
(2001) 03 AP CK 0117

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3252 of 2001 and WP (SR) No. 18005 of 2001

M. Radhakrishna Murthy

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 22, 28, 35(2)
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 23 Rule 1
Constitution of India, 1950 — Article 323A

Citation : (2001) 3 ALD 330

Hon'ble Judges : S.B. Sinha, C.J; V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. Lakshmi Narasimha and Mr. C. Srinivasa Basha, for the Appellant; Mr. M. Surender Rao and Mr. M. Ranta Reddy, for the Respondent

Judgement

Satya Brata Sinha, CJ

1. This petition raises an interesting question as regards interpretation of Order XXIII, Rule 1 CPC vis-a-vis the power of the Administrative Tribunal to entertain an application u/s 19 of the Administrative Tribunals Act, 1985.

2. The petitioner before us was the Original Applicant before the learned Tribunal in OA No.3381 of 2000. In his application u/s 19 of the Administrative Tribunals Act, he prayed the Tribunal to set aside the Memo No.6582/ C4/2000, dated 26-5-2000 and Memo NO.6520/C4/2000 dated 31-5-2000 issued by the second respondent herein as illegal and violative of Articles 14, 16 and 21 of the Constitution of India. He further prayed for a direction upon the respondents to recast the seniority by treating the applicant as senior to the unofficial respondents therein.

3. Admittedly, the respondents 3 to 5 herein were placed at a higher position than the petitioner in the seniority list which was questioned before the learned Tribunal and upon a prayer made by the petitioner herein an interim order was passed by the learned Tribunal on 17-7-2000 which is to the following effect:

"In the facts and circumstances of the case and in view of the foregoing discussion, pending further examination of the matter, the respondents are directed to examine the representation of the applicant dated 23-3-2000 and consider his objections as also the objections raised by similarly situated persons in regard to the seniority in the cadre of RTOs and pass appropriate orders thereon. We further direct that based on the orders to be passed on the representation dated 23-2-2000 the respondents are directed to make appropriate corrections in the seniority list of Deputy Transport Commissioners, before effecting promotions to the next higher category of Joint Transport Commissioner".

4. As against the said order, a writ petition being WP No.15794 of 2000 was filed by the third respondent herein and this Court in modification of the order passed by the learned Tribunal directed:

"Without going into the controversy raised in this writ petition, we direct the Tribunal to dispose of OA No.3381 of 2000 filed by the 4th respondent herein as expeditiously as possible. However, we modify the interim order dated 17-7-2000 passed by the Tribunal directing the official respondents to examine the objections raised by the petitioner herein through his representation dated 23-3-2000 and take appropriate decision within a reasonable period. We are of the view that this controversy has to be resolved and therefore, we direct the official respondents to decide the representation filed by the 4th respondent herein objecting to the combined seniority list of RTOs dated 26-5-2000 and the provisional seniority list of Deputy Transport Commissioners within a period of two weeks from the date of receipt of a copy of this order. We are of the further view that pending the Tribunal taking final decision, the proposed action of the official respondents contemplating to make further promotions to various categories could be proceeded with, however, such promotions would be subject to the result in OA No.3381 of 2000 that would be disposed of by the Tribunal."

Pursuant to or in furtherance of the said interim order passed by the Tribunal, as also the orders passed by this Court, the Government of Andhra Pradesh issued G.O. Ms. No.14, Transport, Roads and Buildings (Tr.I) Department, 29-1-2001 inter alia directing:

"The Government after careful examination of all representations in accordance with the rules of APS & SS Rules, 1996 and the instructions issued in circular memo No.16/Ser-A/93-39 dated 21-04-1999, hereby fix the inter-se-seniority of the Regional Transport Officers as indicated in the Annexure to this order, subject to the result of OANo.3381 of 2000 filed by Sri M. Radhakrishna Murthy, in A.P. Administrative Tribunal, Hyderabad.

The Transport Commissioner shall take further action in the matter accordingly."

5. The said purported G.O. Ms. No.14, dated 29-1-2001 was said to be questioned by the 5th respondent herein, but upon an objection taken in that regard by the petitioner herein he was not allowed to do so. The matter was

heard on merit and the judgement was reserved. Thereafter, a letter of withdrawal was filed by the petitioner herein before the learned Tribunal. The learned Tribunal refused to act thereupon and by the impugned judgment dated 19-2-2001 decided the matter on merit, inter alia, holding:

"The learned Counsel for the applicant filed a withdrawal letter dated 31-1-2001 requesting for the application to be closed as withdrawn on the ground that as per the directions of the Honourable High Court in WP No.15794 of 2000 on 6-11-2000 Government issued final orders in G.O. Ms. No.14, Transport, Roads and Buildings (Tr.1) department, dated 29-1-2001 with regard to the seniority of the RTOs and the seniority in the cadre of Deputy Transport Commissioner. On the other hand, the learned Counsel for the unofficial respondents contended that the matter may be disposed of on merits in order to give a finality to the issue involved in this matter....."

6. Mr. Lakshmi Narasimha, learned Counsel appearing on behalf of the petitioner, inter alia, submitted that having regard to the provisions of the Administrative Tribunals Act, the power of withdrawal of an application is an unconditional one. He would urge further that in view of the provisions under sub-sections (3) and (4) of Section 19 of the Administrative Tribunals Act, the petitioner is entitled to withdraw his application as no cause of action survives since the petitioner is no longer aggrieved by any order which was required to be considered and as such question of exercising any discretion by the learned Tribunal in the matter do not arise. The learned Counsel also submits that an application is entertainable in terms of the provisions of Section 19 of the Act only when an employee feels aggrieved by any order of the employer and not otherwise. The learned Counsel submits that keeping in view the principles laid down in Order XXIII, Rule 1 CPC, learned Tribunal has no jurisdiction to refuse to grant permission to the petitioner to withdraw the said application. Strong reliance in this connection has been placed on the decisions of the Apex Court in *Hulas Rai Baij Nath Vs. Firm K.B. Bass and Co.*, and *K.S. Bhoopathy v. Kokila*, 2000 (4) Sup 236.

7. Mr. Surender Rao, learned Counsel appearing on behalf of the third respondent on the other hand submitted that in view of the fact that the petitioner herein had taken undue benefit of an interim order passed by this Court and farther having regard to the fact that he had argued the matter on merit, it is not proper for him now to contend that the right to withdraw the Original Application is an unconditional one. He would further urge that Order XXIII, Rule 1 CPC per se has no application in a proceeding before the Administrative Tribunal. Our attention in this connection has been drawn to Section 22(3) of the Administrative Tribunals Act as also Sections 28 and 35(2)(e) of the said Act. It was submitted that in any event the power exercisable in terms of Section 19 of the Act is subject to the power of Section 20 thereof. According to the learned Counsel, Section 19 of the Act cannot be said to have any application once the matter is admitted and slated for hearing. In any event, Mr. Surender Rao would contend that the jurisdiction u/s 19, in a fact situation of this nature may not strictly be

adversarial in nature between two contending parties as would appear from the fact that a third party namely D.C. Govinda Reddy, has also filed a separate writ petition, being WPSR No. 18005 of 2001, although he was not a party in the Original Application, questioning issuance of the said G.O. Ms. No.14, dated 29-1-2001 whereby and whereunder he is also aggrieved. It was urged that in that situation, such an application may be considered to have been filed by the petitioner in a representative capacity inasmuch as it is the said application which might have affected adversely the interests of others who are not parties to the lis. Strong reliance in this connection has been placed on a Division Bench decision of this Court in Princess Fatima Fronzia v. Sayeed-Ul-Mulk 1978 (2) ALT 124. In any event, as no notice of said withdrawal having been served upon the fifth respondent, no order directing withdrawal of the application could have been passed. In support of the said contention reliance has been placed on a Division Bench of this Court in Bangaru Patttabhirmayya and Others Vs. Bangaru Gopalakrishnayya and Others, . The learned Counsel would further contend that as refusal to permit to withdraw a suit is not a revisable order in terms of Section 115 CPC, the same principle should be applied in the instant case also. Strong reliance in this connection has been placed on the Division Bench decisions of Allahabad, Patna High Courts as also a decision of Delhi High Court reported in Sheo Kumar Dwivedi and Others Vs. Thakurji Maharaj Brijman and Another, , Tata Iron and Steel Co. Ltd. Vs. Arun Chandra Bose and Another, and Jagdish Chander Dhawan Vs. Karam Chand Mehra and Another, respectively.

8. Mr. Ratna Reddy, learned Counsel appearing on behalf of the fifth respondent while adopting the submissions of Mr. Surender Rao submitted that the petitioner herein having opposed the prayer of the fifth respondent to question the said G.O. Ms. No.14, now cannot be permitted to turn round and contend that he has a right of unconditional withdrawal. If it is held that the petitioner has a right of unconditional withdrawal, Shri Ratna Reddy contends that his client i.e., fifth respondent would be gravely prejudiced.

9. Mr. Srinivasa Baba, learned Counsel appearing on behalf of the petitioner in WP SR No.18005 of 2001 submits that his client has also been adversely affected by reason of the said G.O. Ms. No.14.

10. Although all the provisions contained in the Code of Civil Procedure, 1908 *stricto sensu* are not applicable in the proceedings initiated u/s 19 of the Administrative Tribunals Act, the general principles contained therein may be found applicable. Section 22 of the Administrative Tribunals Act categorically states that the Tribunal shall have power to regulate its own procedure and it shall not be bound by the provisions laid down in the CPC.

11. Having regard to the purport and object of constitution of the Administrative Tribunals as adumbrated under Article 323-A of the Constitution of India, the Tribunal is a substitute to all other Courts, which were otherwise having jurisdiction to decide disputes of civil nature including service disputes. Having regard to the decision of the Apex Court in L. Chandra Kumar v. Union of India,

the Tribunal of course do not exercise power of judicial review but its power somehow is akin thereto. In this situation, we are of the opinion that Order XXIII, Rule 1 CPC cannot be said to be applicable *stricto sensu* to the proceedings of the Tribunal. Thus, we do not find any justifiable reason to interfere with that part of the order of the Tribunal whereby and whereunder it has refused to grant permission to withdraw the application in favour of the petitioner. In *M/s. Hulas Rai's case*, (*supra*) the law is stated in the following terms:

"2. The short question that, in these circumstances, falls for decision is whether the respondent was entitled to withdraw from the suit and have it dismissed by the application dated 5th May, 1953 at the stage when issues had been framed and some evidence had been recorded, but no preliminary decree for rendition of accounts has yet been passed. The language of Order XXIII, Rule 1, sub-rule (1), CPC gives an unqualified right to a plaintiff to withdraw from a suit and if no permission to file a fresh suit is sought under sub-rule (2) of that rule, the plaintiff becomes liable for such costs as the Court may award and becomes precluded from instituting any fresh suit in respect of that subject matter under sub-rule (3) of that Rule. There is no provision in the CPC which requires the Court to refuse permission to withdraw the suit in such circumstances and to compel the plaintiff to proceed with it. It is, of course, possible that different considerations may arise where a set-off may have been claimed under Order VIII CPC or a counter claim may have been filed, if permissible by the procedural law applicable to the proceedings governing the suit. In the present case, the pleadings in paragraphs 8 and 11 of the written statement, mentioned above, clearly did not amount to a claim for set-off. Further, there could be no counter claim, because no provision is shown under which a counter claim could have been filed in the trial Court in such a suit. There is also the circumstance that the application for withdrawal was moved at a stage when no preliminary decree had been passed for rendition of accounts and, in fact, the appellant was still contending that there could be no rendition of accounts, in the suit because accounts had already been settled. Even in para 11, the only claim put forward that, in case the Court found it necessary to direct rendition of accounts and any amount is found due to the appellant a decree may be passed in favour of the appellant for that amount. In this paragraph also, the right claimed by the appellant was a contingent right which did not exist at the time when the written statement was filed. Even if it be assumed that the appellant could have claimed a decree for the amount found due to him after rendition of accounts no such right can possibly be held to exist before the Court passed a preliminary decree for rendition of accounts. It is to be noted that in the case of a suit between principal and agent, it is the principal alone who has normally the right to claim rendition of accounts from the agent. The agent cannot ordinarily claim a decree for rendition of accounts from the principal and, in fact, in the suit, the appellant, who was the agent of the respondent, did not claim any rendition of accounts from the respondent. In these circumstances, at the stage of withdrawal of the

suit, no vested right in favour of the appellant has come into existence and there was no ground on which the Court could refuse to allow withdrawal of the suit. It is unnecessary for us to express any opinion as to whether a Court is bound to allow withdrawal of a suit to a plaintiff after some vested right may have accrued in the suit in favour of the defendant. On the facts of this case, it is clear that the right of the plaintiff to withdraw the suit was not at all affected by any vested right existing in favour of the appellant and consequently, the order passed by the trial Court was perfectly justified".

In Bhoopathy's case (supra) the Supreme Court held:

"11. The present Rule which was introduced in place of the old Rule 1 by the Amendment Act of 1976 makes a distinction between absolute withdrawal which is termed as "abandonment" and withdrawal with the permission of the Court. This clear distinction is maintained throughout in the substituted Rule by making appropriate changes in the wording of various sub-rules of Rule 1.

12. The law as to withdrawal of suits as enacted in the present Rule may be generally stated in two parts : (a) a plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the Court; in that case he will be precluded from suing again on the same cause of action. Neither the plaintiff can abandon a suit or a part of the suit reserving to himself a right to bring a fresh suit, nor can the defendant insist that the plaintiff must be compelled to proceed with the suit; and (b) a plaintiff may; in the circumstances mentioned in sub-rule (3), be permitted by the Court to withdraw from a suit with liberty to sue afresh on the same cause of action. Such liberty being granted by the Court enables the plaintiff to avoid the bar in Order II, Rule 2 and Section 11 CPC".

On the other hand a Division Bench of this Court in Princess Fatima 's case (supra) upon taking into consideration the principles governing Order XXIII, Rule 1 CPC held that the right to withdraw suit by a plaintiff is not unconditional one. In that situation the Division Bench held:

"11. May be as contended by the appellant-petitioner is entitled to withdraw. If he has an unconditional right to withdraw, whether the grounds which have impelled him to withdraw are proper or not, the Court cannot refuse permission to withdraw. But at the same time, if the suit or proceeding is in effect a representative one, the appellant-petitioner cannot thereby put an end to all the proceedings taken up to that point or that would logically follow. The right of an appellant to withdraw the appeal is one thing and the power of the Court to allow another person, who has an interest similar to that of the appellant, to continue the suit, appeal or proceeding is another. On account of such withdrawal, the suit or appeal does not terminate. In Seethal Achi v. Meyappa AIR 1937 Mad. 337, the Division Bench held that where a plaintiff withdraws from a suit before a Court passes a final Order recording the withdrawal, the suit cannot be deemed to have been terminated. Ordinarily when the Court finds no impediment to the

dismissal of a suit after the announcement of the withdrawal of the claim by the plaintiff, it will simply say that the suit is dismissed as the plaintiff has withdrawn from it. An order as to costs will also be passed. But several exceptions have been recognised to this general rule, as for example, partition suits, partnership suits, suits for accounts etc. The Court further proceeded to consider whether "the moment the plaintiff announces the fact of withdrawal, the Court is deprived of all the jurisdiction over the suit for any purpose except for passing an order in view of such withdrawal by the plaintiff" and held that "before the final order of the Court is passed after such withdrawal the suit cannot be deemed to have been terminated". The Court further observed "the withdrawal by the plaintiff should not necessarily lead to the dismissal of the suit because some appropriate reliefs may have to be given even in favour of the defendants. In a representative suit, the Court need not dismiss the suit inspite of withdrawal by the plaintiff, but it may add another person as party in substitution of the plaintiff or transpose the defendant as plaintiff and direct the continuation of the suit". The principle enunciated in this case was followed by a Bench of this Court in Masulipatam Municipality Vs. Rallabhandi Venkatappayya and Others, , that was an administrative suit. The Court held that "the moment a petition for withdrawal is filed or made, the appeal does not come to an end, the order of the Court is necessary and in an administrative suit before the Order of the Court any person affected may join and continue the suit".

The said decision was followed by a Division Bench of this Court in B. Pattabhiramayya's case (supra) holding that in a given situation, a withdrawal of a suit without notice to the other side may cause undue hardship and irreparable injury to him and as such no suit can be permitted to be withdrawn without notice to the concerned respondents who would be affected thereby. Applying the case of "Princess Fatima" (supra) the Bench presided over by P.A. Choudary, J., held:

"..... We find that the lower Court acted without jurisdiction in granting permission to the plaintiff to withdraw the suit without giving notice to all the defendants. If the defendants had been given notice, they would have in all probability, subject to the law of limitation, transposed themselves as plaintiffs and continued the suit making the plaintiff a defendant, if necessary. They would have thus saved and safeguard their lawful interest. By permitting the plaintiff to withdraw his suit even without notice to the contesting defendants the Court has clearly denied the defendants their lawful right".

12. Order XXIII, Rule 1 is in two parts. While sub-rule (1) thereof provides for abandonment of the claim, sub-rule (3) speaks of withdrawal of a suit with leave to file another suit in the self-same cause of action. Abandonment of a claim, in the situation stated by this Court in the cases of Princess Fatima (supra) and B. Pattabhiramayya (supra) is not an absolute right, although in a normal situation, the same would be an absolute right of the petitioner.

13. In a situation of this nature, we are of the opinion that it cannot be said that

the Tribunal had no jurisdiction at all to refuse to permit the petitioner to withdraw the case by reason of the prayer in the letter of withdrawal dated 31-1-2001 filed by the petitioner which reads:

"It is submitted that OA No.3381 of 2000 has been filed on the file of the Hon"ble A.P. Administrative Tribunal questioning the combined seniority list of Regional Transport Officers issued in Memo No.6582/C4/2000, dated 26-5-2000 of the Transport Commissioner, A.P. Hyderabad and the Provisional Seniority list of Deputy Transport Commissioners in Memo No.6520/C4/2000, dated 31-5-2000 of the Transport Commissioner, A.P. Hyderabad.

The Government and the Transport Commissioner have not filed any counter affidavit till now in the case explaining the facts of the case. It is not possible to put forth any reasonable arguments without knowing the version of the official respondents.

However, in pursuance of the orders of the honourable High Court in WP No.15794 of 2000, dated 16-11-2000 duly calling for objections from the concerned and accordingly the applicant submitted objections along with others. As per the directions of the Hon"ble High Court the Government issued final orders in G.O.Ms. No.14, Transport, Roads and Buildings (Tr.I) Department, dated 29-1-2001 with regard to seniority of the RTOs and the seniority in the cadre of Deputy Transport Commissioners would also be decided consequently.

On 30-1-2001, I already stated before the honourable Bench about the withdrawal of the OA No.3381 of 2000.

Under these circumstances, as the grievances set forth in OA No.3381/2000 have been redressed, the OA No.3381/2000 filed by the applicant may please be closed as withdrawn".

14. The prayer to withdraw the application was, therefore, made because of issuance of the aforementioned G.O. Ms. No.14, dated 29-1-2001. It is thus not a case where the petitioner abandons his claim in terms of clause (1) of Order XXIII, Rule 1 CPC or principles analogous thereto. We, therefore, are of the considered opinion that the impugned order need not be interfered with by this Court in exercise of equitable jurisdiction under Article 226 of the Constitution of India. Be that as it may, having regard to the fact that now another application had been filed questioning the G.O. Ms. No.14, dated 29-1-2000 and further in view of the fact that the State Government have not yet filed any counter-affidavit is the Original Application, we are of the opinion, that the interests of justice would be subserved if the matter is remitted back to the learned Tribunal with a direction to consider the same afresh in the light of the observations made by us and with a further direction that the Original Application filed by the respondent No.5 herein may also be admitted and disposed of on merit. The petitioner in WPSR 18005 of 2001 may also be given liberty to file an Original Application. The petitioner herein may also file a separate application for amendment of the Original Application. However, we may clarify that the interim

orders dated 17-7-2000, of the Tribunal as modified by this Court did not survive in view of passing of the final order dated 19-2-2001 by the learned Tribunal. In the given fact situation of the matter, we would, however request the Tribunal, to consider the desirability of disposing of the whole matter at an early date and preferably within two months from date. We have no doubt in our mind that while considering the matter afresh, the Tribunal will not be influenced by the impugned order. Parties are at liberty to make appropriate interim prayer before the learned Tribunal, which may be considered, on its own merit. Subject to the aforementioned observations, the applications are disposed of. No costs.