

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34797 of 2006
and
M.P. No.3 of 2006

1.A.Pandian
2.B.Subramanian
3.Murugiah
4.Ramasamy
5.Ramalingam
.... Petitioners

Vs.

1.The Bar Council of Tamilnadu,
rep. by its Secretary,
Bar Council Buildings,
High Court Campus,
Chennai 600 104.
2.The Bar Council of India,
rep. by its Secretary,
No.21, Rouse Avenue,
Institutional Area,
New Delhi 110 002.
.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to Resolution No.186 of 2006 dated 17.06.2006 on the file of the 1st respondent which was approved by the second respondent and quash the same.

For Petitioners : Mr.N.Senthil Kumar

For Respondents : Mr.S.Y.Masood for R1

O R D E R

The petitioners have filed this writ petition challenging the Resolution No.186 of 2006 dated 17.06.2006 passed by the first respondent which was confirmed by the second respondent.

2.The case of the petitioners is that they are graduates and post graduates and they were admitted to study B.L. and B.G.L. 3 years course respectively in the academic year 2005-06.

According to him, in a Notification issued by the Tamil Nadu Dr. Ambedkar Law University, no upper age limit was prescribed for enrolment as Advocates. While so, the Bar Council of Tamil Nadu, the first respondent herein has passed a Resolution No.186 of 2006 dated 17.06.2006 fixing upper age limit of 45 years for a candidate to enrol as an Advocate and the same was approved by the Bar Council of India, the second respondent herein. Challenging the same, the petitioners are before this Court.

3.The matter is squarely covered by the decision of the Apex Court in the case of Rishikesh Sharma vs. Saroj Sharma reported in 2006 (5) CTC 703 wherein the Apex Court has observed as follows:

"14.We cumulatively considered above the acceptability of the various factors projected for imposing the upper age limit. We make it clear that we are not underestimating the rule-making power of the Bar Council of Tamil Nadu, at the same time, we cannot uphold the validity of a provision, even though it arises out of the rule-making power of the authority with proper jurisdiction, when it is apparently stained with arbitrariness and inequality and infringes Article 14 of the Constitution. Thus, we have no other option except to declare the impugned Rule 8-A as void and unconstitutional.

15.The other phase to be analysed is relating to the Explanation clause to Rule 8-A. It states that after the coming into force of Rule 8-A, any person enrolling as an Advocate in any other State Bar Council, where there is no age restriction, shall not be entitled to apply for transfer to Tamil Nadu Bar Council. Again, revolving around the same reasons as enumerated above, the Bar Council of Tamil Nadu goes on to say in the Additional Counter affidavit,

"5.I respectfully submit that with reference to the Judgment of the Honourable Supreme Court of India while deciding the introduction of age restriction for enrolment in the year 1993, the Honourable Supreme Court in the first instance held that there was no reliable statistical or other materials on record in support of the inference that Ex-Government or Quasi-Government servants or the like indulged in undesirable activity of the type mentioned after entering the profession. With utmost respect to our Apex Court we submit that such materials or statistics cannot be collected...."

16.The State Bar Council is constant in repeating the same version again and again without coming forward before this Court with sufficient statistical data

substantiating their claim, however, they admit their inability in bringing concrete evidence, hence, illusion and imagination cannot be allowed to be a base to frame a rule or clause thereof. In respect of the apprehension that law degrees from other States are not upto the expectation or standard, it is for the respective State Bar Councils to identify the universities and, after proper verification of the degree certificate and other documents, they can very well deny enrolment if the documents found to be fake or issued by any unrecognised university and there is no compulsion on the part of the Bar Councils to enrol them on their Roll. It cannot be the case of the second respondent that Bar Councils of other States have no check on the issue of fake degrees and certificates issued by unrecognised universities. Inasmuch as we have already held that Rule 8-A is unconstitutional, any clause or explanation arising therefrom shall meet the same fate."

4. In view of the categorical decision of the Apex Court, this Court is inclined to extend the benefits to the petitioners as stated above. Accordingly, this petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

vga

To

1. The Secretary, Bar Council of Tamilnadu,
Bar Council Buildings,
High Court Campus, Chennai 600 104.

2. The Secretary, Bar Council of India,
No.21, Rouse Avenue,
Institutional Area, New Delhi 110 002.

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RSI (CO)

RRK (04/06/18)