

(1989) 09 KAR CK 0044
In the Karnataka High Court
Case No : W.P. No. 232/1986

Nagamma and Another

APPELLANT

Vs

Deputy Commissioner, Chickmagalur and Others

RESPONDENT

Date of Decision : 13-09-1989

Acts Referred:

Citation : (1989) 3 KarLJ 561

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-Though in this writ petition, the order passed by respondent 1 who is the Deputy Commissioner, Chickmagalur District, as well as the order of the Assistant Commissioner, Tarikere Sub-Division (respondent 2) have been challenged, a very unusual feature is involved not encountered before by this Court. The Deputy Commissioner has proceeded to dismiss the appeal on merits overlooking the fact that the memorandum of appeal presented before him by the petitioners remained unsigned by the Counsel for the appellants therein and without even the vakalath not having been signed by the same Counsel. The additional highlight is that neither the vakalath nor the memorandum of appeal bear the dates on which the appeal was presented and vakalath was executed by the Parties.

2. In these circumstances, the question which arises for consideration is whether the impugned order of the Deputy Commissioner deserves to be quashed.

3. Apart from considering the feasibility of quashing the impugned order of the Deputy Commissioner, what is most disquieting is the carelessness with which the brief of the clients has been handled by the Counsel who appeared before the Deputy Commissioner. Preferring a memorandum of appeal devoid of both the date and signature of the Counsel himself is the height of carelessness. Added to that, non-signing of the vakalath and presenting the same along with the unsigned memorandum of appeal is indeed a sad commentary on the Counsel who was entrusted with the task of prosecuting the appeal and safeguarding the interests of the appellants who had reposed implicit faith and confidence in the

Counsel. As in some other case which was disposed of by this Court, in the context of the deplorable negligence in the handling of the appeal, I am tempted to recall the liability to malpractice action which is recognised and enforced in some of the Western Countries where the Counsel is found careless whether intentional or otherwise in the conduct of the cases of the client entailing serious consequences both in terms of money and continuation of practice as a legal practitioner. If instances of this nature increase in number, probably the day is not far off when sensible persons would consider it necessary to introduce similar-regulations in our Country also. One thing is certain and that is that the lack of diligence does not inspire confidence.

4. What is equally surprising is how the Deputy Commissioner and his paraphernalia were unable to discover these glaring discrepancies both in the memorandum of appeal and the vakalath leading to the impugned order. In the order passed by the Deputy Commissioner, it is clearly mentioned that an Advocate of Chickmagalur, appeared for the appellants and argued the case and respondent 2 therein was represented by a Counsel by name Sri K.N. Bommanna, Chickmagalur, and that the impugned order was passed after hearing both the Counsel. The only redeeming feature is that the Deputy Commissioner has, in fact, signed the order which is now challenged before this Court.

5. In the light of such vital discrepancies, it is not possible to sustain the impugned order of the Deputy Commissioner. A memorandum of appeal can be regarded as an appeal only if it has been duly signed at least by the Counsel for the appellant and, incidentally, it ought to bear the date of presentation of the appeal also. Similarly, a Counsel who has not signed the vakalath has no right to be heard as in the instant case then he was not signed the vakalath. From both the angles, the order of the Deputy Commissioner which is in respect of an unsigned memorandum of appeal and supported by arguments of a Counsel who has not signed the vakalath, is an irregular order which deserves to be set aside. The impugned order was passed on 15-10-1985 and the writ petition was filed on 2-1-1986 and it has come up before me for disposal today. Between 1985 and 1989 is quite a long distance of time involving wasteful delay and expenditure, both in terms of time and money, resulting in nothing sort of harassment to the litigants for no fault of their. It is rightly said that eternal vigilance is the price of justice and neither the Counsel nor the bureaucrat could be an exception to it.

6. In the light of the above discussions, I allow this writ petition in part and quash the impugned order of the Deputy Commissioner, Chickmagalur. The Deputy Commissioner is directed to afford an opportunity to the petitioners for rectification of the defects noticed both in the memorandum of appeal and in the vakalath and after rectification within the stipulated time limit that may be fixed by the Deputy Commissioner, the Deputy Commissioner shall afford a fresh opportunity of hearing to the petitioners and dispose of the case on merits and in accordance with law giving specific findings on the points raised in the appeal by

the petitioners within three months from the date of receipt of a copy of this order.

Writ Petition allowed partly.