

PETITIONER:
VIJAYAWADA-GUNTUR-TENALI URBANDEVELOPMENT AUTHORITY & ORS.

Vs.

RESPONDENT:
MOVVA RANGA RAO & ORS.

DATE OF JUDGMENT: 22/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
G.B. PATTANAIK (J)

CITATION:
JT 1996 (5) 427 1996 SCALE (4)316

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

The only question is: whether the respondent is entitled to a minimum fee of Rs.2,000/- in each of the reference cases in which the reference Court has certified it to be the fee payable to the respondent? The respondent appeared as a counsel for the appellant on land acquisition reference initially as Government Pleader and after he ceased as such, he filed Vakalatnama on behalf of the appellant and appeared as private counsel. On the basis of the memorandum of costs supplied to the respondent, he claimed the amount from the appellant but the appellant has disputed the liability. On a reference made to the Advocate General of Andhra Pradesh, the Advocate General has certified that the fee claimed is correct one and the respondent is entitled to the same. However, the respondent being not satisfied with it, insisted upon the proper fixation of the fee payable to him. Since the appellants have not been making payment of the fee to which the respondent is entitled, the respondent has filed the writ petition in the High Court. The Division Bench of the High Court in W.A.No.590/94, by judgment and order dated September 5, 1995 has held that once the court has fixed the Fee, the appellants are bound to pay the same and they cannot go behind the fee fixed by the Court.

The High Court seems to have proceeded on the premise that under the Advocates' Fees Rules the Court fixes the fee and that parties are bound by the same by holding that it is a contractual relation. There is a distinction in payment of the fee between the private counsel and the State counsel. As far as the State counsel are concerned, their fee is regulated by the rules prescribed by the State Government and thereunder the Government counsel is entitled to the fee or the fee fixed by the Court. In the latter event, the Government is bound to pay the fee. As regards the private counsel, the High Court of A.P. has made the rules, viz.,

Advocates Fees Rules. The same rules are in vogue as on date.

Rule 8(9) prescribes fee in other cases. It contemplates prescribing the fee in land acquisition cases envisaging that "in Land Acquisition Cases as between the Collector and the claimants, the fee shall be 5% on the amount claimed in excess of the award subject to minimum of Rs.100/- and a maximum of Rs.2,000/-. As between rival claimants, the fee shall be calculated as for suits under Rule 4(II).

It would, therefore, be clear that in cases where the fees is to be fixed on the basis of the claim on a reference, the court has to calculate the fee on the amount claimed in the reference and awarded under Section 26 subject to a minimum of Rs.100/- at the rate of 5% on the amount claimed by the claimants and the maximum thereof would be Rs.2,000/-. It would thus be clear that in every case, necessarily, it would not be Rs.2,000/-. It depends upon the valuation of the claim awarded under Section 26 and the amount to be calculated varies between the minimum and the maximum. If the amount claimed is far in excess of 5% and fee calculated exceeds 2,000/- the court has to limit the fee to Rs.2,000/- in spite of the amount awarded, it would secure fee of the advocates exceeding Rs.2,000/-. It does not per se yield to the respondent that in each case, counsel would be paid Rs.2,000/-. In every case, the maximum of Rs.2,000/- should not be required to be determined.

Shri Mohan, learned senior counsel for the respondent, undertakes to get all the decrees and the claims made in the decrees settled and he also assures to sit with the counsel for the appellant and both would calculate the fee to which in each of the case the respondent would be entitled to. They are given four weeks' time for making the calculations. After the calculations are worked out, the amount may be notified to the Registry and the same will be incorporated in the order.

The appeal is accordingly disposed of. No costs.