

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1507 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH****and****HONOURABLE MR.JUSTICE ASHUTOSH J. SHASTRI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

RAJESH MANIBHAI PATEL**Versus****BAR COUNCIL OF GUJARAT (BCG) & 1 other(s)****Appearance:****PETITIONER PARTY-IN-PERSON****MR MEHUL S SHAH, SENIOR ADVOCATE WITH MR MANAN A SHAH(5412) for the Respondent(s) No. 2****MR KASHYAP JANI for the Respondent No.1****MR RC JANI(357) for the Respondent(s) No. 1****CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH****and****HONOURABLE MR.JUSTICE ASHUTOSH J. SHASTRI****Date : 24/03/2020****CAV JUDGMENT**

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. This petition under Article 226 of the Constitution of India has been filed by the petitioner in person Shri Rajesh Manibhai Patel impleading the Bar Council of India and the Bar Council of Gujarat as party respondents originally praying for the following reliefs:

*“(18) Grant the **'Writ of Mandamus'** provisioned under Article [226] enforcing Petitioner's Fundamental Rights under Part-III, vide Article [14], Article [19][1][g] and [21] directing Bar Council of Gujarat to process against **duly filled out** Form with required documents and only Enrollment Fees of Rs.750.00 and no more as per Advocate's Act SECTION-24 provisions with immediate effect and without any further delay or ado on part of BCG or BCI under any false pretexts or excuses.*

*(19) Further, grant the Petitioner in the same Writ, directing Bar Council of India and Bar Council of Gujarat to grant **'Right to Practice Law' and Certificate there-under as per effectively provisioned in The Advocate's Act S-30 to start Practice in Gujarat High Court for Constitutional Practice under Article [14], [19][1][g] and [21]** without any delay post enrollment.”*

2. Subsequently, by way of amendment, the petitioner added paragraph 17A as an additional prayer. The same is reproduced below:

“(17A) To declare the legality and validity of Rules 9 to 11 in Part-VI, Chapter-III of the Bar Council of India Rules-Conditions for right to Practice inserted by Resolution No.73/2010 passed by as ultra vires of S-24 and S-30 of the Advocates Act

1961 and Article 14, 19(1)(g) and 21 of constitution of India.”

Notices were issued. Affidavits have been filed in response.

3. We have heard the petitioner in person, Shri Mehul Suresh Shah, learned Senior Advocate assisted by Shri Manan A. Shah, learned counsel for the Bar Council of India and Shri Kashyap Jani, learned advocate appearing for the Bar Council of Gujarat.

4. Originally, the relief claimed by the petitioner was that a Writ of Mandamus be issued to the respondent Bar Council of Gujarat to process his application for registration and enrollment with enrollment fee of Rs.750/- only and no more and the second relief claimed was that a Writ be issued directing the Bar Council of India and the Bar Council of Gujarat to issue Certificate of Right to Practice under Section 30 of the Advocates Act, 1961 without any delay post enrollment.

5. The petitioner claims to have completed his Three Year LL.B. Degree Course and after completing the same has applied to the Bar Council of Gujarat for being enrolled as an advocate, which application apparently has not been processed as the petitioner is not willing to deposit the fee required for such enrollment and

registration by the Bar Council of Gujarat. Subsequently, the petitioner by way of amendment added a prayer to declare Rules 9 to 11 in Part-VI, Chapter-III of the Bar Council of India Rules-Conditions for Right to Practice Law as inserted by Resolution No.73 of 2010 as ultra vires Section 24 and Section 30 of the Advocates Act, 1961 and also Articles 14, 19(1)(g) and 21 of the Constitution of India. Insofar as the third prayer added by amendment is concerned, no further foundation has been laid down and the only amendment sought was to add the prayer without any further facts and grounds as to why the said rules be declared as ultra vires.

6. In the original petition, there are general grounds and specific grounds. The same are reproduced below under the headings as mentioned by the petitioner:

"GENERAL GROUNDS

(12) *It is earnestly stated in unequivocal terms that, any violating provisions by WHOMSOEVER as far as passage of something having the 'Force of Law' under Article[13] [3] has been declared to be 'NULL&NOID' to the extent of violation and thus any actions or decisions taken or followed under those 'VOID' provisions DO automatically become ultra-wires under Article[13] [1] and [2] thus to be inherently Immutable with inherent Exceptions: Entire Part-III of Constitution of India.*

(13) *Thus; Rules can not override the Laws and similarly Laws can not override "Constitution of India" especially PART-III: Fundamental Rights as the way they are defined to be so and Supreme to any*

*Authority defined under Article [12] - THAT IS ANY AUTHORITY WITHIN TERRITORY OF INDIA AND EVEN THE TERRITORIES ELSEWHERE UNDER THE CONTROL OF GOVERNMENT OF INDIA" which includes even private ~~whithin~~ ^{within} the forementioned territory of India as long as acting with and as an authority besides Union Government, the Parliament and States' Governments and their legislatures, including The Executive including the President and State's Governors and the Judiciary **WHEN ACTING IN SUCH MANNER** through myriad of Laws, Regulations, Rules, Bylaws and all their amendments inclusive and even the Entities having Customs having the 'Force of Law' which also covers Social structures.*

*(14) The only **Exception** allowed to restrict the Part-III of Constitution of India as provided for therein under Article[33] is given to Parliament which may by law determine the extent to which any of the Rights conferred by PART-III shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure proper discharge of their duties and the maintenance of discipline among them and for the rest of citizens otherwise provided therein under Article[19] [2] through [6] as special circumstances mostly as and only when in the INTEREST OF GENERAL PUBLIC AND NONE OTHER as any attempt to circumvent them by such Bodies whose primary objectives revolves around and are to rid of any ETHICAL MISCONDUCTS rather than anything else, otherwise risks overstepping the realm of Laws and Article [14]*

SPECIFIC GROUNDS

*(15) Here; the Petitioner is challenging the legality and validity of Rules 9 to 11 in Part -VI, Chapter-III of the Bar Council of India Rules - Conditions for 'Right to Practice'" inserted by Resolution No. 73/2010 passed by Bar Council of India (Annexure-"A") being ultra-vires o**S-24 and S-30 (Annexure-"B")** Advocates Act, 1961 and also Articles [14], [19](1) I g) and [21] of Constitution of India. The BCI and BCG can not make Rules exceeding the Advocate's Act and Advocate's act has Eligibility defined for Enrollment which is not disputed at all (as admitted by BCI itself in Rule:9 of Part VI Ch.III) and Constitution of India vide Article[19][6] allows for certain prescribed Professional and Technical Qualifications by Authorities defined under Article[12] of Constitution of India-Part-III vide Article*

[19] [6], which is already prescribed in the Advocate's Act S-24 where it is covered and Rules to that Function of various Bar Councils can not exceed that besides and certainly not Constitution of India specifically and especially Part-III :Article [19] [1] [g].

(16) Even Fees chargeable is prescribed under the Advocates Act 1963 S-(24)(1)(f) which also could not be exceeded without amending the Act and currently it is prescribed therein to be Rs.750.00.

(17)The BCI and various State Bar Councils are Body Corporate and could not impose any commercial activities through Rules and Regulations as such especially when they are qualifying to be within the realm of 'Conflict of Interest' viz-a-viz various Institution established by Constitution of India and under Provision of Laws. As of now after latest 40% increase as Rs.3,500 for extra-legal Fees for arbitrary qualifying AIBE as prerequisite for "Certificate of Practice" as it violates the preamble as well as Article [14], [19] [1][g] and [21] of Constitution of India besides The Advocates Act S-30 as prescribed as is and declared to be so vide GR No.1139 attached herewith (Annexure "B")."

7. Both the respondents filed their affidavits. The petitioner has filed rejoinder in reply to the counter affidavits of the respondents.

8. At the outset, we may record that on a careful reading of the contents of the petition, we find that some wild allegations have been made. The petitioner although claims to be a Law Graduate but apparently having no experience of drafting a petition or arguing a matter has made all kinds of careless and wild allegations of which we are not taking note of but at times, it is difficult to understand as to what the petitioner wants to contend by

way of the averments contained in the pleadings filed by him. What we could derive from the reading of the pleadings submitted by the petitioner and the submissions made by him are as follows:

- i) There is challenge to the All India Bar Examination;*
- ii) The demand of any fee above and beyond Rs.750/- for purposes of any enrollment and issue of Certificate of Right to Practice is arbitrary and cannot be made as being beyond the competence of the Bar Council of India and the Bar Council of Gujarat; and*
- iii) There is also challenge to the vires of Rules 9 to 11 introduced by Resolution No.73 of 2010 in Part-VI, Chapter-III of the Bar Council of India Rules.*

9. We first deal with the challenge to the vires of Rules 9, 10 and 11 contained in Resolution No.73 of 2010 in Part-VI, Chapter-III of the Bar Council of India Rules. Said Resolution No.73 of 2010 is reproduced below:

*“BAR COUNCIL OF INDIA
New Delhi, the 5th June 2010
ALL INDIA BAR EXAMINATION RULES-2010*

The Bar Council of India at its meeting held on 30th April 2010 passed the following resolution:-

Resolution No.73/2010

RESOLVED that the Bar Council of India, being vested with the power of laying down conditions subject to which advocates shall have the right to practice the profession of law under the Advocates Act, 1961, shall conduct an All India Bar Examination, the passing of which would entitle the advocate to a Certificate of Practice which would permit him/her to practice the profession of law under the Advocates Act, 1961. The Bar Council of India, therefore, approves the Rules framed by the Directorate of Legal Education for the conduct of the All India Bar Examination.

In view of the above resolution the following rules are framed and to be inserted as Rules 9 to 11 in Part VI, Chapter III of the Bar Council of India Rules – Conditions for Right To Practise – under Section 49(1)(ah) of the Advocates Act, 1961.

“9. No advocate enrolled under section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law students graduating from academic year 2009-2010 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961.

The All India Bar Examination

10. (1) The All India Bar Examination shall be conducted by the Bar Council of India.

(a) The Bar Examination shall be held at least twice each year in such month and such places that the Bar Council of India may determine from time to time.

(b) The Bar Examination shall test advocates in

such substantive and procedural law areas as the Bar Council of India may determine from time to time.

(c) Such substantive/procedural law areas and syllabi shall be published by the Bar Council of India at least three months prior to the scheduled date of examination.

(d) The percentage of marks required to pass the Bar Examination shall be determined by the Bar Council of India.

(e) An unsuccessful advocate may appear again for the Bar Examination, without any limit on the number of appearances.

(f) The Bar Council of India, through a committee of experts, shall determine the syllabus, recommended readings, appointment of paper setters, moderators, evaluators, model answers, examination hall rules and other related matters.

(g) The Bar Council of India shall determine the manner and format of application for the examination.

(h) Upon successfully passing the Bar Examination, the advocate shall be entitled to a Certificate of Practice.

Application for Certificate of Practice

11. (1) The Certificate of Practice shall be issued by the Bar Council of India to the address of the successful advocate within 30 days of the date of declaration of results.

(2) The Certificate of Practice shall be issued by the Bar Council of India under the signature of the Chairman, Bar Council of India."

10. The above rules only provide for the holding of the All India Bar Examination. It further provides that an advocate enrolled under Section 24 of

the 1961 Act would be entitled to practice only after successfully clearing the All India Bar Examination conducted by the Bar Council of India. It also provides the manner in which the All India Bar Examination is held and issuance of certificate of Right to Practice within 30 days of successful passing of the said examination. As far as the challenge to the above All India Bar Examination as inserted by Resolution No.73 of 2010 is concerned, the question is already sub-judice before the Hon'ble Supreme Court to be considered by the Constitution Bench vide order dated 18th March, 2016 passed in Special Leave Petition (Civil) No.22337 of 2008. Said order dated 18.3.2016 passed by the Supreme Court is reproduced as under:

*“One of the questions that has been raised for determination by this Court is whether the Bar Council of India is competent to prescribe an examination post enrollment of an advocate as a condition of eligibility for his continuing to practice at the Bar. An incident question that arises is whether pre-enrollment training in terms of the Bar Council Training Rules, 1995 framed under Section 24(3)(d) of the Advocates Act, 1961 is within the competence of the Bar Council of India and whether the decision of this Court in **Sudeer vs. Bar Council of India & Anr. [(1999) 3 SCC 176]** holding pre-enrollment training to be beyond the competence of the Bar Council needs reconsideration. On the same analogy arises yet another question whether a pre-enrollment examination can be prescribed by the Bar Council of India as a condition*

precedent for enrollment under the Advocates Act.

Having heard learned counsel for the parties at some length including Mr. K.K. Venugopal, learned senior counsel who has assisted us as an amicus we are of the view that the questions that fall for determination are of considerable importance affecting the legal profession in general and need to be authoritatively answered by a Constitution Bench of this Court. We accordingly refer this matter to a five-Judge Bench for consideration and determining of the following three questions:-

*(1) Whether Pre-enrollment training in terms of Bar Council of India Training Rules, 1995 framed under Section 24(3)(d) of the Advocates Act, 1961 could be validly prescribed by the Bar Council of India and if so whether the decision of this Court in **Sudeer vs. Bar Council of India & Anr. [(1999) 3 SCC 176]** requires reconsideration.*

(2) Whether a pre-enrollment examination can be prescribed by the Bar Council of India under the Advocates Act, 1961.

(3) In case questions Nos.1 and 2 are answered in the negative whether a post-enrollment examination can be validly prescribed by the Bar Council of India in terms of Section 49(1)(ah) of the Advocates Act, 1961.

Learned counsel for the parties shall now furnish additional sets of paper books within four weeks. The papers shall be placed before the Chief Justice of India for constituting an appropriate Bench.

We request Mr.K.K.Venugopal, learned senior counsel to continue to render his valuable assistance to the Court when the matter comes up for hearing before the Constitution Bench of five Hon'ble Judges."

11. In fact, holding of All India Bar Examination was

duly approved by the Supreme Court in its order dated 14.12.2009 passed in Special Leave Petition (Civil) No.22337 of 2008. But since the matter is already engaging the attention of the Supreme Court, we are not going into that question. Order dated 14.12.2009 passed by the Hon'ble Supreme Court is reproduced below:

“We have heard Mr. Gopal Subramaniam, learned Solicitor General of India. In pursuance of the directions of this Court, the time frame for implementation of the three-member Committee report has been given to the Court. According to this time frame, preparation of parameters and list of experts for inspection of Law Schools/Colleges would be completed by 31st December, 2009.

Mr. Subramaniam also submitted that the Directorate of Legal Education will be operationalized by 31st of December, 2009 and the Directory of Law Schools and Law Colleges will be prepared by 15th January, 2010. He further submitted that the institutions which have not been inspected earlier, would be inspected on or before 31st January, 2010.

Mr. Subramaniam further submitted that preparation of a detailed database of all law schools and law colleges would be prepared by 31st January, 2010. He also informed the Court that a meeting of the National Legal Knowledge Council has been fixed on 1st February, 2010.

The most significant achievement of this entire exercise has been the introduction of the Bar Examination. Learned Solicitor General submits that the first Bar Examination shall be conducted in July-August, 2010 by a specially constituted independent body, consisting of experts of various disciplines of national stature.

In the facts and circumstances of this case, we deem it appropriate to direct the Central Government to ensure that the entire programme framed by the three- member Committee is operationalized forthwith. We further direct the concerned institutions to fully cooperate with the Bar Council of India.

We deem it appropriate to list this matter for further directions on 8th February, 2010 at 2.00 p.m.”

12. Now coming to the second question regarding demand of fee above Rs.750/- for purposes of enrollment, we find that the power to admit persons as advocates is provided under Section 24 of the Advocates Act, 1961. Conditions of payment of stamp duty and the enrollment fees are provided under Section 24(1) which is reproduced below:

“24. Persons who may be adopted as advocates on a State roll.

(1) Subject to the provisions of this Act, and the rules made there under, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely: -

(a) He is a citizen of India:

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practice law in that other country;

(b) He has completed the age of twenty-one years;

(c) He has obtained a degree in law-

(i) Before the [12th day of March, 1967]

*from any University, in the territory of India;
or*

*(ii) Before the 15th of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935;
or*

[(iii) After the 12th day of March, 1967, save as provided in sub-clause (iii) After undergoing a three 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

(iiia) 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; or]

(iv) In any other case, from any University outside the territory of India, if the degree is recognised for the purpose of this Act by the Bar Council of India] or;

[He is a barrister and is called to the Bar on or before the 31st day of December, 1976 [or has passed the articulated clerks' examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act];

*[(d) * * *]*

(e) He fulfills such other conditions as may be specified in the rules made 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, and an enrolment fee payable to the State Bar Council of [six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]:

Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to the effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be [one hundred rupees and to the Bar Council of India, twenty-five rupees].

[Explanation-For the purposes of this subsection, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination].

(2) Notwithstanding anything contained in subsection (1) [a vakil or a pleader who is a law graduate] may be admitted as an advocate on a State roll, if he

(a) Makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed, day, and

(b) Fulfills the conditions specified in clauses (a), (b) and (f) of subsection (1)

[(3) Notwithstanding anything contained in subsection (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

[(aa) Before the 1st day of December, 1961, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date; or]

*[(b) * * *]*

(c) Before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935-, or

(d) Is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf, 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) Fulfills the conditions specified in clauses (a), (b), (e) and (f) of sub-section

*[(4) ***]"*

13. The State Bar Council and the Bar Council of India are empowered to make rules under Section 28 read with Section 49 of the Act of 1961 in given circumstances. Sections 28 and 49 are reproduced below:

“28. Power to make rules.—

(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—*

[(a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section 20;]

*[(b) ***]*

(c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

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

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India.”

“49. General power of the Bar Council of India to make rules.—

[(1)]] The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe— 2[(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

(ab) qualifications for membership of a Bar Council and the disqualifications for such membership;

(ac) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section (3);

(ad) the manner in which the name of any advocate may be prevented from being entered in more than one State roll;

(ae) the manner in which the seniority among advocates may be determined;

[(af) the minimum qualifications required for admission to a course of degree in law in any recognised University;]

(ag) the class or category of persons entitled to be enrolled as advocates;

(ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;]

(b) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another;

(c) the standard of professional conduct and etiquette to be observed by advocates;

(d) the standards of legal education to be observed by universities in India and the inspection of universities for that purpose;

(e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act;

(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;

(g) the restrictions in the matter of practice to which senior advocates shall be subject;

[(gg) the form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal;]

(h) the fees which may be levied in respect of any matter under this Act;

[(i) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced;]

(j) any other matter which may be prescribed:

[Provided that no rules made with reference to clause (c) or clause (gg) shall have effect unless they have been approved by the Chief Justice of India:]

[Provided further that] no rules made with

reference to clause (e) shall have effect unless they have been approved by the Central Government.

[(2) Notwithstanding anything contained in the first proviso to sub-section (1), any rules made with reference to clause (c) or clause (gg) of the said sub-section and in force immediately before commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), shall continue in force until altered or repealed or amended in accordance with the provisions of this Act.]”

14. Section 24(f) of the Act of 1961 was amended by the Bar Council of India in 1973 adding the conditions of payment of stamp duty and it was further amended in 1993 increasing rate of enrollment fees and payment of part thereof to the Bar Council of India. Thereafter, by framing appropriate rules, in exercise of power under section 49 of the Act of 1961, and by publishing the same in the Official Gazette, the said amount was increased. The said exercise of power is within the competence and scope of Section 49 of the Act of 1961 in view of the fact that provisions of Section 24 of the Act of 1961 was expressly made subject to the provisions of Section 49 of the Act of 1961 in the Scheme of the Act.

15. Apart from the above, Section 15 of the Advocates' Welfare Fund Act, 2001, which Act is enacted by the Parliament in the Fifty-second Year of the Republic of India to provide for the Constitution of a Welfare Fund

for the benefit of advocates and for matters connected therewith or incidental thereto, provided that 20% of the enrollment fee received by the State Bar Council under clause (f) of Section 24 of the Act of 1961 shall be paid annually to the said Fund. From the amount received by the Bar Council of India towards the enrollment fees, various activities for the benefit of the advocates and the litigants as provided under section 7 of the Act of 1961 are being undertaken by the Bar Council of India. Even on the principles of harmonious construction of various provisions of the Act and the Rules, the action of Bar Council of India in increasing the rate of fees cannot be said to be unreasonable, unauthorized or ultra vires. Even though validity of Gazette Notifications dated 26.6.2013 and 20.9.2015 is not challenged in the present petition, we may record that said notifications are neither ultra vires nor unconstitutional nor against Section 28 of the Act of 1961.

16. On a careful reading of the provisions of the Act of 1961 and the Rules thereunder, it is clear that the increase in the rate of fees is properly and adequately justified. Further, even by applying the principles of harmonious construction of the provisions also, it is clear

that there is no conflict between the provisions of the Act of 1961 and its Rules. The Act of 1961 provides entitlement to levy enrollment fees for enrollment as an advocate. Prescribing the right to levy fees be considered to be fundamental and it cannot be whittled by any rule. Prescribing the rate of fees is merely ancillary and can be modified by the Rules as apparent from Section 49 of the Act of 1961. The harmonious construction between the Act and the Rules which governs the field of operation of both the provisions is that the rate as mentioned in Section 24 is to be treated as bare minimum fees which is always amenable for further increase. Since the petitioner has not challenged the validity of either the provisions of Section 24 or 49 of Act of 1961 or Rules framed thereunder, both the provisions shall prevail under the law.

17. In this regard, strong reliance is placed on the decisions of the Hon'ble Supreme Court in the cases of ***Union of India and another Vs. Azadi Bachao Andolan and another*** reported in ***AIR 2004 SC page 1107***, ***State of Madhya Pradesh and another Vs. Bhola alias Bhairon Prasad Raghuvanshi*** reported in ***AIR 2003 SC page 1191***, ***South Eastern Coalfields Ltd. Vs. State of M.P. and others*** reported in ***AIR 2003***

SC page 4482, M/s Khoday Distilleries Ltd. Vs. State of Karnataka and others reported in ***AIR 1996 SC page 911 and the Corporation of Calcutta and another Vs. Liberty Cinema*** reported in ***AIR 1965 SC page 1107***. As the law on the point is well settled, we are not burdening this judgment by quoting from the same.

18. Thus, for all the reasons recorded above, this petition lacks merit and is accordingly dismissed. Rule discharged.

(VIKRAM NATH, CJ)

RADHAKRISHNAN K.V.

(ASHUTOSH J. SHASTRI, J)

सत्यमेव जयते
THE HIGH COURT
OF GUJARAT

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