
(1999) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1528 of 1998

K.P. Leela

APPELLANT

Vs

Secretary, Law, Govt. of A.P.

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Andhra Pradesh Advocates Fees Rules, 1990 — Rule 3, 50
Constitution of India, 1950 — Article 165, 21, 226, 32

Citation : (1999) 3 ALD 595 : (1999) 3 ALT 562

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : M/s. K.P. Leela, for the Appellant; Government Pleader for Home, for the Respondent

Judgement

1. This writ petition is filed for a writ of Mandamus directing the respondent to implement the Andhra Pradesh Advocates Fee Rules, 1990 (in short "the Rules") with effect from preceding three years from the date of filing of this writ petition to all the Government Pleaders, Assistant Government Pleaders and Standing Counsels of the State Government Organisations.

2. This writ petition is styled as "public interest litigation". The petitioner states that she was the Standing Counsel to M.C.H. In the affidavit filed in support of the writ petition, she states that the Standing Counsels in the State are being exploited by the State Government by not following the Rules, and the Government Pleaders, Assistant Government Pleaders and the Standing Counsels for different State Government Organisations are paid fees less than what the Rules prescribe, and they are being paid consolidated salary. She further states that unless one has a bargaining power with the Government, such person cannot get justice or due share. She also stated that some Government Pleaders in the Civil Courts are not being paid salaries for the last twenty months, in spite of submitting representations. She also made some allegations against the Advocate General. But from reading of the cause title, I find that the Advocate

General is not made a party to this Writ Petition and as such, it is not fair on the part of the petitioner to make certain allegations on the Advocate General, without impleading him as one of the respondents. The petitioner ultimately prayed in the writ petition that direction may be issued to implement the Rules immediately.

3. A counter is filed denying the allegations made in the writ petition, further stating that such a writ petition in the form of public interest litigation is not maintainable for and on behalf of the Government Pleaders, Assistant Government Pleaders, and Standing Counsels since they cannot be said to be persons belonging to under-privileged class, unable to represent their grievances, if any, against the Government. It is further stated that the averments made in the writ petition are very vague and not specific and it is not stated as to which Government Pleader, the salaries were not paid for the last twenty months etc, and if there are any specific cases of non-payment of remuneration, a representation could be made to the concerned authority. Regarding the Standing Counsels of the Municipal Corporations and other institutions are concerned, such corporations may be responsible to pay such fee, as admissible under their regulations and it is not for the Government to pay the remuneration on their behalf. It is further stated that a reference to the Advocate General in the affidavit of the petitioner is irrelevant and it is made only with a mischievous and defamatory intention and, therefore, those statements made against him are liable to be struck off. It is further stated that the petitioner has not demonstrated as to how there is violation of statutory provisions of the Rules. Therefore, this writ petition is liable to be dismissed, more so in view of the vague allegations made in the writ petition.

4. To this counter, a reply statement is filed by the petitioner stating that the person who has filed counter affidavit is not a party to the writ petition, therefore, he is not entitled to file counter affidavit, opposing the relief sought and he is also not authorised to file such affidavit. It is further stated that this counter is prepared at the instance of the Advocate General and the person who has filed the affidavit has not applied his mind. It is further reiterated that the writ petition is filed by way of public interest litigation on behalf of Law Officers of the State and State Organisations, since Law Officers as a Class are weak parties and are unable to represent their grievances with the fear of termination of their appointment. It is further stated that regarding the other corporations, even though the respondent is not paying any remuneration, but it can direct the concerned corporations to pay the remuneration as per the Rules. The petitioner stated that she also filed a writ appeal in WANO.1379/1998, making certain allegations and those allegations are not denied. When I directed the office to furnish a xerox copy of the order passed in WANO.1379/1998, I was informed by the Office that the said writ appeal does not pertain to the petitioner and it pertains to some other subject, with which the petitioner is not concerned. When I asked the petitioner, who has argued her case in person, she stated that the writ appeal number given in the WP is not correct. However, she further stated

that her services as Standing Counsel of M.C.H. were earlier terminated and she had filed a writ petition and writ appeal and there were some observations. In the reply affidavit also she made certain allegations against the Advocate General and ultimately prayed that the writ petition may be allowed.

5. Heard the petitioner as party-in- person and the learned Government Pleader for Home.

6. From reading of the entire affidavit filed in support of the writ petition, I find that particulars as to the remuneration paid to Government Pleaders or Assistant Government Pleaders or even to Standing Counsels to State Government Organisations and other Corporations is not mentioned. The grievance of the petitioner is that whatever the remuneration they are paid, is less than what is prescribed in the Rules. On the basis of such vague allegations, without any particulars, it is difficult to appreciate the case of the petitioner. Moreover, the petitioner herself submitted! that she was earlier a Standing Counsel of the Corporation and her services were terminated and she had filed a writ petition; in the High Court and the matter was even taken upto the Division Bench. From this it follows that the petitioner has personal interest in the subject matter, seeking her own remuneration. It is an established principle of law, that a person cannot file a public interest litigation with the personal interest involved and normally, the High Courts and Supreme Court would not entertain such public interest litigations. If the petitioner has her own grievance, as to the remuneration or arrears that she was entitled to, she could have filed her own writ petition, making necessary statements in support of her relief, and under the guise of public interest litigation, she is not expected to expose her own cause. Hence, this writ petition cannot be entertained. If any Government Pleader or Assistant Government Pleader has any grievance, either regarding remuneration paid or regarding arrears to be paid to him, such Government Pleader or Assistant Government Pleader whosoever it is, may make a representation to the proper authorities and seek relief. But that is not the case here. Moreover, certain wild allegations are made against the Advocate General without making him a party to the writ petition and those allegations which are personal in nature, only the Advocate General can meet, but not other persons. Having regard to these circumstances only, the Government Pleader for Home appearing for the respondent-Government submitted that those remarks made against the Advocate General are liable to be expunged from the record. There is substance in this contention. The office of the Advocate General is a constitutional office under Article 165 of the Constitution of India. In practice, the Advocate General is considered to be the leader of the Bar. Having regard to these circumstances, the petitioner should not have made such wild allegations against him, without making him as a party. From these allegations, at least one conclusion is possible that the petitioner unfortunately bears an animosity against the Advocate General. I do not know for what reasons. Whatever it may be, the present public interest litigation should not have been filed to satisfy such a personal vengeance. The Hon'ble Supreme Court in the decision reported in Chhetriya

Pardushan Mukti Sangharsh Samiti Vs. State of U.P. and others, , held that the remedy of public interest litigation can be resorted to by persons genuinely interested in the protection of the society. But this weapon cannot be used as cloak to "feed fact ancient grudge" and enmity. That was a case in which a person filed a public interest litigation by sending a letter to the Supreme Court, complaining environmental pollution in the thickly populated area. But in the counter filed in that case, it was disclosed that the petitioner had only aim to extract money from the people and there were also criminal proceedings against him and the petitioner therein was blackmailing people and there was a long history of enmity between the petitioner and the respondent. It was in those circumstances, the Hon"ble Supreme Court stated that such a public interest litigation should be discouraged by the Courts, by observing as under :--

"8. Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the Constitution. But this can only be done by any person interested genuinely in the protection of the society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the Court with great deal of circumspection and caution. Where it appears that this is only a cloak to "feed fact ancient grudge" and enmity, this should not only be refused but strongly discouraged. While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior Court preventing other genuine violation of fundamental rights being considered by the Court. That would be an act or a conduct which will defeat the very purpose of preservation of fundamental rights."

7. Having regard to the allegations made against the Advocate General, ventilating some personal grievances, I think this writ petition is filed only as a cloak to "feed fact ancient grudge". On this count alone, this writ petition is liable to be dismissed. At the same time, I may remind the petitioner that this legal system has survived and will survive in future only on the basis of mutual respect and affection amongst the members of the bar and between the bar and the bench. It is in this view of the matter, I think it appropriate to expunge the remarks made by the petitioner against the Advocate General.

8. Even otherwise, the Rules do not apply to the Government Pleaders, Assistant Government Pleaders etc. Under Rule 3 of the Rules it is stated that "these rules shall govern the fee payable by the adversary" in the Courts subordinate to the High Courts of Andhra Pradesh". In other words, if an advocate files a certificate stating that he has received fee, such amount may be made as costs in the suit and nothing more. In fact, Rule 50 provides that "every Advocate shall produce a

certificate that he has received the fee claimed in the suit or appeal within two weeks from the date of the judgment". On such certificate only, the same would be included in the costs ultimately payable by the adversary. From the object of the rules, it is clear that these rules are framed only for awarding costs in the suit or other proceedings and as such, these rules are not applicable for fixation of the remuneration to the Government Advocates. The petitioner has not brought to my notice any other rules governing the fee of the Government Pleaders, Assistant Government Pleaders etc. Whatever it may be, the position of a Counsel cannot be equated to an employee under the State. If the remuneration is not commensurate to his services, such Counsel may refuse to accept the office of the Government Advocate. It is with this kind of dignity, this profession is surviving and would survive in future. There are any number of instances, that some Advocates refused to become Judges of the High Court. In other words, such an independent position, the lawyers of this Country commanded all along and this kind of tradition deserves to be maintained also. And if the Government does not pay proper remuneration, an Advocate may refuse the brief of the Government. Having regard to this position of a learned Counsel in the legal system, that we have developed in India, I do not think that a writ petition of this type could be entertained for a better salary or remuneration etc. Normally, whatever is paid to the Counsel, is only a remuneration for his/her services, but not salary in the strict sense of the term and if such remuneration is not commensurate to his services rendered, it is open to the Counsel to refuse to accept the Government briefs. There may be instances that a Government Advocate may receive remuneration more than what the Rules contemplate and it does not mean that such an Advocate would be entitled to remuneration only what is prescribed in the Rules. Having regard to these circumstances, I am of the opinion that this writ petition cannot be entertained at all and accordingly, I pass the order as under :-

9. The writ petition is dismissed, but in the circumstances without costs.