
(2014) 09 MAD CK 0350

In the Madras High Court

Case No : W.P. (MD) No. 1139 of 2014 and M.P. (MD) Nos. 1 and 2 of 2014

S. Sankar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Advocates Act, 1961 — Section 17, 24, 30, 49(1)(ah), 49(i)(a4)

Citation : (2015) 1 LW 545

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—With the consent of both parties, this writ petition is taken up for final disposal.

2. The petitioner, who is a practicing Advocate before the Madurai Bench of Madras High Court, has filed this writ petition to quash the order, dated 02.09.2013, passed by the second respondent the Trustee Committee of Advocates Welfare Fund, Bar Council of Tamil Nadu, by which the petitioner was informed that he is required to pay a sum of Rs. 8,300/- towards life subscription, failing which the amount already paid by him would be adjusted towards admission fee and annual subscription upto 31.03.2014. The said communication was sent to 35 applicants, who are all members of the Madurai Bench High Court Advocates Association.

3. The Trustee Committee placed reliance on the resolution passed in it's meeting held on 05.07.2013 in resolution No. 3 of 2013, wherein it was resolved to admit those Advocates, who have filed applications for admission in Form No. III, on or before 08.09.2012, on payment of admission fee and life subscription, if paid on the pre-amendment rate namely Rs. 200/- and Rs. 2,500/- respectively. It was further resolved that if the advocates paid admission fee of Rs. 1,000/- on or after 08.09.2012, they shall be admitted as members and if any excess amount is paid by them the same shall be adjusted towards annual subscription and those who have paid admission fee of Rs. 1,000/- and life

subscription of Rs. 10,000/- on or after 08.09.2012, they shall be admitted into the membership with life subscription. This decision of the Trustee Committee has been challenged by the petitioner by filing this writ petition.

4. Before we venture into the facts and contentions, it has to be pointed that though there are 35 Advocates, whose names find place in the list appended to the impugned order, who are members of the Madurai Bench High Court Advocates Association, except the petitioner no other applicants have remitted the amount during 2011 and all remittances have been made in between August, 2012 and March, 2013 and the petitioner has remitted the amount of Rs. 2,700/- on 14.10.2011.

5. The petitioner has completed his B.A.B.L., Course in April, 2011 and was enrolled as an Advocate before the Bar Council of Tamil Nadu and Puducherry and a certificate of enrollment was issued to him on 23.04.2011, bearing enrollment No. MS 1164 of 2011. The petitioner submitted his application on 11.10.2011 for admission to the Tamil Nadu Advocates' Welfare Fund, by filing Form-III and remitted admission fee and life subscription being Rs. 2,700/- by demand draft, dated 11.10.2011, drawn in favour of the second respondent Trustee Committee, Tamil Nadu Advocates' Welfare Fund, Chennai. The component of such payment being Rs. 200/- towards admission fee and Rs. 2,500/- towards life subscription. The application submitted by the petitioner was certified by the President and Secretary of Madurai Bench of High Court Advocates Association, Madurai, certifying the fact that the petitioner is actually practicing in Madurai Bench of this Court and is a member of their association. The petitioner did not receive any reply nor did he receive the bond enrolling him as a life member to the fund. After about five months, since no information was forthcoming the petitioner made a request under the Right to Information Act, to know about the stage of the application. By reply, dated 02.04.2012, the petitioner was informed by the Public Information Officer of the Bar Council of Tamil Nadu that all those candidates who have completed the law course after May, 2010 will be registered as members in Advocates' Welfare Fund only on production of the certificate of practice issued by the All India Bar Council after qualifying in the All India Bar Examination.

6. The petitioner submitted a representation to the second respondent, on 10.04.2013, stating that the pass in the All India Bar Examination would have no connection to enroll as a member of the Advocates' Welfare Fund and the application form also did not contain any relevant column calling for such details and therefore he should be admitted to the fund by accepting the payment of Rs. 2,700/-. In response to the said representation, the petitioner received the impugned communication stating that unless he remits the balance of Rs. 8,300/-, he cannot become a life member and the said amount is not remitted, the amount already remitted will be adjusted towards admission fee and annual subscription.

7. Ms. M. Padmavathy, learned counsel for the petitioner submitted that the

payment effected by the petitioner was much prior to the crucial date fixed by the second respondent i.e., 08.09.2012 and that the All India Bar Examination is no way connected with the Advocates' Welfare Fund Scheme and the application also did not seek for such particulars, therefore, the petitioner should not be compelled to pay further sum of money. Further, it is submitted that the resolution No. 3 of 2013, dated 05.07.2013, passed by the second respondent was passed much after the petitioner's application and payment of money and the petitioner's application having not been either accepted or rejected, in terms of Section 15 of the Tamil Nadu Advocates' Welfare Fund Act, 1987, and the amount of application fee was raised from Rs. 200/- to Rs. 1000/- under in sub-section (3) of Section 15, by Act No. 2 of 2013, dated 23.02.2013, much after the petitioner's application and payment of money, which was made on 11.10.2011. Further, by referring to Sections 30 and 49(1)(ah) of the Advocates Act, it is submitted by the learned counsel that as a deeming provision comes into operation, the petitioner is entitled to be admitted to the funds at the old rates.

8. Further, it is submitted that though All India Bar Examination was to be conducted from 2010 onwards, it was not implemented in the State of Tamil Nadu and for the first time, the examination was conducted on 08.01.2012 for which the petitioner was issued hall ticket and his exam centre was allotted in Kerala State and due to the agitations on the Mullai Periyar issue, the petitioner could not undertake travel to Kerala and therefore he appeared for the next examination, which was conducted on December 2012 and passed the same.

9. It is further submitted that the Bar Council passed a resolution in it's meeting held on 26.08.2012, wherein it is resolved that the candidates, who did not pass the All India Bar Examination, shall be provisionally admitted and granted two years time. This resolution was passed only on 26.08.2012 and communicated to all the State Bar Councils by communication, dated 12.04.2013. Therefore, it is submitted that the same cannot have any retrospective effect nor can it have any effect on the petitioner's case as he has been enrolled as an Advocate and not provisionally.

10. Further, it was submitted that there was no separate category as provisional category under the Advocates' Welfare Fund Act and therefore the question of interlinking the pass in the All India Bar Examination to the membership in the fund is not tenable. Further, it is submitted that in terms of Section 10 of the Advocates' Welfare Fund Act, the amounts collected by the Bar Council are invested in accordance with Section 10 of the Act and the Bar Council earns interest out of such investment and it is not as if the petitioner's amount was not utilized by the Bar Council in it's consolidated fund.

11. By referring to the copy of the petitioner's application for membership into the fund, produced by the respondent it is submitted that the respondents were aware that the petitioner has passed the All India Bar Examination during December, 2012. Therefore, the learned counsel submitted that the petitioner

should be admitted to the fund without insisting upon any additional payment towards life subscription.

12. Mr. M. Subash Babu, learned counsel for the second respondent submitted that it is true that the petitioner was enrolled as an Advocate on 24.02.2011 in the rolls of the Bar Council of Tamil Nadu and Puducherry and he has submitted an application for admission into Tamil Nadu Advocates' Welfare Fund Scheme by paying a sum of Rs. 200/- towards admission and also paid the life subscription of Rs. 2500/- on 11.10.2011. The Petitioner is not expected to pay the annual subscription or life subscription at the time of applying for admission. Further, it is submitted that Sec. 15(3) of the Advocates' Welfare Fund Act says that the applicant shall pay the admission fee of Rs. 200/- along with the application to the account of Trustee Committee. Further, sub-clause (1) says that every advocate practicing in the State and being the member of the Bar Association or Advocates Association may apply to the Trustee Committee for admission as a member of the Fund. Further, on receipt of the application, the Trustee Committee shall make such enquiry as it deems fit and either admit to the Fund or reject for reasons to be recorded. Therefore, the practicing advocate should only pay a sum of Rs. 200/- for the admission and thereafter, if the Trustee Committee admits the advocate to the Welfare Fund scheme, then only he can pay the annual subscription.

13. Further, it is submitted that the Trustee Committee passed resolution No. 3 of 2013, dated 05.07.2013 to the effect that those persons, who have applied for admission into the Welfare Fund Scheme before 08.09.2012 on payment of admission fee and life subscription on the pre-amendment rate viz., Rs. 200/- and Rs. 2500/- respectively shall be admitted into the Fund. Further, it is resolved to admit those advocates, who have paid admission fee of Rs. 1000/- and life subscription of Rs. 10,000/- on or after 08.09.2012 shall be considered for admission. As per the resolution of the Bar Council of India advocates after enrollment will have to undergo the A.I.B.E. Examination conducted by the Bar Council of India and then only the advocates will be eligible to be admitted into the Welfare Fund Scheme.

14. It is further submitted that the advocates, who are applying for the welfare fund scheme should be member of any advocates association. The advocates after enrollment, if had not passed the examination conducted by the Bar Council of India is not eligible to become member of any of the Bar/Advocates association. In such circumstances, he would not be admitted to the welfare fund scheme. Admittedly, the Petitioner passed the All India Bar Examination only in December 2012.

15. Further it is submitted that as per the amended Act, the admission fee was hiked from Rs. 200/- to Rs. 1000/-, the life subscription from Rs. 2500/- to Rs. 10,000/-. Admittedly, the petitioner passed the All India Bar Examination only in December 2012. Therefore, he should remit the admission fee of Rs. 1000/- and whereas, the petitioner paid only admission fee of Rs. 200/- and life subscription

of Rs. 2500/-. Hence, the Trustee Committee has admitted him provisionally subject to the condition that the Writ Petitioner pays the balance of the admission fees and as well as life subscription.

16. It is further submitted that the Bar Council also sent a letter to all the advocates association stating that if any amount is paid lesser than the amount prescribed under the amended act, the paid amount will be adjusted to the admission fees and the balance will be treated as annual subscription. Therefore, the petitioner cannot come forward with the prayer restraining the Bar Council from adjusting the Petitioner's payment of Rs. 2700/- dated 11.10.2011 as annual subscription for Advocates Welfare Fund. It is submitted that before the amendment of the Act, the benefit for the member of the Welfare Fund Scheme was only Rs. 2,00,000/-. After the amendment, it was enhanced to Rs. 5,25,000/- with retrospective effect from 08.09.2012.

17. Further, it is submitted that the petitioner cannot challenge the resolution dated 02.09.2013 on the ground that he has already paid the sum of Rs. 2,700/- towards welfare fund scheme, which is deficient as per the amended Act. The Petitioner must pay the balance amount as per the amended Act and then only he will be eligible to get the benefit. The Petitioner has taken a futile attempt in challenging the resolution when he eligible for the enhanced amount of Rs. 5,25,000/- as benefit under the scheme.

18. It is further submitted that All India Bar Examination Rules, 2010 (hereinafter, referred to as "the Rules") was framed as per the directives issued by the Honourable Supreme Court and in terms of Rule 9, no advocate enrolled under Section 24 of the Advocates Act, 1961, shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India and that the Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 and onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961.

19. Further, it is submitted that the petitioner enrolled as an Advocate on 23.04.2011 and the Rule came into effect on 30.04.2010. Therefore, in terms of Rule 9 of the Rules, he should have passed the All India Bar Examination as it is a mandatory requirement. It is further submitted that the decision taken by the All India Bar Examination Committee of the Bar Council of India in it's meeting held on 26.08.2012 was communicated to all the State Bar Councils by communication, dated 12.04.2013, wherein a decision was taken to issue provisional certificates to candidates, who are enrolled by the concerned State Bar Councils but yet to appear and pass the All India Bar Exam and that the candidates, who do not pass the All India Bar Exam shall not get benefits of the various welfare schemes of the State Bar Councils or the Bar Associations. Further, it is submitted that when the petitioner sought for information under RTI Act, the facts were brought to his notice by way of appropriate reply, dated 02.04.2012.

20. Further, it is submitted that the amount payable under the Welfare Fund has been increased to Rs. 5,25,000/- and the cut off date has been fixed as 08.09.2012 since the enhanced amount was payable with effect from the said date and consequently higher amount towards life subscription and admission fee has to be remitted. In order to ascertain as to on what date the All India Bar Examination was conducted in the State of Tamil Nadu, this Court requested the learned counsel for the second respondent to get necessary particulars. Accordingly, particulars have been furnished, from which it is seen that for the first time in the State of Tamil Nadu All India Bar Examination was conducted only in January, 2012. Though the first examination was conducted during March, 2011, the second examination was during July, 2011 in all other centres except the State of Tamil Nadu.

21. It is further submitted that if the petitioner's case is to be accepted, then it would open floodgate as there are several persons, who have not passed the All India Bar Examination on the crucial date i.e., 08.09.2012, who had not been admitted to the benefits of the fund without payment of the enhanced subscription and admission fee and of such person would seek for similar treatment. Further, it is submitted that the second respondent is justified in demanding higher admission fee and higher life subscription since the benefit under the Act has been substantially increased to Rs. 5,25,000/- from Rs. 2,00,000/- and therefore the decision taken by the second respondent is proper and justified.

22. Heard the learned counsel for the parties and perused the materials placed on record.

23. The undisputed facts are that the petitioner was enrolled as an Advocate in the Bar Council of Tamil Nadu and Puducherry and he was given a certificate of practice, dated 23.04.2011, under Section 17 of the Advocates Act, 1961. Admittedly, the said certificate was not a provisional certificate, but a certificate of enrollment as an Advocate. The All India Bar Council has taken a decision to issue provisional certificates pursuant to the resolution, dated 26.08.2012. The petitioner on being enrolled as an Advocate submitted his application to be admitted as a life member of the Advocate Welfare Fund by application dated 11.10.2011. As required under the provisions of the Act the said application was certified and forwarded to the Madurai Bench High Court Advocate Association, in which the petitioner is a member. The application was submitted along with a demand draft for Rs. 2,700/- in favour of the second respondent. The second respondent received the petitioner's application on 14.10.2011. Thus, on the date when the petitioner's application was received, the admission fee required to be paid was Rs. 200/- and life subscription of Rs. 2,500/- in all Rs. 2,700/-. The application submitted by the petitioner was neither rejected nor accepted as required to be done under Section 15(2) of the Act. The petitioner sought for information from the second respondent as to the fate of his application, he was informed that they will not be in a position to enroll him as a life member of the

fund based on the remittance made by him, but he has to remit the enhanced amount, since he has not passed the All India Bar Examination on the date when the application was filed and the money was remitted but by the time he passed the All India Bar Examination during December, 2012, the benefit payable under the fund had increased consequently the admission and life subscription was also increased and the cut off date was fixed as 08.09.2012. The issue to be decided is as to whether there is a sanctity to fix cut-off date and whether such cut-off date can be put against the petitioner.

24. It may be true that the petitioner was issued a certificate of practice by the Bar Council on 23.04.2011. It is to be noted that as on the said date, it was compulsory for every Advocate enrolled under Section 24 of the Advocates Act to pass the All India Bar Examination, failing which he shall not be entitled to practice under Chapter IV of the Advocate Act and this became mandatory for all law students graduating from academic year 2009-2010 onwards and enrolled as Advocate under Section 24 of the Advocates Act. There cannot be any dispute as to the applicability of statutory provisions namely All India Bar Examination Rules, 2010 nor the same has been challenged by the petitioner. As long as the statute remains in the statute book, the authority enrolling the law students are bound by the same. The petitioner's defence is that he had been issued a certificate of practice and entitled to practice from 2011, though he did not pass the All India Bar Examination and in any event the pass in the Bar examination can have no effect on the right to get enrolled as a life member in the Advocates Welfare Fund.

25. This Court is not inclined to accept such submission since the purpose of enacting the Tamil Nadu Advocates Welfare Fund Act was with an object for payment of benefits to the Advocates in the State of Tamil Nadu. At this juncture, it would be beneficial to take look as regards the scheme of the Act.

26. The Tamil Nadu Advocates' Welfare Fund Act, 1987 was enacted to provide for payment of retirement benefits to the advocates in the State of Tamil Nadu and for conferring on them the benefits connected therewith or incidental thereto. The Amendment Act, 1990 was enacted to provide for welfare fund for the benefit of the Advocates on cessation of practice and for matters connected therewith or incidental thereto in the State of Tamil Nadu. Amendment Act 1992 made it compulsory for every advocate appearing before any Court, Tribunal or other authority to fix the welfare fund stamp on every vakalatnama to the value of two rupees in addition to the Court Fee stamp affixed therein. One of the salient feature of 1995 Amendment Act is to pay the lump sum amount of Rs. 1,00,000/- as death benefit to the nominees or the legal heirs of the advocate members and to increase the subscription from Rs. 50/- to Rs. 100/- for advocates with less than ten years standing, Rs. 100/- to Rs. 200/- for ten years or more and life subscription of Rs. 10,000/- for the designated senior advocates and Rs. 2,500/- for other advocates. The value of the stamp to be affixed in the vakalathnama was enhanced from Rs. 2/- to Rs. 5/- so as to augment the fund.

27. By the Amendment Act, 2000, the death benefit payable to the nominee or legal heir of the member of the Advocates Welfare Fund was increased from Rs. 1,00,000/- to Rs. 2,00,000/- and by the Amendment Act, 2013, the death benefit was increased from Rs. 2,00,000/- to Rs. 5,25,000/-. Section 2(a) of the Act defines "advocate" to mean a person whose name has been entered in the roll of advocates prepared and maintained by the Bar Council under Section 17 of the Advocates Act, 1961 and who is a member of a Bar Association or an Advocates Association. "Advocates Association" has been defined under Section 2(b) of the Act to mean an association of advocates recognized and registered by the Bar Council under Section 13. "Bar Association" has been defined under Section 2(c) of the Act similar to that of Advocates Association. "Fund" has been defined under Section 2(g) to mean that the Tamil Nadu Advocates Welfare Fund constituted under Section 3.

28. The Trustee Committee, which has taken the impugned decision, is established under Section 4 of the Act and it shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of the property and shall by the said name sue and be sued. Section 9 of the Act deals with functions of the Trustee Committee and in terms of Section 9(2)(b), the Trustee Committee shall receive applications for admission or re-admission to the Fund and dispose of such applications within ninety days from the date of receipt thereof. In terms of Section 10(2) of the Act, the Trustee Committee shall deposit all moneys and receipts forming part of the Fund in any scheduled bank or invest the same in loans to any Corporation owned or controlled by the Central Government or the State Government or in loans floated by the Central Government or the State Government or in any other manner as the Bar Council may, from time to time, direct with the prior approval of the Government. Section 13 of the Act deals with recognition and registration by Bar Council of any association of Advocates. On such application being made by the association of advocates, in terms of sub-section (3) of Section 13, the Bar Council may, after such enquiry, as it deems necessary, recognize the association and issue a certificate of registration in such form as may be prescribed.

29. Having discussed about the scheme of the Act, it is to be pointed out that the definition of the Advocate under the Welfare Fund Act is defined to mean a person whose name is entered in the roll of Advocate prepared and maintained by the Bar Council under Section 17 of the Act and who is a member of the Bar Association or an Advocate Association. Therefore, the petitioner cannot take a stand that the membership in the Advocates Welfare Fund could have no bearing on the status of the Advocate as recognized by the Bar Council of India. The question to be considered would be, who would be entitled to have entered into the roll of Advocate prepared and maintained by the Bar Council under Section 17 of the Act. The answer to the query would be the Advocate, who fulfills not only the requirements of the Bar Council of India Act, but also satisfy the requirement under the provisions of the All India Bar Examination Rules, 2010, which has been framed and inserted in Chapter-III of Bar Council of India Rules

and condition for right to practice and under Section 49(i)(a4) of the Advocates Act, 1961. Hence, the embargo would operate. However, the petitioner was not prevented from practicing as adopted by all candidates during the relevant point of time, though he did not immediately pass the examination, passed the same during December 2012. It has been admitted that though All India Bar Examination was conducted throughout the country from March 2011 in the State of Tamil Nadu it was conducted for the first time during January 2012. If the petitioner had passed the examination in January, 2012, this impediment would not operate against him. His explanation is he was allotted centre in Kerala State and he could not travel to attend examination, therefore, he appeared for the All India Bar Examination during December 2012 and qualified in the same. However, this explanation cannot be accepted as it cannot operate against the statute. In the light of the above facts and the scheme of the Act and Rules, it has to be held that for all purposes that it is mandatory for all law students graduating from the academic year 2009-2010 onwards to pass the All India Bar Examination, without which are not entitled to practice under Chapter-IV of the Advocates Act, 1961. This is an eligibility criteria to be admitted to the Welfare Fund in the light of the definition of the Advocate as defined under Section 2(a) of the Advocates Welfare Fund Act, 1987.

30. In the light of the above discussion, this Court is not inclined to accept the submission made by the petitioner that by virtue of the fact that the petitioner having made the payment towards admission fee and life subscription on 11.10.2011, would be entitled to be enrolled in the fund without payment of the enhanced amount in the light of the fact that the petitioner satisfied the statutory requirements only during December, 2012, when he qualified in the All India Bar Examination and by then the benefits which shall accrue under the welfare fund was increased to Rs. 5,25,000/- with consequential revision in the admission fee and the life subscription and the cut-off date was fixed as 08.09.2012 since the amendment was given effect to the said date. Therefore, there is a basis for fixing the cut-off date and since the petitioner qualified in the Bar Examination during December, 2012 after the cut-off date, he has to remit Rs. 1,000/- towards admission to Rs. 10,000/- towards life subscription and after giving credit to the amount paid by the petitioner i.e., Rs. 2,700/-, the balance amount of Rs. 8,300/- is payable by the petitioner as demanded in the impugned order.

31. In the result, the writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.