

(1964) 02 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 329 of 1963

Badri Prasad Sadashivrao

APPELLANT

Vs

District Judge, Shri G.R. Kale

RESPONDENT

Date of Decision : 28-02-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 2
Legal Practitioners Act, 1879 — Section 11, 32, 7, 8, 9

Citation : AIR 1964 MP 264 : (1965) ILR (MP) 727

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : G.L. Oza, for the Appellant; R.J. Bhawe, Government Advocate and A.P. Sen, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.—This order will also govern the disposal of Misc. Petitions Nos. 392 and from 404 to 416, all of 1963,

2. The petitioners in all these applications under Article 226 of the Constitution were until lately appearing for parties in cases in the subordinate courts at Indore after obtaining general powers of attorney from parties, and in some cases special powers of attorney. In July 1963 a complaint was received by the District Judge of Indore from the Bar Association, Indore, stating that the petitioner Badri Prasad, in M. P. No. 329 of 1963, and other persons, under the cover of general powers of attorney and also in some cases special powers of attorney, were appearing for parties in cases and practising as legal practitioners for them, and that they also attired themselves as lawyers. Thereupon the learned District Judge held an inquiry into the matter. He directed all the petitioners to furnish him a list of cases in which they were appearing in the various subordinate courts as recognised agents.

On the basis of the information supplied by the petitioners, the learned District Judge found that the petitioner in each case had obtained a number of general

and special powers of attorney from several persons and was appearing on their behalf in a number of cases pending in various courts. The District Judge then asked each petitioner to select one general power of attorney and one special power of attorney which he desired to utilise for his appearance on behalf of the party or parties giving these two selected powers of attorney. No petitioner made any election. Consequently, on 9th July 1963, the learned District Judge made an order prohibiting the petitioner-Badriprasad from appearing in any case in any court on the strength of any Mukhtyar-Nama (power of attorney) in his favour. He also passed on 17th October 1953 a similar order prohibiting the other petitioners from appearing in any case. The petitioners now pray that the said orders of the District Judge be quashed by the issue of writs of "certiorari".

3. The contention of the petitioners is that under Order 3, Rule 2, Civil Procedure Code, as amended in this State, no restriction was placed on their appearance as recognised agents for several parties in their cases, after obtaining from them general powers of attorney; that is recognised agents they only did what Order 3, Rules 1 and 2, C. P. C. permitted them to do; that they never practised as a legal practitioner under the Legal Practitioners Act, 1879, and never made it a business of appearing as a pleader or a Mukhtyar under that Act; and that merely because they appeared in courts for more persons than one under the authority conferred on them by general powers of attorney, it could not be said that they were mukhtyars under the Act of 1879 or were practising as a Mukhtyar.

It has also been urged that the Legal Practitioners Act, 1879 (hereinafter referred to as the Act), does not define "Mukhtyar"; that u/s 11 of the Act the High Court is empowered to make rules from time to time declaring what shall be deemed to be the functions, powers and duties of Mukhtyars practising in the subordinate courts; that no such rules have been framed by this court; that in the absence of such rules it cannot be said of any person with reference to the kind of activity in which he is engaged, that he is practising as a Mukhtyar within the meaning of the Act; that the learned District Judge had no power at all to make the orders that he did against them; and that even in regard to any person practising in any court as a pleader or Mukhtyar in contravention of Section 10 of the Act, the District Judge had no power under the Act of debarring him from appearing in any court as a pleader or a Mukhtyar and such a person could only be punished u/s 32 of the Act by the Court before which a contravention of Section 10 is committed by the person. The petitioners also complain that the District Judge did not hold any enquiry against anyone of them for determining whether they were, in the light of the decisions in *Kali Kumar v. Nobin Chunder*, ILR 6 Cal 585; *Tussuduq Hossain v. Girhar Naram* 1LR 14 Cal 556 (FB); *Emperor v. Beni Bahadur* ILR 26 All 380 and *M. Krishnammal Vs. T. Balasubramania Pillai*, Power of Attorney Agent of M. Krishnammal, at all practising as legal practitioners under the Act and also did not give them an opportunity of showing that they were not so acting.

4. In the return filed by the District Judge, Indors, in Misc. Petition 329 of 1963 opposing these petitions, the facts and circumstances in which he made the impugned orders against the petitioners are not disputed. The impugned orders are, however, sought to be justified on the grounds that Order 3, Rule 2, C. P. C., as amended in this State, does not authorize a person to make a business of appearing as a pleader or a Mukhtyar for parties in cases by obtaining powers of attorney from the parties and thus evade the provisions of Section 10 of the Act under which no person is entitled to practise as a pleader or Mukhtyar unless he holds a certificate issued u/s 7 or has been enrolled in such court; and that it was found from the general and special powers of attorney held by the petitioners and from the records of various cases in which they were appearing that the applicants had made it a practice to act as Mukhtyars.

5. The arguments advanced by learned Counsel appearing on behalf of the petitioners were on the lines of the contentions taken by them in their petitions. During the course of their argument, learned counsel stressed the fact that Order 3, Rule 2, C. P. C. did not impose any bar on the appearance of a person as a recognised agent for several parties on the strength of general powers of attorney given by them. It was admitted that under that rule the petitioners could not act as a recognised agent for any party by obtaining from him a special power of attorney. It was, however, urged that even if the petitioners obtained general powers of attorney from several persons and acted for them as recognised agents, that was not sufficient to characterise them as persons practising as Mukhtyars contrary to the provisions of the Act; that the distinguishing feature between a recognised agent on the one hand and a pleader or a Mukhtyar on the other, under the Act, was that whereas a recognised agent under Order 3, Rule 1 could only make and do such appearances, applications and acts on behalf of the party as are required or authorised by law to be made or done by the party, and could not plead, a pleader or a Mukhtyar under the Act could not only appear and act but also plead; and that as none of the petitioner ever pleaded, they could never be regarded as a Mukhtyar or a pleader under the Act. It was further said that even if any petitioner had practised as a Mukhtyar, the District Judge had no power to debar him from appearing in any court; that such a person could only be proceeded against u/s 32 of the Acts and that in any case he learned District Judge was not justified in making the orders that he did without holding any enquiry against the petitioner and without giving them an opportunity to show that they had never practised as Mukhtyars.

6. In reply, Shri Bhawe, learned Government Advocate, appearing for the respondent District Judge, said that each of the petitioners was given a notice of hearing by the District Judge before the making of an order against him prohibiting him from appearing in any court on the strength of any power of attorney in his favour; that it was on the basis of the material furnished by the petitioners themselves in the form of powers of attorney held by them that the impugned orders were made: that the very fact that each of the petitioners held

several powers of attorney was in itself indicative of the fact that they were constantly, as a means of livelihood, performing the functions of a Mukhtyar mentioned in Section 9 of the Act and practising as such; that it made no difference that in this State the class of Mukhtyars under the Act did not exist or that this Court had not framed any rules u/s 11 of the Act declaring the functions of Mukhtyars; and that even if action against the petitioners could be taken u/s 32 of the Act, that did not prohibit the District Judge from making the impugned orders in the exercise of his supervisory and controlling powers u/s 14 of the Madhya Pradesh Civil Courts Act, 1958, and the powers given to him by the rules framed under the Legal Practitioners Act of maintaining the roll of pleaders and Mukhtyars. Learned Government advocate proceeded to add that under the Act a legal practitioner alone could plead, but he could also appear and act for a party; and that if, therefore, any of the petitioners abstained from pleading but made it a habit of appearing and acting for parties generally in courts of law on the strength of powers of attorney obtained from them, then he would be in effect practising as a pleader or Mukhtyar in violation of Section 10 of the Act.

7. Shri A.P. Sen, who appeared for the State Bar Council in response to the notice directed to be issued to the Council by us, while supporting the orders made by the District Judge prohibiting the petitioners from appearing in law courts, expressed the alarm of the Bar Council at the growth of a "class of legal practitioners" who did not possess any legal qualifications whatsoever and were not bound by any rules of professional conduct or etiquette and who were not subject to the disciplinary control of the High Court, District Court or of anyone. He submitted that the manner in which the petitioners acted and appeared for several parties in subordinate courts indicated that they were in effect performing the functions of a legal practitioner under the Act or of any Advocate under the Advocates Act, 1961; that the petitioners not being qualified so to act had no legally enforceable right; and that being so, they could not claim the issue of any direction to the District Judge compelling him to allow them to appear as legal practitioners under the guise of recognised agents for various parties in subordinate courts. He also supported the learned Government Advocate in his contention that the District Judge had power to make the impugned orders in the exercise of his controlling and supervisory powers u/s 14 of the M. P. Civil Courts Act, 1958, and the rules framed under the Legal Practitioners Act, 1879, over subordinate courts and legal practitioners.

8. On the arguments presented before us, the questions that directly arise for our decision are whether Rules 1 and 2 of Order 3, C. P. C., put any restriction as regards the number of cases in which and parties on whose behalf a person can appear as a recognised agent on the authority of general powers of attorney given by the parties, and that if these rules do impose such restrictions, then whether the District Judge had the power to make the impugned orders and whether he made them after following the proper procedure. The other questions, namely, whether if Rules 1 and 2 of Order 3 do not impose any such restrictions, the petitioners can be said to have in effect practised as legal

practitioners under the Act by appearing for several parties as recognised agents under cover of powers of attorney, and if they did, whether the District Judge had the power to prohibit their appearance in this manner, are no doubt questions of great importance to the Bar. But as we will show later on, they do not require any determination in the cases before us and may come up for decision before this court at a suitable or appropriate occasion.

9. Order 3 Rule 1, C. P. C. provides that-

"Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf;

Provided that any such appearance shall, if the Court so directs, be made by the party in person."

Rule 2(a) of that Order, as amended in this State, is as follows--

"2. The recognised agents of parties by whom such appearances, applications and acts may be made or done are

(a) persons holding on behalf of such parties either (1) a general power of attorney, or (ii) in the case of proceedings in the High Court of Madhya Pradesh, an advocate of that High Court and in the case of proceedings in any district, any Advocate, or a Pleader to whom a sanad for that district has been issued, holding the requisite special power of attorney from parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, authorising them or him to make and do such appearance, applications and acts on behalf of such parties."

Reading these two rules together it is clear that they merely deal with "any appearance, application or act in or to any court, required or authorised by law to be made or done by a party in such court", and provide that such an appearance, application or act may be done by the party in person, or by his recognised agent or by a pleader. Where the party chooses to make appearance, applications and acts through a recognised agent who is not an Advocate or a pleader in a subordinate court, then under Order 3 Rule 2, C. P. C. the recognised agent must hold on behalf of the party a general power of attorney. That rule also enables an advocate to act as a recognised agent under a special power of attorney in proceedings in the High Court. It also permits a pleader to appear as a recognised agent for a party under a special power of attorney if the conditions mentioned in the rule are satisfied. Neither Rule 1 nor Rule 2 of Order 3 say anything as to the number of cases in which, or the number of parties on whose behalf, a person, who is not an advocate or a legal practitioner under the Act, can appear as a recognised agent after obtaining general powers of attorney from the parties.

It must be noted that these two rules do not in any way deal with the qualifications of the persons entitled to practise as a pleader or a Mukhtyar under the Act or as an advocate. They do not even deal with the right of advocates, pleaders or Mukhtyars to plead which arises independently of Order 3 C. P. C. and flows from the provisions of the Advocates Act, 1961 and the Legal Practitioners Act, 1879. They deal with the restricted class of acts in connection with litigation in courts and it is with regard to this type of acts that Rules 1 and 2 of Order 3 permit recognised agents to be; appointed. A person, who is not an advocate or a legal practitioner, can, therefore, appear in several cases on behalf of the parties as their recognised agent on the strength of general powers of attorney given by them in his favour. A recognised agent under Order 3 Rule 2 can only make and do "appearances, applications and acts" on behalf of his principal. He has no right of pleading, that is to say, no right of audience in court, no right of addressing the court, and no right of examining and cross-examining the witnesses.

10. It must be noted that a person, who is not an advocate or a legal practitioner or a pleader, can act as a recognised agent only if he holds a general power of attorney. He cannot be allowed to appear as a recognised agent under a special power of attorney. The distinction between a general power of attorney and a special power of attorney is well-known and has been, if we may say so with respect, lucidly stated by Chagla C. J. in *Western India Theatres Ltd. Vs. Ishwarbhai Somabhai Patel*, . The learned Chief Justice pointed out that a general power of attorney must confer upon the donee of the power all necessary powers with regard to the business of the donor and even if a liberal view of the general power of attorney is taken, it must at least authorise the agent to act for the donor with regard to all his litigation in different courts. Then he observed--

"However full the powers may be which are conferred upon the donee, if they relate to one particular matter, if they are not general in the sense as referring to his whole business or a particular section of his business or to all his litigation, then the mere fact that wide and full powers are conferred upon the donee with regard to one specific matter will not make the power of attorney a general power of attorney. The connotation of the word "general" is that the power must be general with regard to the subject-matter, not general with regard to the powers conferred in respect of a subject-matter. What one has got to look at before one decides whether a power is general or special is what is the subject-matter in respect of which this power is conferred, and if the court comes to the conclusion that the subject-matter is not general, that it is restricted to something specific, something particular, then the power of attorney would not be a general power of attorney."

If Rules 1 and 2 of Order 3 do not put any limitation as regards the number of cases in which and the number of parties on whose behalf a person can appear as a recognised agent, then the learned District Judge clearly erred when he stopped the petitioners from appearing as recognised agents in various courts on

the basis of powers of attorney in their favour merely on the ground that they were holding several powers of attorney and were appearing in courts for a number of parties. He also went wrong in asking the petitioners to select out of the several powers of attorney they were holding one general power of attorney and another special power of attorney which they intended to utilise for their appearance as recognised agents. He would have been no doubt justified if he had intimated to those petitioners, who were holding special powers of attorney, that under Order 3, Rule 2, C. P. C. they could not be allowed to appear as recognised agents on the basis of those powers of attorney. Before us it was conceded on behalf of such petitioners who held special Powers of attorney that on the strength of those powers of attorney they could not appear as recognised agents for any party under Order 3, Rule 2, C. P. C.

11. The learned District Judge was, however, of the view that the petitioners' appearance and acting in several cases as recognised agents amounted to their practising as Mukhtyars within the meaning of the Legal Practitioners Act, 1879. Now, it is no doubt true that a power of attorney agent cannot carry on the "business" as a pleader or a Mukhtyar under the Act. Order 3, Rule 2 does not authorise a person to make a business of appearing in effect as a pleader or a Mukhtyar under the Act under cover of general powers of attorney. If such an agent carries in effect the business of a pleader or a Mukhtyar under the Act and practises as such when he is not qualified to do so, then he would no doubt be punishable u/s 32 of the Act. The argument that as under Sections 8 and 9 of the Act a pleader or a Mukhtyar enrolled under the Act can plead and under Order 3 Rule 2 a recognised agent can never plead he cannot be said to be practising as a pleader or a Mukhtyar even if he appears in several cases on the strength of general powers of attorney is altogether untenable. A pleader or a Mukhtyar under the Act can plead as well as appear and act. A recognised agent under Order 3, Rule 2 can also appear and act. Therefore, even if a recognised agent does not plead in the cases in which he appears, yet if he carries on the business of acting and appearing and performs functions of appearing or acting which a legal practitioner under the Act also performs, he cannot but be regarded as practising as a pleader or a Mukhtyar under the Act.

Section 9 of the Act itself provides that a Mukhtyar holding a certificate u/s 7 may after enrolment practise as a Mukhtyar in any civil or criminal Court in which he is enrolled or in any court subordinate thereto and may appear, plead and act in any such court. Section 11 no doubt gives to the High Court the power to frame rules declaring what shall be deemed to be the functions, powers and duties of Mukhtyars practising ;n subordinate courts. The fact that the class of Mukhtyars under the Act does not exist in the State and no rules have been framed: by this court u/s 11, does not mean that any person can without any restriction practise as a Mukhtyar without making himself liable to any punishment u/s 32 of the Act. The right to practise as a Mukhtyar under the Act is available only to a person who holds a certificate issued u/s 7. If the system of Mukhtyars does not exist in the State and no certificate is issued to anyone u/s 7

to enable him to practise as a Mukhtyar, then clearly if a person practises as a Mukhtyar he renders himself liable to penalty u/s 32 of the Act.

12. In coming to the conclusion that the petitioners practised as Mukhtyars under the Act, the learned District Judge was influenced mainly by the fact that each of the petitioners appeared as a recognised agent not for one or two persons only but for many more and some of them appeared for as many as twenty-four to twenty-five persons. Quite apart from the fact that the question whether any person has illegally practised as a Mukhtyar can be judicially determined only when proceedings for penalising that person u/s 32 of the Act are started by the court in which the illegality of practising as a Mukhtyar has been committed by him and that the learned District Judge did not initiate any proceedings u/s 32 against any of the petitioners, the approach of the District Judge to the determination of the question whether the petitioners practised as Mukhtyars was altogether erroneous.

It is not necessary, and it would not even be proper, for us in these cases to explain what would constitute practising as a Mukhtyar or carrying on business as a Mukhtyar. The question has to be decided on the facts of each case. It is sufficient to say that the fact that a person has appeared as a recognised agent for several persons is by itself not decisive of the matter whether he is carrying on business as a Mukhtyar or practising as such. On the question as to when and in what circumstances a person can be said to be practising as a lawyer or as a Mukhtyar, sufficient guidance is furnished by the decisions in ILR Cal 585, ILR Cal 556 (FB), ILR All 380 and *M. Krishnammal Vs. T. Balasubramania Pillai*, Power of Attorney Agent of *M. Krishnammal*, . If a person is found to carry on the business of practising as a Mukhtyar, then his even one isolated appearance as a recognised agent on the basis of a power of attorney would be sufficient to render him guilty of conduct punishable u/s 32 of the Act.

13. It is obvious that in the cases before us, the District Judge acted in his administrative capacity in making the impugned orders against the petitioners. The sanction for the orders which the learned District Judge made is not to be found in Section 14 of the M. P. Civil Courts Act, 1958, which deals with the District Judge's power of superintendence and control over subordinate courts. But it cannot be denied that when by the rules framed by this Court under Sections 6, 7 and 8 of the Act relating to the admission and enrolment of pleaders, the District Judge is required to maintain a register of pleaders enrolled, the District Judge rightly and properly acts within his powers when he finds a certain person practising as a legal practitioner when he is not qualified to do so and directs him to desist from practising. Such an order of the District Judge is nothing more than an intimation to the person concerned that he is illegally practising as a legal practitioner.

If the person chooses to ignore the intimation and persists in practising, then he would be liable to punishment u/s 32 of the Act not because of any contravention of the order of the District Judge but because of the contravention of the

provisions of Section 10 of the Act. The suggestion, therefore, made on behalf of the petitioners that the District Judge had no power at all to hold any enquiry into their appearances as recognised agents and to intimate to them as a result of the enquiry that they were illegally practising as Mukhtyars, and that they could be proceeded against only u/s 32 of the Act cannot be acceded to. When after a full enquiry and after hearing the person, concerned the District Judge warns a person that he is illegally practising as a legal practitioner, it is for him to heed the warning or face the consequences u/s 32. It must, however, be said to the credit of all the petitioners that though the orders made by the learned District Judge had no support in the language of Rules 1 and 2 of Order 3, and though he was not right in holding that the petitioners were practising as Mukhtyars on the material before him and without giving the petitioners full hearing, they obeyed the interdiction of the District Judge against them.

14. For the foregoing reasons, all these petitions are allowed and the orders made by the District Judge of Indore prohibiting each of the petitioners from appearing as a recognised agent in any case on behalf of a party on the strength of a general power of attorney are quashed. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of security deposit shall be refunded to the petitioners.