

R.G. Devadhar Vs. State of Karnataka

R.G. Devadhar Vs. State of Karnataka

SooperKanoon Citation : sooperkanoon.com/382890

Court : Karnataka

Decided On : Jan-09-1986

Reported in : ILR1986KAR4095

Judge : K.A. Swami, J.

Acts : Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 - Rule 23; ;[Constitution of India](#) - Article 14, 162, 226 and 300A; [Karnataka Land Reforms Act, 1961](#) - Sections 48A

Appeal No. : W.Ps. 16154 of 1984 etc.

Appellant : R.G. Devadhar

Respondent : State of Karnataka

Advocate for Def. : N. Santosh Hegde, Adv. General and ;S. Udayashankar, HCGP

Advocate for Pet/Ap. : H.B. Datar, Sr. Adv. and Amicus Curiae

Disposition : Petition allowed

Judgement :

ORDER

K.A. Swami, J.

1. In all these petitions, the petitioners were High Court Government Pleaders at the relevant point of time. They have sought for quashing the amendment to the Karnataka Law Officers (Appointment and Conditions of Service) Rules, 1977 (hereinafter referred to as the 'Rules') effected by the Government Order No. LAW 46 LAG 83, dated 16-4 1983. In some of the petitions, the petitioners have also sought for issue of a direction to the State Government to consider the Bills submitted by them without reference to the aforesaid amendment dated 16th April, 1983 effected to the Rules. The pleas raised by the petitioners are similar, therefore, all these petitions are heard together.

2. The case of the petitioners is that the Rules govern them and the Rules as they were in force up to 16-4-1983 provided for a fee of Rs. 100 per Writ Petition irrespective of whether it related to Land Reforms or any other subject ; that by the amendment dated 16-4-1983, the fees in respect of Writ Petitions or Writ Appeals relatable to applications under Section 48A of the [Karnataka Land Reforms Act, 1961](#), wherein High Court Government Pleaders have put in appearance on the direction of the High Court and not on the previous authorisation of the Government, is reduced to Rs. 25/- each with retrospective effect from 10th January, 1983 ; that such an amendment is bad in law because the terms of the appointment, even if it is conceded that the appointment is contractual, cannot unilaterally and retrospectively be changed to the disadvantage of High Court Government Pleaders ; that once the case is argued irrespective of the fact, whether the judgment is delivered on the date of argument, the fee payable as per the Rules accrues to them and that becomes a property and it cannot be taken away by an executive order ; that the distinction or classification made between a case where the authorisation is issued and a case where a High Court Government Pleader appears on the direction of the High Court and authorisation is issued subsequently, is neither based on any intelligible differentia nor it has any nexus to the object ; therefore, it is submitted that the amendment effected to Clause 2 of Part-A of Schedule III of the Rules, by the order dated 16th April, 1983 is violative of Article 14 of the Constitution, as such, it is bad in law ; hence it is liable to be quashed.

3. On the contrary, it is submitted on behalf of the State by Learned Advocate General that the appointment of the petitioners as High Court Government Pleaders is purely contractual; therefore, the petitioners are not entitled to any relief under Article 226 of the Constitution ; that prior to introduction of Schedule III of the Rules, Law Officer had no right to claim fee for his appearance without the authorisation of the Government ; that under Note 2 to Schedule III of the Rules, Government has the right to fix the remuneration in any case or class of cases, at a rate less than those specified in the schedule at any time even after the case is conducted ; that in the Writ Petitions and Writ Appeals relatable to applications under Section 48A of the Karnataka Land Reforms Act, the landlord and the tenant are the contesting parties and the State has no interest; that in such a proceeding, Government's interest is not involved ; that in large number of land reforms cases, Law Officers used to send their bills at the rates specified in the Schedule and at every time the Government had to reduce the fee claimed in their bills after noticing in which of the cases the claim is made ; that whether the matter pertained to Land Reforms or not ; that in order to avoid multiplicity of work in the Department and to make it known to the Law Officers to claim Rs. 25/- in Land Reforms Cases, the impugned amendment is effected, thus the impugned amendment is purely clarify since the Government has always discretion under the Rules to reduce the fees claimed by any Law Officer even in the absence of the impugned amendment. It is also the stand taken in the statement of objections that normally general authorisations are not issued by the Government, even where Government Pleaders appear on the direction of the Court, the instructions are specific to the effect that appearance is permitted to defend the Government interest if involved in the case and the verification of involvement of Government interest has to be made either by the Government or the Advocate General. It is further contended that in the absence of authorisation either by Government or instructions by the Advocate General, the Law Officers do not become entitled to any remuneration since they are paid the monthly retainer to appear before the Court where Court directs ; that after receiving the letters from the Law Officers wherein they are directed by the Court to take notice in any case, the Department examines whether Government interest is involved or not in such cases and it is then open to the Government to fix such fees as is deemed fit in the

circumstances of the case and in the light of the Rules.

4. I have heard Sri H.B Datar, Learned Senior Counsel as Amicus Curiae for the Petitioners and Learned Advocate General for the State.

5. Having regard to the aforesaid contentions the points that arise for consideration are :

(i) Whether the amendment to the Rules effected by the Order dated 16th April, 1983 to Clause 2 of Part-A of Schedule III of the Rules, after Item No. (iii) is valid ?

ii) If the amendment is valid, whether it can be given retrospective effect ?

iii) What relief ?

6. Points (i) and (ii) can be considered together. There can be no doubt that the appointment of a High Court Government Pleader is purely contractual. The Rules are not statutory rules, they are the rules framed in exercise of the executive power of the State under Article 162 of the Constitution. Once it is held that the appointments are contractual, conditions governing the appointments are those which are found in the Rules governing the appointment and in force on the date of the appointment. Rule 5 of the Rules provides for appointment of Law Officer, which expression as defined in Rule 3 of the Rules also includes a High Court Government Pleader. A Law Officer is appointed by the Government and he holds office (during the pleasure of the Government. He is removable by giving one month's notice. It is open to a Law Officer including a High Court Government Pleader to resign his office by giving one month's notice to the Government. Otherwise, in the normal course, the term of office is for a period of three years. As per Rule 23(8) of the Rules, the retainer and other remuneration payable to a Law Officer and a High Court Government Pleader shall be as specified in Schedule III to the Rules, whether appearing by himself or by assisting the Advocate General. Schedule III of the Rules, contains two parts i.e., Part-A and Part-B. Part-A contains retainer and rates of fee payable in relation to various categories of cases mentioned therein, to Government Advocate including Additional Government Advocates and High Court Government Pleaders attached to them.

Part-B contains retainer and rates of fee payable in relation to various categories of cases mentioned therein to the State Public Prosecutor and High Court Government Pleader attached to him. In these petitions, we are concerned only with the fee payable to High Court Government Pleaders in respect of Writ Petitions. Clause 1 of Schedule III of the Rules, states that Government Advocate, including Additional Government Advocates, shall be paid a retainer of nine hundred rupees per mensem and a High Court Government Pleader attached to him shall be paid a retainer of five hundred per mensem. Clause 2 thereof, further provides that 'They shall be paid fees at the following rates for appearance in the High Court of Karnataka and for the work done in connection with the petitions or appeals in the Supreme Court, namely :-

(i) Civil Petitions :Rs. 100 per case (ii) Civil Revision Petitions :Rs. 100 per case (iii) Writ Petitions and Writ Appeals : (a) in the case of Government Advocate including Additional Government Advocates:Rs. 200 per case. (b) in the case of High Court Government Pleaders :Rs. 100 per case.'

This was the position which prevailed up to 16-4-1983. Thus there was no distinction made in the Rules, for application of the rates of fee as provided in the Rules on the ground whether a High Court Government Pleader appeared in a Writ Petition on the previous authorisation by the Government or in the direction of the High Court or whether a Writ Petition related to a proceeding under Section 48A of the Karnataka Land Reforms Act, or under any other law. This distinction came to be introduced by the following amendment which came to be effected on 16-4-1983 and made applicable from 10-1-1983.

'Provided that the fees payable in respect of Writ Petitions or appeals relating to applications under Section 48A of the [Karnataka Land Reforms Act, 1961](#) shall be twenty five rupees if the appearance by the Law Officer is without the previous authorisation of the Government.

NOTE : This above proviso shall apply to all cases decided on or after 10th January, 1983 '

It is the validity of this amendment that is challenged in these Writ petitions.

7. In these petitions, the case of the petitioners is that several cases were argued and decided in between 10th January and 16th April, 1983 and the bills relating to all those cases are passed by applying the proviso inserted by the order dated 16th April, 1983 which in effect amounts to giving retrospective effect to an executive order and thereby taking away the right to receive the remuneration at a particular rate which had accrued to a High Court Government Pleader on the day he finally argued the matter; that the impugned amendment results in depriving the petitioners of their property without the authority of law; hence the amendment effected by the order dated 16-4-1983 is bad in law as it is not only violative of Article 300A of the Constitution ; but it is also hit by Article 14 of the Constitution in as much as the classification of the cases on the basis of appearance of a Law Officer with and without the previous authorisation of the Government is not founded on intelligible differentia and has no rational relation to the object sought to be achieved.

8. There cannot be any doubt that a right accrues to a High Court Government Pleader as soon as he argues the case finally to claim the fees at the rate specified in Schedule III of the Rules, existing as on the date the case is finally heard. Such a right, even though it arises out of the terms of contractual appointment, cannot unilaterally be taken away or altered by retrospectively amending the Rules. However, in the instant cases, several Writ Petitions argued by High Court Government Pleaders, had been decided prior to the date the impugned-proviso was inserted and the Bills in respect of such cases are reduced by retrospectively applying the impugned proviso. The right to receive the fees does not depend upon the date on which the judgment is rendered in a case argued by a High Court Government Pleader. It depends upon the rate of fees payable as per the Rules prevailing on the date the hearing of a case is completed. This conclusion is possible not only on the first principle, but it also receives support from the wordings contained in Clause 2 of Schedule III of the Rules, which provides that Government Advocates and High Court Government Pleaders attached to them shall be paid fees at the rates mentioned therein for appearance in the High Court of Karnataka and for the work done in connection with the petitions or appeals in the Supreme Court. We are not concerned in these petitions with regard to the work done in connection with the petitions or appeals in

the Supreme Court. We are only concerned with the fees payable for appearance in the High Court of Karnataka. Therefore, on the completion of the final hearing of the case, the High Court Government Pleader who has appeared in the case is entitled to claim fees as per the rates specified in Schedule III as prevailing on that date. This right which accrues to a High Court Government Pleader on the completion of the final hearing of the case, cannot in exercise of the executive power of the State under Article 162 of the Constitution, be taken away. The right so accrued to claim fees in terms of the rates specified in Schedule III of the Rules, becomes a property within the meaning of Article 300A of the Constitution.

In *Khem Chand v. Union of India*, : (1963)ILLJ665SC , the right to arrears of pay and allowances was held to constitute 'property' within the meaning of Article 19(1)(f) of the Constitution. No doubt, Article 19(1)(f) of the Constitution, stands omitted by Constitution (44th Amendment) Act, 1978 ; and as such, the right to acquire, hold and dispose of property is no more a fundamental right. Nevertheless, the right to property is protected by Article 300A of the Constitution, which provides that no person shall be deprived of his property save by authority of law. The executive power of the State under Article 162 of the Constitution, cannot be exercised to deprive a person of his property. The exercise of Executive power under Article 162 of the Constitution, must not only conform to, and be subject to the provisions of the Constitution, but it must not also be contrary to any other law. It cannot infringe or encroach upon the legal right of an individual. In *Bishamber Dayal Chandra Mohan v. State of U.P.*, : [1982]1SCR1137 . the Supreme Court has observed thus :

'41.....

The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162 as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300A. The word 'law' in the context of Article 300A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or

State made law.'.

That being so, this is not a case in which it is possible to hold that in exercise of the powers conferred by the Rules, the fees of a High Court Government Pleader has been reduced. It is a case in which in exercise of the executive power of the State under Article 162 of the Constitution, the State Government has amended the Rules retrospectively to deprive fully or partly a Law Officer of his fees which he has earned. It is the validity of this amendment that has been challenged. Therefore, it is not possible to accept the contention of learned Advocate General that as the matter relates to contractual relationship between the State Government and its Law Officers, the jurisdiction under Article 226 of the Constitution, cannot be invoked. The contention is accordingly negated.

9. It is contended by learned Advocate General that Note-2 to Schedule III of the Rules, empowers the Government to modify the Rules; therefore, the modification effected by the order dated 16-4-1983 is permissible in law. Note 2 Schedule III of the Rules, provides thus :

'Notwithstanding anything contained in the preceding provisions, the State Government shall have the right to fix in any case or class of cases remuneration at a rate less than those specified in the said provisions, having regard to the facts and circumstances of such case or class of cases.'

Note-2 only enables the State Government to fix in any case or class of cases remuneration at a rate less than those specified in the Schedule having regard to the facts and circumstances of such case or class of cases. The amendment of the Rules is quite different from fixing of the fees at a rate less than those specified in the Schedule III of the Rules, in a particular case or class of cases. The Rules are amended or framed in exercise of the executive power of the State under Article 162 of the Constitution. Therefore, the contention that the impugned amendment is permissible having regard to the provisions contained in Note 2 to Schedule III of the Rules, is not valid and cannot be accepted. It is accordingly negated. In these cases, the bills submitted by High Court Government Pleaders in respect of the cases decided prior to 16-4-1983 have been reduced by applying the impugned proviso.

10.1. The next question for consideration is whether the impugned proviso is hit by Article 14 of the Constitution. Any law, rule or regulation having the force of law or an order issued in exercise of the power of the State under Article 162 of the Constitution, among other things, must also satisfy the equality clause enshrined in Article 14 of the Constitution. What Article 14 of the Constitution prohibits is class-legislation and not reasonable-classification for the purpose of Legislation. The classification to be permissible must satisfy two conditions viz., (1) that the classification must be founded on intelligible differentia; and (2) that that differentia must have a rational relation to the object sought to be achieved by the Statute or Rule in question. Thus, it is necessary that there must be a nexus between the basis of classification and the object of the Statute or the Rule under consideration.

10.2) In the instant cases, the impugned proviso classifies the Writ Petitions or Writ Appeals relating to applications under Section 48A of the [Karnataka Land Reforms Act, 1961](#) [hereinafter referred to as the 'Act'] for the purpose of fixing a fee payable to a Law Officer under the Rules, on the basis of appearance by a Law Officer with and without the previous authorisation of the Government. According to the classification made by the impugned proviso, if a Law Officer appears in a Writ Petition or Writ Appeal, relating to applications under Section 48A of the Act, without the previous authorisation of the Government, he is entitled to a fee of Rs. 25/- only; whereas in a similar Writ Petition or Writ appeal, if a Law Officer appears with the previous authorisation of the Government, he is entitled to a normal fee of Rs. 200 or 100, as the case may be, fixed under Clause-2 of Schedule III of the Rules.

10.3) It is not in dispute and it is the case of the State Government as well as the petitioners that Writ Petitions or Writ Appeals relating to applications under Section 48A of the Act, in which a Law Officer has put in appearance without the previous authorisation of the Government are those in which the High Court has directed the Law Officer to appear on behalf of the State or the Land Tribunal, as the case may be.

10.4) The authorisation, according to the case of the State Government, is issued on verification as to whether the interest of the State is involved or not in the case. Thus, the basis for the classification is the previous authorisation issued by the State Government on the ground that the interest of the State is involved in the case.

10.5) Whether a Law Officer appears in a case either on the previous authorisation of the State Government or on the direction of the High Court-without the previous authorisation of the Government-there is no difference in the service rendered or to be rendered by a Law Officer.

10.6) It is urged on behalf of the State that in Writ Petitions and Writ Appeals relatable to applications under Section 48A of the Act, the interest of the State is not normally involved; therefore, in such cases, the State Government authorises its Law Officers to appear on behalf of the State only on being satisfied that the interest of the State is involved. Therefore, it is further urged that the appearances of a Law Officer in such cases without the previous authorisation of the Government, cannot be held to be for the purpose of protecting the interest of the State. Therefore, such cases stand on a different footing. Hence, the fee-payable in such cases is fixed at Rs. 25/- as the classification made on the basis of the appearance by a Law Officer with and without previous authorisation of the Government is valid.

10.7) It is not possible to hold that the classification made on the aforesaid basis is valid. It is also not possible to accept the contention that in Writ Petitions and Writ Appeals relatable to applications under Section 48A of the Act, the interest of the State is not involved. One of the primary objects of the Act, is conferment of ownership on tenants. Chapter-III of the Act, specifically deals with conferment of ownership on tenants. As per the provisions contained in Section 44 of the Act, all lands held by or in possession of tenants (including tenants against whom decree or order for eviction or certificate for resumption is made or issued) immediately prior to the date of commencing of the Karnataka Act No. 1/74 except those excepted stand transferred to and vested in the State Government. One of the consequences that flows out of such vesting is that all rights, title and interest

vesting in the owners of such lands and other persons interested in such lands shall cease and be vested absolutely in the State Government free from all encumbrances. Under Section 45 of the Act, it is in respect of such vested lands a permanent or protected tenant or other tenant in possession and personally cultivating such lands, is entitled to be registered as occupant. A permanent or protected or other tenant on grant of occupancy right becomes entitled to enjoy the land subject to certain restrictions and conditions provided under the Act as owner thereof and he is entitled to partition among the members of his family subject to the condition that no fragment is created by such partition. That being so, in order to achieve one of the primary objects of the Act, it is necessary for the State to see that the tenanted lands vest in the State. The Land Tribunal, in an application filed under Section 48A of the Act, by a person claiming that he should be registered as occupant, is required to determine whether such land was held by or in possession of such person as tenant and which he has been cultivating personally on the date of vesting. Therefore, it is not possible to hold that the interest of the State is not involved in Writ Petitions or Writ Appeals relatable to applications under Section 48A of the Act; inasmuch as unless the land in respect of which occupancy right is claimed is held to have vested in the State Government as on 1-3-1974, it is not possible to grant occupancy right. Consequently, it will not be possible to fulfil one of the primary objects of the Act, viz., conferment of ownership on tenant. Thus, it is clear that the very basis of the classification of Writ Petitions and Writ Appeals relatable to applications under Section 48A of the Act, wherein the Law Officer has put in appearance without the previous authorisation of the Government, as involving no interest of the State Government, is itself erroneous and unsustainable.

10.8) The classification of Writ Petitions and Writ Appeals relatable to applications under Section 48A of the Act, founded on the ground of appearance by a Law-Officer with and without the previous authorisation of the Government, is neither based upon intelligible differentia nor it has a rational relation to the object sought to be achieved by the proviso. As it is already pointed out, in such cases, the interest of the State is involved. Services to be rendered by a Law Officer in such cases whether it be on the previous authorisation of the State Government or on the direction of the High Court, will be the same. Further, when the High Court

directs that a High Court Government Pleader should take notice in a Writ Petition or Writ Appeal, relating to applications under Section 48A of the Act. to appear on behalf of the State or the Land Tribunal - as the case may be - it necessarily follows that in such cases the High Court is of the opinion that it is necessary to hear the State. That being so, it is not at all open to the State Government to sit in Judgment on the opinion expressed by the High Court and hold to the contrary that in such cases, no interest of the State is involved; therefore, it is not necessary for the State to be represented.

10.9) No doubt, under Sub-rule (4) of Rule 21 of the Rules, the Advocate General, subject to general or special directions, if any issued by the Government and the provision of the rules, is entitled to distribute Government work in the High Court between the Government Advocate, Additional Govt. Advocates and the State Public Prosecutor; and supervise and control their work. Under Rule 23 of the Rules, the Government Advocate, Additional Government Advocates and the State Public Prosecutor and High Court Government Pleaders are required to attend all cases in the High Court in which the State is a party. They are also required to attend to such other work as may be assigned to them by the Advocate General or by the Government from time to time. They are attached to the office of the Advocate General and are subject to the supervision and control of the Advocate General. Thus, a High Court Government Pleader is also entitled to attend cases in the High Court in which the State is a party. There is no prohibition in the Rules prohibiting a Law Officer from appearing in a case in which the State is a party without the prior authorisation of the State Government.

10.10) As per Writ Proceedings Rules, the provisions of the Code of Civil Procedure are applicable to writ proceedings. Under Rule 4 of Order 27 of the Code of Civil Procedure, the Government Pleader in any Court shall be the agent of the Government for the purpose of receiving process against the Government issued by the Court. Rule 2 of Order 27 of the Code of Civil Procedure, further provides that persons being ex-officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be recognised agents by whom appearances, acts and applications under the C.P. Code may be made or done on behalf of the Government. That being so, a Law

Officer attached to the office of the Advocate General who is entitled to attend to all cases in the High Court, in which the State is a party, as per Rule 23 of the Rules, cannot refuse to take notice and appear for the State on the direction of the High Court in any proceeding before it, in which the State is a party.

11. Thus, from what is stated above, it is clear that the classification of the Writ Petitions or Writ Appeals relatable to applications under Section 48A of the Act, made on the basis of with and without the previous authorisation of the Government, is based on no intelligible differentia and has no nexus to the object of the impugned proviso. Thus the impugned proviso is hit by Article 14 of the Constitution.

12. The impugned proviso has also been given retrospective effect. The result is that it deprives a Law Officer of his right to receive the fees which had already accrued to him on the date it was inserted. It is not permissible for the State Government in exercise of executive power of the State under Article 162 of the Constitution, to frame such a rule and deprive a person or a Law Officer of his property. That the fees that have already accrued to a Law Officer is a property, has already been pointed out. No property can be taken away by the State by way of an executive order. This aspect of the matter also has already been pointed out.

13. For the reasons stated above, Point Nos. 1 and 2 are answered as follows :

i) The impugned proviso inserted by the Government Order bearing No. LAW 46 LAG 83, dated 16-4-1983, after item No. (iii) in Clause-2 of Part-A of Schedule III of the Rules. is unconstitutional and as such, it is invalid.

ii) The impugned proviso even if it is presumed to be valid, cannot be given retrospective effect.

14. Accordingly, these Writ Petitions are allowed in the following terms :

i) The Government Order dated 16-4-1983 bearing No. LAW 46 LAG 83 inserting the following proviso after Item (iii) in Clause-2 of Part-A of Schedule III of the Rules, is hereby quashed :

"Provided that the fees payable in respect of Writ Petitions or appeals relating to applications under Section 48-A of the [Karnataka Land Reforms Act, 1961](#) shall be twentyfive rupees if the appearance by the Law Officer is without the previous authorisation of the Government.

Note : This above proviso shall apply to all cases decided on or after 10th January 1983.'

ii) A direction shall issue to the Government to examine the bills submitted by the petitioners afresh without reference to the aforesaid proviso and in the light of the observations made in this order.

iii) Compliance in three months from the date of receipt of this order.

15. Before parting with the case, I place on record my appreciation for the valuable assistance rendered by Shri H.B. Datar, Learned Senior Counsel who appeared for the petitioners as Amicus Curie at the request of the Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com