

2021 SCC OnLine CCI 1

In the Competition Commission of India
(BEFORE ASHOK KUMAR GUPTA, CHAIRPERSON AND SANGEETA VERMA, MEMBER AND BHAGWANT SINGH BISHNOI, MEMBER)

Thupili Raveendra Babu ... Informant;

Versus

Bar Council of India (BCI) and Others ... Opposite Party.

Case No. 50 of 2020

Decided on January 20, 2021

Order under Section 26(2) of the Competition Act, 2002

1. The instant information is filed by Mr. Thupili Raveendra Babu (hereinafter, the 'Informant') under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the 'Act') alleging contravention of provisions of Section 4 of the Act by Bar Council of India, through Managing Committee represented by its Chairperson Mr. Manan Kumar Mishra (hereinafter, the 'BCI'/'Opposite Party No. 1'). Opposite Parties No. 2 to 5 are the office bearers of the BCI and Opposite Parties No. 1 to 5 are collectively referred to as 'Opposite Parties'.

2. The Informant, aged 52 years, states that he is working as an executive engineer in Central Public Works Department (CPWD) under the Ministry of Urban Development, Government of India and plans to voluntarily retire to pursue legal education. He states that he appeared for LLB (3 year) entrance examination in the State of Andhra Pradesh (APLAWCET) on 01.10.2020 and secured first rank in the said examination in the state.

3. According to the Informant, the BCI is an elected body of advocates in India. It regulates the legal practice as well as legal education in India. It enjoys the dominant position in controlling the legal education as well as the legal practice in India.

Facts and Allegations as stated in the Information

4. The Informant states that he learnt about Clause 28 of Schedule III, Rule 11 to Part IV - Rules of Legal Education, 2008, a part of Bar Council of India Rules enacted under the Advocates Act, 1961 (hereinafter, 'Clause 28'), according to which the candidates belonging to General category who have attained the age of more than 30 years, are barred from pursuing legal education. The BCI has allegedly imposed maximum age restrictions upon the new entrants to enter into the legal education and thus, created indirect barriers to the new entrants in the profession of legal service. The impugned Clause 28 has been incorporated by the BCI in contravention of Section 4 of the Act by '*misusing its dominant position*'. By having done so, the BCI has also allegedly indulged in colourable exercise of power.

5. The Informant has further alleged that the members of the BCI, by way of aforementioned Clause 28, conspired to reduce the competition to its electors and created indirect barriers in the profession of legal service. He has also alleged that the members of the BCI who are managing the affairs of the BCI are misusing the dominant position enjoyed by the BCI in controlling the legal education in India.

6. Based on the above, the Informant has prayed before the Commission to declare the impugned Clause 28 as illegal and *void ab initio* and impose maximum penalty on the BCI for the violation of Section 4 of the Act and indulging in colourable exercise of power.

7. The Informant has also prayed before the Commission for interim directions

under Section 33 of the Act for suspending the impugned Clause 28. He submits that allegedly *prima facie* case of violation of Section 4 of the Act is established against the BCI and the balance of convenience lies in his favour. He further states that irreparable loss and harm would be caused to him and many other legal aspirants for pursuing legal education in India, if the operation of Clause 28 is not suspended.

8. The Commission considered the matter in the ordinary meeting held on 04.01.2021 and decided to pass an appropriate order in due course.

9. The Commission has carefully perused the information, the documents filed by the Informant and the information available in public domain.

10. The Commission notes that the Informant has alleged contravention of the provisions of Section 4 of the Act, primarily, against the BCI. However, in order to appreciate the facts in the matter, it is imperative to examine the status of the BCI as an enterprise within the contours of the provisions of Section 2(h) of the Act before proceeding further with regard to the allegations raised in the information.

11. Thus, the primary question which falls for consideration is that whether BCI is an 'enterprise' within the meaning of Section 2(h) of the Act. The term 'enterprise' has been defined under Section 2(h) of the Act, *inter alia*, as a person or a department of the Government, engaged in any activity relating to provision of any kind of services.

12. In the present matter, the Commission notes that the BCI is a statutory body established under Section 4 of the Advocates Act, 1961. Section 7 of the said Act lays down the functions of the BCI which includes promotion of legal education in India and to lay down standards of such education in consultation with the Universities in India and the State Bar councils. Further, Section 49 of the Advocates Act, 1961 empowers the BCI to make rules for discharging its functions under the said Act such as prescribing qualifications and disqualifications for membership of a Bar Council, minimum qualifications required for admission to a course of degree in law in any recognised university, prescribing the standards of legal education for the universities in India, etc. Thus, it is noted that the BCI appears to carry out functions which are regulatory in nature in respect of the legal profession.

13. It is noted that that in Case No. 39 of 2014, *In re: Dilip Modwil and Insurance Regulatory and Development Authority (IRDA)*¹, decided on 12.09.2014, the Commission had the occasion to examine the status of IRDAI as an 'enterprise' under the Act. The Commission had observed that any entity can qualify within the definition of the term 'enterprise' if it is engaged in any activity which is relatable to the economic and commercial activities specified therein. It was further observed that regulatory functions discharged by a body are not *per se* amenable to the jurisdiction of the Commission.

14. In the present matter, when the BCI appears to be discharging its regulatory functions, it cannot be said to be an 'enterprise' within the meaning of Section 2(h) of the Act and consequently, the allegations made in relation to discharge of such functions which appears to be non-economic in nature, may not merit an examination within the provisions of Section 4 of the Act.

15. In view of the foregoing, the Commission is of the opinion that there exists no *prima facie* case under the provisions of Section 4 of the Act and the information filed is directed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act. Consequently, no case for grant for relief(s) as sought under Section 33 of the Act arises and the same is also rejected.

16. The Secretary is directed to communicate to the Informant, accordingly.

¹ Now, IRDA is known as Insurance Regulatory and Development Authority of India (IRDAI).

or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.