
(1978) 04 BOM CK 0011
In the Bombay High Court
Case No : Appeal No. 196 of 1978

Bhiwa Yeshwant

APPELLANT

Vs

Regional Director, E.S.I. Corp. and Others

RESPONDENT

Date of Decision : 25-04-1978

Acts Referred:

Advocates Act, 1961 — Section 32, 45
Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1

Citation : (1978) 80 BOMLR 361 : (1978) MhLj 589

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Advocate : J.R. Pandey and K.K.V. Kurup, for the Appellant; D.R. Dhanuka, for Bar Council of Maharashtra, for the Respondent

Judgement

S.C. Pratap, J.—An otherwise simple matter has turned out to be one of some interest and importance to the Bar as also to the litigating public.

2. This first appeal by the original applicant one Bhiwa Yeshwant against the judgment and order dated July 20, 1977, passed by the learned Judge, Employees' Insurance Court, Bombay, in Application No. 19 of 1977, was filed in the office of this Court by Mr. J.R. Pandey claiming himself to be an Attorney at Law. After the usual procedure, the appeal was numbered and in due course placed before the Court for admission, the board in that behalf showing Mr. J.R. Pandey as being the Advocate for the appellant.

3. When the matter was first called out on April 18, 1978, Mr. Pandey appeared and commenced his arguments. However, finding him in an informal suit with tie and not in the robes of an Advocate appearing in the High Court, the Court requested him to come in proper Court attire and address the Court only thereafter. He then informed the Court that he was not an Advocate but an "Attorney-at-law" and had also filed his vakalatnama accordingly. He, therefore, claimed that he had a right to appear. Perusal of the original vakalatnama showed that it was filed by him as an Attorney-at-law and also as a power of

attorney holder of the appellant. Since prima facie I had doubts regarding his claim to appear as of right, notice was directed to issue to the Bar Council of Maharashtra on the question whether he could so appear though he was not an Advocate but claimed to be the appellant's power of attorney holder as also an Attorney-at-law.

4. When the matter was called out today, Mr. D.R. Dhanuke, the learned Advocate and Chairman of the Bar Council of Maharashtra, appeared and advanced arguments strenuously opposing the appearance of Mr. Pandey, Mr. Pandey, on the other hand, asserted his earlier claim contending that he had a right to appear, that in fact he has been so appearing and practising in several courts including this Court and the Supreme Court since 1959 and that the Court has, therefore, no authority to prevent him from appearing. At this stage, Mr. K.K.V. Kurup, an Advocate of this Court, also appeared on the scene armed with a vakalatnama duly signed by the appellant in his favour and asserting his own right to represent the appellant.

5. Question at the outset arising for determination is whether Mr. Pandey is entitled to appear before this Court as of right. Question next arising is whether (in the event of his having no such right) the Court, in the circumstances of the case, should or should not grant him leave or liberty to appear.

6. Now, on the first question aforesaid, the emerging circumstances render the position clear. Mr. Pandey, on his own statement to the Court, is not an Advocate. Indeed, he frankly conceded that his name is not entered as an Advocate in any roll under the Advocates Act, 1961. Mr. Pandey's own statement to the Court further discloses that he is also not a Solicitor nor an Attorney normally so understood. He has not disclosed nor does he appear to have any other qualification as a legal practitioner. The only surviving status he can claim is that of a constituted attorney of the appellant. Question, however, is whether he can as such constituted attorney appear as of right.

7. In this behalf, Mr. Dhanuka, the learned Advocate, referred to a ruling of this Court in *Aswin Shambhuprasad v. National Rayon Corp. Ltd.* 57 Bom.L.R. 209. In the said case, one Shambhuprasad claiming to be the constituted attorney of Aswin (and Vijay), the heirs and legal representatives of the original plaintiffs Diwalibai and Nirmalaben, sought to assert his right to appear in Court. Considering the question as one of "...very great importance to the Bar", notices were directed to be issued to the Advocate General the Bar Council, the Advocates' Association of Western India and the Bar Association. Thereafter, upon hearing the respective Advocates and construing the provisions of Order III of the CPC and relying upon the Full Bench decision of the Madras High Court in *Krishnammal v. Balasubramaniam* ILR 1938 Mad 12, and two decisions of the Calcutta High Court, one in *Hurchand Ray Goburdhon Das v. The Bengal-Nagpur Railway Co.* (1914)19 C.W.N. 64, and the other in *(re Eastern Tavoy Minerals Corporation Ltd.)* ILR (1934) Cal 324, the learned Chief Justice Mr. M.C. Chagla (as he then was) held follows :

"A constituted attorney holding a general power-of-attorney has no right of audience in Court, as the right of the audience does not form part of an "appearance, application or act in or to any Court" within the meaning of the expression in Order III, Rule 1, of the Civil Procedure Code, 1908."

8. Mr. Dhanuka, the learned Advocate, also relied upon a very recent decision of the Supreme Court in Harishankar Rastogi Vs. Girdhari Sharma and Another, . Wherein Krishna Iyer J. considered a somewhat similar situation. The petitioner one Harishankar appeared in person before the Supreme Court and sought permission to be represented by another person who was not an Advocate. Hearing the party as also the Supreme Court Bar Association (notice being earlier directed to issue to it) and considering the provisions of the Advocates Act, 1961, as also the primary aim of justice and legal service, the Supreme Court held thus :

".....private person, who is not an Advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may, even after grant of permission, withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission."

9. Settled position, therefore, is that one who is not an Advocate cannot assert appearance in Court as a matter of right and claim a right of audience accordingly. Such right must be held to be confined to the litigant himself and/or to his Advocate. To hold otherwise would mean that persons other than Advocates are also allowed to practise. This is not to lay down that there is a blanket bar or an absolute edict against such appearance. But such appearance can only be after and if leave in that behalf is granted by the Court, such grant being a matter entirely for the Court to consider and decide on the facts and circumstances of each case and subject to such conditions as the Court may deem just and proper. This position is also, to an extent, supported by section 32 of the Advocates, Act 1961, vide :

"Notwithstanding anything contained in this Chapter, any Court, authority or person may permit any person, not enrolled as an Advocate under this Act, to appear before it or him in any particular case."

I, therefore, reject the contention to the contrary of Mr. J.R. Pandey and hold that he is not entitled to appear as of right in this matter. He has no such unqualified privilege.

10. Question then arises whether this Court should grant him permission to appear. In this behalf, it must, at the outset, be noted that no such motion is made nor any such permission sought by the party-appellant himself. On the contrary and what is more, the appellant's son (the appellant, I am told, being in

hospital) who is present here mentioned to the Court that his father, the appellant, has actually engaged Mr. K.K.V. Kurup, Advocate, and has also in fact signed a vakalatnama accordingly in his favour. This is confirmed in essentials by the learned Advocate Mr. K.K.V. Kurup. This, by itself, is, therefore, in my view, sufficient to decline leave to Mr. Pandey to appear in this matter. Indeed, it is no longer open to him to even ask for such leave.

11. That apart, and assuming Mr. Pandey can nevertheless and in spite of the aforesaid telling circumstances still ask for leave to appear, I would have no hesitation in refusing the same. To consider whether he could be a fit person to represent the appellant, questions were sought to be put to him by the Court, but he consistently avoided them. Though in law he need have no formal qualifications, he, however, evaded to disclose them if any. Though he is neither an Advocate nor an Attorney, he has been using printed vakalatnama and, on his own statement, he has been filing the same in different courts, indeed, even the office of this Court was lulled into relying upon his vakalatnama form and consequently showing him on the record and on the board as Advocate for the appellant. His persistence in represent the appellant even after the appellant had engaged an Advocate was nothing short of sheer importunence. Such insistence on appearance and resistance to a voluntary withdrawal was not service but disservice to the very cause sought to be represented. His conduct in Court was highly unbecoming and his demeanour almost defiant. He depicted a picture of utter irresponsibility having least regard and respect for courts of law and administration of justice. His incessant chatter in Court was all "sound and fury signifying nothing". His address, an amalgam of varied sorts, if one may call it so, was more, in the nature of ignorant elenchi than any relevant legal or even factual argument as such. He was all along riding a high horse with a never say die attitude. His gestures, bizarre as these were, symbolised the role of a dramatic person engaged more in his own monologue than any dialogue as such with the Court.

12. Indeed, his performance was a low water-mark of dignity, decorum and discipline. His own proclaimed nearly twenty years of appearances in different courts do not appear to have enlightened and imbued him with even the bare essentials of these basic attributes. His conduct was altogether anathema to a respectful deportment and manners expected and contemplated of one entering a temple of justice. Permission in such a case will not aid but impede administration of justice. It will not serve but subvert the ends of justice. The judicial process will not be helped but hampered. In such hands neither law nor justice can remain safe. And a fortiori with such representation, interests of the litigants would not advance but retard and would be more jeopardised than secured. Considering this spectrum of facts and circumstances, I am of the view that Mr. J.R. Pandey must be refused permission to appear in this matter. Permission is accordingly rejected.

13. I am also of the view prima facie that this is a fit case for action against Mr.

J.R. Pandey under the Advocates Act, 1961, section 45 of which runs as follows :

"Any person who practises in any Court or before any authority or person, in or before whom he is not entitled to practise under the provisions of this Act; shall be punishable with imprisonment for a term which may extend to six months."

As observed by the Supreme Court in *Harishankar Rastogi v. Girdhari Sharma* supra :

"Such other person cannot practise the profession of habitually representing parties in Court. If a non-advocate specialises in practising in Court, professionally he will be violating the text of the interdict in the Advocates Act."

I, therefore, direct that a copy of this order be forwarded to the Bar Council of Maharashtra for further looking into and examining the matter and, if considered fit and necessary, to then proceed to take against Mr. Pandey appropriate steps in accordance with law. A copy of this order be also sent to the Government Pleader, the Law Officers of the State Government in the High Court at Bombay, for such action in the matter as may be considered necessary after scrutiny.

14. Though there is no sovereign inoculation against recurrences similar hereto hereafter, this matter should serve as a stimulus to the concerned authorities and quicken the pace of inquiry, investigation and action so as to at least minimise, if not altogether eliminate, such occurrences in the future. The earlier the concerned authorities consider the matter the better and safer it would be for the large body of ignorant and guilible litigants as also for upholding and maintaining the dignity of the courts and the ethics of the profession. Speedy action may also serve as a salutary check on many another bird of the same feather as the power of attorney holder and the "Attorney-at-Law" herein.

15. I was inclined to fix the appeal for admission on the regular admission day, Thursday, the 27th instant. However, as Mr. Pandey has not obliged the Advocate Mr. Kurup with the papers of the matter and has turned a deafer to requests in that behalf, the said Advocate would naturally require some time to construct his brief and to thereafter properly study and prepare the matter. The appeal is, therefore, adjourned till after the ensuing summer vacation and will be placed for admission before the appropriate Court on the usual admission day, Thursday, June 22, 1978, or on such other date as the Court taking up admission matters may fix.