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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SANJAY KISHAN KAUL; J., SANJIV KHANNA; J., ABHAY S. OKA; J., VIKRAM NATH; J., J.K. MAHESHWARI; J.

February 10, 2023

CIVIL APPEAL NO. 969 OF 2023 (Arising out of SLP (C) No.22337 of 2008)

BAR COUNCIL OF INDIA *versus* **BONNIE FOI LAW COLLEGE & ORS.**

Summary: - Supreme Court Constitution Bench upholds the validity of All India Bar Examination - Recongizes the right of Bar Council of India to prescribe such a condition for practice - Overrules decision in V. Sudeer v. Bar Council of India, (1999) 3 SCC 176, in which the top court had held that no condition, other than those enumerated in Section 24 of the Advocates Act, could be imposed on a person wishing to practise law-Court however clarifies that the setting aside of the judgment in V. Sudeer is in no manner an imprimatur to mandating the requirement of pre-enrolment training.

Advocates Act 1961 - The objective of the legislature while giving wide powers to the Bar Council of India under Section 49 of the Advocates Act which gives it the power to prescribe rules, read with Clause (d) of Sub-section (3) of Section 24, which gives it the power to prescribe norms for entitlement to be enrolled as an advocate under the rules of the Bar Council of India, leads us to the conclusion that these are adequate powers with the Bar Council of India under the said act to provide for such norms and rules. We are, therefore, of the view that while considering the question referred to us, the only conclusion is that the interdict placed by the judgement of this court in V. Sudeer on the powers of the Bar Council of India cannot be sustained and we cannot hold that this decision laid down the correct position of law. The effect of the view expressed by us would be that it is left to the Bar Council of India as to at what stage, the All-India Bar Examination will be held, that is, pre-enrolment, or post-enrolment. *(Para 33)*

Advocates Act 1961 - Quality of lawyers is an important aspect and part of administration of justice and access to justice. Half baked lawyers serve no purpose. It is this quality control, which has been the endeavour of all the efforts made over a period of time. *(Para 19)*

Advocates Act 1961 - No provisions prohibit BCI from prescribing pre-enrolment exam- Neither these provisions, nor the role of the universities to impart legal education, in any way, prohibit the Bar Council of India from conducting pre-enrolment examination, as the Council is directly concerned with the standard of persons who want to obtain a license to practice law as a profession. *(Para 20)*

All India Bar Examination - It has to be left to the Bar Council of India as to at what stage the All India Bar Examination has to be held – pre or post enrolment. *(Para 35)*

All India Bar Examination - Strictly follow the schedule of conducting AIBE twice a year as otherwise the students with law degrees would be left idling their time. *(Para 36)*

All India Bar Examination - Supreme Court accepts the suggestion of amicus curiae that students who have cleared all examinations to be eligible to pursue

the final semester of the final year course of law, on production of proof of the same, could be allowed to take the All India Bar Examination - During the interrugnum between passing the university and enrolment, any graduate with the degree who is yet to appear for the Bar examination or get enrolled under the said Act should be able to do all the tasks allied to the legal profession other than the function of acting or pleading before the courts. *(Para 38)*

All India Bar Examination - BCI may lay down a rule that people who were in non-legal jobs for a certain number of years should qualify AIBE to rejoin legal profession. *(Para 42)*

Bar Council of India - Ensure enrolment fee does not become oppressive- different State Bar Councils are charging different fees for enrolment. This is something which needs the attention of the Bar Council of India, which is not devoid of the powers to see that a uniform pattern is observed and the fee does not become oppressive at the threshold of young students joining the Bar. *(Para 44)*

WITH W.P.(C) No.25/2021 T.C.(C) No.16/2011 T.C.(C) No.12/2011 T.C.(C) No.13/2011 T.C.(C) No.36/2011 T.C.(C) No.14/2011 T.C.(C) No.15/2011 T.C.(C) No.75/2012 T.C.(C) No.88/2012 W.P.(C) No.987/2013 T.P.(C) No.692/2015 T.C.(C) No.8/2012 T.C.(C) No.17/2011 T.C.(C) No.18/2011

(Arising out of impugned final judgment and order dated 17-03-2008 in WP No. 13698/2007 passed by the High Court of M.P. Principal Seat at Jabalpur)

Mr. K.K. Venugopal, AC Mr. Ankur Talwar, Adv. Mr. Chinmayee Chandra, Adv. Mr. Siddhant Kohli, Adv. Ms. Suhasini Sen, Adv. Mr. K.V. Viswanathan, Sr. Adv./AC Mr. Venkataraman, Adv. Mr. Amartya Ashish Sharan, Adv. Mr. Rahul Sangwan, Adv,. Mr. M.G. Aravind D., Adv. Mr. Chankya Dwivedi, Adv. Mr. Sivagnanam Karthikeyan, Adv. Ms. Akhila Nambiar, Adv. Mr. Siddharth Sridhar, Adv. Mr. Navjot Singh, Adv. For parties:- Mr. Ardhendumauli Kumar Prasad, AOR Mr. V. K. Biju, AOR Ms. Ria Sachthey, Adv. Mr. Chetanya Singh, Adv. Mr. Amlendu Kumar Akhilesh Kumar Jha, Adv. Dr. Ranjeet Bharti, Adv. Mr. Anand Sanjay M. Nuli, Adv. Mr. Dharm Singh, Adv. Mr. Suraj Kaushik, Adv. Mr. Agam Sharma, Adv. Ms. Akhila Wali, Adv. Ms. Nandiny Pandey, Adv. Mr. Shiva Swaroop, Adv. Mr. Nanda Kumar K.B., Adv. M/S. Nuli & Nuli, AOR M/S. Chambers Of Kartik Seth, AOR Mr. Kartik Seth, Adv. Mrs. Shriya Gilhotra, Adv. Mr. Tarun Mehra, Adv. Ms. Aakriti Vikas, Adv. Mr. A. Venayagam Balan, AOR Mr. Manan Kumar Mishra, Sr. Adv. Mr. Prabhakaran, Sr. Adv. Mr. Apurba Sharmam, Sr. Adv. Mr. Ardhendumauli Kumar Prasad, AOR Ms. Anjul Dwivedi, Adv. Mr. Shashi Shekhar Kumar Prasad, Adv. Mr. Ramasankar, Adv. Ms. Radhika Gautam, Adv. Mr. Vishwajeet Mishra, Adv. Mr. Sai Girdhar, Adv. Ms. Shreya Srivastava, Adv. Mr. Ashish Madaan, Adv. Ms. Ananya Sahu, Adv. Mr. Amritesh Raj, Adv. Mr. Ardhendumauli Kumar Prasad, AOR Ms. Taruna Ardhendumauli Prasad, Adv. Mr. Nirmal Kumar Ambastha, Adv. Mr. Shashi Shekhar Kumar Prasad, Adv. Mr. Vishajeet Kumar Mishra, Adv. Ms. Anjul Dwivedi, Adv. Mr. Sai Girdhar, Adv. Mr. Durga Dutt, Adv. Mr. Vaibhav Shukla, Adv. Mr. Ratan Singh, Adv. Mr. Aditya Tripathi, Adv. Mr. Amritesh Raj, Adv. Mr. Gaurav Gautam, Adv. Ms. Radhika Gautam, Adv. Mr. B. K. Satija, AOR Ms. Aishwarya Bhati, ASG Ms. A. Thanvi, Adv. Ms. Shreya Jain, Adv. Mr. Padmesh Mishra, Adv. Mr. Raghvendra Srivatsa, Adv. Mr. A.K. Sharma, AOR Mr. G. Prakash, AOR Mr. H. Chandra Sekhar, AOR Mr. M.K. Mishra, Adv. Mr. Hitesh Kumar Sharma, Adv. Mr. Akhileshwar Jha, Adv. Ms. Niharika Dwivedi, Adv. Ms. Yamini Sharma, Adv. Mr. Ravish Kumar Goyal, Adv. Ms. Vidhiya Pandey, Adv. Ms. Madhumita Mishra, Adv. Mr. Sanjay Singh, Adv. Mr. Mohan Pandey, AOR Dr. Vinod Kumar Tewari, AOR Ms. Radhika Gautam, AOR Mr. Manan Kumar Mishra, Sr. Adv. Mr. Prabhakaran, Sr. Adv. Mr. Apurba Sharma, Sr. Adv. Ms. Radhika Gautam, Adv. Ms. Anjul Dwivedi, Adv. Mr. Ramsankar, Adv. Mr. Vishwajeet Mishra, Adv. Mr. Sai Girdhar, Adv. Ms. Anagha S. Desai, AOR Mr. Satyajit A Desai, Adv. Mr. Siddharth Gautam, Adv. Mr. Abhinav K. Mutyalwar, Adv. Mr. Vijay Raj Singh Chauhan, Adv. Ms. Chandan Ramamurthi, AOR Mr. Mukesh Kumar Maroria, AOR Mr. Harshad V. Hameed, AOR Mr. Dileep Poolakkot, Adv. Mrs. Ashly Harshad, Adv.

J U D G M E N T

SANJAY KISHAN KAUL, J.

Leave granted.

The Advocates Act:

1. The Advocates Act, 1961, (hereinafter referred to as the "*said Act*") was the consequence of a deeply felt need for change in the Judicial Administration in accordance with the needs of the time in the post independence era. The Law Commission was assigned the job of preparing a report on the reform of Judicial Administration. In the meanwhile, the All India Bar Committee also made recommendations in 1953. This resulted in the said Act.

2. *Chapter II* of the said Act deals with the State Bar Councils, Bar Council of India and their functions.

3. *Chapter IV* of the said Act confers the right to practice on Advocates, who are the only recognised class of persons to do so and have their names entered in the rolls of the State Bar Councils.

4. Section 7 of the said Act provides for functions of the Bar Council of India, which *inter alia* includes the disciplinary power, protection powers to safeguard the interest of the advocates as also the general supervision and control over State Bar Councils. Further, Section 49 of the said Act refers to the general powers of the Bar Council of India to make rules.

Procedural History:

5. The original dispute between the Bar Council of India and Bonnie Foi Law College, the respondent college herein, arose on account of the application of the said college for affiliation to carry on a legal study course. This Court appointed an inspection team on 29.06.2009, which visited the respondent college and gave a comprehensive report pointing out shortcomings in the infrastructure and functioning of the college. On 24.08.2009, the Court laid down certain conditions to be followed by the respondent college which the college claimed to have fulfilled later.

6. During the course of this matter, a larger question of diminishing standards of legal education provided at various law colleges in India came to be noticed *vide* the order dated 29.06.2009, which resulted in a Committee being appointed comprising Mr. Gopal Subramanium, then Solicitor General of India as its Chairman; Mr. M.N. Krishnamani, then President of the Supreme Court Bar Association; and Mr. S.N.P. Sinha, then Chairman of the Bar Council of India. The said Committee was requested to examine issues relating to affiliation and recognition of law colleges, to identify areas requiring redressal and to address factors impeding the implementation of existing norms. A report was submitted to this Court on 06.10.2009 ("hereinafter referred to as *the Report*").

7. The Report recognised two significant aspects as imperative for improving standards of legal profession, i.e., firstly, introduction of a bar examination and, secondly, compulsory requirement of apprenticeship under a senior lawyer prior to admission to the Bar. It made the following observations:

a. ***Bar Examination in India:*** A bar-examination is a pre-condition for admission to the Bar in most Commonwealth countries.

b. ***Pre-enrolment training:*** The requirement of training with a senior member of the Bar was present even before the enactment of the said Act, wherein a prospective lawyer was required to 'train' in the chambers for a period of one year, and then appear in an examination comprising the subjects of civil and criminal procedure. Thereafter,

Section 24(1)(d) of the said Act continued the requirement of apprenticeship for graduate law students. However, this provision was omitted by the amending Act 60 of 1973 (hereinafter referred to as "*1973 Amendment*"), thereby discontinuing the practice.

The Report also recorded that the 1973 Amendment omitted Section 28(2)(b) of the said Act, which enabled State Bar Councils to frame rules regarding training and bar examination. In 1994, a High-Powered Committee on Legal Education recommended the reintroduction of the requirement for apprenticeship and bar examination and thus, Bar Council of India (Training) Rules, 1995 (hereinafter referred to as "*1995 Rules*") were framed by the Bar Council of India in furtherance of the mandate of the High-Powered Committee. However, the 1995 Rules were struck down by this Court in the judgment of ***V. Sudeer v. Bar Council of India***[1], opining that once express provisions on Sections 24(1)(d) and 28(2)(b) had been omitted by the statutory amendment, the requirement could not be reintroduced. The Report also suggested that Bar Council of India's role as the primary body for regulating standards of professional legal education should be reaffirmed.

8. On 14.12.2009, Mr. Gopal Subramanium submitted that the first All India Bar Examination will be conducted in July-August, 2010, by a specially constituted independent body consisting of experts of various disciplines of national stature. The Court directed the Central Government to ensure that the entire programme framed by the Committee headed by Mr. Gopal Subramanium was operationalized and further directed concerned institutions to fully cooperate with the Bar Council of India.

9. On the proceedings taking the aforesaid course, *vide* order dated 18.03.2016 (hereinafter referred to as "*reference order*"), a three-Judges Bench of the Court opined that the questions which fall for determination in the present matter are of considerable importance affecting the legal profession in general and need to be authoritatively answered by a Constitution Bench. The reference order provided for three questions to be answered by this Court, as under:

"1. Whether pre-enrolment 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-enrolment examination can be prescribed by the Bar Council of India under the Advocates Act, 1961.

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

10. There was resistance on part of some stake holders to hold the All India Bar Examination in W.P. (C) No.25 of 2021, W.P.(C) No. 987/2013, T.C. (C) No. 16/2011, 12/2011, 13/2011, 36/2011, 14/2011, 15 /2011, 75 /2012, 88/2012, 08/2012, 17/2011, 18/2011 and T.P.(C.) No. 692/2015, which have been tagged with the present matter.

[1] (1999) 3 SCC 176

The case law debated before us:

11. There are three significant judgments whose implication was debated before us. The first is the judgment of this Court in ***V. Sudeer***[2] which discussed whether the 1995 Rules relating to entrants into the legal profession are within the competence of the Bar Council of India. The Bench recognised the exclusive and unfettered right to practice to a person enrolled as an advocate on the State roll. A conjoint reading of Sections 23, 29 and 33 clarifies that a person who is found qualified to be admitted as an advocate on the State Roll by satisfying the statutory conditions under Section 24(1), will automatically become entitled to practice full-fledged in any court including the Supreme Court. Hence, the statutory conditions under Section 24(1) are satisfied unless a disqualification takes place under Section 24A of the said Act. The concept of pre-enrolment training was held to be not necessary. On various grounds the 1995 Rules were held *ultra vires* the said Act and was, thus, invalid.

12. We then turn to the judgment of this Court in ***Indian Council of Legal Aid and Advice & Ors. v. Bar Council of India & Anr.***[3]. The Court struck down the endeavour of the Bar Council of India to put an age cap on the entry into the profession. The Bar Council of India had prescribed that any person who had completed the age of 45 years on the date on which he submitted his application would not be entitled to be enrolled as an advocate.

13. Lastly, in ***Dr. Haniraj L. Chulani v. Bar Council of Maharashtra & Goa***[4], the appellant was a medical practitioner since 1970 who insisted that even though he was a medical practitioner, he was entitled to simultaneously carry on the profession as an advocate. The Supreme Court opined that Section 49(1)(ag) when read with Section 24 of the said Act confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates, which would include the power to refuse enrolment in certain cases. The Bar Council of India was held to be empowered to take all such steps as it considered necessary to filter students at the entry stage to the law course at the entry point of the profession, e.g. by providing an examination or a training course before enrolment as an advocate.

In view of the magnitude of the ramifications of the issues involved, we had considered it appropriate to appoint Mr. K.V. Vishwanathan, Senior Advocate as Amicus Curiae to assist the Court in this matter. Mr. Vishwanathan gave a very comprehensive note pointing out the fallacies in the earlier judgment of ***V. Sudeer***[5], which are of significance and are crystalised as under:

a. *The Bar Council of India's powers at a pre-enrolment stage are not ousted through amendment to Section 7(a) of the said Act.*

In ***V. Sudeer***[6], this Court held that while the State Bar Councils have the function of "maintenance of rolls" under the said Act, the Bar Council of India is not concerned with the same. It was submitted by the Amicus that it is important to read the specific terminologies used in different sections of the said Act and to cull out the underlying meaning for each of these terms. A plain reading of Sections 6(a), 6(b), Section

[2] (supra)
[3] (1995) 1 SCC 732
[4] (1996) 3 SCC 342
[5] (supra)
[6] (supra)

24(1)(e) and Section 28(2)(d) of the said Act indicates that the functions of the State bar Council relates to preparing and maintenance of rolls and the admission of persons as advocates on its roll. However, in stark contrast, the Rule making power of the Bar Council of India under Section 49(1)(ag) of the said Act empowers the Bar Council of India to prescribe rules that could specify a class or category of persons who are entitled to be enrolled. The meaning of "entitle" would indicate that the Bar Council of India could prescribe such conditions which would give the right or claim to a person to be enrolled as an advocate. Thus, Bar Council of India's role prior to enrolment cannot be ousted.

b. ***V. Sudeer*** [7] *failed to consider that Section 24(1) is subject to the other provisions of the said Act and Rules made thereunder.*

In ***V. Sudeer***[8], this Court held that Sections 24(1)(d) and 28(2)(b) of the said Act had empowered the State Bar Councils to provide for a pre-enrolment training and examination, which had been repealed through the 1973 Amendment. The Amicus submitted that the legislature was not expected to make any superfluous provisions that specifically empower the Bar Council of India with the specific action regarding pre-enrolment training and examination. However, the purport of Section 49 of the said Act and in particular Section 49(1)(ag) already empowers the Bar Council of India to do so.

It was also submitted that:

i. Section 24(1) of the said Act opens with the words "subject to the provisions of this Act, and the rules made thereunder" thereby making the conditions under Section 24(1) and its sub-clauses, directly subject to the rules framed under the said Act.

ii. In ***Satish Kumar Sharma v. Bar Council of H.P***[9], a three Judges Bench of this Court held that the enrolment under Section 24 of the said Act is subject to the Rules framed by the Bar Council of India under Section 49 of the said Act, even if no Rules were framed under Section 24(1)(e) or Section 28(2) (b) of the said Act itself.

iii. This Court's reliance on Section 24A of the said Act in ***V. Sudeer***[10] is misplaced since the power to disqualify a person from enrolment is materially different from prescribing conditions subject to which the very right to be enrolled arises.

c. ***V. Sudeer*** [11] *erred in concluding that it is not one of the statutory functions of the Bar Council of India to frame rules which impose pre-enrolment conditions.*

The 1995 Rules could have been 'traced' to the Bar Council of India's function of 'general supervision' over the State Bar Councils, which was not considered by ***V. Sudeer***[12]:

i. In light of clauses (l) and (m) of Sub-Section (1), it was submitted that Section 7 of the said Act is not an exhaustive list of the Bar Council of India's statutory function. Further, the Bar Council of India's function under Section 7(1)(g) of the said Act would

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[7] (supra)
[8] (supra)
[9] (2001) 2 SCC 365
[10] (supra)
[11] (supra)
[12] (supra)

include the authority to specifically direct State Bar Councils not to enrol persons who had not undertaken the training course prescribed under the 1995 Rules.

ii. An additional statutory function can be culled out on a conjoint reading of Section 7(1)(l) and Section 24(1) of the said Act, which confers the Bar Council of India with a statutory function of prescribing rules subject to which any person may be treated as "qualified to be admitted as an advocate on a State roll", such as a pre-enrolment training course or exam prescribed by the Bar Council of India.

iii. Even if this Court concludes that no other provision of the said Act confers the Bar Council of India with a function of laying down pre-enrolment conditions, Section 49(1)(ag) of the said Act would per se afford a basis to infer that the Bar Council of India has such a function. Thereafter, the ministerial act of enrolment, subject to the conditions that may be specified, is carried out under Section 24(3)(d) of the said Act.

d . *Viability of an Examination to be conducted post-enrolment:*

If this Court decides to extend no reconsideration to the decision in ***V.Sudeer***[13], the question then arises as to whether the Bar Council of India could prescribe a post-enrolment examination under Section 49(1)(ah) of the said Act. It is important to contrast the word used in Section 30 of the said Act with Sections 24 and 29 of the said Act. While the former makes the right to practice subject to the provisions of the said Act, the latter provisions make their respective aspects subject to the provisions of the said Act and the rules made thereunder. Therefore, the right to practise under Section 30 of the said Act could only be restricted by another provision in the said Act and not by the rules made under any provision in the said Act. If this interpretation were to stand, then the framing of the All India Bar Examination in its current format would have to be held illegal. However, the previous interpretations of the provisions of the said Act in ***Jamshed Ansari v. High Court of Allahabad & Ors.***[14]***, and N.K. Bajpai v. Union of India & Anr.***[15]***,*** make the right to practise subject to the provisions that grant the rule-making power, thereby validating the All India Bar Examination in its current form at the expense of expanding the scope of the restriction on Section 30 of the said Act.

14. The aforesaid was supplemented by the Amicus through an additional note addressing concerns that were expressed in the Court during the proceedings on the practicality of the various thought processes. This *inter alia* included as to when the examination could be held and how the candidates should be dealt with till the examination results are declared. The supplementary suggestions are as under:

a. If the examination is held pre-enrolment, two alternatives are suggested: firstly, the candidates should be permitted to take the preenrolment examination on production of a transcript showing that they have received a passing mark in all their law school examinations and the degree certificate can be submitted at the time of enrolment. Alternatively, if the eligibility could be extended to those persons who are in the final semester of their law course, they could be allowed to take the examination and any result in such examination would then be subject to the said person passing all the components required under the University/College's course of study. This will

[13] (supra)
[14] (2016) 10 SCC 554
[15] (2012) 4 SCC 653

be subject to the All India Bar Examination results being valid for a limited period of time.

b. During the period between date of passing the exam and the date of enrolment, any graduate with a degree who is yet to appear for the All India Bar Examination or get enrolled under the Advocates Act would still be able to do all the tasks allied to the legal profession other than the function of acting or pleading before the Courts.

c. The determination of seniority in case of post-enrolment examination based on the date of birth of an advocate currently has statutory recognition and a similar criterion would suit even a preenrolment examination. Thus, the practice and procedure as it exists on date for post-enrolment examination would be apt for application to a pre-enrolment examination, in addition to any criterion which has been framed by the respective State Bar Councils.

d. Currently, any person who is provisionally enrolled is allowed to practice for two years, but is allowed to take the All India Bar Examination not just for those two years but for any number of times till he passes the All India Bar Examination. The date of reckoning seniority of the candidate is from the date of the provisional enrolment. However, it was submitted that unlimited number of attempts would not be in line with the scheme proposed by this Court and must be limited to any number that this Court deems fit.

e. Rule-making power under Section 49(1)(ah) of the said Act could be invoked requiring an examination for advocates who come back into the practice after a substantial break from practice. Alternatively, if this Court holds that the Bar Council of India can make rules under Section 24(1) read with 49(1)(ag) of the said Act which governs the circumstances in which any person may be deemed “qualified to be admitted” as an advocate, a useful inference would follow. Such rules could lay down that an enrolled advocate, having taken an employment in a non-legal context for a substantial length of time would be deemed to be a new enrolee. In order to regain that qualification, that person could be subjected to the re-examination rule and be required to take the All India Bar Examination once more.

f. The validity of the result obtained by any candidate in any preenrolment or a post-enrolment bar examination must also be limited by time which would be a policy matter for the Bar Council of India to consider.

g. The Bar Council of India can exercise its power to issue directions under Section 48B of the said Act to ensure uniformity and fairness of the procedure followed by each of the State Bar Councils.

15. Then Attorney General, Mr. K.K. Venugopal, who had also been appointed as an Amicus and after taking us through the material crystallised two aspects as under:

a. The Bar Council of India is entitled to make rules under Section 49 of the said Act and the rule-making power of the Bar Council of India would not be affected after the 1973 Amendment.

b. The pre-enrolment training may not be necessary since what is gained through the mandate of the internship is far superior.

16. The Chairman of the Bar Council of India, Mr. Manan Kumar Mishra, learned Senior Advocate, highlighted the powers of the Bar Council of India to make rules for the implementation of the said Act. Mr. Mishra also relied upon Section 7(1)(g) of the

said Act which gives absolute control to the Bar Council of India to exercise supervision and control over the State Bar Councils.

Contra View Point:

17. The significant contra view point was made by the petitioners in T.C. (C) No.13/2011 seeking to contend that since the pre-enrolment examination was done away in the light of the statutory provisions in ***V. Sudeer***[16], the first two questions of the reference order need no reconsideration. With respect to third question of the post-enrolment examination for which Rules 9 to 11 have been inserted in Chapter III of Part VI of the Bar Council of India Rules, the plea of striking down was based on the following aspects:

a. Section 16 of the said Act provides for only two categories of advocates, i.e. Senior Advocates and other advocates, and does not provide for any third category of "provisionally enrolled advocates" who shall be finally enrolled after giving the All India Bar Examination.

b. Section 22 of the said Act provides for certificate of enrolment to any person whose name is entered in the roll of advocates maintained by the respective State Bar Council. Hence, once an advocate enters the State Roll, he is an advocate and there is no bar on his practice.

c. Section 24 of the said Act which exhaustively provides for conditions and qualifications for the persons to be admitted as advocates does not set any condition to the effect of clearing any post-enrolment examination for continuing as an advocate.

d. Section 28 of the said Act was amended and the power of State Bar Councils to provide for an examination and training prior to enrolment was done away with.

e. Section 30 of the said Act which provides for right to practice does not provide for clearing an examination to practice.

f. Rule 9 of the Bar Council of India Rules is unconstitutional and violative of Article 14 of the Constitution, as a person graduating before the introduction of the All India Bar Examination and applying for enrolment is not required to take the Examination, whereas those from 2009-2010 are mandated to take the Examination, making the rule discriminatory in nature.

18. The aforesaid line of reasoning was supported by other pleas. It was submitted that the power given to the Bar Council of India in ***V. Sudeer***[17]was for enlarging the scope of eligibility of becoming an advocate, and not to narrow it down. Further, there was no accountability and transparency with respect to the fees collected by Bar Council of India and its association with an entity named 'Pearl First' which found no place on the official website of the Bar Council of India.

Our Thought Process:

19. We have given our thought to the matter and share the concerns of all those who appeared before us to see that the best come into the profession. Quality of lawyers is an important aspect and part of administration of justice and access to

[16] (supra)
[17] (supra)

justice. Half baked lawyers serve no purpose. It is this quality control, which has been the endeavour of all the efforts made over a period of time.

20. The object of Parliament enacting the said Act was to consolidate the law relating to legal practitioners. The prominent role of the Bar Council of India, the apex body, is apparent from the functions prescribed for the Bar Council of India under Section 7 of the said Act. Clause (h) of Sub-Section (1), provides for promotion of legal education and for laying down standards of such education in consultation with Universities in India and State Bar Councils. Sub-Clause (m) is in the nature of a residuary clause, having the widest amplitude to do all other things necessary for discharging the aforesaid functions. These provisions do not entrust the Bar Council of India with direct control of legal education, as primarily legal education is within the province of the universities. Yet, the Bar Council of India, being the apex professional body of the advocates, is concerned with the standards of legal profession and the equipment of those who seek entry into that profession.[18] Neither these provisions, nor the role of the universities to impart legal education, in any way, prohibit the Bar Council of India from conducting pre-enrolment examination, as the Council is directly concerned with the standard of persons who want to obtain a license to practice law as a profession.

21. Along with the aforesaid provision, we would like to advert to the post-legal education stage for admission of advocates on the State roll. Section 24 of the said Act prescribes as to who are the persons who may be prescribed as Advocates on State roll. Sub-Section (1) of Section 24 provides conditions fulfilling which a person shall be qualified to be admitted as an advocate on a State roll. Sub-Section (3) of Section 24 of the said Act begins with the non-obstante clause qua Sub-Section (1) by stating "notwithstanding anything contained in Sub-Section (1)". Clause (d) of SubSection (3) of Section 24 of the said Act refers to the entitlement to be enrolled as an Advocate under any Rule made by the Bar Council of India in this behalf.

22. It is under Clause (d) of Sub-Section (3) of Section 24 of the said Act that the Bar Council of India sought to introduce the All India Bar Examination, which would be uniformly applicable irrespective of the recognised educational institutions from which a person would complete law before he was enrolled at the Bar. It is this endeavour of the Bar Council of India, which came to be assailed in the judgment of this Court in ***V. Sudeer***[19]and that challenge succeeded. We would have to look carefully at this judgment in ***V. Sudeer***[20] as in the reference order to the Constitution Bench, the first two questions referred to us really emanate from this judgment i.e. the authority of the Bar Council of India to provide for pre-enrolment training in terms of the 1995 Rules and whether pre-enrolment examination can be prescribed by the Bar Council of India under the said Act. In terms of the 1995 Rules, trainee advocates are entitled to appear in court for seeking adjournments and to make mentioning on instruction of their guides, after their provisional enrolment**.**

23. The judgment in ***V. Sudeer***[21], though operative prospectively, opined that such rule making power of the Bar Council of India was *ultra vires* the parent Act as it stood

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[18] See O.N. Mohindroo v. Bar council of Delhi and Ors. (1968) 2 SCR 709; Bar Council of India v. Board of Management, Dayanand College of Law and Ors. (2007) 2 SCC 202

[19] (supra)

[20] (supra)

[21] (supra)

amended after the 1973 Amendment. In so far as the exercise of power under Clause (d) of Sub-Section (3) of Section 24 of the said Act was concerned, it was opined that a person, who is otherwise eligible for enrolment having qualified the law degree, could not be denied enrolment by prescribing additional qualifications of pre-enrolment training and an examination of enrolment as an Advocate.

24. The decision of this Court in ***Indian Council of Legal Aid and Advice*** (supra) was also discussed though that was a matter dealing only with the aspect of prescribing the age bar to be eligible to be enrolled at the Bar.

25. The discussion notes that between 1961 and 1964, the State Bar Councils required an applicant to undergo a course of training in law and pass the examination after such a training as conditions of enrolment. But after 1964 till 1973, it was permissible for the State Bar Councils to prescribe a course of training in law as a pre-condition of enrolment of a candidate and he was also required to pass the requisite examination during the training or even after completing the training course and such examination could be prescribed by the State Bar Council concerned only. The object and reasons of the 1973 Amendment provided that it was felt necessary to give powers to the Bar Council of India to enable it to add to the categories of the eligible candidates who were otherwise not eligible to be enrolled under Section 17 read with Section 24(1) of the said Act before the said amendment. The reasoning, which permeates the judgments in ***V. Sudeer***[22] is that if statutorily the power of the State Bar Councils has been taken away in respect of a particular aspect i.e. either for providing training or for holding examination, the endeavour of the Bar Council of India to introduce a pre-enrolment examination could not be sustained as it would go contrary to the intent of the 1973 Amendment.

26. The third question framed for reference refers to Section 49(1)(ah) of the said Act for providing a post-enrolment examination if the answers to the first two questions are in negative. Section 49 deals with the general powers of Bar Council of India to make rules and Sub-Clause (ah) specifically deals with the conditions subject to which an Advocate shall have the right to practise and the circumstances under which a person can be deemed to practise as an Advocate in a Court.

27. We now turn to the submissions of Mr. K.V. Vishwanathan, learned Senior Counsel, who assisted this Court as an Amicus as he pleaded about what he perceived as the fallacies of the earlier judgment of ***V. Sudeer***[23]***.*** He contended in this behalf that the powers of the State Bar Councils and the Bar Council of India encompass different fields and that of the Bar Council of India are much wider. He also submitted that when the legislature ousted the power of the State Bar Councils in this behalf, it did not *per se* amount to whittling down the powers of the Bar Council of India under the existing provisions, which do not stand modified or deleted. The functions of the State Bar Councils, on a plain reading of Section 6 deal with their powers relating to preparing and maintaining the rolls and admissions of persons as advocates on their rolls. However, the power of the Bar Council of India under Section 49(1)(ag) of the said Act empowers the Bar Council of India to prescribe Rules that would specify a class or category of persons, who are entitled to be enrolled as advocates. Section 49(1)(ag) reads as under:

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[22] (supra)
[23] (supra)

"**49. General power of the Bar Council of India to make rules** – [(1)] The Bar Council of India may make rules for discharging its funtions under this Act, and, in particular, such rules may prescribe-

…. …. …. …. …. ….

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

28. Thus, he contended that the meaning of entitlement, would indicate that the Bar Council of India could prescribe such conditions, which would give the right or claim to a person to be enrolled as an advocate and the power of Bar Council of India prior to enrolment cannot be ousted. Further, the significance of Section 24(1) has to be read with other provisions of the said Act and the Rules made thereunder including the "notwithstanding clause" at the beginning of Sub-Section (3) of Section 24.

29. In the aforesaid context, we believe that we have to read the powers of the State Bar Councils and the Bar Council of India in the context of their respective statutory provisions. The powers are not *pari materia*. Bar Council of India has much larger powers and authority as submitted and discussed aforesaid including in the submissions of the learned Amicus.

30. We are unable to agree with the reasoning in ***V. Sudeer***[24] that because the State Bar Councils' power for providing training or for holding examination was taken away by the 1973 Amendment, it *ipso facto* amounts to taking away such powers if they so vested with the Bar Council of India. The legislative object was clear i.e. not to confer such powers on the State Bar Councils. However, that could not affect the position of the power of the Bar Council of India, and naturally such a power existed. If the Bar Council of India never had such a power, then the same could not be read by implication. But, if the Bar Council of India had sufficient powers, then the 1973 Amendment would not take away those powers of the Bar Council of India as the said amendment did not deal with the aspect of the powers of the Bar Council of India.

31. In addition, the learned Judges in ***V. Sudeer***[25] opined that if such a power has to be conferred, it should be conferred legislatively. While in principle, there can be no disagreement with the broad proposition, the issue is whether such a power is already existing with the Bar Council of India under the statutory provisions. The functions of the Bar Council of India, as specified under Section 7, *inter alia* prescribe an exercise of general supervision and control over the State Bar Councils under Clause (g) of Sub-Section (1) of Section 7. Further, under Sub-Clause (l), the Bar Council of India has the power to perform all other functions conferred on it by or under the said Act and under Clause (m) to do all other things necessary for discharging the aforesaid functions. The powers are, thus, wide and extensive as conferred by the legislature. Thus, when under Section 24(1), the Bar Council of India has the statutory power of prescribing Rules subject to which a person may be treated as qualified to be admitted as an Advocate in the State roll, then we believe that the Bar Council of India is not devoid of its jurisdiction in undertaking a pre-enrolment training course or examination prescribed by the Bar Council of India.

32. In case of any subsisting doubt, we must refer to Section 49(1)(ag) of the said Act, which while dealing with the general powers of the Bar Council of India to make rules, specifically stipulates that the class or category of person entitled to be enrolled

[24] (supra)
[25] (supra)

as advocates, is an aspect for which all powers have been conferred on the Bar Council of India. Thus, the provision for an examination for enrolment of advocates by the Bar Council of India can hardly be doubted. We had specified at the inception itself that quality control of entry into the Bar is the need of the hour.

33. The objective of the legislature while giving wide powers to the Bar Council of India under Section 49, which gives it the powers to make Rules, read with Section 24(3)(d), which gives it the powers to prescribe the norms for entitlement to be enrolled as an Advocate under the Rules of the Bar Council of India, leads us to the conclusion that these are adequate powers with the Bar Council of India under the said Act to provide such norms and Rules.

34. We are, thus, of the view that while considering the questions referred to us, the only conclusion which can be laid is that the interdict placed by the judgment of this Court in ***V. Sudeer***[26] on the powers of the Bar Council of India cannot be sustained and we cannot hold that ***V. Sudeer***[27] lays down the correct position of law.

35. The effect of the view expressed by us would be that it has to be left to the Bar Council of India as to at what stage the All India Bar Examination has to be held – pre or post. There are consequences especially in respect of the interregnum period which would arise in holding the All India Bar Examination in either scenario, and it is not for this Court to delve into them but it would be appropriate to leave it to the Bar Council of India to look to the niceties of both situations. However, in view of larger ramifications we do consider it appropriate to delve into some, though not all of the aspects which may get involved in holding the All India Bar Examination, especially in view of some suggestions made by the Amicus.

36. We may take note of the fact that the All India Bar Examination is scheduled to be held twice in a year. It is necessary that this schedule should be strictly followed as otherwise the students with law degrees would be left idling their time.

37. One of the questions which arose was whether only on passing the examination from a law University/College or obtaining such a degree should a person be eligible to take the All India Bar Examination? In India, the various recognised institutions providing law degrees often declare results at different times. The concern is that a person on account of nondeclaration of result may lose out on the opportunity to appear in the All India Bar Examination leading to a fairly long hiatus period of time without having the opportunity to work in court proceedings.

38. We are inclined to accept the suggestion from the learned Amicus that students who have cleared all examinations to be eligible to pursue the final semester of the final year course of law, on production of proof of the same, could be allowed to take the All India Bar Examination. The result of the All India Bar Examination would be subject to the person passing all the components required under the course of study of the University/College. This would be subject to the All India Bar Examination results being valid for a specified period of time.

39. More often than not, there would be a hiatus period between the date of passing the examination from a law University/College and the date of enrolment. The eligibility of a law graduate to perform certain tasks may thus arise. The suggestion made is

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[26] (supra)
[27] (supra)

that during the period between the date of passing the examination and the date of enrolment, any graduate with the degree who is yet to appear for the Bar examination or get enrolled under the said Act should be able to do all the tasks allied to the legal profession other than the function of acting or pleading before the courts. We give our imprimatur to this suggestion.

40. Another issue which arises is that of seniority at the Bar. This is relevant for many purposes including chamber allotment, at the time of elevation, etc. The determination of seniority in case of a post-enrolment examination based on the date of birth of an advocate is stated to have statutory recognition under Section 21 of the said Act currently and, thus, it has been suggested that a similar criteria would suit in any pre or post enrolment examination. We must also note here that the Bar Council of India has the powers to make rules determining the seniority among advocates under Section 49(1)(ae) of the said Act.

41. The Amicus has suggested that unlimited attempts to pass the All India Bar Examination would not be in line of scheme proposed before this Court and it should be limited to any number of attempts which this Court deems fit to do so. We would, of our own, hesitate to prescribe the number of opportunities available to a law graduate to take the All India Bar Examination, especially when it is only on passing the All India Bar Examination that he would be entitled to be enrolled in a pre-enrolment examination. In case of a post-enrolment examination, the period of two years between enrolment and passing the All India Bar Examination is already specified.

42. Learned Amicus also sought to flag the issue of persons, who may take up other jobs and may want to enrol themselves as advocates later at some stage. There may also be persons who despite being enrolled at the Bar, decide to take another job and come back into the profession after a considerable period of time, at times even post retirement. It is in that context that the learned Amicus has suggested that the rule making power under Section 49(1)(ah) of the said Act could be invoked requiring an examination for the advocates who come back into the practice after a substantial break from practice. We are inclined to accept the suggestion in principle that appropriate rules can be framed laying down that an enrolled advocate who takes up an employment in a non-legal context for a substantial length of time (say for five years) would be deemed to be a new enrolee and in order to regain the qualification, that person would be required to take the All India Bar Examination once more. We believe that the requirements of an active legal practice and that of an unconnected job are different. Even if a person has a law degree or enrolment, it does not mean that his ability to assist the court would continue with him if there are long hiatus period of time in some unconnected job. He would have to hone and test his skills afresh. Thus, if there is a substantial break, norms should be specified by the Bar Council of India that to regain that qualification, the person would be subject to re-examination and would be required to take the All India Bar Examination once more.

43. The other two suggestions made by the learned Amicus are that the validity of the result obtained by any candidate in any pre-enrolment or a post-enrolment bar examination must be limited by time which would be a policy matter for the Bar Council of India to consider, and the Bar Council of India can exercise its power to issue directions under Section 48B of the said Act to ensure uniformity and fairness of the

procedure followed by each of the State Bar Councils. We agree with these suggestions.

44. We also have one caveat arising from the plea that different State Bar Councils are charging different fees for enrolment. This is something which needs the attention of the Bar Council of India, which is not devoid of the powers to see that a uniform pattern is observed and the fee does not become oppressive at the threshold of young students joining the Bar.

45. While we agree in principle with the suggestions of the learned Amicus, these should receive the attention of the Bar Council of India urgently in the process of steps taken by the Bar Council of India in view of this judgment.

46. We may note that the contra viewpoints sought to be suggested before us predicated on the judgment of this Court in ***V. Sudeer***[28] case and in view of our opining that the same would not be good law, they really do not survive for consideration.

47. Our hope is that the aforesaid observations while conferring a greater role on the Bar Council of India, would make the Bar Council of India more conscious of the importance of the role it has to perform, including ensuring that the only persons who are well equipped with the tools of law pass the All India Bar Examination. Further, in view of periodic changes in the legal position and the consequent nature of All India Bar Examinations being held, we would like to make this judgment prospectively applicable so that it does not disturb the scenarios which have prevailed during the interregnum period. We clarify that the setting aside of the judgment in *V. Sudeer*[29] is in no manner an imprimatur to mandating the requirement of pre-enrolment training. We expect the Bar Council of India to take necessary steps within a period of three months. We greatly appreciate the assistance rendered by learned amici.

48. In the end, we hope that our view would assist in bringing forth the enrolment of young bright minds at the Bar, who would be able to assist the Court in a more efficient manner so that the administration of justice is benefited.

49. The civil appeal and the petitions are disposed of leaving the parties to bear their own costs.

[28] (supra)
[29] (supra)