

(2011) 10 SC CK 0068

In the Supreme Court Of India

Case No : I.A. No. 2 of 2009 in Special Leave Petition No. 18481 of 2009

Vijay Dhanji Chaudhary

APPELLANT

Vs

Suhas Jayant Natwadkar

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Supreme Court Rules, 1966 — Rule 1, 5, 6

Citation : (2012) 3 BomCR 677

Hon'ble Judges : R.V. Raveendran, J;A.K. Patnaik, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an application for restoration of SLP No. 18481/2009 dismissed on 27.2.2009. Having noticed certain irregularities in the application for restoration this Court made an order on 30.10.2009, relevant portion of which is extracted below:

3. What is puzzling is the role or rather the absence of the role of the Advocate-on-Record in this matter. Para 4 of the application show that the Advocate-on-Record had nothing to do with the SLP except to lend his name for filing the petition. He did not take instructions from the client/petitioner. He did not prepare the special leave petition. He did not instruct any counsel. He was not required to or expected to attend the hearing of the case.

4. The Supreme Court Rules, 1966 provide that though any advocate enrolled under the Advocates Act, 1961, is entitled to appear and plead before the Court, no advocate other than the Advocate-on-Record shall be entitled to file an appearance or act for a party in the Court [vide Rule 1, Rule 6(b) and Order IV]. Rule 5 provides that no advocate shall be qualified to be registered as Advocate-on-Record unless he has undergone training for one year with an Advocate-on-Record approved by the Court and thereafter has passed the tests held by the Court. Rule 6(a) provides that an Advocate-on-Record shall, on his filing

memorandum of appearance on behalf of a party, accompanied by vakalatnama duly executed by the party, be entitled to act as well as to plead for the party in the matter and to conduct and prosecute before the court all proceedings that may be taken in respect of the said matter or any application connected with the same or any decree or order passed therein including proceedings in taxation and applications for review. Sub-clause (c) of Rule 6 requires all Advocate-on-Record to keep such books of account as may be necessary to show in connection with his practice as an Advocate-on-Record, moneys received from or on account of and the money paid to or on account of each of his client.

5. Unfortunately, many special leave petitions are being filed with Advocate-on-Record being mere name-lenders, without having, or taking, any responsibility for the case. As a result of prevalence of such a practice, in such cases, the Advocate-on-Record do not appear when the matters are listed either before the Registrars or before the Chamber Judge or the Court nor do they take any interest or responsibility for processing or conducting the case. They also play no role in preparation of the special leave petitions, nor ensure that the requirements of the Rules are fulfilled and effects are cured. If the role of an Advocate-on-Record is merely to lend his name for filing cases without being responsible for the conduct of the case, the very purpose of having the system of Advocate-on-Record would get defeated.

6. The question that arises for reconsideration is whether an Advocate-on-Record can file appearance as mere name-lender for facilitating filing of petitions by others, without performing any of the functions associated with an Advocate-on-Record.

7. In order to enforce discipline in the working of Advocate-on-Record and to avoid the misuse of the system, and to ensure that the court has the benefit of effective assistance of the Advocate-on-Record, a solution has to be found.

8. We, therefore, direct issue of notice to the Advocate-on Record Association and the Supreme Court Bar Association to assist us to find appropriate solutions and provide necessary checks and balances. The Registry is directed to furnish copies of this order to the said Associations.

2. In response to it, we have received the following suggestions from the Advocate-on-Record Association, the Supreme Court Bar Association and from several counsel:

1. Suggestions by Supreme Court Bar Association (by Mr. Ram Jethmalani through Mr. Sanjay Bansal, Sr. Adv.)
2. Suggestions filed by Mr. Vikas Singh, Sr. Adv. (on behalf of Non-AOR Association)
3. Suggestions by Mr. KN Bhatt, Sr. Adv. (on behalf of Supreme Court Bar Association)

4. Suggestions on behalf of AOR Association (filed by Mr. D.K. Garg, Adv.)
5. Brief Note of problems and suggestions filed by Mr. Sushil Kumar Jain, Adv.
6. Suggestions by C. Radha Krishna, Adv.
7. Suggestions filed by Mr. Bijan Ghosh, Adv.
8. Suggestions filed by Mr. Haroim Sharma,
9. Suggestions filed by Mr. K.R. Chitra, Adv.
10. Suggestions filed by Dr. Parvin Kumar Mutreja, Adv.
11. Suggestions filed by Mr. D.B. Vohra, Adv.
12. Suggestions filed by Mr. D.K. Sinha, Av.
13. Suggestions filed by Mr. Ajay Pratap Singh, Adv.

3. We are informed by the registry that the Rule Committee of the Supreme Court of India is already seized of most of the issues that have been raised in these suggestions. Therefore we deem it appropriate to place all these suggestions before the Rule Committee so that the Committee can take note of the same while formulating new or additional rules or while suggesting amendments to the existing rules.

4. We may however like to refer to one common grievance which has a bearing on the availability of adequate number of Advocates-on-Record in regard to the AOR examinations. The examinations are held in the following four subjects:

- (i) Practice and procedure of the Supreme Court
- (ii) Drafting
- (iii) Elementary knowledge of Book Keeping and Accounts and Professional Ethics
- (iv) Leading cases.

The grievance is in regard to the third paper relating to Elementary Knowledge of Book Keeping and Accounts, being a part of the AOR examination.

5. There is considerable force in the said submissions. Elementary knowledge of Book Keeping and Accounts might have been necessary five decades ago. But with the availability of appropriate computer software and the capacity of the AORs to engage Accountants, AORs may not require any knowledge of Book Keeping and Accounts to such an extent as to pass an examination in that subject. The interests of the institution would be better served if the third paper is made purely one relating to Advocacy & professional ethics, by deleting the part relating to Book Keeping and Accounts. Many candidates fail in the Book Keeping and Accounts paper and many are deterred from taking the AOR examination because of the Book Keeping and Accounts paper being a part of the AOR examination. If the same is deleted, there would be better participation of

the members of the Bar in the Advocate-on-Record examination thereby increasing number of Advocates-on-Record, which will improve the entire system of filing cases and representation. We therefore commend appropriate amendment to the AOR Examination Regulation in this behalf.

6. The IA for restoration is allowed subject to deposit of Rs. 2500 as costs with the Supreme Court Legal Services Committee within four weeks.