
(2016) 11 KL CK 0050
In the High Court Of Kerala
Case No : W.P.(C) No. 36008 of 2016

Group 7 Guards (I) Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Advocates Act, 1961 — Section 32, Section 33

Citation : (2017) 1 ILRKerala 400 : (2016) 4 KerLJ 857

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Harikumar G, Advocate, for the Respondent; Rupesh Ravindran, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

A. Muhamed Mustaque, J. - This writ petition is filed by a private limited company through its authorised signatory, the Manager - Administration & HR Sri. Rupesh Ravindran. Sri. Rupesh Ravindran appeared as a party in person being authorised signatory of the company to sign and verify pleadings. This court entertained a doubt whether a person, who is not a lawyer even though he is an authorised signatory of the company can appear and argue the case on behalf of the petitioner company. Considering the legal question involved, this court appointed Sri. Harikumar G. Nair as an Amicus Curiae and posted the case today for hearing. Learned Amicus Curiae placed before me the relevant provisions of Advocates Act, 1961 and also the judgment of the Hon''ble supreme Court in Goa Antibiotics and Pharmaceuticals Ltd. v. R.K. Chawla, 2001 15 Supreme Court Cases 4491, the judgment of Gujarat] High Court in Jaywal Thakore v. Charily, (2001) KHC 9561, the judgment of the High Court of Bombay "Aswizt Shambhurprasad Patel v. National Rayon Corporation, AIR 1955 Bom 2623 and the judgment of the Division Bench of this court in Brenda Barbara Francil v. Adrian G. Miranda, 2016 (3) KLT 214 and also the judgment of the High Court of Karnataka in Malleswarani co-operative Society v. Karnataka Appellate

Tribunal, ILR 1986 Karnataka 2329. The learned Amicus Curiae submits that no person as a matter of right other than an Advocate has the right to appear in a case before a court of law. The learned Amicus Curiae submits that in terms of section 32 of Advocates Act, 1961, the court can permit the appearance in particular case of any person not enrolled as an Advocate to appear before the court. The learned Amicus Curiae pointed out that if any statute permits appearance, there is no bar for a party to appear before the court or tribunal as the case may be based on the statutory provisions. In this regard he also highlighted the provisions of section 10GD of companies Act, 1956 and similar provisions in the Companies Act, 2013 (section 432). The learned Amicus Curiae drawn my attention to Order 3, Rule 1 of the Code of Civil Procedure. He further submits subscription and verification of pleadings under Order 29 of the Code of Civil Procedure, 1908 by an officer of a Corporation itself will not enable such person to appear as a party in person before the court unless any other provisions enables him so. Learned Amicus Curiae also drawn my attention as to the distinction as contemplated under Order 3 and as referred in section 32 of the Advocates Act. According to the learned Amicus Curiae, the appearance as referred in Order 3 is appearance pursuant to the order of the court and where as appearance as referred in section 32 of Advocate Act is an appearance based on a permission of the court.

2. The Hon"ble Supreme Court in Goa Antibiotics"esse (supra) while referring to section 32 of Advocates Act opined that right of a person other than enrolled as an Advocate to appear and argue before the court is only a discretion conferred by the Act and it is not a right conferred any person as a matter of right to appear be fore the court. It is to be noted even if any party other than an Advocate to appear in a particular case, has to seek permission of the court by filing appropriate petition under section 32 of the Advocates Act to address the court.

3. In Goa Antibiotics" case (supra), the question was whether a power of attorney holder of a company can be permitted to argue personally on behalf of the company before the court. The relevant portion of the judgment in Goa Antibiotics" case (supra) reads as follows:

"We make it clear that as regards artificial persons like a company registered under the Companies Act or a registered cooperative society, or a trust, neither the Director of the company nor member of the Managing Committee or officer-hearer of the registered society or a trustee has a right to appear and argue on behalf of that entity; since that entity is distinct from its shareholders or officer-bearers or Directors However, it is the discretion of the court under section 32 of the Act to permit such person to appear on behalf of that entity."

The Division Bench of this court held in Brenda Barbara Francis v. Adrian G. Miranda 2016 3 KLT 214 that power of attorney to conduct the case will not enable him to appear and argue the case.

4. The right of a party-in-person to appear before the court is nowhere mentioned in any of the statutory provisions, nevertheless the right to appear before the court by a party-in-person has to be treated as a right to have an access to the justice. No one can be compelled to engage an Advocate or a lawyer to appear on behalf of him. If such insistence is made, it would result in denial of justice to such person. In the absence of any provision barring any party-in-person appearing before the court, the court cannot deny such person to appear before the court and argue his own case. However, a distinction has to be made by a company represented by an officer of the company and a party in person. As far as the court is concerned, that person represents the company as an agent having no personal interest and whose right is not the subject matter of the lis. Therefore, in that sense, it has to be concluded that even if he is not permitted, there is no denial of access to justice to him. The constitutional scheme of access to justice is only to protect the interest of a person whose right is infringed. Therefore, the only question in that scenario is whether an authorised representative of the company can appear before the court to argue the case on behalf of the company. In the light of embargo under section 33 of the Advocates Act, that Advocate alone is entitled to practise and no person is entitled to practise in court, this court is of the view, the authorised official of a company cannot appear before the court and argue. No doubt, if such official as rightly pointed out by the learned Amicus Curiae, if so permitted under any special enactment like Companies Act can appear before such authority or before any court, if such person is permitted under Section 32 of the Advocates Act.

Therefore, this court is of view, authorised signatory of a company cannot appear as a party in person and the Registry cannot permit a party in person to appear on behalf of the company. In that view of the matter it is appropriate for this court to adjourn the matter for a period of 10 days to permit the petitioner to engage a lawyer to appear on behalf of the company. This court record its appreciation to the learned Amicus Curiae for the valuable assistance given in this matter. The Registry shall circulate this order for office purpose.