

Supreme Court of India

In Ref vs Rameshwar Prasad Goyal Aor on 22 August, 2013

Bench: B.S. Chauhan, S.A. Bobde

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

SUO MOTU CONTEMPT PETITION NO. 312 of 2013

In Re: Rameshwar Prasad Goyal, Advocate

J U D G M E N T

Dr. B.S. Chauhan, J.

1. Civil Appeal No. 1398 of 2005, Mohamed Israfil v. Raufunessa Bibi (D) by L.Rs. & Ors., was dismissed in default vide order dated 8.3.2013 as none appeared to press the appeal. An application for restoration of the said appeal was filed by Shri Rameshwar Prasad Goyal, Advocate-on-Record (hereinafter referred to as AOR). The said application was listed in the Court on 8.7.2013. The Court was of the view that the facts contained in the application were not correct and the counsel appearing for the applicant was not able to clarify the same. The Court passed over the matter and asked the counsel appearing therein to call the AOR who would be able to explain the factual controversy. When the matter was taken up in the second round, the Court was informed that Shri Rameshwar Prasad Goyal, AOR refused to come to the Court. It has also been pointed out that the said AOR has filed extremely large number of cases in this Court but never appears in the Court. In view of the refusal of the AOR to come to the Court, this Court had no other option but to dismiss the application. However, the Court issued a show cause notice to the said AOR as to why his name should not be removed from the register of AsOR, as his conduct was 'unbecoming' of an AOR. Prima facie, his conduct would tantamount to interfering with the administration of justice. Being an AOR, he ought to have appreciated that the institution of AsOR has been created under the Supreme Court Rules, 1966 (hereinafter referred to as the 'Rules') and no one can appear in this Court except by the authority of an AOR; or unless instructed by an AOR. Considering the gravity of the issue involved herein, this Court also requested the Association of AsOR, through its President and Secretary, to assist the Court in dealing with this situation as our experience has been that some AsOR, who have filed a large number of cases have been lending their signatures for consideration and take no responsibility for the matter and never appear in the Court.

2. In response to the same, Shri Rameshwar Prasad Goyal, AOR has filed his reply tendering an absolute and unconditional apology and has given an undertaking that he would not repeat such a mistake again in future. He has also given many reasons for not appearing in the Court but none of them has impressed us and none of them is worth mentioning herein. It is not that he has entered appearance in very few cases; the information received reveals that Mr. Rameshwar Prasad Goyal has entered appearance in as many as 1678 cases in the year 2010, in 1423 cases in the year 2011, and in 1489 cases in the year 2012. Upto 19.7.2013, he has entered appearance in 922 cases. The number of cases filed by him is too big.

3. In *Vijay Dhanji Chaudhary v. Suhas Jayant Natawadkar*, (2010) 1 SCC 166, this Court made an attempt to deal with the menace of lending of signatures for a petty amount by a few AsOR without any sense of responsibility and rendering any assistance to the Court. The record reveals that the matter stood subsequently dismissed on some other grounds. However, the issue of conduct of an AOR, particularly in respect of name lending was referred to the Supreme Court Rules Committee vide order dated 12.10.2011.

4. Relevant rules for the purpose of adjudicating upon the issue involved herein are contained in Order IV of the Rules, which read as under:

“4. Any advocate not being a senior advocate may, on his fulfilling the conditions laid down in rule 5, be registered in the Court as an advocate on record:

xxx xxx x xx x xx xxx

6. (a) An advocate on record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a vakalatnama duly executed by the party, be entitled-

(i) to act as well as to plead for the party in the matter and to conduct and prosecute before the Court all proceedings that may be taken in respect of the said matter or any application connected with the same or ... xxx xxx x xx x xx xxx

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

xxx xxx x xx x xx xxx

8A. When, on the complaint of any person or otherwise, the

Court is of the opinion that an advocate on record has been guilty of misconduct or of conduct unbecoming of an advocate on record, the Court may make an order removing his name from the register of advocates on record either permanently or for such period as the Court may think fit and the Registrar shall thereupon report the said fact to the Bar Council of India and to State Bar Council concerned:

XXX XXX X XX X XX XXX

10. No advocate other than an advocate on record shall appear and plead in any matter unless he is instructed by an advocate on record.” (Emphasis added)

5. The term “Otherwise” contained in Rule 8-A has been defined in dictionary to mean contrarily, different from that to which it relates; in a different manner; in another way; in any other way; in some other like capacity; in other circumstances; in other respects; and relating to a distinct and separate class altogether. The word 'otherwise' should be construed as ejesdum generis and must be interpreted to mean some kind of legal obligation or some transaction enforceable in law.

(See: Kavalappara Kottarathil Kochuni @ Moopil Nayar & Ors. v. The State of Madras and Kerala & Ors., AIR 1960 SC 1080; George Da Costa v. Controller of Estate Duty, Mysore, AIR 1967 SC 849; Krishan Gopal v. Shri Prakashchandra & Ors., AIR 1974 SC 209; Municipal Corporation of Delhi v. Tek Chand Bhatia, AIR 1980 SC 360; S.R. Bommai v. Union of India & Ors., AIR 1994 SC 1918; and International Airport Authority of India & Ors. v. Grand Slam International & Ors., (1995) 3 SCC 151).

6. This Court in Supreme Court Bar Association v. U.O.I. & Anr., AIR 1998 SC 1895 observed :

“.....In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it.....” (Emphasis added)

7. Thus, it is evident that this Court is competent to proceed against an AOR suo motu, without any complaint from any person, if prima facie it is of the opinion that an AOR is guilty of misconduct or of conduct unbecoming of an AOR.

8. The Rules make the position clear that in order to carry out its work smoothly, this Court has framed the rules under which the institution of AsOR is created. Rule 8A, Order IV enables the Court to deal with a situation where an AOR commits misconduct or he conducts himself/herself in a manner unbecoming of an AOR.

In fact, this Court has conferred a privilege upon the AsOR. To carry out certain responsibilities and failure to carry out the same would definitely tantamount to unbecoming conduct of an AOR, if not misconduct.

9. Lawyers play an important part in the administration of justice. The profession itself requires the safeguarding of high moral standards. As an officer of the court the overriding duty of a lawyer is to the court, the standards of his profession and to the public. Since the main job of a lawyer is to assist the court in dispensing justice, the members of the Bar cannot behave with doubtful scruples or strive to thrive on litigation. Lawyers must remember that they are equal partners with judges in the

administration of justice. If lawyers do not perform their function properly, it would be destructive of democracy and the rule of law. (Vide: *Manak Lal v. Dr. Prem Chand Singhvi & Ors.*, AIR 1957 SC 425; *Smt. Jamilabai Abdul Kadar v. Shankarlal Gulabchand & Ors.*, AIR 1975 SC 2202; *The Bar Council of Maharashtra v. M.V. Dabholkar*, AIR 1976 SC 242; *S. P. Gupta & Ors. v. President of India & Ors.*, AIR 1982 SC 149; and *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378).

10. In *Re: Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting*, (1995) 3 SCC 619, this Court while dealing with the issue held :

“.....Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many times even illegible and without personal check and verification, the non- payment of court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the court but do positive disservice to the litigants and create embarrassing situation in the court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system..... The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society..... The casualness and indifference with which some members practice the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving..” (Emphasis added)

11. “Law is no trade, briefs no merchandise”. An advocate being an officer of the court has a duty to ensure smooth functioning of the Court. He has to revive the person in distress and cannot exploit the helplessness of innocent litigants. A wilful and callous disregard for the interests to the client may in a proper case be characterised as conduct unbefitting an advocate. (See : In the matter of Mr. ‘P’, an Advocate, AIR 1963 SC 1313; *T.C. Mathai & Anr. v. District & Sessions Judge, Thiruvananthapuram*, AIR 1999 SC 1385 *D.P. Chadha v. Triyugi Narain Mishra & Ors.*, AIR 2001 SC 457; and *Smt. Poonam v. Sumit Tanwar*, AIR 2010 SC 1384)

12. If the AOR does not discharge his responsibility in a responsible manner because he does not appear whenever the matter is listed or does not take any interest in conducting the case, it would amount to not playing any role whatsoever. In such a fact-situation, lending signatures for consideration would amount to misconduct of his duty towards court. In case the AOR is only lending his signatures without taking any responsibility for conduct of a case, the very purpose of having the institution of AsOR stands defeated.

13. In *Ex Capt. Harish Uppal v. UOI & Anr.*, AIR 2003 SC 739, this court has categorically held that if a lawyer refuses to attend the court, it is not only unprofessional but also unbecoming of a lawyer disentitling him to continue to appear in Court.

“.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 courts.”

14. In *Lt. Col. S.J. Chaudhary v. State (Delhi Admn.)*, AIR 1984 SC 618, this Court held that it is the duty of every advocate who accepts a brief to attend the trial and this duty cannot be overstressed. It was further reminded by this Court that “having accepted the brief, he will be committing a breach of his professional duty, if he so fails to attend.” The court further relied on *Warvelle’s Legal Ethics*, at p. 182 which is as under:

“A lawyer is under obligation to do nothing that shall detract from the dignity of the court, of which he is himself a sworn officer and assistant. He should at all times pay deferential respect to the Judge, and scrupulously observe the decorum of the courtroom.”

15. This Court has depreciated the practice of name lending in *Tahil Ram Issardas Sadarangani & Ors. v. Ramchand Issardas Sadarangani & Anr.*, AIR 1993 SC 1182, wherein the High Court had dealt with a case of a firm of advocates merely lending its name and did not take further responsibility to plead or act. The High Court found such an arrangement most unfortunate and contrary to the duty and obligation of a counsel towards the clients as well as to the court. Approving the said view, this Court held as under:

“Legal profession must give an introspection to itself. The general impression which the profession gives today is that the element of service is disappearing and the profession is being commercialised. It is for the members of the Bar to act and take positive steps to remove this impression before it is too late.”

16. The institution of AsOR is to facilitate the working of the Court as contained in Order IV Rule 6. It entitles an AOR to act, plead, conduct and prosecute before this Court in respect of all matters filed by him. To act means to file an appearance or any pleading or any application in the Court and such a task has been entrusted solely upon an AOR and no other advocate can file an appearance or act for the party without his authorisation. The Court conducts an examination before enrolling a person as an AOR and the basic purpose to have such an examination is to verify whether the person is well versed with the rules, practice and procedure of the Court and to test his legal acumen and ethics. He must be fully acquainted with the drafting of proceedings as well as its manner of filing in the Registry. An AOR is not beneficial only to the Court but also assists in the working of the Registry. In such a fact- situation, an AOR cannot lend his signatures just to camouflage the requirement of rules. He, in addition to doing the work of drafting, filing appearance and assisting the Court, must maintain professional ethics and proper standards so that the Court may rely upon him without any reservation.

17. Availability of justice to all which is a social goal, must be made a reality. However, it cannot be done unless there is an easy access to the Bench and the Bar both. If the Court is not working

properly or if the Bar is not rendering proper assistance, it would lead to a travesty of justice and destroy the basic democracy, which would tantamount to failure of administration of justice. The people and particularly, the common man would cease to be beneficiaries of democracy. Justice is based on law and law in modern democracy is too complicated, therefore, it is not possible for an ordinary litigant to raise his voice without engaging a lawyer. In case the lawyer is negligent or not willing to assist the court, or fails to perform his duty towards the court, loss to the poor litigant is beyond imagination.

18. In the present era, the legal profession, once known as a noble profession, has been converted into a commercial undertaking. Litigation has become so expensive that it has gone beyond the reach and means of a poor man. For a longtime, the people of the nation have been convinced that a case would not culminate during the life time of the litigant and is beyond the ability of astrologer to anticipate his fate. It is in this context that a suggestion has been made to amend the statutory provision in respect of substitution of the legal representative(s) of a party, to the effect that both the plaintiff and defendant must make a statement in the plaint/written statement respectively as who would be his legal representative(s) as they cannot expect that matter could be decided in their life time. Any order passed by the Trial Court on the application of substitution of legal representative(s) is generally challenged time and again right up to this Court with the proceedings in the Courts below remaining stayed.

19. Transparency in functioning of the court and accountability with respect to the Bench and the Bar are fundamentals in a democracy. Therefore, the Bench as well as the Bar have to carry out their duties with full sense of responsibility.

The Courts exist for the litigants, where a lawyer has to plead the case of his client with full sincerity and responsibility. In a system, as revealed in the instant case, a half baked lawyer accepts the brief from a client coming from a far distance, prepares the petition and asks an AOR, having no liability towards the case, to lend his signatures for a petty amount. The AOR happily accepts this unholy advance and obliges the lawyer who has approached him without any further responsibility. The AOR does not know the client, has no attachment to the case and no emotional sentiments towards the poor cheated clients. Such an attitude tantamounts to cruelty in the most crude form towards the innocent litigant. In our humble opinion, conduct of such AOR is certainly unbecoming of an AOR. Though the observations by this Court in Tahil Ram Issardas Sadarangani (supra) were made two decades ago, the same are apposite even today. The Bar failed to have an introspection and improve the situation.

20. The facts of this case present a very sorry state of affair. A noble profession has been allowed to be converted by this AOR into a profession of cheating. An AOR, whom the litigant has never briefed or engaged, has lent his signature for a petty amount with a clear understanding that he would not take any responsibility for any act in any of the proceedings in the Registry or the Court in the matter. The Advocate who has been obliged by such an AOR must be going inside the Registry in an unauthorised manner and must be appearing in the Court directly or engaging a senior advocate without any knowledge/authorisation of the AOR. It is beyond our imagination what could be more devastating and degrading for the institution of AsOR. Even a few of them indulging in such an

obnoxious practice spoils the working of this court, without realising that Bench and Bar, both have to give strict adherence to moral code.

21. An AOR is the source of lawful recognition through whom the litigant is represented and therefore, he cannot deviate from the norms prescribed under the Rules. The Rules have been framed to authorise a legally trained person with prescribed qualification to appear, plead and act on behalf of a litigant. Thus, not only is his physical presence but effective assistance in the court is also required. He is not a guest artist nor is his job of a service provider nor is he in a professional business nor can he claim to be a law tourist agent for taking litigants for a tour of the court premises. An AOR is a seeker of justice for the citizens of the country. Therefore, he cannot avoid court or be casual in operating and his presence in the court is necessary. There are times when pleadings and records have to be explained and thus, he has to do a far more serious job and cannot claim that his role is merely a formal one or his responsibilities simply optional. An AOR is accountable and responsible for whatever is written and pleaded by putting his appearance to maintain solemnity of records of the court.

The multi-tier operation of one lawyer hauling a client and then acting as a facilitator for some other lawyer to draw proceedings or engage another lawyer for arguing a case is definitely an unchartered and unofficial system which cannot be accepted as in essence, it tantamounts to a trap for litigants which is neither ethically nor professionally a sound practice. Such conduct is ridiculously low from what is expected of a lawyer. This kind of conduct directly affects the functioning of the court and causes severe damage that at times becomes irreparable and uncompensatory. It is ironic that an AOR who has cleared an examination to get himself authorised lawfully for assisting the court becomes conspicuous by his absence though his presence is maintained on record. The defective psychology of not appearing in the court is contrary to the first principle of advocacy.

22. Shri Sushil Jain, the learned President of the Advocates-on- Record Association, has given certain suggestions to check activities of such unscrupulous AsOR in the Court and Registry but as those suggestions had earlier been forwarded to the Supreme Court Rules Committee, it is not desirable for us to issue any direction in this regard. However, it is clarified that as per the Rules, no unauthorised person can deal with the Registry and Registry must strictly adhere to the Rules.

23. At the time of hearing, Shri Rameshwar Prasad Goyal, AOR, not only tendered absolute and unconditional apology and promised not to repeat the misconduct in future but also assured the court that he would remain present in the court in all the cases where he had entered appearance for either of the parties. Some senior advocates and a large number of members of the Bar have also asked the Court to pardon him as he would abide by the undertaking given by him.

24. In view of above, though the conduct of Shri Goyal, AOR, has been reprehensible and not worth pardoning but considering the fact and circumstances involved herein, his conduct is censured and we warn him not to behave in future in such manner and to appear in court in all the cases wherever he has entered appearance. The court shall examine his conduct for one year from now and if no improvement is found, may initiate the proceedings again. With these observations, the matter stands closed for the time being.

.....J.

(Dr. B.S. CHAUHAN)J.

(S.A. BOBDE) NEW DELHI;

AUGUST 22, 2013.
