
(1999) 03 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 22397 of 1998-N

Krishnakumar G. and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 02-03-1999

Acts Referred:

Advocates Act, 1961 — Section 15
Bar Council of India Rules, 1975 — Rule 17, 18

Citation : AIR 1999 Ker 303 : (1999) 2 ILR (Ker) 802 : (1999) 1 KLJ 932 : (2011) 4 TAC 77

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : N. Dharmadan and R. Lakshmi Narayan, for the Appellant; B.N. Shiv Shankar, A.C.G.S.C. and S. Gopakumaran Nair, for the Respondent

Judgement

C.S. Rajan, J.—The petitioners studied for Law in Indira Priyadarshini College of Law at Bangalore. The above College was affiliated to the Bangalore university. According to the petitioners, they started their training under the Bar Council of Kerala. They completed the training of one year in January and February 1999 respectively. According to them, they are entitled to be admitted as advocates on the State Roll of the Bar Council of Kerala. But they were informed by the Bar Council of Kerala as per Exhibit P-1, a letter addressed to the Bar Council of India, that the name of the Law College in which the petitioners studied was not seen included in the list of affiliated Law Colleges by the Bar Council of India. The Bar Council of India was already requested in Exhibit P-I to clarify whether the said Law College was approved by the Bar Council of India for the purpose of enrolment. The first petitioner filed Exhibit P-3 representation before the Bar Council of Kerala. In Exhibit P-3 the first petitioner requested to take up the matter with the Bar Council of India and to save him from the embarrassing situation. The Bar Council of Kerala as per Exhibit P-4 informed the first petitioner that the Bar Council of India was informed that the Indira Priyadarshini Law College, Bangalore was not granted approval of affiliation for the purpose of

enrolment. Therefore, the application could not be considered for the purpose of enrolment at present. Exhibit P-4(a) is a similar communication addressed to the second petitioner.

2. By Exhibit P-6 letter the Principal of the Law College informed the counsel for the petitioners that the College is taking steps to comply with the conditions imposed by the Bar Council of India. Thereafter the petitioners submitted Exhibit P-7 representation to the Bar Council of Kerala and Exhibit P-8 before the Bar Council of India. It may be pointed out that all these correspondence started from March, 1998 and ended with October, 1998.

3. The petitioners in this Original Petition have sought to quash Exhibits P-4 and P-4(a) and also to strike down Rule 12 of Part IV of the Bar Council of India Rules as it is ultra vires of the provisions contained in the Advocates Act and is violative of the fundamental rights of the petitioners. The petitioners also pray for a declaration that they are eligible to be enrolled as Advocates.

4. In order to appreciate the arguments of the petitioners it is necessary to refer to the provisions contained in the Advocates Act and the Rules made thereunder. Section 24 of the Advocates Act deals with the qualification to be admitted as an Advocate of a State Roll. Section 24(c)(iii), which is the relevant provision as far as this case is concerned is as follows :

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

The Bar Council of India in exercise of its powers u/s 15 of the Advocates Act framed Rules prescribing standards of legal education and recognition of Degrees in Law or admission as Advocates. The relevant Rules as far as this case is concerned are Rules 17 and 18, which are 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

It 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 of 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.

(c) 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 the 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."

The contention of the petitioners is that Rule 17 as quoted above is ultra vires of the provisions contained in Section 24(c)(iii) of the Advocates Act. It was argued by Sri N. Dharmadan, learned Senior Counsel that requirement of separate, recognition by the Bar Council of India for a College other than the provisions contained in Section 24 of the Advocates Act is illegal. If once the College is affiliated to the University in accordance with the norms prescribed by the University, the Bar Council of India cannot have a separate view on the question of recognition and affiliation of the above College. The learned Senior Council also brought to my notice a Division Bench judgment of the Andhra Pradesh High Court reported in C.M. Balaraman v. Registrar, Osmania University, Hyderabad, AIR 1998 Andh Pra 105. In the above case also the plight of the students who passed out of the Law Colleges in Hyderabad which were not recognised by the Bar Council of India was considered. Dealing with the powers and the jurisdiction of the Bar Council of India with regard to the legal education to be imparted to the students the following observations were made by the Andhra Pradesh High Court :

"37. In the background of the above statutory provisions, it follows that the Bar Council of India a body created to lay down and monitor standards of the legal education, has necessary power to take all such actions which are necessary for achieving the said objects.

38. In view of the categorical assertion by the Bar Council of India that the above mentioned law colleges did not have continuance of approval of affiliation and in view of the prohibition contained in Rule 17(1) mentioned earlier, the Bar Council of India is perfectly justified in making such communication to the Osmania University.

39. The Bar Council of India as a body charged with responsibility of maintaining the standards of Legal Education, has not only power to regulate the various aspects of Legal Education, but also owes a duty to the public, more particularly to the legal profession, to see that the sacred obligation entrusted to it is well-discharged. The role of lawyers, Legal Education and Courts in a democratic constitution set up is too well known to be mentioned here. Apart from that, knowledge of law would be a great asset for administrators and legislators in discharging their constitutional duties. That being so, can this country really afford law college which are ill-equipped, ill-motivated and ill-functioning? It is the legal responsibility of the Bar Council of India under the Advocates Act and Rules to constantly keep a watch on the institutions imparting Legal Education. That is why Rule 17 declares that the approval of affiliation to an institution imparting Legal Education has to be obtained from the Bar Council of India. Such

approval would be granted as can be seen from the rules, only on the Bar Council of India being satisfied that the institution seeking such an approval has all the necessary infrastructure to effectively impart Legal Education. All the law colleges which have now been declared by the Bar Council of India to be unfit to survive in the field of Legal Education were given approval of affiliation for a limited period hoping that within the period they would equip themselves with all necessary infrastructure as stipulated under the Bar Council of India Rules."

Ultimately what the Andhra Pradesh High Court did was to allow these students to be enrolled as Advocates subject to the condition that they must succeed in an examination to be conducted by the Bar Council of Andhra Pradesh or the Bar Council of India. The purpose of this examination was to ensure that students with basic knowledge of law are alone entitled to enter the profession.

5. The petitioners' contention that Rule 17 is ultra vires of the Rule making power of the Bar Council of India has no foundation to stand. u/s 15 of the Advocates Act the Bar Council of India is empowered to make rules to carry out the purpose of the Advocates Act. Section 7 deals with the functions of the Bar Council of India which include inter alia :

(1) 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;

(2) to recognise Universities whose degree in law shall be a qualification for enrolments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

One of the qualifications for a person to be admitted as an Advocate on a State Roll is that he must have a Degree in Law after undergoing a Three Year course from any university in India which is recognised for the purpose of this Act by the Bar Council of India. In exercise of these provision Rule 17 has been enacted which provides that no College shall impart instruction in a course of study in law for enrolment as act Advocate unless its affiliation has been approved by the Bar Council of India. Therefore, it is abundantly clear that the Bar Council of India has a responsibility of maintaining the high standard of legal education. It has also a duty to see that the students who are becoming members of an honourable profession are well equipped to be the members of the legal fraternity. For that purpose the College must have all necessary infrastructure, such as suitable building, qualified teachers and a well equipped library. It is the duty of the Bar Council of India to see that every institution which imparts legal education satisfies all these requirements. Thus, under the Act the Bar Council of India has been given the power and jurisdiction to supervise the institutions which impart training to the future lawyers and to see that any person who did not get necessary training and qualification from an ill-equipped College is not allowed to be enrolled as an Advocate. That is why power is given to the Bar

Council of India even to dis-affiliate any existing Law College who does not comply with the standards of legal education as laid down by the Bar Council of India. Therefore, it will not be in the interest of justice or viewing it in a large perspective of future of the profession, to declare the above rule, empowering the Bar Council of India which has a final say on the affiliation of the Law College, as ultra vires.

6. With great respect to the learned Judges of the Andhra Pradesh High Court I am not persuaded to adopt the course of conducting a separate examination to these students who came out from the Colleges who did not have the affiliation from the Bar Council of India. But, at the same time, the Bar Council of India has a duty to act as expeditiously as possible in the matter of affiliation of the Law Colleges. In this case the College started in 1994. It was recognised by the Bangalore University and by the State of Karnataka. The averments in the Original Petition also go to show that the College started Five Years" course. The above course has been approved by the Bar Council of India. The petitioners brought to the notice of the Bar Council of Kerala and Bar Council of India their predicament as early as March, 1998. Still the Bar Council of India has not taken any step either to recognise and affiliate the fifth respondent-College or to say "no" to their request. The Bar Council of India must definitely take these things more seriously and act quickly. The plight of the students and the embarrassment they are facing after getting a Law Degree must wake up the Bar Council of India to take immediate decision in this matter without any further delay.

Under these circumstances, the Bar Council of India is directed to take a decision with regard to the affiliation of the fifth respondent-College after completing necessary formalities within three months from the date of receipt of a copy of this judgment.

Original Petition is disposed of as above.