

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE BABU MATHEW P.JOSEPH**

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WA.No.1008 of 2013

AGAINST THE JUDGMENT DATED 26-03-2013 IN WP(C) 2574/2010.

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APPELLANT/PETITIONER IN WRIT PETITION:

**T.L.ANANTHASIVAN,ADVOCATE,NOW RESIDING AT 36,
KRISHNA KUTIR,FLAT FI,VTH AVENUE,BESANT NAGAR,
CHENNAI-600090.**

**BY SRI.M.C.SEN (SENIOR ADVOCATE)
ADVS.SRI.M.P.SREEKRISHNAN
SMT.M.H.BINDU**

RESPONDENT'S/RESPONDENTS:

- 1. GOVERNMENT OF KERALA,
REPORESENTED BY ITS CHIEF SECRETARY,
TRIVANDRUM-695001.**
- 2. THE KERALA ADVOCATE'S WELFARE FUND,
TRUSTEE COMMITTEE,REPRESENTED BY THE SECRETARY,
BAR COUNCIL OF KERALA,HIGH COURT BUILDING,
ERNAKULAM-682031.**
- 3. THE SECRETARY,BAR COUNCIL OF KERALA,
HIGH COURT BUILDING,OFFICE OF THE BAR COUNCIL,
ERNAKULAM-682031.**

**R1 BY SENIOR GOVT. PLEADER SRI.S.JAMAL
R2 BY SRI.T.A.SHAJI (SENIOR ADVOCATE.)
R3 BY SRI.GRASHIOUS KURIAKOSE (SENIOR ADVOCATE.)**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30.3.2015 THE
COURT ON 07-04-2015, DELIVERED THE FOLLOWING:**

“CR”

Thottathil B.Radhakrishnan

&

Babu Mathew P.Joseph, JJ.

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W.A.No.1008 of 2013

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Dated this the 7th day of April, 2015

Judgment

Thottathil B.Radhakrishnan, J.

1.Appellant is an advocate and a member of the Kerala Advocates' welfare Fund, hereinafter called the 'Fund'. That Fund is constituted under the Kerala Advocates' welfare Fund Act, 1980; for short, the 'welfare Fund Act'. Section 16 of that Act is to the effect that the payment due to a member of the Fund under that Act will be paid only on "cessation of practice" as defined in section 2(d) of that Act. Appellant sought a declaration that such provision is violative of articles 14 and 19(i)(g) of the Constitution of India and the provisions of the Advocates Act, 1961. That challenge failed at the hands of the learned single Judge. Hence this appeal.

2. Heard the respective learned senior counsel; for the appellant, the Fund and the Bar Council of Kerala.

3. The thrust of the submissions on behalf of the appellant is that the terms of section 16 of the Act read with section 2(d), which defines the term "cessation of practice", result in compelling an advocate to stop practice; to receive the payments due to that person as a member of the Fund; and, this results in depriving that advocate of the statutory eligibility to practice in terms of the provisions of the Advocates Act and the constitutional rights emanating out of articles 14 and 19(i)(g) of the Constitution. It is argued that this is all the more so because such compulsion to stop practice as an advocate; for the purpose of the provisions of a State legislation; amounts to deprivation of the rights of that person to practice as an advocate

elsewhere in India, as well. It is also argued that the terms relating to payment into the Fund are also indicative of the fact that payment out of the Fund as per section 16 of the Welfare Fund Act cannot be bridled with any restrictive covenant in the form of the impugned imposition.

4. On behalf of the Fund and the Bar Council, it is pointed out that the Welfare Fund Act is a piece of welfare legislation and there is no compulsion to join the Fund. The requisite prescriptions as to the necessary conditions to be fulfilled in terms of section 16 of the Welfare Fund Act, to enable a member of the Fund to receive amounts out of the Fund on cessation of practice, are in terms of the laudable objectives sought to be achieved by that enactment, it is contended. It is pointed out that the Fund depends upon the contributions generated from different sources, including by remittances by way of stamps along with vakalatnamas, as legitimate financial modes and measures to ensure funds and augment it for

the purpose of the object sought to be achieved through the Welfare Fund Act. It is argued that those provisions do not in any manner result in any indefeasible right of a member of the Fund to claim payment out of the Fund without satisfying the statutory conditions specified for such purpose. There is no inhibition created against practice, as per the provisions of the Welfare Fund Act and the assumption of the appellant that the terms of the Welfare Fund Act, relating to the conditions requisite to be satisfied for payment out of the Fund amounted to restrictions on the freedom of practice as an advocate is not tenable, it is contended. It is argued that the requirement as to cessation of practice is a sustainable condition for receiving payments out of the Fund as enjoined by section 16 of the Welfare Fund Act, having regard to the laudable objects sought to be achieved by that piece of legislation, and those terms can never be termed as unreasonable or arbitrary, violating the fundamental rights or the statutory rights of an

advocate in terms of the Constitution and the Advocates Act respectively.

5. The impugned judgment has been rendered noticing, quite rightly, that the question to be considered is as to whether, the petitioner is entitled to receive the amount specified in section 16(1) of the Welfare Fund Act, without complying with the provisions of that Act. The learned Judge noted that under the Advocates Act, once a person is enrolled in a State Bar Council, that person is entitled to practice anywhere in the country; but the fact remains that when a person becomes a member of the Fund framed under the Welfare Fund Act, that person becomes bound by the provisions of that Act and therefore the restrictions imposed, by way of conditions requisite, to receive amounts in terms of section 16(1) of that Act, are in no way bad in law or arbitrary or violative of any legal right available to an advocate under the Advocates Act. The learned Judge also found that there is no conflict

between the provisions of section 30 of the Advocates Act and section 16 read with section 2 (d) of the welfare Fund Act and that both those provisions operate in different fields. It was rightly noted by the learned Judge that the welfare Fund Act contemplates creation of a Fund for the welfare of advocates enrolled in the State Roll and that there is no mandate that one should be a member of the Fund. It was held that if an advocate becomes a member of the Fund, that person will have to comply with the provisions of that Act, in order to get the benefits of the Fund. The learned Judge noted that in the case in hand, the contention of the petitioner is that he intends to practice as an advocate in another State. It has been pointed out in the impugned judgment that nothing prevents the petitioner from doing so; however that he will not be entitled to get payment out of the Fund in terms of the welfare Fund Act, if he does not stop practice.

6. Article 14 is an infallible and salutary constitutional prescription ordained to guard the seminal right to equality. The right protected as fundamental right in terms of article 19(1) (g) of the Constitution is the right to practice any profession, or to carry on any occupation, trade or business; subject to the restrictions as are constitutionally recognised as reasonable, having regard to the contents of clause 6 of Article 19. However, among the questions arising for decision in the case on hand, we see not even the ebb of any such constitutional issue; for the simple reason that what is for decision is not the eligibility of the petitioner to continue with his avocation as an advocate in any part of India; but his pleaded entitlement to collect payments out of the Fund, without satisfying the statutory requirements for such payment in terms of the Welfare Fund Act.

7. Membership in the Welfare Fund is a matter of one's own volition. There is no statutory

compulsive requirement as to such membership for a person, to practice as an advocate in the State of Kerala. When one voluntarily joins a statutory welfare fund; which is undoubtedly a scheme of welfare measure for the beneficiaries of that fund; that person voluntarily accepts the terms of the membership; which includes the conditions as to membership, cessation from membership and gaining the eligibility to be paid from out of the fund under the control of the statutory fund of which he is a member. The terms of the statute that governs such a fund get embedded into the bilateral contract between such a fund and its members. A member of such a fund has no legal right to make any claim without satisfying the conditions precedent, in terms of the contract between that fund and that person. Those terms include the statutory prescriptions which govern the working of such a fund. They are the statutory terms of the contract between such a fund and its members. It is a statutory contract, the terms of which cannot be varied depending

upon the volition of the member or the fund concerned. When a person joins a statutory fund, it results in a statutory contract, which binds that fund as well as the person who joins that fund. They will be governed by the statutory provisions which govern that fund and its operation. Certainty and the binding nature of such terms are of the essence of such statutory contracts. Otherwise, that would be perilous for that fund and the objects sought to be achieved by the creation of such a fund through a piece of welfare legislation. It would also impinge on the rights of all other members of such a fund. This would be anathema to the purpose of such a legislation and creation of such fund, in public good. It would negative the avowed objectives of such a fund and reduce it to be one as if it is a savings deposit scheme for oneself; as if it is a 'savings bank' exercise, where one could deposit and withdraw with accrued profits, with passage of time. If any welfare fund of the nature of the one in hand is reduced to be merely one which is

a 'savings scheme'; that would deprive the very purpose and object of such welfare schemes.

8. In the aforesaid view of the matter, the resultant conclusion is that the petitioner cannot get any payment out of the Fund in terms of section 16 of the Welfare Fund Act unless he satisfies the conditions requisite for such payment, including that there has to be cessation of practice by him; that is to say, cessation in accordance with the definition of the term 'cessation of practice' as contained in section 2 (d) of the Welfare Fund Act. That requirement, as is prescribed to obtain payment out of the Fund, is a term of the statutory contract between the petitioner and the Fund, in conformity with, and in consonance with the provisions of the Welfare Fund Act. Such prescription as to the eligibility to obtain funds out of the Fund has no bearing whatsoever on the statutory and constitutional rights of the petitioner to carry on the avocation as an advocate in accordance with the

Advocates Act and the Constitution of India. The insistence of the Fund that payment would be made out of the Fund in terms of section 16, only on production of certificate of cessation of practice as enjoined by that section read with section 2(d) of the Welfare Fund Act does not militate against the fundamental rights of the petitioner in terms of the Constitution or of his statutory rights in terms of the Advocates Act. The contentions of the petitioner to the contrary are wholly misplaced, unsustainable and untenable in the statutory and constitutional perspectives. They are hence repelled.

9. We think it worthwhile to recall that advocates, as a class, belong to a sector which had no social welfare support. This is primarily because advocacy is an avocation which does not amount to employment. The history of advocates; including the perils and challenges they faced in the sojourn of that professional community, brought home to all concerned that it is imperative to

provide a social security measure of support to the advocates as a lot. The varied financial disparity in the field of advocacy is an issue which is often not debated. This is because of the nobility that is ordained and carried by the great ones who are in the field of advocacy. Poverty has not left that sector untouched. Lack of support for the less fortunate, may be, even in spite of their legal acumen, had to be reckoned by the society. Advocates flourish through different modes. Merit and ability may get recognised; not until the individual advocate withstands many perilous circumstances, including poverty at times. There may be exceptions. There may be prodigies and the blessed ones. Well connected in the socio economic political background, some may even pop up beyond their abilities. But, we need to remember that a large spectrum of practicing advocates toils to sustain themselves and their families. Many of them work with no frills or extra institutional openings to further their professional career. The community

of advocates is a class by itself. It has all the challenges; the pains; the pangs; the little smiles and the aspirations. The ground reality, even today, is the stark fact that socio economic, medical and other societal support, including by way of financial aid to bring up the progenies of the advocates is just not there as is needed. This Court cannot be oblivious of these critical factors that affect the huge society of advocates, who have shown the courage to contribute and augment that profession at different levels; at the Taluk, District, State and National levels. The legislature of Kerala stood up to that problem. This is the legislative backdrop of the Welfare Fund Act. The laudable concept that motivated the creation of the Fund was the betterment and financial support to the needy among the advocates borne on the rolls of the Bar Council of Kerala. The Fund was, and is, never intended to be a parking place for the funds of any member. The petitioner's assumptions and contentions are wholly misplaced in the

situational scenario and contextual background of the welfare Fund Act which has resulted in the creation of the Fund, which is a measure of support and succour to the advocates of Kerala.

10. Before parting, we may note that, before the learned single Judge it was submitted on behalf of the petitioner that, as matters stood on the date of hearing of the writ petition, he was entitled to the welfare fund amount on his retirement after a period of 15 years and that he should be given an opportunity to ventilate his grievances before the Fund for disbursement of funds on that basis. That request was acceded to by the learned Judge. Yet, this writ appeal is filed on issues which are patently unsustainable. We are therefore inclined to impose exemplary costs on the petitioner, payable in favour of the Fund. We, however, see that the petitioner, enrolled in 1964, is a member of the Fund, and, had practised in the State of Kerala before shifting his residence to Chennai. Giving exceptionally

reclusive thinking on the issue, we dissuade ourselves from imposing an order of costs on the appellant.

In the result, this appeal is dismissed.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
Babu Mathew P.Joseph
Judge

Sha/

-true copy-

P.S.to Judge.