
MOOT PROBLEM*

The Secretary, Forum for Ethics in Legal Profession (FELP)

v.

Union of India and the Registrar General of the High Court of Dakshin Pradesh

The rationale of major basic principles of administration of justice, both substantive and procedural, at the stage of regulation and denial of freedom, are well founded in India in its ancient values and its present Constitution. The celebrated concept of *dharma* has provided a fertile ground for myriad legal principles to create an environment wherein every individual can live a quality life with noble institutions and professions having pledged themselves to this end.

In India, knowledge was always imparted to successive generations as a matter of pious obligation with a mandate to live an upright life and serve the society. The *tittariyopanishat's anushashasana* administered in the convocations of universities speaks volumes about it. A professional, in good olden days, never charged for his professional services. Professionals bestowed the fruits of their knowledge on the needy persons as a matter of pious obligation. A professional was always revered for this great gesture of serving the society with *pro bono publico* commitment. It was never a career, let alone a business. Professions were not regulated by any body, whether statutory or otherwise, because of the trust society reposed in them. Instead the society relied upon '*regulation by self*' of professions and felt that the regulation by professional peers was the best way to regulate professions and the interest of the society was safe in their hands. Traditionally the professional ethics were zealously adhered to, especially in the state of Dakshin Pradesh, a State in the Union of India, which has the legacy of contributing great legal luminaries, who spearheaded not only the freedom struggle but also played a pivotal role as members of the Constituent Assembly.

The Indian society created an exclusive right in favour of the Advocates to appear on behalf of others in courts and created a monopoly in favour of them by enacting *The Advocates Act, 1961* (herein referred to as '*the Act*'). By contrast, Section 34(1) of the Act empowers the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto. Further, Article 145 of the

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Constitution of India empowers the Supreme Court to make rules for regulating the practice and procedure of the court including rules as to the persons practicing before the court.

Of late, certain members of the Bar, in the State of Dakshin Pradesh, failed to adhere to the professional standards and the frequency of court boycotts, lawyers' strikes, bundhs and disruptions of court proceedings increased. The younger generations of advocates did not heed the advise of the elderly in the profession. Feeling that the '*regulation by self*' on the part of the profession as visualized under the *Advocates Act* has failed, the High Court of Dakshin Pradesh framed rules under Section 34 of the Act called the *High Court of Dakshin Pradesh Rules of Practice, 2016*, which *inter alia* reads as follows:-

Rule 21: Power to Debar:

- (i) An Advocate who is found to have accepted money in the name of a Judge or on the pretext of influencing him; or
- (ii) An Advocate who is found to have tampered with the Court record or Court order; or
- (iii) An Advocate who browbeats and/or abuses a Judge or Judicial Officer; or
- (iv) An Advocate who is found to have sent or spread unfounded and unsubstantiated allegations/petitions against a Judicial Officer or a Judge to the Superior Court; or
- (v) An Advocate who actively participates in a procession inside the Court campus and/or involves in gherao inside the Court Hall or holds placard inside the Court Hall; or
- (vi) An Advocate who appears in the Court under the influence of liquor;
- (vii) An Advocate who uses unbecoming language in the court; shall be debarred from appearing before the High Court or Subordinate Courts permanently or for such period as the Court may think fit and the Registrar General shall thereupon report the said fact to the Bar Council of Dakshin Pradesh.

Rule 22: Power to Take Action:

- (i) Where any such misconduct referred to under Rule 21 is committed by an Advocate before the High Court, the High Court shall have the power to initiate action against the Advocate concerned and debar the Advocate from appearing before the High Court and all Subordinate Courts.

(ii) Where any such misconduct referred to under Rule 21 is committed by an Advocate before the Court of Principal District Judge, the Principal District Judge shall have the power to initiate action against the Advocate concerned and debar the Advocate from appearing before any Court within such District.

(iii) Where any such misconduct referred to under Rule 21 is committed by an Advocate before any subordinate court, the Court concerned shall submit a report to the Principal District Court within whose jurisdiction it is situate and on receipt of such report, the Principal District Judge shall have the power to initiate action against the Advocate concerned and debar the Advocate from appearing before any Court within such District.

Rule 23: Procedure to be followed:

The High Court or the Court of Principal District Judge, as the case may be, shall, before making an order under Rule 21, issue to such Advocate a summon returnable before it, requiring the Advocate to appear and show cause against the matters alleged in the summons and the summons shall if practicable, be served personally upon the Advocate.

Rule 24: Power to pass Interim Order:-

The High Court or the Court of Principal District Judge may, before making the Final Order under Rule 21, pass an interim order prohibiting the Advocate concerned from appearing before the High Court or Subordinate Courts, as the case may be, in appropriate cases, as it may deem fit, pending enquiry.

These rules were framed by the High Court of Dakshin Pradesh after due consultation with the representatives of the Dakshin Pradesh Bar Council office bearers. The senior members of the Bar, who have formed a Forum for Ethics in Legal Profession (FELP), submitted a memorandum to the Chief Justice of Dakshin Pradesh and insisted that the rules should not be framed for the reason that they will demean the nobility of profession which is not good for that institution. Their stand was that such rules will shake the trust which society has reposed in professionals and that the rules were not in keeping with the evolution of the profession from chaos to order and from order to '*regulation by self*'. They perceived the activities of the advocates which impelled the High Court to frame rules, as a passing phase of the profession which can be addressed under the

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existing legal framework without discrediting the institution of Advocacy. They felt that the causes for the unacceptable behavior of advocates can be addressed properly without framing rules under the existing legal framework of disciplinary powers of the Bar Councils, power of the courts under the *Contempt of Courts Act, 1971* and through appropriate education and training.

The Registrar General of the High Court of Dakshin Pradesh notified the rules on 1st August 2016 and came into effect from that day. The FELP, in an emergency meeting convened to consider the situation after the notification of the said rules, resolved to file a Public Interest Litigation before the Supreme Court. The FELP through its Secretary has filed a Public Interest Litigation against the Union of India and the Registrar General of the High Court of Dakshin Pradesh, challenging the constitutional validity of Section 34 of the *Advocates Act, 1961* and also the *High Court of Dakshin Pradesh Rules of Practice, 2016*. It argues, *inter alia*, that Section 34 of the Advocates Act and the rules framed thereunder are unreasonable restrictions on the fundamental rights of Advocates to appear before courts and also regulate their profession; that Section 34 suffers from the vice of unbridled delegation of power.