

2022 LiveLaw (SC) 414

IN THE SUPREME COURT OF INDIA
SANJAY KISHAN KAUL; M.M. SUNDRESH; JJ.

Civil Appeal No(s). 816-817/2022; 21-04-2022

BAR COUNCIL OF INDIA Versus TWINKLE RAHUL MANGAONKAR & ORS.

Bar Council of India Rules - Provisional enrolment - Persons engaged in other employments can be permitted to provisionally enrol with the concerned Bar Council and to appear in the All India Bar Examination (AIBE), and that upon clearing the AIBE, they can be given a period of 6 months to decide whether to join legal profession or continue with the other job.

Mr. K.V. Vishwanathan, Sr. Adv./Amicus Curiae Mr. R. Venkataraman, Adv. Mr. Amartya Sharan, Adv. Mr. Rahul Sangwan, Adv. Mr. M.G. Aravind Raj, Adv. Mr. Chanakya Dwivedi, Adv. Mr. K. Sivagnanam, Adv.

For Appellant(s) Mr. S.N. Bhat, Sr, Adv. Mr. D.P. Chaturvedi, Adv. Mr. Tarun Kumar Thakur, Adv. Ms. Parvati Bhat, Adv. Mr. Durga Dutt, AOR

For Respondent(s) Ms. Megha Jani, Adv. Ms. Anushree Prashit Kapadia, AOR Ms. Priyanka Rathi, Adv. Mr. Nikhil Goel, AOR

ORDER

The Bar Council of India (BCI) has filed the status report dated 11.04.2022 and we have the benefit of the additional note filed by Mr. K.V. Viswanathan, learned Amicus Curiae. Taking into consideration the order passed on 15.03.2022 which has resulted in the aforesaid being filed, we consider it appropriate to take the matter forward in the following terms :

ROLL NUMBER AND ALL INDIA BAR EXAMINATION (AIBE)

The Bar Council of India appears to have some apprehensions in the path ahead on this aspect on account of Rules prescribing compulsory internship being struck down by the Supreme Court in the case of **V. Sudeer vs. BCI (1999) 3 SCC 176**.

The subject matter debated in the aforesaid judgment was the challenge to the validity of the Bar Council of India Training Rules, 1995 and prohibiting enrolment as an Advocate unless he/she was eligible to do so on having undergone training under the Rules. The trainee was enrolled provisionally as “Trainee Advocate” with a limited right to enter appearance in courts and seniority was to be taken from the date of provisional enrolment. This was held not permissible as per the powers conferred on the BCI.

The AIBE was introduced subsequent to the aforesaid decision by insertion of Rules 9 to 11 in Part VI, Chapter III of the BCI Rules dealing with the conditions for right to practice. The prerequisite under Rule 9 is that an Advocate must have successfully passed the AIBE exam before being enrolled and a certificate of practice is provided to them under Rule 11. The provisional enrolment has a limited validity with an undertaking by the Advocate that he will practice as an adocate provisionally till he qualifies under the AIBE within the stipulated period.

A reading of the aforesaid shows that the right to be enrolled arises from his/her graduation in the law Degree but subject to clearance of AIBE exam. The right to practice under Chapter IV of the Advocates Act would not come into force immediately but would arise only after clearance of the AIBE exam.

The aforesaid process was not something which is required to be interfered with by us, but the matter has to be looked in from a different perspective. A person who graduates in law does not get an immediate right to practice before he/she clears the AIBE exam. It is a provisional enrolment with a limited validity and the undertaking given by the candidates. The objective of the provisional enrolment is to facilitate the writing of the AIBE.

The solution suggested by learned Amicus Curiae seems to be appropriate, i.e., the provisional enrolment No. would have to be maintained in two separate registers with a 'B' register of such enrolment for candidates who instead of pursuing the path of a legal practice immediately may have obtained a job. The employment will be an impediment in their being enrolled to practice but that should not be an impediment in taking the examination. The undertaking in such a scenario would be that the person would not be entitled to practice till such time as the person is in employment. This would not, in our view, fall foul of the judgment in **V. Sudeer's** case (supra).

The Rules 47 to 49 of Part VI, Chapter II, Section VII of the BCI Rules stipulate that a person who was entitled to practice would not be engaged in any other employment or profession and if he/she were so engaged, he/she would cease to practice as an Advocate so long as he/she continues to be in employment. Thus a person who obtains the provisional enrolment to enter into a 'B' Register with continuing wish for existing profession/employment unless he attends to the AIBE cannot insist on there being an existing right to practice merely upon obtaining such provisional enrolment in view of the bar created against practice on account of the employment.

The solution can be that upon clearing the exam, a transition period of 6 months may be given within which period he or she will be required to submit an undertaking that he/she will give up his/her job/profession and the seniority of such a candidate would be counted from the date of giving up of the employment followed by such an undertaking as prior to that there is debarment to practice.

We are thus inclined to accept the plea of the learned Amicus Curiae that the BCI may adopt the aforesaid process by giving a provisional enrolment to be entered into a 'B' Register with the appropriate undertaking that such enrolment would not be interpreted as a right to practice in the intervening period. This act of balancing will be in accordance with the doctrine of proportionality as elucidated in the previous hearings by the learned Amicus Curiae and would not be in contradiction to the decision in **V. Sudeer's** case (supra), with other modalities such as seniority being worked out on the specified basis as mentioned aforesaid.

We may note that this also subserves the objective that it should not be that a person takes the exam and continues his employment for a long period of time and thereafter seeks seniority on the basis of an exam taken years ago. If the person continues to be in employment, then, if the person exercises the option of continuing to

be in employment then he/she would have the requirement to take the Bar exam again at the appropriate stage when he/she seeks to give up the employment and get himself/herself enrolled at the Bar. The period of 6 months suggested is good enough for a person to take a call whether he wants to be in employment or continue the profession of law.

A linked issue flagged by learned counsel for respondent No. 1 who has also been assisting us is that there is another category of persons who after qualifying the law degree, take the Bar exam, clear it, get a certificate of practice and then get their licence suspended to take up the job. They may come back even after twenty years of a job.

We do believe that this is an issue rightly flagged for the BCI to consider. They will have to look to scenarios where a person may have a deemed suspension of practice licence on being appointed as a APP and a Public Prosecutor or somebody joining a judicial service. Those are categories by themselves. However, if a person takes a full time employment in most other scenarios, as to whether he should be called upon to take a Bar exam again, in case he continues in service for a certain period of time is something the BCI may debate and come back to us.

LEGAL EDUCATION AND BCI

The BCI is stated to have a Legal Education Committee and Advisory Board which is to consider introducing State Level Entrance Test for admission to law colleges. The BCI is also stated to have earmarked about 500 institutions which are below the standard and a team of Judges and Advocates have been founded to take steps to close the institutions. We would like to be apprised of the composition of this Committee.

One of the methods being debated by the BCI is to withdraw the approval granted for running courses of legal education where it has been found to be below standards. A Teachers Training Academy is stated to have been established in Bhubaneswar.

The BCI has also stated that it has constituted an Advisory Board for development of legal education and the legal profession consisting of Chief Justice of India, with many sitting Judges, academicians, senior Advocates, Vice Chancellors etc. The composition of the Committee may be disclosed. The new Legal Education Rules are stated to be in progress with inputs sought from by Universities and State Bar Councils and BCI has informed the Universities to conduct surprise inspections.

At the request of learned counsel for the BCI, we direct that wherever the inspection team visiting the campuses needs security, the State Government is bound to provide adequate protection and security. In case of non-cooperation either by the Institution or by the State Government, it can be brought to the notice of this Court.

All that we expect is an urgent attention to this issue so that the matter does not remain pending before the Committees for long.

STEPS FOR TIGHTENING AIBE

It is stated that the last AIBE XVI exam was held in 2021 when the BCI directed that only bare acts without comments must be used by the candidates. What we expected was that the suggestions noted in our earlier order given by the learned Amicus Curiae

and debated before us required urgent attention so that they can be incorporated in the next exam. A High Level Committee is stated to have been constituted by the BCI consisting of Judges, Advocates whose composition may be disclosed. We would request the Committee to bestow early consideration to this very urgent aspect as on enquiry we are told that the Committee has been in existence for one year but no report has been received as yet. The persons manning the Committee, we are sure appreciate the urgency of the matter and a report should be placed before us before the next date.

PLACEMENT FOR JUNIOR LAWYERS

The BCI is stated to have constituted a High Empowered Committee to check the legal and constitutional validity of compulsory chamber placement with senior advocates or advocates having 25 years of standing or for framing a fair system for juniors to find placement in chambers. The BCI is also stated to be planning to frame a Rule, according to which fresh law graduates will take online objective tests on subjects studied during LLB degree, the results of which can be used for placement under senior advocates or advocates having 25 years of standing at the Bar.

Mr. K.V. Vishwanathan, learned Amicus Curiae rightly points out that the endeavour to provide assistance to young lawyers is not predicated on a compulsion but on incentivisation. In this behalf he has drawn our attention to paragraphs 23 and 24 of the submissions of the learned Amicus Curiae filed on 21.02.2022 which should be placed before the Committee for due consideration. That would facilitate the process and also take it in a different direction.

We need to say that most if not all High Courts have provision for law clerks. This is an opportunity for young lawyers to get guidance. At times these posts are not filled in. We request the Hon'ble Judges to give opportunity to the younger lawyers by facilitating their working as Law clerks based on the selection of each Judge.

The BCI would be required to place on record a report on action taken in respect to all the aspects which have been discussed today on or before 11.07.2022. The learned Amicus Curiae would file any additional note arising therefrom within 2 weeks thereafter.

List for further proceedings on 02.08.2022.

At the request of learned counsel for respondent No. 1, we clarify that the fresh norms which will come into being would be applicable to respondent No. 1 before us only from the date they are brought into force qua the window of six months as we expect those norms to be brought into force on an urgent basis shortly.