

Madras High Court

Sp.Chockalingam vs Controller Of Patents on 15 March, 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2013

CORAM :

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

W.P.No.8472 of 2006

SP.Chockalingam

.. Petitioner

Vs.

1. Controller of Patents
Intellectual Property Rights Building,
GST Road,
Guindy, Chennai 600 032.
2. Union of India
Rep. by Ministry of Commerce & Industry
Departmental of Industrial Policy and Promotion,
Udyog Bhawan,
New Delhi 110 011.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance

For Petitioner : Mr.SP.Chockalingam, party-in-person

For Respondents : Mr.S.Udayakumar, SCGSC

O R D E R

This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of Declaration, to declare the amendment introduced to Section 126 of the Patent Act, 1970 by Section 67 (a) of the Patents (Amendment) Act, 2005 (Act 15 of 2005) as illegal, unconstitutional, ultra vires and void.

2. The petitioner, who appeared party-in-person is a practicing Advocate, specialised in Intellectual Property matters. The petitioner submits that his area of practice, includes practicing before the Controller of Patents, preparing all documents, transact all business and discharge such other functions relating to patent, design, copyright and trademark in India and also argue cases relating to intellectual property at various levels of Courts in India, including Tribunals and quasi-judicial authorities like the first respondent herein. The petitioner has further submitted that the introduction of the amendment to Section 126 of the Patents Act, 1970, has curtailed his right to practice, though as per Section 30 of the Advocates Act, he is entitled to practice in all Courts, including the Supreme Court, Tribunals and quasi-judicial authorities. According to him, the impugned amendment has been made against the fundamental rights of the petitioner, guaranteed under the Constitution. Hence, he filed the writ petition, seeking an order to declare the impugned amendment, as illegal, unconstitutional, ultra vires and void.

3. It is an admitted fact that Section 126 of Patents Act (herein after referred to as "the Act"), deals with qualification for registration of patent agents. Section 126 of the Patents Act, prior to the amendment read as follows :

"(1) A person shall be qualified to have his name entered in the register of patent agents if he fulfills the following conditions, namely :-

(a) he is a citizen of India;

(b) he has completed the age of 21 years;

(c) he has obtained a (degree in science, engineering or technology from any University established under law for the time being in force) in the territory of India or possesses such other equivalent qualifications as the Central Government may specify in this behalf, and, in addition-

(i) is an advocate within the meaning of the Advocates Act, 1961 (25 of 1961);

(ii) has passed the qualifying examination prescribed for the purpose; (or)

(iii) has, for a total period of not less than ten years, functioned either as an examiner or discharged the functions of the Controller under section 73 or both, but ceased to hold any such capacity at the time of making the application for registration;

(d) he has paid such fee as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), a person who has been registered as a patent agent before the commencement of the Patents (Amendment) Act, 2005 shall be entitled to continue to be, or when required to be re-registered, as a patent agent, on payment of the fees as may be prescribed."

In the said Section 126 (1) (c) (i) of the Act, the portion typed in bold letters herein, that was available prior to the amendment has been deleted by the impugned amendment. According to the writ petitioner, the impugned amendment is against the Constitutional mandate and as such ultra vires the Constitution, under Articles 14, 19 (1) (g) and 21.

4. Mr.SP.Chockalingam, party-in-person submitted that in view of the amendment to Section 126 of Patents Act, the petitioner, though a practicing Advocate cannot register his name and practice as patent agent, in spite of the fact that it was a matter of right to any Advocate to register as patent agent, prior to the impugned amendment. As per Section 127 of the Act, a patent agent is entitled (1) to practice before the Controller of Patents and (2) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller under the Act.

5. The writ petitioner submits that prior to the amendment, as per Section 126 (1) (c) (i), an advocate within the meaning of the Advocates Act, 1961, was qualified to have his name entered in the register of Patent agents. However, after the impugned amendment, the right of an Advocate to practice as a patent agent has been taken away and it was further argued by the petitioner that the amendment is a clear violation of right to practice conferred on any Advocate, as contemplated under Section 30 of the Advocates Act, 1961, and as such, ultra vires to the Constitutional mandate under Articles 14, 19 (1) (g) and 21 of the Constitution.

6. It is submitted by the petitioner that the aforesaid amendment that was brought in, to Section 126 of the Patents Act, is discriminatory in nature, hence, the same is violative of Article 14 and it deprives the right of the petitioner to practice as a Patent Attorney. It is also contended by the petitioner that the said amendment is violative of the fundamental right, guaranteed under Article 19 (1) (g) of the Constitution of India. The petitioner contended that the impugned amendment relating to Section 126 of the Patents Act, taking away the right of Advocates to practice as patent agent has no rationalia and also ultra vires to the Constitution, even under Article 21 of the Constitution, hence, the impugned amendment is liable to be struck down, as unconstitutional. However, in the writ petition, the relief sought for is only to declare that the amendment introduced to Section 126 of the Patents Act, 1970 by Section 67 (a) of the Patents (Amendment) Act 2005 (Act 15 of 2005) as illegal, unconstitutional, ultravires and void.

7. It is seen that Section 126 of the Act, prescribes qualifications for registration as patent agent, for which, one must be (a) a citizen of India (b) has completed the age of 21 years (c) has obtained a degree in science, engineering or technology from any University established under law for the time being in force in the territory of India or possess such other equivalent qualifications as the Central

Government may specify in this behalf. Sub-clause (i) of Section 126 (1) (c) of the Patents Act, prior to the impugned amendment read as follows :

"is an advocate within the meaning of the Advocates Act, 1961 (25 of 1961)"

The term "advocate, as per the Advocates Act, 1961" has been deleted by the impugned amendment. Though science is a vast subject, having various specialization and branches, such as Physics, Chemistry, Computer Science, Biotechnology, Pharmaceutical Science, Animal Husbandry, Nursing etc., any degree holder in Science, Engineering or Technology having passed the qualifying examination prescribed and conducted by the respondents for the purpose is eligible to register as patent agent. Though there was no bar for an Advocate to register and function as patent agent, as a matter of right, prior to the amendment, in view of the impugned amendment, the said right is not available to any Advocate at present, as the same was taken away against the Constitutional mandate.

8. It is well settled that in view of the Fundamental Right guaranteed under Article 14, the State shall not deny any person equality before law and equal protection of laws within the territory of India. Article 12 of the Constitution defines that unless the context otherwise requires "the state" includes the Government and Parliament of India and the Government and the legislature of each of the State and all local or other authorities within the territory of India.

9. In *K.Thimmappa vs. Chairman, Central Board of Directors, S.B.I*, reported in AIR 2001 SC 467, it has been made clear by the Hon'ble Supreme Court that what Article 14 prohibits is only a "class legislation" and not "reasonable classification" for the purpose of legislation. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation and what is really needed to achieve. Similarly in *Pathumma vs. State of Kerala* reported in AIR 1978 SC 771, it was ruled that what Article 14 prohibits is that of hostile discrimination and not reasonable classification.

10. In order to decide whether the impugned amendment is a class legislation or reasonable classification, this Court has to consider the nature of duty and the right of the patent agents, as prescribed under Section 127 of the Patents Act and also the qualification prescribed for Registration of patent agents under Section 126 of the amended Act.

11. It is seen that under Section 127 of the Patents Act, the heading Rights of patent agents would say that as per the Act and the Rules made thereunder, every patent agent whose name is entered in the register shall be entitled (a) to practice before the Controller; and (b) to prepare all documents, transact all business and discharge such other functions as may be prescribed in connection with any proceeding before the Controller of Patents under the Act.

12. A perusal of the aforesaid section of the Patents Act would clearly show that the power, as contemplated under Section 127 of the Act to be a patent agent is to practice before the controller and prepare all documents, transact all business and discharge such other functions, as may be prescribed in connection with any proceeding before the Controller under the Patents Act.

13. It is not in dispute that as per Section 30 of Advocates Act, 1961, right of Advocates to practice includes the entitlement of an Advocate to practice before any Court in the territory of India, including the Supreme Court, various Tribunals or any authority. The functioning of an Advocate could be broadly divided into two segments, (1) preparing plaint, written statement, petitions, applications, counters, preparation of all documents relating to the same, filing the case, compliance of any returns till the same is numbered, (2) Advancing legal arguments in the cases and in case if the order or Judgment is against the client or the particular counsel, preferring appeal / revision. Therefore, one part of the advocacy is drafting or preparing the case legally and filing and the other part is advancing arguments. As per Section 127 of the Patents Act, though the word 'patent agents' has been coined or employed, the heading of the section, Right of patent agents, itself makes it clear that the same is nothing but the normal duty of any advocate relating to drafting, presenting and filing papers before the Court or Tribunal or other authority, though the nomenclature is patent agents, under Section 127 of the Patents Act, for which, qualification has been prescribed under Section 126 of the Act, to register as patent agent.

14. As per Section 126 of the Act, prior to the amendment, the qualification prescribed to be patent agent, as per sub-clause (i) of the Section 126 (1) (c), was an advocate within the meaning of the Advocates Act, 1961 (25 of 1961). Hence, an advocate was entitled to register his name as patent agent, as a matter of right to practice before the Controller of Patents, prepare all documents, transact all business and discharge other functions, as per the provisions of the Act. Therefore, the nature of job stated under Section 127 of the Patents Act is nothing but a part of the work usually done by any Advocate in respect of drafting and filing. In fact, as per Section 126 of the Patents Act, apart from Advocates, other persons, who have passed the qualifying examination prescribed and conducted by the respondents' Department are also eligible to be registered as patent agents. However, after the impugned amendment, it has been made that advocates are not entitled to register their names as patent agents, as a matter of right.

15. The petitioner, who is party-in-person drew the attention of this Court to rule 110 (2) of the Patents Rules, whereby syllabus has been prescribed for the examination conducted by the respondents, accordingly, there are two written papers prescribed, one is on Patent Act and the Rules thereunder and other one is Drafting and interpretation of patent specifications, for which, the maximum marks would be 100 for each paper, apart from viva voce, which carries 100 marks. The respondents' Department has prescribed the syllabus for the Examination and also conducting examination and selecting the candidates. Appointment is also made by them, excluding advocates, as per the impugned amendment.

16. It could not be disputed that to become an Advocate, one should have passed B.L., or LL.B degree through a recognized University or its affiliated law college and such a degree could have been approved by Bar Council, as per Advocates Act. Hence, mere law degree granted by any recognised university is not sufficient, if the same has not been approved by Bar Council. It is an undisputed fact that to become an advocate, one should have studied various laws and passed the law examination, including drafting and procedural laws, as per the curriculum prescribed by any recognised University. The respondents cannot say that in imparting legal education or conducting the law examinations, a recognized law college or University would be inferior to the respondents

and further, to be a qualifying degree, either B.L., or LL.B., to enroll as Advocate, power of supervisory control is vested with the Bar Council, as per Advocates Act. Even if a Law college or University is empowered to confer any Law degree, such a degree would not be a sufficient educational qualification to enroll as Advocate, unless the same is recognised by the Bar Council, as per Advocates Act. Considering the said facts, prior to the amendment to Section 126 of the Act, it was made clear that any Advocate, within the meaning of the Advocates Act, 1961, was presumed to have the prescribed qualification to register as patent agent. Accordingly, as a matter of right, an advocate was entitled to register himself as patent agent, since the duty of patent agent is nothing but a part of the duty of an advocate, such as drafting and filing. Merely because the nomenclature is patent agent, under the Act, the respondents cannot delete the important sub-clause (i) to Section 126 (1) (c) of the Patents Act, while prescribing qualification, whereby not to permit an advocate for getting registration as patent agent, by making an unreasonable class legislation, against Article 14 of the Constitution.

17. In this regard, this Court has to consider whether the impugned amendment has been made on public interest, based on reasonable classification or otherwise to be construed as an unreasonable class legislation. It cannot be said that a degree holder in science, engineering or technology, who has passed the examination conducted by the respondents in Patents Act and drafting would be a better qualified person to function as patent agent, than an Advocate, who passed various law papers in his Examinations, including drafting and procedural laws. It is an admitted fact that to be an advocate, one has to pass the examinations relating to various laws conducted by any recognised University. Pointing out the same, the petitioner, party-in-person argued that the amendment, deleting sub-clause (i) of Section 126 (1) (c) of the Patents Act, removing the term Advocate, within the meaning of Advocates Act, 1961, has to be construed as an unreasonable class legislation and not a reasonable classification, as contemplated under Article 14 of the Constitution.

18. The other important aspect argued by the petitioner is that by conducting the qualifying Departmental examination, the Controller of Patents under the Ministry of Commerce and Industry, is usurping the power and unreasonably claiming supremacy over the law degree given by Universities and law colleges and that the impugned amendment has illegally prescribed qualification, only by giving importance to their own Departmental law examination rather than the qualifying law degree granted by competent universities, whereby creating a rider against Section 30 of the Advocates Act, though the same is also a Central Act, by way of creating bar against practicing Advocates, in the case of drafting, preparing, filing and appearing before the first respondent, in the name of patent agents, as per the impugned amendment made in the Patents Act.

19. The Patents Act and Rules framed thereunder empowers the respondents, in prescribing the syllabus, conducting exam, appointing patent agents and also power to remove patent agents. The Court can take judicial notice that after the impugned amendment, normally such patent agents may not be practicing advocates before High Courts or Supreme Court, as the amended Act has taken away the rights of Advocates, to register as patent agents as a matter of right, that was available prior to the amendment, under Section 126 (1) (c) (i) of the Act. Therefore, in all practical purposes, after the amendment, the patent agents have been made amenable to the respondents, since the term advocate has been deleted from the section. It is further contended that if a practicing lawyer is

permitted to register as patent agent, as per the Act, prior to the amendment, being a legal practitioner, he may directly approach the High Court and the Supreme Court, in case an order passed by an authority under the Patents Act is against law. Hence, prior to the amendment, the authority was made more vigil in following Rule of law and passing proper and appropriate orders, regarding the duties and functions of patent agents. If all the patent agents are selected only by the respondents, as per the procedure prescribed by the respondents, leaving Advocates, there would be no broad outlook in the functioning of patent agents, in respect of preparation, drafting, filing and appearing before the first respondent and make proper and broader interpretation of law, relating to Patents Act. Therefore, preventing advocates, who are more qualified in preparing documents, drafting, transact business before the Controller and permitting only the degree holders in science, engineering or technology, who passed the Departmental examination conducted by the respondents, by way of the impugned amendment, that would certainly narrow down the skill of patent agents. It was also argued by the petitioner, party-in-person that the impugned amendment violates Articles 14, 19 (1) (g) and 21 of the Constitution and the amendment is also not beneficial to the interest of the common people and the country.

20. It is pertinent to note that the respondents and their subordinate officers are the deciding authorities of any issue relating to a case under the Patents Act, subject to the orders being passed, by way of judicial review, by the Constitutional Courts. It is an admitted fact that the respondents and their officers are virtually passing orders and the patent agents are not the deciding authorities in the matter relating to Patents Act. Hence, it is the prerogative of the parties or clients to engage their patent agents, prior to the amendment, either an advocate functioning as patent agent or the other category of patent agent. However, by amending Section 126 (1) (c) (i) of the Act, deleting the term "Advocate, within the meaning of Advocates Act, 1961", the respondents have made it mandatory on the part of the parties or litigants not to engage advocates as patent agents, which is beyond the purview of the respondents and also against Section 30 of the Advocates Act, relating to legal profession.

21. It was argued that respondents have no legal right to expand their authority for curtailing the profession of legal practitioners against the Advocates Act, by way of conducting their own examination in law and drafting, so as to have a narrow circle, amenable to them in the name of patent agents and excluding advocates, by way of the impugned amendment. The petitioner submitted that the respondents, by making the impugned amendment cannot direct any party or litigant, in the matter relating to Patents Act, not to engage advocate, as patent agent, as the same would not come under the purview or authority of the respondents. It is the right and privilege of any party or litigant to engage a professionally qualified person to defend his case. Prior to the amendment to Section 126 of the Act, advocates were permitted to register as patent agents as a matter of right, since part of the work of any practicing lawyer is preparing, drafting, filing and appearing before the Courts and authorities. However, in the name of prescribing qualification for patent agents, the respondents have unreasonably deleted sub-clause (i) to Section 126 (1) (c) of the Act, whereby preventing advocates, so as to monopolise certain group of persons, amenable to the authorities under the Act. After the amendment, the term "Advocate within the meaning of Advocates Act" has been taken away, hence, merely a degree holder in science, engineering or technology, having passed the Departmental examination conducted by the respondents alone are

eligible to register their names as patent agents. It was argued by the petitioner, party-in-person, that advocates being law graduates of recognized law college or university are entitled to practice as per Section 30 of the Advocates Act, however, after the unreasonable amendment, an advocate has to depend on the other category of patent agent for drafting, filing and appearing before the Controller of Patterns, hence, the amendment is violating Article 21 of the Constitution.

22. It is an undisputed fact that science is like a ocean. A Science degree may be relating to physics, chemistry, zoology, botany, statistics, Biotechnology, Bio-chemistry, veterinary science, nursing etc., Similarly, engineering or technology is also a vast subject. Hence, it cannot be presumed that a B.Sc., Graduate in statistics, Zoology or Nursing shall be well versed in cases relating to Engineering and Technology under the Patents Act. Similarly, it cannot be decided that a degree holder in physics, chemistry, engineering or technology could be an expert in forensic science, biology or zoology. Merely by prescribing qualification, as degree holder in science, engineering or technology and passing a Departmental Examination on Patents Act and drafting, the respondents cannot monopolise such category of persons and say that Advocates are not competent to be patent agents and similarly the right that was available to advocates under Section 126 (1) (c) (i) of the Act, could not be taken away against the Constitutional safeguards, by way of the impugned amendment. It is also brought to the notice of this Court that advocates having basic degree in Arts or Commerce are not even eligible to appear for the Examination conducted by the respondents, on the ground that they are not degree holders of Science, Engineering or Technology. Similarly, advocate, who had already registered as patent agents, prior to the amendment are eligible, however the other Advocates, who are yet to be registered as patent agents are not permitted, which is also a discrimination and anomaly in taking such a stand, there is no 'rationalia' available to support the case of the respondents, to justify the impugned amendment.

23. The view of eminent Jurist and great academicians is that "law is a social science" and a practicing lawyer is a social engineer. When such is the view of Courts and eminent Jurists, the respondents are not entitled to take a decision mechanically, that law is not a science and that graduates in science, engineering or technology, after passing a Departmental Examination in Patents Act and drafting, conducted by the respondents, they will be better qualified persons than any practicing advocate. Based on the nomenclature given by the Universities either B.L., or LL.B., the respondents cannot hold that law is not a science, in spite of the fact that it is an important social science. This Court is of a considered view that B.L., or LL.B., awarded by any recognized university is a degree of social science in law and a practicing lawyer is a social engineer. It is the prerogative of the university to decide the nomenclature of a degree, based on which, the respondents cannot hold that law degree is not a degree in science. The petitioner, party-in-person argued that the impugned amendment deleting sub-clause (i) to Section 126 (1) (c) of the Act, preventing Advocates to register as patent agents as a matter of right, is arbitrary, based on a wrong notion that a degree holder in science, engineering or technology, passing the Departmental Examination in Patents Act, the Rules there under and drafting would be better qualified persons to function as patent agent. Hence, the impugned amendment, could be construed only an unreasonable class legislation, prohibited under Article 14 of the Constitution, as the same is not a reasonable classification, as decided by the Hon'ble Supreme Court.

24. All Citizens shall have right to practice any profession, or to carry on any occupation, trade or business, as fundamental right, as contemplated under Article 19 (1) (g) of the Constitution. It was argued by the petitioner that the impugned amendment curtails his right as practicing advocate, though the right has been guaranteed as a fundamental right, under Article 19 (1) (g) of the Constitution, so far as it relates to his practice, in the matters relating to Patents Act and function as patent agents, in spite of the fact that such right was available to an advocate, prior to the impugned amendment.

25. Mr.S.Udayakumar, learned Senior Central Government Standing counsel appearing for the respondents submitted that there is no bar for the petitioner or any advocate, in arguing the case relating to the Patents Act before the Courts and the appellate authority, though as per the impugned amendment, an advocate cannot register as a patent agent, as a matter of right. According to him, as per the amendment, there is no total bar for violating Article 19 (1) (g) of the Constitution. It has been further submitted by the senior standing counsel for the respondents that the petitioner should have filed only a Public Interest Litigation and the writ petition, according to him, is not legally sustainable.

26. However, the standing counsel for the respondents, has not disputed the fact that the petitioner, party-in-person is a practicing lawyer. He has made categorical averments that he is concentrating his practice on the matters relating to Patents Act. Prior to the amendment, being an Advocate, he was entitled to register his name as a patent agent, however, after the amendment, the right has been taken away, as sub-clause (i) of Section 126 (1) (c) of the Act, has been deleted by the impugned amendment. Since the petitioner himself has stated that he is an affected person, in view of the impugned amendment, the arguments advanced by the learned Senior Standing counsel appearing for the respondents is not sustainable in law and hence, the petitioner herein need not file writ petition in the nature of Public Interest Litigation. This Court is of the view that the petitioner, being an affected party, in view of the impugned amendment, has locus standi to file this writ petition, challenging the amendment.

27. As per Article 19 (1) (g) of the Constitution, all the citizens of India, shall have right to practice any profession or carry on any occupation, trade or business, which is a fundamental right, that cannot be prevented by state by making any law, though the State or authority is empowered to impose reasonable restrictions in the interests of general public, on the exercise of the right conferred by sub-clause (g) of Article 19 (1). Similarly, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to : -

(i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

However, it is well settled that any restriction not reasonable, cannot be imposed against the fundamental rights guaranteed under Article 19 (1) (g) of the Constitution.

28. As ruled by the Hon'ble Supreme Court, in Dharam Dutt vs. Union of India, reported in (2004) 1 SCC 712, fundamental rights guaranteed under the Constitution cannot be taken away by any legislation, though the legislation could impose reasonable restrictions on the exercise of the fundamental right, guaranteed as per Article 19 (1) (g) of the constitution.

29. It is an undisputed fact that as per Article 19 (1) (g) of the Constitution, the petitioner being a citizen of India, has the right to practice or carry on his occupation or his profession as Advocate, which cannot be curtailed by the respondent, by any class legislation or unreasonable restriction, though reasonable restriction could be imposed by state or authority, on the exercise of the said right. The work or professional duty of patent agent, as specified under Section 127 of the Patents Act is only a part of the profession of any advocate, hence, the respondents cannot justify the impugned amendment as a reasonable restriction to Article 19 (1) (g) of the Constitution and also not contravening Section 30 of the Advocates Act.

30. On the said circumstances, the Court has to consider whether the impugned amendment under Section 126 (1) (c) (i) of Patents Act, has imposed any unreasonable restriction against the petitioner, being an advocate, to register as patent agent. It cannot be disputed that a better qualified person for a particular task may constitute a reasonable class than less qualified persons. In the instant case, the respondents cannot say that degree holders in Science, Engineering or Technology, after passing the law examination in patent law and drafting conducted by the respondents would be more qualified than advocates, for deleting sub-section (i) of Section 126 (1) (c) of the Act. In order to prevent or prohibit advocates from registering as patent agents, though advocates were originally entitled to register as patent agents, prior to the impugned amendment, by way of the impugned amendment, the term advocate, within the meaning of Advocates Act, 1961 has been deleted.

31. Mr.S.Udayakumar, learned Senior Central Government Standing counsel, drew the attention of this Court to Section 132 of the Patents Act and argued that as per Section 132 (b) of the Act, advocate, not being a patent agent is entitled to argue cases, however, the said contention would not justify the amendment, deleting the terms advocate and virtually preventing them from functioning as patent agents under the Act, though the functioning of patent agent is only similar to part of the work done by advocates, such as drafting, filing and appearing before authorities.

32. As per the impugned amendment to the Act, the petitioner is not entitled to register his name as patent agent, though he is a qualified law graduate, obtained his degree from a recognised university and the same has been approved by Bar Council of India under the Advocates Act. The petitioner is not entitled to register his name as patent agent, in view of the impugned amendment. It is an admitted fact that for getting a qualifying degree, either B.L., or LL.B., and to enroll as advocate, one should have studied regular course in law for three years, if he is a degree holder or five year course after passing plus two examination and after getting through the examinations conducted by such recognised university, he would be entitled to be an advocate. Hence, the respondents are not

entitled to claim supremacy for their departmental examination in law and drafting over the law degree of B.L., or LL.B., awarded by any recognised university approved by Bar Council. Hence, it cannot be disputed that a recognised degree, either B.L., or LL.B., which is the required educational to be enrolled as an advocate, is certainly a better qualification than the examination, conducted by the respondents in Patents Act and drafting to register any one as patent agent.

33. The petitioner is a graduate in law (B.L./ LL.B.) that conferred by a recognised university, which is not in dispute. Being an Advocate, the petitioner, has got sufficient experience in drafting, pleading and to argue any case, including the cases relating to the Patents Act and hence, he was eligible to register his name as patent agent, prior to the impugned amendment, as a matter of right. However, after the amendment, the said right of the petitioner has been taken away. The departmental examination conducted by the controller of patents, the first respondent herein under the second respondent, could not be construed as a better qualification in law than a law degree granted by any recognised university, even in respect of drafting or practicing as patent agent, as contemplated under Section 127 of the Patents Act and therefore, prior to the amendment, advocates, within the meaning of Advocates Act, 1961 were entitled to register themselves as patent agents, as a matter of right. However, the said provision has been taken away unreasonably by the impugned amendment against Section 30 of the Advocates Act, violating the Constitutional mandate.

34. It is pertinent to note that the wisdom of Parliament thought it proper to enact Section 126 (1) (c) (i), whereby advocates were recognised to be qualified persons to register themselves as patent agents, as a matter of right. In addition to that, degree holders in science, engineering or technology, who passed the qualifying examination, conducted by the respondents in patents Act and drafting were also treated as qualified persons to be registered as patent agents. However, by the impugned amendment, deleting sub-clause (i) to sub-section (1) (c) of Section 126 of the Patents Act, virtually advocates, who are more qualified persons to do the work stipulated under Section 127 of the Act are prevented from registering as patent agents, though the other category is permitted to register, based on the examination conducted by the respondents in law and drafting. There is no satisfactory reason on the side of the respondents as to why the term "Advocate, within the meaning of Advocates Act, 1961 available under Section 126 (1) (c) (i) of the Act was deleted by the impugned amendment in an unjustifiable manner.

35. It is also submitted by the petitioner that as per Section 123 of the Patents Act, there is a penal clause, which reads as follows :

"123. Practice by a non-registered patent agents If any person contravenes the provisions of section 129, he shall be punishable with fine which may extend to one lakh rupees in the case of a first offence and five lakh rupees in the case of a second or subsequent offence."

According to the petitioner, the penal clause is operating against the legitimate right of the advocates.

36. In this writ petition, the Court has to decide whether the impugned amendment made to Section 126 of the Patents Act is violative of Articles 14, 19 (1) (g) and 21 of the Constitution, as argued by the writ petitioner, party-in-person or the amendment has to be construed as reasonable classification to Article 14 and reasonable restriction to Article 19 (1) (g) of the Constitution and not contravene Article 21 of the Constitution.

37. It is a well settled proposition of law that reasonable classification cannot be construed as violation of Article 14, since equality as contemplated under Article 14, refers to equality among equals or among equally placed persons. However, a better qualified person cannot be rejected by any authority on the pretext of reasonable classification. As decided by the Hon'ble Apex Court in *K.Thimmappa vs. Chairman, Central Board of Directors, S.B.I*, reported in AIR 2001 SC 467, a class legislation is different from reasonable classification. A class legislation cannot be a defence under Article 14, though reasonable classification is within the purview of Article 14. The term reasonable classification itself reveals the reasonableness or justifiable nature of the classification, otherwise, the same would be a class legislation, which is prohibited under Article 14. In that context, leaving advocates, better qualified persons, the respondents cannot permit lesser qualified persons as a reasonable class, to practice law in respect of drafting, filing and appearing before the first respondent in the name of patent agent, as per Sections 126 and 127 of the Patents Act.

38. Prior to the amendment, the second category of persons eligible to register their names as patent agents were degree holders in Science, Engineering or Technology, who passed the examination conducted by the respondents in Patents Act, including the Rules framed thereunder and drafting. It cannot be disputed that only the degree holders, either B.L., or LL.B., of any recognised university approved by the Bar Council are eligible to enroll as advocates. In imparting education and conducting examinations, especially in law and drafting, the recognised universities are more competent than the respondents, who are conducting only departmental examination in Patents Act and drafting and therefore, advocates, being law graduates of any recognised university, approved by Bar Council are certainly better qualified persons in legal acumen, drafting and interpreting the law than the other category of persons, who were also permitted to register as patent agents. Prior to the impugned amendment, it was a matter of right to any advocate to register as patent agent, since the work of a patent agent is only a part of the work done by any advocate. However, by the impugned amendment, the term "Advocate, within the meaning of Advocates Act, 1961" has been unreasonably deleted by the respondents, without any justifiable reason. Therefore, preventing advocates, better qualified persons and retaining less qualified persons as patent agents, on the basis of the examination conducted by the respondents would not be justified under the pretext of reasonable classification, hence, the impugned amendment is violative of Article 14 of the Constitution, as it is an unreasonable class-legislation.

39. Mr.S.Udhayakumar, learned standing counsel appearing for the respondent relying on the decision in *Clarence Pais Vs. Union of India*, 2001 (4) SCC 325 submitted that as per the amendment to Section 126 (1) (c) (i) of the Act, the other category of persons could be a separate class and the petitioner cannot plead that the said qualification is violative of Article 14 of the Constitution and according to the senior standing counsel, the impugned amendment would come under the defence or exception of reasonable classification. The aforesaid decision relating to

Section 213 (2), (as amended by Kerala Act 1 of 1997) pertaining to probate, being obtained was not mandatory for Indian Christians in Kerala, in view of the protection of interest of minorities, guaranteed under Article 29 of the Constitution, hence, the said decision is not applicable to the facts and circumstances of this writ petition.

40. Learned Senior Standing Counsel appearing for the respondents drew the attention of this Court to the procedure being followed by the Supreme Court regarding "counsel on record" as a separate class for filing of cases in the Apex Court. However, the said argument advanced by the standing counsel for the respondents has no merit. In interpreting law, the respondents can no way be compared with the Supreme Court, in view of Article 141 of the Constitution, since an order or Judgment rendered by the Hon'ble Supreme Court is the law declared by the Supreme Court and the same is binding on all courts and authorities in the territory of India and further, among the advocates, by a competitive examination, the counsel on record are selected by the Supreme Court. Therefore, the advocates on record are selected by way of examination conducted among advocates, hence, the same would create reasonable classification among advocates. So far as the impugned amendment, pertaining to Patent Act is concerned, it has deleted the advocates, a better qualified law knowing persons, merely by conducting some departmental examination in Patents Act, Patent Rules and drafting. The respondents selecting certain group of persons to register as patent agents, deleting advocates, more qualified persons, would be unreasonable and against the larger interest of the general public.

41. The Court can also take judicial notice that if any lawyer is permitted to register as patent agent, he may directly challenge any order passed by the respondents or any other officers subordinate to the respondents, in case the order is contrary to law, however, persons selected by the respondents, on the syllabus prescribed and the examination conducted by the respondents and also appointed by them, the respondents would have professional control over the said patent agents and normally they would be amenable to the authorities under the Patents Act and that would not be beneficial to the larger interest of the public and that may likely to increase corruption.

42. In this regard, it is relevant to refer the Golden Words that "Power corrupts a man and absolute power corrupts absolutely". Leaving advocates and creating only a group of persons, who pass the departmental examination conducted by the respondents as patent agents, which will create only a narrow circle and they may be amenable to the officers of the respondents, however, that would not be in the larger interest of the public. In any angle, I am of the considered view that deleting sub-clause (i) to section 126 (1) (c) of Patents Act, by way of the impugned amendment, whereby preventing advocates from becoming patent agents, would be against the mandate of Article 14, on the ground that the same is against equality before law and equal protection of law, as unreasonable class-legislation.

43. It was argued by the petitioner that the amendment is not making any reasonable restriction, in the exercise of fundamental right, guaranteed, under Article 19 (1)(g) of the Constitution, but the amendment is violative of the fundamental right, guaranteed under the said Article of the Constitution, hence, not sustainable in law.

44. The Hon'ble Supreme Court in Dharam Dutt vs. Union of India (referred to above), has held that fundamental rights guaranteed under Article 19 (1) (g) of the Constitution cannot be taken away by legislation, though the said right is subject to any reasonable restriction. Preventing advocates, who are better qualified persons, ignoring the ground reality that conducting law examination in Patents Act and drafting by the respondents would not make the other group of patent agents as better qualified persons than advocates to register themselves as patent agents. The said amendment would create only a monopoly of certain group of persons, who are amenable to the authorities in the name of patent agents under the Act.

45. It is not in dispute that primary or original orders are being passed only by the respondents and their subordinate officers, subject to judicial review of this Court and the Hon'ble Apex Court. It is the prerogative of the parties or litigants in the matter relating to Patents Act in respect of engaging patent agents. Prior to the amendment, either an advocate registered as patent agent or other category of patent agents, registered themselves, based on the examination conducted by the respondents as their patent agents. However, deleting the term "Advocate" by way of the impugned amendment to Section 126 of the Act, the parties or litigants should necessarily engage their patent agent only in the said second category and not the advocate, since an advocate cannot register as patent agent, after the amendment, as a matter of right.

46. As a matter of fact, prior to the impugned amendment, the parties / litigants were at liberty to engage any advocate, who had registered as patent agents, in respect of drafting, preparing, filing and appearing before the authorities. It is the right or privilege of the litigants or parties to engage any patent agent, either an advocate, who has registered himself as patent agent or the other category, by way of amendment, the respondents cannot create a monopoly against the Advocates Act.

47. It cannot be disputed that in respect of legal practice, the competent supervising machinery or authority is only the Bar Council and as per Section 30 of Advocates Act, an advocate is entitled to appear before any Court, including the Supreme Court, Tribunals and other authorities, such right of an advocate cannot be tampered with by the respondents, in the name of patent agent. Advocates, being law graduates doing part of their work in respect of drafting, preparing documents, filing and appearing before the authorities, apart from arguing cases before Courts are comparatively better qualified persons than the other category of patent agents. Hence, by way of the impugned amendment, the respondents cannot delete the term Advocate and make restrictions to the advocates to register their name as patent agents. There is no acceptable reason assigned by the respondents for deleting the word, Advocate, within the meaning of Advocates Act, 1961" by way of the impugned amendment. The impugned amendment is not based on any reasonable restriction but only an unreasonable restriction, contravenes Article 19 (1) (g) of the Constitution, hence, in the light of various decisions rendered by the Hon'ble Supreme Court, it has to be held that the impugned amendment is violative of Article 19 (1) (g) of the Constitution.

48. It is further argued by the petitioner, party-in-person that the impugned amendment is also against Article 21 of the Constitution, which guarantees protection of life and personal liberty. The Hon'ble Supreme Court has categorically held that right to life and personal liberty includes right to

earn for the livelihood and hence, the same is a fundamental right, guaranteed under Article 21 of the Constitution.

49. The Court can take judicial notice that more than 20,000 advocates are practicing in the city of Chennai alone, as submitted by the petitioner, party-in-person, apart from other advocates practicing all over India. It is the prerogative of any advocate to select and practice in the area relating to his profession, including cases relating to Patents Act. By the unreasonable restriction made by the respondents, by way of impugned amendment, that advocates practicing in the area of Patents Act, in respect of drafting, preparing, filing and appearing before the first respondent and other authorities, they have to necessarily depend on the other category of patent agents. In fact, the impugned amendment makes virtually the advocates, practicing on Patents Act to depend on the other category of patent agents, though the advocates were entitled to register themselves as patent agents, prior to the impugned amendment, as a matter of right. Hence, I am of the considered view that the impugned amendment, curtailing the rights of the petitioner and the other advocates is against the mandate of Article 21 of the Constitution, in view of the class-legislation and the unreasonable restriction made, by way of amendment in the Patents Act.

50. The other limb of argument advanced by Mr.S.Udayakumar, learned Standing Counsel appearing for the respondents is that India is a party to various international treaties, hence, it necessitated the respondents to make the impugned amendment, whereby the term advocate, within the meaning of Advocates Act, 1961, under Section 126 (1) (c) (i) of the Act was deleted. The aforesaid contention of the respondents was not supported by any material and further, the said argument cannot be accepted, on the ground that the sovereignty and the constitutional supremacy cannot be diluted by raising a plea of International contracts with other countries. Constitution is the supreme law of the land and fundamental rights have utmost importance and such rights were not conferred by Parliament or the Judiciary or even the Constitution. As per the preamble of the Constitution, it has been made clear that the people of India, while resolving to constitute India, a sovereign, secular, democratic, republic, have retained certain unalienable basic rights, which are fundamental to any citizen, in a civilized country and the Judiciary is the custodian and watchdog of such fundamental rights, retained by the people. Therefore, the respondents are not entitled to enter into any treaty or contract with any other country, violating such fundamental rights. Similarly, India is a sovereign country not amenable to any outside authority, hence, even by way of international treaty or conventions, constitutional mandates cannot be taken away, as the same would be against the sovereignty of our country. In the aforesaid circumstances, without any materials, the respondents cannot advance their plea that the impugned amendment was made, in view of international treaties and convention, whereby deleted the term advocate, within the meaning of Advocates Act, 1961, under sub-clause (i) of section 126 (1) (c) of the Patents Act, as the same would create monopoly to certain group of persons, selected by them.

51. In any angle, I am of the considered view that the impugned amendment is against Articles 14, 19 (1) (g) and 21 of the Constitution and also against public interest, accordingly, the same is liable to be struck down, as unconstitutional. However, the relief sought for in the writ petition is to declare that the amendment introduced to Section 126 of the Patents Act, 1970, by Section 67 (a) of the Patents (Amendment) Act, 2005 (Act 15 of 2005) as illegal, unconstitutional, ultra vires and void.

52. Hence, to meet the ends of justice, I find it just and reasonable to allow the writ petition and declare that the impugned amendment introduced to Section 126 of the Patents Act as illegal, unconstitutional, ultra vires, void and unenforceable

53. In the result, this writ petition is allowed, declaring that the impugned amendment introduced to Section 126 of the Patents Act 1970, by Section 67 (a) of the Patents (Amendment) Act, 2005 (Act 15 of 2005) as illegal, unconstitutional, ultra vires, void and unenforceable. No order as to costs.

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1. Controller of Patents Intellectual Property Rights Building, GST Road, Guindy, Chennai 600 032.
2. Ministry of Commerce & Industry Union of India Departmental of Industrial Policy and Promotion, Udyog Bhawan, New Delhi 110 011