

(1953) 09 MAD CK 0019
In the Madras High Court

Liberator Press and Rangaswami

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 18-09-1953

Acts Referred:

Bar Councils Act, 1926 — Section 14, 9
Constitution of India, 1950 — Article 14, 19, 225, 226
Industrial Disputes Act, 1947 — Section 36

Citation : (1954) 1 LLJ 301

Hon'ble Judges : P.V. Rajamannar, C.J; T.L. Venkatarama Ayyar, J

Bench : Division Bench

Judgement

T.L. Venkatarama Ayyar, J.—This is an appeal against the judgment of Subba Rao, J., in W.P. No. 591 of 1951 1953 I L.L.J. 24 and the point for determination is whether advocates have a right of audience before a tribunal constituted under the Industrial Disputes Act (XIV of 1947). The second appellant is a company called the Liberator, Ltd., and disputes having arisen between the management and the employees therein, the Government of Madras referred the same to the industrial tribunal, Fort St. George, Madras, the first respondent herein, for adjudication. The first appellant who is an advocate of this Court sought to appear on behalf of the second appellant before the tribunal and presented Ms vakalat. Objection was taken to his appearance by the secretary of the labour union, which is the third respondent herein, and on that, the tribunal heard all the parties concerned and passed an order on 24 September 1951 refusing permission to the first appellant to appear for the second appellant. Thereupon the appellants moved this Court under Article 226 of the Constitution for a writ of certiorari to quash the order of the tribunal on the grounds that it was an unconstitutional denial of the right of the first appellant to practise his profession and that it was further repugnant to Article 14 of the Constitution and was, therefore, void. Subba Rao, J, before whom the petition came up for hearing, disagreed with these contentions, and dismissed the same. It is against this order that the present appeal has been brought.

2. The statutory provisions bearing on these questions are Sections 9(1) and 14(1), (a), (b) and (c) of the Indian Bar Councils Act (XXXVIII of 1926) and Section 36(4) of the Industrial Disputes Act (XIV of 1947) as amended by the Industrial Disputes (Appellate Tribunal) Act (XLVIII of 1950). Section 9(1) of the Indian Bar Councils Act is as follows:

The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court; provided that High Court refuse admission to any person in its discretion

Section 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,

(b) save as otherwise provided by Sub-section (2) or by or under any other law for the time being in force, in any other court in the union of India and before any other tribunal or person legally authorized 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.

Section 36(4) of Industrial Disputes (Appellate Tribunal) Act reads as follows:

In any proceedings before the tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceedings and with the leave of the tribunal.

On these provisions it was held by Subba Rao, J., that the right of an advocate to appear before a tribunal was, u/s 14(b) of the Bar Councils Act subject to any law for the time being in force, that Section 36(4) of the Industrial Disputes Act was such a law and that the order of the tribunal, dated 24 September 1951, refusing permission to the first appellant in terms of that section was not open to attack.

3. It is contended by Mr. D. Narasa Raju, learned advocate for the appellants, that it is the fundamental right of every advocate under Article 19(1)(g) of the Constitution to practise before all courts and tribunals exercising judicial functions and that; unless the restrictions imposed on that right could be brought under Article 19(6) they would not be valid. It is argued that while the rules prescribing qualifications for enrolment as an advocate u/s 9 of the Bar Council Act could be upheld under Article 19(6), the restriction imposed by Section 14(1) (b) could not be held to be saved by that provision as it is absolute and goes far beyond the requirements. This contention renders it necessary to examine the nature of the right which counsel has to practise before courts and tribunals.

4. In England before a person is called to the bar he must satisfy various requirements as to age, qualifications and character. Vide Halsbury's Laws of

England, Second Edition, Volume 2, pages 481 to 485, paragraph 655. What his rights are after admission to the bar is thus stated

as soon as a person has been called to the bar he can at once begin to practise as a barrister, unless he is disqualified by some condition imposed by his Inn...A barrister has, when in practice, the following rights and privileges:

(1) the right of audience as an advocate in all the superior courts and most of the inferior courts. (Halsbury, Volume 12, page 491, paragraph 662.).

The other rights mentioned in that paragraph are not material for the purpose of the present appeal. The right to appear, is, it is to be noted, only before courts; where the question is whether a barrister is entitled to appear before tribunals, the answer to it must be found in the terms of the statute by which the tribunals are created. Thus Section 137(3) of the Income Tax Act, 1918, as amended by the Finance Act of 1923, provides for barristers and solicitors being heard in appeals against assessments. Section 7 of the Architects (Registration) Act, 1931, entitles a person against whom disciplinary action is taken under the Act to be represented by counsel. Sections 50 and 51 of the Railway and Canal Traffic Act of 1888 provide for any party appearing before the Commissioners under the Act either in person or through counsel. Section 22(1)(e) of the Railways Act of 1921 gives a right to a party to appear before the Rates Tribunal either in person or through counsel. There are, however, several other statutes in which appearance before the tribunal is subject to permission being granted therefore by the tribunal itself. Thus Section 9, Sub-clause (11), of the Local Government Act, 1894, provides that in any acquisition of land by a parish council, counsel cannot be heard except in such cases as may be prescribed by an order of the Minister of Health. So also Section 40 of the Friendly Societies Act of 1875 confers on the arbitrator a discretion as to whether he would hear counsel or not. u/s 4 of the Police Appeals Act of 1927 the parties to an enquiry have a right to appear by counsel or solicitor with the consent of the person holding the enquiry. With reference to enquiries before the industrial tribunals, Section 9 of the Industrial Courts Act, 1919, provides that the parties may appear by counsel or solicitor in proceedings before the court with the permission of that court. Thus a barrister under the English practice has the right to practise when called to the bar before the superior courts and most of the inferior courts. So far as tribunals are concerned that right is limited by the statutes under which the tribunals are set up. This precisely is the position u/s 9 and Sections 14(1) (a), (b) and (c) of the Bar Councils Act. In America the right to practise has been held to be not an absolute right but a privilege or a franchise. Discussing the legal status of attorneys and counsel, Field, J., observed in *Ex parte In the matter of A.H. Garland* (18 L. Ed. 366 at 370) as follows:

They are officers of the court; admitted as such by its order upon evidence of their possessing sufficient legal learning and fair private character.

In *Bradwell v. Illinois* 21 L. Ed. 442 dealing with the right of a woman to be

admitted to the bar, Bradley, J., observed:

I am not prepared to say that it is one of her fundamental rights and privileges to be admitted into every office and position including those which require highly special qualifications and demanding special responsibilities.

It is the prerogative of the legislator to prescribe regulations founded on nature, reason and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence.

5. This Court had occasion to consider the nature of this right In *S. Ananthakrishnan Vs. The State of Madras*, . There the point for determination was whether a levy of stamp duty on an application for enrolment by an advocate was an unconstitutional restriction on the right to carry on the profession. It was held that it was not. Considering in that connexion the nature of the right of counsel to practise, his lordship the Chief Justice observed:

Much was said at the bar as to what exactly is comprised in the right to practise a profession guaranteed under Article 19(1)(g). Taking the profession of law what does this right consist in? Is the effect of Article 19(1) to confer on every person who may be otherwise qualified the right to practise in any court in the land? I see nothing in Article 19(1)(g) to justify the conclusion that this Court or any other High Court or Supreme Court cannot lay down rules for the admission of advocates who alone will be permitted to represent the suitors before them. On the other hand the clauses in the Letters Patent granted to the Chartered High Courts to which reference was made earlier in this judgment clearly confer on the High Courts the power to virtually prevent even qualified persons other than the advocates on their rolls to plead and act before them on behalf of suitors. This power of the High Court has been continued under Article 225 of the Constitution. The Bar Councils Act recognizes this right and lays down that only the persons enrolled as advocates of a particular High Court have certain rights of audience. Besides acting and pleading in courts there are many ways in which a lawyer can pursue his profession and he is free to so practise his profession. If any one wants the additional privilege of being entitled as of right to act and plead in the High Court he has got to be enrolled in the rolls of that court...After consideration of the arguments of counsel and the authorities cited to us, and on examination of the provisions of our Constitution which after all should govern the decision of this case, I have come to the following conclusion. The right to plead and act on behalf of suitors in a court is not a right flowing from citizenship. The reasoning in *Bradwell v. Illinois* 21 L. Ed.442 is to this extent not bad law even to this day. The exclusive right to represent suitors in court which an advocate possesses is really in the nature of a privilege.

In *Mulchand Gulabchand Vs. Mukund Shivram Bhide and Another*, the question arose with reference to Rule 36 framed under the Bombay Co-operative Societies Act, which provided that in proceedings held under Rules 32 to 35 no party shall be represented by a legal practitioner. The point for determination was whether

this rule was repugnant to Article 19(1)(g) of the Constitution as violating the fundamental right of an advocate or pleader to practise. In answering it in the negative the court observed It is necessary to consider what is the right that a lawyer has, to practise his profession? Is it an absolute right to practise in all courts, in all tribunals, before all persons who have a right to receive evidence and to decide judicially or is it a right which is regulated and restricted by the very charter which permits him to practise his profession? If a lawyer's right was an absolute right then undoubtedly, Rule 36 is a restriction upon that right, because it prevents him from appearing before a domestic tribunal like the tribunal set up under the Co operative Societies Act and we would then have to consider under Sub-clause (6) of Article 19 whether that restriction was a responsible restriction or not. But as I shall presently point out, the right of a lawyer to practise is not an absolute right. The very charter which gives him the right to practise controls, limits and circumscribes his right. After examining the provisions of the Bar Councils Act the learned Judges proceeded to observe it should be remembered that it is not the fact that a man has passed a law examination or has acquired a law degree that entitles him to practise in courts of law; his right to practise depends upon his being enrolled as an advocate and he is enrolled as an advocate on terms and conditions laid down in the Bar Councils Act. Examining next the provisions of the Legal Practitioners Act the learned Judges concluded: Therefore just as in the case of Bar Councils Act, the right of a pleader to practise before a tribunal is not an absolute right. It is a right subject to the provisions of any law for the time being in force.

The position, therefore, is that a person who has obtained the requisite legal qualifications is not entitled on that ground alone to a right of audience in courts. He must, further, be admitted to the bar before he could practise. That is a matter which is regulated by statutes and the extent of the right to practise must depend on the terms of those statutes. This right is also a privilege as it is limited to those who are admitted to the bar. It is what the American Jurists aptly describe as a franchise. In this country the matter is governed by the Bar Councils Act and the Legal Practitioners Act. The right of the first appellant to practise is, therefore, just what is conferred on him by Section 9 and Sections 14(1)(a), (b) and (c) of the Bar Councils Act, neither more nor less, and when the particular right claimed by him cannot be found within the four corners of those sections, then there is nothing in respect of which the guarantee under Article 19(1)(g) could be invoked. That article merely operates to protect the rights which a person otherwise possesses under the law. It does not create any new rights in him. The result then is that the first appellant to appear before the tribunal is u/s 14(1)(b) of the Bar Councils Act subject to any law for the time being in force; Section 36(4) of the Industrial Disputes Act is such a law and under that section he has a right to appear only when the third respondent consents.

6. It is next contended that the impugned provisions are in contravention of Article 14 of the Constitution and, therefore void. The argument is that while a

litigant who has a cause in a civil court has a right to be represented by counsel, party to a proceeding before a tribunal is denied a similar right and that that is discrimination obnoxious to Article 14. The answer to this contention is that Article 14 does not forbid classification and provided it rests on some difference relevant to the subject, it cannot be assailed as repugnant to it. This is so well settled that there is no need to refer to the authorities on the subject. The question to be decided is whether any ground exists for treating appearance before tribunals differently from appearance before courts. There can be little difficulty in answering this question. The courts, as we have then, are governed by certain rules in the matter of procedure, reception of evidence and so forth which have their roots in institutions which owe their existence to statutes and the principles by which they are governed are not identical with those which courts observe. The matters which they have got to decide may be purely administrative in which case, it is conceded, there is no question of appearance by lawyers. Even when the dispute is of a character which involved the exercise of judicial functions, the tribunals, would be more in the position of arbitral bodies, not bound by strict rules of procedure or of evidence. With reference to such tribunal, the legislature which establishes them has also felt itself free to lay down the procedure which they should follow in the hearing of the disputes and it may generally be stated that subject to rules of natural justice they enjoy in the matter of procedure and trial a freedom which the courts do not possess. Thus, there are essential differences between courts and tribunals and the enactment of special rules with reference to tribunal is, therefore, not open to attack as discriminatory under Article 14.

7. Mr. D. Narasa Raju raised a further objection to the validity of Section 36(4) of the Industrial Disputes Act which deserves special consideration. He contended that the right of a litigant to engage counsel is under that section made to depend on the consent of his opponent and that such a provision is unreasonable as it puts it in the power of one party to prevent its opponent from engaging counsel. The reason for this some what unusual provision is stated to be that while the employers would be in a position to engage eminent counsel, the labourers might not be and that would make the contest unequal. The following passage from Pollard's Administrative Tribunals At Work at page 32 was relied on as supporting this standpoint:

Moreover if the propertied side were legally represented and the other party not, as has been seen in country courts, the chairman would feel it incumbent on him to conduct the unaided man's case for him. If the professional advocate is admitted, there is the question of expense. Property can always command good brains versed in traditional law.

It is argued for the appellants that the above observations have lost much of their force at the present day when the labour is well-organized but apart from that, it should not be forgotten that some of the disputes that are referred to tribunals involve complicated questions and without the assistance of trained

lawyers the tribunals might find it difficult to arrive at a just conclusion. To deprive them of legal assistance because of the opposition of the representatives of labour would be to clog the wheels of justice. It is with a view to avoid this result that provisions are usually made in statutes conferring on the tribunal itself, discretion to grant permission to parties to appear by counsel. Such a provision would on the one hand enable the tribunals to decide simple disputes speedily without the aid of counsel and at the same time enable them to get the necessary legal assistance in complicated cases. Our attention has not been drawn to any statute wherein a provision similar to Section 36(4) of the Industrial Disputes Act of 1947 has been enacted. There is therefore, considerable force in the contention of the appellants that the section, as it stands, must result in hardship. But this, however, is a matter for the legislature to consider, and not a ground for holding that the section is unconstitutional, as it makes no distinction between the employers and the employees and there is, therefore, no discrimination. It was suggested by Mr. D. Narasa Raju that in fact the labour unions have persons with legal education as their chief officers and that in effect the labourers have legal assistance and that it is only the employer that is at a disadvantage. This, however, is not a matter which can be taken into account in deciding whether the section, as it stands, is repugnant to Article 14 of the Constitution.

8. In the result both the contentions raised by the appellants must be overruled and this appeal dismissed but in the circumstances without costs.