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(2005) 08 MP CK 0113

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 2624 and 3197 of 2004

Nemichand Jain — APPELLANT

Vs

State of Madhya Pradesh and Others — RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:
Constitution of India, 1950 — Article 14, 16
Madhya Pradesh General Sales Tax Act, 1958 — Section 21, 21(1), 21(2), 21(2A), 21(2B)
Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 — Section 31, 31(1), 31(2), 31(3), 31(4)
Madhya Pradesh Vanijyik Kar Niyam, 1995 — Rule 4, 4(2), 4(3)

Citation : (2006) 1 MPLJ 126 : (2006) 145 STC 639

Hon'ble Judges : R.V. Raveendran, C.J;Shantanu Kemkar, J

Bench : Division Bench

Advocate : Rohit Arya and Sanjeev Tuli, for the Appellant; R.N. Singh, Advocate-General and Sanjay Yadav, Government, for Respondent Nos. 1 and 2 and Rajendra Tiwari and Pushpendra Singh, for the Respondent

Judgement

R.V. Raveendran, C.J.

These two petitions involving common questions of fact and law are heard together and disposed of by this common order. Though the respondents are common, the petitioners are different. The petitioner in the first petition is Nemi Chand Jain ("N.C. Jain", for short) and the petitioner in the second petition is S.C.J. Kochhal.

Section 4 of the M.P. Vanijyik Kar Adhiniyam, 1994 ("the Act", for short) relates to constitution of Tribunals. By Amendment Act, 2003, the word "Tribunal" has been substituted by the expression "Appellate Board". Section 4 provides that subject to such rules as may be made in that behalf, the State Government may, by notification, with effect from a date specified therein, constitute a Tribunal to exercise the powers and perform the functions conferred on the Tribunal by or under this Act. Rule 4 of the M.P. Vanijyik Kar Niyam, 1995 ("the Rules", for

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short) as it originally stood, provided that the Tribunal shall consist of three or more Judicial and Account Members appointed by the State Government. The said rule was substituted by a new Rule 4 as per notification dated June 3, 2002, the relevant portion of which read as follows :

4. Constitution of the Tribunal and its functions.--(1) The Tribunal shall consist of a Chairman and two Members, appointed by the State Government, who have vast experience of administration or taxation matters.

(5)(c) The salaries, allowances and other conditions of service of the Chairman, Members, officers and other employees of the Tribunal shall be such as the State Government may, by orders, specify.

By Notification dated January 10, 2003, the State Government, in exercise of power u/s 4 of the M.P. Vanijyik Kar Adhiniyam, 1994 constituted the "M.P. Commercial Tax Tribunal", with Shri Suraj Prakash (Retired I.A.S.) as Chairman and Shri G.P. Tiwari (Retired Additional Commissioner, Commercial Taxes) and Shri Nemi Chand Jain (Advocate, Guna) as the Members. By order dated February 7, 2003, the State Government stipulated the following terms and conditions in regard to the service of N.C. Jain, as Member of the Tribunal :

(i) The tenure shall be 5 years or till attainment of 70 years of age, whichever is earlier ;

(ii) The pay-scale and perquisites shall be on par with the officers of the rank of Secretary to State Government ;

(iii) The appointment being full time, the petitioner shall not carry on any trade, work, service or other activities ;

(iv) The other conditions of service shall be the same as those relating to Government service.

The petitioner was 66 years of age at the time of such appointment. In pursuance of such appointment, he was functioning as Member of the Tribunal.

The State Government in exercise of powers conferred u/s 80 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994, amended the Madhya Pradesh Vanijyik Kar Niyam, 1995, vide notification dated July 7, 2004 again substituting Rule 4. The relevant provision of the new Rule 4 is extracted below :

4. Constitution of the Appellate Board and its functions.--(1) The Appellate Board shall consist of a Chairman and two Members appointed by the State Government.

(2)(a) The Chairman of the Appellate Board shall be a serving or retired Member of the Indian Administrative Service of the Madhya Pradesh Cadre, who has held the post of Principal Secretary or equivalent in the Government of Madhya Pradesh for at least three years.

(2)(b) One Member of the Appellate Board shall be an advocate within the

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meaning of the Advocates Act, 1961 (25 of 1961) or a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949), who has experience of at least ten years of practice in sales tax, commercial tax or Income Tax.

(2)(c) The other Member of the Appellate Board shall be an officer of the rank of the Additional Commissioner or the Deputy Commissioner of the Commercial Tax Department, who has held the post for at least three years.

(3) The tenure of the Chairman and Members shall ordinarily be for five years which may be extended by the State Government by such period, as it may think fit, but shall not be beyond the age of 65 years in case of the Chairman and 62 years in the case of Members :

Provided that the Chairman and the Members shall hold office during the pleasure of the State Government.

(4) The salaries, allowances and other conditions of service of the Chairman and Members of the Appellate Board shall be such as the State Government may, by order, specify.

(5) A Member of the Appellate Board may at any time tender his resignation from the post and such resignation shall take effect from the date of its acceptance by the State Government.

(6) The State Government may terminate before the expiry of the tenure, the appointment of the Chairman or a Member of the Appellate Board, if the Chairman or the Member--

(a) is adjudged as an insolvent ; or

(b) is engaged during his term of office in any paid employment outside the duties of his office; or

(c) is in the opinion of the State Government, unfit to continue in office by reason of infirmity of mind or body ; or

(d) is convicted of an offence involving moral turpitude ; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions ; or

(f) has so abused his position as to render his continuance in office prejudicial to the public interest.

After such substitution of Rule 4, two orders were issued on July 9, 2004. By the first order dated July 9, 2004 the appointment of the petitioner as Member of the Appellate Board was brought to an end with immediate effect on the ground that his age was beyond the maximum age prescribed for a Member. By the second order, the third respondent was appointed as Member of the Board in place of the petitioner.

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Peeling aggrieved, N.C. Jain filed W.P. No. 2624 of 2004 for following reliefs :

(a) For a declaration that the M.P. Vanijyik Kar Niyam, 1995 as amended by notification dated July 7, 2004 was ultra vires articles 14 and 16 of the Constitution of India.

(b) For a direction to the respondents to permit him to complete his term as Member of the M.P. Commercial Tax Appellate Board till attaining the age of 70 years.

(c) For quashing of order dated July 9, 2004 (annexure P6) bringing the service of the petitioner to an end.

(d) For quashing the order dated July 9, 2004 (annexure P8) appointing the third respondent as Member of the Board.

One S.C.J. Kochhal filed W.P. No. 3197 of 2004 for the following reliefs :

(i) for quashing the order dated July 9, 2004 appointing the third respondent as Member of the Appellate Board.

(ii) for issuing a writ of quo warranto unseating third respondent from the public office of Member, Vanijyik Kar, Madhya Pradesh.

Contentions :

Shri N.C. Jain in his petition (W.P. No. 2624 of 2004) raised the following contentions :

(a) Amended Rule 4(3) prescribing the tenure of Members of the Appellate Board is unreasonable and being retrospective in operation, is arbitrary and violative of articles 14 and 16 of the Constitution.

(b) Alternatively if the said Rule 4(3) is not retrospective in operation and is found to be valid, it can only apply to appointments of Members of the Board to be made in future and cannot invalidate or ineffectuate any appointments already made. Therefore, the letter dated July 9, 2004 bringing to an end his appointment as Member of the Board on the basis of amended Rule 4(3) is invalid as it amounts to giving retrospective effect to the amendment.

(c) The order dated July 9, 2004 putting an end to his appointment is also invalid, as it is a colourable exercise of political power to bring in the third respondent as Member of the Appellate Board.

(d) The third respondent was not possessing the minimum experience of ten years practice as required under Rule 4(2)(b) and therefore, he was not entitled to be appointed as Member nor continue as a Member of the Appellate Board.

The petitioner in W.P. No. 3197 of 2004 has reiterated the contention that the third respondent was not entitled to hold the office of Member of the Board and therefore liable to be removed by issue of a writ of quo warranto.

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Respondents 1 and 2 resisted the petitions contending that Rule 4(3) of the Rules as amended by notification dated July 7, 2004 is validly made and did not suffer from any infirmity. It is further contended that in view of such amendment, any person who has already attained the age of 62 years cannot be appointed as Member and any Member already appointed and who has crossed 62 years as on the date when the amended Rule 4 came into force (July 7, 2004) cannot continue as Member beyond July 7, 2004. The petitioner who was 66 years when appointed as Member on January 10, 2003 could not, therefore, be continued as Member beyond July 7, 2004 and that necessitated the issue of an order dated July 9, 2004, bringing his appointment to an end. In so far as the appointment of third respondent as Member in place of petitioner, it is contended that as per the particulars and documents furnished by the third respondent, he was found to have fulfilled the eligibility criteria for appointment and therefore he was appointed and there was no infirmity in his appointment. To counter any allegation of mala fides and favouritism, it was clarified on behalf of the State that if any material is placed on record by the petitioners to demonstrate that the third respondent was not eligible for appointment as Member, it will have no objection for his appointment being quashed.

The third respondent has also resisted the petitions reiterating the contentions advanced by the respondents 1 and 2. In addition, he contended that he fulfilled the requirements of Rule 4(2)(b) as he had 10 years'' experience of practice in commercial tax at the time of his appointment and, therefore, there was no infirmity in his appointment.

Re. Contentions (a) and (b) :

The rule challenged provides that tenure of the Chairman and Members shall ordinarily be five years, which may be extended by the State Government by such period as it may think fit but shall not be beyond 65 years in case of Chairman and 62 years in the case of Members. The petitioner contends that rule is unreasonable. It is also contended that as it is retrospective in operation as it affects his vested right to continue in office, it is arbitrary and violative of article 14. It is now well-settled that a subordinate legislation can be challenged only on four grounds : (i) want of legislative competence to make the rule; (ii) being violative of any constitutional provision, in particular, provisions relating to fundamental rights; (iii) being contrary to any provision of the statute under which it is made, or any other statute; and (iv) being manifestly arbitrary, i.e., arbitrariness to such an extent that it could not be said to be in conformity of the statute or that it offends article 14 of the Constitution. (The fourth ground is in fact a part of second ground).

There is always a presumption in favour of constitutionality of an enactment or subordinate legislation and the burden is upon whom who attacks it to show that there has been a clear transgression of the constitutional principles [vide The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others,]. A reading of the Rule 4(3) does not show anything arbitrary and unreasonable much less

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manifest or palpable arbitrariness. It merely provides that the tenure cannot extend beyond 62 years for Members. The learned Counsel for the petitioner was not able to justify his contention that any term of the rule is unreasonable or arbitrary. He, however, contended that as the amendment is retrospective which has the effect of taking away a benefit already accrued to the petitioner under the existing rules, it is arbitrary, discriminatory and violative of article 14 of the Constitution. Strong reliance is placed on the decisions of the Supreme Court in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, , T.R. Kapur and Others Vs. State of Haryana and Others, , P.D. Aggarwal and Others Vs. State of U.P. and Others, , K. Narayanan and others Vs. State of Karnataka and others, and Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others, in support of the said contention. It is submitted that a right had accrued to the petitioner by virtue of his appointment to serve for five years or till attaining the age of 70 years (whichever is earlier) and that right cannot be curtailed or taken away by providing that no one can have a tenure as a Member of the Appellate Board beyond 62 years.

The assumption of the petitioner (N.C. Jain) that the amended Rule 4 has a retrospective operation is not tenable. In The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , a Constitution Bench of the Supreme Court held that it is wrong to characterise the operation of a rule as retrospective merely because it applies to existing employees ; and that a rule which operates on those who entered service before the rule came into effect but operates in future, in the sense that it governs the future right of those who are already in service, is not a rule with retrospective operation but prospective in nature (para 16).

A similar view was expressed by another Constitution Bench of the Supreme Court in Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, . The Supreme Court held :

It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of articles 14 and 16 of the Constitution to the extent it operates retrospectively.

In many of these decisions the expressions ''vested rights'' or ''accrued rights'' have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the

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effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under articles 14 and 16 of the Constitution.

In this case, the amended rule does not take away any benefit which has been granted to or availed by the petitioner up to the date when the amended rule came into force. It only affects his right to continue as a Member in future that is from July 7, 2004. As repeatedly laid down by the Supreme Court, a rule which operates to affect only the future rights of those already in service and which does not affect the benefits or rights which have already accrued or enjoyed (till the date of the rule coming into effect) is not a rule which is retrospective in operation and consequently cannot be termed as violative of article 14 of the Constitution.

The petitioner next contended that by virtue of his appointment as a Member on January 10, 2003 and subsequent order dated February 7, 2003 fixing his tenure (as five years or till attainment of 70 years, whichever was earlier), a right had accrued to him to continue in service till attaining the age of 70 years and that right cannot be altered unilaterally to his disadvantage, that too, without giving an opportunity to show cause. This contention is also untenable. In a series of decisions, the Supreme Court has clarified that though employment or service under the Government may be contractual in origin, the Government servant acquires a "status" on appointment to his office. As a result, his rights and obligations are liable to be determined under statutory or constitutional authority, which for its exercise, requires no reciprocal consent from the Government servant. The Government can alter the terms and conditions of its employees unilaterally. Consent of the employees is not a pre-condition for the validity of the rules of service, notwithstanding the contractual origin of the service. It is further clarified that the hallmark of a "status" as contrasted with a contract is an attachment of a legal relationship on rights and duties imposed by a public law and not by mere agreement of the parties [vide Roshan Lal Tandon Vs. Union of India (UOI), , The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others,], The said principle applies to the case of the petitioner. His appointment on January 10, 2003 was in pursuance of old Rule 4. The terms and conditions of service were not contractual but by means of a unilateral order dated February 7, 2003, stipulating the tenure and that the service conditions will be same as those in Government service. Therefore, the appointment of the petitioner as a Member of the Tribunal (later "Appellate Board") under Rule 4 is not a contractual appointment. By being appointed as a Member of the Board, a "status" was conferred on the petitioner. The State has the authority and power to alter the rules governing his service unilaterally. Such alterations can affect even adversely the future rights relating to such "status" conferred on the petitioner as a Member of the Appellate Board.

The prescription of qualifications, experience, mode of selection, tenure of

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service and other service conditions in regard to a post are all matters within the exclusive domain of the State. The State can alter them at any time without reference to the employees concerned. Such matters being in the realm of policy formulated with reference to the special requirements of the post, courts will not interfere in the absence of arbitrariness. There is no right in a Government servant or the holder of a statutory post, to claim that rules governing the conditions of his service (which includes the tenure) should forever be the same as were in force when he was appointed, for all purposes. Except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, the appointee has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to his existing service [vide decisions in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, and P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others,]. Therefore, we hold that : (i) Rule 4(3) of the Rules does not suffer from any Constitutional or other infirmity; (ii) that Rule 4(3) is not retrospective, but prospective in operation; and (iii) such a rule can be made applicable to existing Member of the Appellate Board, to be effective from the date of the rule coming into effect.

When the new Rule 4(3) came into effect on July 7, 2004, the petitioner became ineligible to continue in the post from July 7, 2004. Consequently, the State was justified in putting an end to his service as Member of the Appellate Board by issuing a letter dated July 9, 2004. As we have already held that giving effect to a rule in future without affecting the rights anterior to the date of amendment does not amount to giving retrospective effect to the rule, there is no merit in the challenge to the letter dated July 9, 2004 bringing to an end the petitioner''s tenure as Member of the Appellate Board. If the termination of the appointment of petitioner had been under Rule 4(6) on account of any of the reasons mentioned therein, there would have been a need to give an opportunity to show cause. But where the termination is on account of expiry of tenure as in this case or by exercise of power to terminate under the proviso to Rule 4(3), which provides that a Member shall hold office during the pleasure of the Government, such termination of tenure is neither stigmatic nor need be preceded by an opportunity to show cause, [vide Dr. D.C. Saxena Vs. State of Haryana and Others, and Krishna Borate Vs. State of Maharashtra and Others,].

Re. Contention (c) :

The petitioner has contended that his services were terminated only with the intention of accommodating the third respondent. This allegation is not supported by any material. It is already noticed that Rule 4 was substituted with effect from July 7, 2004 providing that tenure of a Member of the Appellate Board cannot continue after completing 62 years. As on July 9, 2004 the petitioner was aged 67 years. Therefore, the letter dated July 9, 2004 putting an end to his tenure, is a consequence of the new Rule 4 and not as a result of any ulterior motive. In so far as appointment of third respondent is concerned, his

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appointment, by itself does not lead to an inference of ulterior motive or political interference. When the tenure of the petitioner came to an end on July 7, 2004, necessarily the State had to appoint someone else in his place. Therefore, in the absence of any material to the contrary, the appointment of the third respondent is only a consequence of the tenure of the petitioner coming to an end and not on account of any political or ulterior motive.

Re. Contention (d) :

Rule 4(2)(b) provides that one Member of the Appellate Board shall be an advocate within the meaning of the Advocates Act, 1961 or a chartered accountant within the meaning of the Chartered Accountants Act, 1949 who has experience of at least ten years of practice in sales tax, commercial tax or Income Tax.

It is not in dispute that the third respondent was enrolled as a legal practitioner on August 2, 1994. The extract from the register issued by the State Bar Council of M.P. shows that the third respondent was born on June 1, 1964 and was enrolled on August 2, 1994. Therefore, admittedly the third respondent was not an advocate with 10 years standing on July 9, 2004, when he was appointed as a Member of the Appellate Board. The third respondent contends that the requirement of Rule 4(2)(b) is that the person appointed should (i) be an advocate and (ii) have an experience of at least 10 years of practice in sales tax, commercial tax or Income Tax. It is submitted that Rule 4(2)(b) does not require that the person to be appointed as a Member should have been an advocate for 10 years. It is alleged that the third respondent was practicing in the taxation field for more than 10 years as on July 9, 2004 and was enrolled as an advocate on August 2, 1994 and, therefore, he fulfilled both requirements for being appointed as a Member.

Let us examine whether the third respondent could be considered as a person "practicing" taxation for 10 years as on July 9, 2004. Section 31 of the Act relates to appearance before taxing authorities. Sub-section (1) thereof provides that any dealer may attend or appear in person or represented by a person authorised by him in writing, being a relative of or a person regularly employed by the dealer or a legal practitioner or a chartered accountant or tax practitioner. Sub-section (2) providing as who will be entitled to appear as a tax practitioner is extracted below :

(2) For the purposes of Sub-section (1) any person who--(a) before coming into force of this Act, had been enrolled, as a sales tax practitioner under the Act repealed by this Act ; or

(b) holds a degree in law or commerce or the degree of Bachelor of Arts with economics as one of his subjects conferred by any Indian university incorporated by any law for the time being in force or by any other university as the State Government may, from time to time by notification, specify ; or

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(c) does not possess any of the qualifications referred to in Sub-clause (b) but has held a post in the Commercial Tax Department not below the rank of an Assistant Sales Tax Officer/Assistant Commercial Tax Officer for at least ten years and is granted a certificate by the Commissioner having regard to his record of service in the department as being a fit and proper person to appear in any proceeding under this Act, shall be entitled to appear as a tax practitioner.

Sub-section (3) of Section 31 requires, every tax practitioner and every person who is entitled to appear as a tax practitioner in any proceeding under the Act to be enrolled as a tax practitioner on payment of such fee as may be prescribed. Sub-section (4) of Section 31 provides that if the Commissioner is satisfied that the application for enrolment is in order, he shall enroll and grant him certificate of enrolment in the prescribed form. The old Act (Madhya Pradesh General Sales Tax Act, 1958) had a corresponding provision. Section 31 of the New Act corresponds to Section 21 of the old Act and Sub-sections (1), (2), (3) and (4) of Section 31 of the new Act corresponds to Section 21(1), (2), (2A) and (2B) of the old Section 21. Therefore, a person can claim that he was practicing as a tax practitioner only if he was registered as a tax practitioner. A person who casually appears as an employee of a dealer or a relative of the dealer or as a friend of the dealer or as an employee or assistant of a tax practitioner cannot claim that he was "practicing" as a "tax practitioner". "Practice" has a special connotation.

In L.M. Mahurkar Vs. Bar Council of Maharashtra and another, , what is "practice" came up for consideration. The Supreme Court held :

It clearly appears that a distinction has been drawn between a legal practitioner and a sales tax practitioner in Section 71. Both may appear before an authority in connection with sales tax cases. That will not turn a sales tax practitioner into a legal practitioner. Even a relative or an employee of an assessee may appear on his behalf before a sales tax authority. He does not require to have any special qualification for doing that. If an employee appears regularly for his employer in connection with sales tax cases of his employer before a sales tax authority, he cannot be treated to be a legal practitioner or entitled otherwise to practise the profession of law by virtue of Section 71 of the Bombay Sales Tax Act.

The second category of persons, who are entitled to appear before sales tax authorities under Clause (b) of Section 71, are professionally qualified persons, A legal practitioner or a chartered accountant or a cost accountant may appear before a sales tax authority on behalf of his client. Such appearance by a lawyer or an accountant will be in the course of carrying on his profession of law or accountancy, as the case may be. It cannot be said that an accountant carries on the profession of law when he appears before the sales tax authority, nor can it be said that a lawyer carries on the profession of an accountant when he appears before a sales tax authority.

The third category, to which the appellant claims to belong, is the category of

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sales tax practitioners, who possess the prescribed qualifications. Assuming that the appellant, who is stated to be only a matriculate, has acquired the prescribed qualifications and has been included in the list of persons qualified to appear before the sales tax authorities, he cannot be treated as a person entitled to practise either the profession of law or the profession of accountancy. A large number of persons have been permitted to appear before sales tax authorities on behalf of the dealers. The list includes an employee, a relative, a sales tax practitioner and also professionally qualified people like lawyers and accountants. The right to appear before a sales tax authority is not confined to lawyers only. We are unable to uphold the contention that merely because the appellant has been permitted to appear before the sales tax authority, he falls within the category of persons entitled to practise the profession of law by virtue of the provisions of the Bombay Sales Tax Act.

Moreover, appearance before the sales tax authority may only be for the purpose of filing a return and producing documents in support of the return. A relative or an employee or an accountant or a sales tax practitioner can be asked to do this job by an assessee for and on his behalf. That does not mean that any one of the aforesaid persons is practising the profession of law when he appears before the statutory authority and produces the accounts. He may even be called upon to explain the accounts or justify the entries made in the account books. There may be problems only of book-keeping and accountancy and nothing of law in such proceedings. Therefore, it cannot be inferred straightway that because the sales tax practitioner has been given a right to appear before a statutory authority, he is practising the profession of law.

The aforesaid observations with reference to what is "practising the profession of law" indicate what a practice is. A person who did not enrol or register himself as a "tax practitioner" cannot obviously call himself as a tax practitioner. In this case, the third respondent admittedly did not get himself registered as a tax practitioner. Therefore, the contention that the third respondent had started tax practice in the office of Sogani & Company at Nayapura, Guna in February 1994 itself and that earlier he was dealing with taxation matters of one Pradeep Kumar Jain and others from July 1, 1989 to June 1994, even if true, are of no relevance. As he was not a registered tax practitioner, it could not be said that he was practicing taxation. We, therefore, hold that the third respondent was ineligible for being appointed as a Member of the Appellate Board on July 9, 2004, as he did not have the experience of ten years'' practice in the field of taxation as on July 9, 2004.

The contention of the third respondent that he had been given an identity card by the M.P. State Bar Council showing the enrolment No. 1215/1994 and the date of enrolment as June 2, 1994 and, therefore, he had 10 years'' experience is only to be stated to be rejected. As noticed above, the register of the Bar Council of M.P. clearly shows that he was enrolled on August 2, 1994. This is not disputed. In the circumstances, if the identity card showed the date of enrolment

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on June 2, 1994, it is either on account of obliteration of a part of the number "8" on account of passage of time, or tampering to make it appear as "6". We do not propose to impute any illegal motive to third respondent in this behalf. Suffice it to hold that the identity card is not of any assistance, in the teeth of the certificate issued by the State Bar Council.

The petitioners in the two cases have produced some documents in support of their contention that the third respondent was actively carrying on the business as a partner in civil contract firm under the name and style "Patwa Constructions" at Guna even up to the time of his appointment and therefore was not practicing as an advocate at the time of appointment. The third respondent has denied the same. He has stated that originally he and his brother Ved Prakash Patwa were the partners in the firm "Patwa Constructions" ; that the said partnership firm came into existence on April 1, 1993 but was dissolved on March 31, 1994 ; and that from April 1, 1994, Ved Prakash Patwa was the sole Proprietor of "Patwa Constructions" and he had nothing to do with the said business ; nor was he a contractor from April 1, 2004. It is not necessary to examine this issue, as we have already held that the third respondent does not fulfil the requirements for being appointed to the office of Member of the Appellate Tribunal. The State Government was obviously misled by the date of enrolment in the identity card of third respondent issued by the M.P. State Bar Council by reading it as June 2, 1994 instead of August 2, 1994. We accordingly hold that the third respondent not being qualified to be appointed to the office of Member of the Appellate Board on July 9, 2004, his appointment is invalid and he is not entitled to hold office of Member of the Appellate Board.

In view of the above, both the petitions are allowed in part as follows :

(i) The challenge to the validity of Rule 4(3) of the M.P. Vanijyik Kar Niyam, 1995 is rejected.

(ii) The challenge to the order dated July 9, 2004 putting an end to the tenure of N.C. Jain, is rejected.

(iii) The order dated July 9, 2004 appointing the third respondent as a Member of the M.P. Commercial Tax Appellate Board is quashed. Consequently, it is declared that third respondent is not entitled to continue as a Member of the said Board.

(iv) The third respondent shall pay costs of Rs. 2,000 to the petitioner in W.P. No. 3197 of 2004. The other parties to bear their respective costs.

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