
(1989) 07 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16892 of 1987

K. Srinivasa Rao

APPELLANT

Vs

Collector, Srikakulam and another

RESPONDENT

Date of Decision : 18-07-1989

Acts Referred:

Citation : AIR 1990 AP 136 : (1990) 3 ALT 384

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : Surya Rao, for the Appellant; Govt. Pleader for Commercial Taxes, for the Respondent

Judgement

K. Ramaswamy, J.

1. The petitioner was admittedly appointed as Government Pleader in the District Court, Srikakulam and there is a reference under S. 18 concerning 21 cases in O.Ps.256/81 to 271/81, 173/82, 174/82 and 37/ 83 to 39/83. Admittedly separate trial was conducted in respect of each of the O.Ps. Separate judgments and separate decrees were passed enhancing the compensation, wherein the Court has fixed the fee of Rs.2,000/- in each O.P. The petitioner had submitted his bills for payment of the fees of the 21 cases in a sum of Rs. 42,679-25 ps. On reference, the Government in Memo. No. 1403/K2/86-4 Rev. (K) Dept., dated 3-8-86 directed that the acquisition may be treated as one case, and the fee Rs. 2,000/- is payable to the Government Pleader and also the cost towards copy application and copy stamps for obtaining certified copies of the judgment has to be allowed. Assailing the legality thereof, the present writ petition is filed. Though Rule Nisi is issued and served, the respondents have not filed counter. Though time was granted, no counter is filed. The learned Government Pleader relied on para wise remarks given by the concerned District Collector. Based thereon, arguments have been advanced on behalf of the State.

2. The contention of the learned Government Pleader is, that under R. 30(1)(i)

read with R. 36 of the Advocates' Recruitment as Law Officers Rules issued in G.O. Ms, No. 1487 Home dated 31st August, 1937 gives discretionary power to the Government where the Government considered that the fee paid by the concerned Government Pleader is considered to be higher, the Government in appropriate case may determine in accordance with the provisions made in R. 36 irrespective of the fact whether costs are recoverable by the Government from the other party or not. Rule 36 provides that the Government shall, if the fees fixed by the Court or the regulation fees, as the case may be, is considered to be too high, have the discretion to reduce such fees, irrespective of whether or not costs are recoverable to Government, and pay such smaller amount as may be determined in each case on the basis of the work done and the time taken by the Government Pleader and in accordance with the principles which are given hereunder purely as a working guide: (1) The fees fixed by the Court as recoverable by the Government from the other party may ordinarily be allowed; (2) A reasonable fees may be allowed when the Court awards only proportionate costs as recoverable by the Government from the other party or when a case is decided either in favour of the Government (without any costs being recoverable) or against the Government. It is now settled by a Division Bench judgment of this Court wherein it was held that in a case where the Court has fixed fees of the Government Pleader in a particular case, then the Government is devoid of discretion to reduce the fee already fixed by the Court. In other respects, where the Court has not fixed the fee, then the authorities concerned to consider on the work basis and fix the fee according to law. In this case, admittedly the Court has already fixed the fee by directing a separate decree and judgment in each O.P. and fixed the fee of Rs. 2,000/- in each O.P. Therefore, once the Court has fixed Rs.2,000/-. The Government is devoid of power to exercise under R. 3(1)(i) and read with R. 36 of the Rules, to reduce the fee to Rs. 2,000/ - as consolidated amount.

3. It is next contended by the learned Government Pleader that under R. 30(2) (3) the Government have considered the entire acquisition as one unit and when the Court has fixed the fee declaring it as one unit, the fee is also fixed as one unit of Rs. 2,000/-only. I find no force in this contention.

4. No doubt, R. 30(1)(iii) provides that in, all civil suits, appeals or proceedings, including those relating to execution proceedings one regulation fees for a number of connected cases where the result is virtually determined by the decision of a single case, irrespective of whether any fees is fixed by the Court and any fees is recoverable by the Government from the other party in each case, subject to the condition that such regulation fees shall always to be highest for any single case in the batch. In this regard the rule is clear that where a number of cases are disposed of in a batch by a common judgment and the fee is not fixed by the Court, then the Government has discretion to grant as one unit fee for a number of cases. As I have already stated that this Court had held that the Court once fixed the fee even under R. 30(1)(iii), the fee that is fixed is to be paid to the concerned Government Pleader, and in that regard, the decision

of the Division Bench also comes into operation. But where the Court does not fix the fee, the Government has discretion to exercise power under R. 30(1)(iii) of the Rules. But in this case, admittedly, the cases were not disposed of in a batch. Therefore, R. 30(1)(iii) also is not attracted to the facts of this case. Under these circumstances, the writ petition is allowed, but in the circumstances without costs. Advocate's fee Rs,350/-.

5. It is stated by Sri. Suryarao that pursuant to the interim direction, half the amount was already paid. Therefore, the respondents are directed to pay the balance amount, within a period of three months, from the date of receipt of this order.

6. Petition allowed.