

(2006) 03 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 71631 of 2005

Neel Kanth Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Advocates Act, 1961 — Section 48A, 49(1), 6
Constitution of India, 1950 — Article 14, 16, 19, 19(1), 226

Citation : AIR 2006 All 243 : (2006) 3 AWC 2299 : (2006) 2 RD 171

Hon'ble Judges : Tarun Agarwala, J;A.K. Yog, J

Bench : Division Bench

Advocate : R.C. Singh and A.K. Tripathi, for the Appellant; Pankaj Naqvi and Siddharth Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Yog and Tarun Agarwala, JJ.—Heard the learned Counsel for the parties. At the stage of admission, this Writ Petition is decided finally without calling counter and rejoinder affidavit.

2. The petitioner claims to be a practicing Advocate in the District Court, Varanasi after he was enrolled as Advocate by Bar Council U.P. and allotted Enrolment No. U.P. 4421 of 1996 and also thus a member of Central Bar Association, Varanasi. The petitioner, by means of present Writ Petition under Article 226, Constitution of India seeks to challenge the legal authenticity/validity of the U.P. Bar Council Advocates Association Affiliation Rules, 2001 framed by Bar Council, U.P., in purported exercise of its power u/s 6 of the Advocates Act and further to issue a writ of mandamus directing the Bar Council of U.P. not to compel Respondent No. 4/ Central Bar Association, Varanasi (U.P.) to adopt Model Bye Laws, dated 12.2.2005 and to direct Respondent No. 4/ Central Bar Association (Varanasi) to hold election as per its old Constitution. It is submitted that the Central Bar Association, Varanasi is a society registered under Society Registration Act (as Amended by State of U.P.).

3. In brief, the primary objection of the petitioner is that Section of the Advocates Act does not confer power to frame Model Bye Laws and/or compel "Bar Association of Advocates to adopt it.

4. For convenience we reproduce the legal grounds raised to maintain the writ petition (vide Para 28), which read:

I. Because, the Clause 17 of the model bye laws which deals with the qualification of the office bearers. An ordinary member having put in 25 and 20 years of the active practice can seek the election of the President and Senior Vice President respectively. An ordinary member having put in 10 and 15 years of the practice can seek the election of the Vice President and Secretary. The Clause 17 of the model bye laws is illegal and arbitrary inasmuch as it imposes unreasonable restriction on right of member to seek election. As per model bye laws only an ordinary member can seek the election of the Bar Association and that the life member cannot seek the bar election. The conditions contained in Clause 17 are violative of Article 14, 16 and 19 of the Constitution of India.

II. Because, Article 19(1)(c) confers a right on every citizen to form associations or unions. The unreasonable restriction contained in Clause 17 is illegal and violative of the right guaranteed under Article 19(1)(c).

III. Because, a person desiring to seek election of the member of the Bar Council must be an advocate on the roll of the State Bar Council that there is no restriction of the length of practice whereas the Bar Council has framed a bye laws which imposes unreasonable restrictions.

IV. Because, the Clause 54, which provides that only ordinary members, who have put in 2 years of continuous membership, will be entitled to vote and participate in the election. The said clause again disentitles a life member from participating and seeking election:

V. Because, the said rules/bye laws contains a direction that all such Bar Associations who have not adopted the bye laws and have not got registration from the Registrar, Society and Chit, Fund within a period of 3 months from the receipt of bye laws will stand disaffiliated. The said direction is also without any authority.

VI Because, the aforesaid bye laws was tentatively approved by the Bar Council of U.P. vide resolution No. 2389 of 2005 in its meeting dated 9.1.2005 and after certain modification confirmed vide resolution in meeting dated 12.2.2005. It is stated that the risk of repetition that said rule/bye laws have not been approved by the Bar Council of India. However, they are being foisted on every Bar Association through having no legal sanctity.

VII Because, the tentative bye laws alleged to have been framed by the U.P. Bar Council was never circulated amongst the Advocates on roll to enable them to give suggestion and file objection. The tentative bye laws was confirmed in resolution dated 12.2.2005 without inviting opinion or objection of the Advocates.

5. On the other hand, in Para 11 of the Short Counter Affidavit (sworn by Sri P.N. Tyagi, Secretary of the Bar Council) filed on behalf of Respondent No. 3/Bar Council U.P., it is stated that the "Model Bye Laws" to regulate and conduct BAR ASSOCIATION in U.P. have been framed by the Bar Council with an object to improve standard of "BAR" in view of falling standards in the past, this issue is the subject matter of adjudication in another Writ Petition No. 55898 of 2002 (PIL), Shiv Kumar Akela and Ors. v. The Registrar, Societies Firms and Chits and Ors. and its various aspects are being examined by this Court; "Model Bye Laws" framed by " BAR COUNCIL U.P." has been adopted without objection by some of the Bar Associations of the Districts- (viz-for example in another Bar Association of District Varanasi has as adopted these Bye Laws and (conducted its election on its basis). For convenience, Para 6 to 14 of the said Shot Counter Affidavit (filed as wrongly Short Affidavit) are reproduced.

6. That apart from this, the local Bar Association have also formulated various Welfare Schemes for their members naturally those who are practising in that very court but on account of enrolment of lawyers practising in other courts, they also shared various Welfare Scheme, framed by that Bar Association.

7. That the Bar Council of India, vide Chapter 3, has framed Rules in exercise of powers u/s 49(1)(ah) of the Advocates Act, 1961 to meet such Contingency but on account of lack of provision for its enforcement no effective measures could be taken.

8. That keeping in view the above problems hampering the cause of lawyers and effective implementation of the Welfare Schemes, the Bar Council of U.P. has framed MODEL BYE LA WS for being adopted by all the Bar Associations, who desires to be affiliated with the Bar Associations, who desires to be affiliated with the Bar Council of U.P. and have been directed to incorporate the same in their BYE- LAWS for being adopted by all the Bar Associations, who desires to be affiliated with the Bar Council of U.P. and have been directed to incorporate the same in their BYE-LA WS within stipulated period.

9. That though the Bar Council of U.P. is fully competent to frame such Bye-Laws to regulate the functioning of the Bar Associations, But by way of abandon precaution they have been forwarded t the Bar Council of India for consequential action. Copies of the said MODEL BYE LA WS are fled and enclosed herewith for the perusal of this Hon"ble Court as Annexure No. SA-1 to this Affidavit.

10. That though the Hon"ble Court has framed certain rules of the like nature for regulating ROLL of the Members of the Bar practising in High Court but unless a common BYE- LA WS and Rules for maintaining the ROLL of Advocates practising in entire State of U.P. is made/framed the very purpose will not be achieved.

11. That as a matter of fact the Model Bye Laws framed by the Bar Council of Uttar Pradesh is subject matter of adjudication by way of public interest litigation before the bench of Hon"ble Mr. Justice A.K. Yog and Hon"ble Mr. Justice Tarun Agarwala and various provisions of the Model Bye Laws are being scrutinized.

12. That the Model Bye Laws have been adopted by various Bar Associations of the different districts, for example in particular the Bar Association of District Varanasi to which petitioner belongs and they have conducted election also according to the provisions of Modern Bye Laws.

13. That by thumping majority the members of the Bar Association, Varanasi have welcomed the provisions of the Model Bye Laws and have adopted the same and communication made to this effect is being enclosed for the kind perusal of this Hon'ble Court as Annexure No. SA-2 to this affidavit.

14. That writ petition at the instance of the sole petitioner Sri Neelkanth Tiwari is not maintainable, as none of the members, other than the petitioner has challenged enforcement of the "Model Bye Laws" on the other hand Respondent No. 4 has adopted the same and even its election has been conducted as per "Model Bye Laws" and consequently the writ petition deserves to be dismissed as infructuous.

6. It is interesting to note that none of the members, other than the petitioner, has challenged the enforcement of the Modern Bye Laws, rather they participated in the election held on its basis, "BAR ASSOCIATION" (through its President or Secretary) which is legal entity has not come forward to show its grievance over these "Model Bye Laws". The petitioner (as individual) in case of his genuine grievance, can, if so advised, approach Registrar Societies (under Societies Act) for redressal of his grievance. The writ petition is deserves to be dismissed as infructuous.

7. It is, therefore, clear that "Model Bye Laws" have been adopted by majority of the member of the "Bar" in question. Petitioner being its member has no right to challenge the same in democratic system of working. Petitioner has even exposed himself of being expelled by the society for his act of filing Writ Petition against the "desire" or "decision" of the Society.

8. Writ Petition at the instance of the petitioner, in view of the admitted position on record as noted,, above is not maintainable.

Besides the above, Petitioner can approach the Bar Council of India u/s 48A of the Advocates Act, 1961 against the decisions of Bar Council, U.P. Section 48A reads as follows:-

48-A. Power of revision- (1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.

(2) No order which prejudicially affects any person shall be passed under this Section without giving him a reasonable opportunity of being heard.

9. The petitioner can raise all his grievances, which have been raised in this Writ

Petition, before Bar Council of India. We also find that Petitioner has filed the present Civil Misc. Writ Petition No. 71631 of 2005 (along with his own affidavit) praying for direction to the Respondents to permit him to participate in the election of the Bar(i.e. Respondent No. 4) scheduled on 21.1.2006 which was stated to be conducted as per f Model Bye Laws". This Casts aspersion on bonafides of the petitioner and show that he was not serious to press the issue of Model Bye Laws and its adoption. This application has been rejected vide our order dated 27.3.2006 which reads :-

AX. Tripathi, Advocate has identified the Petitioner-Dependant without checking that blank Affidavit has been sworn and neither the petitioner who is of Professional Advocate has shown serve of responsibility or caution in the matter of discharging duties.

10. In view of the above, the Writ Petition is dismissed as not maintainable.

11. Petitioner shall pay Rupees Ten Thousand as costs to Respondent No. 3/Bar Council of U.P. within one month, failing which the said Respondent shall recover it though District Magistrate, Varanasi as land revenue within two months of receiving information from Respondent No. 3 to this effect and Respondent No. 3 also initiate Disciplinary Proceeding/s of Misconduct against the petitioner in the light of observations made above.