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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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W.P.(C) 3966/2017

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Date of decision : 8th May, 2017

ROHINI M. AMIN

..... Petitioner

Through : Mr. Mathews Nedumpara and
Mr. A.C. Philip, Advs.

versus

THE BAR COUNCIL OF INDIA & ORS Respondents

Through : Mr. Preet Pal Singh, Adv. for
R-1.

Ms. Suparna Srivastava, Adv.
for R-2.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition was listed on 8th of May 2017 when the order recording its dismissal with reasons for the same to follow was recorded. We now record our reasons for dismissal of the writ petition.

2. This writ petition claims to have been filed under public interest by Ms. Rohini M. Amin claiming to be a practising advocate. The writ petitioner submits that it has been instituted for enforcement of

the petitioner's constitutional and legal rights. The writ petitioner complains that equality of opportunity as granted under Article 16 of the Constitution of India is denied to legal practitioners by virtue of Section 16 and 23(5) of the Advocate Act, 1961, for the reason that Section 16 separates the professionals into two classes and, that, by virtue of Section 23(5), the class of advocates so separated, are given lesser professional opportunity in the legal profession which tantamounts to denial of opportunity.

The writ petitioner states that on account of such discrimination, Section 23(5) of the Advocate Act, 1961 together with Section 16 of the said enactment are liable to be declared as unconstitutional under Article 13 of the Constitution of India.

3. The writ petition seeks the following prayers:-

“(a) To declare under Article 13 of the Constitution of India that Section 16 of the Advocates Act, 1964 is unconstitutional and ultra vires, being inconsistent and in violation of the Fundamental rights assured in Articles 14, 15, 16, 18, 19 and 21 of the Constitution to the extent it creates different classes of lawyers, and thus interalia classifies the citizens and other litigants into different hierarchical classes based upon their financial capacities and political powers involved causing deprivation of equality before law and denial of equal protection of the laws, discrimination on the ground of financial capacities, creating separate titles, which involves separate rights, manifestations, salutations and transgresses to the freedom of speech and thus affecting the right to life which is not mere vegetating existence,

but involves human dignity, assurance of righteousness, access and establishment of justice as well;

(b) declare that Rule 2 of Chapter-IV of the Supreme Court Rules, 2013 framed by the Supreme Court of India in exercise of the powers conferred upon it under Article 145 of the Constitution of India, by which an Advocate is designated as a Senior Advocate is void ab initio being inconsistent and in violation of the Fundamental Rights assured in Articles 14, 15, 16, 18, 19 and 21 of the Constitution;

(c) declare that the Rules of the High Court of Judicature at Delhi Original Side Chapter 6-L in (Delhi) High Court Rule and Orders, Volume V, framed by the High Court of Judicature at Delhi, under Section 16(2) of the Advocate Act, 1961, by which an Advocate is designated as a Senior Advocate is void ab initio being inconsistent and in violation of the Fundamental rights assured in Articles 14, 15, 16, 18, 19 and 21 of the Constitution;

(d) To issue a consequential writ of mandamus or any other appropriate writ, order or direction to the Respondents herein to abolish the different classes of advocates created under Section 16 of the Advocates Act, 1961, which had evolved as a custom and usage, being stuck by Article 13(1), 13(2) and 13(3) of the Constitution of India;

(e) without prejudice to the above prayers to declare that the designation process of senior advocates in pursuant to Section 16 of the Advocates Act, 1961 by the judges are the interference with the autonomy of the Bar, which is a statutory autonomous professional body of the legal practitioners and the affairs of the Bar shall be left

to itself to regulate and any interference with the affairs of the management of process of designations of the professionals are against the spirit of law and the right to trade and profession guaranteed under Article 19(g) of the Constitution, and the infringement of the same through the current appointment process by the Judges' or the panel of judges is thus violating the basic structure of the constitution, namely, the judicial review, independence of judiciary and democracy as well, which are primordial, transcendental and inalienable to the constitutional mechanism, and thus the said process of appointments by the panel of judges is void ab initio and nonest in the eyes of law.

(f) Without prejudice to the prayers (a), (b) and (c) above, to declare that the separate dress code of the professionals while practicing profession is a professional misconduct, as it is causing serious prejudice to the rights of equality before law to the citizens who are not financially rich to engage the services of such higher class advocates and the rights of lower class advocates as well and such distinguishable dress code is violative of the Fundamental Rights.

(g) to declare that the custom, use and usage of 'Senior Advocate' as title by the special classified advocates under Section 16 of the Advocates Act, 1961 and reiterated by the Rule 2 of Chapter-IV of the Supreme Court Rules, 2013 and Rules of the High Court of Judicature at Delhi (Original Side) Chapter 6-L in (Delhi) High Court Rule and Orders, Volume V, is void and is eclipsed under Article 13(1), 13(2) and 13(3) read with Article 18 of the Constitution of India;

(h) declare that sub-Section (5) of Section 23, which confers upon the Senior Advocates, who often represent

the cause of the elite, the rich and the powerful and at times are pitted against the ordinary citizens, the poor and the miserable, a right of pre-audience over other Advocates, are unconstitutional and void inasmuch as such division / classification of lawyers into two classes and discriminatory treatment of affording pre-audience to one class of lawyers are violative of the equality clause, nay, the very basic structure of the Constitution, so too Articles 19 and 21, which are to be read together with Article 14 thereof and consequently to grant a writ of injunction or prohibition against granting such right of pre-audience or any other privilege to Advocates inter se, and in particular to the advocates designated as Senior Advocates;

(i) without prejudice to the above prayers, to declare that, even if this Hon'ble Court finds that the separate classes of advocates are essential for the profession, it may be declared to be uniformly applied by length of standing or examination conducted, independently managed by the Bar by its autonomous conduct of its own affairs and not by arbitrary selection of external interference by the bench, as conducted at present.

(j) without prejudice to the above prayers, to declare that, the classification of senior advocates as done today shall be made an irrevocable affair at the sweet will of the Bench, and it shall be a permanent classification, once done with an individual, so that the individual so classified can conduct the practice without fear or favour to anybody, but upholding the higher values of the noble profession;

(k) to declare that the designation made by the full court of this Hon'ble Court as senior advocates the Respondents No. 6 to 17 as void ab initio, being in

violation of the basic canons of law, that pendent lite, nihil innovature, nay, pending litigation, nothing new shall be introduced.

(l) to issue a consequential writ of certiorari, or any other appropriate writ, order or direction, quashing and setting aside the designation of the Respondent No.6 to 17 being in violation of legal propriety and done arbitrarily in an opaque manner with undue hurry, pendent lite;

*(m) to issue an interim stay, restraining and prohibiting, then full court of this Hon'ble Court from designating any advocates as senior advocates till the final hearing and disposal of the writ petition, which was instituted before this Hon'ble Court as **WP(C) No.6331/2016**, which stands called up by the Hon'ble **Supreme Court of India** into its own file as **T.C.(C) No.1/2017 (NATIONAL LAWYERS CAMPAIGN FOR JUDICIAL TRANSPARENCY AND REFORMS AND ANR. VS. THE BAR COUNCIL OF INDIA & ANR.)**; and*

(n) pass such other order or orders, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

(Emphasis by us)

4. It is noteworthy that the writ petitioner makes a general sweeping allegations without making a single assertion on which the relief prayed for could be granted.

5. To put it simply, the above prayers manifest that the writ petitioner is basically challenging the designation of lawyers as a

Senior Advocates of the Delhi High Court.

6. We are informed that prior hitherto, in the year 2016, a writ petition bearing WP(C) No.6331/2016 instituted by the National Lawyers' Campaign for Judicial Transparency and Reforms & Anr. v. The Bar Council of India & Anr. was filed in this court wherein the Constitutional validity of the above provisions of the Advocate Act, 1961 were challenged.

7. Mr. Nedumpara, Id. counsel for the petitioner has submitted before us that the issues pressed by the petitioner are also pending for consideration before the Supreme Court of India by way of WP(C) No.454/2015 Indira Jaisingh vs. Supreme Court of India through Secretary General & Ors. In this writ petition the petitioner was requesting the court to frame guidelines for designation of practicing advocates and designated advocate of Supreme Court.

8. In support of the writ petition, Mr. Mathews Nedumpara, Id. counsel for the petitioner has placed before us a copy of three orders passed by the Supreme Court of India. Before the Supreme Court, WP(C) No.454/2015 was listed on 22nd of March, 2017 with transfer case bearing T.C.(C) No.1/2017 when the following order was recorded by the court:

“In some of the cases listed before us, the constitutional validity of Section 16(2) of the Advocates Act, 1961 is under challenge whereas in Writ Petition (Civil) No. 454 of 2015 this court has been called upon to frame guidelines for designation of practicing Advocates as

designated Senior Advocate(s) in the Supreme Court.

*Having regard to the issues arising in the present group of cases we are of the view that the **decision of this Court on the said issues may have effect on the process and procedure of designation of Senior Advocate(s) by the High Courts in the country**, apart from the Supreme Court of India. We are, therefore, of the tentative view that it is necessary to know the precise guidelines that **are in force in different High Courts** for designation of Senior Advocates.*

*The **issue being of vital importance**, we are of the view that the **matter should be heard by a larger bench**. We, therefore, request the Registry of this court to lay the papers of this case before the Hon'ble the Chief Justice of India forthwith for constitution of a larger bench of such strength that the Hon'ble Chief Justice of India may consider it appropriate.*

Registry to act accordingly.

So far as the designation during the interregnum is concerned, we leave the matter to the discretion of the High Court(s) as well as this Court."

(Emphasis supplied)

9. On the **2nd of January 2017** when *Indira Jaisingh vs. Supreme Court of India through Secretary General & Ors.* with WP(C) No.454/2015 was listed before the Supreme Court of India, a prayer was made by Mr.Mathews Nedumpara, Id. counsel for the present petitioner, before the Supreme Court that hearing in that matter should await the dismissal of WP(C)No.6331/2016 instituted by the *National*

Lawyers' Campaign for Judicial Transparency and Reforms & Anr. v. The Bar Council of India & Anr. which is pending before this court. On a consideration of the matter, the Supreme Court of India has passed the following order:

“1. We had on 21st October, 2016 heard learned counsel for the parties and the interveners at some length and reserved the matter for pronouncement of orders. An application was in the meantime filed on behalf of Shri R.R. Nair seeking recall of our order dated 21st October, 2016 for a two-fold reason. Firstly, the application points out that when the matter was taken-up for hearing on 21st October, 2016 the Court did not fully hear submissions on behalf of what the application describes as 95% of the non-designated lawyers. Mr. Nedumpara, advocate, alone was heard for a short while, but even Mr. Nedumpara was, according to the application, not in a position to formulate the points on which he wanted to address this Court during the short time available to him. He was, therefore, asked to give written submissions in support of his case which may not be conducive to justice keeping in view the grave importance of the questions that fall for determination of this Court.

2. Secondly, the application refers to Writ Petition (C) No.6331 of 2016 titled “National Lawyers’ Campaign for Judicial Transparency and Reforms & Anr. Vs. The Bar Council of India & Anr.” filed in the High Court of Delhi to challenge the constitutional validity of Sections 16 and 23(5) of the Advocates Act, 1961. The argument is that hearing of this writ petition should await the disposal of the said petition which is possible only if our order dated 21st October, 2016 is recalled and the matter listed for hearing afresh.

3. *In Writ Petition(C) No.6331 of 2016, the constitutional validity of Sections 16 and 23(5) of the Advocates Act, 1961 which provide the statutory basis for designation of lawyers as senior advocates appears to have been challenged. Now, if the source of power for such designation is itself under challenge it would be more appropriate to hear the matters together by transferring the petition pending in the High Court to this Court. This is particularly so because issues touching designation of lawyers as per the prevalent procedure appears to be causing considerable dissatisfaction among a section of the bar which fact is evident from the large number of interventions made in these proceedings and an equally large number of solutions proposed at the bar for improvement of the system. A feeling among those opposing the process of designation that they were not heard fully before the matter was reserved for orders only adds to their frustration and avoidable misgivings.*

4. *In the circumstances, it would be more appropriate if the matter is set down for fuller arguments afresh along with Writ Petition (C) No.6331 of 2016, which is hereby transferred to this Court for hearing and disposal.*

5. *In light of what we have said above, our order dated 21st October, 2016 shall stand recalled and the matter set down for final hearing along with transferred Writ Petition (C) No.6331 of 2016 in the month of February, 2017. The parties may complete pleadings in the transferred case during the intervening period.”*

(Emphasis by us)

10. The above narration clearly manifests that the Supreme Court is concerned with the process and procedure of designation of senior advocate by itself as also by all different High Courts in India. The issue being considered to be of vital importance, the matter stands referred for hearing by the larger bench.

11. The Supreme Court has also transferred W.P.(C)No.6331/2016 which had been filed in this court raising a Constitutional challenge to Sections 16 and 23(5) of the Advocate Act, 1961. This challenge is being heard along with W.P.(C)No.454/2015. By the order dated 22nd March, 2017, these cases are being heard by a larger Bench of the Supreme Court.

12. We may note that several intervention applications are being filed before the Supreme Court in WP(C) No.454/2015. One such application being I.A.No.5/2017, was listed on the 24th of April 2017, when the Supreme Court of India has passed the following order-

“List the matter on 2nd May, 2017.

The Secretary General of the Supreme Court will take steps to inform the Registrar General of all the High Courts about the pendency of the present petition. Thereafter, it is left open to the High Courts to take further course of action in the matter, as may be advised.”

13. The matter thereafter was taken up by the Supreme Court on the 1st of May 2017 when the court directed the Registry to list the cases for final disposal on 20th July, 2017 before the appropriate larger

bench as earlier ordered.

14. To the knowledge of the writ petitioner as well as Mr. Mathews Nedumpara, Id. counsel for the petitioner, the Constitutional validity of Section 16 and 25(5) of the Advocate Act, 1961 was the subject matter of the challenge by way of the prior writ petition being WP(C) No.6331/2016 titled *National Lawyers' Campaign for Judicial Transparency and Reforms & Anr. v. The Bar Council of India & Anr.* which had been filed in this court under Article 226 of the Constitution of India.

15. Mr. Mathews Nedumpara, Id. counsel for the petitioner had himself argued the intervention application in W.P.(C)No.454/2015 before the Supreme Court on 2nd of January 2017 when he pressed the Supreme Court to await decision in W.P.(C)No.6331/2016 by this court. The Supreme Court did not accept this submission. Instead by the order dated 2nd January, 2017, transferred W.P.(C)No.6331/2017 to the Supreme Court for hearing . The Division Bench of the Supreme Court has directed that same has to be heard along with WP(C)No.454/2015 before the larger bench and the hearing is slated for 20th of July 2017.

16. Thus, the petitioner who is a practicing advocate as well as Id. counsel representing her are fully aware of the matters and orders passed by the Supreme Court which stand annexed to the present writ petition. Despite knowledge of the fact that the challenge pressed by the petitioner is already the subject matter of challenge in the prior

petition which is listed before the Supreme Court, this writ petition has been filed under Article 226 of the Constitution of India before this court raising an identical challenge.

17. Ms. Suparna Srivastava, CGSC has submitted that as per the memo of parties, the petitioner Rohini M. Amin shown to be a resident of Andheri (East), Mumbai – 400 093. The learned CGSC would contend that this writ petition is clearly misconceived and lays down no factual basis.

18. The Constitutional challenge to the statutory provisions raised herein, admittedly pending consideration before the Larger Bench of the Supreme Court of India, the present writ petition filed as if in public interest with full knowledge thereof, is nothing more than an irresponsible attempt at seeking publicity, unnecessarily multiplying litigation in complete disregard of its impact of wastage of precious judicial time. If so advised, the petitioner could have intervened in the pending cases. The present writ petition cannot be entertained before this court.

19. In view of the pendency of the issues before the Supreme Court of India in the writ petition before the Supreme Court of India, we clarify that we have refrained from expressing any opinion on the merits of the challenge. However, it must be observed that the present writ petition is completely bereft on any factual basis for the prayers made.

This writ petition is accordingly dismissed.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 08, 2017/mk