
(1981) 11 KL CK 0025
In the High Court Of Kerala
Case No : O.P. No. 3034 of 1979-J

A.Y. Aype

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 25-11-1981

Acts Referred:

Constitution of India, 1950 — Article 14, 254
Kerala Document Writers Licence Rules, 1960 — Rule 5
Registration Act, 1908 — Section 69(1)

Citation : AIR 1982 Ker 139

Hon'ble Judges : T. Kochu Thommen, J

Bench : Single Bench

Advocate : Mathew Zachariah, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T. Kochu Thommen, J.—The petitioner retired from Government service as a Sub-Registrar. After he retired he made an application (Ext. P1) in Form A under Rule 8 of the Kerala Document Writers" Licence Rules, 1960, (the "Rules"). His application was rejected by Ext. P3 for the reason that he was not qualified to be considered for registration in view of the deletion of Rule 5 (A) (1). This Rule as it stood originally provided :

"5. Licenses to whom granted.-- Subject to the provisions of these rules

(A) a Document writers" License may be granted to :

(1) Any retired officer of the Judicial, Registration or Law Departments of the Kerala State.

(2) Any person who has passed the Document Writers Licensing Test.

(3) Any person who on 1-4-1951 was in possession of a Document Writers" License granted to him under the Travancore Document Writers" License Rules,

1121.

(4) Any person who is in possession of a Document Writers' License granted to him under the Travancore-Cochin Document Writers' License Rules, 1955.

(5) Any other person who proves to the satisfaction of the Licensing Authority that he has been in continuous practice as a Document Writer in Travancore-Cochin or as a Scribe in the Travancore area for a period of not less than 5 years immediately preceding 1-1-1955 or as a Document Writer in the Malabar area for a period of not less than 5 years immediately preceding the date of commencement of these Rules.

(B) A Scribe's License may be granted to any person who has passed the Scribes' Test or was on 1-4-1951 in possession of a Scribe's License granted to him under the Travancore Document Writers' License Rules, 1121, or who is in possession of a Scribe's License granted to him under the T-C Document Writers' Licence Rules, 1955 :

Provided that Government may, on the recommendation of the Licensing Authority in appropriate cases, exempt any person or class of persons from the provisions of this Rule". It is Sub-rule (1) that has been deleted by notification M3-37725/78 dated 15-1-1979 published in Kerala Gazette No. 15 dated 10-4-1979. The petitioner is admittedly not qualified under any other provision of Rule 5. He claims to be aggrieved by the Rule as it now stands.

2. The petitioner contends that the Rules relating to Document Writers' Licence are ultra vires the Act. According to him, none of the Rules relating to licensing of Document Writers is valid. These Rules, he says, are inconsistent with the Registration Act, 1908 (the "Act"), which is a Central enactment. He further contends that the Rules are discriminatory insofar as they provide that only persons having licences can practice the profession of document writers even if others are equally or better experienced in the field. The Rules were made u/s 69(1)(bb). This provision is challenged for the reason that it was introduced by an amendment of the Travancore-Cochin legislature which is alleged to be inconsistent with the Central enactment.

3. Registration is a matter included in List III of the VII Schedule to the Constitution. The Registration Act, 1908, provides for Rules being made by the Inspector-General subject to the approval of the State Government. Section 69 reads as follows :

"69. Power of Inspector-General to superintend registration offices and make rules. (1) The Inspector-General shall exercise a general superintendence over all the registration offices in the territories under the State Government and shall have power from time to time to make rules consistent with this act -

.....

(bb) providing for the grant of licences to document writers, the revocation of

such licences, the terms and conditions subject to which, and the authority by whom such licences shall be granted and generally for all purposes connected with the writing of documents to be presented for registration

.....

(2) The rules so made shall be submitted to the State Government for approval, and after they have been approved, they shall be published in the official Gazette, and on publication shall have effect as if enacted in this Act".

Clause (bb) of Sub-section (1) was introduced by Section 2 of the Registration (Travancore-Cochin) Amendment Act (XXV of 1952). It is by virtue of the power conferred upon the Inspector-General by this provision that the rules were made by him. If Clause (bb) of Sub-section (1) has been validly inserted in Section 69, the vires of the Rules in question cannot be in doubt. Its invalidity can then arise only if it is discriminatory as contended by the petitioner.

4. The reason for challenging the validity of the amendment introducing Clause (bb) to Sub-section (1) of Section 69 is that it is inconsistent with the Central Act. It is stated that the Central Act does not postulate any restriction on the privilege of citizens to practice the profession of Document Writers. According to the petitioner the provision for grant of licence introduced under Clause (bb) by the State legislature is therefore repugnant to the Central enactment. I do not agree. I do not see the requirement of licence as in any manner inconsistent with the provisions of the Central Act. The Central Act regulates registration of documents. The Inspector-General is a person authorised under the Act to exercise general superintendence over all the registration offices in the territories under the concerned State Government. In relation to that power of superintendence he is authorised to make rules. Although the Section as it originally stood did not provide for the grant of licence the new provision relating to the grant of licence is a matter in respect of the general superintendence which the Inspector-General is authorised to exercise.

There is not only no inconsistency between the provisions originally enacted by the Central legislature and the new provision added to the Section by the State legislature, but the new provision is meant to supplement and aid the function of the Inspector-General as envisaged under the Central Act. I see no inconsistency between Section 69 as it stood then and as it stands now. In the circumstances, the contention that Clause (bb) is repugnant to Section 69 is unsustainable.

5. The challenge against the validity of the Rules made by the Inspector-General by virtue of the powers vested in him under Clause (bb) of Sub-section (1) of Section 69 can be sustained only if the petitioner's contention regarding discrimination is valid. Document Writers are a class of people who practise the profession of document writing. They are expected to acquire the necessary qualifications and skill in order that they may discharge their duties and functions satisfactorily and consistently with the public interest. Every profession, be it law, medicine or any other, needs to impose restrictions as regards the qualifications

of persons allowed to practise. This is necessary in the public interest. It is in the public interest that those who profess to write documents for others are required to acquire the necessary qualifications. To say that the imposition of restrictions on the basis of qualification in respect of persons who profess to practise a profession is discriminatory is to ignore the very nature of their functions. I do not see any substance in the contention that to impose qualifications as a condition precedent to a person being allowed to practise a profession is discriminatory.

For the same reason, to contend that the requirement of a licence is discriminatory is also without substance. It was therefore in the public interest and consistently with the power vested under the Act that the Rules were made by the Inspector-General with the approval of the State Government. Clause (1) of Rule 5 (A) having been deleted by an amendment which was duly made, the petitioner cannot be heard to contend that he is in any manner aggrieved by the refusal of his application for that reason. If the petitioner has a case that he is qualified under the remaining provisions of the Rule it is open to him to make a fresh application stating the necessary facts. With this observation, the O. P. is dismissed. I make no order as to costs.