

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI**

+WRIT PETITION NO.21105 OF 2022

% 26.08.2022

Syed Mohammed Hussain, s/o. Syed Vasi Fasli Hyder,
Aged about 56 years, occu:Service r/o. H.No.5-10-180/C,
Hill Fort Road, Basheerbagh, Hyderabad and others.

..... Petitioners

and

\$ The District Legal Services Authority,
Rep.by its Chairman-cum-Prl.District & Sessions Judge
at Sanga Reddy, Sanga Reddy district and others.

.....Respondents

!Counsel for the petitioners : Sri B.Venkateswarlu

Counsel for the Respondents : Sri Jukanti Anil Kumar representing the
State Legal Services Authority for
Respondents 1 and 2

Counsel for the Respondent : Sri Asma Raheem for respondent no.3

<Gist :

>Head Note:

? Cases referred:

2018 (2) ALD 648 DB
(1987) 4 SCC 391= AIR 1987 SC 2235.
AIR 1972 SC 1089
(1999) 6 SCC 237
1998 (1) ALD 595= 1998 (1) ALT 212
2022 (2) SCC 301

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION NO.21105 of 2022

Between :

Syed Mohammed Hussain, s/o. Syed Vasi Fasli Hyder,
Aged about 56 years, occu:Service r/o. H.No.5-10-180/C,
Hill Fort Road, Basheerbagh, Hyderabad and others.

..... Petitioners

and

The District Legal Services Authority,
Rep.by its Chairman-cum-Prl.District & Sessions Judge
at Sanga Reddy, Sanga Reddy district and others.

.....Respondents

JUDGMENT PRONOUNCED ON : 26.8.2022

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI

1. Whether Reporters of Local Newspapers may : Yes
be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals : :
3. Whether Their Ladyship/Lordship wish to : No
see fair Copy of the Judgment ? : :

**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI**

WRIT PETITION NO.21105 OF 2022

ORDER: *(per Hon'ble Sri Justice P.Naveen Rao)*

Petitioners herein instituted O.S.Nos.72, 73, 74, 75 and 76 of 2009 in the Court of VII Additional District and Sessions Judge-cum-Judge, Family Court, Medak at Sanga Reddy, praying to declare the plaintiffs as absolute owners of suit schedule properties and to direct the defendants to deliver the possession of the suit schedule properties to the plaintiffs. Plaintiffs were represented by the General Power of Attorney Holders. The GPA holders applied to the District Legal Services Authority to exempt them from paying the court fee. The Secretary, District Legal Services Authority, Medak at Sanga Reddy issued certificates of exemption on 24.09.2009. The certificates were presented before the Court below for exemption from payment of court fee. Sixteenth plaintiff died. Syed Farhatullah Sohail, Syed Akbar Zamani @ Farzana Khan and Syed Shafakahullah Khaleel were impleaded as legal heirs of the deceased 16th plaintiff as per the orders of the Principal District & Sessions Judge, Medak at Sanga Reddy. Aggrieved thereby, revision petitions were preferred. This Court directed those persons to be impleaded in the array as defendants instead of 16th plaintiff. Accordingly, they were added as

defendants. As defendants they filed written statement in all the five suits. These defendants filed application under Order VII Rule 11 of the Code of Civil Procedure, 1908 for rejection of the plaint on the ground that by playing fraud and misrepresentation plaintiffs obtained exemption certificates. The civil Court dismissed the said application, granting them liberty to go in appeal before the Executive Chairman or the Chairman of the Legal Services institution if they are aggrieved by the certificate issued by the Member Secretary. Taking clue from the said observation of the lower Court, the said defendants preferred appeals to the Chairman, District Legal Services Authority. By common order dated 05.03.2022 the appeals preferred by the defendants were allowed and court fee exemption certificates issued on 24.09.2009 were cancelled and direction was issued to the plaintiffs to pay the requisite court fee. Challenging the said decision, this writ petition is filed.

2. We have heard the learned counsel Sri B.Venkateshwarlu for petitioners, and learned standing counsel Sri Jukanti Anil Kumar, representing the State Legal Services Authority and the learned counsel Sri Asma Raheem for the party respondent.

3. Learned counsel for the petitioners contended that the exemption certificates were issued on 24.09.2009 under old Rules. The old Rules not provided for remedy of appeal against exemption

certificate issued by the Secretary, District Legal Services Authority. The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 ('2010 Regulations') were notified in the year 2010 and were operative prospectively from the date of the notification. These Regulations for the first time provided remedy of appeal against granting or refusing to grant exemption from payment of court fee. As regulations are prospective in operation effected from 09.09.2010, the said Regulations cannot be applied to entertain the appeal and decide the appeal. He would therefore submit that the appellate authority has no jurisdiction to decide the appeal and, therefore, void *ab initio*. He would further submit that even assuming that the appellate authority was competent to decide the appeal under 2010 Regulations, as certificate was issued on 24.09.2009, whereas the appeal was preferred in the year 2021 i.e., after 12 years, the appellate authority erred in entertaining such appeal after long lapse of time and ought to have dismissed the appeal on the sole ground of delay and laches. Even if the provision to prefer appeal does not envisage of limitation the appeal has to be preferred within a reasonable time and 12 years cannot be said as reasonable time to entertain the appeal and decide the validity of certificate issued in the year 2009.

4. According to the learned standing counsel, it is not necessary that 2010 Regulations to be retrospective. Though for the first time

remedy of appeal is provided under 2010 Regulations, a person aggrieved by the exemption granted earlier can prefer appeal under the provisions of the Regulations and, therefore, the appeals preferred by the respondents were validly entertained by the Chairman and looked into the entitlement of the applicants for exemption from payment of court fee.

5. According to the learned standing counsel, second proviso to Regulation 20 of the Telangana State Legal Services Authority Regulations 1996 empowers the Chairman of the District Legal Services Authority to scrutiny the entitlements granted under the scheme. He therefore submitted that even assuming that the Regulations 2010 are prospective and not applicable, the Chairman has got inherent powers to review the decision made by the Secretary and if it is found on such review that the persons claiming legal aid are not entitled to legal aid, he can review the decision and withdraw the exemption granted earlier.

6. He would further submit that chapter-IV of the Legal Services Authorities Act, 1987 deals with entitlement to legal aid. Section 12 of the Act prescribes criteria for giving legal services and Section 13 of the Act deals with entitlement of legal services. According to Section 13, persons who satisfy all or any of the criteria specified in Section 12 should be entitled to receive legal services provided that the

concerned authority is satisfied that such person has *prima facie* case to prosecute or to defend. It requires submission of an affidavit by a person claiming legal aid as to his income. According to the learned standing counsel in the instant cases, no such affidavits were filed by the claimants, but affidavits were filed by the GPA Holders in their individual capacity explaining their financial status and vaguely submitting that plaintiffs cannot afford to pay the stamp duty. There was no assertion on the income status of the plaintiffs and unless plaintiffs clearly depose explaining their income status, it was not obligatory for the competent authority to grant legal aid. He would further submit that on filing application and on mere filing of affidavit also does not automatically entitle granting of legal services unless the authority is satisfied whether a person requires legal aid. The Secretary, District Legal Services Authority has not properly verified the entitlement of the persons for legal aid and more particularly exemption from payment of court fee and, therefore, Chairman, District Legal Services Authority has rightly set aside the decision of the Secretary.

7. He would submit that the fact that the plaintiffs have engaged private Lawyers to prosecute their cases would show that they have sufficient means to pursue the litigation and it clearly appears that by playing fraud and misrepresentation, they have obtained exemption certificates from payment of court fee. He would further

submit that what is envisaged is refund of court fee and not exemption.

8. According to the learned counsel for party respondent, if fraud or misrepresentation is established in securing legal aid, limitation and delay do not apply to review such earlier legal decision and on review of the earlier decision, the Chairman has rightly decided against granting legal aid in the form of exemption from payment of court fee and as there is no illegality committed by the Chairman, District Legal Services Authority, the order does not call for interference by this Court.

9. Having regard to the submissions made by the learned counsel, the claim of petitioners require consideration on two aspects:

1) whether the appeal under 2010 Regulations against decision made on 24.09.2009, prior to coming into force of the 2010 Regulations, is maintainable;

2) Assuming that those regulations are not applicable to the decision made prior to coming into force of the Regulations, whether the Chairman of the District Legal Services Authority has got inherent powers to rescind earlier exemption granted in favour of the petitioners. Both aspects are discussed hereunder.

10. The Preamble to the Constitution of India proclaims justice, social, economic and political, liberty of thought, expression, belief, faith and worship and equality of status and of opportunity. These are the fundamental principles and goals set to ourselves by the Constitution of India, on which the edifice of our democracy is established and is operational. Though every citizen has an inviolable right to assert his rights but reality is millions of Indians do not have the means to assert their right, seek legal remedy. Article 39A mandates the State to promote justice on a basis of equal opportunity and free legal aid. Its primary objective is that no citizen should be denied right to seek legal remedy due to poverty/social condition. To give effect to this avowed objective, the Legal Services Authorities Act, 1987 was enacted. The Act aims to provide legal service to conduct a case or other legal proceeding before a Court or other authority or Tribunal and to give legal advice on any legal matter.

11. Section 12 of the Act prescribes criteria to extend legal services. A person fulfilling the criteria prescribed in Section 12 is entitled to receive legal services (Section 13). Apart from other criteria a person should have an annual income of less than Rs.1,00,000/- to claim legal aid service and should make out a *prima facie* case to prosecute or defend. The person seeking legal aid must give an affidavit about

his income subject to the satisfaction of the concerned authority. (Sections 12(h) and 13). Regulation 5 of the 2010 Regulations prescribes format of such affidavit. Regulation 7 provides mechanism to scrutiny and to evaluate the application for legal services. Clause 7(5) provides for remedy of appeal against a decision or order of the Committee on issues concerning legal aid service. According to Regulation 6, if free legal service is obtained by furnishing incorrect or false information or in a fraudulent manner, the legal service would be stopped forthwith and the expenses incurred can be recovered.

12. Cumulatively, the Scheme of the Act envisages free legal aid services to the needy persons belonging to weaker sections of the society/marginalized sections, who cannot afford to fight litigation on their own. It is a service aimed to provide legal aid to a targeted group of citizens. A person seeking to avail this service must fulfil the criteria and should abide by the requirements of the scheme. As it is a service, to earn the legal aid, compliance to criteria is must and should receive strict assessment. As the burden of asserting entitlement is on the person seeking legal aid service, he must be fair, honest and should correctly disclose his social status and financial position.

13. Petitioners were extended legal aid service in the form of exemption of Court fee in five suits. On a review undertaken, based on an appeal filed under Regulation 7(5) of 2010 Regulations, they were found not eligible to receive legal aid.

14. It is vehemently contended that the petitioners were granted legal aid prior to notification of 2010 Regulations. For the first time, 2010 Regulations envisaged remedy of appeal to the Chairman, District Legal Services Authority against a decision made by the Secretary of District Legal Services Authority and it is prospective in operation. Therefore, appellate authority has no power to entertain appeal against a decision made earlier to 2010 Regulations. At first blush, this submission appears formidable. However, on a deeper consideration it has no merit.

15. Extending legal aid is a benevolent scheme provided to the needy citizens to enable them to assert their right through legal process. It cannot be abused/misused by any person. It is intended to help a person fight litigation unhindered by his social status and financial constraints and not to dole out legal aid service even when person has means to fight litigation. In order to check false claims by greedy persons and that benefits of the Act are extended only to the most deserving person, Regulation 6 of the 2010 Regulations vests power to undertake review, to stop legal aid service and to recover

expenses incurred, if extending legal aid to a person is found to be undeserving. Having regard to purpose and objectives of the legal aid service Scheme, power under Regulation 6 can be invoked at any time. Therefore, Regulation 6 does not impinge power to undertake review of extension of legal aid service, once granted, to any period.

16. As legal aid service is a continuous process till the beneficiary gets relief, the plea that remedy of appeal provided by 2010 Regulations do not apply is stated to be rejected. It is also pertinent to note that Regulation 7(5) of 2010 Regulations do not provide period of limitation. No doubt a remedy of appeal is carved out for the first time, but its application is not restricted to any period. Therefore, it cannot be said that appeal is not maintainable.

17. Further, if a person secures legal aid service by playing fraud or misrepresentation or furnishes false information, he cannot take shelter under technicalities, such as, delay/laches, that 2010 Regulations are prospective, to enjoy the benefit to which he is not entitled. Delay and laches cannot hinder to review a decision to extend legal aid service if same was secured by playing fraud/misrepresentation/false information.

18. In the case on hand also, legal aid service was provided in the form of exemption from payment of court fee and the suits are still pending. Therefore, plea of delay and laches is not attracted.

19. Even otherwise, legal aid service is a continuous process extended till a person gets his legal remedy and his problem is solved. It can be widened in a given case or curtailed or withdrawn. Therefore, entitlement to legal aid can be reviewed at any time either to extend additional service or to curtail or withdraw the service. Therefore, delay and latches are not attracted and plea of delay and latches deserves to be rejected.

20. A careful reading of Sections 12 and 13 make it abundantly clear that only if a person fulfils the eligibility criteria prescribed in Section 12, he is entitled to legal aid and determination of eligibility perforce can be reviewed and reassessed. To achieve the objectives of Article 39A and the Act, reading down the provisions in Sections 12 and 13 in the above manner is imminent. Further, a person getting the legal aid by non-disclosure of true facts/ suppression of relevant facts cannot be permitted to plead delay and latches to cling on to illegal benefit.

21. Further, Andhra Pradesh State Legal Services Authority Regulations, 1996 were in force when legal aid was extended to petitioners. Regulation 20 deals with scrutiny of applications. Second proviso vests power in the Chairman of the District Authority to control and modify the orders granting legal aid. Word 'modify' is elastic enough to mean to change, alter, vary, substitution of one

thing for another. Thus, even assuming that 2010 Regulations are prospective, this provision is elastic enough to vest power to review the entitlement of petitioners for legal aid.

22. In the case on hand, 16 plaintiffs filed five suits praying for declaration of title and recovery of possession of large extent of land. The affidavits, as required by Regulation 19 of 1996 Regulations was filed by General Power of Attorney holders. They disclosed their financial position. One of them is also a plaintiff. He is Doctor by profession, but claimed his annual income as Rs.48,000/-. Another GPA shown as a businessman claimed to be earning only Rs.42,000/- per annum. Regulation 19 requires each of the persons claiming legal aid under Section 12 (h) to file affidavits giving details of the properties possessed by them and their annual income from all sources. No such affidavits were filed and no details were furnished. Party respondent asserted that one plaintiff is a Director of a company by name, Grand India Builds Worth Developers Private Limited, Hyderabad. The relevant information is enclosed to the counter. This fact is not denied.

23. From the cause title in the suit plaint, it is seen that plaintiffs 1 to 3 and 5 claimed to be in public service, plaintiffs 7 and 8 in private service, plaintiffs 9 to 16 claimed to be household. 4th plaintiff occupation disclosed as business and 6th plaintiff occupation

disclosed as Medical Practitioner. Plaintiffs 1 to 3, 5, 7 and 8 have not disclosed what was the service they were doing and how much salary and remuneration they were earning. Plaintiff no.4 also has not disclosed what business he was doing. Plaintiffs 9 to 11 showed their status as household, but have not disclosed the status of their spouses. Plaintiffs 12 to 16 only shown that their husbands are no more. They have also not disclosed financial status of their families.

24. We have called for the records of the impugned proceedings. From the office notes on the applications submitted on behalf of plaintiffs in five suits, initially objection was raised by the office of DLSA on not filing individual affidavits by plaintiffs, not filing individual affidavits by all GPA holders and that GPA holders were doing business and that petitioners were not being covered under any other clause of Section 12 of the Legal Services Authorities Act, therefore not entitled to legal aid. Standard reply given was '**the above laid objection complied herewith. Hence resubmitted**'. Except this statement, they have not filed any other document. The office accepted the same without blinking its eyes and recommended to grant exemption from court fee. From the record, it is apparent that no individual affidavits were filed. Only two GPAs out of four filed their personal affidavits wherein they only vaguely stated that the plaintiffs have no financial means to pay court fee. There is nothing on record to show how the office was satisfied with the reply to its

objections. No detailed reasons are recorded as to how the authority was satisfied on the eligibility of plaintiffs to seek exemption from court fee. More so, when earlier objection was against granting exemption. It appears matter was routinely dealt with to grant exemption of court fee of Rs.19,66,676/- in O.S.No.72 of 2009, Rs.6,54,426/- in O.S.No.76 of 2009, Rs.9,01,301/- in O.S.No.75 of 2009, Rs.35,95,271/- in O.S.No.73 of 2009. Details of fifth suit are not available. These aspects can also be looked into under Section 12 and/or Regulation 19 of the 1996 Regulations.

25. Even assuming that 2010 Regulations are not applicable to challenge a decision made prior to 2010 Regulations, it is settled principle of law that once it is recognized that a decision made by a statutory authority is referable to a statutory provision vesting in him power to review a decision made earlier, reference to a wrong provision/ another provision do not vitiate such decision.

26. It appears that they have sought legal aid only to avoid payment of huge court fee and their claim that they have no means to bear the court fee is not supported by any material brought on record.

27. In **Kopparthi Krishna Murthy vs. District Legal Services Authority, Eluru and others**¹, the Division Bench of this Court held that the Legal Services Authority has no competency to issue certificate exempting from payment of court fee. Division Bench held:

“29. It is suffice for our present discussion to note that even under regulation 25(b)(ii)(a) of the Andhra Pradesh State Legal Services Authority Regulations, 1996 what is prescribed is only the payment to the entitled person, of the court fee and not the grant of a certificate for exemption from payment of court fees. Therefore, if at all, the petitioner, if he satisfies the criteria prescribed under Section 12 of the Act, could have sought only the payment of court fees and not a certificate of exemption from payment of court fees.

32. Irrespective of whether the regulations framed by the State Authority under Section 29-A (1) of the Legal Services Authorities Act, 1987 is in excess of the power conferred or not, what is contemplated by regulation 25(b)(ii)(a) is only “the payment to the entitled person of court fee”. There is no provision (1) either in the Andhra Pradesh Court Fees and Suits Valuation Act, 1956; or (2) in the Code of Civil Procedure; or (3) in the Legal Services Authorities Act, 1987; or (4) in the Rules framed by the Central or State Government; or (5) in the regulations framed by the Central or State Authorities, for the grant of a certificate of exemption from payment of court fees. If at all, the Legal Services Authorities, until the validity of regulation 25(b)(ii)(a) is tested, can order payment of court fee to the entitled person, but not order the grant of a certificate of exemption from payment of court fee, as it would be an encroachment into the territory occupied by a State Enactment. The District and Mandal Legal Services Authorities shall keep the statutory scheme in mind while dealing with the applications of this nature.

35. After the advent of the Legal Services Authorities Act, 1987, the Government issued a notification in G.O.Ms. No. 73 Law dated 19-06-2007, exempting persons entitled and provided with Legal Services under Sections 12 and 13 of the 1987 Act, from payment of court fees. This Government order was issued again in exercise of the powers conferred by Section 68 of the A.P. Court Fees and Suits Valuation Act, 1956. But this Government Order also made it clear that in the event of the persons provided with legal services succeeding in the proceedings, the amount of court fees shall be recovered by the State Government from the party ordered by the Court in the decree to pay the same.

36. But without understanding the scope and effect of such notifications, the District Legal Services Authorities were issuing certificates of exemption, in terms of 1980 Rules. This necessitated the Member Secretary of the Andhra Pradesh State Legal Services Authority to issue a circular bearing Roc. No. 5772/APSLSA/LSW/2010, dated 21-08-2010. It was made clear in the said circular that the Legal Services institutions such as the Mandal/District/State Legal Services Authorities have no power or authority to issue a certificate of exemption from payment of court fees. Therefore, all that could be done by a person is to approach the concerned Legal Services

¹ 2018 (2) ALD 648 DB

Authority and seek the provision of legal services. If the concerned Legal Services Authority is satisfied that such a person satisfies the criteria specified in Section 12 of the Legal Services Authority Act, 1987, then it may be open to the concerned authority to invoke the stipulations contained in the Government order G.O.Ms. No. 73 Law dated 19-06-2007 issued in exercise of the powers conferred by Section 68 of the A.P. Court Fees and Suits Valuation Act, 1956, subject, however, to the conditions stipulated in the said Government Order.”

28. In view of the opinion expressed by the Division Bench even issuing the certificate of exemption of Court fee is ex-facie illegal, without jurisdiction of competence.

29. In **M/s.Navya Infracon Projects (I) Private Limited vs. State of Andhra Pradesh (W.P.No.9091 of 2016 dated 22.12.2016)** another Division Bench suggested to plug the loopholes in the Regulations to avoid misuse of provision of legal aid. The Division Bench suggested that if benefit of exemption of court fee is extended to a person, he must be told to avail the services of legal aid counsel. The Division Bench observed:

“29. ... We, however, feel that the Legal Services Authorities of the States of Telangana and Andhra Pradesh may examine the possibility of plugging the loopholes in the ‘Regulations’ in order to ensure that the munificent provisions of the Act and the Regulations are not misused by clever, ingenious and incorrigible litigants by indulging in speculative litigation. Perhaps such misuse may be arrested (i) by strict adherence to assessment of prima facie case by the scrutinizing committee and (ii) by incorporating a Regulation to the effect that those who receive the benefit of payment of Court fee under Section 12(h) of the Act by the State has to necessarily engage the services of the Panel Lawyers maintained by the Legal Services Authority concerned only. This, we reiterate, is only a suggestion for consideration by the Legal Service Authorities of both the States and the same shall not be understood as a direction.”

30. Herein, petitioners have engaged services of a private lawyer to prosecute five suits, this writ petition and also before the Chairman in the proceedings leading to passing impugned order. This would show they have sufficient means to prosecute litigation.

31. Writ remedy is an equitable and discretionary remedy. In a given circumstances of a case, the writ Court may refuse to grant relief even when a case is made out where justice and larger public interest require denial of such relief vis-à-vis grievance of an individual; where no prejudice is caused; where no useful purpose would be served in remanding the matter for fresh consideration; where the course adopted by an authority is in accord with the statutory mandate; where on admitted and indisputable facts, there is only one conclusion. *Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved* [**RASHPAL MALHOTRA v. SATYA RAJPUT MRS² & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH v. K G S BHATT³**].

32. It is settled principle of law that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is some violation of procedural safeguards or where accepting the plea

² (1987) 4 SCC 391= AIR 1987 SC 2235.

³ {AIR 1972 SC 1089

of petitioner and setting aside the order would result in restoring an illegal action/decision. The writ Court need not grant a futile writ. The Court also keeps in mind larger public interest while granting or refusing to grant a relief. The queue of precedential decisions is long and crowded. Suffice to note few watermark decisions.

32.1. In **M.C. MEHTA v. UNION OF INDIA AND OTHERS**⁴, Bharat Petroleum Corporation Limited (BPCL) assailed cancellation of retail petroleum outlet on the ground that prior to such cancellation, no notice or opportunity was afforded to BPCL. Earlier the very same piece of land was allotted to Hindustan Petroleum Corporation Limited (HPCL). This allotment was cancelled, and allotment was in turn made to BPCL. By order dated 10.03.1999, the plot was restored to HPCL withdrawing from BPCL. Both have contended that principles of natural justice violated when allotment was cancelled. To the extent relevant the observations of Hon'ble Supreme Court are as under:

“15. It is true that whenever there is a clear violation of the principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this Court because the orders of the Department were consequential to the orders of this Court. The question however is whether the Court in exercise of its *discretion* under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no *de facto prejudice* is established. On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10-3-1999 order will restore an earlier order dated 30-7-1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10-3-1999 is set aside as being in

⁴ {(1999) 6 SCC 237}

breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the latter order of this Court dated 7-4-1998?

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17. The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. ***The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.***

(Emphasis supplied)

32.2. In **KALASAGARAM, SECUNDERABAD CULTURAL ASSOCIATION**

Vs STATE OF ANDHRA PRADESH⁵, learned single Judge of this Court,

as he then was, considered the very issue and held as under:

“14. Even if it is to be assumed that the impugned order suffers from some infirmities, should the Court grant relief to the petitioner and issue writ as prayed for? Whether the petitioner is entitled for any relief from this Court? It is settled law that this Court does not issue writs in exercise of its jurisdiction under Article 226 of the Constitution of India, as a matter of course. The Court exercising jurisdiction under Article 226 of the Constitution of India is also a Court of equity. The relief to be granted in exercise of such power is an equitable one. Mere infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of Mandamus. ***The Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and now subtleties invented to evade law***’ (See **A.P. STATE FINANCIAL CORPORATION v. GAR RE-ROLLING MILLS, (1994) 2 SCC 647 at 662. Writ of Mandamus is highly discretionary remedy as the aggrieved person has to not only establish the infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of a judicially enforceable right. The existence of a right is the foundation of the jurisdiction of Court to issue a writ of Mandamus.**

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⁵ {1998 (1) ALD 595= 1998 (1) ALT 212}

16. ***Be that as it may, the Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the Government or statutory authorities to act in an illegal manner.*** The respondent-Municipal Corporation ought not to have granted lease of the said land to the petitioner herein as it is reserved as open space and for a specified purpose, namely, play grounds, perks. The land reserved for such purpose cannot be even allowed to be utilised for any other public purpose. Land reserved for a park and play ground can never be allowed to be converting to be utilised even for any other public purpose (See *Bangalore Medical Trust v. S. Muddappa*, (1991) 4 SCC 54 : AIR 1991 SC 1902. It is not as if an equal extent of a land was made available in the same layout for the play grounds and parks by allotting the land in question to the petitioner.”

(Emphasis supplied)

32.3. In **Chairman, State Bank of India and another v.**

M.J.James⁶, the Hon’ble Supreme Court held as under:

“42. The relief as granted certainly has serious financial repercussions and would also prevent the appellants from taking further action, which aspect has been noticed, though not finally determined in the impugned judgment [*SBI v. James*, 2008 SCC OnLine Ker 759] . The studied silence of the respondent, who did not correspond or make any representation for nine years, was with an ulterior motive as he wanted to take benefit of the slip-up though he had suffered dismissal. ***The courts can always refuse to grant relief to a litigant if it considers that grant of relief sought is likely to cause substantial hardship or substantial prejudice to the opposite side or would be detrimental to good administration.*** [*R. v. Restormel Borough Council, ex p Corbett*, 2001 EWCA Civ 330] This principle of good administration is independent of hardship, or prejudice to the rights of the third parties and does not require specific evidence that this has in fact occurred, though in relation to withholding relief some evidence may be required. Relief should not be denied for mere inconvenience but when the difficulty caused to the decision-maker approaches impracticability or when there is an overriding need for finality and certainty. [*R. v. Monopolies & Mergers Commission, ex p Argyll Group Plc.*, (1986) 1 WLR 763 (CA)].”

(Emphasis supplied)

33. The following principles can be deduced from the treasure trove of precedents, three of which are referred to above:

⁶ 2022 (2) SCC 301

- (A) In exercise of power of judicial review under Article 226 of the Constitution of India, it being discretionary and equitable remedy, Writ Court may decline to grant the relief to a petitioner, in the given facts of a case, even if legal flaw in the decision of competent authority is made out.
- (B) Even when there are procedural infirmities in taking a decision by statutory authority affecting the petitioner adversely, Court need not grant the relief prayed for, if setting aside the decision assailed would result in restoring another illegal decision.
- (C) Even when there are procedural infirmities vitiating a decision of competent authority, it need not be set aside on that ground and petitioner has to prove prejudice caused to him and that if opportunity was afforded to him he could have persuaded the competent authority to take a different view and such is possible and permissible.
- (D) Writ remedy is highly discretionary remedy and to grant such a writ, the petitioner has to not only establish infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of judicially enforceable right.

34. Guided by the above principles, if we look at the facts of the case, petitioners intended to avail legal aid service to exempt payment of huge Cozurt fee. It is a benevolent service intended to be extended to a needy person to enable him to prosecute legal remedy notwithstanding his social status and financial constraints. No right, much less a vested right is available to a person to seek legal aid service. As analysed in the earlier paragraphs decision to exempt from payment of Court fee is vitiated on several counts. By virtue of impugned decision, no legally enforceable right of the petitioners is impinged. On the contrary, setting aside the impugned order would result in restoring another illegal order. Therefore, even assuming that there was flaw in the decision, Writ Court do not subscribe to granting relief on that ground. Further, as held by Division Bench of this Court in **Kopparthi Krishna Murthy**, the Legal Services Authority has no competence to issue certificate of exemption from payment of Court fee. Thus, looking from any aspect, petitioners have to fail.

35. For all the aforesaid reasons, the writ petition is dismissed. No costs. Miscellaneous applications, if any pending, stand closed.

P.NAVEEN RAO, J

DR. G.RADHA RANI, J

Date: 26.08.2022

Note : L R copy to be marked—YES

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**HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HONOURABLE DR. JUSTICE G.RADHA RANI**

WRIT PETITION NO.21105 OF 2022

Date: 26.08.2022

Kkm/tvk