
(1990) 08 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 13908 of 1990

D.R. Papi Chetty, A. Saravana Bhavan and Andiappan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 31-08-1990

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 19(6)

Citation : (1990) 08 MAD CK 0019

Hon'ble Judges : Ramalingam, J

Bench : Single Bench

Advocate : S. Silambanan represented by Mrs. Nalini Chidambaram, for the Appellant; K. Raviraja Pandian, AGP (W), for the Respondent

Final Decision : Dismissed

Judgement

Ramalingam, J.—The prayer in the writ petition is for the issue of a writ of declaration, declaring R.4-A of the Tamil Nadu Document

Writers Licence Rules 1982, hereinafter referred to as "the Rules", inserted by G.O.Ms. No. 317 Commercial Taxes and Religious Endowments

Department, dated 23-5-1990, as unconstitutional and illegal and void. The petitioners state that they have been licensed under the provisions of

the rules, which enable them to prepare documents to be registered under the Registration Act. The petitioners have licences valid till 31-12-1990

and thereafter renewals are also contemplated. By the amendment made to these rules by the aforesaid G.O. dated 23-5-1990, R.4-A, reading as

follows, was introduced:

PRESENT LICENCE HOLDERS TO CONTINUE TILL 60 YEARS OF AGE: The persons holding Document Writer's Licence as on 22nd &

23rd May, 90 shall/continue as such till they complete sixty years of age.

The petitioners state that R.4-A which imposes a restriction regarding the age upto which alone a document writer would be licensed, is

unconstitutional and invalid on grounds which are set out below.

2. The petitioners state that under Art. 19(1)(g) of the Constitution, the petitioners have a fundamental right to carry on any trade, business or

occupation, and the occupation carried on by the petitioners as document writers is a guaranteed fundamental right. The petitioners would state

that upon such a fundamental right, though reasonable restrictions could be imposed under Art 19 (6). they could be only on grounds of public

interest and there is no public interest involved in restricting the age upto which a document writer could be licensed.

3. It is not in dispute that under S. 89-B of the Registration Act, the power is vested with the state government to make rules regarding the grant of

licences to document writers, terms and conditions subject to which and the authority by whom such licences shall be granted; and one of the terms

or conditions that is prescribed by the state government under R.4-A of the Rules, is the outer age limit upto which alone the licence would be valid

and the power to frame R.4-A is traceable to S.89-B of the Act. The rule being a statutory rule, this law is a law within the meaning of Part III of

the Constitution. The law so made viz., R.4-A imposes restrictions. The question is whether such restriction is in public interest or not. The licensed

document writers are expected to shoulder a heavy responsibility in drafting the document, so that future litigations would not be created on

account of vague terms contained in the document. They are also supposed to be vigilant and careful in drafting the documents. The government

has, therefore, rightly decided that such exercise of care and diligence could be expected to be exercised only uptill a reasonable period of the life

of an individual. In that context, if they decide that sixty years of age would be the outer age limit upto which the document writers should be

allowed to practise the profession, that rule can certainly be said to be made in the interest of the public in general. For the same reason, the attack

on the said rule on the ground that it is arbitrary and unreasonable cannot be accepted. The rule is based on sound and accepted principles.

4. The next submission of the learned counsel is that S. 89-B gives an unrestricted power to the state government to make a law in the manner of

its choice and there is no such safeguard as is contained in S. 89-A (4), which requires rules made under that section viz. S. 89-A, to be laid

before the legislature." It is submitted that such a law which is made under S. 89-B being only a subordinate legislation, should be struck down. It

is contended that in the exercise of plenary legislative power, restriction on the fundamental right can be imposed but not by subordinate legislation.

For the reasons stated already, a subordinate legislation is also law and restrictions can be imposed by such law. Merely because a safeguard is

provided under S. 89-A(4), which is not available in S. 89-B, there is no scope for any arbitrary exercise of power. If power under S. 89-B is

exercised in an arbitrary manner and unreasonable rules are made, a citizen can always be protected by recourse to courts of law which can strike

down such unreasonable subordinate legislation made in exercise of the powers under S. 89-B.

5. The next submission made by the petitioners' counsel is that licensed document writers are not given any pension and, therefore, there should be

no age of retirement. This is not a case of appointment under the State to a civil post. It is a case of mere grant of licence to practise a trade of his

choice. Therefore, the question of grant of pension, etc. does not arise nor would the provision restricting the age upto which alone a person can

practise that profession or occupation become vitiated merely because there is no provision for pension.

6. The last of the submissions is that the petitioners have valid licences and they can practise as document writers till 31-12-1990, but the

respondents have orally informed them in the first week of August 1990 that they should not continue to write documents because their licences

have become invalid on the ground that they have attained the age of sixty years. It is their case that they are only in their early 50's. Be that as it

may, learned Additional Government Pleader stated before court that notwithstanding the fact that the document writers may reach the age of 60

years, during the currency of the valid licence issued to them, they would not be prevented from practising the profession. This statement is

recorded. In these circumstances, I find no merit in any of the contentions raised in the writ petition and it is dismissed. No costs.