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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
SANJAY KISHAN KAUL; J., C.T. RAVIKUMAR; J., SUDHANSHU DHULIA; J.
WRIT PETITION (C) NO. 320 OF 2023; October 16, 2023
MATHEWS J. NEDUMPARA & ORS. *versus* **UNION OF INDIA & ORS.**

Advocates Act, 1961; Sections 16 and 23(5) - The seniority of advocates is premised on a standardised metric of merit aimed at forwarding the standards of the profession. Thus, the classification of advocates and the mechanism to grant seniority to advocates is not based on any arbitrary, artificial or evasive grounds. Such a classification is a creation of the legislature, and there is a general presumption of constitutionality. *(Para 18)*

For Petitioner(s): Petitioner-in-person

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. The petitioners, practicing Advocates, have filed the present writ petition under Article 32 of the Constitution of India for a declaration that the designation of Advocates as Senior Advocates under Sections 16 and 23(5) of the Advocates Act, 1961 (hereinafter referred to as the 'said Act') as well as under Rule 2 of Order IV of the Supreme Court Rules, 2013, creating a special class of Advocates with special rights, privileges and status not available to ordinary Advocates is unconstitutional being violative of the mandate of equality under Artilce14 and Right to Practice any Profession under Article 19 as well as Right to Life under Article 21 of the Constitution of India. It is their say that such designation has created a class of Advocates with special rights, and the same has been seen as a result only for kith and kin of Judges, Senior Advocates, politicians, Ministers, etc., resulting in the legal industry being monopolised by a small group of designated Advocates, leaving the vast majority of meritorious law practitioners as ordinary plebians receiving discriminatory treatment.

2. We may notice that it is contended that this Court in ***Indira Jaisingh vs. Supreme Court of India, Through Secretary General & Ors.***[1], upheld the *vires* of the said Act providing for the designation of Advocates as Senior Advocates and illegally providing guidelines for such designation, amounting to judicial legislation. We may here add that there have been further modifications and formulations for designation by a subsequent judgment rendered in ***Indira Jaisingh vs. Supreme Court of India, Through Secretary General & Ors.***[2] in pursuance to the liberty reserved in the aforesaid judgment.

3. The say of petitioner no.1 is that we cannot borrow the concept from Roman Law or England, which was feudal in character, as, in England, the concept of Queen's Counsel representing the crown came into existence in the 18th Century. At the time when the Constitution came into existence, there were admittedly different categories of legal practitioners with varying degrees of the right to practice – Mukhtiyars, Vakils and Pleaders practiced in the Muffasil Courts, while in High Courts, Bar at Laws, Advocates and Solicitors practiced. The said Act was brought into existence to streamline the process of working of the legal system. Petitioner no.1, while lauding the objective behind the said Act, seeks to challenge the provisions of Sections 16 and 23(5) of the said Act, which is

[1] (2017) 9 SCC 766
[2] (2023) 8 SCC 1

stated to have been '*unwittingly*' incorporated and is stated to be destroying the laudable purpose of the said Act, i.e., a single unified Bar for the entire republic of India.

4. A reference has also been made to the Advocates on Record in the Supreme Court, who are entitled to do the filing in the Supreme Court, while the Senior Advocates are the arguing counsels.

5. We may note that the pleadings of petitioner no.1 are almost reckless in character. The vast number of first-generation lawyers who attained prominence and were designated as Senior Advocates are sought to be ignored – something which has grown over a period of time. We say the pleadings are reckless because it has sought to be made out as if the legal profession in India has long been feudalistic and a monopoly of certain higher castes and certain families. In fact, in the post-liberalisation period, it is alleged that lawyers no longer come to be known for their knowledge, values and erudition but for the manifestation of wealth and the proximity to the Bench. These averments are contemptuous in character, and that too by Petitioner no.1, who already faced conviction for contempt and debarment from this court to practice in ***Mathews Nedumpara, In Re***[3].

6. The petitioner no.1 does not stop at this but alleges that the Bar has lost all its independence and vitality. The allegations are not only against the ordinary members of the Bar and designated Advocates but also against Government Law Officers enjoying Constitutional stature. He has pleaded that designation is insignia of superior status and title and promising lawyers should not undertake the ignominy of applying for designation. He goes as far as to say that the lawyers have lost faith in the system of merit, character, knowledge and uprightness but realised that only a title conferred by the Court as Senior Advocate alone can bring prosperity and success in the profession. Not only that, the entire legal fraternity practicing in subordinate Courts is stated to have been excluded from the zone of consideration for designation, and no meaningful objective is to be achieved by such classification.

7. The dual system is stated to be causing '*total destruction of a justice delivery system*'.

8. The test of Constitutional validity of law is stated to be actual impact and reality. Petitioner no.1 does not stop at blaming successful lawyers or, for that matter, the Judges but seems to paint everybody with the same brush, alleging even powerful politicians and high-ranking bureaucrats have the clout to get their kith and kin appointed as Judges and Senior Advocates.

9. In fact, during the course of arguments, petitioner no.1 sought to submit that the petition filed for judicial transparency and reforms by an NGO sought to hijack the proceedings initiated by the petitioner. This is in reference to the petition of Mrs. Indira Jai Singh and even attributing motives to her as it was said that what she sought was legislation.

10. One may say that petitioner no.1 goes on and on ranting and raving about these issues, completely ignoring the purpose of the provisions he seeks to assail and the narrow compass of challenge to legislations. For convenience of reference, the relevant provisions are reproduced as under:

"16. Senior and other advocates.—

[3] (2019) 19 SCC 454

(1) There shall be two classes of advocates, namely, senior advocates andother advocates.

(2) An advocate may, with his consent, be designated as senior advocateif the Supreme Court or a High Court is of opinion that by virtue of his ability [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.

(3) Senior advocates shall, in the matter of their practice, be subject tosuch restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

(4) An advocate of the Supreme Court who was a senior advocate of thatCourt immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate:

[Provided that where any such senior advocate makes an application before the 31st December, 1965, to the Bar Council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.]

…. …. …. …. …. ….

23. Right of pre-audience.—

(5) Subject as aforesaid— (i) senior advocates shall have pre-audience over other advocates, and (ii) the right of pre-audience of senior advocates inter se and other advocates inter se shall be determined by their respective seniority."

11. There are multifarious prayers seeking to strike down the provisions mentioned aforesaid of the said Act and to declare the judgment in ***Indira Jaising***[4] case as unconstitutional as also the relevant Supreme Court Rules as they seek to provide an unjust classification including robes.

12. There is no doubt that petitioner No.1 has had more than one brush with the law, though he claims to have become an advocate in the pursuit of his own case. Petitioner No.1 obviously crossed boundaries where the Court was compelled to take action under the Contempt of Courts Act, 1971 and debar petitioner No.1 from practicing in this Court.

13. We find the pleadings completely devoid of merit and justification, making allegations against all and sundry. This is more so in the conspectus of the large growth in the legal profession where a large number of firstgeneration lawyers have made their mark. These lawyers, some of them young ones, have come from National Law Schools and other prominent Law Schools. Instead of appreciating their contribution, petitioner No.1 has used his usual style of making allegations against all and sundry.

14. On what is a limited legal scrutiny, the rest being the opinion and rantings of the petitioners, is the constitutional validity of the aforesaid provisions of the said Act. Suffice to say that the constitutional validity of a specific provision cannot be challenged in abstract, but when the provisions violate any fundamental rights guaranteed under Part III or contravenes any provision of the Constitution, or the legislature lacks law-making competence. If a provision violates a fundamental right, such a violation must directly and inevitably affect the people and cannot be premised on an ostensible use of violation of the provision. We may usefully refer to the observations in ***Public Services Tribunal Bar Association v. State of U.P.***[5] as under:

"26. The constitutional validity of an Act can be challenged only on two grounds viz. (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of

[4] supra

[5] (2003) 4 SCC 104

the Constitution or of any other constitutional provisions. In State of A.P. v. McDowell & Co. [(1996) 3 SCC 709] this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds."

15. The classification of advocates as senior advocates and other advocates under Section 16 of the said Act is a classification made by the legislature. The legislature has a broad discretion to make such classifications, and while there must be a reason for classification, the reason need not be a good one. The Court can only review the classification if it is palpably discriminatory and arbitrary.

16. In ***Union of India v. Nitdip Textile Processors (P) Ltd.***[6] observed as under:

"47. It is now well settled by a catena of decisions of this Court that a particular classification is proper if it is based on reason and not purely arbitrary, caprice or vindictive. On the other hand, while there must be a reason for the classification, the reason need not be a good one, and it is immaterial that the statute is unjust. The test is not wisdom but good faith in the classification. It is too late in the day to contend otherwise. It is time and again observed by this Court that the legislature has a broad discretion in the matter of classification. In taxation, "there is a broader power of classification than in some other exercises of legislation". When the wisdom of the legislation while making classification is questioned, the role of the courts is very much limited. It is not reviewable by the courts unless palpably arbitrary. It is not the concern of the courts whether the classification is the wisest or the best that could be made."

17. The classification of advocates under Section 16 of the said Act is a tangible difference established by the practice advocates have over decades, and the Court has devised a discernible and transparent mechanism to adjudicate the seniority of advocates in the profession. In order to be able to file any matter in the Supreme Court, an extensive and strict examination for an Advocates-on-Record has been provided. Not any advocate can walk in to file a matter. The objective is the efficiency of the system and proper assistance to the Bench as also to be in a better position to propagate the case of the client. Expertise and merit are the criterion. A lot of advocates prefer to remain as an Advocate-on-Record or advocates in the High Court and District Courts as the designation as Senior Advocate carries many inhibitions in the role that they can perform, i.e., they have to appear with an instructing counsel, not draft and file pleadings, and not deal with the litigants, etc. Thus, a special entitlement to address the Court is coupled with restrictions on many acts which they could otherwise perform as advocates. The designation as a Senior Advocate is a recognition of merit by the Court, and the two judgments passed in ***Indira Jaising***[7] cases referred to aforesaid have endeavoured to make the process more transparent.

18. The challenge that the aforesaid classification is violative of Article 14 of the Constitution is untenable since Article 14 permits the reasonable classification of people by the legislature. The seniority of advocates is premised on a standardised metric of merit aimed at forwarding the standards of the profession. Thus, the classification of advocates and the mechanism to grant seniority to advocates is not based on any arbitrary, artificial or evasive grounds. Such a classification is a creation of the legislature, and there is a general presumption of constitutionality, and the burden is on the petitioners to show that there is a clear transgression of the constitutional principles – something which they have miserably failed to discharge. This rule is based on the assumption, judicially recognized

[6] (2012) 1 SCC 226

[7] supra

and accepted, that the legislature understands and correctly appreciates the needs of the people.

19. In ***R.K. Garg v. Union of India***[8], it is observed as under:

"7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

20. If one may say the indulgence to the junior members of the Bar, in a sense, is more than to the senior members because it is also part of the duty of the Bench to help with the evolution of the Bar. The underlying principle for ages has been that the credit should go to the junior counsel without the discredit going to him, and through ages, many lawyers have learnt in this process, including the persons who now form the Bench.

21. We have, thus, not the slightest hesitation in coming to the conclusion that this writ petition is a misadventure largely of petitioner No.1 in continuation of some of his past misadventures. It appears that the judgments and orders passed earlier do not seem to have had any salutary or counselling effect on petitioner No.1 for any self-introspection, but he seeks to carry on a vilification campaign against all and sundry. Obviously, the system is not able to correct petitioner No.1 in his approach.

22. We dismiss the petition with no order as to costs.

[8] (1981) 4 SCC 675