

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th March, 2012

+

LPA No.311/2010

% **YOGENDRA PRAKASH JAUHARI** Appellant
Through: Mr. Manoj Sharma, Adv.

Versus

BAR COUNCIL OF INDIA & ORS. Respondents
Through: Mr. Sanjeev Sachdeva, Sr. Adv.
with Mr. Preet Pal Singh, Mr.
Abhimanyu Chopra and Ms. Priyam
Mehta, Advs.
Mr. Gagan Gupta, Adv. for R-5.

AND

+

LPA No.415/2010

% **YOGENDRA PRAKASH JAUHARI** Appellant
Through: Mr. Manoj Sharma, Adv.

Versus

BAR COUNCIL OF INDIA & ORS. Respondents
Through: Mr. Sanjeev Sachdeva, Sr. Adv.
with Mr. Preet Pal Singh, Mr.
Abhimanyu Chopra and Ms. Priyam
Mehta, Advs.
Mr. Gagan Gupta, Adv. for R-5.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. These Intra-Court appeals impugn the judgments, both dated 15.02.2010 of the learned Single Judge of this Court dismissing W.P.(C) No.7406/2009 and W.P.(C) No.12356/2009 preferred by the appellant. Notice of the appeals was issued and the counsels have been heard.

2. The appellant was employed, since the year 1992, as a Steno-typist in the Session Division, Gurgaon, Haryana. He in the academic year 1992-93 joined the LL.B Degree Course as a regular student of D.S. College, Aligarh, Dr. Bhim Rao Ambedkar University, Agra and was in the year 1997 awarded the LL.B Degree. He however continued to serve as Steno-typist and was in the year 1999 accused of an offence under The Prevention of Corruption Act, 1988 and convicted therefor on 15.02.2005. He, though preferred an appeal against the said conviction and which appeal was admitted by the Punjab & Haryana High Court for hearing but

was in April, 2005 dismissed from service subject to outcome of the said appeal. The appellant on 13.05.2005, applied to the Bar Council of Punjab & Haryana (BCPH) for enrolment as an Advocate. However, while his said application was still pending consideration, he on 30.06.2005 also applied to the Bar Council of Delhi (BCD) for enrolment as an Advocate in Delhi and was so enrolled with the BCD on 07.07.2005. Thereafter, the appellant on 11.07.2005 applied to the BCPH for withdrawal of his application for enrolment therein.

3. The BCPH however vide order dated 27.11.2005, considered the application of the appellant for enrolment and finding, that though while admitting the appeal against conviction, the appellant had been granted bail but the operation of the conviction had not been suspended during the pendency of the appeal, and being of the view that in the face of the order of conviction, the appellant was not entitled to be enrolled and further finding that the appellant had obtained the departmental permission to do the LL.B course as a private candidate only and not as a regular student and could not have while in employment attended the classes as a regular

student and thus could not have satisfied the stipulations of the Bar Council of India (BCI) of minimum regular attendance, recommended to the BCI for rejection of the application of the appellant for enrolment. The BCI vide order dated 08.03.2006 accepted the said recommendation of the BCPH and rejected the application of the appellant for enrolment. The appeal of the appellant thereagainst was also dismissed.

4. Complaints were made to the BCD also with respect to the enrolment therewith of the appellant. The said complaints were referred to the BCI. The Disciplinary Committee of the BCI vide memorandum dated 19.07.2008, recommended removal of the name of the appellant from the rolls of the BCD for the reason of the appellant while applying for enrolment with the BCD having concealed the material fact of his having earlier applied for enrolment with the BCPH. The BCI vide order dated 12.10.2008, accepted the said recommendation and ordered removal of the name of the appellant from the rolls of BCD. The review preferred by the appellant was also dismissed. Aggrieved therefrom W.P.(C) No.7406/2009 (supra) was filed.

5. The appellant on 05.04.2009 i.e. after filing W.P.(C) No.7406/2009 applied afresh for enrolment with the BCPH. The BCPH vide Resolution dated 19.07.2009 ordered fresh enrolment of the appellant. The BCI however exercising its revisionary power stayed the operation of the said Resolution and vide order dated 21.08.2009 quashed the said Resolution of the BCPH. Aggrieved therefrom W.P.(C) No.12356/2009 was preferred.

6. The order dated 12.10.2008 (supra) of the BCI impugned in W.P.(C) No.7406/2009 records, finds, holds:

- (i) that it was incumbent upon the appellant to while applying for enrolment with the BCD to disclose that he had already applied for enrolment with the BCPH and the said application was still pending;
- (ii) the appellant fraudulently and with a *mala fide* intent withheld the information of pendency of his application with BCPH;
- (iii) it was thus established that the appellant obtained enrolment with the BCD by misrepresentation of essential facts and

fraud.

7. The learned Single Judge has dismissed W.P.(C) No.7406/2009 observing, finding, holding:

- (i) that the appellant in his application to the BCD had against column No.20 requiring him to disclose whether he had made a previous application for enrolment as an Advocate had stated “No” when he had earlier made an application to the BCPH. The appellant thus consciously mislead the BCD;
- (ii) that it could not be said that the same was at best a concealment and not a mis-declaration as to an essential fact as contended by the counsel for the appellant – if the appellant had not written anything against the said column, he could not have claimed the same to be only a concealment; however by expressly writing “No” against the said column he had mis-declared the fact;
- (iii) that the said information is an essential fact within the

meaning of proviso to Section 26 of the Advocates Act, 1961;

- (iv) that the application form also warned the applicants that any omission to disclose or any misrepresentation would render the application invalid and liable to be cancelled;
- (v) no error could thus be found in the finding of the BCI of the appellant being guilty of suppression of an essential fact in the application made to the BCD;
- (vi) that the BCI required a student of law to put in minimum attendance of 66% of the lectures on each of the subjects;
- (vii) that the appellant had during the time when he claimed to have attended the classes of law not availed of any study leave from the Office of District and Sessions Judge, Gurgaon;
- (viii) that the appellant thus could not have attended the lectures and the BCI was correct in holding the appellant to have not satisfied the said criteria also;

- (ix) that the law college which the appellant claimed to have attended was at a distance of 170 Kms. from the place of posting of the appellant and the appellant could not possibly have attended the classes;
- (x) that the conviction of the appellant also involved moral turpitude; though the appeal against the said conviction was pending consideration before the Punjab & Haryana High Court but the conviction had not been suspended. Section 24A of the Advocates Act prohibit admission as an Advocate on a State roll for a period of two years if convicted of an offence involving moral turpitude; the said period of two years had not lapsed and the appellant was not entitled to be enrolled even on that ground.

8. W.P.(C) No.12356/2009 (supra) was also dismissed in view of the findings aforesaid in the judgment in W.P.(C) No.7406/2009 qua attendance. It was held that the appellant could not seek enrolment on the basis of such an LL.B Degree.

9. The appellant before us has contended that he has been wrongly held guilty, while applying to the BCD of having practiced fraud and concealed the earlier application to the BCPH with *mala fide* intent. It is argued that if the appellant had intended any concealment, it would have been of the factum of his conviction but which was fully disclosed. As far as the information furnished against column No.20 (supra) of the application form is concerned, it is argued that the appellant was under the *bona fide* impression that the same did not apply to him since no decision had been taken on his application to the BCPH. It is further argued that the learned Single Judge had erroneously held the distance between the place of posting of the appellant and the law College as 170 Kms. when infact it was around 80 Kms. away and which he was traversing every day in a Jeep. It is further argued that the law College had certified that the appellant had attended 75% of the classes and without the said certificate and the LL.B Degree being set aside, the BCI could not disbelieve the same. Qua LPA No.415/2010, it is additionally argued that the issues therein were entirely different and have wrongly been not dealt with.

10. The senior counsel for the BCI, BCD and BCPH has per contra contended that the BCI is not bound to grant enrolment to all possessing a LL.B Degree and is entitled to satisfy itself of the fulfillment of the conditions / criteria laid down by it. He has invited our attention to ***BCI Vs. Aparna Basu Mallick*** (1994) 2 SCC 102 and to ***Satish Kumar Sharma Vs. Bar Council of H.P.*** (2001) 2 SCC 365. While the latter of the said judgments merely emphasizes the need for fulfillment of the rules of enrolment, in the former the decision of the BCI to deny enrolment for the reason of the applicant having not pursued regular course of study at any college notwithstanding Degree was upheld by the Supreme Court.

11. As far as the controversy qua distance is concerned, it is the admission of the appellant also that the law college was at a distance of 70/90 Kms. from the place of his posting. Even if we were to go by the said distance, we find ourselves unable to interfere with the finding of fact of a professional body like the BCI to the effect that the appellant could not have attended the classes regularly so as to be in a position to satisfy the said condition for enrolment. The BCI in this regard has noted:

- (i) that inspite of being required to produce documents to satisfy having attended the requisite classes, no such documents were produced; save for himself stating that the classes commenced during late evening hours, no details of the timings of the classes were furnished;
- (ii) that the records of the office of the District and Session Judge, Gurgaon did not show the appellant having obtained Study leave / earned leave to attend the regular classes;
- (iii) that the appellant had obtained permission from the District & Session Judge, Gurgaon for admission as a private candidate only but in contravention thereof joined as a regular candidate and which also clearly amounted to cheating / fraud with the employer;
- (iv) though the appellant claimed to have attended the law classes during summer vacation but could not produce any document from the law college in support thereof;

- (v) that the appellant has failed to prove as to how he attended regular classes at a long distance;
- (vi) thus the appellant's attendance in law classes appeared to be by proxy and not by physical presence;
- (vii) that for enrolment with the BCI, an applicant is required to show that he had actually and physically attended the required percentage of lectures at law college during the law course.

12. The appellant before us also has not been able to satisfy the possibility if at all of his having attended the requisite law classes.

13. Moreover, it was the application of the appellant for enrolment with BCPH which was rejected on the ground of the appellant having not attended and or could not have attended the requisite number of classes. That decision of the BCI i.e. of 08.03.2006 (supra) attained finality and is not subject matter of either of the writ petitions from which these appeals have arisen. Once BCI qua the application for enrolment made to BCPH had held that the appellant did not possess the requisite qualifications, the

revocation of the enrolment with BCD on the basis of the same LL.B degree was axiomatic. We reiterate that the appellant allowed the order dated 08.03.2006 (supra) of BCI to attain finality. He thus can in any case be not heard to challenge the same in these appeals arising from writ petitions challenge wherein was not to the order dated 08.03.2006 of BCI.

14. We are unable to find any error requiring interference in exercise of powers of judicial review in the order dated 12.10.2008 (supra) of the BCI finding the appellant to have fraudulently and with a *malafide* intent withheld essential facts while applying for enrolment with BCD.

15. We are of the opinion that in the entirety of the facts aforesaid, no case for interference with the jurisdiction exercised by the professional bodies of refusing enrolment to the appellant is made out. The Supreme Court recently in ***R.K. Anand Vs. Registrar Delhi High Court*** (2009) 8 SCC 106 has expressed grave concern and dismay on the decline of ethical and professional standards among lawyers and erosion of the professional values among lawyers at all levels and the immediate need for arresting and reversing the said trend. It was held that unless the same is done, it

will have deleterious consequences for the administration of justice in the country. It was further held that no judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people. The Supreme Court observed that the Bar Council of India and the Bar Councils of different States cannot escape their responsibility in this regard.

16. A Division Bench of the Allahabad High Court also recently in ***Prashant Singh Gaur Vs. State of UP*** MANU/UP/1921/2010 was constrained to observe that there is a systematic attempt by the criminal elements of the society to criminalize the legal system by inducting the law graduates with criminal background and criminal bent of mind in the Bar and who work like mafia dons. Various suggestions were mooted to cleanse the system.

17. The Madras High Court also recently in ***B. Balakrishna Pillai Vs. The Bar Council of India*** MANU/TN/0878/2011 was constrained to observe that with the mushroom growth of institutions offering legal

education, securing law degrees has become easier; judicial notice was taken of the number of advocates enrolled in Tamil Nadu State Bar Council being in excess of the sanctioned strength in law colleges in the State of Tamil Nadu. The Court observed that the Bar Council of the State and the Bar Council of India owed a statutory duty to uphold high standards in the legal profession. It was observed that though there could be no restriction in pursuing legal education but for the purpose of enrolment as an advocate the Bar Council should thoroughly examine the applications submitted for enrolment at the threshold and take appropriate action against those who acquire law degrees without satisfying the mandatory condition under the Act and the rules and practice as advocate. The Court warned that if the said exercise is not undertaken and persons not qualified for enrolment to practice the noble profession of law are enrolled, public interest will be affected. Similarly the Karnataka High Court also has recently in *Mr. Haragi Parasappa @ Giddappa Vs. State of Karnataka* MANU/KA/1282/ 2011 called upon the Bar Councils to wake up and ensure the quality of those practicing the noble profession of law. Even our Court in *Vandana Kandari Vs. University of Delhi*

MANU/DE/1614/2010 has noticed the Setalvad Commission's report to the similar effect.

18. We may hasten to add that Chief Justice Burger while addressing the American College of Trial Lawyers, District of Columbia, lamented on the state of the profession as under:

“... in some jurisdictions up to half of the lawyers who appear in court are so poorly trained that they are not properly performing their job and that their manners and their professional performance and their professional ethics offend a great many people. They are engaging in on-the-job training at the expense of their clients' interests and the public.”

We thus take solace in the fact that the problem highlighted in the judgment (supra) is not confined to India alone.

19. The profession of law has always been known as a noble profession. It is not an empty rhetoric. Success in the profession is measured not by the fortune made but on the threshold of learning. Advocates are known as

the officers of the Court. They are expected to possess not only intellectual purity but owe a responsibility to the Court to present the case dispassionately in an upright dignified ethical manner and to display fairness also to their colleagues and in all their dealings. The duty of a lawyer is to assist the Court in the administration of justice and an advocate must not indulge in any activity which may tend to lower the image of the profession in the Society.

20. The conduct of the appellant of, while applying to BCD, wrongly stating that he had not made any earlier application to any other Bar Council is not found to be an isolated incident. Rather the consistent conduct of the appellant of i) seeking permission for doing LL.B course as a private student but joining the same as a regular student; ii) to not disclosing to the Session Division, Gurgaon where the appellant was employed, thereafter also of having joined the LL.B course as a regular student; iii) conviction for corruption; iv) first applying to BCPH and thereafter to BCD for enrolment; v) having secured LL.B degree by attending classes by proxy and which finding as aforesaid has attained

finality; vi) not informing BCD of rejection of his application for enrolment with BCPH by the BCI; and vii) applying again for enrolment with BCPH after his enrolment with BCD had been revoked, speaks volume of the nature and character of the appellant. We are thus unable to accept the explanation offered by the appellant of the mis-declaration in filling up the application for enrolment with BCD being *bonafide*. The conduct aforesaid rather shows the appellant to be a believer of, achieving his goals by hook or by crook. It cannot also be lost sight of that the appellant was / is not a fresher to the field of law. He before applying for enrolment for, nearly 13 years was working in the Courts and can be held to be aware of all his action. We have wondered whether such a person even otherwise is entitled to discretionary remedy under Article 226 of the Constitution of India. The answer obviously is no.

21. Insofar as LPA No.415/2010 is concerned, once it is held that the appellant had not attended the requisite law classes, the question of his enrolment in BCI does not arise.

22. We therefore do not find any merit in these appeals and dismiss the same. We refrain ourselves from imposing any costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 07, 2012
'gsr'