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W.P.No.32337 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WRIT PETITION NO.32337 OF 2012

Mr. S. Ramasamy

.... Petitioner

-Vs-

1. The State of Tamil Nadu

Represented by its
Chief Secretary to Government
Secretariat, Fort St. George,
Chennai - 600 009.

**(R1 - deleted as per order dated
15.02.2022 in MP No.1 / 2013
in WP No.32337 / 2012)**

2. The Secretary to Government,
Public (Law Officers) Department,
Secretariat, Fort St. George
Chennai - 600 009.

.... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in E Mail/ Letter No. 591/LO/2011-1 dated 18.01.2011 and QUASH the same as illegal, Ultra Vires and



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consequentially direct the second respondent to issue appropriate instructions to the Departments of Secretariat to sanction fees as claimed by the petitioner.

For Petitioner : Mr. G.Rajkumar
For Respondents : Mr. J.Ravindran
Additional Advocate General
Assisted by Mr. Tippu Sultan
Government Advocate

ORDER

You will never be a better you, than you. To achieve greatness one should improve and illuminate himself with great virtues, but not by envying and belittling others. Here is a case of a highly placed Law officer of the State Government, in order to defend the honour and glory of the noble profession, against the unilateral and arbitrary decision taken by a fickle minded officer, contrary to the specific instructions given by the Chief Secretary the State Government.

2.The Government has to augment its revenue from taxation and other sources and incur expenditure under various heads including the



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welfare measures for the people, even where there is no return or profit.

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There are certain pivotal fields from where the government shall spend without expectation of revenue, such as Health, Education, Law and Social Welfare. The Government need to provide budgetary allocation to these Departments, which are very vital for a welfare state to maintain peace and harmony. Thus, the honorarium made to the services of the Law Officers of the State to defend its actions is also a very important, essential and unavoidable expenditure.

3. Government is continuously running machinery for the welfare of the people and its responsibility to protect, preserve and uphold the rights and liberties, dignity, social, economic and political justice to each and every citizen continue to be the same. The welfare schemes, projects, development of infrastructure, rule of law continue, in spite of change of rulers. In the present writ petition, oblivious of the above facts and the pivotal role played by the respectable and highly placed Law Officer on request, the impugned order of restricting the fee, came to be passed under the pretext of saving expenditure to the Government.



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4.Once, a Law officer of a Public Sector undertaking told me that defending the Government, Governmental Corporations, Public Sector Undertakings is nothing but defending and safeguarding the interests of the individual citizen of the country, thereby securing them the Social, economic and political justice, dignity and personal liberty from the attacks of the insidious, who are avaricious to aggrandize wealth through whatever means. Once you accept to defend the Government or its agencies, you cannot complain of the poor and nominal fee paid by them, for, the Government is for the people and it is not destined to make profit, but to serve the people.

5.To illustrate it more specifically, Transport Corporations or Telecom Companies of the Government provide service even to the remotest part of the Nation, knowing well it will not get back the investment and unmindful of loss incurred. It is with the sole aim of providing the facilities in every nook and corner to each and every citizen without any discrimination, thereby securing social and economic justice. Whereas, a



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private operator would not venture this expenditure having an eye on profit.

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Therefore, there cannot be any comparison of the private and Government companies, for, one is on profit motive and the other on service motive. So also, of fat professional fee charged by a lawyer from an individual client or a lawyer of a profit making Corporate cannot be compared with the nominal fee paid to the Law Officers of the State and its instrumentalities. Thus it can be easily inferred that not only the Government, but also the Law Officers perform their duties without profit motive and with a service mentality for a nominal fee as compared to their lucrative private practice, more particularly the top law officers.

6. Legal profession is a noble profession and it is the lawyer, who plays predominant role in securing every citizen life and personal liberty fundamental and statutory rights ensured by the Constitution. When a lawyer for an individual client fight for the life and liberty of his client, the Law Officers of the State are cast with the onerous responsibilities to strike a balance between liberty of the said individual and the interest of



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other fellow citizens and also the interest of the State, its policies, welfare schemes etc. It is like walking on a tight rope, for, there cannot be any deprivation of personal liberty, even to a single individual at the cost of larger public interest, as far as possible, more so, in the absence of correct and proper instructions in time. The Law Officers are subjected to mental pressure and face difficulties in getting proper instructions due several factors such as laid back attitude of certain officers for want of man power, fear of facing court of law, fear of taking responsibility, their future career prospects in the event of failure, travel to long distances, physical disabilities, lack of reward and also unwillingness to work. Apart from the above, wild allegations, indiscriminate and unnecessary arrayal of high ranking officials and departments as parties, that too without issuing notices or making representations.

7.Mr.J.Ravindran, learned Additional Advocate General, sitting in an unenviable position in a matter directly touching upon his own office, vehemently contested against the writ petitioner, which shows the Law Officers render their services above self against his own clan, raised serious



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concerns of impleading Chief Secretary as a party respondent in many writ petitions unmindful of the fact as to whether the issue pertains to the Chief Secretary or not? As to whether he is a necessary party or not? and his presence will in anyway helpful for effective disposal of the Writ Petition or not? Right, Left and Center. The Chief Secretary is impleaded indiscriminately, even in Writ Petitions for Mandamus, for grant of Patta, cancellation of Patta, issuance of legal heir certificate, cancellation of trade licences, provision of electricity connections so on and so forth. The impleading of Chief Secretary in all the writ petitions, in which, he is not at all answering respondent is causing great hardship. The learned Additional Advocate General would request this Court for a direction to ensure that the Chief Secretary should not be made as a party unless a specific relief is sought against him or he is the competent person to answer the issues in the writ petitions. Therefore, a direction shall be issued to the Registry in respect of arrayal of unnecessary parties, particularly the Chief Secretary to the Government. Of course, it is a matter to be taken note of and appropriate instructions needs to be given.



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8.It is relevant to note that the difficult situations faced by a Government Law Officer, from the litigants, Courts, Judges and the officers of the concerned departments, particularly when Chief Secretary and other high ranking officials holding sensitive posts are indiscriminately impleaded. After overcoming all these difficulties, it is expected that a Law Officer shall perform well and efficaciously and also he shall maintain highest form of integrity, professional ethics and fairness.

9.As discussed in the preceding paragraphs, the professional fee paid to the Law Officers will not be commensurate to the amount of service rendered, their dedication, amount of time spent, mental and physical labour, age and expertise and their sacrifice of lucrative private practice. All these factors are taken into consideration and a decent and reasonable remuneration is fixed after much deliberation at the higher level. Still it will not be befitting the labour, age, seniority, experience and expertise. In this process, the Government to avail the services, provides for certain special fee.



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10.The special instructions by the Chief Secretary with regard to addressing of the Advocate General and Additional Advocate General would be relevant to the present writ Petition, which is extracted hereunder:-

***“MODE OF ADDRESSING ADVOCATE
GENERAL
GOVERNMENT OF TAMIL NADU
PUBLIC (GENERAL) DEPARTMENT***

(U.O.NOTE NO.8509/66-2, Dated the 24th September 1966)

***Subject:- Law Officer – City – Advocate General,
Madras – Official Correspondences – Procedure –
Instructions issued.***

1. Instructions have been issued from time to time, regarding the proper way by which departments of the secretariat should hold correspondence with the Advocate General. The Government desire to stress the need for taking special care in addressing the Advocate General. The attention of the departments of the secretariat, is in this connections, invited to the procedure and the mode of correspondence with the Advocate General laid down in paragraph 55 (VIII) and 112 of the secretariat manual



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and other instructions are strictly adhered to, whenever it is necessary to correspond with the Advocate General and that no occasion is given for, any complaint.

2.The following important points should be noted for guidance:-

(i)The Advocate General is a highly placed official. Reference to him should go only when it is considered essential. Copies of government orders, memoranda, etc., addressed to any of the law officers which do not require the attention of the Advocate General should never be sent to that officer;

(ii)Where the Advocate General is to be consulted purely for legal opinion, the departments of secretariat should, after obtaining orders in circulations, remit the file to the law department with a draft memorandum to the Advocate General. In very urgent and secret cases, however, the Advocate General may be consulted direct, after obtaining orders in circulation.



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(iii)The Advocate General does not himself generally appear in cases, but only leads the subordinate law officers whenever he is required to do so. The words “enter appearance” should appropriately be used only the case of Deputies, and when Government considered that the Advocate General should appear, the terms to be used should be, “The Advocate General, Madras is requested to appear-”. While orders requesting him to appear or lead any of the subordinate Law Officers, as the case may be, can be communicated to him direct, all enquiries about the result or stage of a particular case or request for copies of judgment or order of the High Court or proceedings should be addressed only to the appropriate Subordinate Law Officer.

(iv)While addressing the Advocate General, care should be taken to see that the language used is polite and courteous. Words, such as “The Government direct” should not be used. The instructions should be conveyed in the form of a request;



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(v) It is no proper to ask him to explain matters etc., in a routine way. It is also desirable that no reference should go to him, except on the orders of a Minister; and

*(vi) Any matters connected with the claim or fees etc., where it is proposed to ask him to reconsider or where any language which suggests criticism of the Advocate General has to be used, the file should be circulated to the Chief Minister through the Chief Secretary. The fees permissible to the Advocate General or laid down in Annexure I to G.O.No.2606, Public (General-F), dated 25th September 1958. **Generally, the special fees claimed by the Advocate General are not to be questioned.***

*C.A.RAMAKRISHNAN,
Chief Secretary to Government."*

11.The above instruction is an indicator to the attitude of executive and due respect and reverence deserved by the Law Officers of the State. But unfortunately, the impugned E-Mail challenged in the present Writ Petition reflect the same mentality of an individual officer treating the



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highly placed Law Officer on par with him and unable to digest the special fee paid to him contrary to the concerted decision taken by the high level committee. It is the same mentality that as to how a Law Officer is bigger than me and as to why he should be paid more than a Government servant. Actuated by such *mala fide*, the impugned letter came to be issued exercising the power arbitrarily. It is normal attitude of a human being to treat another human on par or even lesser. Subconscious mind does not accept superiority of other person. It asks “How are you superior than me?” It tends, when opportunity occurs to treat a person inferior, to look down upon, to please his ego, to insult, or envy his position. It depends on the rank and fortune of any human being, so also, the Government servant. The general outlook and attitude of a Government servant happens to be of a paid servant. You are also paid by Government and I am also paid by the Government and then How are you greater than me ? This tendency tends, in the present writ petition, the executive to treat the Law Officers as Government servants, as subordinates and that they receive their remuneration at the mercy of the officers like him. This suppressed mental



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state perhaps, actuated the restriction of the special fee arbitrarily, unilaterally, unreasonably and contrary to the instructions of the Chief Secretary to treat Advocate General and Additional Advocate Generals with respect and reverence as became their rank and position.

12.It is relevant to state that the relationship between a lawyer and client is more on trust than on contract. Once a client agrees to pay a certain fee, the Advocate trusts his client and discharges his duties. On completion of the case, the client shall not go back on his promise and question the competence or the fee as excessive. It is prestige and prerogative of the lawyer to value himself and fix the fees at his discretion. No client can assess his talent and estimate his fees. Lawyers have every right to decline the brief, if his services and his dignity is not respected. In order to do social justice or economic justice an Advocate may accept higher fee from an affluent client and lesser or no fees from a poor or downtrodden litigant. It is his discretion to accept the brief and fix the fee. In the case of Law Officers, they agree for a fee schedule. The Advocate



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General and Additional Advocate General are requested to appear in important and sensitive cases. After accepting to pay a special fee for their services, it is not palatable for Government to state that I will restrict your fee and pay less than what I promised. No client, much less, the mighty Government as a client, which shall be a model for ethical standards, shall fail in their promise. It is relevant to reiterate that the instructions issued by the Chief Secretary to Government that **“Generally, the special fees claimed by the Advocate General are not to be questioned.”** but in the instant writ petition, it was questioned by the respondent contrary to the instructions which always bind on him.

13.As I stated in the preamble, Rulers may change, but the Government is continuously running machinery and its servants shall not shift their loyalty to Government to please the Rulers. The impugned order thus actuated by *malafides*, tainted with arbitrariness and colourable exercise of power, shall not be sustained and it is liable to be set aside.



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14. Accordingly, the impugned Government letter of the second respondent in E Mail/Letter No. 591/LO/2011-1 dated 18.01.2011 is set aside and a direction is given to the respondents to pass the bill as claimed by the petitioner and pay it within a period of eight weeks from the date of receipt of a copy of this order.

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

(a) The Law Officers shall be given due respect for their dedication in defending the Government.

(b) 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



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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.

(c) The Officials shall be prompt in getting legal opinion in time, giving instructions to the Law Officers in time, if any appeal is preferred, it shall be intimated on time, without any delay. The Government is also equally a litigant which cannot expect a special treatment in condonation of delay matters.

(d) Whenever they seek for instructions, the Government shall ensure that its Officials give



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top priority and produce the information, records sought for by them.

(e) 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.

(f) The fee structure of the Law Officers shall be revised once in three years corresponding to the Price Index.

(g) If the bill is submitted by a Law Officer, it shall be settled at once, if not within a reasonable period that is to say to a maximum of two months.



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(h) Further, depending on the sensitivity or importance of the case, the fee structure of a private Lawyer will raise. Whereas, the Law Officer of the lower rank will get the same fixed fees and to be particular, in batch matters, they would get fee only for the main matter and for the remaining connected matters, a fixed minimum fee is paid. In such a situation, the Government shall consider immediate payment of fee and treat it is as honorarium to the Law Officers for the enormous efforts and time put in by them.

(i) 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,



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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.

16.Special Note to Registry is given to peruse the relief and the arrayal of parties, who are necessary for granting the same. Unnecessary impleadment of Officers, causing embarrassment and mental pressure, shall be avoided by requesting the writ petitioner from deleting the unnecessary parties, as contested by the learned Additional Advocate General Mr.J.Ravindran. The Chief Secretary is impleaded indiscriminately, even in Writ Petitions for Mandamus, for grant of Patta, cancellation of Patta, issuance of legal heir certificate, cancellation of trade licences, provision of electricity connections so on and so forth. The impleading of Chief



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Secretary in all the writ petitions, in which, he is not at all answering respondent is causing great hardship. Therefore, the Chief Secretary to the Government, need not be impleaded as a party in writ petitions unless it is warranted.

17. It is made clear that this order will not pertain only to the Law Officers of the State but also of the allied Departments and all the Public Sector undertakings and other limbs of the Government.

18. This Writ Petition is allowed with the above observation and direction. No costs.

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Internet : Yes/No
Speaking / Non-speaking order
Kpr/tk



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M.GOVINDARAJ, J.

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To

The Secretary to Government
Public (Law Officers) Department
Secretariat
Fort St. George
Chennai - 600 009.

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