
(1999) 11 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 2849 of 1999-L

Adv. S. Rajeev

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-11-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 19(1)
Telegraph Act, 1885 — Section 7
Telephone Allotment Rules, 1980 — Rule 2.4

Citation : (2000) 1 ALT 300 : (2000) 2 ILR (Ker) 109

Hon'ble Judges : S. Sankarasubban, J; A.R. Lakshmanan, J

Bench : Division Bench

Advocate : T.V. Prabhakaran and T. Ravikumar, for the Appellant; K. Ramakumar, C.G.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.R. Lakshmanan, J.—Heard Mr. T. Ravi Kumar for the petitioner and Mr. K. Ramakumar, Senior Central Government Standing Counsel, for the respondents. We also heard Mr. John Varghese, Additional Central Government Standing Counsel, who appeared for the respondents in O.P. No. 6115 of 1997, which is also on the same subject matter.

2. The petitioner is an Advocate on the rolls of the Kerala Bar Council, who is practising in this Court and in other Courts and Tribunals. He applied for a new telephone connection within the territorial jurisdiction of Parur Telephone Exchange in 1997. He made a representation on 13-2-1997 explaining the hardships faced by him due to the lack of telephone connection at his office and requested to give new telephone connection to the petitioner at his office on a priority basis considering his profession as a lawyer. He also stated in the representation that he had obtained telephone connection at his house in the ordinary category. The representation is marked as Ext.P-3. The Sub-Divisional Engineer, Department of Telecommunications, North Paravoor sent a reply to

Ext.P-3 representation informing the petitioner that for getting a new telephone connection on priority basis by including his name in the Non-OYT (Special) Category, the petitioner should not have a phone connection either at his office or at his residence and since the petitioner has a telephone at his residence, he is not eligible for special category registration. The reply is produced as Ext.P-4. It is useful to reproduce Ext.P-4 communication.

"Sub.: New Phone conn. under Spl. Cat. - Reg.

Ref.: Your letter dt. 20-1-97.

Sir, Kindly refer to the letter cited above. It is informed that Advocates who do not have the facility of phone either at the office or residence are eligible for spl. category regn. Since you have a telephone at the residence you are not eligible for special cat. regn.

Yours faithfully."

The petitioner, on enquiry, was given to understand that the 2nd respondent, vide instructions circulated to all Chief General Managers, Telecom Circle/ Telegrams under letter No. 2-13/96-PHA, dated 17-6-1996, formulated a scheme for including advocates in the Non-OYT (Special) Category with many preconditions. Copy of the above communication is produced and marked as Ext.P-5, which reads thus:

"Sub.: - Inclusion of Advocates in Non-OYT/Special Category for provision of New Telephone -policy-Reg.-

It has been decided to include the Advocate in Non/OYT/Spl. Category for provision of New telephone connection subject to fulfilment of the following conditions:-

(1) That the Advocates should have a minimum of five years standing at the Bar or must be an Income Tax assessee for the past two years as on the date of application provided:-

(i) He/She does not have the facility of phone either at the office or residence on the date of application for telephone connection.

(ii) He/Her close relations viz., wife/ husband, son, unmarried daughter residing in the same house are not already having a telephone connection.

(iii) If he/she is already having more than one office and the facility of phone is already existing in any area of the office/residence, he/she will not be eligible to be included in this category.

These instructions will come into force with immediate effect."

It is submitted by Mr. Ravi Kumar that Ext.P-5 stipulates that if an Advocate does not have a minimum of five years" practice or alternatively, if he is not an Income Tax assessee for the past two years as on the date of application he

cannot be included in the Non-OYT (Special) Category for providing new telephone connection and hence, Ext.P-5 cannot be considered to be a fair or reasonable or judicial exercise of power by the 2nd respondent. He further submitted that such classification denies the privileges of special category to advocates who have less than two years practice even though he became an Income Tax assessee after enrolment as advocate. The impugned instructions under Ext.P-5 have also been reflected in the telephone directory for 1997 published by all the Telecommunication Circles under the 2nd respondent. It is pointed out by Mr. Ravi Kumar that among the special categories, only against Advocates such pre-conditions have been stipulated. The relevant page of the telephone directory issued by the Department is produced as Ext.P-6, the relevant portion of which is reproduced hereunder:

"Commercial Information

Social Organisations and Missions.

Non-OYT General - New Lines

Blind persons supported by "Visually Blind Certificate" issued by CMO/MS/Ophthalmic Surgeon of district level Government Hospital.

OYT-Special - xxxx

Permanent units under the following categories:

Non-OYT Special - xxxx

(a) Tiny enterprises (TINY)

- Doctors holding recognised degree in any approved system of medicine/surgery registered in Kerala State or Central Medical Council. Qualified nurses and midwives registered in Kerala State or Central Council.

(b) SSI Ancillary Industrial Undertakings (ANC)

Advocate:- Subject to the fulfilment of the following conditions.

(c) Small Scale Service and Business Enterprises (SSSBE)

(a) Should have a minimum of five years standing at the bar or must be an income tax assessee for the past two years as on the date of the application.

(d) Export Oriented Units (EOU)

(b) Does not have the facility of phone either at the office or residence on the date of application Non-OYT Selected Subscribers (e) Small Scale Industrial Undertakings (SSI)

(c) Close relation viz., wife/husband, son, unmarried daughter residing in the same house are not already having a telephone connection. Non-OYT SWS (Swatantra Senani) xxxx

(d) If already having more facility of phone is already existing in any one of the office/residence. State, national or international recognition. Public institutions. Accredited Press Photographers. Registered News Agencies. Newspaper Managements registered with RNI. Government Schools and Colleges. Tatkal Scheme (Highest Priority) xxxx

Temporary Connection xxxx

Casual Connection xxxx"

The petitioner has filed the writ petition in larger public interest of the legal fraternity and on his personal behalf, objecting to the manner in which the advocates have been imposed with many pre-requisites for being included in the Non-OYT (Special) Category. According to learned Counsel for the petitioner, the conditions now imposed against advocates are discriminatory, illegal and unreasonable, and have no nexus whatsoever to the objects sought to be achieved.

3. According to Mr. Ravi Kumar, the insistence of pre-conditions only against advocates for eligibility for new telephone connection on a priority basis is very prejudicial on the part of the respondents. Counsel submits that it is not discernible under what circumstances the respondents have imposed severe restrictive pre-conditions in the case of lawyers, which are not imposed upon any other class or category. The pre-conditions imposed are also attacked as illogical, illegal and unwarranted and violative of Articles 14, 19(1)(g) and 39A of the Constitution of India. According to Counsel, the condition in para 1 of Ext.P-5 classify the advocates into two categories for a privilege on the basis of experience at the bar and on the basis of income, which has resulted in degrading the status of the legal fraternity as a whole, since, according to him, it is totally unwarranted and illegal in the historical and practical backgrounds of the legal profession, which plays a pivotal role in the administration of justice.

4. A counter-affidavit was filed on behalf of the respondents by the Sub-Divisional Engineer (Legal), Telecom working under the 3rd respondent. The grounds urged in the counter-affidavit with regard to the unsustainability of the claim of the petitioner are as under:

(a) The conditions laid down in Ext.P-5 are reasonable and has direct connection to the object sought to be achieved. Among the advocates, certain standards are prescribed to be eligible for out of turn allotments. The standing in the bar, absence of facilities of telephone in any place, etc., which are all relevant for the grant of telephone connection, have been included in the new order, none of which are amenable to attack as violative of Articles 14 and 19 of the Constitution of India.

(b) The conditions imposed for out of turn allotment based on the standing in the bar, assessment to Income Tax, etc., will not amount to violation of the right to occupation or the right to carry on the profession as a lawyer. Those conditions

are absolutely reasonable and are required in the interest of the State.

(c) A telephone connection is needed to an Advocate who is in active practice. If he is in active practice, ordinarily he will be an assessee to Income Tax and hence, all the conditions in Ext.P-5 are perfectly legal, and are intended to give a special consideration to advocates in the matter of facilitating new connections. According to Counsel, there is no violation of any of the fundamental rights of the petitioner or any of the legal practitioners. According to him, it will not be practicable or feasible to extend the special category status to all the legal practitioners as soon as they are enrolled, irrespective of whether they are active practitioners or merely enrolled.

5. According to Counsel, the rules are made in terms of the relevant statutes and the statutory rules. The conditions, according to him, are intended to facilitate easy telephone connection to the special category and the stipulations are made in public interest. It is also argued that similarly placed professionals like Engineers, Chartered Accountants, Consultants, Architects, etc., are not included in the Non-OYT (Special) Category and if all the professionals are included in the special category, it will defeat the very purpose of having a special category. In support of his contentions, learned Counsel for the Department relied on the decision of the Andhra Pradesh High Court reported in P.R. Prasad and Others, Advocates and Advocates Associations Vs. The Union of India (UOI) and Others, . In those writ petitions, the Department took the plea that it is not only be importance of the profession in general that counts, but the profession must be directly linked with life of public or national interest. The Division Bench of the Andhra Pradesh High Court held that in view of the fact that the profession of Advocates also has come to play increasingly a more active part in the life of the public and the nation as such, it is necessary that the cases of the Advocates for inclusion in the Non-OYT Special Category shall be considered by the authorities concerned and a decision be taken with due promptitude in any case not beyond the period of three months from the date of the judgment. The authorities, thereupon, considered the matter and declined to include advocates in Non-OYT (Special) Category by order dated 21-6-1991 on two grounds, viz., there is no element of emergency requiring contacts with clients even at odd hours and that other similarly placed professionals like Engineers, Chartered Accountants, Architects, Consultants, etc., also may demand inclusion in Non-OYT (Special) Category if the advocates are included and the inclusion of all these professionals could defeat the very purpose of having a special category. That decision was challenged again in a batch of writ petitions before the Andhra Pradesh High Court in W.P. No. 14077 of 1993 and connected cases Mrs. K. Padmalatha, Advocate and Others Vs. Govt. of India and Another, and the Court by judgment dated 31-3-1994, after considering all aspects, held that the circumstances justify issuing a Writ of Mandamus giving direction to the authorities to include "Advocates" in the Non-OYT (Special Category and directed to include the "Advocates" in the Non-OYT (Special) Category subject to the following conditions:

"The Advocates should have a minimum of five years standing at Bar or must be an Income Tax assessee for the past two years as on the date of application provided,

(i) He does not have the facility of phone either at his office or residence on the date of the application for telephone connection;

(ii) The close relations of the petitioner, namely husband/wife, son, unmarried daughter, residing in the same house are not already having telephone connection in his/her name in the same house;

(iii) If the Advocate is having more offices than one and the facility of phone is already existing in any one of the offices or residence, he will not be eligible to be included in this category."

Mr. Ramakumar, learned senior Central Government Standing Counsel, submitted that the SLP filed against the judgment of the High Court of Andhra Pradesh was dismissed by the Hon"ble Supreme Court on 21-3-1995 at the admission stage and, therefore, in compliance with the judgment of the Andhra Pradesh High Court, Ext.P-5 was issued, which, according to him, is legal, valid and reasonable. He submitted further that the conditions set out in Ext.P-5 have received judicial scrutiny and, therefore, it cannot be said that the same is injudicious. The classification envisaged in Ext.P-5 according to the learned Counsel, is perfect in view of the background that all law graduates who enroll as Advocates do not practise as Advocates and therefore, the minimum standing fixed by the High Court is good in the eye of law. It is argued that the grounds raised in the Original Petition are without any merits and hence the prayers in the Original Petition are liable to be rejected. It is further submitted that the judgment of the Andhra Pradesh High Court has been confirmed by the Supreme Court by judgment dated 21-3-1995.

5-A. In view of the above arguments, two Original Petitions were referred to Division Bench by K.S. Radhakrishnan, J. by his order dated 17th November, 1998. Before the learned Judge it was argued that having included the Advocates in the Non-OYT (Special) Category, there cannot be any further classification adding new conditions. They also relied on some of the decisions of the Supreme Court. The Department relied on the decision of the Andhra Pradesh High Court. The learned Judge felt that this matter should be considered by a Division Bench since the matter is of general importance.

6. Counsel for the petitioner, in support of his contentions, cited the decision reported in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, , which was followed in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, : Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, .

7. We have given our anxious consideration to the rival submissions made by Counsel on either side. In our opinion, the preconditions imposed by the

Department for inclusion of Advocates in Non-OYT (Special) Category for providing new telephone connection on a priority basis considering his profession as a lawyer is unreasonable, unjust and unfair. Ext.P-5 stipulates a condition that if an advocate does not have a minimum of five years standing at the Bar or is not an Income Tax assessee for the past two years as on the date of the application, he will not be eligible for inclusion in the Non-OYT Special Category. The said clause, in our view, cannot be considered to be fair, reasonable or a judicious exercise of power by the 2nd respondent. The said condition denies the privilege to Advocates who have less than two years of practice, even if he became an Income Tax assessee after enrolment. Such conditions have not been imposed against any of the categories enlisted in Non-OYT (Special) Category by the Department. The conditions imposed in Ext.P-5 are not applicable to any of the other categories. The above preconditions and classifications do infer that the respondents have no sincere deliberation to grant the facility of priority in granting new telephone connection to advocates, who extensively use the telephone for their professional purpose as the communication facility is a basic necessity for every practising advocate irrespective of one's standing at the bar or financial background or the magnitude of cases he handles independently or depending on others. The equation of five years practice with the status of income tax assessee for the last two years on the date of application for inclusion in Non/OYT (Special) category for new telephone connection is, in our opinion, a colourable exercise of the jurisdiction of the 2nd respondent, which deny the privilege of telephone connection on a priority basis to the junior members of the bar who are coming up in the legal profession under guidance and dependent on senior lawyers. The condition in para 1 of Ext.P-5 classify the advocates into two categories for a privilege on the basis of experience at the bar and on the basis of income, which has resulted in degrading the status of the legal fraternity as a whole because, in our view, it is totally unwarranted and illegal in the historical and practical backgrounds of the legal profession, which plays a pivotal role in administration of justice. The respondents have failed to appreciate the fact that on the very inception of an advocate on the rolls of the bar, every advocate is considered to be a full-fledged one for practising in any Court of law, tribunal and other quasi-judicial and statutory authorities under law without any restriction as to the nature or magnitude of cases they deal, unlike chartered accountants, who have to undergo apprenticeship training and the medical professionals, who have to undergo house surgency after their graduation. The Supreme Court, by a recent decision, has struck down a rule imposed by the Bar Council of India prescribing a pre-enrolment apprenticeship training. Thus, a lawyer, on the very date of his enrolment after graduation is (not) (sic.) entitled to appear and practise before any Court, Tribunal etc., established under law. It is pertinent to note that doctors in various disciplines such as allopathy, ayurveda, homoeo, naturopathy, veterinary etc., and nurses both diploma as well as degree holders, duly registered, working in private hospitals and public hospitals and midwives are entitled to be included in the Non-OYT (Special) Category for providing new telephone connection without any stipulation or condition of years of practice, or

(on the) basis of income or any other conditions as applicable to the Advocates. Doctors are entitled for two telephones under Non-OYT (Special) category and nurses and midwives are entitled to one telephone under that category either at their office or at the hospital. Existence of telephone facility with the close relatives or in the office or residence are not at all a bar for doctors, nurses or others enlisted in the Non-OYT (Special) Category for getting a new telephone connection. But in the case of advocates, they are barred from applying for new telephone connection under the Non-OYT Special Category if he possesses a telephone either at his residence or office either in his name or in the name of any of his close relatives. Hence, in our view the pre-conditions imposed on Advocates are unreasonable, arbitrary and unfair, violative of Articles 14 and 19(1)(g) of the Constitution of India and hence they are liable to be declared null and void and as unconstitutional and unjust. We do so.

8. The Advocates Act, 1961 recognises only two categories of advocates, viz., "Senior Advocates" and "Advocates". Ext.P-5 has classified Advocates into other two categories on the basis of their standing at the bar and on the basis of income, which, in our view, is illegal, arbitrary and violative of Article 14 of the Constitution of India. The Supreme Court of India in the decision in *All India Judges' Association Vs. Union of India and others*, , has observed that the administration of justice and the part to be played by the Advocates in the system must be looked into from the point of view of litigant public and the right to life and liberty guaranteed under Article 21 and right to free legal aid as contemplated under Article 39A of the Constitution of India. The Supreme Court and various High Courts in the country have, in various landmark decisions, upheld the legal profession as a noble profession. By classifying the legal fraternity on the basis of unintelligible and unfair criteria, the 2nd respondent has lowered the image of the legal profession. We are of the view that the respondents have failed to consider the value of the legal profession and the fact that it is a profession which needs better communication facilities to function effectively. Due to the increase in the legal awareness among the public and multiplicity of litigations in Courts and Tribunals in the country the advocates, both juniors and seniors, irrespective of their experience at the bar, are equally involved in the process of dissemination of law and legal awareness among the public, and hence, the classification of advocates for a privilege in regard to basic professional need such as the facility of telephone is unwarranted and uncalled for in the context of the public duty they perform. The importance of the legal profession and the contribution made by the lawyers for freedom struggle and for the countries development in all spheres through the legal profession cannot be ignored.

9. The law is the embodiment of every thing that is excellent and the members of the bar who have a vast reservoir of wisdom, strength and courage are its torchbearers. Krishna Iyer, J. in the *The Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, observed that the vital role of the lawyer depends upon his probity and professional life-style. The central function of the legal profession

is to promote the administration of justice. As monopoly to legal profession has been statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of confidence of community in him as a vehicle of social justice. "Law is not trade, briefs no merchandise". Law as a public profession organised and controlled by the Government originated in India with the Bengal Regulation VII of 1973. The legal system prevailing in India is something more than a hang-over from British Rule or an historical accident. It is one of our priceless possessions. Law is universally described as an "honourable" profession and is distinguished by its rules of ethic without which advocacy would degenerate into a trade or mere sordid pursuit for livelihood and accumulation of wealth. In the memorable words of Cockburn, C.J., it is the duty of an advocate to the utmost of his power to seek to reconcile the interests he is bound to maintain and the duty it is incumbent upon him to discharge with the eternal and immutable interests of truth and justice". The lawyer daily plays a worthy part in seeing that justice is administered according to law.

10. In the decision in the *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, the issue for consideration was, if persons drawn from different sources are integrated into one class, whether they can be classified for purposes of promotion on the basis of their educational qualifications. Krishna Iyer, J., speaking on behalf of Bhagwati, J., has, in para 5 of the judgment, observed thus:

"5. Mini-classifications based on micros-distinctions are false to our egalitarian faith and only substantial and straightforward classification plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality. If in this case Government had prescribed that only those degree holders who had secured over 70% marks could become Chief Engineers and those with 60% alone be eligible to be Superintendent Engineers or that foreign degrees would be preferred we would have unhesitatingly voided it."

11. In the decision reported in the *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, the Supreme Court opined that the quality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. Broad classification based on reason, executive pragmatism and experience having a direct relation with the achievement of efficiency in administration, is permissible, but not mis-classification which creates inequality among the similarly circumstanced members of the same class or group. In *Ajendra Nath Vs. State of Madhya Pradesh*, the Supreme Court held thus:

"What is meant by equality in Article 14 is equality amongst equals. It does not provide that what is aimed at is an absolute equality of treatment to all persons in utter disregard in every conceivable circumstances of the differences such as

age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of the Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them are of no relevance for the purpose of classification is permissible. It does not mean anything more."

In *Sampath Kumar v. Bar Council of India* 1994 (2) KLT 882 a Division Bench of the Madras High Court comprising of D. Raju and A.R. Lakshmanan, JJ. considered the constitutional validity of Rule 9 Chap. III, Part VI of the Bar Council of India Rules prescribing an upper age limit of 45 years for enrolment, which was introduced by resolution No. 64 of 1993, disentitling a person who completed the age of 45 years on the date on which he submitted his application to the State Bar Council. The Division Bench declared that the impugned rule introduced by the Bar Council was ultra vires its rule making power and inconsistent with the provisions of the Act besides being arbitrary and unreasonable. Consequently the said rule was struck down. The Bench held in the judgment as follows:

"Though the Bar Council could prescribe rules in respect of class or category of persons entitled to be enrolled as Advocates the criteria based on age could not be legitimately claimed to form the basis of a class or category of persons. The class or category of persons, as we are able to consider in the light of the historical background of the different categories and classes of persons pleading in Court has reference to the qualifications possessed, the nature of degrees held and the kind of the curricular studies such persons underwent before acquiring the eligibility qualifications. Whatever may be the position in this regard, certainly consideration of age cannot by itself form the basis of creation of a class or category to enable the first respondent to trade its power of making the rule to the provisions contained in Clause (a). The rule, which has the effect of putting an axe on the right of a person, who is otherwise eligible to be enrolled as an Advocate, has the consequence of, in substance prescribing a disqualification. The prescription of an upper age with ceiling limit of 45 years, per se operates as permanent disqualification for a person otherwise entitled to get enrolled as an Advocate. The statute itself prescribes the criteria for admitting a person as Advocate on a State Roll (vide. Section 24 of the Act), Clause(b) of Sub-section (1) of Section 25 of the Act. Clause (b) of Sub-section (1) of Section 24 stipulates that one has to have completed the age of 21 years. Though the minimum age qualification is prescribed, the maximum age limit within which one has to get himself enrolled is not stipulated and conspicuously found omitted by the Parliament in its wisdom. When the Parliament as a matter of policy, thought fit only to stipulate a minimum age limit, we are of the view it may not be permissible for the Bar Council of India to superimpose a further qualification by an upper age limit so as to disqualify or render ineligible for ever a person, though otherwise qualified from having reached enrolled merely on the ground of having reached a particular maximum age limit prescribed by rules.

Similarly, Section 24A of the Act stipulates the disqualifying factors, which stand in the way of any one claiming to be admitted as an Advocate on a State roll. The Parliament, in its wisdom has not chosen to introduce any disqualification based on the criteria of age of a particular applicant.

The opinion expressed by the Madras High Court was also later confirmed by the Supreme Court by the decision reported in *Indian Council of Legal Aid and Advice v. Bar Council of India* 1995 (1) KLT 311. The Supreme Court held that Rule 9 prescribing upper age limit of 45 for enrolment as advocates is beyond the rule making power of the Bar Council of India and is ultra vires the Advocates Act, 1961.

12. In the above cited decisions, the Supreme Court and the High Court have held that the aim of Article 14 is to ensure that individual distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description. As already noticed, the lawyers alone have been singled out and discriminated from among other professionals. The equation of five years practice at the bar with the status as an assessee for Income Tax for two years as on the date of application for inclusion in the Non-OYT (Special) Category is unreasonable. There cannot be a classification among the legal fraternity into two categories on the basis of experience at the Bar and on the basis of income. Hence Ext.P-5, which classifies the Advocates into two categories, is, in our opinion arbitrary, illegal and violative of Article 14 of the Constitution. It was argued that similarly placed professionals like Engineers, Chartered Accountant, Architect, Consultants, etc., are also not qualified under the Non-OYT (Special) Category then the above mentioned similarly situated persons may also demand their inclusion under the Non-OYT (Special) Category and the inclusion of all these professionals would defeat the very purpose of having a special category cannot at all be a ground for denying that facility irrespective of their standing at the Bar or income. At the time of argument, the decision of the Andhra Pradesh High Court, reported in *P.R. Prasad and Others, Advocates and Advocates Associations Vs. The Union of India (UOI) and Others*, and the subsequent decision in *W.P. 14077/93 (1-A supra)* were relied on. In the latter decision, the Andhra Pradesh High Court held that the circumstances justify issuing a writ of mandamus giving direction to the authorities to include "Advocates" in the "Non-OYT (Spl.) Category" and directed to include "Advocates" in the said category, subject to certain conditions. It is stated that the SLP filed against the said judgment was dismissed by the Supreme Court on 21-3-1995. However, the judgment of the Supreme Court was not placed before us. We are told that the SLP was dismissed at the admission stage. The Supreme Court has held that the dismissal of SLP by a non-speaking order, which does not contain the reasons for dismissal, does not amount to acceptance of the correctness of the decision sought to be appealed against. Such an order does not constitute law laid down by the Supreme Court for the purpose of Article 141 of the Constitution of India. In this context, we may refer to the following decisions: *M/s. Sun Export Corporation, Bombay Vs. Collector of Customs*,

Bombay and another, ; P.S.E. Board, Patiala v. Ashok Kumar Sehgal 1990 LabIC 249 para 22 at P.259 and State of Kerala v. The Corporate Management of Schools of the Archdiocese of Changanacherry 1970 KLT 232 para 6. The judgment of the Division Bench of the Andhra Pradesh High Court referred to supra cannot, therefore, be treated as a binding precedent on us. In this context, we may also refer to a very recent decision of a Division Bench of this Court comprising of Arijith Pasayat, C.J. and K.S. Radhakrishnan, J. in Union of India v. Kumaran and others 1999 (2) KLJ 852. The Bench held as follows:

"The effect of a non-speaking order of dismissal of an SLP without anything more indicating grounds or reasons, of its dismissal must, by necessary implication, be taken to be that Supreme Court had decided only that it was not a fit case where SLP should be granted. Where reasons are given, decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by Supreme Court shall be binding on all Courts within the territory of India. It, therefore, follows that when no reason is given, but an SLP is dismissed simpliciter, it cannot be said that there has been a declaration of law by apex Court under Article 141 of the Constitution."

13. The Supreme Court in Sudeer v. Bar Council of India 1992 (2) KLT 73 held that the rules prescribing for pre-enrolment training are beyond the rule making powers of the Bar Council of India and are ultra vires of the Advocates Act, 1961. Section 24A of the Act deals with disqualification for enrolment of a person desirous of being an Advocate under the Act. That section was inserted by Advocates Amendment Act 60 of 1973. The Bar Council of India Training Rules, 1995, as amended by the resolution of the Bar Council of India in its meeting dated 19-7-1998 relating to training to entrants of legal profession were challenged on the ground that the right to practise law is made available by the relevant provisions of the Act was being arbitrarily denied by the impugned rules framed by the Bar Council of India and, therefore, the fundamental rights of the persons who have successfully completed their legal education by getting requisite law degrees from the Universities concerned are being arbitrarily denied by the impugned rules framed by the Bar Council of India and therefore the fundamental rights under Article 19(1)(g) of the Constitution of India is being violated. It was contended that the said rules do not impose any reasonable restrictions on the exercise of their fundamental right. The Supreme Court, by the above judgment, held that the rules prescribed for pre-enrolment training are beyond the rule making powers of the Bar Council of India.

14. The telephone which was a mere status symbol in our country half a century back has now become one of the most essential necessities. This is mainly because of the growing development of commerce and industry which need fast means of communication to keep pace with similar progress throughout the world. The importance of development of the telephone system has been realized by the Government who have entrusted the responsibility of the future of the telephones to the newly created Telecom Commission. It is healthy sign that this

Commission has given priority to efficient customer-service. The Department has also introduced value added services of communication systems such as Cellular Telephones, Radio Paging Service, Voice Mail Service, Videotex Service and E-Mail Service etc. In these modern days, possession of telephones is no longer considered a luxury or a status symbol but a necessity of life for the common man in general and businessman and professionals like Lawyers, Doctors, Engineers, Chartered Accountants etc. Provision of telephone and other services is governed by the Indian Telegraph Rules, 1951, as amended from time to time. Telephone connections are provided to the public in accordance with the Telephone Allotment Rules and other guidelines and instructions issued by the Department of Telecommunications. In our view the department cannot take shelter under the judgment of the Andhra Pradesh High Court in W.P. 14007/93, dated 31-3-1994.

15. During the last several years enormous changes have taken place in the scientific field in the matter of transmission of information and broadcast all over the world. A thing which was supposed to be a luxury about a few years back has now become a necessity, without which it has become a difficulty to keep in touch with people who has something to do with the work of an individual or a group of persons as the case may be. In fact, Andhra Pradesh High Court in their judgment reported in P.R. Prasad and Ors. v. Union of India (1 supra) have pointed out several amendments that have been made to the category of Non-OYT (Special) from time to time. As pointed out by the said Court, the authorities in whom the discretion is vested to include or delete certain persons or class of persons have failed to exercise their discretion in a fair and equitable manner. Though they considered the inclusion of Advocates in the Non-OYT (Special) Category, pursuant to the decision of the Andhra Pradesh High Court in W.P. 14077/93 (1-A supra), certain preconditions have been imposed, which, as rightly pointed out by the learned Counsel for the petitioner, is unreasonable, illegal and discriminatory in nature.

16. The Rule of Law is the foundation of a democratic society. Judiciary is the guardian of Rules of Law. Hence judiciary is not only the third pillar but the central pillar of a democratic set up like ours. Lawyer is a part of the judicial system of our country. As an Officer of the Court, he helps to strengthen the administration of justice by upholding dignity and majesty of Courts. Lawyers constitute an important occupational category in the society. The Bar is potential force. It is capable of performing many an important function in the life of a community. In our country in the pre-independence era and in the decades that followed, the Bar has been mainly instrumental in building the nation. Individual members of the Bar have played extensive role in the scientific and political life of the country by making profuse contributions. A section of top lawyers commanded high prestige as freedom fighters during the national liberation movement. Thus it can be seen that Lawyers play a major role in upholding civil liberties of human rights that are integral to right to life guaranteed under Article 21 of the Constitution of India.

17. The role of Telegraph Act though prescribes conditions for the grant of Non-OYT Special telephone has no nexus with the object it seeks to achieve. As already noticed, the Rule while prescribes the preconditions for the grant of telephone to Advocates does not prescribe any such precondition with respect to the grant of facility to Doctors and Nurses. If the quality and nature of service rendered to the members of the society is the criteria to decide the objectives sought to be achieved the .lawyers cannot be treated at a lesser grade than members of the medical profession. The principle underlying the guarantee under Article 14 is that all persons similarly circumstanced shall be treated .alike, both for privileges conferred and liabilities imposed. Article 14 itself guarantees equality before law for all persons and a protection against discrimination by any law. It prohibits hostile classification by law and is directed against the discriminatory classes of legislation i.e., treating equals as unequals and unequals as equals,

18. To treat one person different from another where there was no rational basis for doing so would be arbitrary and thus discriminatory. The Supreme Court held in Union of India and Another Vs. Tulsiram Patel and Others, . Even if a provision is not discriminatory but is entirely unreasonable or absolutely arbitrary, it would be struck down as ruled by the apex Court in AIR India Vs. Nergesh Meerza and Others, .

19. The advancement of science and technology in basic human life has changed the very concept of a telephone from the status of a mere luxury to the status of an essential amenity. In this age of technological advances and fast development, when global dissemination of knowledge and information is done in seconds, the Telegraph Department is expected to rise from their slumber and act in consonance with the needs of the changing society. Clinging to the rules and conditions as the pre-requisites for giving the telephone facilities is not only archaic but otiose. The department has to keep pace with the vast developing and changing scenario. We conclude this judgment with the hope that the department will do away with such archaic rules in order to facilitate the lives of members of the society and treating granting of telephone as an essential service to all without any discrimination, on the mere asking or applying for a telephone within a reasonable time, which is an absolute necessity for the day to day life of a lawyer a litigant and all other professions. institutions etc.

20. It may be mentioned that so far as existing telephone connections which have been provided pursuant to the interim directions of this Court are concerned, they may be continued to operate and the department shall treat the same as the one provided pursuant to the order of this Court. In the instant case, we are told that it has already been provided to the applicant.

21. An analysis of the telephone allotment rules along with the guidelines issued by the department for all these years show that the allotment rules and the guidelines have been frequently and elaborately amended from time to time by the department in accordance with the exigencies of the situation. It is pertinent

to note that the said rules are merely administrative instructions and do not have statutory force as they have not been promulgated in exercise of the powers u/s 7 of the Indian Telegraph Act, 1885. In fact in P.R. Prasad and Ors. v. Union of India (1 supra) the Division Bench has mentioned the importance of the profession of Advocates, which is linked with the life of the public and national interest, while considering the question of inclusion of Advocates in the Non-OYT (Special) Category.

22. The Writ Petition is allowed. The preconditions contained in Ext.P-5 to include the Advocates in Non-OYT (Special) Category for provision of new telephone connection are quashed as discriminatory, unreasonable and arbitrary. We declare that all Advocates on the roll of the Bar Council who apply for telephone connection, irrespective of their standing at the Bar are entitled to be included in the Non-OYT Special Category. We direct the Department of Telecommunications to provide telephone connections either at office or at residence or both within a reasonable time subject to the other rules and guidelines.

A copy of this judgment shall be forwarded to the Hon''ble Minister for Telecommunications, Union of India, New Delhi and to the Asst. Director General (PHA), Department of Telecommunications, Sanchar Bhavan, New Delhi for further action. No costs.