

(1972) 09 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 52 of 1972

S.S. Mittal

APPELLANT

Vs

Bar Council of India and Others

RESPONDENT

Date of Decision : 08-09-1972

Acts Referred:

Advocates Act, 1961 — Section 26(1)
Civil Procedure Code, 1908 (CPC) — Section 20

Citation : AIR 1974 HP 32 : (1972) 1 ILR HP 38

Hon'ble Judges : R.S. Pathak, C.J.;C.R. Thakur, J

Bench : Division Bench

Advocate : S. Malhotra, for the Appellant; D.P. Sud, for the Respondent

Judgement

R.S. Pathak, C.J.—The petitioner applies under Article 226 of the Constitution for quashing an order of the Bar Council of India removing his name from the roll of Advocates maintained by the Bar Council of Delhi.

2. The petitioner, who at one time was a member of the judicial service, is said to have obtained his LL. B. Degree as a private candidate from the Punjab University in the year 1968 and after resigning from judicial service he applied on November 17, 1970 to the Bar Council of Punjab and Haryana at Chandigarh for enrolment as an Advocate u/s 24 of the Advocates Act, 1961. The Bar Council of Punjab and Haryana was doubtful whether the law degree obtained by the petitioner could serve to qualify him for enrolment and it referred the question to the Bar Council of India for its opinion. The petitioner now applied on March 19, 1971 to the Bar Council of Punjab and Haryana for withdrawing his application but there is nothing to show that any order was passed allowing the application to be withdrawn. On March 31, 1971 he applied to the Bar Council of Delhi for enrolment as an Advocate. The application was allowed and the petitioner was enrolled on April 5, 1971.

Meanwhile, on April 15, 1971, the Bar Council of Punjab and Haryana made an order refusing to enrol him as an Advocate on the ground that as he had not

obtained the law degree after undergoing a course of study in law for a minimum period of 2 years after graduation and has obtained it as a non-collegiate candidate he was not eligible for enrolment as an Advocate. Thereafter, the Bar Council of Delhi came to know of the proceedings before the Bar Council of Punjab and Haryana and in May 1971, it wrote to the petitioner to explain why at the time of applying to it for enrolment he had not disclosed the fact that his enrolment had been refused by the Bar Council of Punjab and Haryana and that he had passed the Law Examination in 1968 as a private candidate. The petitioner submitted his explanation but it was not accepted. The case was referred to the Bar Council of India u/s 26 (1) of the Advocates Act. On April 30, 1972, the Bar Council of India held that the petitioner had been guilty of suppressing material facts at the time of applying for enrolment to the Bar Council of Delhi inasmuch as he did not disclose that he had made an earlier application to the Bar Council of Punjab and Haryana, which was about to be rejected, and that his law degree was one which could not be recognised. Accordingly, acting under the proviso to Section 26 (1) of the Advocates Act it removed the name of the petitioner from the roll.

3. Shri D. P. Sud, learned Counsel for the respondents, has raised a preliminary objection. He urges that this Court has no jurisdiction to entertain this writ petition inasmuch as the Bar Council of Delhi and the Bar Council of India, which passed the impugned order, is situated outside the territorial jurisdiction of this Court and no part of the cause of action arises within that territorial jurisdiction. It seems to us that objection has force and must be upheld.

4. Both the Bar Council of Delhi and the Bar Council of India have their seat outside the territorial jurisdiction of this Court. The impugned proceedings were taken by them, and the impugned order removing the name of the petitioner from the roll of Advocates was passed by the Bar Council of India. Article 226 (1) of the Constitution empowers the High Court to issue directions, order or writs to any person or authority within the territories in relation to which it exercises jurisdiction. It has no power under Article 226 (1) to do so if the person or authority is situated outside those territories. Therefore, this Court has no power under Article 226 (1) to grant relief against the Bar Council of Delhi or the Bar Council of India.

5. Article 226 (1-A) empowers the High Court to issue directions, orders or writs if the cause of action, wholly or in part, arises within the territories in relation to which it exercises jurisdiction. There is nothing to show that any part of the cause of action arises within the territories of Himachal Pradesh. Learned counsel for the petitioner points out that a copy of the order was served on the petitioner at Simla and therefore, it is urged, the cause of action arises within the jurisdiction of this Court. It is said that the order became effective only upon service of the copy on the petitioner and therefore, this service constituted part of the cause of action. In our opinion, the mere circumstance that a copy of the order was served on the petitioner at Simla does not lead to the inference that a

part of the cause of action arises there. The cause of action includes only those facts which are essential for obtaining relief. As was pointed out by the Privy Council some years ago, it means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. AIR 1949 78 (Privy Council) It is necessary for the petitioner to establish that a copy of the impugned order was served on him before he can obtain relief? Was he affected by the order only after a copy of it was served on him, or did the order come into effect as soon as it was passed? It is clear from the copy of the impugned order annexed to the writ petition that it was passed in the presence of the petitioner on April 30, 1972. His presence has been noted at the top of the order. There is no averment in the writ petition that the order was not passed in his presence. In the circumstances, we must take it that the order was communicated to him when it was made on April, 30, 1972. The order took effect as soon as it was passed on that date. It removed the name of the petitioner from the roll of Advocates, and it did that as soon as it was made. To accomplish that end, it was not necessary that a copy of the order should also have been served on the petitioner. The order was a complete and final order, and after pronouncing it the Bar Council of India had no power to make a different order. An order made by the Bar Council under the Proviso to Section 26 (1) of the Advocates Act is final unless it is reviewed by the Bar Council in the exercise of some statutory power conferred upon it in that behalf, or a clerical or some such error is corrected in the exercise of the inherent jurisdiction of the Bar Council.

6. In *Bachhittar Singh Vs. The State of Punjab*, on which the petitioner relies, the order in question was an order of the State Government and it was laid down by the Supreme Court that in order to amount to decision of the Government it must be communicated to the person concerned, and that was for the reason that it was always open to the Government, before such communication to make a different order. The Supreme Court said :

"Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore till its communication, the order cannot be regarded as anything more than provisional in character."

7. Proceeding on similar reasoning, the Supreme Court observed in *State of Punjab Vs. Amar Singh Harika*, :

"If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court the authority may change its mind and decide to modify that order,"

and it referred to the considerations peculiar to orders of dismissal which led it to take that view.

8. In the present case, the order was made by the Bar Council of India in the presence of the petitioner at Delhi. It was, therefore, communicated to him at Delhi. It took effect at Delhi, and its taking effect was not postponed to the moment when a copy of the order was served on the petitioner at Simla.

9. It is next urged that the impugned order has deprived the petitioner of his right to practise in Himachal Pradesh and therefore the cause of action can be said to arise partly within the jurisdiction of this Court. The right to practise in Himachal Pradesh is based on the submission that by reason of the name of the petitioner being entered on the roll of Advocates maintained by the Bar Council of Delhi, the Petitioner was entitled to have his name entered on the common roll maintained by the Bar Council of India u/s 20 of that Act, and on that he was entitled as of right to practise throughout the territories of India, including the State of Himachal Pradesh, by virtue of Section 30 of the Act. The argument is that once a person is entered on the State roll, that gives him a right to be enrolled on the common roll and therefore to practise anywhere in India. The contention cannot be accepted. Section 19 of the Advocates Act requires every State Bar Council to send to the Bar Council of India an authenticated copy of the roll of Advocates prepared by it for the first time under that Act and thereafter to communicate to the Bar Council of India all alterations in, and additions to, in such roll as soon as the same has been made. Section 20 provides:

"Common roll of advocates:

(i) The Bar Council of India shall prepare and maintain a common roll of advocates which shall comprise the entries made in all State rolls....."

10. Section 30 provides:

"Right of advocates to practise: Subject to the provisions of this Act, every Advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends....."

11. Before the petitioner can invoke Section 30 in support of his right to practise in Himachal Pradesh, he must establish that his name is entered in the common roll. The right to have one's name entered in the common roll and the making of an entry in the common roll in recognition of that right are two different things. The gulf between the two is bridged when the State Bar Council, acting u/s 19, conveys to the Bar Council of India the addition made to the roll maintained by it and the Bar Council of India then, acting u/s 20, enters the name in the common roll, the physical existence of the entry in the common roll gives an Advocate the right to practise anywhere in India. On the material before us, there is nothing to suggest that the name of the petitioner was ever entered in the common roll. Therefore, he is not entitled to maintain that he had a right to practise in Himachal Pradesh.

12. Learned counsel for the petitioner has placed a number of decisions before us in support of the contention that the cause of action arises wholly or in part

within the jurisdiction of this Court. In our opinion, those cases do not help the petitioner.

13. In *Harcharan Lal Vs. Director, Indian Institute of Sugarcane Research and Another*, the petitioner was a truck driver serving at the Central Sugarcane Station, Lucknow. His services were terminated by the Director, Indian Institute of Sugarcane Research, Lucknow. An appeal filed by the petitioner was dismissed by the Government of India, Ministry of Food and Agriculture (Department of Agriculture), New Delhi. The Allahabad High Court rejected the contention that because the original order terminating the petitioner's services could be said to have merged in the appellate order of an authority outside the territorial limits of that Court, no writ petition would lie to it. It referred to Article 226 (1-A) of the Constitution and held that the cause of action arose within Uttar Pradesh. This case, it will be noticed, falls within the principle laid down in *Bachhittar Singh Vs. The State of Punjab*,

14. The next case relied upon is *Damomal Kausomal Raisinghani Vs. Union of India and Others*. That was a case where although the order was made by a governmental authority at Delhi it had its consequence at Ulhasnagar situated in the District of Thana of Maharashtra where the petitioner resided, and it was observed that the proceedings contemplated against the petitioner in consequence of the impugned order would be taken by officers located within the territorial jurisdiction of the Bombay High Court.

15. Reference has also been made to *Gopal Vinayak Godse Vs. The Union of India and Others*. In that case the cause of action was furnished by the seizure of the books in Poona, even though the seizure was effected in pursuance of the order of forfeiture passed by Delhi Administration. Clearly a writ petition challenging the seizure could be maintained before the Bombay High Court.

16. In *Serajuddin and Co. Vs. The State of Orissa and Others*, which has also been placed before us, the orders impugned by the petitioner were served on him at Calcutta, but they were orders requiring him to stop working and to quit possession of certain mines. It appears from the judgment of the Calcutta High Court that the petitioner maintained an office at Calcutta from which he directed the activities concerning the mines. The impugned orders required him to do or to forbear from doing something at his Calcutta office, and therefore, it is apparent that the cause of action arose at Calcutta. The Calcutta High Court, therefore, held that it had jurisdiction in that matter.

17. Finally, reliance has been placed on *S.S. Light Rly. Co. Ltd. Vs. The Industrial Tribunal (Central) and Others*. The impugned award was made by the Industrial Tribunal, Lucknow, but some of the hearings of the Tribunal took place in Delhi and the award was published at New Delhi. Further, the petitioner and the workmen who were affected by the award were carrying on their activities, to which the award was related, at Shahadra within the jurisdiction of the Delhi High Court. Upon those facts, the Delhi High Court held that a writ petition

against the impugned order would lie to it.

18. In our opinion, upon the facts of the present case this petition is not maintainable in this Court.

19. Learned counsel for the petitioner prays that in case this Court finds that the petition is not maintainable here it may be returned to the petitioner for presentation to the proper Court. We have some doubt whether this can be done in the case of a petition under Article 226 of the Constitution, but as learned counsel for the respondents states that he has no objection to such an order, we direct the petition be returned to the petitioner for presentation to the proper Court.