

Project Officer Vs. Smitha

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Court : Kerala

Decided On : Jan-28-2003

Reported in : AIR2003Ker186

Judge : J.B. Koshy and; P.R. Raman, JJ.

Acts : [Kerala Court Fees and Suits Valuation Act, 1959](#) - Sections 73A;
[Constitution of India](#) - Articles 12, 166 and 299

Appeal No. : Unnumbered L.A.A. of 2003

Appellant : Project Officer

Respondent : Smitha

Advocate for Pet/Ap. : M.V. Mathai Muthirenthu, Adv.

Judgement :

ORDER

J.B. Kosby, J.

1. The question to be decided in this order is whether the Kerala Water Authority can file an appeal without paying court fee. By the Kerala Court Fees and Suits Valuation (Amendment) Ordinance, 2002, (hereinafter referred to as the 'Ordinance') Section 73A was inserted in the [Kerala Court Fees and Suits Valuation Act, 1959](#), which reads as follows:

'73A. Special provision regarding suits, appeals, revision etc. filed by or on behalf of the Government before the Court - Notwithstanding anything contained in any other provisions of this Act, where a suit, appeal, revision, review or other pleadings or documents are filed or presented by or on behalf of the Government or its officers in their official capacity before any Court, no Court fee shall be chargeable in respect of such suit, appeal, revision, review or other pleadings or documents under the provisions of this Act.'

Under the above provision, the Government or its officers in their official capacity can file a suit, appeal, revision, review or other pleadings or documents without payment of fees as provided under the Act. According to the Water Authority, since it is a statutory corporation and formerly it was part of the Government itself, it is also entitled to the benefit. Admittedly, Water Authority is a State Government undertaking. It is an instrumentality of the State for the purpose of Article 12 of the [Constitution of India](#). But is not a Government as such. The Kerala Water Authority is constituted under Section 3 of the Kerala Water Supply and Sewerage Act, 1986. Section 4 deals with constitution of the authority. Sections 3 and 4 of the above Act read as follows:

'3. Establishment of Kerala Water Authority :-

(1) The Government shall, by notification in the Gazette and with effect from such date as may be specified therein, establish an autonomous authority to be called the Kerala Water Authority.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall by the said name sue and be sued.

(3) The Authority shall for all purposes be deemed to be a local Authority.

(4) The Authority shall have its head office at Trivandrum and may have offices at such other places as it may consider necessary.'

4. Constitution of the Authority:- The Authority shall consist of the following members, namely:-

(a) a Chairman appointed by the Government;

(b) a Managing Director, who possesses experience in management and administration or who is a qualified Engineer not below the rank of a Chief Engineer having sufficient experience in management and administration in water supply and sewerage works, appointed by the Government :

Provided that no person who is more than fifty-five years of age shall be appointed as Managing Director;

(c) the Secretary to Government in charge of Public Health Engineering Department, or the Kerala Water Authority, ex-officio;

(d) the Finance Secretary to Government, ex-officio;

(e) the Secretary to Government in charge of Local Administration Department, ex-officio;

(i) the Secretary to Government in charge of Development Department, ex-officio;

(g) two members representing the local bodies in the State, appointed by the Government;

Provided that if for any reason there are no elected members in office in any of the local bodies in the State, the Government may appoint a person who had been a member of any such local body;

(h) a member belonging to a Scheduled Caste or Scheduled Tribe appointed by the Government; and

(i) a technical member, who shall be a qualified Public Health Engineer not below the rank of a Chief Engineer, appointed by the Government.'

Therefore, it can be seen that the appellant is an autonomous authority. Event hough Chairman, Managing Director and other members are appointed by the

Government, it is not 'Government' itself. It is an autonomous body with perpetual succession and a common seal like an incorporated Government Company. Restrictions and procedures to pass orders of Government under Article 166 or formalities for execution of Government Contract under Article 299 of the Constitution are not applicable to it. Even though it is an institution of State and Government has got deep and pervasive control, it is not a Government Department. While considering the question with regard to a Government Company the Apex Court in Hindustan Steel Works Construction Ltd. v. State of Kerala (1997 (1) KLT 820 (SC)) held as follows:

'19. After giving our careful consideration to the facts of the case and the respective contentions made by the learned counsel for the parties, it appears to us that the appellant company cannot be held to be a department of the Government. There may be deep and pervasive control of the Government over the appellant company and the appellant company, on such account may be an instrumentality or agency of the Central Government and as such a 'State' within the meaning of Article 12 of the Constitution.....'

See also the decision in Hindustan Organic Chemicals Ltd. v. State of Kerala (1999(1) KLT 782). Therefore, the Kerala Water Authority is not exempted from payment of court fee under Section 73A. Here the appeal is filed not by or on behalf of the Government, but on behalf of an autonomous body, a statutory authority, the Kerala Water Authority. The appellant, Water Authority is, therefore, liable to pay court fee in land acquisition appeals.

A month's time is allowed to pay court fees.

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