
(2018) 02 DEL CK 0462

In the Delhi High Court

Case No : Civil Writ Petition No. 1604 Of 2018, Civil Miscellaneous No. 6564 Of 2018

Rajesh Poddar

APPELLANT

Vs

Bar Council Of Delhi And Anr

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16
Advocate Act, 1961 — Section 3(2), 16

Citation : (2018) 02 DEL CK 0462

Hon'ble Judges : Sanjiv Khanna, J;Chander Shekhar, J

Bench : Division Bench

Advocate : Shams Khwaja, T. Singhdev, Amandeep Kaur, Tarun Verma, Michelle Biakthansangi, Puja Sarkar, Abhijeet Chakravarty

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J

1. Writ Petitioner, an Advocate, has challenged constitutional vires of first proviso to Section 3(2) of the Advocate Act, 1961 which stipulates that as

nearly possible 50% of the elected members of the State Bar Council should be Advocates on the State rolls for at least 10 years.

2. Petitioner has also prayed for striking down Chapter II of Part III of the Bar Council of India Rules and Notification No. Elect/100/31/2018 dated

24.01.2018 issued for election of the members of the Bar Council of Delhi to be held on 16th and 17th March, 2018, as it stipulates that a minimum of

13 seats out of 25 Â seats have to be filled up from amongst Advocates who have been on the State rolls for at least 10 years on 30.11.2017.

3. Petitioner submits that the requirement that 50% of the elected members should have been on the state rolls for at least 10 years violates Article 14

and 16 of the Constitution of India. As per Section 16 of the Advocates Act, there are only two classes, Senior Advocates and Advocates. Thus

distinction between Advocates who have been on role for at least 10 years and those with less than 10 years creates a new and different

classification, which is discriminatory. Advocates Act does not state the reason and basis for this unequal treatment. All Advocates are equal. The

proviso refers to 10 years of enrolment and not 10 years of experience.

4. Section 3(2) of the Advocates Act and the impugned proviso read as under:-

â??Section 3(2) in THE ADVOCATES ACT, 1961

(2) A State Bar Council shall consist of the following members, namely:â?

(a) in the case of the State Bar Council of Delhi, the Additional Solicitor General of India ex officio 15[in the case of the State Bar Council

of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate General of each of the State of Assam, Manipur, Meghalaya,

Nagaland and Tripura, ex officio; in the case of the State Bar Council of Punjab and Haryana, the Advocate-General of each of the State

of Punjab and Haryana, ex officio;] and in the case of any other State Bar Council, the Advocate-General of the State, ex officio;

(b) in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council

with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of the State Bar Council with

an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means

of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council:

Provided that as nearly as possible one-half of such elected members shall subject to any rules that may be made in this behalf by the Bar

Council of India, be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in

relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian

Bar Councils Act, 1926 (38 of 1926).

5. The proviso was enacted and was made applicable with effect from 16.05.1964. Impugned Notification dated 24.01.2018 is in terms of the mandate

of the proviso.

6. Object and purpose behind the proviso is apparent and obvious for it acknowledges and accepts importance of experience. State Bar Councils are elected representative bodies of Advocates bestowed with several statutory regulatory, administrative and quasi-judicial functions. Years of practice at the Bar and knowledge gained by exposure to work, interaction with fellow Advocates, litigants and appearance in Courts significantly helps in appreciating issues, causes, problems of the profession and their solutions. Experience contributes and adds to maturity and is considered by many as superior to bookish knowledge. The stipulation ensures and inspires confidence in public mind that those elected are experts in the legal field, who have some years of experience and expertise. Experience is often prescribed as an essential qualification for selection and appointment to posts. Such prescription of experience in addition to educational qualification would not per se violate Articles 14 and 16 of the Constitution of India.

7. The contention that there is difference between enrolment and experience overlooks the statutory mandate that enrolled Advocates are prohibited from taking employment or carrying on any other profession.

8. Articles 14 and 16 do not prohibit classification, albeit classification must be reasonable and not discriminatory. Classification should not be irrational and based on irrelevant factors having no nexus with the object to be achieved by the statute in question. Classification should be founded on intelligible differentia that distinguishes persons and things from other persons and things which are left out. Further, classification may not be absolutely perfect or logically complete. Reasonableness is to be judged with the object of legislation that can be gathered from the circumstances, the object and facts judicially noticed. Basis of classification need not be specifically stated and elucidated in the legislation. Moreover, right to election is a statutory right and not a fundamental or common law right.

9. For the reasons stated above, the classification and stipulation made in the proviso satisfies the constitutional mandate. Proviso is not discriminatory and rather ensures that those with experience of at least 10 years are adequately represented in the State Bar Council.

10. The writ petition has no merits and is dismissed.