

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P. No. 30547 of 2014

Akshai Mani,
S/o T.K.S.Mani,
66/69, Adam Street,
Mylapore, Chennai- 600 104

...Petitioner

-- Versus --

1. Bar Council of India,
Rep. by its Secretary,
No.21 Rouse Avenue Institutional Area
New Delhi- 110002

2. Bar Council of Tamil Nadu &
Puducherry,
Rep by its Secretary,
N.S.C.Bose Road, George Town
Chennai- 600 104

...Respondents

AFFIDAVIT FILED BY THE PETITIONER

I, Akhsai Mani, son of T.K.S.Mani Hindu, aged about 23 years, residing at 66/69, Adam Street, Mylapore, Chennai- 600 004 do hereby solemnly affirm and sincerely state as follows:-

1. I am the Petitioner herein and as such I am well acquainted with the facts and circumstances of the case. I further submit that this is the first Writ Petition before this Hon'ble Court and I have not filed any other petition in respect of the same relief.

2. I humbly submit that I am an Advocate practising before the Hon'ble Madras High Court and I had enrolled myself with the 2nd Respondent in August, 2014. I respectfully submit that I am filing this present writ petition as public interest litigation for the benefit of thousands of young lawyers like me. I submit that I am filing this petition using my own funds and I have no private or vested interest in the matter. I also undertake to pay costs if this Hon'ble Court finds the present petition to be frivolous or vexatious.

3. I humbly submit that before my enrolment, as a Law Student in my law school, I have participated and won laurels for my institution at various National and International Moot Court Competitions, Debate Competitions, Oratorical competitions and seminars. I have also attended various internships in the Madras High Court and Subordinate Courts. I am from a family with no legal background and I am very passionate about practising as an Advocate before this Hon'ble Court. I also intend to practise in the Hon'ble Supreme Court of India in the coming years.

4. I submit that to my shock and surprise, the 1st Respondent in the Official Gazette of India, dated 30.10.2014 in Part III, Section 4 published the Bar Council of India Certificate of Practise and Renewal Rules, 2014. The said rules appears to have been formulated based on the recommendation of the Sub-Committee in exercise of the powers conferred under Section 49(1)(ag), 49(ah) and 49(i) of the Advocates Act, 1961.

5. It is submitted that the Rules mandate that the Advocates have to renew their practise every 5 years and Certificate of Practise shall be issued for the said purpose. The Rules also mandates that every advocate must be compulsorily a member of a bar association as per Rule 6 and that in case of change of membership from one association to another, the same shall be notified to the State Bar Council.

6. It is submitted that as big blow to young lawyers, Rule 7.1, 7.2 and 7.3 stipulates that newly enrolled lawyers can practise only in Subordinate Courts for two years and for practising in the Supreme Court, they will have to have practised for 2 years in Subordinate Courts and 3 years in High Courts. The Rules state as under:

"7. Conditions for practising law in different Courts of law:

7.1 *An advocate, enrolled on the roll of advocates after the enforcement of these Rules, after having obtained/renewed Certificate of Practise, shall be entitled to practise law only before such Courts of Law as are equivalent to Sessions Judge or District Judge and such other Courts in specific field/s of law that are exercising original jurisdiction in the matters covered by such fields of law and all other Courts which are subordinate to them.*

7.2 *An advocate, enrolled on the roll of advocates after the enforcement of these Rules, after having practised law before Courts, Tribunals etc. mentioned in Rule 7.1 for a period of not less than two (2) years, shall be entitled to practise law before a High Court and such other Courts in specific fields of law that are exercising appellate or revisional jurisdiction in the matters covered by such fields of law and all other Courts which are subordinate to them.*

7.3 *An advocate enrolled on the roll of advocates after the enforcement of these Rules, after having practised law before Courts of Law mentioned in Rule 7.2 for a period of not less than three (3) years shall be entitled to practise law before the Supreme Court of India subject to such other terms and conditions as may be in force In the Supreme Court of India."*

7. It is respectfully submitted that these rules are ex facie contrary to Section 30 of the Advocates Act, 1961 which provides that the right to practise before all Courts in the country including the Supreme Court. Section 30 states as follows:

"30. Right of advocates to practise.—*Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,—*

(i) in all courts including the Supreme Court;

(ii) before any tribunal or person legally authorised to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

8. It is submitted that as per Section 30 of the Advocates Act which has been passed by the Parliament provides an absolute right for an Advocate to practise in all Courts and Tribunals, including the Supreme Court. This right that has been conferred by a Parliamentary Legislation cannot be taken away or abrogated by any Rule or Subordinate Legislation that has been framed by the Respondents. These Rules has created a huge furore among the young lawyers practising before this Hon'ble Court and has proven to be a huge setback for young lawyers and law students aspiring to take up law practise before the Supreme Court and High Courts.

9. It is submitted that the percentage of young bright law students from National Law Schools enrolling and practising before the Courts across the Country is dwindling every year due to other avenues like Law Firms, LPO's, Legal Advisers in companies and corporations etc.

10. I humbly submit that such a measure by the Bar Council of India would be the last nail in the coffin for young and aspiring lawyers who are interested in practise of law before the Supreme Court and High Courts. The right to practise conferred under Section 30 of the Act is derived from Article 19(1)(g) of the Constitution of India and in the event there has to be any fetter imposed exercising the power conferred under Article 19(6), it can be done only by way of a statutory amendment to the Advocates Act and not by Rules framed by the 1st Respondent.

11. It is submitted that Section 30 has been notified in the year 2011 and thus all lawyers irrespective of their experience at the Bar are entitled to practise before all Courts. The choice of a lawyer to practise before either before the Supreme Court or High Court is his individual right guaranteed by the Constitution of India under Articles 19(1)(g) and 21. It is pertinent to point out that the Hon'ble Division Bench of the Delhi High Court in **Balraj Singh Malik v. Supreme Court of India through its Registrar General** by order dated 13.02.2012 has held that:

"26. Section 30 of the Act entitles every advocate, as of right, to practice throughout the territories to which this Act extends and specifically mentions all Courts including the Supreme Court. Thus, no doubt, right to practice in the Supreme Court is conferred...."

29.The Court system being pyramidal in structure makes the Supreme Court as the Court of last resort so it is helpful to have someone who is equipped to deal with all kinds of matters where the litigant is not able to afford the Senior Counsel or some other counsel. No doubt, AOR can engage a counsel other than a Senior Counsel and in that sense every advocate has right to argue before the Supreme Court. However, with this system, the other advocates who may be authorized by AOR would be an advocate who has experience and confidence of the litigant."

12. I humbly submit that the impugned Rules, more specifically Rule 7 of the Bar Council of India Certificate of Practise and Renewal Rules, 2014 is squarely arbitrary, unconstitutional, unjust, unreasonable and against law and also violates the fundamental rights guaranteed under Art.14, Art.19(1)(g) and Art.21 of the Constitution of India.

13. I humbly submit that as per the existing practice under the Supreme Court of India Rules, 2013, any advocate who has enrolled in the Bar Council and has practised for one year shall be entitled to appear before the Hon'ble Supreme Court even if he is not an Advocate on Record (AoR). Further for a person to be registered as an AoR, he shall be practising for four years in the Court and completed one year training with an AoR, after which he shall sit for the AoR Examination. Hence an Advocate who has 5 years standing at the Bar is entitled to be registered as an AoR after passing the Examination conducted by the Hon'ble Supreme Court.

14. But however as per the existing Rules, an Advocate should have practised for a total period of 5 years in the High Courts/Subordinate Courts cannot take part in the AoR Examination though he is otherwise qualified to take part as per the Supreme Court of India Rules, 2013. Hence the present impugned Rules, 2014 is also in derogation of the Supreme Court of India Rules, 2013 which has been formulated exercising power under Article 145 of the Constitution of India.

15. I further submit that the law students upon having enrolled as Advocates till October, 2014 have the vested right to start practise immediately before the Hon'ble Supreme Court of India and High Courts after acquiring the law degree prescribed and recognised by the Bar Council of India. I further submit that every advocate who has satisfied the conditions prescribed under the Advocates Act, 1961 has a legitimate expectation that he shall be permitted to practise as an advocate immediately upon completion of his law degree course before all Courts.

16. Hence the above impugned rules frames by the Bar Council of India is violative of the principle of legitimate expectation and infringes the vested right of a law graduate to practise before the Court of law. Therefore this decision is absolutely unreasonable and arbitrary and violates Art.14 of the Constitution of India.

17. Under S.30 of the Advocates Act, every person who has enrolled himself as an advocate is conferred with the right to practice before all courts. This right is a statutory right conferred by the statute and can only be restricted if any provision of the statute provides for such a restriction.

18. It is also to be noted that the law graduate's right to livelihood under Art.21 of the Constitution of India is affected by the impugned rules as his earning capacity is totally deprived of if he is only asked to practise before the Subordinate Courts. The young lawyers who are to be encouraged and motivated by the 1st Respondent, by the impugned rules are only put to serious hardship and prejudice. The Constitutional Bench of the Supreme Court while dealing with this question in **Aswini Kumar Ghose v. Arabinda Bose** AIR 1952 SC 369 stated as follows:

"A statutory right of practice cannot as a matter of constitution be taken to be controlled by reference to some other rules and unless expressly reserved by the Act itself, such right could not be lawfully interfered with."

19. Further in **Devata Prasad v. Chief Justice and Judges, Patna High Court** AIR 1962 SC 201, the other Constitutional Bench of the Supreme Court while explaining the ratio of its decision in the above said case of **Aswini Kumar Ghose(supra)** held that:

"Unless the power is expressly reserved by the statute, no rule can be made repugnant to the right to practice conferred under the Act."

Further in **V.Sudeer v. Bar Council of India & Ors** AIR 1999 SC 1167, it was held that:

"A conjoint reading of Sections 23, 29 and 33of the Advocates Act leaves no room for doubt that once a person is found qualified to be admitted as an advocate on the State roll having satisfied the statutory conditions of eligibility laid down in sub-section (1) of Section 24, he will

automatically become entitled as of right to practise full-fledged in any Court including the Supreme Court.”

Therefore, it is undoubted that the Act confers an explicit right to practice before the Courts of law upon enrollment as an advocate. But the impugned rules deny the right of practice guaranteed under the Act and hence nullifies and overrides the provisions of the Parent Act itself. This is impermissible in law and therefore, the impugned rules are ultra vires, illegal and unconstitutional.

20. It is also to be noted that the only division of Advocates under the Act has only been on the basis of their ability, standing at the Bar or special knowledge or experience in law, whereby under S.16 of the Act, the Advocates are classified into two categories, namely 'Senior Advocates' and 'Advocates'. Hence there cannot be classification of advocates based on years of practise and there cannot be any curtailment of their right to practice. Such demarcation would be against Section 16 of the Act.

Having no other effective alternative remedy I am filing the present writ petition before this Hon'ble Court by invoking Article 226 of the Constitution of India challenging the impugned Rule 7 of the Bar Council of India Certificate of Practise and Renewal Rules, 2014 among other following

GROUNDS

a) The impugned Rule is unconstitutional, arbitrary, unjust unreasonable and against law.

b) The impugned rule which is a subordinate legislation is in contravention of Section 30 of the Advocates Act, 1961 and Article 19(1)(g) of the Constitution of India and hence is ultra vires and illegal.

c) The right to practise before all Courts conferred under Section 30 of the Advocate Act cannot be taken away by the impugned rules. The impugned rules being only a subordinate legislation that has been framed exercising the power conferred under the Act cannot override or supersede the conditions prescribed under the parent Act.

d) It is undoubted that the Act confers an explicit right to practice before the Courts of law upon enrollment as an advocate. But the impugned rules deny the right of practice guaranteed under the Act and hence nullifies and overrides the provisions of the Parent Act itself. This is impermissible in law and therefore, the impugned rules are ultra vires, illegal and unconstitutional.

e) There cannot be classification of advocates based on years of practise and there cannot be any curtailment of their right to practice. Such demarcation would be against Section 16 of the Act and against Article 14 of the Constitution of India.

f) The Impugned Rules is against the law laid down by the Supreme Court of India in a catena of decisions, including **Devata Prasad v. Chief Justice and Judges, Patna High Court** AIR 1962 SC 201; **V.Sudeer v. Bar Council of India & Ors** AIR 1999 SC 1167; **Aswini Kumar Ghose v. Arabinda Bose** AIR 1952 SC 369 and against the judgment of the Delhi High Court in **Balraj Singh Malik v. Supreme Court of India through its Registrar General.**

The petitioner reserves the right to raise further additional grounds, if necessary during the course of the hearing or at a later point of time.

I humbly submit that I have not been served a copy of the impugned Rules framed by the 1st Respondent. However I have obtained a copy from the official website of the Respondent and I am filing the same herewith.

For the reasons stated above it is humbly prayed that this Hon'ble Court may be pleased to dispense with the production of the original or certified copy of the Bar Council of India Certificate of Practise and Renewal Rules, 2014 published in Official Gazette of India in Part III, Section 4, dated 30.10.2014 and thus render justice.

I humbly submit that many young lawyers below two years of practise have started practising in the High Court and if they are prevented from practice by the impugned rules they would be put to prejudice. Hence, unless an interim order of stay of the operation of the impugned rules is not granted the young lawyers at large will be put to great hardship, inconvenience and irreparable loss and prejudice.

For the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to grant interim stay of Rule 7 of the Bar Council of India Certificate of Practise and Renewal Rules, 2014 pending disposal of the above writ petition and thus render justice.

Hence for the reasons stated above, it is humbly prayed that this Hon'ble Court may be pleased to issue a WRIT OF DECLARATION or any other appropriate WRIT or ORDER or DIRECTION declaring Rule 7 of the Bar Council of India Certificate of Practise and Renewal Rules, 2014 as Void, Illegal and Unconstitutional and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai
This the 17th day of November, 2014
And signed his name in my
Presence.

BEFORE ME

Advocate, Chennai

MEMORANDUM OF WRIT PETITION
(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE HIGH COURT OF JUDICATURE AT MADRAS
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Chennai- 600 104

...Respondents

WRIT PETITION

The address for service of all notices and processes on the petitioner is that of his Counsel **M/s. NAVEEN KUMAR MURTHI**, at 221, New Addl Law Chambers, High Court, Chennai-104.

The address for service of all notices and processes on the respondents are the same as stated above.

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue a **WRIT OF DECLARATION** or any other appropriate WRIT or ORDER or DIRECTION declaring Rule 7 of the Bar Council of India Certificate of Practise and Renewal Rules, 2014 as Void, Illegal and Unconstitutional and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Dated at Chennai on this 17th day of November, 2014

COUNSEL FOR THE PETITIONER