

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION NO.9091 OF 2016

DATED:22-12-2016

Between:

M/s. Navya Infracon Projects (I) Private Ltd.,
Rep. by its Managing Director,
Office situated at Sri Sai Karuna Nilayam
D.No.11-3-6/2, 4th Floor
Plot No.1, Gangapur VUDA Layout,
Waltair Uplands, Visakhapatnam ... Petitioner

And

State of Andhra Pradesh
Rep. by its Secretary – Law
A.P. Secretariat
Saifabad, Hyderabad
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. V. Ravinder Rao, Senior Counsel
for Ms. Gyanam Sandhya Rani

COUNSEL FOR RESPONDENT NO.1: -

COUNSEL FOR RESPONDENT NOS.2 and 3: Mr. J. Anil Kumar, Standing
Counsel for High Court

COUNSEL FOR RESPONDENT NOS.4 to 24: Mr. G.L. Nageswara Rao

THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

An issue which is short but of considerable importance arises for adjudication in this writ petition. What precisely is the scope of enquiry before the District Legal Services Authority in the matter of legal aid exempting from payment of Court fee available under the Legal Services Authorities Act, 1987 (for short, 'the Act') and the Central and State Rules and Regulations made thereunder is that issue.

2. The facts giving rise to the filing of this writ petition are briefly set out hereunder:

Respondent Nos.4 to 24 (hereinafter referred to as 'the plaintiffs') filed a suit against five individuals and the petitioner - construction company impleaded as defendant No.6, for declaration that they are absolute owners of various extents of properties situated in Sy. Nos.10/1, 10/2, 10/3, 10/4, 18/5 of China Waltair, Visakhapatnam. It is their pleaded case that one Vasupalli Appanna was their ancestor, who has acquired Acs.4.00 under registered sale deed dt.27.10.1945 from one Adidam Venkata Rama Rao and others and he has also succeeded to an extent of Ac.5.57 cents from his ancestors. That during his lifetime, Vasupalli Appanna enjoyed the property with absolute rights and in recognition of his right and possession, his name was shown as owner in the revenue records in respect of Ac.0.35 cents in Sy. No.10/1, Ac.0.21 cents in Sy. No.10/2, Ac.0.21 in Sy. No.10/3, Ac.2.74 cents in Sy. No.10/4, and Acs.2.06 cents in Sy. No.18/5. In support of this averment, the plaintiffs have filed registration extract of the sale deed of the year 1945 and SFA copy showing the said Appanna as the owner. The plaintiffs further pleaded that out of Acs.5.57 cents, Vasupalli Appanna gifted an extent of Ac.1.50 cents to his brother Vasupalli Tatayya under registered

gift settlement deed dt.6.1.1956, and that said Tatayya, in turn sold away the said property to Perla Arrenna, S/o. Rajappa and another, under registered sale deed dt.02.6.1961. That after the sale, Vasupalli Appanna continued to own and possess Ac.4.07 cents, and that he died leaving behind him his two sons, namely, Durgayya and Satteyya on whom the extent of Ac.4.07 cents devolved as per the Hindu Succession and Survivorship. That plaintiff Nos.1 to 3 are the sons and plaintiff Nos.4 to 7 are daughters of Vasupalli Durgayya; plaintiff Nos.8 and 9 are sons of plaintiff No.1, plaintiff No.10 is son of plaintiff No.2 and plaintiff Nos.11 to 13 are sons of plaintiff No.3. Following the death of Durgayya, these plaintiffs succeeded to his estate. That Satteyya, another son of Vasupalli Appanna, died on 11.07.1999 leaving behind him, his wife - plaintiff No.14, two sons, plaintiff Nos.15 and 16, and two daughters, plaintiff Nos.17 and 18, and that plaintiff Nos.19 and 20 are sons of plaintiff No.15 and plaintiff No.21 is son of plaintiff No.16. It was accordingly pleaded that all the twenty one plaintiffs are the legal representatives of Vasupalli Durgayya and Satteyya, who succeeded to the estate of the original ancestor Vasupalli Appanna. It was further pleaded that out of total extent of Ac.4.07 cents, the legal heirs of Vasupalli Appanna sold away an extent of Ac.0.85 cents in Sy. No.10/4A to defendant Nos.1 to 4 under Registered Sale Agreement-cum-General Power of Attorney dt.18.07.1997 and that except this land, the legal heirs of the original owner did not sell any other land and that therefore for the remaining property all the plaintiffs are the absolute owners.

3. It was further averred that at the time of filing of the suit, the plaintiffs owned an extent of Ac.0.35 cents in Sy. No.10/1, an extent of Ac.0.21 in Sy. No.10/2, an extent of Ac.0.21 in Sy. No.10/3 and an extent

of Ac.2.06 cents in Sy. No.18/5. The plaintiffs alleged that while entering into the Registered Sale Agreement-cum-General Power of Attorney on 18.07.1997, defendant Nos.1 to 4, taking advantage of the innocence and illiteracy of the plaintiffs, got a recital made in the agreement with an evil intention to the effect that except the property covered by the Registered Sale Agreement, the plaintiffs do not own any other land and that defendant Nos.1 to 4 have brought into existence some sale deeds taking advantage of the Registered Sale Agreement-cum-General Power of Attorney executed by the plaintiffs and their family members in their name and also in the name of defendant No.5. That with the aid and assistance of defendant No.6 – writ petitioner constructions are being made by encroaching into the schedule mentioned properties highhandedly. The plaintiffs have applied for legal aid by way of exempting from payment of Court fee to the tune of Rs.18,59,104/-. The Secretary of respondent No.3 issued certificate dt.19.02.2016 exempting respondent No.4 (plaintiff No.1) from payment of Court fee of Rs.18,59,104/-. This action of respondent No.3 is questioned in this writ petition by defendant No.6 in the suit.

4. The Managing Director of the petitioner filed his affidavit wherein he has *inter alia* averred that the petitioner and its predecessors in interest acquired title to the suit schedule property through valid registered deeds of conveyance. The flow of title has been explained in Annexure P.3. The sum and substance of the petitioner's plea is that under a valid conveyance deed it has purchased 4395 sq.yards in Sy.No.10 and entered into construction agreement with individuals by names, Bangaramma, GRK Raju and Padmavathi, and an extent of 3900 sq. yards was given for development under development agreements by

individuals by names, Patrudu, Bhaskar Reddy and Gayathri. The petitioner specifically pleaded that having acquired title, it has applied for and obtained permission from the Greater Visakhapatnam Municipal Corporation for construction of a multi-storied residential complex and that with an intention to blackmail and create hurdle in the process of developmental activities, the plaintiffs devised the suit. It was further pleaded that plaintiff Nos.18, 22 and 23 have filed O.S. No.1194 of 2014 in the Court of II Senior Civil Judge, Visakhapatnam, against the petitioner's predecessors in title seeking perpetual injunction from interfering with their alleged possession and also for mandatory injunction to remove the structures existing in the suit schedule property, that as the suit for injunction simplicitor was not maintainable, the defendants have filed I.A. No.593 of 2014 under Order VII Rule 11 of the Code of Civil Procedure, 1908, for rejection of the plaint and that the said application is pending. That having realized that the said suit is not maintainable and also as the plaintiffs therein failed to secure *ex parte* injunction order, all the plaintiffs have invented a devious method of filing the present suit seeking exemption from payment of Court fee. The petitioner further averred that taking advantage of the liberal provisions in the Act, the plaintiffs indulged in speculative litigation by avoiding payment of Court fee by seeking exemption from payment of Court fee and without conducting any enquiry whatsoever into the financial status of the plaintiffs as well as the existence or otherwise of the *prima facie* case, respondent No.3 has granted exemption from payment of Court fee. The petitioner further pleaded that respondent No.3 is under obligation to hold enquiry as the exercise of jurisdiction by it for exempting Court fee is akin to that of the Civil Court under Order XXXIII of CPC under which a person

is declared as indigent and exempted from payment of Court fee. That by granting exemption without being satisfied with the existence of *prima facie* case, respondent No.3 has not only caused serious loss to the State exchequer but also allowed frivolous and speculative suit to be pursued by the plaintiffs.

5. On 16.09.2016 this Court has passed the following order:

“Prima facie we are shocked at the way the Secretary, District Legal Services Authority (DLSA), Visakhapatnam, and the Chairman, Scrutinizing Committee, DLSA, Visakhapatnam (Principal District Judge, Visakhapatnam) have granted exemption to respondent Nos.4 to 24 from payment of Court fees under the Legal Services Authorities Act, 1987 without even recording the basic facts in support of their conclusion that they were satisfied that the said respondents have established a prima facie case to prosecute the petition. Further, the income certificates which are ipsissima verba with each other except the names and door numbers, contained a common figure of Rs.72,000/- (Rupees Seventy Two Thousand only) as annual income of each of the aforementioned respondents. We are surprised that neither the Secretary, nor the Chairman has got a doubt about the genuineness of the claim of the said respondents, at least after looking at the said figure contained in the income certificates.

Hence, the Secretary, DLSA, Visakhapatnam, is called upon to file an affidavit explaining the procedure he has followed in exempting the aforementioned respondents from payment of the Court fees of a huge sum of Rs.18,59,104/- (Rupees Eighteen Lakhs Fifty Nine Thousand One Hundred and Four only).

Post on 30.09.2016.”

In compliance of the afore-mentioned order, the Secretary of respondent No.3 has filed a counter affidavit wherein he has *inter alia* averred that all the plaintiffs are fishermen by profession, and that he has perused the income certificates issued by the Tahsildar (Urban) Visakhapatnam, which were filed by the male applicants, certifying that their annual income is less than Rs.1.00 lakh. That he has also heard the counsel for the applicants to know whether they have *prima facie* case to prosecute the suit and that their counsel stated that they traced their title

to the plaint schedule property through registered sale deed dt.24.10.1945 with document No.1196/1945 in the name of Vasupalli Appanna. That after excluding the extent of Ac.1.50 cents gifted to his brother Vasupalli Tatayya on 06.01.1956, said Appanna enjoyed the remaining extent of Acs.4.07 cents during his life time. That after the death of said Appanna, the property was devolved on his two sons - Vasupalli Durgayy and Satteyya, through succession, and that on their demise the same devolved on the plaintiffs. He has further averred that the counsel for the plaintiffs has submitted that his clients have sold only Ac.0.85 cents covered by Sy. No.10/4 under a Registered Sale Agreement-cum-General Power of Attorney to defendant Nos.1 to 5 and taking advantage of some false recitals in the agreement, false sale deeds were created.

As regards the income certificates, the deponent has pleaded that the language of Section 13(2) of the Act suggests that the District Legal Services Authority need not conduct enquiry with regard to the means of the applicants and a mere affidavit is sufficient. He has also referred to Regulation 5 of the National Legal Services Authority (Free and Competent Legal Services) Regulations 2010, (for short, 'the Central Regulations') which reads as under:

"An affidavit of the applicant that he falls under the categories of persons entitled to free legal services under Section 12 shall ordinarily be sufficient."

To justify his acceptance of the claim of the applicants/plaintiffs for exemption and about their financial status, the Secretary further pleaded that a separate Committee was constituted by the Chairman of respondent No.3 as provided under Regulation 7 of the Central Regulations, comprising Secretary, District Legal Services Authority, Visakhapatnam, IX Additional District Judge and a Senior Advocate to

scrutinize and evaluate the applications for legal services and that after a preliminary enquiry by the deponent the matter was placed before the said Scrutiny Committee which was also satisfied that the applicants are entitled to legal aid under the Act.

6. Respondent No.4 has filed a counter affidavit, reiterating the contents of the plaint, and their title over the suit schedule properties. He has further averred that after duly verifying the documents and being satisfied that the plaintiffs are eligible for exemption, respondent No.3 has granted exemption from payment of Court fee.

7. In the reply affidavit it is averred on behalf of the petitioner that Vasupalli Durgayya and Vasupalli Sattayya, through whom respondent Nos.4 to 24 have claimed their title, submitted declarations under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976 claiming that they are the owners of the lands in Sy. No.10/4 and 10/11 of China Waltair and that they did not claim any right, title and interest in the suit schedule lands. The petitioner has enclosed a copy of order dt.15.03.1997 passed by the Special Officer and Competent Authority, Urban Land Ceiling, Visakhapatnam, in support of this averment. The petitioner has therefore termed the entire claim in the suit as speculative and without any semblance of right in the plaintiffs. It is further averred that if proper enquiry is undertaken by respondent No.3 into the existence of *prima facie* case, respondent No.3 might not have arrived at satisfaction of existence of *prima facie* case under Section 13 of the Act.

8. On perusal of the counter affidavits, we have adjourned the case on 27.10.2016 in order to know whether the District Legal Services Authority has taken the impugned decision in a properly held meeting or by way of circulation among the Secretary and the Chairman. The

Secretary of respondent No.3 Committee was directed to file an affidavit on the procedure followed while passing the impugned order.

9. In pursuance of the said direction, the Secretary filed an additional counter affidavit wherein he has stated that being the Secretary of the District Legal Services Authority, he has received application for legal aid from the plaintiffs on 20.01.2016, that he has enquired with them about their financial capacity for legal aid and placed the record for scrutiny and evaluation on 19.02.2016 before the Chairman of the scrutiny committee, that the same was considered by the Committee consisting of himself, the XII Additional District Judge (in-charge IX Additional District Judge), and an Advocate and that the Committee having verified the material on record and been satisfied that the applicants made out a *prima facie* case to prosecute the suit, granted exemption of the Court fee as sought for. He has also referred to the Legal Aid Register and pleaded that the particulars of the applicants, the nature of the legal services sought for and the decision of the committee, as to whether grant of legal services is approved or not are recorded. He has also placed the record before us for perusal.

10. We have heard Mr. V. Ravinder Rao, learned Senior Counsel for the petitioner, Mr. J. Anil Kumar, learned Standing Counsel for the High Court appearing for respondent Nos.2 and 3, and Mr. G.L. Nageswara Rao, learned counsel for respondent Nos.4 to 24, and perused the record.

11. Before adverting to the correctness or otherwise of the decision of respondent No.3 in granting exemption from payment of Court fee by the plaintiffs, we feel the necessity of discussing the relevant statutory provisions.

12. As evident from its long title, the Act was enacted to constitute legal services authorities for providing free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. Section 2(c) of the Act defines 'legal services' as including the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. The Act envisages five-tier system as per which, Central Authority at national level, State Authority at the State Level, District Authority at District Level and Taluk Authority at Taluk Level, and legal Services Committee for every High Court, are constituted.

13. Since this case is concerned with the District Legal Services Authority, it is necessary to refer to its composition. Under Section 9(2) of the Act, a District Authority shall consists of (a) the District Judge who shall be its Chairman and (b) such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by the Government in consultation with the Chief Justice of the High Court. Chapter –IV deals with entitlement of legal services. Section 12 of the Act under this Chapter laid down criteria for giving legal services. It provided for various categories of persons for entitlement for legal services under clause (a) to (h). Clause (c) pertains to a woman or a child and clause (h) relates to persons whose annual income is less than Rs.9,000/- or such other higher amount as may be prescribed by the State Government, if the case is before a Court other than the Supreme Court, and less than Rs.12,000/- or such other higher

amount as may be prescribed by the Central Government, if the case is before the Supreme Court. Sub-section (1) of Section 13 of the Act declares that a person who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a *prima facie* case to prosecute or to defend. Sub-section (2) thereof postulates that an affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless, the concerned Authority has reason to disbelieve such affidavit. Section 27 of the Act empowers the Central Government in consultation with the Chief Justice of India to make Rules. Under Section 28, the State Government in consultation with the Chief Justice of the High Court is empowered to make Rules for carrying out the provisions of the Act. Under Section 29 of the Act, the Central Authority is empowered to make Central Regulations and under Section 29-A of the Act the State Authority is empowered to make State Regulations.

14. In pursuance of its rule making power, the erstwhile State of Andhra Pradesh framed 'The Andhra Pradesh State Legal Services Authority Rules, 1995 (for short, 'the State Rules') and under Section 29-A of the Act, the Andhra Pradesh State Legal Services Authority also framed Regulations called 'The Andhra Pradesh State Legal Services Authority Regulations, 1996 (for short, 'the State Regulations')'. Chapter-VIII of the State Regulations deals with 'legal services'. Under Regulation 19, a person seeking legal services shall send an application under affidavit containing brief facts of the case, and where the applicant is a person falling under Section 12(h) of the Act (one whose annual income is less than the stipulated income) and not being covered by any other clauses of

that Section, the affidavit shall also state the details of the properties possessed by him and his annual income from all sources. Under Regulation 20, the scrutiny of the applications shall be undertaken and disposed of by the Secretaries of the respective authorities, provided the order shall be passed after obtaining the order of the respective Chairman. Regulation 25 envisages modes of legal services and advice. Clause (b)(ii)(a) thereof provides for payment to the entitled person or on his behalf, of court fee.

15. The Central Regulations framed under Section 29 of the Act are made applicable to all the hierarchical functionaries commencing from Supreme Court Legal Services Committee upto Taluk Legal Services Committees, provided for scrutiny and evaluation of the applications for free legal services. Under Regulation 5, an affidavit of the applicant that he falls under the categories of persons entitled to free legal services under Section 12 of the Act shall ordinarily be sufficient, and such affidavit may be signed before a Judge, Magistrate, Notary Public, Advocate, Member of Parliament, Member of Legislative Assembly, elected representative of local bodies, etc. Regulation 7, envisaged that a Committee will scrutinize and evaluate the applications for legal services at every level, including District and Taluk Levels, that the Committee shall be constituted by the Executive Chairman or Chairman of the Legal Services Institution and shall consist of the Member Secretary or Secretary of the Legal Services Institution as its Chairman and two members, out of whom one may be a Judicial Officer preferably having working experience in the Legal Services Institution and a legal professional having at least fifteen years' standing at the Bar or Government Pleader or Assistant Government Pleader or Public Prosecutor or Assistant Public Prosecutor,

as the case may be. Sub-regulation (4) of Regulation 7 mandates that the Committee shall scrutinize and evaluate the application and decide whether the applicant is entitled to the legal services or not within a period of eight weeks from the date of receipt of the application. Under sub-regulation (7) any person aggrieved by the decision or order of the Committee, he or she may prefer appeal to the Executive Chairman or Chairman of the Legal Services Institution.

16. From the scheme of the Act and the extant Regulations discussed above, it could be deciphered that various categories of persons are made entitled for different legal services and one such category pertains to persons who do not have sufficient annual income. All those who fall within the categories mentioned in Section 12 of the Act will be entitled to legal services only if they satisfy the criterion under Section 13(1) of the Act, namely, satisfy the concerned authority that he/she has a *prima facie* case to prosecute or to defend. In the instant case, respondent Nos.4 to 24 have claimed to fall under Section 12(h) of the Act, i.e., not having annual income exceeding the prescribed limit. It appears that the State Government has prescribed ceiling of income of Rs.1.00 lakh per annum for being entitled to legal services and those who fall within that criterion must also satisfy the conditions under Section 12(h) of the Act. While under sub-section (2) of Section 13 of the Act, an affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services unless the concerned authority has reason to disbelieve such affidavit, Regulation 19 of the State Regulations stipulated that the affidavit shall also state the details of the properties possessed by him and his annual income from all sources.

17. As noted, in the counter affidavit, the Secretary of respondent No.3 has taken the stand that as per sub-section (2) of Section 13 of the Act and Regulation 5 of the Central Regulations, no enquiry into the income of the applicant need be conducted and that an affidavit of the applicant in this regard is sufficient. It is no doubt true that the Act and the Central Regulations consecrated the affidavit of a person as to his income, with a high degree of sanctity. Probable reason for such a liberal approach is to spare the bona fide intended beneficiaries deserving legal services from the ordeals of harassment at the hands of the authority concerned and save them from procedural hassles. The Legislature is however, guarded in not giving *carte blanche* to the authorities in accepting every affidavit as to his income. The words "shall ordinarily be sufficient" in sub-section (2) of Section 13 of the Act and also in Regulation 5 of the Central Regulations make it abundantly clear that the authority concerned is conferred with the discretion to reject the affidavit if it is not satisfied with correctness of its contents. With these provisions in mind, let us consider whether respondent No.3 has properly applied its mind both in respect of the income limits of respondent Nos.4 to 24 and also on the aspect of existence of *prima facie* case.

18. As regards the income limit, the Secretary of respondent No.3 stated in his counter affidavit that in view of the certificates issued by the Tahsildar, Visakhapatnam, that all the male applicants' income is less than Rs.1.00 lakh per annum each and on the facts stated in the affidavit of applicant No.15, he had no reason to doubt the same. A perusal of the income certificates purportedly issued by the Tahsildar reveals an interesting feature. The Tahsildar has certified that each of respondent Nos.4 to 24 has an annual income of Rs.72,000/-. It is incomprehensible

that even if all the said respondents belong to the same family, all of them will earn precisely the same amount per annum. We are surprised that neither the Secretary nor the Committee concerned has entertained any suspicion about the genuineness of the claim regarding their income certificates. While it would have been open to the scrutinizing committee to accept the affidavits on their face value in the absence of element of reasonable suspicion or genuine doubts, respondent No.3 on its own showing has not relied upon mere affidavits. When it chose to consider the income certificates issued by the Tahsildar, there was no justification for it to accept the certificates issued by the Tahsildar certifying that each of the respondents is earning the same amount of annual income. The scrutinizing committee did not appear to have called for any explanation from these respondents on this unusual feature affecting the very credibility of the certificates. Respondent No.3 has not placed before the Court the applications of respondent Nos.4 to 24. Therefore, it is not known whether these respondents have given details of the properties they possess in addition to their claim over the suit schedule properties, as envisaged under Regulation 19 of the State Regulations in order to know whether each of the respondents have stated the details of the properties possessed by him and his annual income from all sources in their affidavits.

19. Coming to the *prima facie* case, in his affidavit the Secretary of respondent No.3 has stated that in view of the documents filed by the applicants in support of their claim “this respondent” was satisfied that they had a *prima facie* case to prosecute the suit. He has also averred that the parties and their counsel made oral submissions at the time of hearing, based on which “this respondent” came to the opinion that the

plaintiffs are eligible for exemption. The expression “this respondent” is ambiguous as it is not explained whether the Secretary referred to himself as “this respondent” or he has referred to the “District Legal Services Authority, Visakhapatnam”. Either way, this expression is inappropriate because as per Regulation 7 of the Central Regulations, it is the scrutinizing committee which has to evaluate the applications for legal services. In view of this ambiguity, we have directed the Secretary to file his affidavit as to the procedure followed while disposing of the applications. Accordingly, an additional counter affidavit was filed wherein he has stated that being Secretary of respondent No.3 he has received application for legal aid, that he has enquired with the applicants about their financial capability for legal aid and placed the record for scrutiny and evaluation on 19.02.2016 before the Chairman of the scrutinizing committee and that the same was considered by the committee consisting of XII Additional District Judge (in-charge IX Additional District Judge), Secretary, District Legal Services Authority, and an Advocate. Here again, the Secretary has created an element of confusion by referring “before the Chairman, Hon’ble Scrutinizing Committee” suggesting that in addition to the Secretary, XII Additional District Judge and an Advocate, there was another functionary. Under Regulation 7(2)(i) of the Central Regulations, the Secretary of the Legal Services Institution himself is the Chairman. Obviously, the Secretary was referring to himself as the Chairman of the scrutinizing committee.

20. Be that as it may, the record produced by the Secretary does not contain any endorsement that on 19.02.2016 the counsel representing the plaintiffs was present and any hearing has taken place. No endorsement has been made on the existence of *prima facie* case, let alone passing of

a brief reasoned order in support of the purported satisfaction of the committee on the *prima facie* case. All that the record reveals is that the committee has scrutinized the income certificates, gender of the applicants, and the status of one of the applicants, as a student. Neither a reference to the documents, nor its nature has been made. Therefore, the averments in paragraph -3 of the additional counter affidavit that the scrutinizing committee has verified the material on record and been satisfied that the applicants have made out a *prima facie* case to prosecute the suit are not supported by the record. On the contrary, there is utter non-application of mind on the part of the scrutinizing committee both with regard to the contents of the income certificates and also existence of *prima facie* case. We have, therefore, no option except to reject the claim of the Secretary that the scrutinizing committee has examined both the income eligibility of the plaintiffs as well as the existence of *prima facie* case, as wholly baseless and not supported by the record.

21. The relevant provisions of the Act and the Regulations discussed above, in our view, not only empower in the authority concerned to extend the legal services as prescribed therein, but also impose an obligation to ensure that only the persons who satisfy the eligibility criteria are provided with the legal services. In other words, the power to grant legal aid is coupled with the obligation to ensure that only deserving people receive its benefit. This is evidently so for the reason that there is a potential misuse of the benevolent provisions of the Act and the Regulations by unscrupulous elements indulging in frivolous, vexatious and speculative litigation. The words “provided that the concerned Authority is satisfied that such person has a *prima facie* case to

prosecute or to defend” in Section 13(1) of the Act, and “the committee shall scrutinize and evaluate the application and decide whether the applicant is entitled to legal service or not...” in Regulation 7(4) of the Central Regulations (emphasis added) would leave us in no doubt that the function of the scrutinizing committee in extending the benefit of legal services is not merely administrative, but it is quasi judicial in nature. Evaluation of *prima facie* case is primarily a judicial or quasi judicial function. That the aggrieved party is provided with the remedy of appeal under sub-regulation (7) of Regulation 7 of the Central Regulations, further fortifies our view that the scrutinizing committee discharges quasi judicial function through judicial application of mind and not through mechanical process. Therefore, in every case where a person applies for legal service, the scrutinizing committee is bound to examine the material and take a well informed decision whether the applicant has established *prima facie* case. In this context, we would like to briefly explain the concept of *prima facie* case.

22. *American Cyanamid Co. v. Ethicon Ltd.*¹ is a celebrated case where the House of Lords while terming the use of expression such as “a probability”, “a *prima facie* case”, or “a strong *prima facie* case” in the context of the exercise of a discretionary power to grant an interlocutory injunction as leading to confusion as to the object sought to be achieved by this form of temporary relief, however, held that the Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

¹ (1975) 1 All ER 504

23. In *Martin Burn Ltd. v. R.N. Banerjee*² the Supreme Court has succinctly explained the concept of *prima facie* case. It was held therein that “a *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. ...It has only got to consider whether the view taken is a possible view on the evidence on record...”.

24. In *Dalpat Kumar V. Prahlad Singh*³, the Supreme Court observed that the phrases ‘*prima facie* case’, ‘balance of convenience’ and irreparable loss’ are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man’s ingenuity in given facts and circumstances, but always are hedged with sound exercise of judicial discretion to meet the ends of justice. On the facts of the said case, the Supreme Court held that it was well-nigh impossible to find from facts *prima facie* case and balance of convenience.

25. Dealing with an application for injunction, the Supreme Court in *M. Gurudas v. Rasaranjan*⁴ has profitably quoted many English decisions apart from the judgments of our Supreme Court, explained how a *prima facie* case has to be evaluated, and it has observed that the question sought to be tried must be a serious question and not only a mere triable issue, that a finding of fact on ‘*prima facie* case’ would be a finding of

² AIR 1958 SC 79

³ AIR 1993 SC 276

⁴ (2006) 8 SCC 367

fact and that, however, while arriving at such finding of fact the Court must arrive at a conclusion that a case for trial has been made out.

26. Dealing with the extant provisions, a Division Bench of this Court in *Masarath Jahan Begum v. Smt. Masood Hashim Ali*⁵ held:

“10. So, the scheme of the 1987 Act, the Rules and Regulations made thereunder do not indicate axiomatic (sec. automatic) extension of legal aid to the persons notified under Section 12 therein. The persons who are notified in Section 12 of the 1987 Act and whose income may be regarded as sufficient for making him eligible to the entitlement of legal services are entitled to legal aid provided they satisfy that there exists a prima facie case. Therefore, on the mere ground that the petitioner is a woman, she is not entitled to the legal aid as a matter of right. In evaluating the prima facie case, the District Legal Services Authority is under obligation to go through the relief claimed by her, for which the legal aid is sought, to decide as to whether, for such a relief, she is entitled to the legal services or not and to judge whether there exists a prima facie case for granting legal aid and, in that connection, the Authority is entitled to go through the plaint averments and the earlier litigation. The said inquiry shall be confined only to the extent of judging whether the petitioner is entitled to the benefits by way of exemption of Court fee by issuing necessary certificate subject to his satisfying prima facie case. Any finding recorded about the prima facie case cannot operate as res judicata in the event of a civil suit is instituted and the said finding is only for the purpose of granting benefits under the 1987 Act.”

27. The learned Senior Counsel for the petitioner submitted that since the very dispute raised by respondent Nos.4 to 24 pertains to a very valuable property, and the quantum of Court fee being paid by the Government on behalf of the said respondents is substantial, the scrutinizing committee ought to have issued a notice to the petitioner. We are not persuaded to accept this submission. If such procedure is followed, it would amount to preliminary hearing of the suit itself even before it is registered and the provisions of the Act and the Regulations do

⁵ 2011 (3) ALT 256 (DB)

not permit such procedure to be followed. In our opinion, the scrutinizing committee must assess and evaluate the *prima facie* case based on the plaint averments and the material filed in support thereof by putting the test as to whether the question sought to be tried is a serious question and not merely a triable issue besides assessing reasonable chances of the applicant's success. In the process, the scrutinizing committee may hear the counsel for the parties, if need be, and in his absence, the parties themselves, before arriving at a decision.

28. In the light of the discussion undertaken above, we have no hesitation to hold that the scrutinizing committee of respondent No.3 has exempted the plaintiffs from paying huge court fee without application of mind and without following the procedure under the Act and the Central and State Regulations. The impugned decision of the scrutinizing committee of respondent No.3 is accordingly set aside and the committee is directed to reassess and re-evaluate the *prima facie* case and also determine whether the claim of the plaintiffs that they are eligible for exemption based on the income limit under Section 12(h) of the Act is bona fide or not. It is needless to observe that the plaintiffs' entitlement for payment of court fee by the Government depends upon the decision of the scrutinizing committee. Till a decision is taken by the Committee, the suit shall not be proceeded with.

29. Before parting with this case, we would like to place on record certain ground realities. We have come across strong criticism of brazen misuse of benevolent provisions of the Act and the Regulations made thereunder. It has come to our notice that persons with sound financial position have been invoking the provisions of Section 12(h) of the Act and

receiving the benefit of payment of huge court fee by the Government. Once this is done, they have been engaging private counsel by paying huge Advocate's fees. Indeed in the present case also, respondent Nos.4 to 24 engaged a private counsel. Improper scrutiny of the eligibility of the persons for grant of legal services, we are told, is also leading to institution of frivolous and vexatious litigation causing hardship to the adversary parties and causing further strain on the already overburdened courts. The avowed object of extending the legal services to the poor and needy must not be proved to be a boon for unscrupulous elements and a bane for adversary parties. We do not intend to lay down any guidelines in this regard as that is neither the function nor the forte of this Court. We, however, feel that the Legal Services Authorities of the States of Telangana and Andhra Pradesh may examine the possibility of plugging the loopholes in the 'Regulations' in order to ensure that the munificent provisions of the Act and the Regulations are not misused by clever, ingenious and incorrigible litigants by indulging in speculative litigation. Perhaps such misuse may be arrested (i) by strict adherence to assessment of *prima facie* case by the scrutinizing committee and (ii) by incorporating a Regulation to the effect that those who receive the benefit of payment of Court fee under Section 12(h) of the Act by the State has to necessarily engage the services of the Panel Lawyers maintained by the Legal Services Authority concerned only. This, we reiterate, is only a suggestion for consideration by the Legal Service Authorities of both the States and the same shall not be understood as a direction.

30. Subject to the above observations, the writ petition is allowed.

As a sequel to disposal of the writ petition, W.P.M.P. No.11530 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

22-12-2016

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Note: LR copies to be marked.

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