

(1951) 09 KAR CK 0001

In the Karnataka High Court

Case No : Civil Revision Petition No. 75 of 1951-52

G. Rajagopalachar and Another

APPELLANT

Vs

Government of Mysore

RESPONDENT

Date of Decision : 27-09-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Mysore Legal Practitioners Act, 1884 — Section 11

Citation : AIR 1952 Kar 103

Hon'ble Judges : Medapa, C.J.; Vasudevamurthy, J

Bench : Division Bench

Advocate : M.P. Somasekhara Rao, for the Appellant; A.R. Somanatha Iyer, General, for the Respondent

Judgement

1. This revision petition has been filed u/s 151 of the Code of Civil Procedure, Section 10 of the Mysore High Court Act and Article 227 of the Constitution of India, against an order of the District Judge, Bangalore, refusing to stay an enquiry that is being conducted by him in Miscellaneous case No. 134 of 50-51. The enquiry which was ordered on 7-7-50 is being made u/s 11. of the Mysore Legal Practitioners Act, III of 1884, against the two petitioners who are advocates of this court practising in Tumkur and Bangalore respectively.

2. For the petitioners their learned Counsel, Mr. M. P. Somasekhara Rao contends, that the Bar Councils Act of 1926 and the Legal Practitioners Act of 1879 have been since extended to Mysore by the Part B States (Laws) Act of 1951. The effect of such extension of these Acts is, according to him, that the Mysore Legal Practitioners Act has ceased to be in force in Mysore and the present enquiry which was ordered by this Court under that Act can no longer be continued as the Bar Council is now the only body which can enquire into cases of professional misconduct by virtue of section 10 of the Bar Councils Act; and the same has not yet been formed in Mysore. It is further urged that even if the Indian Bar Councils Act is held not to be in force in Mysore under the proviso to

Section 41 of the Legal Practitioners Act of 1879 an advocate is entitled to "an opportunity of defending himself before the High Court which enrolled him" before he can be punished under that section.

3. We think there is no force in these contentions. The Part B States (Laws) Act, III of 1951, which received the assent of the President on February 1951 and which provides for the extension of certain laws into Part B states was to come into force on such date as the Central Government may by notification in the Official Gazette direct. Both the Legal Practitioners Act, VIII of 1879, and the Indian Bar Councils Act, XXXVIII of 1926, are among those specified in the schedule to that Act which are to be and have been so extended to Mysore with effect from 1-4-1951. But when we come to examine those Acts it is found that only certain provisions of those Acts came into effect immediately in Mysore by virtue of the provisions of the Part B States (Laws) Act which may be referred to as the "extending Act" on the day to be appointed by a Central Government's notification, and that the rest of the provisions of those Acts would operate in Mysore and have effect only after certain other formalities have been gone through under those Acts.

4. Section 1 of the Legal Practitioners Act. XVIII of 1879, declares that that Act shall come into force on the first day of January 1880 and that section and section 2 shall extend to the whole of British India which of course would now mean the Indian Union. The rest of Act. however, is to come into effect only in certain territories specified in that section but any other Provincial Government may from time to time by notification in the official Gazette, extend all or any of the provisions of the Act to the whole or any part of its territories. Section 2 merely relates to interpretation and definition of certain terms in the Act. There has been admittedly so far no notification in the Mysore Gazette extending the other provisions of that Act into Mysore and until it is so done section 41 of that Act can have no application in Mysore.

5. The position with regard to the Bar Councils Act is also similar. Under Sub-section (2) to Section 1 of that Act. the Act extends to the whole of India and shall apply to the High Courts of Calcutta, Bombay, Madras etc., specified in that section and to such. other High Courts as the President may by notification in the Gazette of India declare to be the High Courts to which the Act applies. Under Sub-section (3), Section 1, and Sections 2, 17, 18 and 19 shall then come into force at once and the Provincial Government may by notification in the Official Gazette direct that the other provisions of the Act or any provisions thereof specified in the notification shall come into force in respect of any High Court to which this Act applies on such date as it may by notification appoint.

6. By the extending Act, Sub-section (2) to Section 1 of the Bar Councils Act is extended to the whole of India, except the State of Jammu and Kashmir, and shall apply to every High Court of Part A States and of every Part B States other than the State of Jammu and Kashmir and to such Courts in Part C States as the Central Government may declare by notification. The effect of this substituted

Sub-section would no doubt be that the Act is applicable to the Mysore High Court. But as Sub-section (3) to Section 1 of the Bar Councils Act is left untouched, there must be a further notification in the Mysore Provincial Gazette before the provisions of that Act other than sections 11 2, 17, 18 and 19 can come into force in Mysore. It is only under Sections 3 to 16 that the constitution and incorporation of the Bar Council and its powers, rights and duties are provided for and those provisions must be held to have not yet been applied in Mysore and cannot affect the present enquiry.

7. Moreover, it is only an enquiry that is being conducted before the District Judge according to the practice of this Court, and this Court will, as is usual in such cases, before taking any disciplinary action against the Legal Practitioners concerned give them full opportunity to represent their case and defend themselves in this Court. It has been held in "DISTRICT MAGISTRATE, BANGALORE v. BHASHYAM IYENGAR" 9 Mys L J 262 that even u/s 13 (b) of the Legal Practitioners Act. the High Court will only deal with a Legal Practitioner after such enquiry as it thinks fit. In "IN RE BELUR SRINIVASA IYENGAR" 12 Mys LJ 311 it has been pointed out that the form of procedure in such cases is not of controlling importance so long as the essentials of fair notice and opportunity to be heard are present and that the Court has inherent power to apply such rules of procedure as may ensure a fair trial. This, we think is all that is contemplated even u/s 41 of the Legal Practitioners Act of 1879.

8. There is also a further and conclusive answer to the petitioners' objections. u/s 6 of the Extending Act it is laid down that

"If immediately before the appointed day, there is in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as otherwise provided in the Act, stand repealed."

But it is expressly provided in that section that the repeal shall not affect: --

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or

(b) any right, privilege, obligation, or liability acquired, accrued or incurred under any law so repealed, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed. There is also a similar provision of Section 6 in the General Clauses Act.

9. In the result this revision petition fails and is accordingly dismissed.

10. Petition dismissed.