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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

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THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 20784 of 2021
and
W.M.P. No. 22052 of 2021

V.P.Raman

.. Petitioner

Versus

National Medical Commission
Rep. by its Secretary
Pocket-14, Sector - 8
Dwarka Phase - 01
New Delhi - 110 077

.. Respondents

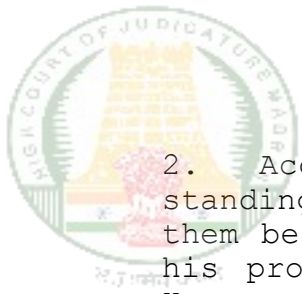
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent herein to clear all pending invoices of the petitioner within a time frame to be fixed by this Hon'ble Court without insisting on production of daily orders reflecting counsel name.

For Petitioner : Mr.P.H.Arvind Pandian,
Senior Counsel
for M/s.Shobana Krishnan

For Respondent : Mrs. Shubaranjani Ananth

O R D E R

1. The relationship between an advocate and his client is by nature a fiduciary one which has as its basis- trust and faith. This relationship also entails responsibility, which both parties are expected to shoulder equally. The case at hand however exposes the complete lack of faith on the part of the respondent towards their standing counsel, and further brings to light the unequal relationship between them and the unreasonable expectations of the respondent towards the petitioner, who is none other than their own standing counsel to whom they have been entrusting all the cases to represent them in various courts, including this Court.



2. According to the petitioner herein, he was serving as a standing counsel to the respondent Commission, representing them before this Court for nearly 12 years and he was paid with his professional fees at the time of conclusion of each case. However, some bills / invoices were sent for processing, the respondent insisted the petitioner to furnish the daily orders reflecting his name in the same, which is not possible for all the cases. Hence, he resigned his post and thereafter, he sent several representations to the respondent for clearing the invoices, which he had raised, but, the same evoked no response.

3. The learned senior counsel for the petitioner vehemently contended that the respondent with an intent to avoid payment of professional fees, directed the petitioner to produce certain proof, on technical ground, which is arbitrary and illegal. Adding further, he submitted that at the first instance, the respondent insisted the petitioner to provide daily orders reflecting his name along with causelists, which were duly sent to them. Even then, they are insisting the petitioner to raise separate invoices for each date of hearing in order to delay the process of settling the same. Such course adopted by the respondent cannot be accepted, according to the learned senior counsel. A memo stating the pending invoices for settlement by the respondent Board has also been filed to substantiate the case of the petitioner.

4. Heard the learned counsel for the respondent and also perused the materials available on record.

5. The short question that arises for consideration in the present writ petition is, whether the respondent having engaged the services of the petitioner and having entrusted him with cases to represent the respondent in various courts, including this Court, can later insist upon proof of his appearance in the cases in the form of daily orders with his name reflected therein.

6. A reading of the records would show that the respondent pays the advocate only after the final disposal of each writ petition, after consolidated invoices on the different dates of hearing are sent by the petitioner to them as has been the earlier practice. When the date on which a matter is listed for hearing, can be easily understood from the court's causelist produced in this regard, it is not understandable or appealable to logic as to why the respondent insists upon daily orders to further prove the appearance of the counsel on each of the dates of hearing. While it is possible that some cases would have been listed, but may not have been taken up on a particular date, it



is in such circumstances, the respondent will have to depend upon the faith reposed in their Standing Counsel and believe his statement for his appearance on the said date of hearing on the strength of the court's causelist and the updates given by the counsel in this regard.

7. It is also clear from the records that the petitioner has specifically answered to the query raised by the respondent stating that daily orders with respect to the proceedings of every case, which does not culminate into an interim or final order on that particular day, are not published by the Madras High Court in its Principal or its Madurai Bench and as such, insistence on such a requirement by the respondent is not feasible for compliance. At best, the standing counsel can produce a copy of the causelist, wherein the cases listed before the court are mentioned along with the name of the counsel, who is representing a particular organisation/institution or entity in that particular case.

8. Having said so, there is no further logical reason as to why a public authority like the respondent, would not settle the fees of its own standing counsel, as they usually have a long-term relationship and the standing counsel is usually a part of the institution itself. The standing counsels deal with their cases day in and day out representing the institution before the High Court and other Courts with a deep sense of belongings and attachment to the said institution whom they deem to be a valued client. The only scope for a dispute in respect of the settlement of dues or fees would arise in cases, where after having achieved finality, the final order reflects the name of some other counsel representing the respondent, which has not happened in the present case and therefore, this Court need not go into that reason/aspect.

9. While such being the limited area of consideration with respect to the facts of the present case and in view of the limited relief claimed by the petitioner that is only a Writ of Mandamus to direct the respondent to clear all the pending bills of the petitioner without insisting upon the daily orders reflecting his name in each of the proceedings of the cases, this case brings to fore the larger issue, whether such public entities/bodies which are akin to a State, especially educational institutions like the National Medical Commission (the erstwhile Medical Council of India) and other institutions and statutory bodies, Universities or public authorities and institutions, etc. can constrain their own advocates to approach this court seeking its intervention for clearance of the pending fees, which are legitimately due to them. In the last few years, it has been seen that several cases are being filed by the



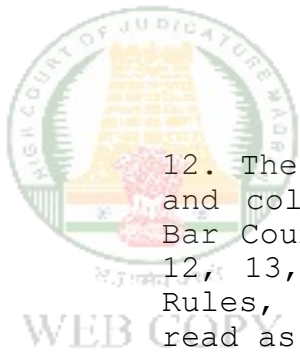
standing counsels as well as law officers of the State for clearance of their pending fees, which have become due to them over a period of time and inspite of having represented these bodies and authorities diligently before the Court, when there is no dispute about the fact that they have indeed appeared for these parties and when the parties themselves do not dispute the same, but are insisting upon technical requirements, which are impossible of satisfaction.

10. At this juncture, it is relevant to state that in several decisions, the Supreme Court has emphasized on the role of advocates in relation to their clients. In *Vikas Deshpande v. Bar Council of India and Others* [(2003) 1 SCC 384], it was held as follows:

"15. Relationship between an advocate and his client is of trust and therefore sacred. Such acts of professional misconduct and the frequency with which such acts are coming to light distresses as well as saddens us. Preservation of the mutual trust between the advocate and the client is a must otherwise the prevalent judicial system in the country would collapse and fail. Such acts do not only affect the lawyers found guilty of such acts but erode the confidence of the general public in the prevalent judicial system. It is more so, because today hundred percent recruitment to the Bench is from the Bar starting from the subordinate judiciary to the higher judiciary. You cannot find honest and hardworking judges unless you find honest and hardworking lawyers in their chambers...."

11. In *Kokkanda B. Poondacha and Others v. K.D. Ganapathi and Others*, [(2011) 12 SCC 600], it was observed as under:

"12. At this stage, we may also advert to the nature of relationship between a lawyer and his client, which is solely founded on trust and confidence. A lawyer cannot pass on the confidential information to anyone else. This is so because he is a fiduciary of his client, who reposes trust and confidence in the lawyer. Therefore, he has a duty to fulfil all his obligations towards his client with care and act in good faith. Since the client entrusts the whole obligation of handling legal proceedings to an advocate, he has to act according to the principles of *uberrima fides*, i.e., the utmost good faith, integrity, fairness and loyalty."



12. The duties of an advocate to the Court, the client, opponent and colleagues are enumerated in Chapter II of Part IV of the Bar Council of India Rules, 1975 (for short, "the Rules"). Rules 12, 13, 14 and 15 of Section II, Chapter II of Part IV of the Rules, which regulate the duty of an advocate to the client, read as under:

"12. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned."

"13. An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an advocate if he can retire without jeopardising his client's interests."

"14. An advocate shall, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement."

"15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence."

13. An analysis of the above reproduced Rules show that one of the most important duties imposed upon an advocate is to uphold the interest of the client fearlessly by all fair and honourable means. An advocate cannot ordinarily withdraw from engagement without sufficient cause and without giving reasonable and sufficient notice to the client. If he has reason to believe that he will be a witness in the case, the advocate should not accept a brief or appear in the case. In *V.C. Rangadurai v. D. Gopalan* [MANU/SC/0029/1978 : (1979) 1 SCC 308], A.P. Sen, J. outlined the importance of the relationship of an advocate with his client in the following words:



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"Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Lord Brougham, then aged eighty-six, said in a speech, in 1864, that the first great quality of an advocate was 'to reckon everything subordinate to the interests of his client'. What he said in 1864 about 'the paramountcy of the client's interest', is equally true today. The relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character requiring a high degree of fidelity and good faith. It is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. A lawyer when entrusted with a brief, is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust. The Appellant completely betrayed the trust reposed in him by the complainants."

14. While so, much has been said on the role of advocates, trust is always a two way road and clients are equally required to repose faith in their counsels. This is more so true in the case of law officers of the State and the standing counsels of public bodies, who have a greater duty towards their client being a public authority, and thereby to the larger public interest. The importance of advocates engaged by public bodies has also been gone into in the State of U.P. and Others v. U.P. State Law Officers Association and Others [(1994) 2 SCC 204], wherein it has been acknowledged that the role performed by advocates who are appointed as law officers and Standing Counsels, is essentially in the nature of protection of public interest and hence, their appointment is to be viewed with utmost seriousness and dignity. It has been observed thus:

"14. The relationship between the lawyer and his client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave his also, for the same reasons. He is under no obligation to give reasons for withdrawing his brief from his lawyer. The lawyer in turn is not an agent of his client but his dignified, responsible spokesman. He is not bound to tell the court every fact or urge every proposition of law which his client wants him to do, however irrelevant it may be. He is essentially an advisor to his client and is rightly called a counsel in some



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jurisdictions. Once acquainted with the facts of the case, it is the lawyer's discretion to choose the facts and the points of law which he would advance. Being a responsible officer of the court and an important adjunct of the administration of justice, the lawyer also owes a duty to the court as well as to the opposite side. He was to be fair to ensure that justice is done. He demeans himself if he acts merely as a mouthpiece of his client. This relationship between the lawyer and the private client is equally valid between him and the public bodies."

15. Over the years, the public sector has grown considerably, and with its extension and expansion, the number of lawyers engaged in the public sector has increased noticeably, so much so, that it can truly be said that to-day there is a public sector in the legal profession as well. The expansion of the public sector activities has necessitated the maintenance of a permanent panel of lawyers. Some of the lawyers are also in full-time employment of the public institutions as their law officers. The profile of the legal profession has thus undergone a change.

16. The Government or the public body represents public interests and whoever is in-charge of running their affairs, is no more than a trustee or a custodian of the public interests. The protection of the public interests to the maximum extent and in the best possible manner, is its primary duty. The public bodies are, therefore, under an obligation to the society to take the best possible steps to safeguard its interests. This obligation imposes on them the duty to engage the most competent servants, agents, advisors, spokesmen and representatives for conducting their affairs. Hence, in the selection of their lawyers, they are duty-bound to make earnest efforts to find the best from among those available at the particular time. This is more so because the claims of and against the public bodies are generally monetarily substantial and socially crucial with far-reaching consequences.

17. The mode of appointment of lawyers for the public bodies, therefore, has to be in conformity with the obligation cast on them to select the most meritorious. An open invitation to the lawyers to compete for the posts is by far the best mode of such selection. But sometimes the best may not compete or a competent candidate may not be available from among the competitors. In such circumstances, the public bodies may resort to other methods such as inviting and appointing the best available, although he may not have applied for the post. Whatever the



18. This Court in W.P. No. 32337/2012 in S. Ramasamy v. Secretary to Government, Public (Law Officers) Department, Chennai, in its order dated 15.02.2022 has elaborated the difficulties faced by the law officers as well as the pressures, which they undergo in the fulfilment of their responsibilities and has also issued detailed instructions as to the sanctioning and clearing of all the bills raised by all officers including the Councils, public entities and corporations/statutory bodies including bodies like the respondent herein. The said order and the observations made therein are squarely applicable to the facts of the present case.

<https://hcservices.ecourts.gov.in/hcservices/>



20. With the aforesaid observations, this writ petition stands allowed as prayed for. As a sequel, the respondent is directed to settle the fees payable to the petitioner, without insisting on production of daily orders, reflecting the counsel name, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dhk

To

The Secretary
National Medical Commission
Pocket-14, Sector - 8
Dwarka Phase - 01
New Delhi - 110 077.

+1cc to M/s.Shobana Krishnan, Advocate, S.R.No.26924

W.P. No. 20784 of 2021

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NSK/27/05/2022