

(2009) 06 SHI CK 0012
In the High Court Of Himachal Pradesh

M.R. Kondal

APPELLANT

Vs

Bar Council of India and Others

RESPONDENT

Date of Decision : 15-06-2009

Acts Referred:

Bar Council of Himachal Pradesh Advocates Enrolment Rules, 2006 — Rule 3
Constitution of India, 1950 — Article 14

Citation : AIR 2009 HP 85

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—By means of this Writ Petition the petitioner has prayed for the issuance of appropriate writ to quash Rule 3 of the Enrolment Rules of 2006 framed by the Bar Council of Himachal Pradesh in so far as the said Rules disqualifies persons above the age of 45 years from being enrolled as Advocates.

The petitioner at the time of filing the petition was aged 52 years. He was working as Economic Investigator Grade-II in the office of the Director General, Labour Bureau, Shimla. After joining service the petitioner did his graduation, post graduation and in the year 1994 he joined the LL.B Course and successfully completed the same in the year 1997. He also obtained the LL.M degree in September, 2000. According to the petitioner he has submitted his Ph.D Thesis in October, 2006.

2. The petitioner is aggrieved by Rule 3 of the Bar Council of Himachal Pradesh Advocates Enrolment Rules, 2006, which reads as under:

3. A person shall be eligible to be admitted as an Advocate on State Roll if he/she fulfills the conditions laid down in the Advocates Act, 1961 and the Bar Council of India Rules and the Bar Council of Himachal Pradesh Advocates Enrolment Rules, 2006. Provided that a person who has completed the age of 45 years on the date on which he/she submits his/her application for enrolment as

an Advocate to the Bar Council of Himachal Pradesh shall not be entitled to be enrolled as an Advocate.

3. According to the petitioner, the State Bar Council has no authority to put a condition of the maximum age as prescribed under the aforesaid Rule. It is also alleged that the criteria so laid down has no nexus with the object sought to be achieved.

4. The Bar Council of India and Bar Council of Himachal Pradesh have contested the aforesaid writ petition. It is not necessary to go into the contentions raised by the parties in detail since most of these contentions have already been decided by the Apex Court in Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, , wherein the Apex Court held as follows:

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 24A), authority entitled to grant admission (Section 25 and 26), the authority which can remove any name from the roll (Section 26A), 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 fulfil 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 practice 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. There is no provision in Chapter III dealing with the 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 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 24A was introduced by Section 19 of Act 60 of 1973 with effect from 31st January, 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 24A 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 competed 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 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) identification and specification of a class or category of persons "entitled" to be enrolled and not "disentitled" to the 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.

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 a 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.

5. It has been argued by Sh. Ajay Mohan Goel, learned Counsel for the Bar Council of Himachal Pradesh that this judgment only lays down that it is the State Bar Council which is entitled to lay down conditions u/s 24(1)(e) and the power to make Rules is given to the State Bar Council u/s 28.

6. The aforesaid argument loses sight of the fact that in para 13 quoted hereinabove the Apex Court after holding that the Bar Council of India had no power to make Rules also held that even if such power was there, the said Rules are arbitrary and unreasonable.

7. In the present case also no material has been placed on record that there was any material available with the State Bar Council to show that the State Government or quasi Government servants indulge in undesirable activities after entering the profession. It is clear that the Rule is discriminatory since it only debars those persons from entering the profession who have completed 45 years of age and there is nothing to show what is the criteria for fixing the age of 45 years.

8. A similar issue was considered by the Madras High Court in *M. Radhakrishnan v. The Secretary, the Bar Council of India and Anr.* AIR 2007 Mad 108, wherein the State Bar Council has framed a Rule similar to the one which is under challenge before us. A Division Bench of the Madras High Court held as follows:

13. ...We emphasise that while striking down Rule 9, the Supreme Court, after observing so, not stopping therewith, itself posed a question, "13. The next question is, is the rule reasonable or arbitrary and unreasonable?" and answered the same, which is extracted in the earlier part of the judgment. Hence, the contention of the respondents that the supreme Court struck down Rule 9 framed by the Bar Council of India only on the basis of jurisdictional aspect and not on

other various aspects has no substance. We also add here that when a person is fully qualified to be enrolled to practice as an Advocate and such person, if curtailed from enrolment on the basis of age factor, in view of the reasons given above, such curtailment cannot be so lightly defended by stating that the right to practice as an Advocate is merely a statutory right in a given set of facts. We unveil the object of the rule that it is only to curtail a group of persons from entering into the profession and to satisfy other group of persons who also stand on the same footing. Merely because happening of certain stray instances here and there, it cannot be said that the whole field is dominated by persons with undesirable character.

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 8(A) as void and unconstitutional.

9. We are in respectful agreement with the law laid down by the Madras High Court.

10. In view of the above discussion, the writ petition is allowed and the proviso to Rule 3 of the Enrolment Rules which lays down that a person who has completed the age of 45 years shall not be entitled to be enrolled as an Advocate is struck down being void and unconstitutional. There will be no order as to costs.