

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

WRIT APPEAL No.689 OF 2016 & WRIT PEITION No.24172 of 2016

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

Curiously, in this case, it is the respondent-writ petitioners who insist that the interlocutory order passed by the Learned Single Judge not be varied, and the main relief sought for in the writ petition not be granted, though the appellant (respondent in the Writ Petition) would request us to set aside the impugned Order, and grant the petitioner the relief sought for in the Writ Petition.

It is necessary, in this context, to note the facts of the case, albeit in brief. The proceedings, under challenge in the writ petition, are the orders passed by the State Government in G.O.Rt.No.151, Higher Education (CE-A2) Department, dated 29.06.2016 and G.O.Rt.No.171, Higher Education (CE-A2) Department, dated 15.07.2016. By way of an interlocutory application the respondent-writ petitioners sought interim suspension of the aforesaid orders.

By G.O.Rt.No.151 dated 29.06.2016 the 4th respondent accorded permission to the appellants to shift their degree college from Venkatagiri to Naidupet in Nellore District, and to change the name of their college, in relaxation of Rule 14(3) of G.O.Ms.No.29 dated 05.02.1987 read with G.O.Ms.No.35 dated 25.04.2007 and G.O.Ms.No.211 dated 08.11.2007. Pursuant thereto the State Government, exercising the powers of exemption conferred on them by Section 100 of the A.P. Education Act, 1982 (for short "the Act"), issued G.O.Rt.No.171 dated 15.07.2016 according permission to the appellants to shift their college from Venkatagiri to Naidupet in Nellore District, and to change the name of their college. The validity of these G.Os was questioned, among others, also on the ground that they fell foul of the statutory requirement of Section 100 of the Act. In the interim order, now under appeal before us, the learned Single Judge

noted that the said G.Os did not indicate any reasons for grant of exemption which was mandatory under Section 100 of the Act and, accordingly, suspended both the G.Os.

Sri C.V.Mohan Reddy, learned Senior Counsel appearing on behalf of the appellants, initially sought to support the G.Os issued by the Government. When we pointed out that Section 100 of the Act, which conferred power on the Government to exempt any educational institution from the operation of all or any provisions of the Act and the Rules made thereunder by way of a notification and for reasons to be specified therein, had been violated and the impugned G.Os do not assign reasons for grant of exemption, learned Senior Counsel would submit that, as the impugned G.Os appear to be bereft of reasons, this Court may consider setting aside the G.Os, and directing the respondent-officials to pass a reasoned order afresh and in accordance with law.

The Learned Government Pleader for Higher Education would submit that the Government was ready and willing to withdraw both these G.Os, and to pass a reasoned order afresh and in accordance with law.

While both Sri C.V.Mohan Reddy, Learned Senior Counsel and the Learned Government Pleader for Higher Education would request that the impugned G.Os be quashed on the ground that they are bereft of reasons, Sri P.V.Krishnaiah, learned counsel appearing on behalf of the respondent-writ petitioners, would insist that the appellants be relegated to the remedy of filing a petition to vacate the interim order contending that any order, varying/vacating the interim order, can only be passed by the learned Single Judge on his jurisdiction being invoked by way of a petition to vacate stay. In effect the submission, urged on behalf of the petitioner, is that, instead of allowing the writ petition, the interim order should be continued, and the appellants should be relegated to filing a petition before the Learned Single Judge seeking vacation of the interim order, more so as the validity of

the impugned orders are questioned on several grounds.

While we do not, in the facts and circumstances of the present case, intend examining the submissions urged by Sri P.V.Krishnaiah, learned counsel appearing on behalf of the respondent-writ petitioners, we must, nonetheless, note the contentions urged by him in this regard. According to the learned counsel, the remedy of the respondents in a writ petition is only to file a petition seeking vacation of an *ex parte* interim order; no special reasons were mentioned in the grounds of appeal as to why the appellants chose not to avail such a remedy instead of invoking the appellate jurisdiction of this Court; it is not even their case that the order under appeal suffers from any illegality; as the Letters Patent is a pre-constitutional law, and as the High Court has framed Rules governing Writ Proceedings in exercise of its powers under Article 225 of the Constitution of India, the remedy of an intra-court appeal, under Clause 15 of the Letters Patent, is not available, more as the Writ Proceedings Rules do not provide for such a remedy; and, unlike a Chartered High Court, the procedure governing intra-court appeals is regulated only by the Writ Proceedings Rules, and not by Clause 15 of the Letters Patent. He would refer to Rules 7(a) and 14 of the Writ Proceedings Rules to submit that the present appeal is not maintainable. He would also rely on ***Midnapore Peoples Co-op. Bank Limited vs. Chunilal Nanda***^[1] and ***Umaji Keshao Meshram vs. Radhikabai W/o. Anandrao Banapurkar***^[2] in this regard.

Clause 15 of the Letters Patent provides for an intra-court appeal. As both the Single Judge and the Division Bench of the High Court exercise jurisdiction only under Article 226 of the Constitution of India, and the power conferred on the High Court thereunder is part of the basic structure of the Constitution (***L.Chandra Kumar vs. Union of India***^[3]), such a power can neither be negated nor circumscribed by even an amendment to the Constitution, let alone by legislation -

either plenary or subordinate. While the aforesaid contentions, urged by Sri P.V.Krishnaiah, Learned Counsel for the respondent-writ petitioners, can be examined in an appropriate case, we are satisfied that the present case is not one in which we should undertake its examination, as we are inclined to grant the respondent-writ petitioners the main relief sought for by them, and to allow the writ petition filed by them. Suffice it to observe that, even if the orders passed by the Government are questioned on several grounds, it is unnecessary for this Court to examine all the grounds urged in challenge to the validity of the impugned order, when it is satisfied that the order must be set aside on one of such grounds.

As we were satisfied that the order passed by the Government falls foul of Section 100 of the Act, we see no reasons to keep the writ petition pending on the file of this Court or to relegate the appellants to the remedy of filing a petition to vacate stay, as the interim order passed by the learned Single Judge would remain in force only till the main writ petition is decided, and not thereafter.

Both the impugned G.Os are set aside on the short ground that they are bereft of reasons and, therefore, fall foul of Section 100 of the Act. It is made clear that this order shall not preclude the respondents from passing a reasoned order afresh, and in accordance with law.

The Writ Appeal is disposed of, and the Writ Petition is allowed. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

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(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

17th August 2016
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[\[1\]](#) (2006) 5 SCC 399

[\[2\]](#) (1986) Supp SCC 401

[\[3\]](#) AIR 1997 SC 1125