

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C).No. 15165 of 2013 (U)

PETITIONER:

M.G.SREEKUMAR, AGED 44
S/O.GOPALAN NAIR, MOLOTHU HOUSE, RAYAMANGALAM VILLAGE
KUNNATHUNADU TALUK.

BY ADVS.SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS:

1. STATE OF KERALA
REP.BY PRINCIPAL SECRETARY
DEPARTMENT OF LOCAL ADMINISTRATION, SECRETARIAT
THIRUVANANTHAPURAM-695001.
2. THE DIRECTOR OF PANCHAYATHS
OFFICE OF THE DIRECTOR OF PANCHAYATS
THIRUVANANTHAPURAM-695001.
3. MALAYATTOOR-NEELEESWARAM GRAMA PANCHAYAT
PANCHAYAT OFFICE, NEELEESWARAM-683584
RERESENTED BY ITS SECRETARY.
4. THE PRESIDENT
MALAYATTOOR-NEELEESWARAM GRAMA PANCHAYAT
PANCHAYAT OFFICE, NEELEESWARAM-683584.

R1 & 2 BY GOVERNMENT PLEADER SRI. K.I.SANJEETHA
R3 BY ADV. DR.K.P.SATHEESAN (SR.), SC
R3 BY ADV. SRI.M.R.JAYAPRASAD
R3 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)
R3 BY ADV. SRI.ANOOP.V.NAIR
R3 BY ADV. SRI.S.VIBHEESHANAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE RESOLUTION BEARING NO.15 DATED 14.8.07
OF THE 3RD RESPONDENT.

EXHIBIT-P2: TRUE COPY OF THE LETTER BEARING NO.NIL DATED 28.2.08 SENT
BY THE 4TH RESPONDENT TO V.K.SHAJI, VATTAPPARA HOUSE, NEELEESWARAM
P.O.

EXHIBIT-P3: TRUE COPY OF REQUEST BEARING NO.A3 855/06 DATED 6.7.09
SUBMITTED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXHIBIT-P4: TRUE COPY OF THE LAWYER NOTICE DATED 1.3.11 ADDRESSED TO
THE 3RD RESPONDENT.

EXHIBIT-P5: TRUE COPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY THE 3RD
RESPONDENT ON 4.3.2011.

EXHIBIT-P6: TRUE COPY OF THE REPLY BEARING A3 955/06 DATED 17.3.2011
SENT BY THE 3RD KRESPONDENT.

EXHIBIT-P7: TRUE COPY OF INTIMATION BEARING NO.G1- 12651/13 DATED
14.5.13 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXHIBIT-P8: TRUE COPY OF INTIMATION BEARING NO.A-3023/13 DATED
13.5.13 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

"CR"

DAMA SESHADRI NAIDU, J.

W.P.(C) No. 15165 of 2013

Dated this the 18th day of March, 2015.

JUDGMENT

Briefly stated, the petitioner, a practicing lawyer, was appointed by the third respondent Grama Panchayat as an enquiry officer to conduct the domestic enquiry, in course of disciplinary proceedings against a part time librarian working in the respondent Grama Panchayat. Chronologically speaking, the domestic enquiry was started on 18.12.2008 and concluded on 25.5.2009, after 12 hearings.

2. The petitioner submitted the enquiry report along with the bills for the payment of remuneration/fee. When no response was received, the petitioner further issued Ext.P4 legal notice dated 1.3.2011 to the respondent Grama Panchayat. In fact, the respondent Grama Panchayat issued Ext.P6 reply informing the petitioner that, it forwarded the proposal to the second respondent. It has also raised an objection with regard to the claim of the petitioner placing on

record that the petitioner is not entitled to Rs.12,000/- as remuneration/fee in the light of the statutory ceiling.

3. Eventually, after waiting some more time, the petitioner filed the present writ petition.

4. At the out set, the learned counsel for the respondent Grama Panchayat, in tune with the averments made in the counter affidavit, has submitted that, the claim of the petitioner for Rs.12,000/- as fee/remuneration cannot be entertained in the face of Rule 5 of the Kerala Panchayat Raj (Conduct of Cases and Payment of Fees to Legal Advisors) Rules 2003. He has also further submitted that the proposal forwarded to the second respondent has so far not been considered by the said authority.

5. At this juncture, the learned Government Pleader has contested the statement made by the learned counsel for the respondent Grama Panchayat. He has submitted that so far the respondent Grama Panchayat has not forwarded any proposal to the second respondent. At any rate, he has agreed that the second respondent will consider any proposal, it

received from the respondent Grama Panchayat for necessary sanction, strictly in accordance with law.

6. The learned counsel for the petitioner has, however, contended that the service rendered by the petitioner at the request of the Grama Panchayat does not fall within the purview of the Rules under reference. According to him, there was no occasion for the petitioner to render the service as the Counsel to assume that the limitation or the cap on the remuneration to be paid to the counsel.

7. Heard the learned counsel for the petitioner, the learned counsel for the respondent Grama Panchayat and the learned Government Pleader, apart from perusing the records. Cap

8. It is not in dispute that the petitioner was appointed by the respondent Grama Panchayat to conduct a domestic enquiry in the capacity of an enquiry officer. When he submitted his bills seeking remuneration on that account, the respondent Grama Panchayat raised many objections.

9. Since much turns upon Rule 5 of the Rules, it is

profitable to extract the same, which reads as follows:

"5. Fee for Legal Advisors.- (1) The Panchayat may, at the rates specified below, give fee to the Advocates concerned, namely:-

"(i) Fee in accordance with law or fee as fixed by the Panchayat not exceeding One thousand and five hundred rupees for a civil case;

(ii) In criminal cases, for appearance in connection with the case in a Court at the place where the Advocate practices, fee at the rate fixed by the Panchayat not exceeding two hundred and fifty rupees for each day of appearance occupying less than three hours and that not exceeding five hundred rupees for each day of appearance occupying not less than three hours and that not exceeding five hundred rupees for appearance per day in a Court at a place wherein the Advocate does not practice:

Provided that when an Advocate appears on behalf of the Panchayat in more than one case on the same day in the same Court or in different Courts at the same place, the total fee payable for the day for his appearance in all the case shall not exceed five hundred rupees;

(iii) Fee as fixed by the Panchayat not exceeding five hundred rupees for every case of rendering legal advice on administrative matters after examining documents;

(iv) Fee for rendering legal advice on every case in respect of appeals shall be that admissible to the District Government Pleader subject to a maximum of five hundred rupees as fixed by the Panchayat.

Provided that, for rendering legal advice in respect of

appeals, no separate fee shall be payable to the Advocate who conducted the case in the lower Court;

(v) Fee as fixed by the Panchayat, not exceeding two thousand rupees for conducting a case in appeal in the higher Court against the judgment of the lower Court.

(vi) Fee not exceeding three thousand rupees for each case may be given for conducting case in the High Court.

(2) Notwithstanding anything contained in sub-rule (1), subject to the prior approval of the Director of Panchayats, fee, as fixed by the Panchayat in excess of the limit is payable to the respective Advocate in the case of a case involving complicated questions of law and for the conduct of which wide knowledge in law is essential."

10. In the first place to apply the provisions under reference, the petitioner ought to have been engaged as a Counsel or Legal Advisor for the purpose of conducting the cases. Even Rule 5 only speaks of the fee for advocates to conduct cases on behalf of the respondent Grama Panchayat. In the present instance, incontrovertibly the petitioner has rendered his services only as an enquiry officer in a domestic enquiry. It may not even be said that he has participated in any judicial proceedings.

11. In the facts and circumstances, I am of the

considered opinion that Rule 5 of the Rules does not have any application to the demand made by the petitioner for the charges due to him on account of his services he has rendered for the respondent Grama Panchayat, so long as the services do not partake the character of any legal assistance.

I, therefore, direct the respondent Grama Panchayat to process the petitioner's application expeditiously and submit the necessary proposal, only if it is legally reasoned before the second respondent, who, in turn, shall consider it in accordance with law. If the process has already begun, I earnestly believe that the authorities will take necessary steps expeditiously to ensure that the issue is resolved at the earliest.

With the above observations, the writ petition stands disposed of. No order as to costs.

Sd/-
DAMA SESHADRI NAIDU
JUDGE

Scl.