

(2023) 01 DEL CK 0051

In the Delhi High Court

Case No : Civil Writ Petition No. 233 Of 2023, Civil Miscellaneous Application
No. .849 Of 2023

Sandeep

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Bar Council of Gujarat (Enrollment) Rules, — Rule 1, 2
Bar Council of India Rules, — Rule 5

Citation : (2023) 01 DEL CK 0051

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Richa Kapoor, Tusharika Sharma, Jai Batra, Suhani Sumanchna,
Anurag Ahluwalia, Avshreya Pratap Singh, Preet Pal Singh, Saurabh Sharma,
Shivam Sachdeva

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - Mr. Sandeep, S/o Mr. Shishpal Singh, who is a LLB graduate from the batch of 2014-2017, University of Delhi. The Petitioner has been working as a Senior Assistant with the Delhi Jal Board from 3rd October, 2016.
3. It is the case of the Petitioner that he wishes to appear in the All India Bar Examination (hereinafter, "AIBE-XVII"), which is scheduled to be held on 5th February, 2023. The last date of filing of the application form for AIBE-XVII is 16th January, 2023. The Petitioner is stated to have filed the application and provided all the required documents to the Respondent No.3 - Bar Council of Delhi (hereinafter, "BCD"). However, the provisional enrolment number has not yet been made available to the Petitioner, because of which he is unable to file the application for appearing in the AIBE-XVII. It is submitted that the following message was received from the office of the BCD on 14th December, 2022:

"Mr. Sandeep S/o Mr. Shishpal Singh

It has been informed that you had submitted your enrolment form on 12.10.2022 in Bar Council of Delhi. Your enrolment form was sent for legal opinion because you are presently in Government Service. As per legal opinion presently your enrolment has been denied with Bar Council of Delhi as an Advocate. Please collect the copy of Legal Opinion letter from the office of Bar Council of Delhi."

4. The Petitioner relies upon the decision of the High Court of Gujarat in "Twinkle Rahul Mangaonkar v. Union of India in R/Special Civil Application No. 15123 of 2019", wherein the Court had permitted persons who are in employment to take the bar exam and had given six months to them after the clearing of the bar exam, as to whether they wish to continue with the employment or start practising. The relevant observations in the said judgment are as under:

"32. It is too much to say that a person desirous to get himself enrolled as an Advocate with the State Bar Council should be asked at its inception to give up any other vocation, business or job and only, thereafter, he can be enrolled on the roll of the State Bar Council. We are dealing with a matter, in which, as single mother has come before us saying that no sooner she is enrolled as an Advocate after clearing the Bar Council Entrance Exam, then she would file a declaration on oath that she has given up the job which she has as on date. The lady is in a helpless situation. Today, if she gives up her job being a single mother, and god forbid if she is unable to clear the All India Bar examination, then she would be left without any means of livelihood. She has made herself very clear that she may be issued a provisional Sanad and such provisional Sanad shall remain in deposit with the Bar Council of Gujarat and she would obtain the final Sanad after clearing the Bar Council of India Exam. She has already filed an undertaking to this effect. We have quoted the entire undertaking in the earlier part of our judgment. If that be so, may it not be said that the object of Rules 1 and 2 respectively of the Bar Council of Gujarat (Enrollment) Rules as well as Rule 49 of the Bar Council of India Rules is protected and sub-served.

33. In such circumstances, referred to above, we read down Rules 1 and 2 respectively of the Bar Council of Gujarat (Enrollment) Rules so as to read that a person may be either in full or part time service or employment or is engaged in any trade, business or profession, who otherwise is qualified to be admitted as an Advocate shall be admitted as an Advocate, however, the enrollment certificate of such a person shall be withheld with the Bar Council and shall lie in deposit with the Council until the concerned person makes a declaration that the circumstances mentioned in Rule 2 have ceased to exist and that he or she has started his/her practice.

34. We, accordingly, direct the Bar Council of Gujarat as well as the Bar Council of India to act accordingly after applying the rules in consonance with what has been stated above and issue a provisional Sanad to the writ applicant so as to

entitle her to appear in the Bar Council of India Exam.

35. The Bar Council of Gujarat shall issue the Enrollment Number to the writ applicant on the same line and in the same format as given to all other applicants who apply for enrollment as an Advocate and which is acceptable to and compatible with the On-line All India Bar Examination portal. Let this exercise be undertaken at the earliest and the registration number shall be given to the writ applicant within a period of three days from the date of issue of the writ of this order."

5. The above judgment was carried in appeal by the Bar Council of India (hereinafter, "BCI") in "BCI v. Twinkle Rahul Manglokar [Civil Appeal No(s). 816-817/2022], before the Supreme Court of India. Vide order dated 2nd August, 2022, the Supreme Court clarified the procedure to be followed by the BCI/State Bar Council in respect of enrolling persons having LLB degree who are in employment, and directed as under:

" C.A . NOS. 816 -817/2022

We have perused the additional affidavit filed by the Bar Council of India and we must appreciate the progress which has been made.

Learned Amicus Curiae points out with reference to paragraph 8(A)(i) that apparently as the report stands it may not correctly reflect the position qua 'Register A' as 'Register A' has to contain the names of candidates who passed the law examination and are enrolled in 'Register A' to be able to take the examination, whereafter on clearance of the Bar examination their names will be entered .

Mr. Manan Kumar Mishra, learned senior counsel for the Bar Council of India states that necessary clarification will be issued but in any case we record the intent of the same.

In respect of the aforesaid , it is clarified for the benefit of the parties with consent that the procedure to be followed by the Bar Council of India would be that persons who are in jobs and are desirous of taking the examination , will in advance inform the Bar Council of the factum of their employment and on being successful in the examination, an undertaking would be required that within six months they will take a call whether to resign or join the profession or they will still continue to work in their respective jobs, in which case, they would on a subsequent date being so desirous of joining the profession require to take the examination afresh and in case of resignation give proof thereof.

We have been shown the extract of the Minutes of the General Council Meeting of the Bar Council of India dated 08.07.2022 qua 'Register C' which has been read over and seems to be in order except on one issue that in the penultimate paragraph where it refers to the requirement to appear in the examination again and clear AIBE again after 5 years, instead of "a publication of the result of AIBE" it should read as "after suspension of licence".

6. Ld. Counsel for the Petitioner submits that, as per the directions given by the Supreme Court in *BCI v. Twinkle Rahul Manglokar* (supra), the Petitioner could not have been stopped from appearing in AIBE-XVII, or even obtaining provisional registration, inasmuch as, whether to start practise or to continue to remain in employment can be decided by the Petitioner after he qualifies the bar exam. In view of the above, it is prayed that the Petitioner be permitted to appear in the AIBE-XVII exam, as per the orders passed by the Supreme Court in *BCI v. Twinkle Rahul Manglokar* (supra).

7. Heard Id. Counsels for the parties. A perusal of the directions given by the Gujarat High Court, as also, the Supreme Court in the decisions extracted hereinabove make it abundantly clear that a person who has passed the LLB examination and is in employment, cannot be stopped from taking the All India Bar Examination, merely on the ground of employment.

8. This Court is of the opinion that the legal profession has evolved to such an extent that there are several avenues of employment for lawyers. Judicial notice is also being taken of the fact that the AIBE-XVII exam has not been held for more than two years. Thus, it cannot be expected that persons who have qualified the LLB examination ought not to take up employment after graduation and ought to mandatorily practice, while waiting for the AIBE examination to be conducted. Accordingly, the persons who have qualified the LLB examination ought to be given the flexibility which has been clearly recognised by the Gujarat High Court and the Supreme Court in the aforementioned decisions.

9. Moreover, Id. Counsel for the BCI raises an issue that the Petitioner could not have been in employment while pursuing the LL.B course as there may be issues of attendance etc., While issues of attendance are serious in nature, the time has come for the BCI to take a pragmatic view of legal education in India. Increasingly, there is a need felt in courts for lawyers who are possessed with skills and knowledge in a vast range of subjects including science subjects such as physics, chemistry, biology; engineering, biochemistry, biotechnology, economics and chartered accountancy etc., Different combination courses may have to be looked into and permitted by the BCI, to cater to the future needs of the profession. Moreover, candidates who pursue law or LL.B. could include women who are taking care of families, men who may be compelled to work due to economic situation of the family etc., These considerations would surely be borne in mind by the BCI while looking into future reforms that may be needed in legal education. Ld. Counsel assures the Court that he would place the present order before the BCI. Let the needful be done and the outcome of the deliberations on these issues, by the BCI, be placed before the Court by the next date.

10. In the present case, the Petitioner, having qualified the LLB examination from the University of Delhi, though in employment, could not have been rejected from obtaining a provisional enrolment with the Bar Council of Delhi. Even as per the Advocates Act, 1961 and Rule 5, Chapter-III of the Bar Council of India Rules

framed thereunder, if a person takes employment even after enrolment, such a person has the option of keeping the enrolment under suspension. The said Rule 5, Chapter-III, Part-VI of the Bar Council of India Rules, dealing with voluntary suspension of practice, is set out below:

"5. (1) An Advocate who voluntarily suspends his practice for any reason whatsoever, shall intimate by registered post to the State Bar Council on the rolls of which his name is entered, of such suspension together with his certificate of enrollment in original.

(2) Whenever any such Advocate who has suspended his practice desires to resume his practice, he shall apply to the Secretary of the State Bar Council for resumption of practice, along with an affidavit stating whether he has incurred any of the disqualifications under section 24-A, Chapter III of the Act during the period of suspension.

(3) The enrollment Committee of the State Bar Council may order the resumption of his practice and return the certificate to him with necessary endorsement. If the Enrollment Committee is of the view that the Advocate has incurred any of the disqualifications, the Committee shall refer the matter under proviso to section 26(1) of the Act.

(4) On suspension and resumption of practice the Secretary shall act in terms of rule 24 of Part IX."

11. Thus, the BCI ought to encourage lawyers, who have qualified the LLB examination, to appear in the All India Bar Examination, while having the flexibility to either practice or keep their enrolment under suspension.

12. In any event, in the case of the present Petitioner, the provisional enrolment could not have been denied by the BCD keeping in mind the directions passed by the Supreme Court in BCI v. Twinkle Rahul Manglokar (supra). Thus, considering that the last date for filing the application to appear in the AIBE-XVII exam is 16th January, 2023, the following directions are issued:

i. The Petitioner shall appear before the Enrolment Committee of

BCD tomorrow i.e., 12th January, 2023 at 11:30 am. After verifying all the documents submitted by the Petitioner, provisional enrolment shall be granted to the Petitioner by 13th January, 2023. If any clarifications are required in the process of verification, the same shall be sought from the Petitioner.

ii. The Petitioner shall be permitted to appear for AIBE-XVII on 5th February, 2023. For the said purpose, the Petitioner shall file an application and submit the necessary fees for appearing in AIBE-XVII, by 16th January, 2023.

iii. In case there is any delay due to the provisional enrolment number not being received from the BCD, the Petitioner's application for AIBE-XVII shall not be rejected on the said ground. The Petitioner would be facilitated to apply for AIBE-XVII.

13. The BCI and the BCD shall file their respective affidavits in this matter within six weeks. If there are any outstanding issues which the BCD wishes to raise qua the Petitioner's documents or credentials, the same shall be placed by means of the said affidavits.

14. List for hearing on 25th May, 2023.