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**(2006) 07 MP CK 0058**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 2232 of 2006**

Asha Patwa

APPELLANT

Vs

State of M.P. and others

RESPONDENT

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**Date of Decision :** 12-07-2006

**Acts Referred:**

Advocates Act, 1961 — Section 49

**Citation :** (2006) 4 MPLJ 162

**Hon'ble Judges :** S. Samvatsar, J; Abhay Gohil, J

**Bench :** Division Bench

**Advocate :** Jitendra Sharma, for the Appellant; Ami Prabal, Dy. Advocate General for Respondents No. 1 and 2, M.P.S. Raghuvanshi for Respondents No. 3 and 4 and V.K. Bharadwaj, for the Respondent

**Final Decision :** Allowed

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## Judgement

Abhay Gohil, J.

Petitioner has filed this pro bono publico petition in the larger public interest for ensuring the compliance of rules framed by the Bar Council of India from time to time in the Govt. Nehru Degree Law College, Ashok Nagar, M.P.

In nutshell it is contended that there is Nehru Degree Law College at Ashok Nagar, which is being run by Jan Bhagidari Samiti and the Government is trying to appoint law teachers in Govt. Nehru Degree College as guest faculty teachers in violation of the rules framed by Bar Council of India without caring the standard of education in the field of law, whereas as per rules framed by the Bar Council of India are binding upon the respondents for running the law college. The Government vide circular dt. 28-3-2001, the Government has prepared a self financing scheme for settling ratio of teachers and students and on the basis of the aforesaid scheme the College is being managed by the respondents from the funds of self financing scheme and it is further contended that as per the rules framed by the Bar Council of India, u/s 49 of the Advocates Act and as per

the rules every college is duty bound to engage full time principal and law teachers and they are required to pay the pay scales recommended by the UGC to the teachers of these law colleges. Four full time law teachers are working in the law college and they are working as per the norms of the UGC. The inspection of the said college was made by the Bar Council of India and submitted its report on 28th July, 2005. As per the aforesaid report teachers appointed on contract basis have to be paid the pay scale approved by the U.G.C. through bank cheque and an affidavit was required to be filed by the college authority on or before 31st January, 2006. The petitioner's further grievance is that respondent No. 2 issued a circular dt. 2-7-2005 laying down the procedure for appointment of Guest Faculty teachers but their contention is that the aforesaid circular is not applicable in the law colleges but taking the shelter of the aforesaid circular the respondent No. 3 has issued an advertisement inviting applications for appointing law teachers as Guest Faculty, which is contrary to rules framed by the Bar Council of India and because of that the recognition of the institution has come under suspicion and apprehension is that if the teachers are appointed on the basis of Guest Faculty policy, the recognition of the college will be cancelled by the Bar Council of India as the same has been done in the case of M.L.B. College Gwalior and has prayed the relief in the petition that the respondents be directed to ensure the compliance of Part 4 of the Bar Council of India Rules for maintaining standards of legal education in the Govt. Nehru Degree Law College Ashok Nagar (M.P.) and to further issue direction restraining the respondents from making appointments of Law Teachers either as daily wage, casual or part time, Guest Faculty. He further prayed that directions be issued for making appointments of full time Principal and Law Teachers on payment of regular salary on the basis of UGC pay scales.

Respondents No. 3 and 4 Principal/Secretary Jan Bhagidari Samiti and President, Jan Bhagidari Samiti of Govt. Nehru Degree College have filed their reply and it was contended on behalf of the State Government that in view of the reply/return filed by the respondents No. 3 and 4, the respondent/State does not want to file return.

In the return on behalf of respondents No. 3 and 4, it was submitted that State Government has issued one notification whereby in all the colleges where the regular Professors/Assistant Professors and Teachers are not available, the Institute will constitute a fund out of collection to be made from the students known as Jan Bhagidari Scheme and thereby to engage the eligible Teachers for fulfilling the need of education in the Institute concern. Such appointment is to be made for one academic session and the appointment can be extended in terms of need of the Institute and students. However, fact remains that such persons cannot be said to be appointee of the Institute but they are being paid honorarium for arrangement of studies and accordingly such persons will have no right for regularisation in other service. Even no experience certificate is required to be issued to such engaged persons and thus it was submitted that they will have no right against the post. It was further submitted that there are five

sanctioned posts of Assistant Professor Law in the College in question and all are vacant. In the earlier session, out of five, four posts were fulfilled by contract appointment, which came to an end by 30-4-2006. As per the impugned advertisement, the qualification prescribed by the UGC is being taken due note and accordingly the qualified teachers according to the norms fixed by the UGC as Guest faculty Teacher will be engaged and it was submitted that any inferior quality teacher has not been introduced under the garb of Guest Faculty and for appointment and engagement of Guest Faculty Teachers no procedure is required to be followed. It is practically not possible to get appointment on the post of Assistant Professor through PSC by the State Government within short period and therefore for stop gap arrangement the impugned advertisement has been issued. It was pleaded that as per the circular the Guest Faculty Teachers can also be appointed in Law Faculty and that circular is also for the law Faculty.

Shri Vinod Bharadwaj, Learned Counsel for the respondent No. 5 present in Court submitted that the policy and guidelines issued by the Commissioner, Deptt. of Higher Education, Govt, of Madhya Pradesh on 2-7-2005 are not in accordance with the rules framed and guidelines issued by the Bar Council of India. Bar Council of India has not permitted the appointment on the basis of Guest Faculty. No law teacher can be appointed as Guest Faculty Teacher. The rules framed by the Bar Council of India have been produced as Annexure P/3, which are framed with a view to raise and maintain the standard of legal education in the country.

We have heard the Learned Counsel for the parties at length. Learned Counsel for the parties jointly submitted that looking to the ensuing academic session of the respondent Govt. College, this petition be finally heard today and disposed of.

Learned Counsel for the petitioner in nutshell submitted that the circular issued by the Government is contrary to the rules framed by the Government of India under the Advocate's Act and it is the duty of the Government as well as Government Colleges to follow the rules framed by the Bar Council of India. In nutshell the submission of the Learned Counsel for the respondents No. 3 and 4 is that they are running the college on the basis of circular issued by the State Government dt. 28-3-2001 and the scheme framed and they have issued advertisement for inviting applications on the basis of circular issued by the Govt, of Madhya Pradesh on 2-7-2005 (Annexure P/14) for appointment as Guest Teachers. In the last academic session there were four regular teachers and they were all LLM and duly qualified as per the terms prescribed by the UGC and Jan Bhagidari Samiti was paying the salary of Rs. 7,000/- to them as the Jan Bhagidari Samiti is having limited source and the salary is being paid out of the collection made from public and the fees received from the students.

After hearing the Learned Counsel for the parties and after perusal of the documents, the question for consideration in this petition before us is whether the rules framed by the Bar Council of India for maintaining standard of legal education and also for recognition of degree in Law for admission as Advocate and the aforesaid rules framed and guidelines issued by the Bar Council of India

is binding on the Government Colleges and whether the Government is bound to follow the same and whether Government can issue any contrary instructions to the Law Colleges being run by the Government.

Section 49 of the Advocates Act of 1961 provides general powers to the Bar Council of India to make rules. Sub-section (d) of Sec. 49 provides that the legal standard of legal education to be observed by University in India and the inspection of University for that purpose.

Bar Council of India has framed separate rules to prescribe the standard of legal education according to, which there shall be two streams of law course leading to LL.B. Degree viz. a five year and a three year law course for the purposes of enrolment as Advocates as prescribed under the Rules contained in section A and section B respectively. Part IV provides that law education of 5 years shall be through whole time law colleges of University Department, University Department will be deemed to be whole-time law college as provided in sub-rule (2) and (3) of section A of Part IV in case working time of the college or the University exceeds to at least thirty hours of working per week including contact and correspondence programme, tutorials, home assignments, library, clinical work, etc. provided that the actual time for classroom lectures is not less than 20 hours per week. A law college shall be located at place where there is at least a District Court or a Circuit District Court or within such distance thereof as the Bar Council of India permits. Sub-rule (2) of Rule 8 contained in para 8 provides that every law college to obtain approval of affiliation must have in its teaching staff in its first year a whole-time Principal and at least two other whole-time teachers and they the time it opens its third year, it must have two more whole-time teachers. This rule came into force immediately for the new colleges while in case of existing law colleges became effective from 1st July, 1996. Rule 8 (2) is quoted below:

8(2) Every Law College to obtain approval of affiliation must have in its teaching staff in its first year a whole-time Principal and at least two other whole-time teachers and by the time it opens its third year, it must have two more whole-time teachers. This rule will come into force immediately for new colleges while in case of existing law colleges, it will be effective from 1st July, 1996.

Various other norms have also been prescribed by BCI. Salaries have to be as per the scales recommended by the UGC from time to time as provided in Rule 14. Rule 16 provides that a law college affiliated to a University shall by June 1, 1987 be an independent law college and shall cease to be a department attached to a college. No college after the coming into force of the rules shall impart instruction as provided in Rule 17 unless its affiliation has been approved by BCI. Rule 21 provides that Bar Council of India may issue directives from time to time for maintenance of the standards of legal education. Section B of Part IV of the Rules contains the provisions with respect to three-year law course after graduation. Rule 4 (2) in section B Part IV provides that every law college to obtain approval affiliation must have in its teaching staff in its first year a whole-

time Principal and at least two other whole-time teachers and by the time to open its third year, it must have two more whole-time teachers. This rule came into force immediately for the new colleges while in case of existing law colleges became effective from 1st July, 1996. Thus, it is clear that for three years Law course after graduation the college must have whole-time Principal and at least 4 whole-time teachers. The aforesaid requirement is to wipe out the adhocism from the legal education prevailing in the country.

To consider the question of importance of the legal education, long back in the case of *State of Maharashtra Vs. Manubhai Pragaji Vashi and others*, , after considering the provisions of Article 21 read with Article 39-A of the Constitution of India and after placing reliance on the decision of the Constitution Bench of the Supreme Court in the case of *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, , in which it was held that while rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other and also considering another Constitution Bench decision in the case of *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, , in which it was held that it is thus well established by the decisions of this Court that the provisions of Parts III and IV are supplementary and complementary to each other and that fundamental rights are--but a means to achieve the goal indicated in Part IV. It is also held that the fundamental rights must be construed in the light of the directive principles. The Supreme Court has further held in para 17 as under:

17. In the light of the above, we have to consider the combined effect of Article 21 and Article 39-A of the Constitution of India. The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The preamble to the Constitution of India assures "justice, social, economic and political". Article 39-A of the Constitution provides "equal Justice" and "free legal aid". The State shall secure that the operation of the legal system promotes justice. It means justice according to law. In a democratic polity, governed by rule of law, it should be the main concern of the State, to have a proper legal system. Article 39-A mandates that the State shall provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The principles contained in Article 39-A are fundamental and cast a duty on the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further mandates to provide free legal aid in any way -- by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities. The crucial words are (the obligation of the State) to provide free legal aid "by suitable legislation or by schemes" or "in any other way", so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (emphasis supplied). The above words occurring in

Article 39-A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial, a vast number of persons trained in law are essential. Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in Courts, tribunals or other authorities. It has manifold facets. The explosion in population, the vast changes brought about by scientific, technological and other developments, and the all-round enlarged field of human activity reflected in modern society, and the consequent increase in litigation in Courts and other forums demand that the service of competent persons with expertise in law is required in many stages and at different forums or levels and should be made available. The need for a continuing and well-organised legal education, is absolutely essential reckoning the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever-growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialisation in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. It cannot admit of doubt, of late there is a fall in the standard of legal education. The area of "deficiency" should be located and correctives should be effected with the co-operation of competent persons before the matter gets beyond control. Needless to say that reputed and competent academics should be taken into confidence and their services availed of, to set right matters. As in this case, a sole Government Law College cannot cater to the needs of legal education or requirement in a city like Bombay. Lack of sufficient colleges called for the establishment of private law colleges. If the State is unable to start colleges of its own, it is only appropriate that private law colleges, which are duly recognised by the University concerned and/or the Bar Council of India and/or other appropriate authorities, as the case may be, should be afforded reasonable facilities to function effectively and in a meaningful manner. That requires substantial funds. Under the label of self financing institutions, the colleges should not be permitted to hike the fees to any extent in order to meet the expenses to provide the infrastructure and for appointing competent teachers and staff. The private law colleges, on their own may not afford to incur the huge cost required in that behalf. The "standard" of legal education and discipline is bound to suffer. It should not so happen for want of funds. The "quality" should on no account suffer in providing free legal aid and if it is not so, "the free legal aid" will only be a farce or make believe or illusory or a meaningless ritual. That should not be. It is in that direction the grants-in-aid by the State will facilitate and ensure the recognised private law colleges to function effectively and in a meaningful manner and turn out sufficient number of well-trained or properly equipped law graduates in all branches year after year. That will in turn enable the State and other authorities to provide free legal aid and ensure that

opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily flowing from Articles 21 and 39-A of the Constitution were totally lost sight of by the Government when it denied the grants-in-aid to the recognized private law colleges as was afforded to other faculties. We would add that the State has abdicated the duty enjoined on it by the relevant provisions of the Constitution aforesaid. In this perspective, we hold that Article 21 read with Article 39-A of the Constitution mandates or casts a duty on the State to afford grants-in-aid to recognised private law colleges, similar to other faculties, which qualify for the receipt of the grant. The aforesaid duty cast on the State cannot be whittled down in any manner, either by pleading paucity of funds or otherwise. We make this position clear.

So far as the question of importance of legal education in the country is concerned, its importance has already been highlighted by the Supreme Court in the aforesaid judgment. We need not elaborate it in this petition. From the aforesaid Judgment of the Supreme Court, it is very much clear that our democratic society is governed by rule of law and education specially the legal education and its standard has to be raised. There is a need for continuing and well-organised legal education in the country and specially in the State of M.P., which is only possible if adequate number of law colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner. The right to free legal aid and speedy trial are guaranteed fundamental rights under the Constitution and looking to the welfare concept of Constitution especially when according to Article 38 the object of the State is welfare of the people. Under the Constitution it is the duty of the State to provide education to the people including legal education.

It is surprising that when the Government is running the colleges including the law faculty in the college, why the Government is not regularly appointing Principal and Teachers in the Law Faculty and why the Government is compelling Jan Bhagidari Samiti to collect the fund and to pay the salary to the teachers and that too very meagre amount. When the Bar Council of India has already framed rules, which are having the force of law and has directed about the appointment of teachers on regular basis, the Government cannot take the exception of the same. The Bar Council of India Rules are equally binding on the Government and ignoring them, the Government cannot appoint teachers either as daily wager, casual or part time teachers or as Guest Faculty as has been directed on 2-7-2005 vide Annexure P/14. This circular issued by the respondent State is for the academic session of 2005-06 is contrary to the rules framed by the Bar Council of India. To that extent the submission of the Learned Counsel for the petitioner is that the aforesaid circular is not applicable for the Law Colleges appears to be logical. Therefore, it can be safely held that the said circular is not applicable to the Law Colleges and its application to the Law Colleges is hereby quashed and the teachers cannot be appointed as Guest Faculty in the Law Colleges. If the education and the legal education is part of the fundamental

right, the Government is bound to provide legal education to the people, its importance has already been highlighted by the Supreme Court in the aforesaid judgment and to open atleast one law college in every district and to appoint Principal and regular law teachers fully qualified as per the norms prescribed in every college run by the Government and availability of the funds cannot be an excuse.

In view of the aforesaid discussion, it is clear that the rules framed by the Bar Council of India are having force of law. They are also binding on the Govt. Law Colleges. The Rules cannot be ignored, nor under the guise of funds Government can close the Law Colleges and cannot prolong the regular appointment of qualified Principal/Teachers in the Law Colleges.

We are inclined to allow this petition. Accordingly, it is allowed and the State of Madhya Pradesh is directed to establish atleast one law College in a district and appoint qualified teachers on regular basis in every College where there are vacancies within the period of six months through PSC. Till then qualified Law Teachers can be appointed on temporary basis so that the education of the students may not suffer. No appointment can be made on contract, casual or on daily wager or on contingency or as Guest Faculty. Even if any such teacher is appointed it cannot be made regular contrary to the rules framed by the Government unless selected by the PSC. Guest Faculty Teachers can only be invited to deliver lecturers on special subjects as and when necessary in the interest of students, but they cannot be appointed as regular teachers and no college can be permitted to run without full time, qualified regular Principal/Law Teachers. It is not only the duty of the Bar Council of India to frame rules but Bar Council of India should develop effective machinery for regular inspections of the Colleges and to see that standards of every Law College is raised and they provide legal education as per the standard fixed by them. It is expected that Bar Council of India shall effectively control the colleges, those who are involved in providing legal education. 16. Parties are directed to bear their own costs.