IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
01.03.2023	03.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos.19905, 20129 of 2020 and 298 of 2021

WP No.19905 of 2020

V.Ayyadurai ... Petitioner

versus

1.The State of Tamil Nadu,
rep. By Chief Secretary,
St.George Fort, Chennai 9

2.The Additional Chief Secretary to Government,
Highways & Minor Ports (HV2) Department,
St.George Fort, Chennai 9

3.A.Karthik I.A.S,
Principal Secretary to Government,
Highways & Minor Ports (HN2) Department,
St.George Fort, Chennai 9

4.Tamil Nadu Road Development Co.
rep. By its Chairman & Managing Director,
No.171, 2nd Floor, TNMB Building,
South Kesavaperumal Street,
Greenways Road, Raja Annamalaipuram,
Chennai 28 ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus calling for the records comprised in G.O.(D)No.182, HW and MP (HF2) Department 21.12.2021 and to quash the same and consequently direct the

respondents to pay a sum of Rs.3,94,47,680/- together with interest at the rate of 12 percent for the period beyond six months of final fee bill dated 06.02.2018 i.e. From 06.08.2018 till the date of payment after deducting Rs.5,00,000/- already paid and received under protest.

(Prayer amended vide order dated 27.9.2022 in WMP No.23068/2022)

WP No.20129 of 2020

V.Ayyadurai ... Petitioner

versus

1.The State of Tamil Nadu,
rep. By Chief Secretary,
St.George Fort, Chennai 9

2.The Principal Secretary to Government,
Public (Law Officers) Department,
St.George Fort, Chennai 9

3.The Additional Chief Secretary to Government,
Highways & Minor Ports (HV2) Department,
St.George Fort, Chennai 9

4.The Superintendent Engineer,
National Highways – Chennai circle,
TNSCC Complex, Jai Nagar
206/N, Jawaharlal Nehru Salai,
Opp.to Mufussil Bus Stand,
Chennai 106

5.The Divisional Engineer,
National Highways,
Arumbakkam, Chennai 106.

6.Vijaynarayanan,
Advocate-General of Tamil Nadu,
High Court Buildings,
Chennai 104.

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus calling for the records comprised in G.O.(D)No.29, Highways and Minor Ports (HV2) Department dated 01.02.2021 as passed by the Principal Secretary to Government Highways and Minor Ports (HV2) Department/R3 and to quash the same consequently directing the respondents 1 to 5 to sanction and pay my professional fees of Rs.11,73,750 as claimed in my fee bill dated 12.03.2018 together with interest at 12 percent p.a. Thereon for the period beyond 6 months from the date of my fee bill dated 12.09.2018 till the date of payment by fixing out time limit for such payment.
(Prayer amended vide order dated 25.11.2022 in WMP No.7340/2021)

WP No.298 of 2021

V.Ayyadurai ... Petitioner

versus

1.The State of Tamil Nadu,
Principal Secretary to Government,
Home (Transport-V) Department,
St.George Fort, Chennai 9

2.T.S.Manimaran, B.Sc.,
Deputy Secretary, Home (Transport-V) Department,
St.George Fort, Chennai 9

3.Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Periyamet, Chennai 7

4.Additional Commissioner of Police (Traffic)
Poonamallee High Road,
Vepery, Chennai 7 ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus directing the respondents to pay the professional fees as claimed in fee bill dated 12.03.2018 for Rs.45,43,868.75 np together with interest @ 12% p.a. With effect

from 12.09.2018 till the date of payment by fixing the outer limit of time for making such payment.

For the Petitioner : Mr.V.Ayyadurai,
Party-in-person

For the Respondents : Mr.J.Ravindran,
Additional Advocate-General,
assisted by
Mr.T.Seenivasan,
Special Government Pleader
for respondents in WP No.298/2021
respondents 1 to 3 in WP No.19905/2020
respondents 1 to 5 in WP No.20129/2020

Mr.M.Sivavarthanan,
for the fourth respondent
in WP No.19905 of 2020

Mr.C.Vigneswaran,
for the sixth respondent
in WP No.20129 of 2020

COMMON ORDER

All these writ petitions have been filed by the petitioner, Mr. V. Ayyadurai, a Senior Advocate of this Court who was also formal Additional Advocate General. Originally in the nature of a mandamus seeking a direction against the respondents to pay his final fee bill as raised in the three writ petitions.

2. The Government had passed G.O.Ms. No. 339/Public (Law Officers) Department dated 08.05.2018, wherein the fees for the Law Officers appearing before Arbitrators/Arbitral Tribunal and High of Madras both at Principal Seat and Madurai Bench and in other original side matters had been determined.

3. Consequent to the introduction of this Government Order, further Government Orders had been passed fixing the fees of the petitioner, and the relief sought in the writ petitions had been amended from a writ of mandamus to a writ of certiorari mandamus.

4. In W.P.No. 19905 of 2020, the writ petitioner had sought interference with G.O.(D).No.182, Highways and Minor Ports (HF2) Department dated 21.12.2021, by which in accordance with the aforementioned G.O.Ms.No. 339, the fees of the petitioner was determined.

5. In W.P.No. 20129 of 2020, the petitioner had sought to quash G.O.(D) No. 29 Highways and Minor Ports (HV2) Department dated 01.02.2021 by which the fees of the petitioner had been determined.

6. In W.P.No. 19905 of 2020, the petitioner had appeared on behalf of the Highways and Minor Ports (HV2) Department in an arbitration case where the claim was Rs. 616,66,83,700/-. The petitioner had appeared up to the stage of filing proof affidavit of R.W.1. He had raised a fee bill of 25 % out of 1% of the claim of the contractor namely Rs. 1,54,09,250/-.

7. On 08.05.2018, the Government had passed G.O.Ms.No. 339 by fixing the fee structure in case of pending arbitration cases, civil suits and other original side matters.

8. On 23.07.2019, G.O.(Ms) 486 Public (L.O) Department was passed wherein the expression 'award/decree' was amended to 'value of suit'.

9. W.P.No. 20129 of 2020:

i) The petitioner had appeared in an arbitration claim for a value of Rs.15,64,98,528/- till the closing of evidence. He had claimed a bill of 75 % out of 1 % of the claim of the contractor amounting to Rs.11,73,750/-.

ii) Thereafter, G.O.(D) 29 was passed and a sum of Rs. 5,00,000/- was sanctioned towards the fees of the petitioner and it was remitted by the respondents by NEFT.

10. W.P.No. 298 of 2021:

The petitioner had appeared on behalf of the Transport Department in an Arbitration for which the claim was Rs. 72,70,19,151/-. He had appeared up to the stage of filing of proof affidavit for R.W.1.

11. He claimed 62.5 % out of 1 % of the claim of the contractor amounting of Rs. 45,43,868/-. The petitioner was paid in accordance with G.O.Ms. No. 182 dated 12.09.2022 and in accordance with G.O.Ms. 339, dated 08.05.2018.

12. The reliefs in the writ petitions were amended seeking certiorari against the Government Orders so introduced by the Government.

13. A counter affidavit had been filed on behalf of the respondents, wherein, the fact that the petitioner had appeared for the

cases was not disputed but it was stated that during the pendency of the arbitration proceedings G.O.Ms. 339 was passed on 08.05.2018 fixing the fees of Law Officers of the High Court of Madras and it was stated that the said rule was applicable to all pending arbitration matters. Since it was claimed that the arbitration cases referred to in the three writ petitions were also pending, it was stated that the petitioner could be paid the amount as determined in G.O.Ms.No. 339.

14. It was stated that the petitioner will have to abide by the fees determined in the Government Order and that the claim made for the sums as stated by the writ petitioner are exorbitant and therefore it was stated that the writ petition should be dismissed.

15. The writ petitioner appeared as party in person.

16. He pointed out the facts and stated that in W.P.No. 19905 of 2020, he had raised a fee bill of 25 % of 1 % of the claim of the contractor which amounted of Rs. 1,54,09,250/-.

17. He further stated that in W.P.No. 20129 of 2020 he had raised a claim of 75 % of 1 % of the claim of the contractor amounting to Rs.11,73,750/-

18. In W.P.No. 298 of 2021, he had raised a bill for 62.5 % out of 1 % of the claim of the contractor amounting to Rs. 45,43,868/-.

19. He stated that the bills raised were extremely reasonable and in consonance with the structure of the fees to be paid even as determined in the Legal Practitioners Fees Rules, 1973.

20. The petitioner relied on the following judgments:

i) Commissioner of Income Tax (Central-I), New Delhi vs Vatika Township Pvt. Ltd., 2015(1) SCC 1.

General principles concerning retrospectivity

27. A legislation, be it a statutory Act or a statutory rule or a statutory notification, may physically consists of words, printed on papers However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation . A legislation is not just a series of statements, such as one finds in a work of fiction/non-fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of "interpretation of statues". Vis-a-vis ordinary prose, a legislation differs in its provenance, layout and features as also in the implication as to its meaning that

arise by presumptions as to the intent of the marker thereof.

28. Of the various the guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness" which must be basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new

duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect, unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

ii) . AIR 1970 SC 1636

Nani Gopal Mitra vs. State of Bihar

"5. It was in the first place contended on behalf of the appellant that s. 5 (3) of the Act was repealed by Parliament while the appeal was pending in, the High Court and the presumption enacted in s. 5 (3) of the Act was not available to the prosecuting authorities after the repeal of the sub-section on December 18, 1964. The argument was stressed. that it was not open to the High Court to invoke the presumption contained in s. 5(3) of the Act in considering the case against the appellant. It was also said that the presumption contained in s. 5(3) of the Act was a rule of procedural law and not a rule of substantive law and alterations in the form of procedure are always. retrospective in character unless there is some good reason or other why they should not be. It was

therefore submitted that the judgment of the High Court was defective in law as it applied to the present case the presumption contained in s. 5(3) of the Act even after its repeal. We are unable to accept the contention put forward on behalf of the appellant as correct. It is true that as a general rule alterations in the, form of procedure' are retrospective in character unless there is some good reason or other why they should not be. In James Gardner v. Edward A. Lucas(1), Lord Blackburn stated: "Now the general rule, not merely of England and Scotland, but, I believe, of every civilized nation, is ex. pressed in the maxim, Noya constitutio futuris formam imponere debet non prateritis'--prima facie, any new law that is made affects future transactions, not past ones. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to shew it, might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame a new procedure, that [1878] III App.Cass.582 at p.603 instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether

civil or criminal."

In the King v. Chandra Dharma (1), Lord Alverstone.C.J. observed as follows:

"The rule is clearly established that, apart from any special circumstances appearing on the face of the statute in question, statutes which make alterations in procedure are retrospective. It has been held that a statute shortening the time within which proceedings can be taken is retrospective (The Ydun, 1899 p. 236.), and it seems to me that it is impossible to give 'any good reason why a statute extending the time within which proceedings may be taken should not also be held to be retrospective. If the case could have been brought within the principle that unless the language is clear a statute ought not to be construed so as to create new disabilities or obligations, or impose new duties in respect of transactions which were complete at the time when the Act came into force, Mr.Compton Smith would have been entitled to succeed; but when no new disability or obligation has been created by the statute, but it only alters the time within which proceedings may be taken, it may be held to apply to offenses .completed before the statute was passed. That is the case here."

It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz. that a statute should not be, so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at

the time the amending Act came into force--(See In re a Debtor(1) and In re Vernazza(3).The same principle is embodied in s. 6 of the General Clauses Act which is to the following effect:

"6. Effect of repeal. 'Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or here-after to be made, then, unless a different intention appears, the repeal shall not--

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

6. The effect of the application of this principle is that pending cases although instituted under the old Act but still pending are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure. In the present case, the trial of the appellant was taken up by the Special Judge, Santhai Parganas when s. 5 (3) of the Act was still operative. The. conviction of the appellant was pronounced on March 31, 1962 by the Special Judge,

Santhai Parganas long before the amending Act was promulgated. It is not hence possible to accept the argument of the appellant that the conviction pronounced by the Special Judge, Santhai Parganas has become illegal or in any way defective in law because of the amendment to procedural law made on December 18, 1964. In our opinion, the High Court was right in invoking the presumption under s. 5 (3) of the Act even though it was repealed on December 18, 1964 by the amending Act. We ,accordingly reject the argument of the appellant on tiffs aspect of the case."

(1976) 3 SCC 37,

iii) Sri Vijayalakshmi Rice Mills, New Contractors Co. and ors. vs. State of Andhra Pradesh,

"5. Mr. Nariman appearing on behalf of the appellants has laid great emphasis on the word "substituted" occurring in clause 2 of the Rice (Andhra Pradesh) Price Control (Third Amendment) order, 1964 and has urged that the claim of the appellants cannot be validity ignored Elaborating his submission, counsel has contended that as the prices fixed by the Government are meant for the entire season, the appellants have to be paid at the controlled price as fixed vide the Rice (Andhra Pradesh) Price Control (Third Amendment) order, 1964, regardless of the dates an which the supplies were made. We cannot accede to this contention. It is no doubt true that the literal meaning of the word "substitute" is "to

replace' but the question before us is from which date the substitution or replacement of the new Schedule took effect. There is no deeming clause or some such provision in the Rice (Andhra Pradesh) Price Control (Third Amendment) order, 1964 to indicate that it was intended to have a retrospective effect. It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospectivity, may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disability or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force. (See Mani Gopal Mitra v. The State of Bihar."

iv) (2008) 12 SCC 112,

State of Punjab and ors. vs. Bhajan Kaur and Ors.

"13. No reason has been assigned as to why the 1988 Act should be held to be retrospective in character. The rights and liabilities of the parties are determined when cause of action for filing the claim petition arises. As indicated hereinbefore, the liability under the Act is a statutory liability. The liability could, thus, be made retrospective only by reason of a statute or statutory rules. It was required to be so stated expressly by the Parliament. Applying the principles of interpretation of statute, the 1988 Act cannot be given retrospective effect, more

particularly, when it came into force on or about 1.07.1989.

15. Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

16. It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication."

v) Mr. S. Ramasamy …. Petitioner vs. The State of Tamil Nadu Represented by its Chief Secretary to Government, WP No.32337 OF 2012

"15.Before parting with the case, considering the plight of the Law Officers, the following directions are issued: -

(2) In particular, the highest Law Officers, viz., Advocate General and Additional Advocate General, who are required in emergent situation to appear before the Court to defend the interest of the State, the officials shall not insist on the Government Order requesting him to appear and also shall not deny the claim of fee or special fee whatsoever claimed by them in terms of the instructions issued by the Chief Secretary to Government.

(5) The Law Officer shall be provided the initial fees and after completion of the litigation the final fee. The

said fee shall be paid immediately and it shall not be unduly delayed.

(9) The Government at any cost shall not reduce the fee than one was fixed at the time of appointing a Law Officer, more particularly, due to the change of regime. As stated earlier the Government is continuing machinery and defending the case of the Government and of the people is a continuing affair and therefore, the Law Officer shall not be slighted down and they shall be paid with utmost respect which they deserve for the meritorious efforts put by them."

vi) 2009(2) SCC 589, Panchi Devi vs. State of Rajasthan and Ors.

"A delegated legislation, as is well known, is ordinarily prospective in nature. A right or a liability which was created for the first time, cannot be given a retrospective effect. Furthermore, the intention of the State in giving a prospective effect to that rule is clear and explicit; the amendment in Rule 22A was also to be effective from 1.9.1982 itself. No relief can be granted to the appellant herein on the basis of the decision in Prabhati Devi (supra). The said decision did not lay down the correct law. Article 14 of the Constitution of India has a positive concept. Equality, it is trite, cannot be claimed in illegality. Even otherwise the writ petition as also the review petition have rightly not been entertained on the ground of delay and laches on the part of the appellant."

vii) (2016) 4 Supreme Court Cases 234

3. Per contra, it was the stand of the contesting respondent that as on the date when he was appointed, the Rule envisaged that to claim a right for a preferential appointment, person appointed should have completed only two months of service and not one year of service as envisaged under the amended Rule, and as introduced by proviso 2 to Rule 51-A of the Kerala Education Rules.

4. The learned Judges of the High Court of Kerala applying first principles and also the language employed in the proviso to Rule 51-A, has come to the conclusion that the contesting respondent had a vested right to seek a preferential appointment, since the amended proviso to Rule 51-A has come into effect only w.e.f. 27.04.2005.

5. In our view, the learned Judges of the High Court of Kerala have not committed any illegality or error, which would call for our interference. Accordingly the appeal stands dismissed.

viii) Judgment dated 30.11.2022 in W.A.No.2579 of 2022 in the State Industries Promotion Corporation of Tamil Nadu Ltd. vs. V.Ayyadurai.

"6. We do not find any merits on the said submissions of the learned Counsel for the appellants. It is an admitted case of the appellant SIPCOT that the writ petitioner, being an Additional Advocate General at the relevant point of time and Senior Counsel, it has hired the services of the writ petitioner/1st respondent herein in an arbitration proceedings in M/s.Siemens Limited Vs. SIPCOT to make a counter claim for a sum of Rs.19,74,70,000/- towards differential land cost together with sales tax. Therefore, we are of the view that the writ petitioner is entitled to make the professional bill at the rate of 1% of the said counter claim to the tune of

Rs.19,74,700/- as per the G.O.Ms.No. 124, Highways and Minor Ports (HN2) Department, dated 30.07.2013. It is also the claim of the writ petitioner/1st respondent herein that as per the judicial precedent fixing 1% of the claim amount as professional fee even in an arbitration case was also in owe. Therefore, there was no any reply made by the appellant to the number of reminders made by the writ petitioner. Finally, partiallyaccepting the claim of the writ petitioner, the appellant has also remitted a sum of Rs.9,25,000/- by NEFT transfer to the credit of his bank account after deducting Rs.75,000/- towards TDS at the prevalent rate of 7.5%. Therefore, when the claim made by the writ petitioner for payment of his professional fee was partially accepted and that there was no reply whatsoever given to the writ petitioner refuting his claim, after filing the writ petition before this Court, it is not open to the appellant SIPCOT to deny the said claim without any justification or any reason. It is also made clear that when the writ petitioner has sent his claim for disbursement of his professional fee at the rate of 1% on the basis of G.O.Ms.No.124, Highways and Minor Ports (HN2) Department, dated 30.07.2013, we do not find any good reason to accept the contentions made by learned counsel for the appellants that they are entitled to apply the G.O.Ms.No. 339 dated 08.05.2018, which came into force after the said award came to be passed. In view of all the above, we do not find any error or infirmity in the order passed by the learned Single Judge."

21. Pointing out the ratio laid down in the judgments, the petitioner contended that there cannot be introduction of a new policy in a pending matter.

22. He also stated that the law on the date of the transaction should be taken into account and there cannot be retrospective application of a newly introduced policy.

23. He also stated that introduction of a new Government Order cannot be made applicable to completed transaction.

24. He also stated that the law on the date of the cause of action alone must be taken into consideration

25. He further stated that fee fixed on the date of the appointment engaging Law Officer alone must be taken into consideration.

26. He also stated that delegated legislation cannot be taken into consideration.

27. He also pointed out the judgment of the Hon'ble Division Bench cited supra wherein, again directions has been given for determination of the fee payable to an Additional Government Pleader.

28. Learned Additional Advocate General on the other hand contended that the fees as claimed by the petitioner was extremely exorbitant and therefore the Government Order had brought in G.O.Ms.No. 339 on 08.05.2018.

29. It is the contention of the learned Additional Advocate General that the Government Order is applicable to the petitioner's cases and as a matter of fact stated the former Additional Advocate General had also received the fees as determined under the Government Order.

30. It is also contended that the amount as sanctioned had been paid to the petitioner herein.

31. It was also stated that therefore the petitioner cannot seek additional privilege.

32. Leaned Additional Advocate General relied on the following judgments:

i) 2000(6) SCC 293, Kerala State Electricity Board and anr. vs. Kurien E.Kalathil and Ors.

"10. We find that there is a merit in the first contention of Mr. Rawal. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order

to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies."

ii) 2017 SCC OnLine All 3297, Santdeen Yadav vs. State of U.P.

"10.Apart from this the engagement of State counsels and their payment of renumeration is indicated in para 6.04 of the Legal Remembrancer's Manual as applicable in the State of U.P. but they are set of instructions that cannot be placed at par with statutory rules as involved in the present case. Consequently, we hold that in relation to such claim of entitlement of emoluments under the U.P.Revenue Code Rule:- 2017 can be raised through writ petition for consideration of such claim."

iii) 1995 Supp(4) SCC 577, Improvement Trust, Ropr vs. S.Tejinder Singh Gujral and ors.

"3.We find that the High Court had allowed the writ petition filed by the respondent advocate for the recovery of his professional fees f the petitioner. No writ petition can lie for recovery of an amount under a contract. The High Court was clearly wrong in entertaining and allowing the petition. There is no separate law for the advocates. In the circumstances, we set aside the order passed by the learned Single Judge on 26-7-1991 and dismiss the writ petition. The result is that the letters patent appeal pending before the Division Bench of the High Court would also come to an end. The appeal is allowed accordingly. In the circumstances of the case, there will be no order as to costs."

33. Pointing out the ratio laid in the above judgments, learned Additional Advocate General stated that the writ court cannot determine the fees payable to the petitioner and it would be the civil forum which can examine the claims of the petitioner herein.

34. Learned Additional Advocate General therefore questioned the maintainability of the writ petition and stated that the writ petitions should therefore be dismissed.

35. I have carefully considered the arguments advanced.

36. The following facts cannot be denied or disputed :

i. The petitioner is a Senior Advocate of this Court and former Additional Advocate General and had appeared on behalf of the State in the three arbitration matters for which he had raised fee bills.

ii The fees as claimed by the petitioner had not been paid to him.

iii. The Government had introduced G.O.Ms.No. 339 Public (Law Officers) Department dated 08.05.2018 determining the fees payable to the law officers to appear for the Government in what can be broadly stated as the Original Side of the High Court.

37. I hold the entire issue should be viewed from a larger and wider prospective.

38. The petitioner is a professional. As a professional his legal skill, knowledge and acumen had been recognized and he had been designated as an Senior Advocate. He had also been appointed as Additional Advocate General for the State of Tamil Nadu. He had held that post and it can be stated that the sanctity and dignity attached to that post has to be recognized by this Court.

39. The petitioner had appeared for the Government also in arbitration cases. The three writ petitions now under consideration are with respect to the fee bills raised by him for his appearances in the three arbitration cases and for which payment has been denied.

40. He had therefore originally filed the three writ petitions in the nature of a mandamus seeking a direction to direct the respondents to pay the fee bill amount raised.

41. The Government had however introduced G.O.Ms.No. 339 of 08.05.2018. By that Government Order, the fees for the law officers

had been declared payable on the scale stated in the Government Order.

42. The relevant portions of the Government Order is extracted below:

> *"5. After careful consideration, the Government have decided to accept the recommendation of the High Level Committee for fixation fees for arbitration cases, civil suit, Original petition Original Side Appeal and Civil Miscellaneous Appeal etc cases and ordered that the fees payable to the Law Officers of High Court of Madras and its bench at Madurai for their appearance in Arbitration cases, civil suit, Original Petition, Original side Appeal and Civil Miscellaneous Appeal etc cases be fixed as detailed below:-*
>
> *5 (I) Fees for the Law Officers appearing before Arbitrator/Arbitral Tribunal and High Court of Madras and its bench at Madurai in Arbitration Matters, Civil Suit, Original Petition, Original Side Appeal and Civil Miscellaneous Appeal etc., cases shall be payable on the following scale:-*
>
> *(a) Regular cases: At the rate of 1 (one) percent of the award/decree subject to the ceiling of Rs. 10 lakhs.*
>
> *(b) Sensitive Cases (cases having huge financial implication for Government): This will be subject to the fees fixed by Government on individual case to case basis. The Departments concerned may decide the fees in consultation with Finance Department in case to case basis.*

5(III) If the Law Officer is assisted by Advocates, in such cases the Advocate shall be eligible for fee not exceeding 1/3rd of the actual fee fixed for the Law Officer. If more than one Advocate assist the Law Officer, this 1/3rd fee, shall be shared among them.

5(III) The above rule shall be applicable for all Departments in all pending Arbitration Matters, Civil suit, Original Petition, Original Side Appeal and Civil Miscellaneous Appeal etc., as well as future cases.

5(IV) In future, before engaging the Law Officer in Arbitration Matter, Civil Suit, Original Petition, Original Side Appeal and Civil Miscellaneous Appeal etc., the Department concerned should get the consent of the Law Officer on the fee structure as a precondition to his engagement."

43. It is seen that the Government had determined that for pending arbitration matters, civil suits, original petitions, original side appeals, civil miscellaneous appeals and for regular cases, the fee which shall be payable would be 1 % of the award/decree subject to a ceiling of Rs. 10,00,000/-. For sensitive cases which have huge financial implications on the Government, the fees would be determined by the Government on individual case to case basis.

44. By G.O.Ms. No. 486 dated 23.07.2019, the words 'award/decree' had been amended and the words 'value of the suit'

were substituted. However, the basic principle namely that a ceiling of Rs.10,00,000/- is determined was retained.

45. The profession of law is a complicated profession. Legal acumen is required in consultation with the clients in preparing pre-suit notices, in preparing any other representations or petitions, in preparing and drafting a plaint to be presented before the Court, in preparing the documents to be filed, and if appearing for the respondents in preparing the written statement or the response to the claim and also preparing counter to all applications filed.

46. All these steps are taken within the Chambers of a legal professional. This would indicate the skill, knowledge and application of mind are required even in base preparation of written materials to be presented before the Court. It is only thereafter that the appearance in the Court commences. If urgent orders are required, then effective representation has to be made to the Court.

47. Quite often the Government is always a respondent except when an appeal is filed. Then effective representation is to be made to defend and project the stand of the Government and prevent any

interim order being passed to the disadvantage of the Government. These representations would only be on the first few hearings dates.

48. Apart from the preparedness of facts, spontaneity by the counsel is required to answer all questions. Thereafter, arguments will have to be advanced in applications or in suits or appeals. These would require special preparation within the confines of the Chambers and later effectively presenting them in the court.

49. In arbitration matters, witnesses will also to be examined. Evidence in chief will have to be prepared. Documents will have to be examined to be presented before the Court. The facts should be on the finger tips of every professional to cross examine the other side witness. On the basis of the evidence adduced, much preparation has to be done to analyze the evidence and present the final arguments before the Court.

50. It is owing to this acumen for legal knowledge and on the various facts of each case, that the profession is also called a Leaned profession. Knowledge should expand beyond the facts of the case, to also know the laws of the land and the precedents set by the Courts.

51. There must also be skill in advancing argument and in thinking on the feet.

52. Understanding legal professional and a professional itself is an art.

53. The Government Order passed by the Bureaucrats cannot be a bench mark to estimate the skills and knowledge of an advocate who defends a Government order or advances the cause of the policies of the Government.

54. It is only in courts of law that these policies are challenged and they are upheld and get a stamp of approval.

55. The legislators pass the law. The executive drafts the laws. But it is only on the arguments advanced in a Court of law, that the laws which are drafted and passed are actually upheld as intra virus the Constitution.

56. A reading of the G.O.Ms. No. 339 gives the impression that the Government has reduced a legal professional wedded to the nuances of law to a contract worker. That cannot be done and should not be done. The Government must come forward to appreciate the effective work done by a professional in upholding the letter and spirit of the policies of the Government.

57. Every case has not only financial implications but would also have far reaching implications sometimes touching upon the survival of the Government. I hold G.O.Ms. No. 339 has been passed oblivious of the reality of the situation.

58. It is unfortunate that it is projected by the learned Additional Advocate General as a just and equitable determination of the fees payable to a Law Officer who gives his sweat and blood to defend the Government, to project the policies of the Government and ensures that the policies are not struck down by courts of law.

59. The value of an advocate representing the Government is immeasurable. It may be a small case, it may be a big case, still the Government has to be protected. Even if a common citizen comes

seeking a legal heirship certificate and if the law officer is not able to justify either grant or denial of legal heirship certificate, it is ultimately the image of the legislature which is effected. That dignity and sanctity of the Government is in the hands of its law officers. These are facts which on the Executive or an Bureaucrat would never ever understand.

60. Determining a ceiling of Rs. 10 lakhs for appearances in arbitration matters or in civil suits defies logic. The Government Order is extremely irrational. It is not known why that amount was determined. It is not known on what basis that amount was fixed as being just and equitable. It is just another amount fixed by the Executive. It cannot be thrust on a professional.

61. The Government also has a duty to ensure that it recognizes the dignity of the legal profession. I am deeply distressed by the wordings in G.O.Ms. 339 and G.O.Ms. No.486. They have no connection to the efforts put by any Law Officer. I have no hesitation in holding that both the Government Orders are an insult to the legal profession.

62. Incidentally the consequential Government Orders are complained of in the writ petition. I am deeply conscious that the petitioner has not directly sought a certiorari against G.O.Ms. Nos. 339 or 486 but however the Court can declare that the said two Government Orders are extremely arbitrary and irrational in nature.

63. The consequential G.O. (D) No. 182 HW and MP (HF2) Department dated 21.12.2021 and G.O. (D) No.29 Highways and Minor Ports (HV2) Department dated 01.02.2021, are both thus struck down.

64. The writ petitions are allowed with a direction to the Government to consider the fee bills raised by the petitioner in the light of the professional assistance rendered by the petitioner.

65. The Government is always at liberty to fix rules and guidelines but Government Orders determining a ceiling as fees for a professional cannot be accepted by any court of law.

66. The writ petitions stands allowed with a direction to the respondents to examine the representations given by the petitioner with respect to the fee bills and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this common order. No costs. Consequently, WMP Nos.24851 of 2020, 368 of 2021 are closed.

03.03.2023

Index: Yes/no
mrn

To
1.The Chief Secretary,
St.George Fort, Chennai 9

2.The Additional Chief Secretary to Government,
Highways & Minor Ports (HV2) Department,
St.George Fort, Chennai 9

3.A.Karthik I.A.S,
Principal Secretary to Government,
Highways & Minor Ports (HN2) Department,
St.George Fort, Chennai 9

4.Chairman & Managing Director,
Tamil Nadu Road Development Co.
No.171, 2nd Floor, TNMB Building,
South Kesavaperumal Street,
Greenways Road, Raja Annamalaipuram,
Chennai 28

5.The Principal Secretary to Government,
Public (Law Officers) Department,
St.George Fort, Chennai 9

6.The Additional Chief Secretary to Government,
Highways & Minor Ports (HV2) Department,
St.George Fort, Chennai 9

7.The Superintendent Engineer,
National Highways – Chennai circle,
TNSCC Complex, Jai Nagar
206/N, Jawaharlal Nehru Salai,
Opp.to Mufussil Bus Stand,
Chennai 106

8.The Divisional Engineer,
National Highways,
Arumbakkam, Chennai 106.

9.The Principal Secretary to Government,
Home (Transport-V) Department,
St.George Fort, Chennai 9

10.The Commissioner of Police,
No.132, EVK Sampath Road,
Vepery, Periyamet, Chennai 7

11.The Additional Commissioner of Police (Traffic)
Poonamallee High Road,
Vepery, Chennai 7

C.V.KARTHIKEYAN, J.
(mrn)

P.D. Order in
W.P.Nos.19905, 20129
of 2020 and 298 of 2021

03.03.2023