

News

The Karnataka High Court challenges the BCI's limitations on the practice of law by retired district judges.



The Court questioned why retired district judges were prohibited from practicing law in districts other than their former service areas although retired High Court judges were permitted to practice in other High Courts.

The fairness of the Bar Council of India (BCI) regulations that limit former judges from practicing law after they retire or leave office was questioned by the Karnataka High Court on Wednesday [VN Madhav Reddy v. The Secretary and Anr and connected issues].

According to BCI regulations, former judicial officers are not allowed to practice law before courts that are presided over by judges with a rank that is the same as or lower than the judicial officer's during their tenure.

Even if the retired judge wishes to practice in a district different than the one in which they served, this bar would still be in effect, according to the BCI's attorney yesterday.

But even former High Court justices are permitted to practice law in High Courts other than the ones they presided over, according to Justice ES Indresh.

The judge asked why retired district judges could not be granted the same protections, allowing them to practice law without hindrance before courts in other districts.

"If a retired High Court judge can practice in Supreme Court, if it is permitted, or if a retired High Court judge will appear in any other High Court of which he was not the presiding judge, that is permissible ... apply the same principle," he said.

A series of petitions challenging a BCI decision from August 2013 that amended Rule 7 of Part VI, Chapter III of the BCI's Rules on Professional Standards that apply to attorneys were being heard by the Court.

The aforementioned rule places limitations on the ability of judicial officers who have retired or otherwise left the judicial service to continue practicing advocacy after leaving office.

According to the amended rule,

"An officer (including judicial officers, tribunal members, etc.) who is enrolled as an advocate and retires or otherwise leaves service for any reason is not permitted to practice in any judicial, administrative courts, tribunals, or authorities that are presided over by an officer who is either lower or equivalent to the position that the officer previously held."

In 2014, three people filed petitions to dispute the BCI's 2013 resolution and the subsequent implementation of this amended rule. A group of retired Karnataka court officers later filed a petition contesting these legal limitations in February of this year.

Justice Indresh questioned the fairness of the legal constraints being challenged on

Wednesday.

"How do you sustain this?" he asked the advocate for the BCI.

"It applies to all of India. Furthermore, no one else has contested the constitutionality. The BCI attorney said, "BCI has the statutory authority to establish regulations such as these.

Does it comply with Article 14 (the right to equality and the prohibition against discrimination)? Even High Court judges who have retired will appear before the Supreme Court. Given this, how will your regulations address this? The lone judge made a comment.

The Court went on to note that a retired Karnataka High Court judge may continue to serve as a judge at the Madras High Court.

He asked why retired district judges were not given the same leniency, allowing them to practice law without limitations in districts other than the ones where they were judges.

Another one-judge Bench of the Court had requested clarity on the following points during a previous hearing in March of this year:

1. If the presiding officer of the arbitral tribunal were an officer of the district judiciary of the same level or lower, would the BCI's limitation still apply to a retired judicial officer appearing before the panel?
2. Would this also hold true for a member of the district judiciary who was appointed as a High Court additional judge but was not made a permanent member?
3. Does the restriction only apply to courts and tribunals that the retired judicial officer has presided over, or does it apply to all courts and tribunals in the State of Karnataka? This is especially important because if the retired judicial officer was a Principal District Judge, it would effectively prevent him or her from appearing in any Karnataka court.

Yesterday, the BCI's attorney stated that it has submitted an affidavit answering the Court's questions.