

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.9808 of 2019

ORDER::

This writ petition is filed against the in-action on the part of the 2nd respondent in not taking any action on the complaint dated 07-03-2019 made by the petitioner and registering a crime basing on the said complaint, as being illegal, arbitrary and consequently direct the 2nd respondent to forthwith register a crime in respect of the complaint made by the petitioner, in the interest of justice.

02. Heard the learned counsel for the petitioner and the learned Asst. Government Pleader for Home for respondents.

03. Learned Asst. Government Pleader for Home, on instructions, submits that the respondent-Police have acted upon the complaint of the petitioner and a GD entry was made on 7-3-2019 itself and preliminary inquiry was done on the complaint and on inquiry it was disclosed that the subject matter is civil in nature. It is also stated that a notice was issued to the petitioner to that effect by registered post on 30-04-2019 informing the petitioner that no action could be taken on his complaint as the matter is civil in nature.

04. In view of the same and recording the submission made by the learned Asst. Government Pleader for Home, the writ petition is disposed of. However, it is open for the petitioner to work out his remedies as are available to him under law. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: -04-06-2019
NRG

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//WEB//



Dated: 04-06-2019

NRG



7. The decision of the appellate authority not advertng to any of the grounds of appeal raised by the respondent, and only reiteration of the order and reasons stated by the disciplinary authority, more particularly, as to the absence of the respondent to participate in the enquiry proceedings, not being a speaking order is in violation of principles of natural justice. Merely on the ground of absence of the respondent to participate in the enquiry, the enquiry officer cannot hold the charges proved, but the enquiry officer has to arrive at a finding based on material available. Relying on the decision of the Supreme Court in **ALLAHABAD BANK vs. KRISHNA NARAYAN TEWARI**¹, the learned single Judge in exercise of his discretion chose not to remand the matter for conducting proceedings afresh as the subject matter of enquiry pertains of the year 2000 and by now it is nearly 2 decades past. Such exercise of discretion by the learned single Judge not to remind the matter, at this length of time is also rational and

¹ 2017 (2) SCC 308

traceable to formidable reason. In **ROMA SONKAR vs.**

MADHYA PRADESH STATE PUBLIC SERVICE

COMMISSION,² expressing ‘serious reservation’ about a

Division Bench of a High Court remitting a matter to single

bench for moulding relief, the Supreme Court has observed

that the single Judge is not subordinate to the Division Bench.

The Supreme Court at para 3 of the judgment observed thus:-

“We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned single Judge, as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court, but that does not mean that the single Judge is subordinate to the Division Bench.”

8. The discretion exercised by the learned single Judge in exercise of jurisdiction under Article 226 of the Constitution, cannot be interfered with except in compelling circumstances and there is no reason to take a view than the view taken by

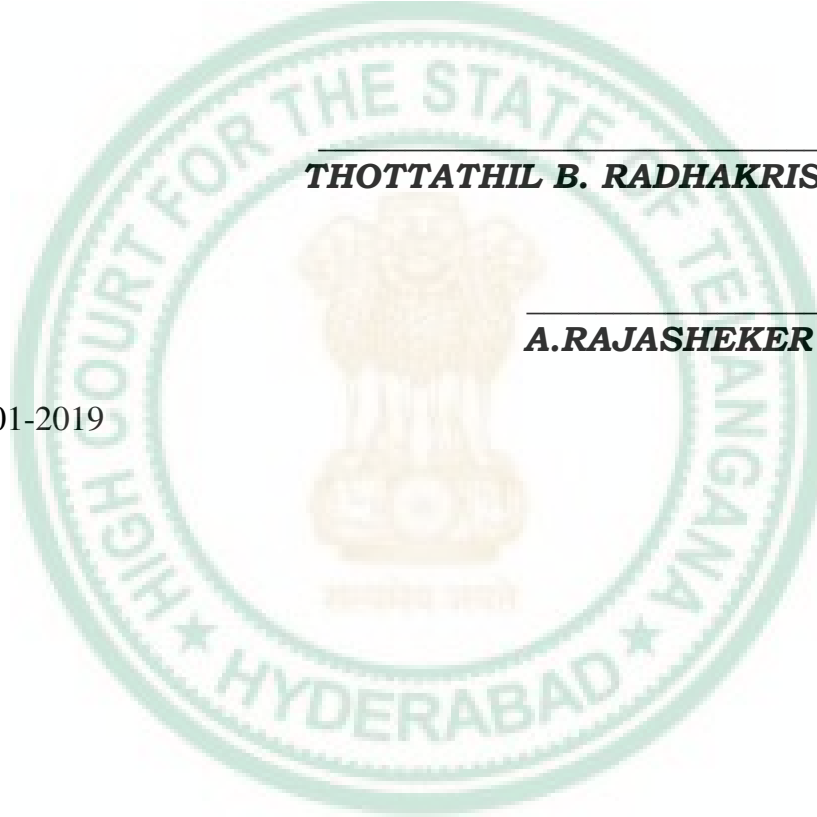
² 2018 SCC OnLine SC 956

the learned single Judge in the facts and circumstances of the case, and therefore, the discretion exercised cannot be unfolded in intra-Court appeal filed under Clause 15 of the Letters Patent Act. In the result, the appeal is devoid of merits and it is accordingly dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

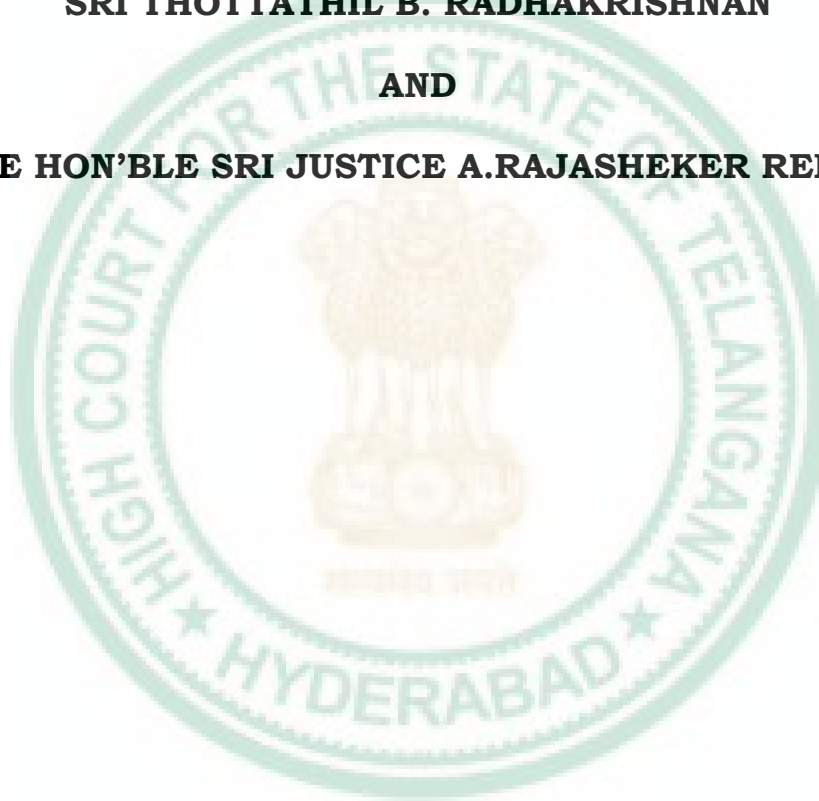
Dated: 30-01-2019
NRG



**THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



WRIT APPEAL No.45 of 2019

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30-01-2019

NRG

