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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd February, 2021
+ **W.P.(C) 5732/2020 & CM APPL. 20717/2020 & 24320/2020**

ANANYA BAJPAI & ANR. Petitioners
Through: Mr. Abhijat, Ms. Sanam Tripathi and
Mr. Shaaswat Jindal, Advocates.
versus

BAR COUNCIL OF DELHI Respondent
Through: Mr. Ajayinder Sangwan, Advocate.
With

+ **W.P.(C) 9862/2020 & CM APPL. 33595/2020**
ABHISHEK ANAND & ORS. Petitioners
Through: Mr. Abhishek Anand, Petitioner in
person with Mr. Gaurav Kumar, Ms.
Priya Ranjan and Mr. Anurag Yadav,
Advocates. (M: 9315956801)
versus

BAR COUNCIL OF DELHI & ANR. Respondents
Through: Mr. Ajayinder Sangwan, Advocate
for Respondent No.1
Ms. Ishita Farsaiya, Advocate for
Respondent No.4
Ms. Shobhna Sharma, Applicant in
CM APPL. 33595/2020
Ms. Sanobar Ali, Advocate
(M: 9810945320)
Mr. Shoeb Alam, Advocate
(M: 9711346040)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh (Oral)

1. This hearing has been done through video conferencing.

CM APPL. 33595/2020 (for impleadment) in WP(C) 9862/2020

2. Ld. counsel submits that vide this application, an Applicant was seeking impleadment in the present petition. However, he has already been given provisional enrolment and he is appearing in the All India Bar Exam on 25th April, 2021. Accordingly, the impleadment application is not pressed.

3. The application is dismissed as withdrawn.

W.P.(C) 5732/2020 & CM APPLs. 20717/2020 & 24320/2020 (both for directions)
WP(C) 9862/2020

4. WP(C) 5732/2020 has been filed by two Petitioners - Ms. Ananya Bajpai and Mr. Kartikeya Sharma praying for directions against the Respondent, i.e., the Bar Council of Delhi (*hereinafter*, 'BCD') to accept their enrolment applications, including the payment thereto, entirely in electronic form.

5. Mr. Abhijat, ld. counsel appearing for the Petitioners submits that vide order dated 28th August, 2020, the BCD was directed to place on record the steps taken by them for online enrolment. He submits that no affidavit has been filed by the BCD in this regard.

6. Mr. Sangwan, ld. counsel appearing for the BCD submits that the BCD has, since July, 2020, enrolled a large number of about 5,000 Advocates, through online enrolment procedures. Even online payment of the enrolment fee has been made possible. The first All India Bar Exam post the COVID-19 pandemic was conducted on 24th January, 2021 physically and the next Bar Exam is scheduled for 25th April, 2021.

7. Ld. counsel further submits that in so far as providing online forms is

concerned, the BCD is already in consultation with its IT Team and the recommendations of the IT team are likely to be placed before the Full House of the BCD shortly. In any event, he submits that both the Petitioners have already been enrolled provisionally and they have also given the bar examination.

8. Mr. Abhijat confirms that the Bar Exam has been given by both the Petitioners.

9. In WP(C) No. 9862/2020, the prayer of Mr. Abhishek Anand, the Petitioner in person, is that online enrolment should be permitted and exemption should be granted from filing of rent agreement/proof of residence.

10. Even in his case, he has been granted provisional enrolment. However, he continues to challenge the condition for production of a proof of residence as, according to him, the same is violative of Section 25 of the Advocates Act, 1961 as also Article 19 (1) (g) of the Constitution of India.

11. Mr. Ajaywinder Sangwan, ld. counsel, on the other hand, submits that in so far as the BCD is concerned, enrolment is permitted to all lawyers who are residents of Delhi or the NCR region. Since the BCD can regulate the enrolment of Advocates who are practising within its jurisdiction, the requirement of rent agreement/proof of residence has been made applicable to all those seeking enrolment.

12. This Court has considered the averments made by the parties. In so far as the online enrolment process is concerned, it appears that sufficient steps have been taken by the BCD during the pandemic to enable provisional enrolment of Advocates through online mechanisms. The BCD ought to continue its endeavour to make the entire system as transparent

and convenient as possible for Advocates who are seeking enrolment. Accordingly, the BCD may take a decision expeditiously in respect of making available online forms and accepting documents online, as also facilitating the online payment of enrolment fee. In so far as online enrolment and exemption from physical appearance is concerned, the feasibility of the same may also be considered by the BCD which would take a decision expeditiously, in accordance with law.

13. In so far as exemption from filing the rent agreement/proof of residence is concerned, the submissions of the parties have been heard.

14. The submission of the Petitioner that such a document cannot be insisted upon is based on the interpretation of the phrase '*proposes to practise*' as contained in Section 25 of the Act. The said provision reads:

“25. Authority to whom applications for enrolment may be made. – An application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.”

15. A perusal of the Advocates Act, 1961 shows that it is an Act to amend and consolidate the law relating to legal practitioners. In addition, it provides for constitution of “*Bar Councils*”. Section 3 of the Act stipulates that there shall be a Bar Council in all the major States and Union Territories including a Bar Council “*for the Union Territory of Delhi to be known as the Bar Council of Delhi*”. The constitution of the State Bar Council is provided in Section 3(2)(a). Section 4 provides for constitution of the Bar Council of India. Section 6 lays down the functions of State Bar Councils. The three primary functions of State Bar Councils are as under:

“6. Functions of State Bar Councils.- (1) The functions of a State Bar Council shall be –
(a) to admit persons as advocates on its roll;
(b) to prepare and maintain such roll;
(c) To entertain and determine cases of misconduct against advocates on its roll;....”

16. Under Section 6(2), the State Bar Councils can also provide for welfare measures for advocates who are on its roll. Section 9 stipulates that Bar Councils would also have a Disciplinary Committee. Under Section 15, the Bar Council can make Rules.

17. Chapter III deals with the admission and enrolment of advocates. State Bar Councils maintain the rolls of advocates under Section 17 of the Act. The roll of advocates consists of the names and addresses of the persons admitted to be advocates on the rolls of the State Bar Council. The said roll is maintained on the basis of seniority. Under Section 18, the name of the advocate can be transferred from one State Bar Council's roll to the roll of another State Bar Council. At the time of such transfer, the seniority of the Advocate would be retained. The State Bar Council issues a Certificate of Enrolment under Section 22. Under Section 24, the following five conditions would have to be satisfied for the advocate to be admitted on the said roll.

- (i) The advocate has to be a citizen of India;
- (ii) The advocate ought to be above the age of 21 years;
- (iii) The advocate has to have obtained a degree in law as contained in Section 24(c);
- (iv) The advocate should fulfil the conditions as may be specified in the Rules made by the State Bar Council under Chapter 3;

and

- (v) The advocate has to pay stamp duty, if any chargeable, as also enrolment fee.

The disqualifications for a person from being admitted on a State roll are provided under Section 24A.

18. Section 25 of the Act is relevant and is set out herein below:

“25. Authority to whom applications for enrolment may be made. – An application for admission as an advocate shall be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposes to practise.”

As per the above section, the advocate shall file a prescribed form to the State Bar Council within whose jurisdiction the applicant “*proposes to practise*”. Once the application is made, the same is referred to the enrolment committee of the State Bar Council, which shall either admit a person as an advocate or refuse the same with reasons. The power to remove an advocate from the rolls also vests with the State Bar Council. According to the Petitioner, since enrolment is to be given on the basis of the jurisdiction where the applicant merely ‘*proposes to practise*’, insistence on a proof of residence is contrary to law.

19. Under Section 28, the State Bar Council may make Rules to carry out the purpose of Chapter III i.e., for admission and enrolment of advocates. The BCD is fully empowered to make Rules under Section 28(2)(d) of the Advocates Act, 1961, prescribing the conditions on the basis of which a person may be admitted as an advocate on its roll. Section 28 of the Advocates Act, 1961 reads:

“28. Power to make rules. — (1) A State Bar Council may make rules to carry out the purposes of this Chapter

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for —

(a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section 20;

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(c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(d) the conditions subject to which a person may be admitted as an advocate on any such roll;

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India.”

Under Section 29, advocates are the only class of persons who are entitled to practise law. Advocates have a right of audience before the Supreme Court and to appear before any Courts, as also any Tribunal. In order to practise before any Court or authority, a person has to mandatorily enrol as an advocate.

20. The conduct of an advocate is governed by Chapter V, which vests discretionary powers in the State Bar Councils. The said State Bar Councils can also punish advocates for misconduct.

21. A perusal of the above scheme shows that every State has a separately constituted Bar Council meaning thereby that the power of the State Bar Council extends to that particular State. The roll of the advocates maintained by the State Bar Council does not merely contain the name but also the address of the advocate. Thus, the address is essential for enrolment.

22. Under Section 25, the expression "*State Bar Council within whose jurisdiction the Applicant proposes to practise*" does not mean temporary appearance before a Court. It means the place where the Applicant who is seeking enrolment intends to practise, with a sense of regularity and permanence. This is so because an advocate practising within a particular jurisdiction is under the supervisory and disciplinary control of the State Bar Council where he has obtained enrolment as a member. A singular or occasional appearance before a Court cannot entitle the Applicant to enrol with the State Bar Council of that area. It is in the jurisdiction where the Applicant intends to regularly practise that the enrolment can be obtained. It is also clear from the scheme of the Act that if an advocate changes his regular place of practise, a transfer ought to be sought from one Bar Council to another.

23. Considering the unique nature of Delhi, as also the fact that several advocates residing in the NCR region regularly practise within Delhi, the BCD has provided in its Rules that the proof of residence in Delhi or the NCR region would be required. The BCD has framed Rules in the year 1981, which have been approved by the BCI.

24. A '*member*' under these Rules is a member of the BCD. The Rules contemplate formation of a Disciplinary Committee, an Enrolment

committee, an Election Committee, a Rules Committee as also a Tribunal. Chapter VIII specifically deals with Rules for enrolment. Some of the Rules are relevant and are extracted herein as under:

“107. The application for enrolment shall be accompanied by all the documents required to be produced as given in Form enclosed.

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109. The Enrolment Committee of the Bar Council may require any candidate to appear before it in support of any statement made by him in his application or to furnish such other particulars as may be required.

Xxx

115. Every advocate shall notify to the Council from time to time any change of address and all suspensions or assumptions of practice. Every such intimation shall contain the roll number of Advocate, the date of his enrolment, his address and other necessary particulars.”

25. The enrolment form, which is to be filled by the candidate seeking enrolment, asks for the permanent address as also the temporary/present address. This form is prescribed under Sections 24 and 25 of the Act. The declaration specifically sought in this form is to the following effect:

“3. I declare that upon admission I propose to practice within the State of Delhi.”

26. In the checklist for enrolment, the following proof of residence is sought:

“8. Proof of Residence of applicant within the territories of National Capital Region (NCR) such as Ration Card/Passport/Adhaar Card/ Election Card/Rent Agreement. In case Rent Agreement is

attached, Residential I.D. Proof of landlord/landlady, duly self attested by him/her, be also attached. (Mobile Bill/Bank Statement of applicant and landlord are not acceptable)”

27. The proforma affidavit which is to be signed by the applicant also seeks the following declaration:

“(i) That I have passed the LL.B. examination from University in the year and have applied for enrolment as an Advocate with the Bar Council of Delhi. It is already undertaken by me in the enrolment application that my place of practice will ordinarily be at Delhi.

(ii) However, in case I shift my place of practice from Delhi to any other state, hereby undertake to get my enrolment transferred from Delhi to that state within 6 months of the change of place of practice as provided in Part-V, Chapter III, Rule 3 framed by the Bar Council of India under Section 49(1)(a b) of the Advocate’s Act, 1961.

28. Even the ID card issued by the BCD seeks a residential address in the Delhi/NCR region. All these Rules and forms are prescribed by the BCD, duly exercising its power under Section 28 of the Act read with Sections 24 and 25 of the Act. The purpose of prescribing these conditions is to ensure that the BCD permits enrolment to only those candidates, who intend to regularly practise in Delhi as, admittedly, for the candidates who intend to practise outside Delhi/NCR, the BCD cannot provide enrolment. In order to ensure that it enrolls only such candidates who intend to practice in Delhi,

the BCD has, in its wisdom, laid down various checks. One such check asks for proof of residence, either permanent or temporary, in Delhi. Since the roll maintained with the State Bar Council has to contain not merely the name but also the address of the advocate and Section 25 clearly provides that the State Bar Council can enrol only such persons who propose to practise within its jurisdiction, the requirement of providing proof of residence in the Delhi/NCR region cannot be said to be either arbitrary, discriminatory or unreasonable. If such a check is not maintained by the BCD, it may lead to indiscriminate and unregulated enrolment of candidates from various States in the BCD. Such a situation would be chaotic and unruly, as if the applicant is not residing within the jurisdiction of Delhi/NCR, for the purpose of disciplinary action etc. the BCD would be unable to exercise jurisdiction. Therefore, in order to maintain discipline, in terms of the responsibility vested with the State Bar Council under the Advocates Act, 1961, seeking of documentation to support the residential address of the candidate is perfectly justified.

29. Moreover, these Rules have been in existence for several years. The constitution of State Bar Councils in each State and Union Territory is itself for the purpose of exercising jurisdiction over an advocate intending to practise in that particular State or region. In fact, if a particular candidate wishes to, for a substantial period, move his or her place of practise, such candidate has to seek transfer of his/her enrolment. This itself proves that the jurisdiction of the State Bar Council extends over a particular State and the intention is to make sure that the Bar Council within whose jurisdiction the advocate practises is able to regulate the conduct of the advocate enrolled with it. Thus, the challenge to the proof of residence in Delhi/NCR

region raised by the Petitioner fails.

30. Both petitions are disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 22, 2021/Mw/RC/dk/T
(corrected and released on 4th March, 2021)

