

(2002) 02 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 20161 of 1999, 27264, 28638-28649 and 34899-34907 of 2001 and etc. etc.

Smt. Manjula B.R. and Others etc.

APPELLANT

Vs

Karnataka State Bar Council and Others etc.

RESPONDENT

Date of Decision : 13-02-2002

Acts Referred:

Advocates Act, 1961 — Section 49 (1) (j), 7 (1) (m)
Bar Council of India Rules, 1975 — Rule 12, 13

Citation : AIR 2002 Kar 274

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : B.L. Sanjeev, R. Ravi, A.C. Vinayaraj and K.M. Nataraj, for the Appellant; Suresh S. Joshi, M.V. Vedachala, Subhash B, T.P. Rajendra Kumar Sungay, for the Respondent

Final Decision : Allowed

Judgement

Raveendran, J.—These petitions involving common questions are heard together by consent and disposed of by this order.

2. The petitioners in these petitions have successfully completed three years Law course in the Rajiv Gandhi College of law, Matteswaram, Bangalore, which is affiliated to Bangalore University, and obtained degrees in law in the years 1998, 1999, 2000 and 2001.

3. When the petitioners wanted to enroll themselves as advocates, the Karnataka State Bar Council informed them that they could not be enrolled as the college where they underwent the course of study (Rajiv Gandhi College of Law) has not been recognized by the Bar Council of India (BCI for short).

4. Feeling aggrieved, petitioners have filed these petitions for the following reliefs :

a) for quashing of the endorsement issued by the Karnataka State Bar Council,

rejecting the applications for enrolment on the ground that Rajiv Gandhi College of Law is not recognised by BCI (wherever such endorsements are issued) :

b) a declaration that Sections 7(1)(m) and 49(1)(j) of the Advocates Act, 1961, are arbitrary, unreasonable and unconstitutional;

c) a declaration that Rules 12 and 13 of Section B of Part IV of the Bar Council of India Rules or any directive or provisions of the Rules, providing for approval or disapproval of the affiliation already granted by the University and for inspection of law colleges, are ultra vires and unconstitutional; and

d) for a direction to the BCI and the State Bar Council to enrol them as Advocates.

In pursuance of interim orders petitioners have been enrolled as Advocates, subject to the final decision in the writ petitions.

5. During the course of arguments, learned counsel for the petitioners submitted that if the BCI and State Bar Council are directed to enrol them as Advocates or if the petitioners' enrolment in pursuance of the interim orders is not disturbed, they will not press their prayers in regard to constitutional validity of Sections 7(1)(m) and 49(1)(j) of the Advocates Act, 1961 (for short, the Act) and Rules 12 and 13 of Section B of Part IV of the Bar Council of India Rules (for short, the Rules). The petitioners contend that the degrees of law obtained by them from Bangalore University by undergoing a course of study in law in a college affiliated to the said University was sufficient to get themselves enrolled; and they were not concerned with approval by BCI, of the affiliation of their College to the Bangalore University.

6. Rajiv Gandhi College of Law (College for short) which has been impleaded in some cases, has filed a memo, stating that it was established in the year 1994 and is affiliated to Bangalore University; that ever since then, its students have been appearing for the examinations conducted by the Bangalore University; that the State Bar Council has enrolled several of its students who have secured law degrees by undergoing the course of Law study in its college without objection; that it made an application to the Bar Council of India for approval of affiliation in the year 1997: that the Bar Council of India on inspection, pointed out certain shortcomings and required that they should be complied with; that it complied with the said requirements and requested BCI to again inspect the college; and that on 12-8-2001 the Bar Council of India inspected the college and has issued an order dated 16-10-2001, approving its affiliation for the year 2001-2002 and 2002-2003. The college has stated that it has requested BCI by letter dated 2-10-2001 for approving the course conducted during the earlier years between 1994 to 2001; and that BCI, by letter dated 19-11-2001 has informed the college that the question of such approval will be considered shortly.

7. Bangalore University, which is impleaded as one of the respondents in most of these cases, has supported the claim of petitioners. The University admits that

the petitioners have been permitted to appear for the law degree examination conducted by it and they have passed the examination and obtained degrees from it. According to Bangalore University, it has been recognized by the Bar Council of India for the purpose of the Act and any student, who has obtained a degree in law from it, after undergoing a course of Law study in a college affiliated to it, is entitled to be enrolled as an advocate. The University also confirms that during the relevant years, Rajiv Gandhi College of Law was affiliated to it.

8. Bar Council of India has filed Common objections (on the file of WP No. 27264/ 2001). It has contended that a person can be enrolled as an Advocate only if he has undergone a three years course of study in law, from a College which is recognized for the purposes of the Act by the Bar Council of India, by approving its affiliation with a University in India; and that the college In which the petitioners herein have studied is not recognized by it. It contends that as it has not approved the affiliation of the college to Bangalore University, the petitioners are not entitled to be enrolled as advocates.

9. On the rival contentions, the question that arises for consideration is whether the petitioners who have undergone the three years course of study in law from the Rajiv Gandhi College of Law affiliated to Bangalore University, and who have obtained degrees, of law from the said University can be refused enrolment on the ground that the said affiliation is not approved by BCI.

10. Section 24 of the Act deals with the persons who may be admitted as advocate on a State Roll. Section 24A deals with disqualification for enrollment. The relevant portion of Section 24 of the Act is extracted below :

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

(a) he is citizen of India:

xxxxx (b) he has completed the age of twenty one years;

(c) he has obtained a degree in law--

(i) xxx

(ii) xxx

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

(d) xxx xxxx

(e) he 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 duty, if any, chargeable under the Indian Stamp Act 1899 (2 of 1899) and an enrolment fee payable to the State Bar Council of two hundred and fifty Rupees.

11. The State Bar Council admittedly has not made any Rules under Chapter III of the Act prescribing any additional conditions to be fulfilled for enrolment. It is also not in dispute that the petitioners are citizens of India who have completed 21 years who have offered to pay the necessary stamp duty and enrolment fee; and they do not suffer from any of the disqualification for enrolment enumerated in Section 24A. Thus the entire controversy narrows down to one aspect only, that is whether the petitioners have undergone a three year course of study in law from any university in India, which is recognized for the purposes of the Act by the Bar Council of India. If the petitioner satisfy the said requirement they will automatically be entitled to be enrolled as advocates on the State Roll, The petitioners have obtained a degree in law after undergoing a three year course of study in law from Bangalore University which is recognised by BCI for the purposes of the Act. Therefore the petitioners fulfil the requirements for enrolment and cannot be denied admission as Advocates on the State Roll.

12. The learned counsel for BCI contended that BCI has prescribed some additional conditions to be fulfilled by candidates for admission as Advocates. Reliance is placed on Rules 1 and 12 of the Rules to contend that the candidate should have completed the law course in a college whose affiliation to an University is said requirement. But Sections 24 and 24A alone govern enrolment and they do not contemplate BCI, by Rules, prescribing any additional requirement to be fulfilled by a candidate seeking enrolment. BCI's recognition (by way of approval of affiliation) of a college where the candidate undergoes the course of study is not one of the condition to be fulfilled, for enrolment u/s 24. Such a requirement, even if it is prescribed by BCI under its Rules, will not be binding or relevant for admission as advocate on a State Roll, if he otherwise fulfils the requirements of Section 24 of the Act and does not suffer from the disqualifications enumerated in Section 24A.

13. The Supreme Court in V. Sudeer Vs. Bar Council of India and Another, has made it clear that BCI cannot by its Rules, add any conditions for enrolment, in addition to what is prescribed in Section 24. The following observations are relevant (Paras 17 to 19) :

".....He contended that Section 24(1) of the Act itself enables rule making authorities to enact Rules which may go beyond the statutory provisions of Section 24(1) as enacted by the legislature and, therefore, the Bar Council of India as a rule making authority can be exercise of the said power add to the conditions of enrolment as expressly laid down by Section 24(1). It is not possible to agree with this submission for the simple reasons that Section 24 itself contemplates the qualifications of a person who seeks admission as an advocate on the State roll. To reiterate granting of admission to a person for being enrolled as an advocate under the Act is a statutory function of the State

Bar Council only. The Bar Council of India has no role to play on this aspect. All it has to do is to approve any Rules framed by the State Bar Council u/s 24(1) laying down further qualifications for a person to be enrolled by it on the State roll as an advocate. We have, therefore, to read the rule making power mentioned u/s 24(1) conjointly with the rule making power of the State Bar Council as provided by Section 28(1) especially Clause 2 (d) thereof which provides as under :--

"(1) A State Bar Council may make rules to carry out the purposes of this Chapter.

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

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(d) the conditions subject to which a person may be admitted as an advocate on any such roll."

Consequently, the submission of Shri P. P. Rao, learned senior counsel for the Bar Council of India that the Council also can exercise rule making power u/s 84(f) for imposing an additional condition of qualification for a person to be enrolled on State roll obviously cannot be accepted.

Shri Rao then next turned to Section 7 of the Act and submitted that amongst enumerated functions of the Bar Council of India, at Clause (h) of Sub-section (1) is specified a provision regarding promoting the 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..... Shri Rao, learned senior counsel for the Bar Council of India, is right when he contends that the concept of legal education is not necessarily confined to only class room lectures or theoretical study of law. It can include practical training of prospective advocates. But even accepting that legal connotation of the term "legal education", the question remains as to how the Bar Council of India can promote legal education, it can obviously promote legal education by laying down standards of such education in consultation with the respective universities in India imparting such education.

The words Universities in India imparting such education as found in Clause (h) of Sub-section (1) leave no room for doubt that the question of imparting legal education is entrusted to the Universities in India and not to the Bar Council of India. All that the Bar Council of India can do is to suggest ways and means to promote such legal education to be imparted by the Universities and for that purpose it may lay down the standards of education, syllabi in consultation with the Universities in India."

(Emphasis supplied)

The Supreme Court also negated the contentions of BCI based on Section 49(1)

(ag) of the Act that it has power to make rules prescribing conditions for enrolment, in addition to the conditions specified in Section 24 of the Act. Section 49(1)(ag), enables the BCI to make rules for discharging its functions under the Act inter alia by prescribing the class or category of persons entitled to be enrolled as Advocates. The Supreme Court held *V. Sudeer Vs. Bar Council of India and Another*, :

"It must, therefore, be held that the rule making power contemplated by the legislature u/s 49(1)(ag) for being exercised by the Bar Council of India was pertaining to only those classes or categories of persons who were thought fit to be enrolled as advocates though they might not be eligible to be enrolled u/s 24(1) of the Act as it stood on the statute book. In other words, this enabling rule making power only by which the Bar Council of India could add to the category of eligible persons for enrolment which would have otherwise, remained outside the sweep of the statutory scheme of eligibility for enrolment as laid down by Section 24(1), did not contemplate any power to curtail the existing eligibility of applicants u/s 24(1) for enrolment as advocates. It is only for such additional class or category of persons, that the enabling provision as per the said rule making power could be available to the Bar Council of India....."

The aforesaid observations of the Supreme Court is a complete answer to the contention of BCI that it can by Rules, add to the conditions to be fulfilled by a candidate seeking enrolment. Once a candidate fulfils the conditions stipulated in Section 24(1) of the Act and does not suffer from any disqualification u/s 24A, he is entitled to enrolment and he cannot be denied enrolment on the ground that he does not fulfil some other alleged requirements prescribed by BCI by Rules framed by it, even assuming that any such Rules has been made by BCI.

14. The Learned Counsel for BCI next contended that the requirement u/s 24(1)(c)(iii) that the person seeking admission as Advocate should have undergone a three year course of study in law from "any university in India which is recognized, for the purposes of this Act, by BCI." shall not be read as "any university and college in India which is recognized for the purpose of this Act by the Bar Council of India". We are afraid that such an interpretation is wholly unwarranted and impermissible. The words "any University in India" refer only to a University constituted under any Central or State Act and does not include or refer to any independent private college which is affiliated to such university.

15. This Court dealt with this aspect in *Shiva Shankara S. Vs. Karnataka State Bar Council, Bangalore and Others*, wherein it is observed thus :

The Bar Council of India has recognized Bangalore University, as a University whose degrees in law shall be a qualification for enrolment as an Advocate.....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 shall remain open at least 8 hours a day. The proviso to Sub-rule (1) of Rule 19 refers to existing University Law Department 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."

Similarly the distinction between the colleges affiliated to or University and a college run by the University, is maintained under the Rules relating to three year courses contained in Section B. The contention of the Bar Council that the arm "university" in Section 24(1)(c)(iii) of the Act should be read as "university and college" is therefore rejected.

16. Though we have already rejected the contention of BCI that it can by Rules, prescribe conditions for enrolment, as elaborate arguments were advanced on the basis of Rule 1 (1) and (2) and Rule 12 (1) of Section B of Part IV of the Rules, we will also examine whether the said Rules contain any additional condition for enrolment as an Advocate. Sub-rules (1) and (2) of Rule 1, and Sub-rule (1) of Rule 12 are extracted below :

1. (1) Save as provided in Section 24(1)(c)(iiia) of the Act, a degree in law obtained from any University in the territory of India after the 12th day of March, 1967 shall not be recognised for purposes of Section 24(1)(c)(iii) of the Act unless the following conditions are fulfilled :--

(a) That at the time of Joining the course of instruction in law for a degree in law, he is a graduate of a University or possesses such academic qualifications which are considered equivalent to a graduate" degree of a University by the Bar Council of India.

(b) That the law degree has been obtained after undergoing a course of study in law for a minimum period of three years as provided in these rules;

(c) That the course of study in law has been by regular attendance at the requisite number of lectures, tutorials or moot Courts in a college recognised by a University.

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

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

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

12(1) No college started after the 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.

17. Only Sub-rule (1) of Rule 1 is relevant as it purports to explain what is a "degree of law obtained from any University", for purposes of Section 24(1)(c) (iii). The requirements of the said Rule are (a) when a person joins a three year course of instruction in law for a degree in law, he should be a graduate of a University or possess an academic qualification which is considered equivalent to a graduate's degree of a University by the Bar Council of India; (b) he should have obtained the degree after undergoing a course of study in law for a minimum period of three years as provided in the rules and, (c) the course of study in law has been by regular attendance at the requisite number of lectures, tutorials or moot courts in a college recognised by a University.

18. There is nothing in the said Rule 1(1) which requires that a person should have completed the course of instruction in law, from a college recognised by the Bar Council of India. What is required is that the candidate should have completed the course of study in law in a college recognised by the University concerned.

19. As the petitioners have not challenged Rule 1(1), it is unnecessary to examine whether it can prescribe what conditions should be fulfilled by a student to obtain a degree in Law from University. The three conditions referred to in Rule 1(1) are in the realm of the University and most universities have prescribed these requirements for passing a course of law. The Supreme Court in *Sudeer's* case has held that question of imparting legal education is entrusted to Universities in India and not to the Bar Council of India. Be that as it "may,

20. Rule 1(2) and 12 no doubt refer to recognition of college by BCI by approving the affiliation of Colleges to a university. But that is not by way of addition of a condition for enrolment u/s 24. The said Rules are made by BCI in exercise of the power u/s 7(1)(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education. Section 7 also makes it clear that the function of BCI is to recognise the Universities whose degree in law shall be a qualification for enrolment as an advocate, and not to "recognise" colleges affiliated to Universities. To reiterate, the statutory framework of Advocates Act as it stands at present does not empower BCI to prevent in any manner, persons who have undergone a course of study in law in college affiliated to an University and who have obtained a law degree from such university recognised by BCI from being enrolled as Advocates.

21. Learned counsel for the BCI strenuously argued that BCI is attempting to ensure the maintenance of the standards in legal education in law colleges, by

requiring them to confirm to certain minimum infrastructural requirements prescribed in Rules and by providing for BCIs approval of affiliation to the university, and that if students of a college, whose affiliation to the University was not approved by BCI are permitted to be enrolled, its efforts to maintain the standards of legal education will receive a set back, we are not unmindful of the steps taken by BCI In promoting legal education and laying down of standards of legal education. But BCI can do so only within the framework of the statute. The statutory functions/powers of BCI does not extend to imposing additional conditions for enrolment, in excess of what is prescribed in Section 24. Recognition/approval of the Law College by BCI, can be made a condition for enrolment of students of that college, either by the State Bar Councils prescribed such a requirement by making Rules u/s 24(1)(e) or by appropriate amendment of the Advocates Act or the legislation governing University. In fact from the academic year 2002-2003, this has been done in an indirect manner fry the Karnataka State Universities Act, 2000, which has replaced the Karnataka State Universities Act, 1976, with effect from 12-9-2001. Section 59 of the new Act deals with affiliation of colleges. Sub-section (1) provides that the colleges within the University area shall, on satisfying the conditions specified in the said Section, be affiliated to the University as affiliated colleges of the University on the recommendation made by the State Government. Sub-section (13) provides that sanction of such affiliation for a law colleges shall, however, be subject to such college obtaining the prior approval of the Bar Council of India. Thus the position under the new Act is that no new law college can seek affiliation with any university in Karnataka unless such new college has obtained the prior approval for such affiliation from the BCI. Be that as it may.

22. In view of the above, these petitioners are allowed as follows :--

(i) The decision of the Enrolment Committee of the Karnataka State Bar Council refusing to admit the persons who have undergone three year law course from Rajiv Gandhi College of Law, Bangalore and obtained law degree from Bangalore University, is declared to be illegal and invalid.

(ii) Consequently, the Karnataka State Bar Council is directed to admit the petitioners as advocates on its roll.

(iii) Wherever the petitioners have already been enrolled in pursuance of interim orders of this Court, such enrollment shall stand confirmed and the Bar Council of India and the Karnataka State Bar Council shall not deny the petitioners any benefit flowing or arising from such enrollment on the ground that the said college was not "recognised" by the Bar Council of India.

(iv) Parties to bear their respective costs.