

**\*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN  
AND  
THE HON'BLE SRI JUSTICE M. GANGA RAO**

**+ Writ Petition No.43859 of 2017**

% 19-01-2018

#Kopparthi Krishna Murthy

.... Petitioner

AND

District Legal Services Authorities, West Godavari  
Eluru and 4 others

.... Respondent

! Counsel for petitioner: Sri V. Ramu

^ Counsel for respondent: Sri J. Anil Kumar, standing counsel

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> Head Note:

? Cases referred:



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

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**and**

**THE HON'BLE SRI JUSTICE M. GANGA RAO**

**Writ Petition No.43859 of 2017**

Between:

Kopparthi Krishna Murthy, S/o Venkata Ratnam,  
aged 66 years, Occ: Agriculturist, village: Aakiveedu  
(Village and Mandal) West Godavari

... Petitioner

Vs.

District Legal Services Authorities, West Godavari,  
Eluru and 4 others.

.. Respondents

For Petitioner : Mr. V. Ramu

For Respondents : Mr. J. Anil Kumar, standing counsel

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**HON'BLE SRI JUSTICE M. GANGA RAO**

**Writ Petition No.43859 of 2017**

**ORDER: (V. Ramasubramanian, J)**

The petitioner has come up with the above writ petition challenging the order of the District Legal Services Authority, Eluru, confirming the order of the Mandal Legal Services Authority, Narsapur, West Godavari, refusing to grant Court Fee Exemption Certificate to the petitioner, for the purpose of enabling the petitioner to file a suit against an Insurance Company.

2. Heard Mr. V. Ramu, learned counsel for the petitioner and Mr. J. Anil Kumar, learned standing counsel for respondents 1 and 2 takes notice.

3. According to the petitioner, he established a factory under the name and style of M/s. Venkata Datta Cotton and Ginning Industry in the year 2006 and that the factory was gutted in a fire.

4. Claiming that it was an accident and that therefore there was insurance cover, the petitioner made a claim with the United India Insurance Company. But the Insurance Company repudiated the claim forcing the petitioner to approach the Consumer Forum.

5. The State Consumer Redressal Commission dismissed the complaint filed by the petitioner against the insurer. But the Consumer Forum left it open to the petitioner to seek remedies before the normal Civil Court.

6. Therefore, the petitioner filed a civil suit on the file of the District Court, Narsapur. Simultaneously, he moved an application before the Mandal Legal Services Authority, West Godavari, Narsapur seeking the issue of a Court Fee Exemption Certificate, on the ground that his income was below Rs.1,00,000/- and that he is an agriculturist. The Mandal Legal Services Authority, Narsapur, dismissed the application by an order dated 25-10-2012 on the ground that the petitioner failed to produce his individual Income Tax Returns, despite being specifically called upon to do so and that the other documents filed by him did not inspire the confidence of the Mandal Legal Services Authority, Narsapur.

7. Aggrieved by the order of the Mandal Legal Services Authority, Narsapur, the petitioner filed an appeal before the District Legal Services Authority, West Godavari, Eluru, but the same was also dismissed, forcing him to come up with the above writ petition.

8. Two issues arise for consideration in this writ petition. They are:

- (1) Whether the Mandal/District/State Legal Services Authority is vested with the power to grant exemption from payment of court fees, for a litigant to seek remedies before a Civil Court; and
- (2) if so, whether the petitioner is entitled for the issue of such a certificate.

9. As seen from the order passed by the Mandal Legal Services Authority on 25-10-2012, the petitioner did not produce any valid documents to justify his claim for exemption from payment of court fees. Therefore, the answer to the second question, assuming

that the Mandal/District/State Legal Services Authority has power to grant exemption, is too obvious to be stated.

10. In such circumstances, it was possible for us to proceed on the presumption that there is power for the Legal Services Authority to grant exemption from payment of Court and still dismiss the writ petition on facts, thereby confirming the orders of the Mandal and District Legal Services Authorities. But in view of the importance of the first question, we shall take up the same for consideration in greater detail.

11. Court Fee payable in any Court except in Supreme Court is a State subject falling under Entry 3 of List-II of the 7<sup>th</sup> Schedule to the Constitution and every State has a statutory enactment, invariably covering the twin aspects of Court Fees and Suits Valuation. The State of Andhra Pradesh has the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. The Act itself contains a provision in Section 68, empowering the State Government, by way of notification in the Government Gazette, to reduce or remit, in the whole or in any part of the territory of the State, or any of the fees chargeable under the Act. Apart from the power so specifically conferred upon the Government under the Court Fee Act itself, the Civil Courts are also empowered to grant relief, under Order XXXIII of the Code of Civil Procedure, 1908. But Order XXXIII provides a detailed procedure for allowing a person to prosecute a case without payment of court fees and it also takes care of several contingencies such as (a) what happens if the indigent person succeeds in the suit instituted without payment of court fees; (b) what happens if he fails

in the suit; (c) what happens if the permission to sue as indigent person is withdrawn later; (d) what happens if the suit filed by such indigent person abates; and (e) the mode of recovery of the court fee if any of the contingencies listed above occurs.

12. The Civil Procedure Code, 1908, as it originally was, contained provisions only for allowing a person to sue as an indigent person. The other contingencies namely (a) what happens if a person sued is an indigent person and (b) how could an indigent person be expected to hire the services of a legally trained person, were not provided for in the Code of Civil Procedure of the year 1908. But when sweeping changes were made to the Code of Civil Procedure by Act 104 of 1976, three provisions were inserted, one under the Rule 9-A, another under Rule 17 and the third under Rule 18. Rule 17 of Order XXXIII enables even a defendant who desires to plead a set off or counter claim, to invoke the provisions of Order XXXIII. Rule 9-A (1) enables the Court to assign a pleader to a person, who is permitted to sue as an indigent, if he is not represented by a pleader. Sub rule (2) of Rule 9-A of Order XXXIII empowers the High Court, with the previous approval of the State Government, to make rules providing for the mode of selecting pleaders, the facility to be provided to such pleaders and any other matter. Rule 18 of Order XXXIII confers two different powers, one upon the Central or State Government and another upon the High Court. Under sub-rule (1) of Rule 18 of Order XXXIII, the Central or State Government may make such supplementary provisions as it thinks fit for providing free legal services to those who have been

permitted to sue as indigent persons. Sub-rule (2) of Rule 18 of Order XXXIII empowers the High Court to make Rules for carrying out the supplementary provisions made by the Central or State Government under sub-rule (1).

13. A close scrutiny of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 and the provisions of Order XXXIII of the Code of Civil Procedure, 1908 will show (a) that there is a distinction between the power of the State Government and the power of the Court with regard to the issue of payment of Court Fees; (b) that under the Court Fee Act, the State Government has the power to reduce or remit fees in respect of the whole or part of a territory or in respect of the fees chargeable under the Act; (c) that under the Code of Civil Procedure, the Court is empowered just to allow a person to sue as an indigent person, resulting merely in the postponement of the payment of court fee, but not the reduction or remission of the court fees and (d) that the Central or State Government is also empowered under Order XXXIII Rule 18 (1) of the Code to make supplementary provisions for providing free legal services to those who have been permitted to sue as indigent persons.

14. In other words, the Government alone is vested with the power to grant reduction or remission and the power of the Court is limited to the extent of granting the facility of postponement of the payment. Before we proceed further, we must also take note of one important fact namely that while Rule 9-A of Order XXXIII empowers the Court to assign a pleader to a person who is permitted to sue as

an indigent person, Rule 18 (1) empowers the Central or State Government to make supplementary provisions for providing free legal services to those who have been permitted to sue as indigent persons. There are two distinguishing features between Rule 9-A and Rule 18 (1) of Order XXXIII. They are (a) while the former empowers the Court, the latter empowers the Central or State Government; and (b) while the former speaks merely about the assignment of a pleader to an indigent person, the latter speaks about the provision of free legal services.

15. There are two more important aspects which are required to be kept in mind, while comparing Rule 9-A with Rule 18. The first is that these Rules can be invoked only after a person is permitted by the Court to sue as an indigent person, but not before. The second important aspect is that the expression “free legal services” appearing in Rule 18 (1) of Order XXXIII, which is obviously larger in scope than the assignment of a pleader under Rule 9-A, is not defined in the Code of Civil Procedure.

16. At the time when Rule 18 was inserted in Order XXXIII, by Act 104 of 1976 with effect from 01-02-1977, the expression “free legal services” does not appear to have been defined anywhere else also. While Article 39 A of the Constitution came into effect on 03-01-1977, Rule 18 of Order XXXIII of the Code of Civil Procedure came into effect on 01-02-1977. Within three years of these two important developments in the statutory regime, the Government appointed a “Committee for Implementing Legal Aid Schemes” under the Chairmanship of Mr. Justice P.N. Bhagavathi. This Committee

evolved a model scheme. After a couple of years, the working of the Committee was reviewed and the same led to the enactment of the Legal Services Authorities Act, 1987. Even the preamble to this Act No.39 of 1987 used the expression “free and competent legal services”. The expression “legal services” is defined in Section 2 (1)(c) of the Act, as follows:

“Legal Services” includes 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.”

This is an inclusive definition and hence, not exhaustive.

17. Under the Legal Services Authorities Act, 1987, a scheme for the flow of funds is envisaged under Sections 14 to 17. The Central Government is obliged to pay to the Central Authority, known as NLAF (National Legal Aid Fund) by way of grant, such sums of money as the Central Government may think fit. With the amount of money so received as grant, the Central Authority has to establish a fund in terms of Section 15 (1). This National Legal Aid Fund has to be applied for meeting the cost of legal services provided under the Act, including grants made to the State Authorities.

18. The grants made by the National Legal Services Authority to a State Authority is utilised by the State Authority for establishing a fund known as State Legal Aid Fund. This State fund is distributed by the State Legal Services Authority under Section 17 to the District Legal Services Authorities and to the High Court Legal Services Committees.

19. The Legal Services Authorities Act, 1987 does not speak about any exemption from payment of court fees. On the contrary,

Section 21 (1) of the Legal Services Authorities Act, 1987 enables only the refund of the court fee, in cases where a compromise or settlement is arrived at by a Lok Adalat in a case referred to it under Section 20 (1). But even this refund is to be made, as per Section 21 (1) of the Legal Services Authorities Act, 1987, only in the manner provided under the Court Fees Act. It is an irony that Section 21 (1) of the Legal Services Authorities Act, 1987 makes a reference only to the Court Fees Act, 1870 despite the fact that after the adoption of the Constitution, court fee became a State subject and every State issued its own enactment. Every State Enactment contained a provision repealing the Court Fees Act, 1870, in so far as that particular State is concerned. For instance, the Court Fees Act, 1870 is repealed in its application to the State of Andhra Pradesh, under Section 79 (1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956.

20. Be that as it may, the Parliament appears to have been conscious about the fact that the grant of exemption from payment of court fee (except in relation to Supreme Court), may tantamount to an encroachment into the exclusive domain of the State. While every State Enactment contained a provision for reduction or remission by the State Government, of the court fee payable, the power of the Court under the Code of Civil Procedure is merely to postpone the payment and the power of the Lok Adalat under Section 21 (1) of the Legal Services Authorities Act is merely to order refund. This refund is made to the party who has paid the court fee in the first instance and the expenses towards the refund are

made out of the National Legal Aid Fund, which trickles down from the Central Authority to the State Authority and then to the District Authorities.

21. The Legal Services Authorities Act, 1987 empowers the Central Government, under Section 27 to make Rules with respect to the matters provided in sub-section (2) of Section 27. Section 28 (1) confers power on the State Government to issue Rules with respect to the matters listed in sub-section (2) thereunder. Sections 29 and 29-A respectively empower the Central and State Authorities to make Regulations.

22. In exercise of the powers conferred by Section 29 of the Legal Services Authorities Act, 1987, the Central Authority issued a set of Regulations known as the Supreme Court Legal Services Committee Regulations, 1996. Regulation 13 of these Regulations indicate that the Legal Services to be provided, may include even the payment of court fees, process fees and all other charges, payable or incurred in connection with any legal proceedings.

23. Similarly, the Andhra Pradesh State Legal Services Authority has also issued a set of Regulations in exercise of the power conferred by Section 29-A of the Act. Regulation 25 of the Andhra Pradesh State Legal Services Authority Regulations, 1996 indicates that the legal services admissible under the regulations, shall include payment to the entitled person or on his behalf, of the court fee payable by him.

24. As we have indicated earlier, the power of the Central Authority to make Regulations flows out of Section 29 (1) and the

power of the State Authorities to make Regulations flows out of the Section 29-A (1), but the matters for which provision may be made in the Regulations, are enlisted in sub-section (2) of Section 29 and sub-section (2) of Section 29-A. Sub-section (2) of Section 29 reads as follows:

*(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-*

*(a) the powers and functions of the Supreme Court Legal Services Committee under sub-section (1) of Section 3A;*

*(b) the terms of office and other conditions relating thereto, of the Members and Secretary of the Supreme Court Legal Services Committee under sub-section (4) of Section 3A.*

Sub-section (2) of Section 29-A reads as follows:

*“(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-*

*a) the other functions to be performed by the State Authority under clause (d) of sub-section (2) of Section 7;*

*(b) the powers and functions of the High Court Legal Services Committee under sub-section (1) of Section 8A;*

*(c) the number, experience and qualifications of Members of the High Court Legal Services Committee under clause (b) of sub-section (2) of Section 8A;*

*(d) the terms of office and other conditions relating thereto, of the Members and Secretary of the High Court Legal Services Committee under sub-section (4) of Section 8A;*

*(e) the terms of office and other conditions relating thereto, of the Members and Secretary of the High Court Legal Services Committee under sub-section (4) of Section 9;*

*(f) the number, experience and qualifications of Members of the High Court Legal Services Committee under clause (b) of sub-section (2) of Section 8A;*

*(g) other functions to be performed by the District Authority under clause (c) of sub-section (2) Section 10;*

*(h) the terms of office and other conditions relating thereto, of Members and Secretary of the Taluk Legal Services Committee under sub-section (3) of Section 11A.”*

25. Though the matters listed in sub-section (2) of Section 29 or Section 29-A do not include the type of legal services about which a provision can be made in the Regulations, the National as well as

State Legal Services Authorities appear to have kept the generality of the power to make Regulations in mind, while including the payment of court fee as one of the legal services that could be rendered by the respective authorities.

26. It must be noted that the Rules framed by the Central Government under Section 27 (1) of the Act, require the consultation with the Chief Justice of India and the rules framed by the State Governments under Section 28 (1), require the consultation with the Chief Justice of the High Courts. In contrast, the Regulations issued by the Central Authority under Section 29 and the Regulations issued by the State Authorities under Section 29-A, do not require the approval of the State Government. Nevertheless, the Regulations are required to be laid before the State Legislature, under Section 30 (2).

27. Again a distinction is maintained between sub-section (1) and sub-section (2) of Section 30. While sub-section (1) of Section 30 deals with the laying of rules made by the Central Government and the laying regulations made by the Central Authority before each House of Parliament, sub-section (2) of Section 30 provides for laying of the rules made by the State Government and Regulations made by a State Authority before the State Legislature. But sub-section (1) of Section 30 empowers the Houses either to suggest a modification or to annul any rule or regulation. Such a power seems to be absent in sub-section (2). Sub-sections (1) and (2) of Section 30 read as follows:

*“(1) Every rule made under this Act by the Central Government and every regulation made by the Central Authority thereunder shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, and if, before the expiry of the session immediately following the session or the successive sessions or in two or more successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.*

*(2) Every rule made under this Act by a State Government and every regulation made by a State Authority thereunder shall be laid, as soon as may be after it is made, before the State Legislature.”*

28. We do not know, in the light of the statutory scheme, if the provision for payment of court fees as one of the modes of the legal services, would fall within the ambit of any of the matters for which a provision may be made in the regulations under Section 29 (2) or Section 29-A (2) of the Act at all or not. In any case, we are not concerned with the *vires* of the regulation 25 (b) (ii) (a) of the Andhra Pradesh Legal Services Authorities Regulations, 1996, which includes payment of court fees as one of the forms of the legal services that could be rendered by the Legal Services Authority. We are also not called upon to decide whether such provision is in excess of the power granted under Section 29-A (2) of the Act.

29. It is suffice for our present discussion to note that even under regulation 25 (b) (ii) (a) of the Andhra Pradesh State Legal Services Authority Regulations, 1996 what is prescribed is only the payment to the entitled person, of the court fee and not the grant of a certificate for exemption from payment of court fees. Therefore, if at all, the petitioner, if he satisfies the criteria prescribed under Section 12 of the Act, could have sought only the payment of court fees and not a certificate of exemption from payment of court fees.

30. The learned counsel for the petitioner brought to our notice, a judgment of a Bench of this Court in **M/s. Navya Infracon Projects (I) Private Ltd., v. State of Andhra Pradesh** (W.P.No.9091 of 2016 decided on 22-12-2016). But in the said case, what was in question before a Division Bench of this Court was the validity of the enquiry made by the District Legal Services Authority, for ordering exemption from payment of court fees. The District Legal Services Authority in that case granted a certificate of exemption to a group of persons to enable them to institute a suit. The 6<sup>th</sup> defendant in the said suit challenged the certificate of exemption so granted by the District legal Services Authority, by way of a writ petition before this Court. The focus in that case was not on the existence or otherwise of the power of the District Legal Services Authority to grant exemption, but was actually on the nature of the enquiry to be conducted while dealing with such applications. Therefore, the Division Bench proceeded on the assumption, in the said decision, in **M/s. Navya Infracon Projects (I) Private Ltd., v. State of Andhra Pradesh** that there existed a power to grant exemption. Therefore, we cannot take the decision in **M/s. Navya Infracon Projects (I) Private Ltd.**, as laying down any opinion on the core issue as to whether the Mandal/District/State Legal Services Authority has any power to grant exemption from payment of court fee at all.

31. As we have pointed out earlier, until the advent of the Legal Services Authorities Act, 1987, there were only two institutions namely (1) the Government and (2) the Court, both of which had

different types of powers. While the State Government is conferred with the power to grant reduction or remission of the court fee, under Section 68 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, the power of the original Court under Order XXXIII and of the Appellate Court under Order XLIV of the Code of Civil Procedure is only to postpone the payment but not to grant reduction or remission of the court fee. Since the court fee is a State subject, the Parliament was careful, while enacting the Legal Services Authorities Act, 1987 not to use any expression such as reduction or remission or exemption from payment of court fees. On the contrary, Section 21 (1) of the Legal Services Authorities Act, 1987 speaks only about refund of court fees.

32. Irrespective of whether the regulations framed by the State Authority under Section 29-A (1) of the Legal Services Authorities Act, 1987 is in excess of the power conferred or not, what is contemplated by regulation 25 (b) (ii) (a) is only "the payment to the entitled person of court fee". There is no provision (1) either in the Andhra Pradesh Court Fees and Suits Valuation Act, 1956; or (2) in the Code of Civil Procedure; or (3) in the Legal Services Authorities Act, 1987; or (4) in the Rules framed by the Central or State Government; or (5) in the regulations framed by the Central or State Authorities, for the grant of a certificate of exemption from payment of court fees. If at all, the Legal Services Authorities, until the validity of regulation 25 (b) (ii) (a) is tested, can order payment of court fee to the entitled person, but not order the grant of a certificate of exemption from payment of court fee, as it would be an

encroachment into the territory occupied by a State Enactment. The District and Mandal Legal Services Authorities shall keep the statutory scheme in mind while dealing with the applications of this nature.

33. As a matter of fact, even before the advent of the Legal Services Authorities Act, 1987, the State of Andhra Pradesh issued a set of Rules known as “Andhra Pradesh State Legal Aid and Advice to the Poor Rules, 1980”. These Rules contained provisions for rendering legal aid and advice to the poor, but did not contain any provision for exemption from payment of court fees.

34. However, the Government issued G.O.Ms.No.350 Home (Courts) Department, dated 17-06-1982, in exercise of the powers conferred by Section 68 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, directing remission, in the whole of the State of Andhra Pradesh, the fee chargeable in respect of any proceeding including suits and appeals initiated before any Court by a person, who came within the definition of the expression “aided person” in terms of the 1980 Rules. But the said Government order also stipulated that in the event of such aided person succeeding in his case, the amount of court fees, which would have been paid by him, shall be recoverable by the State Government from any party ordered by the Court in the decree to pay the same.

35. After the advent of the Legal Services Authorities Act, 1987, the Government issued a notification in G.O.Ms.No.73 Law dated 19-06-2007, exempting persons entitled and provided with Legal Services under Sections 12 and 13 of the 1987 Act, from

payment of court fees. This Government order was issued again in exercise of the powers conferred by Section 68 of the A.P. Court Fees and Suits Valuation Act, 1956. But this Government Order also made it clear that in the event of the persons provided with legal services succeeding in the proceedings, the amount of court fees shall be recovered by the State Government from the party ordered by the Court in the decree to pay the same.

36. But without understanding the scope and effect of such notifications, the District Legal Services Authorities were issuing certificates of exemption, in terms of 1980 Rules. This necessitated the Member Secretary of the Andhra Pradesh State Legal Services Authority to issue a circular bearing Roc.No.5772/APSLSA/LSW/2010, dated 21-08-2010. It was made clear in the said circular that the Legal Services institutions such as the Mandal/District/State Legal Services Authorities have no power or authority to issue a certificate of exemption from payment of court fees. Therefore, all that could be done by a person is to approach the concerned Legal Services Authority and seek the provision of legal services. If the concerned Legal Services Authority is satisfied that such a person satisfies the criteria specified in Section 12 of the Legal Services Authority Act, 1987, then it may be open to the concerned authority to invoke the stipulations contained in the Government order G.O.Ms.No.73 Law dated 19-06-2007 issued in exercise of the powers conferred by Section 68 of the A.P. Court Fees and Suits Valuation Act, 1956, subject, however, to the conditions stipulated in the said Government Order.

With the above clarification, the writ petition is dismissed as devoid of merits.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

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**V. RAMASUBRAMANIAN, J**

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**M. GANGA RAO, J**

Date: 19-01-2018

**Note:** L.R. copy to be marked.

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