

(1973) 09 BOM CK 0009

Bombay High Court

Case No: Special Civil Application No. 1538 of 1973

Jhaman Karamsingh Dadlani

APPELLANT

Vs

Ramanlal Maneklal Kantawala
and Others

RESPONDENT

Date of Decision: Sept. 6, 1973

Acts Referred:

- Advocates Act, 1961 - Section 30
- Bombay High Court (Appellate Side) Rules, 1960 - Rule 1
- Bombay High Court (Original Side) Rules, 1980 - Rule 623
- Companies (Court) Rules, 1959 - Rule 6
- Constitution of India, 1950 - Article 226, 227, 229

Citation: AIR 1975 Bom 182 : (1974) 76 BOMLR 644

Hon'ble Judges: Rege, J; Deshpande, J

Bench: Division Bench

Judgement

Deshpande, J.

The petitioner, an advocate of this Court. seeks to challenge the Bombay High Court (Original Side) Rules, 1957, in this petition under Articles 226, and 227 of the Constitution of India on the ground of the said Rules being violative of Articles 14 and 19 thereof as also the provisions of the Advocates Act. 1961 . A writ directing Union Government to enforce Section 30 of the said Act said Act also is sought . This petition was lodged and received at the appellate Side. Notice before admission was directed to be issued by Vaidya and Dudhia JJ. to the respondents and certain other interested institutions, in view of importance of the points raised, when the matter was placed before us for admission, on the appearance of the respondents, etc., as per order of the learned Chief Justice. Regular Bench for constitutional matters could not hear it earlier due to an objection raised by Mr. Desai that one of the learned Judges was a member of the delegation opposing such Rules. The learned Advocate General and Mr. Ashok Desai raised a preliminary objection to the

competency of this Bench of enter in the petition on the Appellate Side. We have heard them and Mr. Kalsekar, learned Advocate for the petitioner, as also Mr. Paranjape. Mr. Singhvi Mr. D. R. Dhanuka, Mr. M. A. Rane Mr. H.K. Shah and Mr. Mahendra Gill, learned Advocates appearing for different institutions and the learned Government Pleader, all of whom supported the petitioner.

2. This High Court since its establishment in 1862 under the Letters Patent has been exercising original as well as appellate jurisdiction and its functioning is regulated by "the Bombay High Court (Original Side) Rules, 1957 and "Rules of the High Court of Judicature at Bombay. Appellate Side, 1960" (hereinafter referred to respectively as "O. S. Rules" and "A. S. Rules"). Rules also provide for disposal of petitions under Articles 226 and 227 of the Constitution. Supervisory jurisdiction of the High Court under Article 227 of the Constitution is exclusively vested in a Bench on the Appellate Side and jurisdiction of either of the two wings of this Court under Article 226, however depends upon whether "the matter in dispute" arises substantially in Greater Bombay or beyond it, the same being execrable by the original Side in the former case and by the Appellate Side in the latter case. This is not made dependent on the matter being in fact of an original or appellate matter. The contention of the learned Advocate General and Mr. Desai is that the matter in dispute, on averments in the petition must be said to have arisen at any rate substantially within the limits of Greater Bombay and the petitioner cannot be permitted to avoid the impact of these Rules and choose his own forum by merely quoting Article 227 of the title and prayer clause of the petition, when it is not attracted or by merely making a pretense of the dispute having arisen beyond Greater Bombay by referring to non-existing facts to attract the Appellate Side jurisdiction under Article 226.

3. This take us to the close scrutiny of the facts averred. One Joglekar of Mahad in Kolaba District, filed a Company Petition through the petitioner on the Original Side of this Court. Rule 35 disables any Advocate from appearing in any such a matter unless instructed by an Attorney or unless he happens to be a Supreme Court Advocate. The Assistant Master virtually declined to receive this petition expressing doubt about the petitioner's competency to so file it without complying with the Rules. It is not disputed that Chamber Judge's authority to receive or refuse to receive such documents under Rule 89 is delegated to the Assistant Master under Rule 96. sub-rules (1) and (10) of the O. S. Rules read with clause (b) of Company (Court) Rules subject to his 9 the Chamber Judge on the Original Side) over-all supervision. The real grievance of the petitioner is that Rule 35 is invalid being violative of Articles 14 and 19 of the Constitution and provisions of the Advocates Act and the order of the Assistant Master is violative of his unrestricted right to practice as an Advocate in this Court without regard to whether the matter is cognisable by the Original or Appellate Side and without being instructed by any Attorney or enrolling himself as Supreme Court Advocate. His further grievance is that failure of the Union Government to enforce Section 30 of the Advocates Act and piecemeal enforcement of the provision of the said Act has perpetuated such disabilities. He

thus claims relief under Articles 226 and 227 of the Constitution.

4. Article 227 invests this Court with supervisory jurisdiction over sub-ordinate Courts and tribunals. Order of the Assistant Master in compliance with the Assistant Master in compliance with the O. S. Rules amounts to the order of this Court itself, it is difficult to see how this Court can exercise supervisory jurisdiction over itself. Secondly, the petitioner is shown to be a resident of Bombay. He appears to be practicing in Bombay. he appear to be practicing in Bombay, having his office in Bombay. The Company petition giving rise to the present claim of unrestricted right to practise was filed on the Original Side of this Court in Bombay. his right is denied to him by an Officer or Court whose seat is located in Bombay. The rules under which such right is denied are passed and promulgated in Bombay by the High Court seat of which is in Bombay. Unfettered right to practise is claimed fro appearing on the Original Side which functions only in the city of Bombay. The matter indispute thus must be deemed to have arisen in Bombay on these undisputed facts. Thus this petition attracts Rule 623 of O. S. Rules and consequently exceeds the Application of Rule 2 of Chapter XVII of the A. S. Rules. Entertainment of this petition in the be sence of applicability of Article 227 and Rule 1 of A.S. Rules on the Appellate Side, on k the face of it is not authorised and objection raised appears to be well founded.

5. There is not much substance in the contention of Mr. Kalsekar that this objection must be deemed to have been overruled by the division Bench of this Court when notice before admission of this petition was ordered to be issued in spite of the office objection. In the first instanced, there is no such specific order, not to speak of any speaking order. Secondly, the respondents cannot be prevented from agitating such an objection after their appearance.

6. It is true that the case is referred to this Bench by the learned Chief justice by a specific order. Such an order is referable to Rule 623 of the O. S. Rules under which it is open to the Chief Justice to refer the matter to Division Bench, if he so considers necessary. Such inference is, however not possible in the facts of this case. Ordinarily, such reference is, however not possible in the facts of this case. Ordinarily such reference is made, when under Rule 59 a single Judge hearing the matter on the Original Side, so opines. Nothing can also prevent the Chief Justice himself from so referring the matter to Division Bench. If he thinks it necessary. There is nothing, however to indicate that the Chief Justice had down so in exercise of his powers under this Rule . On the contrary, circumstances in which the matter is shown to have been referred to us militate against his having acted under Rule 623.

7. All the learned Advocates strongly urged that the Assistant Master is a subordinate Court or Tribunal within in meaning of Article 227 of the Constitution, and thus his order is amenable to this Court's such supervisory jurisdiction. The contention is indeed untenable. The Assistant Master is an officer of this Court. Administrative supervisory his ministerial acts obviously is vested in the Chief Justice

by virtue of his power of appointment under Article 229 of the Constitution. Judicial powers delegated to him in limited sphere are however, according to O. S. Rules, subject to the supervision by the Chamber Judge. It is impossible to trace such suppositioning or supervisory powers over him to Article 227 cannot be invoked to correct supposed or true errors of the Judge or the Officers of this Court. It is difficult to conceive of subordination of any Judge, or of such Officer exercising the delegated powers of the Judge to their own High Court.

8. Mr. Shah's reliance on the judgment in the case of [Mohanlal Narottamdas Kandoi Vs. Keshavlal Narottamdas Kandoi](#), to support his contention that the Assistant master is a statutory Court or tribunal is misconceived. The learned Chief Justice in that case was dealing with the office of the Taxing Master created under the Court fees Act. In the present case, Registrar or prothonotary or Assistant Master, referred to in Company (Court) Rules are not creatures of these Rules. Rule 6 thereof in terms makes O. S. Rules applicable to all proceedings under the said Company (Court) Rules. It is difficult to think of any act or order of any Judge or think of any act or order of any Judge or his delegate under these Rules, excepting as being the act or order of this Court itself.

9. We do not propose to rest our judgment on the absence of necessary averments in the petition as to the application of Article 227. We would have allowed necessary amendment of the petition had we been satisfied about its application. But nothing was urged before us on this Court except contending that the impugned order must be deemed to be of a subordinate Court. It is difficult to see how the distinction between administrative, ministerial or judicial powers of any officer of this Court and power of the High Court to interfere in judicial or administrative functions of subordinate Courts or tribunals is relevant to the point before us. Article 227 conceivably has no application whatsoever. Reference to the case of Hari Vishnu v. Ahmad Ishaque and [Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others](#), and [A.G. Kazi and Others Vs. C.V. Jethwani](#), respectively, is unnecessary.

10. Mr. Kalsekar and all other learned Advocates supporting him relied on the averments in para, 8 and the prayer for a writ in the petition directing respondent No. 3 Union Government to implement Section 30 of the Advocates Act. The grievance is that the Act is aimed at conferring unfettered rights on the Advocates to practice before every Court, tribunal and authority in any part of India and Section 30 in the Act has been engrafted with this end in view. But notwithstanding the expiry of 12 years from the passage of this enactment. Union Government has not implemented the said Section 30 in spite of representations from the Advocates and the Bar Council. This inaction it is urged has resulted in perpetuation of the present unintended disabilities and the invidious discrimination between the Members and Members of the Bar and adversely affected right of the petitioner to practice in any part of India and before any Court and Tribunal or authorities therein. Mr. Dhanuka also appearing for the petitioner made an application for amendment of the petition

by introducing paragraph 8-A therein indicating how restrictions on the appearance of Advocates before the authorities created under the enactment's referred to in the said para, are liable to be vanished on enforcement of Section 30 of the Act. It was contended that as the seat of the Government of India is in Delhi and seat of such authorities happen to be situated beyond Bombay, the dispute with regard to this prayer at any rate arises substantially, if not wholly, without greater Bombay, and as such Appellate Side's jurisdiction under Art. 226 is attracted. We are taking these averments also into account for deciding the preliminary objection as we would have granted leave to amend readily, had this amendment been of any help to the petitioner. Several other objections as to the validity of such interpretation of Section 30 or to the possibility of the petitioner's succeeding ultimately in getting writ issued in this Court shall have to be ignored at this stage as the same are not connected without the interpretation of the relevant O. S. or A. S. Rules or the competency of either of the two wings to entertain this petition.

11. In our opinion fact in para. 8 or intended para, 8-A and the prayer clause based therein do not make any difference. In the first instance, even the prayer for direction to implement Section 30 cannot be divorced from his main grievance of the appearance being wrongly denied to him by this Court in his company Petition. Implementation of Section 30, in the context, is inseparably interlined with his claim to practice as of right in every Court and tribunal including on the Original Side. Matter in dispute thus still continues to be the same i.e. unfettered right to practice on the Original Side. denied to him. Secondly, consideration of his grievance against the restrictions placed by Rule 35 and the enactment's referred to in intended paragraph 8-A on his right to practice cannot be isolated from the place of his residence and practice, which is shown to be Bombay, in para 1 of his petition. The question of these restriction and fetters in the case of the petitioners is obviously linked to the area of his professional activities, which on averments is confined to Bombay. Thirdly, the mere fact of the Union Government's seat being in Delhi cannot transfer the matter in dispute from Bombay to Delhi, when real dispute centers, round the right to practice in Bombay, whether on the Original Side or before any other authorities created by other enactment's,. Rule makers appear to have advisedly made the jurisdiction of either wings to depend on place of not accruals of "cause of action" but of "matter in dispute". It is the impact of the orders, and not the place of issuance thereof that counts. Distinction between the two expressions is too transparent to need more discussion. Seat of the Union Government is thus irrelevant factor.

12. It was, however, contended that authorities under the enactments referred to in intended para, 8-A may have their seats or sittings beyond Greater Bombay. His right to practice before such authorities does raise a "matter in disputes" which can be said to have arisen in place outside Grater Bombay, where the said authorities hear causes. This contention has also little merit. Averments in the petition do not show that he commands India-wide practice nor do these even go to assert that he

holds any briefs before such authorities beyond Greater Bombay. The petition is conspicuously silent about the extent of such profession activities. No such indication was even hinted at the Bar. Even so, some possibility of the petitioner getting briefs in immediate or distant future for briefs in immediate or distant future for appearing before such authorities cannot be there optically ruled out. In the absence of anything more any such possibility and consequently its giving rise to dispute is far fetched indeed, if not imaginary. Even if the possibility is taken to nary. Even if the possibility is taken to be a certainly, such dispute as to right to practice still cannot be said to arise substantially outside Bombay. The dispute as to unfettered right to practice covers the entire field of his professional activities which ordinarily is limited to Bombay. The possible extension of dispute along with extension of his professional activities beyond Bombay cannot make difference to where such dispute substantially arises. Such dispute shall have to be held as arising substantially in Bombay even after taking into account the possibility of his getting some briefs by chance to appear in Court. Tribunal or Authorities outside Greater Bombay. Stray occasional possible further such chances cannot affect or deflect the substance of the dispute and consequently the forum. The substance of the dispute naturally must be deemed to have arisen at the ordinary place of residence and practice, i.e. in Bombay, Reliance by Mr. Shah on the judgment in the case of [United Motors \(India\) Ltd. and Others Vs. The State of Bombay and Another](#), is of no material use, as in that case imminent danger of illegal impost in Violation of the fundamental right of the petitioner was found to exist. Threat to the supposed right to practice of a Bombay practitioner before authority outside Bombay is too remote or far fetched, apart from the said grievance forming only a minor part of his principal grievance in the facts of this case.

13. Mr. Dhanuka tried to draw some support from Article 226 (1-A) of the Constitution and contended that the words "cause of action" in sub-art, (1-A) have no different connotation from the words "matter in dispute" in Rule 623 of O. S. Rules or Rule 1 of A. S. Rules, Even Assuming, without accepting that it is so, the same cannot make any difference to the point as to where substantially the cause or dispute can be said to have arisen in this case. Sub-article (1-A) only enable the High Court to issue writs against the authorities located beyond its territorial limits. If the cause of action arises within its limits. It is difficult to see what bearing the wording or the principle implicit in this Sub-Article can have on the controversy before us. Reliance on the judgment in the case of [Damomal Kausomal Raisinghani Vs. Union of India and Others](#), thus is misconceived. The petitioner's right to move the High Court for exercise of its power under Article 226 to compel the Govt of India to do the needful. If circumstances so justify, is not challenged. The controversy is only with regard to whether such petition lies before the Judge on the Original Side or the Bench on the Appellate Side.

14. It is true that ordinarily when the vires of an Act or rules is challenged the petitioner challenging such vires is not driven to agitate such claims before the very

authorities who are the creatures of such enactments or the Rules. But it is so done because such authorities are incompetent to adjudicate on the validity or otherwise of such enactments or the Rules. This cannot be said to be true of High Court either on the Original Side or on the Appellate Side. The High Court is invest with the powers of the judicial review under Article 226 of the Constitution of India. The contention of Mr. Paranjape, therefore that the petitioner should not be driven to comply with the Rules the validity of which he seeks to challenge in this writ application is without any merit.

15. In the result, therefore, the preliminary objection is upheld. We accordingly hold that the petition is virtually under Article 226 of the Constitution and the subject-matter therein substantially arises within the limits of Greater Bombay and as such the petition is liable to be heard in accordance with the O. S. Rules. The entertainment of the petition the Appellate Side is not justified.

16. Office to take notice of this and send the Papers to the concerned section of the Original Side for disposal in accordance with the Rules.

17. Ordered accordingly.