

2022 LiveLaw (SC) 1018

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
K.M. JOSEPH; J., HRISHIKESH ROY; J.

16 November, 2022

WRIT PETITION (CIVIL) NO. 1087 OF 2022 (ARISING FROM W.P.(CIVIL) DIARY NO.25218 OF 2022)
NANDINI SHARMA & ANR. versus REGISTRAR SUPREME COURT OF INDIA & ORS.

Advocates Act 1961 - Supreme Court Rules - Advocates-on-Record System - Supreme Court has authority to prescribe who can act or plead in the court as per Article 145 of the Constitution read along with Section 52(b) of The Advocates Act, 1961 - Challenge against AoR system dismissed.

For Petitioner(s) Petitioner-in-person

For Respondent(s) Ms. Radhika Gautam, Adv.

J U D G M E N T

K. M. JOSEPH, J.

1. The delay of 11 days in refiling the writ petition stands condoned.
2. Application for permission to appear and argue in person is allowed.
3. The petitioner who has filed the writ petition under Article 32 of the Constitution of India lays a challenge to the Rule mentioned in the prayers which *inter alia* read as under:-
 - A. To declare as void the impugned Rule 1 (b) & Rule 5 & Rule 7 (c) of Order IV, the Supreme Court Rules, 2013, for being unreasonable, discriminatory, oppressive and in contravention of Article 14 & Article 19 (1) (g) of the Constitution of India.
4. Under the said Rule which is made under Article 145 of the Constitution of India, the right has been conferred exclusively on a category of Advocates described as Advocates on Record. According to the petitioner, who is an Advocate and who appears as Party-in-person, such a Rule clothing a class of Advocates with exclusive rights runs counter to Section 30 of the *Advocates Act, 1961* under which an Advocate like the petitioner who has appeared in the law exams and passed the examination and having become a lawyer, she is entitled just as any other lawyer to do all the things which are now permitted to be done only by an Advocate on Record.
5. We also had the benefit of hearing Ms. Radhika Gautam, learned counsel appearing on behalf of the respondent No.3-*Bar Council of India*.
6. Ms. Radhika Gautam, learned counsel for the respondent No.3 brought to our attention a compilation of judgments. In the judgment of this court in *Mr. Arun Kumar and Another vs. Supreme Court of India*, (2015) 16 SCC 57, this court, *inter-alia*, held as follows:-

"2. We have heard the learned counsel appearing for the parties and have also considered the judgments relied upon by the learned counsel for the petitioners. We are not in agreement with the submissions made by the learned counsel for the petitioners and we accept the view expressed by this Court in *Lily Isabel Thomas, In re (AIR 164 SC 855)* and, thereafter, in *Harish Uppal v. Union of India (2003), 2 SCC 45*.

3. We have also considered the judgment delivered by the High Court of Delhi in *Balraj Singh Malik v. Supreme Court of India, 2012 SCC Online Del 897* and we also approve the view expressed by the High Court."

7. She drew our attention to the judgment of the High Court of Delhi in *Balraj Singh Malik v. Supreme Court of through its Registrar General India, 2012 SCC Online Del 897* authored by Mr. A. K. Sikri, Acting Chief Justice as His Lordship then was. In this case also objection was taken by the writ petitioner therein to the classification of Advocates as AOR and Non-AOR and restricting the right to file cases in the Supreme Court only to the former category. The said challenge was dealt with and the Court found no merit in the contention.

"9. All these counsels have argued that the 1961 Act was passed under Article 246 of the Constitution of India and Section 16 of the Advocates Act in chapter III has provisions for only two types of advocates in the country namely Senior and other Advocates. So there is no purpose or object to continue AOR system and it should be abolished.

10. It is contended that the power granted under Article 145 of the Constitution of India is to supplement and not supplant the spirit of the Constitution and/or the Advocates Act, 1961. The power of the Supreme Court under Article 145 of the Constitution is subject to the provisions of any law made by the Parliament, hence Supreme Court has no power to continue the AOR system in light of the Advocates Act. Supreme Court under Article 145 has only the power to regulate the persons who can practice before it but not restrict anyone from practicing before the Apex Court."

Last but not the least, we may refer to the judgment of this Court in a Bench of five learned Judges and which is referred in the first mentioned judgment namely AIR 1964 SC 855, *In Re. Lily Isabel Thomas*. Therein this Court was dealing with a challenge to Rule 16 of the Supreme Court Rules, 1960 prescribing qualification to act as an Advocate on Record. The Court drew support from Section 52 of the Advocates Act, 1961 besides Article 145, *inter alia*, and went on to hold that the words "right to practise would in normal connotation take in not merely right to plead but the right to act as well".

8. No doubt, that the petitioner drew our attention to a judgment of the Patna High Court. The challenge was made to the Advocate on Record system in the Patna High Court. The complaint was that any Advocate who was registered with the Bar Council of any State was not as such entitled to practice in the Patna High Court. The Advocate had to still further pass an examination which was recognized as an Advocate on Record examination. The argument which appealed to the High Court was that there was no power under Section 34 of the Advocates Act, 1961 to grant an exclusive right to the Advocates on Record or to insist that only an Advocate on record would have the right to do the various things provided for in the Rule.

9. As far as the system of Advocate on Record in this Court, undoubtedly, it is rested on a constitutional provision, namely, Article 145 of the Constitution of India. Article 145 reads as under:-

145. Rules of Court, etc.—(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;

(b) rules as to the procedure for hearing appeals, and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

[(cc) rules as to the proceedings in the Court under [Article 139-A];] (d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of Article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceeding therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of Articles 317.

Our attention is also drawn by Ms. Radhika Gautam, learned counsel for the respondent No.3-*Bar Council of India* to the presence of Section 52 in the Advocates Act, 1961. It reads as follows:-

"52. Saving —Nothing in this Act shall be deemed to affect the power of the Supreme Court to make rules under Article 145 of the Constitution—

(a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court;

(b) for determining the persons who shall be entitled to [act or plead] in that Court."

Read together, namely, Article 145 of the Constitution along with Section 52(b) of The Advocates Act, 1961 the matter is put beyond the pale of any doubt, that the authority to make Rules with the Supreme Court, to provide for the persons who can act or plead in this Court, is beyond challenge.

10. The contention of the petitioner appears to be that the Rules are unreasonable. When the Court is invited in its power of judicial review of legislation which would include, undoubtedly, subordinate legislation, it is elementary that the Court is not sitting as an Appellate Forum seeking to pronounce on the wisdom of the legislation. Unless a Rule, as in this case, which is a species of subordinate legislation, is afflicted with any of the vices which are far too well known to require any reiteration, it is not vulnerable to invalidation on the mere ground of the results it may produce in a particular case. We may note in this regard, that the petitioner has a complaint against a particular Advocate on Record- who is incidentally arrayed as respondent No.2. In the working of any law, it is not unlikely that it may produce some difficulties but that hardly furnishes the firm foundation required in law to successfully lay a challenge to the provision which no doubt is species of subordinate legislation when particularly the power to make it has its origin in a constitutional provision which in this case is Article 145 of the Constitution.

11. The insistence on the passing of an examination wherein the skills in various aspects are put to test, including practices of this Court cannot be dubbed in any manner as being unreasonable or arbitrary, that the Court should invalidate the said Rules. If the petitioner has any particular complaint, undoubtedly the law would provide an appropriate remedy. This is a matter which we need not explore further. The writ petition will stand dismissed.

Pending application(s), if any, stand disposed of.