

**PBBJ:**

**Date of Reserve :18.12.2020**

**Date of Pronouncement :23.12.2020**

**WRIT PETITION NO.57952/2015 (GM-KLA)**

**Between:**

Sri. Veeresh Kori and another

... Petitioners

(By Sri. P.N. Harish, Advocate)

**And:**

Hon'ble Karnataka Lokayukta and another

... Respondents

(By Sri. Mohan Kumar .T, Advocate for R2;  
Sri. Mallikarjun C. Basareddy, GA for R1;  
Sri. Ashwin S. Halady, Advocate for R1;  
V/O dated 08.12.2020 Sri. Venkatesh S. Arbatti  
Advocate is directed to assist in the matter)

This petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order of the respondent No.1 passed dated 21.11.2014 approved on 24.1.2014 as per Annexure-F to this writ petition.

This petition having been heard and reserved for orders on Memo of Appearance, coming on for pronouncement of orders this day, the Court made the following:

**ORDER ON MEMO OF APPEARANCE**

In the instant petition, petitioners have questioned the validity of the complaint filed by respondent No.2 (Annexure-F) dated 21.11.2014.

2. Respondent No.1-office of the Karnataka Lokayukta had taken certain actions on the complaint of respondent No.2 while directing the Commissioner, City Municipal Council, Shivamogga.

3. Sri. Mallikarjun C. Basareddy, advocate and panel counsel for Karnataka Lokayukta filed a memo of appearance on 30.05.2016 in this petition for respondent No.1. Pursuant to the Government Order dated 09.04.2014, he was appointed as panel counsel for respondent No.1-Office of the Karnataka Lokayukta.

4. Name of Sri. Mallikarjun C. Basareddy as a panel counsel for Karnataka Lokayukta was withdrawn with effect from 29.04.2019. Consequently, Sri. Ashwin S. Halady filed memo of appearance on 02.12.2020. In this backdrop, whether Sri. Ashwin S. Halady's memo of appearance dated 02.12.2020 could be accepted in the absence of no objection (consent) from the existing counsel - Sri. Mallikarjun C. Basareddy for respondent No.1 or not?

5. Sri. Venkatesh S. Arbatti, who is one of the panel counsel for the office of the Karnataka Lokayukta was requested to assist in the matter. Sri. Venkatesh S. Arbatti, learned counsel submitted that Order 3 Rule 4 of CPC relates to appointment of pleader. Sub-Rule 7 of Rule 4 of CPC is relevant for the purpose of the aforesaid issue. It is submitted that there is no provision or procedure stipulated if there is any change of counsel to file a memo of appearance. In other words, Sub-Rule 7 of Rule 4 of CPC is silent in respect of change of counsel or filing of memorandum of appearance by different counsel, during the pendency of the litigation.

6. Office of the Lokayuktha has practice of appointing a panel counsel for a limited period and panel counsel would be changed from time to time. Therefore, it is suffice if an appointed panel counsel files his memorandum of appearance in place of the existing panel counsel. Consequently, there is no infirmity in filing memo of appearance in place of

Sri. Mallikarjun C. Basareddy by Sri. Ashwin S. Halady in the aforesaid case.

7. Section 34 of the Advocates Act, 1961 empowers respective High Courts to make rules. Section 34 reads as under:-

**“34. Power of High Courts to make rules.-** (1) *The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto.*

*[(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.]*

*[(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on*

*the State roll and any other matter connected therewith.]”*

8. In terms of the aforesaid statutory provision, High Court of Karnataka, Bengaluru framed the rules namely, “Rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the Courts sub-ordinate thereto.” The rules have come into force from 01.09.1969. Rule 9 reads as under:-

*“9. No Advocate shall be permitted to file an appointment or memorandum of appearance in any proceeding in which another Advocate is already on record for the same party save with the consent of the former Advocate on record or the leave of the Court, unless the former Advocate has ceased to practice or has by reason of infirmity of mind or body or otherwise become unable to continue to act.”*

9. In view of the aforesaid Rule 9, it is mandatory for an advocate to take consent of the former advocate on record or leave of the Court, unless the former advocate has ceased to practice or has by reason of infirmity of mind or body or otherwise become unable to continue to act.

10. In the present case, Sri. Mallikarjun C. Basareddy filed a memo of appearance on behalf of respondent No.1-The Registrar, Karnataka Lokayukta. In the absence of his consent, Sri. Ashwin S. Halady's memo of appearance dated 02.12.2020 cannot be accepted for the reasons that neither he has taken no objection/consent of Sri. Mallikarjun C. Basareddy nor has taken leave of the Court to accept his memo of appearance.

11. Sub-Rule 7 of Rule 4 of Order 3 of CPC reads as under:-

*“(7) No Government Pleader or other pleader appearing on behalf of the Government or on behalf of any public servant sued in his official capacity shall be required to present any document empowering him to act, but such pleader shall file into Court a memorandum of appearance signed by him and stating the particulars mentioned in sub-rule (6)”*

12. The aforesaid provision is silent in respect of issue involved in the present matter, however, Rule 9 of the High Court Rules pursuant to Section 34 (1) of Advocates Act, 1961 is the source of power in respect of filing of

vakalath/memorandum of appearance and which holds the field as on this day and there is no compliance while filing memo of appearance on behalf of Sri. Ashwin S. Halady. Though issue is trival in nature at the same time statutory provision is to be followed by institutions like Karnataka Lokayukta and others.

13. When a statute prescribes a particular manner for doing a particular Act, that Act must be in the manner alone as held by the Apex Court in the case of **Kunwar Pal Singh Vs. State of U.P.**, reported in **(2007) 5 SCC 85** in paragraph No.16 reads as under:-

*“16. Section 6(2), on a plain reading, deals with the various modes of publication and they are: (a) publication in the Official Gazette, (b) publication in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and (c) causing public notice of the substance of such declaration to be given at convenient places in the said locality. There is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act.”*

14. Therefore, memo of appearance filed by Sri. Ashwin S. Halady dated 02.12.2020 is contrary to Rule 9 of the aforesaid rules. Consequently, memo of appearance filed by Sri. Ashwin S. Halady dated 02.12.2020 is hereby rejected reserving liberty to take consent of Sri. Mallikarjun C. Basareddy, advocate, who is an advocate on record on behalf of respondent No.1-the Registrar, Karnataka Lokayukta.

**(P.B. BAJANTHRI)**  
**JUDGE**

MBM