

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL NO.1071 OF 2018

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The complaint of Sri Prabhakar Sripada, learned counsel for the appellant, is that the learned Single Judge had passed the order under appeal, dismissing the Writ Petition, on the basis of instructions furnished to the Court by the learned Assistant Government Pleader; the petitioner was unaware of what those instructions were; under the Writ Proceeding Rules, 1977 only facts, as stated in the counter affidavit, can be taken into consideration by the Court; and the procedure adopted by the learned Single Judge, in passing the order under appeal, is alien to the Writ Proceeding Rules, 1977.

Rule 12(i)(a) of the Writ Proceeding Rules, 1977 requires the respondent in the Writ Petition to enter appearance, and file a counter affidavit in opposition, as soon as may be; and, in any event, not later than six months from the date of service of the notice in the Writ Petition. Only facts, which are asserted in the counter-affidavit, can be taken note of, and not instructions furnished by any Government official to the Learned Government Pleader, as such instructions are more in the nature of internal communication between a Lawyer and his client.

On the short ground that the Writ Petition was dismissed, solely on the basis of the instructions furnished by a Government official the learned Assistant Government Pleader, even without a counter affidavit being filed by the respondents, the order under

appeal is set aside, and the Writ Petition is restored to file. The respondents shall file their counter affidavit within three (3) weeks from today. It is open to the appellant to request the learned Single Judge, to take up the Writ Petition for admission, any day after three weeks from today.

Subject to the aforesaid observations, the Writ Appeal is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

16th August 2018
RRB

