

Devasheesh Pathak and Others Vs. Bar Council of India Thru' Its Secy. and Others

Devasheesh Pathak and Others Vs. Bar Council of India Thru' Its Secy. and Others

SooperKanoon Citation : sooperkanoon.com/1182023

Court : Allahabad

Decided On : Feb-26-2015

Judge : Shashi Kant Gupta

Appeal No. : Writ - C No. 5219 of 2015

Appellant : Devasheesh Pathak and Others

Respondent : Bar Council of India Thru' Its Secy. and Others

Advocate for Pet/Ap. : Sri. Abhijeet Mukherj

Judgement :

Shashi Kant Gupta, J.

1. By means of the instant writ petition the petitioners have sought the issuance of a writ in the nature of certiorari for quashing the notice/advertisement (Annexure-1) issued by Respondent No. 3-the examination conducting university, in so far as it seeks to prescribe the maximum age limit of 20 years as an essential criterion for appearing in the Common Law Admission Test -2015 (in short "CLAT-2015).

2. This Court after hearing the learned counsel for the petitioners had issued notice by its order dated 4.2.2015 to Respondents No. 1 to 3 directing them to file

counter affidavit within two weeks, while the petitioner was directed to take steps through speed post within three days.

3. The office has submitted its report dated 23.2.2015, indicating that notices were issued to the Respondents No. 1 to 3 through speed post, fixing 24.2.2015 as the date of hearing but neither acknowledgement nor the undelivered cover has returned after service of notice as yet and as per computer enquiry, no counter affidavit has been filed on behalf of the Respondents No. 1 to 3.

4. Since the notice sent to the respondents has not returned after service, the service upon them would be deemed to be sufficient as per the rules of the Court.

5. The facts as emerge from the pleadings in the writ petition may briefly be noted for appreciating the issues:-

6. The Petitioners No. 3, 6, 17 and 20 have completed their schooling in the year 2012. Petitioners no. 1, 5, 7, 10, 13, 14 and 16 have completed their schooling in the year 2013. Petitioners No. 4, 8, 9, 11, 12, 15, 19 and 21 have completed their schooling in the year 2014. Petitioner no. 18 is appearing in the qualifying examination in March/April 2015.

7. The Petitioners No. 1, 12 and 20 qualified CLAT last year, but did not take admission as they were getting low ranking Universities. Hence, they took the valiant decision of leaving it with the hope of getting a better college this year.

8. Since the petitioners wanted to pursue law as a profession, they chose to sacrifice their most valuable years in the academic preparation for CLAT 2015 so as to achieve this goal of entering in one of the leading National Law Schools of the country. For accomplishing this, they enrolled themselves in various renowned Law Tutorials in Allahabad in order to crack CLAT-2015.

9. At this stage, the attention of the Court was drawn to the historical background of CLAT which was introduced as a consequence of proceedings before the Apex Court for mitigating the hardship, both physical and financial, of the candidates due to multiple tests conducted by different colleges. The Law Commission of India in its 184th Report recommended that instead of requiring "effective

consultation' with each University, the Advocates Act should instead be suitably amended to enable BCI to consult a representative body, which body, in turn should be constituted by UGC, thus ensuring that both BCI and UGC remains equal partners in regulating legal education.

10. Earlier the Bar Council of India (hereinafter mentioned as "BCI") had prescribed the maximum age limit of 20 years for admission in the stream of Integrated Bachelor of Law Degree Program by means of Clause 28, Schedule III Rule 11 of the Legal Education Rule, 2008. However, later on the BCI withdrew the said condition by issuing a notification in the gazette.

11. This year CLAT-2015 is being organized by Respondent No. 3, Dr. Ram Manohar Lohiya National Law University, Lucknow, which published notice/advertisement inviting applications for CLAT-2015 for admission to 16 National Law Schools in different parts of the country. To the utter shock of the petitioners, the maximum age limit for appearing in the CLAT Entrance-2015 was prescribed as 20 years and the last date for submission of Online Application Form is 31.03.2015 (11:59 p.m.), and the exam is scheduled on 10.05.2015.

12. According to the petitioners, they have completed all the requisite qualifications i.e. they have passed 10+2 or equivalent examination with more than 45% marks (40% for SC and ST Candidates) at the time of admission.

13. Petitioners tried to fill up the form for CLAT-2015 online but their applications were not accepted by the computer database as they were shown to be overage.

14. Learned counsel for the petitioners submitted that the BCI has withdrawn Clause 28 Schedule III Rule 11 of the Legal Education Rules, 2008 whereby the upper age limit was fixed by the BCI. Therefore, Respondent No. 3 neither has any power nor any discretion to fix the upper age limit for being eligible for appearing in CLAT-2015.

15. Heard Smt. Sushmita Mukherjee and Sri Abhijeet Mukherj, learned counsel for the petitioners and perused the record.

16. Since the respondents have not appeared despite the service of notice, I have not had the benefit of hearing the respondents. However, keeping in view the nature of the case and the urgency involved in the matter, this matter is being heard and decided finally so that the students who are appearing for CLAT-2015 may not have any kind of uncertainty and confusion and their preparation for CLAT-2015 may not be hampered.

17. Admittedly, the Bar Council of India as well as Bar Council of different States have been constituted under the Advocates Act, 1961 to consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar.

18. A perusal of the provisions of the Advocates Act clearly goes to show that the Bar Council of India is a statutory authority constituted under Section 4 of the Advocates Act, 1961. It is competent to lay down the standards of legal education and recognition of the degree in law for admission as an advocate. Section 7 of the Advocates Act lays down the functions of the Bar Council of India which includes promotion of legal education and to lay down standards of such education in consultation with the Universities in India and the State Bar Councils. Sections 15 and 49 of the Advocates Act further empower the Bar Council of India to frame Rules for carrying out all its functions.

19. On 14.9.2008, the Bar Council of India passed the Resolution No. 110/2008 and formulated 'the Rules'. The Rules have been basically formulated to prescribe the standards of legal education and recognition of degrees in law for the purpose of enrolment as advocates and inspection of Universities for recognising their degree in law under Section 7(1)(h) and (i), 24(1) (c)(iii), and (iiia), 49(1)(af), (ag), and (d) of the Act.

20. Schedule-III appended to 'the Rules' prescribes the minimum infrastructural facilities required in a Centre of Legal Education for applying permission to run law courses with affiliation from an Indian University. Clause 28 of Schedule-III relates to 'age on admission', and stipulates the age limit for admission in 3 year and 5 year law courses. It reads as under:

"28. Age on admission:

(a) Subject to the condition stipulated by a University on this behalf and the high degree of professional commitment required, the maximum age for seeking admission into a stream of integrated Bachelor of law degree program, is limited to twenty years in case of general category of applicants and to twenty two years in case of applicants from SC, ST and other Backward communities.

(b) Subject to the condition stipulated by a University, and the general social condition of the applicants seeking legal education belatedly, the maximum age for seeking admission into a stream of Three Year Bachelor Degree Course in Law, is limited to thirty years with right of the University to give concession of 5 further year for the applicant belonging to SC or ST or any other Backward Community."

21. A bare perusal of Clause 28(a) shows that the maximum age for seeking admission into a stream of integrated Bachelor of Law degree program (which is of 5 years duration) the age has been limited to 20 years in case of General category applicants and 22 years in case of applicants belonging to SC, ST and other Backward communities. Similarly, Clause 28(b) prescribes a cap of 30 years in respect of General category applicants as the maximum age limit for seeking admission into a 3 years Bachelor Degree Course in Law. However, in the case of SC, ST and other backward community applicants, the concerned University has the right to give a concession of 5 years.

22. Various writ petitions were filed all over the country challenging the abovementioned rule as being arbitrary and unconstitutional. As a result, the Clause 28, Schedule III Rule 11 of the Legal Education Rules, 2008 was set aside.

23. Punjab and Haryana High Court in the case of Ankit Bhardwaj Vs. Bar Council of India (13846 of 2010), while setting aside the aforementioned rule, inter alia, observed as follows:

"We find that the provisions of Clause-28 of Schedule-III appended to the Rules are beyond the legislative competence of the Bar Council of India. Clause-28 is ultra vires the provisions of Section 7 (1) (h) and (I), 24 (I) (C) (iii) and (iiia) or

Section 49 (I) (af) and (d) of the Advocates Act. Even otherwise, the Rule is arbitrary as it introduces an invidious classification by dividing one Class of student into two artificial and irrational Classes by prescribing the maximum age for admission to law courses.

As a sequel to the above discussion, the writ petitions are allowed. The petitioners who have been admitted on the basis of the interim order would continue and their admissions should not be cancelled on the ground that they did not fulfill the criteria of maximum age."

24. The High Court of Punjab and Haryana at Chandigarh also held in the case of Rajan Sharma Vs. The Bar Council of India and another in Writ Petition No. 20966 of 2010 as follows:

"9. The impugned clause 28 dealing with the age on admission occurring in schedule-iii appended to the rules have been framed under section 7(1)(h) and (i) and 24(1)(c)(iii) and (iiia), 49(1)(af), (ag), and (d) of the Advocates Act. section 7 of the Advocates Act deals with the function of the Bar Council of India and clause 7(1)(h) and (i) only deals with such functions of the Bar Council of India, which are aimed at promoting legal education and to lay down standards of such education in consultation with the universities in India imparting such education and to recognize the universities whose degree in law shall be a qualification for enrolment as an advocate. therefore, this clause would not arm the Bar Council of India to incorporate the provisions in the rules like clause 28 concerning the age on admission to LLB course. likewise, section 24(i)(c) deals with person who may be admitted as an advocate on a state roll. it has got nothing to do with the age on admission and cannot be construed to have conferred power on the Bar Council of India to prescribe the maximum age for the purposes of admission to LLB five years' course or LLB three years' course.

10. We are left to deal with section 49(1)(af) and (ag) of the Advocates Act. the aforesaid clause (af) deals with the minimum qualification required for admission to a course of degree in law in any recognized university and clause (ag) deals with the class or category of the persons entitled to be enrolled as advocates. clause (d) of section 49 (i) of the Advocates Act deals with the standards of legal

education to be observed by universities in India and the inspection of universities for that purpose. we are afraid that even this clause would not extend to grant competence to Bar Council of India to incorporate a provision concerning the maximum age for admission to LLB course. the matter has been discussed in detail in Indian Council of Legal aid and Advice's case (supra) by Hon'ble the Supreme Court. it is also relevant to mention that a similar view was taken by a Division Bench of Madras High Court in the case of M. Radhakrishnan v. the Secretary, the Bar Council of India AIR 2007 Madras 108. Therefore, we find that the provisions of clause 28 of schedule-iii appended to the rules are beyond the legislative competence of the Bar Council of India. clause 28 ultra vires the provisions of sections 7(1)(h) and (i), 24(1)(c) (iii) and (iiia) or section 49(1)(af) (ag) and (d) of the advocate act. even otherwise, the rule is arbitrary as it introduces an invidious classification by dividing one class of student into two artificial and irrational classes by prescribing the maximum age for admission to law courses.

12. As a sequel to the above discussion, the writ petitions are allowed. the petitioners who have been admitted on the basis of the interim order would continue and their admissions should not be cancelled on the ground that they did not fulfill the criteria of maximum age."

25. Similar orders were passed by various other High Courts of this Country. As a consequence thereof, the Bar Council of India withdrew the condition imposing the maximum age through a notification dated 28th September, 2013 wherein it was mentioned, inter alia, as follows:

"The Bar Council of India at its Meeting held on 29th September, 2013 vide item No. 331/2013 considered the modified report dated 28.9.2013 submitted by the Member, Mr. S. Prabakaran in regard to Clause-28 and passed the following Resolution No. 231/2013 Council has considered the Secretary's Note as well as modified report submitted by the Hon'ble Member, Mr. S. Prabakaran in regard to Clause-28, Schedule-III, Rule-11 of the Rules of Legal Education-2008. The modified report submitted by Hon'ble Member, Mr. S. Prabakaran is accepted and office is directed that this modified report be Gazetted in Gazette of India. Earlier report dated 28.7.2013 along with resolution which was published in Gazette of

India vide: Extraordinary Part-III, Section 4, September 28, 2013 stands withdrawn."

26. A bare perusal of the last paragraph of the said notification clearly records that in many of the States, after due deliberations an opinion had been formed that Clause-28, Schedule-III, Rule-11 of the Rules of Legal Education-2008 was ultra vires, unconstitutional, irrational and wholly arbitrary and it was in such circumstances, the said Clause-28, Schedule-III, Rule-11 of the Rules of legal Education-2008 was withdrawn by the Bar Council of India.

27. The above mentioned notification and resolution was published in The Gazette of India on 31.10.2013 under the head of "Extra Ordinary- Part-III Section 4'.

28. Despite the fact that said Clause 28 was withdrawn, Respondent No. 3, the Vice Chancellor/Convener, Dr. Ram Manohar Lohiya National Law University while issuing the notice/advertisement for CLAT 2014-15 has introduced the condition fixing the upper age limit of 20 years in case of General candidates and 22 years in the case of SC/ST/PWD (Persons with Disability Candidates) for appearing in the examination.

29. I failed to find any provision either under the State Universities or under the National Law School of India Act, 1986 or any other law whereby examination conducting universities have been empowered to fix upper age limit in the Common Law Entrance Examination. The statement of objects and reasons of National Law School of India Act, 1986 clearly lays down that one of the functions of the Bar Council of India is the promotion of legal education. For ready reference, the Statement of Object and Reasons of National Law School of India Act, 1986 is extracted herein below;-

"Act 22 of 1986.- One of the functions of the Bar Council of India is promotion of legal education. To carry out that object the Bar Council of India created a charitable trust called the Bar Council of India Trust which in turn registered a Society known as the National Law School of India Society, in Karnataka. The Society framed necessary rules to manage the National Law School of India with powers to confer degrees, diplomas, etc., and requested the State Government to

assist it, by establishing the School as a University by a statute so that it could carry out its objects effectively. The State Government considers it desirable to encourage the establishment of such a national level institution in the State.

30. It has also been stated at the Bar that there is no upper age limit for taking admission in any other examination i.e. B. Ed., C. A., C. S. and M. B. A. as restriction of the age to take admission violates the fundamental right as envisaged under Article-19 of the Constitution of India.

31. I am constrained to say that the Respondent No. 3 has completely shut its eyes and has not considered that when the Bar Council of India itself has withdrawn the notification prescribing upper age limit as 20 years for admission in the stream of Integrated Bachelor of Law Degree Program by means of notification dated 28.9.2013, Respondent No. 3 had no authority in law to prescribe the upper age limit for appearing in CLAT-15 which is merely an examination conducting university. As stated earlier, condition regarding upper age limit fixed by the BCI has already been held as ultra vires and unconstitutional by various High Courts.

32. The University cannot go beyond the statutory provisions as have been laid down under the Advocates Act and the Bar Council of India Rules. Thus, the CLAT organizing University went beyond the power envisaged under the Act by prescribing 20 years as the maximum age limit for CLAT Examination-2015.

33. The aforesaid discussion clearly indicates that the age limit indicated in the notice/advertisement for CLAT-2015, as well as the information Brochure is without any authority of Law, as there is no provision of Law which clothes Respondent No. 3 with the power to fix the upper age limit. Respondent No. 3 is an agency which was given the responsibility to hold CLAT-2015 on behalf of the concerned law colleges/universities, in accordance with the admission procedure as laid down by the BCI. From the Information Brochure of CLAT it is apparent on the face of record that the Colleges/Universities which are included in CLAT -2015 are in fact recognized by the BCI and follow the syllabus pattern fixed by the BCI. Hence, the rules framed by the BCI are mandatory in nature and must be followed by all the concerned Colleges and Universities recognized by it.

34. In view of the above discussions, the impugned advertisement/notice issued by the Respondent No. 3 fixing upper age limit cannot stand the scrutiny of law. The condition imposed by the advertisement/notice (Annexure- "1' to the writ petition) for Common Law Admission Test -2015 to the extent of prescribing the Age Limit by the Conducting University/Respondent No. 3 for the Under Graduate Programme, Five Year Integrated LLB Programme for general candidate as well as SC/ST/PWD (Persons with Disability Candidates) candidates is hereby quashed. The Vice Chancellor/Convener of Dr. Ram Manohar Lohiya National Law University is directed to accept the petitioners' admission form and to allow the petitioners-candidates as well as the other similarly situated candidates to appear in CLAT-2015 examination subject to their satisfying other conditions of eligibility, except the requisite condition as to age stipulated in the notice/advertisement. The Respondent No. 3 is further directed to upgrade its website accordingly within a period of one week from the date of receipt of a certified copy of this order.

35. With this observation, this writ petition stands allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com