
(2012) 11 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 8428 of 2012

Satyaprakash Sharma

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Companies Act, 1956 — Section 20
Constitution of India, 1950 — Article 19(1)(c), 19(4), 226, 227
Societies Registration Act, 1860 — Section 1, 2, 3

Citation : (2013) 1 BomCR 11 : (2013) 1 MhLj 147

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : Raju Z. Moray assisted with ith Sagar A. Rane Instructed by Nitesh Nevshe, for the Appellant; P.S. Cardozo, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—This writ petition was heard earlier and was reserved for orders today. Rule. Rule made returnable forthwith by consent of parties. The learned A.G.P. waives service for the respondents.

2. By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order passed by the 2nd respondent on 4th June, 2012. By that order the application made on behalf of the petitioner/original applicant has been rejected.

3. It is the case of the petitioner that along with others, who are all advocates duly enrolled with the Bar Council of Maharashtra and Goa and practicing in this Court, filed an application with the 2nd respondent seeking registration of an Association as a Society under the Societies Registration Act, 1860 (hereinafter referred to as the Act).

4. It was their case that they wanted to register an association of advocates called "Bombay Lawyers" Association".

5. This application was made on 21st April, 2012 together with the information that is required to be supplied, namely, aims and objects of the Association, the memorandum of Association with the signatures of the subscribers, and the rules and regulations of the Association. The association was constituted on 14th April, 2012.

6. On this application, a hearing was scheduled on 4th June, 2012 which was attended by the petitioner and another representative/founder member. At this hearing, the petitioner was informed that there is an objection and such an Association cannot be registered. The attention of the representative was invited to section 3-A of the Act. The petitioner submitted a written submission, copy of which is at Annexure-B to the writ petition, pointing out that there is nothing undesirable about the activities and the aims of the Association. It is not as if the petitioner seeks anything which is contravening the status of a statutory body, namely, the Bar Council of India and Bar Council of Maharashtra and Goa. If the main object of the Association is welfare of lawyer community and that is the reason why the application for registration was filed, then, the petitioner submitted that the same deserves consideration and the registration be granted. Reliance was placed on Article 19(1)(c) of the Constitution of India in this behalf. It appears that, on 4th June, 2012, the order was passed by the Assistant Registrar and his reasons for refusal of the registration are as under:

7. The following aspects are apparent in the present matter:-

(a) The name is undesirable due to the identical name with the already functioning associations of the advocates and lawyers including Bar Council of India, Maharashtra and Goa that too with the prefix of "Bombay" i.e. earlier name of city of "Mumbai".

(b) The name is identical with the name of body constituted by virtue of the provisions of Advocates Act, 1961 i.e. Bar Council of India, Maharashtra and Goa and also nearly resembles with the Bar Association of Mumbai Courts.

(c) The members of the various Bar Associations of Mumbai Courts and Tribunals established with due permission of the concerned authorities and the members of Bar Council of Maharashtra and Goa and members of Bar Council of India or the members of the present proposed society are likely to be deceived by the name of the present proposed society.

(d) Even the objects incorporated in the present proposed society are very nearly resembling the functioning of the Bar Council of Maharashtra and Goa, Bar Council of India and various Bar Associations of the Advocates in the city of Mumbai.

(di) When there is a body established by virtue of the laws and rules of Advocates Act, 1961 covering the functions and welfare of the advocates, the registration of the proposed society is undesirable, unless specific or special sanction to the same, which is not filed on the present record and proceedings.

8. The applicant took shelter of the Article 19-C of the Constitution of India and stressfully argued for allowing the application for registration of the present proposed society. However, the issue here is not to adjudicate the "registration of the society" but whether the prohibition as provided in section 3-A of the Societies Registration Act, 1860 covers the present proposed society regarding its name, objectives and functioning. Therefore, after considering all the aspects referred above, I am of the opinion that the registration of the proposed society "Bombay Lawyers Association" is undesirable.

7. It is this order which has been challenged in this writ petition. Mr. Moray, the learned counsel appearing on behalf of the petitioner submitted that the impugned order is contrary to law. Mr. Moray submits that there is nothing in this case which enables the 2nd respondent to hold that the registration can be refused. Inviting my attention to section 3-A, it is submitted that the prohibition is against the registration of societies with undesirable name. However, what is undesirable is the identity of a name with or which, in the opinion of the Registrar, so nearly resembles the name by which any other existing society has been previously registered, as to be likely to deceive the public or members of either society. Secondly, if no permission of the Government is obtained, but the names suggest or calculate to suggest a Government connection or patronage of the Government or any local authority or which may subject to rules made in this behalf, be deemed to be unreasonable by the Registrar.

8. Mr. Moray submits that, only such conclusion would enable the Registrar or his delegate to refuse registration. There are no rules framed by the Maharashtra Government in guiding the exercise of this power. The identity of the name as is contemplated by the section must be resembling the name by which any other existing Society has been previously registered. The Assistant Registrar does not hold that any association or society has been registered with the name which is identical to that proposed by the petitioner. If the conclusion of the Society Registrar is noted, what he thinks "undesirable" is that there are already functioning associations of the advocates and lawyers including the Bar Council of India and Bar Council of Maharashtra and Goa and that too by prefixing Bombay i.e. earlier name of the city of Mumbai. Further, the name is identical with the name of body covered by the provisions of Advocates Act, 1961 and also nearly resembles with the Bar Association of Mumbai Courts and Tribunals.

9. Mr. Moray submits that this conclusion hardly meets the requirement of the statute. The statute does not say anywhere that everything which is registered in the name of lawyers, advocates and with the prefix of the name of the city is undesirable. Merely because there are several tribunals and Courts in Mumbai and each have their Bar Association or Association of advocates duly registered by their members under the relevant law, it does not mean that registration of the petitioner Association is undesirable. There is no question of any deceit or common identity merely because the resemblance is there. That is not enough. The resemblance has to be with any other existing society previously registered.

Therefore, unless and until such a conclusion is reached, the registration could not have been refused. It is not as if by mere registration that the petitioner is trying to encroach upon the authority or status of statutory body like the Bar Council of India and Bar Council of Maharashtra and Goa. There is no identity or resemblance with the statutory bodies. However, associations of advocates in Courts and tribunals may be there, but the requirement is to establish and prove that any other existing society has been previously registered. It is only with that finding that one can go further and urge that there is likelihood of the public or members of that society being deceived. In the absence of all this, if the registration is refused, then, such an order is patently arbitrary, unreasonable in law and should be set aside.

10. Mr. Moray has invited my attention to section 20 of Companies Act, 1956. My attention is invited to The Emblems and Names (Prevention of Improper Use) Act, 1950, and equally to the State Emblem of India (Prohibition of Improper Use) Act, 2005. He submits that there are definite guidelines under the Companies Act which guide the Registrar while exercising powers to register companies with undesirable names. Equally, under the Emblems and Names (Prevention of Improper Use) Act, 1950 and State Emblem of India (Prohibition of Improper Use) Act, 2005 Acts, there is requirement of the State names or emblems being misused or abused and, therefore, registration can be refused. Nothing of this nature has been found in the instant case and yet the registration is refused. For all these reasons, Mr. Moray submits that the impugned order be set aside.

11. On the other hand, the learned A.G.P. has supported the impugned order and she submits that if the Assistant Registrar has found, as a matter of fact, that there are several associations of advocates and lawyers functioning in this Court and equally subordinate and other Courts and tribunals in city of Mumbai with more or less identical names, this conclusion cannot be faulted. There is something undesirable in common names of Advocates' Associations and which are identical and by which every single member of the society or the other societies is likely to be deceived. For these reasons, there is no interference permitted in writ jurisdiction with such finding of fact. The order is consistent with the objects and purpose sought to be achieved by section 3-A of the Act. For these reasons, the writ petition be dismissed.

12. With the assistance of the learned counsel appearing for the parties, I have perused the petition and all annexures thereto. The petitioner together with others submitted an application for registration of Bombay Lawyers Association. That application, copy of which has been annexed to the writ petition, states that the association be registered as a Society under the Societies Registration Act, 1860. The Memorandum of Association, true copy of rules and regulations, consent letters of all the members of the Governing Council and other documents including the affidavit, came to be forwarded. Such an application was received in the office of the 2nd respondent on 21st April, 2012. The Memorandum of

Association states that the aims and objects are, to uphold the rule of law, promote higher values in legal profession and to preserve and protect independence of judiciary. Such other aims and objects as are enumerated in Clause 3 of the memorandum of association have been set out and thereafter the details of the first Governing Council of the Society are mentioned. Thereafter, there is a draft of the rules and regulations which have been framed by this Association. All such documents being forwarded and the complaint is not that there is no compliance with the requirement of submitting proper application and form, then, what the Assistant Registrar was required to do, was to refer to the provisions of the Act and particularly, in relation to the registration and in view of the guidelines which may guide in that behalf consider the application for registration.

13. A brief reference to the provisions of the Act would reveal that, it is an Act for the Registration of Literary, Scientific and Charitable Societies. It is an act which provides for improving the legal condition of societies established for the promotion of literature, science or the fine arts, or for the diffusion of useful knowledge (the diffusion of political education), or for charitable purposes. Section 1A and section 1B designate the officers for exercising the powers in relation to registration and all other duties and functions under the Act.

14. Thereafter, section 1 specifies the requirement of making an application and of forwarding the Memorandum of Association. The requirement of forwarding the memorandum of association and the contents thereof are referred to in section 2 and thereafter in section 3 registration and fees are referred. Section 3 states that, subject to the provisions of section 3-A, the Registrar shall certify under his hand that the society is registered under this Act.

15. Then comes section 3-A which reads as under:

Section 3-A. -- No society shall be registered by a name which, in the opinion of the Registrar, is undesirable, being a name which is identical with or which in the opinion of the Registrar so nearly resembles the name by which any other existing society has been previously registered, as to be likely to deceive the public or members of either society, or which, without the previous permission of the Government concerned suggests or is calculated to suggest the patronage of that Government or connection with anybody constituted by that Government or any local authority or which may, subject to any rules made in this behalf, be deemed to be undesirable by the Registrar.

A bare perusal of section 3-A would show that, no society shall be registered by a name which in the opinion of the Registrar is undesirable, being a name which is identical with or which in the opinion of the Registrar, so nearly resembles the name of the society which has been previously registered as is likely to deceive the public or either society. Therefore, the opinion has to be formed that the name which is sought to be registered is undesirable. Moreover, the statute requires that the opinion should be with regard to the undesirability of the name

in the backdrop of it being identical or which in the opinion of the Registrar is nearly resembling the name by which any other existing society has been previously registered and thereafter the likelihood of deceit of the public or members of either society.

16. Although there is a reference to the status of the Bar Council, the later part of section 3-A cannot be said to be attracted in this case because the finding is not that there is anything in the name proposed by the petitioner which is calculated to suggest the patronage of the Government and it is sought without previous permission of that Government. There is a reference made in para 7 to the Bar Council and to the Advocates Act, 1961, but the Assistant Registrar does not in any manner hold that under these two enactments there is anything by which a person or an applicant cannot seek registration of the society or an association of advocates and lawyers. There is no prohibitory provision nor is any such act termed an offence under these statutes. There is nothing by which the status of a Bar Council of India or the Bar Council of Maharashtra and Goa, is in any way jeopardized or adversely affected or the public getting a feeling or entertaining a belief that somebody is trying to usurp the authority of these statutory bodies by seeking registration of its own council or statutory authority. Therefore, the reference to the Bar Council of Maharashtra and Goa and to Bar Council of India is really uncalled for. There is nothing in the name "Bombay Lawyers Association" which resembles or bears close resemblance to the name of Bar Council of India or Bar Council of Maharashtra and Goa. Equally, the order does not indicate that the name is identical with the name of any body constituted by virtue of the provisions of Advocates Act, 1961. If the Assistant Registrar does not name any body other than the Bar Council of India, then, his further finding that the present name bears close association or resemblance with the name of the Bar Council of India and the Bar Council of Maharashtra and Goa, is erroneous. Because his finding should not be that these names are resembling each other. One finds nothing in the name which bears any close resemblance but assuming to be so, the element of deceit has to be indicated. That having not been indicated and merely because there are several other associations and societies of advocates, which are functioning in various Courts and tribunals, that by itself does not mean that the registration can be refused. There is no reference in the order to any of the existing societies of advocates and lawyers which have been registered under the Societies Registration Act. Therefore, a vague finding that there is something undesirable in the name of the petitioner Association as proposed, the Registrar could not have refused to register the Association. There is nothing in it which is likely to deceive the public far from the members of the legal profession being deceived. If on the own showing of the Assistant Registrar, despite a statutory body like the Bar Council of India, Bar Council of Maharashtra and Goa, which enroll advocates and regulates the profession in general, there are functional associations of advocates and lawyers and they have been registered and are continuing their activities, then, it is difficult to understand as to how despite so many

associations and bodies of lawyers already functioning in the city with the name of Bombay, that the status of Bar Council of India and Bar Council of Maharashtra and Goa, is not affected. Though several such associations are already functioning, there is no element of deceit or confusion. If there is only one authority recognized by law to enroll the advocates and regulate their conduct, then, I do not see any reason for refusing registration in this case.

17. The Assistant Registrar possibly was agitated because the petitioner sought to rely on Article 19(1)(c) of the Constitution of India. That Article gives a citizen of India a fundamental right to form associations or unions. Of course, by Article 19(4), the operation of any existing law insofar as it imposes or prevents the State from making any law imposing reasonable restrictions on the exercise of the right conferred by this Article in the interest of sovereignty and integrity of India, public order or morality and operation of such law is not affected. In these circumstances, there was no reason by which one could feel agitated, if reliance is placed on Constitutional provisions and that too conferring fundamental rights on citizens of India. Equally, it was not the argument of the applicant petitioner that the restrictions placed or that prohibition carved out by section 3-A of the Act is in any way unreasonable or contravenes the mandate of Article 19(1)(c) of the Constitution of India. The argument was that, if the registration is refused the refusal will be contravening the Constitutional mandate. That argument should have been appreciated in the above light and proper spirit and there was nothing by which one could conclude that seeking registration of the proposed society, "Bombay Lawyers Association" is undesirable.

18. The word "undesirable" has some specific legal connotation. In Webster's Encyclopedic Unabridged Dictionary of the English language, this word is stated to be carrying a meaning of "being not desirable or attractive, objectionable, inappropriate or detrimental". It is therefore understood in the present statute as objectionable, inappropriate or detrimental. It has been understood in other statutes as something by which a Company cannot be registered when its name has a close resemblance with the body already in existence and previously registered. Equally, if there is something to guide the authority, then, what would that be is indicated by the Central Government in exercise of powers u/s 20 of Companies Act, 1956. The guiding instructions for deciding cases of making a name available for registration under the Companies Act, 1956 are in the Appendix-A and they would indicate that something which undermines the authority of the State, causes person to entertain a particular belief or deceives the members of the public or the body and that is essentially considered as "undesirable". There is nothing like a general notion or concept of "undesirable". That has been understood in the backdrop of the object and purpose sought to be achieved by the statute enabling and providing for registration of a Society, Trust, Company, etc. It is not something of one's own belief and there are certain and definite factors to be borne in mind. A general perception or impression of what is desirable and undesirable is, therefore, ruled out even in cases falling u/s 3-A. That there are registered associations of advocates and

lawyers which are functioning throughout Mumbai and one more association being registered will be undesirable is no ground to refuse the registration in the facts of this case. The very fact that there are several associations which are registered under some enactment or the other and which are functional by itself and without anything more is no ground to refuse registration of another association. The Assistant Registrar should have been aware that ultimately the advocates and lawyers are bound to seek registration of their association with the title of their profession or a general description of the same. Equally, such associations are in large number in the cities. The prefix of the city or the town can always be one of the titles of the association. It could be an element included in the name. In these circumstances, to hold that additional or one more association is undesirable by itself will not be enough.

19. Looked at from any angle, one finds that the order passed by the Assistant Registrar cannot be sustained. It is vitiated by an error apparent on the face of the record. The error of law that I have pointed out is in context of the provisions of the Societies Registration Act, 1860 which enable the petitioner and others to seek registration of a society.

20. In such circumstances, the writ petition succeeds. Rule is made absolute. The impugned order dated 4th June, 2012 is quashed and set aside. The Respondent No. 2 is directed to consider the application filed by the petitioner in accordance with law and without in any way being influenced or guided by his observations in the order dated 4th June, 2012. The application be processed as expeditiously as possible and within a period of eight weeks from the date of receipt of a copy of this order.