

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 203 OF 2016

Mohammed Badiuzzama Khan
S/o Mohammed Abdul Waheed,
age 63 years, occupation Advocacy,
Residing at Sohel Garden, Ganesh Colony,
Aurangabad – 431 001
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.. Petitioner

Vs.

1. The Presiding Officer,
Maharashtra State Wakf Tribunal,
Aurangabad .. *(deleted)*
2. Sayyad Mustaque Ahmed Khatib
S/o Syed Ashfaque Ahmed Khatib,
age 29 years, occupation Nil,
residing at Mehboob pura, Udgir,
Taluka Udgir, District Latur
3. Maharashtra State Board of Wakf,
Panchakki, Aurangabad, through its
Chief Executive Officer, Aurangabad
4. The District Wakf Officer, Latur
5. Mr. Rafiyuddin S/o Khudubuddin Gallekatu,
Age 58 years, occupation trade,
Residing at Khadkali Galli,
Udgir, Taluka Udgir, District Latur
6. Mr. Hisamuddin Patel,
Age 55 years, occupation trade,
Residing at Vijaynagar, at present Khairnagar,
Udgir, Taluka Udgir, District Latur
7. Syed Hisamuddin S/o Syed Nizamuddin,
Age 60 years, occupation Advocate,
Residing at Nanded Bidar Road, Udgir,
Taluka Udgir, District Latur

8. Shaikh Hakkani S/o Shaikh Hussain,
Age 40 years, occupation Nil,
Residing presently at Aurangpura,
Udgir, Taluka Udgir, District Latur
 9. Saber S/o Yahya Patel,
Age 32 years, occupation Municipal Councilor,
Residing at Rangeen Bunglow,
Udgir, Taluka Udgir, District Latur
 10. Khurshid Alam S/o Masoodul Haque,
Age 45 years, occupation Nil,
Residing presently at Dakhul Darwaza,
Killa Road, Udgir, Taluka Udgir,
District Latur
 11. Najmuddin S/o Ziyauddin Sayyed,
Age 28 years, occupation Nil,
Residing at Kailgaon, Taluka Nilanga,
At present Azad Nagar, Jalkot Road,
Udgir, Taluka Udgir, District Latur
- .. Respondents

Nos.2 to 10 – Litigants in Suit
No.33/2016 as well as 34/2016

Respondent No.11 – respondent
in Suit No.34 of 2016

Nos.3 to 11 are formal parties and added
only because they are litigants in the
proceeding in which the impugned order
is passed.

Mr. Hemant Surve, Advocate for the petitioner
Respondent no.1 deleted as per Court's order dated 28/11/2016
Mr. Rajendra Deshmukh, Advocate and Mr. S.A.P. Quadri, Advocate
for the respondent no.2
Mr. H.I. Pathan, Advocate and Mr. Sameer Patel, Advocate for
respondent no.3
Respondent nos.4 and 5 to 11 – served - absent

CORAM : SUNIL P. DESHMUKH, J.
DATE : 01/02/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the parties finally, by consent.
3. Present civil revision application has been moved against order dated 16/11/2016 passed by the presiding officer, Maharashtra State Wakf Tribunal, Aurangabad on exhibits 24, 25 and 38 in wakf suit no. 22 of 2016 as well as on exhibits 27, 28 and 42 in wakf suit no. 34 of 2016, praying for, inter-alia, setting aside order dated 16/11/2016 and/or in the alternative to keep in abeyance the proceedings of wakf suits till disposal of civil revision application.
4. In order to appreciate the controversy in its proper perspective, it would be better to refer to the following facts, which are not in dispute,
5. The revision applicant had been enrolled on the Bar Council of Maharashtra and Goa on 23/08/1979 and had subsequently been selected as member of Judiciary in 1989 and continued as a judicial officer serving in different capacities climbing up in hierarchy and had subsequently, in 2007, ceased to be

member of the judicial services. Thereafter, in 2008, he was reinstated as member of Bar Council of Maharashtra and Goa enabling him to resume legal practice.

6. Respondent no.2 in the revision application has instituted wakf suits bearing no.33 of 2016 and 34 of 2016 seeking declaration and injunction. In said suits, present revision petitioner had lodged his power for appearance before the wakf tribunal on behalf of defendants except the board and its officer.

7. While suits were being proceeded with, applications - exhibits 24 and 25 had been moved praying for reliefs claimed therein. 'Say' to respective applications appear to have been filed by revision applicant and the tribunal had under order dated 10/8/2016 directed the plaintiff to produce documents.

8. Similar applications were moved in suit no. 34 of 2016 at exhibits 27 and 28 and were met with similar order.

9. It appears that, exhibits 38 and 42 came to be moved in respective suits, seeking in addition to the reliefs which were claimed in the earlier application, proceeding in the nature of contempt of courts.

10. All aforesaid applications came to be disposed of by common order passed on exhibits 24, 25 and 38 in wakf suit no.33 of 2016 and exhibits 27, 28 and 42 in wakf suit no.34 of 2016. The revision applicant has thus been before this court posing challenge to said common order.

11. Mr. Hemant Surve, learned counsel for applicant during his submissions, has referred to the Advocates Act, 1961 and section 30 thereof, reading thus :-

“30. Right of advocates to practise.—Subject to provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,—

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.”

12. In view of aforesaid, Mr. Surve goes on to contend that the applicant would be entitled as of right to practice throughout the territories of India in all the courts, tribunals and before any authority. There are no fetters for appearance before these *fora* having regard to the aforesaid substantive provision.

13. He refers to resolution and consequent rule no.7 of Bar

Council of India Rules, Part VI, Chapter III being framed and being enforced in 2013, reading thus :-

“An Officer after his retirement or otherwise ceasing to be in service for any reasons, if enrolled as an Advocate, shall not practice in any of the Courts, Tribunals or Authorities, of which he was a member or is presided over by an officer equivalent or lower to the post which such officer last held:-

PROVIDED that the restriction on such officer shall extend only to the territorial jurisdiction of the High Court, which such officer was subordinate to,

PROVIDED further that the restriction shall be in addition to any other restriction imposed by any other Statute for the time being in force.

Explanation : An officer shall include Judicial Officer, Officer from State or Central services and Presiding Officers or Members of the Tribunals or Authorities or such officers as referred under Section 30(ii) of the Advocates Act, 1961.”

14. Learned counsel submits that in the circumstances, the resolution and consequent rule being referred to, applied, and considered to preclude him from appearing before the wakf tribunal, appears to be beyond the pale of rule making power of the Bar Council.

15. Mr. Surve, learned counsel for applicant contends that order of the nature passed on 16/11/2016 impugned in the present civil revision application suffers infirmity on three counts, namely, it is in excess of powers of the tribunal, it affects the fundamental right as would be available under article 19(1)(a) and that the reliance having placed on a rule of Bar Council which would not be

retrospectively applicable since revision applicant being on its rolls from 1979 with hiatus during his tenure as judicial officer and his reinduction on rolls in 2008.

16. He further submits that in any case, the applicant has been on the rolls of Bar Council of Maharashtra and Goa since 1979 with suspension during his tenure as judicial officer till 2008, and, has been reinducted on the rolls since 2008, the rule framed in 2013 would not be applicable to him and would not be able to stall his appearance before the *fora* referred to in aforesaid sub section (iii) of section 30 of the Advocates Act, 1961, as the rule is not made applicable with retrospective effect.

17. Mr. Surve also adverted to order of Karnataka High Court, according to which, he purports to contend that, similar rule having been stayed by the Karnataka High Court, the tribunal ought not to have passed impugned order.

18. Mr. Rajendra Deshmukh and Mr. H.I. Pathan, learned counsel for respondent no.2 submit that the plaintiff or for that matter, the lawyers appearing for parties and others do not have any particular grudge against revision applicant, however, plainly are trying to bring to the fore that it may not be legitimate for the revision applicant to appear and to be before the wakf tribunal.

19. Learned counsel submit that taking into account the rule, as has been reproduced in paragraph no.14 hereinabove, it categorically emerges that the applicant would not be able to practice before the wakf tribunal. It is not in dispute that at the time of cessation of his career as judicial officer, the applicant had been holding rank / peer of district judge and having regard to provisions of sub-section 4 of section 83 of the Wakf Act, presiding officer of the wakf tribunal being a judicial officer of the same peer, as such, by the stipulation under the Bar Council Rules, as enforced in 2013, the applicant would not be able to appear and practice before wakf tribunal. It is further submitted by them that the rule is applicable to an incumbent on and from the date of its enforcement onwards irrespective of the date of enrollment of incumbent.

20. The plea / argument is not available to the applicant, since he has been reinducted on rolls in 2008, the rule would not be applicable to him. The object and underlying rule is not to let such persons practice in any court, tribunal or before authority of which he had been a member or is presided over by an officer of equivalent rank or before a forum which was lower to the one occupied by the person. In the present case, it is not the contention of the applicant that the seat of presiding officer of tribunal is not equivalent to the post which had been held by him at the cessation of his tenure as judicial officer.

21. Learned counsel submit that it is not the case either that the amended rule of 2013 acts retrospectively and nullifies the applicant's cause till the amendment had been enforced. It applies from the date of enforcement uniformly to all the persons who had been enrolled before and who would be enrolled afterwards. It is submitted that the rule is not retrospective but would be retroactive. It will be operative against all the persons who are already enrolled and would duly cause restraint on the enrolled persons from appearing before the *fora* which they had occupied or before the officers equivalent to their rank or lower.

22. Learned counsel Mr. Deshmukh during the course of submissions has drawn attention to excerpts from a judgment of the Supreme Court, namely, in the case of **Mahipal Singh Rana, Advocate Vs. State of Uttar Pradesh (2016) 8 S.C.C. 335**, pointing out the contents of paragraphs no.33, 34 and 38, reading thus :-

*“33. In Bar Council of India V. High court of Kerala, constitutionality of rule 11 of the Rules framed by the High Court of Kerala for barring a lawyer from appearing in any court till he got himself purged of contempt by an appropriate order of the court, was examined. This court held that the rule did not violate Articles 14 and 19(1)(g) of the constitution nor amounted to usurpation of power of adjudication and punishment conferred on the Bar Councils and the result intended by the application of the Rule was automatic. **It was further held that the rule was not in conflict with the law laid down in Supreme Court Bar Assn. Judgment. Referring to the constitution Bench judgment in Harish Uppal, it was held that regulation***

of right of appearance in courts was within the jurisdiction of the courts. It was observed, following Pravin C. Shah, that the court must have major supervisory power on the right to appear and conduct in the court.

34. Reference was also made to the following observations in Harish Uppal : (SCC PP. 72-73, para 34)

34.... The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in court. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the court. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay

*down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. **It must be remembered that Section 30 has not been brought in force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus, even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.***"

38. *In Bar council of Maharashtra V. M.V. Dabholkar, the following observations have been made about the vital role of the lawyer in administration of justice: (SCC p. 298, para 15)*

15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right:

It must be a consciences alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice, to the end that public confidence may be kept

undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the rule of law. It must be a conscience, not shaped by rigid rules of doubtful validity, but answerable only to a moral code which would drive irresponsible Judges from the profession. Without such a conscience, there should be no Judge and, we may add, no lawyer. Such is the high, standard set for professional conduct as expounded by courts in this country and elsewhere."

23. He refers to another judgment of the Supreme Court in the case of **N.K. Bajpai V. Union of India and anr. AIR 2012 S.C. 1310** and particularly, draws attention to paragraph nos.18, 19, 50 and 51 therein, with a view to answer the contentions of learned counsel Mr. Surve about the retrospectivity or otherwise in application of the amended rule of 2013.

Paragraphs no. 18, 19, 50 and 51 of **N.K. Bajpai's** case (supra) read, thus :-

"18. Rules 7 and 7A of the Bar Council of India Rules, were introduced by the Bar Council of India on 14th October, 2007.

19. This Rule clearly mandates that upon his retirement or when otherwise ceasing to be in service for any reason, a person will not be able to practice in the administrative tribunal, other tribunals, authorities, courts etc. over which he had presided and which were headed by an officer in a post equivalent to or lower than the post which he had held. The definition in the explanation of what an officer shall mean and include further widened the scope of interpretation. Not only this, requiring adherence to professional standard and values, Rule 7A further makes it mandatory that a person who has been dismissed, retrenched, compulsorily retired, removed or otherwise retired from government service or service of the High Court or Supreme Court on the charges of corruption, dishonesty unbecoming of an employee, etc. would not even be enrolled as an advocate on the rolls of a State Bar Council. These provisions clearly demonstrate the intention of the

Legislature to place restrictions for entry to the profession of law. These restrictions have to be decided only on the touchstone of reasonableness and legislative competency. The restriction which withstands such a test would be enforceable in accordance with law.

....
....

50. *In the present case, the restriction would be applied uniformly to all the practicing advocates as well as to the advocates who would join the profession in future and would achieve the object of the Customs Act without leading to any absurd results. On the contrary, its uniform application would achieve fair results without really visiting any serious prejudice upon the class of the advocates who were earlier the members of the Tribunal as it remains open to them to practice in other Tribunals, Forums and Courts. If an exception was carved out in their favour, it would lead to an anomaly as well as an absurd situation frustrating the very purpose and object of section 129(6) of the Act.*

51. *Still in another case title Dilip v. Mohd. Azizul Haq and anr. [(2000) 3 SCC 607 : (AIR 2000 SC 1976 : 2000 AIR SCW 1035)], this court while dealing with the question whether the amendment in the Rent Control Order, which had earlier covered 'houses', and was amended to encompass 'premises' could be allowed to agreements entered into, prior in time, **clearly held that the provision came into force when the appeal was still pending and, though the provision is prospective in force, it has retroactive effect. This provision merely provides for limitation to be imposed for the future, which in no way affects anything done by a party in the past and the statutes providing for new remedies or new manners for enforcement of the existing rights will apply to future as well as past causes of action. This Court also held that the presumption against the retrospective legislation does not necessarily apply to an enactment merely because a part of the requisites for its action are drawn from a time antecedent to its passing.***

24. He also tenders across an unreported judgment of the Delhi High Court dated 5/11/2014 in the case of **Jagdish Sagar Vs. Bar Council of India**, wherein according to him, it is not a case wherein such a restriction had not been earlier considered.

25. Having regard to aforesaid, it does not appear to be a case whereunder rule of similar nature had not fallen for consideration before the Apex Court and it had been considered that putting restrictions on appearance will have to be decided on the touchstone of reasonableness and legislative competency. The Apex Court also appears to have considered that certain provisions would be retroactive and may not be said to retrospective in operation.

26. In the circumstances, it appears that the so long as the rule is in operation, the decision under challenge in this revision application would seldom be open for exercise of discretion under the revisional powers of this court. Validity of rule is not questioned in the present civil revision application nor can challenge to the same be posed in revision application.

27. In the circumstances, civil revision application is not being entertained and the same stands dismissed.

28. It is also made clear that the order does not express anything on merits of the case pending before the tribunal, nor does it close doors on the revision applicant to explore redressal of his grievance.

29. Learned counsel for the revision applicant, in the circumstances, prays that *status quo* be continued to be maintained with regard to the proceedings pending before the tribunal obtaining hitherto pursuant to orders of this court, for a period of a fortnight. It may be fair to consider the request. The request, as such, is granted. It is further made clear that effect of this arrangement would cease to subsist on expiry of above period.

30. Rule stands discharged.

[SUNIL P. DESHMUKH]
JUDGE

arp/