

(1992) 09 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 1851 of 1992

Payyazhi Janardhanan, Adv.

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 08-09-1992

Acts Referred:

Citation : (1993) 95 BOMLR 94 : (1993) CriLJ 100

Hon'ble Judges : S.P. Kurdukar, J; A.V. Savant, J

Bench : Division Bench

Advocate : P. Janardhanan, for the Appellant; Miss P.D. Muklesaria, M.P. Vashi and Miss K.A. Bhatia, for the Respondent

Judgement

Kurdukar, J.—On the application of Shri P. Janardhanan, name of respondent No. 7 (The Bar Council of India, New Delhi), is deleted. Amendment to be carried out within one week.

2. Rule returnable forthwith. Miss Anklesaria waives service for respondents Nos. 1 to 5 Shri Vashi waives service for respondent No. 6.

3. Miss Anklesaria tenders affidavit dated 8th Sept. 1992 of Shri A. N. Hiremath, Jailor, Group II, Bombay. Affidavit taken on record.

By consent petition placed on board and called out for hearing.

4. A news item appearing in "The Afternoon" dated Aug. 10, 1992 under a caption "City advocates up in arms over dress code" has led to the filing of this writ petition. The petitioner is a practising advocate and he is appearing in person. In the news report, it is stated that the directive from the Byculla and Arther Road Jail authorities concerning dress regulations has been issued. It then states :

"According to the directive, advocates would be denied entry into the jail premises if their dress is not in conformation with the dress is not in conformation with the dress regulations laid down by the Bar Council of

Maharashtra.

Last week, it was learnt, one Mr. Pachpan Singh, an advocate practising in the city sessions court, was not permitted entry into the Byculla jail since his dress was not in accordance with the new directive."

5. On the basis of this report, it is contended on behalf of the petitioner that there is no provision in the Maharashtra Prison Manual of 1979 which authorises the jail authority to issue any direction as regards the dress. It was urged by the petitioner that the alleged directive issued by the jail authority is without authority of law and cannot be sustained. The petitioner, therefore, urged that the said directive, if any, be quashed and set aside.

6. Miss Anklesaria, learned Additional Government Pleader, appearing for respondents Nos. 1 to 5 stated that this directive was required to be issued in view of the security measures which are required to be taken within the jail premises. Learned counsel urged that on various occasions, it has come to the notice of the jail authorities that on representations made to them that they are Advocates, permission was granted to them to take interview of the persons detained in the jail. There was no effective method to verify such representations. On some occasions, there were some unpleasant incidents with Advocates in the jail premises and in order to avoid any such unpleasant incidents, the jail authorities have issued directions making Advocate's dress i.e. wearing of black coats to Advocates compulsory. We enquired from the learned Government Pleader as to whether there is any provision in the Maharashtra Prison Manual of 1979 authorising the jail authority to introduce such condition and/or to issue such direction as regards the dress. The learned counsel then drew our attention to Chapter 31, and in particular Rule (ii). The said provision has been set out in Paragraph 2 of the Affidavit in reply. It reads thus :

"Where a legal advisor desires an interview with an unconvicted criminal prisoner (U.T.) he shall apply in writing to the Superintendent stating his name, address, profession and the name of the prisoner and satisfy the Superintendent or any other officer of the prison specially empowered by the Superintendent in this behalf that he is the bona fide legal advisor of the prisoner with whom he seeks an interview and that he has legitimate business with him."

After hearing the learned Government Pleader, we are of the opinion that this provision does not confer any authority on the jail authority to issue any such direction requiring a legal advisor to comply with the dress regulations laid down by the Bar Council of Maharashtra. No provision has been brought to our notice which would authorise the jail authority to issue any such direction as regards the dress. In view of this legal position, it is not possible to uphold the directive issued by the jail authority. However, we cannot lightly brush aside the apprehensions entertained by the jail authorities causing unnecessary unpleasantness and commotion in the jail premises. It is, therefore, necessary to have identity card with the legal advisor who wants to visit the jail in order to

interview a person detained in jail.

7. Shri Vashi, learned counsel appearing for Bar Council of Maharashtra and Goa and who also happened to be the former Chairman of the Maharashtra Bar Council, stated that the Bar Councils of Maharashtra and Goa have taken a decision to issue identity cards to the legal practitioner whosoever applied for the same. This identity card gives all the necessary details in addition to the photograph being affixed thereon. Shri Vashi further informed the Court that there identity cards are being issued expeditiously on applications of the legal practitioners.

8. Shri Janardhanan, the petitioner in person did not dispute that it is necessary to have some identity to get over the apprehensions entertained by the jail authorities. Having regard to the facts and circumstances of the case, although we quash and set aside the present directives issued by the jail authorities which have appeared in the newspaper "The Afternoon" dated Aug. 10, 1992, we uphold the contention of the learned Government Pleader to regulate the entry of the legal practitioner in jail to take interview on the basis of identity card which is issued by the Bar Council of Maharashtra and Goa. If such identity card is produced by the legal advisor, the jail authorities will accept the same and permit the legal advisor to have the interview of the person detained in jail in accordance with law. The Bar Council to forward the copy of this judgment to all the Bar Associations in Maharashtra and Goa for information. The Government Pleader will also forward the copy of this judgment to the jail authorities for information. Certified copy expedited.

9. Rule disposed of in the above terms. There will be no order as to costs.

Order accordingly.