

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO. 18 OF 2009

Yasmin E. Tavaría. .. Petitioner
Vs
Union of India and Another. .. Respondents

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Ms. Yasmin E. Tavaría, the Petitioner in person.
Shri Advait M. Sethna for Respondent No.1 Union of India.
—

CORAM : A.S. OKA & A.K.MENON, JJ
DATED : 22ND JANUARY 2015

PC.

. Heard the Petitioner appearing in person. By this Petition under article 226 of the Constitution of India, the challenge is to the Rule 28 in the Schedule-III of the Rules on Standards of Legal Education framed under Sections 7(h) & (i), 24(1)(c)(iii) and (iiia), 49(1)(af), (ag), and (d) of the Advocates Act, 1961 which were approved and adopted by the Bar Council of India in the meeting held on 14th September 2008.

2. The said Rule 28 reads thus:

“28. Age on admission:

- (a) Subject to the condition stipulated by a University on this behalf and the high degree of professional commitment required, the maximum age for seeking admission into a stream of integrated Bachelor of law degree program, is limited to twenty years in case of general category of applicants and to twenty

two years in case of applicants from SC, ST and other Backward communities.

- (b) Subject to the condition stipulated by a University, and the general social condition of the applicants seeking legal education belatedly, the maximum age for seeking admission into a stream of Three Year Bachelor Degree Course in Law, is limited to thirty years with right of the University to give concession of 5 further year for the applicant belonging to SC or ST or any other Backward Community.”

3. The Petitioner appearing in person pointed out that initially the Bar Council of India had applied to the Apex Court for transfer of this Petition along with the other Petitions pending in various High Courts to the Apex Court. She has placed on record a copy of the order dated 13th November 2014 passed by the Apex Court by which the transfer Petitions filed in the year 2009 were withdrawn. She has also placed on record the judgment and order dated 20th October 2011 of the Punjab and Haryana High Court in CWP No.20966 of 2010 and other connected Petitions. By the said judgment, the Punjab and Haryana High Court declared that the provisions of the said Rule/Clause 28 is beyond the legislative competence of the Bar Council of India. It was held that even otherwise, the Rule is arbitrary and irrational. Relevant part of the operative part of the order passed by the Punjab and Haryana High Court reads thus:

“Therefore, we find that the provisions of Clause 28 of Schedule-III appended to the Rules are beyond the legislative competence of the Bar Council of India.

Clause 28 ultra vires the provisions of Sections 7(1) (h) and (I), 24(1)(c)(iii) and (iiia) or Section 49(1) (af)(ag) and (d) of the Advocates Act. Even otherwise, the Rule is arbitrary as it introduces an invidious classification by dividing one Class of student into two artificial and irrational Classes by prescribing the maximum age for admission to law courses.

12. As a sequel to the above discussion, the writ petitions are allowed. The petitioners who have been admitted on the basis of the interim order would continue and their admissions should not be cancelled on the ground that they did not fulfill the criteria of maximum age.”

4. The Petitioner appearing in person has also placed on record a copy of the order dated 5th January 2015 passed by the Apex Court. The said order shows that a Special Leave Petition preferred by the Bar Council of India against the said judgment and order dated 20th October 2011 in CWP No.20966 of 2010 passed by the Punjab and Haryana High Court has been withdrawn. Therefore, she rightly submits that the judgment and order dated 20th October 2011 has attained finality. She further pointed out that in the year 2013, the Bar Council of India purported to appoint a Single Man Committee to examine the said Rule/Clause 28 and on 29th September 2013, a Resolution No.231 of 2013 has been passed by which the said Clause/Rule 28 is sought to be withdrawn. Her submission is that once the Rule/Regulation has been struck down, there was no occasion for the Bar Council to withdraw the Gazette Publication containing the impugned Rule/Regulation.

5. Suffice it to say that the decision of the Punjab and Haryana High Court has attained finality and hence, the impugned Regulation/Rule 28 does not exist on the Rule Book. The Petitioner appearing in person expresses an apprehension that the Bar Council of India may again introduce the same or a similar Rule. It is obvious that before taking any such decision, the Bar Council of India will be under an obligation to consider what is held by the Punjab and Haryana High Court on the issue of the legislative competence. The Bar Council of India is bound to consider the finding of the High Court that the Rule is arbitrary and is violative of Article 14 of the Constitution of India.

6. Subject to what is observed above, no further direction is required to be issued in this Petition.

7. The Petition is, accordingly, disposed of.

8. The Petitioner appearing in person will serve an authenticated copy of this order to the Bar Council of India.

(A.K.MENON, J)

(A.S. OKA, J)