

L.M. MAHURKAR

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v.

THE BAR COUNCIL OF MAHARASHTRA AND ANR.

APRIL 8, 1996

[J.S. VERMA, S.C. SEN AND S.B. MAJUMDAR, JJ.]

B

Advocates Act, 1961—Section 24(3)(aa)—Appearance before Sales Tax Authority prior to enactment of Advocates Act—Denial of enrolment as an advocate after enactment of Advocates Act—Appearance before Sales Tax Authority—Whether amounts to practise the profession of law—Held, the Bombay Sales Tax Act and the Rules do not suggest that the appearance before Sales Tax Authority amounts to entitlement to practise the profession of law as contemplated by Advocates Act.

C

Bombay Sales Tax Act, 1959—Section 71—Bombay Sales Tax Rules—Rule 66—Appearance before Sales Tax Authority prior to enactment of Advocates Act—Enrolment as an Advocate denied after enactment of Advocates Act—Appearance before Sales Tax Authority—Whether amounts to practise the profession of law—Held, apart from legal practitioner many other persons empowered to appear before Sales Tax Authority—Clear distinction has been drawn between legal practitioner and sales tax practitioner—Hence, mere appearance would not turn a sales tax practitioner into a legal practitioner.

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Central Provinces and Berar Sales Tax Act, 1961—Section 286.

Appellant, a matriculate, not having degree of law & not passed any accountancy examinations, was a Sales Tax Practitioner under provisions of Bombay Sales Tax Act, 1959. On enactment of Advocates Act, 1961, he was denied enrolment as an Advocate by the Bar Council.

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He filed a writ petition before High Court claiming to be enrolled as an Advocate which was dismissed.

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In appeal to this court the appellant contended that he was entitled to be enrolled as an Advocate by virtue of the provisions of Section 24(3)(aa) Advocates Act, 1961, as he was entitled to practise the profession of law before 1st December, 1961 by virtue of the provisions of the Bombay

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A Sales Tax Act, 1959.

Dismissing the appeal, this Court

B Held : 1.1. There is nothing in the provisions of the Bombay Sales Tax Act or the Rules framed thereunder to suggest that the right of appearance before Sales Tax authority amounts to entitlement to practise the profession of law as contemplated by clause (aa) of sub-section (3) of Section 24 of the Advocates Act. [93-A]

C 1.2. Section 71 of the Bombay Sales Tax Act, 1959 empowers not only legal practitioners but many other persons to appear before a Sales Tax Authority. A distinction has been drawn between a legal practitioner and a Sales Tax practitioner in Section 71. Both may appear before an authority in connection with Sales Tax Cases. That will not turn a Sales Tax practitioner into a legal practitioner. [89-G-H]

D 1.3. Rule 66 of Bombay Sales Tax Rules goes to show that apart from lawyers and chartered and cost accountants, other persons are allowed to practise in the Sales Tax Department as Sales Tax Practitioners, provided they have acquired some knowledge of accountancy. They will have to pass one of the many recognized accountancy courses for this purpose. This goes to show that Sales Tax practitioner does not carry on the profession of law, when he appears before a Sales Tax Officer. This practice is more in the nature of that of an accountant. [92-G-H; 93-A]

F 1.4. The category, to which the appellant claims to belong, is the category of Sales Tax practitioners, who possess the prescribed qualifications. Assuming that the appellant, who is stated to be only a matriculate, has acquired the prescribed qualifications and has been included in the list of persons qualified to appear before the Sales Tax Authorities, he cannot be treated as a person entitled to practise either the profession of law or the profession of accountancy. A large number of persons have been permitted to appear before Sales Tax authorities on behalf of the dealers. The list includes an employee, a relative, a Sales Tax practitioner and also professionally qualified people like lawyers and accountants. The right to appear before the Sales Tax authority is not confined to lawyers only. [90-D-F]

H 1.5. After passing of the Advocate Act, only one class of persons is entitled to practise the profession of law, namely, advocates (section 29).

If the phrase 'practice the profession of law,' is equated to appearance before the Sales Tax Authority in that event, a chartered accountant or a cost accountant or even a relative as an employee of an assessee will not be entitled to appear before a Sales Tax Authority after the Advocates Act came into force. If the contention of the appellant is accepted, after the appointed date the Sales Tax practitioner who does not have a degree in law will not be entitled to be enrolled as an Advocate, will not be able to practise the profession of law and consequently will not be able to appear before any sale tax authority notwithstanding the provisions of section 71 of Bombay Sales Tax Act. [93-B-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4797 of 1984.

From the Judgment and Order dated 22.12.81 of the Bombay High Court in S.C.A. No. 1104 of 1979.

V.N. Ganpule, Alok Singh and Ms. V.D. Khanna for the Appellant.

V.B. Joshi for the Respondents.

Pramod Swarup for the Bar Council of India.

The Judgment of the Court was delivered by

SEN, J. The appellant claims that he was a Sales Tax Practitioner in 1949 when the Central Provinces and Berar Sales Tax Act, 1947 was in force in the State of Madhya Pradesh and, thereafter, he continued his practise in sales tax matters at Nagpur under the provisions of the Bombay Sales Tax Act, 1959. The appellant claimed that when the Advocates Act, 1961 came into force, he was entitled to be enrolled as an Advocate by the Bar Council of Maharashtra.

It has been contended by Mr. Ganpule appearing on behalf of the appellant, that the appellant was entitled to be enrolled as an Advocate by virtue of the provisions of sub-section (3)(aa) of Section 24 of the Advocates Act, 1961. There is no dispute that he does not have a degree in law or for that matter any degree, but he is a person who was entitled to practise the profession of law before 1st December, 1961 by virtue of the provisions of the Bombay Sales Tax Act, 1959. Therefore, his right to be enrolled as an advocate could not be denied.

A We shall have to examine whether the appellant's case comes within the provisions of sub-section (3)(aa) of Section 24 of the Advocates Act to justify the claim made by Mr. Ganpule. Sub-section (1) of Section 24 lays down the qualifications which must be acquired by a person who wants to be admitted as an advocate on a State roll. Sub-section (2) provides that not-

B withstanding anything contained in sub-section (1) a vakil or a pleader who is a law graduate may be admitted as an advocate under certain circumstances. Sub-section (3) deals with cases of persons who do not fall either under sub-section (1) or (2). Sub-section (3) of Section 24 is as under :

C "24(3). Notwithstanding anything contained in sub-section (1), a person who -

(a) has, for at least three years, been vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law as an advocate of a High Court (including a High Court or a former Part B State) or of a Court of Judicial Commissioner in any

D Union territory; or

(aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been

E in public service on the said date; or

(b)

(c)"

F Since the appellant's claim is confined to clause (aa) of sub-section (3), it will have to be examined whether he was entitled 'to practise the profession of law' by virtue of the provisions of any law before 1st day of December, 1961. The appellant's case that he was appearing in sales tax matters before sales tax authorities under Bombay Sales Tax Act has not

G been disputed. But that does not mean he was practising the profession of law. Section 71 of the Bombay Sales Tax Act, 1959 empowers not only legal practioners but many other persons to appear before a sales tax authority. Section 71 provides :

H "71. Appearance before any authority in proceedings : (1) Any person, who is entitled or required to attend before any authority

in connection with any proceeding under this Act, may attend - A

- (a) by a relative or a person regularly employed by him, or
- (b) by legal practitioner or Chartered Accountant or Cost Accountant, who is not disqualified by or under sub-section (2), or
- (c) by a sales tax practitioner who possesses the prescribed qualifications and is entered in the list, which the Commissioner shall maintain in that behalf, and who is not disqualified by or under sub-section (2),

if such relative, person employed, legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner is authorised by such person in the prescribed form, and such authorisation may include the authority to act on behalf of such person in such proceedings. C

(2) The Commissioner may by order in writing and for reasons to be recorded therein disqualify for such period as is stated in the order from attending before any such authority, any legal practitioner, Chartered Accountant, Cost Accountant or sales tax practitioner,- D

- (i) who has been removed or dismissed from Government service, or
- (ii) who being a legal practitioner, Chartered Accountant or Cost Accountant is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the member of the profession to which he belongs, or
- (iii) who being a sales tax practitioner is found guilty of such misconduct by the Commissioner." E F G

It clearly appears that a distinction has been drawn between a legal practitioner and a sales tax practitioner in Section 71. Both may appear before an authority in connection with sales tax cases. That will not turn a sales tax practitioner into a legal practitioner. Even a relative or an employee of an assessee may appear on his behalf before a sales tax H

A authority. He does not require to have any special qualification for doing that. If an employee appears regularly for his employer in connection with sales tax cases of his employer before a sales tax authority, he cannot be treated to be a legal practitioner or entitled otherwise to practise the profession of law by virtue of Section 71 of the Bombay Sales Tax Act.

B The second category of persons, who are entitled to appear before sales tax authorities under clause (b) of Section 71, are professionally qualified persons. A legal practitioner or a chartered accountant or a cost accountant may appear before a sales tax authority on behalf of his client. Such appearance by a lawyer or an accountant will be in the course of carrying on his profession of law of accountancy, as the case may be. It cannot be said that an accountant carries on the profession of law when he appears before the sales tax authority, nor can it be said that a lawyer carries on the profession of an accountant when he appears before a sales tax authority.

D The third category, to which the appellant claims to belong, is the category of sales tax practitioners, who possess the prescribed qualifications. Assuming that the appellant, who is stated to be only a Matriculate, has acquired the prescribed qualifications and has been included in the list of persons qualified to appear before the sales tax authorities, he cannot be treated as a person entitled to practise either the profession of law or the profession of accountancy. A large number of persons have been permitted to appear before sales tax authorities on behalf of the dealers. The list includes an employee, a relative, a sales tax practitioner and also professionally qualified people like lawyers and accountants. The right to appear before a sales tax authority is not confined to lawyers only. We are unable to uphold the contention that merely because the appellant has been permitted to appear before the sales tax authority, he falls within the category of persons entitled to practise the profession of law by virtue of the provisions of the Bombay Sales Tax Act.

G Moreover, appearance before the sales tax authority may only be for the purpose of filing a return and producing documents in support of the return. A relative or an employee or an accountant or a sales tax practitioner can be asked to do this job by an assessee for and on his behalf. That does not mean that any one of the aforesaid persons is practising the profession of law when he appears before the statutory authority and

produces the accounts. He may even be called upon to explain the accounts or justify the entries made in the accounts books. There may be problems only of book-keeping and accountancy and nothing of law in such proceedings. Therefore, it cannot be inferred straightaway that because the sales tax practitioner has been given a right to appear before a statutory authority, he is practising the profession of law.

There is also another aspect of the matter. The exact qualification of the appellant and the nature of his work has not been set out in the petition under Article 226 of the Constitution before the Nagpur Bench of the Bombay High Court. It was stated by Mr. Ganpule that the petitioner is a Matriculate. The Secretary, Bar Council of Maharashtra, by a letter dated 27th December, 1978 called upon the appellant to produce the application made by him to the Sales Tax Officer initially for registration as a sales tax practitioner. The appellant was also asked to give particulars of any examination of accountancy which he may have passed. The appellant in reply in his letter dated 3rd January, 1979 stated :

"I have to state that I did not pass any accountancy examination since that was not necessary to qualify for a Sales Tax Practitioner under section 11-B(2) of the C.P. & Berar Sales Tax Act, 1947. Similarly, under that Act, there was neither any provision or any requirement for formal enrolment or registration as Sales Tax Practitioner, but the then Commissioner of Sales Tax did not maintain a list of such Sales Tax Practitioner. Since I was such a Sales Tax Practitioner under that Act, I practised right upto 31st December, 1959, when that Act was repealed on 1.1.1960 but the Bombay Sales Tax Act 1960, and by virtue of the Savings Section 77(1)(c) of the Repealing Act, I was entitled to practice under the Bombay S.T. Act, 1960 and get myself enrolled as Sales Tax Practitioner under Section 71 read with Rule 66(2) of that Act."

The question asked by the Secretary, Bar Council of Maharashtra, is also important for the purpose of this case. The sales tax practitioner is required to be conversant with accountancy principles and practice. He may not be a qualified chartered accountant or a cost accountant, but he must have some familiarity with accountancy practice. This is apparent from the requisite qualification of a sales tax practitioner under Rule 66 of the Bombay Sales Tax Rules :

- A "66 Qualifications of a Sales Tax practitioner : (1) A Sales Tax Practitioner shall be eligible for having his name entered in the list of sales tax practitioners maintained under Section 71, if-
- B (a) he has passed an accountancy examination, recognized by the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924), for the purpose of clause (v) of sub-section (2) of Section 288 of the Income-tax Act, 1961 (43 of 1961), or
- C (b) he has acquired such educational qualifications as are prescribed by the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924 (IV of 1924), for the purpose of clause (vi) of sub-section (2) of Section 288 of the Income-tax Act, 1961 (43 of 1961), under Rule 51 of the Income- tax Rules, 1961, and
- D (c) (Deleted by G.N. of 4.12.1962).
- E (d) he was formerly an employee of the Sales Tax Department, he is in the opinion of the Commissioner a fit and proper person to attend before any Sales Tax authority as a Sales Tax practitioner :"

The requirements of Rule 66 go to show that sales tax practitioner, who has not got a degree in law or is not a qualified chartered or cost accountant, will have to acquire some knowledge of accountancy. Even Section 288 of the Income Tax Act and the Rules framed thereunder, lays down that an Authorised Representative who is not legal practitioner entitled to practise in any civil court in India or a Chartered Accountant or a person qualified to be an auditor of a company may be allowed to appear before an Income Tax Authority, if he has passed any of the accountancy examinations recognised by the Central Board of Revenue or has acquired a degree in commerce from a recognised University. These rules go to show that apart from lawyers and chartered or cost accountants, other persons are allowed to practise in the Sales Tax Department as Sales tax practitioner provided they have acquired some knowledge of accountancy. They will have to pass one of the many recognised accountancy courses for this purpose. This goes to show that the sales tax practitioner does not carry on the profession of law when he appears before a Sales

Tax Officer. His practice is more in the nature of that of an accountant. A
Therefore, we are unable to uphold the contention that merely because the
appellant was allowed to practise as a sales tax practitioner, he is entitled
to be enrolled as an advocate by virtue of the provisions of clause (aa) of
sub-section (3) of Section 24 of the Act.

It may also be pointed out that the construction suggested by the B
appellant will lead to anomaly and must be avoided. After passing of the
Advocates Act, only one class of persons is entitled to practise the profes-
sion of law, namely, advocates (Section 29). If the phrase 'practise the
profession of law' is equated to appearance before the sales tax authority, C
in that event, a chartered accountant or a cost accountant or even a relative
or an employee of an assessee will not be entitled to appear before a sales
tax authority after the Advocates Act came into force. Not only that, if the
contention of the appellant is accepted, after the appointed date the sales
tax practitioner who does not have a degree in law will not be entitled to
be enrolled as an advocate, will not be able to practise the profession of D
law and consequently will not be able to appear before any Sales tax
authority notwithstanding the provisions of Section 71 of the Bombay Sales
Tax Act.

We are of the view that there is nothing in the provisions of the
Bombay Sales Tax Act or the rules framed thereunder to suggest that the E
right of appearance before a sales tax authority amounts to entitlement to
practise the profession of law as contemplated by clause (aa) of sub-section
(3) of Section 24 of the Advocates Act.

Therefore, this appeal fails and is dismissed. There will be no order
as to costs. F

K.T.

Appeal dismissed.