

(2023) 01 DEL CK 0024

In the Delhi High Court

Case No : Civil Writ Petition No. 16623 Of 2022, Civil Miscellaneous Application No. 52326 Of 2022

Nishant Khatri

APPELLANT

Vs

Bar Council Of India & Anr

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

All India Bar Examination Rules, 2010 — Rule 9, 10, 10(1), 10(1)(a)

Citation : (2023) 01 DEL CK 0024

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Kunal Lakra, Shivam Sachdeva

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The Petitioner - Nishant Khatri filed the present writ petition seeking directions against Respondent No.1 - Bar Council of India (hereinafter, 'BCI') in view of the non-conduct of the All India Bar Examination ('AIBE'). The Petitioner's concern was that he ought not to be debarred from practising as an advocate due to the non-conduct of the AIBE.
3. It was submitted by the Petitioner that in terms of Rules 9 and 10 of the All India Bar Examination Rules, 2010 (hereinafter, 'AIBE Rules, 2010') the AIBE was introduced by the BCI on 5th June, 2010. The said exam is mandatory as per Rule 9 of the AIBE Rules, 2010, which provides that no advocate can practice under Chapter VI of the Advocates Act, 1961 without clearing the AIBE. Further, the AIBE is to be cleared by an advocate who is provisionally enrolled within a period of two years from the date of provisional enrolment.
4. Reliance was placed by the Petitioner on the minutes of meeting of the General Council of BCI dated 9th August, 2020 where in the period between 24th March, 2020 till 31st March, 2021 was exempted from the applicability of Rule 9

of the AIBE Rules 2010 due to the outbreak of the pandemic. It was also submitted that the last exam was conducted only in October, 2021 and thereafter no exam has been conducted.

5. In this background, the Court vide order dated 5th December, 2022 had issued the following directions:-

"10. A perusal of the above would show that it is mandatory for advocates who are provisionally enrolled to clear the AIBE. Further, as per Rules 10(1) and Rule 10(1)(a) of the AIBE Rules, 2010, such an exam is to be held at least twice in a year in such month as the BCI may prescribe.

11. The Court has also perused the statement of the BCI recorded in the aforementioned order of the Hon'ble Supreme Court dated 2nd August, 2022 which states that the syllabus would be published within 15 days from the said date and the examination would be held within a period of about three months thereafter.

12. In the present case, the admitted position is that since October 2021, AIBE has not been conducted. It is also not dispute that the AIBE is to be cleared within two years from the date of provisional enrolment. Thus, it is observed that there may be a large number of advocates whose two year provisional enrolment period may have come to an end this year. Such advocates would have not had the opportunity to avail of the four attempts to write the AIBE over two years. They also face the threat of debarment for not having cleared the AIBE in terms of Rule 9 of the AIBE Rules, 2010 – though the same was due to non conduct of the exam.

13. In view of the fact that the AIBE has not been conducted since October, 2021, the following directions are issued:

(i) The Petitioner shall not be debarred or disqualified from continuing to rely upon his provisional enrolment. The Petitioner would be entitled to appear in the Courts. This order shall continue until further orders of this Court.

(ii) In view of the non-conduct of the AIBE, Rule 9 of the AIBE, 2010 would not be operational qua such advocates who may have not taken the AIBE within the period of two years after their enrolment, due to the non conduct of AIBE.

(iii) A status report shall be filed by the BCI wherein the next date for the conduct of the AIBE shall be provided.

(iv) The BCI shall also consider having a pre-set schedule for conduct of the AIBE (For eg., First Saturday of January and July every year) so that the uncertainty can be resolved and provisionally enrolled advocates can prepare for appearing in the AIBE."

6. The status report was called from the BCI vide order dated 5th December, 2022. Today, Mr. Kunal Lakra, Id. Counsel appearing for the BCI relies upon the resolution passed by the BCI on 30th December, 2022 which reads as under:-

"This is bring to your kind knowledge that General Council of the Bar Council of India has passed a resolution with regard to exemption of time period with regard to passing AIBE after Enrolment as an Advocate. The Resolution dated 30.12.2022 is given below:-

The Bar Council of India has been receiving requests from many Advocates that owing to the pandemic, they have suffered miserably. Many of them were not even able to take care of basic necessities of their families. If they were able to arrange for fooding they had difficulty in arranging for medication and health care. Many Advocates lost their near and dear ones during the time of pandemic. Inspite of the best efforts of Bar Council of India, State Bar Councils, various Bar Associations and many magnanimous Advocates, the legal fraternity as a whole suffered a lot due to closure of courts. Thereafter, hogging of virtual hearings by a certain segment of Advocates and also due to the reduction in the paying capacity of clients and reduction in the number of litigations owing to the pandemic, also led to a majority of the legal fraternity from being literally deprived of their right to livelihood.

The Bar Council of India had earlier vide a resolution dated 29.7.2020 had exempted the period from 24th March to 31st March, 2021 from being counted as a necessary time period from the point of view of considering it within the requisite time period of two years from the date of enrolment, to clear the AIBE in order to further continue in practice.

By way of this instant resolution, dated 30th December, 2022, it is hereby resolved that the period from the date of the last All India Bar exam held on 31st October, 2021 till-April, 2023, by which time, the result of the next AIBE is likely to be declared, is hereby exempted from being counted as a necessary time period from the point of view of considering it within the requisite time period of two years from the date of enrolment as an Advocate to pass AIBE.

Thus, it is hereby resolved that this period shall remain exempted and shall not be counted while calculating the two year period from the date of enrolment for the purposes of counting the time period for clearing/passing AIBE."

7. In addition, he relies upon the notification issued by the BCI for conduct of the AIBE-XVII examination. A perusal of the notification of the examination shows that the examination is to be held on 5th February, 2023. Resolution dated 30th December, 2022 also records that the results of the AIBE-XVII examination are likely to be declared before April, 2023. Thus, the entire period between 31st October, 2021 to April, 2023 has been exempted by the Bar Council of India for being counted for the necessary time period of two years.

8. In so far as the direction No. 13(iv) set out above in respect of having a pre-set schedule for conduct of the AIBE examination is concerned, Id. Counsel for the BCI submits that the same would be taken up and considered by the BCI in its next meeting. Accordingly, he prays for deferment of the present petition.

9. In this view of the matter, list this matter on 4th May, 2023 to enable the Bar Council of India to file a further status report in respect of the direction given in para 13 (iv) of order dated 5th December 2022, as extracted above.