

(1953) 09 MAD CK 0032

In the Madras High Court

Case No : Letters Patent Appeal No. 288 of 1952

P.P. Selvarajan (Advocate)

APPELLANT

Vs

Bar Council, Madras

RESPONDENT

Date of Decision : 16-09-1953

Acts Referred:

Bar Councils Act, 1926 — Section 10, 9
Constitution of India, 1950 — Article 226
Madras Bar Council Rules — Rule 28

Citation : AIR 1954 Mad 400 : (1953) 66 LW 1048 : (1953) 2 MLJ 735

Hon'ble Judges : Rajamannar, C.J.; Venkatarama Aiyar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Aiyar and K.B. Krishnamurthi, for the Appellant; A.G., for the Respondent

Judgement

Rajamannar, C.J.—This is an appeal against the judgment of Subba Rao J. dismissing the appellant's application filed under Article 226 of the Constitution for a writ of certiorari or any other appropriate writ to call for the records and quash the order dated 16-4-52 of the Bar Council, Madras, and such other order or give such other directions as this Court deems fit to the Bar Council and enter the appellant's name in the register of practising advocates.

The appellant is an advocate of this Court, having been enrolled as such on 20th September 1937. He continued to practise till April 1944 when he intimated to the Bar Council that he was suspending his practice, because his maternal uncle died in January 1942 leaving no male issue & a running business in fancy goods & it became necessary for him to devote his whole time to the business. Subsequently the appellant found that the income from the business was insufficient for the needs of his family and he applied to the Bar Council on 29th July 1949 requesting their permission to practise as an advocate and at the same time to look after his business interests. He stated that his businesses were functioning without his actual presence and that it would not cause any prejudice to his duties as a lawyer if he had only a supervisory control over his business.

The Bar Council refused to grant him permission by their letter dated 19th August 1950.

As the income from the business diminished still further the appellant completely divested himself of all personal contact with the business, gave a general power-of-attorney to his manager and entrusted the conduct of another business to an active partner and renewed his application to the Bar Council on 12th March 1952. The Bar Council however refused the request by their letter dated 16th April 1952. It is this order that has given rise to this application for "certiorari".

2. The application by the appellant to the Bar Council was made under rule 28 of the Madras Bar Council Rules which runs as follows:

"No advocate shall be a promoter of a trading company, nor shall he without the leave of the Bar Council otherwise engage in any trade or calling."

In the affidavit filed by him in support of his application he attacked the order of the Bar Council as being arbitrary. He submitted that the arbitrary discretion vested in the Bar Council under rule 28 was void and inoperative after the coming into force of the Constitution, because it would be contrary to the rule of equal protection of laws laid down in Article 14 and also because it would be contrary to the provisions of Article 19(1)(g) which guaranteed to the citizens freedom to practise any profession.

3. Subba Rao J. after an elaborate discussion of the case-law and the principles laid down in the American decisions and in this country, came to the conclusion that rule 28 did not infringe on the fundamental rights embodied in Article 14 and Article 19 of the Constitution. He also held that the order of the Bar Council was not passed arbitrarily. He therefore dismissed the application.

4. Soon after Mr. Venkatasubramania Aiyar, learned counsel for the appellant, began his arguments, it became obvious that the appellant could not complain of any legal grievance. Before Subba Rao J. counsel on both sides appear to have proceeded on the assumption that an order of the Bar Council refusing to permit the appellant to continue to have an interest in his businesses would effectively prevent him from having such an interest and at the same time practising his profession.

When we asked the learned Advocate General who represented the Bar Council what legal sanction there was behind rule 28 of the Bar Council Rules, he confessed there was none. There is no provision declaring what is to happen if there was a contravention of that rule of the Bar Council. Obviously the Bar Council as such have no power to take any disciplinary action against an advocate. The Bar Council cannot suspend, or remove from practice any advocate of the High Court. There is nothing in the Bar Councils Act or in the Bar Council Rules to the effect that an advocate contravening the provisions of rule 28 is guilty of professional or other misconduct. u/s 10(1) of the Indian Bar Councils Act, it is only the High Court which may reprimand, suspend or remove

from practice any advocate of the High Court whom it finds guilty of professional or other misconduct.

The utmost that the Bar Council might be able to do is to make a complaint to this court that the advocate who has infringed rule 28 of their rules has been guilty of misconduct. It is then for this Court to decide judicially whether the action of the advocate amounts to professional or other misconduct which calls for punishment. There is nothing in the Bar Councils Act or the rules which would prevent this court from coming to the conclusion that an advocate is not guilty of professional or other misconduct in spite of the fact that his application under rule 28 had been refused by the Bar Council or even if the advocate has not chosen to make any application under that rule.

5. Section 15 of the Bar Councils Act provides that,

"A Bar Council may, with the previous sanction of the High Court for which it is constituted, make rules consistent with this Act to provide for and regulate any of the following matters, namely:

- (a) the rights and duties of the advocates of the High Court and their discipline and professional conduct;
- (b) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court;
- (c) the giving of facilities for legal education and training and the holding and conduct of examinations by the Bar Council;
- (d) the charging of fees payable to the Bar Council in respect of the enjoyment of educational facilities provided, or of the right to appear at examinations held by the Bar Council;
- (e) the investment and management of the funds of the Bar Council; and
- (f) any other matter in respect of which the High Court may require rules to be made under this section."

It is evidently in exercise of the power conferred by this section that the Bar Council has made certain rules, one of which is rule 28. We are here concerned only with rules which fall under clause (a). They are rules 28 to 36-A. Among them we find for instance a rule like the following:

"28-A. No advocate of 15 years standing or more shall appear without a junior in any case in which the valuation is Rs. 5,000 or more."

Now, what is the force of this rule? Is it anything more than advisory? Suppose an advocate infringes this rule, can he be prevented from appearing and pleading? Or, can he be held to be guilty of professional misconduct by a mere contravention of this rule? Obviously not. Some of the other rules are also clearly advisory, as, for example, rule 31(1) which runs as follows:

"Where any amount is received from court or from other parties on behalf of the client the fact of such receipt must be intimated to the client as early as possible."

Surely, it cannot be contended that a noncompliance with this rule by itself would automatically render an advocate liable for any punishment. In short, there are no sanctions behind these rules of the Bar Council. They embody sound advice. But a contravention of these rules does not affect the status or legal rights of an advocate contravening them. Ultimately it is only this court acting u/s 10 of the Bar Councils Act that can punish an advocate in such a way as would prevent him from practising his profession temporarily or permanently.

6. In this view the appellant cannot be said to have been legally aggrieved by the refusal by the Bar Council of his application under rule 28. There is therefore no need to quash the order of the Bar Council. The appeal is dismissed.

7. Mr. Venkatasubramania Aiyar, during the course of his arguments, said that if there was no sanction behind rule 28 there is no place for such a rule, as it would serve no purpose. We do not agree. Rule 28 will, in our opinion, serve a useful purpose. When an advocate obtains permission of the Bar Council under rule 28 and is engaged in any trade, and proceedings are thereafter taken for professional misconduct against him, this court would certainly consider his case with great lenience as his obtaining permission would be convincing proof of his bona fides.