

2016 (5) ALT 700 (D.B.)

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
V. SANKARANARAYANAN and Mrs.ANIS, JJ.
W.A.No 893 of 2016
DECIDED ON : 23-09-2016

HEAD

NOTE

LETTERS PATENT, Clause 15 — Civil Procedure Code, 1908, Section 151 — Writ Appeals against interim orders — Arising out of interim orders passed by single Judge of High Court granting a direction to appellants as well as University to include petitioners for counselling and for allotment of students in MBA course and also a direction to the University to grant affiliation — Grievance of appellants-AICTE is, impugned orders have the effect of granting the main reliefs in the writ petition itself — Held, grievance of appellants is justified — Court is of the view that a petition for interim direction stands on a different footing than a petition for interim stay or injunction — Once an order is passed granting interim direction, it is doubtful if a petition to vacate the interim direction may be entertained — Counsel for private respondents contending, in the first order passed by this Court, a direction was given to the AICTE to conduct an inspection of class rooms and infrastructure facilities and to pass orders and despite the fact that respondents had sufficient buildings and infrastructure and that other courses have been given up, the AICTE did not apply its mind to the said fact — Held, Court thinks that, when the writ petition is pending, it would not be proper to get into the said dispute — Two courses of action available to this Court: First is to admit writ appeals and examine the correctness of the interim directions issued by the single Judge by examining the merits; Second option is to send appellants back to the single Judge to move a petition for vacating the interim direction, by holding that the impugned orders contained only interim directions capable of being reconsidered by the single Judge — Second option appears to be the best option, in view of the fact that AICTE and the University have not so far filed a counter either to the main writ petition or to the miscellaneous petitions — Therefore, writ appeals disposed of directing AICTE to move a petition to vacate the interim orders, by treating the orders impugned in these appeals as interim directions capable of being reconsidered by the single Judge — Orders impugned in these appeals not be enforced, until the vacate petitions are disposed of — However, taking into account the time constraint, appellants and/or the University should file applications on or before 29-9-2016 — If at all contesting respondents succeed on merits, either in W.P.M.Ps or in the writ petition, the AICTE and the University shall not defeat the rights of the respondents, by taking the plea that the writ petition has become infructuous. (Paras 6 to 8)

QUOTABLE

POINT

Vacate the interim direction “ Once an order is passed granting interim direction, it is doubtful if a petition to vacate the interim direction may be entertained.

ADVOCATES

Mr. **RAMAKANTH REDDY**, Counsel for the Appellants. G.P. for Higher Education (TG) for the Respondents.

JUDGMENT

(PER V. RAMASUBRAMANIAN, J.)

All these writ appeals arise out of the interim orders passed by the learned Single Judge, granting a direction to the appellants as well as the university to include the petitioners for counselling and for allotment of students in MBA course and also a direction to the university to grant affiliation.

2. Heard Mr. **RAMAKANTH REDDY**, learned counsel appearing for AICTE, Mr. P. Pandu Ranga Reddy, learned counsel took notice for respondents 1 to 3 and he is represented by Mr. L. Ravichander, learned Senior Counsel and Mr. A. Abhishek Reddy, learned counsel for JNTU.

3. The grievance of the AICTE is that the impugned orders have the effect of granting the main reliefs in the writ petition itself. For the purpose of easy appreciation of the above contention, it is necessary to extract the prayer made in the main writ petition W.P.No.28334 of 2016 and the reliefs sought in the miscellaneous petitions W.P.M.P.Nos.35085 and 35086 of 2016 in a tabular column. They are as follows: -

4. From the above it is clear that the grievance of the appellants is justified. Though Mr. L. Ravichander, learned Senior Counsel submitted that without filing a petition to vacate the interim orders, the appellants ought not to have come up with the above writ appeals, we are of the considered view that a petition for interim direction stands on a different footing than a petition for interim stay or injunction. Once an order is passed granting interim direction as prayed for, it is doubtful if a petition to vacate the interim direction may be entertained.

5. The next contention of the learned Senior Counsel for the private respondents is that in the first order passed by this Court, a direction was given to the AICTE to conduct an inspection of the class rooms and infrastructure facilities and to pass orders. Despite the fact that the respondents had sufficient buildings and infrastructure and despite the fact that the other courses have been given up, the AICTE did not apply its mind to the said fact.

6. But the above contention is on the merits of the dispute. Therefore, we do not think that when the writ petition is pending it would be proper for us to get into the said dispute.

7. There are now two courses of action available to this Court. The first is to admit the writ appeals and examine the correctness of the interim directions issued by the learned judge, by examining the merits. The second option is to send the appellants back to the learned Judge to move a petition for vacating the interim direction, by holding that the impugned orders contained only interim directions capable of being reconsidered by the learned Judge. The second option appears to be the best option, in view of the fact that the AICTE and the university have not so far filed a counter either to the main writ petition or to the miscellaneous petitions.

8. Therefore, all the writ appeals are disposed of directing the AICTE to move a petition to vacate the interim orders, by treating the orders impugned in these appeals, as interim directions capable of being reconsidered by the learned Judge. The orders impugned in these appeals, shall not be enforced, until the vacate petitions are disposed of. However, taking into account the time constraint, the appellants and/or the university should file applications for vacating the interim orders on or before 29.09.2016. If at all the contesting respondents succeed on merits, either in the miscellaneous petitions or in the writ petition, the AICTE and the university shall not defeat the rights of the respondents by taking the plea that the writ petition has become infructuous. There shall be no order as to costs.

As a sequel pending miscellaneous petitions, if any, shall stand closed.

@ Copy Rights Reserved To ANDHRALAW TIMES / ALTDOT