
(1966) 04 MAD CK 0014
In the Madras High Court

C.D. Sekkizhar and Another

APPELLANT

Vs

The Secretary, Bar Council and Others

RESPONDENT

Date of Decision : 08-04-1966

Acts Referred:

Citation : (1968) ILR (Mad) 823 : (1966) 79 LW 388 : (1966) 2 MLJ 249

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—While disposing of C.D. Sekkizhar Vs. The Secretary, Bar Council and Others, this Court said:

The Bar Council is entitled to proceed with the election from the place where it was stopped by the stay orders of this Court. 25th March, 1966, is

fixed as the date for polling.

Since then the Government of India made a notification published in the Gazette of India Extraordinary dated 10th January, 1966. This notification

is captioned as the Advocates (Removal of Difficulties) Order, 1966 and was to take effect from 1st November, 1965. The substantive part of the

notification reads:

Extension of term of office of elected members of the State Bar Councils required to retire u/s 8 of the Adocates" Act, 1961--Every elected

member of a State Bar Council due to retire after the 1st day of November, 1965, u/s 8 of the said Act on the expiration of the second year from

the date of such reconstitution, shall, notwithstanding such expiration, continue to hold office for a further period of one year with effect from the

date of such retirement.

In view of this notification the Bar Council wanted the petition to be spoken to for further orders with reference to the directions contained in the order of this Court, which is extracted at the outset.

2. If the notification is valid and enforceable, the direction given by this Court fixing the date for polling will have to be cancelled. The Bar Council

of India and the Government of India were given notice of the further proceedings arising out of the request of the Madras Bar Council for further

directions. Mr. G. Vasantha Pai, who was one of the respondents in the Writ Petition, appears in person and contends that the notification is

without jurisdiction and is invalid. On the other hand, Mr. G. Ramanujam for the Government of India and Mr. G.K. Damodara Rao for the Bar

Council of India maintain that the notification is within the purview of Section 59 of the Advocates Act, 1961. In the counter-affidavit filed on

behalf of the Government of India it is stated that the impugned notification was issued to remove difficulties in giving effect to the provisions of the

Advocates Act, 1961. The difficulty is explained to be this. The Bar Council of India represented to the Government of India that elections to the

State Bar Councils involve considerable expenditure and suggested suitable amendment to Section 8 so as to provide that elections may be held

every third year instead of every second year with one-half of the members retiring instead of one-third. A Bill entitled Advocates" (Amendment)

Bill, 1965, has been introduced to give effect to the suggestion and it is said that the Bill was passed by the Rajya Sabha, but for want of time, it

could not be passed in the Lok Sabha during the last session. In the circumstances, in anticipation of the passing of the Bill, some of the Bar

Councils did not take action necessary under the Bar Council Rules for the holding of the elections. But in Madras, Mysore, and Assam, where the

two years had already expired, the question arose whether the elections should be held or not. In Madras the proceedings to hold elections have

already been taken. In other States the period of two years was due to expire. The Government of India was therefore requested by the

concerned Bar Councils that immediate action should be taken to continue the existing member so as to avoid unnecessary expenditure on

elections particularly in view of Clause 4 of the Advocates" (Amendment) Bill, 1965. Section 4 of the Bill seeks to amend Section 8 in the

following manner:

in Sub-section (1) of Section 8 for the words "one-third" and "every second year" the words "one-half" and "every third year" shall be and shall be deemed always to have been respectively substituted.

3. Section 59 which is the only section pressed in aid by learned Counsel for the Government of India entrusts the Central Government with a limited power for removal of difficulties. Sub-section (1) is as follows:

If any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act

to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with

the purposes of this Act, as appear to it to be necessary or expedient for removing the difficulty.

It is obvious that this section can be invoked only for removal of difficulties arising in giving effect to the provisions of the Act and not difficulties

arising aliunde. The intention of this Sub-section is to enable the Central Government to resolve difficulties arising in the transition period and on

account of the repeal of the earlier Acts relating to Advocates. The Sub-section also makes it manifest that any provision made by the Government

of India to remove difficulties should not be inconsistent with the purposes of the Act. That means no provision can be made u/s 59 which will run

counter to any of the express provisions in the Act. Section 8 is clear that one-third of the members first elected to each Bar Council shall retire on

the expiration of every second year. This section is mandatory. In my opinion the direction in Section 8 cannot be modified or altered or neutralised

in exercise of the power u/s 59, for, such exercise will be inconsistent with the direction contained in Section 8 which is one of the purposes of the

Act. It cannot be pretended in this case that any difficulty arose out of the working of Section 8 itself. The counter-affidavit filed on behalf of the

Central Government shows that the difficulty, on the other hand, was not in the working of Section 8, but may arise in the event of the Bill

becoming the law. That is clearly not a difficulty within the purview of Section 59. On both the grounds, therefore, namely, that the notification is

inconsistent with Section 8 and that the difficulty sought to be removed is not one in the working of the Act, the notification must be held to be ultra

vires the powers of the Government u/s 59.

4. It follows that the Madras Bar Council cannot give effect to this notification. It must proceed u/s 8 of the Advocates Act, 1961, as it exists. In

modification of the date originally fixed by this Court, 8th July, 1966, is fixed as the date for polling.