

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.630 of 2018

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

This appeal, under Clause 15 of the Letters Patent, is preferred by the 2nd respondent in W.P. No. 13327 of 2018 aggrieved by the order passed by the learned Single Judge in I.A. No. 1 of 2018 in W.P. No. 13327 of 2018 dated 17.4.2018. Respondents 1 and 2 herein filed W.P. No. 13327 of 2018 seeking a mandamus to declare the election notification dated 7.4.2018 issued by the Bar Association of Kakinada, and its Chief Electoral Officer, fixing the tenure of the Executive Committee of the appellant-2nd respondent as two years, without adhering to the model bye-laws framed by the Bar Council of Andhra Pradesh, as illegal and ultra vires the provisions of the Constitution of India, besides violative of the model bye-laws framed by the Bar Council of Andhra Pradesh.

In the order under appeal, the learned Single Judge observed that the appellant-2nd respondent had adopted the model bye-laws framed by the Bar Council of Andhra Pradesh, which also prescribed a term of one year for office bearers of the Advocates Association; and, therefore, the impugned election notification dated 7.4.2018, issued by the Bar Association of Kakinada proposing to conduct election to the Executive Committee of the Bar Association of Kakinada for two years, was prima facie illegal. The learned Single Judge passed an interim order suspending the election notification dated 7.4.2018.

Sri E.V.V.S. Ravi Kumar, learned counsel appearing on behalf of the appellant-2nd respondent, would submit that, while the model bye-laws of the Bar Council of Andhra Pradesh, no doubt, prescribed a

period of one year to be the term of office of any duly elected Bar Association, the appellant-2nd respondent had not adopted these bye-laws; in the absence of the Bar Association adopting such bye-laws, the model bye-laws of the Bar Council of Andhra Pradesh were not automatically applicable; and, in the absence of any statutory obligation cast on the appellant-2nd respondent to follow the model bye laws, they were free to prescribe a term of office different from that prescribed, in the model bye-laws, by the State Bar Council.

On the other hand Sri G.M. Mohiuddin, learned Standing Counsel for the Bar Council of Andhra Pradesh, would submit that the appellant had adopted the model bye-laws; they had, thereafter, sought permission of the Bar Council of Andhra Pradesh to deviate therefrom; and the request of appellant-Bar Association, to deviate therefrom, had been declined by the State Bar Council.

It is wholly unnecessary for us to examine these rival submissions, since none of these contentions have been examined by the learned Single Judge in the order under appeal. The impugned order, passed by the learned Single Judge, is an ad-interim order passed at the stage of admission of the Writ Petition, without the appellant filing a counter-affidavit. The appellant is, therefore, not disabled from filing a counter-affidavit, and seeking vacation of the said ad-interim order.

Sri E.V.V.S. Ravi Kumar, learned counsel for the appellant, would express apprehension of the appellant being denied the opportunity of filing a petition to vacate stay, on the ground that they had appeared before the learned Single Judge when the ad-interim order under appeal was passed. Suffice it to make it clear that, since the order under appeal was passed before the appellant-2nd respondent could file their counter-affidavit, they are not disabled from filing their counter-affidavit

and seeking vacation of the ad-interim order. We, however, see no reason to interfere with the said order in an *intra-Court* appeal, under Clause 15 of the Letters Patent, as exercise of discretion by the learned Single Judge, to grant the said interim order, cannot be said to be patently illegal.

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)

20th April, 2018

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(KONGARA VIJAYA LAKSHMI, J)



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