

*** THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

+ WRIT PETITION No. 44071 OF 2016

%11.08.2017

Between:

Abdul Shafi S/o.late Abdul Shaheed,
Aged 43 years,
Occ: Divisional Statistical Officer,
O/o.RDO, Armoor, Nizamabad District,
R/o.H.No.9-20-1534/4, Telecom Colony, Autonagar,
Nizamabad.

... Petitioner.

AND

The State of Telangana,
Rep. By its Principal Secretary,
Transport, Roads and Buildings (TR.1) Department,
Secretariat Building, Hyderabad and 7 others.

.... Respondents.

! Counsel for Petitioner : Sri V.Ravi Kiran Rao

^ Counsel for Respondents : G.P. For Finance & Planning(TG),

G.P. For Revenue (TG),

G.P. For Women Development

and Child Welfare (TG),

Sri R.Nagarjuna Reddy.

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> Head Note:

? Cases referred:

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IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.44071 OF 2016

Between:

Abdul Shafi S/o.late Abdul Shaheed,
Aged 43 years,
Occ: Divisional Statistical Officer,
O/o.RDO, Armoor, Nizamabad District,
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The State of Telangana,
Rep. By its Principal Secretary,
Transport, Roads and Buildings (TR.1) Department,
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.... Respondents.

DATE OF JUDGMENT PRONOUNCED: 11.08.2017

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgments?
2. Whether the copies of judgment may be marked to Law Reporters/ Journals?
3. Whether Their Ladyship/ Lordship wish to see the fair copy of the judgment?

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.44071 of 2016

ORDER :

Assailing the order dated 21.06.2016, passed by the Collector and District Magistrate and Chairman, Appellate Tribunal for Maintenance and Welfare of parents and Senior Citizens, Nizamabad, wherein and whereby, while rejecting the request of the petitioner, the maintenance amount was enhanced from Rs.10,000/- per month to 12,000/ per month, the present writ petition is filed under Article 226 of the Constitution of India.

2. The facts in issue are as under:

Respondent No.7 is the mother of the petitioner herein and respondent No.8 is his brother. The father of the petitioner, late Abdul Shaheed died leaving behind the petitioner, his mother, brother and one sister by name Sajida Begum. It is averred that during the life time of his father, he used to run a mini rice mill in the village and also acquired 0.17 guntas of land in Survey No.789, one house bearing Nos.5-91 and 5-92 consisting of two portions and an open plot admeasuring 369 square yards at Hasakothur Village, Kammarpalli Mandal, Nizamabad District. It is stated that during the life time of the petitioner, his father orally divided the house property between the petitioner and respondent No.8. While things stood thus, his mother was living in a portion of the house which was allotted to the petitioner by his father. The averments in the affidavit show that the petitioner made suitable adjustments by which her mother used to receive some amount from the tenants. Apart from that the petitioner was also paying a sum of Rs.1,000/- per month, which was enhanced to Rs.1,500/- per month. The averments in the affidavit would further indicate that there were some disputes between the petitioner and respondent No.8, which lead to registration of a case in Crime No.528 of 2015 before the Armoor Police Station. While things stood thus, the mother of the petitioner lodged a complaint before

respondent No.2 i.e., the Collector, on 20.05.2016, alleging that the petitioner is not paying any maintenance to her. The said complaint was forwarded to the Tahsildar, Armoor, with an endorsement 'for enquiry'. Though a memo was issued by the Tahsildar, the petitioner refused to receive the same as the Tahsildar has no jurisdiction to entertain the same under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, 'the Act') and A.P.Maintenance and Welfare of Parents and Senior Citizens Rules, 2011(for short, 'the Rules'). Realizing the mistake, the Tahsildar is said to have addressed a letter to respondent No.4 – Tribunal, constituted under the Act. Pursuant thereto, respondent No.4 numbered the matter as O.P.No.B4/10 of 2016 and issued a notice dated 16.06.2016 in Form-C to the petitioner, asking him to appear on 20.06.2016 at 03.00 p.m., in the office of Revenue Divisional Officer, Armoor, and submit his reply. In response to the same, the petitioner appeared before the Revenue Divisional Officer and orally submitted his reply. It is stated that without conducting any enquiry and without giving an opportunity to the petitioner to adduce evidence, the order, dated 21.06.2016, came to be passed, directing the petitioner to pay a sum of Rs.10,000/- per month to his mother. Challenging the same, the petitioner preferred an appeal, which was rejected by respondent No.2. While rejecting the request of the petitioner, on 07.12.2016, the Collector enhanced the maintenance to Rs.12,000/- per month. Challenging the same, the present writ petition came to be filed.

3. Learned counsel for the petitioner mainly submits that the procedure which has been adopted, while awarding maintenance is totally contrary to the provisions of the Act. Referring to various provisions of the Act, he would submit that the authorities erred in awarding a sum of Rs.10,000/- per month towards maintenance. He further submits that respondent No.2 – Collector totally erred in enhancing the maintenance to Rs.12,000/- per month, in the appeal filed by the petitioner. Apart from that, it is also brought to the notice of the Court that there is no provision of appeal to the aggrieved person, but here when an appeal

is preferred by the aggrieved person, respondent No.2 erred in not only entertaining the appeal but also enhancing the quantum of maintenance.

4. A counter came to be filed by the respondents denying the averments made in the affidavit filed in support of the writ petition. While disputing the factual aspects, which are referred to in the affidavit filed in support of the writ petition, learned counsel for the respondents would submit that the impugned orders came to be passed after following due procedure contemplated under the Act. It is stated that the mother of the petitioner who is an aged lady is depending entirely on her son and as such requires substantial amount for her maintenance. It is further stated that the petitioner being a Divisional Statistical Officer, working in the office of RDO, Armoor, he can afford to pay the amount awarded by the respondents – authorities.

5. A reply to the said counter came to be filed explaining the stand taken on factual aspects. Though it is not disputed that the petitioner is a Government employee, but however, he tries to explain stating that there are number of dependants who are living on his earning and that it is not possible to pay that much of amount. On 19.12.2016, this Court, while issuing notice before admission, directed the petitioner to pay a sum of Rs.4,000/- per month to respondent No.7 – mother.

6. There is no dispute with regard to the relationship of the petitioner with the unofficial respondents. So also, there is no dispute that respondent No.7 is living separately and that she requires money for her maintenance.

7. The question is whether the authorities have followed the procedure contemplated under the Act and whether respondent No.2 is justified in enhancing the maintenance amount from Rs.10,000/- per month to 12,000/- per month?

8. In order to appreciate the rival contentions, it would be appropriate to refer to the provisions of the Act.

9. Section 4 of the Act deals with Maintenance of Parents and Senior Citizens, which reads as under:

“4. Maintenance of parents and senior citizens – (1) A senior citizen including parent who is unable to maintain himself from his own earning or out of the property owned by him, shall be entitled to make an application under Section 5 in case of –

- (i) parent or grand-parent, against one or more of his children not being a minor;
- (ii) a childless senior citizen, against such of his relative referred to in clause (g) of Section 2.

(2) The obligation of the children or relative as the case may be, to maintain a senior citizen extends to the needs of such citizen so that senior citizen may lead a normal life.

(3) The obligation of the children to maintain his or her parent extends to the needs of such parent either father or mother or both, as the case may be, so that such parent may lead a normal life.

(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such senior citizen or he would inherit the property of such senior citizen or he would inherit the property of such senior citizen.....”

Section 5 of the Act deals with application for maintenance, which reads as under:

“5. Application for maintenance: (1) An application for maintenance under Section 4, may be made –

- (a) by a senior citizen or a parent, as the case may be; or
- (b) if he is incapable, by any other person or organization authorized by him; or
- (c) the Tribunal may take cognizance *suo motu*.

10. As per the above provision, an application is required to be made before the Tribunal constituted under the Act. Sub Section 3 of Section 5 states that on receipt of an application for maintenance under Sub-Section (1), a notice of such

application shall be given to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the quantum of maintenance. An application filed under Sub-Section 2 for monthly allowance for the maintenance and expenses for proceeding shall be disposed of within ninety days from the date of service of notice of the application to such person. However, the Tribunal is given a discretion to extend the same once, for a maximum period of 30 days, in exceptional circumstances for which it has to record reasons. Section 6 of the Act deals with the jurisdiction and procedure to be followed. Sub-Section 4 of Section 6 states that all evidence to such proceedings shall be taken in the presence of the children or relative, against whom an order for payment of maintenance is proposed to be made, and shall be recorded in the manner prescribed or as in summons cases. Provided that, if the Tribunal is satisfied that the children or relative against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Tribunal, the Tribunal may proceed to hear and determine the case ex parte. Sub-Section 6 contemplates that the Tribunal before hearing an application under Section 5, may, refer the same to the Conciliation Officer and such Conciliation Officer shall submit his findings within one month and if amicable settlement has been arrived at, the Tribunal shall pass an order to that effect. As per Sub-Section 2 of Section 7 of the Act, the Tribunal shall be presided over by an officer not below the rank of Sub-Divisional Officer of a State. Section 8 of the Act deals with the summary procedure in case of an inquiry. As per Sub-Section 1 of Section 8, in holding an inquiry under Section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit. Sub-Section 2 states that the Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath, enforcing the attendance of witnesses, compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; the Tribunal shall be deemed to

be a Civil Court for all the purposes of Section 195 and Chapter XXVI of Cr.P.C. Section 9 of the Act deals with the order for maintenance, while Section 10 of the Act refers to alteration in allowance. It is also to be noted here that against an order passed by the Tribunal, an appeal lies to the appellate Tribunal, which is constituted under Section 15 of the Act. The said appellate Tribunal shall be presided over by an officer not below the rank of District Magistrate. Section 16 of the Act, which deals with Appeals, states that any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal, may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal. Clauses 2 to 7 of Section 16 of the Act prescribed the procedure for hearing of the appeal.

11. As stated earlier, an application, which was made to the Tahsildar, was forwarded to respondent No.4, constituted under the Act, to deal with the request made by the respondents for grant of maintenance. The said application was made seeking maintenance @ Rs.10,000/- per month from the petitioner herein. The impugned order itself indicates that notice was given to the petitioner asking him to appear on 20.06.2016 and **render a reply**, as to why the application should not be ordered against him. Pursuant thereto, the petitioner appeared before the authorities on 20.06.2016 at 03.30 p.m. and then orally told them about the amount which is already being paid to his mother. On the next day itself, the order came to be passed directing the petitioner to pay an amount of Rs.10,000/- per month. From the above, it is clear that there was no inquiry as contemplated under Section 5 of the Act. As per Section 5 (3) of the Act, on receipt of an application for maintenance under Sub-Section (1), a notice of such application shall be given to the children or relative and after giving the parties an opportunity of being heard, hold an inquiry for determining the amount of maintenance. In the instant case, notice was given, but no inquiry was conducted for determining the quantum of maintenance. Further, Section 6(6) contemplates that the Tribunal, before hearing an application under Section 5, may, refer the same to the Conciliation Officer and such Conciliation Officer shall submit his findings

within one month. Both these aspects were not followed, which is evident from the fact that the petitioner appeared before the primary authority on 20.06.2016 at 03.30 p.m. and the order awarding maintenance came to be passed on the very next day. On that score alone, the impugned order has to go.

12. It is also to be noted here that the District Collector enhanced the maintenance from Rs.10,000/- per month to Rs.12,000/- per month in an appeal filed by the petitioner herein. First of all, as per Section 16 of the Act, any senior citizen or a parent, as the case may be, aggrieved by an order of a Tribunal, may, within sixty days from the date of the order, prefer an appeal to the Appellate Tribunal. The Act is silent with regard to the appeals to be filed by the children or relative. Proviso to Section 16 (1) states that, on appeal, the children or relative who is required to pay any amount in terms of such maintenance order shall continue to pay to such parent, the amount so ordered, in the manner directed by the Appellate Tribunal. Hence, respondent No.2, who is an appellate authority should not have entertained the appeal filed by the son, as Section 16 of the Act prescribes filing of an appeal only by the parent or a senior citizen. While entertaining the appeal, filed by the son, the appellate authority enhanced the maintenance from Rs.10,000/- per month to 12,000/- per month, which is totally impermissible under law. On this score also, the impugned order enhancing the maintenance from Rs.10,000/- per month to Rs.12,000/- per month has to go.

13. Further, Section 8 of the Act postulates that, while holding an inquiry under Section 5, the Tribunal may, subject to any rules that may be prescribed by the State Government in this behalf, follow such summary procedure as it deems fit. Therefore, even as per Section 8 of the Act, there has to be an inquiry and, while conducting inquiry, summary procedure has to be followed. Apart from that, it is also to be noted that an application under Section 5 of the Act is required to be made in a particular format, as contemplated under Rule 4 (1) of the Rules, 2011. Though, it may be true, respondent No.7 – mother, is in dire need of money and it

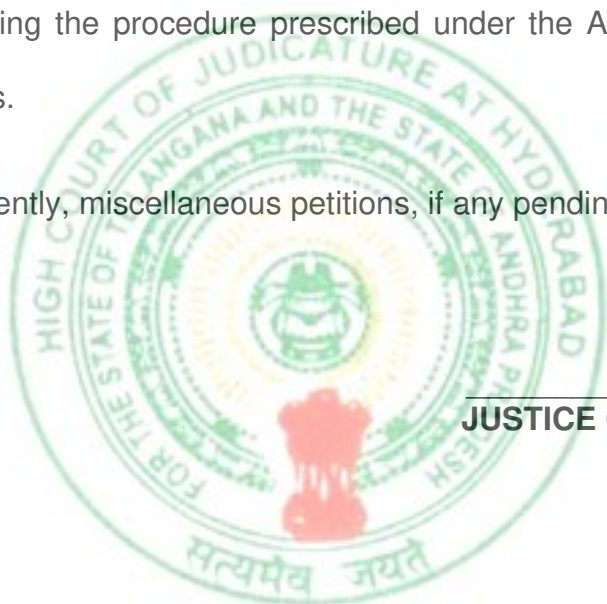
may also be true that she is a sick lady, but when the Act prescribes a particular procedure to be followed, the same has to be adopted and followed in the manner prescribed therein.

14. Having regard to the above circumstances and since the order came to be passed in violation of the procedure contemplated under the Act, the order under challenge warrants interference by this Court.

15. Accordingly, the Writ Petition is allowed, setting aside the impugned order, however, giving liberty to respondent No.7 to make a fresh application, in accordance with law, in which event, the appropriate authority shall deal with the same, by following the procedure prescribed under the Act. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

11.08.2017
vhb



JUSTICE C. PRAVEEN KUMAR