

C/SCA/6394/2017

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 6394 of 2017**

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MAM RAJ GOEL....Petitioner(s)

Versus

BAR COUNCIL OF GUJARAT & 1....Respondent(s)

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Appearance:

PARTY-IN-PERSON, PERSONAL CAPACITY for the Petitioner No. 1

MR MANAN A SHAH for the Respondent(s) No. 2

RC JANI & ASSOCIATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE RAJESH H.SHUKLA**Date : 28/08/2017****ORAL ORDER**

01 The present petition is filed by the petitioner under Articles 226 of the Constitution of India as well as under Sections 24 and 28 of the Advocates Act, 1961 for the prayers as prayed for inter alia that appropriate writ, order or direction may be issued to the Bar Council of India to enroll the petitioner as a Member of the Bar Council for practice of law as an advocate on the grounds stated in the petition.

02 The brief facts of the case as narrated in the petition are as follows:-

2.1 The petitioner is a Chartered Accountant and is a member of Chartered Accountant of India with certificate of practice. It is also stated that at present, he is engaged in the

practice as Chartered Accountant, however, the petitioner is also having decree of LLB and, therefore, he has applied for permission vide letter dated 07.07.2015 for membership of the Bar Council of Gujarat. It is stated that after the retirement from the Nationalize Bank, the petitioner being a Chartered Accountant, started independently practice as a Chartered Accountant and, thereafter, joined the firm of Chartered Accountant (Soni Jhawar & Co. Chartered Accountants). It is, therefore, contended that the practice as a Chartered Accountant is nothing but a law practice relating to commercial branch i.e. Income Tax Act, Companies Act, Partnership Act etc. or Debt Recovery Tribunal. It is, therefore, contended that earlier Special Civil Application No. 12858/2016 was filed, which was disposed of by this Court vide order dated 04.10.2016 and as same has not been considered, contempt application was filed and, thereafter, as the application of the petitioner is rejected, the present petition is filed.

- 2.2 Affidavit in reply has been filed by the Bar Council of Gujarat specifically referring to earlier round of litigation being Special Civil Application No.12858/2016. It was

contended that the petition was filed for the similar prayer and, therefore, there is no justification for filing the present petition. It is also contended that the petitioner has availed alternative remedy by way of Appeal before the Bar Council of India and, therefore, the present petition may not be entertained. Further it has been contended that the petitioner can get enrollment as an Advocate if he fulfills the criteria / rules framed by the Bar Council of Gujarat and Bar Council of India. It is contended that the Institute of Chartered Accountants of India is not the authority to decide whether the petitioner can be enrolled as an Advocate or not. Reference is made to the provision of the Advocates Act, 1961 as well as Bar Council of India Rules. The provision of Rule 49 of the Bar Council of India Rules has been quoted, which clearly provides that the petitioner, who is a Chartered Accountant and partner in the firm of Chartered Accountant, cannot be enrolled. Reference is also made to the judgment of the High Court of Gujarat, reported in **2001 (3) GLR 2124** that the person, who is practicing in medical profession, cannot practice law.

- 03 Heard Shri Mam Raj Goel, the petitioner, who appears as Party-in-Person and learned advocate,

Shri R.C. Jani for the respondent.

- 04 Shri Goel has referred to the pleadings in his affidavit, which has been given and also the provision of the Rule 49 of the Bar Council of India Rules and submitted that it does not in any manner restrict the membership as an Advocate. He has referred earlier petition and submitted that the application of the petitioner ought to have been considered, which has not been considered. He submitted that as per the Chartered Accountant Act, 1949, he has been permitted to practice as Chartered Accountant and the Institute of Chartered Accountant of India permits the practice as a Chartered Accountant to those, who are also law graduates. He, therefore, submitted that in larger national interest, the amendment has been made in the Chartered Accountant Act. She Goel submitted that the petitioner is not a salaried employees and, therefore, as per Rule 49, he cannot be denied merely because he is partner of the firm of Chartered Accountant. He submitted that the Bar Council Act forms the Rules, which are ultra vires the provision of the Advocates Act. Shri Goel has also referred to other papers and the provision of the Advocate Act, particularly, Sections 24 to 28. He submitted that Section 24 provides that the person who may be admitted as advocates on a State roll. He therefore submitted that any such Rule made by the

Bar Council cannot be justified and enrollment cannot be denied.

- 05 Learned advocate, Shri Jani, however, submitted that the petitioner had earlier filed Special Civil Application No.12858/2016 and his application has been considered by the Enrollment Committee. He submitted that admittedly the petitioner has been the member/partner of the firm of Chartered Accountant and practicing as Chartered Accountant. He, therefore, submitted that he cannot be allowed to practice in another profession as an Advocate. Learned advocate, Shri Jani submitted that Section 28 of the Advocates Act refers to the power to make Rules and it empowers the State Bar Council to make Rules to carry out the purpose. He submitted that there is an Enrollment Committee, which will scrutiny and take decision. Therefore learned advocate, Shri Jani submitted that the professional duty as an Advocate requires various functions and, therefore, he has not been enrolled. Learned advocate, Shri Jani has referred to the order of the Hon'ble Division Bench of the High Court in Letters Patent Appeal No. 1296/2016 (Coram : R. Subhas Reddy, CJ & Vipul M. Pancholi, J.) dated 22.12.2016 and submitted that identical issue was considered by the Hon'ble Division Bench with reference to Rule 49 of the Bar Council of India Rules. He pointedly referred to the judgment and

submitted that Bar Council may take appropriate decision as it has been authorized by the Advocates Act and, therefore, the present petition may not be entertained.

- 06 In view of these rival submissions, it is required to be considered whether the present petition filed by the petitioner, who appears as party-in-person seeking direction for the enrollment as an advocate, can be entertained.
- 07 As it transpires, the petitioner is admittedly a Chartered Accountant practicing as Chartered Accountant with the partnership firm of Chartered Accountant. Therefore, the moot question is whether he can be allowed to have an enrollment as an Advocate for practicing in the profession of Advocate. The nature of work which the party-in-person, Shri Goel has tried to suggest that he is conversant with the law and commercial matters and, therefore, he may be allowed to practice as an Advocate, is made on a general observation or perception. The enrollment as a member of the profession is subject to the law made by the Parliament i.e. the Advocates Act. Section 28 of the Advocates Act empowers the Bar Council which is an apex body to make the rule for the member of the profession i.e. the Advocates including the Rules for enrollment. As stated above, Rule 49 which is sought to be interpreted in a different manner that it does not restrict the enrollment,

cannot be readily believed or accepted. In fact, the person as a member of profession has to discharge his obligation and, therefore, the profession as an Advocate or Lawyer which is a full time, one cannot be permitted if he is already working as a profession like Chartered Accountant. The nature of work may have some kind of overlapping or connection but it is not the nature of work but it is the nature of profession, which is relevant. Section 49 refers to the general power of the Bar Council of India to make rules. Section 49(a) clearly provides that such Rules may provide the conditions subject to which an advocate may be entitled. Thus it includes the clause or category of a person entitled to be enrolled as an Advocate under this Act. Therefore the statute empowers the body like State Bar Council or Bar Council of India to make the Rules for enrollment and also take decision and if the decision is taken, it cannot be said to be illegal. The submissions which have been made by Shri Goel that there is nothing which prohibits and, therefore, he should be allowed to ride on two horses in two profession, cannot be accepted. The Bar Council of Gujarat has made the Rules in exercise of power under Section 28 read with Section 24 of the Advocates Act. Rule 2 of the Bar Council of Gujarat provides "Every person applying to be admitted as an Advocate shall in his

application make a declaration that he is not in full or part-time services or employment and that he is not engaged in any trade, business or profession contrary to the rules".

The form which is required to be filled up also requires similar declaration as Clause (h) specifically provides "A declaration that the applicant is not in full or part-time, employment or service and is not engaged in any trade, business or profession except as provided in Rules 1 and 2 of the Rules of the State Bar Council made under Section 28(2) (d) and the Rules of the Bar Council of India". Thus the declaration is required to be made that the applicant, who seeks enrollment as an advocate, is not engaged in any profession except as provided under Rules of State Bar Council made in exercise of power under Section 28 of the Advocates Act. This itself would make the position clear.

08 Therefore, the present petition cannot be entertained and deserves to be dismissed and accordingly stands dismissed. Notice is discharged. No order as to costs.

Sd/-
(RAJESH H. SHUKLA, J.)

Gautam