

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

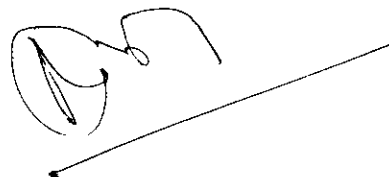
MISC. APPLICATION NO.97 OF 2016
IN
REVIEW APPLICATION NO.31 OF 2015
IN
ORIGINAL APPLICATION NO.270 OF 2012

DISTRICT : NASHIK

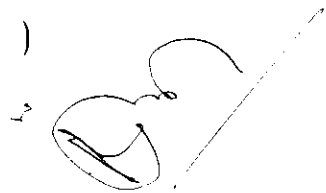
Shri Jarshad Bhikanrao Ahirrao.)
Akola District Prison, Kaulhed Road,)
Officers Quarter, Akola - 444 001.)...Applicant
(Ori.Resp.No.11)

Versus

1. Savita Nivrutti Salve @ Savita)
Pravin Dethe, R/o. Jaidatta,)
Survey No.882/3/45, Vaibhav)
Colony, Rajeev Nagar, Mumbai Agra)
Road, Nashik.)
2. The Desk Officer.)
Through the Chairman / Secretary,)
Maharashtra Public Service)
Commission, Having office at)
3rd Floor, Bank of India Building,)
M.G. Road, Fort, Mumbai - 400 001.)
3. The State of Maharashtra.)
Through its Secretary, Home Dept.,)
Having office at Mantralaya,)
Mumbai - 400 032.)



4. The State of Maharashtra.)
Through its Secretary, General)
Administration Department,)
Mantralaya, Mumbai - 400 032.)
5. Shrikumara A. Madhukarrao.)
R/o. A Type, 33/1, R.C.F. Colony,)
Kurul, Tal. Alibaug,)
Dist : Raigad - 402 201.)
6. Shribhaidas Namdeo Dhole.)
Superintendent of Jalgaon,)
District Prison, Jalgaon Collector)
Office back side, Jalgaon - 425 001.)
7. Kirti Kishore Dahale.)
Kirti Rajesh Chintamani (Dahale),)
Gurukrupa Jewellers, Sarafa Line,)
Mahagaon, Yavatmal.)
8. Shrivaibhav S. Agey.)
Jailor Grade-2, Byculla District)
Prison, Clare Road, Byculla,)
Mumbai 400 008.)
9. Aruna Arjunrao Mugutrao.)
C/o. Arun T. Handal, A/p.)
Pimpalgaon, Naku, Tal. : Newas,)
Dist : Ahmadnagar - 414 603.)
10. Geeta Hanumant Shikare.)
Jail Officers Quarter No.1,)
Near Female Prison, Yerawada,)
Pune - 411 006.)
11. Swati Khushalrao Jogand.)
C/o. Jadhav D.D. G, 001, B-2,)
Yogidham, Murbad Road, Kalyan (W))
Dist : Thane.)
12. Shrinagnath Gangadhar Sawant.)



A/P. Bolegaon (Khurd), Tal. Chakur,
District : Latur – 413 525.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. K.S. Gaikwad, Presenting Officer for Resps. 2 to 4.

Shri M.D. Lonkar, Advocate for Respondent No.1.

Shri A.A. Desai, Advocate for Resps. 5,7,9, & 12.


**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 11.04.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

JUDGMENT

1. This Misc. Application (MA) throws up for determination an issue which is not a common place one. The issue is as to whether it is per-se legally impermissible to allow appearance of an Advocate for a party in a Review Application, other than the Advocate who argued his main proceeding which in this case was the Original Application (OA). Pertinently, there is not even slightest of an allegation of any sharp practice or oblique motive in what can be described as “change of Advocate” for arguing the Review Application.



2. The facts to the extent they are necessary to be stated are a few and simple. Shri R.M. Kolge, the learned Advocate represented the Applicant in the OA. It came to be decided by this Bench on 27.7.2015. The said OA came to be dismissed. Thereagainst, the said Applicant Savita Salve brought this Review Application and even at that time, she was represented by Shri Kolge, Advocate. The Applicant of this MA Mr. H.B. Ahirrao is the Respondent No.11 to the Review Application.

3. Pending the said R.A, Mr. M.D. Lonkar, the learned Advocate filed his Vakalatnama. Pertinently, although in Para 3 of this MA, the present Applicant Ahirrao has made an averment that on 20.1.2016, the learned Advocate Mr. R.M. Kolge withdrew his appearance, there does not seem to be any such document on record and the Bench did not make any order permitting him to withdraw appearance. Therefore, it must follow that the original Applicant of the R.A. was represented by two Advocates – S/s Kolge and Lonkar.

4. In the above set of circumstances, the Applicant of this MA has moved us inter-alia pleading that the present Respondent No.1 being the original Applicant could not be allowed to change her Lawyer, and therefore,



she must continue to be represented by Shri Kolge, Advocate. In that connection, reliance is placed on case law.

5. The original Applicant and the other Respondents did not file Affidavits-in-reply. In the MA, we have heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant hereof, Shri Lonkar, the learned Advocate for the Respondent No.1 being the original Applicant – Smt. K.S. Gaikwad, the learned Presenting Officer for Respondent Nos.2 to 4, Shri A.A. Desai, the learned Advocate for Respondent Nos.5, 7, 9 & 12.

6. We have already indicated as to what is the issue that is to be determined. The Advocate-Client relationship as per the traditional law of contract is a contract between Agent and Principal. Incidentally, even the Master-Servant relationship also is an instance of contract of service. However, with passage of time and evolution of law, so as to remain serviceable to the needs of the society, there has been instances of codification of law of contract. There are several such instances, but we need not get drawn into the academics. The Advocate-Client relationship is also now governed by the statute enshrined in the Advocates Act, 1961 and in fact also, the procedural law enshrined in



order 3 of the Code of Civil Procedure. Therefore, when one talks about the contractual relationship between the Client and Advocate, the traditional liberty in the matter of law of contract available to a Principal and Agent would have to be studied in that perspective. The conduct of matters before the judicial fora has to be with utmost purity and that indeed is a matter of public policy which the judicial institutions must uphold and they do in fact do so. In actual practice which in some cases is also supported by the directions of the Court of superintendence, the document evidencing the establishment of Client-Counsel relationship is known by what are commonly called "Vakalatnama, Power, Vakalat, etc. There is a practice of the Court endorsing its seal of approval, if anything to indicate that the Advocate has the authority to conduct the said case before the said judicial forum.

7. Now, as a matter of fact, even if the practices set out in the preceding Paragraph are not followed in letter in the Tribunals, they are undoubtedly followed in spirit at least and it is a matter of not only judicial discipline vis-à-vis the Court on the one hand and the Litigant and Counsel on the other. But it provides sanctity and purity to the proceedings. In our view, these observations need to

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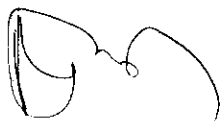
be borne in mind in adjudicating the MAs like the present one. If there is nothing worth taking exception to, then there is a certain degree of latitude to the litigant to choose his Advocate in exactly the same way as a patient has to choose a Doctor.

8. In the present matter, as indicated hereinabove, there is absolutely no indication that any dishonourable practice was adopted by any one, be it party or advisors.

9. In the context of the above facts, we now turn to the authorities cited at the Bar. In **G. Chandramohan Vs. IOC, Review Application No.167/2014 in Writ Appeal No.950/2013, dated 11.12.2014 (Madras)**, there was a change of Advocate at the stage of the review. It was, however, found that the review did nothing, but re-state the facts and the facts at issue in the Writ Appeal which judgment was sought to be got reviewed. To that extent, it was an authority laying down the contours of review jurisdiction. It was in that factual background that the change of Advocate in review was noticed.

10. The next judgment was in the matter of **Shobha Bajirao Damodar Vs. Triratna Krida and Shikshan Prasarak Mandal, Akola and others, 2009 (1)**

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Maharashtra Law Journal 979. That matter was a Writ Petition brought before the Hon'ble High Court. Interim orders were made. The Advocate was changed. The observations in Para 12 thereof would make it clear as to how certain statements at the admission stage must have led the Court to formulate a particular point of view. In Para 17, it was specifically observed that a device of filing an application for review by changing Advocates had to be deprecated. Thereafter, in Para 22, Hon'ble Bombay High Court referred to a judgment of the Hon'ble Supreme Court in **Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, AIR 1997 SC 1005.** A particular Paragraph quoted from the judgment of the Hon'ble Supreme Court, in fact needs to be quoted here as well.

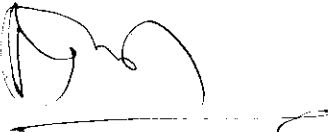
“It is a sad spectacle that new practice unbecoming of worthy and conducive to the profession is cropping up. Mr. Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of Mr. V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on April 24, 1996. Yet another advocate, Mr. S.U.K. Sugar, had now been



engaged to file the present application styled as “application for clarification”, on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is on record who neither appeared nor was party in the main case. It is salutary to note that Court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the advocate on record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession.”

The judgment was then concluded with an imposition of cost on the defaulting litigant.

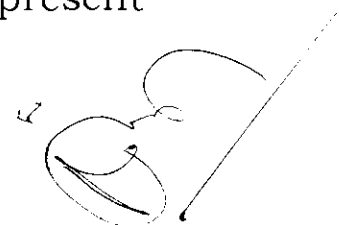
11. In **C.S. Venkatasubramanian Vs. State Bank of India, AIR 1997 SC 2329** was essentially an authority in the matter of the remuneration to the previous Counsel

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(fees). There the learned Advocate sued the Banks, for whom he had appeared. The principles emanating therefrom had already been applied by us to the present facts.

12. An unreported judgment of the Hon'ble Supreme Court in **Review Petition (Civil) No.2279/2010 in Civil Appeal No.4757/2010 (Delhi Pradesh Regd. Med. Prt. Association Vs. Union of India & Ors., dated 11.03.2011)** was cited before us. There a Review Petition was moved on the ground that the main matter was heard and decided in his absence and hence, breach of principles of natural justice was invoked as a ground. Their Lordships were pleased to formulate an important issue in Para 4, on whether an Advocate other than the Advocate-on-Record could file Review Petition and in that connection **Tamil Nadu Electricity Board** (supra) was also cited. The Review Application was then considered in depth and it was found that it had no merit.

13. **R.D. Saxena Vs. Balaram Prasad Sharma, AIR 2000 SC 2912** was a matter which required the determination of the issue with regard to the lien, if any, of the Advocate on the file of his client for failure to pay his fees. On facts, the issues were not similar to the present



one. We have already, at the outset, made a reference to the provisions of Advocates Act and applied the principles laid down by the Hon'ble Supreme Court.

14. Now, the above discussion, more particularly based on the judgment in the matter of **Shobha** (supra) and **Tamil Nadu Electricity Board** (supra), in our opinion, makes it clear that what is required to be guarded against is the indulgence by scheming litigants and may be even their advisors into sharp practice, so as to somehow or the other try to achieve success. That affects the administration of justice and also pollutes the serene environment of institution of justice. If there is a clear evidence to show that the party changing the Advocate midstream was actuated with bad motive then of course such a practice would not only have to be curbed, but such a person would have to be penalized. It is, however, very clear that in the present set of facts, there is not even a particle of material to show that there was any such sharp practice having been played or attempted to be played. If that be so, then in our view, there is no ground to direct the removal from record of the learned Advocate Shri Lonkar.

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15. In our opinion, the crux of the matter is that if there is any material to show any dishonourable practice or questionable conduct in the name of Review Application by change of the Advocate, then the judicial forum will come down hard on such an attempt and those that made or attempted such an act. If that vice is found not to be there, then in our opinion, there would be no ground to act. It is after-all a question of facts which would be peculiar to each matter. In **Shobha** (supra) and **Tamil Nadu Electricity Board** (supra), there was clear material to show that in the guise of review jurisdiction by a questionable conduct ulterior motives were involved. That quite clearly is not the state of affairs herein.

16. For the foregoing, therefore, this Misc. Application stands dismissed with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
11.04.2016

Sd/-
(Rajiv Agarwal)
Vice-Chairman
11.04.2016

Mumbai
Date : 11.04.2016
Dictation taken by :
S.K. Wamanse.