

O. N. Mohindroo

Vs

The Bar Council of Delhi & Ors

Civil Appeal No. 240 of 1967

(CJI K. N. Wanchoo, R. S. Bachawat, J. M. Shelat, G. K. Mitter, C. A. Vaidialingam JJ)

08.01.1968

JUDGMENT

SHELAT, J. –

This appeal by certificate raises the question as to the scope of entries 77 and 78 in List I and entry 26 in List III of the Seventh Schedule to the Constitution.

The question arises in the following manner :

On a complaint by the Subordinate Judge that the appellant, while taking inspection of the Court record in an arbitration matter pending before his Court, had mutilated the copy of a notice in that record by wilfully tearing a portion thereof, the District Judge, Delhi filed a report against the appellant before the Delhi State Bar Council for taking action under the Advocates Act, 25 of 1961 (hereinafter referred to as the Act). The Disciplinary Committee of the said Council after hearing the appellant found him guilty of professional misconduct and ordered his suspension for one year under s. 35(3)(c) of the Act. An appeal filed by the appellant under s. 37 before the Bar Council of India failed. Thereupon he filed an appeal against the said order under s. 38 in this Court. The appeal was placed for preliminary hearing and summarily rejected at that stage. The appellant thereafter filed a writ petition in the High Court of Punjab (Delhi Bench) for quashing the said order of suspension, the order of the appellate authority confirming the said order and the order of this Court dismissing the appeal. He thereafter filed a review petition against the dismissal of his appeal contending, inter alia, that rule 7 of O. 5 of the Supreme Court Rules was ultra vires s. 38 of the Act. The review petition also was dismissed.

At the hearing of his writ petition, the appellant, inter alia, contended that s. 38 of the Act was ultra vires Art. 138(2) of the Constitution inasmuch as the appellate jurisdiction conferred on this Court by s. 38 fell under entry 26 in List III and that there being no special agreement between the Government of India and the Government of any State as required by clause 2 of Art. 138 Sec. 38 was invalidly enacted. He also contended that O. 5 r. 7 of the Supreme Court Rules under which the appeal was placed for preliminary hearing was ultra vires s. 38 as the said rule cut down and impaired his right of appeal under s. 38. Lastly, he contended that the decision of the Bar Council of India was bad for the several grounds alleged by him in his writ petition. The learned Single Judge who heard the writ petition rejected these contentions and dismissed it. As regards the first contention he held that clause 2 of Art. 138 did not apply and that it was clause 1 of that Article which was applicable as the subject matter of the Advocates Act fell under entry 77 of the Union List. As to the other two contentions he held that Rule 7 of the O. 5 was valid and did not contravene s. 38; that the Bench before which the appeal came up for preliminary hearing had heard

the appellant's counsel and in addition had called for production of a document desired by him. There was no affidavit by Counsel appearing for him that he was not heard on any point which he desired to contend. He also held that the appellant had specifically raised the contention as to the vires of the said rule in his review petition and that that contention having been rejected, the appellant could not reargue it in the writ petition. He also held that the appellant was similarly not entitled to reargue the question as to the merits of the said order of suspension, the same having been considered and rejected at the time of the preliminary hearing of his appeal. Aggrieved by the order of the learned Single Judge, the appellant filed a Letters Patent Appeal. At the hearing of that appeal the appellant's counsel conceded that he could not raise any contention on the merits of the case in view of this Court having disposed of those very contentions and that therefore he would confine his arguments only to the question of the vires of s. 38. The learned Judges who heard that appeal were of the view (1) that the Act was a composite piece of legislation, that it did not, as held by the learned Single Judge, fall exclusively under entries 77 and 78 of List I but that it fell partly under those entries and partly under entry 26 of List III; (2) that Art. 138 had no application as the jurisdiction to entertain and try appeals under s. 38 was not 'further jurisdiction' within the meaning of that Article; that the jurisdiction to hear such appeals was already vested in this Court under Art. 136 even without s. 38 as the Bar Councils of Delhi and of India were quasi-judicial tribunals and that therefore this Court had jurisdiction to entertain and try appeals against their orders; and (3) that the only effect of s. 38 was that by providing for an appeal Parliament removed the hurdle of an appellant having to obtain special leave under Art. 136. On this reasoning the learned Judges dismissed the contention as to the vires of s. 38. Dismissing the appeal the learned Judges observed :

"There is no bar to the Parliament legislating with respect to jurisdiction and powers of the Supreme Court subject to the express provisions of the Constitution like Arts. 132 and 134. When a provision for appeal to the Supreme Court is made in a statute, within the sphere covered by Arts. 132 to 136 it is not conferment of further power and jurisdiction as envisaged by Art. 138, such power would be exercisable by reason of entry 77 of List I".

In this appeal the appellant challenges the correctness of this view.

The question which falls for consideration is one of interpretation of entries 77 and 78 of List I and entry 26 of List III. If it is held that it is entry 26 of List III under which the Act was enacted, clause 2 of Art. 138 would apply and in that case a special agreement with the State Government becomes a condition precedent to the enactment of s. 38 of the Act. In that case the difficulty would be to reconcile entries 77 and 78 of List I with entry 26 of the List III.

It is a well recognised rule of construction that the Court while construing entries must assume that the distribution of legislative powers in the three Lists could not have been intended to be in conflict with one another. A general power ought not to be so construed as to make a nullity of a particular power conferred by the same instrument and operating in the same field when by reading the former in a more restricted sense, effect can be given to the latter in its ordinary and natural meaning. It is, therefore, right to consider whether a fair reconciliation cannot be effected by giving to the language of an entry in one List the meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of another entry in another List a meaning which it can properly bear. Where there is a seeming conflict between one entry in one List and another entry in another List, an attempt should always be made to avoid to see whether the two entries can be harmonised to avoid such a conflict of jurisdiction. (C.P. & Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 [[1938] F.C.R. 18]; Citizens Insurance

Company of Canada v. Parsons [[1881] 7 A.C. 96]; Bhola Prasad v. Emperor [[1942] F.C.R. 17]; Governor General in Council v. Province of Madras [[1945] 72 I.A. 91] and State of Bombay v. Balsara [[1951] S.C.R. 682].

It is in the background of these principles of construction that we must proceed to examine the content of the various relevant entries dealing with the constitution and organisation of courts and their jurisdiction and powers and the scheme envisaged thereunder. Entries 77 and 78 of List I read as under :-

"77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court) ...persons entitled to practise before the Supreme Court."

"78. Constitution and organisation (including vacations) of the High Courts.....; persons entitled to practice before the High Courts."

Entry 95 of List I reads as follows :-

"95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction."

Entry 65 of List III reads :

"65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List."

Entry 46 in List III reads :

"46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List."

"The scheme for conferring jurisdiction and powers on courts is (a) to avoid duplication of Courts, Federal and State Courts as in the Constitution of the United States, (b) to enable Parliament and the State Legislatures to confer jurisdiction on courts in respect of matters in their respective lists except in the case of the Supreme Court where the legislative authority to confer jurisdiction and powers is exclusively vested in Parliament. In the case of the Concurrent List both the legislatures can confer jurisdiction and powers on courts except of course the Supreme Court depending upon whether the Act is enacted by one or the other. Entry 3 in List II confers legislative powers on the States in the matter of "Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court." It is clear that except for the constitution and the organisation of the Supreme Court and the High Courts the legislative power in the matter of administration of justice has been vested in the State Legislatures. The State Legislatures can, therefore enact laws, providing for the constitution and organisation of courts except the Supreme Court and the High Courts and confer jurisdiction and powers on them in all matters, civil and criminal, except the admiralty jurisdiction. It would, of course, be open to Parliament to bar the jurisdiction of any such court by special enactment in matters provided in Lists I

and III where it has made a law but so long as that is not done the courts established by the State Legislatures would have jurisdiction to try all suits and proceedings relating even to matters in List I and III. Thus, so far as the constitution and organisation of the Supreme Court and the High Courts are concerned, the power is with Parliament. As regards the other courts, Entry 3 of List II confers such a power on the State Legislatures. As regards jurisdiction and powers, it is Parliament which can deal with the jurisdiction and powers of the Supreme Court and the admiralty jurisdiction. Parliament can confer jurisdiction and powers on all courts in matters set out in List I and List III where it has passed any laws. But under the power given to it under entry 3 in List II, a State Legislature can confer jurisdiction and powers on any of the courts except the Supreme Court in respect of any statute whether enacted by it or by Parliament except where a Central Act dealing with matters in Lists I and III otherwise provides. That these entries contemplate such a scheme was brought out in *State of Bombay v. Narothamdas* [[1951] S.C.R. 51], where it was contended that the Bombay City Civil Court Act, 40 of 1948, constituting the said Civil Court as an additional court was ultra vires the Provincial Legislature as it conferred jurisdiction on the new court not only in respect of matters in List II of the Seventh Schedule of the Government of India Act, 1935 but also in regard to matters in List I such as promissory notes in Item 8 of List I. Rejecting the contention it was held that the impugned Act was a law with respect to a matter enumerated in List II and was not ultra vires as the power of the Provincial Legislature to make laws with respect to "administration of justice" and "constitution and organisation of all courts" under Item 1 of List II was wide enough to include the power to make laws with regard to the jurisdiction of courts established by the Provincial Legislature; that the object of Item 53 of List I, Item 2 of List II and item 15 of List III was to confer such powers on the Central and the Provincial Legislatures to make laws relating to the jurisdiction of courts with respect to the particular matters that are referred to in List I and II respectively and the Concurrent List, and that these provisions did not in any way curtail the power of the Provincial Legislature under Item 1 of List II to make laws with regard to jurisdiction of courts and to confer jurisdiction on courts established by it to try all causes of a civil nature subject to the power of the Central and Provincial Legislatures to make special provisions relating to particular subjects referred to in the Lists. It may be mentioned that Item 53 in List I, Items 1 and 2 in List II and Item 15 in List III in the Seventh Schedule to the 1935 Act more or less correspond to entries 77, 78 and 95 in List I, entries 3 and 65 in List II and entry 46 in List III of the Seventh Schedule to the Constitution.

This being the scheme with regard to the constitution and organisation of courts and their jurisdiction and powers let us next proceed to examine entry 26 in List III. Entry 26, which is analogous to Item 16 in List III of the Seventh Schedule to the 1935 Act, deals with legal, medical and other professions but is not concerned with the constitution and organisation of courts or their jurisdiction and powers. These, as already stated, are dealt with by entries 77, 78 and 95 in List I, entries 3 and 65 in List II and entry 46 in List III. Enactments such as the Indian Medical Council Act, 1956, the Indian Nursing Council Act, 1947, the Dentists Act, 1948, the Chartered Accountants Acts, 1949 and the Pharmacy Act, 1948, all Central Acts, would fall under the power to deal with professions under entry 26 of List III in the Seventh Schedule to the Constitution and Item 16 of List III of 1935 Act. It will, however, be noticed that entries 77 and 78 in List I are composite entries and deal not only with the constitution and organisation of the Supreme Court and the High

Courts but also with persons entitled to practise before the Supreme Court and the High Courts. The only difference between these two entries is that whereas the jurisdiction and powers of the Supreme Court are dealt with in entry 77, the jurisdiction and powers of the High Courts are dealt with not by entry 78 of List I but by other entries. Entries 77 and 78 in List I apart from dealing with the constitution and organisation of the Supreme Court and the High Courts also deal with persons entitled to practise before the Supreme Court and the High Courts. This part of the two entries shows that to the extent that the persons entitled to practise before the Supreme Court and the High Court are concerned, the power to legislate in regard to them is carved out from the general power relating to the professions in entry 26 in List III and is made the exclusive field for Parliament. The power to legislate in regard to persons entitled to practise before the Supreme Court and the High Courts is thus excluded from entry 26 in List III and is made the exclusive field for legislation by Parliament only [Re : Lily Isabel Thomas [[1964] 6 S.C.R. 229, 236] and also Durgeshwar v. Secretary, Bar Council, Allahabad [A.I.R. 1954 All. 728]]. Barring those entitled to practise in the Supreme Court and the High Courts, the power to legislate with respect to the rest of the practitioners would still seem to be retained under entry 26 of List III. To what extent the power to legislate in regard to the legal profession still remains within the field of entry 26 is not the question at present before us and therefore it is not necessary to go into it in this appeal.

The Advocates Act was passed to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. Section 2(a) and (i) define an 'advocate' and a 'legal practitioner'. Chapter II deals with the establishment of Bar Councils and their functions, viz., to admit persons on its roll, to prepare and maintain such roll, to entertain and determine cases of misconduct against advocates on its roll etc. Section 7 lays down the functions of the Bar Council of India, that is, to prepare and maintain a common roll of advocates, to lay down the standards of professional conduct and etiquette, to lay down procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council, to exercise general supervision and control over State Bar Councils etc. Chapter III deals with admission and enrolment of advocates. Section 16(I) provides that there shall be two classes of advocates, senior advocates and other advocates. Chapter IV deals with the right to practise. Section 29 provides that subject to the provisions of this Act and the rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, the advocates. Section 30 provides that subject to the provisions of this Act, every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends in all courts including the Supreme Court and before any tribunal or any other authority before whom such advocate is by or under any law for the time being in force entitled to practice. Chapter V deals with the conduct of advocates. Section 35 lays down that where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee. The disciplinary committee has to fix a date for the hearing of the case and give a notice thereof to the advocate concerned and to the Advocate General of the State. Sub-s. (3) provides that such committee after giving the advocate concerned and the Advocate General an opportunity of being heard, may make, inter alia, an order suspending the advocate from practice as it may deem fit. Similar powers are also conferred on the Bar Council of India under s. 36 in relation to an advocate on the common roll. Section 37 gives a right of appeal to the Bar Council of India by any person aggrieved by an order of the disciplinary committee of a State Bar Council. Section 38 confers a right of appeal to the Supreme Court on any person aggrieved by an order by the disciplinary committee of the Bar Council of India under s. 36 or s. 37 and empowers the Supreme Court to pass such orders thereon as it deems fit.

The object of the Act is thus to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate the working of the profession and to prescribe rules of professional conduct and etiquette, and the power to punish those who commit breach of such rules. The power of punishment is entrusted to the disciplinary committees ensuring a trial of an advocate by his peers. Section 35, 36 and 37 lay down the procedure for trying complaints, punishment and an appeal to the Bar Council of India from the orders passed by the State Bar Councils. As an additional remedy s. 38 provides a further appeal to the Supreme Court. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrollment, right to practise and discipline of the advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all courts including the Supreme Court. As aforesaid, the Act creates one common Bar, all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts, the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore the Act must be held to fall within entries 77 and 78 of List I. As the power of legislation relating to those entitled to practise in the Supreme Court and the High Courts is carved out from the general power to legislate in relation to legal and other professions in entry 26 of List III, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under entries 77 and 78 of List I and partly under entry 26 of List III.

In this view, the right of appeal to this Court under s. 38 of the Act creates a jurisdiction and power in relation to a matter falling under entries 77 and 78 of the Union List and the Act would, therefore, fall under clause 1 and not clause 2 of Art. 138. The argument that s. 38 falls under Art. 138(2) and is invalid on account of its having been enacted without a special agreement with the State Government is, therefore, without merit.

As regards the validity of Rule 7 of O. 5 the contention, as already pointed out, was raised and rejected in the said review petition filed by the appellant. The contention having thus been concluded could not obviously be raised in the writ petition filed by the appellant, nor would he be entitled to any writ or order from the High Court as against the said decision. The rule, in any event, merely provides for the placing of an appeal filed under s. 38 for a preliminary hearing and enables this Court to dismiss at that stage an appeal if it finds it has no substance. The appellant in such an appeal is heard; if the court finds that there is nothing in the appeal, the court declines to issue notice on the opposite side and disposes of the appeal there and then. Section 38 confers no doubt a right of an appeal on a person aggrieved by an order passed under Ss. 36 and 37 and the appellant does not have to obtain any special leave under Art. 136. But the fact that under Rule 7 the appeal is placed for preliminary hearing and is liable to be disposed of at that stage does not mean that the content of the right of appeal under s. 38 is in any way curtailed as the party filing the appeal has to be heard on all points raised by him therein. There is, therefore, no substance in the argument that Rule 7 contravenes s. 38, and is therefore ultra vires the section. On the express terms of Art. 145(1)(b), the rule is within the rule-making power of this Court as it merely lays down how and in what manner an appeal filed under s. 38 is to be dealt with and does not deal with or affect the right of appeal. The validity of the rule cannot, therefore, be impeached. The decision in *Prem Chand Garg v. Excise Commissioner* [[1963] Supp. 1 S.C.R. 885] cannot assist the appellant. In that decision Rule 12 of O. XXXV of the Supreme Court Rules was declared void in so far as it related to the furnishing of security on the ground that the right to move the Supreme Court under Art. 32 was absolute and the rule by providing security for costs impaired such an absolute right. Furnishing of security in the case of persons without means to do so would obviously obstruct such persons

from vindicating their rights under Art. 32 and would, therefore, curtail the right under that Article. That obviously is not so in the case of the rule with which we are concerned in this appeal. The contention, therefore, that Rule 7 curtails the right of appeal under s. 38 or contravenes that section must be rejected.

The appellant cited a number of authorities but it is not necessary to deal with them as they have no bearing on the questions before us. He also tried to question the correctness of the order passed against him by the Bar Council of India but we did not allow him to reagitate it as it stood concluded on the dismissal of the appeal and the review petition filed by him in this Court.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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