
(1997) 02 AP CK 0041

In the Andhra Pradesh High Court

Case No : Writ Petition No. 528 of 1997

M. Rajaiah

APPELLANT

Vs

Managing Director, APSRTC

RESPONDENT

Date of Decision : 25-02-1997

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (1997) 3 ALD 806 : (1997) 4 ALT 41

Hon'ble Judges : Y.V. Narayana, J

Bench : Single Bench

Advocate : K. Ramakrishna Reddy, for the Appellant; A. Vijainthi, for the Respondent

Final Decision : Dismissed

Judgement

Y.V. Narayana, J.—The petitioner herein is a practising advocate in Karimnagar. He was appointed by the respondent-Corporation by Order dated 1-3-1996 as Additional Standing Counsel for the A.P.S.R.T.C. at Karimnagar. The term of appointment is two years. While so, on 10-6-1996, the Prohibition & Excise officials raided the house of the petitioner herein and found Whisky bottles in the sand lying in the residential premises of the petitioner and thereupon a crime was registered against the petitioner under the provisions of Prohibition laws. Subsequently, on 26-12-1996, the respondent- Corporation issued the impugned order, which reads as follows:

"It is reported in the complaint dated 12-12-1996 that the Prohibition and Excise Inspector raided your house, seized 25 bottles of liquor and arrested you and sent for remand and the case filed against you is still pending before the Court. The said incident was also, reported in the Eenadu Daily Newspaper, Karimnagar dated 12-6-1996. Since you are accused in the criminal case, your representation before the Courts on behalf of APSRTC will not be effective. Further, your involvement in the said case will affect the reputation of the Corporation. It is, therefore, considered that your performance is not satisfactory.

Invoking Clause 3 of terms and conditions of your appointment, I hereby give this notice of termination. Please take notice that your appointment as Additional Standing Counsel for APSRTC at Karimnagar stands terminated on expiry of 15 days from the date of receipt of this notice."

Challenging the said order, the present writ petition is filed contending that the impugned order is contrary to the terms and conditions of appointment and that it is, therefore, ultra vires. It is further contended that before terminating the petitioner, the respondent has not issued any notice to him and that the impugned order is, therefore, contrary to the principles of natural justice. It is, therefore, submitted that the action of the respondent, which is an instrumentality of the State within the meaning of Article 12 of the Constitution, amounts to arbitrariness and is not in conformity with the rule of law. It is thus contended that the impugned order is liable to be set aside.

2. On the other hand, it is contended by the learned Standing counsel for the respondent-Corporation that the terms and conditions of the appointment do not contemplate issuance of any prior notice to the petitioner before terminating the term of a Standing Counsel. It is however, submitted that the impugned order is in the nature of a notice of termination as 15 days' time was given to the petitioner before actually giving effect to the order of termination.

3. It is useful to read Clause 3 of the Terms and Conditions governing the appointments of Standing Counsel for the Corporation, which reads as follows:

"The period of engagement is for two years but subject to termination earlier at the discretion of Managing Director, if the work of the Counsel is considered unsatisfactory."

A perusal of Clause (3) goes to show that the term of appointment is two years and the same is terminable at any time at discretion of the Managing Director of the Corporation, even before the expiry of the said term if he feels that the work of the Standing Counsel is unsatisfactory. Nowhere it is stated that notice should precede the order of termination. Therefore, it is the sheer discretion of the Managing Director whether to engage or disengage a particular Standing Counsel. It is needless to say that the Standing Counsel will represent the Corporation as long as his work is satisfactory. The Managing Director is free to terminate the service of his Counsel if he feels that he is unsuitable to represent the cases on behalf of the Corporation, may be because of his unsatisfactory work or because of any other reason. In this case, the Managing Director having felt that the petitioner may not satisfactorily discharge his duties effectively as Standing Counsel consequent upon his involvement in the criminal case, terminated the appointment of the petitioner. True that the language used in the order of termination does not reflect the true intention of the Corporation in terminating the engagement of the petitioner, but that does not entitle the petitioner to harp upon Clause 3 of terms and conditions of appointment and say that the order impugned is not in accordance with Clause 3.

4. The learned counsel for the petitioner seeks to rely upon the dying declaration of his wife, who is said to be died having poured kerosene on her body and lit fire to herself on hearing the news that the petitioner was involved in a criminal case, and contends that the said dying declaration would clearly prove that the petitioner is an innocent and the criminal case is only a foisted case at the instance of one Mr. Ramaswamy, Circle Inspector (Excise) who is inimically disposed with the petitioner. It is, therefore, contended that the Corporation is wholly unjustified in terminating the engagement of the petitioner on the basis of such a false and foisted criminal case. But, I am of the view that the questions whether the criminal case is a foisted one or not or whether the contents of the dying declaration can be believed or not are all matters of enquiry and trial before the criminal Court and till the charge against the petitioner is disproved, the petitioner is like any other accused person before a Court of law and he cannot be said to be innocent till the Court holds him not guilty of the charge. Therefore, the contention of the learned counsel for the petitioner, placing reliance upon the contents of the dying declaration, will not be of any help to the petitioner in this writ petition. 5. Even otherwise, I am of the view that the Corporation is fully justified in terminating the engagement of the petitioner as Standing Counsel for the following reasons. By virtue of the engagement of the petitioner as Standing Counsel, there existed a relationship of "Advocate" and "Client" in between the petitioner and the A.P.S.R.T.C. It is no doubt true that the Corporation is a "State" within the meaning of Article 12 of the Constitution of India and even the mighty State is like any other party before a Court of Law and a client before an Advocate. No client would like to have an Advocate who is involved in a criminal case. No client would like to see his Advocate standing in the dock in a Criminal Court like an accused person and no client wants such an Advocate to conduct the cases on his behalf in a Court of Law. The petitioner was permitted to conduct the cases on behalf of the Corporation as long as the Corporation has the confidence upon him. When once the client loses its confidence upon its Advocate, it is but natural that it does not retain such an Advocate any further. The involvement of the petitioner in criminal case, thus, naturally prompts the Corporation to disengage the petitioner as its Standing Counsel. For these reasons, the contention of the learned counsel for the petitioner that the Corporation which is a State within the meaning of Art. 12 of the Constitution, cannot act arbitrarily like an ordinary citizen, is ill-founded. In the facts and circumstances of the case, I am of the view that the respondent-Corporation, which is like any other client, need not give any opportunity or invite any explanation from the petitioner about his involvement in the criminal case before disengaging his appointment. However, it is noticed, from a perusal of the impugned order, that 15 days' time was given to the petitioner before effecting the order of termination. Therefore, the contention of the petitioner need not be given much weight. It is not out of place to mention here that when once the client does not want to engage or continue to engage an Advocate, it is better, in order to preserve and protect the high moral values of the legal profession, if the petitioner hands, over the charge to his successor and he ought

not have approached this Court challenging the termination order raising flimsy grounds. In these circumstances and for the foregoing reasons, I am of the considered opinion that none of the decisions cited by the learned counsel for the petitioner are applicable to the facts of the case. There are no merits in the writ petition.

The writ petition is accordingly dismissed. No costs.