



2023:CGHC:26437

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 5201 of 2010

- 1 - Mrs. Indira Nair W/o Late P. Sadasivan Nair R/o 1570-A, Napier Town, Jabalpur, Madhya Pradesh, Madhya Pradesh
- 2 - Mrs. Vineeta Nair, D/o Late P. Sadasivan Nair R/o Tc/13/1320/1, Sreemulam Lane, Po Kumarapura, Trivandrum, Kerala
- 3 - Mrs. Anita Menon, D/o Late P. Sadasivan Nair 102, Raj Mandir, Raheja Complex, Off. Yari Raod, Mumbai-61
- 4 - Mr. Anoop Nair S/o Late P. Sadasivan Nair R/o 1570-A, Napier Town, Jabalpur, Madhya Pradesh

... Petitioners

versus

South Eastern Coal Fields Ltd. A Company Regd. Under Companies Act Through Its Chairman-Cum- Managing Director, Seepat Raod, Bilaspur, Chhattisgarh Pin- 495006, Chhattisgarh

... Respondent

(Cause title taken from Case Information System)

For Petitioners	:	Mr. Prafull N. Bharat, Senior Advocate along with Mr. Akash Pandey, Advocate
For Respondent	:	Mr. V.V.S. Murthy, Senior Advocate along with Ms. Priya Mishra, Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal  
Order in Chamber

**31/10/2023**

1. The present writ petition has been filed by the petitioner for the following reliefs :

**“(i) This Hon Court direct the respondent to submit record of the case amongst others the following records:-**

**a) various representations letters sent by reposing and received by them.**

**b) proceeding of Fundamental Board of Directors in connection with payment of bill of the petitioner.**

**c) various letters received from coal India and reply received by them in connection with bills of the petitioner, especially Arbitration case mentioned in para 8.2 above.**

**d) total noting and letters on subject of Arbitration Cases Jamuna Kotma Area, Hasdeo Area, Legal Department, Director (P), Director (F) and all other officers of Department.**

**e) all other connected papers with reference to the present case and payment of bill**

**ii) This Hon Court be pleased to issue direction to the respondent to make payment of entire amount due to the petitioner with interest of 18%, prevailing interest of 1994-95 with immediate effect especially in fact that petitioner is aged 88 years and suffering from various illness.**

**iv) This Hon Court be pleased to direct the CMD to take appropriate action against individual officers who deliberately or otherwise or on extraneous or other consideration delayed/denying the payment of fees of the Petitioner.**

**v) The cost of the petition be awarded to petitioner.**

**vi) Any other appropriate writ/ relief/ relieves/ order or directions which the Hon'ble Court may deem just and proper in the nature and circumstances of the case.”**

2. The brief facts of the case are that the original petitioner was a practicing advocate and was standing counsel for SECL before the various Court/Authorities. He appeared in various cases on behalf of the SECL in the following arbitration cases :

- “1. SECL, Vs. Rampur Engineering Co. Ltd.**
- 2. SECL, Vs. Data Cables.**
- 3. SEC:L VS. KL Loomba & sons**
- 4. SECL Vs. M/s. Tirupathi Construction.**
- 5. SECL, Jamuna & Kotma Area Vs. M/s. Sarvatra Road Runneers Pvt. Ltd. (Case no. 20-A/96)**
- 6. SECL, Hasdeo Area Vs. M/s. Sarvatra Road Runners Pvt. Ltd. (Case No. 19-A/96)”**

3. The original petitioner did his work with utmost sincerity and given a satisfactory response to the SECL, as he successfully dealt with the matters entrusted to him and the officers of the Coal India Ltd. as well as SECL were extremely happy and satisfied with the work of the original petitioner. The petitioner had submitted bills for the cases, in which he had appeared since 1994-95. Despite repeated reminders and requests made by the original petitioner for payment of bills, their bills have been withheld and have not been paid. A number of letters have been sent by the Petitioner, despite that his bills have not been cleared. The petitioner was informed that the Finance Department of the SECL have made a reference to Coal India Ltd. asking their consent for making payment of arbitration

cases, but the response received from the Coal India Ltd. was either suppressed or not disclosed with the authorities of the SECL for the reason best known to them. The matter was run from pillar to post and from one authority to another, but the bills of the original petitioner were not paid to him.

4. Since the income of an advocate is only the fees, which he receives for conducting cases, and their sustainability of life depends upon the fees received from the client, which is a fundamental right as provided under Article 21 of the Constitution of India, he filed the present writ petition for the payment of bills due since 1994-95 along with the accrued interest.
5. The respondent/SECL in their reply have denied the pleadings of the writ petition and have submitted that the authenticity of the appointment orders of the original petitioner as an advocate is suspicious, because of the reason that in the minutes of the meeting held on 13<sup>th</sup> August 1994, only says about the schedule of fees for Senior Advocate, Jabalpur. In the said resolution, neither the rate of fees nor the name of the advocate is mentioned. Therefore, the office order dated 20.09.1994, (Annexure P/1) is not compatible with the prevailing procedure and practice of the SECL. It is also submitted that the manner in which the fees is settled in the document also creates suspicion in the mind that if the rate mentioned in column No. 1 and 2 above, are 2% of the total claim, whichever is higher in so far as the arbitration matters are concerned, because in the public sector this kind of settlement of fees is unknown and the fixation of the fees on the basis of claim

only is arbitrary and is not possible in the public sector undertaking. It is also submitted that if the petitioner has raised those bills in the year 1994 itself, there is no reason for him to keep silence for more than 16 years, i.e. till filing of the writ petition. The office order dated 20.09.1994 (Annexure P/1) was never upon the petitioner as well as by the SECL, and on being verification of the records, not a single bill @ 2% of the claim, has been honored by the SECL in favour of the petitioner. It is also submitted that the present petition is filed after about 16 years of the claim, which accrued in the year 1994, which is barred by limitation and therefore the present rate petition is liable to be dismissed.

6. In the rejoinder to the reply, it is submitted by the petitioner that the competent authority has sanctioned the fees by the concurrence of finance dated 18.05.2005 (Annexure P/4) and the competent authority has approved for revision of fees vide its order dated 01.04.2009 (Annexure P/5). The order dated 20.09.1994 (Annexure P/1) was circulated to all the areas, and therefore the genuineness of the said order dated 20.09.1994 is beyond doubt in all the areas, have acted upon this order. The order dated 18.05.2005 Annexure P/4 refers the order dated 20.09.1994 which further established the genuineness of the document. The General Manager, Jamuna Kotma area had accepted bills on 16.06.2005 and forwarded the same in respect of the arbitration case of M/s. Kishori Lal and forwarded the bills to headquarter of the company. Further, the Finance Department of the company has approved the same rate in the year 1994, 2005 and 2009 and the Board of

Directors have also approved all the rates as just and fair, and now the respondent cannot turn back and say it was not just and fair. The respondent is deliberately suppressing the letters with malafide intention. The documents are very well available with the management and they are deliberately, intentionally and malafidely disputing the genuineness of the documents to create a follow of suspicion. It would further submit that there is no delay in filing the petition, as the General Manager (Legal) Coal India Ltd. Vide its letter dated 08.07.2010 (Annexure P/8) has directed the SECL to pay the amount. When the SECL did not pay the amount, the petitioner has filed the petition. The claim of the petitioner is a continuing one and he submitted his reminders repeatedly.

7. During the pendency of the petition, the original petitioner has died and the present petitioners have been substituted in place of the original Petitioner, who are his legal representatives. Present is a dispute with respect to the payment of fee of an advocate, who appeared on behalf of the SECL in various cases at various places. The bills have been raised by the Petitioner, but the same has been withheld by the respondent/SECL on the ground that it was not in accordance with the fee structure, which was approved by the SECL, whereas they denied the genuineness of the letter dated 30.09.1994.
8. In the petition, on 29.11.2010, this Court has directed the petitioner to file relevant rules, notifications, instructions, etc. as to whether the Advocates in India are entitled to charge the fees on the basis of percentage under any circumstances. Further, vide order dated

24.06.2011, it is submitted on behalf of the petitioner that the respondent is in process of setting the fee of the petitioner and thereafter this Court has filed the following orders :

**“It is expected that the fee of the Advocates, as per the terms and conditions of the engagement, shall be fixed and if the payment has not been made within a reasonable time, the petitioner may also be entitled to reasonable interest on the fee, which was not paid in time. On 12.08.2011, learned counsel appearing for the petitioner submits that carbon copies of the bills submitted earlier, are still available with the legal heirs of the counsel, though this must be in possession of the respondent/SECL, however, a copy of the same shall be supplied within a period of two weeks. Thereafter, two weeks time is granted to the respondent to settle the bills and submit the report before this Court on the next date of hearing.”**

9. On 17.01.2024, this Court has directed the respondent to file Affidavit stating that the bills raised by the petitioner are not in accordance to the schedule of fees applicable to the original petitioner. The respondent is also directed to specify on oath that they have till date, never made any payment as per the schedule of fees as claimed by the petitioner. This be done within three weeks.
10. In compliance of the order dated 17.01.2014, the respondent filed an affidavit on 07.03.2014 stating therein that :

**“3. It is respectfully submitted that in the petition, the original petitioner has relied upon a document dated 20.09.1994 (Annexure P-1) which was duly signed by the then Director (Personnel) whereby the fees of Late Shri P.S. Nair was fixed in case of arbitral matters fees at the rate mentioned in item No.2 above of 2% of the total claim whichever is highest. It is further respectfully submitted that the genuineness of this**

document has already been questioned by the answering respondent in the return on the grounds mentioned in the return itself. It is also respectfully submitted that the rates which are quoted in Annexure P-1 is not rational.

4. That, I do state on oath that the bill which was submitted by Late Shri P.S. Nair was not in accordance with the schedule applicable to him during the prevailing period.

5. That, I do hereby state on oath that as per the record maintained by South Eastern Coalfields Limited as well as the information gathered from the areas, no payment has been made as per the schedule of fees claimed by the petitioner i.e. at the rate of 2% of the claim. Since the professional fees to Late Shri P.S. Nair was paid in various payment centres situated in different areas and since the matter is old enough and, therefore, if by mistake treating the Annexure P-1 as genuine document, any amount is paid it is not traceable.”

11. On 27.11.2020, this Court has passed the following order in the case :

“During the course of hearing, this Court finds that the entire dispute revolve around the schedule of fees payable for Senior Advocate in respect of arbitration cases attended by him on behalf of respondent. While deciding the case of the petitioner, the petitioner has relied upon letter dated 20th of September, 1994 issued by the then Personnel SECL.

The contents of letter are sought to be disputed in the return by stating that the authenticity of this order is suspicious because the Minutes of 135<sup>th</sup> Meeting of Functional Directors held on 13<sup>th</sup> of August, 1994 as recorded by the Chief Corporate Services dated 31<sup>st</sup> of August, 1994, only says that schedule of fees for Senior Advocate, Jabalpur is approved and letter dated 31<sup>st</sup> of August, 1994, Annexure R/1 has been filed along with the return.



The petitioner has placed on record certain documents received by him under Right to Information from respondent, including copy of Minutes of Meeting under Item No.131.32, subject is payment of fees to Shri P.S. Nair, Senior Advocate for attending arbitration case of M/s. Sarvatra Roadrunners (P) Ltd., New Delhi and the resolution recites that rates of different Senior Advocates, as obtained from CIL will be examined and a proposal will be put up by CLO for consideration of Functional Directors. This was recorded in the 131<sup>st</sup> Meet of the Functional Directors held on 26<sup>th</sup> of April, 1994.

Subsequently in the 135<sup>th</sup> Meet of the Functional Directors held on 13<sup>th</sup> of August 1994, under item No.135.28, under the subject "schedule of fees for Senior Advocate, Jabalpur. The Minute records as "Approved. Action: Director (P)"

Thus, the respondent seeks to raise suspicious letter Annexure P/1 issued by their own Director Personnel. However, the respondent have not placed on record which schedule of fees was approved in 135<sup>th</sup> Meet of Functional Directors, if they wanted to dispute content of letter Annexure P/1, dated 20.09.1994.

The agenda of the meeting and the proposal which was approved in 135<sup>th</sup> Meet of Functional Directors held on 13<sup>th</sup> of August, 1994 obviously is in possession of the respondent which they ought to have produced if they dispute the contents of letter Annexure P/1.

The respondent is accordingly directed to produce the original records of 135<sup>th</sup> Meet of the Functional Directors held on 13<sup>th</sup> of August 1994 including proposal under the Agenda which was finally approved under item No.135.28.

It is made clear that if the relevant records are not produced, this Court may draw adverse inference."

12. Be that as it may, the nature of dispute appears to be the factual dispute, as to what was the fee schedule, in which cases the

original petitioner made their appearance and on what occasion they had made their appearance in the proceeding of the arbitration case and what amount has been paid to the petitioner towards bills raised by him. The fact remains that the bills raised by the petitioner is still undecided by the respondent, as to whether the petitioner is entitled for the amount of bills raised by him or what is the amount, he is entitled for and if the petitioner is entitled for any amount of bills, what would be the appropriate interest for delayed payment. The bills raised by the petitioner shall have to come in a logical end regarding entitlement of the petitioner or not.

13. It is a very unfortunate situation that a Senior Advocate is litigating for his fees since 1994-95 and could not get any decision in either way, therefore, the respondents are directed to take a decision over the bills raised by the petitioner as claimed by him in accordance with law and after giving opportunity of hearing to the petitioners.
14. Since the matter is quite old, therefore the respondent is directed to take a decision on the claim of the petitioner and bills raised by him within 03 months from the date of receipt of a copy of this order on its own merits. The parties are also at liberty to settle the dispute mutually.
15. With the aforesaid observations, the writ petition stands disposed of.

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signed by  
VEDPRAKASH  
DEWANGAN  
Date:  
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**Sd/-**  
**(Ravindra Kumar Agrawal)**  
Judge