
(2025) 05 KL CK 1159

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34764 Of 2018

Mathew B. Kurian

APPELLANT

Vs

National Council For Teacher Education

RESPONDENT

Date of Decision : 26-05-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2025) 05 KL CK 1159

Hon'ble Judges : Mohammed Nias C.P., J

Bench : Single Bench

Advocate : Jacob Sebastian, Dr.Abraham P.Meachinkara

Final Decision : Allowed

Judgement

Mohammed Nias C.P., J

1. The petitioner, Mathew B. Kurian, an advocate representing M/s. Peter & Karunakar and the son of the late Advocate V.M. Kurian, who passed away on 07.06.2018, seek intervention regarding the respondents' failure to settle pending legal fees. The first respondent, the National Council for Teacher Education (NCTE), a statutory body under the 1993 Act, is a 'State' under Article 12 of the Constitution and subject to writ jurisdiction. The petitioner states that NCTE appointed Sri V. M. Kurian as Standing Counsel in 2000, who handled over 590 cases for nearly two decades, with bills totalling Rs. 12,11,770/- remaining unpaid despite regular invoicing. After the appointment of a new counsel in April 2018, the petitioner informed NCTE of pending bills and case files, which were delivered to the new counsel in July 2018, who assured payment. Despite repeated requests, bills from 2004 remain unpaid, with no response from NCTE.

2. The petitioner asserts that there is no dispute over the fees owed and that NCTE is capable of clearing dues. In response, the 3rd respondent states that the bills were processed with a request for detailed information, such as case classification, document drafting, and disposal dates, as per NCTE guidelines

[Exhibits R3(a) and R3(b)]. Payment will be made once these details, supported by documentation, are provided, depending on fund availability.

3. Upon admission of this writ petition, an interim order was passed directing the NCTE to pay the fee at the rate of Rs. 2,250/-. Against this order, NCTE filed W.A. No. 1435/2019 in which a stay was granted, and finally writ appeal was disposed of, maintaining the interim order and directing the writ petition to be heard. After disposal of the writ appeal, an additional statement has been filed by the 3rd respondent raising objections to the release of some bills.

4. The contentions regarding the bills submitted as Ext.P2 and the explanations offered by the petitioner are illustrated in the tabular columns given below:

Table A – Cases where NCTE is not a party.

Sl No.

Sl.No. in the 2nd set of Ext.P2

Case Number

1

21

WPC No. 23357/2005

2

31

WPC No. 15637/2005

3

32

WA No. 1065/2005

4

40

WPC No. 32836/2005

5

49

WPC No. 36100/2005

6

65

OP No. 15283/2001

7

93

WPC No. 8164/2008

8

150

OP No. 15791/2000

9

159

WPC No. 18160/2004

10

211

WPC No. 2578/2005

Table B - The following case involves duplication of the Bill.

Sl No.

Sl.No in the 2nd set of Ext.P2

Case Number

1

146

WPC No. 24476/05

The petitioner admits the stand of the NCTE as regards the cases listed in Tables A and B, and accordingly, no amounts are due in these cases.

Table C - In the following cases, NCTE contends that the date of the bills is before the actual date of disposal.

Sl No.

Sl.No. as in 2nd set of Ext.P2

Case Number

1

4

WA No.441/04

2

7

WP(C) No.31370/04

3

8

WP(C) No.27860/03

4

16

WP(C) No.16255/05

5

18

WP(C) No.32938/03

6

26

WP(C) No.25252/05

7

30

WP(C) No.19643/05

8

33

WA No.23877/05

9

40

WP(C) No.32836/05

10

50

WP(C) No.1558/06

11

231

WP(C) No.27935/12

12

242

WP(C) No.26263/10

13

254

WA No.90/14 – Against

WP(C) No.27400/12

Explanation: The Petitioner clarifies that the dates of the bills are irrelevant, as all the above-cited cases were disposed of when Late V.M. Kurian appeared as the Standing Counsel. Bills for part payment were made in some cases during their pendency.

Table D - Cases where NCTE asserts that payment has already been made, alongwith the explanation offered by the petitioner.

Sl No.

Sl.No. as in 2nd set of Ext. P2

Case Number

Explanation by the Petitioner

1

33

WPC No. 23877/05

No payment

received

2

50

WPC No. 1558/06

No payment

received

3

73

WPC No. 8924/07

Partly paid

4

86

W.A No. 2857/07

WPC No. 22758/07

No payment
received.

5

126

W.A No. 1151/09

WPC No. 18974/08

Partly paid

6

128

WA No. 2845/09

No payment
received

7

129

WPC No. 13024/09

No payment
received

8

130

WPC No. 2447/10

No payment
received

9

131

WPC No. 4675/10

No payment
received

10

132

WPC No. 23835/10

No payment

received

11

135

WPC No. 26853/10

No payment

received

12

144

WPC No. 33532/11

No payment

received

13

214

WPC No. 2545/14

No payment

received

14

258

WPC No. 26239/12

No payment

received

15

259

RP No. 234/13

WPC No. 33532/11

No payment

received

16

263

WPC No. 20306/14

No payment

received

Table E - Cases in which NCTE claims non-receipt of certified copies of the judgment are listed below, alongwith the explanation offered by the petitioner.

Sl No.

Sl.No as in 2nd set of Ext P2

Case Number

1

214

WPC No. 2545/14

2

258

WPC No. 26239/12

3

259

RP No. 234/13 WPC No. 33532/11

4

263

WPC No. 20306/14

5

22

W.A. No. 1639/05

6

37

WPC No. 24586/04

7

39

WPC No. 32235/05

8

46

WPC No. 32835/05

9

52

WPC No. 7726/06

10

80

WPC No. 24811/07

11

81

WPC No. 25331/07

12

83

WPC No. 33092/07

13

89

WPC No. 34225/07

14

95

WPC No. 28597/07

15

99

WPC No.18817/08

16

116

WPC No. 6983/04

17

117

WPC No. 8635/04

Explanation: In the reply affidavit, the petitioner clarifies that a copy of the above-listed judgments can be provided.

Table F - NCTE contends that records for the following cases have not been provided.

Sl No.

Sl.No as in 2nd set of Ext. P2

Case Number

1

3

RP No. 179/1956

2

9

CCC No. 235/05

3

44

CCC No. 1475/05

4

54

CCC No. 615/06

5

103

CCC No. 1312/08

6

123

CCC No. 347/09

7

149

CCC No. 639/07

8

175

CCC No. 1236/05

9

238

WA No. 1625/09

Explanation: The petitioner explains that the case records were duly forwarded to NCTE after the cases were disposed of.

Table G - In the following case, Late V.M. Kurian did not appear for NCTE.

Sl No.

Sl.No as in 2nd set of Ext. P2

Case Number

1

136

WPC No. 24775/2010

Explanation: Petitioner submits that W.P.(C) No.24775/2010 is connected to a batch of cases and was disposed of together, denying the contention of NCTE.

5. The petitioner, in the reply affidavit, contends that the first set of bills in Exhibit P2 were only partially paid and relate to a period before the introduction of Exhibit R3(b) guidelines in December 2017, and thus, the new guidelines should not apply to them. The second set of bills, covering 273 cases, remains completely unpaid. The petitioner states that judgment copies— showing the counsel's name—were already sent and that it is impractical to submit fresh bills with detailed classifications like effective or non-effective hearings. The petitioner agrees to comply with Exhibit R3(b) guidelines for cases filed after 28.12.2017.

6. Heard the learned counsel for the petitioner, Sri. Jacob Sebastian and Sri. Abraham P. Meachinkara, the learned Standing Counsel, appeared for the respondents.

7. Rules 11, 12, 28, 29, and 38 in Part VI – Rules Governing Advocates, Chapter II - Standards of Professional Conduct and Etiquette, Section II – Duty to the Client, of the Bar Council of India Rules and which are relevant in the instant case, read thus:

"11. An Advocate is bound to accept any brief in the Courts or Tribunals or before any other authorities in or before which he proposes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special

circumstances may justify his refusal to accept a particular brief.

12. An Advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notices is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

.....

28. After the termination of the proceeding, the Advocate shall be at liberty to appropriate towards the settled fee due to him, any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the Advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Court, in force for the time being, or by then settled and the balance, if any, shall be refunded to the client.

.....

38. An Advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same.”

8. A reading of the above Rules of the Bar Council of India Rules clearly shows that a lawyer-client relationship is based on a contract, express or implied, and when the lawyer accepts a brief and the client agrees to a fee, a binding contract is formed. The Advocate has to be compensated for the time, skill and effort, and when a fee is stipulated and accepted by both parties, the client is legally obligated to pay. Even in cases where there is no fixed fee agreed upon, a lawyer can claim a reasonable fee based on the value of the services rendered. Lawyers providing specialised intellectual and legal services are entitled to a fee consistent with their standing and the nature of the case, and the rules prohibit charging below the admissible fees if the client is able to pay, thus reinforcing the advocate's right to fair payment. Rule 12 allows only for sufficient cause and mandates a refund of only that part of the fee not earned, implying that the earned fees are justly due and non-refundable. Rules 28 and 29 also authorise the Advocates to deduct their fee from funds held for the client at the end of a case, which reflects the recognition of their automatic entitlement to payment from such amounts. The fair payment to the Advocates is essential to ensure the independence, dignity and non-subordination of the legal profession and is also quintessential to maintain the ethical integrity. Non-payment or arbitrary denial of fees leads to exploitation of legal professionalism, which hinders access to justice. A reading of the above rules and the interpretation thereof leaves no doubt that, if a client agrees to pay and then refuses after receiving services, such conduct is unjustifiable and condemnable.

9. The respondents' counsel argued that the writ petition is not maintainable due

to disputed questions of fact. In *Govt. of Tamil Nadu and Ors. v. R. Thillaivillalan* [AIR 1991 SC 1231] and *James Koshy v. KSRTC* [1999 3 KLT 533] Courts have held that petitions by Advocates for unpaid professional fees against state instrumentalities are maintainable under Article 226, unless complex factual issues prevent adjudication. The Supreme Court has consistently reiterated that the presence of disputed questions of fact does not by itself bar the exercise of writ jurisdiction under Article 226. The proposition that a petition under Article 226 must be rejected simply on the ground that it cannot be decided without determining the disputed question of fact is not warranted by any provisions of law nor by any decision of Court and such a proposition as an inflexible rule of law or of discretion will necessarily make the provisions of Article 226 wholly illusory and ineffective, and that on occasions, such an approach is dictated by considerations of convenience, rather than a rigid rule calling for universal application.

10. Judicial review remains warranted in cases of perceived arbitrariness, regardless of contractual complexity or factual disputes.. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs which turns on entertainability and not maintainability. Thus, the High Court has jurisdiction to entertain petitions involving factual disputes, especially when State agencies act arbitrarily or violate constitutional guarantees. The authority to issue writs under Article 226 is plenary, and limitations only arise where explicitly provided by the Constitution. Courts can, on occasion, assess disputed facts where justice demands, underscoring that the so-called "hands-off" approach is not absolute, but context-dependent.

11. Adopting any other position would imply that an advocate, who has diligently represented a client throughout the entirety of a case, would be compelled to initiate a separate suit against his own client, incurring court fees and navigating the constraints of the period of limitation. Such an approach would impose an unwarranted burden on legal professionals, forcing them into such strained circumstances unless the matter involves complex issues requiring factual adjudication. This would undermine the very essence of legal practice, where the advocate's role is to serve the client's interests without the needless complication of parallel proceedings, save for circumstances that genuinely demand detailed factual examination.

12. In the instant case, there is no dispute that there was an engagement by NCTE. There is no dispute that 590 cases have been disposed of. There is no allegation that the lawyer concerned had not appeared or that the cases had not been disposed of. Only ten cases are shown where the NCTE is not a party. Under such circumstances, there is no justification at all for non-payment of the agreed fees to the petitioner for the services rendered. Nothing on record shows any communication issued by the NCTE to Late Adv.V M Kurian calling for any details or complaining that the disposal of the cases was not intimated or that the certified copies were not given.

13. On the question of application of the Exhibit R3 (b) guidelines, the same will apply to those cases after the issuance of the guidelines and not to the ones filed before that. At any rate, guidelines cannot be a reason for not paying the fee due to the lawyer who appeared in all those cases. As regards the cases listed in Tables C, D, E, F and G, there is nothing on record or any proof furnished by NCTE to contradict the petitioners contention of non receipt of fees and hence, the amounts remain due for these cases, subject to deductions for partial payments made by the respondent, as reflected in Table D. The findings above underscore the petitioner's rightful claim, affirming the legitimate entitlement to the fees due.

14. In the result, the writ petition is allowed and there will be a direction to the first respondent to pay the fees for all the cases listed in Tables C, D, E, F, and G within two months from the date of receipt of a copy of this judgment. It will be open to the first respondent to seek clarifications, if any, regarding Table-E within two weeks from today, in which case the petitioner will respond within two weeks thereafter. As I have already held that the conduct of the respondents is blameworthy, I am inclined to order an amount of Rs. 50,000/- (Rupees fifty thousand only) as costs payable to the petitioner alongwith the fee directed above.

The writ petition is allowed as above.