

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

Debts Recovery Tribunal, Advocates Association of Andhra Pradesh Vs. Debts Recovery Tribunal, Karnataka and Andhra Pradesh, Bangalore and ors.

Debts Recovery Tribunal, Advocates Association of Andhra Pradesh Vs. Debts Recovery Tribunal, Karnataka and Andhra Pradesh, Bangalore and ors.

SooperKanoon Citation : sooperkanoon.com/426062

Court : Andhra Pradesh

Decided On : Oct-05-2001

Reported in : 2002(2)ALD167

Judge : Bilal Nazki and ;E. Dharma Rao, JJ.

Acts : Andhra Pradesh Advocates Fees Rules, 1990 - Rule 50; [Constitution of India](#) - Article 227 and 227(2); [Banks and Financial Institutions Act, 1993](#) - Sections 22(1); Advocates Act, 1962 - Sections 34(1A); [Legal Practitioners Act, 1879](#) - Sections 27

Appeal No. : WP No. 35936 of 1998

Appellant : Debts Recovery Tribunal, Advocates Association of Andhra Pradesh

Respondent : Debts Recovery Tribunal, Karnataka and Andhra Pradesh, Bangalore and ors.

Disposition : Petition dismissed

Judgement :

Bilal Nazki, J.

1. This writ petition has been filed by an Advocates' Association and it is submitted that the association was formed to promote brotherhood among legal fraternity and to take up activities relating to common problems of Advocates. It has been stated that the Banks and financial institutions were filing suits in Civil Courts for recovery of their dues in respect of loans and other facilities provided by them to the borroweRs. The Government of India having felt the need, created separate Tribunals for adjudication of matters relating to Bank recoveries. The Recovery of Debts due to the Banks and Financial Institutions Act (51 of 1993) was promulgated by Parliament which came into force on 24th June, 1993. The Central Government was authorised to issue notification to establish Debts Recovery Tribunals to adjudicate the claims of the Banks. The Government was also empowered to specify the areas over which such Tribunals may exercise their jurisdiction. The Central Government by a notification constituted Debts Recovery Tribunals on 30th November, 1994. A Debts Recovery Tribunal was constituted at Bangalore which had the jurisdiction to try the debts recovery matters for the State of Andhra Pradesh and Kamataka and it started functioning at Bangalore from 30th November, 1994. The claims of Banks worth Rs. 1 0.00 lakhs and above were sent to the Tribunals. All the pending suits valued at Rs. 10.00 lakhs and above pending before the Courts in the State of Andhra Pradesh were transferred to the said Tribunal. According to the petitioners, the Advocates appearing for Banks and Financial institutions in Civil Courts were being paid Advocate fees- in the A.P. Advocates Fee Rules, 1990 prescribed by the High Court of Andhra Pradesh. According to the petitioners, the Banks also issued circulars for payment of fee for Advocates appearing in Civil Courts in accordance with A.P. Advocates Fees Rules, 1990. The Managements of the Public Sector Banks, however, started issuing circulars to their branches prescribing a different fee structure for cases before the Debts Recovery Tribunals without having regard to the fee structure prescribed by the High Court of Andhra Pradesh and Karnataka. The General Manager (Operations) of the State Bank of India, Hyderabad issued a circular on 18th August, 1995 prescribing the fee structure. Rs. 12,000/- was fixed as fee for debts upto Rs. 10.00 lakhs and Rs. 500/- was to be paid for each Rs. 1.00 lakh or part thereof subject to maximum of Rs. 30,000/-. The Circular also

prescribed the mode of payment. 25% of the fee had to be paid at the time of filing of application before the Debts Recovery Tribunal, 25% was payable after obtaining recovery certificate from the Tribunal, 25% was to be paid at the time of initiation of proceedings and the balance of 25% would become due on termination of proceedings before the Recovery Officer after full payment by the debtor. In case of compromises, only half of the fee prescribed was payable. The grievance of the Association is that the fee prescribed by Local Head Office of State Bank of India was much less than the fee payable under the Advocates Fee Rules prescribed by the High Court. It is submitted that the Advocates had to bear their own expenses for going to Bangalore for any number of times for the purpose of the case. They were not being paid even TA/DA. It is submitted that other Banks have also issued circulars on the lines of the circular issued by the State Bank of India. This circular and the circulars issued by the other Banks on similar lines have been challenged in this writ petition. It is further stated that the Tribunal framed Regulations under Section 22(1) of the Recovery of Debts due to [Banks and Financial Institutions Act, 1993](#), Rule 50(b) of the Regulations stipulated as follows:

'Rule 50(b); Advocates fee to be included in the costs awarded by the Tribunal to a party in any proceedings before it shall be as prevailing in the respective States over which Tribunal has territorial jurisdiction.'

It is further submitted that the Tribunals followed the Scheme adopted by Advocates Fee Rules framed by the High Court of Andhra Pradesh.

2. The ground of attack on these circulars is that, it is the exclusive jurisdiction of the High Court under Article 227 of the [Constitution of India](#) to fix the fee payable to the Advocates representing before the Courts and Tribunals. It is further stated that, Section 34(1A) of the Advocates Act, 1962 and Section 27 of the Legal Practitioners Act also prescribe that the fee payable to the Advocates shall be governed by the Rules framed by the High Court. The High Court having framed the rules being A.P. Advocates fee Rules, 1990 and the Tribunal having accepted to adopt the fee rules framed by High Courts of A.P. and Karnataka, the respondents have no power to fix the fee structure.

3. Now, the question before this Court is, whether it is prerogative of the litigants to negotiate and fix the fee with regard to the matters pending in the Court with their Counsel, or, the High Court has any power to fix such fee. Reference is made by the learned Counsel for the petitioners to Article 227 of the [Constitution of India](#) and also to the A.P. Advocates fee Rules, 1990. On the other hand, the respondent Bank has submitted that it is the prerogative of the respondents as a litigant to fix the fee and it is always open for the Counsels either to accept the fee and the brief or to refuse the brief on the fee offered.

4. When this case came up before us for hearing we found that the outcome of this case would affect the interests of Advocates in general, therefore notice was given to the Chairman and Secretary of A.P. Bar Council. They also appeared and filed Counter. They have almost adopted the same arguments which were made by the learned Counsel for the petitioners.

5. The pleadings suggest that the whole case has been based upon A.P. Advocates fee Rules, 1990. Now, it will be pertinent to see the scope of these Rules. These rules have been framed in exercise of the powers conferred on High Court under Article 227 of the [Constitution of India](#) read with Section 27 of the [Legal Practitioners Act, 1879](#) and Section 34(1A) of the Advocates Act. It has been stated at the Bar that the Legal Practitioners Act is not now operative therefore it can be presumed that these Rules have been framed under Article 227 of the Constitution read with Section 34(1A) of the Advocates Act. Under Article 227 of the Constitution this court has the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises its jurisdiction. Under Article 227(2)(b) the High Court can make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts and Section 34(1A) of the Advocates Act lays down; 'The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto' It was contended by the learned Counsel for the respondents that, even under Article 227 read with Section 34(1A) of the Advocates Act the High Court has no power to fix the fee for Advocates. But, we are not going to deal with this question presently because the power of

making rules is available to the High Court both under-Article 227 and under Section 34(1A) of the Advocates Act and this power has been exercised. We will not be dealing with the extent of the power available to the High Court but we will only deal with the power which it had exercised and try to see the scope of the rules made thereunder in 1990. There cannot be any difficulty in interpreting Section 34(1A) of the Advocates Act because it restricts the power of the High court of fixing and regulating the fee payable as costs by any party to an adversary. There can be two opinions for interpretation of Article 227(2)(b), but the Rules of 1990 make it clear that these rules were not intended for fixing the fee payable to the Advocates by their clients. Section 3 of Part-I of these rules lays down;

'3. These rules shall govern the fee payable by the adversary in the Courts subordinate to the High Court of Andhra Pradesh.'

Reading these rules with Section 34(1A) of the Advocates Act makes it abundantly clear that, what the High Court laid down was as to how the costs would be calculated against an adversary if the costs are imposed against a party at the end of a proceedings. Therefore, these rules govern the Courts rather than the Advocates.

6. The learned Counsel for the petitioners have not been able to show us any judgment although reference has been made to many judgments which are not relevant for the purpose of this case. Out of the many judgments referred, one judgment needs to be mentioned that is In Re K.L. Gauba, : AIR1954 Bom478 . This was a case in which there was an agreement between the advocate and client, this agreement had a stipulation that the client would give a share in the subject matter of litigation in the event of success. The Bombay High Court was of the view that this was misconduct. Fixation of fee by Banks for payment to the lawyers uniformly would not in any way be termed as an agreement between the client and advocate for sharing the fruits of litigation. As such, we do not find that even this judgment would come to the rescue of the petitioners.

7. Since the petitioners have failed to show us any rule or any law by which it could be said that the High Court had fixed the fee which could be payable by

clients to the Advocates, this writ petition deserves to be dismissed which is accordingly dismissed. No costs.

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