

(1966) 01 MAD CK 0015

In the Madras High Court

Case No : Writ Petition No. 4313 of 1965

C.D. Sekkizhar

APPELLANT

Vs

Secretary, Bar Council, Madras and Others

RESPONDENT

Date of Decision : 06-01-1966

Acts Referred:

Advocates Act, 1961 — Section 3
Constitution of India, 1950 — Article 226

Citation : AIR 1967 Mad 35

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The petitioner is an advocate of this Court with a standing of eight years at the Bar. As a member of the profession, he

applies under Art, 226 of the Constitution for rule forbidding the respondent from conducting the election to the Bar Council of Madras, which was

originally fixed to be held on 5-11-1965 but stayed by this court. The petitioner contends that Rule 7(2) of the Election Rules framed by the

Madras Bar Council on 20-4-1963 and approved by the Bar Council of India on 24/25-8-1963 is invalid in so far as it forbids any announcement

or canvassing as provided for by the Explanation to the rule. The ground of invalidity, it is said, is that the Explanation is unreasonable. The petition

is opposed not only of the ground that the Explanation is in keeping with the ethics and standards of the noble profession but also on the ground

that the alleged invalidity of the Explanation in is more properly agitated by means of an election petition under R. 35 of the Election Rules.

2. The Advocates Act, 1961 by S. 3 in Ch. II. provides for constitution of a Bar Council for such State and fixes its strength besides the provision

for the Advocate General of the State being an ex officio member thereof. Section 6(1) enumerates the functions of a State Bar Council one of the

members of the Bar Council one of which under clause (g) is to provide for election of the members of the Bar Council. The term of office of

members of the Bar Council is regulated by S. 8. By this provision the term of office of the elected members of a State Bar Council shall be six

years, but as nearly as possible one third of the members first elected to the Council shall retire on the expiration of every second year in the

manner prescribed. The vacancies so arising should be filled by election of new members in the prescribed manner.

Section 15 contains rule-making power of a Bar Council, Rules may be framed by the Council to carry out the purposes of Ch. II. Among the

specified items of power to make rules in sub-section(1) of S. 15 is the power of make rules for election of members of a Bar Council and the

power extends to make rules as to the conditions subject to which persons can exercise the right to vote, the preparation and revision of electoral

rolls, the manner in which election shall be held and the manner in which results of election shall be published. In exercise of this power the Election

Rules mentioned at the outset have been framed. These rules cover various matters which need not be detailed here. They include provision for

notice of election and as to how the candidates for election may be proposed. Rule 7 places a bar upon an advocate in certain circumstances from

standing for election or from holding an office or continuing in it in certain circumstances. As this is the rule that is under attack, it may be set out:

7(1) No Advocate found guilty of professional misconduct by the present or previous Bar Council or convicted of any criminal offence involving

moral turpitude and not being merely of a political nature, shall be qualified to stand for election or continue in office after such disciplinary

proceedings or conviction.

2 No advocate found guilty of any electoral misconduct in the election shall be entitled to hold office of a member of the Bar Council for a period

of six years from the date of such finding.

Explanation to Rule 7(2): ""Electoral misconduct"" shall include any announcement or canvassing in person, by post or otherwise by any advocate, of

his candidature to the Bar Council or the candidature to the Bar Council of some

other advocate other than himself. Provided that a nomination to the Bar Council or announcement by the Bar Council shall not be deemed to come within this rule.

The attack in this provision is confined to the validity of the Explanation to sub-rule(2). Learned counsel for the petitioner does not say, I think,

quite rightly, that prohibition of canvassing in person, by post or otherwise by an advocate is unreasonable. His argument is confined to the

prohibition of any announcement in person, by post or otherwise by an Advocate of his candidature to the Bar Council or the candidature to the

Bar Council of some other advocate. Learned counsel is not, however, clear how this prohibition is unreasonable and from what point of view. All

that he says is that if for instance there are two persons in the profession with the same name and one of them stands as a candidate, in the absence

of announcement of the identity of the particular candidate, there may be confusion in the minds of the voters. It is urged therefore, that the

explanation to that extent is unreasonable.

3. The difficulty in the illustration given by counsel rarely occurs, if at all, and is one which is not comprehended by and is not relevant to the

Explanation. It cannot be held to be unreasonable merely by reason of what it does not provide for. The whole object of R. 7 including the

explanation is obviously that having regard to the high ideals and place of the noble profession, no advertisement, canvassing or announcement in

any manner should be permitted. I consider that this is perfectly legitimate and what should be expected. The position of the profession and its

standards cannot be judged by the same yard stick as applies to the general public. The profession is a fraternity by itself and is the master of its

own affairs. It is entitled to prescribe rules of etiquette, conduct, standard and professional ethics for the members of the community. It is hardly

necessary to point out that the profession of law is one of the most evolved and learned of all the professions, and has certainly special privileges

and, therefore, also special responsibilities. Consistent with a view them, therefore, it is eminently reasonable, I think, that Rule 7 has been framed

with a view to avoid any kind of advertisement by an advocate under the guise of his standing for the Bar Council election or of his colleague.

4. Advertisement in any form by a member of the legal profession is rightly

regarded as a kind of misconduct from the point of view of professional ethics. On that matter the profession cannot be judged in the same way as the trade or the rest of the public. In *A solicitor in re; Law Society, Ex parte*; 1912 1 KB 302, Hamilton J. expressed the view:

It is obvious that the conduct of a solicitor in his profession must be judged by the rules of his profession any by the standard which its members set up not only for their brethren, but for themselves. It is inconsistent with the proper conduct of a solicitor in his profession that he should do that which was done in this case, namely, connect himself with the so called debt collecting society incorporated and registered under the Companies Act, but controlled by himself so as to make it an adjunct or instrument for the collection of business which he may take into court in cases where it is profitable to do so. It is inconsistent with the honourable conduct of his profession that he should take business of that sort from clients without disclosing his connection with the company.

5. The Court of Appeal in *Rex v. General Medical Council*, 1930 1 KB 562 also said:

As in the case of the Bar so in the medical profession advertising is serious misconduct in a professional respect and that is all that is meant by the phrase "infamous conduct"; it means no more than serious misconduct judged according to the rules written or unwritten governing the profession.

That court further observed that the Council were the judges without appeal of the existence or absence of serious misconduct in a professional respect. The principle of these decisions, which I accept as correct, is firmly established. Advertisement in any form by a member of the profession of law is and has been for ages considered as reprehensible conduct. That is as it ought to be because of the standard which the gentlemen of the profession have jealously developed and set up for themselves as befitting the honour, dignity and high position of the no 1 profession.

6. The Advocates Act leaves the question of conduct of the members of the profession to the profession itself, S. 7(b) of the Act gives power to the Bar Council of India on that matter and it is indeed one of its functions to lay down standards of professional conduct and etiquette for advocates, Section 49(c) also gives power to the Bar Council of India to make rules in that regard. Rule 36 of the rules framed by the Bar Council

of India in exercise of its power under the provision reads:

An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications,

interviews not warranted by personal relations, furnishing or inspiring newspaper comments or procuring his photograph to be published in

connection with cases in which he has been engaged or concerned. His signboard or name plate should be of a reasonable size. The sign board or

name plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of any Association or that he has been

associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has

been a judge or Advocate General.

7. The Explanation to sub-rule(2) of R. 7 of Election Rules is entirely in keeping with the spirit of Rule 36 of the Rules relating to the professional

conduct and etiquette. The preamble to the rules relating to professional conduct and etiquette also says:

An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the court, a privileged member of the community,

and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar or for a member of the Bar in his

non-professional capacity may still be improper for an advocate.

In the circumstances, therefore, it cannot be said that the Explanation to Rule 7(2) is unreasonable.

8. It is true in politics and in elections to local and Parliamentary bodies as in trade as well as certain other spheres advertisement and canvassing

are a normal feature. But what obtains in such cases is certainly taboo in elections to Bar Councils. What is proper in these cases is clearly

improper in the case of the Bar Council. There is certainly no analogy between two. No doubt in any election, be it in the profession or outside,

there must be a clear announcement of the candidate. Rule 12 of the Election Rules provides for it. It says that not less than 15 days, before the

date fixed for the election, the Secretary of the Bar Council shall cause the names of all the candidates duly proposed to be posted on a notice

board in the Bar Council. The rule also requires the Secretary to send copies of the names to the Bar Association, to the Advocate General and to

each candidate found to have been duly proposed. That must be a sufficient announcement to the electorate which consists of only members to the electorate which consists of only members of the Bar, who, as of a fraternity, know or are expected to know each other.

9. As I said, Rule 7 including the Explanation is reasonable and valid. On this view, it is unnecessary to consider the objection based on Rule 35.

10. The petition is dismissed. No costs. 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.