

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT APPEAL No. 817 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 Writ Petition No. 26318 of 2016, dated 5.8.2016. The jurisdiction of this Court, under Article 226 of the Constitution of India, was invoked by the appellant herein seeking a direction from this Court to declare the interim award passed by the Vidyut Ombudsman in Appeal No. 51 of 2016, dated 2.8.2016, in so far as payment of 1/3rd of the demand amount is concerned, as arbitrary and illegal.

From the facts as noted in the order under appeal, it is evident that the appellant herein had approached the Consumer Grievances Redressal Forum challenging the penal charges levied from June 2014 to September, 2014; the Consumer Grievances Redressal Forum, after giving both the parties a reasonable opportunity of being heard, had rejected the complaint; aggrieved by the order dated 23.6.2016 the appellant herein had filed Appeal No. 51 of 2016 before the Vidyut Ombudsman for the State of Telangana; and, while admitting the appeal on 2.8.2016, the Vidyut Ombudsman had passed an interim award directing the appellant to deposit 1/3rd of the demanded amount, questioning which the writ petition was filed.

In the order under appeal, the learned Single Judge observed that this Court would not lightly interfere with the discretionary order passed by the lower Court/Tribunal; there was no error apparent on the face of the record which warranted interference with the orders passed by the Ombudsman; at the time of hearing, the learned counsel for the petitioner had requested two months time to deposit the amount mentioned in the interim award; the learned Standing Counsel had

submitted that one week's time may be granted to the petitioner; and having regard to the facts and circumstances of the case, and in view of the submissions made by both the counsel, the appellant herein was directed to deposit 1/3rd of the demanded amount within one month from the date of receipt of the order.

Sri M.P. Chandra Mouli, learned counsel for the appellant, would submit that no power is conferred on the Vidyut Ombudsman to pass a conditional order of stay; his power is either to grant stay or not at all; the entire industry is facing a severe financial crunch; they are now called upon, pursuant to the order of the Supreme Court, to pay a substantial amount towards Fuel Surcharge Adjustment; and in such circumstances the order of penalty, which is under challenge before the Vidyut Ombudsman, would cripple the appellant-industry.

The question regarding the power of the Vidyut Ombudsman to pass a conditional order does not appear to have been raised before the learned Single Judge, as the order under appeal does not so state. Even otherwise, accepting the submission of Sri M.P. Chandra Mouli, would mean that the Ombudsman either has the power to grant or refuse stay, and not to pass a conditional order of stay. Refusal to grant stay would have put the appellant in a far worse position than they are now placed in, and they would have been required to pay the entire amount.

The jurisdiction which this Court exercises, in an intra-Court appeal under Clause 15 of the Letters Patent, is extremely limited. Save patent illegality, in the order under appeal, the Division Bench would, ordinarily, refrain from interference. We find no patent illegality in the order passed by the learned Single Judge. However, considering the request of the appellant on the ground of financial difficulties, as a request was made before the learned Single Judge to grant two months time for deposit of the amount mentioned in the interim award, and as the learned Single Judge has granted one month's time, we consider it

appropriate to grant the appellant time till 1.10.2016 to pay the said amount.

The writ appeal is, accordingly, 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)

2nd September, 2016

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