

(1996) 12 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 5396 of 1996

Sanjeev M. Gorwadkar and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 19-12-1996

Acts Referred:

Constitution of India, 1950 — Article 20, 21, 226, 39A
Evidence Act, 1872 — Section 57, 78

Citation : AIR 1997 Bom 303 : (1997) 3 ALLMR 30 : (1997) 4 BomCR 622 :
(1997) 2 BOMLR 360 : (1997) 2 MhLj 152

Hon'ble Judges : D.K. Deshmukh, J;A.V. Savant, J

Bench : Division Bench

Advocate : C.R. Dalvi, for the Appellant; M.N. Zambre, M.P. Vashi and A.S. Rao,
for the Respondent

Judgement

A. V. Savant, J.—Heard all the learned Counsel.

2. This is a petition seeking very innocuous relief that respondents Nos. 1, 2 and 5 namely the State Government, Director of Printing and Publication Department and Union of India should be directed to make available by publishing and printing adequate number of authenticated copies of the bare Acts, legislation, rules and other statutory instruments having force of law at a reasonable price to the public at large through out the State. Prayer (b) is as follows:

"(b) Respondents Nos. 1, 2, 5 be directed to make available adequate number of authenticated copies of the bare Acts, Legislations, Rules, Regulation and other statutory instruments having force of law in the State of Maharashtra to all the three benches of the High Court of Judicature of the State as well as to all the Mofussil Courts in the State of Maharashtra immediately."

3. The petitioners are citizens of India and both the lawyers practising in this Court. The petitioners have contended that under Art. 21 of the Constitution they have a right to know the law which governed them. They have right to get the

information about the laws which enable them to effectively enjoy the right to live under Art. 20 of the Constitution. According to the petitioners, such right puts obligation on respondents Nos. 1 and 5 to make adequate number of authenticated copies of bare acts, legislation, rules and regulations etc. available not only to them but also all the three Benches of this Court functioning in the State as also to the Mofussil Courts in the State of Maharashtra. Our attention is invited to A.D. 1799 Regulation I which annexed as Exhibit A to the petition. Para 1 of the said Regulation makes interesting reading which is as under :

"It is essential to the future propriety of the British territories under the Presidency of Bombay that all Regulations which may be passed by Government, affecting in any respect, the right, persons, or property of their subjects, should be formed into a regular code, and printed, with translation in the country language; that the grounds on which each Regulation may be enacted should be prefixed to regulate their decisions by the rules and ordinances which those Regulations may contain. A Code of Regulations, framed upon the above principles, will enable individuals to render themselves acquainted with the laws upon which their security depends, and the mode of obtaining speedy redress against every infringement of them, the Courts of justice will be able to apply the Regulations according to their true intent and import; future Administrations will have the means of judging how far Regulations have been productive of the desired effect, and when necessary, to modify or alter them, as from experience may be found advisable; new Regulations not to be made, nor those which may exist be repealed, without due deliberation; and the cause of future decline or prosperity will always be traceable in the Code to their source. The Governor in Council has accordingly enacted as follows :

Every rule or order that may be passed by the governor in Council, regarding the administration of justice, the imposition or levying of taxes, or of duties on commerce, the collection of the public revenue assessed upon the lands, the rights and tenures of the proprietors and cultivators of the soil, the provision of the Company's investment manufacture of salt, and generally all Regulations affecting in any respect of rights, person, or property of the natives, or any individuals who may be amenable to the country Courts of Judicature, shall be recorded in the Judicial Department and there framed into a Regulation and printed and published as hereafter directed."

Needless to say that the objections behind making the Government enactment available to the citizens is very laudable. We may also refer to the provisions of S. 57 of the Evidence Act, 1872 which reads as under :

"57. Facts of which Court must take judicial Notice: The Court shall take judicial notice of the following facts :

(1) All laws in force in the territory of India.

(2) All public Acts passed or hereafter to be passed by the Parliament (of the United Kingdom) and all local and personal Acts directed by Parliament (of the

United Kingdom) to be judicially noticed.

(3) Articles of War for (the Indian) Army, (navy of Air force).

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislature established under any laws for the time being in force in a Province or in the State).

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

(6) All seals of which English Courts take judicial notice: the seals of all (Courts in Indian) and of all Courts out of (India) established by the authority of (the Central) Government or the Crown Representative); the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public and seals which any person is authorised to use by (the Constitution or an Act of Parliament of the United Kingdom or an) Act; or

Regulation having the force of law in (India)

(7) The accession to office, names titles, functions and, signatures of the persons filing for the time being any public office in any (State), if the fact of their appointment to such office is notified in (any official gazette);

(8) The existence, title and nation flag of every State of Sovereign recognized by (the Government of India).

(9) The divisions of time, the geographical divisions of world, and public festivals, fasts, and holidays notified in the official gazette.

(10) The territories under the domination of (the Government of India).

(11) The commencement, continuance and termination of hostilities between (the Government of India) and any other State or body of persons.

(12) The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates, attorneys proctors, vakils, pleaders and other persons authorised by law to appear or act before it.

(12) The rule of the road (on land or at sea).

In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

4. The concluding portion of the section says that if the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so. The petitioners' contention is that even if an attempt is made to get the copies of the bare acts, leave alone the rules and

regulations framed thereunder, the same are not easily available. We may incidentally mention that it has also been our unfortunate experience not to be able to get the copies of authenticated publications in the matter of Acts, Rules and Regulations. The petitioners, therefore, contend that in the absence of authenticated copies of the Acts, Rules, Regulations and other statutory instruments being made available, it will be difficult for the Courts to act upon the mandate of S. 57 of the Evidence Act requiring the Court to take judicial notice of certain facts such as of laws in force in India. In this behalf, the petitioners have rightly contended that if ignorance of law is no excuse it presupposes that a citizen is able to know law. The elementary requirement in this country is that the citizen is able to obtain an authenticated copy of the Act, Rules and Regulations. If a citizen is not able to obtain these documents, the argument is that it would be difficult to implement the rule that ignorance of law is not an excuse. Our attention is also invited to the fact that in certain enactments requirement of mens rea has been recognised. It is therefore, necessary for the citizen to know the set of laws, rules and regulations which govern his conduct and it is obvious that in case of breach of any such act, rule or regulation, he may be faced with penal consequences.

5. Despite the rule being made returnable no affidavit is filed on behalf of the First Respondent State which is very unfortunate thing. On behalf of the second respondent Director of Printing and publishing department Prabhakar L. Purkar, Deputy Director of Printing and Stationery, has filed his affidavit. He has stated the procedure that is adopted by Printing and Publishing Department in the matter of printing and publishing the copies of the Acts, Rules and Regulations. Needles to say that he has to abide by the instructions given to him by the concerned department in the matter of printing and publishing the Acts, Rules and Regulations. The affidavit filed by Purkar does not answer the grievance of the petitioners against the first respondent State or the fifth respondent Union of India.

6. We may also refer to S. 78 of the Evidence Act dealing with the proof of other official documents, the said Section reads as under :

"78. Proof of other official documents : The following public documents may be proved as follows :

(1) acts, orders or notifications of (the Central Government) in any of its departments, (or of the Crown Representative) or of any (State Government) or any department of any (State Govt.) by the records of the department certified by the heads of department respectively or by any document purporting to be printed by order of any such Government (or as the case may of the Crown Representative).

(2) the proceedings of the legislature :

by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed (by order of the Government concerned.)

(3) proclamations, orders or regulations issued by (Her Majesty) or by the Privy Council, or by any department of (Her Majesty's) Government -

by copies or extracts contained in the London Gazette, or purporting to be printed by the Queen's Printer.

(4) the Acts of the Executives or the proceedings of the Legislature of a foreign country-

by journals published by their authority, or commonly received in that country as such, or by a recognition thereof (in some (Central Act)).

(5) The proceedings of a municipal body in (a State -

by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body:

(6) Public documents of any other class in a foreign country-

by the original or by a copy certified by the legal keeper thereof with a certificate by the legal keeper thereof with a certificate under the seal of a Notary Public, or of (an Indian Counsel) or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

7. A perusal of the above provisions will make it clear that for proving the public documents, it would be necessary to have the copies of these documents.

8. Shri Vashi appearing on behalf of the Bar Council of Maharashtra and Goa has placed before us a copy of the letter dt. 25th April, 1996 written by the Secretary to the Bar Council to president District/Taluka Bar Association in Mumbai and State of Maharashtra and Goa regarding supply of Government publications. It mentions the fact that Government publication. It mentions the fact that Government publications of number of enactments are not available. The copy of the said letter dt. 25th April 1996 is taken on record and marked as "X" for identification. Our attention is also invited to the copy of the letter dt. 24th May, 1996 written by the Chairman of the Bar Council of Maharashtra and Goa in the Hon'ble Law Minister, Government of Maharashtra. The same is also taken on record and marked "Y" for identification. It contains the grievance of the chairman of the Bar Council that number of Government publications are not available with the Director, Government Printing Stationary and Publication Department, Charni Road, Mumbai. The Chairman of the Bar Council has also invited the attention of the Law Minister to the fact that the Bar Council has been approached in the matter with the representation from the Advocates who needs to purchase the Govt. publications and difficulties faced by them because of non availability of the Government publications. There is no reason for us to doubt the contents of the said two letters at X and Y. Apart from the above the fact that the first respondent State of Maharashtra has not cared to appear in the matter nor choose to file the affidavit in reply.

9. In the circumstances mentioned above, we are left with no alternative but to make the rule in the petition absolute in terms of prayers (a) and (b). We further direct that time limit to comply with this order in terms of prayers (a) and (b) of the petition is 30th April, 1997. No order as to costs.

Order accordingly.