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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.5092 of 2015

R.Dhanapalraj

... Petitioner

Vs

1. Ministry of Finance
Dept. of Revenue,
Church Road,
Hutments, New Delhi.
2. Union of India,
Rep. by its Secretary,
Ministry of Law and Justice,
New Delhi.
3. Deputy Director,
Directorate of Enforcement,
3rd Floor, III Block,
No.26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

...Respondents

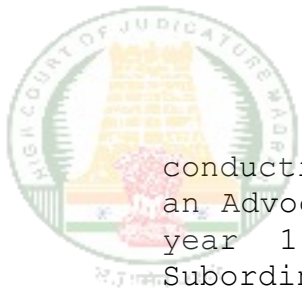
PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the 3rd respondent to pay the fees arrears of Rs.9,35,019/- for conducting case on behalf of the respondents.

For Petitioner :Mr.N.Manikandan

For Respondents:Mr.S.Makesh,
CGSC For R1.
Mr.N.Ramesh,
Special Public Prosecutor for R3.

O R D E R

The writ on hand has been instituted to direct the third respondent to pay the legal fees arrears of Rs.9,35,090/- for



conducting case on behalf of the respondents. The petitioner is an Advocate enrolled before the Bar Council of Tamil Nadu in the year 1978 and practising in Madras High Court and other Subordinate Courts. The petitioner was appointed by the Department of Revenue, Ministry of Finance, Government of India, in the empanelment of Advocates as a Special Prosecutor for conducting cases in Economic offences Forum under the Foreign Exchange Regulations Act, initially for two years and thereafter, extended time till 2010. The petitioner was asked to conduct some sensitive cases for conducting cases in trial Court as well as before the High Court.

2. The grievance of the writ petitioner is that he used to submit the Bills periodically and the third respondent was in the habit of sanctioning the fees after a prolonged period and therefore, many such bills were not paid and thus, the petitioner is constrained to move the present writ petition.

3. Several representations sent by the petitioner to sanction the Bill amounts were not responded. Thus, the present writ petition is filed.

4. The Directorate of Enforcement filed a counter affidavit setting out the fees structure allowed and agreed between the parties.

5. Paragraph No.5 of the counter affidavit deals with the fees structure and the agreed conditions, which reads as under;

"5. It is submitted that the petitioner herein is empanelled as Panel Counsel by Department of Revenue, Ministry of Finance, Government of India in F.No.13/6/96-Ad.I-C dated 26.09.1997 for a period of 2 years with effect from 1st April, 1997 to 31st March, 1999 which was subsequently extended from time to time and the writ petitioner was also engaged for conducting routine cases of 3rd respondent department various courts including High Court pertaining to cases arising under FERA, 1973 inclusive of prosecution. Further fees and other terms and conditions was also issued by the 1st respondent. As per the fees structure the counsels



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empanelled for conducting FERA prosecution is entitled to a specific fees structure as mentioned hereunder:

a. For High Court cases:

i. Effective hearing - Rs.600/- per day.

ii. Non - Effective hearing - Rs.300/- (subject to maximum of 3 hearings in a case).

iii. Conference/Consultation fees - Rs.200/- per conference (subject to maximum of 3 conferences in each case).

iv. Drafting fees (inclusive of clerkage) - Rs.300/-

v. Application for bail/stay/transfers, etc., - Rs.100/- if only one hearing takes place and Rs.50/- for each hearing, if more than 1 hearing takes place (Subject to a maximum of Rs.300/- only in one case).

b. For cases in District/Sessions/Metropolitan Courts, etc.

i. Effective hearing - Rs.400/- per day.

ii. Non-Effective hearing - Rs.200/- (subject to maximum of 3 hearings in a case).

iii. Conference/Consultation fees - Rs.150/- per conference (subject to maximum of 3 conferences in each case).

iv. Drafting fees (inclusive of clerkage)- Rs.250/-

v. Application for bail/stay/transfers, etc., - Rs.100/- if only one hearing takes place and Rs.50/- for each hearing if more than 1 hearing takes place (Subject to a maximum of Rs.300/- only in one case).

Further as per the empanelment order, the petitioner is not entitled for retainer/monthly remuneration, that the empanelled counsel should not appear against the 3rd respondent department that the empanelment is subjected to termination without assigning any reason etc., Agreeing the above terms and conditions the



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petitioner herein was empanelled as an advocate for effectively conducting prosecution under FERA, 1973. Further the writ petitioner was also nominated to assist Special Counsel in respect of important sensitive cases against certain politically exposed persons filed by this 3rd respondent zonal office on the same terms and conditions mentioned in his empanelment order."

6. Regarding various other Bills, the Directorate of Enforcement raised objections by stating that the petitioner, in violation of the fees and other terms and conditions annexed to his empanelment letter dated 26.09.1997, issued by the Department of Revenue, Ministry of Finance, Government of India, has claimed fees even for non-effective hearings by showing the same as effective hearing. As per the fees and other terms and conditions annexed to the empanelment order, the sanctioned professional fees for non-effective hearings before District/Sessions/Metropolitan Courts, etc., is Rs.200/-, which is subject to a maximum of three hearings per case. As per the guidelines issued by the second respondent, by way of Office Memorandum, an effective hearing is defined as hereunder:-

"Effective Hearing:

A hearing in which either one or both the parties involved in a case are heard by the court. If the case is mentioned and adjourned or only directions are given or only judgement is delivered by the court, it would not constitute an effective hearing but will be termed as non-effective hearing.

However in contrary to the office memorandum issued by the 2nd respondent, the writ petitioner has mentioned the hearing of the cases as effective wherein adjudication reflects that only petition under section 317 has been filed to dispense with the presence of the accused and claimed effective hearing fees which violates the office memorandum issued by 2nd respondent, hence the same was rejected and considered as non-effective. As such after due consideration of the adjudication of the hearings and also taking into account of the fee structure annexed to empanelment order, the claim of the petitioner was reduced and duly



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settled to the petitioner on various dates by way of cheques drawn in favour of the writ petitioner. Therefore, there is no arrears/balance of professional fees to be settled in favour of the petitioner as claimed by him. Further the same was also duly communicated to writ petitioner by the respondent department on 03.04.2014.

7. On Perusal of the affidavit filed in support of the writ petition as well as the counter affidavit filed by the respondent, this Court is of the opinion that dispute exists between the parties. However, such disputed issues cannot be adjudicated with reference to the documents and evidences in Writ proceedings under Article 226 of the Constitution of India. The legal fees is fixed and agreed based on certain terms and conditions and in the event of any such violation or otherwise, either of the parties are bound to approach the competent Court of Law for the purpose of adjudication and resolving the issues. Contrarily, merely based on the affidavit filed by the petitioner, this Court, in Writ proceedings, cannot direct the authority to settle the fees as claimed by an Advocate, who appeared for the Government Department. All such disputed issues require examination of documents and scrutinization of terms and conditions agreed between the parties and crystallization of the rights between the parties.

8. This being the principles to be followed, Writ petitions, in such circumstances cannot be entertained in a routine manner. Therefore, in such circumstances, where there is legal fees dispute between the parties, adjudication becomes necessary and such an adjudication is to be done by the competent Court of law and not by this Court under Article 226 of the Constitution of India. In the present case, the respondent/Department, in clear terms has stated that even for non-effective hearing, the petitioner has raised the issue, therefore, they have rejected. Further they have defined the effective hearing in an office memorandum which is known to the petitioner. All these factors require examination.

9. This being the factum, the petitioner is at liberty to approach the Competent Court of Law for adjudication of issues. However, the relief as such sought for in the present writ petition cannot be granted.



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10. Accordingly, this Writ Petition stands dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kmm
To

1. The Ministry of Finance,
Dept. of Revenue,
Church Road,
Hutments, New Delhi.
2. The Secretary,
Union of India,
Ministry of Law and Justice,
New Delhi.
3. The Deputy Director,
Directorate of Enforcement,
3rd Floor, III Block,
No.26, Haddows Road,
Shastri Bhavan,
Chennai - 600 006.

+1cc to M/s.N.Manikandan, Advocate Sr.5102
+1cc to M/s.S.Makesh, Advocate Sr.5469

W.P.No.5092 of 2015

kmm[co]
Srg 22/02/2022