

(1989) 08 CAL CK 0012
In the Calcutta High Court
In re: Shila Roy

Date of Decision : 16-08-1989

Acts Referred:

Advocates Act, 1961 — Section 30, 30(ii), 31, 50(3)(c)
Bar Councils Act, 1926 — Section 14, 14(1)
Constitution of India, 1950 — Article 19(1)(g), 22(1), 22(1), 254(1)
West Bengal Land Reforms Act, 1955 — Section 18, 18(1), 21(3), 21E, 3(1)

Citation : (1989) 08 CAL CK 0012

Hon'ble Judges : Monoj Kumar Mukherjee, J

Bench : Single Bench

Advocate : Ramapati Roy, for the Appellant; K. Safiullah, for the Respondent

Final Decision : Dismissed

Judgement

M.K. Mukherjee, J.—The short question that seeks an answer in this writ petition is as to whether Section 21E of the West Bengal Land Reforms Act, 1955 ("Act" for short) which debar Advocates and legal practitioners from appearing, pleading or acting in any capacity on behalf, party before any officer or authority deciding disputes under the provisions of Chapter III of the Act is ultra vires the Constitution of India. question arises in this way.

2. The writ petitioners has filed a suit against the private respondent herein in the Second Court of the Munsif at Baruipur for a permanent injunction restraining them from interfering with her peaceful possession respect of certain plots of land and for other consequential reliefs contesting the suit, the private respondents laid a claim as Bargadars in respect of the plots in question. In view of the claim so made, the learned Munsif referred the matter to the authority appointed u/s 18 of the Act as required u/s 21 (3) thereof. Before the said authority, an Advocate appeared on behalf of the writ petitioner and filed power to act on her behalf. The private respondents, however, raised objection to such appointment drawing attention of the authority concerned to Section 21E of the Act and the objection was allowed. Aggrieved thereby petitioner has filed this writ petition.

3. Having regard to the fact that the Act has been included in the Ninth Schedule to the Constitution of India, Section 21E and for that matter, the entire Act have become immune from attack on the ground of inconsistency with or abridgement of any of the fundamental rights guaranteed Part III of the Constitution of India. Being a part of a State Act, it therefore, to be ascertained whether Section 21E is vulnerable Article 254(1) of the Constitution of India. Relying upon Chapter IV of the Advocates Act, 1961, particularly Section 30 thereof, it has averred in the writ petition that as the Advocates Act has been enacted by the Parliament under Entry Nos. 77 and 78 of List-1 of the Seventh Schedule of the Constitution and as the provisions thereof entitle every Advocate entered in the State roll to practise as of right before, inter alia, any Tribunal or person legally authorised to take evidence, the embargo of Section of the Act, yield place to the former. In support of the above averments the decision of the Supreme Court. in the case of H.S. Srinivasa Raghavachar Vs. State of Karnataka and Others, been relied on.

4. In that case, the Constitutional validity of Section 48 (8) of the Karnataka Land Reforms Act, 1961 which contains a similar provision assailed on the ground that the said Section was repugnant to Section 31 the Advocates Act, 1961 and Section 14 of the Indian Bar Councils, 1926. It was submitted that the State Legislature was not competent to make a law repugnant to laws made by Parliament pursuant of Entries 77 and 78 of List 1 of the Seventh Schedule of the Constitution. The above submission was accepted by the Supreme Court with the following words :

The submission of the learned Counsel is fully supported by the judgment of a Full Bench of High Court of Punjab and Haryana in Smt. Jaswant Kaur and Another Vs. The State of Haryana and Another, . We adopt the reasoning of the High Court of Punjab and Haryana and direct that Section 48 (8) will not be enforced so as to prevent Advocates from appearing before the Tribunals functioning under the Act.

5. Since in support of the above observation, the Supreme Court has not given any reasons of its own but has accepted the reasons given by the Punjab & Haryana High Court, it will be necessary to refer to the same in some details. In that case, the Constitutional validity of various sections of the Haryana Ceiling on Land Holdings Act ("Haryana Act" for short), 1972, including Section 20A, which bars the appearance of an legal practitioner before any Officer or authority, other than the Financial Commissioner, appointed under the said Act was challenged on the ground that it was repugnant to Section 30 of the Advocates Act, 1961. The High Court pointed out that there was no dispute that the authorities constituted under the Haryana Act were legally authorised to take evidence and that but for Section 20A of the Haryana Act, Advocates should be entitled by virtue of Section 30(ii) of the Advocates Act to appear before any Officer or authority functioning under the Act. Keeping in view these undisputed facts, the Court proceeded to decide the question raised and observed that the right of an Advocate whose name appeared on the common roll to practise before any Tribunal or person

legally authorised to take evidence could not be taken away by a State Law. Accordingly, it held that to the extent that Section 20A of the Haryana Act barred the appearance of an Advocate before any Officer or authority it was repugnant to Section 30 of the Advocates Act and therefore, invalid.

6. After the Court prepared the judgment on the above basis, it was brought to its notice that Section 30 of the Advocates Act had not been brought into force till then. The Full Bench held that the fact would not make any difference to their conclusion regarding the validity of Section 20A of the Haryana Act, because until Section 30 of the Advocates Act was brought into force by virtue of Section 50(3) (c) of the Advocates Act, Section 14 of the Indian Bar Councils Act, 1926 which was in pari materia with Section 30 of the Advocates Act should continue to be in force. The Full Bench then extracted Section 14(1) of the Indian Bar Councils Act, 1926 and pointed out that all that had been said by the Supreme Court in the decisions referred to by the High Court, and by it with reference to Section 30 of the Advocates Act applied with the same vigour to Section 14 of the Indian Bar Councils Act.

7. It follows from the discussion so far held that though the writ petitioner confined her constitutional challenge in respect of Section 21E of the Act relying solely on Section 30 of the Advocates Act, which has still not been brought into force, the judgement in the case of Jawant Kaur (Supra) as affirmed by the Supreme Court in the case of Srinivasa Raghavachar (Supra) supports the case of the petitioner. In spite thereof, I am unable to accept the contention of the petitioner having regard to judgment of the Supreme Court on identical question.

8. In the case of Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, , the Constitutional validity of Section 9A, besides other sections of Maharashtra Restoration of Lands to Schedule Act, 1975 ("Maharashtra Act" for short), which debarred pleaders appearing on behalf of a party in any proceeding under the Act before the Collector, the Commissioner of the Tribunal was challenged. The case was on the grounds that it affected (i) the fundamental right of an Advocate enrolled by the State Bar Council of Maharashtra to carry on his profession guaranteed by Article 19(1)(g) of the Constitution and (ii) the right of the appellants, who were non-tribals, being prevented from being presented by a legal practitioner of their choice. The Supreme Court pointed out that the above problems had to be viewed from two angles; first, from the view point of the legal practitioner and secondly, from that of the litigants. Viewing the matter from the first angle, the Supreme Court observed as under :

The contention that an Advocate enrolled under the Advocates Act 1961 has an absolute right to practise before all Courts and can hardly be accepted. Such a right is no doubt conferred by Section 30 of the Advocates Act. But unfortunately for the legal profession, Section 30 has not been brought into force so far though the Act has been on the Statute Book for the last 22 years. There is very little that we can do in the matter and it is for the Bar to take it up elsewhere. A person enrolled as an advocate under the Advocates Act is not ipso facto entitled

to a right of audience in all Courts unless Section 30 of that Act is first brought into force. That is a matter which is still regulated by different statutes and the extent of the right to practise must depend on the terms of those statutes. The right of an Advocate brought on the rolls to practise is, therefore, just what is conferred on him by Sections 14(1)(a), (b) and (c) of the Bar Councils Act, 1926. The relevant provisions read as follows :

14(1). An advocate shall be entitled as of right to practise.

(a) subject to the provisions of sub-section (4) of Section 9 in the High Court of which he is an advocate, and

(b) save as otherwise provided by sub-section (2) or by or other law for the time being in force in any other Court and before any other Tribunal or person legally authorised to take evidence, and

(c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

In view of the various authorities on the subject, we cannot but held that Section 9A of the Act is not an unconstitutional restriction advocates to practise their profession.

9. And looking into the matter from the other angle, the Supreme Court observed as follows :

That brings as to the second aspect of the matter, i.e., the so-called right of a litigant to be represented before the Collector in matters not covered by Sections 3 (1) and 4 of the Act. Now it is well-settled that apart from the provisions of Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in a Court. The only fundamental right recognised by the Constitution that under Article 22 (1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters, i.e., in suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner.

10. Since the judgment in the case of Lingappa (supra) was delivered by a Bench of three learned Judges of the Supreme Court whereas the judgment in the case of Srinivasa (supra) was delivered by a Bench of two Judges, I am bound to follow the former. It is interesting to note that Justice C. Chinnappa Reddy was a party to all the three judgements referred to above. For the foregoing discussion I must held that Section 21E the Act is not constitutionally invalid.

11. Another submission that has been made on behalf of the petitioner is that as the right of the authority concerned to decide any matter u/s 21 (3) stems from a suit for proceeding pending in any civil criminal Court, the procedure to be followed for arriving at a decision must be the procedure laid down in the CPC or the Criminal Procedure Code, as the case may be. I am unable to accept this

contention. Once a reference is made u/s 21 (3) of the Act, it has to be answered by an Officer appointed u/s 18 (1) and the authority concerned can only act under the powers given and procedures prescribed by the Act and the Rules framed thereunder. If the content of the petitioner is taken to its logical conclusion, then it would mean that for answering the self same question, namely whether a person is a bargadar or not, two distinct and different procedures, depending upon the forum where the question arose, namely whether in a Civil or Criminal proceedings will have to be followed by the authority concerned, and different standards of proof will have to be applied.

12. In the result, the application fails and the same is rejected.