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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

W.P.[MD].No.12506 of 2018

Muthuvijayan

: Petitioner

Vs.

1. The Bar Council of India,
Represented by its Secretary,
No.21, Rouse Avenue Institutional Area,
Near Bal Bhawan, New Delhi 110 002.

2. The Chairperson,
Enrollment Committee,
Bar Council of Tamil Nadu & Pondicherry,
High Court Campus, Chennai 104.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent to enroll the petitioner as Advocate in the State Bar within the stipulated time.

For petitioner : Mr.N.Jeyaram Siddharth
For Mr.SO.Paramasivam

For respondent No.1 : Mr.M.Subash Babu
Standing Counsel

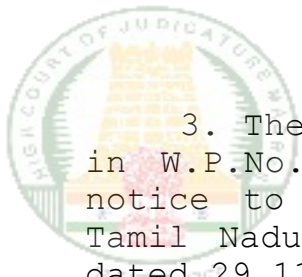
For Respondent No.2 : Mr.Niranjan S.Kumar
Standing Counsel

O R D E R

[Order of the Court was made by C.T.SELVAM, J.]

The petitioner, who has passed 10th standard through regular schooling, +2 privately through State Board, a degree through college and then a BL degree through the Government Law College, Tirunelveli, has approached this Court informing that though he is eligible to enroll himself as an Advocate, his enrollment has not been permitted over a period of two years after his completion of BL course.

2. The matter has been adjourned on an earlier occasion by this Court on being informed that an issue, similar to the one raised in the present Writ Petition, is pending adjudication in W.P.No.30315 of 2017 and that the same has been referred to a Full Bench by the Hon'ble First Bench.



3. The issue which forms the basis of reference to a Full Bench in W.P.No.30315 of 2017 is a show cause notice and prohibitory notice to resolution No.184/2017, adopted by the Bar Council of Tamil Nadu, on 09.11.2017. The Hon'ble First Bench, in the order dated 29.11.2017 has observed:

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6. The short question is whether Advocates, who have obtained degrees through open university system without satisfying the Bar Council Rules, can be permitted to practise. In this context, it would possibly be pertinent to refer to Rule 5 of Part IV of the Bar Council of India Rules relating to Legal Education, which came into force on 14th September 2008. Rule 5 provides as follows:-

"5.Eligibility for admission:

(a) Three Year Law Degree Course: An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State legislature or an equivalent national institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree program in law leading to conferment of LL.B. degree on successful completion of the regular program conducted by a University whose degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(b) Integrated Degree Program: An applicant who has successfully completed Senior Secondary School course ('+2') or equivalent (such as 11+1, 'A' level in Senior School Leaving certificate course) from a recognized University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognized by the Bar Council of India for the purpose of enrolment.

Provided that applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or



correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years' LL.B. Course, as the case may be.

Explanation: The applicants who have obtained 10+2 or graduation/post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses."

Underlining supplied.

4. As informed in the order of the Hon'ble First Bench dated 29.11.2017, the short question in W.P.No.30315 of 2017 was whether Advocates, who have obtained degree through Open University System, without satisfying the Bar Council Rules, can be permitted to practise.

5. The counter affidavit of the second respondent informs that W.P.(MD) No.11434 of 2017 and other connected writ petitions have been referred to a Larger Bench, which has reserved orders and that the Bar Council has been awaiting the judgment for enrolling the candidates, who have studied 10th standard and 12th standard privately. Learned counsel for the second respondent informs that the matter referred to the Full Bench was a decision of this Court in W.P.(MD).No.11434 of 2017, dated 27.06.2017, whereby this Court found it necessary to stay the resolution of the Legal Education Committee dated 30.04.2017, which was to the following effect:-

"Thus, in conclusion it can be stated that for seeking admission into 3 year law course qualifications needed are only 12th and three year graduation, with 12th being the basic qualification for seeking admission into 3 year law course, while for seeking admission into 5 year law course only 10th and 12th qualification suffices with 10th being the basic qualification for seeking admission into the 5 year law course.

The qualifications of 10th, 12th (+2) and graduation may be obtained through any mode (distance / correspondence / open schooling method)."

6. This Court had expressed the view that by the resolution of Legal Education Committee dated 30.04.2017, an attempt had been made by the Legal Education Committee to get over the decision in K.Sakthi Rani Vs. The Secretary of the Bar Council of Tamil Nadu, reported in 2010 (2) LW 746, which it would not have power to do. We will now explain why neither the decision in K.Sakthi Rani, cited supra, nor the decision of this Court in W.P.(MD).No.11434 of 2017, dated 27.06.2017, would stand in the way of the enrollment of the petitioner. This Court, under its orders dated 27.06.2017 in W.P.(MD).No.11434 of 2017, has observed as follows:-



5. Taking note of the decision in K. Sakthi Rani case (supra), the Bar Council of India took a pro-active step, by sending a circular to the Registrar/Deans/Directors of all Universities, deemed to be Universities and Law Schools in India dated 20.12.2010. The direction as issued is to the following effect:

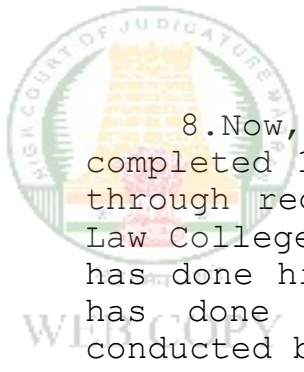
"In view of the Bar Council of India, Legal Education Rules-2008, University Grants Commission Act and Regulations, decision of Honourable Supreme Court of India and subsequent decision of High Court of Tamil Nadu, all Universities, deemed to be Universities, Law Schools and others offering LL.B. Courses are informed that applicants who have obtained +2 higher secondary pass certificate or First degree certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the integrated five year course or three year LL.B. Course, as the case may be. However, the applicants who have obtained 10+2 or graduation/post graduation through open universities system directly without having any basic qualifications for prosecuting such studies are not eligible for admission in law courses."

(underlining supplied)

6. The above position remained as such for about three months and once again, the matter appears to have been brought up before the second respondent, the Legal Education Committee, which discussed the same in its meeting held on 17.04.2011. The agenda of the meeting reads as follows:-

"to consider the note of seeking clarification as to whether 10th or 10+2 or graduation is the basic qualification as mentioned in explanation to Rule 5 (b) of the Legal Education Rules, as it has created confusion".

7. Prima facie, we are of the view that the Rule is very clear and has been upheld by the Division Bench of this Court, following the decision of the Hon'ble Supreme Court in Annamalai University case (supra) and the Bar Council understood the purport of the Rule and issued a circular dated 20.12.2012, to all the Institutions.



8. Now, it is to be appreciated that the petitioner has completed 10th standard through formal schooling, his initial degree through regular college, as also the law degree through Government Law College, Tirunelveli. It is to be understood that the petitioner has done his +2 not without having the basic qualification, but, he has done so through private study and by clearing the exams conducted by a recognized university.

9. The petitioner like many others has pursued the same curriculum and taken the same examination conducted by a recognized board as has a school going student. While so, it would be rather harsh to invoke the principle of 'intelligible differentia' between students, who do private study and those who go through school. It would be more appropriate to apply the ceteris paribus rule - other things being equal - to treat equal all. In decision of this Court in W.P.(MD) No.11916 of 2018 dated 10.07.2018 in the matter of T.K.Rangarajan v. Union of India through its Secretary Ministry of Human Resources Development and others, this Court observed as follows:

"A Lament:

We note that students who pursue private study in plus two are not eligible to apply for NEET. Why is this so?

We have tens of thousands of children, having to support a mother, siblings, ailing parents and elders and sometimes a deserving father, by eking out a living by earning that extra rupee which keeps the home fire burning and yet in real earnest pursue private study simply because they want to be educated. They want to lift themselves out of the squalor their lives are. Why are such children being deprived? Is it because they do not put in 'n' number of fixed hours of study or is it because science subjects require practical training which they are not exposed to?

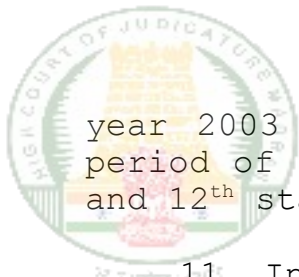
If it is the first question, is it not the knowledge gained as reflected by performance in examination that matters?

If it is the second, should not Government/Education bodies provide for practical training, widely publish the availability thereof and thus enable such deserving students to hope for a better tomorrow. At the end of the day, our Constitutional scheme is inclusive, not exclusive. We trust that the issue will engage the attention of the authorities."

To quote, one of the tallest world citizens, Nelson Mandela:

"A nation should not be judged by how it treats its highest citizens, but its lowest ones."

10. For the purpose of convenience and clarity, it is to be stated that the petitioner has completed his 10th standard in the



year 2003 and +2 in the year 2008, i.e., more than the requisite period of two years have lapsed between his completing 10th standard and 12th standard.

11. In the light of what is stated above, and particularly that the petitioner does not fall foul of the Bar Council of India Circular dated 20.12.2010, the Writ Petition shall stand allowed and there shall be direction to the respondents 1 and 2 to enrol the petitioner as an Advocate on the roll of Bar Council of Tamil Nadu and Pondicherry.

12. Counter affidavit of the second respondent informs that the petitioner's original Law Degree Provisional Certificate has been returned to him on his request on 27.07.2017. The petitioner is directed to forthwith resubmit the same along with a copy of this order.

13. Given the explanation, we have provided hereinabove, we hope and trust that the Bar Council will process the applications of all persons, placed in position similar to that of the petitioner, without driving each and every one of them to Court. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
The Bar Council of India,
No.21, Rouse Avenue Institutional Area,
Near Bal Bhawan, New Delhi 110 002.
2. The Chairperson,
Enrollment Committee,
Bar Council of Tamil Nadu & Pondicherry,
High Court Campus, Chennai 104.

+1CC to Mr.M.Subash Babu, Advocate, SR.No. 73633

+1CC to Mr.Niranjan S.Kumar, Advocate, SR.No. 73121

W.P.[MD].No.12506 of 2018
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NB

ES/SV/SAR 1/18.07.2018/7P/5C