

(2010) 08 GAU CK 0068
In the Gauhati High Court
Case No : W.A. No. 21 of 2004

Tripura Bar Association

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Advocates Act, 1961 — Section 30
Constitution of India, 1950 — Article 14, 19(1)
Registration Act, 1908 — Section 52
Tripura Registration (Amendment) Rules, 1989 — Rule 121, 124, 6(2)

Citation : AIR 2011 Guw 27 : (2010) 6 GLR 489

Hon'ble Judges : Madan B. Lokur, C.J.;C.R. Sharma, J

Bench : Division Bench

Advocate : D.K. Biswas, for the Appellant; T.D. Majumder and Somik Deb, for the Respondent

Final Decision : Allowed

Judgement

Madan B. Lokur, C.J.—The Appellant, the Tripura Bar Association, ("the Association") is aggrieved by the judgment and order dated 20.5.2004 passed by a learned Single Judge in WP(C) No. 71 of 2002.

2. In the writ petition, the Association had challenged the validity of Rule 124 of the Tripura Registration (Amendment) Rules, 1989. The Association had also challenged the validity of the Notification dated 5.2.2002 issued by the Revenue Department, Government of Tripura.

3. By the judgment and order dated 20.5.2004 (under appeal), the learned Single Judge held that the Association had no locus standi to file the writ petition.

4. We are not in agreement with the view expressed by the learned Single Judge inasmuch as it is quite clear that the writ petition was filed by the Association in the interest of the general public as would be apparent from the facts of the case. We, therefore, hold that the Association had the locus standi to maintain

the writ petition.

5. Ordinarily, we would have remanded the matter back to the learned Single Judge for a decision on merits, but since the writ appeal is quite old and the issue is of some importance, we have heard the appeal on the merits of the controversy raised.

6. Rules 121 and 124 of the Tripura Registration Rules, 1989 form a part of Chapter DC thereof and they deal with the licensing of deed writers. These rules read as follows:

121. Any person of the District, preferably of the areas within the jurisdiction of the Sub-Registry Office, not below 21 years of age who can draft documents well in language prevalent in the locality and whose hand-writing is good and who has the practical knowledge of the important provisions of the Transfer of Property Act, 1982, the Tenancy Act in force in Tripura, the Indian Stamp Act, 1899, and the Indian Registration Act, 1908 and whose conduct is good and who is of good character may apply in writing in Form II appended to these Rules, to the Registrar of the District either direct or through the local Sub-Registrar with testimonials, if any, for a licence as a Deed Writer.

124. A list of licensed Deed Writers shall be hung up at a conspicuous place in the Registration Office with the following note of warning at the foot:

No person whose name is not included in this list is allowed to enter the Sub-Registry Office or its compound except for the purpose of transacting business in connection with the Registration of his own documents or making of searches or application for certified copies or for doing any other transaction in the office on his own behalf, or for doing the same under a power-of-attorney or unless he holds a receipt u/s 52 of the Indian Registration Act, 1908 duly endorsed in his favour.

7. Although it is not very clear, it appears that in exercise of powers conferred by Rules 121 and 124 of the aforesaid Rules, the State Government issued a Notification dated 5.2.2002, whereby an advocate was disallowed from practising deed writing without obtaining any deed writing licence. The impugned Notification dated 5.2.2002 reads as follows:

NO.F.5(7)-REV/87

GOVERNMENT OF TRIPURA

REVENUE DEPARTMENT

Dated, Agartala, the 5th February, 2002

NOTIFICATION

Subject: Writing of deeds by the advocate.

The matter relating to writing of deeds by a person, who has no deed writing

licence has been re-examined carefully by the government.

After careful consideration it has been decided that henceforth only the person who has Deed Writing Licence, will be allowed to practice deed writing.

The advocate even enrolled himself/herself as member of the Bar Council, cannot practice deed writing without obtaining any Deed Writing Licence.

Sd/-

(B. Bhattacharya)

Deputy Secretary to the

Government of Tripura.

8. A conjoint reading of Rules 121 and 124 of the aforesaid Rules and the Notification dated 5.2.2002 makes it clear that though an advocate may write a deed on behalf of his client, he cannot present it before the Registering Authority for the reason that since he is not a licensed Deed Writer, he cannot enter the office of the Registering Authority for presentation of the deed. The reasonableness of this prohibition is questioned by the Association.

9. We find that the issue raised in this case is covered by the decision of the Supreme Court in *Zila Dastavej Lekhak Association, Banda and another Vs. State of U.P. and others*, . A reading of paragraph 4 of this decision makes it quite clear that the practice of deed writing includes not only drafting an instrument but also presenting it before the Registering Authority. This broad understanding of the duty of any deed writer is clearly in the interest of the party on whose behalf the instrument is drafted, even if it by an advocate. The reason is that the author of the instrument can best explain its contents, should the need arise, before the Registering Authority. The Supreme Court held, while dealing with an advocate as a deed writer, that such an advocate does not need any further certificate from the Licensing Authority under the Rules to have the ability to draft a document and if need be, to present it at his option before the Registering Officer for its registration. Paragraph 4 of the decision rendered by the Supreme Court in *Zila Dastavej Lekhak Association (supra)*, reads as follows:

4. The question then is: whether the advocates would be required to obtain licence under the Rules to become document writers. An advocate by virtue of his sanad having been granted by the appropriate Bar Council under the Advocates Act, 1961 is entitled to draft the pleadings and appear and practice before the courts and tribunals or persons legally authorised to take evidence before the courts and tribunals or persons legally authorized to take evidence u/s 30 unless he is otherwise excluded. As a part of practice, advocates are entitled to draft the documents on behalf of the parties and produce them before the Registering Officer if he undertakes such exercise. As a consequence. Rule 6(2) seeks to exclude from the purview of the Rules the party who himself presents the document for registration or the advocate who drafts the document and

presents the same, if needed by the party, for registration. Under these circumstances, advocates stand as a class by themselves apart from the document writers governed by the Rules. An advocate does not need any further certificate from the Licensing Authority under the Rules to have the power to draft the document and if need be, to present it at his option before the Registering Officer for registration of the instrument. He gets his right only by virtue of practice of his profession as an advocate. Therefore, the contention of the Petitioner Association that its members are excluded from the purview of Rule 6(2) is devoid of substance.

10. Learned Counsel appearing on behalf of Respondent No. 7, i.e., the Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, which is a judgment delivered by three learned Judges, the decision of the Supreme Court and the law laid down in Zila Dastavej Lekhak Association (supra) is not good law. Reliance has been placed by learned Counsel on paragraph 34 of the decision rendered in Longappa Pochanna Appealwar (supra).

11. We are unable to appreciate the relevance of the decision cited by learned Counsel. That case dealt with the right of audience of an advocate before the authorities under the Maharashtra Restoration of Lands to Scheduled Tribes Act. In this context, the Supreme Court held that an advocate could not claim a right of audience before all authorities.

12. Insofar as the present case is concerned, the question of a right of audience does not arise. The question is limited to the entitlement of an advocate to present a document on behalf of his client, the document having been drafted by that advocate.

13. We may mention, in passing, Rule 124 of the aforesaid Rules, which clearly postulates that a document may be presented to the Registering Authority not only by the party for whom the document has been drafted, but also an attorney of the party. That being so, prohibiting the entry of an advocate who has drafted the instrument sought to be registered, for the purpose of registering it, cannot stand the test of reasonableness. Consequently, Rule 124 of the aforesaid Rules needs be read down so as to permit the entry of advocates into the office of a Registering Authority for the purpose of registering a document drafted by that advocate. If it is not so read down, then the validity of Rule 124 of the aforesaid Rules would be hit by the provisions of Articles 14 and 19(1)(g) of the Constitution inasmuch it places an arbitrary and unreasonable restriction on the right of an advocate to practice his profession.

14. The writ appeal is allowed and Rule 124 of the Tripura Registration Rules, 1989 is read down to the extent that an advocate drafting an instrument is entitled to present that instrument before the concerned Registering Authority. The Notification dated 5.2.2002 prohibiting an advocate from entering the premises of the Registering Authority for presentation of a document is struck down to that extent.

15. No costs.