

(2012) 07 KL CK 0096

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7800 of 2012

Karunakara Bhandary

APPELLANT

Vs

Kasaragod Bar Association

RESPONDENT

Date of Decision : 30-07-2012

Acts Referred:

Citation : (2012) 4 KLT 90

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Jacob P. Alex and Joseph P. Alex, for the Appellant; P.B. Krishnan, Alan Papali, George Mathews, Geetha P. Menon, N. Ajith, P.B. Subramanyan and Sojan Micheal, for the Respondent

Final Decision : Allowed

Judgement

P.R. Ramachandra Menon

1. The petitioner has approached this Court with the following prayers:

i. Declare that the decision taken/resolution passed by the first respondent to the effect that none of the lawyers who are members of Kasargod Bar Association should defend or prosecute any case on behalf of Karunakara Bhandary (petitioner) as unconstitutional, null and void;

ii Direct the fourth respondent to ensure that the members of 1st respondent are not preventing any other members of 1st respondent or any other advocate from appearing on behalf of petitioner in any courts in Kasargod District;

iii issue a writ in the nature of mandamus or any other writ, order or direction commanding the fourth respondent to take appropriate action upon Ext. P5 within a time-limit to be fixed by this Hon"ble Court

iv. Issue such other appropriate writ, order or direction that may be deemed just and equitable in the facts and circumstances of the case.

The Writ Petition was admitted, issuing notice by speed post on 28.3.2012. Despite the lapse of four months, nobody has filed any counter affidavit with regard to the pleadings and prayers sought for.

2. The learned counsel for the petitioner submits that, the petitioner is not in a position to enter appearance, file necessary pleadings or prosecute the matter in respect of the various litigations pending before the concerned Courts, allegedly because of some resolution stated as passed by the first respondent, virtually preventing the lawyers from accepting the Vakalath on behalf of the petitioner and from appearing in any of the Courts.

3. When the matter came up for consideration before this Court the last time, the learned counsel for the petitioner submitted that actually no such resolution could be passed by the first respondent and that even if any such resolution was there, it cannot fetter the rights of the petitioner to be represented through a lawyer of his choice, which otherwise will be contrary to the constitutional mandate and the law declared by this Court on many an occasion. The second respondent, who happens to be the President of the Association submitted the last time that, to the knowledge of the second respondent, a resolution was passed by the first respondent and that appropriate arrangements were being made to have proper representation for the first respondent. The fact remains that there is nobody to represent the first respondent and the case projected by the petitioner is not rebutted by any of the respondents in a proper manner by raising a pleading.

4. In the above circumstances, this Court finds that, if the apprehension expressed by the petitioner is genuine, there cannot be any such step by the first respondent or anybody under the first respondent Association, to cause any lawyer to refrain from accepting the brief for the petitioner and represent him in the concerned litigations, in which the petitioner wants to have the assistance of a lawyer. It is part of the duty of the lawyer to give necessary assistance to a client, who approaches him reposing confidence in the lawyer. This basic duty cannot be given a "go bye" and further, there is no right vested with the first respondent to impose any such prohibition, affecting the right of a lawyer to practise as an Advocate. This is more so by virtue of the law declared by the Apex Court as per the decision reported in A.S. Mohammed Rafi Vs. State of Tamil Nadu Rep. by Home Dept. and Others, on the point and also in view of the observations made by the Constitution Bench of the Apex Court in Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, holding that Lawyers haven't right to strike and that Lawyers holding vakalath of a client, if are abstaining from the Court due to a strike call, are personally liable for cost and also for compensation payable to the client in respect of the loss caused to the latter. In the above circumstances, this Court finds that the petitioner is entitled to succeed. It is made clear that, it is open for the petitioner to engage any lawyer of his choice to appear on behalf of him before the concerned Courts/Forum and the concerned lawyer will be free to accept such brief, notwithstanding

restriction, if any, placed by the first respondent Association or anybody under them.

Writ Petition is allowed. No cost.