

**Presented on: 22-11-2019**

**Subject** *"PIL - TO STOP THE ILLEGAL PRACTICE OF LEVY OF EXORBINANT FEES BY THE BAR COUNCIL OF KERALA AND BAR COUNCIL OF INDIA IN DIRECT CONTRAVENTION OF THE PROVISIONS OF THE ADVOCATES ACT, 1961."*

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**

W.P.(Civil)No. \_\_\_\_\_ of 2019  
(Special Original Jurisdiction)

Ajiz M.K. and others : Petitioners  
v.  
Bar Council of Kerala and another : Respondents

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA**

C.F. Rs. /- is paid

SANTHOSH MATHEW(S-204)  
ARUN THOMAS(A-1056)  
JENNIS STEPHEN (J-1033)  
VIJAY V. PAUL (V-684)  
KARTHIKA MARIA (K-514)  
VEENA RAVEENDRAN (V-713)  
ANIL SEBASTIAN PULICKEL (A-1886)  
DIVYA SARA GEORGE (D-433)  
JAISY ELZA JOE (K.001690/2018)  
SHINTO MATHEW ABRAHAM (K-977/2018)  
&  
JOB MICHAEL MATHEW (Kar.1734/2019)

COUNSEL FOR THE PETITIONERS

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**

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Dated this the 19<sup>th</sup> day of November, 2019.

Sd/-  
COUNSEL FOR THE PETITIONERS

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**

W.P.(Civil)No. \_\_\_\_\_ of 2019  
(Special Original Jurisdiction)

Ajiz M.K. and others : Petitioners  
v.  
Bar Council of Kerala and another : Respondents

**SYNOPSIS.**

*"A statutory functionary like the respondent Bar Council of Kerala should be a model for upholding the basic norms of rule of law. It is to be borne in mind that they are the Apex regulatory body of legal professionals in the State of Kerala. The members of the legal profession are the high priests for upholding the rule of law. Therefore, the Apex statutory regulatory body of legal professionals in the State should also be in the forefront for upholding rule of law."*

*- Judgment dated 30-11-2016 of the Honourable High Court of Kerala in **Koshy T v Bar Council of Kerala** reported in **2017 KHC 553***

**DATES**

**EVENTS**

|      |   |
|------|---|
| 1961 | : Advocates Act comes into force. Rs. 375 was prescribed as the enrolment fees as per Section 24 (1) (f).                               |
| 1993 | : Section 24 (1) (f), Advocates Act, 1961 is amended to increase enrolment fees to Rs. 750.   |
| 2012 | : Bar Council of India's Resolution No. 112/2012 imposes transfer fees of Rs. 2000 in violation of Section 18 (1), Advocates Act, 1961. |
| 2016 | : Hon'ble High Court of Kerala's judgment in Koshy T. v. Bar Council of Kerala reported in 2017 KHC 553                                 |
| 2017 | : Law Commission of India's Report No. 266 on Advocates Act, 1961.  |
| 2018 | : Hon'ble High Court of Kerala's judgment in Bar Council of Kerala v. Koshy T (W.A. No. 2170 of 2017)                                   |
| 2019 | : Hon'ble Supreme Court of India's Order dismissing S. L. P. in Bar Council of Kerala v. N. S. Gopakumar.                               |

The Petitioners are law students studying at the National University of Advanced Legal Studies, Kochi.

The Petitioners herein are approaching this Honourable Court, in public interest, to highlight the practice of imposition of exorbitant and illegal fees by the 1<sup>st</sup> respondent Bar Council of Kerala and the 2<sup>nd</sup> respondent Bar Council of India on law graduates who seek to enroll as Advocates, and on Advocates who wish to transfer their name from one state roll to another, in direct contravention of the provisions of the Advocates Act, 1961.

The exorbitant and illegal fees being imposed now are the following:

- 1) Enrolment Fees = Rs. 10,650
- 2) Delay Condonation Fees = Rs. 5,000 (Enrolment after 5 years of graduation) and Rs. 10,000 (Enrolment after 10 years of graduation).
- 3) Fees for transfer of name from one State roll to another = Rs. 2,000

The Parliament, through Section 24(1)(f) of the Advocates Act, has fixed Rs. 750/- as the enrolment fees that can be imposed on law graduates. Despite the law clearly stipulating the amount of enrolment fee that can be charged, the first respondent is levying an amount of Rs 10,650/- from law graduates who seek to enter the noble profession of law.

In addition to charging Rs 10,650/- as 'Enrolment Fees', the first respondent also levies a 'Delay Condonation Fee' of Rs 5000/- and Rs 10,000 /- from those candidates who are enrolling after 5 years and 10 years from the date of securing law degree, respectively. In the absence of payment of such fees, the first respondent will not enroll the candidates in question and therefore, the said fees takes the form

of an enrolment fee and is illegal on account of falling foul of Section 24 (1) (f).

There is no obligation on any law graduate to enroll within any number of years from passing the law degree under any Act or Rules in India. Under such circumstances, there arises no question for any delay to be 'condoned' in the first place. Further, such 'Delay Condonation Fee' is nothing but enrolment fee in another name as it is a fee that is intricately interwoven and interconnected with the process of enrolment.

Any rules made by the first respondent to give to itself the authority to levy a different amount than which is prescribed in Section 24 (1) (f) is beyond the scope of its rule making powers. Such wanton disregard for the law is not only unbecoming of the Apex regulatory body of legal professionals in the State but also deals a heavy blow to the objective of increasing accessibility to the profession by erecting a substantial financial barrier for entry to the profession for many aspiring Advocates.

This Honourable Court in Exts. P2 and P4 judgments has also affirmed that rule making powers cannot be pressed into service to frame any rules with respect to the conditions already stipulated in sub clauses (a), (b), (c), and (f) of Section 24 of the Advocates Act.

The respondents also require candidates to pay Rs. 3000/- towards the Bar Council Of India Welfare Fund at the time of enrolment. However, Rule 40, Part VI, Chapter II, Section IV A of the Bar Council of India Rules clearly states that the obligation to pay such an amount is on 'Advocates' and not on prospective advocates. It is clear that the said amount is to be collected at a post-enrolment stage and not be imposed as a pre-enrolment condition. This conclusion is affirmed by the fact that Rule 40 gives Advocates the liberty to make payments towards the fund in instalments if the Advocates so desire. By requiring that candidates pay the whole amount of Rs. 3000/- as a

precondition for enrolment, the first respondent is denying to candidates the inherent flexibility that Rule 40 offers.

Further, the second respondent requires Advocates who want to transfer their names from the rolls of one State Bar Council to another State Bar Council to pay fees of Rs 2000/-. Such a requirement is in direct contravention to Section 18 (1) of the Advocates Act, 1961 where it is explicitly provided that Advocates are entitled to have their names transferred from the rolls of one State Bar Council to another without the payment of any fees.

Therefore, on all the above mentioned grounds, the Petitioners are approaching this Hon'ble Court to put a stop to the practice of levy of exorbitant and illegal fees by the first and second respondents.

Acts and Rules relied on:

- 1) Advocates Act, 1961
- 4) The Bar Council of India Rules
- 5) The Bar Council of Kerala Rules, 1979

Case laws relied on:

- 2) Koshy T. v. Bar Council of Kerala (2017 KHC 553)
- 6) Bar Council of Kerala v. T. Koshy (W.A. No. 2170 of 2017)
- 7) Bar Council of Kerala v. N. S. Gopakumar (S.L.P. 44268/2018)
- 8) Mahipal Singh Rana v. State of U.P. (AIR 2016 SC 3302)
- 9) Indian Council for Legal Education v. Bar Council of India (AIR 1995 SC 691)

Dated this the 19<sup>th</sup> day of November, 2019.

Sd/-  
COUNSEL FOR THE PETITIONERS

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT  
ERNAKULAM**

W.P.(Civil) No. \_\_\_\_\_ of 2019  
(Special Original Jurisdiction)

**Petitioners:-**

1. Ajiz M. K.,  
Aged 21 years, S/o Sakeer M. K.,  
Kuvakkattail House, Perumpadappu P O  
Malappuram - 679580.
2. Sarath K. P.,  
Aged 22 years, S/o Ponnann,  
Koluveedu House, Panangad P O,  
Ernakulam - 682506
3. Sreenath J.,  
Aged 21 years, S/o M. N. Jayan,  
Kundil Madam, Nandipulam P O,  
Thrissur - 680312.
4. Mohammed Sheharan,  
Aged 20 years, S/o Abdul Razak,  
Valiakath Kuttipurathel House,  
Veliankode Pazhanji P O,  
Ponnani, Malappuram - 679579
5. Niranjan M. S.,  
Aged 21 years, S/o Madhu M. S.,  
Mannoor House, Plakeezhu Pirappancode P O,  
Thiruvananthapuram- 695607

Vs.

**Respondents:-**

1. Bar Council of Kerala,  
Bar Council Bhavan,  
High Court Campus,  
Ernakulam - 682 031  
Represented by its Chairman.
2. Bar Council of India,  
21, Rouse Avenue International Area  
Near Bal Bhawan,  
New Delhi - 110 002  
Represented by its Chairman.



**MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226  
OF THE CONSTITUTION OF INDIA**

The Address for service of notice and process to the petitioners is that of their counsel **M/s Santhosh Mathew, Arun Thomas, Jennis Stephen, Vijay V. Paul, Karthika Maria, Veena Raveendran, Anil Sebastian Pulickel, Divya Sara George, Jaisy Elza Joe, Job Michael Mathew, and Shinto Mathew Abraham, M/s. Ninan & Mathew Advocates, S1, 2<sup>nd</sup> Floor, Empire Building, High Court East End, Cochin-18.**

The address for service of notice on the respondent is as stated above.

**STATEMENT OF FACTS**

1. The Petitioners herein are approaching this Honourable Court in public interest, seeking an end to the illegal levy of enrolment fees in excess of Rs 750 and transfer fees of Rs 2000 by the 1<sup>st</sup> respondent Bar Council of Kerala and the 2<sup>nd</sup> respondent Bar Council of India, respectively, in direct violation of the provisions of the Advocates Act, 1961.

2. The Petitioners are students of law. The 1<sup>st</sup> to 4<sup>th</sup> Petitioners are 7<sup>th</sup> semester students of the National University of Advanced Legal Studies (NUALS), Kochi. The 5<sup>th</sup> Petitioner is a 5<sup>th</sup> semester student of the same institution. The Petitioners have not filed any other Public Interest Litigation before this Hon'ble Court till date.

3. The exorbitant and illegal fees presently being imposed are as follows:

A. Enrolment Fees = Rs. 10,650/-

B. Delay Condonation Fees = Rs. 5,000/- (Enrolment after 5 years of graduation) and Rs. 10,000/- (Enrolment after 10 years of graduation).

C. Fees for transfer of name from one State roll to another =  
Rs. 2,000/-

4. The 1<sup>st</sup> respondent is the regulatory body for the legal profession in the State of Kerala and is responsible for, *inter alia*, enrolling advocates to its rolls. The 2<sup>nd</sup> respondent is the national regulatory body for the legal profession in India and is responsible for, *inter alia*, laying down standards of professional conduct and etiquette for advocates.

5. The Advocates Act, 1961 amalgamates, codifies and consolidates the law relating to the regulation of practice by advocates and the system of the legal profession. Section 2 (a) of the Act defines an 'Advocate' as a person entered in any roll under the provisions of the Act and the term 'roll' according to Section 2 (k) means a roll of advocates prepared and maintained under the Act.

6. Section 3 of Advocates Act provide that there shall be a Bar Council for each of the States to be known as the Bar Council of that State. Section 4 provides for a Bar Council for the territories to which the Act extends to be known as the Bar Council of India. The functions of the State Bar Councils and the Bar Council of India have been set out in Sections 6 & 7, respectively. The functions of the State Bar Councils include admission of persons as advocates on its roll, preparation and maintenance of such roll, safeguarding the rights, privileges and interests of advocates on its roll and to do all things necessary for discharging the above functions. The functions of the Bar Council of India include the laying down of standards of professional conduct and etiquette for advocates and for safeguarding their rights, privileges and interests of advocates.

7. Section 24 of the Advocates Act envisages the 'persons who may be admitted as advocates on a State roll'. Section 24 (1) provides that subject to the provisions of the Act and the rules made there under, a person shall be qualified to be admitted as an

advocate on a State roll, if he fulfils the conditions mentioned in clauses (a) to (f) thereof. Requirements regarding citizenship, minimum age, and acquisition of law degree are laid down in clauses (a), (b), and (c) respectively. Clause (e) of Section 24 (1) provides that, subject to the provisions of the Act and the Rules made thereunder, a person shall be qualified to be admitted as an advocate on the State roll if he fulfils such other conditions specified in the rules made by the State Bar Council under that Chapter. Crucially, as per clause (f) of Section 24 (1), the entitlement of a person who is otherwise qualified to be admitted as an advocate on the State roll is also qualified with a condition that the said person has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (Act 2 of 1899) and **an enrolment fee of Rs 600/- payable to the State Bar Council and of Rs 150 /- to the Bar Council of India, thus totaling to Rs. 750/- (for SC/ST candidates, enrolment fee payable is Rs 150/- comprising of Rs 125/- payable to the State Bar Council and Rs 25/- payable to the Bar Council of India)**. The amounts presently specified in clause (f) of Section 24 (1) are those pursuant to the amendment carried out as per Central Act 70 of 1993. Prior to the said amendment carried out with effect from 26-12-1993, Section 24(1)(f) provided that the enrolment fee payable to State Bar Councils was Rs 250/- and to the Bar Council of India was Rs 125/-.

8. It is submitted that Section 24 (1) (f) fixes the enrolment fees that can be levied by State Bar Councils at Rs 750/- and does not allow any State Bar Council to levy any other amount as enrolment fee. Despite the statutory bar on levying enrolment fees in excess of Rs 750/- provided for in Section 24 (1) (f), the 1<sup>st</sup> respondent presently collects a sum of Rs 10,250/- as enrolment fees from prospective advocates. It is submitted that the levy of enrolment fees in excess of Rs 750/- is ultra vires the provisions of the Advocates Act, 1961 and beyond the rule making powers of the 1<sup>st</sup> respondent. A copy of the Fee Structure published by the 1<sup>st</sup>

Respondent for enrolment in 2019 is produced herewith and marked as **Exhibit P1**.

9. Ext. P1 Fee Structure lays down 5 different categories of payments that a law graduate who seeks to enroll needs to make. The first category of payments is titled "Enrolment Fees" and within this category are eight different heads of fees which cumulatively add up to Rs 10,650/-. The second category of payments is titled "Chairman's Relief Fund A/C" and Rs 500 is to be made towards it. The third category is "Bar Council of India Collection Fund" and a payment of Rs 150 is to be made towards it. The fourth category of payment is "Bar Council of India Welfare Fund" and a payment of Rs 3000 is to be made towards it. The fifth category of payment is "Additional Fees for Candidates if Applicable" and under it are the heads of payments for condoning delay for enrolment after graduation, and late fee for candidates applying after the last date for filing enrolment application. Given below is a tabular representation of the same:

| <b>Enrolment Fees</b>             | <b>Fees</b>                     | <b>Amount</b>   |
|-----------------------------------|---------------------------------|-----------------|
|                                   | Application Form Fees           | Rs 2000         |
|                                   | Enrolment Fee                   | Rs 600          |
|                                   | Registration Fee                | Rs 2500         |
|                                   | Processing and Verification Fee | Rs 3500         |
|                                   | Identity Card Fee               | Rs 100          |
|                                   | Fee for photograph and CD       | Rs 350          |
|                                   | Certificate Fee                 | Rs 1000         |
|                                   | Fee for Book Advocates Act      | Rs 600          |
|                                   | <b>Total</b>                    | <b>Rs 10650</b> |
| <b>Chairman's Relief Fund A/C</b> | <b>Rs 500</b>                   |                 |

|   |   |               |
|---|---|---------------|
| <b>Bar Council of India Collection Fund</b>         | <b>Rs 150</b>   |               |
| <b>Bar Council of India Welfare Fund</b>            | <b>Rs 3000</b>  |               |
| <b>Additional Fees for candidates if applicable</b> | <b>Fee</b>  | <b>Amount</b> |
|   | Delay condonation fee for seeking enrolment 5 years from date of passing the law degree                         | Rs 5000       |
|   | Delay condonation fee for seeking enrolment 10 years from date of passing the law degree                        | Rs 10000      |
|   | Late Fee for candidates applying for online registration after the last date for filling enrolment applications | Rs 5000       |

10. It is submitted that out of all the payments to be made under Ext. P1 Fee Structure for Enrolment, only the following payments, as declared in **Koshy T. v Bar Council of Kerala** reported in **2017 KHC 553** are valid and legal under the Advocates Act, 1961 and the rules framed under it :

- a) Rs 600 towards enrolment fees as provided in Section 24 (1) (f) of the Advocates Act, 1961;
- b) Rs 150 towards Bar Council of India Collection Fund as provided in Section 24 (1) (f); and
- c) Late Fee for candidates applying for online registration after last date for filling enrolment application.

A copy of the judgment dated 30-11-2016 of this Honourable Court in **Koshy T v Bar Council of Kerala** reported in **2017 KHC 553** is produced herewith and marked as **Exhibit P2**.

11. It is submitted that for a punctual candidate, all the different heads of fees under the title of "Enrolment Fees" in Ext. P1 Fee Structure for Enrolment, except "Enrolment Fee" of Rs 750, are illegal on account of being ultra vires Section 24 (1) (f) of the Advocates Act, 1961.

12. It is submitted that in order to levy enrolment fees in excess of Rs 750/-, reliance cannot be placed on the rule making powers under a combined reading of Section 24 (1) (e) and Section 28 (2) (d) of the Advocates Act, in the light of Ext. P2 judgment of this Hon'ble Court. The learned Single Judge of this Honourable Court had made the following observations in Ext. P2 judgment:

*"No doubt, Sec. 28(2)(d) empowers the respective State Bar Councils to frame Rules so as to prescribe conditions subject to which a person may be admitted as an advocate in a State roll. Sub clause (e) thereof empowers the State Bar Councils to prescribe rules regarding the installments in which the enrolment fee may be paid. **A plain reading of Sec. 24(1) and Sec. 28(2)(d) of the Act makes it clear that matters as covered by "such other conditions as may be specified in the rules made by the State Bar Council under this Chapter" as appearing in clause (e) of Sec. 24(1) can only be those conditions relating to pre-enrolment matters other than conditions envisaged in clauses (a), (b), (c) and (f) of Sec. 24(1).** It is only the field covered by Sec. 24(1)(e) that is covered by prescribing rules as envisaged in Sec. 28(2)(d) of the Act. **The said field covered by Sec. 24(1)(e) is limited and bounded and it can only relate to conditions relating to valid pre-enrolment matters other than those conditions envisaged clearly in sub clauses (a), (b) and (c) of Sec. 24(1).** Incidentally, Sec. 24(1)(d) has been*

omitted as per amendment Act (Sec. 18 of amendment Act 60 of 1973) with effect from 31-1-1974. It is quite clear to appreciate that under the guise of rule making power in respect of the field covered by Sec. 24(1)(e) and Sec. 28(2)(d), the State Bar Council will not have the competence to frame any rule in respect of conditions stipulated in sub clauses (a), (b) and (c) of Sec. 24(1) which deals with citizenship, minimum age, minimum law degree therein, etc. **If the power to make rules as per Sec. 28(2) if so invoked, it would amount to plain and utter violation of the plenary provisions of law as contained in sub clauses (a), (b), (c) and (f) of Sec. 24(1) and such purported subordinate legislation would be nothing short of being ultra vires and beyond the scope of rule making powers going by the well known elementary principles regulating the power of subordinate legislation. Therefore, since, the Parliament has consistently enunciated its clear objective and policy by engrafting a specific provision under Sec. 24(1)(f) for enrolment fee chargeable shall be limited to Rs. 750 as stated above, subject to demand of any valid stamp duty that may be chargeable under the provisions of the Indian Stamp Act, 1989, neither the Bar Council of India by resort to its rule making power under Sec. 49(1) nor the State Bar Council by virtue of its rule making powers under Sec. 28(2) of the Act can have the competence and jurisdiction to frame any rule prescribed for enrolment fee which is at variance with the one already engrafted by the Parliament in Sec. 24(1)(f). Such a rule as may be made by the State Bar Council which is ultra vires Sec. 24(1)(f) of the Act,**

*cannot be made valid merely on account of the so called approval granted thereto by the Bar Council of India by purported resort to the provisions contained in Section 28(3)."*

13. It is submitted that since enrolment fee has already been fixed at Rs 750/- under Section 24(1)(f), it is evident that Parliament has occupied the field with respect to amount chargeable as enrolment fee. Therefore, it is beyond the power of the first respondent to make rules that modify and alter the enrolment fee amount as provided under Section 24 (1) (f) of the Advocates Act, 1961. The first respondent thus cannot rely on Rule 2 (a) of Chapter V of the the Bar Council of Kerala Rules, 1979 to impose any fees in excess of Rs. 750 for enrolment. The relevant portion of the Bar Council of Kerala Rules is produced herewith and marked as **Exhibit P3.**

14. It is submitted that Ext. P2 judgment held the special fee of Rs 40,000 imposed on retired employees seeking enrolment as ultra vires the provisions of the Advocates Act, 1961. The Learned Single Judge struck down the said fees on the ground that such fees were in excess of Rs 750/- as provided in Section 24 (1) (f) of the Advocates Act, 1961. However, the Learned Single Judge did not express an opinion about the other fees levied at the time of enrolment such as Registration Fee, Application Fee etc., i.e. the fees that are being challenged in the present writ petition, on account of the fact that the validity of such other fees was not challenged before the Court by the petitioner therein. It is submitted that the reasoning of this Hon'ble Court in Ext. P2 judgment is applicable to the facts of this writ petition and therefore, levying any enrolment fees in excess of Rs. 750, for a punctual candidate, is ultra vires the provisions of Section 24 (1) (f) of the Advocates Act, 1961.

15. It is submitted that though the first respondent preferred an appeal against Ext. P2 judgment, the said judgment was affirmed



by a Division Bench of this Honourable Court. A copy of the Judgment dated 12-04-2018 in **Bar Council of Kerala v. T. Koshy and Others (W.A. No. 2170 of 2017)** is produced herewith and marked as **Exhibit P4**. The Division Bench of this Hon'ble Court made the following observations in Ext. P4 judgment:

***"Thus, the surviving question is whether the fixation of special fee is encompassed by the conditions which the Bar Council is entitled to prescribe in the rules made by it in view of section 24(1)(e) and section 28(2)(d). As we have already seen and as found by the learned single Judge, in section 24(1)(f), the Legislature itself has prescribed the enrolment fee payable by a candidate applying for enrolment with a Bar Council of a State. Once the legislature has prescribed enrolment fee, another fee, be it called a special fee or anything else, can legitimately be prescribed by a State Bar Council or any other authority only if there is an express legislative sanction therefore. In so far as section 24(1)(e) is concerned, all that it empowers the State Bar Council is to specify in the rules made by it under Chapter III of the Act the other conditions that a candidate should fulfill for enrolment. That rule making power also finds reflection in section 28(2)(d) which provides for the power of the Bar Council to make rules prescribing the conditions subject to which a person could be admitted as an advocate on its rolls. These provisions, in our view, only deal with the eligibility conditions and those conditions do not empower the Bar Council to prescribe any fee for the enrolment, either in the form of enrolment fee or special fee. Therefore, the prescription of special fee as done by the Bar***

*Council of Kerala is totally ultra vires its powers as conferred under the Advocates Act, 1961."*

16. It is submitted that Ext. P4 judgment further makes it clear that the powers conferred under Section 24 (1) (e) and Section 28 (2) (d) only permit the laying down of eligibility conditions and those conditions do not permit the first respondent to prescribe any fee for enrolment, either in the form of enrolment fee or special fee. It is clear from Ext. P1 Fee Structure Notification that the first respondent is levying enrolment fees of Rs 10,650/- under 8 different heads. The reasoning of the Division Bench of this Hon'ble Court in Ext. P4 judgment is squarely applicable to the facts at hand and therefore, the levy of enrolment fee in excess of Rs 750/- is ultra vires the powers conferred on the first respondent under the provisions of the Advocates Act, 1961.

17. It is submitted that the first respondent filed a Special Leave Petition (SLP) against Ext. P4 judgment and the same was dismissed by the Hon'ble Supreme Court. A copy of the Order dated 11-01-2019 of the Hon'ble Supreme Court dismissing the SLP filed by the first respondent is produced herewith and marked as **Exhibit P5**. Thus, it is submitted that the concurrent holding of this Hon'ble Court in Ext. P2 and Ext. P4 judgments was affirmed by the Hon'ble Supreme Court and has attained finality.

18. It is submitted that the "**Delay Condonation Fees**" levied by the first respondent is ultra vires the provisions of the Advocates Act, 1961. It is submitted that the "Delay Condonation Fees" charged for permitting enrolment 5 years and 10 years after the date of passing law degree is nothing but enrolment fee in a different name. In Ext. P2 judgment, this Hon'ble Court made it clear that the question of whether or not a specific fee is enrolment fee or not has to be resolved not with respect to the nomenclature of the fee but by seeing whether the fee is inextricably interconnected and

interwoven with the process of enrolment. The Learned Single Judge observed in Ext. P2 as follows:

***“So essentially this Court has to find out whether the impugned special fee is the one which is for enrolment and is inextricably interconnected and interwoven with the process of enrolment and if that be so, it is totally beyond the rule making power of the State Bar Council to make any provision in that regard as it would amount to blatant violation of the mandate by the Parliament in Sec. 24(1)(f) of the Act.”***

19. It is submitted that it is evident that the “Delay Condonation Fees” is “*inextricably interconnected and interwoven with the process of enrolment*” as without paying the said fees, a candidate who had not enrolled within 5 or 10 years of obtaining the law degree cannot secure enrolment. Additionally, it is submitted that there is no legal requirement under any law that a law graduate has to enroll within a certain number of years after obtaining the law degree or even enroll at all. Therefore, it is submitted that there arises no need for the “delay” to be condoned in the first place. Hence, the levy of “Delay Condonation Fees” for attempting to enroll 5 years or 10 years after obtaining the law degree is illegal and arbitrary.

20. It is submitted that the Hon’ble Supreme Court in **Mahipal Singh Rana v. State of UP** reported in **AIR 2016 SC 3302** expressed displeasure over the existing regulatory mechanism governing advocates and tasked the Law Commission of India to review provisions of the Advocates Act, resulting in the 266<sup>th</sup> Report of the Law Commission of India. The relevant portions of the 266<sup>th</sup> Report of the Law Commission of India issued in March 2017 are produced herewith and marked as **Exhibit P6.**

21. Ext. P6 report has a section which consists of the proposed amendments to the Advocates Act, 1961 suggested by the second respondent. The proposed amendment removes the fixed enrolment fee of Rs. 600/- and instead gives the freedom to State Bar Councils to fix any amount of enrolment fees in their rules. The language of the amended Section 24 (1) (f) as proposed by the second respondent and as noted in Ext. P6 report is as follows:

*"24(1)(f): 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 as may be prescribed by the Rules.**"*

22. It is submitted that the amendment to Section 24 (1) (f) suggested by the second respondent to the Law Commission of India **makes it crystal clear that as per the understanding of the second respondent, it is presently not within the power of the first respondent to prescribe enrolment fees in variance with Rs 750/- as provided in the Advocates Act, 1961.**

23. It is submitted that the Law Commission of India, however, suggested a different amendment to Section 24 (1) (f). The amendment suggested by the Law Commission of India increases the enrolment fee from Rs. 750/- to Rs. 2500/-. The language of the amended Section 24 (1) (f) as proposed by the Law Commission of India is as follows:

*"Amendment of Section 24. In Section (1) of Section 24 of the Advocates Act, 1961: (a) in clause (f)*

*(I)(i) for the words "six hundred rupees", the words "two thousand rupees" shall be substituted;*

*(ii) for the words "one hundred fifty rupees", the words "five hundred rupees" shall be substituted."*

24. Thus, in the absence of any amendments, the law as it stands today fixes the enrolment fee that can be collected by State Bar Councils at Rs 750/- and it is wholly ultra vires the provisions of the Advocates Act, 1961 to prescribe fees in excess of such amount.

25. It is submitted that the first and second respondents require candidates for enrolment **to pay Rs. 3000/- towards the Bar Council Of India Welfare Fund at the time of enrolment.** However, Rule 40, Part VI, Chapter II, Section IV A of the Bar Council of India Rules clearly states that the obligation to pay such an amount is on '**Advocates**' and the same is therefore not on prospective advocates. A copy of the relevant Notification issued by the Bar Council of India as per which the said Rule 40 was amended into its present form is produced herewith and marked as **Exhibit P7**. The language of Rule 40 of Part VI, Chapter II, Section IV A of the Bar Council of India Rules is as follows:

*"Every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 1,800/- every third year commencing from the date of notification in Gazette along with a statement of particulars as given in the form set out at the end of these Rules, the first payment to be made on or before the date of notification in Gazette or such extended time as notified by the Bar Council of India or the concerned State Bar Council.*

***Provided further, however, that an advocate shall be at liberty to pay in lieu of the payment of Rs. 1,800/- every three years a consolidated amount of Rs. 3,000/-. This will be a life time payment to be kept in the fixed deposit by the concerned State Bar Council. Out of life time payment 80% of the amount will be retained by the State Bar Council in a fixed deposit and remaining***

*20% has to be transferred to the Bar Council of India. The Bar Council of India and State Bar Council have to keep the same in a fixed deposit and the interest on the said deposits shall alone be utilized for the Welfare of the Advocates."*

26. It is submitted that the language of Rule 40 makes it clear that the obligation to make payments under the said Rule is on advocates and not on prospective advocates and that advocates shall be at liberty to make part payments every three years as opposed to a one time consolidated amount. The Honourable Supreme Court in **Indian Council for Legal Education v. Bar Council of India** reported in **AIR 1995 SC 691** dealt with the legality of an age limit on enrolment that the Bar Council of India had introduced through its rule making powers. A copy of the Judgment dated 17-01-1995 of the Hon'ble Supreme Court in Indian Council for Legal Education v. Bar Council of India reported in AIR 1995 SC 691 is produced herewith and marked as **Exhibit P8**.

27. It is submitted that the second respondent argued therein that the impugned rule was within its rule-making power and traced the power to make such a rule to clause (ah) of Section 49 (1) of the Advocates Act. Section 49 (1) (ah) is as follows:

**"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—*  
*(ah) - the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court;"*

28. The Hon'ble Supreme Court in response to the argument that the power to prescribe an age limit for enrolment was traceable to Section 49 (1) (ah) held in Ext. P8 judgment as follows:

*"On the plain language of the said clause it seems clear to us that under the said provision the Bar Council of India can lay down the 'conditions' subject to which 'an advocate' shall have the right to practise. **These conditions which the Bar Council of India can lay down are applicable to an advocate, i.e., a person who has already been enrolled as an advocate by the concerned State Bar Council. The conditions which can be prescribed must apply at the post-enrolment stage since they are expected to relate to the right to practise. They can, therefore, not operate at the pre enrolment stage.** By the impugned rule, the entry of those who have completed 45 years at the date of application for enrolment is sought to be barred. The rule clearly operates at the pre-enrolment stage and cannot, therefore, receive the shelter of Clause (ah) of Section 49(1) of the Act. Under the said clause conditions applicable to an advocate touching his right to practise can be laid down, and if laid down he must exercise his right subject to those conditions. But the language of the said clause does not permit laying down of conditions for entry into the profession."*

29. It is submitted that the interpretation of the Hon'ble Supreme Court with respect to Section 49 (1) (ah) is squarely applicable to Rule 40 as well. **Rule 40 uses the term 'advocate' which clearly indicates that payment towards welfare fund should not be a pre-enrolment condition.** Further, levying the fee

at the time of enrolment goes against the inherent flexibility which the Rule itself provides to make part payments every three years.

30. It is submitted that the second respondent pursuant to **Resolution No. 114/2012** requires advocates who want to transfer their names from one State Roll to another to pay Rs 2000 to the second respondent. A copy of Resolution No. 114/2012 is produced herewith and marked as **Exhibit P9**. Prior to the passing of Ext. P9 resolution, no fees were required to be paid to effect such transfers. It is submitted that the levy of such fees for the purposes of transferring names of advocates from one State Roll to another is ultra vires the provisions of the Advocates Act, 1961.

31. Section 18 (1) of the Advocates Act, 1961 clearly lays down that once an advocate has made an application in the prescribed form for transfer of name from the rolls of one State Bar Council to another, the 2<sup>nd</sup> respondent shall direct the concerned State Bar Councils to do the needful without the payment of any fee. The relevant portion of Section 18 (1) of the Advocates Act, 1961 is as follows:

*"Transfer of name from one State roll to another: Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall **without the payment of any fee**, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction;"*



32. It is submitted that Section 18 (1) clearly provides that the transfer of name of an advocate from the rolls of one State Bar Council to another shall be done without the requirement of payment of any fee. **When the Act clearly lays down a prohibition on the collection of fees, the second respondent cannot resort to its rule making powers to levy such fees.** It is therefore submitted that the levy of such fees is ultra vires Section 18 (1) of the Advocates Act, 1961 and therefore illegal.

33. Hence, aggrieved by the first and second respondent's illegal practice of levying enrolment fees in excess of Rs 750/- and imposing transfer fees contrary to the provisions of the Advocates Act, 1961 and the law as laid down by the Hon'ble Supreme Court and this Hon'ble Court, the petitioners are left with no efficacious and alternative remedy than to approach this Hon'ble Court on the following:

#### **GROUND**

- A. The levy of enrolment fees in excess of Rs. 750/- by the first respondent and the imposition of transfer fees by the second respondent are illegal, arbitrary, and contrary to the legitimate expectations of the petitioners.
- B. The actions of the first and second respondents result in closing the doors for common persons to enter the legal profession, thus pulling back the progress of the legal system in terms of accessibility and diversity.
- C. Section 24 (1) (f) of the Advocates Act, 1961 fixes the enrolment fees that can be levied by State Bar Councils at Rs. 750/-. The first respondent is collecting enrolment fees of Rs 10,650/- by issuing Rules that are ultra vires Section 24 (1) (f) of the Advocates Act, 1961.

- D. Ext. P2 judgment of this Hon'ble Court makes it clear that State Bar Councils cannot resort to rule making powers provided under Section 24 (1) (e) and Section 28 (2) (d) to make rules that provide for enrolment fees in excess of Rs. 750/- as fixed by the Parliament and provided for in Section 24 (1) (f) of the Advocates Act, 1961.
- E. The Division Bench of this Hon'ble Court in Ext. P4 judgment, while dismissing the appeal against Ext. P2 judgment, held that once the legislature has prescribed enrolment fee, another fee, be it called a special fee or anything else, cannot legitimately be prescribed by a State Bar Council without an express legislative sanction.
- F. Section 24 (1) (e) and Section 28 (2) (d) of the Advocates Act, 1961 only empowers the first respondent to provide rules prescribing the conditions subject to which a person can be admitted as an advocate on its rolls. These provisions can only deal with the eligibility conditions and the same cannot empower the first respondent to prescribe any additional fee for enrolment, either in the form of enrolment fee or special fee. Therefore, the prescription of fees in excess of Rs. 750/- by the first respondent is wholly ultra vires its powers under the Advocates Act, 1961.
- G. The Special Leave Petition filed by the first respondent against Ext. P4 judgment was dismissed by the Hon'ble Supreme Court as per Ext. P5 Order.
- H. The levy of 'Delay Condonation Fee' of Rs. 5,000/- and Rs. 10,000/- by the first respondent is nothing but enrolment fee by a different name since non-payment of the same will result in lack of admission to the rolls of the first respondent. This Hon'ble Court in Ext. P2 judgment held that the test of whether a fee is an enrolment fee depends not on the nomenclature of

the fee but on whether such fee is intricately interwoven with the process of enrolment. 'Delay Condonation Fee' is intimately interwoven with the enrolment process since the non-payment of the same will be fatal to the candidate's prospects of getting enrolled.

- I. The language of Rule 40 of Part VI, Chapter II, Section IVA of the Bar Council of India rules makes it clear that the payments to the Advocate Welfare Fund are to be made at a post-enrolment stage and not as a pre-enrolment condition. The Rule is applicable to '**Advocates**' and therefore such amounts can be collected only after law graduates have enrolled with the State Bar Councils and not prior to their enrolment.
- J. The Honourable Supreme Court in Ext. P8 judgment while interpreting the rule making powers of the second respondent held that the conditions which the second respondent can lay down, under Rule 49, are applicable only to an advocate, i.e., a person who has already been enrolled as an advocate by the concerned State Bar Council and not at pre-enrolment stage. The same rationale applies to the powers of the second respondent with respect to Rule 40.
- K. Rule 40 itself provides advocates with the option to make the payment in instalments. This option is not made available to advocates in Kerala who are forced to make the entire payment at the time of enrolment, thereby increasing the financial burden of common persons who desire to enter the legal profession.
- L. Section 18 (1) of the Advocates Act, 1961 clearly lays down that the transfer of the name of an advocate from one State Roll to another State Roll shall be done without the payment of any fees. Despite the Act clearly prohibiting the levy of any fees for transfer of names from one State Roll to another State Roll, the 2<sup>nd</sup> respondent is charging a fee of Rs 2000/- for such transfers

by issuing Rules that are ultra vires Section 18 (1) of the Advocates Act, 1961.

On these and other grounds to be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to allow this Writ Petition by granting the following:

**RELIEFS**

- 1) Issue a writ of mandamus or any other writ, order or direction, declaring as illegal the levy of enrolment fees in excess of Rs 750/- by the first respondent on account of such levy being ultra vires and contrary to the provisions of the Advocates Act, 1961.
- 2) Issue a writ of mandamus or any other writ, order or direction declaring that the imposition of Delay Condition Fee on law graduates who do not enroll within a specified period of time after obtaining their law degree is illegal.
- 3) Issue a writ of mandamus or any other writ, order or direction declaring that the payment of Rs 3,000/- towards Advocates Welfare Fund is a post-enrolment condition as evident from the language of Rule 40 of Part VI, Chapter II, Section IVA of the Bar Council of India rules and direct the first respondent to refrain from insisting on its payment prior to enrolment.
- 4) Issue a writ of mandamus or any other writ, order or direction declaring as illegal the levy of fees by the second respondent for transfer of names of Advocates from the rolls of one State Bar Council to another State

Bar Council on account of such levy being ultra vires Section 18 (1) of the Advocates Act, 1961.

- 5) Issue such other appropriate writ, order or direction which this Hon'ble Court may deem fit and just in the circumstances of the case.

**INTERIM RELIEF**

Restrain the first and second respondents from collecting enrolment fees in excess of Rs. 750/- and fees for transfer of names of advocates from the rolls of one State Bar Council to another State Bar Council, respectively, pending the disposal of this Writ Petition.

Dated this the 19<sup>th</sup> day of November, 2019.

**PETITIONERS**

1. Sd/-
2. Sd/-
3. Sd/-
4. Sd/-
5. Sd/-

Sd/-  
**Counsel for the petitioners**

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM**

W.P.(Civil)No. of 2019  
(Special Original Jurisdiction)

Ajiz M.K. and others : Petitioners  
v.  
Bar Council of Kerala and another : Respondents

**AFFIDAVIT**

I, Ajiz M. K., aged 21 years, S/o Sakeer M. K., residing at Kuvakkattail House, Perumpadappu P O, Malappuram – 679580, do hereby, solemnly affirm and state as follows:-

1. I am the first petitioner in the above Writ Petition (Civil) and I am fully conversant with the facts of the case. I am swearing to this affidavit on my own behalf and on behalf of the other petitioners also.

2. The averments contained in the above Writ Petition (Civil) are true to the best of my knowledge, information and belief.

3. The Exhibits produced along with the above Writ Petition (Civil) are true copies of its originals.

4. The Petitioners have not filed any other Petition before this Hon'ble Court, seeking the same relief earlier.

5. The Petitioners are seeking to espouse a public cause and they have no personal or private interest in the matter and there is no authoritative pronouncement by the Supreme Court or the High Court on the question raised and that the result of the litigation will not lead to any undue gain to themselves or to anyone associated with them.

6. It is submitted that no other public interest litigation has been filed by any of the petitioners in any subject.

7. It is therefore prayed that this Hon'ble Court may be pleased to grant the reliefs prayed for in the above Writ Petition (Civil).

The above facts are true,

Dated this the 19<sup>th</sup> day of November, 2019.

Sd/-  
Deponent

Solemnly affirmed and signed before me by the deponent on this the 19<sup>th</sup> day of November, 2019, in my office at Ernakulam.

Sd/-  
Santhosh Mathew,  
Advocate