

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION No. 10679 of 2017

ORDER: (*per Hon'ble Sri Justice Sanjay Kumar*)

The petitioner is the applicant in O.A.No.5218 of 2015 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad. The said O.A. was earlier dismissed by the Tribunal *vide* order dated 13.11.2015. Writ Petition No.10036 of 2016 was filed before this Court by the petitioner assailing the dismissal of the O.A. By common order dated 20.09.2016 passed in W.P.Nos.10036 and 10005 of 2016, this Court set aside the order of dismissal passed by the Tribunal in O.A.No.5218 of 2015 and remitted the matter to the Tribunal for consideration afresh on merits and in accordance with the procedure established by law. Thereupon, the Tribunal passed the order dated 24.01.2017 as under:

“In view of remand order of the High Court Dt.20.9.2016 in Writ Petition Nos.10036 & 10005/2016, Admit and issue notice to the respondents returnable in six weeks. Further, in view of fraud alleged by the applicant, counter is necessary. As verified from the record available and stated by the Court Officer, there is no counter filed by the official respondents. A.G.P. also reports that there is no counter filed by the official respondents, previously and there is no copy of any counter filed by the official respondents with them also.

Post main O.A. for final hearing after the pleadings are completed.”

Aggrieved by the adjournment of the matter till after pleadings were completed in the O.A., the petitioner is again before this Court.

Sri P.V. Krishnaiah, learned counsel for the petitioner, would submit that the Tribunal factually erred in recording that no counter was filed by the official respondents. He would draw our attention to the counter dated 05.10.2015 filed by the Director of Medical Education, Government of Andhra Pradesh, Hyderabad, the second respondent in the O.A., long before the dismissal of the O.A. *vide* order dated 13.11.2015.

It appears that the Tribunal was unmindful of this aspect of the matter and baldly stated that no counter was filed by the official respondents. However, as respondents 1 and 3 admittedly did not file a counter, the Tribunal was justified in ordering notice and inviting counters from them.

Sri P.V. Krishnaiah, learned counsel, would state that the Tribunal ought not to have adjourned the matter indefinitely till after the pleadings were completed.

Rule 12 of the Andhra Pradesh Administrative Tribunal (Procedure) Rules, 1989 (for short 'the Rules of 1989') deals with filing of reply and other documents by the respondents.

Rule 12(1) states to the effect that each respondent intending to contest the application, shall file in triplicate the reply to the application and the documents relied upon in book form with the

Registry within one month of the service of notice of the application on him.

Rule 12 (5) states that the Tribunal may allow filing of the reply after the expiry of the prescribed period.

A conjoint reading of the aforestated two sub-Rules makes it clear that in the event reply is not filed by the respondents within one month, they can do so only if the Tribunal permits the same. Therefore, adjourning the O.A till after the pleadings were completed, without indicating a specific date, may result in an anomalous situation where the counters are not filed within one month from the service of notice on the respondents as required but as no date of hearing is specified, the O.A would not be listed at all despite the expiry of the stipulated period.

That apart, Rule 13 of the Rules of 1989 mandates that the Tribunal shall notify to the parties the date and the place of hearing of the application in such manner as the Chairman may by general or special order direct.

Therefore, this Rule also requires that a specific date must be indicated for the next hearing of the O.A. Adjourning the matter without doing so, as in the present case, may result in abuse of process by the respondents who may deliberately choose not to file a counter, thereby preventing the listing of the O.A. thereafter. This may result in grave injustice to the applicant.

The petitioner is therefore given liberty to make a mention before the Tribunal for listing of the O.A in terms of Rules 12(1) of

the Rules of 1989. The Tribunal shall act in accordance with the due procedure in the event such a mention is made.

The writ petition is accordingly disposed of. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

Date: 21.04.2017

N. BALAYOGI, J

Note: Issue CC by 25.04.2017
B/o
va

