

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

Writ Appeal No.918 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 proceedings in W.P.No.29946 of 2016 dated 15.09.2016 whereby the learned Single Judge, while ordering Notice Before Admission returnable in three weeks, directed the Writ Petition to be posted along with the W.P.M.Ps after two weeks. The proceedings under challenge in the said Writ Petition is G.O.Rt.No.201 dated 30.06.2016 issued by the State Government, in the exercise of its powers under Section 100 of the A.P. Education Act, 1982 (for short "the Act"), according permission to the 6th respondent herein to shift their degree College from Venkatagiri to Naidupet in Nellore District. The reasons recorded for grant of exemption are that the 6th respondent is unable to get the minimum number of admissions during the academic years 2014-15 and 2015-16, to avoid inconvenience to the students who had already joined the college, and the 6th respondent had spent a large amount to establish the college and to shift to Naidupet.

Sri P.V.Krishnaiah, learned counsel for the appellants, would submit, not without justification, that under Rule 14(3) of the A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987 (for short "the Rules"), no institution, for which permission is granted to establish a college to meet the educational needs of a particular locality, shall be permitted to shift it to another locality; only in exceptional cases does the Rule confer

power on the Government to accord permission to shift the college within the same locality; the Rules prohibit shifting of the college from one city or town to another; while the power to grant exemption is conferred under Section 100 of the Act, exercise of power must also be reasonable; the reasons assigned, in the order impugned in the Writ Petition, for grant of exemption are wholly irrational and irrelevant; by ordering notice, the appellants have been put in a worse situation than they would have been if their application had been rejected, for then there would be no dispute regarding their remedy of an intra-court appeal under Clause 15 of the Letters Patent; the impugned order suffers from non-application of mind; and, therefore, the said order is liable to be set aside. Learned counsel would draw attention of this Court to the reference made in the impugned G.O, i.e., to G.O.Ms. No.35 dated 25.04.2007, and G.O.Ms.No.211 dated 08.11.2007, by which the 1987 Rules were subsequently amended.

While the aforesaid submissions of Sri P.V.Krishnaiah, learned counsel for the appellants, regarding the validity of the proceedings, impugned before the learned Single Judge, cannot be said to be without merit, all these questions can only be examined if this Court can entertain this appeal under Clause 15 of the Letters Patent.

Sri C.V. Mohan Reddy, learned Senior Counsel appearing on behalf of respondents 6 and 7, would submit that the learned Single Judge had merely ordered Notice Before Admission, and had directed the matter to be posted after two weeks; no order has been passed by the learned Single Judge against which an appeal, under Clause 15 of the Letters Patent, would lie; merely ordering

notice does not amount to a judgment; it is only against a “judgment” does an appeal lie under Clause 15 of the Letters Patent; and all the contentions now urged before this Court by Sri P.V. Krishnaiah are matters for examination by the learned Single Judge in the Writ Petition pending admission before him. He would rely on ***Shah Babulal Khimji vs. Jayaben D.Kania***¹ and ***Kunala Subbarao vs. P.Nagaratnayamma***².

In ***Kunala Subbarao***² a Division Bench of this Court observed:

“.....We have heard Sri Suryanarayanamurthy for the appellants at full length and we are fully satisfied that this particular appeal is wholly incompetent and cannot be maintained under clause 15 of the Letters Patent. It should be emphasised that the institution of an appeal is a statutory creation and is unknown to that grand old dame, common Law. **This appeal is filed under clause 15 of the Letters Patent. The question whether an appeal, under clause 15 of the Letters Patents, is competent against a mere ordering of notice by a learned single judge should therefore be answered only on the basis of the meaning the word 'judgment' bears in clause 15 of the Letters Patent. Clause 15 of the Letters Patent provides for a right of appeal only against a 'judgment' passed by a learned single judge. If ordering notice within that meaning then appeal would be competent. The question therefore is whether in ordering notice on the appellants' application for grant of stay, Lakshminarayana Reddy, J., has passed a judgment. It must be admitted that the meaning of the word 'judgment' has sometimes been variedly interpreted in our High Court itself by some learned judges acting on the assumption that even ordering notice without finally adjudicating upon the merits of the C. M. P. would amount to passing of a judgment.** But its ordinary meaning is one which Halsbury's Laws of England gives us any decision given by a court on a question at issue between the parties (see Burrows' 'Words & Phrases'). **According to this meaning of the word 'judgment', where there is no adjudication on merits, there can be no judgment. It appears to us that this view is preferable to the other which assumes that there can be a judgment even where there is no adjudication on the issue between the parties. In other words, the word 'judgment' means adjudication of the issues between the parties, may be even ex parte. By ordering a mere notice the Court does not trench upon the merits and makes no adjudication on issues between the parties. It merely postpones the adjudication to a future date. Let us admit that such a postponement causes some inconvenience or even detriment to the party. But that inconvenience or detriment is not the result of an adjudication by the Court on any issue between the parties. It is merely postponing the hearing to a future date. That is**

¹ AIR 1981 SC 1786(1)

² AIR 1982 AP 443

not one of the issues between the parties and that is no adjudication at all. The court does not lose its jurisdiction over the matter by ordering notice nor would it become functus officio by passing such an order. Strictly speaking the notice ordered would not in any way affect the rights of the applicant as such an order would have the effect of only postponing the hearing to a later date after service of notice on the party sought to be affected. It is really an act of refusal to adjudicate immediately and that might cause prejudice, but that is no adjudication and no passing of a judgment. The ordering of notice cannot by any reasonable standards be regarded as amounting to passing of a judgment on any issue between the parties. If such an order is not a judgment, clearly no appeal lies. The recent judgment of the Supreme Court is *Shah Babulal Khimji v. Jayaben* (reported in AIR 1981 SC 1786), approving the observations of Sri Arnold White C. J. in *Tularam Row's case* (1912 ILR 35 Mad 1) clearly goes against the argument of the appellants. Arnold White C. J. in his judgment assumed that judgment is the function of an adjudication of the rights. He even said that such an adjudication must put an end to the entire suit or proceedings so far as the Court before which the suit or proceeding is pending is concerned. Clearly ordering notice does not involve any adjudication of the rights of the parties, nor does it put an end to the entire suit or proceedings so far as the Court before which the suit or proceedings is pending is concerned. **Clearly ordering notice does not involve any adjudication of the rights of the parties, nor does it put an end to the proceedings in the sense in which the learned Chief Justice has used that word. Ordering of notice can be nothing more than a step towards obtaining the final adjudication in those proceedings. Even where it might cause prejudice, it cannot be described as a judgment. It is a step in aid and such a step in aid isn't a judgment within the meaning of Letters Patent.** In view of the above, we are unable to entertain this appeal.

But Sri Suryanarayanamurthy argued that it is the substance of an order that **must** be looked into and not the form and that even ordering of notice can at times amount to a rejection of the petitioner's prayer for relief. It may be. But what Clause 15 of Letters Patent makes appealable is only positive adjudication but not refusal to grant immediate aid. But Sri Suryanarayana Murthy's argument is slightly guilty of exaggeration. So long as it is permissible for the Court to adjudicate upon the C. M. P. on which a notice has been ordered, it would be theoretically impossible to contend that ordering of notice in such case affects anyone's rights. There is scope for retrieving of the situation and there is scope for retrieving. That would exclude the possibility of any adverse effects being produced. **In our view, this substance theory of adverse effects has therefore no substance. In any case, in view of the fact that Clause 15 of Letters Patent permits appeals only against judgments and as ordering of notice does not trench upon merits or constitute adjudication, no Letters Patent Appeal is competent against those orders.**

The other argument of the learned counsel Sri. Suryanarayana Murthy is that just as some Courts treated refusal to grant an ex parte injunction and ordering notice as amounting to refusal to grant an ex parte stay. In fact, the provisions of C. P. C. make the granting of an ex parte stay an exception by calling for recording of special reasons for such an order. We are, therefore, unable to accept that submission. **But in any case for the purpose of Clause 15 of the Letters Patent, it**

should be held that unless a matter is adjudicated upon on issues between the parties, no judgment can ensue. No order made by Court merely issuing notice and postponing the adjudication to a future date can be regarded as a judgment. The fact that retrieval and restitution are possible in all such cases, no real harm or detriment can ensue to the parties...."
(emphasis supplied)

As extracted hereinabove, an identical question, whether an appeal would lie, against an order of the learned Single Judge having ordered notice, fell for consideration before the Division Bench in **Kunala Subbarao**², and the Division Bench held that mere ordering of a notice does not amount to a "judgment", and it is only against a judgment that an appeal lies under Clause 15 of the Letters Patent. The Division Bench took note of the judgment of the Supreme Court in **Shah Babulal Khimji**¹ and observed that, in view of the fact that Clause 15 of the Letters Patent permits appeals only against judgments and as ordering of notice neither trenches upon merits nor does it constitute adjudication, no Letters Patent Appeal is competent against those orders. The Division Bench further observed that, for the purposes of Clause 15 of the Letters Patent, it should be held that, unless a matter is adjudicated upon on issues between the parties, no judgment can ensue; no order made by the Court merely issuing notice, and postponing the adjudication to a future date, can be regarded as a judgment; and as retrieval and restitution are possible in all such cases, no real harm or detriment can ensue to the parties.

The judgment of the Coordinate Bench in **Kunala Subbarao**² is binding on us. When we expressed our inability to entertain this appeal under Clause 15 of the Letters Patent, as the learned Single Judge had merely ordered notice, Sri P.V. Krishnaiah, learned counsel for the appellants, would contend that, in certain cases,

merely ordering notice would also cause substantial injustice to the parties; deferring hearing, of the application for grant of stay, may in certain cases, like in the present, cause substantial injustice; it is not as if the learned Single Judge had merely ordered notice but he had also directed the writ petition to be listed along with the WPMPs; this amounts to refusal to pass an order in the WPMPs; and, in the light of the law declared by the Jharkhand High Court in ***Bharat Cooking Coal Limited vs. Dev PL(JV), Dhanbad***³ and the Madras High Court in ***Union of India vs. Government of Tamilnadu***⁴, an appeal under Clause 15 of the Letters Patent would lie thereagainst.

In ***Bharat Cooking Coal Limited***³, the challenge before the Division Bench of the Jharkhand High Court was to an interim order passed by the Learned Single Judge granting status quo. On an objection being raised to the maintainability of the appeal, the Division Bench of the Jharkhand High Court, relying on ***Midnapore Peoples Co-op. Bank Limited vs. Chunilal Nanda***⁵, held that it is only against routine orders or orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties, that a Letters Patent Appeal is not maintainable; and the interlocutory order under appeal, which caused gross injustice to a party, which deprived him of a valuable right, and which contained attributes and characteristics of finality, should be treated as a judgment within the meaning of the Letters Patent.

³ 2014 Indlaw JHKD 294

⁴ 2013 Indlaw MAD 832

⁵ (2006) 5 SCC 399

In **Union of India**⁶, the question which arose for consideration before the Division bench of the Madras High Court was whether an appeal under Clause 15 of the Letters Patent would lie against an interim order of injunction passed by the learned Single Judge. Relying on **Shah Babulal Khimji**¹, the Division bench of Madras High Court observed:

“.....In reply, the learned Advocate General submitted that the policy decision taken by the Central Government can be challenged if it is in violation of the provisions of the Constitution, statutory enactment and against public interest or does not subserve the public interest. He further submitted that under the dual pricing policy, there is no restriction imposed on any of the bulk consumers to get high speed diesel from the retail outlets operated by the petro dealers, and the effect of the impugned order passed by the learned single Judge is only to provide a single place for the supply of high speed diesel required for operating the buses. According to the learned Advocate General, if the impugned order had not been passed, the buses of the State Transport Undertakings would have to go to the retail outlets for getting their tanks filled up, for which the State would have paid only concessional rate payable to high speed diesel, as there is no such prohibition in the policy. Thus, neither the Union of India nor the oil marketing companies are suffering any losses on account of the interim injunction granted by the learned single Judge. **He further submitted that the interim injunction was granted only till 12th April, 2013, and before the learned single Judge, learned standing counsel appearing for the Union of India did not raise any such plea, as has been raised in the present appeal. It is always open to the Union of India to move an application for vacating the exparte order of interim injunction passed by the learned single Judge, and all the pleas raised herein by the appellant shall be considered by the learned single Judge at the time of passing final orders on the application filed for grant of interim relief or finally deciding the main writ petition.** He further submitted that it is the usual practice of this Court not to assign any reasons while granting interim relief by passing an order of interim injunction at the initial stage, which practice has been followed by the learned single Judge in this case also. According to him, after exchange of affidavits, this Court considers all the pleas raised by the respective parties while passing order on the miscellaneous application, and therefore, the impugned order passed by the learned single Judge does not call for any interference.

Mr.M.Ravindran, learned senior counsel appearing for the Oil Marketing Companies, submitted that the learned single Judge ought not to have granted an order of temporary injunction where a policy decision is under challenge. The effect of grant of temporary injunction has a cascading effect and the oil marketing companies are put to loss of approximately Rs.424 crores daily, as other bulk consumers have also approached the other High Courts for grant of interim injunction. He has relied upon a decision of the Hon’ble Supreme Court in Bhavesh D.Parish vs. Union of India reported in 2000 (5) SCC 471.

⁶ 2013 Indlaw MAD 832

In the present case, the interim order passed by the learned single Judge, though does not finally decide a issue, but materially and directly affects the appellant, as the Oil Marketing Companies, which supply diesel to the first respondent herein, would be required to supply diesel at the rate at which they are supplying to the retail consumers thereby causing daily loss to the Oil Marketing Companies running into several crores of rupees, and thus burdening the appellant in grant of subsidy. The view, which we are taking, is in lines with the principles laid down by the Hon'ble Supreme Court in Shah Babulal Khimji vs. Jayaben D.Kania and another (supra) (which has been followed by the Hon'ble Supreme Court in the case of Midnapore Peoples' Coop. Bank Ltd., (supra), wherein the Hon'ble Supreme Court, while considering the scope of Clause 15 of the Letters Patent had held that every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments, which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

Thus, the appeal preferred under Clause 15 of the Letters Patent by the appellant is maintainable....." (emphasis supplied)

The law laid down in the aforesaid judgments, of the Jharkhand and Madras High Courts, is that even where the interim order passed by the learned Single Judge does not finally decide an issue, but materially and directly affects the appellant, it can be regarded as a judgment under Clause 15 of the Letters Patent as it affects the vital and valuable rights of the parties and causes serious injustice to them.

Unlike in the aforesaid judgments of the Jharkhand and Madras High Courts, where an appeal under Clause 15 of the Letters Patent was preferred against an interim order, the appeal, in the present case, is against the action of the learned Single Judge in ordering Notice Before Admission. It is no doubt true that notice was taken by the Government Pleader, the Standing Counsel and the counsel for respondents 6 and 7, but the fact remains that the learned Single Judge has not passed any order in the interim applications filed by the appellants herein. He has merely directed that the Writ Petition be posted along with the MPs

after two weeks. When Notice Before Admission is ordered in a Writ Petition, it is the Writ Petition which is listed after two weeks and all the M.Ps filed therein are also listed along with the Writ Petition. That does not mean that the W.P.M.Ps have either been dismissed, or the request therein, for grant of interim relief, has been refused.

Sri P.V. Krishnaiah, learned counsel for the appellants, would further contend that, accepting the interpretation placed on the scope of Clause 15 of the Letters Patent by the Division Bench in **Kunala Subbarao²**, may well result in a person being denied of his right to approach the appellate Court even in cases where grave injustice is caused to them by the order of the learned Single Judge in deferring hearing, and in ordering notice. While this submission of the learned counsel cannot be said to be devoid of merits, the Coordinate Bench judgment in **Kunala Subbarao²** binds us and, in the light of the law declared therein, we are precluded from entertaining an appeal under Clause 15 of the Letters Patent in the present case.

Conscious as we are of the fact that it is not appropriate for us to determine the board of the learned Single Judge, we must express our inability to accede to the request of Sri P.V. Krishnaiah, Learned Counsel for the appellant, that a date be fixed, for listing of the Writ Petition, for admission. However, as it does appear that delay in hearing the Writ Petition may affect the appellants' rights, we request the learned Single Judge to take up the writ petition for admission at an early date.

Subject to the above observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

29th September 2016
JSU



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



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Date: 29.09.2016

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