

W.P.No.33465 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2025

WEB COPY

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.No.33465 of 2024

Vijaya Vaishnavi Sriram
D/o Sriram MV

.. Petitioner

v.

1. Union of India
represented by Under Secretary
Ministry of Law and Justice
4th Floor, A1 Shastri Bhavan
New Delhi 110 001
2. State of Tamil Nadu
Law Department
represented by Secretary to Government
Government of Tamil Nadu
St.George Fort
Chennai 600 009
3. The Registrar
Hon'ble High Court of Madras
Chennai 600 104
4. Sriram Sridhar, S/o A.N.Sridhar .. Respondents



W.P.No.33465 of 2024

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring Section 13 of the Family Courts Act, 1984 as unconstitutional.

For Petitioner :: Mr.Mahesh Kumar.S

For Respondents :: Mr.AR.L.Sundaresan
Additional Solicitor General of India
assisted by
Mr.R.Rajesh Vivekananthan
Deputy Solicitor General of India
for R1
Mr.G.Ameedius
Government Advocate for R2
No appearance for R3
Mr.S.Vinod for R4

ORDER

(Order of the Court was made by S.M.SUBRAMANIAM,J.)

The present writ of declaration has been instituted to declare Section 13 of the Family Courts Act, 1984 as unconstitutional.

2. The learned counsel for petitioner would mainly contend that the provision infringes the right to practice in Courts contemplated under the provisions of the Advocates Act, 1961. Right of a legal practitioner is an absolute right under the Advocates Act and therefore any prohibition in this

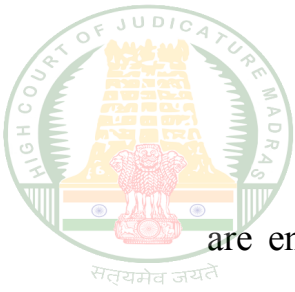


W.P.No.33465 of 2024

WEB COPY

regard is unsustainable. In support of the said contention, the learned counsel for petitioner would submit that in the absence of lawyers, the litigants in the Family Courts are finding it difficult to defend their cases and thus Section 13 infringing the right of legal practitioners is liable to be declared as unconstitutional.

3. Mr.AR.L.Sundaresan, learned Additional Solicitor General of India appearing on behalf of Union of India would strenuously oppose by stating that the validity of Section 13 of the Family Courts Act is no more res integra. The Act is a Central Act and since the validity of the said provision has been upheld by the Bombay High Court and two other High Courts, judicial discipline requires that the said judgments are to be followed in order to avoid any inconsistency in implementing the Central Act. It is contended that there is no absolute prohibition, since Section 13 read with the Family Courts (Procedure) Rules, 1996 notified by the High Court of Madras, more specifically, Rule 41 provides permission for representation by a lawyer. Therefore, there is no absolute prohibition as contended by the petitioner. Permission is granted in deserving cases and the Family Courts



W.P.No.33465 of 2024

are empowered to withdraw the permission wherever necessary. Thus the writ on hand is devoid of merits.

4. In view of the judgments of Bombay High Court, Rajasthan High Court and Allahabad High Court, it would be suffice if the principles laid down by these High Courts are extracted for adopting the legal principles. A Division Bench of the Bombay High Court in the case of *Lata d/o Baburao Pimple v. Union of India and others*, 1993 Mh.L.J. 673 tested the validity of Section 13 of the Family Courts Act, 1984. The findings of the Division Bench of Bombay High Court are extracted hereunder:-

“17. Mr. Agarwal, learned Counsel appearing for the Union of India urged that Section 13 does not prohibit the party from availing services of the lawyer. Such permission can be granted on an application if made by a party and if the Court comes to the conclusion that it is necessary to do so. He however, urged that there is no fundamental right to a citizen/litigant to appear through a lawyer save and except in case of Art.22(1) of the Constitution of India. In support of this submission, he relied upon the decision of the Supreme Court in *Paradip Port Trust v. Their Workmen*. While construing S.36(4) of the Industrial Disputes Act, the Supreme



WEB COPY



W.P.No.33465 of 2024

Court held as under (at page 44) :--

"We have given our anxious consideration to the above submission. It is true that "and" in a particular context and in view of the object and purpose of a particular legislation may be read as "or" to give effect to the intent of the legislature. However, having regard to the history of the present legislation, recognition of law of the unequal strength of the parties in adjudication proceedings before a Tribunal, intention of the law being to discourage representation by legal practitioners as such, and the need for expeditious disposal of cases, we are unable to hold that "and" in S. 36(4) can be read as "or".

This ratio, therefore, indicates that no party can claim as a matter of right, a right to be represented through lawyer. It is open to the legislature to put restrictions on such representation by legal practitioner, having regard to the aims and object of the Act. On an identical issue the Supreme Court in Lingappa Pochanna v. State of Maharashtra, reiterate the same principle. It was a case under the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1971. Section 9-A has laid down a restriction of appearance of Advocate on behalf of non-Tribal in proceedings under the said Act. Challenge was given under Art.19(1)(g) of the Constitution. While dealing with this challenge, the Supreme Court in paragraph 35 held as under (at page 404):



WEB COPY



W.P.No.33465 of 2024

"Now it is well-settled that apart from the provisions of Art.22(1) of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court. The only fundamental right recognised by the Constitution is that under Art.22(1) by which an accused who is arrested and detained in custody is entitled to consult and be defended by a legal practitioner of his choice. In all other matters, i.e. suits or other proceedings in which the accused is not arrested and detained on a criminal charge, the litigant has no fundamental right to be represented by a legal practitioner."

The Supreme Court has recognised only fundamental right under Constitution to be represented by a lawyer is under Art.22(1) of the Constitution. In view of this authoritative pronouncement by the Supreme Court, we are not impressed by the challenge raised by the petitioners to S.13.

18. Mr. Agarwal then drew our attention to the order dated 4-1-1988 of the Supreme Court in Writ Petition No. 1142 of 1987 (Kanpur Bar Association v. Union of India). The issue before the Supreme Court was relating to S.13 of the Act. While negating the right of a party to be represented by a lawyer, the Supreme Court has observed that no party has a right to claim to be represented by a legal practitioner. With this observation, the Supreme Court rejected the petition. In



WEB COPY



W.P.No.33465 of 2024

view of this settled position of law, contention raised on behalf of the petitioners by Mr. Gole that the petitioners have fundamental right under Arts. 21, 19(1)(g) and 39-A of the Constitution of India to be represented by legal practitioner, must be rejected.

19. In view of our above discussion, we may only reproduce the argument of Mr. Anturkar which, in our opinion, stands concluded on our aforesaid reasoning. The argument of Mr.Anturkar is :

"Following judgment of the Supreme Court in Art.19(1)(a) of the Constitution has to be construed liberally which includes litigant's right to put up his case more effectively by engaging Advocate and exercise of that right by the litigant can be put to restriction only on the ground mentioned in Art. 19(2)."

He, however, conceded that Section 13 contains reasonable restriction, but the same is not in conformity with Art.19(2). He also urged that Art.39A has to be read with Art.19(1)(a). In support of this submission, he relied upon decision of this in Perfect Paper and Steel Converers P.Ltd. v. The Bombay National General Workers Union, 1989 MLJ 518.

20. It was then contended on behalf of the petitioners that S.13 is discriminatory on the ground that litigants falling



WEB COPY



W.P.No.33465 of 2024

outside the jurisdiction of the Family Courts are permitted to be represented by a lawyer whereas litigants covered by the jurisdiction of the Court are not permitted. This argument is again devoid of any merit because once it is held that classification made by S.13(1)(a) of the Act, is reasonable classification, then the same reasoning must hold good as regards S.13 also. It must also be emphasised that S.13 does not create absolute bar and it is open to the party to make an application to the Family Court in the circumstances stated in S.13 for being represented by a lawyer. Moreover, this Court in *Kishorilal v. Dwarkabai*, 1992 MLJ997, has laid down guidelines in this behalf.”

5. One of the grounds raised by the petitioner that Section 13 is discriminatory on the ground that the litigants falling outside the jurisdiction of the Family Courts are permitted to be represented by lawyers, more specifically, in the Sub Courts in Taluk and other areas in the State. The said ground of discrimination was also considered by the Bombay High Court in paragraph-20. The said argument is devoid of any merit because once it is held that classification made by Section 13(1)(a) of the Act is reasonable classification, the same reasoning must hold good as regards



W.P.No.33465 of 2024

WEB COPY

Section 13 also. It was emphasised that Section 13 does not create an absolute bar. It is open to the party to make an application to the Family Court under the Family Courts (Procedure) Rules notified by the High Court of Madras. The Family Court may grant permission for engagement of a lawyer to defend the case.

6. Another Division Bench of the Bombay High Court in the case of *Leela Mahadeo Joshi v. Dr.Mahadeo Sitaram Joshi*, AIR 1991 Bombay 105, observed as follows:-

“37. Permission for Representation by a Lawyer :
The Court may permit the parties to be represented by a lawyer in Court. Such permission may be granted if the case involves complicated questions of law or fact, if the Court is of the view that the party in person will not be in a position to conduct his or her case adequately or for any other reasons. The reason for granting permission shall be recorded in the order. Permission so granted may be revoked by the Court at any stage of the proceedings if the Court considers it just and necessary”.



WEB COPY

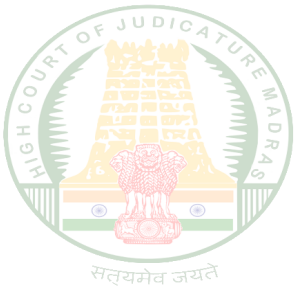


W.P.No.33465 of 2024

It is, therefore, patently clear that reading S.13 with R. 37 that adequate provision has been made for legal representation and in the absence of convincing reasons, such permission ought not to be turned down.”

7. A Division Bench of the Rajasthan High Court in the case of *Sarala Sharma v. State, AIR 2002 Rajasthan 301* considered the validity of Section 13 of the Family Courts Act. The observations made by the Division Bench are extraced hereunder:-

“9. The courts strongly leaves against a construction which reduces the statute to a futility. The court shall read the statute so as to make it effective and operative unless the words used in the statute cannot be given any other meaning. Statute is designed to be workable and the interpretation thereof by the courts should be to secure that object unless crucial omission or clear direction makes that end unattainable. This in view, if we read main part of Section 13 to include the family court's authority to permit engagement of a Lawyer/Advocate of party in exceptional circumstances, Rule 22 of the Rules of 1994 shall be inconformity of Section 13 of the Act of 1984. To save the statute from declaring illegal, it is permissible for the Court to reading down the provision. Rule 22 of the Rules of 1994 reads thus:-



WEB COPY



W.P.No.33465 of 2024

"22. Permission for representation by a Lawyer:- The Presiding Officer of a Family Court, in his discretion may permit a Lawyer/Advocate to appear in the Court, wherever, he feels that it is necessary in the interest of justice."

In stead thereof if we read rule like-

"22. Permission for representation by a Lawyer:- The Presiding Officer of a Family Court, in his discretion in exceptional circumstances may permit a Lawyer/Advocate to appear in the Court, wherever, he feels that it is necessary in the interest of justice."

10. The Rule 22 as above would permit Family Court in its discretion to allow a party to engage Lawyer or Advocate in a suit or proceeding pending before Family Court, in exceptional circumstances if it feels that engagement of Lawyer or Advocate is necessary in the interest of justice. Discretion to be exercised by the Family Court is judicial discretion and therefore it should reflect from the order permitting such engagement. Judicial discretion which shall be exercised by the Family Court shall be guided "by reasons. It should not be vague, arbitrary and fanciful but should be exercised reasonably in good faith keeping in view that order will be passed only in exceptional circumstances to meet the ends of justice. While exercising such discretion of



WEB COPY



W.P.No.33465 of 2024

permitting Lawyer or Advocate to appear in the Court for a party, the Court must keep in mind that normal rule is no intervention of the Lawyer/Advocate in the proceeding before Family Court, it is only in the exceptional circumstances, which must appear from the order of the Court, a party can be permitted to engage a Lawyer/Advocate to appear on its behalf in the suit or proceedings pending before the Family Court.”

8. A Division Bench of the Allahabad High Court in the case of *Bansidhar v. Seema*, (1992) DMC 353 has also held that Section 13 is valid and does not offend Article 22(1) of the Constitution.

9. Pertinently, the three Judges' Bench of the Hon'ble Supreme Court of India in the case of *Thyssen Krupp Industries India Private Limited and others v. Suresh Maruti Chougule and others*, 2023 LiveLaw (SC) 868, considered a similar provision under the Industrial Disputes Act on a reference made before the Supreme Court and the three Judges' Bench has settled the legal principles regarding absolute right to practice law in Courts, Tribunals etc. The Supreme Court considered the judgment in *Paradip Port Trust, Paradip v. Their Workmen*, (1977) 2 SCC 339, where



W.P.No.33465 of 2024

WEB COPY

the issue, in a nutshell, is whether the provisions of the Industrial Disputes Act, 1947 dealing with the aspects of representation by either of the parties through a specific lawyer and limitation put thereon, needs to be re-looked. The three Judges' Bench of the Hon'ble Supreme Court, while agreeing with the view taken in Paradip Port Trust case cited supra, held that the matter is not to be reviewed from the point of view of the legal practitioner but from the aspect of the employer and workmen who are the principal contestants in an industrial dispute, which was taken into consideration in Paradip Port Trust case. Even the Bombay High Court in Lata's case cited supra, relied upon the judgment in Paradip Port Trust case. Thus the legal principles settled in Paradip Port Trust case have been upheld by the three Judges' Bench of the Hon'ble Supreme Court of India and that became the law of the land.

10. In the present case, the stakeholders are husband and wife mostly along with their children or relatives and that being so, the principles settled in Paradip Port Trust case would be more appropriate and there is no scope for taking a different view.



W.P.No.33465 of 2024

11. In view of the aforesaid settled legal principles, no further adjudication with reference to the grounds raised by the petitioner would be required in this case. Consequently, the writ petition stands dismissed. No costs.

Index : yes

(S.M.S.,J.) (K.R.S.,J.)

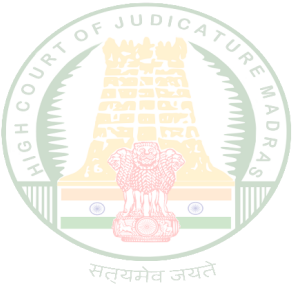
Neutral citation : yes

05.03.2025

SS

To

1. The Under Secretary to Union of India
Ministry of Law and Justice
4th Floor, A1 Shastri Bhavan
New Delhi 110 001
2. The Secretary to Government
Law Department
St.George Fort
Chennai 600 009
3. The Registrar
Hon'ble High Court of Madras
Chennai 600 104



WEB COPY



W.P.No.33465 of 2024

S.M.SUBRAMANIAM,J.

AND

K.RAJASEKAR,J.

SS

W.P.No.33465 of 2024

05.03.2025