

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2706 of 2019**

Hemlata Pradhan, D/o. Shri Resham Pradhan, Aged About 32 Years,
Resident Of Village - Sariya, Ward No. 14, Tahsil – Baramkela, District-
Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Law Department, Mahanadi Bhawan, Atal Nagar, District- Raipur Chhattisgarh
2. The Chairman, State Bar Council, State Of Chhattisgarh, High Court Campus, Bodari, District- Bilaspur Chhattisgarh
3. The Secretary, State Bar Council, State Of Chhattisgarh, High Court Campus, Bodari, District- Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Rahul Tamaskar, Advocate
For State/Respondent No.1	:	Mr. Sudeep Verma, Dy. Govt. Advocate
For Respondent No.2 & 3	:	Mr. Rakesh Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****11.09.2019**

Heard.

1. The instant petition is filed on the ground that the petitioner has passed out her LLB, thereafter, she applied for provisional registration and had paid the requisite fees and filed the application on 29.03.2019 with State Bar Council. Along with the application, an affidavit was also filed wherein she stated that a proceeding under Section 341, 147, 186, 294, 506 Part-II, 353, 149 & 427 of I.P.C. is pending against her before the competent Court at Sarangarh. It is after that the Bar Council/ Respondent No.2 & 3 remained dormant on the issue for a considerable time, as no decision was taken about grant of provisional enrollment, therefore, the instant petition is filed.
2. Learned counsel for the petitioner would submit that under the Advocates Act, 1961 the only disqualification attached to the circumstances enumerated under Section 24A which manifest that the bar to practice an Advocate on a State roll shall only be applied when person is convicted that

too for an offence of mortal turpitude. He therefore submits that the petitioner fairly enough disclosed the criminal case pending against her, therefore, for the pendency of the criminal case, unless the verdict is out, the said bar under the Act cannot be implied.

3. Learned counsel for the Respondents No.2 & 3 assisted the Court with respect to the legal implications which are applicable, as it would have a larger effect. The counsel submits that as per law laid down by the Supreme Court in (2014) 9 SCC 1, the principle of implied limitation would be attracted in this case, which necessarily means that unless and until the person convicted, the Court cannot add anything to add to the disqualification. He further submits, however, it is embarrassing that a person having charge of a major criminal act rubs the shoulder with the Advocate of Bar which diminish and tarnish the image of bar before the general public.
4. Heard learned counsel appearing for the parties and perused the documents.
5. Admittedly, the petitioner after passing out her LLB applied for provisional enrollment vide receipt dated 29.03.2019 and paid the entire required dues. Along with the application, initially an affidavit was filed in support of the application and subsequently another affidavit dated 07.02.2019 was placed on record wherein she disclosed that a criminal case under Section 341, 147, 186, 294, 506 Part-II, 353, 149 & 427 of I.P.C. is pending for evidence in the Court of Sarangarh. She further disclosed that after the judgment is delivered in such case, she would inform the Chhattisgarh Bar Council and whatever the judgment would be she would act then accordingly.
6. Section 24A of the Advocates Act, 1961 speaks of disqualification for enrollment of an Advocate, which reads as under :

24A. Disqualification for enrolment.—(1) No person shall be admitted as an advocate on a State roll—
 (a) if he is convicted of an offence involving moral turpitude;

(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955);

(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation—In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution:]

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his [release or dismissal or, as the case may be, removal].

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).]

7. Reading of the aforesaid section would show that the Bar only applied when a person is convicted in any offence involving moral turpitude and other offence, as has been enumerated in Clause (b) & (c). Therefore, even if the criminal case is pending, reading of the aforesaid provision would make it clear that pendency of criminal case can not be considered for disqualification. This proposition is further supported by the principles of implied limitation applied to the Court as laid down by the Supreme Court in case of **Manoj Narula v. Union of India** reported in **(2014) 9 SCC 1**. Before the Supreme Court like nature of disqualification was considered with respect to the MPs & MLAs and the Supreme Court after elaborate discussion laid down the ratio that principle of implied limitation is attracted to the sphere of constitutional interpretation. Here the statutory interpretation would make it clear that the disqualification is only attached to the conviction that too for the mortal turpitude under Section 24A of the Advocate Act, 1961. The Supreme Court further held that the doctrine of implied limitation would be applicable in such like situation and the Court would be denuded the power to add anything to the statute. The ratio of para 62 of the judgment would be relevant, which is reproduced herein below :

“62. From the aforesaid authorities, it is luminescent that the principle of implied limitation is attracted to the sphere of constitutional interpretation. The question

that is required to be posed here is whether taking recourse to this principle of interpretation, this Court can read a categorical prohibition to the words contained in [Article 75\(1\)](#) of the Constitution so that the Prime Minister is constitutionally prohibited to give advice to the President in respect of a person for becoming a Minister of the Council of Ministers who is facing a criminal trial for a heinous and serious offence and charges have been framed against him by the trial Judge. Reading such an implied limitation as a prohibition would tantamount to adding a disqualification at a particular stage of the trial in relation of a person. This is neither expressly stated nor is impliedly discernible from the provision. The doctrine of implied limitation was applied to the amending power of the Constitution by the Parliament on the fundamental foundation that the identity of the original Constitution could not be amended by taking recourse to the plenary power of amendment under [Article 368](#) of the Constitution. The essential feature or the basic structure of the doctrine was read into [Article 368](#) to say that the identity or the framework of the Constitution cannot be destroyed. In *Minerva Mills* case, giving example, the Court held that by amendment, the Parliament cannot damage the democratic republican character as has been conceived in the Constitution. Though in [Article 368](#) of the Constitution there was no express prohibition to amend the constitutional provisions, yet the Court in the aforesaid two cases ruled that certain features which are basic to the Constitution cannot be changed by way of amendment. The interpretative process pertained to the word “amendment”. Therefore, the concept of implied limitation was read into [Article 368](#) to save the constitutional integrity and identity.”

8. The ratio of said judgment was further followed in case of ***Public Interest Foundation & Others v. Union of India & Another*** reported in **(2019) 3 SCC 224**. Consequently, by application of the said principles of doctrine of implied limitation in the instant fact, this Court too would not add anything to the word of Section 24A of the Act of 1961 wherein the word conviction has been used. The submission of the Bar that in general the members of the Bar do not enjoy a person with criminal background practice with them appears to be reasonable. It is obvious that such a noble profession a person who has a criminal background should not be allowed to march along with the members of the Bar who have achieved the dignity by their work of the institutional up-gradation. The rubbing of the shoulder amongst the members of Bar who has history of conviction has a turbulence effect

and will only lead to downgrading the profession. It is for the Bar members themselves to introspect their own code of conduct. It is however obvious that if the criminalisation in the bar is allowed then the effect of tremor would be felt after a period of time. Now turning to the case in hand with respect to the petitioner, as the conviction has not been effected, therefore, the Bar Council has to take a decision for issuance of provisional enrollment to the petitioner and accordingly it is ordered. The Chhattisgarh Bar Council, the respondents No.2 & 3, within a period of 30 days.

9. In view of the above, the petition stands disposed of.

ashok

Sd/-
Goutam Bhaduri
Judge