

Baldev Raj Sharma vs Bar Council Of India & Ors on 1 May, 1989

Equivalent citations: 1989 AIR 1541, 1989 SCR (2) 862, AIR 1989 SUPREME COURT 1541, (1989) 2 JT 251 (SC), (1989) 2 ALL WC 767, (1989) 1 KER LT 80, (1989) 1 LS 38, 1989 BBCJ 87, (1989) 1 APLJ 73, 1989 2 JT 251, 1989 SCC (SUPP) 2 91, (1989) ALLCRIR 410

Author: R.S. Pathak

Bench: R.S. Pathak

PETITIONER:
BALDEV RAJ SHARMA

Vs.

RESPONDENT:
BAR COUNCIL OF INDIA & ORS.

DATE OF JUDGMENT 01/05/1989

BENCH:
PATHAK, R.S. (CJ)
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PATHAK, R.S. (CJ)
VENKATACHALLIAH, M.N. (J)

CITATION:
1989 AIR 1541 1989 SCR (2) 862
1989 SCC Supl. (2) 91 JT 1989 (2) 251
1989 SCALE (1) 1148

ACT:
Advocates Act, 1961: s. 24(1)(c)/Bar Council of India Rules, 1975, Part IV: Rule 1(1)(c)--Advocate--Enrolment for--Qualification necessary--Three years' course of study in law pursued by maintaining regular attendance.

HEADNOTE:
Sub-clause (iii) of cl. (c) of s. 24(1) of the Advocates Act, 1961 entitles a person to be admitted as an advocate on a State roll if he has obtained a degree in law after 12th March, 1967 after undergoing three years' of study in law. Under sub-cl. (iii) of cl. (c) a person is considered qualified for admission as an advocate if he has obtained a degree in law after undergoing a course the duration of

which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year. Rule 1(1)(c) of Part IV of the Bar Council of India Rules, 1975 requires that the course of study in law should have been by regular attendance for the requisite number of lectures, tutorials and moot courts and practical training.

The petitioner had obtained his Bachelor of Laws (Academic) degree in 1980 as a private candidate. He then pursued the third year of law as a regular student from the Kanpur University and obtained the professional degree in 1982. Thereafter, he applied to the State Bar Council of Punjab and Haryana for enrolment as an advocate under the Act. The State Bar Council denied enrolment on the ground that he had not fulfilled the conditions laid down in Rule 1(1)(c) of the Rules.

Dismissing the writ petition,

HELD: A candidate desiring enrolment as an advocate under the Advocates Act, 1961 must fulfil the conditions mentioned in s. 24(1)(c)(iii) or s. 24(1)(c)(iiia) read with Rule 1(1)(c) of the Bar Council of India Rules, 1975. In the instant case, the petitioner failed to do so. His application for enrolment was, therefore, rightly rejected. [866C] Sub-clause (iii) of s. 24(1)(c) when read along with Rule 1(1)(c)

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intends that the three years course of study in law must be pursued by maintaining regular attendance. So also, in a case failing under sub-cl. (iiia) of s. 24(1)(c) a course of study in law must be pursued for not less than two academic years and Rule 1(1)(c) will apply to such a case also. The petitioner had passed his two year's law course as a private candidate and the third year law only by regular attendance. He was, therefore, not entitled to be enrolled as an advocate. [865H-866A, 864E]

JUDGMENT:

CIVIL ORIGINAL JURISDICTION: Civil Writ Petition 747 of 1985.

(Under Article 32 of the Constitution of India). S.R. Rangarajan and K.B. Rohtagi for the Petitioner. Manoj Swarup and Miss Lalita Kohli Advocates for the Respondents.

The Judgment of the Court was delivered by PATHAK, CJ. This writ petition under Article 32 of the Constitution has been filed by Baldev Raj Sharma against an order of the Bar Council of Punjab and Haryana rejecting his application for enrolment as an advocate.

On 4 March, 1972 the petitioner passed the Bachelor of Arts examination from the Punjabi University, Patiala. In 1978 he joined the Bachelor of Laws (Academic) course in Kurukshetra University. The course is of two years' duration. The petitioner completed the course and on 1

January, 1981 he was awarded the degree of Bachelor of Laws (Academic) by the Kurukshetra University. During the year 1981 the petitioner joined the LL.B. (Professional) course in the third year in Kanpur University as a regular student. The Kanpur University confers two distinct degrees, LL.B. (General), which is a two year course, and LL.B. (Professional), which is a three year course. A person who has been awarded the LL.B. (General) degree is eligible for admission to the LL.B. (Professional) third year. The petitioner says that there is no distinction in the Rules and Regulations of the Kanpur University on whether LL.B. (General) course should be pursued by regular attendance or as a non-collegiate student. It is urged that the LL.B. degree of the Kanpur University is recognised by the Bar Council of India for the purpose of enrolment as an advocate. The petitioner attended classes as a regular student of the LL.B (Professional) Course-third year of the Kanpur University as required by the Rules and Regulations framed by that University. He appeared in the final examination and was declared successful. On 22 July, 1982 the degree of LL.B. (Professional) was issued by the Kanpur University to him. Thereafter, on 4 August, 1982 the petitioner applied to the State Bar Council of Punjab and Haryana with the necessary enrolment fee for enrolment as an advocate under the Advocates Act, 1961.

On 26 April, 1983 the Bar Council of Punjab and Haryana denied enrolment to the petitioner as an advocate on the ground that the petitioner has not fulfilled the conditions laid down in Rule 1(1)(c) of the Rules of the Bar Council of India framed under s. 7(h) and (i), s. 24(1)(c)(iii) and (iiia) and s. 49(1)(d). The detailed grounds of refusal supplied to the petitioner by the Bar Council of Punjab and Haryana state that the petitioner had obtained his Bachelor of Laws degree from the Kurukshetra University as a result of the examination held in April, 1980 as a private candidate. It was an LL.B. (Academic) degree obtained in two years' study as a private candidate. The third year of law was pursued by him as a regular student from V.S.S.D. College, Kanpur of the Kanpur University from which institution he obtained the professional degree. It was further stated that the petitioner had not fulfilled the conditions laid down in the provisions detailed earlier as he had passed his two years' law course as a private candidate from Kurukshetra University and the third year law only by regular attendance at the V.S.S.D. College, Kanpur. It appears that the State Bar Council, upon receiving the application of the petitioner for enrolment as an advocate, obtained the opinion of the Bar Council of India and in conformity with that opinion the State Bar Council has refused enrolment. Section 24(1)(c) provides as follows:

"24. Persons who may be admitted as advocates on a State roll(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:

(c) he has obtained a degree in law--

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| (i) | |
| (ii) | |

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after under-

going a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or (iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India."

Sub-clause (iii) of clause (c) of s. 24(1) entitles a person to be admitted as an advocate on a State roll if he has obtained a degree in law after 12th March, 1967 after undergoing three years' of study in law in any University in India recognised for the purposes of the Advocates Act by the Bar Council of India. An exception to this is provided by sub-cl. (iii) of cl.(c), under which a person is qualified for admission as an advocate if he has obtained a degree in law after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India recognised for the purposes of the Act by the Bar Council of India. The petitioner obtained a degree of Bachelor of Laws (Professional) from the Kanpur University in the examination of 1981. He had pursued the third year course only of study pertaining to that degree as a regular student, of the V.S.S.'D. College, Kanpur in Kanpur University. The Bar Council of India has framed Rules under the Advocates Act, 1961. Rule 1(1)(c) of Part IV of the Bar Council of India Rules, 1975 provides that except as provided in s. 24(1)(c)(iiia) of the Advocates Act a degree in law obtained from any University in the territory of India after 12th March, 1967 shall not be recognised for the purposes of s. 24(1)(c)(iii) of the Act unless the conditions specified there are fulfilled, including the condition "that the course of study in law has been by regular, attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University". These rules were replaced by a fresh set of rules in 1984 and the new Rule 1(1)(c) is almost identical. The Rule clearly requires that the course of study in law should have been by regular attendance for the requisite number of lectures, tutorials and moot courts and practical training. The Rule envisages that for the entire period of the law course there must be a regular attendance of the student before he can satisfy the conditions necessary for enrolment as an advocate under the Advocates Act, 1961. The Rules amplify what is intended in s. 24(1)(c)(iii) of the Act. The three years' course of study envisaged by that subclause in the Act intends that the three years' course of study in law must be pursued by maintaining regular attendance. We are unable to say that there is any inconsistency between the Act and the Rule. So also in a case falling under cl. (iii) of s. 24(1)(c) of the Act, a course of study in law must be pursued for not less than two academic years in terms of that sub-clause and Rule 1(1)(c) will apply to such a case also. There is a substantial difference between a course of study pursued as a regular student and a course of study pursued as a private candidate. The policy underlying the relevant provisions of the Bar Council Rules indicates the great emphasis laid on regular attendance at the law classes. The conditions are specifically spelt out when the Act is read along with the Rules. When so read, it is plain that a candidate desiring enrolment as an advocate under the Advocates Act must fulfil the conditions mentioned in s. 24(1)(c)(iii) or s. 24(1)(c)(iiia) read with Rule 1(1)(c) of the Bar Council of India Rules, 1975. In the present case the petitioner failed to do so. His application for enrolment was rightly rejected.

The writ petition is dismissed, but in the circumstances, there is no order as to costs.

P.S.S.

Petition dismissed.

