
(2008) 04 MP CK 0059
In the Madhya Pradesh High Court

Dr. Shekhar Seth

APPELLANT

Vs

M.P. State Bar Council
 Laxman Rao Jachak Vs State of
M.P. and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Advocates Act, 1961 — Section 24
Constitution of India, 1950 — Article 14, 16, 19

Citation : (2008) ILR (MP) 1974 : (2008) 5 MPHT 42 : (2009) 1 MPJR 189 :
(2009) 1 MPLJ 234

Hon'ble Judges : Ravi Shankar Jha, J;Ramesh Surajmal Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.

The petitioners by these petitions are challenging the constitutional validity of Rule 143-A as framed by the State Bar Council of Madhya Pradesh. Rule 143-A of the Rules which prescribed 45 years as the maximum age for registration as an Advocate, has been challenged on the ground of unreasonableness and being violative of Articles 14, 16 and 19 of the Constitution of India. It is submitted in the petitions that the Bar Council of Madhya Pradesh has no power, authority or jurisdiction to make such a Rule and on the ground that the rule is arbitrary and discriminatory as persons who have crossed the age of 45 years have been debarred from entering the profession simply on the ground that they have crossed the age of 45 years. It is also submitted by the petitioners that Rule 143-A as amended has no nexus with the mental level of a person to act, appear and plead for a client as an Advocate. It is further submitted that in view of the judgment of the Supreme Court in the case of Indian Council of Legal Aid and Advice v. Bar Council of India and Anr. 1995 AIR SCW 473, the rule deserves to be declared unconstitutional.

Shri Tiwari, learned Senior Counsel for the respondents, has submitted that

looking to the present conditions, the standard of education and inflow of people in the profession it was thought fit that some embargo be put at the entry level. It was further submitted that if age limit at the entry level is not fixed then persons after passing Law at any stage may come to join the profession which would not only pollute the system but would contaminate the Court proceedings and lower the standard of advocacy. Learned Counsel for the respondent submits that the impugned Rule framed by the State Bar Council is therefore in conformity with the judgment of the Supreme Court in the case of Indian Council of Legal Aid and Advice v. Bar Council of India and Anr. (supra).

The impugned rule framed by the Bar Council of Madhya Pradesh reads in the following terms:

Rule 143-A.

A person who is otherwise qualified to be admitted as an Advocate, but is of more than 45 years of age on the date of receipt of application for enrollment in the Bar Council shall not be admitted as an Advocate.

The provision of this rule shall also apply in case of persons seeking enrollment in this Bar Council by means of transfer from other State Bar Councils on and from the date of this rule comes into force, the provisions of this rule shall not apply to any other person enrolled as an Advocate before his attaining of 45 years of age by any other State Bar Council seeking transfer to this State Bar Council.

As both the sides have relied upon the judgment of the Supreme Court in the case of Indian Council of Legal Aid and Advice v. Bar Council of India and Anr. (supra), we find it appropriate to examine as to whether the present controversy is covered by the judgment of the Supreme Court. In that judgment the Supreme Court was adjudging the validity of the Rule framed by the Bar Council of India debarring persons who had completed 45 years of age from entry in the profession. The Supreme Court observed that u/s 49(1)(ah) the Bar Council of India could lay down the conditions subject to which "Advocate" shall have the right to practice. The Supreme Court, however observed that the said provision does not empower the Bar Council of India to frame a Rule barring persons who have completed 45 years of age from enrollment as an Advocate. In Paragraph 11 of the judgment it was held that the State Bar Council alone had the power to decide the question of enrollment of an applicant on its roll and not the Bar Council of India. The impugned Rule was, therefore, held to be ultra vires the provisions of the Act. The Supreme Court also observed that there is no nexus between the age limit and the mental level or the professional expertise. The Court ultimately observed that on either of the counts the rule could not be approved.

Taking a clue from the said judgment various State Bar Councils in the country including Madhya Pradesh have now framed the rules and put a bar on the enrollment of a person above the age of 45 years as an Advocate. In view of the

aforesaid judgment of the Supreme Court it is apparent that the question of jurisdiction of the State Bar Council as raised by the petitioners in the present petition has no merit and is accordingly rejected. However, as far as the issue of reasonableness and discrimination are concerned the Supreme Court in the case of *Indian Council of Legal Aid and Advice v. Bar Council of India and Anr.* (supra) has held as under in Paragraph 13:

13. The next question is, is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various Government, quasi-Government and other institutions since they on being enrolled as Advocates use their past contacts to canvass for cases and thereby bring the profession into disrepute and also pollute the minds of young fresh entrants to the profession. Thus, the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-Government or quasi-Government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrollment. Thirdly, those who were enrolled as Advocates while they were young and had later taken up some job in any Government or quasi-Government or similar institution and had kept the sanad in abeyance are not debarred from reviving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practice at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practicing. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrollment while allowing another group to revive and continue practice even after crossing the age of 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution.

From perusal of the above, it is apparent that the Supreme Court after dealing with the issue of power and jurisdiction of the Bar Council of India has specifically dealt with the issue of reasonableness of the rule prescribing 45 years as maximum age of entry into the legal profession and has held it to be violative to the principle of equality enshrined in Article 14 of the Constitution.

In view of what has been held by the Supreme Court in Para 13 of the judgment in the case of Indian Council of Legal Aid and Advice v. Bar Council of India and Anr. (supra), the Madras High Court has declared a similar Rule framed by the State Bar Council of Tamil Nadu ultra vires and unconstitutional in the case of M. Radhakrishnan Vs. The Secretary, The Bar Council of India and The Secretary, The Bar Council of Tamil Nadu, , in the following terms:

14. We cumulatively considered above the acceptability of the various factors projected for imposing the upper age limit. We make it clear that we are not underestimating the rule making power of the Bar Council of Tamil Nadu, at the same time, we cannot uphold the validity of a provision, even though it arises out of the rule making power of the authority with proper jurisdiction, when it is apparently stained with arbitrariness and inequality and infringes Article 14 of the Constitution. Thus, we have no other option except to declare the impugned Rule S(A) as void and unconstitutional.

Similarly in the matter of Lal Chand Saini v. Union of India and Ors. decided on 21-9-2007, disposing of Civil Writ Petition No. 10864 of 2006 and other allied matters a Division Bench of the Punjab and Haryana High Court held that Rule 2-B of Rule 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961 debarring a person who had crossed the age of 45 years is ultra vires the Act and the Constitution of India and while doing so has held as under:

25. To condemn a class of persons and brand them, as the cause for the alleged fall in standard in the legal profession, in the absence of any material or statistical data, is an arbitrary exercise of the rule making power, as also unreasonable, unjust and violative of Article 14 of the Constitution of India. An entire class of persons, above the age of 45, have been classified as perpetrators of the ills that pervade the legal profession. Such a classification would, in our considered opinion, be unwarranted. Isolated instances of malpractice by late entrants into the profession cannot be utilized to condemn an entire class of duly qualified persons aged above 45 years so as to treat them differently. Our above conclusions are fully covered by the ratio laid down by the Hon"ble Supreme Court in Indian Council of Legal Aid and Advice etc. etc. (supra); Rule 2-B, as framed, is, therefore, violative of the principles of equality, enshrined in Article 14 of the Constitution.

If, as canvassed by Counsel for the Bar Council of Punjab and Haryana, the legal profession is facing a crisis of quality, the remedy lies elsewhere and not in erecting walls of exclusion to shut out persons otherwise qualified. We have no doubt, in view of the authoritative pronouncement of the Hon"ble Supreme Court in Indian Council of Legal Aid and Advice etc. etc. (supra), that the rule, as enacted, is not only violative of Article 14 of the Constitution but also unreasonable and arbitrary.

This noble profession that swears by the principles of equality, fraternity, and liberty, would be ill-advised to raise such barriers in this age of globalization. To

condemn a person for his age, or to condemn a class of persons above 45 as perpetrators of ills, as alleged by Counsel of the Bar Council, would be unjust, unfair and arbitrary. The State Bar Council, an institution of great significance power and prestige, would be well advised to take steps to ensure better legal education, periodic post enrollment education and courses for members of the legal fraternity so as to enhance the efficiency and glory of this noble profession.

With the aforementioned observations, we hold that though the Bar Council of the Punjab and Haryana has the rule making power to prescribe conditions for enrollment of law graduates to the rolls of the State Bar Council, Rule 2-B of Rule 28(2)(d) of the Rules, is illegal, being unreasonable, arbitrary and violative of Article 14 of the Constitution of India and is, therefore, struck down.

On perusal of Paragraph 13 of the judgment of the Supreme Court in the case of Indian Council of Legal Aid and Advice v. Bar Council of India and Anr. (supra), it is apparent that the Supreme Court has held introduction of the maximum age of 45 years for enrollment as discriminatory and violative of Article 14 of the Constitution of India. In the present case, the respondent/State Bar Council has not placed any facts, figures, statistics or documents or brought on record any material before this Court in support of the prescription of a maximum age of 45 years for enrollment nor has any material been brought on the record to establish as to how debarring entry of the persons above the age of 45 years would either benefit the legal profession or would adversely affect the standard of the legal profession or pollute its sanctity. In the absence of any such material the law as laid down by the Supreme Court in the case of Indian Council of Legal Aid and Advice v. Bar Council of India and Anr. (supra), squarely applies to the present case also and renders the impugned rule prescribing the maximum age of 45 years for entry in the legal profession as arbitrary and discriminatory and, therefore, violative of Article 14 of the Constitution of India. We also draw support for the conclusion recorded by us from the judgment of the Madras High Court in the case of M. Radhakrishnan v. The Secretary, The Bar Council of India and Anr. (supra) and Punjab and Haryana High Court in the case of Lal Chand Saini v. Union of India and Ors. (supra).

In the result we hold that Rule 143-A as framed by the Bar Council of Madhya Pradesh is ultra vires Article 14 of the Constitution of India. The rule is accordingly struck down.

The petitions are allowed. There shall be no orders as to costs.