

A.F.R.

**Chief Justice's Court**

**Case :-** MISC. BENCH No. - 7116 of 2014

**Petitioner :-** Tax Lawyers Association Lko.Throu General Secy.& Anr.

**Respondent :-** State Of U.P.Thru.Prin.Secy.Tax & Registration U.P.Lko.& Ors

**Counsel for Petitioner :-** Dhruv Mathur,Rahul Agarwal,Sandeep Dixit,Uphar Shukla,Vaibhav Pandey

**Counsel for Respondent :-** C.S.C.,Ashok Kumar,Pratik Nagar,Praveen Kumar

**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice**  
**Hon'ble Devendra Kumar Upadhyaya,J.**

In the writ petition, which has been admitted by an order passed the Division Bench on 6 August 2014, there is a challenge to the validity of Rule 73 of the U.P. Value Added Tax Rules, 2008<sup>1</sup> on the ground that they are *ultra vires* the provisions of the U.P. Value Added Tax Act, 2008<sup>2</sup> and the Advocates Act, 1961<sup>3</sup> insofar as it permits persons who are not Advocates 'to appear and represent' before the authorities established under the Act of 2008. Besides challenging a circular dated 1 May 2013 of the Additional Commissioner, Commercial Tax, the petitioners have sought a mandamus to the respondents not to allow or permit any person other than an Advocate as defined under the Act of 1961 to practice, appear and represent any dealer before the authorities established under the Act of 2008. On 6 August 2014, when the petition was admitted by the Division Bench, the following interim order was passed:

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1 Rules of 2008

2 Act of 2008

3 Act of 1961

“In the meantime, as an interim measure, we direct the respondents that no person whosoever, may be permitted to advertise in the Newspaper or any leaflet, inviting assesses for the purpose of filing of return or arguing before the authority under the VAT Act. Any person, who is not a registered advocate, shall not be permitted to appear before the Authority under the VAT Act.”

Applications for impleadment and for vacating the interim order have been filed before this Court by the Institute of Chartered Accountants of India and by the Institute of Company Secretaries of India. We allow the impleadment applications. The applications for vacating the interim order have been heard.

Section 79 of the Act of 2008 empowers the State Government to make rules to carry out the purposes of the Act. Under sub-section (2) of Section 79 of the Act of 2008, it has been specified that without prejudice to the generality of the powers conferred under sub-section (1), rules may, *inter alia*, provide for 'generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act'. Rules of 2008 have been framed in exercise of the rule making power. Sub-section (4) of Section 79 of the Act of 2008 stipulates that all rules, which are made under this Section, shall be published in the Gazette and shall have effect immediately as if enacted in the Act. The Rules, therefore, have force and effect under the Act as if enacted into its provisions and in the same manner

as if they are part and parcel of the parent legislation. Rule 73 of the Rules of 2008 provides for representation before the authorities under the Act and is to the following effect:

**“Rule 73. Representation before the authorities under the Act. -**

Unless otherwise provided in the Act or these Rules, anything which is by the Act or the rules required or permitted to be done by a dealer, except when he is required to attend personally for examination or affirmation on oath, may be done by a lawyer, an accountant or an authorized agent appointed by the dealer in writing in this behalf.”

Rule 2 (e) of the Rules of 2008 defined the expression 'accountant', prior to a recent amendment on 27 June 2014, as follows:

**“2. (e) “Accountant”** means a Chartered Accountant as defined in Chartered Accountants Act, 1949, or a member of an Association of Accountants recognized in this behalf by the Central Board of Revenue.”

Rule 2 (e) of the Rules of 2008 has been recently amended with effect from 27 June 2014. As amended, the expression 'accountant' is now defined as follows:

**“2. (e) “Accountant”** means a Chartered Accountant as defined in Chartered Accountants Act, 1949, or a member of an Association of Accountants recognized in this

behalf by the Central Board of Revenue and includes a Company Secretary as defined in the Company Secretaries Act, 1980 and a Cost Accountant as defined in the Cost and Works Accountant Act, 1959.”

At this stage, it would also be necessary to note that rule 63 (8) of the Rules of 2008 provides that any applicant or opposite party shall be entitled to have his case argued before the appellate authority or the Tribunal by a lawyer or an accountant or a State representative, as the case may be.

The Act of 2008 came into force from 1 January 2008. Prior thereto, under the U.P. Trade Tax Act, 1948, Section 24 (1) conferred a similar rule making power on the State Government to make rules to carry out the purposes of the Act. Section 24 (2) (f), *inter alia*, extended the rule making power to regulating generally the procedure to be followed and the forms to be adopted in proceedings under the Act. Rule 77-A of the erstwhile Act of 1948 was in the following terms:

**“77-A.** Unless otherwise provided in the Act or the Rules thereunder, anything which is by the Act or the Rules required or permitted to be done by a dealer, except when he is required to attend personally for examination on oath or affirmation, may be done by a lawyer, an accountant or an authorized agent appointed by the dealer in writing in this behalf.”

When the U.P. Trade Tax Act, 1948 was repealed upon the enactment of the Act of 2008, Section 81 of the latter Act made a provision for repeals

and savings. Under section 81 (2) (a) of the Act of 2008, it has been stipulated that notwithstanding such repeal any notification, rule, regulation or order, which is in force before commencement of the Act shall, so far as it is not inconsistent with the provisions of the Act, be deemed to have been issued, made or, as the case may be, granted under the corresponding provisions of the Act. Moreover, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, shall not be affected.

Now it is in this background that it is necessary to consider the background for the challenge. Section 29 of the Advocates' Act of 1961, which forms a part of Chapter IV deals with the right to practise and stipulates that subject to the provisions of the Act and any rules made thereunder, there shall, on the appointed date, be only one class of persons entitled to practise the profession of law, namely, advocates. Section 32 of the Act of 1961 allows a person, who is not enrolled, to appear before any court, authority or person subject to the grant of permission for appearance in any particular case. Section 33 of the Act of 1961 provides as follows:

**“33. Advocates alone entitled to practise. --** Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act.”

Under section 33 of the Act of 1961, no person is entitled to practise in any court or before any authority or person, on or after the appointed

day, unless he is enrolled as an advocate under the Act of 1961. This is however, subject to a provision to the contrary being made in the Act itself or in any other law for the time being in force. The embargo which is enacted in Section 33 of the Act of 1961 upon persons, who are not advocates practicing in any court or before any authority or person is, therefore, clearly subject to a provision to the contrary in the Act or except as otherwise provided in any other law for the time being in force. Hence, where a provision is contained in any other law for the time being in force, entitling persons who are not advocates to practise in any court or before any authority or person, its effect would be to lift the embargo which is imposed by Section 33 of the Act of 1961.

In **L.M. Mahurkar v. Bar Council of Maharashtra**<sup>4</sup>, the Supreme Court dealt with the provisions of the Bombay Sales Tax Act, 1959 and the rules framed thereunder. Under section 71, a specific provision was made under which a legal practitioner, Chartered Accountant, or Cost Accountant, who is not disqualified, was entitled to attend before any authority in connection with a proceeding under the Act. The Supreme Court held that though both the legal practitioner and the sales tax practitioner may appear before the authority in sales tax cases, that would not turn a sales tax practitioner into a legal practitioner. Dealing with the category of Chartered Accountants and Cost Accountants, the Supreme Court held as follows:

**“6. 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 or 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.”

The Supreme Court also noted that a large number of persons have been permitted to appear before sales tax authorities on behalf of 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 was therefore, it was held, not confined only to lawyers.

The provisions of the Consumer Protection Act, 1986 fell for consideration before the Supreme Court in a judgment dated 8 May 2006 in **R.D. Nagpal v. Vijay Dutt**<sup>5</sup>. Rule 14 (1) of the Consumer Protection Act, 1986 allows a complainant or his agent to file a complaint, while rule 14 (3) of the Act allows parties or their agents to appear before the National Commission. The expression 'agent' as defined in Section 2 (b) of the Act, means a person duly authorized by a party to present any complaint, appeal

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<sup>5</sup> (2011) 12 SCC 498

or reply on its behalf before the National Commission. The Supreme Court held that given the wide definition of the expression 'agent', there was no reason, if the Commission were otherwise satisfied that a person was authorized on behalf of the appellant, to refuse to allow him to represent it and to cross examine the complainant. The provisions of Section 33 of the Advocates' Act of 1961 came up for consideration and it was held as follows:

“**6.** The learned counsel appearing on behalf of the respondents has relied upon Section 33 of the Advocates Act, 1961. Section 33 makes it clear that advocates alone will be entitled to practise before any court or before any authority, etc. “except as otherwise provided in this Act or in any other law for the time being in force.” The Consumer Protection Act read with the Rules would be “a law for the time being in force.”

The provisions of the Consumer Protection Act, 1986 were also considered in a judgment of three Hon'ble Judges of the Supreme Court in **C. Venkatachalam v. Ajitkumar C. Shah**<sup>6</sup>. That was a case where the Division Bench of the High Court had held that the right of audience inheres in favour of authorized agents of parties in proceedings before the District Consumer Forum and the State Commission and such a right is not inconsistent or in conflict with the provisions of the Advocates' Act, 1961. The High Court had held that the right of an advocate to practise is not an absolute right but is subject to other provisions of the Act and any other

law for the time being in force, permitting an authorized agent to represent parties in the proceedings before the District Forum or State Commission, would not amount to the practise of law. This was held not to be inconsistent with Section 33 of the Act of 1961. The Supreme Court, while dealing with the judgment of the High Court, observed that the High Court was fully justified in observing that authorized agents do not practise law when they are permitted to appear before the District Forum and State Commission and that under many other statutes including Sales Tax Acts, Income Tax Act and Competition Act, persons who are not advocates, are permitted to represent before the authorities. The view taken by the High Court was approved and it was held as follows:-

**“75.** The agent has been defined both in the Consumer Protection Rules, 1987 and under the Maharashtra Consumer Protection Rules, 2000. The agents have been permitted to appear before the consumer forums. The appearance of authorized agents is not inconsistent with Section 33 of the Advocates Act, 1961.”

**“82.** When the legislature has permitted authorized agents to appear on behalf of the complainant, then the courts cannot compel the consumer to engage the services of an advocate.”

At this stage, it would be necessary to note that in other coordinate legislation, the legislature has recognized a right of representation on behalf

of a party to a proceeding by a person who is not an advocate . Section 288 of the Income Tax Act, 1961 provides that an assessee who is entitled or required to attend before any income tax authority or the Appellate Authority in connection with any proceeding under the Act otherwise than when required under Section 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend by an authorized representative. Clause (iv) of sub-section (2) of Section 288 of the Income Tax Act defines the expression 'authorized representative' to mean a person authorized by the assessee in writing to appear on his behalf, and being 'an accountant'. Similarly, under clause (v), an authorized representative may be a person who has passed any accountancy examination recognized in this behalf by the Central Board of Direct Taxes. Rule 50 of the Income Tax Rules, 1962 has recognized for the purposes of clause (v) of Section 288 (2) the final examination of the Institute of Company Secretaries of India as well as the final examination of the Institute of Cost and Works Accountants of India.

In view of this body of law on the subject and particularly, having due regard to the judgments of the Supreme Court, it is, in our view, inappropriate to restrain, by a blanket order of injunction any person who is not registered as an advocate from appearing before the authorities under the Act of 2008. Any such prohibition would be in the teeth of the provisions of Rule 73 read with Rule 2 (e) of the Rules of 2008. Section 33 of the Act of 1961, in fact, expressly recognizes that the prohibition on a

person who is not enrolled as an advocate under the Act from practicing in any court or before any authority or person is 'except as otherwise provided in the Act or in any other law for the time being in force'.

The submission which has, however, been urged on behalf of the petitioners is three fold:

- (i) It has been submitted that Section 33 of the Act of 1961 is wider in its ambit than Section 29 of the Act of 1961. Though Section 29 refers to an entitlement to practise the profession of law, Section 33 refers to an entitlement to practise which is of a broader connotation;
- (ii) It has been submitted that the expression 'for the time being in force' in Section 33 of the Act of 1961 would refer to a law which was in existence on the date when the Act of 1961 was enacted and, hence, would not govern a situation such as that arising out of Rule 73 of the Rules which have been framed in 2008 under the Act of 2008;
- (iii) It has been submitted that the Act of 2008 is silent in regard to the entitlement to appear. Such a provision is made only in the rules. It is urged that there is no source of power for Chartered Accountants and Company Secretaries to appear before an adjudicatory authority and the law which has been referred to in Section 33 of the Act of 1961 must be a law relating to the entitlement to practise for a member of the profession. Hence, it has been submitted that a provision which is made in fiscal legislation in regard to the entitlement to appear before a court, authority or tribunal would be *ultra vires* the provisions of the Act of 1961, which must

be regarded as occupying the field.

Insofar as the first submission is concerned, it need not detain the Court. Section 29 of the Act of 1961 speaks of there being only one class of persons entitled to practise the profession of law, namely, advocates. Section 33 of the Act of 1961 contemplates that only a person who is enrolled as an advocate under the Act will be entitled to practise in any court or before any authority or person. The entitlement to practise under Section 33 of the Advocates' Act of 1961 is obviously an entitlement to practise the profession of law but, what is more important is that Section 33 recognizes that any other provision of law and for that matter, the Act itself may authorize a person who is not enrolled as an advocate under it to practise in any court or before any authority or person. Consequently, there is no question of the *ultra vires* doctrine being attracted for the simple reason that Section 33 of the Act of 1961 contemplates that any other law may authorize a person who is not enrolled as an advocate under the Act to practise before any court, authority or person.

Insofar as the second limb of the submissions is concerned, the expression 'any other law for the time being in force' cannot be restricted to a law which was in force on the date of the enactment of the Act of 1961. On the contrary, 'any other law for the time being in force' must receive its plain and natural connotation, which means a law which was in force when the Act of 1961 was enacted as well as a law which may be enacted by the competent legislature from time to time. A law for the time being in force

does not mean only a law which was in existence on the date of the enactment of the Act of 1961.

Finally, on the third limb of the submissions, at this stage, it would be necessary to note that entry 26 of the Concurrent List of the VIIth Schedule to the Constitution deals with legal, medical and other professions. The Act of 1961, which has been enacted by Parliament is referable to the power conferred by Article 246 of the Constitution read with entry 26 of the Concurrent List. Once Section 33 of the Act of 1961 contemplates that any other law which is made by the competent legislature may recognize an entitlement to practise in any court or before any authority or person to a person who is not an advocate, any such law must, to that extent, be also referable to the same head of legislative power. In any event, regulating the practise and procedure before an authority constituted albeit under the fiscal legislation is a provision which is ancillary to the proper implementation of the law and falls within the domain of the competent legislative body.

In summary, the conclusion which we have arrived at is that under Rule 73 of the Rules of 2008, it is within the express contemplation of the subordinate legislation that anything which is by the Act or the Rules required or permitted to be done by a dealer (except when he is required to attend personally for examination or affirmation on oath) may be done by (i) a lawyer; (ii) an accountant; or (iii) an authorized agent. The expression 'accountant' is defined in Rule 2 (e) of the Rules of 2008 to mean a

Chartered Accountant as defined in the Chartered Accountants Act, 1949 or a member of an Association of Accountants recognized in this behalf by the Board. Following the amendment of the rules on 27 June 2014, Company Secretaries and the Cost Accountants have also been brought within the fold of rule 2 (e) of the Rules of 2008.

Rule 73 of the Rules of 2008 has force and effect as if it is a provision which is duly enacted in the Act of 2008 by virtue of the provisions of Section 79 (4). Rule 73, therefore, meets the description of a provision which is made in that regard by a law for the time being in force within the meaning of Section 33 of the Act of 1961.

*Prima facie*, therefore, and particularly, having due regard the law laid down by the Supreme Court, there would be no occasion to hold that Rule 73 of the Rules of 2008, insofar as it governs the category of Accountants is *ultra vires* the provisions of the Act of 1961, or for that matter, the provisions of the Act of 2008.

Insofar as the third category of authorized agents governed by Rule 73 of the Rules 2008 is concerned, an application for vacating the interim order has been filed today together with an application for impleadment. Insofar as the category of authorized agents is concerned, the application for impleadment is allowed. We, however, defer consideration of the application for vacating the interim order in relation to the category of authorized agents till the next date of hearing, which shall be 16 September 2014. The application for impleadment filed by the Bar Council of Uttar

Pradesh is allowed. The reply and the rejoinder affidavit, if any, shall be filed in the meantime. We also direct the State Government to file its counter in the meantime.

In the circumstances and at the present stage, we clarify that the interim order dated 6 August 2014 shall stand vacated insofar as the categories of (i) Chartered Accountants; (ii) Cost and Works Accountants; and (iii) Company Secretaries are concerned.

List the matter on 16 September 2014.

**Order Date :-** 20.8.2014  
RKK/-

(Dr. D. Y. Chandrachud, CJ)

(D.K. Upadhyaya, J)

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**Counsel for Respondent :-** C.S.C.,Ashok Kumar,Pratik Nagar,Praveen Kumar

**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice**  
**Hon'ble Devendra Kumar Upadhyaya,J.**

For orders, see order of date passed on separate sheets.

**Order Date :-** 20.8.2014

RKK/-

(Dr. D. Y. Chandrachud, CJ)

(D.K. Upadhyaya, J)

**Case :-** MISC. BENCH No. - 7116 of 2014

**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud,Chief Justice**  
**Hon'ble Devendra Kumar Upadhyaya,J.**

Application for impleadment is allowed.

**Order Date :-** 20.8.2014

RKK/-

(Dr. D. Y. Chandrachud, CJ)

(D.K. Upadhyaya, J)

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