

**HIGH COURT OF GUJARAT (D.B.)**

**VASAVA NARPAT SINH (ADVOCATE) AND ANR**

*Versus*

**REGISTRAR GUJARAT HIGH COURT AND ORS**

**Date of Decision:** 11 August 2014

**Citation:** 2014 LawSuit(Guj) 1294

**Hon'ble Judges:** [Bhaskar Bhattacharya](#), [J B Pardiwala](#)

**Eq. Citations:** 2015 1 GLR 603, **2014 3 GLH 579**, 2014 3 GCD 2397

**Case Type:** Writ Petition (Public Interest Litigation)

**Case No:** 315 of 2013

**Subject:** Civil

**Editor's Note:**

**Public Interest Litigation (PIL) - Advocate Act, 1961 - Secs 30 & 34 - Gujarat High Court Rules, 1993 - Rule 428 - Petitioner prayed for a declaration that rule 428 of the said rules is violative of sec 30 of the Act, and as such, should be quashed - Held - Right of appearance of an Advocate to practice anywhere in India as provide in sec 30 of the Act is subject to fulfillment of such condition as provided in various High Court Rules - Therefore, Rule 482 is not ultra vires - Petition dismissed**

**Acts Referred:**

[Code Of Civil Procedure, 1908 Sec 122](#)

[Advocates Act, 1961 Sec 34, Sec 13, Sec 30](#)

[Gujarat High Court Rules, 1993 R 428](#)

**Final Decision:** Application dismissed

**Advocates:** [Kamal B Trivedi](#), [A S Supehia](#), [P K Jani](#), [Manan A Shah](#), [Saurabh G Amin](#)

**Cases Referred in (+):** 3

**Bhaskar Bhattacharya, C.J.**

**[1]** By this Public Interest Litigation, the petitioner, a learned advocate-in-person, has prayed for a declaration that Rule 428 of the Gujarat High Court Rules is violative of

Section 30 of the Advocates Act, 1961, and as such, should be quashed. The above prayer was made by way of an amendment, and prior thereto, the petitioner prayed for setting aside the order dated 12th November 2013 passed by the Registrar General of this Court refusing to entertain a petition filed by him for want of Advocate code and for a direction to the Registrar General to issue Advocate Code to the petitioner.

**[2]** The case made out by the petitioner may be summed up thus:-

[a]. The petitioner is an advocate registered with the Bar Council of Madhya Pradesh at Jabalpur, and the same has been recognized by the respondent No.3, the Bar Council of India, New Delhi.

[b]. The petitioner passed the All India Bar Examination and got certificate for practice throughout India in any court.

[c]. The respondent No.4, the Secretary of Ministry of Law and Justice, Department of Legal Affairs, Government of India, published a notification dated 9th June 2011 by which Section 30 of the Advocates Act had been made applicable all over the country.

[d]. The petitioner wanted to appear in the matters at Gujarat High Court and has taken membership of the Gujarat High Court Advocates Association.

[e]. The petitioner wanted to file a petition and approached the Registry of Gujarat High Court but the respondent No.1 refused the same and told the petitioner that the petitioner was required to first apply for Advocate Code as provided in Rule 428 of the Gujarat High Court Rules.

[f]. According to the petitioner, the action on the part of the Respondent No.1 in refusing to grant Advocate Code on the ground that the petitioner is not enrolled in the roll of Bar Council of Gujarat was illegal. By way of subsequent amendment, the petitioner prayed for a declaration that Rule 428 of the Gujarat High Court Rules was ultra vires Section 30 of the Advocates Act.

**[3]** During the pendency of this proceedings, the petitioner was enrolled on the roll of Bar Council of Gujarat and subsequently, the Registrar General of this Court has also granted Advocate Code in compliance with the provisions contained in Rule 428 of the Gujarat High Court Rules.

**[4]** Therefore, the only question that survives in this Public Interest Litigation is whether Rule 428 of the Gujarat High Court Rules is violative of any of the provisions of the existing law.

**[5]** In view of the importance of the question involved in this writapplication, we appointed Mr. Trivedi, the learned Advocate General of this State as amicus curiae.

**[6]** Subsequently, another learned Advocate, Ravi Iyer, moved a Civil Application praying for allowing him to intervene in the writapplication, and we have allowed such prayer.

**[7]** The Bar Council of Gujarat has opposed this writ-application by filing an affidavit-in-reply.

**[8]** In order to appreciate the aforesaid question, it will be profitable to refer to Rule 428 of the Gujarat High Court Rules and Sections 30 and 34 of the Advocates Act. Those are quoted below: Rule 428 of the Gujarat High Court Rules:-

"428. Mode of appearance by advocate not on the Roll of Advocates maintained by the Bar Council of Gujarat.- An Advocate who is not on the roll of advocates of the Bar Council shall not act in such Court, unless he files an appointment alongwith an advocate who is on the Roll of the Bar Council and who is ordinarily practising in such Court; but such Advocate who is not on Roll of Advocates of the Bar Council shall be permitted to appear and plead in such Court if he appears with or is instructed by an advocate who is enrolled by the Bar Council and who has filed an appointment. Sections 30 and 34 of the Advocates Act:-

"30. Right of advocates to practise.-

Subject to the provisions of the 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 authorised 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 practise.

"34. Power of High Courts to make rules.-

(1). The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(1A). The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his

adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

(2). Without prejudice to the provisions contained in subsection (1), the High Court at Calcutta may make rules providing for the holding of the intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter concerned therewith."

**[9]** The petitioner-in-person, at the very outset, has relied upon a decision of the Supreme Court in the case of [V. Sudeer v. Bar Council of India](#), 1999 AIR(SC) 1167 where the sole question was whether the Bar Council of India Training Rules, 1995, as amended by the Resolution of the Bar Council of India in its meeting dated 19th July 1998 relating to training to entrants of legal profession, are within the competence of the Bar Council of India or are ultra vires its rule making powers under the Advocates Act. In that context, the Supreme Court held that the Bar Council of India Rules 1995 laying down pre-enrolment training as a pre-condition is ultra vires section 49 of the Advocates Act inasmuch as the right of an Advocate cannot be restricted by creating trainee Advocates qua his seeking only adjournment, and, as such, Rule 15 truncating right to practice is ultra vires section 49(1) (ah) of the Advocates Act. According to the petitioner, the High Court by enacting Rule 428 cannot put any restriction on his right to practice in any High Court once his name was in the roll of the Bar Council, Madhya Pradesh.

**[10]** Mr. Trivedi, the learned Advocate General appearing as amicus curiae has, however, opposed the contentions of the petitioner and has contended that Rule 428 of the Gujarat High Court Rules is, in no way, in conflict with section 30 of the Advocates Act. Mr. Trivedi in this connection has placed strong reliance upon the observations of a three-judge-Bench of the Supreme Court in the case of [BAR COUNCIL OF INDIA v. HIGH COURT OF KERALA](#), 2004 AIR(SC) 2227 where constitutionality of Rule 11 of the Rules framed by the High Court of Kerala prohibiting an Advocate from practising unless he purges the contempt was challenged as ultra vires on the ground that the same interferes with the right to practice. In that context, the said Bench relied upon an earlier decision of the Constitution Bench in the case of Ex-Capt. [Harish Uppal Vs. Union of India and Another](#), 2003 AIR(SC) 739 and relied upon the following observations in the context of right of appearance of an Advocate in a Court.

"34...Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in Court can only be within the domain of Courts. Thus Article 145 of the Constitution of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules

regarding condition on which a person (including an Advocate) can practice in the Supreme Court and/or in the High Court and Courts subordinate thereto. Many Courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self restraint is exercised, Courts may now have to consider framing specific rules debarring Advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the Courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of Bar Councils. It would be concerning the dignity and orderly functioning of the Courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the Courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file Vakalat on behalf of client even though his appearance inside the Court is not permitted. Conduct in Court is a matter concerning the Court and hence the Bar Council cannot claim that what should happen inside the Court could also be regulated by them in exercise of their disciplinary powers. The right to practice, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. But the right to appear and conduct cases in the Court is a matter on which the Court must and does have major supervisory and controlling power. Hence Courts cannot be and are not divested of control of supervision of conduct in Court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of Court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in Courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of Court proceedings. On the contrary it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the Court. Proceedings inside the Courts are always expected to be held in a dignified and orderly manner. 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 the majesty besides impairing the confidence of the public in the efficacy of the institution of the Courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the Courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of

the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an Advocate shall have a right to practice i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the Court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an Advocate shall be permitted to practice in Courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an Advocate to appear in a Court. An Advocate appears in a Court subject to such conditions as are laid down by the Court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a Court. Even if Section 30 were to be brought into force control of proceedings in Court will always remain with the Court. Thus even then the right to appear in Court will be subject to complying with conditions laid down by Courts just as practice outside Courts would be subject to conditions laid down by Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other."

This Court is bound by the aforementioned decisions."

**[11]** It appears that in the last two sentences of the above quoted paragraph, the Supreme Court specifically held that even if Section 30 were to be brought into force control of proceedings in Court will always remain with the Court and thus even then the right to appear in Court will be subject to complying with conditions laid down by Courts. The Supreme Court further held that right to practice is subject to the rule-making power of the High Court under Section 34 of the Advocates Act, and thus, the right to appear in any Court is not an absolute right in that sense.

**[12]** In our view, Mr. Trivedi is perfectly justified in his contention that the provision for Advocate Code is beneficial for the smooth administration of justice and for maintaining natural justice in the course of judicial proceedings. Otherwise, if without getting a code, an advocate of a different State is permitted to appear and after filing proceedings if he gets an interim order and his whereabouts is not traceable, the person against whom such ad-interim order of injunction is granted will face immense difficulties in vacating the adinterim order of injunction after service of notice upon the petitioner. As provided in Section 122 of the Code of Civil Procedure, the High Court is vested with the power to frame rules not only for the proper administration of justice in the High Court but also in District Courts and the right of appearance of an Advocate to

practice anywhere in India as provided in section 30 of the Advocates Act is subject to fulfillment of such condition as provided in various High Court Rules.

**[13]** We, therefore, find that notwithstanding enforcement of section 30 of the Advocates Act with effect from 2011, an Advocate has no absolute right to have appearance in any court and such right must be subject to compliance of other laws laid down by the High Court in exercise of power under section 34 of the Advocates Act and Section 122 of the Code of Civil Procedure.

**[14]** We, thus, find that there is no merit in this application and the same is accordingly dismissed.

15 We record appreciation for the valuable submissions made by the learned Advocate General as amicus curiae in this matter.

