

(1994) 09 MAD CK 0090
In the Madras High Court

J. Sampath Kumar

APPELLANT

Vs

Bar Council of India and Another

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (1995) 1 LW 336 : (1994) 2 MLJ 651 : (1995) WritLR 187

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—This batch of writ petitions involve the constitutional validity of Rule 9 in Chapter III of Part VI of the Bar Council of India Rules introduced by the Resolution of the Bar Council of India Ms. 64 of 1993 dated 22.8.1993 and published in the Gazette of India dated 25.9.1993 disentitling a person who has completed the age of 45 years on the date on which he submits his application for his enrolment as Advocate to the State Bar Council.

2. Common submission have been made by some of the learned Counsel, which have been adopted by the others, to which detailed reference will be made at the appropriate stage hereinafter. To have an understanding of the problem, the factual position in some of the writ petitions may be adverted to.

3. W.P. No. 4116 of 1994 has been filed for a writ of declaration declaring the Resolution (No. 64 of 1993) dated 22.8.1993 of the Bar Council of India as ultra vires the Advocates Act, 1961 (Central Act 25 of 1961)(hereinafter referred to as "the Act"). The petitioner therein claims that he is working as a graduate teacher in a recognised private school and put in 19 years of service, that his father is a practising advocate before this Court with thirty years of standing in the Bar, that he could not do law in the beginning of his career due to family conditions which necessitated him to take employment after college education, that he was employed to enable him to complete law so that he can join his father's office not only to be of assistance to him but also to takeover his work with the advantage of the establishment office, clientele and the liberty built up by him

after his retirement from the profession. It is also stated by this petitioner that after completing his degree in law he has completed the Post Graduate Course M.L. in law though he is yet to pass the said examination. He claims to be helping even now his father to keep in touch with the march of law. The Rule in question is challenged on the ground of being arbitrary and violative of Article 14 of the Constitution of India apart from being ultra vires the powers of the Bar Council of India. It is also stated that any restriction of the nature based on age by fixing the upper-limit has to be done if at all, only by the Parliament through the amendment of the Act itself and neither the Bar Council of India has been empowered to frame a rule similar to the one under challenge nor does the Bar Council spell-out any justifying reasons to exclude the category of persons who have crossed the age 45 years from being enrolled as Advocates. It is also stated that the upper-age limit fixed has no rational nexus with the object sought to be achieved and being so arbitrary cannot stand the scrutiny of law. It is also claimed to affect the right to carry on the profession secured under Article 19(1) (g) of the Constitution of India and the restriction sought to be imposed cannot be said to be a reasonable restriction. Reliance is also placed on Article 21 of the Constitution of India to contend that a citizen with due qualification must be allowed to practice a profession that he chooses subject only to fair and reasonable restrictions and that the reasons which weighed with the Bar Council are motivated and are not justifiable in law. It is contended that when one can merely enroll after study and immediately suspend for a long time and can resume practice even at the age of 60/70 years, there is no justification to have a Rule of the nature in question and the pollution theory is invented. The respondents do not guarantee any income in the profession which ultimately depends upon one's own capacity, skill, knowledge and the clientele one may create and therefore, there is no rationale behind the fixation of an upper age for enrolment. It is stated that the move in question has the consequence of denying the prospectus of professors in law colleges and Universities teaching the subject of law to revert to the profession. While contending that the Bar Council of India lacks the necessary rule making power to introduce the Rule of the nature. That the impugned Rule seeks to create a great barrier to students coming from underprivileged and the uppressed sections of the society from completing law course at their convenience and enrolling themselves as advocates, more with the view to appease certain vested interests than being really in the larger public interest. It is also stated that when persons who have no legal qualification and practice could adorn the various tribunals along with the Judicial Members even after 58 years, it is beyond comprehension as to how the ceiling with the age of 45 years would be justified.

4. W.P. No. 20823 of 1993 : This writ petition is also filed by the Association of Law College (Evening) students challenging the very Rule as in the other case. It is contended in this writ petition that Section 4(1)(ah) of the Act does not enable the Bar Council of India to make a Rule of the nature in question since the said provision of Act related to the circumstances under which a person shall be

deemed to practice as an advocate in a court and therefore, deals with an enrolled advocate and not persons, who requires to be enrolled. Rule 9 is said to be ultra vires Section 49(1)(ah) of the Act and in excess of the rule making power of the Bar Council of India. The rule is also said to be a colourable legislation with an oblique purpose of disqualifying a person from enrolling him as an advocate and the Bar Council of India has not been conferred with any power to prescribe disqualification in the matter of enrolment of a person as an advocate, since according to the petitioner it is only Section 24 and Section 24-A of the Act which exclusively deal with the qualification and disqualification for the purpose of such enrolment. The rule is said to have no nexus to the object sought to be achieved under the Act and as said to be also arbitrary and violative Article 14 of the Constitution of India. It is stated that age is an unavoidable and a nature consequence of life and therefore cannot be pressed into service for permanently disabling a person from getting enrolled as an advocate. The rule is also said to infringe the legitimate expectation of persons and is also said to be violative of, who study the law, to practice the legal profession and is also said to be violative of Article 19(1)(g) of the Constitution of India. It is further contended that when there is no ceiling of age for studying the professional courses in question as in the case of some other professional courses in question as in the case of some other professional courses, there is no justification to impose a restriction from being enrolled after the completion of the course which really tantamount to imposing a restriction on a graduate from practicing his chosen profession. The rule of estoppel is also pressed into service to contend that members of the petitioner Association who have already graduated in acquired a right to practice and the Bar Council is estopped from denying that privilege by introducing the rule in question.

5. W.P. No. 91 of 1994; The petitioner claims to be a post-graduate in Commerce of Sri Venkateshwara University and a law graduate of the University of Bangalore having acquired the L.L.B. degree in the year 1993 from the University of Bangalore. He claims to be fully qualified to be enrolled as an advocate and therefore, obtained the required forms on 15.10.1993 from the second respondent State Bar Council and issued the necessary paper publication and paid the fee. He was informed to his shock and surprise that the Enrolment Committee has rejected his application in view of Rule 9 under challenge. The petitioner contends that the impugned Rule is violative of Articles 14, 19(1)(g) and 21 of the Constitution of India as also Article 22(1) thereof. It is said to be an unreasonable restriction on the right to practice the profession of law, that it is not only arbitrary or unreasonable but unrelated to the object, if any, sought to be achieved by the rule. It is contended that since there is no guarantee of any employment or income by the Bar Council or the Government in favour of an advocate, there is no justification to fix the upper age limit to prevent entry of a qualified candidate as an advocate. It is stated that when the statute in Section 24 of the Act prescribes only the minimum eligibility age, the Bar Council cannot claim to have any rule making power to fix a maximum disqualifying age even

for enrolment and entry into the profession and the same is ultra vires provisions of the Advocates Act. While contending that the rule in question is beyond the rule making power of the Bar Council of India u/s 49 of the Act, it is said to be beyond the scope of Sections 6, 7 and 15 of the Act. According to the petitioner when a previously enrolled person, who suspended his practice could revert even after the age of 45 years, there is no rhyme or reason in denying the right of enrolment to a person for the first time merely because one has crossed the age of 45 years, It is said to be discriminatory also. The issue based on Section 4((1) (ah) of the Act concerning itself with those already enrolled and not with a new entrant, is also reiterated. It is stated that the rule has the effect of denying a person to have an advocate of his choice and therefore it violates Article 22 of the Constitution of India. In those circumstances, it is contended that the restriction of the nature not only deprives a law graduate from getting enrolled as an advocate but denying an accused to have a legal practitioner of his choice even from among such persons. The rule is said to be inconsistent with Section 7(1) of the Act. The rule is said to deny the litigant public the services of expertise who have retired from several legal oriented fields, such as Tax, Labour as also legal. While contending that the petitioner has prosecuted this studies and obtained a law degree also before the impugned rule came into operation, the rule of promissory estoppel is pressed into service in this case, in favour of the petitioner.

6. W.P. No. 1064 of 1994 : The petitioner in this writ petition is said to have acquired his degree in law in the year 1981 and he is employed as Warden in Government Hostel for College Boys (Backward Classes Welfare Department) and he intends to enrol as an advocate. It is contended that the profession of law, a legal profession requires matured outlook and knowledge in various walks of life and fields and institutions and there is no rhyme or reason in fixing the maximum age of 45 years as the disabling factor from being enrolled as an advocate. The constitutional spirit of right to earn the livelihood is sought to be denied in the prescription of the Rule under challenge. Rule 9 is said to be arbitrary illegal and unconstitutional. The Bar Council of India is said to have no jurisdiction to make a rule of the nature in question and the restriction cannot be justified as a reasonable restriction in public interest. According to this petition when there is no age restriction in the form of upper age for admission into the degree course in law, there can be no justification to introduce such a restriction at the time of enrolment. The rule is said to make discrimination between one, who was able to get enrolled earlier being able to practice after reverting back to profession while denying the said privilege of a person, who could not immediately after the completion of his studies, enrol. Violation of Article 21 of the Constitution is also pleaded and it is said that the fixation of upper age limit has nothing to do with the interests of general public. While adverting to an article said to have been written by the Chairman of the Bar Council of India published in the newspaper Indian Express dated 22.11.1993, it is contended that the object must have been borne out of bias against the retired public

service reverting to the Bar with rich experience in various fields of service, viz., Income Tax, Sales-tax, Labour laws, Company laws, Penal laws relating to Customs and Excise etc.

7. W.P. No. 21294 of 1993 : The petitioner in this writ petition, who was said to have served in the Indian Army for 19 years as Wireless Operator and on being relieved in the year 1984, joined the Indian Railway Service in 1986 and after working as Senior Clerk in the Commercial Branch of the Southern Railway passed, the degree of Bachelor of law in the University of Madras in the year 1991. Since he intended to practice as an advocate he submitted his resignation on 6.9.1993 and the resignation was accepted on 29.9.1993 with effect from 8.10.1993. Thereafter it appears that the petitioner submitted an application for enrolment before the second respondent on 10.10.1993 by praying the necessary fee, but by communication dated 29.11.1993, the Bar Council of Tamil Nadu appears to have rejected his application. Aggrieved he approached this Court. While reiterating the contention similar to the one raised in the other writ petitions referred to supra, it is also contended that the rule in question does not come within the rule-making powers conferred in Section 49(1)(ag) or (ah) of the Act.

8. The Bar Council of India, the first respondent has filed a common counter-affidavit contending that the right to practice as an advocate is only a statutory right conferred under the Act and cannot be claimed to be a fundamental right. Since the right to carry on any profession is created by the statute, the exercise of which may be subject to terms and conditions imposed by the statute and by the imposition of any terms and conditions, the fundamental right cannot be said to have been infringed. It is stated that even assuming that this is a fundamental right, there is no bar from imposing conditions in the interests of general public. Reliance is placed upon Sections 24 and 49 of the Act to sustain the rule making power and authority of the Bar Council of India. The impugned Rule is said to be bit violative of Articles 14, 19(1), 19(2) of 21 or any of the Articles of the Constitution of India. Since Article 14 of the Constitution permitted to classification, the Bar Council of India claims to possess the required power to make rules prescribing and classifying or categorising the persons into two categories, viz., those who have completed 45 years of age and those who have not completed 45 years of age and such a classification is said to be a valid one based on intelligible differentia having reasonable nexus to the object sought to be achieved. The object and reasons for fixing an upper age limit of 45 years for enrolment is said to be self-explanatory and meaningful and clearly pointed out the imperative need to fix upper age limit to save the legal profession from deterioration, disrepute and unemployment and to preserve the legal profession as a vehicle of service to the society. The profession is said to be honourable and pious profession and motive and the purpose of the legal profession is not to make monetary gains. The profession is said to be made to aid and assist the system of administration of justice and to aid also the growth of law. In paragraph 7 of the counter, it is stated as follows:

It is respectfully submitted that persons who retire from various Government and quasi-government department and other services and establishments on superannuation seek to start a second life in legal profession. They enjoy life in legal profession. They enjoy various retirement benefits such as pension, provident fund, gratuity etc. Profession is only a side business for them. They want to make additional gains from legal profession. Influx of large number of overaged and pensioned persons seriously affects the organisation, discipline honour and dignity of the profession. Advocate hold a unique place in the life of the community and keep the trust of public confidence in the administration of justice.

While reiterating the position that the right to practice as an advocate is a privilege conferred by statute and not an absolute right, it is contended that only if one fulfils the conditions specified in Section 24 and the rules made in this regard one could claim to be enrolled. Section 24(1)(c) of the Act is also pressed into service to contend that one has to fulfil other conditions as may be specified by the rules made by the State Bar Councils for enrolment as an advocate and the mere fact that Section 24 does not prescribe any upper age limit does not deny the power of the Bar Council of India to make such a rule as the one in question. The fixation of upper age limit in the impugned rule, it is claimed, does not cause any unreasonable hardship and that maximum accommodation for enrolment is proposed to be given to law graduates who are genuinely interested to practice the profession of law. Viewed in that context, it is contended that the upper age limit for enrolment fixed as 45 years is just and reasonable and the Resolution is said to be neither arbitrary nor violative of Article 14 of the Constitution of India.

9. It would be useful to refer to the relevant provisions in the Act to appreciate the grievance sought to be made out on behalf of the petitioners. Section 6 of the Act enumerates the functions of the State Bar Council and one such is to perform among other things all functions conferred on it by or under the Act and do all other things necessary for discharging the aforesaid functions Section 6(1) (h) and (1) Section 7 of the Act enumerates the functions of the Bar Council of India. Among other things, it is the function of the Bar Council of India to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities and to perform all other functions conferred on it by or under the Act and to do all other things necessary for discharging the aforesaid functions Section 7(1)(i), (1) and (m) Chapter III of the Act contains the provisions relating to admission and enrolment of advocates. Section 17 obliges every State Bar Council to prepare and maintain a roll of advocates in which shall be entered the names and addresses of the various categories prescribed and one such is of all persons who are admitted to be advocates on the roll of the State Bar Council under the Act on or after the appointed day. Sub-section (3) of Section 17 provides that entries in each part (Part I and Part II) of the roll of advocates prepared and maintained by a State Bar Council in the order of seniority shall be determined in accordance

with the date of enrolment and such other rule as may be specified by the Bar Council of India.

Section 24 in so far as it is relevant for the controversy before us reads as follows:

24(1) Subject to the provisions of this Act, and the rules made there under, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions namely-

(a) he is a citizen of India : Provided that subject to the other provisions contained in this Act, a national of any other counter may be admitted as an advocate on a State roll, if citizen of India, duly qualified arc permitted to practice law in that other country:

(b) he has completed the age of twenty-one years.

(c) he has obtained a degree in law.

(e) fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter:

(f) he has paid, in respect of the enrolment, stamp duly, if any, chargeable under the Indian Stamp Act, 1899, and an enrolment fee payable to the State Bar Council of six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of bank draft drawn in favour of that Council.

Section 24-A of the Act read as follows:

24(1) No person shall be admitted asan advocate on a State roll-

(a) if he is convicted of an offence, involving moral turpitude.

(b) if he is convicted of an offence, under the provisions of the Untouchability (Offences) Act, 1955.

(c) if he is dismissed or removed from employment of office under the State or any charge involving moral turpitude.

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his release or dismissal or as the case may be removal.

Explanation: In this clause, the expression "state" shall have the meaning assigned to it under Article 12 of the Constitution.

(2) Nothing contained in Sub-section (1) shall apply to a person who having been found guilty is deal with under the provisions of the Probation of Offenders Act, 1958.

Sections 29 and 30 of the Act provide that as and from the appointed day, there shall be only one class of persons entitled to practice the profession of law,

namely, advocates and every advocate whose name is entered in the State roll shall be entitled as of right to practice throughout the territories to which the Act extends in all courts including the Supreme Court. While Section 32 preserves the right of any court, authority or person to permit any one not enrolled as an advocate under the Act to appear before it or him in any particular case, it is made clear under Sec.33 that except as otherwise provided in the Act or in any other law for the time being in force, no person shall on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the Act. Section 34 of the Act enables the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto.

10. Section 49 of the Act insofar as it is relevant for consideration before us is concerned reads as hereunder:

49(1) The Bar Council of India may make rules for discharging its functions under this Act. and in particular such rules may prescribe:

(af) the minimum qualification 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) the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court;

(j) any other matter which may be prescribed:

Section 49-A of the Act reads as under:

49-A(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:

(a) qualifications for membership of a Bar Council and disqualifications for such membership;

(b) the manner in which the Bar Council of India may exercise supervision and control over State Bar Councils and the manner in which the directions issued and has made by the Bar Council of India may be enforced;

(c) the class or category of persons entitled to be enrolled as advocates under this Act;

(g) any other matter which may be prescribed.

11. M/s. K. Chandru, Mrs. Nalini Chidambaram, Senior Advocates, A. Raghunatha Reddy and Thirugnanam learned Counsel appeared for some of the petitioners have made submission while others adopted the same as part of their submissions. The petitioner in W.P. No. 1064 of 1994 argued in person. The learned Counsel reiterated the various contentions raised in their pleadings. Mr. R. Gandhi senior advocate, instructed by Mr. Karthikeyan appeared on behalf of the Bar Council of India the first respondent and reiterated the stand taken in counter-affidavit filed in this Court. The learned Counsel for the second respondent adopted the submission of the learned senior Counsel at the time of bearing reiterated the respective stand taken in their pleadings and the contentions raised will be dealt with hereinafter.

12 Of the several contentions raised on behalf of the petitioners, the question as to whether the right to practice the profession of law as an advocate is a fundamental right guaranteed under Article 19(1)(g) of the Constitution may be considered first. Article 19(1)(g) declares the right of all citizen to practice any profession or to carry on any occupation trade or business. What is guaranteed thereby in our view is only the right to pursue a profession of one's choice and not the right to practice a particular profession, as an advocate in this case. The right guaranteed has been often held to be the national right to enter into or carry on any trade, profession or calling which every citizen has as a member of a civilized society independent of any legislation or grant and wherever the right to carry on any profession is created by a statute, the exercise of that right has got to be subject to the terms and conditions imposed by such statute and an unrestricted right cannot be claimed on the pretext of a plea based on Article 19(1)(g). As far as we know, no one can claim the right to practice as an advocate inherent within since it cannot be considered to be a natural right or a normal avocation recognised to be available to every citizen. The right to plead for others in a court of law or before any such forum or authority depends upon the permission to be granted by such courts, subject to rules made in respect thereof by the High Court (vide: Section 34) and also depends upon the enrolment of the person concerned by the State Bar Council in the State roll. Sections 29, 30 and 33 of the Act also would go to show that the right to practice as an Advocate is merely a statutory right and not a fundamental right. Of course, if a citizen who satisfies the prescribed or stipulated qualifications is unlawfully prevented from practising as an advocate such citizen may complain of a violation of his fundamental right. The reliance placed upon Article 21 or 22(2) to sustain the claim that the right to practise as an advocate is a fundamental right is inappropriate and appears to be farfetched too. The right of a person who has been arrested and detained to consult and be defended by a legal practitioner of his choice does not have the consequence of converting what is otherwise a mere statutory right into a fundamental right for that matter can claim to secure a fundamental right to practice even to a prospective advocate and a person who is on the threshold and yet to get his name enrolled in the rolls of the State Bar Council.

13. The further substantial question that requires to be considered is the legality and the constitutional validity of Rule 9 under challenge made by the first respondent Bar Council of India. The challenge in this regard was projected both on the basis of lack of competency or required statutory power or authority of the Bar Council of India and also on the ground that the said rule is arbitrary, discriminatory, unreasonable and has no nexus or relation to the object of the Act and consequently could not be justified as warranted in the interests of the general public.

14. As against the total lack of power or authority to make the impugned rule by the Bar Council of India, the learned senior Counsel for the first respondent mainly relied upon the provisions contained in Section 49(1)(ag) and (ah) of the Act to sustain power in the Bar Council of India and justify the making of the rule in the interests of general public and in order to maintain the standards and professional discipline by also discouraging the entry to those who join for reasons other than a genuine interest in the legal profession.

15. The text of Rule 9 introduced which is under challenge, as resolved by the Bar Council of India reads as hereunder:

Resolution No. 64 of 1993:

Resolved that the following rule be added as Rule 9, Chapter III, Part VI.

A person who has completed the age of 45 years on the date on which he submits an application for his enrolment as an advocate to the State Bar Council shall not be enrolled as an advocate". In appreciating the challenge based on the lack of power in the first respondent to prescribe a rule of the nature under question in these writ petitions, the policy underlying the provisions contained in the Act as also the topics with reference to which more than one rule-making authority have been conferred with the required powers to prescribe rules in respect thereof cannot be ignored. Similarly, the nature and character of the power exercised in the light of the object of the rules also the serious consequences which flow from the enforcement of the rule, requires to be noticed. The provisions of Clause (ag) of Sub-section (1) of Section 49 enables the prescription of rules in respect of the class or category of persons entitled to be enrolled as Advocates, and Clause (ah) of the very same provision enables the making of the rules in respect of the conditions subject to which an Advocate shall have a right to practice and the circumstances under which a person shall be deemed to practice as an Advocate in a court. As noticed earlier, the submission on behalf of the petitioners is that Clause (ah) envisage the making of rules in respect of a stage posterior to the enrolment, governing the right of practice by an Advocate and not to deal with a person, who has not yet become an Advocate or pertaining to the very process necessary to enroll a person as an Advocate. The submission on behalf of the petitioners appears to be well-justified on the language of Clause (ah) of Section 49(1). As for the reliance placed on Clause (ag) we are of the view that 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, 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 such persons, or at any rate, referable to a class or category with particular reference to the qualifications possessed, the nature of degrees held and the kind of 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 trace its power of making the rule to the provisions contained in Clause (ag). On the other hand, we are of the view that 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 operate as a permanent disqualification for a person otherwise entitled to get enrolled as an Advocate. As rightly contended on behalf of the petitioners, 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-set) of Section 24 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 a 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, and the Parliament in its wisdom thought fit only to stipulate a minimum age limit, we are of the view that it may not be permissible for the Bar Council of India to super impose a further qualification by an upper age limit so as to disqualify or render ineligible person, though otherwise qualified for being enrolled merely on the ground of having reached a particular maximum age limit prescribed as rules. Similarly Section 24(A) of the Act stipulates the disqualifying factors, which stand in the way of anyone 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 particular applicant. As a matter of fact, the counter-affidavit as also the learned Senior Counsel, who made submissions at the time of hearing on behalf of the first respondent, repeatedly urged that the object of the rule was to close the doors against undesirable people from coming into the field to practice law before courts and bring to the profession a bad name or tarnish its reputation and image. Not only the Parliament has taken care of such situation by enacting Section 24(A) of the Act, but even in the recent amendment brought about in the year 1993 introducing Clause (c) to Sub-section (1) of Section 24(A) of the Act, a person who is dismissed or removed from employment or office under the State on any charge, involving moral turpitude is rendered disqualified for enrolment and that too for a limited period stipulated therein. The Legislature, even at that stage does not appear to have thought of introducing a statutory amendment to impose any ceiling limit based on the introduction of an upper age to operate as a

disqualifying factor against a person from getting enrolled into the State rolls. The matters pertaining to disqualification of a person otherwise rendered eligible under the statute must be considered to be matters pertaining to the legislative policy and not mere formalities relating to any procedure or mere details of implementation of the provisions of the Act effectively. Consequently, short of an amendment to the provisions of the Act, the rule making authorities cannot claim to possess any power to introduce a disqualification on whatever ground including the age of a person so as to bar his entering to the profession as prescribed for and from getting enrolled as an Advocate. As the matter stands we are of the view at any rate the Bar Council of India has no such powers and cannot claim the exercise any such authority or powers by virtue of its rule making powers u/s 49 of the Act. We are, therefore, of the view that the impugned Rule 9 introduced in Chapter III of Part VI is in excess of rule making power besides being inconsistent with the provisions of the Act, and on this ground alone, renders itself liable to be struck down.

16. That apart, this Court further views that the impugned rule cannot be said to be a reasonable restriction in the interest of general public. As noticed supra, apart from the subject being a matter pertaining to a matter of policy for the Legislature to declare, the apprehensions of the rule making authority and the avowed object, which professedly propelled them in making such a rule, does not also appear to be a genuine or a reasonable excuse to justify the unreasonable action. The rule though has the consequence of permanently disentitling a person, who has attained the age of 45 from getting enrolled, it is not as though such category of persons are completely eliminated. In its operation the rule, in our view brings about invidious discrimination also on irrelevant considerations. There could be no substantial distinction or difference between a person below 45 years getting enrolled, leaving profession instantly by suspending the right to practice and reverting back at any age he like and a person who wants to get enrolled after he attains 45 years at any point of time after getting qualified or getting eligible for being so enrolled and willing to be entered in the profession. The rule also does not provide for any exception to mitigate the grievance of genuine reasons either pursue or complete the studies before he attained 45 years or in the case of a person who had secured his degree earlier and did not get himself enrolled immediately but wants to join the legal profession after he attains 45 years. The apprehension based upon persons leaving their employment or rushing after retirement to join the legal profession as being alone responsible for the deteriorating standards or the quality and reputation of the Bar, is merely a matter of surmise, with no credible or legitimate basis for such assumptions, Section 24(A) of the Act, as amended in 1993, while introducing Clause (c) to Sub-section (1) takes sufficient care of persons guilty of misconduct getting enrolled as members of the profession and the legislative policy and intention to debar such person is not for and paid unlimited period. In our view, the imposition of a restriction by introducing an upper age limit so as to operate as a disqualification for any one to get enrolled as a member of the Bar

does not really achieve the avowed and proclaimed object of the rule, nor could we consider that the imposition of such a restriction is an effective or a permanent panacea for the woes, and ills in the profession. A permanent blockade of the nature devised seem to run against the policy of the Act itself. In substance, the rule cannot be said to conform to either logic or reason or any dictates absolute necessity in the process of purification of the profession. In our view, the rule smacks of arbitrariness, besides bringing about invidious discrimination on irrelevant and extraneous considerations. Consequently, the rule cannot be said to be either reasonable or required or necessitated in the interest of general public. On this ground alone, the rule is liable to be struck down as being violative of Article 14 of the Constitution.

17. The decisions relied upon the learned Senior Counsel for the first respondent, viz., Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , Devata Prasad Singh Chaudhuri and Others Vs. The Hon'ble The Chief Justice and Judges of the Patna High Court, , Xavier Thottakath v. State AIR 1974 Ker. 790 are not appropriate to the case on hand. However, laudable the object sought to be achieved may be we are unable to subscribe to the view that the enrolment of persons who have completed the age of 45 years has the effect of undermining the morality or decorum or the dignity and reputation of the noble profession. On the other hand, with the advancement of age, a person grows rich in experience and gains skill, sobriety, maturity of understanding and perfection to do things effectively and handles matters diligently carefully judiciously and with conviction. This being the normal attribute of growing old, there is nothing concrete before us for any assumptions to the contrary in favour of the Rule making authority in this case. In *Indravadan H. Shah Vs. State of Gujarat and Another*, , while considering a challenge to the age restriction in regard to the appointment of Assistant Judge by promotion amongst members holding posts of Civil Judges (Junior Division) and those in the cadre of Civil Judges (Senior Division), the Apex Court held as here under:

The posts of Assistant Judge as well as of District Judge are included in Senior Branch of Gujarat Judicial Service. It is incomprehensible how these two cadres of Assistant Judges and District Judges can be treated as two different classes altogether, thereby justifying the introduction of age restriction in regard to selection and appointment by promotion to the post of Assistant Judge while doing away with any such sort of age limit or restriction in respect of appointment to the post of a District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges, Articles 14 and 16 of the Constitution ensure that there should not be any discrimination in the matter of appointment in service, nor there will be any arbitrariness or unreasonableness in the rules of recruitment providing for the rules of appointment to the service either by promotion or by direct recruitment. There is no nexus to the object sought to be achieved by introducing the age restriction as regards the promotion by appointment to the post of Assistant Judge from amongst the members of the Gujarat Judicial Service (Junior Branch) as provided

in Rules 6(4)(i) and (4)(iii)(a) of the said rules. But in respect of appointment to the highest post of a District Judge by promotion from amongst the members of the Junior Branch who have served as Assistant Judges no such restriction of age has been provided in Rules 6(2)(i)(a) and (b) of the said Rules. There is obviously no rationale nor any reasonableness for introduction of this age bar in regard to appointment by promotion to the post of an Assistant Judge. The rule, is therefore, arbitrary, and it violates the salutary principles of equality and want of arbitrariness in the matter of public employment as guaranteed by Articles 14 and 16 of the Constitution.

When that seem to be the position even in respect of recruitment or promotion to service, there could be no justification whatsoever to do so in respect of a profession, independent as it is claimed to have guillotine based upon an upper age limit.

18. For all the reasons stated above, we declare, that the impugned Rule 9 introduced by the Bar Council of India by its Resolution No. 64 of 1993 is ultra vires its rule making powers, inconsistent with the provisions of the Act and also arbitrary and unreasonable. Consequently, the same shall be struck down as unconstitutional and violative of Article 14 of the Constitution of India and unenforceable in law, In view of the above, we do not consider obliged to pronounce upon the other contentions raised against the rule. These writ petitions will stand allowed to the extent indicated above, leaving liberty with the petitioners to move the authorities concerned for working out their rights and privileges, as if the rule never existed on the Statute. There will be no order as to costs.

19. Having regard to the peculiar facts and circumstances of the case, the nature of rights involved and the pendency of similar cases before the Apex Court, we are of the view that it would be appropriate and reasonable to keep in abeyance our decision and declaration as above for four weeks from this date, on the expiry of which it shall become enforceable and executable.