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M. Peer Reddy Vs. State of A.P. and Another

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Court : Andhra Pradesh

Decided On : Jul-27-1994

Reported in : AIR1995AP46; 1994(2)ALT720

Judge : Lingaraj Rath and ;B. Subhashan Reddy, JJ.

Acts : Andhra Pradesh Law Officers (Recruitment, Conditions of Service and Remuneration) Rules, 1967 - Rules 30 30(1), (5) and (7) and 36; Land Acquisition Act - Sections 18 and 30

Appeal No. : Writ Petition No. 720 of 1991

Appellant : M. Peer Reddy

Respondent : State of A.P. and Another

Advocate for Def. : Govt. Pleader for Law

Advocate for Pet/Ap. : C.R. Pratap Reddy, Adv.

Judgement :
ORDER

Lingaraj Rath, J.

1. The appellant is an advocate practising at Sanga Reddy in Medak District and is assailing the judgment of the learned single Judge rejecting his claim for legal fees

raised by him against the respondent No. 2, on account of having conducted on his behalf 101 land acquisition original petitions under Section 30 of the Land Acquisition Act and 329 interlocutory applications. The appellant had filed three writ petitions viz. 9049, 9050 and 9089 of 1989. While W.P. Nos. 9050 and 9089 of 1989 were allowed, the claim in W.P. No. 9049 of 1989 was rejected on the learned Judge taking the view that the payment of fees to the appellant is governed by sub-rules (5) and (7) of Rule 30 of the Law Officers Fees Rules. The learned Judge found that as the Andhra Pradesh Law Officers (Recruitment, Conditions of Service and Remuneration) Rules, 1967 (for short 'Law Officers Fees Rules) do not make any provision for payment of fees in respect of original petitions under Section 30 of the Land Acquisition Act, no fees was payable for having conducted those cases and in view of the bar contained, in Rule 30(5) in respect of interlocutory applications, no fees was also payable in respect of such applications.

2. Rule 30 of the Law Officers Fees Rules, so far as relevant, is extracted below:

30. Fees payable to Government Pleaders Additional Government Pleaders and the Assistant government Pleaders in Courts Subordinate to the High Court :-- The fees payable to the Government Pleaders, the Additional Government Pleaders and the Assistant Government Pleaders in Courts subordinate to the High Court, shall be as follows:--

(1) In all civil suits, appeals or proceedings, including those relating to execution proceedings :--

(i) the fees which the Court fixes or if such fees is considered to be too high; any smaller amount, as the Government may in their discretion determine in accordance with the provision made in Rule 36 irrespective of the fact whether the costs, including fees, are recoverable by the Government from the other party or not;

(ii) the regulation fees or any smaller amount as the Government .may in their discretion determine in accordance with the provisions made in Rule 36, if no fees is fixed by the Court.

(2) to (4) .....

(5) In interlocutory applications C.M.P.s filed in the course of a proceeding, no fees shall be payable if the court makes no order as regards costs therein;

(6) .....

(7) In Land Acquisition Cases as betweenthe Collector and the claimants the fees shall be one percent on the amount enhanced by the Court in excess of the Award subject to a minimum of Rs. 50/- and a maximum of Rs. 100/- in case a separate Judgment is delivered for each O. P. and Rs.2,000/- if common judgment is delivered for a batch of cases.'

A reference to the quoted provisions shows provision to have been made for payment of fees generally in civil suits, appeals or proceedings, but specific provision has been made in respect of interlocutory applications in sub-rule (5) of Rule 30 and fees in respect of Land Acquisition cases between the Collector and the 'claimants under sub-rule (7) of Rule 30. Sub-Rule (5) and Sub-rule (7) being provisions of exceptions, would control the general provisions in sub-rule (1) only to the extent they carve out exceptions to it. Those provisions would have no effect of affecting the generality of the operation of sub-rule (1) which states about fees payable not only in civil suits or appeals, but also in other proceedings, which would undoubtedly include original petitions under Section 30 of the Land Acquisition Act. That being so, with great respect we are unable to subscribe to the view that merely because sub-rule (7) of Rule 30 of the Law Officers Fees Rules does not deal with other type of land acquisition cases except land acquisition cases between the claimant and the Collector where the amount is enhanced by the court in excess of the award, obviously referring to references under Section 18 of the Land Acquisition Act, no fees is payable. Clearly such case conducted by a Law Officer comes under 'other proceedings' covered by sub-rule-(1) of Rule 30. We must hence hold that the appellant is entitled to fees for the 101 original petitions conducted by him.

3. It is the admitted case of the parties that in respect of all the 101 cases, fees was fixed by the court. Rule 30(I)(i) vests power in the Government, where the

fees has been fixed by the court, to determine at its discretion, if the fees fixed is too high, a smaller amount in accordance with the provisions in Rule 36 irrespective of the fact whether the costs including the fees are recoverable by the Government from the other party or not. Rule 36 while vesting the same power in the Government regarding the reduction of the fees fixed either by the court or under the regulation (under the Andhra Pradesh Advocate Fees Rules), stipulates two guidelines for exercise of the discretion, the first being that the fees fixed by the court'iis recoverable by the Government from the other party may ordinarily be allowed; and the second being a reasonable fees to be allowed when the court awards only proportionate costs as recoverable by the Government from the other party or when the case is decided either in favour of the Government (without any costs being recoverable) or against the Government.

4. The very guidelines provide that the fees fixed by the court as recoverable is to be ordinarily allowed. Whenever a statute provides a particular act to be ordinarily done, it has to be understood in the sense that the desire of the statute is the act to be carried into effect, unless there are any cogent and reasonable grounds of exception. If no such exception is available, the act ordinarily directed to be performed is to be performed. In the background of such view, it is noticed that the fees was claimed by the appellant in the year 1986. About 8 years have elapsed in between. For 101 cases, the claim preferred was about Rs. 94,000/-, i.e. on the average at the rate of Rs. 930/- per case. The amount having been kept back from him about 8 years back, it can be concluded that the appellant has been made to lose benefits out of the amount for 8 years and the interest calculated on that would, itself, be a substantial amount. Considering all such facts, we are of the view that a mandamus is required to be issued to direct the respondent No. 2 to pay the appellant the fees in respect of the original petitions as claimed.

5. However, so far as the claim for interlocutory applications is concerned, we are of the view that specific rule having been made in sub-rule (5) of Rule 30 disentitling to any fees in that regard as the court had not made any orders regarding costs therein, the appellant is not entitled to any fees in that regard. Mr.Reddy, the learned counsel appearing for the appellant also concedes the matter and has assured us that the. claim with regard to interlocutory applications

would not be agitated further. That aspect of the claim we reject.

6. In the result, the Writ Appeal isallowed to the extent indicated above. TheRespondent No. 2 is directed to pay theamount claimed within a period of one monthfrom the date of the receipt of this order. Nocosts.

7. Appeal allowed.

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