

The State Of Karnataka Vs. Sri.rahamathulla

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Court : Karnataka

Decided On : Nov-17-2022

Judge : G.Narendar and P.N.Desai

Appeal No. : WP 23210/2021

Appellant : The State Of Karnataka

Respondent : Sri.rahamathulla

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE17H DAY OF NOVEMBER, 2022 PRESENT THE HON'BLE MR. JUSTICE G.NARENDAR AND THE HON'BLE MR. JUSTICE P.N.DESAI WRIT PETITION NO.23210/2021 (S-KSAT) BETWEEN:

1. THE STATE OF KARNATAKA, REP. BY ITS ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, VIDHANA SOUDHA, BENGALURU-560 001.
2. THE DIRECTOR GENERAL AND INSPECTOR GENERAL OF POLICE, KARNATAKA STATE, BENGALURU-560 001.
3. THE SUPERINTENDENT OF POLICE, CHITRADURGA DISTRICT, CHITRADURGA.

4. THE ACCOUNTANT GENERAL (A & E) IN KARNATAKA, RESIDENCY PARK ROAD, BENGALURU-560 001. ... PETITIONERS (BY SRI VIJAY KUMAR DESAI, AGA.) 2 AND: SRI.RAHAMATHULLA S/O KHASIM SAB, AGED ABOUT 66 YEARS, RETIRED ASSISTANT SUB-INSPECTOR OF POLICE, D.C.R.B., CHITRADURGA, RESIDING NEAR MOHAMMED MAJID, A.G.ROAD, SHANTHINAGAR, CHALLAKERE, CHITRADURGA DISTRICT-577 522. ... RESPONDENT THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT,

ORDER

OR DIRECTION TO QUASH THE

ORDER

DATED 20.10.2020 (ANNEXURE - C) PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BENGALURU IN APPLICATION No.1780/2018 ETC. THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, G.NARENDAR J, MADE THE FOLLOWING:

ORDER

Heard the learned Addl. Government Advocate appearing on behalf of the petitioners.

2. The instant writ petition is by the State represented by the Additional Chief Secretary, Home Department, the Director General & Inspector General of Police, Bengaluru, the Superintendent of Police, Chitradurga 3 and the Accountant General (A & E) in Karnataka, Bengaluru.

3. The writ petition was listed on 29.10.2022 and after hearing the learned AGA, the following order was made:- Heard the learned Additional Government Advocate on behalf of the petitioners/State. The petitioner is the State of Karnataka, Department of Home, by its Additional Chief Secretary, Bengaluru, the DG & IG of Police, Bengaluru, the Superintendent of Police, Chitradurga, the Accountant General (A&E), in Karnataka, Bengaluru. We have perused the impugned order passed by the Tribunal in Application No.1780/2018 dated

20.10.2020. The facts are that the respondent was prosecuted for possessing disproportionate assets. In other words, assets disproportionate to his known sources of income. We have perused paragraphs 6, 7, 8 and 9 of the impugned order. The contents of which are neither disputed nor controverted by the learned Additional Government Advocate. On reading of the same, it is amply clear that what respondent has faced is not a prosecution but something other than that. What causes consternation to this Bench is that despite the sheer 4 weight of evidence against the petitioners they have ventured to file this petition. The cavalier fashion in which the writ petition is filed would prima-facie indicate the scant regard the petitioners have for judicial time. The paragraphs 7, 8 and 9 clearly records the admissions elicited from the departmental witnesses. More particularly, PWs-8 and 9, who have clearly admitted that the income of the son, wife and income from other sources like agricultural income and rental income, have not been taken into consideration while holding that the assets held are disproportionate to the known sources of income. It is further forthcoming from the cross- examination that the said sources of income have been ignored despite the same being before the Enquiry Officer. It is also elicited from the mouth of the witness, that the son was an Engineer and gainfully employed in Bengaluru which fact was also known to the Enquiry Officer. The fact that wife was also gainfully employed was also known to the Enquiry Officer. The suggestion that assets possessed by the DGO before his entry into service cannot be taken into account have also been taken into consideration. The sheer weight of all these admissions has gone unnoticed by the Enquiry Officer who appears to have given a report that the charges are proved. The cake itself is foul smelling and the cream on it is the instant petition. The instant writ petition only shows scant regard for the judicial time. The High Court cannot be treated like a dustbin by the largest litigant and the litigant bears a responsibility towards the justice dispensation system, a responsibility which is a constitutional mandate. 5 On umpteen number of occasions have come across numerous meritless petitions and despite our intention to impose cost and in some cases even after cost was imposed, conceding to the fervent pleas of the Government Advocates, we have gone lenient. As the saying goes, this is the last straw that broke the Camels back. This is a case which causes real consternation. It is even unthinkable that somebody

could have given a finding that the charges are proved. Assuming that the follies of the Enquiry Officer can be condoned by attributing lack of legal knowledge, can the same yard-stick be applied here. In the light of the categorical findings rendered by the Tribunal, it is impossible to condone or turn a blind eye to this frivolous petition. The instant petition is nothing but a sheer waste of judicial time. In that view of the matter and in view of the previous alerts, warnings & reminders passed by this Court, we deem it necessary to impose a cost of Rs.10.00 lakhs to be paid by the State and we also propose to grant liberty to the first petitioner-State to conduct an enquiry and recover the same from the officers. Hence, hearing is adjourned to 31.10.2022 to enable the petitioners to show cause as to why the cost of Rs.10.00 lakhs should not be imposed. List on 31.10.2022. Copy of the order to be furnished to the learned Additional Government Advocate. 6 4. The order above is reflective of the anxiety, the litigation has caused to this Court. On the next date of hearing, i.e., on 31.10.2022, the learned Advocate General appeared and the following order was made:- Heard Sri. Prabhuling K. Navadgi, learned Advocate General along with learned Addl. Government Advocate for the petitioners. Learned Advocate General would submit that the State has devised a Litigation Policy and would fairly admit that though there has been a negative opinion regarding filing of the writ petition, yet the writ petition appears to have been preferred and would seek time to look into the matter and submit to the Court. Hence, as requested by the learned Advocate General, list on 14.11.2022.

5. The learned Advocate General has placed before the Court a Policy Document framed by the Law Department, Government of Karnataka and titled Karnataka State Dispute Resolution Policy 2021. The learned Advocate General would submit, that an exhaustive exercise was conducted by the office of the Advocate General in consultation with other stake holders and the 7 result of the exercise is the Policy Document. That the Policy Document was launched by the Honble Chief Minister. That despite the launch, on account of increase in COVID numbers, the document could not be circulated and even the printing and publishing was affected. He has submitted to the Court that the Policy is a comprehensive Policy and an attempt has been made to address every conceivable facet of dispute resolution and in particular, he would take us through Chapter 6, Paragraph No.4, which commences with the heading Measures for

Reform and the same reads as under:- Measures for Reform 4. Process - Oriented and Structural Reforms to the Conduct of Disputes Often, individual actors emphasize on procedural aspects in the conduct of disputes rather than the substantive. The focus is on movement of files from one official to the next in the hierarchy, instead of ensuring value addition to the file at every step of the process. In order to address this issue, the Policy prescribes three key steps that must become part of the process of conduct of litigation: Risk Analysis, Workflow Management and Devising Dispute Strategies. These steps are to be implemented by 8 the Heads of Departments in consultation with the Law Officers. Risk analysis

4.1.1. Just as companies / businesses make decisions on whether it makes economic sense to litigate or to settle a case, Departments must make these decisions for every case. Values should be assigned to probabilities and the likelihood of adverse outcomes if adversarial methods of dispute resolution such as litigation or arbitration are pursued, must be evaluated. As a process, risk analysis must include two aspects: (i) gauging the likelihood of adverse outcomes; (ii) factoring the impact caused on the respective Department, the State and on society as a whole.

4.1.2. It is not that risk analysis is a new concept, it may be found in several existing rules: evidence is required to be evaluated by HLCs /Legal cells before initiating claims, opinions are sought from the Law Department or from the Advocate Generals Office in various situations and HLCs are to examine the merits of the case before filing appeals., It is essential is that in the process of routinely following rules, the object and purpose of the rules are not missed. Thus, there is a need to consciously focus on analyzing risk by taking into account various factors.

4.1.3. Factors that could aid the process of risk analysis include: a. Strength of evidence 9 b. Time that may be taken at the stage of original proceedings and subsequently in appeals c. Background check on opponents: their resources, circumstances and other contributory factors that may hinder dispute resolution including their propensity to file appeals d. Probability of opponents pursuing appeals e. Assessment of legal trends by reading precedents f. Value of the claim being raised or defended which will have a bearing on impact caused to the Department g. Perceptual impact on society

4.2. Workflow Management Effective risk analysis will help formulate appropriate responses, reduce uncertainties and adopt corrective or damage-control measures.

Importantly, it will guide workflow management by providing an understanding of prioritization of problems and allocation of human and financial resources. Given that resources are scant, and volume of disputes is very high, enhancing efficiency by an optimal workflow management is crucial. 4.3. Devising dispute strategies

4.3.1. Once the risk analysis is complete and the reasons on which the analysis is based are clear, it is essential to evolve sound strategies before proceeding with the next steps in the dispute. These 10 strategies will determine the tool or combination of tools that will best serve in resolution of the dispute and also include contingency plans. Strategies could relate to the choice of remedy where there are multiple options, choice of dispute resolution mechanism such as mediation, negotiation or litigation, choice of Special Counsel, etc. It is essential that strategies are revisited as the case evolves and the focus at all times remains on the resolution of disputes.

4.3.2. The strategies formulated need to have a correlation to the impact of the dispute. From the States perspective, impact is not only measured in financial terms to the Department / State but also in terms of public perception and serving public interest. The practice of filing appeals all the way to the Supreme Court merely to obtain a certificate of dismissal so that *quietus* can be put in the Department has been repeatedly frowned upon by the Apex Court including in its recent judgment.⁸ Even in cases where the likelihood of the Department succeeding in Court is high, it is necessary to evaluate if the value addition of such victory is of worth to the Department and would justify the expending of public resources.

6. We have perused the document and in fact the Law Department has placed reliance on the ruling of the Honble Apex Court in the case of Director of Income Tax, 11 New Delhi v. SRMB Dairy Farming Pvt. Ltd.¹, wherein the Honble Apex Court has lamented and expressed its concern in the following words:- the propensity of Government Departments and public authorities to keep litigating through different tiers of judicial scrutiny as one of the reasons for docket explosion.

7. The document in its entirety reflects the concern of one wing of the Government and we have been seeing that the other wings of the Government maintaining a blissful ignorance to this monumental issue of docket explosion. This is not the first

case where this Bench has expressed its grave concern and in fact on more than three occasions, this Court has expressed its displeasure and that too, in no uncertain terms, for the Departments having come up with petitions even as against mere directions, directing various Departments to consider the representations. There are any number of cases, where despite receiving hiding from the Tribunal, and despite Departments not being able to controvert a single reason assigned by the Tribunal, they have gone ahead and 1 (2018) 400 ITR9(SC) 12 preferred writ petitions. In fact in some cases, including this case, a negative opinion has been rendered opining against the filing of the appeal or a writ petition. Yet the Departments have proceeded to approached this Court. Even in the instant case, despite the opinion being in the negative, an attempt has been made before this Court and that too, without any justification by the petitioners.

8. Coming to the case on hand, the allegations have been ripped apart in the course of cross-examination and from every conceivable angle. The allegation is one, of accumulation of assets disproportionate to known sources of income. In the cross-examination, it has been elicited that the wife of the DGO was carrying on tailoring business and was having an independent source of income. In the cross- examination, it has been elicited that the son of the DGO, an engineer by profession, was gainfully employed in Bengaluru. It has been elicited in the cross-examination that the DGO possessed certain properties even prior to the date of his entry into service. It has been elicited in the 13 cross-examination that the DGO was in receipt of rental income from buildings owned by them. It has been elicited in the cross-examination that the DGO was receiving income from agricultural lands and the icing on the cake is that all these sources of income have been declared to the employer. Despite the declaration, in the enquiry, the Enquiry Officer and the Disciplinary Authority have conveniently ignored all these sources of income and have not brought it on record, which we feel is not an inadvertent act but a deliberate omission. Despite the weight of evidence against them and despite categorical admissions in the course of cross-examination during the enquiry, an attempt is made before this Court and that is what has caused us consternation. It is inconceivable that the persons responsible for filing of the writ petition indulged in a bonafide attempt and this Court having formed such a prima facie view, called upon the petitioners to show cause why a cost of

Rs.10 lakhs should not be imposed, which resulted in the learned Advocate General appearing and pleading the case on behalf of the petitioners and further, 14 asserting that the Policy Document would not only be circulated but efforts would also be made to ensure implementation of the same and in that view, he would pray that cost not be levied.

9. We are not sure that acceding to the request of the learned Advocate General would help in driving home the message but yet keeping in mind the standing of the office of the learned Advocate General and the earnestness of the learned Advocate General, we desist from imposing cost but it is made clear that this shall be treated as a last warning. In future, if the Bench comes across such frivolous litigation, nothing would stop us from being punitively harsh not only in the matter of imposing exemplary costs but also passing strictures against the officers concerned.

10. The petition is wholly devoid of merits. Accordingly, the writ petition stands dismissed.

11. Be that as it may. We feel that time has come where this Court is required to send a message to the 15 biggest litigant and that merely because it is the biggest litigant, it will not be a license to enable it in filing all and sundry cases, which eat into the valuable judicial time. The irony is that the State is one of the prime movers to popularize the Alternate Dispute Resolution System and in this background, the State cannot be the reason for docket explosion. Hence, we deem it appropriate to issue certain directions, which we hope and consider, the concerned stake holders would appreciate in its true spirit. (i) In the event of there being an opinion by the Law Department, opining against preferring of an petition/appeal/revision etc. and if the concerned Department is of a different opinion then, an opinion shall be recorded in writing by the Head of the Department, setting out the reason why the appeal/revision/writ petition etc. needs to be filed ignoring the opinion of the Law Department/legal opinion. (ii) In the event such petition/appeal/revision etc. is not entertained by the Court then, the Government shall 16 mandatorily calculate and recover the cost of that particular limb of litigation from the officer concerned. The Karnataka State Dispute

Resolution Policy 2021, formulated by the Law Department, Government of Karnataka, shall be circulated to the Chief Secretary, Addl. Chief Secretary, to all the Secretaries, Chairman of the Boards, Managing Committees of statutory Corporations, Deputy Commissioners, Superintendent of Police, Director of Prosecution, Public Prosecutors, to all Law Officers of the State and other stake holders, if any, within a period of three weeks from today. Compliance report regarding the Policy Document having been circulated shall be placed before the Court within a period of four weeks and the same shall be placed in the file of the instant writ petition. We further direct the Law Secretary to conduct workshops for the stake holders in order to educate them about the Policy Document and implementation of the 17 same. Preferably three to four workshops shall be held and if necessary, workshops can be held region wise also. Compliance report regarding holding of the workshops shall be placed before the Court periodically. A copy of this order shall be circulated to the Chief Secretary and Heads of all Departments, free of cost. A copy of the Policy Document shall also be circulated to the High Court Library and Advocates Association Library. Sd/- JUDGE Sd/- JUDGE dn/- CT-HR

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