The Deputy Registrar Co-operative Societies/Special officer, Ramanathapuram District Consumers' Co-operative Wholesale Stores Ltd., Ramanathapuram and C.G. Pethanaraj, Enquiry Officer Vs S. Jeyachandran

Court: Madras High Court (Madurai Bench)

Date of Decision: Dec. 1, 2011

Acts Referred: Constitution of India, 1950 â€" Article 21, 226

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: S. Seenivasagam, for the Appellant; F. Deepak, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice K. Chandru

1. This review application is filed by the Special Officer of Ramanathapuram District Consumers Co-operative Wholesale Stores Ltd.,

Ramanathapuram as well as the Enquiry Officer, appointed by them to conduct an enquiry against the respondent in the review application.

2. This review petition when it came up for admission on 29.11.2011, this Court directed the petitioners to serve notice on the counsel who had

appeared in the writ petition before this Court.

3. Before filing the review petition, as there was a delay, the petitioners filed a condonation of delay application seeking to condone the delay of 48

days in filing the review application. Though the condonation of delay application was filed in M.P.(MD)No.1 of 2009, the same was not listed and

subsequently on 16.02.2009 notice to the respondent was ordered. Accordingly, notice was served on the respondent on 30.07.2009. On behalf

of the respondent, a counsel has entered appearance. this Court by an order dated 25.11.2011 condoned the delay and directed the main review

petition to be posted.

4. When the matter came up on 29.11.2011, the Learned Counsel for the respondent did not appear, Mr. S. Seenivasagam, Learned Counsel for

the petitioners was directed to give a notice of hearing to the Learned Counsel respondent. Accordingly, notice of hearing intimating the respondent

was served and a proof has also been filed before this Court.

5. The short point that arises for consideration is whether the order dated 04.11.2008 made in W.P.(MD)No.9465 of 2008 is liable to be

reviewed by this Court.

6. The respondent, the original writ petitioner had four rounds of litigation before this Court. The first writ petition was filed by him was in W.P.

(MD)No.5210 of 2006 seeking to challenge his suspension, dated 02.12.2004, K. Suguna, J held that there was no question of interfering with an

order of suspension. However a direction was given to pay subsistence allowance.

7. Thereafter, he has filed W.P.(MD)No.7804 of 2006 seeking to challenge an order issued by the Deputy Registrar of Co-operative Societies,

dated 21.08.2006 with a further direction to postpone all further proceedings pending the criminal trial in Crime No.7 of 2004 registered under the

Prevention of Corruption Act, 1988. But however, this Court (K. Chandru, J) by an order, dated 13.07.2007 dismissed the writ petition as not

maintainable in the light of the Larger Bench decision of this Court reported in K. Marappan Vs. The Deputy Registrar of Co-operative Societies

and The Special Officer, Vattur Co-operative Agricultural Bank, .

8. The petitioner, thereafter, filed a revision application u/s 153 before the Joint Registrar of Co-operative Societies, Ramanathapuram. In the

meanwhile, when an enquiry notice was sent to appear for an enquiry, the petitioner once again came before this Court in W.P.(MD)No.7501 of

2008 seeking to challenge an order, dated 28.07.2008 stating that he sought permission to peruse the document and the same was not given and

therefore, the order was invalid. A learned Judge of this Court without deciding the maintainability of the writ petition allowed the writ petition and

without giving notice to the society and to the standing counsel Mr. Seenivasagam who had appeared in the earlier two writ petitions.

9. It is notice on Mr. N. Sathisbabu, took notice for the society and allowed the writ petition. It is alleged by the Learned Counsel that he was

never a counsel for the society.

10. The question as to whether the writ petition was maintainable or not was not even decided in the writ petition. The learned Judge had merely

stated that in view of the submission made by the alleged Learned Counsel for the society, the impugned order, dated 28.07.2008 was set aside

and the matter was remanded back to the Enquiry Officer with a direction to provide an opportunity in the enquiry. In case, the respondent refused

to co-operate in the enquiry proceedings, liberty was given to the society to proceed further and pass final orders.

11. The matter did not rest there. Subsequently, proceedings were initiated and it had resulted in a second show cause notice dated 03.10.2008

given to the respondent. The respondent after giving his explanation to the show cause notice filed the fourth writ petition being W.P.

(MD)No.9465 of 2008. In the writ petition, the prayer was to set aside the enquiry report, dated 03.10.2008. After setting aside the same, he

sought for recall of the cross examination of P.W. 1/complainant and to provide all the vital documents.

12. When the writ petition came up for hearing on 04.11.2008, once again the then Government Advocate (Mr. D. Sasikumar) took notice for the

first respondent in the writ petition without any authority and without being instructed to appear by the society. The learned Judge before whom,

the writ petition came up was not informed that such a writ petition was not maintainable. Oblivious of the Larger Bench decision cited supra, the

learned Judge passed the following order:

3. Heard the learned Government Advocate(Writs) for the first respondent.

4. Normally, during the pendency of departmental proceedings no writ would lie and the petitioner/delinquent should wait for the out coming of the

same. Here, it appears, the very defacto complainant was not examined. In fact, the petitioner''s prayer to quash the enquiry report cannot be

accepted as the earlier proceedings need not be set aside on the ground of technicalities.

5. Hence, in these circumstances, I would like to pass the following direction:

The petitioner shall file an application for cross-examining the defacto complainant and the same may be considered by the second respondent in

accordance with law in the interest of justice and thereafter, incorporate the same in his enquiry report with mutatis mutandis changes if any in his

enquiry report dated 03.10.2008.

13. It is by thus direction, the review petitioners were aggrieved and have filed the present review petition.

14. The contention raised in the review petition was that this Court did not follow the Larger Bench decision of this Court reported in K.

Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, as well as the

subsequent Full Bench of this Court in respect of reinterpretation of K. Marappan''s case. It was also contended that the respondent was bound

by the earlier orders and those orders will operate as res judicata. Hence no further writ petition was maintainable even before the completion of

an enquiry and final order was passed.

15. The contentions raised by the review petitioners are well founded. There is no scope for any one to go beyond K. Marappan''s case by either

refusing to follow or ignore the Larger Bench dictum by entertaining a writ petition from an employee of a co-operative society, despite the fact

that this Court had consistently held that such a writ petition was not maintainable.

16. Subsequent to the Larger Bench judgment, an attempt was made to reconsider Marappan''s case. The said judgment in T.K. Ananda Sayanan

Vs. The Joint Registrar co-operative Societies, Vellore Region and The Special Officer, Sinampattadai Primary Agricultural Co-operative Bank, .

The attempt so made was repelled by the Full Bench once again on the ground that even if a suspension or the prolonged suspension was alleged

to violate Article 21, the writ petition was not maintainable. Subsequently, in R. Rathakrishnan Vs. Deputy Registrar Co-operative Societies,

Dindigul reported in 2007 (4) LLN 868, another Full Bench reiterated the similar principle.

17. In the present case, not only the decisions against the respondent referred should have been brought to the notice of this Court by the counsel

for the petitioner in the writ petition. But an attempt has been made to get an order without even notice to the respondent society. The conduct of

the petitioner is reprehensible in securing such orders. It is not as if only the respondent should tell the Court the correct principle of law. Even the

Learned Counsel for the petitioner has an obligation to inform the Court the correct legal position of law notwithstanding that he was projecting the

case of a particular client. Ultimately, the legal obligation of a Learned Counsel is only to the Court. His duty to the client comes later. Ultimately, in

a conflict between the interest of the client and rule of law, it is the rule of law which must prevail.

18. In dealing with the duty of an Advocate towards Court, the Supreme Court had an occasion to consider the same in the judgment relating to

D.P. Chadha v. Triyugi Narain Mishra reported in (2001) 2 SCC 221 and in the following paragraphs in 22,24 and 26, it had spelt out as follows:

22. ...A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society

at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand, more so,

when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or

fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability

so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process

of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or

mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes

worse when a view of the law canvassed by him is not only unsupportable in law ....

24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In the adversarial system,

it will be more appropriate to say that while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction

of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice

may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the

movement of the chariot. As responsible officers of the court, as they are called - and rightly, the counsel have an overall obligation of assisting the

courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but

overzealousness and misguided enthusiasm have no place in the personality of a professional.

....

26. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law

settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of

court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides.

A counsel, being an officer of court, shall apprise the Judge with the correct position of law whether for or against either party.

19. Even bringing to the notice of the court the correct legal position, the counsel owes duty, which was not done in this case and with reference to

the role of lawyers in getting orders without citing binding precedents, it has been observed by the Supreme Court in State of Orissa Vs.

Nalinikanta Muduli, in paragraph 6 as follows:

6. It is strange that a decision which has been overruled by this Court nearly a quarter of a century back was cited by the Bar and the Court did

not take note of this position and disposed of the matter placing reliance on the said overruled decision. It does not appear that the decision of this

Court reversing the judgment of the High Court was brought to the notice of the learned Single Judge who was dealing with the matter. It is a very

unfortunate situation that Learned Counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the

learned Single Judge. Members of the Bar are officers of the court. They have a bounden duty to assist the court and not mislead it. Citing

judgment of a court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been

overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the

applicability of the later judgment to the facts under consideration on it. It also does not appear that Learned Counsel appearing for the respondent

before the High Court did not (sic) refer to the judgment of this Court. All this shows that the matter was dealt with very casually.....It was

certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the

petitioner before the High Court has been overruled by this Court. Moreover, it was the duty of the Learned Counsel appearing for the petitioner

before the High Court not to cite an overruled judgment. It is not that the decision is lost in antiquity. It has been referred to in a large number of

cases since it was rendered. It has been referred to recently in many cases e.g. S.M. Datta v. State of Gujarat, M.C. Abraham v. State of

Maharashtra, Union of India v. Prakash P. Hinduja and earlier in many oft-cited decisions in State of Haryana v. Bhajan Lal, Janata Dal v. H.S.

Chowdhary, Union of India v. W.N. Chadha and State of Bihar v. P.P. Sharma. We can only express our anguish at the falling standards of

professional conduct. Impugned judgment of the High Court is set aside. We remit the matter back to the High Court so that it can deal with the

petitions afresh and decide on merits taking into account the decision and all other relevant aspects of this Court. All the petitions before the High

Court which were disposed of by the impugned judgment shall stand restored to their original position to be dealt with in accordance with law.

20. Apart from these facts in W.P.(MD)No.7804 of 2006, dated 13.07.2007 this Court had clearly held that a writ petition was not maintainable

after referring to the Marappan''s case. In that case, the learned standing counsel of the society''s name (Mr. Seenivasagam) was noted. Hence, the

petitioner''s counsel was fully aware of the name of standing counsel for the society. Therefore, when he filed a third round of litigation in W.P.

(MD)No.7501 of 2008, he had a duty to inform this Court about the name of the Learned Counsel and asked permission to inform the counsel to

take notice. Even assuming an order came to be passed in W.P.(MD)No.7501 of 2008, dated 26.08.2008 that should have put an end to the

litigation because the learned Judge had clearly said if the respondent did not participate in the enquiry proceedings the review petitioners were at

liberty to complete the enquiry proceedings and pass final orders in accordance with law. Therefore, there was no further scope for the

respondent/petitioner to stall the enquiry even at the stage of show cause notice. This was in spite of the fact that he had already submitted an

explanation.

21. The last writ petition in the series of attack made by the petitioner who filed successive writ petitions came up before the another learned

Judge, the petitioner''s counsel was duty bound to have informed that Judge, the legal principles involved and must had shown him the previous

orders obtained by him which had attained finality. On the other hand, he some how wanted to secure an order from this Court and to stall the

enquiry proceedings which were initiated as early as in the year 2004. Even after seven years, the petitioner who is a salesman of a co-operative

society was able to file four successive writ petitions to stall an enquiry into his misconduct through such writ petitions are clearly not maintainable.

22. As to whether the writ petition can be allowed without notice to parties or whether any direction can be issued without notice to the parties

came to be considered by this Court in a catena of decisions. In this context, it is necessary to refer to three Division Bench judgments of this

Court:

22.1. In 1998 (1) L.W.605 [Director of Handlooms and Textiles Vs. K. Venkatesan] the Division Bench held that any decision of court without

adherence to proper procedure was illegal and directions or conditions imposed during admission was neither proper nor permissible. In

Paragraphs 16, 17 and 21, the Division Bench held as follows:

16. A catena of decisions have been rendered highlighting the cardinal duty in extending the reasonable opportunity before a decision is taken

prejudicial to the interests of a party.

17. The nature of relief prayed for in the writ petition is not one if not granted, would put the petitioner in imminent danger or injury or hazard to

paramount public interests. It is not a case in which holding of elections had been notified to be held by the time and date already fixed. The order

nowhere hints out the competing claims of hurry and hearing. Rather, no reason is found in the order, even for granting the relief. It is not an order

where by following the earlier binding decisions of Courts, the petitioner gets allowed. Even under such circumstances, it is done by a court only

after notice to the respondents or by their Standing Counsel taking notice in Court. Allowing a writ petition straightaway when it comes up for

admission is therefore an improper disposal, even though the power exercisable is under Art.226 of the Constitution of India. The principles of fair

play and justice are not excluded, when this power is invoked. It has become necessary to elaborate upon this point because this is not the first

case wherein a writ petition without issue of notice to respondents and without hearing them, gets ordered as it comes up for admission. There are

instances in which writ petitions are dismissed in admission stage, but directions are issued for compliance, which virtually results in petitioner

getting the desired relief. This sort of directions or conditions imposed in admission stage, but technically concluding the order is dismissed or

ordered accordingly, would not also be proper or permissible, because to the extent relief is extended by such manner of disposal leads to

respondents without notice, being compelled to do certain acts, about which they have not been heard at all.

....

21.It is, therefore, held that under no circumstances, a writ petition filed under Art.226 of the Constitution could be straightaway allowed without

ordering notice to affected respondents or without hearing their counsel who may on instructions participate in the proceedings by taking notice for

their clients. Equally issuing directions or imposing conditions while dismissing writ petitions in admission stage cannot be done, without hearing

respondents who are to abide by the conditions. Exercise of Constitutional power in this fashion being inappropriate this Court is put to the

unpleasant task of amplifying and enlightening as to what ought not to have been done, and hence remit the matter, so that the proper procedure

required in law has to be followed, before the writ petition is disposed of. Any decision of court without adherence to proper procedure being

illegal, though the respondents are before this Court, of whom two of them are appellants, it had still necessitated in reviving the writ petition for

adherence to established procedure.

22.2. In the second decision reported in 1996 W.L.R. 360 [RM. Muthuveerappan, etc., Vs. Government of Tamil Nadu], wherein, the Division

Bench held that there was no justification for a direction to the Government to consider a fresh representation without notice to the parties. In that

case, the petitioner on one ground of litigation after the order attained finality, he sent another representation and came up before the Court for the

second round and the same was allowed by a learned Judge. The Division Bench took an exception to the said order and in paragraph 16 had

observed as follows:

16....Thus, there can be no doubt whatever that the order passed in W.P.No.9947 of 1985 was illegal and ineffective. Further, it is seen from the

records that the prayer in the writ petition was only to quash the order dated 25.10.1983 in G.O.Ms.No.2245. Instead of considering that prayer

and the eligibility of the petitioner for the grant thereof, the learned Judge had taken upon himself to direct the petitioner before him to make a fresh

written representation within a particular period and directed respondents 1 and 2 therein to consider the same and pass orders. It should not be

forgotten that the petitioner had no right whatever to make another representation and the respondents had no duty to consider the same. Even

before the said writ petition was filed, the petitioner had several opportunities not only to make written representations, but also to appear in

person before the concerned authority along with his counsel and make a representation. It was only after considering all those representations, the

order dated 25.10.1983 was passed by the Government. In fact, if the learned Judge had given notice to the respondents it would have been

established before him by production of the records that the petitioner''s representations dated 16.11.1983 and 14.12.1983 made to the

Government and the Chief Minister were forwarded to the High Court and a rejection thereof was recommended by the High Court. There was no

justification, therefore, for a direction in that writ petition to the Government and the High Court to consider a fresh written representation which

may be made thereafter by the petitioner therein. In any event, the order made in that writ petition being illegal, cannot be taken advantage of by

the petitioner herein.

22.3.The very same question once again came up before this Court in The Managing Director, Tamil Nadu Housing Board, Chennai Vs. V.P.R.

Raja and others reported in 2007 Writ.L.R. 153 (T) presiding over the Division Bench A.P. Shah, C.J., (as he then was) after referring to the

above decisions held that such directions at the admission stage was impermissible.

23. In the light of the above, not only this review petition is liable to be allowed but also the respondent/petitioner must be imposed with cost.

Hence, the review petition stands allowed and the order dated 04.11.2008 in W.P.(MD)No.9465 of 2008 will stand recalled and the W.P.

(MD)No.9465 of 2008 will stand dismissed. The respondent is imposed with a cost of Rs.5,000/- payable to the counsel for the review

petitioners for unnecessarily dragging the review petitioner society and also for misleading this Court by obtaining orders without informing this

Court about the correct legal position and getting orders without due notice to the society and attempt to file the third and fourth writ petitions

where in the second writ petition it was held that the writ petition was not maintainable.