

In Re Sant Ram

Civil Misc. Petition No. 928 of 1959

(Syed Jafar Imam, K. N. Wanchoo, J. L. Kapur JJ)

07.04.1960

JUDGMENT

SINHA, C.J. -

This matter was placed before the Constitution Bench by an order of the Chamber Judge dated August 14, 1959, as it involved the vires of the rules framed under Art. 145 of the Constitution with particular reference to Rule 24 of Order IV-A of the Supreme Court Rules (as Amended).

It appears that on receipt of a letter dated April 28, 1959, from the Supreme Court Bar Association forwarding a copy of a resolution which had been passed by the Executive Committee of that Association, the Registrar initiated proceedings and held an enquiry under R. 24(2) of Chap. IV-A. The enquiry was made against two persons named Sant Ram and Budh Dev Sharma on a complaint made by the Honorary Secretary of the Supreme Court Bar Association. The complaint against those persons was to the effect that they were "continuing their undesirable activities" and were seen every day in the Court premises and in the verandah in front of the Bar Association "accosting clients". On receipt of the Secretary's letter the Registrar caused notices to be issued to the two persons aforesaid to show cause why their names should not be included in the "list of touts" to be kept hung up on the Court notice board according to R. 24 aforesaid. The Registrar fixed a date for holding the enquiry and called upon those persons to appear before him and to adduce such evidence as they may be advised, in showing cause against the inclusion of their names in such a list. The notice further called upon them to file their replies, if any, to the complaint on or before May 6, 1959, and to be ready with all their evidence and witnesses, if any, at the hearing on May 9, 1959. Copies of the complaint and other relevant papers were also sent to the Secretary of the Supreme Court Bar Association inviting him to take such part in the proceedings as the Association may be advised and requesting him to furnish particulars of the evidence in support of the complaint and to be ready with the evidence. In pursuance of the notice aforesaid Budh Dev Sharma alias B. D. Pathak filed his reply on May 6, 1959, annexing thereto certain documents and praying that he may be allowed to continue earning his livelihood. He also prayed that his employer Shri Dharam Bhushan, Advocate, may be accorded permission to have his name registered as a clerk in the Registry and also in the Bar Association. On May 8, 1959, Sant Ram filed his reply to the said notice annexing thereto a certificate of Mr. M. G. Bhimasena Rao, Advocate, and praying that the notice against him may be discharged and that he be "allowed to make both ends meet in the service of his present employer", meaning thereby Mr. Bhimasena Rao, Advocate. The proceedings before the Registrar commenced on May 9, 1959, and were concluded on May 11, when evidence was recorded.

A preliminary objection was raised on behalf of the persons proceeded against that the rules framed by the Supreme Court under which the proceedings had been initiated against them were ultra vires the powers of the Court conferred by Art. 145 of the Constitution. It was contended on their behalf

that the Registrar had no jurisdiction to initiate the proceedings against them. The learned Registrar overruled the preliminary objection and held that it was not competent for him to go behind the rules and that he must follow them, though he indicated that if he had the competence to decide the preliminary objection on its merits, he would, have no difficulty in holding that the objection was wholly unfounded.

After considering the evidence adduced before him the learned Registrar by his order dated May 16, 1959, recorded the finding that it had been proved to his satisfaction that both those persons had been habitually frequenting the precincts of the Court for the purpose of procuring business for certain advocates in their profession, for remuneration, over a period of years right up to the time the show cause notice had been served upon them. He directed accordingly that a list of touts be published forthwith in accordance with R. 24(1), O. IV-A of the Supreme Court Rules, showing the names of the two persons aforesaid in that list which shall be kept hung up on the Court notice board.

Against this order of the Registrar only Sant Ram appealed to the Chamber Judge. As already indicated, the learned Chamber Judge directed the matter to be placed before the Constitution Bench in view of the constitutional question raised by the appellant challenging the vires of the rules aforesaid.

Though other points were also raised in support of the appeal before us, the most important question that falls to be determined is whether this Court had the jurisdiction under Art. 145 of the Constitution to frame the rules impugned in this case. Before the rules which were amended in the present form and which came into force with effect from April 15, 1959, there was no provision in the rules of this Court containing the definition of the word "tout" or laying down the procedure for dealing with persons who were alleged to have been acting as such. Order IV-A was therefore added. It was headed : "Professional or Other Misconduct". It contains rules relating to the suspension or removal of advocates from the roll of advocates of this Court including the procedure to be followed in proceedings started against an advocate of the Court. Rules 23 and 24 which are the relevant rules are in these terms :-

"23. Any Advocate, who accepts an engagement in any legal business through a person included in the list of touts published as provided in the next following Rule, shall be deemed guilty of professional misconduct.

Explanation :-

"Tout" means a person who procures, in consideration of any remuneration moving from any Advocate or from any person on his behalf, the employment of such Advocate in any legal business, or who proposes to any Advocate to procure, in consideration of any remuneration moving from such Advocate or from any person on his behalf, the employment of the Advocate in such business, or who for purposes of such procurement frequents the precincts of the Court."

24. (1) "The Registrar shall publish lists of persons proved to his satisfaction, by evidence of general repute or otherwise, habitually to act as touts, to be known as 'lists of touts' and may, from time to time, alter and amend such lists.

A copy of every list of touts shall be kept hung upon the Court Notice Board.

Explanation :-

The passing of a resolution by the Supreme Court Bar Association declaring any person to be a tout shall be evidence of general repute of such person for purpose of this Rule.

(2) No person shall be included in the list of touts unless he has been given an opportunity to show cause against his inclusion in such list. Any person may appeal to the Chamber Judge against the order of the Registrar including his name in such list.

(3) The Registrar may, by general or special order, exclude from the precincts of the Court all such persons whose names are included in the list of touts".

The question is whether these rules are within the rule-making power of this Court conferred by Art. 145(1)(a) of the Constitution which is in these terms :-

"145(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including -

(a) rules as to the persons practising before the Court :

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It has been contended that the power of this Court to frame rules is confined to making rules for regulating the "practice and procedure" do not include rules to declare a person a tout and the procedure leading up to such a declaration. In our opinion there is no force in this contention. It has not been, and it cannot be, contended that this Court is incompetent to frame rules regulating conduct in and out of Court bearing on the professional activities of an advocate of this Court. This Court has the inherent jurisdiction to regulate its proceedings relating to conduct of persons appearing before it, in and out of Court, in so far as such conduct has a bearing on their professional relations and ethics, apart from the constitutional provisions of Art. 145 set out above. This Court must in the very nature of things have the fullest power to lay down rules with a view to ensuring honest and efficient discharge of their duties by officers of the Court, including legal practitioners admitted to the roll of advocates of the Court. This Court has, subject to such legislation as may be made by Parliament, the responsibility vested in it of maintaining proper discipline in Court and of insisting upon proper discipline in Court and of insisting upon proper standards being observed by legal practitioners who have the privilege of appearing, acting and pleading in this Court. This Court must, therefore, in the proper discharge of its duties as the highest Court in the land make such rules as would ensure sound administration of justice and proper conduct on the part of those whose duty it is to help the Court in the discharge of its responsibilities. Apart from the inherent jurisdiction of this Court, the Constitution itself has authorised the Court to make rules for regulating generally the practice and procedure of the Court. The expression, "the practice and procedure of the Court" must be construed in its fullest amplitude and must include regulating the conduct of all persons, appearing before the Court, in relation to the business of the Court. Thus the conduct of advocates and their assistants in relation to the business of the Court must from the subject matter of regulation by the rules of the Court.

Once it is held that this Court has the authority to frame rules relating to the conduct of persons practising in this Court, it follows that this Court has the power to prescribe a code of conduct for advocates, regulating their relations with their clients and their conduct in Court as officers of the Court. When this Court, as in R. 23, provides that an advocate shall be guilty of professional misconduct if he accepts an engagement in any legal business through a person included in the list of touts, such a rule cannot be said to be beyond the rule-making powers of this Court. It follows that with a view to enforcing that rule, a "tout" has to be defined, which is done by the explanation to R. 23. It is equally clear that R. 24, which lays down the procedure for publishing lists of touts and for holding an enquiry to determine whether or not a particular person should be included in such a list must be equally within the purview of the rule-making power of this Court. In our opinion, therefore, it is futile to contend that R. 24 in question is ultra vires the rule-making power of this Court.

It is next contended that Art. 14 of the Constitution has been infringed by the provisions contained in R. 24. It was difficult for the appellant to indicate in what way the alleged discrimination occurs. It was faintly suggested that there was some difference between the provisions now impugned and those of s. 36 of the Legal Practitioners' Act (Act XVIII of 1879). Assuming that there is some difference between the two provisions, it cannot be said that ipso facto there is discrimination. All persons who frequent the precincts of this Court shall be dealt with under the same rules, if and when the occasion arises. All persons who are included in the list of touts under R. 24 will be liable to be dealt with in the same way irrespective of any other considerations. Hence there is no room for any discrimination so far as the precincts of this Court are concerned.

It is also contended that the impugned rule infringes Arts. 19 and 21 of the Constitution, because it has the effect of excluding him from the precincts of the Court, and of carrying on his occupation and that it has a tendency to deprive him of his livelihood. The rule, as already indicated, has been made with a view to ensuring the purity and soundness of the profession of law so far as the advocates of this Court are concerned. It cannot, therefore, be said that it is not in the interest of the general public to exclude touts from the precincts of this Court. If the appellant has been rightly declared to be a tout, he cannot justly complain that he is being deprived of the right to carry on his occupation, an occupation which is regarded as having a corrupting influence. A tout as such cannot claim any rights in relation to the business of the Court and it is incumbent on every Court where legal practitioners are allowed to appear and plead to see that toutism is completely eliminated.

With reference to the terms of Art. 21, it was also argued by the appellant himself, after he had been permitted by the Court to dispense with the services of his advocate, that life must include livelihood. The argument that the word "life" in Art. 21 of the Constitution includes "livelihood" has only to be stated to be rejected. The question of livelihood has not in terms been dealt with by Art. 21 of the Constitution. That question is included in the freedoms enumerated in Art. 19, particularly cl. (g), or even in Art. 16 in a limited sense, but the language of Art. 21 cannot be pressed into aid of the argument that the word "life" in Art. 21 includes "livelihood" also. Even if this extreme proposition were to be accepted as well founded, the appellant will have to be kept out of the precinct of the Court only after the procedure established by the rules of this Court has been observed. We have already held that the rule in question is not ultra vires. That being so, the only question that remains to be considered is whether the procedure laid down by the rule has not been followed as contended by the appellant. It has already been stated that the appellant had been properly served with the notice to show cause why his name should not be included in the list of touts. He put in his show cause petition and he was given time to adduce such evidence as he may have been advised in support of his case. The appellant has not contended that the procedure laid

down in the rule has not been followed, but his contention was that as the Registrar did not grant further time and did not issue summons to his witnesses he had been deprived of his right to adduce evidence. In our opinion, there is no substance in this contention. The enquiry was a summary one. The matter was dealt with by the Registrar on two dates. If the lawyers whom the appellant wished to examine on his behalf did not turn up on the date fixed, it may be due to the fact that they were not willing to support his case. It is a little difficult to appreciate what those advocates, even if they had appeared before the Registrar, could prove. They could not prove the negative. It was for the complainant to adduce evidence in support of the allegation that the appellant is a tout. The whole question, therefore, which the Registrar had to determine was whether or not the evidence adduced in support of the complainant's case was sufficient to make out that complaint. The Registrar has come to a distinct finding that it had been established to his satisfaction by evidence of repute that the appellant is a tout. It appears that the appellant started coming to this Court as a litigant after his conviction under s. 409 of the Indian Penal Code. He said he worked as clerk with a lawyer who had taken up his cause, but he appears to have changed his masters rather too frequently and pretended to have worked as an advocate's clerk without his name being shown in the register of clerks maintained by the Bar Association. His case that a number of advocates of this Court had started a false propaganda against him and some others, because they felt that their clients were being misled into engaging other advocates, has not been accepted by the Registrar. It appears to have been the case that not being a registered clerk, he could not do any job permissible for such a clerk. Naturally, therefore, he was found wandering about in the corridors in circumstances which led to the genuine belief that he had no other business in Court than that of touting for such legal practitioners as would engage him for that nefarious activity. We cannot, therefore, accede to the argument that the appellant has been a victim of mere suspicion. The evidence of general repute against him, in our opinion, was sufficient to brand him as a "tout".

It follows that there is no merit in this appeal, which is hereby dismissed.

Appeal dismissed.

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