(1999) 08 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No. 15143 of 1997

James Koshy APPELLANT

Vs

K.S.R.T.C. and Others RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:
Constitution of India, 1950 — Article 14, 226

Citation : (1999) 2 KLJ 544

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : C.C. Thomas, for the Appellant; V. Bhaskara Menon, for the Respondent

Judgement

K.S. Radhakrishnan

1. Determination of a lis on a professional fee is always a delicate one, since the relationship between the client and the lawyer is a matter of trust and fiducial. Earlier times a Barrister cannot sue his client nor can he be sued for negligence because their relationship was not originated in contract. A lawyer has an obligation not only to the client but also an obligation to assist the court for proper administration of justice. In later times lawyers assistance became gratuitous like any other profession and depended upon pecuniary compensation. This was due to multiplicity of judicial proceedings and that the law has become complicated and the situation warranted competent lawyers who are willing to spend time and energy to venlate grievances of their clients. Legal compensation is now not determined by any accepted standard. Generally it is a matter of personal equation. Reputation, skill and knowledge of law and eminence in the bar reflected the professional fees paid by the client. In the instant case the lawyer and the client is governed by the express stipulation in the matter of professional fee and this court is now called upon to determine whether those conditions have been complied with by the parties in determining the professional fees. A preliminary objection was raised by the Corporation stating

that a writ petition would not lie to resolve a dispute on professional fees due to a lawyer, a question of law raised by the Corporation against their erstwhile lawyer. Respondent is the Kerala State Road Transport Corporation, a State Government Undertaking, therefore an instrumentality of the State., The rule which requires the exhaustion of alternative remedies as held by the Supreme Court in Ram and Shyam Company Vs. State of Haryana and Others, is a rule of convenience and discretion, a self-imposed restraint on the court rather than a rule of law. It does not oust the jurisdiction of the court. Where the order complained against is alleged to be illegal or invalid as being contrary to law a petition at the instance of person adversely affected by it would lie to the High Court under Art.226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the State Government. When a citizen files a writ and if there is no complicated questions of fact to be determined it is too harsh to direct the party to approach civil court for redressal of his grievances undergoing long drawn litigation. Supreme Court in LIC of India and Another Vs. Consumer Education and Research center and Others, held as follows:

If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions. They must be based on some rational and relevant principles.

Supreme Court in Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], held that the legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Art.226 of the Constitution, the action of the authority needs to fall in the realm of public law - be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The Kerala State Road Transport Corporation is an instrumentality of the State and as held by the Division Bench of this Court reported in Hindustan Construction Co. Ltd. v. K.S.E.B. (1999 (2) KLT 30) any decision taken by the such authorities have to satisfy the test of fairness and reasonableness envisaged under Art. 14 of the Constitution of India. Action of the said authority has got a public law element in it. The action of the Corporation bears public character with public interest and their''s is administrative decision and are impeached on the ground of arbitrariness and violation of Art. 14 of the Constitution of India and therefore writ petition under Art.226 of the Constitution is clearly maintainable. In view of the above mentioned legal principles I am of the view that the writ petition by a lawyer for professional fee against an instrumentality of the State is liable to be entertained under Art.226 of the Constitution of India unless there are complicated questions of facts.

2. The terms and conditions of appointments of the petitioner have been clearly laid down in this case and there are no disputed questions of facts; Petitioner

was appointed as Standing Counsel and Legal Adviser to the Kerala State Road Transport Corporation as per order dated 9-7-1991 which enclosed the terms and conditions of his appointment. Clause 12 of the agreement stipulated that the provisions contained therein would be in addition to the general provisions contained in the terms and conditions of the appointment of corporation advocates at other centres. Those terms and conditions were also enclosed along with Ext.P2. K.S.R.T.C. later revised the terms and conditions contained in Ext.P2 by order dated 16-3-1995 and the revised rates of fee came into force with effect from 21-1-1995. During the period of petitioner''s appointment from 15-7-1991 to 28-11-1996 he conducted 9445 cases on behalf of the Corporation before the High Court as well as before the State Transport Appellate Tribunal. Some of the bills submitted by the petitioner or professional fees and expenses were already paid by the Corporation.

3. We are now only concerned with the question as to whether towards professional fee petitioner is entitled to get an amount of Rs.4,89,333/-. Petitioner submitted his representation claiming the said amount. Since there was no response he approached this court by filing O.P.4505/97 which was disposed of by this court directing the corporation to consider the request of the petitioner dated 6-2-1997. Corporation then issued Ext.P7 order dated 13-8-1997 sanctioning only an amount of Rs.1,42,692/-. Petitioner is aggrieved by the said order and has preferred this writ petition for a writ of certiorari to quash the said order and for a direction to the Corporation to pay an amount of Rs.6,54,133/- as advocate fee and expenses.

4. A counter affidavit has been filed on behalf of the Corporation. Corporation disputed the claim raised by petitioner. The claim for clerkage and also the claim for fee/expenses at the rate of Rs.100/- for MFAs, Writ Appeals and Appeals were also disputed. Counter affidavit also stated that the claims under clause 7, 8, 9, 12 etc. were not properly substantiated. A reply affidavit has been filed on behalf of the respondent showing all the details. Now the dispute centres round the question as to whether the petitioner is eligible to raise a claim under clause 7, 8, 9 and 12 of Ext.P2 terms and conditions for appointment. Clause 8 of the terms and conditions specifically says that an amount of Rs.50/- will be payable as clerkage per case. Counter affidavit admits that 1666 cases were handed over by the petitioner to the Deputy Law Officer when his term was over. Since those cases were dealt with by the petitioner, naturally he is entitled to claim clerkage at the rate of Rs.50/- which would work out to an amount of Rs.83,330/-.

5. Clause 9 deals with for payment of actual expenses incurred for taking copies of documents, remitting court fees etc. As per the said clause petitioner claims an amount of Rs.4,89,333/- which was due to the petitioner towards actual expenses incurred for taking copies of documents, remitting court fee etc. This claim was sanctioned by the District Transport Officer, Ernakulam and paid to the petitioner. However, while issuing Ext.P7 order it is seen that amount has been deducted at the time of final settlement.

6. I am of the view that this deduction is wrongly made. In fact the said amount was sanctioned to the petitioner and paid towards actual expenses for filing counter affidavit and taking copies of the judgments etc. Petitioner had obtained 8975 judgments and forwarded the same to the office of the Corporation and petitioner claims Rs.25/- towards certified copy of the judgments which works out to Rs.2,24,375/- as the actual expenses for obtaining certified copies of judgments. Petitioner therefore is entitled to claim the amount as per Cl.9 of Ext.P2 and clause 20 of Ext.P3. Clause 12 of Ext.P3 also, specifically directs the petitioner to apply for certified copy of the judgment/award/decree and obtain the same as expeditiously as possible and forward the same to the Corporation. Facts reveal that petitioner claimed the said amount only on the basis of terms and conditions of appointment and consequently. I am of the view that the Corporation is bound to pay the sum of Rs.2,23,375/- and the deduction made to that effect cannot be sustained.

7. Petitioner is also entitled to get the balance amount of Rs.2,65,958/- after deducting Rs.2,24,375/- from Rs.4,89,333/-. Records would reveal that petitioner claimed the same and the same was advanced by the D.T.O. evidently after deducting the same. I am convinced that the claim is reasonable and just in accordance with the terms and conditions of the appointment. By an interim order passed by this court in CMP 5791/98 this court directed the Corporation to pay the sum of Rs.2,24,375/- which was claimed by the petitioner and therefore balance amount of Rs.2,65,958/- is due as per clause 8 to the petitioner.

8. I am of the view Corporation is also not justified in rejecting the claim for payment of Rs.100/- in accordance with clause 10 of the agreement. Out of 1666 cases handed over to the K.S.R.T.C., the K.S.R.T.C. was either petitioner or appellant in 593 cases. All the 593 cases were filed by the petitioner as standing counsel. At the time of filing these cases only actual expenses like court fee in M.F.As., Appeals, Writ Appeals etc. process fee, notice by special messenger etc. has been received as per clause 8. But he has not claimed any amount under clause 10. Clause 10 stipulates that on termination of the period of appointment pending case files shall be transferred to the Corporation within the specified time claiming fees/expenses at the rate of Rs.100/- in respect of cases for which counter affidavit or objections were filed and also in cases where vakalats were filed on behalf of the Corporation a sum of Rs.25/-. It is pertinent to note that the work involved in MFAs, Writ Appeals and Appeals are more onerous than filing counter affidavit in various cases. Writ Appeals and other appeals requires admission from the court and therefore counsel has to address the court for admission of the case. He has to prepare the appeal memorandum etc. which is not like the filing of a counter affidavit.

9. Therefore I am of the view the claim for Rs.100/- for preparation of appeals, writ appeals, MFAs. just like preparing counter affidavit is also justified. Petitioner is also entitled to Rs.25/- per case as per clause 10(b) towards filing of vakalat which is necessary whether the counsel appears for the Corporation either as

appellant or as respondent. After considering the entire matter I am of the view the claim raised by the petitioner is strictly in accordance with the terms and conditions of the appointment. Under such circumstances, I am of the view that the petitioner is entitled to get an amount of Rs.4,07,630/- in all the counts mentioned above. Corporation would take expeditious steps to pay the amount within a period of three months from the date of receipt of copy of the judgment failing which petitioner will be entitled to get 18% interest per annum from the date of judgment.

Original Petition is allowed as above.

