to the filing of the Writ Petition there has been a considerable delay in the trial of the Election Petition, we express the hope that the petition would be heard and disposed of at an early a date as is conveniently possible. The appellant will be entitled to his costs here and in the High Court which will be paid by the contesting third respondent.

Appeal Allowed.

IN *re*: LILY ISABEL THOMAS

1964

January, 14

(B. P. SINHA, C.J., K. SUBBA RAO, RAGHUBAR DAYAL, N. RAJAGOPALAN AYYANGAR AND J. R. MUDHOLKAR, JJ.)

Supreme Court Rules—"Right to practise" if includes "right to act"—Rule making power—If conflicts with legislative power of Parliament—Supreme Court Rules, 1950 *(as amended in* 1962*), O. IV. rr.* 16, 17*—Validity of—Constitution of India, Art.* 145*—Advocates Act,* 1961 (25 *of* 1961) *ss.* 52, 58(3).

The petitioner was enrolled in the Madras High Court under the Indian Bar Councils Act, and later admitted to the rolls of this Court under the Supreme Court Rules. In this petition, it was contended that under s. 58(3) of the Advocates Act, the petitioner was entitled "as of right to practise" in this Court, and the "right to practise" included not merely the right to plead but also to act; that the rules made—O. IV rr. 16 & 17 of the Supreme Court Rules are invalid; and that that by a rule made under Art. 145 (1)(a) this Court could neither entitle a person to practise nor impose qualifications as to the right to practise, these matters being entirely within entry 77 and therefore exclusively for parliamentary legislation.

HELD: (i) The words "right to practise" would in its normal connotation take in not merely right to plead but the right to act as well and if no rules had been made by the Supreme Court restricting the right to act, the petitioner could undoutedly have had a right both to plead as well as to act.

Ashwani Kumar Ghosh v. *Arabinda Bose,* [1953] S.C.R. 1, referred to.

(ii) Under s. 58(3) of the Advocates Act, the right conferred on Advocates enrolled under the Bar Councils Act to practise in the Supreme Court is made subject to any rules made by this Court. Section

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52 of the Advocates Act specifically saves the powers of this Court to make rules under Art. 145. In view of the saving, repeated in s. 52 there is no question of the rule restricting the right to act to a certain class of advocates as being contrary to a law made by Parliament.

(iii) On the express terms of Art. 145(1)(a) rules 16 & 17 of O. IV are valid and within the rule making powers of this Court. This Court can by its rules make provision prescribing qualifications entitling persons to practise before it, and Parliament can do likewise. There is no question of a conflict between the legislative power of Parliament and the rule-making power of this Court, because by reason of the opening words of Art. 145, any rule made by this Court would have operation only subject to laws made by Parliament on the subject of the entitlement to practise.

ORIGINAL JURISDICTION : Petition No. 42 of 1963.

Under Article 32 of the Constitution for the enforcement of fundamental rights.

The petitioner appeared in person.

S. V. Gupte, Additional Solicitor-General, N. S. Bindra and *R. H. Dhebar*, for the Hon'ble Judges of the Supreme Court.

A. V. Ranganadham Chetty, A. Vedavalli and *A. V. Rangam*, for the intervener (W. C. Chopra).

January 14, 1964. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR J.—The proper construction of Art. 145(1)(a) of the Constitution in the context of a prayer for a declaration that rule 16 of Order IV of the Supreme Court Rules as invalid is the principal point raised in this petition which has been filed by an Advocate who under the Advocates Act, 1961, is entitled to practise in this Court.

The petitioner was enrolled in the Madras High Court on November 15, 1955 under the Indian Bar Councils Act, 1926 and was admitted to the rolls of this Court on October 29, 1960 under Order IV of the Supreme Court Rules as they then stood. She states that as an Advocate entitled to practise in this Court, she is entitled as of right not merely to plead but also to act, and that the rules of this Court

which prescribe qualifications before she could be permitted to act are therefore invalid. The prayer which she makes by her petition is therefore for a declaration that rule 16(1) of Order IV of the Supreme Court Rules as amended in 1962 which contains this prescription of qualifications be declared *ultra vires* of this Court and a further declaration that she is entitled to practise as an Advocate on record in this Court without conforming to the requirements now imposed by the impugned rule.

Rule 16 whose validity is challenged runs:

> "16. No Advocate shall be qualified to be registered as an Advocate on Record unless he—
>
> (1) has undergone training for one year with an Advocate on Record approved by the Court, and has thereafter passed such tests as may be held by the Court for Advocates who apply to be registered as Advocates on Record, particulars whereof shall be notified in the Gazette of India from time to time; provided however, that an Attorney shall be exempted from such training and test;
>
> (2) has an office in Delhi within a radius of 10 miles from the Court House and gives an undertaking to employ, within one month of his being registered as Advocate on Record. a registered clerk; and
>
> (3) pays a registration fee of Rs. 25".

It might be mentioned that under the Rules though every Advocate whose name is maintained in the common roll of Advocates prepared under s. 20 of the Advocates' Act, is entitled to plead, only those Advocates who are registered as "Advocates on record" are entitled to act as well, for rule 17 of Order provides:

> "17. An Advocate on Record shall be entitled to act as well as plead for any party in a proceeding on his filing in the proceeding a memorandum of appearance accompanied by a Vakalat-

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nama duly executed by the party in the prescribed form.

No Advocate other than an Advocate on Record shall be entitled to file an appearance or act for a party in the Court."

The contention urged by the petitioner who argued her case in person and presented the points arising with ability and moderation, is that under s. 58(3) of the Advocates Act which reads

"58. (3) Notwithstanding anything in this Act, every person who, immediately before the 1st day of December, 1961, was an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 or who has been enrolled as an advocate under this Act shall, until Chapter IV comes into force, be entitled as of right to practise in the Supreme Court, subject to the rules made by the Supreme Court in this behalf"

she is entitled "as of right to practise" in this Court, and she claims that the "right to practise" would include not merely the right to plead, but also the right to act. She is right so far. Her further submission is as regards the scope and content of the rules which might lawfully be made by this Court. Undoubtedly, if there were no rules made by the Supreme Court or if, as the petitioner contends, the rules now made—Order IV Rules 16 and 17—are invalid the petitioner would be entitled not merely to plead as she is now entitled to, but also to act which latter she is now prevented by rule 17 unless she has complied with the requirements of rule 16.

The question then for consideration is whether the impugned rules are valid. This depends upon the proper construction of Art. 145(1)(a) by virtue of which the impugned rule has been framed, which reads:

"145. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President,

make rules for regulating generally the practice and procedure of the Court including—

(a) rules as to the persons practising before the court;"

As regards this Article there are two matters to which attention might be directed. By the opening words of the Article the rules made by this Court are subject to the provision of any law made by Parliament, so that if there is any provision in a law made by Parliament by which either the right to make the rule is restricted or which contains provisions contrary to the rules, it is beyond dispute that the law made by Parliament would prevail. It is the submission of the petitioner that s. 58(3) quoted earlier, is such a law made by Parliament and that the absolute right granted to persons in the position of the petitioner to "practise as of right" cannot be controlled by rules made by this Court. In this connection our attention was invited to the decision of this Court in *Aswini Kumar Ghosh and Anr.* v. *Arabinda Bose and Anr.*(1). Here this Court explained what the expression 'right to practise' meant. It was laid down that these words which occurred in the Supreme Court Advocates (Practise in High Court) Act, 1951 whose s. 2 enacted "Every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court" meant that such an Advocate was entitled not merely to plead but to act as well, and that the enactment prevailed notwithstanding any rule made by the High Courts of Calcutta and Bombay restricting the right to act on the original sides of those courts. The decision, however, does not carry the matter far, because it was based on the inconsistency between "the right to practise as of right" conferred by the enactment of 1951 and the saving as regards the rule making power of the High Courts of Bombay and Calcutta to restrict "the right to act" on the original side of those courts which was contained in the Bar Councils Act 1926. This Court held that it was a case of an implied repeal of that saving by the later legislation.

(1) [1953] S.C.R. 1.

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Nevertheless the petitioner, as stated earlier, is certainly right in her submission that the words 'right to practise' would in its normal connotation take in, not merely right to plead but the right to act as well and that is why we said that if no rules had been made by the Supreme Court restricting the right to act, the petitioner could undoubtedly have a right both to plead as well as to act.

But we have already pointed out that under s. 58(3) of the Act, the right conferred on Advocates enrolled under the Bar Councils Act to practise in the Supreme Court is made subject to any rules made by this Court. To reinforce this position there is a saving enacted by s. 52 of the Advocates Act which specifically saves the powers of this Court to make rules under Art. 145. Section 52 reads:—

> "52. Nothing in this Act shall be deemed to affect the power of the Supreme Court to make rules under article 145 of the Constitution—
>
> (a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court;
>
> (b) for determining the persons who shall be entitled to act in that behalf."

In view of the saving which is repeated in s. 52 there is no question of the rule restricting the right to act to a certain class of advocates as being contrary to a law made by Parliament. The only question for consideration is whether Art. 145(1)(a) is sufficient to empower this Court to frame the impugned rules.

The argument addressed to us with considerable earnestness was that under the Article the rules to be framed under the items (a) to (j) were all to be framed for regulating the practice and procedure of the Court which she urged indicated the underlying purpose with which the rule making power was vested in the Court. Secondly she urged that if head (a)—in sub-Article (1) reading "rules as to the persons practising before the Court", were treated as an independent subject, entirely divorced from the context of the opening words "practice and procedure of the Court", even then the

power to make the rule was confined to the regulation of the conduct of the persons practising *i.e.* entitled under the law to practise and so practising before the Court.

Though a number of decisions were cited to us as to what was meant by 'practise and procedure of the Court' we do not think it useful or necessary to refer to them. They would have been relevant and might require serious consideration if the entire power to make the rule was to depend merely on the words "regulating the practice and procedure of the Court" but the Article specifically makes provision enabling rules to be made "as to persons practising before the Court." We are inclined to read item (a) as an independent head of rule making power and not as merely a part of a power to make rules for "regulating the practice and procedure of the Court." The word 'including' which precedes the enumeration of the items (a) to (i) as well as the subject matter of item (a), stamp it as an independent head of power.

We do not, therefore, propose to deal with what exactly would have been the content of a "regulation of practice and proceedure." but shall proceed to consider the meaning of the words "Rules as to the persons practising before the Court" because if the rules now impugned could be justified as within this power their validity cannot be impeached. Now as regards these words in item (a) the submission of the petitioner was two-fold : Firstly, she contrasted these words with entry 77 in the Union List in Sch. VII the last portion of which reads:

> "Persons entitled to practise before the Supreme Court."

Relying on the contrast between the two expressions "persons practising" and "persons entitled to practise" the submission was that the words "persons practising before the Court" was narrower and gave this Court power to frame rules only to determine the manner in which persons who had obtained a right to practise under a law made by Parliament by virtue of its power under entry 77 could exercise

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that right. In this connection she drew a distinction between 'being entitled to practise' which would include determining or prescribing the qualifications that a person should possess before becoming entitled to practise, which she urged was the subject matter of entry 77, and a rule as to "a person practising before a court" which was the second stage after the right to practice had been obtained by Parliamentary legislation. In other words, the submission was that by a rule made under Art. 145(1)(a) this Court could neither entitle a person to practise nor impose qualifications as to the right to practise—these being matters entirely within entry 77 and therefore exclusively for parliamentary legislation.

We feel unable to accept this argument. We do not agree that the words "persons practising before the Court" is narrower than the words "persons entitled to practise before the Court". The learned Additional Solicitor-General was well-founded in his submission that if, for instance, there was no law made by Parliament entitling any person to practise before this Court, the construction suggested by the applicant would mean that this Court could not make a rule prescribing qualifications for persons to practise in this Court. In this connection it is interesting to notice that the words used in Art. 145(1)(a) have been taken substantially from s. 214(1) of the Government of India Act, 1935. That section ran, to quote the material words:

> "The Federal Court may from time to time, with the approval of the Governor-General in his discretion make rules of Court for regulating generally the practice and procedure of the Court including rules as to the persons practising before the Court....."

The Government of India Act, 1935 did not in its legislative lists have a provision like as we have in entry 77 of List I (*vide* entry 53 of List I). The Federal Court immediately on its formation made rules and under Order IV of those rules provision was made prescribing qualifications for the

enrolment as Advocates of the Federal Court. Advocates entitled to practise in the High Courts with a standing of 5 years on the rolls of High Court and who satisfied certain requisite conditions were entitled to be enrolled as Advocates, while for enrolment as Senior Advocates a standing of 10 years as an Advocate of a High Court Bar was prescribed. We are pointing this out only for the purpose of showing that the words "as to the persons practising before the Court" were then used in a comprehensive sense so as to include a rule not merely as to the manner of practice but also of the right to practise or the entitlement to practice. Those words which are repeated in Art. 145(1)(a) have still the same content. We ought to add that there is no anomaly involved in the construction that this Court can by its rules make provision prescribing qualifications entitling persons to practise before it, and that Parliament can do likewise. There is no question of a conflict between the legislative power of Parliament and the rule-making power of this Court, because by reason of the opening words of Art. 145, any rule made by this Court would have operation only subject to laws made by Parliament on the subject of the entitlement to practise. We are, therefore, clearly of the opinion that on the express terms of Art. 145(1)(a) the impugned rules 16 and 17 are valid and within the rule-making power.

The learned Additional-Solicitor made a further submission that the rule could be justified under the inherent powers of the Court and relied for this purpose on the decision of this Court in *in re: Sant Ram* [1960] 3 S.C.R. 499 where at pages 504, 505 the inherent powers of this Court have been referred to. In the view we take about the construction of Art. 145(1)(a) we do not think it necessary to rest our decision on the inherent powers of this Court to frame a rule of this sort.

The petition, therefore, fails and is rejected.

Petition dismissed.