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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.13006 OF 2014
AND MP NO.1 OF 2014

S.Maheshwaran

... Petitioner

Vs.

1.The Chairman

Bar Council of Tamil Nadu and Puducherry
Bar Council Building
High Court Campus
Chennai - 600 104.

2.The Secretary

Bar Council of Tamil Nadu and Puducherry
Bar Council Building
High Court Campus
Chennai - 600 104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus to call for the records relevant to the order in R.O.C.No.1168 of 2014 dated 17.03.2014 passed by the 2nd respondent and quash the same is improper unreasonable against the law and natural justice and thereby direct the respondents to allow the petitioner to continue his legal practice as an advocate.

For Petitioner :Ms.P.A.Chitramani

For Respondents-:Mr.C.K.Chandrasekar
Standing Counsel



O R D E R

The writ petitioner is challenging the show cause notice issued by the Bar Council of Tamil Nadu and Puducherry questioning his enrollment on the basis of his age at the time of enrollment.

2.This matter is no longer res integra. The Hon'ble Supreme Court in its judgment in INDIAN COUNCIL OF LEGAL AID AND ADVICE AND OTHERS VS. BAR COUNCIL OF INDIA AND ANOTHER [1995 (1) SCC 732] has 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. Paragraph 13 of the said judgment reads as under:

"13. The next question is, 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 thereby bring the profession into disrepute 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 similar institutions and had kept the sanad in abeyance are not debarred from reviving 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



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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 crossing the age of 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."

3.Later, a Division Bench of this Court in M.RADHAKRISHNAN VS. THE SECRETARY, THE BAR COUNCIL OF INDIA AND ANOTHER [2006 (5) CTC 705] has also 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. Parliament fixed no upper age limit for pursuing law course in Advocates Act. 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. Therefore, from the above judgments, it is clear that the fixation of upper age limit in enrolling in the Bar is construed to be unreasonable.

4.However, Mr.C.K.Chandrasekar, learned counsel appearing for the Bar Council of Tamil Nadu and Puducherry would submit that the matter is pending before the Hon'ble Supreme Court in RISHABH DUGGAL AND ANOTHER VS. THE BAR COUNCIL OF INDIA AND ANOTHER in WRIT PETITION (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.Considering the facts and circumstances of the case, this writ petition is disposed of subject to result of the Writ Petition (Civil) No.1023 of 2016 pending before the Hon'ble Supreme Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

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Bar Council Building
High Court Campus
Chennai - 600 104.

2.The Secretary

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NRL (CO)
CB(04/04/2022)