

(1966) 01 MAD CK 0018
In the Madras High Court

C.D. Sekkizhar

APPELLANT

Vs

The Secretary, Bar Council and Others

RESPONDENT

Date of Decision : 06-01-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) ILR (Mad) 400 : (1966) 79 LW 308 : (1966) 2 MLJ 35

Hon'ble Judges : K. Veeraswami, J

Bench : Single Bench

Judgement

K. 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 Article 226 of the Constitution for a rule forbidding the respondent from conducting the election to the Bar Council of Madras which

was originally fixed to be held on 5th November 1965 but stayed by this Court. The petitioner contends that Rule 7(2) of the Election Rules

framed by the Madras Bar Council on 20th April, 1963 and approved by the Bar Council of India on 24/25th August, 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 on 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 is more properly agitated by means of an election petition under Rule

35 of the Election Rules.

2. The Advocates Act, 1961 by Section 3 in Chapter II provides for constitution of a Bar Council for each 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 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 Section 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 Chapter II. Among the specified items of power to make Rules in Sub-

section (1) of Section 15 is the power to 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

proceeding 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.

3. The attack on 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.

4. 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 Rule 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 yardstick 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 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.

5. 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 L.R.* (1912) 1 K.B. 303 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 and 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 a 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

The Court of Appeal in *Rex v. General Medical Council L.R.* (1930) 1 K.B. 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 them-selves as befitting the honour, dignity and high position of the noble profession.

6. The Advocates Act leaves the question of conduct of the members of the profession to the profession itself. Section 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 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 or stationary 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.

The Explanation to Sub-rule (2) of Rule 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.

7. 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 to be in elections to Bar Councils. What is proper in those cases is clearly

improper in the case of the Bar Council. There is certainly no analogy between the 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 Election Rules provides for it. It says that not less than fifteen 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 of the Bar, who, as of a fraternity, know or are expected to know each other.

8. 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.

9. 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.