

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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SHIKHA SHARMA BAGGA VS. **UNION OF INDIA**

Authored by - HARSH KHATRI

INTRODUCTION

In this case of SHIKHA SHARMA BAGGA VS. UNION OF INDIA a petition challenging the Central Government's failure to provide a field in the MCA Portal for attorneys to form companies or LLPs on behalf of clients, the Delhi High Court issued the notice to the government. According to the petitioner, Shikha Sharma Bagga, the creation of businesses and LLPs for clients was made possible through the MCA portal in 2007 for Chartered Accountants, Company Secretaries, and Cost & Work Accountants. The Companies Act, 2013 was amended in 2014, allowing even attorneys to submit paperwork for a company's incorporation. An advocate must first register as a practicing professional in order to use this purpose. However, the MCA's toolkit did not include the modification. As a result, even today, attorneys cannot register businesses or LLPs on behalf of their clients.

FACTS OF THE CASE

- A petition contesting the lack of a field for attorneys to establish businesses and limited liability partnerships (LLPs) on the present Ministry of Corporate Affairs (or "MCA") portal was filed with the Delhi High Court.
- According to the petitioner's argument, the MCA portal allowed professionals including Chartered Accountants, Company Secretaries, and Cost & Work Accountants to register as active professionals and carry out company and LLP incorporation for clients.
- The Companies Act, of 2013, was amended in 2014, allowing even attorneys to submit paperwork for a company's establishment. An Advocate would need to first register as a practicing professional in order to use the indicated purpose.

- However, the aforementioned modification was not included in the MCA toolkit. Advocates were unable to register businesses or LLPs on their client's behalf as a result.
- As a result, the petitioner requests that a further update to the MCA toolkit be made so that attorneys who are members of the Bar Council may register as professionals in the MCA portal.

PROVISIONS INVOLVED IN THE CASE

- Section 7(1)(b) of the Companies Act, 2013 states that the Advocates can also file documents for incorporation of a company and also an LLP on the behalf of the client.

ISSUES OF THE CASE

- Whether the non-providing of a field for Advocates to register companies and LLPs on the current Ministry of Corporate Affairs (hereinafter, 'MCA') portal justified?

ARGUMENTS FROM PETITIONER

- According to the petitioner, Shikha Sharma Bagga, the MCA portal allowed Chartered Accountants, Company Secretaries, and Cost & Work Accountants to register as practicing professionals to conduct company and LLP incorporation for their clients starting in 2007.
- The petitioner requested that a change to the MCA toolkit be made as a result, allowing attorneys who are members of the Bar Council to register as professionals in the MCA portal.
- The Companies Act of 2013's Section 7(1)(b) makes it quite apparent that attorneys can complete the necessary paperwork to incorporate a company. Even with LLPs, this would be the case. This section states that the Advocates can also file documents for the incorporation of the companies or even the LLPs on the behalf of the client.
- The MCA portal permitted Chartered Accountants, Company Secretaries, and Cost & Work Accountants to register as practicing professionals and undertake incorporation

of companies and LLPs for their clients pursuant to an amendment in the Companies Act, 2013 in 2014.

- The petitioner's single claim was that there has been an amendment made in 2014 in the act the Chartered Accountants, Company Secretaries, and Cost & Work Accountants were permitted to register as professionals and undertake companies and LLPs for their clients, here the Advocates were also allowed the same but this was not mentioned in the toolkit of the MCA, hence petitioner claimed that the same should be added to the provisions of the MCA so that this is not discriminatory on the part of the Advocates as being professionals.

ARGUMENTS FROM DEFENDANT

- This was an appeal for the amendment of the required provision because the part of the Advocate was being got violated.
- However, it is claimed that the MCA's portal does not include any provisions for advocates who are members of bar councils, and bar councils are not included as a choice among the Councils.
- The provision of MCA is still not amended (as until before this case).

JUDGEMENT OF THE CASE

The Delhi High Court in this case held that attorneys who are enrolled with attorneys may file the necessary paperwork to form a company or an LLP, and it commanded that the MCA tool kit be modified. The Bar Council will sign up as a professional organization on the MCA website.

The Companies Act of 2013's Section 7(1)(b) makes it quite apparent that attorneys can complete the necessary paperwork to incorporate a company or LLP.

Despite the fact that the MCA portal claims that no provisions or section have been made for members or advocates of bar councils, bar councils are not listed among the available councils. If this is the case, Advocates would need to modify their biased qualifications.

An Advocate would need to first register as a practicing professional in order to use the indicated purpose. However, the MCA's toolkit did not include the aforementioned modification. As a result, even today, attorneys cannot register businesses or LLPs on behalf

of their clients. The petitioner, therefore, requests that a corollary adjustment be made to the MCA tool kit so that Advocates who are registered with the Bar Council may register as professionals on the MCA site.

It is quite clear from Section 7(1)(b) of the Companies Act of 2013 that Advocates may complete the required papers for a company's incorporation. This would be the case even with LLPs. However, it is asserted that bar councils are not included as a choice among the Councils and that the MCA's web makes no accommodations for advocates who are members of bar councils. If accurate, this would be unfair to activists and would need to be altered.

Hence, the MCA was commanded to make the required changes and add the Advocates so that they can also incorporate companies and LLPs on the behalf of their clients.

CONCLUSION

As to sum up, in this case basically a right or a permit that the advocates were allowed by the Amendment of 2014 in the Companies Act, 2013 to register as practicing professionals and undertake incorporation of companies and LLPs as clients. Since this amendment was not implemented in the toolkit of the MCA and is still not implemented before this case hence, the advocates were unable to register companies or the LLPs on the behalf of their clients. Also, section 7(1)(b) of the Companies Act, 2013 clearly states that Advocates can also file for the documents for the companies and their incorporation. Now, thus the MCA toolkit has been commanded to be amended as per the required needs so that the rights of the Advocates are also not infringed. Now, after this case in 2021, the required amendments are the sort to be made in the toolkit of the MCA for the equal treatment of the Advocates.

THANKYOU