
(2000) 06 AP CK 0047
In the Andhra Pradesh High Court
Case No : Writ Petition No's. 3977 of 2000

K. Umeshwar

APPELLANT

Vs

Electronics Corporation of India, Hyd. and others

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Advocates Act, 1961 — Section 29, 30, 32, 33
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2
Constitution of India, 1950 — Article 226

Citation : (2000) 4 ALD 184 : (2000) 3 ALT 791

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : Mr. S.S. Sonwalkar appeared, Party in Person, Mr. D. Srinivas, SC for ECIL and Mr. T. Amarnath Goud, Amicus Curiae, for the Appellant;

Judgement

1. The petitioner in this writ petition prays for issuance of a writ of mandamus declaring the action of the respondent Corporation in "not conducting the enquiry against the 5th respondent which will reveal why the petitioner has resigned under duress, as illegal, arbitrary, unjust and violation of natural justice...." The petitioner prays for a consequential direction directing the respondent-Corporation to re-instate the petitioner into service with all consequential benefits. A very peculiar prayer indeed.

2. Before advertng to the question as to whether the petitioner is entitled for any relief at all, it may be necessary to notice the relevant facts and the background leading to tiling of this writ petition.

3. The affidavit filed in support of the writ petition is sworn and signed by one Satish Shannkararao Sonwalker s/o late S.J. Sonwalkar, a retired employee of the Corporation in his capacity as the Power of Attorney holder of the petitioner. The petitioner himself appeared in person before the Court along with his power of attorney agent. This Court at the time of hearing of the matter expressed its opinion that it will be better, if the petitioner is represented by a Counsel and

offered to provide legal aid to the petitioner by engaging an advocate to argue the case on his behalf. The petitioner as well as his power of attorney agent did not agree for the suggestion of the Court. The petitioner on the other hand insisted that he should be represented by his power of attorney agent.

4. More about the question as to whether a party has any right to be represented by his power of attorney agent and as to whether the Court is bound to hear the said power of attorney and permit such an agent to make oral submissions acting practically as an advocate on behalf of the party, later.

5. The petitioner, who was working as an Assistant Stores Officer in the respondent-Corporation, tendered his resignation on 23-3-1994 and on the same day his resignation was accepted and he was relieved from his duties. Six months after the acceptance of the resignation, the petitioner made a representation that his resignation was taken by compulsion and he should be permitted to take the advantage of voluntary retirement scheme introduced by the Corporation. The Managing Committee of the respondent-Corporation having considered the request of the petitioner rejected the same by an order dated 27-9-1994. The petitioner questioned the same in WP No.19137 of 1994. This Court by an order dated 10-3-1995 dismissed the writ petition by observing that it is open to the petitioner to make a representation to the highest authority of the Corporation seeking necessary relief and if such a representation is made, the authority may dispose of sympathetically within two months from the date of making such representation. The petitioner filed Writ Appeal No.418 of 1995 and this Court by an order dated 26-4-1995 permitted the petitioner to withdraw the writ petition itself, leaving it open to the petitioner to make a representation to the authorities requesting them to permit him to avail the voluntary retirement scheme and if such a representation is made, it shall be considered sympathetically and disposed of within two months from the date of representation.

6. The respondent-Corporation having considered such representation from the petitioner, in the light of the observations made by this Court, rejected the same by an order dated 19-7-1995. The petitioner again filed WP No.22795 of 1995 challenging the proceedings dated 19-7-1995 rejecting the request of the petitioner for voluntary retirement benefit. This Court by its order dated 9-7-1997 dismissed the writ petition by observing that there is no material to substantiate the claim of the petitioner that the resignation was taken under duress. In fact the Court noticed that disciplinary proceedings were contemplated against the petitioner and in order to avoid the same, not only the petitioner but also two other officers have resigned on the same day. This Court held that the decent behaviour of the Corporation cannot be taken advantage of by the petitioner to contend that there was no possibility of domestic enquiry and, therefore, resignation was under duress. The Court also took note of the fact that the petitioner did not protest immediately but made a representation only after six months and further two other officers, who have resigned on the same day,

have not made any similar protest even though in respect of their cases also the voluntary retirement scheme was available and the domestic enquiry was contemplated against all the three.

7. The petitioner filed Writ Appeal No.957 of 1997 against the said judgment and a Division Bench of this Court by its order dated 8-9-1997 confirmed the order passed by the learned single Judge by observing that there is no material to come to the conclusion that the petitioner was forced to resign.

8. The petitioner by suppressing all the relevant facts filed Writ Petition No.32897 of 1998 challenging the acceptance of resignation by the respondent-Corporation on 23-3-1994. This Court having perused the earlier order passed by this Court dismissed the writ petition at the admission stage observing that the writ petition is barred by the principles of res judicata and even otherwise this Court did not find any merit in the writ petition. The petitioner filed Writ Appeal No.506 of 1999 against the said order and a Division Bench of this Court by an order dated 13-4-1999 speaking through the Honourable the Chief Justice, dismissed the writ appeal and held that the petitioner cannot be permitted to file another petition for the selfsame cause of action. The judgment of the learned single Judge in Writ Petition No.32897 of 1998 was accordingly upheld. It appears that even while these proceedings initiated by the petitioner were going on, the petitioner filed a review application to review the judgment dated 8-9-1997 in Writ Appeal No.957 of 1997 along with an application to condone the delay of 642 days in filing the review petition. A Division Bench of this Court by its order dated 19-11-1999 dismissed both the applications filed by the petitioner i.e., to condone the delay as well as the review application.

9. In the said review application, it was urged that the petitioner was not aware of the details of the two officers referred in the judgment in Writ Petition No.22795 of 1995, but the information which he subsequently got, reveals that the respondent-Corporation made a misleading statement that all the three officers resigned on the same day, though, however, it is not a fact. One S. V. Baku resigned and was relieved on 21-3-1994 and P.V. Ratnam has resigned on 18-3-1994 and was relieved on 21-3-1994 and whereas the petitioner's resignation was accepted on the same day on which he gave the letter of resignation and even without going through the process of taking over charge by the reliever. The petitioner relied upon the correspondence that ensued between himself and the respondent from 5-10-1998 onwards and filed the same in order to establish that the said two officers did not resign on the same day as noted by the learned single Judge in the order passed in Writ Petition No.22795 of 1995. The Division Bench while disposing of the review petition observed that "the petitioner cannot be allowed to raise such contentions by taking advantage of the slight inaccuracy in the judgment about the dates of relief of two other officers similarly situated." The Division Bench observed that it is a matter of no conflict. Thereafter the present writ petition is filed by the petitioner almost for the very same relief.

10. The power of attorney himself refers to some correspondence between himself and the fourth respondent from January, 2000 onwards. The power of attorney holder is purported to have written a letter dated 24-1-2000 addressed to the fourth respondent after his meeting with the fourth respondent on 11-1-2000 suggesting that the respondent-Corporation can conduct an enquiry in the circumstances, which made the management to act in the matter, as it has acted. The purport of the representation is to order an enquiry into the conduct of the fifth respondent herein. Since there is no reply from the respondent-Corporation, the present writ petition is filed seeking declaration that the action of the respondent-Corporation in not conducting enquiry against the fifth respondent as arbitrary and unjust. It is the case of the petitioner that if such an enquiry is held against the fifth respondent, it would reveal that the petitioner had resigned under duress and coercion.

11. It is so obvious that the petitioner is making once again the same effort to put in issue about the resignation of the petitioner on 23-3-1994 and its acceptance thereof by the Corporation. Such a course is not permissible in law. The petitioner cannot be allowed to agitate and reagitate the very same question in writ petition after writ petition. It is nothing but an abuse of the process of the Court. The conduct of the petitioner disentitles him for grant of any relief. The liberal and benevolent attitude adopted by this Court in not imposing heavy penal costs is being taken advantage of by the petitioner. I hope and trust some wisdom would dawn on the petitioner and he would restrain himself from indulging in this vexatious litigation. The same question as the one involved in the previous writ petitions is sought to be raised by the petitioner under the garb of asking for an enquiry against the fifth respondent. The petitioner has no right in law to ask for such an enquiry against the fifth respondent. The writ petition is completely misconceived and is nothing but sheer abuse of the judicial process.

12. The petitioner was represented by different learned advocates in Writ Petition No.19137 of 1994, Writ Appeal No.418 of 1995 and Writ Petition No.22795 of 1995 and also in Writ Appeal No.957 of 1997. Every time, the petitioner had the benefit of services of different learned Advocates. For the first time, the petitioner appeared as party-in-person in Writ Petition No.32897 of 1998. He himself appeared in Writ Appeal No.506 of 1999 and in WA MP No. 1766 of 1999 and Rev. WA MP (SR) No.32897 of 1999 in Writ Appeal No.957 of 1997.

13. The petitioner thereafter executed a power of attorney deed in favour of one Satish Shankararao Sonwalkar a former employee of the ECIL who is the deponent of the affidavit in the present writ petition. The power of attorney is authorised to sign and file the plaint, petition, appeal or any other proceedings on his behalf and make any statement on behalf of the petitioner in the Court or before any other judicial authorities. The power of attorney is authorised to file any appeal or petition for review or revision or other proceedings in any other Court higher or of co-ordinate jurisdiction, as the case may be. The agent is also authorised to appear before the judicial authorities and make any statement or

do any act or things, or cause, the same to be done in such manner, as may be lawful.

14. This Court, in view of the peculiar facts and circumstances of the case, thought it fit to examine and record the deposition of the petitioner. He is accordingly examined and his statement is recorded on 27-4-2000. The petitioner in his evidence, inter alia stated that he is the deponent of the affidavit filed in support of the writ petition. He has gone to the extent that he signed the affidavit filed in support of the writ petition, whereas the affidavit is actually signed by the power of attorney agent. However, during the course of his examination, at one stage, the petitioner stated that the affidavit is signed by the power of attorney agent, but the same was prepared as per his instructions. It is admitted by him that the details of the proceedings initiated by him in this Court are not stated in the affidavit filed in support of the writ petition. It is stated by him that he told the GPA holder about the cases filed by him in this Court. It is however, stated that he has not instructed the GPA holder to state in the affidavit, the details of the cases earlier filed by him in this Court. It is admitted that is power of attorney agent filed complaints against Sri K, Srinivasa Murthy and Sri D. Srinivas, learned Standing Counsel for ECIL. It is admitted by him that such complaints were filed under the specific advise of his power of attorney agent.

15. Interestingly, the petitioner in his evidence states that the required amounts for prosecuting this litigation are being spent by the said GPA since 1998. It is also stated that no remuneration or fee is paid to the GPA agent and on the other hand, the power of attorney agent himself invested the necessary amounts since 1998 for prosecuting his case and the said agent had already spent about Rs.9,000/- for prosecuting this writ petition. It is stated that the petitioner offered him to give his remuneration in the writ petition and if the writ petition ends in his favour. But he refused to accept any remuneration by saying that he wanted to get a name for himself in achieving the result in this writ petition.

16. The facts, as revealed in the statement of the petitioner, speak for themselves. Obviously there is something more than meets the eye. It is rather difficult to appreciate as to how a power of attorney agent himself can spend the necessary amount for prosecuting the case, unless there is some further arrangement between the petitioner and his power of attorney agent. The question that falls for consideration is as to whether this Court is bound to permit such power of attorney agents to represent parties in a proceeding particularly under Article 226 of the Constitution of India. The question is as to whether such power of attorney agents have any right to address the Court in a proceeding under Article 226 of the Constitution of India.

17. "A private person, who is not an advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact the Court may, even after

grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission." (See Harishankar Rastogi Vs. Girdhari Sharma and Another,

18. In T.C. Mathai and Another Vs. The District and Sessions Judge, Thiruvananthapuram, Kerala, , the Supreme Court while dealing with right of a party to represent him in Court observed :

"Legally qualified persons who are authorised to practise in the Courts by the authority prescribed under the statute concerned can appear for parties in the proceedings pending against them. No party is required to obtain prior permission of the Court to appoint such persons to represent him in Court. Section 30 of the Advocates Act confers a right on every advocate whose name is entered in the Roll of Advocates maintained by a State Bar Council to practise in all the Courts in India including the Supreme Court. Section 33 says that no person shall be entitled to practise in any Court unless he is enrolled as an advocate under that Act. Every advocate so enrolled becomes a member of the Bar. The Bar is one of the main wings of the system of justice. An advocate is the officer of the Court and is hence accountable to the Court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

But, if the person proposed to be appointed by the party is not such a qualified person, the Court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause (Section 2(q) of the Code) that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the Court, is to enable the Court to verify the level of equipment of such a person for pleading on behalf of the party concerned."

19. In M. Krishnammal Vs. T. Balasubramania Pillai, Power of Attorney Agent of M. Krishnammal, it is observed that:

"An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of the principal, either in the appellate or original side of the High Court..... There is no warrant whatever for putting a power of attorney given to a recognised agent to conduct proceedings in Court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney (which) is confined only to pleaders, i.e., those who have a right to plead in Courts."

20. In Hari Om Rajender Kumar v. Chief Rationing Officer 1990 (1) ALT 645 this Court speaking through M. Jagannadha Rao, J., (as his Lordship then was) held that the right to appear and plead for a principal in Court as also the right to practise are concerned, are governed by Sections 32 and 33 of the Advocates

Act. It is held that:

"Now, the Advocates Act, 1961, which is an Act to amend and consolidate the law. repeals the above provisions of the Letters Patent and parts of the Legal Practitioners Act. Section 32 of the Advocates Act uses the word "appear" while Sections 29 and 32 use the expression "practise". The word "practise" includes both acting and pleading and takes in all the normal activities of a legal practitioner. Though Section 33 of the Advocates Act uses the word "practise", we are here concerned with the word "appear" used in Section 32. A non-advocate, when he seeks permission to "appear" cannot, in my view, be permitted to "address" the Court on the strength of the power of attorney."

21. The petitioner in the instant case never sought the leave or permission of this Court so as to be represented by his power of attorney agent. There is absolutely no reason or justification to permit the power of attorney agent to adorn the role of advocate and represent the petitioner. The GPA holder's very presence in the proceedings and the reason for requisitioning his services are obviously for extraneous consideration. The power of attorney holder himself is stated to have incurred expenditure for prosecuting the case. There is no relationship as such between the petitioner and the power of attorney holder. Obviously, the power of attorney holder is indulging in speculation and the Court would not be wrong in suspecting some sort of deal between the petitioner and his power of attorney agent. That deal has resulted in this vexatious litigation. The petitioner argued his case earlier as party-in-person and this Court never felt any difficulty in appreciating the submissions made by the petitioner as party-in-person. There is absolutely no justification on the part of the power of attorney to barge into the Court to plead and argue on behalf of the petitioner.

22. However, after reserving this case for judgment, the petitioner appears to have addressed a letter dated 20th June, 2000 to the Registrar (Judicial), High Court of A.P. requesting to consider appointment of Sri S.S. Sonwalkar, Manager, Quality Control (Rctd.), ECIL, as his power of attorney and to plead the petitioner's case on his behalf in the Court. The letter, according to the petitioner is an application purported it to be under Order III, Rule 2 of the Code of Civil Procedure. Even if the said letter is to be treated as an application, the same deserves dismissal. It is a different matter altogether that this Court may have power to grant permission for a non-lawyer to plead/argue cases in certain special circumstances, the present case is obviously not one such. I have already adverted to the contents of the power of attorney deed and also the statement of the petitioner and the circumstances under which the power of attorney is brought into existence. For the aforesaid reasons, I hold that the petitioner is not entitled to be represented by his power of attorney agent.

23. At any rate, the petitioner is not entitled for any relief in this writ petition. It is nothing but an abuse of judicial process by the petitioner. The action of the ECIL in accepting the resignation of the petitioner as desired by him has not resulted in any injustice whatsoever. There is absolutely nothing on record to

hold that his resignation has been forcibly obtained by the Corporation. Such plea is only an after thought on the part of the petitioner.

24. This Court is duty bound to protect the purity of judicial process. The remedy under Article 226 and the relief to be granted is discretionary. This Court is entitled to regulate its proceedings. This Court is not only entitled but duty bound to reject the claim of an agent who is not an advocate to represent a party in a proceeding under Article 226 of the Constitution of India, if it comes to conclusion that the appearance of such power of attorney agent is for dubious reason. Only an advocate has right to argue the case. Of course, party in person can always represent himself but no agent other than advocate has any right to represent a party-in-person. The practice of permitting the power of attorney agent who is not an advocate enrolled under the Advocates Act, 1961 should be put to an end.

25. For all the aforesaid reasons, this writ petition fails and shall stand accordingly dismissed. This Court would have been well justified in awarding huge amount of penal costs so as to deter the petitioner and prevent him from abusing the judicial process. But I refrain myself from doing so, for the reason that the petitioner is out of employment ever since 1994.

26. The Court acknowledges the valuable assistance rendered by Sri T. Amarnath Goud, advocate as an amicus curiae.

27. The writ petition fails and shall stand accordingly dismissed.