
(2014) 11 DEL CK 0272

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4738/2013 and C.M. Nos. 10809/2013 and 4602 of 2014

Jagdish Sagar

APPELLANT

Vs

Bar Council of India

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Advocates Act, 1961 — Section 30(ii)
Constitution of India, 1950 — Article 226

Citation : (2014) 11 DEL CK 0272

Hon'ble Judges : Rajiv Sahai Endlaw, C.J

Bench : Single Bench

Advocate : Preet Pal Singh, Advocate and Ashok Pandey, Jt. Secretary, BCI, Advocate for the Respondent

Judgement

Rajiv Sahai Endlaw, C.J.—This writ petition under Article 226 of the Constitution of India; (i) impugns Rule 7 of Chapter III in Part VI of the Bar Council of India Rules, prohibiting an officer, after his retirement or otherwise ceasing to be in service for any reason, if enrolled as an Advocate, from practicing in any of the judicial, administrative courts / tribunals / authorities which are presided over by an officer equivalent or lower to the post which such officer last held; (ii) in the alternative impugns the explanation to the said Rule explaining that an officer shall include judicial officer, officer from State or Central Services and Presiding Officers or Members of the Tribunals or Authorities or such Officers as referred under Section 30(ii) of the Advocates Act, 1961; (iii) seeks a declaration that the petitioner is entitled to practice as an Advocate before Judicial Officer of any rank; (iv) yet further in the alternative seeks an order reading down the aforesaid Rule, as permitting the petitioner to practice as an Advocate before Judicial Officer of any rank.

2. The petitioner, post his retirement from the post of Principal Secretary (Power) in the Government of National Capital Territory of Delhi with basic pay of Rs. 26,000/-, on 2nd June, 2006 enrolled as an Advocate with the Bar Council of

Delhi. The aforesaid Rule and / or explanation thereto bars the petitioner from practicing before the subordinate judiciary including the Delhi Higher Judicial Services. It is stated that the maximum of the scale of the District Judge in Delhi at the time of retirement of the petitioner was a basic pay of Rs. 24,850/- which was less than the basic pay of the petitioner at the time of retirement.

3. The petition was entertained. During the pendency of the petition the said Rule 7 was amended by the Bar Council of India vide Resolution No. 180/2013 dated 9th August, 2013 published in the Gazette on 28th September, 2013 and the Rule now stands as under:-

"7. An Officer after his retirement or otherwise ceasing to be in service for any reasons, if enrolled as an Advocate, shall not practice in any of the Courts, Tribunals or Authorities, of which he was a member or is presided over by an officer equivalent or lower to the post which such officer last held.

PROVIDED that the restriction on such officer shall extend only to the territorial jurisdiction of the High Court, which such officer is subordinate to.

PROVIDED further that the restriction shall be in addition to any other restriction imposed by any other Statute for the time being in force.

Explanation - An officer, shall include Judicial Officer, Officer from State or Central Services and Presiding Officers or Members of the Tribunals or Authorities or such Officers as referred under Section 30(ii) of the Advocates Act, 1961."

4. It is however the contention of the petitioner that during his tenure as an IAS Officer of the Central Government, he was subjected to the jurisdiction of almost all the High Courts and also exercised his duty as a Member of the quasi judicial body / tribunal; thus as per the aforesaid Rule he will be barred from appearing before almost all the judicial courts / tribunals / authorities throughout the country. It is further his contention that the Rule aforesaid would bar any Officer who served in any Ministry of Central Government or headed any of the All India Organizations, from practicing law in any Court in India since a Ministry of the Government of India is subject to jurisdiction of all the High Courts.

5. The counsel for the respondent Bar Council of India has with leave, today in Court handed over an affidavit dated 1st November, 2014 of the Secretary, Bar Council of India and which is taken on record. Paras 11 to 14 of the said affidavit are as under:-

"11. That the Answering Respondent states that a Central Government Employee or head of any all India organization is barred to appear only before that particular Tribunal / Authorities or before its subordinate Tribunals / Authorities, where he / she served as a Member or Presiding Officer of that Tribunal / Authority. For example, a member of CAT will not appear before CAT but he / she is free to appear before Tax Tribunal. Similarly, a member of Tax Tribunal will not appear before Tax Tribunal or subordinate Tribunal / Authority of that Tax Tribunal but he / she is free to appear before CAT.

12. That the Answering Respondent states that this Rule does not bar an executive officer from appearing before all Courts / Tribunals / Authorities within territorial jurisdiction of respective High Courts, where such officer served as a member / presiding officer but it bars him / her only from appearing before such Tribunal, where he / she served as a Member or Presiding Officer of that Tribunal or before such Quasi Judicial Authorities, in which such officer was a member or was presided over by an officer equivalent to or lower than the post which such officer last held.

13. That the Answering Respondent states that this Rule does not bar an executive officer from appearing before any Judicial Officer, whether, such Judicial Officer is equivalent to or lower in rank than such officer last held. Therefore, an executive officer is barred from appearing before equivalent or lower ranked executive officer in that particular state but not barred from appearing before Judicial Officer, Tribunal / Authority of equivalent or lower rank in same State.

14. That the Present Petitioner being the Executive Officer is not barred from appearing before any District or High Court of that State where he served however, he is barred from appearing before that particular Tribunal or Authority or subordinate Tribunal / Authority thereof in the territorial jurisdiction of that particular State, where he served as a member / presiding officer of that particular Tribunal or Authority."

6. The petitioner appearing in person states that his grievance, for the present stands satisfied in view of the aforesaid stand of the respondent.

7. The petition is disposed of in terms of above.