
(1974) 02 KL CK 0016

In the High Court Of Kerala

Case No : Original Petition No. 2402 of 1973

Xavier Thottakath, Advocate, Ernakulam

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-02-1974

Acts Referred:

Advocates Act, 1961 — Section 49
Bar Council of India Rules, 1975 — Rule 20, 21
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 14, 19(1), 226

Citation : AIR 1974 Ker 190

Hon'ble Judges : George Vadakkal, J

Bench : Single Bench

Advocate : T.T. Xavier, for the Appellant; Govt. Pleader, N. Govinda Warriar and P.C. Chacko, for the Respondent

Final Decision : Dismissed

Judgement

George Vadakkal, J.—An advocate practising in this Court is the petitioner before me. He moves for a certiorari to quash Ext. P-1 order, an order passed by the Subordinate Judge, Parur, (3rd respondent herein) in an interlocutory application in a land acquisition reference case, and Ext. P-2 order passed by my learned brother Poti, J. in C. R. P. Nos. 555 and 556 of 1972. The petitioner has in the alternative asked for a writ of quo warranto or a writ of mandamus, and if found essential, all three writs. It is also prayed that the vakalath filed by the 4th respondent in L. A. R. No. 235 of 1969 be declared as invalid. There is also a prayer to issue a writ of prohibition prohibiting the 4th respondent from appearing as an Advocate on behalf of the 5th respondent. Further it is prayed that the petitioner's lien on the decree amount in L. A. R. No. 235 of 1969 "be kept alive".

2. The short facts on which the petitioner has approached this Court with the prayers aforementioned are : The petitioner filed on behalf of the 5th respondent before me O. P. No. 918 of 1966 for compelling reference in certain land

acquisition proceedings. He filed a similar original petition, O. P. No. 821 of 1966 on behalf of one Varghese also. These original petitions appear to have been allowed. In pursuance of the direction issued by this Court in the aforesaid writ petitions, the land acquisition Officer referred the two cases to the Subordinate Judge's Court, Parur. That Court tried the same as L. A. R. Nos. 235 of 1969 and 21 of 1970. The abovesaid reference cases were decided in favour of the persons interested in the land whereby the compensation amounts were enhanced. In execution proceedings they engaged the 4th respondent before me as their lawyer. It is the case of the petitioner that these engagements are violative of his fundamental rights under Arts. 14 and 19 (1) (g) of the Constitution, and also Rules 15; 23; 25; 26; 28; 29; 32; 33; 38 and 39 of the Bar Council of India Rules framed u/s 49(c) of the Advocates Act, 1961. It is also contended before me that the engagement of the 4th respondent by the 5th respondent is violative of Rules 27 and 28 of the Kerala Civil Rules of Practice 1971, Rule 37 of the Advocates Fee Rules, 1963 and Rules 7 (1) and 9 of the Rules framed by this Court u/s 34(1) of the Advocates Act, 1961, Presumably with these grounds in mind the petitioner filed applications for special leave to execute the two decrees. Ext. P-1 is the order passed by the execution court on the application put in by the petitioner seeking leave for executing the decree in L. A. R. 235 of 1969. By that order the Subordinate Judge held that the petition is not maintainable and in consequence rejected the petitioner's application. Similar petition filed in L. A. R. No. 21 of 1970 also met with the same result. The two orders were taken up in revision to this Court in C. R. P. Nos. 555 and 556 of 1972. Ext. P-2 is the common order passed by my learned brother Poti J. in the aforesaid revision petitions. The revision petitions were dismissed. Subsequent to the disposal of the civil revision petitions the petitioner filed two original petitions, O. P. No. 2343 of 1973 to redress his grievance in not being allowed to execute the decree in L. A. R. No. 21 of 1970 and this original petition in respect of his grievance for not being allowed to execute the decree in the other L. A. R. case. O. P. No. 2343 of 1973 was dismissed by my learned brother Eradi J. by his judgment dated 23-7-1973. The 5th respondent has produced a true copy of that judgment marked Ext. R-1 along with his counter-affidavit.

3. The main argument raised by the petitioner is that under Rules referred to earlier another counsel cannot enter appearance on behalf of a client without the consent and permission of the counsel already on record. In paragraph 2 of the counter-affidavit the 5th respondent has stated that the petitioner's engagement was terminated by her. In answer thereto in the reply affidavit it is stated that there was no notice terminating his service as averred in the counter-affidavit.

4. Another ground relied on by the petitioner is an alleged agreement between him and his client, viz., the 5th respondent, whereby his remuneration for the conduct of the case was fixed at 50% of the amount that might ultimately be decreed in the reference case. The 5th respondent denies that there was any such agreement. No doubt in the reply affidavit the petitioner has averred that the denial of the agreement by the 5th respondent is "absolutely and

transparently false".

5. The aforesaid two questions raised before me are pure questions of fact, each side asserting that the other is putting forward a false case. Such being the position the petitioner could not invoke the jurisdiction under Article 226 of the Constitution for the resolution of the disputes between the petitioner and the 5th respondent. This is sufficient to dispose of this original petition. However in deference to the arguments advanced before me I will refer to the contention raised on the basis of the petitioner's fundamental rights to enter into an engagement to act as an Advocate on behalf of 5th respondent, and the rights flowing from such engagement. On the question stated above there is the precedent of this Court in O. P. No. 2343 of 1973. My learned brother Eradi J. on an identical set of facts and on a similar question raised by the very same petitioner exhaustively considered the question as follows:

"Even apart from the above I do not find any merit in the contentions raised by the petitioner against Ext. P-1. It is argued by the petitioner that he has a fundamental right to bargain with his client and stipulate any terms regarding the fee payable for his professional services, that the arrangement so arrived at confers on him a right to property and that no order should be passed by the court which infringes or affects that right. Rules 20 and 21 of the Rules framed by the Bar Council of India u/s 49(c) of the Advocates Act, 1961 regulating professional conduct and etiquette specifically lay down that an Advocate shall not stipulate for a fee contingent on the results of a litigation or agree to share the proceeds thereof and that he shall not stipulate for or agree to receive any share or interest in any actionable claim. The petitioner however, contends that the said Rules as well as the Advocate's Fee Rules framed by this court are ultra vires and unconstitutional since they impose arbitrary restrictions on his fundamental rights under Article 19(1)(g) of the Constitution. I have no hesitation to reject this contention as totally devoid of any merit. The fundamental right guaranteed under Article 19(1)(g) is not absolute in character but is expressly made subject to the power conferred on the State by Clause (6) of the Article to make any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the said fundamental right. As pointed out by the Supreme Court In Re: Sant Ram, , it is in the interests of the general public to insist upon proper standards of conduct being observed by the legal practitioners with a view to ensuring the purity and soundness of professional law. There are observations to the same effect in Sakhawat Ali Vs. The State of Orissa, . There can be little doubt that Rules 20 and 21 of the Bar Council Rules are wholesome provisions imposing reasonable restrictions on the conduct of the members of the legal profession in the interests of the general public. This very case where an Advocate claims that he should get one half of the decree amount (amounting even according to him to more than Rs. 55,000) as his fee for conducting the land acquisition reference case before the Sub-Court and an earlier writ petition filed before this Court on behalf of an indigent client furnishes ample proof of the imperative necessity for the imposition of the restrictions laid

down in Rules 20 and 21 for safeguarding the interests of the litigant public and for ensuring the observance of proper standards of purity and ethics in the legal profession. The arguments based on Articles 14 and 19 of the Constitution are, therefore, devoid of any merit." I am in respectful agreement with the same.

6. The relief sought for by the petitioner so far as Ext. P-2 order is concerned, is not amenable to my jurisdiction under Article 226 of the Constitution. It is an order passed by this Court, in exercise of the jurisdiction vested in it u/s 115 of the Code of Civil Procedure, 1908. This Court cannot and will not issue a writ against itself in respect of a judicial pronouncement made by this Court. The relief sought for is misconceived.

7. So far as the order Ext. P-1 is concerned, that order has been upheld and affirmed by Ext. P-2 order of this Court. In view of that no writ could be issued to remove the records leading up to Ext. P-1 order to this Court, and much less, any direction in exercise of my jurisdiction under Article 227 of the Constitution which jurisdiction also is invoked by the petitioner.

8. The petitioner has also styled his petition under Article 228 of the Constitution. There is no relief prayed for on the basis of Article 228 to transfer any case pending before a subordinate court to this Court. Whatever that be in view of what is stated above there is no scope for the application of Article 228 to the facts of this case.

9. In the light of the above discussion, I need not advert to the scope and ambit of the several provisions of the Bar Council of India Rules, the Advocate's Fee Rules 1963, the Kerala Civil Rules of Practice, 1971, the rules framed by this Court under the Advocates Act, 1961 and other provisions relied on by the petitioner. It is sufficient to note that none of the provisions relied on by the petitioner would enable the petitioner to overcome the difficulties (in his way) pointed out above, upon getting over of which alone he could succeed.

10. This petition in my view is an abuse of the process of the court. The original petition deserves to be dismissed with costs and I hereby do so.