

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION No. 1114/2018

1. Rashtrasant Tukdoji Maharaj Nagpur University, Nagpur, Ravindranath Tagore Marg, Maharaj Bag Chowk, Civil Lines, Nagpur, through its Registrar.
2. Rashtrasant Tukdoji Maharaj Nagpur University's Dr. Babasaheb Ambedkar College of Law, Nagpur, through its Principal.

PETITIONERS

.....VERSUS.....

1. State of Maharashtra, Department of Higher and Technical Education, Mantralaya, Mumbai-32, through its Secretary.
2. Bar Council of India, 21, Rouse Avenue, Institutional Area, New Delhi-110002, through its Chairman.

RESPONDENTS

Shri M.G. Bhangde, Senior Advocate with Shri P.B. Patil, counsel for petitioners.
Shri J.Y. Ghurde, Assistant Government Pleader for respondent no.1.
Shri A.S. Jaiswal, Senior Advocate with Shri K.R. Narwade, counsel for respondent no.2.

CORAM : A.S. CHANDURKAR AND AMIT BORKAR, JJ.

ARGUMENTS WERE HEARD ON : 12TH MARCH, 2020

JUDGMENT IS PRONOUNCED ON : 08TH APRIL, 2020

JUDGMENT

The validity of Rule 2(xxiv) of the Rules of Legal Education-2008 as framed by the Bar Council of India has been challenged in this writ petition filed under Article 226 of the Constitution of India as being *ultra vires* the rule making power of the Bar Council of India under the Advocates Act, 1961.

2. **RULE.** Rule made returnable forthwith and heard the learned counsel for the parties at length.

3. The petitioner no.1-Rashtra Sant Tukdoji Maharaj Nagpur University (for short, 'the University') is a State University governed by the provisions of the Maharashtra Public Universities Act, 2016. The petitioner no.2-Rashtra Sant Tukdoji Maharaj Nagpur University's Dr.Babasaheb Ambedkar College of Law (for short, 'the Law College') is a college that is being conducted by the University. The Law College has been conferred the status of "Permanent Approved College" by the Bar Council of India in 1995 as per the law prevailing then. This fact was communicated to the Law College by the Bar Council of India on 30.11.1995. According to the Bar Council of Maharashtra & Goa there were two categories of law colleges in the State of Maharashtra. Some law colleges were permanently approved while others were temporarily approved. The name of the Law College herein was included in the list of permanently approved law colleges. The Bar Council of India framed the Rules of Legal Education, 2008 (for short, 'the Rules of 2008'). These rules came into force from 14.09.2008. The said Rules were to replace all previous rules, directives, notifications and resolutions relating to matters covered under the said Rules. As per Rule 2(xxiv), the expression "regular approval" means approval for a period not exceeding five years

including permanent approval granted earlier to any Centre of Legal Education before the Rules of 2008 came into force. These rules prevented Centres of Legal Education from imparting education without obtaining approval of the Bar Council of India. The manner in which regular approval was to be granted and inspection of Centres of Legal Education was to be undertaken was also prescribed.

4. According to the Bar Council of India, it was necessary for the Law College to have got itself approved in the manner prescribed by the Rules of 2008. The list of law colleges having approval of affiliation from the Bar Council of India as on 01.01.2013 was published and the Law College was shown to have been approved up to the year 2010-11. The Directorate of Higher Education called upon the Principals of all the law colleges in the State to comply with the requirements prescribed by the Bar Council of India by 31.08.2016 to enable such approved law colleges to be included in the further academic process for the year 2016-17. The Principal of the Law College accordingly remitted the requisite fees to the Bar Council of India seeking approval for the period from 2016-17 and onwards. It also furnished the information required on 26.07.2016. It appears that the Bar Council of India demanded an amount of Rs.21,50,000/- (Rupees Twenty One Lakhs Fifty Thousand) from the Law College to enable it to get a no objection in that regard. The parties

entered into communication with each other in that regard. Since there was absence of affiliation with the Law College, the State Bar Council refused to enroll graduates who had completed their education from the Law College. Ultimately on 09.01.2019 the Bar Council of India called upon the Law College to deposit the entire amount as directed. In the present writ petition besides challenging the validity of Rule 2(xxiv) of the Rules of 2008, the petitioners have sought a declaration that the Law College was not required to seek fresh approval from the Bar Council of India since it was already granted permanent approval. In the alternate, it has been prayed that the Law College would be required to seek further approval only from the academic session 2014-15 and onwards.

5. Affidavit-in-reply has been filed by the Bar Council of India justifying framing of the Rules of 2008. The manner in which the Bar Council of India was required to revise the earlier rules as framed relating to standards of legal education and recognition of degrees in law has been stated. Reference is made to the framing of the draft rules and consideration of suggestions of various Universities of the State Bar Councils. It has been stated that Resolution No.110 of 2008 was passed by the Bar Council of India accepting the Rules of 2008 and the same being brought into force from the academic session 2009-10. According to the Bar Council of India it was necessary for the Law College to get

itself approved under the Rules of 2008 and till the same was done it was not permissible for it to impart legal education leading to a degree in law. It has been stated that Rule 2(xxiv) was valid and the same was within the rule making power of the Bar Council of India. It has also been stated that initially the Law College had taken steps under the Rules of 2008 for grant of regular approval by making an application in that regard and challenge to the validity of Rule 2(xxiv) was only by way of an afterthought.

6. Shri M.G. Bhangde, learned Senior Advocate for the petitioners in support of the challenge to the validity of Rule 2(xxiv) of the Rules of 2008 submitted that the Advocates Act, 1961 (for short, 'the Act of 1961') did not confer any power whatsoever to the Bar Council of India to frame rules that would have retrospective effect. The rules as framed could be given prospective effect only. By including permanent approval that was granted earlier by the Bar Council of India to the Law College in the term "regular approval" as defined by Rule 2(xxiv), a vested right that had accrued in favour of the Law College by virtue of such grant could not be taken away. Since the Law College had been granted permanent approval which fact was clear from the communication dated 30.11.1995 issued by the Bar Council of India, the status of the Law College as permanently approved could not be taken

away in a retrospective manner. The Rules of 2008 in the matter of grant of regular approval would apply only to those Centres of Legal Education that were established after 14.09.2008. The status of the Centres of Legal Education established before the Rules of 2008 came into force and permanently approved could not be altered. Placing reliance on the decision in *K. Sakthi Rani Versus Secretary, Bar Council of Tamil Nadu, Chennai (Madras)* [2010(4) MLJ 849] it was submitted that the Madras High Court had considered the applicability of the Rules of 2008 with regard to those students who had completed law course when the Rules of 2008 came into force. It was held therein that the Rules of 2008 being in the nature of subordinate legislation were required to be construed as prospective in nature and unless the Act of 1961 gave such power, no retrospective effect could be given. It was held that explanation to Rule 5 of the Rules of 2008 would have prospective application. While urging that grant of permanent approval to the Law College was in the nature of a “vested right” and that the same could not have retrospective operation, reliance was placed on the decision in *Chairman, Railway Board & Others Versus C.R. Rangadhamaiah & Others* [(1997) 6 SCC 623] in that regard. Even though the Law College took some steps in the matter of seeking approval after the Rules of 2008 came into force, the same would not preclude the Law College from challenging the validity of Rule 2(xxiv) thereof. While Rule 45 stipulated that any resolution passed earlier by

the Bar Council of India that was inconsistent with the Rules of 2008 was not to bind the Bar Council of India and other bodies under the Act of 1961 after the Rules of 2008 came into force, Rule 46 on the other hand provided that any action, decision or direction taken/given by the Bar Council of India before the Rules of 2008 came into force was treated to be valid, binding on the institutions and was to remain in force notwithstanding anything contained in the Rules of 2008. Thus only such Rules that were legally framed by the Bar Council of India would be saved and Rule 2(xxiv) could not be applied by relying upon Rule 45 of the Rules of 2008.

Without prejudice to the aforesaid contentions and in the alternate it was submitted that assuming the Rules of 2008 which came into force from the academic session 2009-10 to be valid, the same would apply to the Law College on the expiry of a period of five years as prescribed. The application of said Rules vis-a-vis the Law College would be from the academic session 2014-15 and not the academic year 2009-10. The Bar Council of India therefore was not justified in seeking to apply the Rules of 2008 to the Law College from the academic session 2009-10.

7. Per contra, Shri A.S. Jaiswal, learned Senior Advocate for the Bar Council of India in support of the validity of Rule 2(xxiv) referred to

various provisions of the Act of 1961. Reference was made to the provisions of Section 7(1)(h) and (i) to urge that it was the function of the Bar Council of India to promote legal education and to lay down the standards of legal education in consultation with the Universities imparting such education and the State Bar Councils. It was also its function to recognize such Universities whose degrees would permit enrolment as an Advocate and for that purpose either the Bar Council of India or the State Bar Councils were required to visit and inspect the Universities. Referring to the provisions of Section 49(1)(d) of the Act of 1961 it was submitted that the Bar Council of India had been conferred the power to make rules for discharging its functions and therefore it was required to prescribe the standards of legal education to be observed by the Universities as well as to inspect the Universities for that purpose. Referring to the provisions of Rules of 2008 it was submitted that as per Rule 1(c), the Rules of 2008 had replaced the earlier prevailing rules as regards the matters covered under the Rules of 2008. He also referred to Rule 2(iv), Rule 14(1) and Rule 45 along with Rule 46 thereof. It was submitted that even though the Bar Council of India by its communication dated 30.11.1995 had included the name of the Law College in the list of recognized colleges and thereafter the Bar Council of Maharashtra & Goa had referred to the Law College as a permanently approved law college it would not mean that the same would have the effect of exempting the

Law College from seeking regular approval under the Rules of 2008. It was also submitted that there was no document brought on record by the petitioners to indicate actual grant of permanent approval by the Bar Council of India. Similarly, the terms and conditions that were applicable for grant of such permanent approval had not been indicated. It was then submitted that the object behind framing of the Rules of 2008 was to improve the standards of legal education keeping in view the passage of time and various advancements in that field. A provision of regular inspection was also made in that regard. Referring to Rule 16 of the Rules of 2008 it was submitted that the same would apply even to existing law colleges while Rule 19 prescribed affiliated colleges being regularly inspected. There was no question of any vested right being taken away inasmuch as the approval granted earlier was not being withdrawn. The Law College was merely required to comply with the requirements as prescribed for maintaining the standards in legal education on the basis of which approval could be continued. The manner in which the approval already granted was to be renewed therefore did not indicate any vested right being taken away. It was submitted that the decisions relied upon by the learned Senior Advocate for the petitioners were clearly distinguishable in view of the facts of the case. Reliance was placed on the decision in *Archana Girish Sabnis Versus Bar Council of India & Others* [(2015) 4 SCC 498] to indicate that the Bar Council of

India had acted within its rule making power in framing the Rules of 2008. Rules 45 and 46 were required to be read together harmoniously. The same would indicate that what was inconsistent with the Rules of 2008 and done prior to the Rules of 2008 would not be binding while whatever was consistent with the Rules of 2008 would be saved.

As regards the alternate submission made on behalf of the petitioners it was submitted that the Rules of 2008 having come into force from the academic session 2009-10, the same would be applicable from that session itself. There was no question of the said Rules in the matter of seeking regular approval being made applicable to the Law College from the academic session 2014-15. It was thus submitted that there was no merit in the challenge as raised to the validity of Rule 2(xxiv) of the Rules of 2008 and the writ petition was liable to be dismissed.

8. In reply to the aforesaid submissions the learned Senior Advocate for the petitioners submitted that it was the stand of the Bar Council of India in paragraph N of its affidavit that prior to the academic year 2009-10, some Universities/institutions had been granted deemed/permanent approval by the Bar Council of India and that with the coming into force of the Rules of 2008 the status of such deemed/permanently approved colleges was removed. Since such stand

was taken in the reply itself it was not open for the Bar Council of India to urge that there was no concept of grant of permanent approval by it. It was further submitted that the provisions of Rule 14 of the Rules of 2008 would not be applicable to an existing permanently approved law college and the power to frame rules having retrospective effect had not been indicated by the Bar Council of India.

9. We have heard the learned Senior Advocates for the parties at length and with their assistance we have perused the relevant documentary material placed on record. We have also given due consideration to the respective submissions. For the purposes of considering the validity of Rule 2(xxiv) of the Rules of 2008 vis-a-vis the provisions of the Act of 1961, it would be necessary to refer to the relevant provisions firstly of the Act of 1961. The Bar Council of India has been constituted under Section 4(1) of the Act of 1961 while the State Bar Councils have been constituted under the provisions of Section 3(1) thereof. Section 7 lays down various functions of the Bar Council of India. Amongst others, Section 7(1)(h) empowers the Bar Council of India to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. Section 7(1)(i) empowers the Bar Council of India to recognize the Universities whose degree in law would be a

qualification for enrolment as an Advocate and for that purpose it was required to visit and inspect the Universities or it could cause the State Bar Councils to visit and inspect the Universities according to its directions. Section 24(1)(c) prescribes persons who may be admitted as Advocates on a State Roll. Section 49 confers general power on the Bar Council of India to make rules for discharging its functions under the Act of 1961. Section 49(1)(af) prescribes making of rules in the matter of minimum qualifications required for admission to a course of degree in law in any recognized University while Section 49(1)(d) permits rules to be framed in the matter of standards of legal education to be observed by the Universities in the country and the inspection of Universities for that purpose.

10. The events leading to the framing of the Rules of 2008 need to be referred to. The Legal Education Committee constituted by the Bar Council of India as per provisions of Section 10(2)(b) of the Act of 1961 in its meeting held on 28.06.2002 to 30.06.2002 constituted a Sub-Committee to suggest actions to be taken to improve the quality of legal education and especially the re-drafting of the Rules relating to the Standards of Legal Education. Thereafter, in its meeting held on 07.11.2003, the revision of the Bar Council of India Rules in Part IV was proposed by referring the matter to the Rule making Committee. On 04.05.2007, the Legal Education Committee after finalizing the draft

Rules, invited the comments of all the Universities and State Bar Councils. In its subsequent meeting held on 01.02.2008, the Legal Education Committee referred to the comments and suggestions received from about 38 Universities/Law Colleges and three State Bar Councils. The Bar Council of India in its meeting held on 12.09.2008 and 14.09.2008 passed resolution no.110 of 2008 accepting the Rules as revised by its Legal Education Committee. The said revised Rules were thereafter implemented from the academic year 2009-10.

The aforesaid indicates the various steps undertaken by the Bar Council of India before it resolved to bring into force the Rules of 2008. It cannot be ignored that the exercise of framing the Rules of 2008 was preceded by a detailed exercise being undertaken by a body of experts which was the Legal Education Committee.

11. Certain relevant provisions of the Rules of 2008 may now be referred to. Rule 1(c) prescribes that the Rules of 2008 would replace all previous rules, directives, notifications and resolutions relating to the matters covered under the Rules of 2008. Rule 2(iv) indicates “Centres of Legal Education” to mean approved colleges of law, departments of law of Universities and affiliated colleges or schools of law of recognized Universities so approved. Rule 2(xxiv) validity of which has been put to test reads thus:-

“2(xxiv) “Regular Approval” means approval for not more than five years and includes permanent approval earlier granted to any Centre of Legal Education before these Rules come into force.”

Chapter II of the Rules of 2008 lays down the Standards of Professional Legal Education. Rule 3 refers to recognized Universities which include approved affiliated Centres of Legal Education. A State Bar Council is required to ensure that the applicants passing out from such recognized Universities and approved affiliated law centre of legal education are enrolled. Rule 8 prescribes the standard of law courses while Rule 11 prescribes minimum standard infrastructure to be stipulated by the Bar Council of India. Chapter III lays down steps for inspection, recognition and accreditation. Under Rule 14 no centre of legal education is permitted to admit any student and impart instructions in a course of study of law unless the same has been approved by the Bar Council of India after inspection of the University or Centres of Legal Education concerned. Rule 19 prescribes types of inspection by the Inspection Committee of the Bar Council of India. Regular inspection means an inspection conducted after the initial inspection at the end of temporary approval or for granting a regular approval and thereafter at least once in every five years unless the University or Centre of Legal Education concerned has sought or has been inspected for accreditation. Rule 26 refers to approval granted by the Bar Council of India on the

recommendation of the Legal Education Committee. Such approval may either be temporary approval for a period of not more than three years to a newly proposed institution or regular approval for a period not more than five years when the institution fulfills all standard norms. Chapter VI makes various miscellaneous provisions. Rule 42 requires all approved Centres of Legal Education of the Universities whose degrees are approved for enrolment to submit to the respective University with a copy to the Bar Council of India an annual return in the prescribed form. Under Rule 44 the Bar Council of India is required to notify on its website the names of Universities whose degrees in law are recognized alongwith list of approved Centres of Legal Education. Rule 45 giving over-riding effect to the Rules of 2008 reads thus:-

“45. Over-riding effect.

Any resolution passed earlier by Bar Council of India / Legal Education Committee inconsistent with these rules shall not bind the Bar Council of India and all other bodies constituted in pursuance of the Advocates Act, 1961, after these rules come into force.”

Rule 46 which is the Savings provision reads thus:-

“46. Savings.

Any action, decision or direction taken or directed by the Bar Council of India under any Rule or Regulation in force at any time earlier than these Rules coming into force, shall be valid, binding on the institutions as the case may be

and remain in enforce notwithstanding anything contained in these Rules.”

12. On a complete reading of the Act of 1961 and especially the provisions of Sections 7, 24 with Section 49 of the Act of 1961, it becomes clear that it is the function of the Bar Council of India under Section 7(1)(h) to promote legal education and lay down standards of such education in consultation with Universities in India imparting such education as well as the State Bar Councils. It is also its function to recognize Universities whose degree in law is a qualification for enrolment as an Advocate. The Bar Council of India is also required to inspect Universities for that purpose or cause the State Bar Councils to visit and inspect Universities in that regard. It can also be seen that a person who seeks to be admitted as an Advocate on a State roll is required to fulfill various conditions including obtaining a degree in Law which is recognized by the Bar Council of India for the purposes of the Act of 1961.

13. To enable the Bar Council of India to discharge its functions under Section 7 of the Act of 1961, it has been empowered to make rules in the matter of prescribing the standards of legal education to be observed by the Universities and also to inspect Universities for that purpose. The expression “the standards of legal education to be observed

by the Universities” in Section 49(1)(d) of the Act of 1961 does not envisage a one-time exercise being undertaken by the Bar Council of India or the Universities. Maintaining standards of education cannot be confined to any time frame nor can legal education remain static. It has to evolve with the passage of time keeping pace with developments in legal fields across the world. Though Universities may confer degrees in Law, it is the function of the Bar Council of India to recognize such Universities whose degree in Law could be the qualification for enrolment as an Advocate. In that process, the Bar Council of India has to inspect the Universities or require the State Bar Councils to visit and inspect them. While doing so, the Bar Council of India would be concerned with promoting legal education that would enable graduates in Law obtaining degrees from such recognized Universities to stand up to changing times and especially the advancements in various fields of law.

14. By applying principles of purposive construction, an interpretation that would help in attaining the object and purpose of the Act of 1961 would have to be adopted rather than an interpretation that would restrict the scope of its operation. On a composite reading of the Act of 1961 especially the provisions of Sections 7(1)(h), 24(1)(c)(iii) and (iii-a) alongwith Section 49(1)(af)(ag) and (d) of the Act of 1961 and by adopting a purposive mode of construction of the said provisions,

we find that the Bar Council of India while discharging its function of promoting legal education and laying down standards of such education has been conferred the necessary power to prescribe, by framing rules, the standards of legal education to be observed by Universities. This rule making power would thus include the power to modify existing rules with a view to maintain and improve the standards of legal education in Universities.

The matter can be viewed from another angle. The Bar Council of India while discharging its function of promoting legal education and prescribing standards thereof to be observed by Universities would be required to take various steps from time to time. While doing so, the existing processes as well as prevailing procedures would require modifications from time to time. The rule making power conferred on an Authority has to be construed in a manner that would enable the object of the enactment in question being achieved. If the rule making power conferred by Section 49(1)(d) of the Act of 1961 has to supplement the efforts of the Bar Council of India in discharging its functions under Section 7(1)(h), that rule making power would have to be construed as wide enough to permit the Bar Council of India in modifying existing procedures in the matter of grant of affiliation and approval to Universities and Centres of Legal Education. This would enable the Bar Council of India to take all necessary steps to improve the standards of

legal education to be imparted by Universities and their inspection for that purpose.

Taking the opposite view by giving limited rule making power to the Bar Council of India would hamper it from effectively discharging its function of promotion of legal education and laying down standards thereof. Wide powers conferred under the parent Act to the Bar Council of India cannot be permitted to be whittled down by construing the Rules in a narrow compass.

15. Yet another mode of interpretation recognized by the Hon'ble Supreme Court is based on the nature of provisions in the Statute by construing it as an ongoing statute. Reference in this regard can be usefully made to the decision in *State of Maharashtra Versus Dr.Praful Desai* [2003(2) Mh.L.J. 868]. While considering the question of permissibility of recording evidence in a criminal trial through video conferencing, the Hon'ble Supreme Court after referring to the provisions of Section 273 of the Code of Criminal Procedure, 1973 construed the Code as an ongoing statute. The principles set out by Francis Bennion in his commentary "Statutory Interpretation" were referred to. To quote "An enactment of former days is thus to be read today, in the light of dynamic processing receiving over the years, with such modification of the current meaning of its language as well to now give effect to the

original legislative intention”. It was presumed that Parliament intended the statute in question to be applied at any future time in such a way so as to give effect to the original intention.

The functions of the Bar Council of India of promoting legal education and laying down standards of such education are functions of such nature that are bound to evolve with passage of time requiring innovation and change. Advocacy being a professional skill and the Bar Council of India being conferred the duty and responsibility of acting as the guardian of the legal profession, it has to take steps from time to time in the backdrop of the developing legal scenario. The general power of making rules as conferred on the Bar Council of India by Section 49(1) of the Act of 1961 especially in the matter of prescribing standards of legal education to be observed by Universities imparting such education would therefore have to be construed in that backdrop so as to make it workable in present times. Rule 2(xxiv) of the Rules of 2008 cannot be said to travel beyond the rule making power of the Bar Council of India.

16. The expression “vested” as defined in Black’s Law Dictionary (6th Edition) at Page 1563 means : “Vested, fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.” In *Howrah Municipal Corporation Versus Ganges Rope Co.*

Ltd. [(2004) 1 SCC 663], it was observed that the word “vest” is normally used where an immediate future right in present or future enjoyment in respect of a property is created. It had a “legitimate” or “settled expectation” to obtain right to enjoy property, etc. However, such a “settled expectation” or the so called “vested right” cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law.

It is well settled that no person has a vested right in the matter of procedure. In matters related to procedure, there is a presumption against retrospectivity. In *Gurbachan Singh Versus Satpal Singh & Others* [(1990) 1 SCC 445], the Hon’ble Supreme Court has quoted with approval relevant extracts from Halsbury’s Laws of England, fourth edition Volume 44 at pages 570 and 574. To quote, “The general rule is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are *prima-facie* prospective and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the Legislature. The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament”. Thus, at the highest, the right accruing on

account of grant of approval could be treated to be an existing right, same being subject to complying with prescribed norms.

17. “Approval” in the field of education and conduct of educational institutions is a term used to mean a thing or the state of affairs officially accepted as satisfactory. It is granted by the concerned authority subject to prescribed compliances/requirements being satisfied. Approval in the field of education is a procedural facet that is either granted or rejected subject to requisite standards being achieved or maintained. In the nature of things, it cannot be construed to operate in perpetuity but would naturally be subject to timely assessment. Thus, in the field of education the grant or rejection of approval in the running of an educational institution would be a procedural matter.

Grant of approval being a procedural aspect is also clear from the fact that the matter of approval does not find any place or mention in the Act of 1961. It is only pursuant to the rule making power conferred on the Bar Council of India for the purposes of laying down standards of legal education to be observed by Universities and their inspection that the matter of grant/rejection of approval has been prescribed. The Act of 1961 is silent in that regard. To illustrate this aspect, reference can be made to the provisions of the National Council of Teacher Education Act, 1993. The scheme of the Act envisages through Section 13 inspection of

a recognized institution by the National Council for Teacher Education to ascertain whether the recognized institution is functioning in accordance with the provisions of the Act. Chapter IV of that Act contemplates the manner in which the Teacher Education Institution has to be recognized. The aspect of recognition, affiliation, permission to start a new course as well as inspection of a recognized institution are part of the statutory scheme of that Act itself. The Architects' Act, 1972 stipulates constitution of the Council of Architecture. Every authority granting recognized qualifications is required under Section 18 to furnish such information to the Council with regard to the courses of study and examinations to be undergone for obtaining such qualifications. The Council is empowered by Section 19 to appoint inspectors to inspect any college or institution where architectural education is given. Besides being given the authority to prescribe minimum standards of architectural education, the Council has the power to make representations to the appropriate Government if it finds that the standards prescribed are not being conformed by any college or institution.

Similar provisions can be found in the Indian Medical Council Act, 1956 under which the Medical Council of India is statutorily empowered to recognize medical qualifications, require any University or Medical Institution to furnish information as to courses of study and examinations as well as the authority to inspect examinations conducted.

These are some enactments dealing with the aspect of maintaining professional standards and requirements. The requirements are statutorily prescribed. As noticed above, such statutory provisions are not present in the Act of 1961 except in the form of Section 7 wherein functions of the Bar Council of India are prescribed and the general power to frame rules is conferred on the Bar Council of India under Section 49 of the Act of 1961. This according to us is one more reason to hold that what was granted to the Law College by way of permanent approval was merely an existing right by the Bar Council of India under its rule making power. It did not have the effect of granting a vested right under the Act of 1961.

18. It was strenuously urged by the learned Senior Advocate for the petitioners that as the Law College was granted permanent approval in 1995, it amounted to a right that stood vested in the Law College and that such vested right could not be taken away under the Rules of 2008. As noted above, grant of approval to a Centre of Legal Education as per prevailing norms would only result in conferring a right that could be termed as an “existing right”. An existing right in the matter of grant of approval to impart legal education cannot be raised to a higher pedestal for it to be treated as a right in perpetuity. If advancements in the field of legal education require further compliances to be made by a Centre of Legal Education to maintain its status as an approved centre, it would have to comply with prescribed academic as well as infrastructural

requirements notwithstanding grant of permanent approval earlier. If the Bar Council of India is required to recognize the degree conferred by a Centre of Legal Education that was granted permanent approval prior to the Rules of 2008 coming into force, such centre would have to impart such standard of education that is required to be imparted by a Centre of Legal Education that has been granted regular approval by the Bar Council of India.

Reference can be made to the decision of the Hon'ble Supreme Court in *E.K. Chako Versus The Provident Investment Company* [AIR 1976 SC 2610] wherein it was held that if the legislature forms a new procedure, alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. If a statute deals merely with procedure in an action and does not affect the rights of parties, it would apply *prima-facie* to all actions, pending as well as future. Be it noted that the Law College having been granted permanent approval earlier is not required to undergo the entire process that is required to be undergone while seeking initial approval. It has to subject itself to inspection and other procedures only for the purposes of continuation of approval granted earlier. This would enable grant of regular approval. The right of the Law College of being approved is not affected but continuation of approval is made subject to satisfactory compliance of the requisite requirements as prescribed.

19. Rule 2(xxiv) of the Rules of 2008 defines “regular approval” to mean approval for not more than five years and includes permanent approval granted earlier before the Rules of 2008 came into force. Grant of regular approval under the Rules of 2008 pre-supposes regular inspection of a new University or any affiliated Centre of Legal Education. It is also the basis for seeking accreditation from the Bar Council of India. Permanent approval granted prior to the Rules of 2008 coming into force is now treated as regular approval that is to operate for a period of five years subject to necessary compliances being made. Approval thus granted earlier would be an existing right and not a vested right. This right of approval being purely procedural in nature, permanent approval granted prior to 2008 would therefore have to yield to the requirements prescribed by the Rules of 2008 in the matter of grant of regular approval. There is no scope to interpret said provision of regular approval as excluding permanent approval granted prior to the Rules of 2008 coming into force. In absence of there being any vested right in matters of procedure, the provisions of Rule 2(xxiv) of the Rules of 2008 which include permanent approval granted earlier would not become invalid on the anvil of retrospectivity.

20. Rule 45 of the Rules of 2008 gives over-riding effect to the Rules of 2008 and any resolution passed earlier by the Bar Council of India or the Legal Education Committee which is inconsistent with the

Rules would not bind the Bar Council of India. Rule 46 of the Rules of 2008 saves any action, decision or direction taken or directed by the Bar Council of India under any earlier Rule or Regulation by treating it as valid and binding on institutions while continuing to operate.

Rules 45 and 46 have to be read harmoniously together and when so read, there does not appear to be any inconsistency. Rule 45 refers to earlier resolutions passed by the Bar Council of India as not being binding in case they are inconsistent with the Rules of 2008. Thus, any resolution earlier passed by the Bar Council of India/Legal Education Committee granting permanent approval would not bind the Bar Council of India after the Rules of 2008 came into force. On the other hand, Rule 46 refers to any action, decision or direction taken or directed by the Bar Council of India under the earlier Rules to be valid and binding on the institutions as the case may be. Ordinarily, any action, decision or direction taken or directed by the Bar Council of India would not encompass grant of permanent approval. Permanent approval would be a matter based on a resolution passed by the Bar Council of India or the Legal Education Committee. Hence, even on this count, permanent approval granted earlier would not be saved by applying Rule 46 but in view of the provisions of Rule 45, permanent approval granted earlier being inconsistent with the scheme of the Rules of 2008 would not bind the Bar Council of India after the Rules of 2008 came into force.

21. In *K. Sakthi Rani* (supra), the Madras High Court considered the issue as to whether persons who obtained Post-graduate degrees in Open Universities and thereafter joined the law course and completed the same were entitled to be enrolled on the rolls of the Bar Council of Tamil Nadu or not. It was held that the explanation to Rule 5 of the Rules of 2008 would have to be applied prospectively and it could not be applied to the case of the petitioners therein who had completed the law course prior to 14.09.2008 when the Rules of 2008 came into force. This was on the premise that completion of the law course prior to the Rules of 2008 coming into force resulted in a right being crystallized in favour of the petitioners therein which could not be taken away. The ratio of this decision does not come to the aid of the petitioners herein. Obtaining a particular professional qualification before enforcement of the Rules of 2008 definitely results in a right vesting in favour of such person which cannot be taken away with retrospective effect by virtue of exercise of subordinate legislation. In the present case, we have held that grant of approval, albeit permanent in nature is an existing right and being a matter of procedural compliance, the process can be altered to satisfy the object behind the requirement of obtaining such approval.

Incidentally, the Division Bench of the Madras High Court referred to the decision of this Court in *Inamdar Vahab Badsha & Others Versus Symbiosis Society's Law College, Pune* [1985 Mh.L.J. 438]

wherein it was held that the rule prescribing the minimum percentage of marks in qualifying examination for admission to the law course had rational nexus with the purpose sought to be achieved in exercise of power under Section 7(1)(h), (i), 24 and 49(1) of the Act of 1961. Reference was also made to the decision in *Bar Council of India Versus Aparna Basu Mallick* [AIR 1994 SC 1334], wherein it was held that the Bar Council of India had got ample powers to regulate and control the mode and method by which legal education should be imparted and improved.

For the same reason that grant of permanent approval to the Law College was an existing right and not a vested right, the ratio of the decision in *Chairman, Railway Board & Others* (supra) is also distinguishable.

22. Coming to the alternate prayer made by the petitioners that the Rules of 2008 should be directed to be applied to the Law College from the Academic Session 2014-15, it would be necessary to refer to the events that are transpired after 14.09.2008 when the Rules of 2008 came into operation. By virtue of Rule 2(xxiv) of the Rules of 2008, permanent approval granted earlier stands included in the expression “regular approval”. For the purposes of obtaining regular approval, the law colleges that were granted permanent or deemed approval were called

upon by the Bar Council of India to deposit inspection fees by 30.06.2010. A reminder was also issued to the petitioners on 21.09.2012 by the Bar Council of India. The Bar Council of India thereafter constituted a sub-committee to look into the matter of law colleges that had admitted students without approval of affiliation by the Bar Council of India. The sub-committee recommended payment of default fees of Rs.1,50,000/- per year which amount was increased to Rs.2,00,000/- per year. The Law College applied for approval/recognition for the Academic Year 2016-17 vide application dated 07.07.2016.

It is seen that the Bar Council of India had resolved vide Resolution No.110 of 2008 that the Rules of 2008 would come into force from the Academic Session from 2009-10. With the Rules of 2008 coming into effect, permanent approval granted earlier became a component of regular approval as per Rule 2 (xxiv). Consequent thereto, the modalities prescribed under Chapter III of the Rules of 2008 were required to be satisfied even by the Centres of Legal Education having permanent approval. Rule 14(1) mandates approval by the Bar Council of India without which no Centre of Legal Education can admit any student and impart instructions in a course of study in law. The contention raised on behalf of the petitioners that Rule 14(1) would not apply to the Law College in view of permanent approval granted earlier cannot be accepted. Rule 14(1) takes within its sweep all Centres of

Legal Education, existing as well as proposed. An existing Centre of Legal Education even though permanently approved earlier has to seek regular approval as defined by Rule 2(xxiv) of the Rules of 2008 by following the procedure prescribed. For the purposes of regular approval, inspection as prescribed by Rules 18 and 19 would be necessary. Thus, unless regular approval as contemplated under the Rules of 2008 is received by a Centre of Legal Education notwithstanding it having been granted permanent approval earlier, such Centre of Legal Education would not be in a position to admit any student and impart instructions from 2009-10 onwards. Holding otherwise would cause violence to the plain meaning of the Rules and intention behind enacting the same. Since the Bar Council of India in its list of Law Colleges having approval of affiliation as on 01.01.2013 has indicated that the Law College conducting the three year course had approval upto 2010-11, it becomes clear that from the Academic Session 2011-12, the Law College ought to have taken steps under the Rules of 2008 to secure regular approval. In other words, the permanent approval granted earlier operated till the Session 2010-11 according to the Bar Council of India. It is in that backdrop that the admissions made by the Law College in the absence of regular approval from 2011-12 were sought to be regularized as per the recommendations of the sub-committee constituted by the Bar Council of India. Incidentally, the petitioners did not raise a challenge to the decision of

the Legal Education Committee dated 30.04.2010 requiring law colleges having permanent/deemed approval of affiliation to deposit inspection fees by 30.06.2010.

Hence, the alternate prayer seeking declaration that the Law College was required to seek extension of approval only from the Academic Session 2014-15 onwards cannot be granted. For these very reasons, the challenge to the communication dated 09.01.2019 also cannot be upheld.

23. In the light of all the foregoing reasons we hold that Rule 2(xxiv) of the Rules of Legal Education, 2008 is not *ultra vires* the rule making power of the Bar Council of India. The challenge to its validity fails. The Writ Petition stands dismissed. Rule is discharged leaving parties to bear their own costs.

The interim orders passed in the writ petition shall continue to operate for a period of eight weeks from today.

(AMIT BORKAR, J.)

(A.S. CHANDURKAR, J.)

APTE