

(1970) 06 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jur. Case No. 232 of 1969

Parmeshwar Prasad

APPELLANT

Vs

Union of India(UOI) and Others

RESPONDENT

Date of Decision : 15-06-1970

Acts Referred:

Advocates Act, 1961 — Section 24(3), 50(2), 58(4)
Constitution of India, 1950 — Article 14, 19(1)
General Clauses Act, 1897 — Section 6
Legal Practitioners Act, 1879 — Section 10, 7

Citation : AIR 1971 Patna 316 : (1970) 3 PLJR 514

Hon'ble Judges : S.C. Misra, C.J;Shambhu Prasad Singh, J;K.B.N. Singh, J

Bench : Full Bench

Advocate : J.N.P. Verma and Ramesh Chandra Sinha, for the Appellant; S. Sarwar Ali, Shashi Kumar Sinha, B.P. Semaiyar and Baidyanath Sharan, for the Respondent

Final Decision : Dismissed

Judgement

K.B.N. Singh, J.—In this writ application, the applicant has prayed for issue of an appropriate writ quashing, cancelling or modifying the provisions of Sections 24 and 50 of the Advocates Act, 1961 (Act XXV of 1961--hereinafter referred to as the Act), and the rules framed thereunder.

2. The petitioner, while in Government service, passed the Mukhtarship examination held in the year 1947, and a certificate to that effect, bearing Registered No. 3202 dated the 29th April, 1948, was issued to him by the Committee of Legal Education appointed u/s 37 of the Legal Practitioners Act (Act XVIII of 1879) by the Governor of Bihar to conduct the said examination. The petitioner continued in Government service even thereafter. On the 30th September, 1967, he took one year's leave, preparatory to retirement, with effect from the 30th September, 1968. He was then working as the Office Superintendent of the Monghyr Collectorate. While on leave, on the 27th November, 1967, he applied for being enrolled as a Mukhtar through the District

Judge of Monghyr. His application for enrolment was, however, returned by the Registrar of this Court by letter No. 442 dated the 15th January, 1968, as it could not be considered so long the petitioner remained on leave, as he would be deemed to be in service so long he drew his pay.

The petitioner has averred that thereupon he got his leave, with effect from the 29th January, 1968, cancelled for being enrolled as a Mukhtar and again applied on the 8th February, 1968, through the District Judge of Monghyr for being enrolled as a Mukhtar and, after all the formalities were gone into, he was ordered to get the Mukhtarship Licence, but, in the meantime, the Registrar of this Court, by letter No. 7331 dated the 5th June, 1968, intimated that the High Court had no power to issue the licence and the petitioner was verbally advised by the Registrar of the Court to apply for enrolment as an Advocate, before the Secretary, Bar Council. Bihar. The petitioner, accordingly, applied for being enrolled as an Advocate and deposited the requisite enrolment fee of Rs. 250/-.

On the 2nd August, 1968, he was called for and interviewed by the Enrolment Committee of the Bihar State Bar Council and was told that he could not be enrolled as an Advocate, in view of the provisions contained in Section 24(3) of the Act, according to which, a Mukhtar, who has practised for at least three years before March, 1964, was only entitled to be enrolled as an Advocate, and, the petitioner, not having practised as a Mukhtar for a single day, could not be enrolled as an Advocate. On the 2nd August, 1968, the petitioner was allowed to withdraw his application for enrolment as an Advocate, and the enrolment fee of Rs. 250/- was also refunded to him, (vide Annexure "1").

3. The petitioner, thereafter, again moved the Registrar of this Court to reconsider his application for enrolment as a Mukhtar and issue him the licence, but the Registrar of this Court informed the District Judge of Monghyr that the petitioner could not be enrolled as a Mukhtar and reiterated the Court's earlier decision in the matter, (vide Annexure "2").

4. The petitioner has averred that he possesses the professional and technical qualifications for practising as a Mukhtar and is entitled to practise as such, and that Section 24(3) of the Act puts unreasonable restriction and is detrimental to the interests of the persons who have passed the Mukhtarship examination and have not practised and it debars them from practising the profession of law and enjoying the right of equal opportunity in matters of profession and trade, and has taken away the right of the petitioner from being enrolled as a Mukhtar. It has also been averred that Section 50 of the Act, which has repealed certain provisions of the Legal Practitioners Act, 1879, and the Indian Bar Councils Act, 1926, has done so without giving suitable protection to those who have been affected by the said enactment. On the above grounds it has been prayed that Sections 24 and 50 of the Act be declared ultra vires Articles 14, 19(1)(g) and 31 of the Constitution of India, or be suitably amended so as to entitle the petitioner to carry on his legal profession as a Mukhtar, to which he is legally entitled, and he be ordered to be enrolled as a Mukhtar or an Advocate.

5. Counter-affidavits have been filed on behalf of the Union of India (Respondent No. 1) and the Bihar State Bar Council (Respondent No. 4) and the petitioner's replies thereto have also been filed.

6. In order to appreciate the questions raised in this writ application, it would be relevant to refer, in brief, to the scheme and the provisions of the Act, The Indian Parliament passed the Advocates Act with a view to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All India Bar in the year 1961 (Act XXV of 1961). The Act was assented to by the President of India on the 19th May, 1961,

7. Sub-section (3) of Section 1 of the Act lays down that the Act would come into force on such date as may be notified by the Central Government in the official gazette in this behalf and that different dates might be fixed for different provisions of the Act. Section 2 of Chapter I of the Act is the definition section and it defines "legal practitioner" to mean "an Advocate, Vakil, or Attorney of any High Court, a Pleader, Mukhtar or Revenue Agent". Chapter II deals with the establishment of a Bar Council for each State and a Bar Council of India, and lays down the procedure for their constitution and defines their powers and functions. The functions of the State Bar Council are laid down u/s 6, while those of the Bar Council of India u/s 7. One of the functions of the State Bar Council u/s 6 is to admit persons as Advocates on its roll and to prepare and maintain roll of such Advocates, similarly, one of the functions of the Bar Council of India u/s 7 is to prepare and maintain a common roll of Advocates.

Chapter III deals with the admission and enrolment of Advocates and consists of Sections 16 to 28. Section 17 lays down that the State Bar Council shall prepare and maintain a roll of Advocates in the manner laid down in the section and send a copy of it to the Bar Council of India, and shall also communicate to it all alterations in and additions to the roll, as and when made. According to Section 20, the Bar Council of India will prepare a common roll of Advocates, which shall comprise of all State Rolls, besides the names of the Advocates entitled to practise in the Supreme Court immediately before the appointed day, whose names may not be entered in any State Roll. Chapter III contains one of the impugned sections, namely, Section 24, which lays down the qualifications for admitting a person as an Advocate on the State roll. Sub-section (1) of Section 24 lays down, inter alia, that subject to the provisions of the Act and the rules made thereunder, a person shall be qualified to be admitted as an Advocate, if he fulfils the following conditions:

- (a) Is a citizen of India;
- (b) Completed twenty-one years of age;
- (c) Obtained a degree in law;
- (d) Undergone a course of training in law and passed an examination prescribed by the State Bar Council. This is subject to exemption in cases of Barristers and

Judicial Officers and in certain other cases.

(e) Such other conditions as may be specified in Rules made by the State Bar Council; and,

(f) Pays an enrolment fee of Rs. 250/-.

Sub-section (2) of Section 24 provides that a Vakil or a pleader, who is a law graduate, may be also enrolled as an Advocate, if he make a proper application within two years of the appointed day. Then comes the impugned Sub-section (3) of Section 24, which deals with the enrolment of Mukhtars as Advocates and its relevant portion reads thus:--

"(3). Notwithstanding anything contained in Sub-section (1) a person who-

(a) has, for at least three years, been a Vakil or a Pleader or a Mukhtar, or was entitled at any time to be enrolled under any law as an Advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union Territory; or

XX XX XX may be admitted as an Advocate on a State Roll, if he-

(i) makes an application for such enrolment in accordance with the provisions of this Act; and,

(ii) fulfils the conditions specified in Clauses (a), (b), (e) and (f) of Sub-section (1)."

Under Section 25, an application for admission as an Advocate is to be made in the prescribed form before the State Bar Council within whose jurisdiction the applicant proposes to practise. Such applications are to be disposed of by an Enrolment Committee of the State Bar Council in the manner as laid down in Section 26 of the Act. Chapter IV of the Act is entitled "Right to practise" and contains Sections 29 to 34. Section 29 lays down that subject to the provisions of this Act and the rules made thereunder, from the appointed day (the 1st day of June, 1969), there will be only one class of persons entitled to practise the profession of law, namely. Advocates. Section 30 provides that every Advocate, whose name is entered in the common roll, shall be entitled to practise throughout the territory to which the Act extends. Section 31 lays down special provisions for Attorneys in respect of the Calcutta and Bombay High Courts. Section 32 gives power to the Court to permit any person not enrolled as an Advocate to appear before it in any particular case.

Section 33 lays down that except as otherwise provided in this Act or in any other law, for the time being in force, no person shall, on or after the appointed day, i.e., the 1st of June, 1969, be entitled to practise in any court or before any authority or person unless he is enrolled as an Advocate under this Act. Section 34 provides for power of the High Courts to make rules laying down conditions subject to which an Advocate shall be permitted to practise in the High Courts and the courts subordinate thereto. It also lays down that until rules are made in

this behalf, the rules made by the High Court under the Letters Patent in force immediately before the appointed date shall continue to be in force so far as consistent with the Act and shall be deemed to be rules made under this Act. Chapter V contains Sections 35 to 44 and deals with the conduct of Advocates and provides punishment for misconduct. Chapter VI contains miscellaneous provisions and consists of Ss. 45 to 52. Section 50, which is under challenge, is in this Chapter. This section deals with the repeal of certain enactments and refers to the consequences which would follow on the coming into force of Chapters III, IV and V of the Act. Sub-section (2) of Section 50 provides;

"(2) On the date on which Chapter III comes into force, the following shall stand repealed, namely-

(a) Sections 6, 7, 18 and 37 of the Legal Practitioners Act, 1879, and so much of Sections 8, 9, 16, 17, 19 and 41 of that Act as relate to the admission and enrolment of Legal Practitioners;

(b) Sections 3, 4 and 6 of the Bombay Pleaders Act, 1920;

(c) So much of Section 8 of the Indian Bar Councils Act, 1926, as relates to the admission and enrolment of legal practitioners;

(d) The provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the admission and enrolment of legal practitioners."

Chapter VII deals with temporary and transitional provisions and contains Sections 53 to 60. It may be mentioned that some of these sections have been amended with retrospective effect and Sections 58 and 59 have been retrospectively inserted in the Act by Amending Act of 1962, besides being amended by Act XXI of 1964. Section 55 has kept the right of the Pleader, Vakil and Mukhtar to practise, who have not elected to be or are not qualified to be enrolled as Advocates, unaffected in spite of the repeal of the provisions under which they were enrolled, as mentioned in Section 50(2) of the Act, which, in relation to them, shall not be deemed to be repealed.

8. The different provisions of the Act have come into force on different dates. The Central Government, by notifications issued u/s 1 (3), from time to time, has fixed different dates for bringing into force the different provisions of the Act, which are mentioned below:--

PROVISIONS	Date of Coming into Force.
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Chapters I, II and VII	16-8-1961.
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Chapter III and Section 50(2)	1-12-1991.
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Section 50(1)	15-12-1961.
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Sections 51 and 52	24-1-1962.
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Section 48	29-3-1962.
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Section 32 and Chapter VI except Section 46, Sub-sections (1) and (2) of Section 50, Sections 51 and 52 4-1-1963.

Chapter V 1-9-1963.

Chapter IV (Save Section 32) 1-6-1969.

Sections 58 and 59 were inserted by Amending Act XIV of 1962, followed by insertion of Sections 58A and 58B by Amending Act XXI of 1964, with retrospective effect.

9. On a review of the aforesaid provisions, it is apparent that the purport and the scheme of the Act is to have an All India Bar and to have only one class of legal practitioners, known as Advocates. It has, however, given option to persons who have been Pleaders. Vakils or Mukhtars for three years to get them enrolled as Advocates and for such of them who are not entitled to be enrolled as Advocates or those who do not want to be so enrolled, to continue as such. In other words, their interest has not in any way been affected by the Act and they continue to be governed by the provisions of the Legal Practitioners Act, under which they were enrolled, as if in their case the Legal Practitioners Act has not been repealed.

10. Mr. J. N. P. Verma, appearing for the petitioner, has submitted that on coming into force of Section 50(2) of the Act, the relevant provisions of the Legal Practitioners Act, namely. Sections 6 and 7 of that Act. under which the petitioner could be enrolled as a Mukhtar, stood repealed, without making any provision for enrolment of such persons as have passed the Mukhtarship Examination, but were not enrolled as Mukhtars till before coming into force of Sub-section (2) of Section 50, on the 1st December, 1961, by virtue of a notification dated the 24th November, 1961 of the Central Government. He has also urged that Section 24 (3) provided that a Mukhtar who had practised at least for three years could alone be enrolled as an Advocate. Therefore, the petitioner could neither be enrolled as a Mukhtar nor as an Advocate. He relied on Clause (c) of Section 6 of the General Clauses Act in support of his submission that his right to practise as a Mukhtar after he has passed the Mukhtarship examination cannot be legally taken away in spite of the repeal of the relevant provisions of the Legal Practitioners Act.

In the alternative, he urged that the provisions of Section 24(3) and Section 50(2) of the Act. depriving the petitioner of his right to practise as a Mukhtar, or his right to be enrolled as an Advocate, put unreasonable restriction on his right to practise as a Mukhtar and are infringement on the petitioner's right to carry on his profession and ultra vires Article 19(1)(g) of the Constitution. He also urged that while those who are law graduates are entitled to be enrolled as an Advocate, the persons having passed Mukhtarship examination are deprived of being enrolled either as Mukhtars or Advocates and the aforesaid provisions, therefore, are discriminatory and hit by Article 14 of the Constitution.

11. It is true that the petitioner passed the Mukhtarship examination in 1947, conducted by a Committee of Legal Education appointed in this behalf by the Governor of Bihar. This examination has been abolished after 1948. The question that arises for consideration is the nature of right acquired by the petitioner by his passing the Mukhtarship examination, whether that by itself entitled him to carry on the profession of a legal practitioner, to attract Article 19(1)(g) of the Constitution,

12. It is not disputed that mere passing the Mukhtarship examination will not entitle the petitioner to practise in a Court of law. It is only after he has obtained a certificate to that effect under the Legal Practitioners Act that he can practise as a Mukhtar. This brings us to the consideration of the relevant provisions of the Legal Practitioners Act, 1879.

13. Before coming into force of the Advocates Act, 1961, Advocates, Vakils, Attorneys of any High Court, and Pleaders, Mukhtars or Revenue Agents were governed by the Legal Practitioners Act of 1879. Chapter I of the Legal Practitioners Act contained preliminary provisions, Chapter II related to Advocates, Vakils and Attorneys, while Chapter III related to Pleaders and Mukhtars. Chapter IV related to Revenue Agents. Chapter V dealt with certificates and Chapter VI provided for remunerations of Pleaders, Mukhtars and Revenue Agents. Chapter VII provided for penalties and Chapter VIII contained miscellaneous provisions and consisted of Sections 37 to 42. Relevant for our consideration is Chapter III, dealing with Mukhtars. Section 6 authorises the High Court to make rules as to qualifications etc. of the Pleaders and Mukhtars and reads thus:--

"6. The High Court may, from time to time, make rules consistent with this Act as to the following matters, namely:--

(a) the qualifications, admission and certificate of proper persons to be pleaders of the subordinate courts, and of the revenue offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter in respect of which the Indian Bar Councils Act, 1926, is not in force of such Court;

(b) the qualifications, admission and certificates of proper persons to be Mukhtars of the subordinate courts and, in the case of a High Court not established by Royal Charter in respect of which the Indian Bar Councils Act, 1926, is not in force of such Court;

(c) the fees to be paid for the examination and admission of such persons; and,

(d) suspension and dismissal of such pleaders and mukhtars. All such rules shall be published in the official gazette, and shall thereupon have the force of law. Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the State Government."

Section 7 lays down that on admission u/s 6 of any person as a Pleader or a

Mukhtar, the High Court shall cause a certificate signed by such officer as the Court may appoint in this behalf, to be issued to such person, authorising him to practise up to the end of the current year in the courts. It also provided, for renewal after the expiry of the period of the certificate, subject to the rules made by the High Court, by the Judge of the District Court within the local limits of whose jurisdiction he ordinarily practises. On such renewal the expired certificate will be cancelled or retained by the renewing authority. Section 9 provides that every Mukhtar holding a certificate issued u/s 7 may apply to be enrolled in any civil or criminal Court mentioned therein and situated within the local limits and subject to the rules made by the High Court, and the Presiding Judge shall enrol him. and thereafter he may practise as a Mukhtar in any such civil or criminal Court or Courts subordinate thereto. Section 10 lays down that no person shall practise as a Pleader or a Mukhtar, unless he holds a certificate issued u/s 7, and may usefully be quoted:--

"10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtar in any Court not established by Royal Charter unless he holds a certificate issued u/s 7 and has been enrolled in such Court or in some Court to which it is Subordinate;

Provided that persons who have been admitted as Revenue Agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by Section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869, (to amend the procedure in suits between Landlord and Tenant) or under any other Act for the time being in force regulating the procedure in suits between land-holders and their tenants and agents."

14. As mentioned above, u/s 6 of the Legal Practitioners Act, the High Court is authorised to make rules consistent with the Act as to the matters enumerated in Sub-section (a) of that Section. This High Court has framed rules u/s 6 and they are contained in Part VII of the Patna High Court General Rules and Circular Orders (Civil) Volume I. According to Rule 4 in Chapter I of the said Rules, any person who shall produce a certificate from the Committee of Legal Education, appointed by the Governor of Bihar u/s 37 of the Legal Practitioners Act that he has passed an examination held in accordance with the rules that were in force till the year 1947. may be admitted as a Mukhtar to practise in courts Subordinate to the High Court. Rules 5, 6 and 7 of the said Rules prescribe procedure for making applications for grant of certificate for practising as Mukhtars and payment of fees in that regard. Under Rule 9, the High Court reserved to itself the right to refuse enrolment to any Pleader or Mukhtar. Rule 11, which is relevant, reads thus:--

"11. Upon the applicant being admitted by the High Court, the Registrar of the High Court shall cause his name to be entered in the proper register, and shall grant him a certificate as required by Section 7 of Act XVIII of 1879, authorising

him to practise up to the end of the current year in the courts and in the case of a Pleader also the revenue offices specified therein."

Rule 13 provides for procedure to be followed for renewal of the certificate.

15. Reading the aforesaid provisions of the Legal Practitioners Act and the Rules framed by the High Court in this behalf, it is apparent that mere holding of a certificate from the Committee of Legal Education about the petitioner's having passed the Mukhtarship examination in the year 1947, does not entitle him, as of right, to practise as a Mukhtar in any court. It is only an academic qualification. It is the grant of a certificate u/s 7 of the Legal Practitioners Act by the High Court that entitles a person, who has passed the Mukhtarship examination, to practise during the year for which the certificate is granted. Section 10 of the Legal Practitioners Act contains positive prohibition against "practising without a certificate u/s 7 of the said Act. It is thus apparent that the petitioner did not acquire any vested right by merely passing the Mukhtarship examination. He thus acquired no right even to practise as a Mukhtar, much less to attract the provisions of Article 19(1)(g) of the Constitution.

16. It will also be relevant in this connection to note that the Advocates Act was passed and assented to as early as 1961, containing Section 50, which laid down, as stated above, that after the coming into force of Section 50(2) of the Advocates Act, Sections 6 and 7 of the Legal Practitioners Act, under which the petitioner could claim to be enrolled as a Mukhtar shall be repealed, that is to say, after the coming into operation of Chapter III of the Act, no certificate could be issued to a person who has passed the Mukhtarship examination, to entitle him to practise. Several months after the passing of the Advocates Act, Section 50(2) of the Act came into force. If the petitioner really intended to practise as a Mukhtar, he should have got himself enrolled as such. As already stated, the Act was assented to on the 19th May, 1961 and Chapter III of the Act came into force on the 1st December, 1961.

Some seven months had elapsed between the passing of the Act and coming into operation of Chapter III and Section 50(2) of the Act. If the petitioner intended to practise as a Mukhtar, there was sufficient opportunity for him to get himself enrolled as a Mukhtar during the period intervening. The petitioner cannot be said to have been taken by surprise. It is true that he was in Government service, but, it was for him to elect either to continue in service or to get himself enrolled as a legal practitioner. The mere fact that he has passed the Mukhtarship Examination does not entitle him to practise in courts of law. His right depends on his being enrolled under the Legal Practitioners Act as a Mukhtar and a certificate to that effect being granted to him u/s 7 of the said Act, which since has been deleted.

17. The view I have taken gains support from a Bench decision of the Bombay High Court in the case of *Mulchand Gulabchand Vs. Mukund Shivram Bhide and Another*, , In that case under Rule 36 framed under the Co-operative Societies

Act, legal practitioners were prohibited from appearing in certain proceedings before the Registrar and Arbitrator. One of the questions raised on behalf of the petitioner, a Pleader, was that Rule 36 of the rules aforesaid, prohibiting a lawyer to appear before the Arbitrator in certain proceedings under the Co-operative Societies Act was violative of his fundamental right under Article 19(1)(g) of the Constitution to practise any profession. Chagla, C. J., with whom Ganjendragadkar, J. (as he then was), concurred, observed as follows:--

"But, as I shall presently point out, the right of a lawyer to practise is not an absolute right. The very charter which gives him the right to practise controls, limits and circumscribes his right. Now, there are two charters which entitle a lawyer in this State to practise. One is the Bar Councils Act and the other is the Pleaders Act,"

Referring to the relevant provisions of the two Acts, his Lordship further observed-

"Therefore, his right to practise is controlled by this important provision that any other law for the time being in force may restrict or take away his right, Therefore, if the Co-operative Societies Act were to provide that an advocate of the High Court of Bombay shall not practise before the arbitral tribunal set up under that Act, then the right of the advocate will be circumscribed by the provisions of that law. It should be remembered that it is not the fact that a man has passed a law examination or has acquired a law degree that entitles him to practise in Courts of law; his right to practise depends upon his being enrolled as an advocate and he is enrolled as an advocate on terms and conditions laid down in the Bar Councils Act....."

"Therefore, just as in the case of the Bar Councils Act, the right of a pleader to practise before a tribunal is not an absolute right. It is a right subject to the provisions of any law for the time being in force. Therefore, the only right of a lawyer that has been safeguarded under the Constitution is the right to practise his profession. Now that right not being an absolute right, no absolute right is conferred upon the lawyer by the provisions of the Constitution. The Constitution guarantees to the lawyer such right as he has under his charter. If any such right is affected or contravened, then undoubtedly he can rely upon the provisions of Article 19(1)(f).....".

I am in respectful agreement with the view expressed by their Lordships that Article 19(1)(f) of the Constitution can be brought in aid of a person only after he has been enrolled as a legal practitioner under any enactment authorising him to practice and not merely having academic law, degree or qualification.

18. To the same effect is the decision of the Madras High Court in the case of S. Ananthakrishnan Vs. The State of Madras, . In that case the question was whether the levy of stamp duty on an application for enrolment as an Advocate was unconstitutional, as putting an unreasonable restriction on the right to carry on any profession under Article 19(1)(g) of the Constitution of India. Negating

the contention, a Bench of the Madras High Court observed as follows:--

"Much was said at the Bar as to what exactly is comprised in the right to practise a profession guaranteed under Article 19(1)(g). Taking the profession of law what does this right consist in? Is the effect of Article 19(1) to confer on every person who may be otherwise qualified the right to practise in any court in the land? I see nothing in Article 19(1)(g) to justify the conclusion that this court or any other High Court or Supreme Court cannot lay down rules for the admission of advocates who alone will be permitted to represent the suitors before them. On the other hand, the clauses in the Letters Patent granted to the Chartered High Courts to which reference was made earlier in this judgment, clearly confer on the High Courts the power to virtually prevent even qualified persons other than the advocates on their rolls to plead and act before them on behalf of suitors."

Their Lordships further observed that-

"The right to plead and act on behalf of suitors in a court is not a right flowing from citizenship. The reasoning in (1876) 21 Law" Ed 442 (B) is to this extent not bad law even to this day.....

The exclusive right to represent suitors in court which an advocate possesses is really in the nature of a privilege."

19. The above decision was followed in a subsequent decision of the Madras High Court in the case of A.N. Rangaswamy and Another Vs. The Industrial Tribunal, Fort. St. George, Madras and Others, . In that case, the Tribunal under the Industrial Disputes Act refused permission to a lawyer to appear before it and it was urged that the refusal contravened the fundamental right of the advocate guaranteed under Article 19(1)(g) of the Constitution to practise his profession. Negating the contention, Venkatarama Aiyar, J., who delivered the judgment of the Bench, observed as follows:--

"The position, therefore, is that a person who has obtained the requisite legal qualifications is not entitled on that ground alone to a right of audience in courts. He must, further, be admitted to the Bar before he could practise. That is a matter which is regulated by statutes and the extent of the right to practise must depend on the terms of those statutes. This right is also a privilege as it is limited to those who are admitted to the Bar. It is what the American Jurists aptly describe as a "franchise". In this country the matter is governed by the Bar Councils Act and the Legal Practitioners Act.

"The right of the first appellant to practice is, therefore, just what is conferred on him by Section 9 and Section 14 (1) (a), (b) and (c) of the Bar Councils Act, neither more nor less, and when the particular right claimed by him cannot be found within the four corners of those sections, then there is nothing in respect of which the guarantee under Article 19(1)(g) could be invoked. That Article merely operates to protect the rights which a person otherwise possesses under

the law."

20. In the case of Devata Prasad Singh v. The Chief Justice and the Judges of the Patna High Court, Devata Prasad Singh Chaudhuri and Others Vs. The Hon"ble The Chief Justice and Judges of the Patna High Court, , where validity of Rule 2 Chapter III, Part VII of the Patna High Court General Rules and Circular Orders (Civil) Volume I, made by the High Court u/s 11 of the Legal Practitioners Act was challenged under Article 32 of the Constitution of India, as putting an unreasonable restriction on the right of the Mukhtars to practise in civil courts and contravening their fundamental right guaranteed under Article 19(1)(g) of the Constitution, as well as being in excess of the rule-making powers of the High Court u/s 11 of the Legal Practitioners Act. Their Lordships of the Supreme Court negating the contention observed that "the right of the petitioners to practise in the subordinate courts was created by the Act."

21. In the case of Babul Chandra Mitra v. Chief Justice and other Judges of the Patna High Court, Babul Chandra Mitra Vs. The Chief Justice and Others Judges of Patna High Court, , Section 9 (1) of the Bar Councils Act was challenged as void, putting an unreasonable restriction upon freedom to practise a profession under Article 19(1)(f) of the Constitution. The petitioner before the Supreme Court, a law graduate, after complying with all the necessary requirements of rules framed by this Court under the Bar Councils Act. applied for enrolment, but the High Court refused the application for enrolment in exercise of the powers under proviso to subsection (1) of Section 9 of the Bar Councils Act. The relevant provision of the Bar Councils Act reads thus:--

"9 (1). The Bar Council may, with the previous sanction of the High Court, make rules to regulate the admission of persons to be Advocates of the High Court:--

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion."

It was contended before their Lordships of the Supreme Court that Section 9 of the Bar Councils Act was void and contravened the fundamental right guaranteed to the petitioner under Article 19(1)(g) of the Constitution, and it did not come within the protection afforded by Clause (6) of that Article. Negating this contention, their Lordships observed as follows:--

"It may be stated at the outset that u/s 8 of the Indian Bar Councils Act, no person is entitled as of right to practise in any High Court, unless his name is entered in the roll of the Advocates of that Court maintained under the Act. u/s 9 of the Act, the Bar Council can certainly frame rules with the sanction of the High Court to regulate the admission of persons as Advocates. The proviso mentioned above, however, makes it quite clear that there is an overriding power in the High Court to refuse admission to any person at its discretion in spite of these rules. The vesting of power even in an unfettered form in the High Court to exercise discretion in the matter of enrolling Advocates, who would be entitled to practise before it, does not, in our opinion, amount to an unreasonable

restriction. Such discretion will have to be vested in somebody, and no other or more appropriate authority could be thought of, except the High Court itself."

From the above observations (underlined by me), it is apparent that no law graduate is entitled to practise in any High Court as of right, unless his name is entered in the rolls of Advocates maintained under the Bar Councils Act. This also supports the view that mere passing of Mukhtarship examination does not give unfettered right to such a person under Article 19(1)(g) of the Constitution to practise as a Mukhtar. He can only do so, if under the relevant existing statute, he is enrolled and granted a certificate to practise as such and within the limits of the statement or charters giving him the strength. Thus, the right being creature of a statute and not on merely passing an examination, it cannot be said that the petitioner's right guaranteed under Article 19 has been affected.

22. Learned counsel for the petitioner referred to the case of M. Abdul Towheed Vs. The Patna High Court Bar Council, and urged that the petitioner, in the capacity as the office superintendent of the Collectorate, had been in contact with the legal affairs and its administration and some provision ought to have been made u/s 59 of the Act for removal of difficulties. That was a case for grant of exemption under Rules 1 (v), 2 and 11 of the Patna High Court Bar Council Rules, made under the Indian Bar Councils Act, to one M. A. Towheed, a retired Superintendent of Police. Rule 1 (v) required that a law graduate who had practised in subordinate courts for three years and had secured a certificate of efficiency from the District Judge could be enrolled as an Advocate. Rule 2 provided for admission of a person as an Advocate, if that person has undergone a course of training for one year in the chambers of an Advocate on the roll of the High Court.

Although the petitioner in that case did not fulfil the requirements of either of the aforesaid rules, their Lordships granted the exemption and ordered him to be enrolled as an Advocate, in view of the fact that he had worked as a Lecturer in Criminal Law and procedure and as a Prosecuting Officer for about eight years and had also remained incharge of a district as Superintendent of Police, and it was in that connection that their Lordships observed that "it must be said that, at one time or the other, he had always been in touch with law and its administration, in one form or the other." I am afraid, the above decision is of no assistance to the learned counsel for the petitioner. The High Court granted exemption in that case as there was a provision for admitting a law graduate as an Advocate, exempting from the requirement of three years' practice, or condoning the time of training, but, in the instant case, under the Advocates Act there is no provision entitling the petitioner to be enrolled, after the repeal of the relevant provisions of the Legal Practitioners Act, under which he could be enrolled as a Mukhtar.

23. Learned counsel for the petitioner placed reliance on a decision of the Calcutta High Court in the case of Sunil Kumar Sinha Ray Vs. State of West Bengal and Others, . The petitioner in that case had deposited fee and had made

a proper application, complying with the rules, before the Education Committee constituted by the State of West Bengal u/s 21 of the Legal Practitioners Act in time, for appearing at the Mukhtarship Examination to be held in February-March, 1962. But, by a letter dated the 22nd December, 1961. the petitioner was informed that as the provisions of the Legal Practitioners Act relating to the admission and enrolment of Mukhtars were repealed, the examination was cancelled by the Deputy Secretary to the West Bengal Government and the examination fee already deposited would be refunded.

It was contended on behalf of the petitioner that as he had prepared himself for the examination and deposited the requisite fee and complied with requirements of the Rules for appearing at the examination, he had acquired a vested right to appear at the examination and to qualify as Mukhtar, and, in the absence of express provision of law taking away this vested right, the repeal by Section 50(2) of the Act of certain provisions of the Legal Practitioners Act abolishing enrolment of Mukhtars, did not affect his right. Reliance was also placed in that case on Clause (c) of Section 6 of the General Clauses Act, a relevant portion of which may usefully be quoted:--

"Where any Central Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not..... (c) affect any right, privileges, obligation or liability acquired, accrued or incurred under any enactment so repealed."

Repelling this argument, Mitter, J., observed as follows:--

"So long as the Sections of the Legal Practitioners Act relating to the admission and enrolment of Mukhtars were in force, anybody could take the necessary steps to qualify himself as a Mukhtar and to practise as such in courts of law, but the statute, i.e., the Legal Practitioners Act did not vest anybody who had not already acquired the necessary qualifications with any right. In my opinion, a person can only claim to have a vested right under a statute when he has complied with all the formalities prescribed thereby for acquiring a status and before then the right is only an inchoate one. The principle is well illustrated by the case of Reynolds v. Attorney-General for Nova Scotia, 1896 AC 240."

Mr. Verma has relied on the following observation of his Lordship in the above case:--

"Here the appellants have acquired no right or privilege. If they had appeared at the examination and qualified themselves as Mukhtars, their contention would have been better founded. Moreover, it is clear from the preamble to the Advocates Act and Section 50(2) thereof that the legislature meant to do away with different categories of lawyers and was taking steps in that behalf by preventing the further admission and enrolment of Mukhtars."

Learned counsel laid emphasis on the observation, "If they had appeared at the

examination and qualified themselves as Mukhtars, their contention would have been better founded", occurring in the above quotation and urged that in the instant case the petitioner having passed the Mukhtarship examination, has qualified himself to practise as a Mukhtar and is entitled to be enrolled. This observation has two parts, firstly that a person had appeared at an examination, and secondly that he had qualified as a Mukhtar. The position was further clarified by his Lordship while referring to Section 58(4) of the Act, as it then stood, and these observations have to be understood in that context. His Lordship's further observations, the relevant lines of which have been underlined by me, may be quoted:--

"It is only intended to protect the rights of persons already practising as legal practitioners until Chapter IV came into force. The issue of a Certificate to a Mukhtar under the Legal Practitioners Act is covered by Section 7 of the Act under which a person was to be entitled to a certificate as a Mukhtar on his admission u/s 6. To be admitted u/s 6, a person had to acquire the qualification therein mentioned and comply with the rules made by the High Court in that behalf. Sub-section (4) of Section 58 is designed to safeguard the rights of persons who had already acquired the necessary qualification mentioned in Section 6. In order to clarify the position with regard to legal practitioners who had acquired rights under the Legal Practitioners Act, the Legislature engrafted Sub-section (4) of Section 58 in the Act so that they would be unaffected by the repeal. It may also be that there were persons who had become qualified as pleaders or Mukhtars but to whom no certificates had been issued and Sub-section (4) was designed to protect their rights as well. It cannot apply to persons who had not acquired the necessary qualifications u/s 6."

The expression "qualified themselves as Mukhtars" has to be understood in the sense of having acquired necessary qualifications mentioned in Section 6 of the Legal Practitioners Act. which include grant of admission u/s 6, in respect of which a certificate is issued u/s 7. His Lordship has also clarified that Section 58 (4) has been meant to safeguard the interests of those persons who have qualified themselves for admission as Mukhtars after complying with all the requirements as laid down u/s 6 and the rules framed by the High Court in that regard, but. to whom no certificate has actually been issued. This is perfectly clear from the last line of the above quoted passage, that, "It cannot apply to persons who had not acquired the necessary qualifications u/s 6." The above decision, therefore, does not support the submission of Mr. Verma at all and instead goes counter to his submission. Passing Mukhtarship examination is not the same thing as complying with the qualifications as laid down in Section 6 of the Legal Practitioners Act and the relevant rules made thereunder. It is merely an academic qualification, after obtaining which a person has to apply for being enrolled, conforming to the requirements of Section 6 of the said Act and the High Court considers him to be a fit person to be enrolled as a Mukhtar and issues a certificate u/s 7. entitling him to practise.

24. It was also contended in that case, as in the instant case, that the repeal of the provisions of the Legal Practitioners Act contained in Section 50(2) of the Act, was violative of Article 19(1)(g) of the Constitution, as it sought to prevent persons from practising a lawful profession of Mukhtars. This contention was negated and the following observations of Mitter, J., may be usefully referred to:--

"This argument too must fail inasmuch as Section 50(2) is not designed to prevent persons from practising as lawyers altogether but is only aimed at preventing the practice as lawyers by certain persons with qualification which the legislature thought was inadequate. Moreover, the central idea of the Advocates Act being the Constitution of an All India Bar, it would be incongruous if different categories of lawyers were allowed to function for all time to come. The case in my opinion would be covered by Article 19(6) of the Constitution as the repeal of the several sections of the Legal Practitioners Act only imposes reasonable restrictions as to the practice of the profession of lawyers."

The argument based on Clause (c) of Section 6 of the General Clauses Act was also negated. The following observations of Bose, C. J., in that case, may be usefully quoted:--

"It is to be noted however that the wording of Section 6 itself makes it clear that the provisions of Section 6 will come into play unless a different intention appears, and as pointed out already, Sub-section (4) of Section 58, which was introduced into the Advocates Act, 1961, by Act 14 of 1962, and which by reason of Section 4 of the Amending Act 14 of 1962, shall be deemed always to have been inserted, does express a different intention to the effect that it is only the right to the issue and renewal of the certificates that is saved or preserved and nothing else is saved or preserved. Consequently, it must be held that the argument based on the provisions of Section 6 of the General Clauses Act has no force."

The above observation of Bose, C. J. is complete answer to the submission of Mr. Verma that his right to be enrolled was saved under Clause (c) of Section 6 of the General Clauses Act as well. The right under the General Clauses Act can be saved if no different intention appears in the repealing Act, as mentioned in Section 6 of the General Clauses Act itself. As pointed out by Bose, C. J., the Act does express a different intention to the effect that only the right saved was with regard to "issue and renewal of the certificates", as the expression was understood in the Calcutta decision. As there was some ambiguity in the language of Section 58(4) of the Act. as to what was saved and preserved by the use of the expression "issue" in that section, and there was some conflict of opinion on that question, it was again amended by Act XXI of 1964, by substituting for the expression "the issue and renewal" the expression "the renewal or the issue by way of renewal". In view of the amendment, it is only the right to renewal of the licence of a Mukhtar that is saved and nothing else is saved. It is thus apparent that the right of the petitioner to be enrolled is not

saved u/s 6(c) of the General Clauses Act, as urged by Mr. Verma.

25. The decision of the Madras High Court in the case of V. P. Chakravarthi AIR 1965 Mad 166 relied upon by learned counsel for the petitioner, also has no application to the instant case. In that case an Advocate, whose name had been struck off years ago, had applied u/s 12 (6) of the Bar Councils Act for review of the previous order and his name being restored to the rolls of Advocates, but, on the date of the application, by virtue of Section 50 of the Advocates Act. the relevant provisions of the Bar Councils Act stood repealed. Allowing the petition, their Lordships observed as follows:--

"We are of the view that this power is indisputably saved, assuming that the case is not provided for in the new Act, by virtue of Section 6, Clauses (c) and (e) of the General Clauses Act, 1897. We do not think it can be disputed, for a moment, that the power embodied in Section 12(6) of the Indian Bar Councils Act, is not merely a power vested in us, but is also a remedy in favour of the affected party, and this is very clear from the wording and structure of the several clauses of Section 12. But, if an application for review is a power in the affected party, such power would, undoubtedly, be saved, upon the general principle of Section 6(c) and also Section 6(e) of the General Clauses Act. The learned Advocate-General concedes this, and also concedes that this is a matter with reference to which our power is not taken away by any express provision of the superseding statute. Consequently, we are of the view that, even apart from the amplitude of our inherent jurisdiction, which also the learned Advocate-General would appear to concede, we have the power to entertain this application and to dispose of it, as though the Indian Bar Councils Act were in full force and effect today."

In the instant case, Clause (c) of Section 6 of the General Clauses Act is not attracted and the Madras decision is clearly distinguishable, as there is an express provision u/s 58(4) of the Advocates Act, debarring fresh enrolment of Mukhtars after the repeal of the relevant provisions of the Legal Practitioners Act, as mentioned in the decision of Bose, C. J., of the Calcutta High Court, with which I am in respectful agreement.

26. Mr. Verma has also urged that the Act is discriminatory, inasmuch as, while it is open to the law graduates to get themselves enrolled as Advocates, those who have passed the Mukhtarship examination ceased to be enrolled as Mukhtars after the coming into force of Section 50(2) of the Act. In the first instance, those who have passed the Mukhtarship examination and those who are law graduates do not stand on the same footing. The idea behind fixing a higher qualification for a legal practitioner is to have an efficient, well-equipped, strong and autonomous All India Bar. That an efficient Bar is in the interest of the general public cannot be disputed in our country, where the rule of law prevails under the Constitution. To fix higher qualification for the legal practitioners is a reasonable classification and conforms to the well established norms, e.g., that the qualification must be founded on intelligible differentia, which distinguishes

persons or things that are grouped together with others brought out of the group and has a rational relation to the object sought to be achieved by the statute in question. The Act, as already discussed, has allowed the Mukhtars who were already enrolled to carry on the legal profession and to continue as such. It also provided that those Mukhtars who have practised for three years on the appointed day may be enrolled as Advocates, thus providing for raising their status, which, but for the Act, the Mukhtars could not have achieved. Thus the Mukhtars, who were already enrolled are allowed to continue and the submission of Mr. Verma that the Mukhtars have been prohibited from carrying on the business is based on the misconception of the right of the petitioner to practise after merely passing the Mukhtarship examination which, per se, does not entitle the petitioner to practise the profession of law. As already pointed out, the Act received assent of the President of India on the 19th May, 1961, the Act pointed out in unmistakable terms that on coming into force of Section 50(2) of the Act, the relevant provisions of the Legal Practitioners Act, under which the petitioner could be enrolled as a Mukhtar, would be deleted without providing for any avenue for the persons who have passed Mukhtarship examination for being enrolled as Mukhtars thereafter. Section 50(2) of the Act came into force on the 1st December, 1961, i.e., about seven months after the enactment of the Act. If the petitioner wanted to carry on the profession of law, he could have done so, giving up the Government service during this intervening period.

27. The validity of a law made by a competent legislature, which lays down professional qualification, cannot be challenged on the ground that it infringes the right guaranteed under Article 19(1)(g) as laying down of professional qualification is not circumscribed by reason-able restrictions, which occur in the main part of Clause (6) of Article 19 of the Constitution. It is not the petitioner's case that the restrictions imposed have no relation to the fitness of the person required to carry the profession of, law within the scheme of the Act. For all these reasons, in my considered opinion, the provisions of Section 24(3) and Section 50(2) of the Act are not ultra vires the provisions of Articles 19(1)(g) and 14 of the Constitution. It follows, therefore, that the petitioner has no right to be enrolled either as a Mukhtar or as an Advocate, as prayed for.

28. As for the prayer in the writ application that the provisions of the Act should be suitably modified to allow those who have passed the Mukhtarship examination to continue to practise in law is not a matter for the Court, but for the Legislature.

29. In the result, the application is dismissed, but, in the circumstances of the case, there will be no order as to costs.

Misra, C.J.

30. I agree.

Shambhu Peasad Singh, J.

31. I agree to the order going to be delivered in this case that the application be dismissed. By merely passing the Mukhtarship examination, the petitioner did not acquire any legal right to practise in a court of law. The right to practise in a court of law is not an absolute right. It has always been controlled by laws and charters. Thus, by the impugned sections of the Advocates Act, no legal right much less any fundamental right of the petitioner has been infringed.