IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10317 of 2012

AFR

Narayan Muni .... ***Petitioner***
Mr. B. Pradhan, Advocate

-versus-

State of Odisha and Others ... ***Opposite Parties***
Mr. P.K. Muduli, Addl. Govt. Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

Order No. **ORDER**
05.07.2022

Dr. S. Muralidhar, CJ.

04. 1. The challenge in the present petition is to a notification dated 18th November, 2004 issued by the Law Department, Government of Odisha stating *inter alia* "in a Court where more than one prosecutors are engaged for a day's work in a Court one day's fees payable has to be proportionately divided amongst the prosecutors".

2. It may be noted at the outset that notice in the present petition was issued way back on 17th December, 2012 and an interim order was passed stating "pending consideration of the Misc. Case the admitted fees of the Petitioner may be paid to him."

3. The Petitioner was engaged as an Assistant Public Prosecutor (APP) under the Orissa Law Officers' Rule, 1971 (Rules) on 17th July, 2006 by a notification of that date of the Law Department, Government of Odisha. The appointment was for a period of three years.

4. For the period 28th July, 2006 to September, 2009 the Petitioner submitted his bill of fees at Rs.200/- per day which is the daily fees fixed for the APP in terms of Rule 24(4) of the Rules. This was countersigned by the Public Prosecutor and a certificate was also issued by the assigned Court of the JMFC, Aska. The bill amount for the period for the period 28th July, 2006 to September, 2009 was Rs.1,71,200/- whereas the Petitioner was paid only Rs.85,600/- without being given any reasons. The Petitioner then served a legal notice on 9th November, 2011 on the Opposite Parties. In a reply dated 17th November, 2011 the impugned notification was attached stating that along with the Petitioner one other person was also appointed as APP attached to the Court of the JMFC, Aska and therefore, one days fees payable to the APP had to be proportionately divided between the Petitioner and the other APP.

5. Mr. B. Pradhan, learned counsel for the Petitioner, contends that the above notification runs counter to Rule 24 (4) of the Rules which does not provide for any proportionate division of the daily fees between two or more APPs, who may be appointed. His contention is the daily fee has to be per APP.

6. Despite almost a decade having elapsed after notice was issued in this petition, till date no counter affidavit has been filed to contradict any of the averments made by the Petitioner.

7. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State submitted that some time may be granted to ascertain if the above notification is continuing till date.

8. Irrespective whether such notification is continuing, the justification for such notification has nevertheless to be examined by the Court given the prayers in the petition. Rule 24 of the Rules as it existed at the relevant time reads as under:

> "**24. Fees in criminal cases.-** (1) Subject to the provisions of rules 25, 26 and 27, the daily fees payable to the Public Prosecutors, Additional Public Prosecutors or Associate Lawyers shall be Rs.800 (rupees eight hundred only).
>
> …….
>
> (4) The daily fees of the Assistant Public Prosecutors shall be Rs.200 (rupees two hundred) only.
>
> (5) The daily fees of the Law Officers appearing before the District Consumer Disputes Redressal Forums shall be Rs.300 (rupees three hundred) only.
>
> (6) The daily fees payable to the Law Officers appearing before different Revenue Courts in the District level, Labour Courts, Debts Recovery Tribunal and other such various Forums in the District, shall be Rs.300 (rupees three hundred)

> inside the headquarters and Rs.600 (rupees six hundred) outside the headquarters."

9. Nothing in the above Rule indicates that if more than one APP is appointed, the daily fees payable will have to be divided proportionately. In other words, a plain reading of the Rules indicates that the daily fee has to be paid to every APP so appointed. There appears to be no justification therefore, for issuing the impugned notification whereby the daily fees payable by to an APP would become divisible in proportion to the number of APPs appointed. There cannot be any rational basis for such a notification. In any event it is *ultra vires* Rule 24 (4) of the Rules, which does not permit or envisage such a pro rata division of daily fees among the APP if there is more than one is appointed. On the above ground, para 3 of the impugned notification to the extent it directs that the daily fee would become divided proportionately amongst the Prosecutors if more than one is appointed is hereby struck down as being *ultra vires* the Rule 24(4) of the Rules.

10. Consequently, a direction is issued to the Opposite Parties to pay the Petitioner the balance 50% fees due to him together with simple interest @ 6 % per annum from the date of the fees was due till the date of payment which should not be later than eight weeks from today. If the payment is delayed beyond that period the in addition simple interest on the sum would be payable @ 9% per annum for the period of delay.

11. The petition is disposed of in the above terms. An urgent certificate copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/Secy.