

RAJASTHAN HIGH COURT

Dashrat Chand Singhvi

Vs.

Bar Council of Rajasthan

C.W.P. No. 6950 of 2003

(Prakash Tatia, J.)

10.05.2005

ORDER

Prakash Tatia, J.

1. Heard petitioner as well as learned counsel for the respondent.
2. The petitioner submitted an application for his enrollment as an advocate before the Bar Council of Rajasthan in the year 1986 precisely on 25-1-1986. According to petitioner, the petitioner's application has not been decided by the Bar Council of Rajasthan till the year 2003, therefore, the petitioner has preferred this writ petition and is seeking direction against the respondent Bar Council of Rajasthan to enroll the petitioner as an advocate and action of the Bar Council of Rajasthan for delaying timely consideration of petitioner's case be deprecated and further compensation be awarded to the petitioner.
3. According to petitioner he submitted application for enrollment in the year 1986 and petitioner was waiting for any communication from Bar Council of Rajasthan, but his application was neither rejected nor he was enrolled as an Advocate, then petitioner contacted Secretary, Bar Council of Rajasthan several times, but every time, the Secretary of the Bar Council of Rajasthan told that petitioner's case file is not traceable. It will be worthwhile to mention here that the petitioner did not mention any date or even year when he contacted the Secretary, Bar Council of Rajasthan for this purpose and straightway in the writ petition stated "that the petitioner recently sent a letter dated 28th July, 2003 to the Secretary, Bar Council of Rajasthan (Annex. 1)". According to petitioner that letter was replied by the Secretary, Bar Council of Rajasthan, but the reply was evasive reply. Without disclosing anything in between

1986 to 2003, the petitioner therefore, on the basis of above "recent letter dated 28th July, 2003", preferred the present writ petition before this Court on 16th Dec., 2003 after serving a notice for demand of justice dated 5th Nov., 2003.

4. The reply to the writ petition has been filed by the Bar Council of Rajasthan stating therein that the petitioner concealed the material facts and wrongly stated that the reply of the Bar Council of Rajasthan was evasive. The respondent-Bar Council of Rajasthan also placed on record the copy of the letter dated 26th Nov., 1986 and the copy of the note-sheet as Annxs. R/1 and R/2 and the application which was submitted by the petitioner for returning the documents dated 5th June, 1992 and the copy of the reply, which was sent by the Secretary, Bar Council of Rajasthan to the petitioner's advocate.

5. The petitioner submitted rejoinder explaining all allegations leveled against him.

6. Both the parties were directed this Court on 28th April, 2005 to explore the possibility of settlement amicably. Today both the parties admit that the matter has not been settled between the parties. Both the parties are finding fault of other for not settling the dispute. That is not relevant for the purpose of deciding this writ petition because this Court's indulgence by order dated 28th April, 2005 is for redressed of the dispute amicably only and not for creating new disputes between the parties. Since the matter has not been settled, therefore, the writ petition has been heard on merit.

7. According to petitioner, the Bar Council of Rajasthan was under obligation to decide the petitioner's application for enrollment and in case the State Bar Council was of the view that petitioner's application for enrollment was liable to be rejected then it could have referred the matter to the Bar Council of India in view of the Rule 4 of the Rules framed for the admission and enrollment of the advocates. The petitioner also vehemently submitted that the Bar Council of Rajasthan had no jurisdiction to sit over the petitioner's application and in fact, the Bar Council of Rajasthan from the very beginning raised unnecessary objections about the petitioner's enrollment and according to petitioner all documents, which were demanded from the petitioner by the Bar Council of Rajasthan, reference of which is in the Annex. 2 were not very relevant for the purpose of deciding the petitioner's application for grant of enrollment. It is also submitted that the Bar Council of Rajasthan was fully aware that the petitioner was in service earlier and petitioner's services were terminated by the

employer and he was punished for committing contempt of Court. Since all above facts were in the knowledge of the Bar Council of Rajasthan, therefore, the Bar Council of Rajasthan could have rejected the petitioner's application for enrollment forthwith on these grounds, if those were the valid reasons for rejecting of the petitioner's application for enrollment. The petitioner questioned whether the Council was waiting for the decision in the matter of wrongful termination of the petitioner's services so that after decision about the petitioner's challenge to his termination of service, the petitioner may be enrolled as an advocate.

8. The petitioner when asked to explain the reasons why the writ petition was filed after such an inordinate delay, the petitioner submitted that coming in Court is not an easy task because the litigants are required to pay the heavy fees to the advocates and there is no possibility that the Court will decide the matter expeditiously and according to petitioner, his one more matter is pending before this Court since 1996 and about 9 years have already passed. It is also submitted that in appropriate case, the Court may condone the delay.

9. The contention of petitioner with all force is that the action of the Bar Council of Rajasthan of keeping the application pending cannot be justified by any stretch of imagination and when the action cannot be justified, the delay may not come in the way whereas the respondent's objection in the reply is about the matter in which and the time at which the writ petition has been filed. The respondents in preliminary objection stated that suddenly, the petitioner sent a letter on 28th July, 2003 and preferred writ petition before this Court with incomplete and vague facts. The petitioner failed to disclose that his application was considered and even his original documents on his request were returned to him in the year 1992. Even before that he was given letter to remove the defects on 18th March, 1986 and reminder on 2nd Sept., 1986 and finally by registered post by 26th Nov., 1986. Since the petitioner did not remove the defects therefore, the application was consigned to record.

10. It is also stated that the petitioner also disclosed in his application for enrollment that he was in service in Rajasthan State Road Transport Corporation and his services have been terminated in the year 1982, but he has not received the termination order and he is seeking remedy for reinstatement. The petitioner also disclosed that he had been awarded 15 days' sentence by the High Court under contempt of Court proceedings

11. So far as explanation given by the petitioner for not filing the writ petition since 1986 till 2003 is concerned, cannot be appreciated in any manner. An advocate is expected to assist the Court and the profession of advocacy is not an incidental job which may be felt in the bucket of anybody at any time in his life. It is not an opportunity which can be found lying on road, which may be picked up by anybody at any time in his life and as per his whim. The petitioner's explanation for delay is not explanation for delay in filing the writ petition, but shows that he had no faith in Court for which he rely upon his subsequent solitary experience, that too, without pleading any ground for filing the writ petition after almost decades. The petitioner, who himself submitted his application for enrollment in the year 1986 if had faith in Court only to the extent that he may not be able to get the services of the advocate to conduct his case, as the services of the advocate will be beyond his means then there is no factual foundation, neither in the writ petition nor it comes from the proceedings in this writ petition as this writ petition has been filed by the petitioner himself and not through advocate. The writ petition is being conducted by the petitioner himself and not through any advocate. The Court assume that petitioner might not had sufficient funds to engage advocate, therefore, he himself might have filed the writ petition and is contesting the case for himself.

12. The petitioner's contention that when the limits crossed then only he approached the Court by filing the writ petition clearly reveals that the petitioner has unilaterally and arbitrarily fixed the limit of his tolerance for which he may have right, but that is not relevant while examining the cause by which petitioner could not approach the Court. The reason for his own satisfaction may be his own satisfaction, but when one wants to assert his legal right, he should show his either legal alive right or lawful cause for condoning the delay and his vigilance for protecting his any claim and for the relief.

13. The contention of petitioner that it was his experience, which shows that the litigants cannot get the relief in Court in time and petitioner believed that he also might not have got the relief from the Court even if he would have come before the Court in time, is based only on the atmosphere created by all what has been said at various levels by various persons, may be from judicial side itself, but without having better alternate to the judiciary. Therefore, condemning the judiciary for not granting relief in time without making any efforts for finding out even reasons is only a hue and cry to divert the attention of the public.

14. The petitioner has raised objection that he would not have get the relief from the Court if he would have come before the Court even in the year 1986 and 1988 and the petitioner's objection is that his matter is pending before this Court since 1996 and about 9 years have passed and it has not been decided by the Court. Nobody is asking petitioner or the like persons why this objection has been raised after decades and not earlier? Judiciary is, therefore, paying the cost today of past mismanagement in making proper arrangements by the visionaries. All the litigants are also party to the delays caused in the Courts and it is not a case of omission, but conscious negligence of all concerned, which has created this situation of non-delivery of the decisions to the parties in time.

15. The profession of law cannot be made available to the persons, who are not serious about the profession and want to have the profession as a casual and incidental benefit, which may fall in their life because of some fortunate or unfortunate incident (like termination of service etc.) in and at any period of life.

16. In view of the above, the explanation given for not filing the writ petition, is rejected.

17. The petitioner's contention that the Bar Council has not decided the petitioner's application in time itself is a sufficient ground for allowing the relief to the petitioner is concerned, it may be stated that the claims which were legitimate may became stale claims and if the parties accept the inaction of the other party for long time, thereafter, it does not lie in the mouth of the complaining party to say that others inaction was more grave than inaction of his own, therefore, ignore my lapse and condemn others lapse.

18. Be that as it may, learned counsel appearing on behalf of the Bar Council of Rajasthan submits that still the Bar Council of Rajasthan is ready to consider the petitioner's application if he file fresh application and Bar Council of Rajasthan is even ready to adjust the amount, which the petitioner has already deposited with the Bar Council of Rajasthan in the year 1986 along with his application.

19. In view of the above stand of the Bar Council of Rajasthan, the petitioner may submit a fresh application before the Bar Council of Rajasthan. The Bar Council of Rajasthan may decide the application of the petitioner afresh and the amount which

petitioner has already deposited along with the application filed in the year 1986 may be adjusted against the requisite fees for enrollment of the advocate. The Bar Council of Rajasthan is directed to decide the petitioner's application in its next meeting itself, if possible and if application is found complete in all respects.

20. In view of the above, the writ petition of the petitioner is disposed of, but no relief can be granted to the petitioner which petitioner has sought in the writ petition of direction against the respondents to enroll the petitioner as advocate. No case of compensation has been made out by the petitioner against the Bar Council of Rajasthan rather the petitioner himself is guilty of filing the writ petition after inordinate delay.

Order accordingly.