

(1970) 07 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No"s. 470 of 1968

Sri Md. Yusuf and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-07-1970

Acts Referred:

Constitution of India, 1950 — Article 254
Registration Act, 1908 — Section 69, 69(1)(bb)

Citation : (1970) 07 PAT CK 0012

Hon'ble Judges : N.L. Untwalia, J;B.P. Sinha, J

Bench : Division Bench

Advocate : B.C. Ghose, S.N. Mishra, Radha Raman, S.N. Chatopadhyaya, Man Mohan, S.K. Ghose, Chandra Shekhar in C.W.J.C. 470/68, Tarkeshwar Dayal, Ravi Nandan Sahay in C.W.J.C. 474/68 and Mr. Devendra Prasad Sharma in C.W.J.C. 555/68, for the Appellant; Lal Narain Sinha and K.P. Verma, for the Respondent

Judgement

N.L. Untwalia, J.—In all three writ cases the constitutional validity of Clause (bb) of Sub-section (1) of Section 69 of the Indian Registration Act (Central Act XVI of 1908) (hereinafter called the Act), as inserted by the Indian Registration (Bihar Amendment) Act, 1964 (Bihar Act XVII of 1966) and Rules framed thereunder, have been challenged. All these cases have been heard together and will be disposed of by this common judgment. The subject of registration of deeds and documents is included in Entry 6 of List III of the 7th Schedule to the Constitution of India, namely, the concurrent list. Hence in the purported exercise of their power the Bihar Legislature enacted the Bihar Act XVII of 1966 amending Section 69 of the Central Act, whereby the following Clause was added after Clause (b) in the parent Act:

(bb) providing for the grant of licences to document-writers, the revocation of such licences, the terms and conditions subject to which and the authority by whom such licences shall be granted and generally for all purposes connected with the writing of documents to be presented for registration.

Thus, the Inspector General was given power to make rules, consistent with the Act, also in accordance with the inserted new Clause (bb). The rules so made under Sub-section (2) of Section 69 have to be submitted to the State Government for approval and after they are approved they are to be published in the Official Gazette. Rules were accordingly framed and were called. "The Bihar Document Writers Licensing Rules, 1968." They were published in the Bihar Gazette Extraordinary dated August 7, 1968 and are hereinafter called the Rules. The Inspector General of Registration framed rules with the approval of the Governor of Bihar. Under Rule 3 of the Rules no person, who is not licensed under these rules can engage himself in the profession of document writers or apprentice of document writers and documents drawn and signed by a person who does not hold licence under the Rules are not to be accepted for registration by the Registering Officer. Under the proviso to the said rule, an advocate, a pleader or a Mukhtar is not required to take out a licence under the said Rules. The document-writers are required to take out a licence as provided in the subsequent Rules 4 to 10. Certain other restrictions in regard to the fees which can be charged by document-writers or an apprentice and other matters connected therewith have been provided in the other rules of the Rules.

2. In C.W.J.C. 470 of 1968, the petitioners are document-writers by profession, as their case in the petition is, and have been practising as such since long. When a notice dated 14th June, 1968, a copy of which is Annexure "1" to this writ application, was issued by the District Sub-Registrar, Patna requiring them to take out licence under the Rules, they filed this writ application on 8th July, 1968 challenging the constitutional validity of Clause (bb) of Sub-section (1) of Section 69 of the Act, as introduced by the Bihar Amending Act and the Rules framed thereunder. When similar steps were taken by other Registering officers, two other petitions were filed, one by the document writers of Dalsingsarai in the district of Darbhanga in C.W.J.C. 474 of 1968 and another in C.W.J.C. No. 555 of 1968 by the document-writers of Teghra and Bachhwara in the district of Monghyr. In the latter two applications, the validity of the rules only has been challenged and not the new clause inserted in the Act. At the time of hearing, however, main argument was advanced on behalf of the petitioners in C.W.J.C. No. 470 of 1968 challenging the validity of both, which argument was adopted by learned counsel for the petitioners in the other two cases. Learned Advocate General, appearing on behalf of the State of Bihar strenuously combated the attack on the constitutional validity of law in question made by the petitioners.

3. Mr. B.C. Ghose submitted the following points:--

(1) That in exercise of the legislative power under Entry No. 6 of List III of the 7th Schedule, the Bihar Legislature could not regulate the profession, occupation or calling of the document writers as they have purported to do by insertion of Clause (bb) in Sub section (1) of Section 69 of the Act:

(2) Without making a substantive provision in the Act expressing or indicating their intention of regulating the said profession or occupation the legislature

could not empower the Inspector General to frame a rule for the said purpose, as the purpose of the legislature is not indicated anywhere by the Bihar Amending Act, 1966; and

(3) That even if Clause (bb) be held to be constitutionally valid, very many rules framed thereunder must be struck down at being invalid and being in excess of the power conferred on the Inspector General.

4. Learned Advocate General, appearing for the State, conceded that the enactment in question had been made by the Bihar Legislature in exercise of their power under Entry 6 of List III. But he submitted that the intention of the legislature is to be gathered from the whole of the clause, wherein the purpose is also indicated. It was not necessary to provide in a different section that the document writers should be licensed for the purpose connected with the writing of document to be presented for registration and then empower the Inspector General to frame rules for carrying out the said purpose. The Bihar Legislature was competent to regulate the profession of the document writers for the purpose connected with the writing of documents to be presented for registration. During the course of argument it was pointed out to us that by the impugned enactment and insertion of Clause (bb) in the Act quite a good deal of repugnancy has been brought about between the State law and the Central law and since the Bihar Act XVII of 1966 had not been reserved for the consideration of the President and had not received his assent, as the Act had received the assent of the Governor only, so Clause (bb) of Sub-section (1) of Section 69 should be struck down as void and ultra vires. The learned Advocate General refuted this argument. After hearing learned counsel for the parties, we felt that the clause has to be struck down as being constitutionally invalid, hence it is not necessary to consider separately the constitutional validity of the rules or any of them, as they must fall with the striking down of the Clause (bb).

5. It is to be pointed out at the outset that similar amendments in Section 69 by introduction of a new clause were made by the State Legislature of different States. A similar clause was inserted by the Indian Registration (Andhra Pradesh Amendment) Act, 1960, by the Madhya Pradesh Legislature in 1955 by inserting Clause (k), by Punjab Act XIX of 1961 and by Indian Registration (Rajasthan) Act XVII of 1950 as also by the Indian Registration (Travancore Cochin Amendment) Act XXVI of 1952. No investigation was made as to whether the amending Acts of the various other States had received the President's assent before becoming a law nor could we be informed with any certainty as to whether in any other State similar provision as the one challenged here was challenged either successfully or unsuccessfully. One case, however, was brought to our notice by Mr. Tarkeshwar Dayal, appearing for the petitioners in C.W.J.C. No. 474 of 1968 of Delhi High Court in *Moti Ram Vs. Rittoo*, . In that case the introduction of Clause (bb) in Section 69 of the Act by the Punjab Amendment of 1961 was not attacked. What was attacked was the refusal of the registering officer a will which otherwise ought to have been registered on the ground that under the rules it was not

scribed by a licensed document writer. Such a rule was knocked down as invalid and the registering officer was directed to register the document in accordance with the provision of Sections 40 and 41 of the Act. I may have occasion to refer to this decision again in my judgment after I have discussed the points argued in this Court.

6. Under Entry 6 of List III, both the Legislatures are competent to enact law on the topic of "Registration of deeds and documents". If, unconnected with matter of registration of deeds and documents, the profession or occupation of the document writers is controlled by the legislature, legislative competence or power will have to be found out in some other item of the list other than Entry No. 6, e.g., in Entry 26 of List III law can be made in respect of "legal, medical and other profession". I am inclined to think that the work of document writer requires special skill and it is a profession in respect of which under Entry 26 Law including the regulation of such a profession can be made either by the Central Legislature or by State Legislature. It is not a mere occupation or calling in regard to which no regulatory law can be made as was agreed by Mr. B.C. Ghose. In my opinion, the term "profession" in Entry 26 is wide enough to include the work of a document writer within its ambit. Be that as it may, however, learned Advocate General could not and did not support the impugned clause inserted in the Act with reference to Entry 26. He conceded and, in my opinion rightly, that the impugned enactment was in exercise of the power of the Bihar Legislature under Entry 6.

7. It is no doubt true that no general power has been conferred on the Inspector General to make rule for carrying out the purposes of the Act, while enumerating some of the powers or purposes in another sub-section conferring such power. The power conferred on the Inspector General has been enumerated and to me it appears exhaustively in the various clauses of Sub-section (1) of Section 69. But then he has to make rules consistent with the Act. The Bihar Legislature did not provide by any express enactment, either by amending any other section of the Act or by insertion of a new Section that it was necessary to grant licence to document writers and that the documents written by unlicensed writers should not be accepted for registration. But on this ground alone I would not have felt persuaded to strike down the impugned clause as the intention of the legislature can be gathered by reading the clause as a whole wherein by providing that the Inspector General shall have powers to make rules providing for the grant of licence to the document writers and providing generally for all purposes in connection with the writing of documents to be presented for registration, the legislature has sufficiently indicated their intention that they confer power on the Inspector General to make rules providing for grant of licence which would be necessary for the purpose connected with the writing of documents to be presented for registration, when in the latter part of the clause in a general language they provided the making of the rules for all such purposes. In my opinion, as a matter of construction, though not grammatically, it can be safely held, as argued by the Advocate General, the purpose of regulating the

profession of document writing was connected with the writing of document to be presented for registration. If that be so, the legislative competence of the Bihar Legislature could be found out in Entry 6 of List No. III.

8. But in that event learned counsel for the petitioners submitted that the clause suffers from the vice of excessive delegation of legislative power. Although I do not feel inclined to accept this argument, I do not propose to detain myself on this question as in my opinion the impugned clause has to be struck down on the ground of infraction of Article 254 of the Constitution.

9. Part IV of the Act provides the time of presentation of the documents for registration. Ordinarily and generally it is four months from the date of execution. Section 26, however, provides that document purporting to have been executed by any party out of India can be presented for registration within four months after the arrival of the executant in India. u/s 27 a Will may at any time be presented for registration. Part V deals with the place of registration and Section 28 says that the document can be registered in the office of a Sub-Registrar within whose sub-district the whole or some properties, to which the document relates, is situate. Reading these provisions it would be abundantly clear that a document may be written by the executant or by any scribe anywhere not only in India but in the world. If other conditions of registering of a document as provided in Parts IV, V and VI, are satisfied, the Registering Officer is bound to register the document. Under the Central Act he cannot say that the document presented for registration having been scribed by an unlicensed document writer cannot be registered. Such a thing has been brought about by necessary implication by the impugned Clause (bb) and in express language by Rule 3 of the Rules. Unless the purpose is so connected with the registration of the document, regulation of the profession of the document writers for the purpose connected with the writing of the document to be presented for registration will be meaningless. In absence of such a bar which has been indicated to be put by Clause (bb) of Sub-section (1) of Section 69 and has been expressly put by Rule 3 of the Rules, the regulation of the profession of the document writers in pith and substance will remain a control and regulation of the profession and will have nothing to do with the purpose connected with the writing of document to be presented for registration. The clause as it stands having the said purpose, although could be supported on the basis of Entry 6 List III in so far the legislative competence of Bihar Legislature is concerned suffers from the insurmountable infirmity, of repugnancy between the State law and the Central law. Hence the law, as enacted in violation of the requirements of Clause (2) of Article 254 of the Constitution, is not valid.

10. I may observe in passing that it will be a matter for the Bihar Legislature and the President to consider if a similar law is enacted in purported exercise of the power of the State Legislature under Entry 6 of List III whether it would be wise and expedient to debar the registration of a document unless it is written by a licensed document writer, which will seriously affect the scope and convenience

provided for the executants of the documents in Sections 26, 27 and 28 of the Act. It will be for the appropriate legislature to see whether the profession, occupation or calling, as the case may be, of the document writers can and should be regulated in exercise of their power under some other entry of any of the lists, e.g., Entry 26 of List III. This is not a matter, on which I would be justified in expressing any opinion either way.

11. In Moti Ram's case Hardayal, J. sitting singly had said:--".....Clause (bb) of Sub-section (1) of Section 69, permits the framing of the rule declaring what persons shall be permitted to act as document-writers in the offices of the registering officers, regulating the issue of licences to such persons, the conduct of business by them, the scale of fees to be charged by them and determining the authority by which breaches of such rules shall be investigated and the penalties which may be imposed....." And then his Lordship says further".....The object of the rules, therefore, is to regulate the practice and profession of document-writers.....". I am afraid if that be the object of the clause or the rules framed thereunder, insertion of such a clause merely in the section, which confers the power of rule making on the Inspector General of Registration, will not stand the test of legislative competence under Entry 6 of List III. If the power will be referable to some other entry, then I am afraid, by mere insertion of clause in the rule making power will suffer from an infirmity of excessive delegation of legislative power. If such be the intention of the legislature it will be difficult to gather from the language of Clause (bb), specially as inserted by the Bihar Amendment in Sub-section (1) of Section 69 of the Act. In any event learned Advocate General did not support the insertion of the impugned clause and the framing of the rules thereunder on such a ground, although he submitted that it was necessary to regulate the practice and profession of the document writers. That may be so. But the law enacted even with the good and laudable object has to face the test of constitutional requirements. If it fails, it has to be declared as valid and void. In the result, I allow the applications, declare Clause (bb) introduced in Sub-section (1) of Section 69 of the Act by the Bihar Act XVII of 1966 as also the rules framed thereunder as constitutionally invalid. It follows that all actions taken thereunder must be held to be ultra vires, illegal and void and cannot be enforced, I shall make no order as to costs in any of the applications.

B.P. Sinha, J.

I agree.