
(2003) 12 AHC CK 0148
In the Allahabad High Court
Case No : C.M. (R) A. No. 138670 of 2003

Brij Lal Patel

APPELLANT

Vs

U.P. State Agro Industrial Corporation and Another

RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:

Advocates Act, 1961 — Section 16, 49(1)

Citation : AIR 2004 All 178

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : K.P. Agarwal and Arvind Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Writ Petition No. 28709 of 1993 Brij Lal Patel v. U.P. State Agro Industrial Corporation and another was dismissed in default by an order dated 24-7-2003 which reads as below :

"Sri Arvind Kumar has fairly submitted that at present he has no instruction to pursue the case, therefore, for lack of instruction he is not able to render assistance.

It appears that the cause of action does not survive, therefore, writ petition is dismissed."

(1) A Civil Misc. (Restoration) application No. 138670 of 2003 was preferred on 14-8-2003 by the signature of Sri K.P. Agarwal, Senior Advocate as learned counsel for the petitioner supported by an affidavit of Sri Nazme Hasan aged about 54 years son of Late Shri Mazhar Hussain resident of 275, Rani Mandi, Allahabad, as a registered clerk in the office of Sri K.P. Agarwal, Senior Advocate.

2. In para 2 of the affidavit it is indicated that name of Arvind Kumar, Advocate was printed as the counsel for the petitioner. According to para 3 of the affidavit when the case was called out Sri K.P. Agarwal, Senior Advocate who was to

argue the case for the petitioner was not present as he was not aware of that the case was listed at serial No. 27 in the cause list of 24-7-2003. According to para 4 of the affidavit Sri Arvind Kumar, Advocate had worked for about 10 years with Sri K.P. Agrawal, Senior Advocate in the past, thereafter he started independent practise. According to para 5 Sri Arvind Kumar did not inform Sri K.P. Agrawal, Senior Advocate that the case was listed on 24-3-2003 in Court No. 50 (before Hon"ble R.B. Misra, J.J. In these circumstances it was not noted by Sri K.P. Agrawal, Senior Advocate.

3. According to paras 6 and 7, the writ petition was dismissed in default on 24-7-2003 by this Court in absence of Sri K.P. Agrawal, Senior Advocate which was not on account of his negligence but for bona fide reasons. According to para 8, the petitioners termination is challenged in the Writ Petition and if order of dismissal dated 24-7-2003 is not recalled and Writ Petition is not restored to its original position, the petitioner shall suffer an irreparable loss. When the restoration application was listed, after hearing this Court was pleased to pass the order dated 18-8-2003 which reads as below :

"List this case before me on 21-8-2003. A notice is to be issued to Sri K.P. Agarwal, Senior Advocate to indicate under what circumstances he has filed this application, being a Senior Advocate, he is not supposed to file any application and he is not supposed to file Vakalatnama by his signature as the Full Court of Allahabad High Court has designated him as Senior Advocate. If satisfactory explanation is not given by him the case shall be referred to Hon"ble the Chief Justice for consideration and for removal of his name from the list of Senior Counsel"s designation and the matter shall be sent to Bar Council of U.P. Registrar General shall intimate Sri K.P. Agrawal about this order with an intimation to this Court."

4. In view of the above order Registrar General on 19-8-2003 informed Sri K.P. Agrawal, Senior Advocate, who in response wrote a letter to the Registrar of the Allahabad High Court on 21-8-2003. The contents of the letter is given as below :--

To,

The Registrar, High Court of Judicature, Allahabad,

Ref. Writ Petition No. 28709 of 1993.

Sir,

I acknowledge the receipt of your letter dated 19-8-2003 in the above mentioned Writ Petition together with the photostat copy of order dated 18-8-2003.

2. The circumstances in which the order "dismissed for default had been passed in the absence of the undersigned when the case has called out have been given in detail in paragraphs 2, 3, 4, 5, 6 and 7 of the affidavit filed in support of the Restoration Application and need not be repeated here.

3. It was a mistake and a lapse on my part that I signed the application for restoration. It should not have been done and I feel sorry for the same. I will be more cautious in future in this respect in my limitation as a Senior Advocate.

4. The services of Sri Arvind Kumar, the instructing Counsel in the case were not available when the application had been prepared, the client Sri Patel was on my head and wanted the application to be moved in his presence and hence in haste and hurry I signed, the application, which in fact, I should not have done. I should have been cautious of my limitation, had so ever hurry, haste or pressure of the client may have been I feel sorry for the lapse on my part,

5. So far the latter part of the order of the learned Judge is concerned about reporting the matter of the learned Chief Justice or to the Bar Council it is his prerogative and I have hardly any comment.

6. I on my part would write to the client to come down again, engage another instructing counsel and get a fresh restoration application filed.

Dated : 21-8-2003 Sd/-

(K.P. Agrawal) Senior Advocate, 82, Mahatma Gandhi Marg, Allahabad".

5. This case was again listed on 21-8-2003 when Sri K.P. Agrawal, Senior Advocate, appeared all alone without assistance of any an Advocate, was heard who reiterated the contents of above explanation and response dated 21-8-2003.

6. Now in the present facts and circumstances, the following questions arises :

(i) Whether Senior Advocate could be engaged by client on Vakalatnama

(ii) Whether a Senior Advocate could directly receive instruction from the client/party ?

(iii) Whether in the present application of restoration could be filed for and on behalf of Senior Advocate and on the signature of Senior advocate ?

7. For dealing these aspects it is necessary to deal the relevant provisions of the Advocates Act and the Bar Council of India Rules and other different provisions applicable in the present case.

Under Section 2(1)(a) of the Advocates Act, 1961 (hereinafter called as "Act") the word advocate has been described as below :

2. Definitions -- (1) In this Act, unless the context otherwise requires,--

(a) "advocate" means an advocate entered in any roll under the provisions of this Act;

Chapter III of "Act" deals with admission and enrolment of Advocates which is given below :

"16. Senior and other advocates, -- (1) There shall be two classes of advocates,

namely, senior advocates and other advocates.

(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability (standing at the Bar or special knowledge or experience in law) he is deserving of such distinction.

(3) Senior Advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

(4) xxxxxxxxxxxx

"17. State Bar Councils to maintain roll of advocates. -- (1) Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of--

(a) & (b) xxxxxxxxxxxx

(2) & (3) xxxxxxxxxxxx

(a) & (b) xxxxxxxxxxxx

(*****)

(d) & (e) xxxxxxxxxxxx

(4) xxxxxxxxxxxxxxxxxxxx

"19. State Bar Councils to send copies of rolls of advocates to the Bar Council of India. -- Every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, the addition to , any such roll, as soon as the same have been made."

"22. Certificate of enrolment. -- (1) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act.

(2) Every person whose name is so entered in the State roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change."

"23. Right of pre-audience. -- (1) The Attorney General of India shall have pre-audience over all other advocates.

(2) Subject to the provisions of Sub-section (1), the Solicitor General of India shall have pre-audience over all other advocates.

(3) Subject to the provisions of Sub-sections (1) and (2), the Additional, Solicitor General of India shall have pre-audience over all other advocates.

((3-A) Subject to the provisions of Sub-sections (1), (2) and (3), the second Additional Solicitor General of India shall have pre-audience over all other advocates.)

(4) Subject to the provisions of Sub-sections (1), (2), (3) and (3A)) the Advocate General of any State shall have pre-audience over all other advocates, and the right of pre-audience among Advocate General inter se shall be determined by their respective seniority.

(5) Subject as aforesaid -

(i) senior advocates shall have pre-audience over other advocates, and

(ii) the right of pre-audience of senior advocates inter se shall be determined by their respective seniority.

Chapter IV of "Act" deals with Right to Practice.

"29. Advocates to be the only recognised class of persons entitled to practise law.--

Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates."

"30. Right of advocates to practice.-- Subject to 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 whom such advocate is by or under any law for the time being in force entitled to practise."

31. XXXX XXXXXXXX

32. Power of Court to permit appearances in particular cases.-- 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,

33. Advocates alone entitled to practice.--Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any Court or before any authority or person unless he is enrolled as an advocate under this Act.

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 practise in the High Court and the Courts sub-ordinate 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 upon all proceedings in the High Court or in any Court sub-ordinate 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.]

Chapter VI deals with Miscellaneous parts of "Act" and Section 49 deals with General powers of the Bar Council of India to make rules and the relevant part is provided as below :--

Section 49(1)(g) : the restrictions in the matter of practice to which senior advocates shall be subject;

Under the powers provided under Rule 16(3) and 49(1)(g) of Act and part VI of Bar Council of India Rules deals with the rule governing advocates and Chapter I deals with the Restrictions on Senior Advocates.

8. Relevant provisions of Bar Council of India Rules is provided as below :

PART VI Rules Governing Advocates Chapter I Restrictions on Senior Advocates

{Rules under Sections 16(3) and 49(1)(g) of the Act}

Senior Advocates shall, in the matter of their practice of the profession of law mentioned in Section 30 of the Act, be subject to the following restrictions :--

(a) A senior advocate shall not file a vakalatnama or act in any Court or tribunal, or before any person or other authority mentioned in Section 30 of the Act.

Explanation -- To act" means to file an appearance or any pleading or application in any Court or Tribunal or before any person or other authority mentioned in Section 30 of the Act, or to any act other than pleading required or authorised by law to be done by a party in such Court, or tribunal or before any person or other authority mentioned in the said section either in person or by his recognised agent or by an advocate or an attorney on his behalf.

(b) (1) A senior advocate shall not appear without an Advocate on Record in the Supreme Court or without an advocate in Part II of the State roll in any Court, or tribunal or before any person other authorities mentioned in Section 30 of the Act.

(ii) Where a senior advocate has been engaged prior to the coming into force of the rule in this Chapter, he shall not continue thereafter unless an advocate in Part II of the State roll is engaged along with him. Provided that a senior advocate may continue to appear without an advocate in Part II of the State roll in cases, in which he had been briefed to appear for the prosecution or the

defence in a criminal case if he was so briefed before he is designated as a senior advocate or before coming into operation of the rules in this Chapter as the case may be.

(c) He shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind, in any Court or tribunal, or before any person or other authority mentioned in Section 30 of the Act or undertake conveyancing work of any kind whatsoever. This restriction however shall not extend to settling any such matter as aforesaid in consultation with an advocate in Part II of the State roll.

(cc) A senior advocate shall, however, be free to make concession or give undertakings in the course of arguments on behalf of his clients on instructions from the junior advocate.

(d) He shall not accept directly from a line any brief or instructions to appear in any Court or tribunal or before any person or other authority of India.

(e) A senior advocate who had acted as an advocate (junior) in a case, shall not after he has been designated as a senior advocate advise on grounds of appeal in a Court of Appeal or in the Supreme Court, except with an advocate as aforesaid.

(f) A senior advocate may in recognition of the services rendered by an advocate in Part II of the State roll appearing in any matter pay him a fee which he considers reasonable.

Chapter II of Part VI of Bar Council of India Rules deals with the Standards of Professional conduct and etiquette comprising of Section 1 Duty to the Court, Section II--Duty to the client, Section III Duty to Opponent, Section IV -- Duty to Colleagues and General provisions in Section IVA. However Chapter II of Part VI may not be necessary at this stage to be dealt with.

9. The Part VI of the Allahabad High Court Rules 1952, Chapter XXIV deals the designation of Senior Advocates Rules, 1999. Such Rules are framed u/s 34(1) read with Section 16(2) of the Advocates Act, 1961. Some important Rules are provided as below :--

3. (A) Mode of Recommendation. -- (i) Proposal for designation of an Advocate as Senior Advocate shall be considered on the recommendation of a Judge of the Court.

Only an advocate having at least 20 years of practice can be recommended :

Provided that a retired Judge of any High Court who is qualified to practice in the Allahabad High Court may also be recommended for being designated as Senior Advocate :

Provided further that it shall be open to the Court to relax the qualification in an exceptional case.

(ii) The recommendation shall be accompanied by a written consent and bio-data

of the person recommended to be designated as Senior Advocate.

(iii) While recommending the name for designation as "Senior Advocate", regard shall be had to his standing at the Bar.

(iv) No Judge shall make more than two recommendations for consideration at a meeting.

(B) Procedure for designation.-- The recommendation shall be screened by a Committee comprising five senior-most Judges of the Court at Allahabad and two senior-most Judges of the Court at Lucknow, and if it is not disapproved by the Committee, it shall be placed by the Chief Justice before the Full Court for consideration and approval through secret ballot.

4. Designation of Advocates as Senior Advocates by the Chief Justice.-- (i) On approval by the Court, the concerned Advocate shall be designated as Senior Advocate u/s 16 of the Advocates Act, 1961

(ii) The Registrar shall notify the designation to the Registrar of the Supreme Court of India, the Bar Council of Uttar Pradesh, Bar Council of India and also all the District and Sessions Judges sub-ordinate to the High Court.

(iii) A record of the proceedings of the Court in this regard shall be maintained by the Registrar of the Court for future reference.

5. Restriction for designation of Senior Advocates.--A Senior Advocate shall be subject to such restrictions as the High Court, the Bar Counsel of India or the Bar Council of the State may prescribe.

7. Review. -- (i) If, after being designated as a Senior Advocate it is reported by a Judge of the Court, that by virtue of his conduct and behaviour either inside or outside the Court he has forfeited his privilege to the distinction conferred upon him by the Court, the matter may be placed by the Chief Justice before the Full Court for a consideration of withdrawal of designation as Senior Advocate.

(ii) If, majority of Judges present and voting through secret ballot at a meeting are of the view that the Senior Advocate has forfeited his privilege, the Court may recall his designation as a Senior Advocate. The Registrar shall notify the decision in the same manner as in Clause (ii) of Rule 4 of these Rules.

Explanation.-- A Judge who does not express his opinion shall be deemed to have declined to express any opinion.

10. Sri K.P. Agarwal, Senior Advocate has himself admitted in para 3 of letter dated 21-8-2003 addressed to the Registrar that "I signed the application for restoration" and para 6 that "I on my part would write to the client to come down again". In my respectful consideration both the these aspects are in utter disregard to the Clauses (a), (b) and (c) of Part VI of the Bar Council of India Rules.

11. In these circumstances, it was not in consonance to the provisions of Act as

well as provisions of Bar Council of India Rules that Senior Advocate Sri K.P. Agrawal signed the restoration application and got the affidavit sworn by a clerk attached to him. The conduct of Sri K.P. Agrawal, designated Senior Advocate is unbecoming of Senior Advocate and here all his conduct and projection is unlike a Senior Advocate. It was not necessary to file restoration application by his own signature as after the designation as Senior Advocate, he is not supposed to file Vakalatnama of any client and is not supposed to file any application in his own hand writing. A Senior Counsel is ceased to be counsel for the purpose of filing pleading, representing and engagement by a client. The petitioner might have engaged some other counsel or the earlier counsel might have filed the restoration application only or application or submissions could only be settled by a Senior Advocate. In the present facts and circumstances, this application cannot be treated to be duly filed, therefore, it is difficult to accept the justification and explanation given in the supporting affidavit. Therefore, it is not necessary to go into the contents and justification of the restoration application and in these circumstances, it is only indicated that Sri K.P. Agrawal was to maintain and uphold the dignity of Senior Advocate in the present facts and circumstances. If the client himself comes forward and files restoration application in person after disengaging his earlier counsel Sri Arvind Kumar or restoration application is filed by Sri Arvind Kumar only or after seeking permission of the Court the client may engage another counsel and through him a separate restoration application may be filed, if so advised, for restoration application may be filed, if so advised, for restoration/recalling the order dated 24-7-2003. Therefore, in the interest of justice and to maintain the dignity of the rule of law, it is necessary that the Registrar of this Court is to send notice to the petitioner directly apprising the orders dated 24-7-2003 and 18-8-2003 to take proper legal steps, if so advised. Therefore, no judicial order is passed on the restoration application, as the application is non est.

The restoration application is rejected. Application rejected.