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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 27th July, 2020

+ W.P.(C) 4591/2020 & CM APPLs. 16591/2020, 16592/2020,
16593/2020

AKHIL BHARTIYA LODHI ADHIVAKTA SANGH Petitioner

Through: Mr. Varun Thakur & Brajesh Pandey,
Advocates. (M-9560956524).

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Devesh Dubey, Advocate for R-1

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been held through video conferencing.
2. The present petition has been filed by the Akhil Bhartiya Lodhi Adhivakta Sangh seeking the following prayers:

“(a). issue appropriate writ, direction, order in the nature of Mandamus directing the Respondents for implementation of the Section 30 of the Advocate Act in its true spirit and:

(b). issue appropriate writ, direction, order in the nature of Mandamus to Respondents to clarify that filing of the petition/vakalatnama are included "in Practice" and;

(c) issue appropriate Writ, Direction, Order in the nature of Mandamus to Respondent No.1 to ensure the livelihood of the advocates in this Kovid-19 pandemic and

d). Pass such other or further order/s as this Hon'ble Court may deem fit in the facts and circumstances of this case.”

The Respondents in this matter are Union of India, the Bar Council of India and the Supreme Court of India through Registrar General. The writ petition has raised several grounds including for seeking implementation of Section 30 of the Advocates Act 1961 (*hereinafter*, “*Advocates Act*”) and permitting advocates with more than 10 years’ experience to file petitions in all courts, including the Supreme Court.

3. Mr. Varun Thakur, Id. counsel appearing for the Petitioner submits that the crux of his case is that Section 30 of the Advocates Act, 1961 recognizes every advocate’s ‘*right to practice*’ throughout the territory to which the Act extends, in all Courts, including the Supreme Court. He thus submits that all advocates should be allowed to file in the Supreme Court, especially lawyers like him who have more than 15 years of practice. He submits that in ***Balraj Singh Malik v. Supreme Court of India, AIR 2012 Del 79***, the Id. Division Bench of this Court had expressed that the Advocates-on-Record (*hereinafter* ‘*AoR*’) system may not be functioning in the best manner and therefore it needs to be relooked at, to rectify some of the problems.

4. Mr. Brajesh Pandey, Id. counsel also appearing for the Petitioner submits that ***Balraj Singh Malik (supra)*** related to the Supreme Court Rules of 1966 and not to Section 30 of the Advocates Act. Id. counsels for the Petitioner further submit that they do not challenge the AoR system but rather pray, that advocates with more than ten years of experience should be allowed to practice and file pleadings before the Supreme Court.

5. Mr. Devesh Dubey, Id. counsel appearing for the Union of India relies upon the judgment in ***Balraj Singh Malik (supra)*** to argue that Section 30

of the Advocates Act has been considered in the said judgment and the petition is liable to be dismissed.

6. A perusal of the writ petition shows that the prayer has been worded in a manner so as to seek implementation of Section 30 of the Advocates Act. However, in effect, what it seeks is that all lawyers should be able to file before the Supreme Court, thereby calling into question the AoR system, which is a unique system existing in the Supreme Court.

7. Originally, challenge to the AoR system was considered and decided by the Supreme Court in ***Re: Lily Isabel Thomas, AIR 1964 SC 855***. The Constitution Bench considered Art. 145 of the Constitution of India, the provisions of the Advocates Act, 1961 and the Supreme Court Rules, 1966. The Court observed that the '*right to practice*' in its normal connotation would take in, not merely the right to plead but the right to act as well. However, in view of the Supreme Court Rules, the said right would not be unfettered. The observations of the Court are:

“9. Nevertheless the petitioner, as stated earlier, is certainly right in her submission that the words 'right to practise' would in its normal connotation take in, not merely right to plead but the right to act as well and that is why we said that if no rules had been made by the Supreme Court restricting the right to act, the petitioner could undoubtedly have right both to plead as well as to act.

10. But we have already pointed out that under s. 58(3) of the Act, the right conferred on Advocates enrolled under the Bar Councils Act to practise in the Supreme Court is made subject to any rules made by this Court. To reinforce this position there is a saving enacted by s. 52 of the Advocates Act which

specifically saves the powers of this Court to make rules under Art. 145. Section 52 reads:-

"52. 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 in that behalf."

11. In view of the saving which is repeated in s. 52, there is no question of the rule restricting the right to act to a certain class of advocates as being contrary to a law made by Parliament. The only question for consideration is whether Art. 145(1)(a) is sufficient to empower this Court to frame the impugned rules."

8. The Advocates Act, 1961 was amended in 1993. Section 52 was specifically amended to add the words 'or plead' in S.52(b). Post the amendment, the Division Bench of the Delhi High Court in **Balraj Singh Malik (supra)** also considered the AoR system and the prayer for dispensation of AoRs which was sought in the said writ petition. The Id. Division Bench traced the legality and validity of the AoR system including the amendments. The Court has recorded in the said judgment, how the interest of the litigating public is safeguarded and regulated before the Apex Court by the introduction of AoRs. The Id. Division Bench also considered the **Re: Lily Isabel Thomas (supra)** judgment. The 'right to practice' argument was raised in both **Re: Lily Isabel Thomas (supra)** as also in **Balraj Singh Malik (supra)**.

9. The Division Bench, finally held that the AoR system is not unconstitutional and whatever defects there are in the said system would have to be rectified, but the system does not deserve to be done away with. The observations of the Id. Division Bench are:

“24. Keeping this position in law in mind, we have to answer as to whether amendment in Section 30 of the Advocate (Amendment) Act, 1993 has made any difference. Various provisions of the Advocates Act, 1961 were amended by Act no.70 of 1993. This was done on the basis of the proposals made by the Bar Council of India and certain other bodies and the experience gained in the administration of Advocates Act. The State of objects and Reasons attached to the amendment bill made, inter alia, the following stipulation:-

(vi) empower the Supreme Court of India to make rules for determining the persons who shall be entitled to plead before that Court.

25. As a consequence, apart from amending Section 30, Section 52 of the Advocates Act was also amended and for the word "act", the words "act or plead" has been substituted. Keeping in view this position, let us have a look at Section 30 and 52 of the Act as they stand now:

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

(i) In all Courts including the Supreme Court;

(ii) Before any tribunal or person legally authorized 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 practice.

52. Saving- Nothing in this Act shall be deemed to affect the power for 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 practice in that Court;

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

26. Section 30 of the Act entitles every advocate, as of right, to practice throughout the territories to which this Act extends and specifically mentions all Courts including the Supreme Court. Thus, no doubt, right to practice in the Supreme Court is conferred. Section 52 however, categorically states that nothing in this Act shall be deemed to effect the power of the Supreme Court to make rules under Article 145 of the Constitution. This means that notwithstanding what is contained in the Advocates Act Section 52 of the Act keeps the powers of the Supreme Court under Article 145 of the Constitution intact. Reading these two provisions in harmonious way as mentioned above, an inescapable conclusion would be that the Apex Court has the power to lay down the rules about the entitlement of persons not only to act but also to plead before it. It, thus, clearly follows that amendment of Section 30 has not altered the position which

was prevailing earlier and explained by the Supreme Court in Lily Isabel Thomas (supra). We are not oblivious of the situation, as highlighted by the petitioner, that there are some noises that AOR system is not working satisfactorily. There may be some truth in the same. However, if some anomalies and unhealthy practices have crept in the AOR system, the proper remedy is to find solution to rectify the same. That may not be a cause for dispensing with the system of AOR altogether.

27. But would it not be unfair to say that merely because a provision is not properly implemented, it should be done away with? The answer has to be in the negative. Despite of holding a provision, in such conditions, to be unconstitutional it would be more appropriate that the present practice of the AOR is regulated to ensure that they play a constructive role in justice delivery system.”

10. The Supreme Court Rules which were considered in **Balraj Singh Malik** (supra) were the Rules of 1966. They have been again amended in 2013. As per the Supreme Court Rules 2013, under Order IV Rule 1(a), any advocate whose name is entered in the roll of any State Bar Council shall be entitled to appear before the Supreme Court. In case of advocates with less than one-year experience, they can mention matters, seek adjournments and similar such orders but shall not be entitled to address the Supreme Court for the purpose of any effective hearing. The Supreme Court has the discretion to permit any person to appear and address the Court in any particular case. Under Rule 1(b), AoRs have the right to appear, plead and address the Court. Under Rule 1(c), a party-in-person is permitted to file a matter and if a party-in-person wishes to argue the case in person, permission can be

sought to argue and appear in person by filing an application. Order IV Rule 1 reads:-

“1. (a) Subject to the provisions of these rules an advocate whose name is entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961) as amended shall be entitled to appear before the Court:

Provided that an advocate whose name is entered on the roll of any State Bar Council maintained under the Advocates Act, 1961 (25 of 1961), for less than one year, shall be entitled to mention matters in Court for the limited purpose of asking for time, date, adjournment and similar such orders, but shall not be entitled to address the Court for the purpose of any effective hearing:

Provided further that the Court may, if it thinks desirable to do so for any reason, permit any person to appear and address the Court in a particular case.

(b) No advocate other than the Advocate-on-record for a party shall appear, plead and address the Court in a matter unless he is instructed by the advocate-on-record or permitted by the Court.

(c) In petitions/appeals received from jail or a matter filed by a party-in- person or where a party-in-person as respondent is not represented by an Advocate-on-Record, the Secretary General/Registrar may require the Supreme Court Legal Services Committee to assign an Advocate, who may assist the Court on behalf of such person:

Provided that whenever a party wants to appear and argue the case in person, he/she shall first file an application alongwith the petition seeking permission to appear and

argue in person. The application shall indicate reasons as to why he/she cannot engage an Advocate and wants to appear and argue in person, and if he is willing to accept an Advocate, who can be appointed for him by the Court. Such application shall, in the first instance, be placed before the concerned Registrar to interact with the party-in-person and give opinion by way of office report whether the party-in-person will be able to give necessary assistance to the Court for proper disposal of the matter or an Advocate may be appointed as Amicus Curiae. If the application is allowed by the Court then only the party-in-person will be permitted to appear and argue the case in person.”

11. Order IV Rule 7C provides that no advocate other than an AoR would be entitled to file an appearance or act for a party in the Court. The said Rule reads:

“(c) No advocate other than an advocate-on-record shall be entitled to file an appearance or act for a party in the Court.”

12. An AoR is given five chances to appear in the examination as per Regulation 11(iv) of the Regulations Regarding Advocates-on-Record Examination. These Rules are framed by the Supreme Court exercising powers under Article 145 of the Constitution of India. Thus, the Supreme Court has regulated the manner in which filings would be done before it and the Rules also provide for parties-in-person to file.

13. Mr. Thakur, Id. counsel has made a fervent appeal that considering the current pandemic and the COVID-19 outbreak, exemption should be granted during this period for filing in the Supreme Court inasmuch as litigants are

initially expected to retain one counsel in their local area and thereafter another lawyer as an AoR, leading to higher expenses to approach the Supreme Court. Though, Mr. Thakur, Id. counsel states that he supports the AoR system and in effect his prayer is that, lawyers from across the country should be allowed to file before the Supreme Court and the same ought not to be the exclusive domain of the Advocates on Record. He relies upon the judgment in ***AOR Association in SCBA v. B.D. Kaushik [2011 (13) SCC 774]***, which according to him permits lawyers from across the country who have adequate experience to be voters in the Supreme Court Bar Association.

14. The question as to the validity and legality of the AoR system is no longer *Res Integra*. The same has been challenged in the past and has been held to be valid and legal. Insofar as the outbreak of COVID-19 pandemic is concerned, there is no doubt that the pandemic has changed the manner in which litigation is conducted. The pandemic has also changed the functioning of courts with various functions being carried out with the use of electronic and digital mediums. Filings before most Courts have become online and most hearings are being held through video conferencing.

15. The question as to whether due to the COVID-19 pandemic, any modification would be required in these Rules is within the exclusive domain of the Supreme Court. The provisions of the Advocates Act and the Supreme Court Rules regulating the system of AoRs has already been upheld in the decisions discussed above. The relief sought for i.e. implementation of Section 30 cannot be granted as Section 52 acts as an exception to Section 30. Section 52 clearly provides for the Supreme Court to determine as to who shall be entitled to 'act or plead' before it. The

general connotation of the word ‘practice’ would include acting and pleading. However, in the context of the powers of the Supreme Court, they are regulated by the Supreme Court Rules 2013.

16. Prayer C of the Petitioners is too broad and vague in terms of ensuring of livelihood of advocates during the Covid-19 pandemic. Various courts are dealing with petitions involving measures to be taken for the purpose of providing assistance to advocates during the pandemic.

17. By the present writ petition, a circuitous and tangential challenge to the system of AoRs, which has already been upheld, cannot be laid. The prayer in this writ petition, in effect seeks to dilute the AoR system which has been upheld both in *Re: Lily Isabel Thomas (supra)* as also in *Balraj Singh Malik (supra)*. In view thereof, the present petition before this Court is not liable to be entertained. However, the Petitioner, if it chooses to do so, is permitted to avail of any other remedies which may be available to it.

18. The writ petition is rejected in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 27, 2020

Rahul/A

(Corrected and released on 31st July, 2020)