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W.P. No. 30752 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM :

**THE HON'BLE MR. JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P. No. 30752 of 2006
and
M.P. No. 1 of 2006**

B.Anbarasan

... Petitioner

Vs.

1. The Secretary
Bar Council of Tamil Nadu
High Court Buildings
Chennai – 600 104.

2. The Secretary
Bar Council of India
New Delhi.

... Respondents

PRAYER Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Declaration declaring that the Resolution No. 186 of 2006 dated 17.6.2006 of the First Respondent and Rule 8 (A) of the Enrolment Rules of the First Respondent framed under section 28(2) (d) read with section 24 (1) (c) of the Advocates Act 1961 as communicated in the notice of the First Respondent dated 23.8.2006 in R.O.C. No. 906 of



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2006 are illegal ultra vires and unconstitutional being violative of fundamental rights under Article 14, 16, 19(1)(g) and 21 of the Constitution of India and consequently , direct the Respondents to enroll the petitioner as an Advocate in the Bar council of Tamil Nadu.

ORDER

*(Order of the Court was made by **R.MAHADEVAN, J.**)*

Heard all the parties and perused the materials available on record.

2. According to the petitioner, he made application for enrolment as an Advocate before the Bar Council of Tamil Nadu on 07.08.2006. While so, the first respondent passed a resolution No.186 of 2006 which was approved by the second respondent to the effect that no person can enrol as an Advocate, if he/she has crossed 45 years of age. Accordingly, the Enrolment Rules framed under section 28(2)(d) r/w section 24(1)(c) of the Advocates Act have been amended with effect from 02.08.2006 in order to give effect to the said resolution. Pursuant to the same, notice dated 23.08.2006 in ROC No.906 of 2006 came to be issued by the first respondent, as per which, the petitioner, having crossed the upper age limit of 45 years as on



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02.08.2006, would not be entitled to be enrolled as an Advocate in the Tamil Nadu Bar Council. Aggrieved by the same, the petitioner is before this court with the present writ petition to quash the said notice of the first respondent.

3.The learned counsel for the first respondent submitted that the issue involved herein is covered by the decision of the Hon'ble Supreme Court in ***Indian Council of Legal Aid and Advice and others v. Bar Council of India and another [1995 (1) SCC 732]*** wherein, it was observed that fixing a bar at the age of 45 years is violative of Article 14 of the Constitution of India, discriminatory, unreasonable and arbitrary. The relevant paragraph of the said decision is usefully extracted below:

"13. The next question is the rule reasonable or arbitrary and unreasonable? The rationale for the rule, as stated earlier, is to maintain the dignity and purity of the profession by keeping out those who retire from various Government, quasi-Government and other institutions since they on being enrolled as advocates use their past contacts to canvass for cases and also pollute the minds of young fresh entrants to the profession. Thus the object of the rule is clearly to shut the doors of the profession for those who seek entry into the profession after completing the age of 45 years. In the first place, there is no reliable statistical or other material placed on record in support of the inference that ex-government or quasi-government servants or the like indulge in undesirable activity of the type mentioned after entering the profession. Secondly, the rule does not debar only such persons from entry into the profession but those who have completed 45 years of age on the date of seeking enrolment. Thirdly, those who were enrolled as advocates while they were young and had later taken up some job in any Government or quasi-Government or



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similar institutions and had kept the sanad in abeyance are not debarred from receiving their sanads even after they have completed 45 years of age. There may be a large number of persons who initially entered the profession but later took up jobs or entered any other gainful occupation who revert to practise at a later date even after they have crossed the age of 45 years and under the impugned rule they are not debarred from practising. Therefore, in the first place there is no dependable material in support of the rationale on which the rule is founded and secondly the rule is discriminatory as it debars one group of persons who have crossed the age of 45 years from enrolment while allowing another group to revive and continue practise even after 45 years. The rule, in our view, therefore, is clearly discriminatory. Thirdly, it is unreasonable and arbitrary as the choice of the age of 45 years is made keeping only a certain group in mind ignoring the vast majority of other persons who were in the service of Government or quasi-Government or similar institutions at any point of time. Thus, in our view the impugned rule violates the principle of equality enshrined in Article 14 of the Constitution."

The learned counsel also submitted that following the aforesaid decision, a Division Bench of this Court in ***M.Radhakrishnan v. the Secretary, Bar Council of India and another [2006 (5) CTC 705]*** has held that “the object of the rule is only to curtail group of persons from entering into profession and to satisfy other group of person who also stand on the same footing. The State Bar Council cannot widen / expand its rule-making power so extensively to discriminate or classify between two similarly placed persons based on utter arbitrariness”.



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4. However, the learned counsel appearing for the Bar Council of Tamil Nadu and Puducherry and the learned counsel appearing for the Bar Council of India submitted that the subject matter in issue is pending before the Hon'ble Supreme Court in ***Rishabh Duggal and another v. the Bar Council of India and another in WP(Civil)No.1023 of 2016*** and the Hon'ble Supreme Court has stayed the Notification issued by the Bar Council of India in BCI:D:1519 (LE:Cir.-6) dated 17.09.2016, on 03.03.2017.

5. In the light of the observations of the Hon'ble Supreme Court as well as this court in the decisions cited supra, that “the fixation of upper age limit in enrolling in the Bar is construed to be arbitrary, unreasonable and discriminatory”, this court is inclined to set aside the notice of the first respondent, dated 23.08.2006 and the same is accordingly, set aside. Consequently, the matter is remanded to the first respondent for re-consideration and pass orders afresh, if the petitioner is otherwise found to be eligible, within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that the order to be passed by the



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first respondent is subject to result of the Writ Petition (Civil) No.1023 of 2016 pending before the Hon'ble Supreme Court.

6.This writ petition stands disposed of in the above terms. No costs.

Consequently, connected miscellaneous petition is closed.

J.)

(R.M.D., J.)

(J.S.N.P.,

15.12.2022

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Index : Yes/No

To

- 1.The Secretary,
Bar Council of India,
No.21, Rouse Avenue Institutional Area,
New Delhi – 110 002.
- 2.The Secretary,
Bar Council of Tamil Nadu and Puducherry,
Madras High Court Campus,
Chennai – 600 104.



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