

(1989) 09 BOM CK 0073
In the Bombay High Court
Case No : Letter Patent Appeal No. 69 of 1989

Anant Naik

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-09-1989

Acts Referred:

Advocates Act, 1961 — Section 30
Bar Councils Act, 1926 — Section 14(1)
Constitution of India, 1950 — Article 14, 141, 246
Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 44B

Citation : (1990) 3 BomCR 274 : (1989) 91 BOMLR 951

Hon'ble Judges : V.A. Mohta, J; D.J. Moharir, J

Bench : Division Bench

Advocate : S.R. Deshpande, for the Appellant; B.P. Jaiswal, Special Counsel and V.V. Naik, Asst., Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—Section 44-B of the Maharashtra Agricultural Lands (Ceiling on Holding) Act, 1961 (the Ceiling Act) prohibits appearance of a legal practitioner on behalf of any party to proceedings under the said Act before various authorities specified therein. The only point raised in this Letters Patent Appeal is whether that section is (i) void for want of legislative competence and (ii) unenforceable being repugnant to section 30 of the Advocates Act, 1961 and section 14(1)(b) of the Indian Bar Councils Act, 1976.

2. In our view, the point has to be answered in the negative. Here are our reasons:

In the first place, the validity of the Ceiling Act has been upheld by the Supreme Court in the cases of Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, and Waman Rao and Others Vs. Union of India (UOI) and Others, . Initially, a Division Bench of this Court had upheld the validity of the said Act including section 44-B in the case of Vithalrao Udhaorao Uttarwar

and Others Vs. The State of Maharashtra, and this judgment was affirmed in the former Supreme Court case. These decisions are not merely binding precedents but are "law declared" under Article 141 of the Constitution it is impermissible for us to go behind those conditions. It is true that the validity has not been examined on the touch stone of the points raised before us, but it is nobody's case that those points were not available then. As held in the case of T. Govindaraja Mudaliar Vs. The State of Tamil Nadu and Others, binding effect of the conclusion about the validity of the provisions is not taken away merely because certain aspects based on Article 19(1)(f) were not considered therein. It is further held that the points though available were not raised then and hence cannot be raised in subsequent petitions even before the Supreme Court. In the case of Ambika Prasad Mishra v. State of U.P. and others : [1980]3SCR1159 it is held that every new discovery or argumentative novelty cannot undo or compel reconsideration of binding precedent. Moreover, High Court cannot ignore a Supreme Court decision on the ground that certain legal provisions were not brought to its notice. See Ballabhadras Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, . Inspiration behind all these decisions are well known legal principles---stare decisis, judicial discipline and certainly of law.

3. The Supreme Court in the case of Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, had occasion to examine the validity of a similar prohibition contained in section 9-A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, on the very same grounds raised before us. That attack on the validity was repelled holding that the said provision was not repugnant to section 30 of the Advocates Act dealing with Advocates absolute right of practice before all the Courts and Tribunals because it has not been brought into force so far. It was not repugnant to section 14(1)(b) of the Bar Councils Act because the right to practice before Court (other than High Court), Tribunals etc., contained therein is itself subject to any other law for the time being in force. The said provision was held to be valid. The ratio of that decision will apply on all fours to section 44-B of the Ceiling Act since the two provisions in the State Law are in pari materia. It seemed that controversy which arose directly was set at rest. But it was not to be so.

4. Controversy was sparked off once again in the case of H.S. Srinivasa Raghavachar v. State of Karnataka AIR 1967 S.C. 1516, in which section 48-A of the Karnataka Land Reforms Act, 1962 containing similar prohibition against appearance of Legal Practitioner was held to be (i) void for want of legislative competence of the State legislature in view of Entries 77 and 78 of List 1 in 7th Schedule of the Constitution of India and (ii) repugnant to section 30 of the Advocates Act and section 14(1)(b) of the Bar Councils Act.

5. The validity of section 9-A of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975, was thereafter challenged in this Court contending that in between the above Contradictory decisions of the Supreme Court, the latter decision had the binding force. A Division Bench of this Court (to which one

of us was a party) in that case. *Mahadeo Kisan Bankar v. State of Maharashtra*, L.P.A. No. 28 of 1984, decided on 1-10-1987, replied the attack holding that since the earlier *Lingappa's* case (supra) was rendered by a larger Bench, it was that decision which was binding on the High Court. In taking that view, reliance was placed upon the case of *Mattulal v. Radhe Lal* AIR 1975 S.C. 1596 wherein it is held that in case of contradictory judgments on the same point, decision of a larger Bench is binding though it may not be later in point of time. Thus, the point raised stands concluded against the appellant so far as this Court is concerned, since the ratio of *Mahadeo's* case (supra) will clearly apply also to section 44-B of the Ceiling Act. It appears that the attention of the learned Single Judge was not drawn to the aforesaid Division Bench decision either when the case of *Vishnupant Girdhar Dixit v. State of Maharashtra*, Writ Petition No. 1595 of 1987 was decided on 16th March, 1988 or when the impugned judgment under appeal was delivered.

6. Our attention was drawn to a decision of the Supreme Court in *Javed Ahmed Abdul Hamid Pawala Vs. State of Maharashtra*, to the effect that Supreme Court sites in different Divisions for the sake of convenience and therefore, number of the Hon'ble Judges constituting the Bench is not a material factor. That decision is of no relevance in this in this matter because in that case point was about binding nature of earlier precedents of the Supreme Court on the Supreme Court itself and not the subordinate Courts. Recent decision of a Full Bench of the Calcutta High Court in case of *Ramish Francis Toppo Vs. Violet Francis Toppo*, was also brought to our notice. Ratio of that decision is that High Court is free to follow any one of the contradictory decisions of coequal benches of Supreme Court, which, in its opinion, is better in point of law. We are not faced with such an embarrassing situation in this appeal because the conflicting decisions are not of benches of equal strength. Even if there was any choice open to us, we would have preferred to adopt the view taken in *Lingappa's* case.

7. While *Lingappa's* case exhaustively deals with the distinction between section 14(1)(b) of the Bar Council Act and section 30 of the Advocates Act. *M.S. Srinivasa Raghavachar's* case (supra) merely adopts the reasoning given in the case of *Smt. Jaswant Kaur and Another Vs. The State of Haryana and Another*, by which section 20-A of the Haryana Ceiling on Land Holding Act, 1972 containing similar prohibition against legal practitioners was declared as void on the ground that the said provision was repugnant to section 30 of the Advocates Act a law made by Parliament pursuant to Entries 77 and 78 of List I of Seventh Schedule. It was further held that section 20-A would not be saved even by Article 254(2) of the Constitution since the Ceiling Act is not a law made pursuant to Entry 26 in List III. Now, Punjab and Haryana High court has proceeded upon the assumption that section 30 of the Advocates Act is in operation. After the said judgment was prepared, it was brought to the notice of the High Court that section 30 was not brought into force. The High Court then proceeded to add that until section 30 comes into force, the Bar Council Act continues in force and in view of section 14 of the Bar Council Act all that has been observed by the

Supreme Court in the case of O.N. Mohindroo Vs. The Bar Council of Delhi and Others, (upon which the decision is based) and by the said Court with reference to section 30 of the Advocates Act would apply with the same vigour to section 14 of the Bar Councils Act. In other words, the High Court has held that section 30 of the Advocates Act and section 14 of the Bar Councils Act are the provisions in pari materia. With deepest respect, that does not seem to be the correct assumption. We reproduce the provisions for ready reference :

Section 14 of the Bar Councils Act, reads as under :

"14. Right of Advocates to practice :

(1) An Advocate shall be entitled as of right to practice---

(a) subject to the provisions of sub-section (4) of section 9, in the High Court of which he is an Advocate, and

(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other Court and before any other Tribunal or person legally authorised to take evidence; and

(c) before any other authority or person before whom such Advocate is by or under the law for the time being in force entitled to practice."

Section 30 of the Advocates Act, reads as under :

"30. Subject to the provisions of this Act, every Advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends---

(i) in all Courts including the Supreme Court;

(ii) before any Tribunal or person legally authorised to take evidence, and

(iii) Before any other authority or person before whom such Advocate is by or under any law for the time being in force entitled to practise."

It would be seen that while right of an Advocate to practice in the High Court is regulated under the Bar Councils Act by sub-clause (a) of section 14(1), the said right to practice in any other Court. Tribunal or person legally authorised to take evidence is regulated by sub-clause (b) which begins with the terminology "save as otherwise provided by sub-section (2) or by or under any other law for the time being in force." In other words, that right and we are concerned with that right in the appeal is subject to the provisions contained in any other law. Section 30 of the Advocates Act is an absolute right to practice before all Courts, Tribunals etc. and two provisions are materially different. This basic distinction has been noticed not only in Lingappa's case but also in the case of Paradip Port Trust, Paradip Vs. Their Workmen, which does not appear to have been brought to the notice of either Punjab & Haryana High Court or the Supreme Court in the case of H.S. Srinivasa Raghavachar. It also appears that even Lingappa's case was not brought to the notice of the Supreme Court in the later decision. The

following observations in the three Judges Bench decision in Paradip Port Trust's case rendered in the context of section 36 of the Industrial Disputes Act are to the point:

"Besides, it is also urged by the appellant that u/s 30 of the Advocates Act, 1961, every Advocates shall be entitled "as of right" to practice in all Courts and before any Tribunal (section 30(i) and (ii). The right conferred upon the Advocates by a later law will be properly safeguarded by reading the word "and" as "or" in section 36(4), says Counsel. We do not fail to see some difference in language in section 30(ii) from the provision in section 14(1)(b) of the Indian Bar Councils Act, 1926, relating to the right of Advocates to appear before Courts and Tribunals. For example, u/s 14(1)(b) of the Bar Councils Act, an Advocate shall be entitled as of right to practise save as otherwise provided by or under any other law in any Courts (other than High Court) and Tribunal There is, however, no reference to "any other law" in section 30(ii) of the Advocates Act. This need not detain us. We are informed that section 30 has not yet come in to force. Even otherwise, we are not to be trammelled by section 30 of the Advocates Act for more than one reason. First, the Industrial Disputes Act is a special piece of legislation with the avowed aim of labour welfare and representation before adjudicatory authorities therein has been specifically provided for with a clear object in view. This special Act will prevail over the Advocates Act which is a general piece of legislation with regard to the subject matter of appearance of lawyers before all Courts, Tribunals and other authorities. The Industrial Disputes Act, is concerned with representation by legal practitioners under certain conditions only before the authorities mentioned under the Act. *Genralia Specialibus non Derogant*. As Maxwell puts it :

Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention be manifested in explicit language.....or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special Act. In the absence of these conditions, the general statute is read as silently excluding from its operations the cases which have been provided for by the special one. *Marwell on Interpretation of Statutes*, 11th Edition, page 169.

Second, the matter is not to be viewed from the point of view of legal practitioners but from that of the employer and workmen who are the principal contestants in an industrial dispute. It is only when a party engages a legal practitioner as such that the latter is enabled to enter appearance before Courts or Tribunals. Here, under the Act, the restriction is upon a party as such and the occasion to consider the right or the legal practitioner may not arise."

8. We may at this stage notice that section 30 of the Advocates Act has not been brought into force as yet despite direction of the Supreme Court dated 4th August, 1988 issued to the Central Government in the case of *Aeltemesh Rein, Advocate, Supreme Court of India Vs. Union of India (UOI) and Others*, to

consider within six months whether it would be brought into force or no.

9. This takes us to the consideration of the case of O.N. Mohindroo's (supra). The said decision deals with the scope of Entries 77 and 78 in List I and Entry 26 in List III in the context of the appellate jurisdiction of the Supreme Court u/s 38 of the Advocates Act and Article 138 of the Constitution. Article 138 of the Constitution deals with the enlargement of the jurisdiction of the Supreme Court. Article 138(1) provides for further jurisdiction and powers with respect to any of the matter in the Union List as Parliament may by law confer. Article 138(2) provides for such enlargement by law made by Parliament with respect to any matter upon which Government of India and the Government of any State may specially agree. Submission made and accepted by the Delhi High Court was that the said Act was a composite legislation partly falling in Entries 77 and 78 of List I and partly in Entry 26 of List III and therefore, fell under Article 138(2) and not Article 138(1). Disagreeing with the said view, the Supreme Court held that the Act wholly fell within Entries 77 and 78 of List I, the power to regulate in regard to persons entitled to practise before the Supreme Court and High Court was carved out from the general power to legislate with regard to the legal, medical and other professions in Entry 26 in List III and is made the exclusive field for legislation by Parliament only. The following observations are to the point :

"Barring those entitled to practise in the Supreme Court, and the High Courts, the power to legislate with respect to the rest of the practitioners would still seem to be retained under Entry 26 of the List III."

Conclusion was that section 38 of the Advocates Act was covered by Article 138(1) and not by 138(2) and hence was not invalid because of, its enactment without the special agreement with the State Government.

10. The following Entries in 7th Schedule are relevant:

List I Entry 77 : Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court) and the fees taken therein; persons entitled to practise before the Supreme Court. Entry 78 : Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts persons entitled to practise before the High Courts. List II Entry 18 : Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization. Entry 65 : Jurisdiction and powers of all Courts, except the Supreme Court, with respect to any of the matters in this List. List III Entry 26 : Legal, medical and other professions. Entry 46 : Jurisdiction and powers of all Courts except the Supreme Court with respect to any of the matters in this List.

Now, legislative entries are fields of legislation and not the powers of the legislation which are contained in various Articles of the Constitution, such as Article 246. When there is apparent conflict between different entries, an attempt

has to be made for reconciliation. In case of overlapping, the doctrine of pith and substance has to be applied to find out the real nature of the legislation specific item excludes the general. Enactment is not a mere Collection of sections and therefore, subject matter of each section is not decisive of the matter. Therefore, enactment has one organic hole keeping in view its aims and objects has to be examined while judging its true character and the head of legislation under which it falls. Incidental encroachment on the heads in the other List is some times inevitable. But, such encroachment does not effect the legislative competence.

11. Applying the above well known tests which are crystalised by judicial pronouncement from time to time it seems to us that section 44-B of the Ceiling Act cannot be viewed in isolation and will have to be viewed in the context of the letter and spirit of the Ceiling Act as a whole for the purposes of determining the correct legislative head under which it falls. The purpose and scheme of the Ceiling Act is too well known to be elaborately stated and discussed. The said Act in pith and substance relates to land which comes under Entry 18 in List II read with Entry 65 in List II, and the Advocates Act or the Bar Councils Act in pith and substance relates to Entries 77 and 78 in List I.

12. Having regard to all these factors, we find it extremely difficult to locate any want of legislative competence of the State legislature in enacting section 44B of Ceiling Act. Section 30 of the Advocates Act is not in operation and section 14(1) (b) of the Bar Councils Act does not occupy the field of entitlement to practise in Courts (other than High Court). Tribunals etc. referred to in section 14(1)(b) which can be regulated by other laws including a State law. Therefore, section 44B is not repugnant to section 14(1)(b) which itself permits legislation in this regard.

13. Our attention was also invited to the case of *Nandlal v. State of Haryana* AIR 1980 S.C. 209 and it is contended that the decision of the Punjab and Haryana High Court about invalidity of section 20-A of that State a Ceiling Act is upheld therein. We have gone through the said decision and the submission does not impress us. The said decision does not even remotely touch this point and has only dwelt upon altogether new points raised before the Supreme Court.

14. All that survives is the consideration of the last submission that the battle between a citizen and the State in the Ceiling Act is unequal, specially when the State is allowed to be represented by a trained legal brain and the similar facility is denied to a citizen and hence the prohibition is highly discriminatory and oppressive. In this submission there is some force. But this ground of attack is essentially based upon Article 14 from which the Ceiling Act is immune because of the privileged position it occupies by being placed in Ninth Schedule under Article 31B of the Constitution.

15. To conclude, section 44B of the Ceiling Act is neither void nor unenforceable. The appeal is, therefore, dismissed, but with no order as to costs.