

(1962) 09 CAL CK 0019
In the Calcutta High Court
Case No : C.R. No. 3194 of 1959

District Licensed Deed-Writers" Association, Murshidabad APPELLANT
Vs
State of West Bengal and Others RESPONDENT

Date of Decision : 07-09-1962

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Registration Act, 1908 — Section 80G
Registration Rules, 1908 — Rule 11

Citation : AIR 1963 Cal 124 : (1963) 1 CALLT 54 : 67 CWN 290

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : S. Roy and Arun Prokash Chatterjee, for the Appellant; Jagannath Gangopadhyaya and Satyendra Nath Samajdar for Opposite Parties 5 to 21 and J. Majumdar, P.K. Banerjee and S. Biswas for Opposite Parties 1, 2 and 4, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Mukharji, J.—This is an application under Article 226 of the Constitution by the District Licensed Deed Writers" Association challenging Rule 11(1) and (2) made by the Inspector-General of Registration, West Bengal, in exercise of the power conferred by Section 80S of the Indian Registration Act, 1908 as amended by the Bengal louts Act, 1942 with the approval of the State Government as required by Sub-section (2) of Section 80-G of the said Act. This Rule is by way of amendment" by addition to Rule 10.

2. It will be convenient to set out both the Rules 10 and 11 which are the subject of challenge in this petition. Rule 10 reads as follows:

"Any unlicensed deed-writer who is found to be within the precincts of the Registration office or who is found at or near about the precincts of the Sub-Registry office to persuade the public to have their documents written by him or any unlicensed deed-writer, or who is found to be doing any act which is likely to

defeat the provision of any rule made u/s 80-G of the Indian Registration Act, 1908 shall be deemed to be a tout within the meaning of the clause (ii) of Section 2 of the said Act and his name shall be liable to be included in the list of the touts framed and published under Sub-section (1) of Section 80A."

Rule 11 reads as follows;

"(1) Any clerk of a pleader or a muktear, who has obtained a licence under the rules regarding pleaders" and muktears" licensed clerks, published with the Government of Bengal, Judicial and Legislative Department"s notification No. 3437-J dated the 18th September, 1943, may, without any licence for deed-writers under these rules, perform the functions of a deed-writer only for the pleader or mukhtear by whom he is employed and not otherwise. (2) If any such clerk engages himself in any work in contravention of the provision of Sub-rule (1), he shall be deemed to be guilty of misconduct for the purposes of Rule 11 of the said rules regarding pleaders" and mukhtears" licensed clerks."

Having set out the Rules complained against in this petition this will be the proper stage to state the relevant facts under the Rules as published by the Government Notification No. 3439 J dated 18th September, 1943 u/s 80-G of the Indian Registration Act, 1908 as amended by the Bengal Touts Act, 1942. Various provisions were made for controlling and regulating the conditions of work of deed-writers. The Bengal Touts Act, 1942 was passed with a view to suppress the touts in Courts and certain offices in Bengal. Its preamble suggests that it was an attempt to make better provision for regulating the employment of clerks of Legal Practitioners and suppression of touts in Courts and certain offices in Bengal and to that end to amend the Legal Practitioners Act, 18/9, the Indian Registration Act, 1908, and the Workmen"s compensation Act, 1923 and also to amend the Bengal Village Self Government Act, 1919, the Bengal Wakf Act, 1934 and the Bengal Agricultural Debtors Act, 1934. In defining the word "tout" it extended its meaning by Section 3 which provides that after clause (b) in the definition of tout in Section 3 of the Legal Practitioners Act, 1879 there should be an added clause saying-

"who is declared to be deemed to be a tout for the purposes of this Act by rules made by the High Court or the Chief Controlling Revenue Authority, as the case may be, u/s 31A."

The main purpose of these Rules is to make provisions for granting license on certain conditions. They are made in this way. Section 9 of the Bengal Touts Act, 1942 says that after Part XIII of the Indian Registration Act, 1908, the following Parts shall be inserted, namely etc.: Then follows Part XIII A relating to touts and covering Sections 80A to 80F. That Part is followed by Part XIII B relating to Deed-writers and it is in this Part that Section 80G of the Indian Registration Act occurs. Section 80G of the Indian Registration Act under which these Rules are made provides as follows:

"(a) . . . prescribing the manner in which and the terms subject to which persons

who write documents, outside the precincts of registration office, or who frequent the precincts of registration offices, for the purpose of writing documents, may be granted licences;

(b) prescribing the fees (if any) to be paid for such licences; and

(c) declaring the conditions under which persons who write documents outside the precincts of registration offices without licences shall be deemed to be touts for the purposes of this Act.

(2) The rule 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."

3. Under these sections different Rules made by Notification No. 3439J providing for how to make an application for licence, the conditions of that licence, the qualification required to reach the standard and fees that are to be charged by such deed-writers. The privileges really of such licensed deed-writers appear to be confined within a small area. They are, under Rule 5, allowed to sit in the office precincts and to enter the Registration Office to transact business authorised by the licence under the control and supervision of the Registering Officer.

4. Rules 10 and 11 I have already quoted above. Reading Rules 5, 10 and 11 it will look as though the main benefit of licensed deed-writers thereunder is to be within the precincts of Registration Office or the sub-Registry office to write deeds and documents. The scheme of the Rules is that if one who is not such a licensed deed-writer happens to be within such precincts of the Registration Office or Sub-Registry office then he runs the risk of being declared a "tout" with all the disqualifications attached to that expression. When Rule 10 was first published it was not realised by the Government that a large section of the clerks of pleaders or muktears who were licensed u/s 31A of the Legal Practitioners Act as amended by the Bengal Touts Act, 1942 were excluded. Therefore, an amendment was made by the introduction of Rule 11 as mentioned above permitting such clerks or pleaders or muktears to perform the functions of a licensed deed writer only for the pleader or mukhtear by whom he is employed and not otherwise.

5. It is this introduction of a new clause which is now challenged by the petitioners who are the members of licensed Deed Writers' Association. The main objection of the petitioners is that this Rule 11 infringes their fundamental rights under Article 19(1)(g) to practise any profession or carry on any occupation, trade or business and creates unconstitutional inequality prohibited by Article 14 of the Constitution. Mr. Chatterjee appearing for the petitioners also made another objection on the ground that Rule 11 is ultra vires Section 80-G of the Indian Registration Act.

6. Before discussing the Constitutional questions I shall deal with the objection

that Rule 11 is ultra vires Section 80-G of the Indian Registration Act. The argument is that Section 80-G only gives powers to the Inspector General to make Rules relating to deed-writers as the marginal note indicates. Under Sub-clauses (a), (b) and (c) of Section 80G(1) of the Act, it is contended that the Inspector-General has power only to prescribe the manner in which and the terms subject to which persons who write documents, outside the precincts of registration office, or who frequent the precincts of registration office, for the purpose of writing documents, may be granted licenses, and for declaring the conditions under which persons can write documents outside the precincts of registration offices without licences. It is contended that Rule 11 does not do this but gives a kind of permission to a different class of people, namely, clerks or pleaders or muktears who are licensed under the Legal Practitioners Act read with the Bengal Touts Act.

7. It is difficult to uphold this objection that Rule 11 is ultra vires Section 80G of the Indian Registration Act read with the Bengal Touts Act. Rule 11 is really an exception to Rule 10. Rule 10 as indicated above is a prohibition against the unlicensed deed writer from entering the precincts of the registration office or to be found at or near about the precincts of the Sub-Registry office to persuade the public to have their documents written by him. The only way to avoid that prohibition is normally to take out a license under the Rules and to become a licensed deed writer. What Rule 11 does is to permit the clerks of pleaders or muktears, who are not licensed under these Rules made under the Registration Act read with the Bengal Touts Act, but who are licensed u/s 31A of the Legal Practitioners' Act read with the Bengal Touts Act, the right to perform the functions of a licensed deed writer even though they are not licensed under these Rules. The obvious reason is that they already are licensed. These clerks are licensed under the Rules made u/s 31A of the Legal Practitioners' Act as amended by the Bengal Touts Act and as published in the Civil Rules and Orders, Volume 1 Chapter 43. Rule 11 obviously, therefore, comes within the first part of Sub-clause (a) of Section 80G(1) of the Indian Registration Act which permits the prescribing of Rules for the manner and terms subject to which persons who write documents outside the precincts of the Registration office or frequent such precincts, will be granted licences. Rule 11 permits licensed clerks of pleaders and muktears to do so. It, therefore, comes within both the words and the spirit of Section 80G(1)(a). It is also a Rule which is consistent with the Registration Act and with Bengal Touts Act. I, therefore, overrule this objection that Rule 11 is ultra vires the powers conferred on the Inspector General of Registration u/s 80G(1) of the Indian Registration Act.

8. Then comes the question of Constitutional challenge. I shall first take up the challenge under Article 19(1)(g) of the Constitution. The petitioners complain that their fundamental right to carry on trade or occupation or business is affected by Rule 11 which permits unlicensed persons to become deed writers on the ground that such unlicensed deed writers are licensed clerks or pleaders or muktears. There are two short answers to this challenge. One is that it is not a

fundamental right to carry on a trade or occupation or business at a particular place such as the Registration office or the sub-Registry office. The Government is the owner of such offices and as the owner of such offices it is entitled to regulate as to who should be allowed to come within the precincts of that office or not. Rule 11 only does this and no more. It does not affect at all the fundamental right of the petitioners (a) either to carry on their trade or business or occupation of writing deeds inside those offices provided they obtain the licences granted by the Rules and intended for licensed deed-writers who the petitioners already are, or (b) carry on the business or occupation of writing deeds in all places outside the precincts of Registration office or Sub-Registry office. Therefore, the petitioners' right to carry on their own trade or occupation under licenses is not affected at all by Rule n. In this connection see the decision in Mohammad Yasin Vs. The Dist. Magistrate, Kanpur and Another, and specially the observation of Mootham J. at page 318 and the Division Bench judgment of this Court in Commissioner for the Port of Commissioners for the Port of Calcutta and Another Vs. Asit Ranjan Majumder and Others, . I, therefore, overrule the petitioners' objection that Rule 11 in fringes their fundamental right under Article 19(1)(g) of the Constitution.

9. But the more serious challenge against Rule 11 is made on the ground that it makes unconstitutional discrimination between two classes of deed-writers. There is a good deal of force in this argument under Article 14 of the Constitution. The argument may be stated briefly in order to appreciate the force of the objection under this head. It is said that the Rules governing the licensed deed-writers under the Rules made by Notification No. 3439J dated 18th September, 1943 are onerous and a licensed deed-writer has to satisfy the conditions laid down in these Rules. In the first place, these licensed deed-writers have to possess practical knowledge of the important provisions of the Transfer of Property Act, 1882, the Bengal Tenancy Act, 1885, the Indian Stamp Act, 1899, and the Indian Registration Act, 1908. But a licensed clerk a pleader or a muktear u/s 31A of the Legal Practitioners Act has not got to do so. Secondly, a schedule of fees for the licensed deed-writers is given in great detail in Rule 7 and breach of that schedule is punishable. But the licensed clerks of the pleaders or muktears u/s 31A of the Legal Practitioners Act do not have to observe any schedule of fees Because Rule 11 does not say so and the result is that they would be able to charge any fees and under-cut and under-score the licensed deed-writers. Thirdly, the discrimination is alleged to be on the ground that the licensed clerks are introduced as deed-writers by Rule 11 although the clerks are licensed u/s 31A of the Legal Practitioners Act to do acts which have nothing to do with deed-writing. In support of this reference is made to Rule 882 of the Rules made by this Court regarding Pleaders' and Mukhtears' Licensed Clerks u/s 31 of the Legal Practitioners Act as amended by the Bengal Touts Act, 1942. Rule 882 says that the Court shall allow the licensed clerks of pleaders or mukhtears practising before them-

(1) to present applications signed by their masters, for-

- (a) copies or information, (b) supply of forms, (c) return of documents, (d) repayment of deposits, (e) inspection, (f) all applications of a routine nature,
- (2) to take delivery of copies or information,
- (3) to tender money,
- (4) to identify persons verifying affidavits before the Sheristadar,
- (5) to take notes from cause lists, books of information, etc., regarding dates of hearing, processes and process-fees due, etc.

Rule 883 expressly prohibits such clerks from inspecting or handling records of Courts. That being so, it is said that these clerks of pleaders and mukhtears are given licences for entirely different purposes for certain work in Courts and not to write deeds within the precincts or the Registration Office or the Sub-Registry Office. It is, therefore, again said that to permit such licensed clerks to do the job of licensed deed-writers is wholly irrational. Fourthly, the discrimination is again alleged to be on the ground that the conditions of a licensed deed-writer are very different from the licence of a licensed clerk of a pleader or a mukhtear.

10. As will be seen from the enunciation of this argument that prima facie there is a good deal of scone for complaint on the ground of unconstitutional discrimination. But on a closer analysis of these specific heads of discrimination it will be found that Rule 11 passes the test of reasonable classification under Article 14 of the Constitution and the distinction made between the licensed deed-writers and licensed clerks of pleaders and mukhtears is justified on intelligent differentia with a rational basis and nexus. Most of the objections on the ground of discrimination will be answered by the fact that the language of Rule 11 is a very guarded language and gives only an extremely limited right to the licensed clerks of pleaders or mukhtears. They do not become full-fledged deed-writers as licensed deed-writers are. What really Rule 11 does is to permit the licensed clerk to perform the functions of a licensed deed-writer and that again only for the limited purpose for the pleader or mukhtear by whom he is employed. This limitation is severe. A pleader or a mukhtear certainly is entitled to draft a deed or write a deed. If he asks or instructs his licensed clerk to do it it is only in that case and event that such licensed clerk will perform the functions of a licensed deed-writer and not otherwise. In fact it is expressly said in Rule 11 and not otherwise", in other words, these licensed clerks will not do any independent business, trade or occupation of writing deeds and charge fees for themselves and thus competing with the licensed deed-writers. They will only be confined to the work of their masters, the pleader or the mukhtear. That seems to be a reasonable classification to make. To exclude such licensed clerks of pleaders or mukhtears from writing deeds under the instructions of their masters or in connection with their masters' business will create unnecessary handicap for the practising pleaders or mukhtears for they may be busy otherwise in court and may not be able to attend to the actual manual writing of the deed and which they should be in a position to ask their licensed clerks to do. Rule 11 really is

enabling the pleaders or mukhtears who themselves are perfectly legally competent to write deeds to have that work of theirs done through the agency of their licensed clerks. Therefore these licensed clerks of pleaders and Mukhtears are not becoming the full-fledged deed-writers on a par with the licensed deed-writers. Mr. Chatterjee appearing for the petitioners realised the force of this justification but then he urged that it would be difficult to see whether these licensed clerks were doing the work of their pleader or mukhtear and it would be difficult to see if they were keeping themselves within the limits of Rule 11. True, there may be a good deal of difficulty. But then if the Rule in its letter is on the face of it constitutional and is justified on the basis of rational classification then the argument that in individual cases it might be difficult to administer the Rule and to see whether it is really complied with or not does not make the Rule unconstitutional. That will only mean that in individual cases of breach of the Rule they will have to be found as a fact and punished accordingly and for which provision is made in sub-rule (2) of Rule 11 which expressly provides that if such clerk engages himself in any work in contravention of sub-rule (1), he shall be deemed to be guilty of misconduct. That will lead to the forfeiture of his licence and order of his removal under Rule 876A of the Rules regarding Pleaders" and Mukhtears" Licensed Clerks. Once they cease to be licensed clerks they also cease to enjoy even the limited, qualified and guarded privilege granted by Rule 11 of performing "the functions of a deed-writer only for the pleader or mukhtear by whom he is employed and not otherwise".

11. This disposes of the arguments advanced against Rule 11.

12. The petition is, therefore, dismissed and the Role is discharged.

13. There will be no order as to costs.