

(2015) 07 PAT CK 0060

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 12851 of 1993

Shravan Kumar and Others

APPELLANT

Vs

Patna Regional Development
Authority and Others

RESPONDENT

Date of Decision: July 15, 2015

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: Hemant Kumar Srivastava, J

Bench: Single Bench

Advocate: Rajiv Nayan Singh and Nand Gopal Mishra, for the Appellant; Rajendra Pd. Singh, A.C. Nirankar and Sanjay Prakash Verma, Advocates for the Respondent

Final Decision: Dismissed

Judgement

Hemant Kumar Srivastava, J.

This petition under Article 226 of the Constitution of India has been filed by the petitioners against the respondents for issuance of command to the respondents to pay the professional fee to the petitioners for conducting the cases and doing the legal work for the respondents.

2. The brief fact of the case is that the petitioners are practising advocates of this Court. The petitioner No. 1 was engaged by the respondents to appear on behalf of Patna Regional Development Authority (hereinafter referred to as "PRDA") before the High Court in all cases and, accordingly, he was informed by the Law Officer of PRDA vide letter No. 09 dated 04.01.1982 (Annexure-1) and furthermore, he was also asked through the said letter to give his consent and disclose his fee. The petitioner No. 1 started doing legal work for the PRDA on the terms and conditions as prevalent at that time. The rate of fee prevalent at that time was at the rate of Rs. 110/- per appearance. The petitioner No. 1 time and again requested the PRDA to increase his fee but no order was passed by the PRDA. Subsequently, petitioner No.

1 was designated as Senior Advocate by the High Court with effect from 17.07.1989 and the information regarding his designation was given to the PRDA by the petitioner No. 1 with request to revise his fee at the rate of Rs. 440/- per appearance. Petitioner No. 1 also intimated to PRDA that petitioner No. 2 shall work as a junior counsel at the prevalent rate of panel lawyer of PRDA. The then Vice Chairman and successive Chairman requested the petitioners to continue the work and assured them to increase their fee. The petitioners submitted their bills in the month of April 1990 for the period 18.07.1989 to March 1990 charging the fee at the rate of Rs. 440/- for petitioner No. 1 and at the rate of Rs. 110/- for petitioner No. 2 but their bills were never cleared though they represented time and again before the respondents and thereafter, they preferred the present writ petition.

3. Counter affidavit was filed on behalf of respondents and it has, specifically, been pleaded that petitioner No. 1 was working as junior advocate of Shri Yadunath Sharan Singh, advocate (as His Lordship then was) and after elevation of His Lordship Shri Yadunath Sharan Singh to the Bench of this Court, the PRDA authorized the petitioner No. 1 to work on behalf of PRDA purely on temporary basis and an order to this effect was issued on 04.01.1985. The petitioner No. 1 was requested through the aforesaid letter to give his consent and also rate of fee so that the same be decided by the PRDA but petitioner No. 1 never informed the PRDA about the rate of his fee. It has further been pleaded that Shri Yadunath Sharan Singh, advocate (as His Lordship then was) was charging his fee at the rate of Rs. 110/- per appearance in per case and after engagement of petitioner No. 1 as lawyer of PRDA, the petitioner No. 1 submitted bill at the rate of Rs. 110/- per appearance in per case. Furthermore, it has been pleaded that a sum of Rs. 67,500/- was paid to the petitioner No. 1 as advance on various dates and subsequently, he submitted his bill for 320 dates which was calculated and sanctioned at the rate of Rs. 110/- which came to Rs. 35,200/- and accordingly, the aforesaid amount of Rs. 35,200/- was adjusted towards his bill and remaining amount is still pending with the petitioner No. 1. On 11.09.1989, petitioner No. 1 sent an application to the Vice Chairman of PRDA stating therein that his fee should be Rs. 440/- per appearance as he has already been designated as senior advocate. The aforesaid letter of petitioner No. 1 was placed in the meeting of PRDA Board and thereafter, the work of petitioner No. 1 was not found satisfactory and entire panel of advocates of PRDA was cancelled vide decision dated 30.04.1990 though it was decided to take services of panel lawyers including petitioner No. 1 till preparation of new panel of lawyers and furthermore, it was decided that decision in respect of increase of fee shall be taken later on. Similarly, petitioner No. 2 was authorized to charge her fee as junior advocate at the rate of Rs. 32/- per appearance. Furthermore, it has been pleaded that vide letter No. 6911 dated 06.09.1993 and letter No. 8551 dated 27.12.1993 the petitioner No. 1 was requested to return the records relating to cases of PRDA but petitioner No. 1 did not return the records of cases of PRDA on pretext of pendency of his bills.

4. This writ petition was admitted by this Court for hearing on 07.10.1996 and since then the present writ petition remained pending for hearing. However, the learned counsels of both the sides were heard by me.
5. Learned counsel appearing for the petitioners submitted that several important issues are involved in this matter. He further submitted that it has to be seen by this Court as to whether an advocate designated as senior advocate by this Court becomes senior advocate for all means and purposes or not and whether he is entitled to charge his fee as senior advocate or not and furthermore, whether a senior advocate requires an assistant advocate or not.
6. Learned counsel for the petitioners submitted that as soon as an advocate of this Court is designated as senior advocate and he is engaged by any person for appearance before this court, the said advocate shall be deemed to be entrusted as a senior advocate. It is further contended by him that admittedly, petitioner No. 1 was authorized to work for PRDA in the year 1982 and as soon as petitioner No. 1 was designated as senior advocate by this Court, information regarding his designation as senior advocate was given to PRDA claiming the fee of a senior advocate in the light of letter dated 04.01.1982 (Annexure-1) as the aforesaid letter had given liberty to petitioner No. 1 to disclose his fee. He further submitted that even after above stated information, the PRDA took the services of the petitioner No. 1 and, therefore, the aforesaid fact clearly goes to show that the PRDA permitted the petitioner No. 1 to charge his fee as senior advocate at the rate of Rs. 440/- per appearance. He further submitted that petitioners worked for PRDA till the year 1993 as it is evident from Annexure-B series because by Annexure-B series, the PRDA demanded all the records related to PRDA from the petitioners. It is further contended by him that petitioner No. 1 submitted his bill for 320 dates at the rate of Rs. 440/- and the PRDA allowed the advance of Rs. 67,584/- at the rate of Rs. 440/- because there was provision to make advance payment up to 50% of the pending bills and the aforesaid fact clearly goes to show that initially, the fee of petitioner No. 1 was paid at the rate of Rs. 440/- but subsequently, the PRDA stopped the remaining fee of the petitioner No. 1 with mala fide intention. He further submitted that similarly, the petitioner No. 2 was paid her fee at the rate of Rs. 32/- instead of Rs. 110/- because at the relevant time, the junior advocate was charging his fee at the rate of Rs. 110/- as admitted by the PRDA in its counter affidavit.
7. Learned counsel appearing for the petitioners referred the decision of [Govt. of Tamil Nadu and another Vs. R. Thillaivillalan](#), AIR 1991 SC 1231 in which almost a similar question arose before the Hon"ble Apex Court and the Apex Court directed the State Government to make a lump sum payment of rupees one lac. Learned counsel for the petitioners submitted that in view of the above stated judgment, this writ petition is maintainable and this Court may direct the PRDA to make payment of dues of the petitioners.

8. Learned counsel appearing for the PRDA refuted the above stated submissions arguing that there was fixed rate for making payment of fee to senior and junior advocate of the PRDA. He further submitted that as a matter of fact, Shri Yadunath Sharan Singh, advocate (as His Lordship then was) was advocate of respondent No. 1 (PRDA) and the petitioner No. 1 was assistant advocate of Shri Yadunath Sharan Singh, advocate (as His Lordship then was) but Shri Yadunath Sharan Singh, advocate (as His Lordship then was) was elevated to this Hon'ble Court as a judge and thereafter, petitioner No. 1 made a request before the respondent No. 1 for his engagement as a panel lawyer of respondent No. 1. It was further submitted that respondent No. 1 authorized the petitioner No. 1 to work as a panel lawyer on 04.01.1982 and also requested the petitioner No. 1 to disclose his rate of fee so that same could be decided by the Board. It was further submitted that petitioner No. 1 worked for respondent No. 1 and charged the fee at the rate which was prevalent at that time. It was further contended that an advance of sum of Rs. 67,500/- was paid to petitioner No. 1 and after adjusting the aforesaid advance, his bill was cleared. It was further contended that on 11.09.1989, petitioner No. 1 sent an application praying therein for enhancement of his fee at the rate of Rs. 440/- per appearance and the aforesaid application was placed in the meeting of Board and it was decided vide resolution No. 16 of 90 dated 30.04.1990 to cancel the existing panel of lawyers and decision regarding enhancement of fee of the panel advocates was kept pending and subsequently, the fee of panel lawyers was enhanced by the Board with effect from 07.02.1995 and admittedly, the name of petitioner No. 1 from panel of lawyers had already been cancelled. So far as petitioner No. 2 is concerned, she was never appointed as panel lawyer of respondent No. 1 and as a matter of fact, her services was taken by the petitioner No. 1 himself as assistant advocate and name of petitioner No. 2 was never included in panel lawyers of respondent No. 1. It was further contended on behalf of the respondents that no doubt, the respondent No. 1 paid fee to petitioner No. 2 at the rate of Rs. 32/- per appearance but as a matter of fact, at the relevant time, P.R.D.A. used to make payment of fee to an assistant advocate of a panel lawyer on the above stated rate and, therefore, mere making payment to an assistant of panel lawyer is not itself an indication to show that the name of assistant of a panel lawyer was also included in the panel. It was further contended on behalf of respondents that no doubt, petitioner No. 1 made request for enhancement of his fee but his aforesaid request was turned down by the Board and, therefore, even if it assumed that Chairman or Vice Chairman assured the petitioner No. 1 to enhance his fee, then also, the aforesaid assurance is of no help to the petitioner No. 1 as only Board was competent to take decision on the point of enhancement of fee of panel lawyers. It was further contended on behalf of the respondents that in the present writ petition, there is nothing to show that any rule or any provision of law was violated by the respondents and therefore, this writ petition is not maintainable and liable to be dismissed.

9. In this writ petition, certain facts are admitted. It is an admitted position that Shri Yadunath Sharan Singh, advocate (as His Lordship then was) was a panel lawyer of respondent No. 1 and petitioner No. 1 was assistant of Hon"ble Mr. J. Yadunath Sharan Singh. Subsequently, after elevation of Hon"ble Mr. J. Yadunath Sharan Singh to this court as Judge, the petitioner No. 1 was temporarily authorized to work as an advocate of respondent No. 1 and requested to give information regarding his consent and rate of fee which is evident from perusal of Annexure-1 to the writ petition. It is also an admitted position that petitioner No. 1 continuously worked as panel lawyer of respondent No. 1 and in the meantime, petitioner No. 1 was designated as senior advocate by the High Court. No doubt, it is the case of the petitioners that petitioner No. 1 had made request several times before the respondent No. 1 for enhancement of his fee but the materials available on the record show that on 11.09.1989, petitioner No. 1 gave a petition claiming enhancement of fee at the rate of Rs. 440/- per appearance. Therefore, it is evident from the aforesaid petition that petitioner No. 1 was working till 11.09.1989 and was, at least, entitled to charge his fee till 11.09.1989. Furthermore, Annexure-A to the counter affidavit reveals that in the proceeding dated 30.04.1990 of the Board, the issue of enhancement of fee of panel lawyers was placed and the Board cancelled the panel of lawyers which was prevalent at that time and kept the issue of enhancement of fee pending till preparation of new panel of lawyers and the Board also authorized the Vice Chairman to take services of lawyers of old panel till preparation of panel of new lawyers. The claim of the petitioners is that even after cancellation of panel of lawyers vide resolution No. 30.04.1990, the services of petitioners was taken and petitioners appeared in the cases of respondent No. 1 and also attended the meetings which is evident from Annexure-4 to the writ petition. Admittedly, the resolution No. 16/90, by which the panel of lawyers was cancelled and the point of enhancement of fee of panel lawyers was kept pending, was passed on 30.4.1990 as evident from perusal of Annexure-A to the counter affidavit but Annexure-5 to the writ petition shows that meeting of panel lawyers and officials was held on 15.05.1990 and the said meeting was attended by the petitioners as lawyers of P.R.D.A. Furthermore, Annexure-5 reveals that issue regarding clearance of bills of panel lawyers was discussed in the said meeting. Therefore, from combined perusal of Annexure-A and Annexure-5 goes to show that even after cancellation of panel lawyers, petitioners worked for P.R.D.A. knowing this fact that the issue of enhancement of their fee had been kept pending. Therefore, the aforesaid fact goes to show that petitioners agreed to work for P.R.D.A. on the previous rate till the final decision in respect of enhancement of their fee. It is an admitted case of the petitioners that the P.R.D.A. never enhanced their fee prior to 07.02.1995 and for the first time, P.R.D.A. enhanced the fee of panel lawyers with effect from 07.02.1995 and it is also an admitted case of petitioners that before enhancement of fee of panel lawyers, their names were struck off from panel of lawyers of P.R.D.A. Furthermore, I find that there is nothing on the record to show that petitioner No. 2 was appointed as panel lawyer of P.R.D.A. rather it is

the case of petitioners itself that petitioner No. 1 authorized the petitioner No. 2 to work as his assistant advocate. Furthermore, there is nothing on the record to show that any impaneled lawyer of P.R.D.A. was entitled to charge a different fee from other panel lawyers on the ground of being senior to them. Therefore, it is apparent from the materials available on the record that there was equal fee of all the panel lawyers except those who were authorized by the panel lawyers to work as their juniors. Moreover, if petitioner No. 1 was not satisfied with his fee, he had every right to give up the briefs of P.R.D.A. but he continued the work for P.R.D.A. knowing this fact that the issue of enhancement of fee was pending before the Board. Therefore, the aforesaid fact goes to show that petitioner No. 1 was aware of this fact that neither Chairman nor the Vice Chairman in their individual capacity was competent to enhance the fee of a panel lawyer and it was Board to decide the aforesaid question. Admittedly, the Board decided to enhance the fee of panel lawyers with effect from 07.02.1995.

10. Although, petitioners have pleaded that decision of Board was mala fide and with intent to deprive the petitioners from the benefit of enhanced fee, the Board chose to implement the enhanced fee with effect from 07.02.1995 but in my view, there is nothing on the record to prove that the Board had some biasness against the petitioners and moreover, before taking the aforesaid decision, the petitioner No. 1 had already disengaged from the panel of lawyers of P.R.D.A.

11. Here, I would like to say that during pendency of this writ petition, the respondents, specifically, pleaded that a cheque of Rs. 45,000/- and odd was given to petitioner No. 1 in lieu of his pending bills and, therefore, it appears that pending bills of the petitioners have already been cleared by the concerned authorities. However, if petitioners are not satisfied with the amount paid to them, they may raise their claim before appropriate forum in accordance with law because the aforesaid dispute cannot be adjudicated without taking evidence of the parties which is not possible in this writ petition.

12. On the basis of aforesaid discussion, I am of the opinion that this writ petition does not have any merit and, accordingly, this writ petition stands dismissed.