

(2001) 12 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 30278, 30697, 31675, 31948 to 31952, 32680, 32779, 32858, 32859, 32861 to 32867, 32906, 32959, 32975, 32976, 33188, 33214, 33215, 33281 to 33284, 33413, 33541, 33542, 33692, 33710 to 33712, 34197 to 34200, 34272, 34780, 35012, 35625,

Shiva Shankara S.

APPELLANT

Vs

Karnataka State Bar Council, Bangalore and Others

RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:

Bar Council of India Rules, 1975 — Rule 17

Citation : AIR 2002 Kar 108 : (2002) ILR (Kar) 623 : (2002) 3 KarLJ 557 : (2002) 1 KCCR 537

Hon'ble Judges : R.V. Raveendran, J;N.K. Patil, J

Bench : Division Bench

Advocate : Ashok B. Hinchigeri, P. Prasanna Kumar, Pramila Nesargi, H.S. Dwarakanath, C.H. Jadhav, P. Prasanna Kumar, Bharathi Nagesh, G. Krishna Murthy, K.N. Subba S=Reddy, Vivek S. Reddy, Sandeep Patil, M.C. Aravind, S.R. Shivaprakash, Mohan Bhat, K. Chandranath Ariga, C.H. Jadhav, Tanya Meghna Jairaj, C.N. Kumar, G. Papi Reddy, B.S. Sandeep Kumar, B. Sreenivasa Gowda, N.V. Vijay, Avathi Ravindranath, S. Subrahmanya, B.V. Badrinath, N.S. Anand, Priya R. Futane, P.D. Mukesh Kumar, Rajashekar B. Basseppagol, Syed Khaleel Pasha, S. Subrahmanya, J.R. Thipparaju, S.B. Hebballi, Thimmanna, Suresh S. Joshi and T.P. Rajendra Kumar Sungay and Indus Law, for the Appellant; Suresh S. Joshi and T.P. Rajendra Kumar Sungay, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—The petitioners in these petitions claim that they have successfully completed the five years LL.B. course in the University Law College, Bangalore (for short ULC) The University Law College, Bangalore is run by the Bangalore University which is established under the Karnataka State Universities Act, 1976.

2. The petitioners applied to the Karnataka State Bar Council for enrolment. The

Enrolment Committee of the Karnataka State Bar Council has issued individual orders refusing to enroll the petitioners as Advocates, on the ground that the University Law College has not applied to the Bar Council of India ("BCI" for short) for approval/recognition of its five years course; that under Rule 17 of the Bar Council of India Rules, no college can impart instructions in a course of study in law for enrolment as an Advocate unless its affiliation has been approved by the Bar Council of India; and that as there is no such approval by the BCI either in regard to the affiliation of the University Law College or to the five years law course conducted by the University Law College, the students who have passed such course from the said college are not entitled for enrolment.

3. Feeling aggrieved, the petitioners have filed these petitions for quashing the orders passed by the Karnataka State Bar Council refusing to enroll them as Advocates and seeking a direction to the Karnataka State Bar Council to enroll them as Advocates. Several petitioners have also sought a declaration that Chapter IV of Rule 17 of Bar Council of India Rules is ultra vires the provisions of the Advocates Act, 1961.

4. The learned Counsel for Bar Council of India and the State Bar Council submitted that Rule 17 is applicable to all colleges which impart legal education including any college or institution run by the Universities; and as the University Law College is not approved/recognized by BCI under Rule 17 and as the five years law course of that college is also not approved by BCI, the State Bar Council was justified in refusing to enroll the petitioners who have passed out of that college.

5. The questions that therefore arise for consideration are:

(i) Whether an institution run by an University conducting courses of study in law for enrolment as Advocates, should apply for and obtain approval/recognition of the institution, or the course of study, from the Bar Council of India?

(ii) Whether the State Bar Council was justified in passing the impugned orders rejecting the request for enrolment?

6. The relevant portion of the orders of the State Bar Council refusing to enroll the petitioners is extracted below:

"As per Bar Council of India Rules, Chapter IV, Section A, Rule 2(b) unless a candidate has passed a law degree after undergoing the regular course of studies from a duly recognised college, the candidate is not entitled for enrolment as an Advocate.

The Bar Council of India Rules CHAPTER IV Standards of Legal Education and Recognition of Degrees in Law for admission as Advocates

Rule 2.--(1) Save as provided in Rule 5 and Section B, Part IV of the rules hereunder, a degree in law obtained from any University in the territory of India shall not be recognised for the purpose of enrolment as Advocate under the

Advocates Act, 1961 from June 1, 1982 unless the following conditions are fulfilled.--

(a).....

(b) The law degree has been obtained after undergoing a regular course of study in a duly recognised law college under these rules for a minimum period of five years, out of which the first two years shall be devoted to study of pre-law courses as necessary qualifications for admission to three years course of study in law to be commenced thereafter. The last six months of the three years of the law course shall include a regular course of practical training".

Rule 17 reads as under:

"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".

That as per the records available in this office, the University Law College, Bangalore was conducting 3 years law course and this course of study was approved/recognized by the Bar Council of India. The college has now switched over to 5 years law course and 3 years law course has been closed. According to the college it switched over to 5 years course on the instruction and direction issued by the Bar Council of India. That after starting 5 years law course, the college has not applied for approval/recognition of 5 years course conducted in the college. Thus as the things stand, there is no approval/recognition for 5 years law course conducted by the University Law College, Bangalore. In similar situation, in respect of J.S.S. Law College, Vidyavardhaka Law College, Mysore etc., where the 3 year's course was recognized/approved by the Bar Council of India but after starting 5 years law course, those law colleges had not applied or taken recognition/approval in respect of 5 years law course. The Legal Education Committee of Bar Council of India and Bar Council of India passed an order dated 28-6-2000 directing the colleges to stop admission to 5 years law course unless they apply and get approval/recognition from the Bar Council of India. So, unless a candidate has obtained a law degree after attending the regular law course from a college which is recognized/approved it is not permissible to enroll the candidates as Advocate under the provisions of Section 24 read with Bar Council of India Rules, Chapter 4 "Standards of Legal Education and Recognition of Degree in Law" ".

7. Before we consider the validity of the said orders, it is necessary to refer to the relevant provisions of Advocates Act, 1961 ("Act" for short) and Part IV of the Bar Council of India Rules ("Rules" for short) other than Rules 2(l)(b) and 17(1) extracted in the order of the State Bar Council.

7.1 Section 7 enumerating the functions of the Bar Council of India, provides that its functions inter alia, shall be:

"(h) to promote legal education and to lay down standards of such education in

consultation with the Universities in India imparting such education and the State Bar Council;

(i) 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 or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf.

7.2 Section 24 lays down the several qualifications required for being admitted as Advocates on a State roll. Clauses (iii) and (iii-a) of Section 24(I)(c) provides that subject to the provisions of the Act, and the Rules made there under, a person shall be qualified to be admitted as an Advocate on a State roll, after 12-3-1967, if he has obtained a degree of law either after undergoing a 3 years 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; or after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India.

7.3 Part IV of the Bar Council of India Rules deals with "Standards of Legal Education and Recognition "of Degree"s in Law for Admission as Advocates". Section A deals with 5 years law course leading to the LL.B. degree (with which we are concerned in these cases). Section B deals with 3 years Law course leading to the LL.B. degree. Relevant portion of Rule 2(1) and entire Rule 17(1) of Section A have been extracted in the impugned orders of the State Bar Council (extracted above). Rule 17(2) and Clauses (a) of Rule 18 which are also relevant are extracted below:

"17(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 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".

8. The Bar Council of India has recognised Bangalore University, as a University whose degrees in law shall be a qualification for enrolment as an Advocate. All these years, the State Bar Council was enrolling candidates who had undergone 5 years law course and secured law degrees from the University Law College. However, from August-September 2001, the State Bar Council has rejected applications for enrolment relying on Rules 2(I)(b) and 17(1) on the ground "unless a candidate has obtained a law degree after attending the regular law course from a college which is recognized/approved, it is not permissible to enroll

the candidates as Advocates" and on the ground that University Law College where they studied, is not approved by the Bar Council of India under Rule 17.

9. Rule 2(l)(b) requires the candidate to have undergone the five years course in a duly recognised law college under the Rules. Rule 17(1) provides that no college, after coming into force of the Rules, shall impart instruction in a course of study in law for enrolment as an Advocate, unless its affiliation has been approved by the Bar Council of India.

9.1 The Rules make a distinction between "Colleges affiliated to a University and "Institution/College run by the University. Sub-rule (1) of Rule 3 provides that the law education as prescribed in. Section A shall be through whole time law colleges or University Department. Sub-rule (2) of Rule 3 provides that a college or University Department will be deemed to be a whole time College, if its working time is as specified therein. Rule 8(3) provides that library of the college or University Department shall remain open at least 8 hours a day. The proviso to Sub-rule (1) of Rule 19 refers to existing University Law Departments and law colleges affiliated to Universities shall be deemed to be professional law colleges under the Rules. Schedule I to Section A also refers to Law Colleges and University Law Departments at several places. It is thus clear that the Bar Council of India Rules have treated law college (affiliated to an University) as distinct and different from the University Law Department (University Law College).

9.2 The University Law College run by the Bangalore University being the Department of Law of the University, does not require any "affiliation" to the University. What Rule 17 requires is that the affiliation obtained by a college should be approved by the Bar Council of India. The term college and affiliation are not defined either in the Act or the Rules. Section 53 of the Karnataka State Universities Act, 1976 relates to affiliation of colleges and provides that colleges within the University area may be affiliated to the University as "affiliated colleges" on satisfying the conditions specified in the said section. The term "affiliation" of a college with reference to an University means an independent college being associated with the University and thereby having the benefits of the University. The term "affiliation" always refers to a separate legal entity (college) being affiliated to the University. Thus Rules 2(l)(b) and 17(1) requires recognition/approval by the Bar Council in regard to only colleges which require affiliation to an University. If the University itself is running an institution imparting legal education, such institution would not require affiliation as such institution is a part of the University itself and is not a separate entity. Such institution also does not require recognition as the University itself has been recognised. If an institution does not require affiliation at all, the question of such affiliation being approved by BCI does not arise.

9.3 The power of inspection for purposes of approval or disapproval contemplated under Rules 17 and 18 of the Rules are therefore with reference to a college which requires affiliation and not in regard to a Department of the

University itself. Neither Rule 2 nor Rule 17 nor any other Rule requires the University to seek or obtain approval/recognition of its Institution (University Law College) or its course of study, from BCI.

10. Rule 17 specifically employs the words "College" and "approval of affiliation". Rule 2 employs the terms "duly recognised law college under these Rules". The Rules also maintain the distinction between colleges requiring affiliation and University Departments/Institutions. Therefore, Rules 2 and 17 relied upon by the State Bar Council for the purpose of refusing enrolment to the students of University Law College are inapplicable to the University Law College or any other law college run by any University. There is no other provision in the Rules which requires the University to obtain approval by the Bar Council of India, in regard to its institution or its courses. Section 7 of the Act refers to the approval of the University and not approval of the University's institution or the courses of study conducted by it. When the Bangalore University is approved, any institution run by it does not require separate approval either under the Act or the Rules. We therefore answer the two questions in the negative. As a consequence, the State Bar Council cannot refuse enrolment to the students of the University Law College on the ground that the said college run by the Bangalore University has not obtained "approval".

11. We are fortified in our view by a recent decision of the Supreme Court in *Bharathidasan University and Another Vs. All India Council for Technical Education and Others*, where a somewhat similar question was considered, that is whether an University should seek prior permission of AICTE (established under All India Council for Technical Education Act, 1987) to start a Department for imparting a course or programme in technical education or a technical institution as an adjunct to the University itself to conduct technical courses of its choice and selection. In that case, Bharathidasan University commenced courses and programmes in technology without applying for or obtaining prior approval for such courses from the AICTE. The AICTE filed a writ petition in the Madras High Court to prohibit the said University from running such courses, without obtaining its prior approval. Though the definition of Technical Institution under AICTE Act, 1987 did not include an University, as Regulation 4 of AICTE Regulations obliged even an University to obtain prior approval from AICTE, AICTE contended that its prior approval was necessary. The University contended that when it did not fall under the definition of Technical Institution" under AICTE Act, Regulation 4 requiring it to seek prior approval to commence a course/programmed in technical education was in excess of the regulation making power of AICTE and therefore null and void and cannot be enforced against the University. A learned Single Judge of the Madras High Court upheld the regulation and allowed the writ petition and ordered cancellation of the admissions made by the University. The Division Bench confirmed it. The Supreme Court allowed the appeal of the University and dismissed the writ petition by the AICTE holding that the University did not require such prior approval. After considering the provisions of AICTE Act, the Supreme Court held:

". . . . All these vitally important aspects go to show that the AICTE created under the Act is not intended to be an Authority either superior to or supervise and control the Universities and thereby superimpose itself upon such Universities merely for the reason that it is imparting teaching in technical education or programmes in any of its Departments or Units. ..".

". . . . The UGC and Universities have always had and have an accepted and well-merited role of primacy to play in shaping as well as stepping up a coordinated development and improvement in the standards of education and research in the sphere of education. When it is only institutions other than Universities which are to seek affiliation. ..".

". . . Therefore, the regulations insofar as it compels the universities to seek for and obtain prior approval and not to start any new department or course or programme in technical education (Regulation 4) and empower itself to withdraw such approval, in a given case of contravention of the regulations (Regulation 12) are directly opposed to and inconsistent with the provisions of Section 10(1)(k) of the Act and consequently void and unenforceable".

". . , The clear intention of the Legislature is not that all institutions whether University or otherwise ought to be treated as "technical institutions" covered by the Act. If that was the intention, there was no difficulty for the Legislature to have merely provided a definition of technical institution" by not excluding "University" from the definition thereof and thereby avoided the necessity to use alongside both the words "technical institutions" and University in several provisions in the Act. The definition of technical institution" excludes from its purview a University. When by definition a University" is excluded from a technical institution", to interpret that such a clause or such an expression wherever the expression "technical institution" occurs will include a University" will be reading into the Act what is not provided therein. The power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned is covered by Section 10(k) which would not cover a University but only a technical institution"..".

12. In view of the above, we hold that the impugned orders passed by the State Bar Council refusing enrolment to the students of the University Law College on the ground that the University Law College had not obtained approval of its institution or five years course from the Bar Council of India, is wholly without authority or jurisdiction and violative of the provisions of the Advocates Act, 1961 and the Bar Council of India Rules.

13. In the view we have taken, it is not necessary to examine the validity of Rule 17(1) of the Rules challenged in some of the petitions. We leave it open to be considered in appropriate proceedings.

14. These petitions are therefore allowed as follows:

(i) The impugned orders of the State Bar Council refusing enrolment to the petitioners as Advocates are hereby quashed.

(ii) As petitioners are already enrolled by virtue of the interim orders granted by this Court, such enrolments shall stand confined and the Bar Council of India and the State Bar Council shall not deny of the petitioners any benefit flowing or arising from such enrolment merely on the ground that the University Law College of which they are the students or the course of study undergone by them, is not approved by the Bar Council of India.

(iii) Parties to bear their respective costs.