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W.P.No.11391 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.P.No.11391 of 2016
and
W.M.P.No.9851 of 2016

S.Delam

... Petitioner

Vs.

1. The Chairman,
Bar Council of India,
No.21, Rouse Avenue Institutional Area,
Near Bal Bhavan,
New Delhi-110 002.

2. The Secretary,
Bar Council of Tamil Nadu,
High Court Campus,
Chennai-600 104.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the Second Respondent in ROC.No.480 of 2007 and consequently, direct the respondents to enrol the petitioner as an Advocate before the Second Respondent within a time fixed by this Honourable Court.



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For Petitioner : Mr.M.Vijay Ragavan
For Respondents : Mr.S.R.Raghunathan(for R1);
Mr.C.K.Chandrasekar (for R2);
Mr.T.Mohan (*Amicus Curiae*).

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The order of rejection of an application seeking enrolment as an Advocate in the Bar Council of Tamil Nadu by the writ petitioner, is under challenge in the present writ proceedings.

2. The petitioner states that he is a Sri Lankan citizen and came to India as a refugee. He joined five years integrated Law Degree course at Government Law College, Coimbatore, under the Sri Lankan Refugee free quota, without attending the entrance examination. He completed the Law Degree in the year 2006.

3. The petitioner submitted an application to the Bar Council of Tamil Nadu for enrolment and the application was rejected on the ground that he is not a citizen of India and therefore, not eligible for enrolment under Section



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24(1)(a) of the Advocates Act, 1961. The petitioner would submit that under the proviso to Section 24, the petitioner is eligible to be enrolled as an Advocate on the State Roll. The said aspect was not considered.

4. This Court appointed Mr.T.Mohan, learned Senior Counsel as *Amicus Curiae* to assist the Court. The *Amicus Curiae* would submit that the Ministry of Home Affairs issued a notification and based on the said notification and also under the proviso to Section 24 of the Advocates Act, the case of the petitioner is to be considered for enrolment.

5. The learned counsel for the Bar Council of India Mr.S.R.Ragunathan would oppose by stating that the notification of the Ministry of Home Affairs cannot overwrite the provisions of the Advocates Act and the Advocates Act, being a special enactment, would apply for enrolment of advocates in State Roll. Therefore, general law can have no application including the Citizenship Act in the present case. The scope of the Citizenship Act is different and unconnected as far as the enrolment of an Advocate in the State Roll is concerned. The provisions of the Advocates Act is to be applied *stricto sensu* and therefore, the very contention raised by the petitioner and the *Amicus Curiae* may not be the legal position with reference



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to the facts of the case on hand.

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6. Mr. C.K.Chandrasekar, appearing on behalf of the Bar Council of Tamil Nadu, would submit that admittedly the petitioner is a Sri Lankan refugee in India, he is not a citizen of India, he is a citizen of Sri Lanka. There is no reciprocity agreement between India and Sri Lanka for enrolment as legal practitioner. In the absence of any such accord/agreement, the petitioner's application cannot be considered for enrolment since there is an express bar under Section 24 of the Advocates Act.

7. Let us now consider Section 24 of the Advocates Act. Sub Section (1) stipulates that *“Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:*

(a) he is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country”



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8. Therefore, the proviso clause unambiguously stipulates that there must be a reciprocatory agreement between India and the country in which the person belongs to, for the purpose of entertaining an application for enrolment.

9. The Bar Council of India relied on the judgement of the Hon'ble Supreme Court of India in *O.N. Mohindroo v. Bar Council of Delhi*, reported in *AIR 1968 SC 888*. Under the Advocates Act, the person who may be admitted as an advocate on a State Roll, is categorically mentioned under Section 24. Under Section 24(1)(a), a person should be a citizen of India. The petitioner admittedly is not a citizen of India and hence cannot seek as a matter of right to practice in India. Further, it is contended that the proviso clause to Section 24 has no application with reference to the facts of the case since there is no reciprocatory agreement between India and Sri Lanka.

10. It is needless to state that the special Act will prevail over the general law. Regarding the enrolment of an Advocate, the Advocates Act will prevail over the Citizenship Act. When the special enactment expressly contemplates that a person who is a citizen of India is eligible to practice law



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in India, the case of the petitioner, who is a Sri Lankan citizen and a refugee in India, is rightly rejected by the Bar Council of Tamil Nadu.

11. Admittedly, the petitioner is not a citizen of India and that being the factum, we do not find any infirmity in respect of the decision taken by the Bar Council of Tamil Nadu, which has been now confirmed by the Bar Council of India, by way of counter affidavit in the present writ petition.

12. Thus, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

06.06.2024

Index : Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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S.M.SUBRAMANIAM, J.

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