

(2023) 03 CHH CK 0058
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 2021 Of 2020

Uttam Pandey

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 20-03-2023

Acts Referred:

Advocates Act, 1961 — Section 3(2)(a), 7(1)(m), 8, 8A, 48B

Citation : (2023) 03 CHH CK 0058

Hon'ble Judges : Goutam Bhaduri, J; N.K. Chandravanshi, J

Bench : Division Bench

Advocate : Soumitra Kesharwani, Ramakant Mishra, H.S. Ahluwalia

Final Decision : Disposed Of

Judgement

Heard.

1. Challenge in this petition is to the vires of Section 7 (1) (m) of the Advocates Act, 1961 (hereinafter the Act, 1961) to declare it ultra-vires and further prayer is made to quash the order of extension of bar council of 19/08/2020 with respect to State of Chhattisgarh.

2. No representation is made on behalf of respondent No.3, despite service of notice.

3. The undisputed facts of the case are that on 02/02/2015 the elected body of Bar Council took over the charge for a period of 5 years which was to end on 02/02/2020. After the elected tenure the Bar Council of India in exercise of power under Section 8 of the Act, 1961 extended the tenure of the elected body for a further period of six months, which was to last up till 02/08/2020. Subsequently, after expiry of tenure of first extension term, another extension was granted on 19/08/2020 with a retrospective effect to extend the term of the elected body of bar council from 02/08/2020, the date when first extension had expired.

4. It is submitted by the petitioner that further extension of term for the second tenure was made by Bar Council of India under the guise of Section 7 (1) (m) of the Act, 1961. It is stated that Section 7 (1) (m) of the Act, 1961 would be in contravention of Section 8A of the Act, 1961 which allows to the extent of appointment of special committee. Therefore, he would further submit that therefore, the said interpretation which has been drawn by the Bar Council of India while grant of second extension taking the shelter of Section 7 (1) (m) of the Act, 1961 would be completely illegal and therefore, Section 7 (1) (m) of the Act, 1961 would be ultra-vires to Section 8A of the Act, 1961 itself. It is further submitted that during subsequent period, the special committee as per clause (a) of sub-section (2) of Section 3 of the Act, 1961 has been constituted & appointed which is working at present to Chhattisgarh Bar Council. He would further submit that since by wrong interpretation of the law and application of it, powers have been exercised, therefore, Section 7 (1) (m) of the Act, 1961 be declared ultra-vires.

5. Per contra, learned counsel for the respondents would submit that only by mere wrong interpretation, the Section cannot be declared ultra-vires and at present the special committee is working.

6. Despite service of notice to the Bar Council of India, no representation is made.

7. Undisputedly, the facts of this case are that after election of the State Bar Council, the body was elected on 02/02/2015 which was to last up till 01/02/2020. After expiry of the body on 03/02/2020 the State Bar Council had extended the period as first tenure up till 02/08/2020. Subsequent to that again on 19/08/2020, the powers were exercised by the Bar Council of India and corpus of the body of the State Bar Council was extended with retrospective effect from 02/08/2020 in exercise of power under Section 7 (1) (m) and 48B of the Act, 1961.

8. Section 7 (1) (m) of the Act, 1961 whereby Bar Council of India drew its power envisages the functions of the Bar Council of India and the relevant part of Section is reproduced as under:-

7. Functions of Bar Council of India.- (1) The functions of the Bar Council of India shall be-

(k) to provide for the election of its members;

(l) xxx xxx xxx

(m) to do all other things necessary for discharging the aforesaid functions;

9. Section 48B also envisages the power of Bar Council of India to give directions, which is vested with the Bar Council for a general supervision and control, it empowers Bar Council of India to give such direction. The Section reads as under:-

[48B. Power to give directions.— (1) For the proper and efficient discharge of the

functions of a State Bar Council or any Committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may appear to it to be necessary, and the State Bar Council or the committee shall comply with such directions.

(2) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the ex officio member thereof as may appear to it to be necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council.]

10. Section 8 of the Act, 1961 describes the term of office of Members of State Bar Council, which is reproduced hereunder:-

[8. Term of office of Members of State Bar Council. —The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be five years from the date of publication of the result of his election:

Provided that where a State Bar Council fails to provide for the election of its member before the expiry of the said term, the Bar Council of India may, by order for reasons to be recorded in writing, extend the said term, the Bar Council of India may, by order, extend the said term for a period not exceeding six months.]

Reading of the aforesaid section would show that when the State Bar Council has failed to provide for the election of its member before the expiry of its term, the Bar Council of India may, by order for reasons to be recorded in writing, extend the said term to remain, which may not exceed six months. Meaning thereby the term of the elected members of State Bar Council, which ended on 02/02/2020 was validly extended in exercise of power under Section 8 for a period of six months which came to be ended on 02/08/2020.

11. Section 8A of the Act, 1961 comes into play in special circumstances for constitution of Special Committee in the absence of election. Admittedly, there was no election held even after expiry of the first extended term on 02/08/2020. Section 8A of the Act, 1961 purports that when any election has not been held after expiry of 5 years or for the extended terms, the Bar Council of India following the date of such expiry may constitute a special committee consisting of ex officio member i.e. a special committee as described in Section 3 (2) (a) which lays down that the Advocate General of the State in the instant case the State of Chhattisgarh herein, would be the ex officio member. For the sake of brevity relevant part of Section 8A & Section 3 (2) (a) of the Act, 1961 are reproduced hereunder:-

[8A. Constitution of Special Committee in the absence of election .—(1) Where a State Bar Council fails to provide for the election of its members before the

expiry of the term of five years or the extended term, as the case may be, referred to in section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of—

(i) the ex officio member of the State Bar Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman:

Provided that where there are more than one ex officio members, the senior-most amongst them shall be the Chairman; and

(ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

(2) On the constitution of the Special Committee and until the State Bar Council is constituted—

(a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee;

(b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special Committee;

(c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise, shall stand transferred to the Special Committee.

(3) The Special Committee constituted under sub-section

(1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold election to the State Bar Council within a period of six months from the date of its constitution under sub-section (1), and where, for any reason the Special Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period.]

3. State Bar Councils.-

(1) xxxxxx xxx

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

(a) In the case of the State Bar Council of Delhi, the Additional Solicitor-General of India, ex officio; [in the case of the State Bar Council of Assam, Arunachal Pradesh, Mizoram and Nagaland, the Advocate-General of each of the States of Assam, Arunachal Pradesh, Mizoram and Nagaland], 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;

12. The conjoint reading of Section 8, 8A and 3 (2) (a) of the Act, 1961 would show that the Bar Council is empowered within Section 8 to extend the period of State Bar Council for a term for a period of six months. In the instant case, first term of the State Bar Council since came to end on 02/02/2020, which was extended in exercise of power under Section 8 of the Act, 1961 till 02/08/2020. Such extension on application of law appears to be legal and was within the rights of Bar Council of India. The subsequent extension is by letter dated 19/08/2020 (Annexure P/1) and terms of the elected body of Chhattisgarh Bar Council was extended for further period of six months. The reading of it would show that the extension of period was from a retrospective date from 02/08/2020. The reason assigned in the application that because of the Covid Pandemic lock-down the State Body cannot be made responsible for not holding any election and they have not faulted, as such the period was extended for six months further.

13. Reading of Section 8 & 8A of the Act, 1961 provides that the statutory limitations have been imposed to extend the period of elected Bar Council and the extension would be valid for a period not exceeding six months. The letter dated 19/08/2020 speaks that the time of elected body was extended from a back date. Admittedly, the extended tenure of Chhattisgarh Bar Council had expired on 02/08/2020, therefore, there was no live corpus of State Bar Council elected body when the extension was ordered. The reasons of pandemic may be logical but the statute provides for different measures to appoint the Advocate General and accordingly the Advocate General was subsequently appointed in exercise of power under Section 3 (2) (a) of the Act, 1961. Consequently, the Bar Council could not have extended the period of elected body beyond six months time by exercising the power under Section 7 (1) (m) of the Act, 1961 as specific provisions exist under Section 8A of the Act, 1961.

14. The petitioner has sought to declare the Section 7 (1) (m) of the Act, 1961 as ultra-vires along with Section 48B of the Act, 1961. Reading of the Section would show that they are not in conflict to any statute rather is a harmonious for discharge of the work by the Bar Council of India in case of emergency. If by wrong interpretation of Sections 7 (1)(m) and 48B of the Act, 1961 the tenure of elected body was extended after it expired beyond the period of six months from a retrospective date, which otherwise they were not entitled to do so, the section cannot be faulted. The Sections 7 (1) (m) and 48B of the Act, 1961 confer the power to Bar Council of India to discharge its job which is embodied in the Act, 1961. Therefore, in a consequence Section 7 (1) (m) of the Act, 1961 cannot be declared as ultra-vires, however, the observation made in the foregoing paragraphs of misapplication of the Section by Bar Council of India would prevail.

15. With the aforesaid observation, the writ petition stands disposed of.