
(2008) 08 RAJ CK 0022
In the Rajasthan High Court

Mangala Ram

APPELLANT

Vs

Bar Council of Rajasthan and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Advocates Act, 1961 — Section 24, 24A, 25, 26, 26A
Constitution of India, 1950 — Article 14

Citation : (2009) 5 RCR(Civil) 590 : (2009) 1 RLW 609 : (2009) 3 SLJ 160

Hon'ble Judges : R.C. Gandhi, J;Guman Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.C. Gandhi, J.—These two writ petitions have been filed challenging the Resolution dated 23.4.2007 passed by the Bar Council of Rajasthan and Resolution dated 4.7.2005 of the Bar Council of India, whereby the resolution of the Bar Council of Rajasthan for Incorporating Rule 1(A) to the Rules framed by the Bar Council of Rajasthan, Jodhpur, in exercise of its powers u/s 28(2)(d) read with Section 240(1)(e) of the Advocates Act, 1961, has been approved.

2. The disqualifications for admission and enrollment of the Advocates to the State Bar Council have been prescribed and stipulated in the provisions of Advocates Act, 1961 (hereinafter to be referred as "the Act"). Section 24 of the Act deals with admission of the Advocates on the roll of the State Bar Council. Section 24A deals with disqualifications for enrollment of the Advocates. Section 28 provides the rule making power of the Bar Councils of the States to carry out the purpose of Chapter III. Section 24 and 24A are contained in Chapter III of the Act.

3. It appears from the pleadings that in exercise of the powers u/s 28(1)(d) read with Section 24(1)(e) of the Act, to regulate the conditions for enrollment of an Advocates, the Bar Council of Rajasthan framed Rule 1-A in the following manner to be incorporated in the existing Rules;

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

4. The proposed rule was sent by the Bar Council of Rajasthan vide letter dated 31st March, 2005 for its approval to the Bar Council of India, so that the proposed rule could be Incorporated by way of amendment in the existing Rules framed by the Bar Council of Rajasthan. The Bar Council of India in their letter dated 4.7.2005 conveyed to the Bar Council of Rajasthan that the proposed amendment to the Rules was considered by the Bar Council of India in its meeting held on 25th and 26th June, 2005 and after consideration, the Bar Council of India has passed the Resolution approving the proposed rule, which is extracted below:

RESOLVED that the amendment of the Enrolment rules by adding the following contained in the letter No. BCI/D/Gen.Meet./Min/Ju/2005/3710 dated 31.3.2005 received from Bar Council of Rajasthan regarding 45 years restriction on enrolment as advocates be and is hereby approved.

5. Accordingly, the proposed rule was incorporated by the Bar Council of Rajasthan as Rule 1-A to the Rules.

6. Writ Petition No. 8875/2007 has been filed by the Society for the Former Judges Association of the State of Rajasthan, seeking to quash the Resolutions and Rule 1 (A) as prayed for in the writ petition.

7. Mr. Shah, appearing on behalf of the Bar Council of Rajasthan has made a statement at the bar that no Judicial Officer has been denied the Advocates' license applying Rule 1(A). He has explained his statement stating that since a Judicial Officer is already enrolled as an advocate before joining the judicial service of the State of Rajasthan and during his service period, his license remains suspended and on his retirement from such service it is automatically revived and the retired Judicial Officer need not to approach the Bar Council seeking permission for issuance of a licence to practice in the Courts in Rajasthan. Because of the above statement, nothing remains to be adjudicated so far as the grievance of the Judicial Officers with regard to the upper age limit provided in Rule 1-A is concerned. They are at liberty to practice their legal profession in the Courts through out the State of Rajasthan unhindered.

8. Petitioner Mangla Ram presented an application to the Bar Council of Rajasthan for his enrolment as an Advocate. His application was considered u/s 26 of the Act read with Rule 1-A by the Enrolment Committee of the Bar Council of Rajasthan In its meeting held on 8.10.2006. Section 26 of the Act, for convenience, is reproduced hereunder.

26. Disposal of applications for admission as an advocate.- (1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provisions of Sub-section (2) and (3)

(and to any direction that may be given in writing by the State Bar Council in this behalf), such committee shall dispose of the application in the prescribed manner.

[Provided that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll of advocates by misrepresentation as to an essential fact or by fraud or undue Influence, remove the name of such person from the roll of advocate after giving him an opportunity of being heard.]

(2) Where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of refusal of the application.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under Sub-section (2) in conformity with the opinion of the Bar Council of India.

9. Upon consideration by the Enrolment Committee, his request for enrolment was declined in view of the rider placed by Rule 1-A of the Rules. The said consideration was referred to the Bar Council of India for its opinion and approval vide letter dated 26.10.2006. The Bar Council of India considered the consideration of the Enrolment Committee of the Bar Council of Rajasthan and passed Resolution No. 17, which reads as under:

RESOLVED that the reference made u/s 26(2) of the Advocates Act by the Bar Council of Rajasthan in the enrollment application of Shri Mangla Ram Gujar be and is hereby accepted.

10. The Bar Council of India conveyed the aforesaid resolution to the Bar Council of Rajasthan, Jodhpur, vide letter dated 23.4.2007. Consequently, the petitioner was informed by the Bar Council of Rajasthan vide letter dated 21.6.2007 that his request for enrolment is declined.

11. The petitioner under such circumstances challenged the Resolution No. 17 of the Bar Council of India "passed on 23rd April, 2007 and Rule 1-A framed by the Bar Council of Rajasthan, on the ground that the Bar Council of Rajasthan as well as the Bar Council of India have enacted the Rule, which is discriminatory in nature, preventing the eligible persons to practice the legal profession and seek enrollment as an advocate.

12. The respondents have filed reply to the writ petition, stating therein that the Bar Council of Rajasthan is competent u/s 28 of the Act to frame rules for regulating the enrollment of the advocates and in exercise of this power, rules have been framed. Rule 1(A) prevents a person, who has attained the age of 45 years, to be enrolled as an advocate. The rule sought to be quashed does not suffer from any illegality and is also not discriminatory in nature and prays for dismissal of the writ petition.

13. We have heard learned Counsel for the parties and perused the record.

14. The controversy involved in this petition arose because of the Resolution No. 64/93 dated 2nd August, 1993 passed by the Bar Council of India, whereby Rule 9 in Chapter III of Part VI of Bar Council of India Rules, was added. The Bar Council of India informed all the State Bar Councils to enact such rules and accordingly Rule 1-A was enacted and inserted in the Rules by the respective State Bar Councils.

15. The validity and legality of Resolution No. 64/1993 of the Bar Council of India came to be considered by the Apex Court in case title Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, . The Apex Court while dealing with Section 24 of the Act held that it is the domain of the Bar Councils of the State to admit the advocates and not of the Bar Council of India and the Resolution being beyond the scope and jurisdiction of the Bar Council of India, struck down the Resolution. While dealing with the Resolution and the powers of the Bar Council of India and the Bar Councils of the States, the Supreme Court observed in para Nos. 11 and 12 of the judgment as under:

11. It seems Parliament while enacting the Act created agencies at the State level as well as at the Central level In the form of State Bar Councils and Bar Council of India and invested them with rule-making powers on diverse matters touching the legal profession, presumably because it must have realised that matter pertaining to the profession are best left to informed bodies comprising of members of the said profession. However, while doing so it provided for basic substantive matters, e.g., eligibility for entry into the profession (Section 24), disqualification for enrolment (Section 24-A), authority entitled to grant admission (Sections 25 and 26), the authority which can remove any name from the roll (Section 26-A), etc., and placed them within the domain of a State Bar Council. Thus it is the State Bar Council which alone must decide on the question of enrolment of an applicant on its roll. u/s 24 a person who is a citizen of India and possesses a degree in Law becomes qualified to be admitted as an advocate if he has completed twenty-one years of age, subject of course to the other provisions of the Act. No doubt he must fulfill the other conditions specified in the rules made by the State Bar Council [Section 24(1)(e)]. Every person whose name is entered in the list of advocates has a right to practise in all courts including the Supreme Court, before any tribunal or other authority. It is, therefore, within the exclusive domain of the State Bar Councils to admit persons as advocates on their rolls or to remove their names from the rolls.⁷⁴³ There is no provision in Chapter III dealing with admission and enrolment of advocates which restricts the entry of those who have completed 45 years as advocates. Nor has the State Bar Council made any such rule under its rule making power.

12. There is no specific provision in Section 7 of the Act which enumerates the functions of the Bar Council of India empowering it to fix the maximum age beyond which entry into the profession would be barred. That is why reliance is placed on the rule-making power of the Bar Council of India enshrined in Section

49. That section empowers the making of rule by the Bar Council of India "for discharging its functions" under the Act, and, in particular, such rules may prescribe the class or category of persons entitled to be enrolled as advocates. The functions of the Bar Council of India enumerated in Section 7 do not envisage laying down a stipulation disqualifying persons otherwise qualified from entering the legal profession merely because they have completed the age of 45 years. On the other hand Section 24-A was introduced by Section 19 of Act 60 of 1973 with effect from 31-1- 1974 to disqualify certain persons from entering the legal profession for a limited period. By the impugned rule every person even if qualified but who has completed 45 years of age is debarred for all times from enrolment as an advocate. If it had been possible to restrict the entry of even those class or category of persons referred to in Section 24-A by a mere rule made by the Bar Council of India, where was the need for a statutory amendment? That is presumably because matters concerning disqualification even for a limited period was considered to be falling outside the ken of rule making power, being a matter of public policy. It is difficult to accept the interpretation that all those above the age group of 45 years constitute a class within the scope of clause (ag) of Section 49(1) of the Act to permit the Bar council of India to debar their entry into the profession for all times. In the guise of making a rule the Bar Council of India is virtually introducing an additional clause in Section 24 of the Act prescribing an upper age ceiling of completed age of 45 years beyond which no person shall be eligible for enrolment as an advocate or is inserting an additional clause in Section 24A(1) of the Act prescribing a disqualification. Viewed from either point of view we are clearly of the opinion that the rule making power under clause (ag) of Section 49(1) of the Act does not confer any such power on the Bar Council of India. We are unable to subscribe to the view that all those who have completed the age of 45 years and are otherwise eligible to be enrolled as advocates constitute a class or category which can be disqualified as a single block from entering the profession. Besides, as stated above clause (ag)(sic) relates to identification and specification of a class or category of persons "entitled" to be enrolled and not "disentitled to be enrolled as advocates, We, therefore, are of the opinion that the impugned rule is beyond the rule making power of the Bar Council of India and is, therefore, ultra vires the Act.

16. After dealing with the powers of the Bar Councils of the States and the Bar Council of India, the Supreme Court rested the similar rule on the touch stone of Article 14 of the Constitution of India and held in para 13 of the judgment as under:

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 enrolment. 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 large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practising. 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 enrolment while allowing another group to revive and continue practise 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 of India.

17. The plea of the learned Counsel for the respondents that the Bar Council of Rajasthan has power to enact the law and the Supreme Court has not dealt with the rule framed by the Bar Council, has no substance. After dealing with the powers of the State Bar Councils and the Bar Council of India and the scope and effect of the Resolution No. 64/93 of the Bar Council of India elaborately, the Supreme Court held it ultra vires to the mandate of Article 14 of the Constitution.

18. The judgment (supra) was delivered on 17.1.1995 by the Supreme Court. The Bar Council of Rajasthan enacted and added Rule 1-A to the Rules, sought to be quashed, in the year 2005 without noticing that such restriction of upper age of 45 years has already been declared by the Apex Court as ultra vires to Article 14 of the Constitution of India, creating a situation for second round of litigation. There was no need to frame such a rule, which has already been set aside by the Supreme Court.

Since this issue is not res integra as stood settled by the Supreme Court in the judgment(supra), therefore, Rule 1-A framed by the Bar Council of Rajasthan, sought to be quashed, does stand the scrutiny of law and is struck down as ultra vires declared ultra vires and discriminating in terms of Article 14 of the

Constitution of India.

19. For the aforesaid reasons, the writ petition is allowed.

The Bar Council of Rajasthan, Jodhpur/Jaipur is directed to consider the application of Shri Marigla Ram Gujar for his enrollment as an Advocate.