
(2002) 02 AP CK 0173

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23603 and 23614 of 2000

A.V. Educational Society

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Bar Council of India Rules, 1975 — Rule 17, 18, 19
Bar Councils Act, 1926 — Section 7(1)

Citation : AIR 2002 AP 348 : (2002) 3 ALD 716 : (2002) 2 ALT 576

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : S. Niranjan Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—In these writ petitions, the petitioners have assailed the validity of Rules, 17, 18 and 19 of Bar Council of India rules, for short "the Rules" framed by the Bar Council of India by virtue of the power conferred upon it under Sections 7(h) and (i), 24(1)(c)(iii) and (iiia)(9), 49(1)(af)(ag) and (d) of the Advocates Act, 1961 for short "the Act".

2. A.V. Educational Society, a Society registered under Andhra Pradesh (Telangana Area) Public Societies Act, 1350-Fasli, is the petitioner in Writ Petition No. 23603 of 2000 and it had established a Law College by name "K.V. Ranga Reddy Institute of Law". The petitioner being aggrieved by the proceedings bearing Lr. No. APSCH/ Law Colleges/Secy/2000, dated 10-8-2000 of the A.P. State Council for Higher Education, the 2nd respondent in writ petition refusing permission to the petitioner college to convert the 5 year .degree course to 3 year degree course and for switching over from the Evening College to Day College, it is stated, it has filed WP No. 16278 of 2000 in this Court and the same is pending inter alia challenging the vires of A.P. State Council for Higher Education Act, 1988 (Act 15 of 1987) on the grounds of the said Act being unconstitutional and beyond legislative competence of the Andhra Pradesh State

Legislature. The petitioner complaining that Rules 17, 18 and 19 of the Rules are ultra vires of the Act and therefore insistence to seek approval of the Bar Council of India for affiliation is illegal and unauthorized, has filed the writ petition challenging the vires of the Rules, 17, 18 and 19 of the Rules.

3. Anwar-Ul-Uloom Educational Association, New Mallepally, Hyderabad, is the petitioner in WP No. 23614 of 2000. The said association is the society registered under the provisions of Andhra Pradesh (Telangana Area) Public Societies Act, 1950 Fasli with Registration No. 23/1952 and this society established a Law College by name "Anwar-Ul-Uloom College of Law" in the year 1988. The Bar Council of India vide its letter No. BCI: D:712:1999 (LE/Meg.), dated 3-8-1999 addressed to the Osmania University, Hyderabad, the 4th respondent in the writ petition, refused to include the name of the petitioner-Law College in the list of approved Law Colleges. The petitioner society being aggrieved by the said action has filed this writ petition questioning the vires of Rules 17, 18 and 19 of the Rules and for a consequential direction to the respondents not to insist for the Bar Council of India's approval as a condition for the grant of affiliation to the petitioner College-Anwar-Ul-Uloom College of Law.

4. In both the writ petitions, the petitioners have not assailed any particular adverse action or order of the Bar Council of India or the Andhra Pradesh State Council for Higher Education. Therefore, the only question that arises for the decision of the Court is whether Rules 17, 18 and 19 of the Rules are ultra vires the Act.

5. Learned Counsel appearing for the petitioners would contend that the Bar Council of India acted without jurisdiction in framing the Rules 17, 18 and 19 in providing for the affiliation of every college imparting education in law must be approved by the Bar Council of India. The learned Counsel would contend that the impugned rules travel beyond the scope of the power conferred upon the Bar Council of India u/s 7 of the Act. According to the learned Counsel, whereas Section 7 of the Act only grants power to the Bar Council of India to prescribe standards and recognize Universities whose degrees would be valid for the purposes of the Act, Rules 17, 18 and 19 travel far beyond the powers delegated to it u/s 7 and also the Rule-making power u/s 15 of the Act and are, therefore, ultra vires the rule making power of the Bar Council of India. The learned Counsel would contend, the impugned rules inter alia impinge upon the authority and functioning of the Universities constituted for the purpose of imparting education and affiliating colleges in accordance with their own guidelines.

6. The Advocates Act, 1961, has been enacted with an object to amend and consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Council and All India Bar. The main objective of the Act is the integration of the Bar into a single class of legal practitioners known as Advocates and the prescription of uniform qualification for the admission of such persons to the legal profession. The composition of the Bar Council of India is to be in accordance with Section 4 of the Act.

7. The rules are framed by the Bar Council of India by virtue of the delegated power conferred upon it under Sections 7(h) and (i), 24(1)(c)(iii) and (iiia), 49(1)(af)(ag) and (d) of the Act, and not in exercise of the rule making power u/s 15 of the Act. Sections 7(h) and (i), 24(1)(c)(iii) (iiia), 49(1)(af) (ag) and (d) of the Act provide as follows:

7. Functions of Bar Council of India :--(1) The functions of Bar Council of India shall be --

(a) xxxxxx

(b) xxxxxx

(c) xxxxxx

(d) xxxxxx

(e) xxxxxx

(f) xxxxxx

(g) xxxxxx

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognize Universities whose Degree in Law shall be a qualification for enrollment as an advocate and for that purpose of visit and inspect Universities; or cause the State Bar Council to visit and inspect Universities in accordance with such directions as it may give in this behalf;"

24. Persons who may be admitted as advocates on a State roll :--(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:--

(c) he has obtained a degree in law-

(i) xxxxx

(ii) xxxxx

(iii) after the 12th day of March, 1967, save as provided in Sub-clause (iiia), after undergoing a three-years course of study in law from any University in India which is recognized for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

49. General Power of the Bar Council of India to make rules :--

(1) The Bar Council of India may make rules for discharging its functions under this Act, and in particular, such rules may prescribe--

(a) xxxx

(ab) xxxx

(ac) xxxx

(ad) xxxx

(ae) xxxx

(af) the minimum qualifications required for admission to a course of degree in law in any recognised University;

(ag) the class or category of persons entitled to be enrolled as advocates;

(ah) xxxx

(b) xxxx

(c) xxxx

(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;

Rules 17, 18 and 19 of the Rules provide as follows:

"17(1) No college after coming into force of these rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India.

(2) An existing Law College shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved by the Bar Council of India.

18. The Bar Council of India shall cause a law college affiliated or sought to be affiliated to a University to be inspected by a Committee to be appointed by it for the purpose, when;

(a) An application for approval of affiliation of a new college is received by it, or

Its suo motu decides in order to ensure that the standards of legal education laid down by it are being complied with.

(b) The application for approval of affiliation of a new college shall be addressed to the Secretary, Bar Council of India and shall be sent only through the Registrar of the University concerned with his recommendation and the application be accompanied by an inspection fee of Rs. 15,000/-.

(c) The college and/or the University concerned shall furnish all information to

the Committee of inspection and the Bar Council of India as and when required and shall co-operate with them in every possible manner in the conduct of inspection.

(d) The Committee of inspection shall submit a detailed report to the Bar Council of India with a clear recommendation as to whether the affiliation to the new Law College be approved/disapproved or that of an existing college be withdrawn/continued or that certain directions be given for improvements to be carried out within the period to be specified. The report shall incorporate the reasons for the recommendations.

(e) If an unfavourable report is received, the Secretary of the Bar Council of India shall cause a copy of the same to be sent to the Registrar of the University concerned for his comments and explanations, if any. Such comments and explanations on the report shall be sent by the Registrar of the University within a period of six weeks from the date of receipt of the communication.

(f) The Secretary of the Bar Council of India shall cause the report and comments/ explanation of Registrar of the University concerned to be placed before the next meeting of the Legal Education Committee of the Bar Council of India.

(g) If the Legal Education Committee is satisfied that the standards of legal education and/or the rules for affiliation or continuance of affiliation provided for these rules by the Bar Council of India are not complied with and/or that the courses of study, teaching and/or examination are not such as to secure to persons undergoing legal education, the knowledge and training requisite for the competent practice of law, the Legal Education Committee shall recommend to the Bar Council of India, the approval/ disapproval of affiliation or continuance of affiliation as the case may be.

The Legal Education Committee may also recommend that certain directions be given for improvements to be carried out within the period to be specified.

(h) This recommendation of the Legal Education Committee along with the accompanying papers shall be placed before the Bar Council of India for its decision. In case the Bar Council of India disagrees with or modifies the recommendation of the Legal Education Committee, it shall communicate its views to the Legal Education Committee for its consideration before arriving at a final decision in the matter.

(i) If the Council is of the opinion that affiliation of a college be disapproved it shall give notice of the proposed action to the Principal of the College and Registrar of the University to show-cause within 30 days of the receipt of the notice and the Council shall take into consideration the reply received before making final orders.

(j) The decision of the Bar Council of India shall be communicated to the Registrar of the University.

It shall be effective from the commencement of the next academic year following the date on which it is received by the Registrar of the University.

19. (1) The Council shall publish by notification in the Gazette of India and in prominent newspapers in India, the names of the Universities whose degrees in law are recognised under these rules with a list of law colleges under the University which are eligible to impart professional legal education as provided under these rules and send a copy of the notification above referred to, to all the Universities imparting legal education and State Bar Councils:

Provided that for the purpose of Sub-rule (1) above, the existing University Law Departments and Law Colleges affiliated to Universities shall be deemed to be professional Law Colleges under these rules unless otherwise decided by the Council.

(2) Information about non-recognition of derecognition of the degree in law of a University shall also be sent to all the Universities in India imparting legal education and to all State Bar Councils.

8. It is true that a delegated legislation can be challenged before the Courts on the ground of being ultra vires the parent Act. The Courts can adjudge the legality and validity of delegated legislation by applying the doctrine of ultra vires. The doctrine of ultra vires has two aspects: substantive and procedural. When delegated legislation goes beyond the scope of the authority conferred by, or it is in conflict with, the parent statute it is invalid and this is known as substantive ultra vires. When the rule-making authority deviates from the procedure, if any, prescribed by the parent statute for making rules, it is known as procedural ultra vires. In these writ petitions, what is urged is the substantive ultra vires only and not procedural ultra vires, Whenever any person or body of persons, exercising statutory authority acts beyond the powers conferred upon him or them by statute, such acts become ultra vires and, accordingly, void. In other words, substantive ultra vires means the delegation legislation goes beyond the scope of the authority conferred on it by the parent statute. It is a fundamental principle of law that a public authority cannot act outside the powers i.e., ultra vires, and it has been rightly described as "the central principle" and "foundation of larger part of administrative law" by Prof. Wade in his Treatise on Administrative Law. The act which is for any reason in excess of power is ultra vires. In *I.E. Newspapers (Bombay) Private Ltd. v. Union of India* (1), (1986) 159 ITR 856 (SC) , E.S. Venkataramaiah, J, (as he then was) stated:

"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be question on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the

ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary."

In the same case, the Court also opined that the power delegated by the statute to the delegate is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, *infra vires* the power granted and on relevant consideration of material facts. It has also stated that all his decisions must be in harmony with the Constitution and other laws of the land, if they are manifestly unjust or oppressive or outrageous or directed to an authorised end or do not tend in some degree to the accomplishment of the objects of delegation, Court might well say, "Parliament never intended to give authority to make such rules, they are unreasonable and *ultra vires*." Thus, delegated legislation or subordinate legislation can be held valid only if it conform exactly to the power granted. Rules, whether made under the Constitution or a statute, must be *intra vires* the parent law under which power has been delegated. If the rule-making power is conferred and the rules made are in excess of that power the rule would be void even if the Act provided that they shall have effect as if enacted in the Act. The validity of the rule is always open to challenge on the ground that it is unauthorised. The validity of the delegated legislation is a question of *vires*, that is, whether or not the power has been exceeded or otherwise wrongfully exercised or is inconsistent with the parent Act. This position is well settled by the pronouncements of the English, American and Indian Courts. The decisions in *U.S. v. Two Hundred Barrels of Whisky* (1877) 95 US 571, *Hodge v. Hodge* (1963) 1 All ER 358, *Chest v. Bateson* (1920) 1 KB 829, *Fawcett Properties Limited v. Buckingham County Council* (1960) 3 All ER 503 = 1961 AC 636, *Utah Constitution Company v. Pataky* (1996) AC 629 = (1965) 3 All ER 650, *McEldowney v. Forde* (1971) AC 632 = (1969) 2 All ER 1039, *Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another*, , *The Management of D.T.U. Vs. Shri B.B.L. Hajelay and Another*, , *State of Karnataka and Another Vs. H. Ganesh Kamath and Others*, , *General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another*, , *District Collector, Chittoor and Others Vs. Chittoor District Groundnut Traders Association and Others*, , *Dhirendra v. Government of W.B.* AIR 1954 SC 424, *Banwarilal Agarwalla Vs. The State of Bihar and Others*, , *Dava Gohil Vs. Joint Chief Controller of Imports and Exports*, , *Durga Prasad v. Supdt. of Central Excise* AIR 1966 SC 1209, *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , *Dwarka Nath and Another Vs. The Municipal Corporation of Delhi*, , *Assistant Collector of Central Excise Vs. M/s. Ramakrishnan Kulwant Rai*, , are the authorities to cite a few.

9. The doctrine of *ultra vires* is quite often is one of the recognised principles/ground to invalidate a delegated legislation. The basic principle of this doctrine is that an authority being the creature of the law it has only such powers as are granted to it by the law. The parent statute, in the instant case, the Advocate Act, is both a - source of authority of the Bar Council of India as well as the limits on it. Therefore, the action of the Bar Council of India would be valid when it falls

within the limits of the Act, but it would become invalid when it falls outside legal limits. Declaring a rule in the Karnataka Motor Vehicle Rules, 1963, ultra vires the Motor Vehicles Act, 1939, as the rule was inconsistent with a section in the Act, the Supreme Court in *State of Karnataka v. H. Ganesh Kamath* (supra) held that the rule-making power cannot include within its scope the power to make a rule contrary to the provisions of the Act conferring the rule-making power and that conferment of rule-making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. The Apex Court in *State of U.P. and Others Vs. Renusagar Power Co. and Others*, , , held:

"If the exercise of power is in the nature of subordinate legislation, the exercise must conform to the provisions of the statute. All the conditions of the statute must be fulfilled. Thus, delegated legislation repugnant to, or inconsistent with or in contravention of, or in excess of, or overriding the provisions of, the parent Act is ultra vires."

Thus, it is clear that if power is conferred to legislate only with respect to certain topics or for certain purposes or in certain circumstances, the limits of the power must not be crossed. For this purpose, the phraseology of the delegating provision becomes relevant. In applying the doctrine, the Court has a three-fold task : first, to determine the meaning of the words used in the Act itself to describe the delegated legislation which the delegate is authorised to make; secondly, to determine the meaning of the subordinate legislation itself; and, finally, to decide whether the subordinate legislation complies with that description.

10. It is well established that while adjudging the vires of delegated legislation, the Courts do not concern themselves with the merits, demerits, wisdom or unwisdom of the underlying policy. A Court never quashes a rule because, in its opinion, the policy underlying it is not wise or prudent. The Court's only concern is to see whether the impugned delegated legislation falls within the scope of the rule-making power conferred on the authority by the parent statute. In *IRC v. National Federation of Self-Employed and Small Businesses* (1981) 2 All.ER 93, the Court has said:

"They [Ministers] are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only Judge; they are responsible to a Court of justice- for the lawfulness of what they do, and of that the Court is the only Judge."

Generally speaking, the attitude of the Courts is to interpret the delegating provision rather broadly. In *Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others*, , the term "capital employed" fell for interpretation while reviewing the validity of Rule 19-A of the Income Tax Rules, 1962. Section 80-J of the Income Tax Act, 1961, uses the term "capital employed" on which relied may be granted to new enterprises. Rule 19-A of the Income Tax Rules, 1962,

defines the term restrictively so as to exclude from its scope long-terms borrowing. By a majority, the Supreme Court upheld the vires of the rule. According to the Supreme Court, the term "capital employed" has no fixed connotation; it is not a term of art; it is "susceptible of varied meanings including or excluding short term borrowings or long term borrowings, whether of all categories or of any particular category or categories depending on its environmental context". Thus, the Supreme Court conceded to the Government power to define the term in any way it thinks best as the term in question has been given a very flexible connotation. In *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI)*, , the validity of the Cotton Textile Control Order, 1948, fell for decision. The Cotton Textile Control Order, 1948, fixed prices for cotton yarn. The question was whether the order was ultra vires. Answering the question in the negative, the Supreme Court pointed out that the expression "cotton textiles" would include "yarn" as well. The Supreme Court held that the "Cotton Textiles" is a generic term which includes both cotton fabrics as well as yarn.

11. It also needs to be emphasised before proceeding further to deal with the contention of the learned Counsel for the petitioner, that in evaluating the vires of the delegated legislation, the Courts start with the presumption of constitutionality, competence and reasonableness of the delegated Legislation impugned before it just as the Courts do in respect of primary legislation by the legislature. As a general proposition, delegated legislation is regarded as validity made, and part of the law of the land, until a Court decides otherwise. In *Hoffman-La Roche v. Secretary of State for Trade and Industry (1975) AC 295*, Lord Diplock speaking for the House of Lords referred to this aspect and observed:

".....the presumption that subordinate legislation is intra vires prevails in the absence of rebuttal, and that it cannot be rebutted except by a party to legal proceedings in a Court of competent jurisdiction who has locus standi to challenge the validity of the subordinate legislation in question."

Thus, the Court while reviewing the validity of a delegated legislation, should presume such delegated legislation prima facie to be intra vires and it is for the person aggrieved to prove affirmatively that "the presumption in favour of constitutionality, competence, fairness and reasonableness is unsustainable" as held by the Apex Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . The onus of establishing invalidity is on the challenger.

12. In the premise of the above noticed well settled principles governing judicial review of delegated legislation, let us proceed to examine whether Rules 17, 18 and 19 framed by the Bar Council of India are ultra vires the Parent Act i.e., the Advocates Act, 1961.

13. The Law Commission of India, in its report, has deplored the deterioration of standard of legal education and has suggested that All India Bar Council should be given powers for improving such standard. The Bar Council of India is an

important statutory functionary under the Act and it is vested with certain important powers to regulate and promote legal education and the legal profession. Clause (h) of Sub-section (1) of Section 7 of the Act entrusts the function to the Bar Council of India to promote legal education by laying down standard of such education in consultation with the respective Universities in India imparting such education. Under Clause (af) of Sub-section (1) of Section 49, the Bar Council of India is empowered to make rules prescribing the minimum qualifications required for admission to a course of degree in law and under Clause (d) of Sub-section (1) of Section 49, it is also vested with the power to lay down the standard of legal education to be observed by the Universities in India and the inspection of Universities for that purpose. Similarly, under Clause (i) of Sub-section (1) of Section 7 of the Act, the Bar Council is vested with the power to recognise the Universities whose degrees in Law shall be a qualification for enrolment as an Advocate and for that purpose to visit and inspect the Universities etc. Further under Clause (ag) of Sub-section (1) of Section 49 of the Act, the Bar Council is vested with the power to frame rules prescribing class or category of persons entitled to be enrolled as advocates. Thus, it can be seen that the Bar Council of India is vested with important statutory powers for prescribing and regulating legal education as well as legal profession.

14. The power conferred upon the Bar Council of India 7(h) and (i), 24 (1)(c)(iii) and (iia), 49(1)(af)(ag) and (d) of the Act cannot be understood as excluding the power of the Bar Council to prescribe that no college after coming into force of the rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by it and that even existing Law College shall also obtain approval from the Bar Council of India for continuance of its affiliation. This is because if the provisions of Section 7(h) and (i), 24(1)(c) (iii) and (iia), 49(1)(af)(ag) and (d) of the Act are read conjointly, it makes it abundantly clear that the Bar Council of India will be competent to prescribe the requirement of obtaining approval to affiliation of a Law College from it as a condition precedent to recognise its degrees of law awarded by the University to which it is affiliated for enrolment as an advocate, as has been done in Rules 17, 18 and 19. In *The Bar Council of India, New Delhi Vs. Gudimeda Kesavaramayya and Another*, , it was held that Clause (h) of Sub-section (1) of Section 7 cannot be understood as excluding the power to fix a minimum academic standard as a prerequisite for the commencement of the study of law. The Court reasoned that this is because the function of laying down standard of legal education necessarily implies the power to define a standard of general education as a condition for admission to a course of law and therefore, the Bar Council of India will be competent to accord recognition of degree of law subject to the condition that the commencement of legal education should be preceded by graduation. In *C.M. Balaraman Vs. Registrar, Osmania University and Others*, , the Court held that Bar Council of India has the power and jurisdiction not to approve any Law College within the country not complying with the basic norms

of the Bar Council of India after conducting inspection by its inspection teams. The Court held that in such a case granting of fresh affiliation and continuance of affiliation to such Colleges by the University in disregard of intimation given by the Bar Council of India would be not proper. In that case, as the concerned Law Colleges had not been given approval by the Bar Council of India for recognition of their degrees, the Court directed that the students of those colleges who already completed their course from such Colleges shall be permitted to be enrolled as advocates after passing examination conducted by the Bar Council. It also further directed that the students pursuing studies in those colleges whose affiliation had not been approved by the Bar Council of India shall be transferred to colleges whose affiliation has been approved by the Bar Council of India. The above precedents would also support our above view. The Bar Council of India has undoubtedly the power under the Act to prescribe prior approval of the affiliations obtained by the Law Colleges in order to recognise the degree in law awarded by them as valid degree for enrolment as an advocate as has been done now by framing Rules, 17, 18 and 19.

15. In *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, , Krishna Iyer, J, states,

"A law has to be adjudged for its constitutionality by the generality of cases it covered, not by the freaks and exceptions it martyrs."

The question whether a particular piece of delegated legislation is in excess of the power of subordinate legislation conferred on the delegate, has to be determined with reference to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc., and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It is true that the Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the act there is no scope of interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of being wholly beyond the scope of the regulation-making power or its being inconsistent with any provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

16. In *Tata Iron and Steel Co. Ltd. Vs. The Workmen and Others*, , Section 5 of the Coal Mines Provident Fund and Bonus Scheme Act, 1948, empowered the Central Government to frame the bonus scheme for employees. In exercise of the power, the Central Government created a quasi-judicial Tribunal to decide certain disputes. Rejecting the contention that such a Tribunal can only be created by the Legislature and not by an executive fiat, the Supreme Court observed "that it is a matter of detail "which is subsidiary or ancillary to the main purpose of the legislative measure for implementing the scheme." Furthermore in *A.V. Nachane and Others Vs. Union of India (UOI) and Another*, Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 empowered the State Government to make rules for regulating the grant of mining leases. Rule 8-

C framed by the State Government totally banned quarrying in black granite by private persons. Thus, by delegating legislation, private enterprise was totally prohibited in quarrying black granite and it was contended that the rule was ultra vires the parent Act, was, therefore, bad. Negating the contention and interpreting the connotation "regulation" in a wider sense, the Supreme Court observed:

"We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

17. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, , Section 36 of the Maharashtra Secondary and Higher Secondary Boards, Act, 1965 empowered the State Board to make regulations for the purpose of carrying into effect the provisions of the Act. Regulation 104(3) read thus: "No candidate shall claim, or be entitled to revaluation of his answers or disclosure or inspection of the answer books or other documents as these are treated by the Divisional Board as most confidential." Considering the ambit and scope of Section 36(2) and in particular Clauses (c)(d), (f) and (g) which dealt with the conditions governing admission of candidates for the final examinations, the arrangement for the conduct of final examinations by the Divisional Boards and for publication of results, and the appointment of examiners, their powers and duties in relation to the final examinations, etc., the Supreme Court observed:

"These topics are comprehensive enough to cover the prescription of the procedure for finalising the results of the examination based on the evaluation of the answers of the candidates who have appeared for the examinations, as well as the laying down of the restrictive provisions relating to verification of marks, prohibition against disclosure and inspection of answer books and denial of any right or claim or evaluation.....In our opinion, it was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for."

18. In *Supreme Court Employees' Welfare Assn. v. Union of India*, , the Supreme Court held that the validity of the subordinate legislation can be challenged on such grounds as any other legislative acts can be challenged. After referring to a number of leading cases, the Supreme Court observed:

"Whether the validity of a subordinate legislation (whether made directly under the Constitution or a statute) is in question, the Court has to consider the nature, objects and the scheme of the instruments as a whole, and, on the basis of that examination, it has to consider what exactly was the area over which, and the purpose for which, power has been delegated by the governing law."

In other words, the doctrine of "pith and substance" which is applicable to Parliamentary Acts is also applicable to delegated or subordinate legislation also.

19. Thus, it is quite clear that if we keep in mind the nature, objects of Rules 17, 18 and 19 and the objective behind the delegated power conferred upon the Bar Council of India under Sections 7(h) and (i), 24(1)(c) (iii) and (iiia), 49 (af)(ag) and (d) of the Act and if we apply the doctrine of "pith and substance", Rules 17, 18 and 19 of the Rules cannot be condemned as ultra vires the parent Act. The Rules 17, 18 and 19 framed by the Bar Council of India in exercise of the delegated rule-making power are very much within the delegated power of the Bar Council of India.

20. In the result and for the foregoing reasons, we dismiss the writ petitions and uphold the vires of Rules 17, 18 and 19 of the Rules.