

Zila Dastavej Lekhak Association, Banda and Another

Vs

State of U.P. and Others

Spl. Leave Petn. (C) No. 3403 of 1993

(K. Ramaswamy, G.B. Pattanaik JJ)

02.04.1996

ORDER

1. The petitioner, which is an Association representing the persons who had licences to scribe documents under the U. P. Document Writers' Licence Rules, 1977 (for short, the 'Rules') challenged the vires of Rule 6(2) of the Rules which reads thus :

"Nothing in sub-rule (1) shall apply where the writer of such document is one of the parties thereto or is a pleader engaged by the parties for drawing up the documents".

2. The contention of the learned counsel for the petitioner is that Rule 5 prescribes qualification for granting licence. Rule 4 prescribes the number of document writers. Rule 10 prescribes the charging of the fee and the period of licence prescribed under Rule 8. A conjoint reading of these rules envisages that the document writers are treated as a class. The exclusion of the advocates from the purview of the provisions of the Registration Act is ultra vires the power of Inspector General of Registrations under Section 69 (hhh) of the Registration Act, 1908 as amended by the State Legislature (for short, the 'Act'). We find no force in the contention. Section 69 (hhh) provides thus :

"Providing for the grant of licences to document writers, the suspension or revocation of such licences, the terms and conditions, subject to which and the authority by whom such licences shall be granted, suspended or revoked, and generally for all purposes connected with the drafting or writing by such document writers of documents to be presented for registration".

3. A conjoint reading of Section 32 of the Act read with Section 69(hhh) of the Act, would indicate that person who executes the document either himself or through an agent is the proper person to present the document before the registering authority. The persons eligible to write the documents are regulated under the rule making power under Section 69 of the Act. The U. P. State Legislature had amended the section by incorporating sub-section (hhh) introducing the classification of the persons eligible to draft the documents and for presentation thereof for registration. The Rules have been made in that behalf classifying the persons to be the document writers. The period of licence, the power to suspend the licence or revocation thereof, has been regulated thereunder. The members of the petitioner-Association, having become the licensees under the Rules, are bound thereby. Firstly, the petitioner - Association being consisting of the members who obtained licence under the Rules, cannot challenge the Rules under which they came to operate. The very source under which they came to operate either survives or perishes under the Rules. They cannot challenge that part of

the Rules which is unfavorable to them while at the same time respecting the favourable part thereof since they have no independent right de hors the Rules. They cannot challenge the power of the Inspector General of Registration in making the Rules, regulating conditions of the document writers and the conditions under which they become eligible to be document writers.

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 Advocate Act, 1961 is entitled to draft the pleadings and appear and practise before the courts and tribunals or persons legally authorised to take evidence under Section 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 registering officer if he undertakes such exercise. As a consequence, Rule 6 (2) seeks to exclude from the purview of 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 registering officer for registration of the instrument. He gets his right only by virtue of practice of profession as advocate. Therefore, the contention of the petitioner-Association that its members are excluded from the purview of Rule 6 (2) is devoid of substance.

5. The special leave petition is accordingly dismissed. Petition dismissed.