

The High Court of Madhya Pradesh
WP 11350/2018

(BRAJ MOHAN MAHAJAN Vs BAR COUNCIL OF STATE OF MADHYA PRADESH & OTHERS)

Gwalior, dated : 11.09.2018

Shri Braj Mohan Mahajan, petitioner in person.

Shri J.P. Mishra, Advocate for the respondents.

The writ and supervisory jurisdiction of this Court is invoked praying for the following relief:-

“7.1 May pleased be order to respondents Nos. 1 to 2 for enrolling the petitioner within 7 days from the date of submitting the enrollment application.

7.2 May pleased be order to respondents No. 1 & 2 to provide an amount of five lacs rupees or suitable exemplary compensation to aggrieved petitioner under public law remedy for established infringement of his indivisible right guaranteed under article 21 of the constitution of India viz. Right to life and liberty as well as violation of human rights.

7.3 Pass such other and further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

Without entering into prolixity of pleadings and detailed factual matrix involved, the short question that is raised in the present petition is as to whether pendency of criminal case arising out of crime No. 17/2006, Police Station Gwalior, District Gwalior bearing offence punishable u/S 452, 352, 323, 294 of IPC can enable the M.P. State Bar Council to decline registration of the petitioner as an Advocate under the Advocates Act, 1961.

It is not disputed by the rival parties that the aforesaid criminal case is still pending adjudication before the trial Court.

State Bar Council in its reply has justified its stand on the anvil of said pending criminal case which according to the Council is a justifiable cause for declining registration as lawyer.

The Advocates Act in Section 24-A provides disqualification which is reproduced below for ready reference:-

“Section 24A in THE ADVOCATES ACT, 1961

1[24A. Disqualification for enrolment.—

(1) No person shall be admitted as an advocate on a State roll—

(a) if he is convicted of an offence involving moral turpitude;

(b) if he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955 (22 of 1955); 2[(c) if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude.

Explanation.—In this clause, the expression “State” shall have the meaning assigned to it under Article 12 of the Constitution:] Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a

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period of two years has elapsed since his 3[release or dismissal or, as the case may be, removal].

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958 (20 of 1958).J”

Learned counsel for the Bar Council invites attention of this Court to clause (e) of sub Section (1) of Section 24 of Advocates Act, 1961 to contend that the petitioner who desires to be registered as an Advocate and wants to be admitted to the Rolls of State Bar Council should satisfy such other conditions as may be specified in the rules made by the Council under Chapter III of the Advocates Act, 1961. In continuation it is submitted that the State Bar Council has passed a resolution on 27.05.2017 that in view of decision of the Single Bench rendered in W.P. No. 4561/2017 on 27.02.2017 at the Principal Seat lying down that pending of criminal case is enough to incur disqualification for being registered as an advocate under the 1961 Act.

The order dated 27.02.2017 passed in W.P. No. 4571/2017 is on record filed alongwith return which is based solely on the disqualification provided in Section 24-A of Advocates Act which inter alia prescribes dismissal from service for charges involving morale turpitude and conviction in offences involving moral turpitude as statutory bar for enrollment as an Advocate.

The said judgment was based on the factual matrix where the petitioner therein was convicted for offence punishable under the Prevention of Corruption Act, 1988 and his appeal before the High Court was pending. The said judgment is of no avail to the Council since petitioner does not suffer any conviction for any offence.

Since the resolution of the State Bar Council dated 27.05.2017, has not been challenged before this Court, no comment is made in that regard.

In view of above, petitioner merely being an accused in the aforesaid criminal case for offences where guilt is yet to be proved, in the considered opinion of this Court, cannot deny entry to petitioner entry into the State Rolls as an Advocate for the

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simple reason that petitioner for the time being does not incur any disqualification u/s 24-A of Advocates Act.

Before parting it would be essential to observe that the enabling provision u/S 24(1)(e) cannot override the provision of Section 24-A of Advocates Act which is couched in prohibitive language. Going by the Rules of interpretation of statutes the provision of Section 24-A of the Advocates Act cannot be supplanted by Section 24(1)(e), unless the Council can point out any other condition specified in rules framed by the State Bar Council under Chapter III of Advocates Act, which is not the case herein.

In view of above, present petition stands allowed and the M.P. State Bar Council is directed to re-consider the application of the petitioner filed for enrollment as an Advocate strictly in terms of Section 24 of the Advocates Act and grant him entry into State Rules as Advocate in the State Bar Council if he is not disqualified u/S 24-A of the Act.

Let the abovesaid exercise be completed within a month from the date of production of this order.

So far as prayer for compensation is concerned, petitioner is free to approach the Court of civil jurisdiction since number of disputed questions of fact will have to be gone into for adjudicating the said prayer.

However, since the petitioner has been denied entry into the State Rolls as Advocate for reasons which are apparently illegal and which are not expected of a statutory authority of the like of M.P. Bar Council, to assign, this Court imposes cost of Rs. 5000/- upon the respondent Council which is directed to be paid to the petitioner within a month.

(Sheel Nagu)
Judge