

(1997) 09 MAD CK 0163
In the Madras High Court

M. Sivathanu

APPELLANT

Vs

Bar Council of Tamil Nadu and Another

RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1998) 1 MLJ 410

Hon'ble Judges : Manmohan Singh Liberhan, C.J

Bench : Division Bench

Judgement

Manmohan Singh Liberhan, C.J.—This writ appeal arises out of the order dated 22.7.1997, dismissing the writ petition, declining to dispense with the apprenticeship training.

2. Skeletal admitted facts run as follows: Petitioner was employed in the legal department of a Nationalised Bank for a period of fifteen years. It was claimed that by virtue of his service in the legal department, he acquired experience by appearing in consumer forums or defending the Bank in various Forums, by reading and drafting of pleadings, by analysing the judgments of various courts for deciding whether appeal or revision has to be filed against the judgment rendered against the Bank. The petitioner passed his Law Degree through correspondence course as well as three year course by attending regular classes in 1986. Under Advocates Act, 1961 Bar Council of India framed Rules, for eligibility to be enrolled as an advocate on the State roll of Advocates, provided apprenticeship of one year under a designated senior Lawyer or Advocate having 15 years of practice at Bar being in continuous active practice in courts, who has been specifically authorised to impart training (herein after termed as "Guides"). Exemption from undergoing training was provided to Judicial Officers, Prosecutors, Vakils, Pleaders and Mukhtars having worked in that capacity for one year.

3. Petitioner claimed exemption from training on the grounds: (i) that the restriction for eligibility for undergoing apprentice training for one year is an

unrealistic restriction on his right to profession thus it violates Article 19 of the Constitution of India: (ii) grant of exemption only to Judicial Officers, Prosecutors, Vakils, Pleaders and Mukhtars and depriving the petitioner having a similar experience has resulted in discriminatory treatment. thus it is argued that providing for training is violative of Article 14 of the Constitution of India; and (iii) exemption provided by Rule 14 should be read liberally so as to include the persons like the petitioner within the exemption clause.

4. Section 24 of the Advocates Act, 1961 provided for eligibility for one to be admitted as an advocate on a state roll under it one has to complete the age of twenty one years and possess the degree of Law from any University in India which is recognised for the purpose of this (Advocates Act) Act by the Bar Council of India and fulfil such other conditions as specified by the Rules made by the Bar Council of India or by the State.

5. Innumerable factors demanded, that before the privilege conferred on a person to be admitted as an Advocate on State roll, he should be required to practice as an apprentice and have practical experience of one year under a Senior Lawyer or Advocates having fifteen years of practice of Bar and who are in continuous active practice recognized by the Bar Council. Need for training was met by enacting the training rules. The Bar Council of India in its wisdom provided exemption from training to persons having served as Judicial Officers, Prosecutors, Vakils, Pleaders and Mukhtars vide Rule 14 of the Rules.

6. It is well established rather well accepted that profession of law is neither a trade nor a business nor it can be equated with them. The legal profession cannot be equated with selfdesire for promotion of a career. Putting self interest above the interest of the general public would be antithesis of the concept of profession with the activities of lesser caliber. Profession of law has always been placed at highest place to serve the public interest. Right to practice cannot be termed as a fundamental right or equitable right. It is purely a statutory right conferred by the statute to appear in Courts and to represent the interest of his clients, not as his agents, but as an officer of the Court by assisting the Court to arrive at a conclusion by deciding the issues raised. It is wellknown that an Advocate is none other than but an officer of the Court. He is one of the essential wing or a person participating in the process of dispensation of justice, which is the pious duty of the Courts, It is a statutory right conferred by a Statute and can be exercised subject to the conditions provided by the Statute. The petitioner cannot claim, as a matter of fundamental right, or even a right inequity, to represent somebody in Courts of law, except permitted under a law enacted by the Legislature. Under the circumstances it would be unrealistic to poist a theory that a person acquired knowledge being in service or staying at home or by participating in seminars can be equated with those having an exposure to courts, participating in crossexaminations in the courts and assisting the Courts in the process of dispensing justice. Acquisition of knowledge would be an clusive concept to practical training or experience in Courts under the Guide, who

acquired the same by spending a number of years in Court ventures. From the imponderable factors and circumstances were taken into consideration by expert body while prescribed the practical training as one of the essential eligibility condition for conferring right to appear in Court or be enrolled as an advocate.

7. Providing a training as a condition for pre-enrolment as an advocate is a laudable act. It is quintessential that before a person is permitted to address the Court, who is already overburdened with work and to render assistance to the Court or the general public is at least expected to be acquainted with the manner in which he can assist the Court by disseminating the law, facts before the Court to arrive at the just decision. One's experience in the Department in whatever capacity may be, cannot even remotely be considered a sufficient exposure to the court proceedings or to the general public, when the general public expects an advocate to deal with various branches of law and to deal with everchanging scenario of societies demands and fast growing legislation with which an ordinary citizen cannot even keep pace. An Advocate is expected to serve the public in general devoid of financial gains made rendering service. No theory can be substituted for practical training of apprenticeship in Courts.

8. We are of the considered view that providing a practical training as a condition for eligibility to enrolment as an advocate is a healthy provision, much needed and subservient to public interest, justice and assistance to court.

9. It is well established that all restrictions placed by law are presumed to be in public interest and reasonable unless proved otherwise. The petitioner point out, much less plausibly that the restriction of training imposed in any manner is either excessive or is against the public interest or policy. The petitioner vehemently argued that grant of exemption to the category of prosecutors, Pleaders and Mukhtars suffers from the vice of discrimination. It is contended that the object of the grant of exemption was that since the Judicial Officers, Prosecutors, Vakils, Pleaders or Mukhtars have already acquired sufficient experience by their exposure to Court proceedings. Consequently, no further experience is required in assisting in the process of rendering justice. The classification is based on intelligible differentia for distinguishing persons or things from the left out plausibly and reasonably and there has been a reasonable nexus with its avowed policy. Thus, the Rule does not suffer from any vice of violation of Article 14 of the Constitution of India. The restriction imposed with respect to training as pre-eligibility condition for enrolment is neither excessive nor unreasonable nor violative of Article 19 of the Constitution of India. Reasonable experience of practice cannot be acquired merely by working in a Department. For innumerable reasons, the experience of working in a Department cannot be equated with the experience of court practice and various perception required of court proceedings. Even if it is assumed that the petitioner did appear in some consumer forums etc. the petitioner is not expected to only practice in a specific court and in specific circumstances. It is not the Advocate's right what he expects to do, but it is the expectation from the general public

what and how the Advocate should assist the public at the time of need which is of paramount consideration. The need of the general public cannot be sacrificed at the desire of an individual or for one's perception about himself.

10. For the reasons recorded above, we find no force in the submission that the restriction imposed with respect to training as preeligibility condition for enrolment is either excessive or unreasonable or violative of Article 19 of the Constitution of India.

11. The petitioner vehemently argued, relying on *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, and *Priyavarte Mehta v. Amrendu Banerjee* AIR 1977 Pat. 114 to the effect that principle of classifications needs rational and intelligible differentia for distinguishing persons or things from the left out. It has to have rational nexus or relation with its allowed policy. If there are two views possible on an interpretation of a statute, the one which enhances the object of intendment of the statute should be preferred over the one which restricts.

12. We are of the considered view, as observed in the earlier part of the judgment, that the classification is based on intelligible differentia for distinguishing persons or things from the left outs plausibly and reasonably and there has been a reasonable nexus with its avowed policy. The Rules conferred the privilege of being enrolled as an advocate to appear in courts and conduct cases of the litigant public should be only with the persons who can discharge their duty efficiently by acquiring atleast one year experience under a designated senior lawyer or Advocate having fifteen years on continuous and active practice at Bar. The observations made in the judgment cited has been read by the petitioner totally out of the context and the text of the facts in the case involved like *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, the Parliament was dealing with respect to enactment of laws with regard to trade and commerce under the Gold (Control) Act.

13. It is axiomatic that court is expected to enforce what the law is, not what it should be. The court in the ordinary course for no philosophical reasons or other perceptions or for its own reasons irrespective of the consequences of legislations, would not give meaning to plain meaning of legislation especially when it is not permissible for courts to add or sub-tract in the legislation, when legislation is not capable of two interpretations. Courts would restrain itself from importing or attributing imagined meaning to legislation against the plain meaning in it carries and then add and subtract from legislation by adhering interpretative law.

14. For the reasons recorded above, is find no merits in the appeal to interfere with the findings of the Hon''ble single Judge. The writ appeal is dismissed, Connected C.M.P. No. 10865 of 1997 is also dismissed.