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used in the section. If the object had been, as is now suggested, the words would have been somewhat as follows: "in or upon any dwelling house, premises or land or any ground attached thereto".

We are, therefore, of the opinion that the word "premises" used in s. 111 of the City of Bombay Police Act does not include open plots of land, and that this section does not apply in cases of trespass upon open lands, which do not belong to Government or which are not appropriated to public purposes.

The conviction of the accused and the sentence passed upon him are, therefore, set aside and he is acquitted. Fine, if paid, should be refunded.

Conviction and sentence set aside.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.

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MULCHAND GULABCHAND *v.* MUKUND SHIVRAM BHIDE AND OTHERS.*

Bombay Co-operative Societies Act (Bom. VII of 1925), ss. 54, 71 (2) (u) —Bombay Co-operative Societies Rules, 1927, r. 36—Prohibition against legal practitioners from appearing in arbitration proceedings —Validity of rule—Constitution of India, art. 19 (1) (g)—Fundamental right of legal practitioners to practise profession—Whether prohibition affects fundamental right—Difference between statutory rules and by-laws—Unreasonableness of statutory rule whether a ground for challenging it—Indian Bar Councils Act (XXXVIII of 1926), s. 14 (1)—Bombay Pleaders Act (Bom. XVII of 1920), s. 8.

Rule 36 of the Bombay Co-operative Societies Rules, 1927, which totally prohibits representation of a party by a legal practitioner in arbitration proceedings arising under s. 54 of the Bombay Co-operative Societies Act, 1925, is a rule of procedure not affecting substantive rights. It is, therefore, validly made under s. 71 (2) (*u*) of the Act.

In re Godinho,[1] referred to.

Further, the rule does not violate the fundamental right guaranteed to a lawyer under art. 19 (*1*) (*g*) of the Constitution of India to practise

* Civil Application No. 619 of 1951 with C. A. No. 942 of 1951.

[1] (1933) 36 Bom. L. R. 1 (F. B.).

his profession. The Constitution guarantees to the lawyer such right as he has under his charter, but the right given to him is a limited right and that right is not in any way affected.

The power which Courts have to consider the validity of statutory rules is a very limited power. If a rule is within the ambit of the statute then it cannot be successfully challenged on the ground that it is an unreasonable rule. There is a clear distinction in this respect between statutory rules and by-laws. Although a by-law may be challenged on the ground that it is unreasonable, a statutory rule cannot be so challenged.

The facts in Civil Application No. 619 of 1951 were as under:

The Bombay Provincial Co-operative Bank, Ltd. (Dhulia Branch), a Co-operative Society registered under the Bombay Co-operative Societies Act, 1925, filed a suit against one Mulchand (petitioner) to recover from him Rs. 53,495-0-6. The suit was referred to the arbitration of three persons (opponents) nominated as per provisions of s. 54 of the Act. On March 26, 1950, the arbitrators framed issues and set down the case for hearing.

On April 3, 1951, the petitioner made an application for permission to engage a lawyer to represent him in the proceedings but that application was rejected by the Tribunal.

On April 10, 1951, the petitioner applied for a writ of *certiorari* to quash the said order, a writ of mandamus directing the opponents to grant him permission to engage a lawyer as prayed, a writ of prohibition prohibiting the opponents from issuing any order or doing any act likely to prejudice the legal and constitutional rights of the petitioner, and for such other reliefs as justice of the case may require.

The petition was heard along with a similar petition filed by a party and his pleader.

R. B. Kotwal, for the petitioner in C. A. No. 619 of 1951.

K. T. Pathak, for the petitioner in C. A. No. 942 of 1951.

N. A. Palkhivala, with *Messrs. Little and Co.* and *B. G. Thakor,* Additional Assistant Government Pleader, for the opponents.

G. R. Madbhavi, for the Bombay Bar Council.

CHAGLA C. J. A dispute between the petitioner who is a member of the Bombay Provincial Co-operative Bank, Ltd., Dhulia, and the Society was referred to arbitration under s. 54 of the Co-operative Societies Act. As the amount involved in the

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dispute was very large, viz., Rs. 53,495-0-6, the petitioner wanted to appear before the arbitral tribunal through his advocate and the tribunal rejected the application of the petitioner as it was governed by rule 36 of the rules framed under the Act. That rule is framed under s. 71 and sub-s. (*1*) of that section provides that the Provincial Government may, for the whole or any part of the presidency and for any society or class of societies, make rules to carry out the purposes of the Act, and sub-s. (2) provides: "In particular and without prejudice to the generality of the foregoing power such rules may——", and when we turn to sub-cl. (*u*), "prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators and for fixing and levying the expenses of determining the dispute". Now, under this sub-clause rule 36 has been framed by the Provincial Government and that rule is to the following effect:

"In proceedings held under rules 32 to 35, no party shall be represented by a legal practitioner."

And the proceedings with which we are concerned are held under those rules.

Now, it is contended by Mr. Kotwal that r. 36 is *ultra vires*. It is pointed out that the petitioner is considerably handicapped by having to appear before the arbitrators without the assistance of a lawyer and that the rule inasmuch as it totally prohibits representation of a party by a legal practitioner is unreasonable and therefore should be held to be bad by this Court. Now, the power which Courts have to consider the validity of statutory rules is a very limited power. If a rule is within the ambit of the statute, then it cannot be successfully challenged on the ground that it is an unreasonable rule. As a matter of fact, Courts in India until our Constitution was enacted had no power at all to consider the reasonableness of any legislation. Reasonableness was a matter of policy which was left to the Legislature and a law could only be challenged on the ground of its being *ultra vires* of the Legislature; but if it was within the competence of the Legislature, the law could not further be challenged on the ground that it was not a reasonable law. Similarly, statutory rules formed part of the statute, and if they were within the scope of the statute and permitted by the statute to be framed, then they could not be challenged on the ground of unreasonableness. Mr. Kotwal has drawn our attention to various decisions of the English Courts

where by-laws have been held to be bad on the ground that they were unreasonable. Now, there is a clear distinction between statutory rules and by-laws. By-laws are usually framed by corporations under their inherent powers in order to carry out the purposes of the corporation or they are framed by public authorities set up by Parliament, and as it is left to the corporations or the public authorities to frame these by-laws and carry out their purposes, the Courts have retained certain amount of control over the by-laws by considering their reasonableness. But statutory rules stand on an entirely different footing. Parliament or Legislature, instead of incorporating the rules into the statute itself, ordinarily authorises Government to carry out the details of the policy laid down by the Legislature by framing the rules under the statute, and once the rules are framed, they are incorporated in the statute itself and become part of the statute, and the rules must be governed by the same principles as the statute itself. And, therefore, although a by-law may be challenged on the ground that it is unreasonable, a statutory rule cannot be so challenged. It is not suggested by Mr. Kotwal that any fundamental right of the petitioner is affected by the statutory rule. The fundamental right that a citizen has is to be heard before a judicial tribunal and not to have any decision given against him or affecting his rights without his being permitted to show cause in his defence. But that right is vouchsafed to the petitioner. We do not think it can be seriously urged that it is a fundamental right of a citizen to be heard through his advocate or through his lawyer.

It is also suggested that the rule does not fall within the ambit of s. 71 (2) (*u*) because that deals with rules of procedure, and it is contended that the right of a party to be represented by a lawyer is not a rule of procedure. Now, it is for the Courts or for tribunals to determine as a matter of procedure as to how parties should be represented and how they should present their case to the Court or the tribunal, and if a rule in laying down such a procedure provides that a party shall be heard in person and not by his advocate or lawyer, it is nothing more than a rule of procedure. If a tribunal were to say that a party shall not be heard at all, that would be a rule of substance, a deprivation of a substantial right and not a rule of procedure. But as the right of the party to be heard is safeguarded and only his right to be heard by a lawyer has been taken away, in

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our opinion r. 36 is a rule of procedure not affecting substantive rights. If any authority is necessary, it is to be found in *In re Godinho*.[1] As pointed out by Mr. Justice Rangnekar (p. 6):

> "The general principle as to a right of audience in a Court, as stated by Baron Parke, is that, in the absence of any statutory enactment or established practice defining what persons are to be heard as advocates, the Court itself has the power to regulate its own procedure and to determine what class of persons have audience."

This petition (C. A. 619 of 1951) only deals with the right of the party affected by r. 36. In the other petition (C. A. 942 of 1951) the rule is challenged by the party, who is petitioner No. 1, and also by the pleader, who is petitioner No. 2. As far as the pleader is concerned, Mr. Pathak on his behalf contends that it violates his fundamental right now guaranteed to him under the Constitution under art. 19 (*1*) (*g*), and that right is the right to practise any profession. Now, before we decide whether that right has been violated, it is necessary to consider what is the right that a lawyer has to practise his profession: is it an absolute right to practise in all Courts, in all tribunals, before all persons who have a right to receive evidence and to decide judicially, or is it a right which is regulated and restricted by the very charter which permits him to practise his profession. If a lawyer's right was an absolute right, then undoubtedly r. 36 is a restriction upon that right, because it prevents him from appearing before a domestic tribunal like the tribunal set up under the Co-operative Societies Act, and we would then have to consider under sub-cl. (*6*) of art. 19 whether that restriction was a reasonable restriction or not. But as I shall presently point out, the right of a lawyer to practise is not an absolute right. The very charter which gives him the right to practise controls, limits and circumscribes his right. Now, there are two charters which entitle a lawyer in this State to practise. One is the Bar Councils Act and the other is the Pleaders Act. The first gives the right to a lawyer to practise as an advocate of this Court, the other gives him a right to practise as a district pleader. The second petitioner is a district pleader, but as the matter is of considerable importance, we might consider the right of all lawyers, both pleaders and advocates. Turning first to the Bar Councils Act, the statutory right given to an advocate who has been enrolled as such by this Court is under s. 14 (*1*) of the Bar Councils Act, and that right is to practise subject to the provisions of sub-s. (*4*) of s. 9,

[1] (1933) 36 Bom. L. R. 1, F. B.

in the High Court of which he is an advocate, and save as otherwise provided by sub-s. (2) or by or under any other law for the time being in force in any other Court in the Province and before any other Tribunal or person legally authorised to take evidence, and before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise. Therefore, his right to practise is controlled by this important provision that any other law for the time being in force may restrict or take away his right. Therefore, if the Co-operative Societies Act were to provide that an advocate of the High Court of Bombay shall not practise before the arbitral tribunal set up under that Act, then the right of the advocate will be circumscribed by the provisions of that law. It should be remembered that it is not the fact that a man has passed a law examination or has acquired a law degree that entitles him to practise in Courts of law; his right to practise depends upon his being enrolled as an advocate, and he is enrolled as an advocate on terms and conditions laid down in the Bar Councils Act. Therefore, as I said before, his very charter which entitles him to practise lays down conditions and limitations, and one of the conditions and limitations is that he can only practise before such tribunals as the law permits him and he may not practise before such tribunals as the law lays down as being prohibited to lawyers. Similarly, when we turn to the Pleaders Act, s. 8 provides that subject to the provisions of any law for the time being in force, district pleader shall, within the district or districts in respect of which he holds a sanad, be entitled to practise.....in or before any other Court, tribunal or person in or before which or whom district pleaders are or may hereafter be entitled by law to practise.....Therefore, just as in the case of the Bar Councils Act, the right of a pleader to practise before a tribunal is not an absolute right. It is a right subject to the provisions of any law for the time being in force. Therefore, the only right of a lawyer that has been safeguarded under the Constitution is the right to practise his profession. Now, that right not being an absolute right, no absolute right is conferred upon the lawyer by the provisions of the Constitution. The Constitution guarantees to the lawyer such right as he has under his charter. If any such right is affected or contravened, then undoubtedly he can rely upon the provisions of art. 19 (*f*). But if the right given to him is a limited right and that right is not in any way affected, he cannot claim a wider right or a larger right under the Constitution.

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We have tried to find out what the position is in England, and it appears in England the position is identical, because in the well known book on barristers by Marchant ("Barrister-at-Law") the right of the barrister to practise is described at page 12 in the following terms:—

> "As soon as a person has been called to the bar, he can, unless he is prohibited either by statute or by some convention of the bar or some condition or limitation imposed upon him by his Inn, practise as counsel in accordance with the rules of the profession."

Therefore, in England also a barrister has not an unlimited, absolute right to practise before any tribunal. It is open to the law of the land to prohibit a barrister from practising before any tribunal, and if the law prohibits him from practising, then his right is controlled and restricted by the law for the time being in force.

In coming to this conclusion we are conscious of the fact that we should try and safeguard the rights and privileges of lawyers. We are also conscious of what valuable assistance litigants obtain from the legal profession. We are also conscious of the fact that as far as possible where legal rights are to be decided and judicial decisions are to be given, litigants should be permitted to be represented by lawyers. But whether before a particular tribunal a lawyer should be allowed to appear or not is a matter of policy with which this Court cannot primarily be concerned. All that we may point out is that it may lead to considerable hardship if in important matters where complicated questions of fact or law arise a litigant is denied the right and the privilege of being represented by a lawyer of his choice. It may be that the arbitrators themselves or those presiding over judicial or quasi-judicial tribunals themselves may feel the necessity of having the help and guidance of lawyers. Rule 36 is so absolute and so drastic in its terms that even if the arbitrators wanted the assistance of lawyers they are precluded from allowing practioners to appear before them. The arbitrators may also feel that in a particular cause a litigant's rights would be affected or jeopardised by his not being permitted to fight his cause through a lawyer. But rule 36 as framed gives no discretion whatever to the arbitrators. We would suggest to Government to consider whether it is not advisable to reframe r. 36 so as to give a discretion to the arbitrators whether to permit lawyers or not, and not to permit r. 36 to remain in its absolute, unqualified form. But apart from

making this suggestion which we hope Government will seriously consider we do not think that in either of these two petitions we can give any relief either to the litigant who is appearing before the arbitrators or the lawyer who is prevented from appearing on behalf of his client.

Rule in both the petitions discharged; no order as to costs.

Rule discharged.

M. W. P.

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APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Gajendragadkar.

RAMCHANDRA ABAJI PAWAR *v.* THE STATE OF BOMBAY.*

1951 Oct. 3

Industrial Disputes Act (XIV of 1947), ss. 10 (1), 12 (5)—Industrial dispute relating to public utility service—Notice of strike properly given by employees—Refusal by Government to refer dispute to Tribunal for adjudication—Application by employees for writ of mandamus—Whether Government can be compelled to make reference—Discretion of Government.

The Government cannot be compelled by a writ of mandamus to refer an industrial dispute relating to public utility service to a Tribunal for adjudication under the proviso to s. 10 (*1*) of the Industrial Disputes Act, 1947, where it is satisfied that the obligation imposed upon it by the proviso need not be discharged either because the notice of the strike given by the employees under s. 22 of the Act is frivolous or vexatious, or it would be inexpedient to make the reference. It is left to the consideration of the Government as to whether the notice has been frivolously or vexatiously given or as to whether it is expedient or inexpedient to make a reference. If Government comes to a conclusion and forms an opinion which is not vitiated by any extraneous consideration, then the Court is bound by the conclusion arrived at and the opinion formed by Government on these matters.

The proviso to sub-s. (*1*) of s. 10 of the Industrial Disputes Act, 1947, no doubt casts an obligation upon the Government to make a reference in the case of an industrial dispute relating to a public utility service, but that obligation is qualified in the proviso itself. Whereas in the case of disputes relating to non-public utility services the discretion is whether to refer or not to refer, in the case of a dispute relating to a public utility service the discretion vested in the Government is to consider and to decide whether the notice mentioned in the proviso has been frivolously or vexatiously given or whether it is expedient or inexpedient to make a reference. The two discretions are of entirely different character. When the Government deals with a dispute relating to a public utility service it must start with this consideration that

* Civil Application No. 622 of 1951.