
(2015) 12 AHC CK 0006
In the Allahabad High Court
Case No : Writ - C No. 33434 of 2015

V.K. Gupta

APPELLANT

Vs

Presiding Officer Central Govt. Industrial Tri. and Others

RESPONDENT

Date of Decision : 22-12-2015

Acts Referred:

Advocates Act, 1961 — Section 29, 30, 33, 36, 36(3)
Constitution of India, 1950 — Article 14, 19(1)(g), 19(g), 226, 246
Family Courts Act, 1984 — Section 13
Industrial Disputes Act, 1947 — Section 10
Maharashtra Universities Act, 1994 — Section 64

Citation : (2016) 1 ADJ 399 : (2016) AIR (All) 23 : (2016) 1 UPLBEC 554

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Arun Kumar Gupta, for the Appellant; D.K. Gupta, S.C., A.S.G.I. and Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The petitioner is an advocate. He is practicing exclusively before Labour and Industrial Tribunal, Kanpur.

2. The petitioner has preferred this petition under Article 226 of the Constitution of India against the order dated 13.05.2015 passed by the Industrial Tribunal-cum-Labour Court, Kanpur (hereinafter referred to as the Tribunal) by which the application of the worker with regard to one of the prayers has been allowed and he has been debarred from representing the management in Industrial Case No. 16 of 2014, C.D. Pal, General Secretary Mazdoor Union Vs. Commandant 508 Army Base Workshop, Fort Allahabad.

3. The petitioner has been debarred as he is not an officer of the Army Base Workshop and at the same time had neither the consent of the worker or the Worker's Union nor the leave of the Court to represent the management in the said case.

4. The Ministry of Labour, Government of India referred a dispute regarding recovery of wages alleged to be paid in excess to the office bearers of the Worker's Union. The said reference dated 21.01.2014 made under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) reads as under:-

"Whether the action of the management of 508 Army Base Workshop for recovering the wages already paid to the office bearers of the Union as per annexure 1 against special casual leave already granted is legal and justified? If not, to what relief the concerned workman/union, is entitled to and to what extent?"

5. On reference Industrial Case No. 16 of 2014, C.D. Pal, General Secretary Mazdoor Union Vs. Commandant 508 Army Base Workshop, Fort Allahabad was registered. In the said case the Management of the Army Base Workshop on 07.04.2014 authorised the petitioner V.K. Gupta, Advocate (Labour Law Adviser) and Sri A.K. Gupta, Advocate to appear on its behalf vide letter dated 20.03.2014. An application without affidavit was moved on behalf of the Workers Union on 08.04.2015 that the petitioner V.K. Gupta, who is an advocate be restrained from appearing on behalf of Management.

6. The application was opposed by the Management of the Army Base Workshop by filing reply dated 13.05.2015 contending that the petitioner had been representing it in the proceedings for the last one year and cannot be debarred at this stage. The application moved by the Workers Union is not supported by an affidavit and the objection to the petitioner's appearance raised in the application is highly belated. There is no legal bar for a lawyer to appear as a representative of the Management.

7. It is on consideration of the above objections that the application of the Workers Union has been allowed in part by the impugned order dated 13.05.2015.

8. I have heard Sri Arun Kumar Gupta, learned counsel for the petitioner and Sri C.D. Pal, Secretary General of the Workers Union appearing in person.

9. Sri Gupta argued that the order impugned violates the petitioner's statutory and fundamental right contained in Sections 29 and 30 of the Advocates Act, 1961 and Article 19(1)(g) of the Constitution of India respectively and that as Section 36(4) of the Act has been declared to be ultra vires he cannot be debarred from appearing in the above case.

10. Article 246 of the Constitution of India provides that the matters enumerated in list I (Union list) of the Seventh Schedule are legislatable exclusively by the Parliament, those in list II (concurrent list) by the Parliament as well as State legislature and those in list III (State list) exclusively by the legislatures of the States.

11. Entry 77 of List I provides for the enactment of law by the Parliament in

respect of constitution, organisation, jurisdiction and powers of the Supreme Court (including that of contempt), the fees chargeable and the persons entitle to practice before the Supreme Court.

12. Similarly, Entry 78 of List I provides for the matters in-connection with the constitution, organisation (including vacations) of the High Courts except provisions as to the officers and servants of the High Courts and the persons entitle to practice before the High Courts.

13. In addition to the above two entries of List I, Entry 26 of List III is relevant. It empowers the Parliament and the State Legislatures to make law relating to legal, medical and other professions.

14. The combined reading of all the above entries of List I and List III makes it clear that the entries 77 & 78 of List I do not permit legislation by the Parliament with regard to persons entitle to practice before any other Court or the Tribunals including Industrial Tribunal except the Supreme Court and the High Courts but legislation in this regard by Parliament is permissible under Entry 26 of List III.

15. The Constitution Bench in O.N. Mohindroo Vs. The Bar Council of Delhi and Others, has observed that Entries 77 and 78 of list I of the constitution apart from dealing with the constitution and organisation of the Supreme Court and the High Court also deal with persons entitle to practice before the Supreme Court and the High Courts. However, the power to legislate in regard to them is carried out from the general power in entry 26 of list III. The power to legislate with respect to the rest of the practitioners (other than those before the Supreme Court and High Courts) is also under entry 26 of list III.

16. In this background, it is apparent that the Advocates Act, 1961 has been enacted by the Parliament in purported exercise of power to legislate under entry 26 of List III of the Constitution.

17. Section 29 of the said Act provides that Advocates is the only class of persons entitled to practise the profession of law. At the same time Section 30 of the said Act authorises every Advocate to practise throughout the territories to which the Act applies in all courts including Supreme Court, Tribunal or person legally authorised to take evidence.

18. Section 33 of the said Act further provides that no person shall be entitle to practise in any court or before any authority or person unless he is enrolled as an advocate.

19. The above provisions are reproduced herein below for the sake of convenience:

"29. Advocates to be the only recognised class of persons entitled to practise law
- Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, advocates.

30. Right of advocates to practise - Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,-

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocates is by or under any law for the time being in force entitled to practise."

33. Advocates alone entitled to practise - Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.

20. The above provisions of law permits only the advocates who are duly enrolled, to practice before all courts including Supreme Court, High Courts and Tribunals or person legally authorised to take evidence. In view of these provisions petitioner who is an advocate is authorised to practice before the Tribunal.

21. The difficulty for the petitioner in practicing law before the Tribunal arises as Section 36(3) & (4) of the Act lays down that an Advocate shall represent the Management before the Tribunal only with the consent of the workmen/union and with the leave of the Court.

22. Section 36(3) & (4) of the Act reads as under:

"36.

(1)

(2).....

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding [before a Labour Court, Tribunal or National Tribunal] a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and [with the leave of the Labour Court, Tribunal or National Tribunal, as the case may be]."

23. In view of the above provisions, the engagement of a lawyer other than the employee or staff of the Management to appear before the Tribunal has to be on fulfillment of the two conditions viz. (i) the consent of the other side; and (ii) with the leave of the Court.

24. The aforesaid provisions does not absolutely bars the lawyers from appearing before the Tribunal. It permits representation by legal practitioner before the

Tribunal subject to the above two conditions. The imposition of the said conditions only amounts to putting restrictions on the general power of the advocates to practice before any court or authority or person. The restrictions so imposed does not impinge with the right of the advocates to practice law as guaranteed by Article 19(1)(g) of the Constitution of India.

25. A somewhat similar provision exist in the form of Section 13 in the Family Courts Act, 1984 whereunder parties are not permitted to be represented by legal practitioner as of right but may be allowed assistance of legal experts if the family court considers it necessary. It was held that it does not totally prohibit engagement of lawyer and the parties can be represented by legal experts at the discretion of the Presiding Officer and as such there is no complete or absolute prohibition upon legal practitioner from appearing before the Family Court. Accordingly, Section 13 of the aforesaid Act was not held to be invalid by the various High Courts.

26. The right to practise granted by the Advocates Act, 1961 does not confer on a litigant the right to be represented by a particular advocate. It only pre-supposes that a litigant is entitle to be represented by an advocate if necessary Zonal Manager, Life Insurance Corporation of India, Central Zonal Office, Kanpur and Others Vs. City Munsif, Meerut and Another, . The right to practice is not an absolute right but only restricted in nature and limitations on such a right can always be placed either by prescribing dress for legal practitioners or in some other manner Prayag Das Vs. Civil Judge, Bulandshahr and Others, .

27. In the light of the aforesaid, the two restrictions as placed by Section 36(4) of the Act does not completely exclude appearance of the advocates before the Tribunal. Secondly, it also does not infringe the fundamental right of a person to practise law. A person entitle to practise law can practise it in any court including Supreme Court, High Court, Tribunals etc. but such right of practise does not necessarily mean that he is entitle to appear in a particular case. In the event he is not permitted to appear in one case it does not mean that any of his fundamental or statutory right gets violated.

28. A Seven Judge Constitution Bench in In Re: Lily Isabel Thomas, was considering the validity of the Supreme Court Rules, 1950 wherein right of representation was given only to certain class of advocates. Their Lordships considering the aforesaid Rule 16 and 17 of Order 4 of the Supreme Court Rules vis-a-vis the provisions of the Advocates Act and the legislative powers of the Parliament under the Entry 77 & 78 of List I held that there is no question of Rule 16 and 17 of Order 4 of the Supreme Court Rules restricting the right of representation to a certain class of advocates to be contrary to law made by parliament. The Supreme Court by its Rules can make provision prescribing qualifications entitling persons to practise before it and there is no question of a conflict between the power of Parliament and the Rule making power of court.

29. Similarly, Maharashtra Restoration of Lands to Scheduled Tribes Act, 1975

vide Section 9A prohibited the appearance of advocates on behalf of non-tribals in proceedings under the Act. The three Judges Bench of the Supreme Court in Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, in dealing with Section 30 of the Advocates Act held that such a prohibition is only a restriction and is not violative of fundamental right of an advocate under Article 19(1)(g) of the Constitution.

30. The exact controversy with regard to right of the advocates to practise law as envisaged under Article 19(1)(g) and Sections 30 /33 of the Advocates Act vis-a-vis Section 36(4) of the Act came up for consideration before the three Judges Bench of the Supreme Court in Paradip Port Trust, Paradip Vs. Their Workmen, . Their Lordships held that the right of an advocate under the Advocates Act is of a general nature and cannot prevail over the special statute i.e. Section 36 of the Act. A lawyer simpliciter cannot appear before an industrial tribunal without the consent of the opposite party and leave of the tribunal.

31. The recent decision of the Supreme Court in Hygienic Foods Vs. Jasbir Singh and Others, is by a Division Bench. It prima facie holds that Section 36(4) of the Act debarring lawyers from appearing before Tribunal is unconstitutional being violative of Article 14 and 19(g) of the Constitution. This decision only express the prima facie opinion and not the final and conclusive one. The said prima facie opinion expressed by the Division Bench is contrary to the aforesaid conclusive opinion of the three Judges Bench in Paradeep Port Trust (Supra) and the two other decisions referred to above. Therefore, the opinion expressed therein has no binding force.

32. Similarly, the opinion expressed by the learned Single Judge of this court (Later Judge of the Supreme Court) in 1992 LLR 477 I.C.I. India Ltd. Vs. Presiding Officer, Labour Court (IV) and another that Section 36(4) of the Act is violative of Article 14 and 19(1)(g) of the Constitution of India and is therefore, ultra vires is also not acceptable as it is contrary to the opinion expressed above and in the three decisions of the Supreme Court referred to above.

33. I would be failing in my duty if I do not mention about one another decision of the Supreme Court in the case of H.S. Srinivasa Raghavachar Vs. State of Karnataka and Others, . The said case was in relation to Karnataka Land Reforms Act, 1962. It by an amendment prohibited legal practitioners from appearing before the land Tribunals. The provision was held to be unconstitutional and violative of Section 30 of the Advocates Act. The aforesaid decision is clearly distinguishable as under the aforesaid Act a complete and absolute prohibition was placed on the right of the lawyers to appear before the land Tribunal.

34. The decision of Bombay High Court in Mohan Madhukar Sudame Vs. State of Maharashtra and The Nagpur University, Nagpur, is also of no assistance to the petitioner in view of the above referred decisions of the Supreme Court on the point. In the above decision the Division Bench of the Bombay High Court ruled

that Section 64 of the Maharashtra Universities Act, 1994 which excluded legal practitioners from appearing before University and college Tribunal is void and repugnant to Section 30 of the Advocates Act. It has no application to the present case as Section 36(4) of the Act does not completely oust the Lawyers from appearing before the tribunal. The exclusion is limited and subject to the two conditions laid down therein.

35. In the instant case, the petitioner is not in the staff of the Army Base Workshop or part of its Management. Therefore, ordinarily he cannot be the authorised representative of the Management before the Tribunal. Even if he is a legal Adviser to the management and advises the Management whenever the occasion arises he cannot be deemed to be the member of the staff as there is nothing on record to establish any regular payment of salary to him as is admissible to other employees. The services rendered by him as a legal adviser are in the nature of his professional duties for which he is entitled to remuneration but not salary on regular basis. He is therefore, not part of the Management and cannot represent the Management until he fulfills the conditions of Section 36 of the Act.

36. It means that his engagement as a lawyer has to be with the consent of the other side and with the leave of the Court.

37. The petitioner has put in appearance on behalf of army base workshop on 07.04.2014. The objection to his appearance was raised for the first time on 08.04.2015. His authority to represent the management was not objected to earlier, either at the time of his putting in appearance or thereafter for a period of about a year.

38. In Francis Gomez and Another Vs. President, Thiruvananthapuram Shops and Commercial Employees' Union and Others, , His Lordship of the Kerala High Court held that if an appearance is filed by an Advocate on behalf of a party and the other side fails to raise an objection to it during first posting day itself there is a implied consent under Section 36(4) of the Advocate Act which cannot be subsequently taken away.

39. In view of the above decision there may be implied consent to the engagement of the petitioner to represent the Army Base Workshop before the Tribunal but the other condition of obtaining leave of the court still stands unfulfilled.

40. A plain reading of Section 36 of the Act reveals that it requires fulfillment of the twin condition for engaging a lawyer to represent a party before the Tribunal namely consent of the worker or worker's union and the leave of the court.

41. Admittedly in the present case the Tribunal has not permitted Army Base Workshop to engage a lawyer and has not granted any leave to it to be represented by a lawyer especially the petitioner.

42. In the above situation, as the petitioner fails to fulfill both the two mandatory

conditions laid down under Section 36 of the Act, the Tribunal is not in error in not accepting him as a representative of the Army Base Workshop and debarring him from appearance in the aforesaid case.

43. The submission that such debarment of the petition is violative of Section 29 /30 of the Advocates Act read with Article 19(1)(g) of the Constitution of India is of no substance.

44. Article 19(1)(g) guarantees right to practice and profession or to carry any occupation, trade or business. This right of the petitioner is not infringed or affected by the impugned order which only debars him from appearing in a particular case that two for non-fulfillment of the statutory conditions. It does not prohibit the petitioner from practicing Law anywhere not even before the Tribunal.

45. Even the right given to the Lawyers under Sections 30 /33 of the Advocate's Act to practise in all Courts including Tribunals is not affected by the impugned order inasmuch as it does not stop him in appearing before any Court or the Tribunal. No lawyer has any right to appear in a particular case and debarring a lawyer from one case does not infringe his right to practise.

46. The petitioner in the above facts and circumstances cannot be an aggrieved party.

47. The aggrieved party if at all would have been the Army Base Workshop but it has not complaint of it and had not filed this petition which means that it has no objection if it is not allowed to be represented by the petitioner before the Tribunal. In these circumstances petitioner alone is not authorised to invoke the writ jurisdiction of this court against the impugned order.

48. In view of the above, I find no merit in the petition and the same is dismissed with direction to the Tribunal to complete the proceedings expeditiously if possible within three months of placing this order before it.