
(1973) 03 AHC CK 0025
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1406 of 1973

Prayag Das

APPELLANT

Vs

Civil Judge, Bulandshahr and Others

RESPONDENT

Date of Decision : 14-03-1973

Acts Referred:

Advocates Act, 1961 — Section 30, 34(1)
Allahabad High Court General (Civil) Rules, 1957 — Rule 615
Allahabad High Court Rules, 1952 — Rule 12
Civil Procedure Code, 1908 (CPC) — Section 122
Constitution of India, 1950 — Article 227

Citation : AIR 1974 All 133

Hon'ble Judges : M.N. Shukla, J;K.N. Seth, J

Bench : Division Bench

Advocate : V.C. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Shukla, J.—The petitioner, an Advocate practising in the Mofussil Courts at Bulandshahr, takes exception to the dress prescribed for Advocates and challenges the power to impose any fetters on the ground of dress on an Advocate's right to practice in the courts in this Slate. He has, therefore, filed this writ petition under Article 226 of the Constitution praying that the impugned orders of the Civil Judge, Bulandshahr (respondent No. 1) preventing him from appearing in his court and also Rule 615, General Rules (Civil), 1957 be quashed and that a writ, order or direction in the nature of mandamus be issued "directing the respondents to permit the petitioner to appear in their courts as an Advocate wearing Dhoti, Kurta and gown as his dress."

2. The petitioner claims to have launched a crusade for securing recognition to Dhoti and Kurta as court dress. For that purpose he gave notice to the High Court, the District Judge, Bulandshahr and other Civil Judges of Bulandshahr, Bar Council, Uttar Pradesh, Bar Council of India and the two Bar Associations of Bulandshahr to the effect that he shall wear Dhoti and Kurta in courts from

5-2-1973. Pursuant to that object the petitioner chose to appear before the respondent No. 1 in Kurta and Dhoti in a consolidation reference on 17-2-1973. The learned Civil Judge passed order (Annexure 5) that since the applicant was not in proper dress he refused to permit him to put his appearance in his court. On an application moved by the petitioner's client the respondent No. 1 passed another order on 27-2-1973 (Annexure 7) affirming his previous order and holding that the petitioner shall not be entitled to put in appearance in the case until he appeared in the prescribed dress before the court.

3. The respondent No. 1 based his order on the provisions of Rule 615, General Rules (Civil), 1957, and held that the petitioner did not comply with the same and was, therefore, not permitted to appear in his court. The aforesaid rule runs as follows:--

"615. All presiding officers of Sessions and Civil Courts and pleaders appearing before them shall wear a buttoned up coat, achkan or sherwani of a black colour. They may wear an open neck coat of the same colour instead, but if they are not entitled to use bands, they shall wear a black tie with it. During the summer the colour need not be black and a coat, achkan or sherwani of a light colour may be worn. With the coat, trousers and with the achkan or sherwani, chooridar pyjama or trousers shall be worn. Ladies appearing before the Civil Courts as pleaders shall wear a black or a white sari and blouse.

"They shall also wear distinctive costumes as indicated below:--

(i) Presiding Officers: a gown, made after the pattern of Queen's Counsel's gown of black silk or stuff, with bands;

(ii) Advocates: a gown similar to a barrister's gown with bands; and

(iii) Pleaders and Vakils: a gown similar to the gown worn by presiding officers, but without sleeves and bands.

If it is desired to wear a headdress, a turban may be worn."

4. The petitioner's contention is that the above rule is no longer good law in view of the rules framed by the High Court and the Bar Council under the Advocates Act, 1961. In the alternative the argument was that the dress worn by the petitioner on 17-2-1973 before the respondent No. 1 did not contravene the said rule and that at all events the dress prescribed by that rule was arbitrary and derogatory to national esteem and Indian culture.

5. There are two provisions of the Advocates Act which may be relevant in this connection. Section 34 confers on the High Court the power "to make rules" laying down the conditions subject to which an Advocate shall be permitted to practise in the High Court and the courts subordinate thereto. Sub-section (3) thereof provides:--

"(3) Until rules are made under this section, any rules made by a High Court under its Letters Patent or any other law relating to any of the matters specified

in this section which were in force immediately before the appointed day, shall continue in force so far as consistent with this Act, and shall be deemed to be rules made under this section."

6. Section 49 of the Advocates Act confers power on the Bar Council of India to make rules for discharging its functions under the Act and says that in particular such rules may prescribe.....

(ab) the condition subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to as an advocate in a Court.

.....

(c) the standards of professional conduct and etiquette to be observed by advocates;

.....

7. The Bar Council of India framed rules u/s 49 of the Act. Rule 5 of the Rules provides:--

"An Advocate shall appear in court at all times only in the prescribed dress, and his appearance that always be presentable."

The preamble of the Rules is also significant and may be quoted. It says:--

"An Advocate shall, at all times, comport himself in manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate."

The Bar Council did not make any rule prescribing the dress. That was left to the High Court. Acting u/s 34(1) of the Advocates Act the High Court framed rules of which Rule 12, which is relevant for the case, is to the following effect:

"12. Advocate, appearing before the Court shall wear the following dress:

(1) Advocate other than lady advocates:

(a) Black buttoned up coat chapkan, Acnakan or Sherwani, Barrister's gown and bands or

(b) Black open collar coat, white shirt, white collar, stiff or soft, with Barrister's gown and bands.

(2) Lady Advocates:--

Regional dress of subdued with Barrister's gown and bands."

8. On the basis of the above-mentioned rules the petitioner has advanced an argument that there is no rule prescribing a dress for Advocates and hence they

are at liberty to wear any dress while appearing in courts. It was submitted that the Bar Council alone had the power u/s 49(c) of the Advocates Act to prescribe the dress for Advocates but it had refrained from framing any rules on that subject. On the other hand, the High Court had framed Rule 12 u/s 34(1) of the Advocates Act prescribing dress for Advocates, though the High Court had no power to frame any such rule under that provision. u/s 30 of the Advocates Act "subject to the provisions of this Act, every Advocate whose name is entered in the common roll shall be entitled as of right to practice" "in all courts including the Supreme Court." This right to practise could be curtailed only by the Bar Council of India by framing rules u/s 49(ab) of the Advocates Act. The High Court could not frame rules so as to curtail or destroy that right and Section 34(1) of the Advocates Act could not be construed so as to include the power to prescribe dress for Advocates. The power to prescribe dress vested in the Bar Council alone. Consequently, Rule 12 framed by the High Court prescribing dress for Advocates was void.

9. It is correct that the High Court does not possess the power to take away an Advocate's right to practise in courts. That power can be exercised only by the Bar Council which may also frame rules u/s 49(ab) of the Advocates Act. But in our opinion the High Court has a power to regulate the appearance of Advocates in Courts. The right to practise and the right to appear in courts are not synonymous. An Advocate may carry on chamber practice or even practise in court in various other ways, e.g., drafting and filing of pleadings and Vakalatnama for performing those acts. For that purpose his physical appearance in court may not at all be necessary. For the purpose of regulating his appearance in court the High Court should be the appropriate authority to make rules and on a proper construction of Section 34(1) of the Advocates Act it must be inferred that the High Court has the power to make rules for regulating the appearance of Advocates and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility. However, so far as the basic qualifications of an Advocate entitling him to practise without physically appearing in court, or disentitling him from doing so are concerned, the determination of such conditions must remain within the exclusive province of the Bar Council. The same division of functions is borne out by the difference in the language of the two provisions. Whereas Clause (ab) of Section 49 refers to the conditions subject to which an Advocate shall have the right to practice, Section 34(1) deals with the conditions subject to which an Advocate shall be permitted to practise. The expression "permitted to practise" in the context can have only one meaning i.e., the right of physical appearance in Court. The word "permitted" refers to a particular occasion when an Advocate wants to appear in a Court and not to his general right to practise which is solely determined by the Bar Council. Refusal by a Court to permit an Advocate to appear before it does not amount to extinction of the Advocate's legal entity as an Advocate. It merely bars his physical appearance in a particular Court on a definite occasion. For the purpose of deciding as to whether the Advocates

physical appearance in a Court may be allowed or disallowed, his dress can be a relevant factor. Consequently, the High Court was competent to frame Rule 12 prescribing Advocates' dress in exercise of the power u/s 34(1) of the Advocates Act. The words "laying down the conditions subject to which an advocate shall be permitted to practise" must be given a restricted meaning of permitting physical appearance of the Advocate and not his general right to practise as an Advocate. We are, therefore, unable to hold that Rule 12 of the Rules framed by the High Court is void or ineffectual.

10. The next submission of the petitioner was that in any case Rule 12 merely prescribes the dress for Advocates but it does not postulate any penalty for breach of that rule. Hence appearing before the Court in a different dress from the one prescribed cannot be visited with the consequence of preventing an Advocate from appearing in the Court and being heard. In other words, for the default in dress there may be any other penalty such as a complaint to the Bar Council, and, if law permits a complaint on such ground, such action as may be taken for such conduct, but the Court has no authority in law to inflict the penalty of refusing audience to an Advocate for that reason. The omission to provide a penalty was also relied upon by the learned counsel for submitting that Rule 12 was only directory and not mandatory. This argument has only to be stated to be rejected. The provision for penalty is only one of the criteria for holding that a rule is mandatory but that is not the sole test. The use of the word "shall" in Rule 12 leaves no room for doubt about the mandatory nature of the provision so that it is compulsory for the Advocates appearing before the Court to wear the prescribed dress. We also find no force in the argument that the absence of penalty clause in Rule 12 precludes the Court from refusing to hear an Advocate not wearing the prescribed dress. In our opinion there was no need of prescribing penalty in Rule 12 inasmuch as the said rule was framed u/s 34(1) of the Advocates Act and the penalty is embodied in the section itself. The High Court has merely to make rules laying down the conditions subject to which an advocate shall be permitted to practise in Courts. Such conditions have been laid down in Rule 12 and, therefore, in the event of non-fulfilment of those conditions the High Court or a Court subordinate thereto can refuse to an Advocate who wishes to appear before it. We have already held that the word "practise" in Section 34(1) implies physical appearance in Court. Withholding permission for such appearance is the penalty embedded in Section 34(1) itself.

Moreover, when a condition is prescribed it is meant for being observed not by its breach but by its compliance and there is implied authority to pass such incidental orders as may be essential to give effect to it. We have already referred to Rule 5 framed by the Bar Council which makes it imperative for an Advocate to appear in Court at all times only in the prescribed dress. The preamble of the rules framed by the Bar Council also lays emphasis on the duty of an Advocate to "comport himself in manner befitting his status as an officer of the Court." The power to preclude an Advocate from appearing in Court is by necessary implication vested in that Court in order to enforce the observance of

the prescribed dress. In fact, appearing without the prescribed dress is to show disrespect and the Court is certainly entitled to refuse audience. The formal attire associated with certain professions and the utility and necessity of ceremonial dress are recognised in many countries. In England, formerly besides the gown the suit had to be of black colour. It is said that Cockburn, C. J. once declined to give audience to a barrister who happened to be in grey trousers. In an observation which has become classical Byles, J. once remarked that he listened with little pleasure to arguments of counsel whose legs were encased in light grey trousers.

11. As we have observed earlier, the impugned orders are founded on Rule 615 of the General Rules (Civil), 1957. The question, therefore arises as to whether that rule is still operative or has it been superseded by the rules framed under the Advocates Act to which we have adverted. There is no inconsistency between that rule and those framed under the Advocates Act. In fact, Rule 12 aforesaid really supplements Rule 615. Both are in *pari materia* and must be read together. In isolation from Rule 615 the dress prescribed by Rule 12 would remain incomplete. The latter rule is silent as to the garments which may be used under the waist. Surely no civilized judicial set up can permit an Advocate to appear nude in Court and therefore, reading Rule 12 alone without adopting the provisions of Rule 615 would lead to a ridiculous situation. Rule 12 merely clarifies and supplements the ingredients of a prescribed dress initially provided by Rule 615. In this view of the matter wearing of trousers or churidar pajama is incumbent on an Advocate as contemplated by Rule 615. Rule 12 framed under the Advocates Act does not detract from the lower garments enumerated in Rule 615.

12. It is contended by the learned Counsel for the petitioner that the first part of Rule 615 which prescribed the lower garments is confined to pleaders and so far as the dress of Advocates is concerned, it is prescribed in the second part of the rule only Which deals with the "distinctive costumes." According to this submission the only dress prescribed for Advocates is "a gown similar to a barrister's with bands". This would be evidently putting an absurd construction on the rule because it is preposterous to imagine that an Advocate has merely to wear a gown with bands and is otherwise free to wear any dress on the rest of his body. The word "they" with which the second part of the rule opens is comprehensive to include Advocates in the first part of the rule as well. In other words, the dress prescribed in the first part of Rule 615 applies both to Advocates and pleaders and the second part of the rule only adds distinctive costumes to be respectively worn by Advocates and pleaders etc. Thus, it is quite clear that without combining the two parts of Rule 615 it is impossible to arrive at the complete dress of an Advocate.

13. We cannot accept the argument that Rule 615 has ceased to be operative after the enactment of the Advocates Act, 1961 and the rules framed thereunder. General Rules (Civil), 1957 were framed by the High Court in the exercise of the

power conferred by the provisions of Article 227 of the Constitution of India and Section 122 of the Code of Civil Procedure. The provisions of the Constitution have an overriding effect and specially when there is no inconsistency between the rule framed under it and those later framed under the Advocates Act, the latter cannot supersede the former. Therefore, Rule 615 is wholly valid and operative and must be given effect to.

14. The contention that Article 227 does not cover the power to make rules for prescribing the dress of Advocates is also untenable. Under Clause 1 of the said Article the High Court has the general power of superintendence and under Clauses (2) without prejudice to the generality of the said provision the High Court may, inter alia, under Sub-clause (b) "make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts." The gamut of proceedings in Court embraces the conduct and behaviour of the Presiding Officer as well as other officers of the Court, including an Advocate. Therefore, the mode in which an Advocate may appear in Court and the dress which he may wear pertain to the form of the practice and proceedings of the Court. In order to regulate the practice and proceedings it is open to prescribe forms, and dress is nothing but a matter of form. Section 122 of the CPC can also be pressed into service for the same purpose. It provides:

"High Court not being the Court of a Judicial Commissioner may, from time to time after previous publication, make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence and may by such rules annul, alter or add to all or any of the rules in the First Schedule."

15. Thus, Rule 615 does not transcend the scope of Article 227 of the Constitution and Section 122 of the CPC and can be fully sustained on those provisions.

16. It is thus manifest that the dress of Advocates has been prescribed by rules framed under Art. 227 of the Constitution, Section 122 of the CPC as well as under the provisions of the Advocates Acts Advocates are bound to conform to the prescribed dress and this explodes the myth of the untrammelled choice of an Advocate in matters of dress while appearing in courts. The petitioner who was wearing a Dhoti and Kurta with a gown violated the prescribed dress and the learned Civil Judge was within his rights to refuse audience to him and the impugned orders are valid and legal. We are constrained to hold that under the existing provisions of law an Advocate cannot appear in Court, dressed in Dhoti and Kurla, even though he may be wearing a gown.

17. Sri V.C. Misra, learned counsel for the petitioner made a scathing attack on the reasonableness of Rule 615 and said that it was arbitrary and capricious. The criticism is wide off the mark. The rationale of such rule is obvious. Justice can best be administered when legal proceedings are conducted with decorum and a certain degree of formality. "The place of justice" as Francis Bacon remarked, "is a hallowed place," and those seeking its aid either for themselves or those whom

they represent should so conduct them-selves as to uphold its dignity. The trappings of a Court room and the costume specially meant for the Court and its officers invest the Court with a sort of dignity which is not without its effect. The traditional prescribed dress of an Advocate gives him certain aloofness wherefrom his submission come with added force. As A.G. Gardener has so eloquently expressed, "Dress", has its spiritual and moral reactions. It may seem absurd, but it is true that we are in a real sense the creatures of our clothes."

18. In our opinion the various rules prescribing the dress of an Advocate serve a very useful purpose. In the first place, they distinguish an Advocate from a litigant or other members of the public who may be jostling with him in a Court room. They literally reinforce the Shakespearian aphorism that the apparel oft proclaims the man. When a lawyer is in prescribed dress his identity can never be mistaken. In the second place, a uniform prescribed dress worn by the members of the Bar induces a seriousness of purpose and a sense of decorum which are highly conducive to the dispensation of justice. Of late there has been a lamentable slackness in matters of lawyers' dress. We feel that the lifting of a prescribed dress for Advocates and courts is apt to precipitate sartorial inelegance and judicial indecorum. If the rule is relaxed it is not unlikely that Advocates may start dressing themselves more and more scantily and even indiscreetly. The apprehension might be well illustrated by a dialogue which is alleged to have transpired between the Australian squatter and his friend who visited him on his estate far away in the wilds of the interior. The friend asked him why, in so remote a place he made it a practice to "dress" for dinner. "I do it," said the squatter, "to avoid losing my self-respect. If I did not dress for dinner I should end by coming in to dinner in my shirt-sleeves. I should end by not troubling to wash. I should sink down to the level of the cattle. I dress for dinner, not to make myself pretty, but as a spiritual renovation."

19. Sri Misra vehemently urged that the rule prescribing pajama or trousers to the exclusion of Dhoti was an affront to the ancient culture of the Indians and must be scrapped. We do not see how trousers and pajamas involve any violence to patriotic sentiment. They have existed as a sort of dress of honour in India from ancient times and they are recognised as very respectable dress. In fact, the fastidious might claim on aesthetic ground also that Dhoti and gown go ill together. (1930) 34 CWN 125. (notes) contains some interesting comments on the respective claim of the Dhoti and the trousers for adoption as Court dress. It says that the feeling against trousers is wholly unreasonable and makes the apposite observation:

"The conflict, therefore, is not between national and foreign dress, but between trousers and the dhoti. For a settlement it must perhaps be referred to sartorial aesthetics and we are of opinion that if the gown is to remain, it would accord very unsatisfactorily with the dhoti. The superfluous cloth worn from the waist in massed folds is bound to get mixed up with the gown and make a mess, with the result that a learned advocate dressed in that fashion would look more an

ungeometrical bundle of loose clothing than a neat and well trimmed figure."

20. Lastly, the learned counsel rested the petition on the ground of mala fide. We have perused the averments made in the petition and the affidavit filed in support thereof. We are not satisfied on the material placed before us that any case of mala fide is made out. If the Court possessed the legal power to prevent the petitioner from appearing before it otherwise than in prescribed dress, the exercise of that power would not be vitiated merely for the reason that the same was not exercised against all or other members of the Bar practising at Bulandshahr.

21. In the result this writ petition fails and is dismissed in limine.