

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2823 OF 2006

BAR COUNCIL OF INDIA

.....APPELLANT(S)

VERSUS

THOMAS P.C. @ F.R. THOMAS
PUDUSSERY & ORS.

.....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 2824 OF 2006

A N D

CIVIL APPEAL NO. 2825 OF 2006

O R D E R

A.K. SIKRI, J.

Section 24 of the Advocates Act, 1961 (hereinafter referred to as the 'Act') mentions the requirements for persons who may be admitted as Advocates on a State roll. Apart from the condition that such a person should be a citizen of India, stipulation regarding age, degree in law, etc., clause (d) of sub-section (1) of Section 24 also mentions that the applicant should fulfil other conditions as may be specified in the rules made by

the State Bar Council. Likewise, Section 24(a) of the Act deals with its qualification for enrolment. The respondent herein fulfils the conditions mentioned in Section 24 of the Act. He does not suffer from any disqualification as listed in Section 24(a). However, the Kerala State Bar Council has framed the rules known as the Bar Council of Kerala Rules, 1979 (hereinafter referred to as the 'Rules'). As per Rule 2(h) of Chapter V of the Rules, an applicant seeking enrolment as an Advocate has to make a declaration in Form-6 to the effect that he is not in full or part time employment or service and is not engaged in any trade, business or profession. Exception is carved out for those who are in part time service as a professor, lecturer or teacher in law.

Precise language of Section 2(h) is as under:

"A declaration in Form 6 that the applicant is not in full or part time employment or service and is not engaged in any trade, business or profession, except a person, who is in part time service as professor, Lecturer or Teacher in Law."

It is this condition which is the bone of contention in the present appeal.

- 2) For the sake of convenience, facts, as appearing in Civil Appeal No. 2823 of 2006, are delineated hereafter.

- 3) The respondent herein is a Priest. This status of the respondent was taken by the Bar Council of Kerala to be hit by Rule 2(h) of the Rules as, according to it, it amounts to engaging in a profession. When the application of the respondent for enrolment as Advocate was not considered by the State Bar Council on the aforesaid ground, he filed a writ petition in the High Court of Kerala. The learned Single Judge allowed the said writ petition, (along with two other writ petitions of the petitioners whose request for enrolment was rejected on the same grounds) vide judgment dated November 07, 2005. The Bar Council of Kerala accepted the said judgment and agreed to enrol the respondent and other writ petitions as Advocates. However, the Bar Council of India (BCI) was not satisfied with the aforesaid outcome. Accordingly, it challenged the judgment of the Single Judge by filing writ appeal before the Division Bench of the High Court. The said writ appeal has met the same fate inasmuch as by impugned judgment dated March 21, 2006, the High Court has rejected the appeal and affirmed the order of the learned Single Judge. The view taken is that engagement of such persons, including the respondent, as Priest and Nuns in the noble profession of divinity serving the God and making does not amount to “engaging in

profession” as contemplated under Rule 2(h) of the Rules or the term ‘profession’ which is generally understood.

- 4) Still dissatisfied, the BCI filed special leave petitions in this Court in which leave was granted. That is how the present appeals have come up for decision on the aforesaid issue, namely, whether the Priest and Nuns were engaged in any trade, business or profession in the context of Rule 2(h) of the Rules.
- 5) The respondent graduated in law from the Bangalore University and sought enrolment as an Advocate on that ground by moving an application before the Bar Council of Kerala. On receipt of the application, the State Bar Council called upon him to submit certain particulars and also to file an affidavit stating that presently he was not holding any post or rendering any service or doing any business or profession in any society or institution. He submitted the required documents wherein he mentioned that he was working as Parish Priest of Little Flower Church, Anandpuram, for which no remuneration was paid to him. However, as mentioned above, the State Bar Council as well as the BCI treated the respondent as having engaged in profession and refused to enrol him as Advocate.

- 6) We have heard the counsel for both the sides and have also minutely gone through the judgment of the learned Single Judge as well as the impugned judgment rendered by the Division Bench. After giving our thoughtful consideration to the issue at hand, we entirely concur with the view taken by the High Court.
- 7) It has come on record that the respondent is a Priest not engaged in any kind of salaried job or activity nor was he getting any remuneration. Further, priesthood is a religious lifestyle and not a profession. The Catholic Church counts priesthood as one of the seven sacraments of Christianity. The marriage, blessing of life together, is also considered as one of the seven sacraments. As a Priest, he was doing purely spiritual service and it was not a bar for doing any profession. Whether this kind of service to the divinity can be treated as engaging in a profession of the nature stipulated in Rule 2(h) of the Rules?
- 8) At the outset, we may mention that if one goes by the literal meaning of the term 'profession', Priest may be called a 'profession'. This expression is defined in 'Words and Phrases', Permanent Edition (Vol.34) as under:

"Literally the term 'profession' is applied to a calling or vocation requiring special knowledge of a branch of science or learning, and in this somewhat restricted sense the word 'profession' means an employment requiring a

learned education, as, a profession of arms, the profession of a clergy man, lawyer or physician, the profession of chemistry or physics...While a profession is not a money getting business and has no element of commercialism in it, it does involve compensation or profit and it is of the essence of profession that the profits should be dependent mainly on the personal qualifications of the person by who it is carried on. It has been said that, in speaking of a person's profession, that branch of the world's activities wherein he expends his usual everyday efforts to gain a livelihood is referred to...Attorneys and clergymen are regarded as engaging in professions, as are physicians and persons engaged in related or associated occupations...'Profession' has been held equivalent to, or synonymous with, 'business'".

- 9) We may also refer to the Code of Canon Law prepared by the Canon Law Society of Great Britain and Ireland, to which strong reliance was placed by the learned counsel for the appellant. Canon 281, which provides for remuneration to the Clerics, reads as follows:

"Since Clerics dedicate themselves to the ecclesiastical ministry, they deserve the remuneration that befits their condition, taking into account, both the nature of their office and the conditions of time and place. It is to be such that it provides for the necessities of their life and for the just remuneration of those whose services they need.

Suitable provision is likewise to be made for such social welfare as they may need in infirmity, sickness or old age."

- 10) Thus, work of a clergymen may be a profession. To this extent there may not be any quarrel. However, as rightly emphasised by the High Court, the significance of the phrase used in Rule 2(h) cannot be lost sight of, namely, 'engaged in any trade, business

or profession'. A person, therefore, has to be 'engaged in a profession'. This expression is explained by the High Court in the impugned judgment with following elaboration:

"12..Concededly the petitioners were not engaged in any trade or business and the case of the appellant is that they are engaged in profession. There is difference between doing a profession and engaged in a profession. We are of the firm view that the word 'engaged' necessarily means earning profit or remuneration. The word 'engaged' is prefixed with the words 'in any trade, business or profession'. The word 'engaged' would thus necessarily apply to trade, business and profession. Any person engaged in any trade or business cannot be said to be engaged gratuitously. Trade or business necessarily generates money. The same has to be true with the word 'profession' as well. Priests and Nuns may or may not be engaged in profession, even though, as mentioned above, professing religion is indeed a profession. A complete ban for entry into the legal profession to a class of clergymen would be wholly illegal. Before the bar created under Rule 2(h) of the Rules is applied it shall have to be found out as to whether a particular person professing religion is engaged in the same or not. We have already held above that the word 'engaged' means gainfully employed, be it for remuneration, profit or salary."

- 11) We are in agreement with the aforesaid view taken by the High Court. It becomes important, therefore, that for a person to be 'engaged' in profession would mean that profession where he is gainfully employed. Therefore, when a person professing religion as Priest or Nun is getting any remuneration or salary for doing the duties in that capacity, such persons would come within the mischief of Rule 2(h) and would not be entitled to be enrolled as Advocates. There may be a number of cases falling in this

category where individuals generate considerable money while being engaged in the profession of religion. However, in the present case, it is not disputed that the respondent is not getting any remuneration or profit or salary. Payment only of subsistence or maintenance allowance for sustenance cannot be termed as having engaged in a profession which generates money.

- 12) We may also note the argument of the respondent that the main purpose for which he wanted to enrol himself as an Advocate was to take up the cases of persons seeking justice on nominal fee and even gratuitous plea in certain cases. It is because of the reason that he has been trained to live a particular way of life, namely, to serve the mankind.
- 13) Another significant feature which is pointed out by the High Court is that being a Priest or Nun is not a disqualification for appointment to any Government or Private job.
- 14) We may place on record that the learned counsel for the appellant had relied upon the judgment of this Court in ***Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa***, (1996) 3 SCC 342. However, the said case has no application when we contrast the facts of that case and the present case.

The High Court has noted the judgment by detailed discussion distinguishing the same. In **Dr. Haniraj L. Chulani** the appellant was engaged in the profession of medicine as a medical practitioner (Colorectal Surgeon) since 1970. Thereafter he obtained LL.B. degree in March 1991. While continuing his profession as medical practitioner, he wanted to enrol himself as an Advocate as well. He was denied enrolment on the ground that as medical practitioner he was gainfully employed.

- 15) For the aforesaid reasons, we find no merit in these appeals, which are accordingly dismissed.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

**NEW DELHI;
SEPTEMBER 13, 2017.**

ITEM NO.107

COURT NO.6

SECTION XI -A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2823/2006

BAR COUNCIL OF INDIA

Appellant(s)

VERSUS

THOMAS P.C. @ FR.THOMAS PUDUSSERY & ORS.

Respondent(s)

WITH

CIVIL APPEAL NO. 2824/2006

CIVIL APPEAL NO. 2825/2006

Date : 13-09-2017

These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Mr. Ardhendumauli Kumar Prasad, AOR
Ms. Taruna Ardhendumauli Prasad, Adv.
Mr. Nirmal Kumar Ambastha, Adv.
Mr. Mitesh Ranjan, Adv.
Mr. Amritesh Raj, Adv.

For Respondent(s)

Mr. P. V. Dinesh, AOR
Mr. Avami Bansal, Adv.
Mr. Samrat Singh, Adv.
Mr. K. Rajeev, AOR
Mr. Bijo Mathew Joy, Adv.
Mr. Ashwani Bhardwaj, AOR
Ms. Sharmila Upadhyay, AOR
Dr. M. P. Raju, Adv.
Dr. Ashwani Bhardwaj, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER (SH)

(MALA KUMARI SHARMA)
ASSISTANT REGISTRAR

[Signed order is placed on the file.]