.7.2016 whereby the interim order passed on 14.7.2016 was extended until further orders.

The proceedings under challenge in the writ petition was a notice issued by the Kadapa Municipal Corporation under Sections 405 and 406 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the GHMC Act') calling upon the writ petitioner to remove the cable wires passing through Central Lighting Poles of Kadapa Municipal Corporation. As the order dated 19.7.2016 extended the earlier order of status-quo until further orders, the Kadapa Municipal Corporation is in appeal before this Court.

It is not in dispute that the Central Lighting Poles, over which the respondent-writ petitioner placed cables, belong to the Kadapa Municipal Corporation. It is also not in dispute that the writ petitioner had, on its own accord and without prior permission from the Kadapa Municipal Corporation, placed cables over these Central Lighting Poles. Sri V.R. Reddy Kovvuri, learned counsel for the writ petitioner, contends that the Kadapa Municipal Corporation was discriminating against the writ petitioner and, while they had initiated action against them, there were several other Multiple System Operators against whom the Corporation has not taken any action. Learned counsel, while relying on an order passed by this Court in Writ Petition No. 11585 of 2015 dated 24.7.2015, would also contend that an appeal against the order passed in Writ petition No. 23232 of 2016 dated 19.7.2016 is not maintainable as the earlier order, in the very same writ petition, dated 14.7.2016 has not been subjected to challenge.

As the Central Lighting Poles, admittedly, belong to the Kadapa Municipal Corporation, it is only with their prior permission could the writ petitioner have placed cables thereupon, or made use of these poles for placing the cables needed for their cable net work. Admittedly, no such permission has as yet been granted. The plea, in justification of their

unauthorised act of placing cables over the Central Lighting Poles of the Kadapa Municipal Corporation, is one of discrimination. As held by the Supreme Court, in **Chandigarh Administration vs. Jagjit Singh and another**^[1], a plea of discrimination can only be examined if the persons, with whom the petitioner claims parity, are arrayed as respondents in the writ petition for, in their absence, the Court would not be justified in examining whether or not the petitioner has been treated differently from them. As held by the Supreme Court, in the aforesaid judgment, even if the authorities have not taken action against some others for their illegal acts, that would not justify the petitioner seeking a direction from this Court that the illegality be perpetuated. In any event, we see no illegality in the action of the respondents in issuing notice to the petitioner directing them to remove the cables which were placed on the Central Lighting Poles of the Kadapa Municipal Corporation.

With regards the plea of maintainability, the earlier order passed in Writ Petition No. 23232 of 2016 dated 14.7.2016 was a direction to both the parties to maintain status-quo, with regard to the cables which were laid through the electrical poles, till 19.7.2016 when the matter was directed to be listed. The said order dated 14.7.2016 did not remain in force after the matter was posted on 19.7.2016, and it is only the order passed on that day (19.7.2016) whereby, the interim order granted earlier was extended until further orders, which remains in force. The Kadapa Municipal Corporation has rightly questioned this order.

While we see no reason to continue the order of status-quo, we make it clear that the Kadapa Municipal Corporation, being a Local Authority, is bound to take action uniformly against all those who have acted illegally, and not proceed against a selective few. While vacating the order of status-quo passed by the learned Single Judge, and permitting the Kadapa Municipal Corporation to proceed and take action in accordance with law against the respondent-writ petitioner herein, the Corporation is directed to take action forthwith, against all those Multiple System Operators in Kadapa who have placed cables over the Central Lighting Poles belonging to the Kadapa Municipal Corporation, in accordance with law. Needless to state that this order will not come in the way of the Kadapa Municipal Corporation taking a uniform policy decision with regards leasing out the Central Lighting Poles to

all those who seek to use them for placing their cables for the purposes of their cable net work.

Subject to the above observations, the interim order of status-quo is vacated and the writ appeal is disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

23rd August 2016

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Date: 23.08.2016

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[\[1\]](#) AIR 1995 SC 705