

(2017) 03 AHC CK 0068

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 5882 of 2017

Santdeen Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Revenue Code Rules, 2016 — Rule 74(d)

Citation : (2017) 5 ADJ 434

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Vikrant Prakash, Abhishek Kumar and Dinesh Chandra, Advocates, for the Petitioner; C.S.C, for the Respondents

Final Decision : Disposed Off

Judgement

1. This writ petition has been filed questioning the correctness of the order dated 24.12.2016 whereby the petitioner has been removed from the panel of lawyers meant for conducting cases on behalf of the Gaon Sabha for Tehsil Amethi, District Amethi.
2. The reason given is that the petitioner had not appropriately handled the cases with due diligence in the past and therefore, a decision has been taken to disengage him in terms of Rule 74(d) of the Uttar Pradesh Revenue Code Rules, 2016. The second relief claimed in the writ petition is that the petitioner has not been paid his fee to which he is entitled in relation to the cases already conducted by him.
3. Having heard learned counsel for the petitioner and learned Standing Counsel what we find is that Rule 74(d) of the Rules 2016 categorically empowers the authority to dispense with the engagement of any lawyer if his work is not found to be satisfactory and the authority exercising such power will have exclusive discretion to dispense with the services at any time without assigning any reason.

4. The impugned order dated 24.12.2016 in our opinion also refers reasons and in view of this it cannot be said that discretion exercised by the District Magistrate, Amethi while passing the order is in any way erroneous. The order dated 24.12.2016, therefore, does not call for any interference as we have been unable to locate any matter to justify interference in the same.

5. The second relief claimed by the petitioner is with regard to payment of his balance of fee.

6. Learned Standing Counsel for the State has urged that in view of the decisions of the Apex Court and of this Court writ petition for realization of professional fee as a lawyer would not be maintainable. Reliance has been placed in the judgment in the case of Improvement Trust, Ropar v. S. Tejinder Singh Gujral and others reported in 1995 Supp. (4) Supreme Court Cases 577 and New India Assurance Co. Ltd. v. A.K. Saxena reported in (2004) 1 Supreme Court Cases 117. The Division Bench in the case of K.N. Mishra v. State of U.P. and Ors. reported in 2006 (2) AWC 1786 of this Court has been cited relying on paragraphs no. 9 and 10 thereof that are extracted herein below :

"9. The aforesaid decisions of the Supreme Court clearly lay down that a writ petition does not lie for recovery of an amount under a contract and even though a Statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions but disputes arising out of the terms of such contracts have to be settled by the ordinary principles of law of contract and the fact that one of the parties to the agreement is a statutory or public body does not affect the principles to be applied. It has also been emphasised that such a contract is not a statutory contract and the disputes relating to interpretation of the terms and conditions of such a contract cannot be agitated in a writ petition under Article 226 of the Constitution. Thus, whether any amount is due or not and refusal to pay it is justified or not are not matters which can be agitated and decided in a writ petition.

10. This apart, in Tejinder Singh Gujral (supra), which is a case specifically dealing with recovery of professional fees of a lawyer, it has been clearly observed by the Supreme Court that a writ petition should not be entertained and there cannot be a separate law for advocates. As noted above in R. Thillaivillalan (supra) the Supreme Court did not decide the issue whether a writ petition by a lawyer for recovery of his professional fees can be, entertained. On the other hand, in Tejinder Singh Gujral (supra) the Supreme Court categorically held that a writ petition by a lawyer for recovery of his professional fees cannot be entertained. In such circumstances the issue is no longer res-integra and we have no difficulty in holding that the present petition cannot be entertained."

7. It is, therefore, submitted by the learned Standing Counsel that the petitioner cannot claim his fee as a matter of entitlement or right in view of the law laid down and referred to herein above.

8. We have considered the aforesaid submission raised and we find that so far as

empanelment of lawyers for Gaon Sabha is concerned, the same is governed now by the U.P. Revenue Code Rules, 2016 that has been brought into effect from 11.2.2016. The said rules have been applied for terminating the services of the petitioner, namely Rule 74(d) as indicated herein above.

9. The same set of rules also provide for the terms and conditions on the basis whereof the appointment of empanelled lawyers has to be made and the fee that is payable has also been provided for in Rule 73 thereof. The terms of engagement are further as per the instructions contained in Appendix II of the 2016 Rules which also provides for litigation expenses in Clause 24 thereof. A perusal of these rules that have been framed in exercise of the powers conferred under the U.P. Revenue Code, 2006, would establish that now the empanelment of a lawyer and his continuance as a lawyer of Gaon Sabha is no longer a matter of mere contract and is governed by statutory rules including the terms and conditions including payment of fee. Thus, the decisions that have been relied upon by the learned Standing Counsel and referred to herein above will not impede the issuance of any mandamus by this Court inasmuch as a writ can also be issued where an obligation is cast under a statute for the performance of a duty. In view of the 2016 Rules the person empaneled as also for Gaon Sabha is, therefore, entitled for his remuneration in terms thereof, and if such remuneration is governed by a statutory set of rules, then the same does not remain a matter of mere contract of a professional lawyer but travels further as it is governed by statutory rules of engagement. Consequently, the aforesaid decisions that have been cited by the learned Standing Counsel would not be an impediment in the passage of the petitioner to claim his rights and the fee to which he is entitled as per rules of 2016, more so when his services have been dispensed with under the same rules.

10. The entitlement of remuneration is a professional remuneration which is now statutorily controlled. At this juncture the history of any payments having made for professional services needs to be pointed out as referred in the decision of Apex Court in par 29 to 31 of the judgment of R.D. Saxena v. Balram Prasad Sharma reported in (2000) 7 Supreme Court Cases 264. The said judgment however, proceeded on the premise of the right of choice of a litigant to engage a lawyer and the lawyer having no lien over the litigation papers filed by the client. On the other hand the payment of remuneration being statutorily controlled under the Legal Practitioners Fees Act (21 of 1926) was dealt with in detail in the judgment of Mrs. Moti Natwarlal and others v. M/s. Raghavayya Nagindas & Co. reported in (1977) 2 Supreme Court Cases 761 to hold that if special right has been conferred then it can be enforced in the manner and subject to the conditions prescribed by the statute. The said case was also in relation to the entitlement of a lawyer to collect the bills of costs of attorneys and as referred to the recommendations made by the then Indian Bar Committee on the issue of suing a lawyer for negligence and his right to sue for fees. The question of payment to be made from government funds was also considered in the case of Mukul Dalal and Ors. v. Union of India (UOI) and Ors. reported in (1988) 3 SCC

144. The issue of payment of fee which a counsel is entitled keeping in view the provisions of Code of Criminal Procedure was discussed and the entitlement as per the statute was considered in the case of Kamala Kant Singh v. State of U.P. & Ors reported in 1992 (4) SCC (Supp.) page 460. Thus, a conspectus of all the decisions and the rules as now applicable persuade us to construe that once such entitlement is governed by a statutory set of rules then writ can be issued for consideration of such entitlement by the competent authority in the event the said obligation is not discharged as per the rules.

11. Apart from this the engagement of State counsels and their payment of remuneration is indicated in para 6.04 of the Legal Remembrancer's Manual as applicable in the State of U.P. but they are a set of instructions that cannot be placed at par with statutory rules as involved in the present case. Consequently, we hold that in relation to such claim of entitlement of emoluments under the U.P. Revenue Code Rules, 2016 can be raised through a writ petition for a consideration of such a claim.

12. It may also be stated at this juncture that if the engagement is prior to the period of the enforcement of the said rules then in that event the order passed in Writ Petition No. 6402 of 2013 decided on 20.8.2013 may be referred to. The said case was in relation to the Gaon Sabha counsel conducting cases in the High Court. While proceeding with the said case the Court noted the directions issued by the State Government in the letter dated 19.8.2013 which refers to the Government Order dated 31.3.1978 in accordance with which the remuneration has to be calculated.

13. We are, therefore, of the opinion that the petitioner can apply before the respondent no. 2 for release of said emoluments to which he may be entitled in terms of the relevant Government Order including the Rules dated 31.3.1978 and we dispose of this writ petition without interfering with the termination order with a direction to the respondent no. 2 to consider the claim of the petitioner for grant of relief of the said payment of emoluments which he may be entitled in accordance with law as observed herein above for which an appropriate order should be passed within three months from the date of presentation of a certified copy of this order.

14. The writ petition is Disposed Off with the said observations.