MYSORE HIGH COURT

V.R. Mudvedkar

Vs

State of Mysore

Writ Petn. No. 4873 of 1970

(C. Honniah and E.S. Venkataramiah, JJ.)

25.01.1971

JUDGMENT

E.S. Venkataramiah, J.

1. This is a petition under Article 226 of the Constitution of India praying for the issue of a writ of mandamus or such other appropriate writ, order of direction quashing the four notifications, S. O. Nos. 2206 to 2209 dated 17-10-1970 issued by the Government of Mysore in exercise of the powers vested in it under the provisions of the Mysore Civil Courts Act, 1964 (hereinafter referred to as the Act) establishing a Court of Civil Judge at Haveri and another at Gadag, both in the District of Dharwar, and fixing the local limits of the jurisdiction of the said Courts. The petitioners are 24 in number, of whom petitioners Nos. 1 to 22 and 24 are Advocates practising either at Dharwar or at Hubli and petitioner No. 23 is a litigant, whose cases are pending in the Court of the Civil Judge, Dharwar. Respondent 1 is the State of Mysore; respondent No. 2 is the Hon'ble Chief Justice of the High Court of Mysore; and respondents 3 to 36 were impleaded as Respondents by an order made by the High Court on 22-12-1970 on I. A. Nos. I and II.

2. The grievance of the petitioners who are Advocates is that the impugned notifications are issued without complying with the provisions of the Act, and, therefore, the notifications are liable to be set aside. They also allege that the notifications have been issued on account of collateral considerations. They have stated in the affidavit filed in support of the petition which has been sworn to by Sri S. C. Rachayyannavar, petitioner No. 9 who is an Advocate and the President of the Bar Association of Dharwar, that they have a right to maintain this petition under Article 226 of the Constitution of India, since their right under the subsisting contracts under which they have been engaged by clients to argue their cases which are now pending in the Courts of the Civil Judge, Dharwar, and Hubli would be affected in the event of the Civil Judge's Courts being established at Haveri and Gadag. In respect of the petitioner No. 23 who is not an Advocate, it is stated that some proceedings in which he is interested are now pending in the Courts of the Civil Judges at Dharwar and Hubli and they are likely to be transferred to the new Courts in the event of the new Courts being established. It is alleged by the petitioners that in the event of the pending cases being transferred to the new Courts established under the notifications, tile clients who have engaged lawyers at Dharwar and Hubli would have to incur

extra expenses to conduct their cases in the new Courts. The petitioners therefore, claim that they are vitally interested in getting the impugned notifications set aside. On behalf of the State Government a counter-affidavit sworn to by an Under Secretary to the Government of Mysore in the Department of Law and Parliamentary affairs has been filed stating that the petitioners have no locus standi to maintain this petition and to seek the reliefs claimed by them. It is also pleaded that the Government of Mysore has followed the necessary procedure such as consultation with the High Court prescribed under the provisions of the Act, and the notifications have been issued in due compliance with law. The allegation that the notifications have been issued either on collateral or extraneous considerations or that there has been any mala fides on the part of the Government in issuing the same, is denied. The Registrar of the High Court has also filed a counter-affidavit.

3. At the hearing of the writ petition, the learned Advocate-General appearing for respondent 1 raised a preliminary objection to the maintainability of the petition on the ground that the petitioners have no locus standi to file the petition for the reliefs prayed for by them. We, therefore, requested counsel for both the parties to submit their arguments on the above question. Having heard both the parties, we reserved the case for judgment since we felt that the case could be disposed of on the preliminary point without going into the Other questions raised in the case.

4. We shall first take up the case of petitioners 1 to 22 and 24. We may mention here that Dharwar and Hubli although were originally two cities are now constituted into one single municipal corporation called Hubli-Dharwar Municipal Corporation. In respect of Dharwar District, there were two Civil Judge's Courts one at Dharwar and the other at Hubli. By Notification No. S. p. 2206 dated 17-10-1970 the Government of Mysore proposed to establish with effect from 4-1-1971 a Court of Civil Judge for the area comprised within the Taluks of Haveri, Hangal, Ranabennur, Hirekerur and Byadgi of Dharwar District and fixed Haveri as the place at which the said Court should be held. The local limits of the jurisdiction of the said court were fixed as the area covered by the local limits of the above said Taluks. By Notification No. S. O. 2207 dated 17-10-1970 the Government of Mysore proposed to establish with effect from 4-1-1971 a Court of the Civil Judge for the area comprised within the Taluks of Gadag, Mundargi, Ron and Laxmeswar (Shirtatti) of Dharwar District and fixed Gadag as the place at which the said Court should be held. It also fixed the limits of the jurisdiction of the said Court to be the local limits of the above said Taluks. By Notification No. S. O. 2208 dated 17-10-1970, the Government of Mysore varied with effect from 4-1-1971 the local limits of the jurisdiction of the Court of the Civil Judge, Hubli, to comprise the area within the limits of the Taluks of Hubli, Kundagol, Shiggaon and Savanur of Dharwar District, and by Notification No. S. O. 2209 dated 17-10-1970, the Government of Mysore varied with effect from 4-1-1971 the local limits of the jurisdiction of the court of the Civil Judge, Dharwar to comprise the area within the limits of the taluks of Dharwar, Kalghatgi, Navalgund and Nargund of Dharwar District. The result was that with effect from 4-1-1971, there had to be four courts of Civil Judges in Dharwar District, one each at Dharwar, Hubli, Haveri and Gadag having jurisdiction over the respective taluks mentioned above. It may be mentioned here that there is no provision in the impugned Notifications which would result in the transfer of pending cases in the courts of the Civil Judge at Dharwar and Hubli arising from out of the areas attached to the Court of the Civil Judge at Haveri or the area attached to the Court of the Civil Judge at Gadag under the impugned notifications. As already stated, the grievance of the members of the Bar, who are petitioners in this case, is that they would be prejudicially affected by the notifications for according to them on

the establishment of the new Courts at Haveri and Gadag, their right to conduct the cases on behalf of their clients would get affected, in the event of the pending cases being transferred to the new Courts. It is also argued that the opportunity they had to appear and conduct cases arising from the areas now transferred to the jurisdiction of the new court would also be affected, since they are all residing within Hubli-Dharwar Municipal Corporation area. Before dealing with the question relating to locus standi of the members of the Bar to maintain this petition, we would like to state that the Bar in India is no doubt an important limb of the administration of justice and dispensation of justice may well-nigh be impossible without the active co-operation of the members of the Bar. Their views on matters pertaining to administration of justice as long as they are consistent with the law of the land on the one hand and efficiency, discipline and judicial propriety on the other, have to be taken into account by the concerned authorities while deciding such matters. Hence, even though we hold that this petition is not maintainable for reasons to be recorded hereinafter, it should not be considered that we are belittling the legal profession in any manner whatsoever. The legal profession to our country is one dedicated to the service of the public and its members enjoy a privilege to appear in all courts in India on behalf of litigants and to present their eases in a manner consistent with the established traditions of the Bar. They also expect to be paid a reasonable remuneration for the services rendered by them. But one thing is clear that pecuniary gain or advantage has never been allowed to assume primary importance in the discharge of their professional duties.

5. It is now well settled that under Article 226 of the Constitution of India, a petition for writ of mandamus can lie only at the instance of a party who has a legal right, personal or fiduciary. The question therefore, is no longer res integra. In order to maintain a petition under Article 226 of the Constitution of India, the petitioners should show that they are in imminent danger of sustaining direct injury as a result of the enforcement of the notifications. In *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal*[1], while dealing with the question relating to the locus standi of a petitioner to file a petition under Article 226 of the Constitution of India, the Supreme Court observed as follows :-

> "Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In *State of Orissa v. Madan Gopal*[2], this Court has ruled that the

[1] AIR 1962 SC 1044

[2] 1952 SCR 28 : AIR 1952 SC 12

> existence of the right is the foundation of the exercise of jurisdiction of the court under Article 226 of the Constitution. In *Charanjit Lal Chowdhuri v. Union of India*[3], it has been held by this court that the legal right that can be enforced under Article 82 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right

that can be enforced under Article 228 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

Sri H. B. Datar, the learned counsel for the petitioners and the learned Advocate-General appearing for the State, both relied upon the above decision in support of their respective contentions. The learned Advocate-General contended that since the petitioners 1 to 22 and 24 have not made out any infraction of any enforceable legal right, the petition is not maintainable. But on the other hand, Sri Datar contended that in the instance of a petitioner who complained that his rights under a contract had been infringed by the impugned law, and therefore, in the present case also since the rights of petitioners 1 to 22 and 24 under the several vakalathnamas filed by them into court in some of the pending cases were affected by the impugned notifications, they were entitled to maintain this petition. The contention of the learned counsel for the petitioners however over-looked the facts of the case decided by the Supreme Court. The petitioner in that case which was a company had entered into an agreement dated 20-7-1948 with respondent 5 in regard to the management of a company called Oriental Gas Company. Under the agreement the petitioner had been appointed as Manager and the general management of the affairs of the Oriental Gas Company was entrusted to it for a period of 20 years. The petitioner had a right to receive thereunder by way of remuneration for its services (a) an office allowance of ₹ 3,000/-per mensem; (b) a commission of 10 per cent, on the net yearly profit of the Company subject to a minimum of ₹ 60,000/-per year in the case of absence of or inadequacy of profits, and (c) a commission of Re. 1/- per ton of all coal purchased and negotiated by the Manager. In its capacity as Manager, the petitioner was put in charge of the entire business and its assets in India and it was given all the incidental powers necessary for the said management. Under the agreement, therefore, the petitioner has a right to manage the company for a period of 20 years and to receive the aforesaid amounts towards its remuneration for its services. By Section 4 of the Oriental Gas Company Act, 1969, with effect from the appointed date and for a period of five years thereafter, the management of the company stood transferred to the State Government and the Company, its agents and servants ceased to exercise management or control over the same. Under Clause (c) of the section, the contracts of agency or managing agency, were no doubt not touched, but all the other contracts ceased to have effect against the company. The Supreme Court, therefore, came to the conclusion that by reason of Section 4 of the impugned Act, the petitioner was deprived of a legal right it possessed under the agreement. It held that the petitioner was deprived of the right to manage the Oriental Gas Company for a period of five years. In those circumstances, the Supreme Court observed that the petitioner was entitled to maintain a petition

[3]1950 SCR 869 : AIR 1951 SC 41

under Article 226 of the Constitution. The facts of the present case are different. It is not shown by the petitioners that their right to appear and conduct cases in which they had filed Vakalatnamas on behalf of their respective clients was in any way abridged. As already stated, by virtue of the impugned notifications, the cases which are now pending in the Courts of Civil Judges at Dharwar and Hubli are not transferred to the new courts proposed to be established at Haveri and Gadag. Even if the said cases are to be transferred at a later date, their right to continue to appear in those cases would not in any way be affected; the only difference being that cases would have to be conducted in a place other than Hubli-Dharwar Corporation area. It was

suggested that if the counsel had to go and to argue cases either at Haveri or Gadag, then it would necessitate modification of the terms under which they were appointed and it would also involve some amount of expenditure on conveyance. We are not satisfied with the above submission. What is necessary to be considered is whether the vakalathnamas filed by petitioners 1 to 22 and 24 are in any way directly affected by the impugned notifications. If they are not so affected, any inconvenience indirectly caused would not be sufficient to entitle the petitioners 1 to 22 and 24 to maintain the petition. We are not satisfied that the interest which these petitioners have in those cases is sufficient in the eye of law to hold that they have locus standi to maintain this petition. Sri Datar relied upon another decision of the Supreme Court in *Gadde Venkateswara Rao v. Govt. of Andhra Pradesh*[4], in support of his case. In that case, the Supreme Court upheld the right of the President of a Panchayat Samiti to file a petition under Article 226 of the Constitution questioning an order of Government relating to the establishment of a Health Centre in the following circumstances : The villagers of a village called Dharmajigudem in the State of Andhra Pradesh formed a committee with the petitioner as the President for the purpose of collecting contribution from the villagers for setting up a Primary Health Centre. The said committee collected Rupees 10,000/- and deposited the same with the Block Development Officer. The petitioner, in all the Block Development Committee and Panchayat Samithi resolutions and in other correspondence, acted on behalf of the committee. The petitioner was, therefore, a representative of the Committee which in law was in the position of a trustee of the amounts collected by it from the villagers for a public purpose. The Supreme Court, therefore, held that he had a right to maintain the petition under Article 226 of the Constitution. Dealing with the decision of the Supreme Court in Calcutta Gas Company's case referred to above, this is what the Supreme Court said in Gadde Venkateswara Rao's case, AIR 1966 SC 828 :

> "The Court held in the decision cited supra that 'ordinarily' the petitioner who seeks to file an application under Article 226 of the Constitution should be one who has a personal or individual right in the subjectmatter of the petition. A personal right need not be in respect of a proprietary interest, it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof. The appellant has certainly been prejudiced by the said order. The petition under Article 226 of the Constitution at his instance is, therefore, maintainable." The position of petitioners 1 to 22 and 24 is not similar to the position of the petitioner in the

[4] AIR 1966 SC 828

> above case, nor the petitioners have been able to establish any exceptional circumstance which would take their case out of the ordinary rule laid down by the Supreme Court in Calcutta Gas Company's case, AIR 1962 SC 1044. This decision of the Supreme Court is of no assistance to the petitioners.

6. Sri Datar next depended upon a decision of the Privy Council in *Attorney General of Gambia v. N'Jie*[5], to show that his clients were really the persons aggrieved by the impugned notifications, and therefore, were entitled to maintain this petition. In that case the question for decision by the Privy Council was whether the Attorney General was entitled to file an appeal in a matter arising out of disciplinary proceedings against a member of the Bar for professional misconduct. The

Privy Council held that the Attorney General represented the Crown as the guardian of the public interest and he had a sufficient interest when the lower court reversed a decision in which a Barrister had been held to be guilty of professional misconduct, to constitute him a person aggrieved within Section 31 of the Order in Council of 1949. The facts of the present case bear no analogy with the facts of the above case, since the interests of the petitioners who are members of the Bar cannot be equated to the interest which the Attorney General as representative of the Crown had in the matter which was before the Privy Council. When the above decision of the Privy Council was relied upon by the Advocate-General of the State of Maharashtra in support of his contention that he was entitled to file an appeal against a decision of the State Bar Council to the Bar Council of India in a proceeding in which the State Bar Council had, according to him, wrongly exonerated an Advocate against whom disciplinary proceedings on the ground of professional misconduct had been taken, in *Adi Pherozshah Gandhi v. H. M. Seervai*[6], Advocate General of Maharashtra. Bombay, (reported in AIR 1971 SC 385), this is what Mitter, J., said :--

> "The reasoning of the Board was as follows-
> "The Attorney-General in a colony represents the Crown as the guardian of the public interest. It is his duty to bring before the Judge any misconduct of a barrister or solicitor which is of sufficient gravity to warrant disciplinary action. True it is that if the Judge acquits the petitioner of misconduct, no appeal is open to the Attorney-General. He has done his duty and is not aggrieved. But if the Judge finds the practitioner guilty of professional misconduct and a court of Appeal reverses the decision on a ground which goes to the jurisdiction of the Judge, or is otherwise a point on which the public interest is concerned, the Attorney-General is a "person aggrieved" by the decision and can properly petition Her Majesty for special leave to appeal." It is clear that Lord Denning considered the denial of jurisdiction of the deputy judge to be a matter of public interest and therefore held the Attorney-General, as the Crown's representative, to be a person sufficiently interested as to be a person aggrieved. That surely is not the position here, nor is an Advocate General the representative of the Government. Neither the Constitution nor the Advocates Act, 1981, hold; him as the representative of the Government or as a person representing the public interest. 'Whatever may be the position of the Attorney-General in a colony as a representative of the Crown, he is not the

[5](1961) 2 All ER 504

[6] Civil Appeal No. 2259 of 1969

> guardian of the public interest in India in any matter except as provided for in
> the statutes. He like any other person may draw the attention of the Bar Council to any misconduct of an advocate which according to him merits disciplinary action."

The Supreme Court, therefore, held that the case before the Privy Council referred to above was of no assistance to the Advocate General of the State of Maharashtra. The position of the members of the Bar who have filed this petition, cannot, therefore, in any way be different from the position of the Advocate General of the State of Maharashtra who relied on the judgment of the Privy Council.

7. Sri Datar next relied upon a decision of the High Court of Andhra Pradesh in *S. Srikrishan v. The State of Andhra Pradesh*[7], In that case the petitioner questioned the validity of the States Reorganisation Act. When his locus standi to maintain the petition was raised, the High Court of Andhra Pradesh held :-

> "As a rule of guidance applicable to ordinary cases, a person, in order to maintain an application under Article 226, must be able to specify any right, be it proprietary right or personal right, which has been infringed by the passing of an Act. But, in extraordinary cases, where, for instance, an Act is passed by the Parliament or by a Legislature in excess of its constitutional power reshaping the map of India, it is difficult to say that a citizen of India, who lived his lifetime as a permanent resident of one of the States abolished has no personal interest to maintain an application." This decision again is distinguishable from the facts of the present case on the ground that this is not an extraordinary case which the High Court of Andhra Pradesh had in its mind when it disposed of the case before it. The counsel for the petitioners next referred to another decision of the High Court of Andhra Pradesh in *V. Ramachandra Reddy v. State of Andhra Pradesh*[8], in which the question for decision was whether the reorganisation of a block under the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act was proper or not. The petitioner who was the President of a Panchayat called Momidi Panchayat in Gudur Taluk and was also the President of the Gudur Panchayat Simithi, questioned the re-constitution of the block by which, according to him, an attempt had been made to prevent him from getting elected again on political considerations. He contended that the reorganisation was only a device to disrupt Gudur block beyond recognition. The High Court cf Andhra Pradesh held that the petitioner who was elected to the village panchayat which formed part of the abolished pancbayat samithi and was not only an elector, but also had right to say to which samithi he should belong, had locus standi to challenge the validity of the notification. The members of the Bar have no say under the Act regarding the question whether a court should be established in any particular place or not. This case again is of no avail to the petitioners.

8. The learned Advocate-General brought to our notice a decision of this Court in *M/s. Ennar Syndicate v. State of Mysore*[9],

[7]AIR 1957 And Pra 734

[8]AIR 1965 And Pra 40

[9] Writ Petn. No. 870 of 1968, D/-18-12-1969 (Mys)

in which this Court had distinguished the decision of the Supreme Court in Gadde Venkateswara Rao's case, AIR 1966 SC 828 and held that the petitioner was not a person aggrieved. In that case, the petitioner was a person who had taken a contract from the Mysore State Road Transport Corporation to exhibit advertisements on motor vehicles belonging to the Corporation and under the agreement he had undertaken to pay any tax or fees payable by the Corporation in connection with such advertisements. Under Rule 154 of the Motor Vehicles Rules, a holder of a permit was liable to obtain a license for exhibiting advertisement on motor vehicles and under the agreement, the fee payable for such a license had to be paid by the petitioner. The petitioner questioned the validity of the said Rule which had prescribed payment of a license fee on the ground that he was affected by the said Rule since under the agreement he had to pay the fee for

the license, and contended that he had sufficient interest to maintain the petition challenging the constitutional validity of the Rule in question. This court rejected the contention of the petitioner holding that even though ultimately under the contract between the petitioner and the Corporation, the petitioner was liable to pay the license fee, the petitioner was not a person directly affected by the Rule since the Rule imposed the obligation to pay license fee on the Corporation which was the holder of the permits. In that view of the matter, the writ petition was dismissed holding that the petitioner had no locus standi to maintain the petition. We respectfully agree with this decision. It is not necessary to refer to some other decisions relied upon by counsel for both the parties since they do not lay down the law in any way different from the decisions already referred to above. In view of what is stated above, we feel that the petitioners 1 to 22 and 24 who are members of the Bar are, not parties whose legal rights are affected by the impugned notifications, and therefore, the petition filed on their behalf is not maintainable.

9. So far as the case of petitioner No. 23 is concerned, it has to be observed that he has not furnished details of cases which are pending in the courts which are likely to be transferred to the new courts to be established under the impugned notifications. It is also well established that a litigant has no right to say that his cases should be heard and disposed of in a particular court. As already stated, the impugned notifications on their own force do not bring about a transfer of pending cases to the new courts. Persons residing in the taluks for whose benefit the new courts are being established, cannot also be considered as aggrieved parties because by the establishment of new courts, justice is being taken nearer their door.

10. In the result, we are of the opinion that the writ petition is not maintainable on the ground that the petitioners have no locus standi. In the view we have taken, we find it unnecessary to go into the merits of the case. The petition, therefore, fails. It is dismissed. In the circumstances of the case, there will be no order as to costs.
Petition dismissed.