

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 2484 of 2018

**Eastern Regional Electrical Contractors' Assn (India)
& Ors.**

vs

Union of India & Ors.

For the Petitioners : Mr. Pratik Dhar, Sr. Adv. ,
Mr. Samir Halder
.....advocates

For the State : Mr. Sirsanya Bandopadhyay,
Mr. Subhendu Senguptaadvocates

Heard on : 28.03.2022

Judgment on : 20.05.2022

Hiranmay Bhattacharyya, J.:-

1. The constitutional validity of Rule 23(c) and 31(5) of the West Bengal Electrical Licensing Rules, 2017 (for short “the 2017 Rules”) is under challenge in this writ petition.
2. The petitioner no. 1 is an association registered under the Companies Act, 1913. The petitioner nos. 4-10 are claiming to be the electrical supervisors and members of the petitioner no. 1. The State of West Bengal framed the 2017 Rules imposing a restriction in case of renewal of license/certificate of competency and/or permit after a

certain age and imposing further restriction upon persons who have crossed a particular age to apply for such certificate and permit. The petitioners have challenged the constitutional validity of said rules and have prayed for a declaration that the same is ultra vires the Constitution of India.

3. Mr. Dhar, the learned Senior Counsel for the petitioner contended that the Electricity Act, 2003 (for short “the Act”) vested various authorities with different power including delegated legislative powers. He further contended that Section 53 of the Act empowers the Central Electricity Authority (for short “CEA”) to take suitable measures for safety. According to Mr. Dhar, the domain of safety falls within the exclusive jurisdiction of CEA under Section 53. He further contended that the CEA is the ultimate authority in respect of the safety and precaution as would be evident from the use of the expression “in consultation with the State Government” appearing in Section 53. According to Mr. Dhar when the CEA who has the ultimate authority with regard to safety did not impose any age restriction in the regulation framed under Section 177 of the Act in case of a supervisor to carry on trade/ occupation/ business under Article 19(1)(g) read with Article 21, the State Government being a delegatee of the CEA could not impose any age restriction in this regard in the 2017 Rules. Mr. Dhar submitted that in case of private business or profession the role of State is merely regulatory but the

fixation of upper age limit is prohibitory in nature as has been held by the Hon'ble Supreme Court of India in the case of *B.P.Sharma vs. Union of India and ors.* reported at (2003) 7 SCC 309. He further contended that the Hon'ble Supreme Court in the said reported decision held that the freedom as guaranteed by the Constitution should be allowed to be enjoyed without any restriction. He also contended that the judgment in the case of *B.P.Sharma* (supra) was followed by the Delhi High Court in the case of *WG.CRD (Retd.) V.A. Joshi & ors. vs. Union of India & Another* reported at 2012 SCC Online Delhi 2477. He next contended that the Hon'ble Supreme Court in the case of *Indian Council of Legal Aid & Advice and Ors. vs. Bar Council of India and Anr.* reported at (1995) 1 SCC 732 was pleased to strike down the rule inserted by the Bar Council of India prohibiting enrolment of an advocate by fixing an upper age limit.

4. By referring to the matters as specifically provided in Subsection 2 of Section 180, Mr. Dhar contended that such power does not extend to imposing a restriction on upper age limit which falls within the exclusive domain of the CEA. He further submitted that regulation 29 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 (for short "the 2010 Regulations") also did not empower the State to impose such prohibition. He next referred to the nature of the job to be performed by the supervisors as described in the affidavit-in-opposition by the State of West Bengal and

submitted that the nature of the job of supervisor also does not justify the prohibition in age. He contended that the right to earn livelihood falls within the expression “life” under Article 21 of the Constitution of India. He further submitted that liberty means freedom of an individual to carry on his trade, business and profession. He contended that by imposing a restriction on upper age limit in the matter of grant/renewal of licence, certificate and permit the State has deprived the petitioners of their personal liberty. By referring to the decision of the Hon’ble Supreme Court in the case of *Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors.* reported at (2017) 10 SCC 1 Mr. Dhar contended that the State can deprive a person of his liberty only by means of a valid legislation and not otherwise. However, in the instant case, according to Mr. Dhar the State has deprived the petitioners of their right to earn their livelihood without any authority of law.

5. Per contra, Mr. Bandopadhyay learned Junior Standing Counsel representing the State respondents contended that the State of West Bengal derives its power to frame rules by virtue of Section 180 of the Act. He, further contended that regulation 3, 29 and 115 of the 2010 Regulations read with Section 2(5) of the Act makes it clear that the State Government is the “appropriate government” for the purpose of issuance of licenses and determining the qualifications required for issuance of such license to designated persons that is the supervisors who are required to hold certificate of

competence. According to him such power has been delegated to the State Government by virtue of regulations 29 of the 2010 Regulations.

6. According to Mr. Bandyopadhyay, the entire responsibility to determine the qualification of the workman and the supervisors have been delegated to the State Government. He submitted that the licensing authority must have the power to determine qualification and by referring to the dictionary meaning of the word “qualification” Mr. Bandopadhyay contended that qualification includes a standard necessary to do a job. According to him, the standard necessary to do a job cannot merely include educational or technical qualification but must also include age, experience etc. which may be required for a unique job on a case to case basis. He further submitted that the Section 180(2) of the Act consists of the illustrative domain of the rule making power which is without prejudice to the general rule making power which has been vested under Subsection 1 of Section 180. He also referred to the similar provisions in the regulations framed in this regard by other states.
7. Mr. Bandopadhyay submitted that determination of age bar or upper age limit is essentially a matter of policy and the scope of interference in judicial review in policy decision is very limited. In support of such contention he placed reliance on the decision of the Hon’ble Supreme Court in the case of *Prafulla Kumar Das & Ors. vs. State of Orissa and*

ors. reported at (2003) 11 SCC 614 and in the case of *Rachna and ors vs. Union of India and another* reported at (2021) 5 SCC 638. Mr. Bandopadhyay contended that the petitioner had tried to make out a case of hardship as a ground for challenging the vires of the aforesaid rules. He contended that hardship cannot be a ground to declare a piece of legislation ultra vires and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of (2003) 11 SCC 614.

8. Mr. Bandopadhyay contended that the courts have exercised judicial restraint and ordinarily left it to the executive authorities to fix the cut off date. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of *Government of Andhra Pradesh and ors. vs. N. Subbarayudu and Ors.* reported at (2008) 14 SCC 702. He referred to a decision in the case of *Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra & Goa* reported at (1996) 3 SCC 342 and contended that the right guaranteed under Article 19(1)(g) to practice any profession or to carry on any occupation/trade/business does not prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by the said subclause in the interest of general public.
9. By referring to a decision of the Hon'ble Supreme Court in the case of *V.T. Khanzode and Ors. vs. Reserve Bank of India and Anr.* reported at (1982) 2 SCC 7 Mr. Bandyopadhyay

contended that the ambit of the general powers conferred by subsection 1 of Section 180 cannot be limited only to the matters specified in subsection 2 of Section 180. He referred to a decision of Delhi High Court in the case of *Vinod Kumar Malhotra vs. Indian Airlines Corporation* reported at (1978) SCC Online Delhi 185 and contended that the authority has the power to fix the age limit for recruitment by taking into consideration the relevant factors including the safety. He referred to a decision of a Division Bench of this court in the case of *Union of India vs. Builders Corporation Private Limited* reported at (2009) SCC Online Cal 1989 to buttress the submission that “qualification” includes a standard necessary to do a job. He also referred to a decision of the Hon’ble Chattisgarh High Court in the case of *Dinesh Kumar Soni vs. State of Chattisgarh* reported at 2017 SCC Online Chh 1553 in support of his contention that hardship or inconvenience of a group of persons cannot be a ground for deciding the law as bad.

10. Heard the learned advocates for the parties and perused the materials on record.
11. It is recorded that in course of hearing, Mr. Dhar, submitted that the petitioners are giving up their challenge to Rule 13(6) and therefore such relief is refused as not pressed.
12. The main contention of Mr. Dhar is that the fixation of the upper age limit is beyond the legislative competency of the State and it also affects the right to earn a livelihood which is guaranteed under Article 19(1)(g) of the Constitution of India.

13. Part (VI) of the Electricity Act, 2003 (for short “the Act”) deals with distribution of electricity. Section 53 of the Act falls within part (VI). Section 53 empowers the CEA to make provisions relating to safety and electricity supply in consultation with the State Government and specify suitable measures on the matters which have been specifically mentioned in Clause (a) to (g) of Section 53. Rule 53 is extracted hereinafter.

“53. Provision relating to safety and electricity supply.- The Authority may, in consultation with the State Government, specify suitable measures for-

- a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;*
- b) elimination or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property;*
- c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specifications as may be specified;*
- d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;*
- e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;*
- f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;*

g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.”

14. Therefore, Section 53 vests power upon CEA to make provisions relating to safety and electric supply. However, the statute mandates that such provisions are to be made in consultation with the State Government.

15. Section 53 of the Act uses the expression “in consultation with the State Government”. Such consultation has to be a meaningful one and not a matter of mere formality considering the fact that it relates to safety and electricity supply and the State has to play an active role in order to fulfil the object behind such provision.

16. Section 177 empowers the CEA to make regulations. However, such regulations have to be consistent with the Act and the rules generally to carry out the provisions of the Act. In exercise of the powers conferred by Section 177, the CEA framed the 2010 regulations.

17. Regulation 3(3) provides that no person shall be designated to operate and carry out the work on electrical lines and apparatus unless he possesses a certificate of competency or electrical work or permit issued by the appropriate government.

18. Regulation 29 deals with the precautions to be adopted by consumers, owners, occupiers, electrical contractors, electrical workman and supplies. The said regulation envisages licensing of electrical contractors, issuance of certificate of competency and permit recognised by the State Government for undertaking the work of electrical installation unless exemption is granted by the Central Government or the State Government. Subsection 2 provides that in case the electrical installation work has been carried out in contravention of the provisions of subregulation 1, such electrical installation shall not be energized or connected to the works of any supplier.
19. Though the CEA has the ultimate authority in respect of the matters falling within Section 53 of the Act but CEA delegated the power to grant licence, certificate and permits to the State Government by virtue of Regulation 29 of the 2010 Regulations.
20. The term “installation” used in Regulation 29 has been defined in Regulation 2(zb) of the 2010 Regulations to mean any composite electrical unit used for the purpose of generating, transforming, transmitting, converting, distributing or utilizing electricity.
21. The duty of the supervisor is thus to supervise the work of electrical installation carried out by a licensed electrical contractor. Definition of the term “installation” and the duties performed by the supervisor makes it clear that the job of the

supervisor is a very specialised one. The safety aspect is very much associated with the nature of job of supervisors.

22. In exercise of the powers conferred by subsection 1 of Section 180 of the Act read with regulation 29 of the 2010 Regulations the Government was pleased to make the West Bengal Electrical Licensing Rules, 2017. Rule 3 laid down the manner in which the West Bengal Licensing Board (Electrical) (for short “the Board”) shall be constituted for carrying out its functions. The functions to be carried out by the Board has been laid down in Rule 6 thereof. Part 5 provides for certificate of competency of supervisors. The qualifications for certificate of competency of supervisors has been specifically laid down in Rule 22. Rule 23 lays down the rules for examination for certificate of competency of supervisors. Rule 23(c) is under challenge in this writ petition and as such the same is extracted herein below-

*“23. Examination for Certificate of Competency of Supervisors-(1)(a) ******

*(b) ******

(c) After coming into force of these rules, no application for new or further Parts for Supervisor Certificate of Competency, shall be entertained from the candidate attaining the age of 65 years. In respect of renewal of such Certificate, candidate of 65 years shall produce a medical fitness certificate. However, in any case Supervisor Certificate of Competency of a person is liable to be ceased/ cancelled upon attaining his age of 70 years.”

23. Rule 31 lays down the rules for Examination for National Certificate of Supervisors. Subrule 5 of Rule 31 is under challenge in the instant writ petition and the same is also extracted herein below-

“Examination for National Certificate of Supervisors-(1)

*(2) ******

*(3) ******

*(4) ******

(5) After coming into force of these rules, no application for new or further Parts for National Certificate of Supervisor, shall be entertained from the candidate attaining the age of 65 years. In respect of renewal of such Certificate, candidate of 65 years shall produce a medical fitness certificate for renewal of National Certificate of Supervisor (N.C.S.). However, in any case National Certificate of Supervisor’s Licence of a person is liable to be ceased /cancelled upon attaining his age of 70 years.”

24. The petitioner has not challenged other conditions specified either in Rule 23 or in Rule 31 or any other Rules of 2017 Rules excepting Rule 23(c) and Rule 31(5) wherein the State Government have fixed an upper age limit in case of persons applying for certificate of competency and national certificate of supervisors as well as in respect of renewals thereof.

25. CEA framed the 2010 regulations for measures relating to safety and electric supply. It has been vehemently argued by Mr. Dhar that CEA has the ultimate authority with regard to safety and the State Government lacks power and competency to frame a rule imposing an age restriction in

respect of a matter falling within the scope of Section 53 of the Act and the 2010 regulations.

26. According to the Mr. Dhar, the fixation of upper age limit amounts to prohibition and such matter relates to safety and precaution which falls within the exclusive domain of the CEA under Section 53. He further contended that since Regulation 29 does not impose any prohibition in this respect, State Government lacks the power to impose such prohibition.
27. Section 53 of the Act vests power upon the CEA to make provisions relating to safety and electricity supply in consultation with the State Government. CEA framed the 2010 regulation and regulation 29 mandates that no electrical installation work except such replacement of lamps, fans, fuses, switches, domestic appliances of voltage not exceeding 250 volts and fittings as in no way alters its capacity or character shall be carried out except by an electrical contractor licensed in that behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government.
28. Upon reading Regulation 29 this Court finds that safety and precaution relating to electrical installation work of a nature specified in such regulation have been delegated by CEA to the State Government by empowering the State Government to issue licence, Certificate of competency and permit. By virtue of such delegation and in exercise of the power to

frame rules, 2017 Rules have been framed by the State Government.

29. The petitioners have prayed for declaration of Rule 23(c) and 31(5) as *ultra vires*. In both the said rules, in case of new applicants the upper age limit have been fixed at 65 years, however, in case of renewals, such age limit was relaxed till the age of 70 years subject to production of medical fitness certificates.
30. From the pleading in the writ petition it is evident that the writ petitioners are not against production of medical fitness certificates as per the said rules but their principal grievance is against prohibition by way of fixation of upper age limit. Mr. Dhar, in course of his argument, also did not take any stand contrary to such stand taken in the pleadings.
31. The power to issue licence, certificate of competency and permit have been vested upon the State Government by virtue of Regulation 29. Power to issue licence, certificate of competency and permit necessarily means that the State Government has been delegated with the power to lay down the conditions for grant, renewal, suspension, cancellations etc. of such licence, certificate and permit. Laying down conditions in respect thereof shall mean fixing the eligibility criteria, qualifications etc. including physical and mental fitness and age.
32. From a reading of the 2017 Rules it is evident that the same is a complete code in the matter of licensing of electrical

contractors, issuance of certificates of competency and permit. The manner in which the examination is to be conducted, the qualifications of the candidates who will be entitled to appear in the examination for permits to electrical workman certificates of competency of supervisors as well as the examination for national certificate of supervisors have been specifically mentioned therein. The eligibility criteria for appearing at the said examinations have also been indicated therein. The eligibility criteria for applying for such licence, certificates, permits and for renewal of the same has also been stipulated.

33. This takes us to the consideration of the argument of Mr. Dhar as to whether the State Government could fix an upper age limit when the same does not fall within any of the matters under subsection 2 of section 180.

34. The Hon'ble Supreme Court in Reserve Bank of India (supra) held that it is well settled that where a specific power is conferred without prejudice to the generality of a power already conferred, the specific power is only illustrative and cannot restrict the width of the general power. By applying the ratio of the said reported decision, this Court holds that mention of certain matters under subsection (2) of Section 180 cannot restrict the width of the general power of the State Government under Section 180(1) of the Act.

35. Thus, this court is of the considered view that the State Government had the power and authority to lay down conditions for grant and renewal of license and/or permit in

exercise of powers under Section 180(1) read with Regulation 29 of 2010 Regulation and 2017 Rules were framed by the State Government in exercise of such powers. This Court is unable to accept the contention of Mr. Dhar that State Government encroached upon the jurisdiction of CEA in this regard.

36. The next issue is whether imposition of age restriction in 2017 Rules affects the right guaranteed under Article 19(1)(g) of Constitution of India.

37. The State, in its affidavit-in-opposition has described the nature of the job performed by the supervisors. It appears therefrom that the nature of the job is a specialised job which also has a safety aspect attached to it. The physical labour which is involved in the nature of work of a supervisor has also been described in the said affidavit. State has also highlighted the issue of unemployment of such technically qualified person. It is the stand of the State that age restriction has been imposed taking into consideration such factors.

38. The right to carry on trade, profession or business is guaranteed under Article 19(1)(g) of the Constitution. However, such guaranteed freedom can be restricted only by an authority of law. However, such restriction has to be a reasonable restriction. In order to determine the reasonableness of the restriction, the nature of the trade, business, occupation or profession as the case may be, has to be considered. The factors determining the reasonableness of

restriction differ from trade to trade. Such restriction should not also be arbitrary.

39. Though it may be true that certain amount of physical labour is involved for carrying on any nature of trade, business, occupation or profession, however, the degree of physical labour differs from one type of trade, profession, business or occupation to another. Certain types of trade or profession may require a lesser degree of physical labour and more mental faculty and skill whereas in case of others it may be just reverse. Certain types of trade, profession etc. may require more stamina, human reflexes, better eyesight than others. It cannot be denied that physical fitness and mental alertness decrease with the age. Thus, age is an important factor which is to be considered while imposing any restriction in the nature of prohibition in respect of trade, profession etc. which require a greater degree of physical labour, stamina, energy, strength, human reflexes etc. and the nature of trade, profession etc. involves the safety of the general public. Furthermore, the writ petitioners have not denied that physical fitness is an essential ingredient for the purpose of carrying on the job of a supervisor.

40. Electrical supervisors have a duty to ensure safety of the general public for which Regulation 29 mandates grant of certificate of competency and permit issued or recognised by the State Government. Therefore, the State Government has an important role to consider the aspect of safety while framing the licensing rules.

41. Now the question arises whether imposing age restriction can be said to be an unreasonable restriction in the instant case.
42. In course of argument, Mr. Dhar cited the example of lawyers and submitted that there are many eminent lawyers who are carrying on their profession effectively and the clients are eager to avail their services even after they are at an advanced age which is much more than the upper age limit fixed as per the regulation. He submitted that a person gains experience in profession with age. He submitted that in case of private profession, it should be left open to the recipient of services of a private professional to make a choice as to whose services they shall avail of and the Government ought not to have imposed a prohibition in this regard.
43. Though the aforesaid argument of Mr. Dhar may hold good in certain types of private profession but the same may not apply to all types of private profession. It is true that the lawyers, in order to carry on their profession must possess energy, stamina, physical strength as well as mental skills. However, the profession of a lawyer is primarily concerned with the mental faculties and mental skills. The degree of physical labour involved therein is much less than that of the work of an Electrical Supervisor. A client approaches a lawyer for the purpose of protection of his interest. In that case the choice may be left to the recipient of the service. But when the nature of service is such that it concerns the safety of the public at large and not restricted to a particular customer or

a class then in such a case it may not always be prudent to leave the choice to the recipient of service in such a case giving precedence to experience only but such choice is to be made from the class of service providers who fulfils the requisite criteria or standard. Thus, when it comes to the aspect of safety, it is in the interest of the general public that the Government has to adopt a policy for the purpose of protection of the interest of the general public.

44. The term “qualification” means reaching the standard necessary to do a job. It is within the realm of the licensing authority to fix the standard necessary for doing a particular job. Age is certainly an important factor for fixing the standard necessary for a job in case the nature of the job requires a greater degree of physical labour. Apart from fixing the upper age limit, 2017 Rules have also prescribed other qualifications. The power and authority of the State Government to fix qualifications have not been challenged by the writ petitioners. Thus, this Court is of the considered view that the State Government has the power to fix upper age limit.

45. In such a case fixation of upper age limit either at the time of making an application or at the time of renewal cannot be said to be unreasonable.

46. After taking into consideration the sphere of the job of an electrical supervisor as would be evident from Regulation 29 read with Regulation 2(zb) of the 2010 Regulations, and the nature of the job that is done by them as well as the object

behind fixation of upper age limit, as stated in the affidavit-in-opposition, this Court is of the considered view that the State Government has the power and authority to lay down any condition for the purpose of ensuring safety of the general public. Laying down any condition shall also mean fixing the age limit. After this Court has held that the State Government has the power to impose age restriction, the rest is a policy decision of the State Government, which this Court should not interfere with in exercise of power of Judicial Review.

47. The scope of judicial review in respect of policy matters is very limited as held by the Hon'ble Supreme Court in *Gaurav Ashwin* (supra) and *Rachna* (supra). The Hon'ble Supreme Court in the said reported decision held that judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision. The scope of judicial review is to see whether it violates the fundamental rights of the citizens or is opposed to the Constitution or opposed to any statutory provision or manifestly arbitrary.

48. Action of the State Government in fixing the upper age limit may cause hardship to a class of persons including the petitioners, as argued by Mr. Dhar, but the same cannot be a ground for striking down of valid legislation as held by the Hon'ble Supreme Court in the case of *Prafulla Kumar Das* (supra) and in *Dinesh Kumar Soni* (supra).

49. By placing strong reliance on the decision of the Hon'ble Supreme Court of India in *B.P.Sharma* (supra), Mr. Dhar strenuously contended that conditions of age bar completely debars the Supervisors after attaining certain age to act as such. He contended that age restriction ought not to have been imposed merely because it is permissible for the State to do so.

50. In *B.P. Sharma* (supra) the Hon'ble Supreme Court was considering the case of a tourist guide. The nature of duty of a Tourist Guide is entirely different from that of an Electrical Supervisor. Thus, merely because imposing of age restriction was held to be unreasonable in the case of tourist guide cannot also be said to be unreasonable in the case on hand for the reasons as stated hereinbefore. In *B.P.Sharma* (supra) it was also held that the authority lacked the competence to impose age restrictions as per the relevant statutes and the rules. Therefore, the said decision is not applicable to the facts of this case.

51. The Hon'ble Delhi High Court in *WG.CRD* (supra) while dealing with the case of Pilots flying Private Aircrafts on non commercial flight operations i.e. no fee was charged from the passengers in the aircraft after taking note of the decision of the *B.P.Sharma* (supra) and also that the job of guides may be altogether different from the functions which are to be performed by a pilot did not strike down the impugned provision. Thus, the said decision in *WG.CRD* (supra) is of no assistance to the petitioner in the instant case.

52. In the case of *Bar Council of India* (supra) the validity of Rule 9 of the Bar Council of India Rules was challenged. By the said Rule the age restriction for enrolment of advocates was imposed. The Hon'ble Supreme Court held that the Bar Council of India have the power to prescribe conditions which can apply at the post enrolment stage and cannot operate at the pre-enrolment stage. It was further held that the relevant clause does not permit laying down of conditions for entry into the profession. For such reasons the Hon'ble Supreme Court held that the statute did not empower the Bar Council of India to frame a rule barring persons who have completed 45 years of age from enrolment as an advocate and accordingly held the impugned rule to be *ultra vires*. Furthermore, the job of an electrical supervisor is altogether different from that of an advocate. The said decision has no manner of application to the facts of the case on hand as this Court has held that the Act and the regulations permit laying down of conditions by the State Government. Furthermore, the question whether the impugned rule violates Article 19(1)(g) of Constitution was, however, not decided by the Hon'ble Supreme Court in *Bar Council of India* (supra).

53. In the case of *K.S.Puttaswamy* (supra) the Hon'ble Supreme Court while considering the issue whether right to privacy is a facet of the right to life made certain observations on Article 19 of the Constitution. The said decision is not on the issue involved in the case on hand. This Court has already held that imposing of age restriction is not an unreasonable one

and the State Government had the competence to frame rules in that regard. In view thereof, the said decision is of no assistance to the petitioner. Consequently, the decision in the case of *Kia Khosrou* (supra) loses its relevance for deciding the issue involved in this writ petition.

54. The decision in the case of *Vinod Kumar Malhotra* (supra) is not applicable to the case on hand as it is a case of recruitment in service and not on the issue involved in this writ petition.

55. The decision in the case of *Haniraj L Chulani* (supra) is not applicable to the case on hand as the issue therein was whether a medical practitioner can enrol himself as an Advocate.

56. The issue involved in *N. Subbarayudu* (supra) was whether the court in exercise of the power of Judicial Review can interfere with the fixation of cut off date. Such issue does not arise for consideration in this writ petition and therefore, the said decision is not applicable to the case on hand.

57. Since the constitutional validity of some of the provisions in the 2017 Rules is under challenge in this writ petition, the fact that several other states have framed similar/identical rules is also of no relevance in this case.

58. This Court is of the considered view that the State Government while imposing age restrictions in the 2017 Rules acted within its jurisdiction and cannot be said to have encroached upon the jurisdiction of the CEA. This Court

further holds that the State Government was competent to fix the upper age limit by 2017 Rules and the same cannot be said to be an arbitrary one. Since the aspect of safety of the general public is involved with the job of supervisors, the fixation of upper age limit imposed by the 2017 rules cannot be said to be unreasonable. The State Government has the power to impose age restriction while laying down the conditions for grant or renewal of licence, certificate and permit by framing rules. In view thereof, this Court holds that the writ petitioners have failed to establish that they have been deprived of their right to earn livelihood except according to procedure established by law.

59. For the reasons as aforesaid, the writ petition fails and the same stands dismissed, without, however, any order as to costs.

60. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis.

(Hiranmay Bhattacharyya, J.)

(P.A.- Sanchita)