
(2010) 06 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1322 of 2010 (M)

Muralidharan K. and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Court Fees and Suits Valuation Act, 1959 — Section 52, 66, 67, 68, 69, 69

Citation : (2010) 3 ILR (Ker) 438 : (2010) 2 KLJ 702 : (2010) 3 KLT 246

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : Celine Joseph, for the Appellant; K.C. Santhosh Kumar (G.P.) and Elvin Peter P.J., for the Respondent

Judgement

K. Surendra Mohan, J.—This writ petition has been, posted before me for the reason that a doubt is entertained by the Registry as to whether the direction issued by me for the refund of full court fee paid in this case, while permitting the petitioners to withdraw this writ petition, is not liable to be modified in view of Section 69 of the Kerala Court Fees and Suits Valuation Act, 1959. This writ petition was filed by 63 petitioners claiming various reliefs due to former abkari workers who had lost their employment consequent to the ban on the sale of arrack in the State. Though the writ petition was filed after paying an amount of Rs. 6,300/-as court fees, the same was not admitted or taken on file. While so, a request was made by the counsel for the petitioner for permission to withdraw the writ petition reserving the liberty of the petitioners to approach this Court again on the same cause of action. It had been represented by the counsel for the petitioners that the writ petition suffered from some formal defects. Since the writ petition had not even been admitted, the same was permitted to be withdrawn and a direction was also issued for refund of the full court fee that was paid, to the counsel for the petitioners.

2. Later on, the Registry expressed a doubt as to whether refund of the full court

fee that was paid was permissible in view of Section 69 of the Court Fees Act. Therefore, this case has been posted before me, again.

3. I have heard the counsel for the petitioner as well as Mr. K.C. Santhosh Kumar, the learned Senior Government Pleader.

4. It is agreed by both the counsel that since the writ petition was not even admitted, there was no occasion to bestow any judicial attention on the various contentions raised. Since the writ petition was withdrawn on the next posting date itself, it cannot be said that the petitioner got any benefit out of the filing of this writ petition. Section 69 of the Court Fees Act applies to cases where a matter is decided on the basis of a compromise or on the admission of parties. In such cases, only half the court fee paid is liable to be refunded. This is for the reason that the court has taken a decision on the issues that are raised, though on the basis of the compromise or on the admission of a party as the case may be, and a decree is granted. Since no process of adjudication is undertaken, half of the court fee is refunded. In the present case, no notice was issued to the opposite parties and no adjudicatory process was even set in motion. At the threshold itself, the petitioner sought for withdrawing the writ petition, which was allowed. Therefore, this is a case in which Sections 66 to 69 have no application.

5. The correct provision that is applicable to the present situation is Section 70. The above provision permits refund of court fee paid by mistake or inadvertence. In such cases, what is contemplated is full refund of the court fee paid. In the present case, the filing of the writ petition itself was a mistake committed by the petitioners and consequently, the court fee paid was also by mistake or inadvertence. In view of the above, the full court fee paid by the petitioners is liable to be refunded.

6. A similar situation came up for consideration before a Division Bench of this Court in the decision reported in Sankunni Somadhan Vs. Vinodhini Amma and Others, 1 In the said case, an appeal filed by the petitioner after paying 1/3rd of the court fee u/s 52 of the Court Fees Act had been dismissed. The petitioner filed a petition for restoration of the appeal, after remitting the full court fee payable on the appeal. Ultimately, the restoration petition was dismissed. Thereupon, he sought for refund of the court fee. After considering the various provisions of the Court Fees Act, Hassan Pillai, J. has concluded the issue in the following words:-

If we give a direction to the Registry to refund the court fee paid by the petitioner, we are doing only a proper thing by passing a formal order in exercise of the inherent jurisdiction to stop abuse of the process of the Court. We may also state here that if a litigant is made to pay fees which is not payable by him under the provisions of the Act the statute does not stand in the way of refunding such fees paid as it never authorised receipt of such fees. In such cases, the litigant has got a right to get refunded court fee paid because the court fee paid is his money. As the court has inherent jurisdiction to order refund

of court fee paid *ex debito justitiae* in such circumstances we are inclined to allow the petition to refund the court fee of Rs. 10,706/- paid by the petitioner along with petition filed to restore the appeal.

7. My attention has also been drawn to the decision reported in *GCDA v. M/s Enkon Engineers & Contractors* (2009(4) KHC 181), where a suit was filed by the plaintiff for recovery of money due on the basis of a works contract. The plaint was rejected granting liberty to file a fresh suit. Refund of court fee was also ordered. In a challenge against the said order in revision, this Court held that the order of refund was perfectly justified.

8. It is also submitted that the present case being a writ petition filed under Article 226 of the Constitution, the court fee paid was in a petition matter and that no provision for refund of the court fee paid is available under the Court Fees Act. The above contention is not sustainable for the reason that Section 70 refers only to fee paid by mistake or inadvertence and does not contain any reference to either a suit or a petition. Apart from the above, in the Division Bench decision reported in *Sankunni Somadhan's* case (*supra*), it has been held that this Court has the inherent jurisdiction to order refund of the court fee wherever it is found to have been paid under a mistake or without justification. In exercise of the above power also, the court fee paid in the present case is liable to be refunded.

9. I further notice that the petitioners have filed another writ petition, WPC No. 6316/2010 after rectifying the formal defects in the present writ petition, after paying full court fee which is pending.

10. For the foregoing reasons, the direction in the judgment dated 22.1.2010 for refund of full court fee is perfectly justified and in order. The Registry shall refund the court fee that has been ordered to be paid.