

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.18627 of 2005

M.H.Abdur Rahmaan

..Petitioner

Vs

1.The Sessions Judge,
For Bomb Blast Cases,
Coimbatore.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Home,
Fort St. George,
Chennai - 600 009.

3.The Additional Superintendent of Police,
Special Investigation Team,
CB CID,
Coimbatore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records pertaining to the order dated 11.05.2005 passed in CFR No.810 of 2004 in S.C.No.2 of 2000 on the file of the first respondent and quash the same and consequently direct the first respondent to pay fees as fixed by the Court in W.P.M.P.No.29909 of 2001 in W.P.No.20293 of 2001 and Crl.O.P.Sr.44333 of 2001, dated 20.12.2001.

For Petitioner : Mr.C.D.Sugumar

For Respondents : Mrs.K.Bhuvaneswari,
Additional Government Pleader

O R D E R

The order under challenge in the present writ petition is to recover a sum of Rs.1,71,500/-, which is claimed to have been made in excess, towards remuneration fee for State Brief Advocate.

2. The petitioner herein was appointed as a State Brief Advocate in the year 2001, by the Government of Tamil Nadu to defend the accused in Coimbatore Bomb Blast Cases, before the Special Court at Coimbatore. By way of remuneration, a sum of Rs.1,500/- has been fixed for the advocates, who are residing in the city of Coimbatore and a sum of Rs.2,500/- for the advocates, who are conducting cases from outside the city of Coimbatore for each effective hearing. It is the case of the petitioner that, since in view of the frequent adjournments, in which, the case was taken up for hearing, he had temporarily taken a house for rent in the city of Coimbatore in the month of May 2003 and moved into the city of Coimbatore only for the purpose of conducting the cases. Since there was some inconvenience for his family members, he had also admitted his children in the schools in the city of Coimbatore. The third respondent herein had given a complaint stating that, since the petitioner herein was residing at Coimbatore, he had fraudulently claimed a sum of Rs.2,500/- as if, he had been staying outside the city of Coimbatore. Pursuant to certain observations made by this Court, the learned Session Judge for Bomb Blast cases had enquired into the matter and concluded that the petitioner is liable to refund the excess amount paid on the ground that, he is residing within the city of Coimbatore.

3. The learned counsel appearing for the petitioner submitted that, he had produced various documents evidencing that, he is regularly practicing at Chennai and Tanjore and that, he is temporarily practicing as advocate at Coimbatore. Further, he has submitted that, he moved in the city of Coimbatore only for the purpose of conducting Bomb Blast Cases. He had also produced sufficient documents evidencing that, he was a permanent resident of Chennai and that, the learned Sessions Judge had misconstrued these documents filed by him.

4. Learned Additional Government Pleader submitted that, there was no infirmity in the order of the learned Sessions Judge. According to her, the third respondent herein, had produced documents evidencing that, the petitioner was residing within the city of Coimbatore and conducting the Bomb Blast Cases and hence, he is only entitled for a sum of Rs.1,500/- for each of the effective hearing and a sum of Rs.1,000/- which paid in excess is liable to be recovered.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Before the learned Sessions Judge, the petitioner herein had produced 5 documents, in which, the Ration Card for the period 1998-2003 as well as the identity card issued by the Election Commission of India dated 30.07.1998 formed part. Apart from these two documents, the petitioner herein had also

produced the copies of the affidavits filed in certain legal proceedings to show that, he was a counsel appearing in the courts outside Coimbatore.

7. On the part of the State, 17 documents were produced, in which, most of the documents were related to the year after 2004. The learned Sessions Judge had taken the claim period between 07.03.2002 and 15.04.2005. While considering the documents filed by the petitioner herein, the learned Sessions Judge had made an observation saying that, two of the documents evidencing that, the petitioner is a resident of No.32, Ganapathy Nagar, Tanjore and No.21, Ganapathy Nagar South Street, Tanjore had been filed. While referring to these addresses, the learned Judge had observed that, the exact address of the residence of the petitioner at Tanjore was not established by him and therefore, the Sessions Judge had raised doubt with regard to the averments made by the petitioner herein.

8. I am unable to appreciate such an observation. The issue to be determined is as to whether the petitioner herein was the resident of Coimbatore City or not. When the petitioner had come out with the specific case stating that, he had temporarily moved to the city of Coimbatore, only for the purpose of conducting Bomb Blast Cases, the documents produced by the petitioner, also have to be viewed from the same angle. The respondents had produced documents to show that, the children of the petitioner herein were studying at Coimbatore. This is actually admitted by the petitioner also. What he intends to state is that, he had shifted his residence to Coimbatore, admittedly for the purpose of conducting the Bomb Blast Cases and in order to avoid inconvenience to his family members, he had also shifted his family.

9. It would be pertinent to point out here that, the counsel fee fixed i.e., a sum of Rs.2,500/- is being extended to lawyers, who are conducting Bomb Blast Cases from outside the city of Coimbatore, so as to enable them to cover the travelling expenses as well as for boarding and lodging expenses. The petitioner herein had stated that, if he resides at Chennai and conduct the Bomb Blast Cases at Coimbatore, he would suffer irreparable monetary loss and therefore, he had shifted his residence temporarily to Coimbatore. It is not his case that, he is a practicing lawyer at Coimbatore, neither such a stand had been taken by the respondent herein.

10. The documents relied upon by the State pertains to the year 2004 onwards and the payment of a sum of Rs.2,500/- for lawyers, who enter appearance in the Coimbatore Bomb Blast cases, who are practicing outside the city of Coimbatore were made as per the order of this Court dated 20.12.2001. Even as per the impugned order the payments were made to the petitioner upto 2004 only. It is pertinent to note here that, there was no supporting documents before the learned Sessions Judge to

show that, the petitioner herein was a regular practicing lawyer of Coimbatore City, prior to the Coimbatore bomb blast cases.

11. As such, the learned Sessions Judge was not justified by shifting the burden on the petitioner and observing that, the petitioner had not produced any documents to show that, he was a practicing lawyer. When the ration card as well as identity card issued by the election commission of India evidences that the petitioner was a permanent resident in places outside the city of Coimbatore, the benefit of doubt ought to have been extended to the petitioner and as such, the recovery order may not be proper.

12. For all the foregoing reasons, I do not find any justification on the part of the first respondent herein, in having passed the impugned order. Accordingly, the order dated 11.05.2005 passed in CFR No.810 of 2004 in S.C.No.2 of 2000 by the learned Sessions Judge is hereby quashed.

13. With the above direction, the writ petition shall stand allowed. No costs.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

- 1.The Sessions Judge,
For Bomb Blast Cases,
Coimbatore.
- 2.The Secretary,
Department of Home,
Fort St. George,
Chennai - 600 009.
- 3.The Additional Superintendent of Police,
Special Investigation Team,
CB CID, Coimbatore.

+1 CC to Mr. R.Sankarasubbu Advocate SR.NO.37380
+1 CC to Additional Government Pleader SR.NO.37717

W.P.No.18627 of 2005

CO(SVI)
VC (12/06/2019)