

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15123 of 2019
 With
 MISC. CIVIL APPLICATION (FOR REVIEW) NO. 1 of 2020
 In R/SPECIAL CIVIL APPLICATION NO. 15123 of 2019
 With
 CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2020
 In R/SPECIAL CIVIL APPLICATION NO. 15123 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH Sd/-

and
HONOURABLE MR. JUSTICE J.B.PARDIWALA Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

TWINKLE RAHUL MANGAONKAR
 Versus
 UNION OF INDIA

Appearance:

MS MEGHA JANI(1028) for the Petitioner(s) No. 1
 MR MANAN A SHAH(5412) for the Respondent(s) No. 2
 NOTICE SERVED(4) for the Respondent(s) No. 1
 RC JANI AND ASSOCIATE(6436) for the Respondent(s) No. 3

CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
 and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 06/11/2020

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs;

“(A) that the Hon’ble Court be pleased to issue an appropriate writ, order or direction and be pleased to quash and set aside Rule 1 and Rule 2 of the Bar Council of Gujarat (Enrollment) Rules to the extent they prohibit admission of a person who is otherwise qualified to be admitted as an advocate, but is either in full or part time service or employment or is engaged in any trade, business or profession, as an advocate:

Alternatively

the Hon’ble Court be pleased to read down Rule 1 and Rule 2 and declare that a person who is otherwise qualified to be admitted as an advocate, but is either in full or part time service or employment or is engaged in any trade, business or profession, shall be admitted as an advocate, however the enrollment certificate of such a person shall be withheld with the Bar Council and shall lie in deposit with the Council, until the advocate makes a declaration that the circumstances mentioned in Rule 2 have ceased to exist and that he continues to start his practice:

(B) – that pending the hearing and final disposal of this petition, the Hon’ble Court be pleased to direct the Bar Council of Gujarat to accept application form of the Applicant and permit the Applicant to take up the Bar Council Examination.”

2. We need not state the facts of this litigation in details as those have been stated in the order passed by this Court dated 06.10.2020. We quote the order as under;

“2. The gist of the case put up by the writ applicant, in her own words, as pleaded in the memorandum of the writ application, reads thus:

March 1996 The writ applicant obtained degree of Bachelor of Commerce from Kolkata University. The writ

applicant has been living in Ahmedabad since 1996. The writ applicant presently lives with her son, her retired father and is the sole earning person in the family.

05.05.2009 The husband of the writ applicant who was a journalist passed away. The writ applicant presently lives with her son, her retired father and is the sole earning person in the family.

** The Bar Council of India introduced the All India Bar Examination, an exam which is mandatory for all law students graduating from Academic Year 2009-10 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961. It is mandatory for an advocate to be enrolled as such before taking the All India Bar Examination. As per the Bar Council of India Rules, no advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act unless such Advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. The Bar exam is mandatory for all law students graduating from Academic Year 2009-10 onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961. It is mandatory for an advocate to be enrolled as such before taking the All India Bar Examination. The exam is applicable only for enrolled advocates. The Bar Council of a state while enrolling a person as an advocate issues a provisional permission to practice as an advocate for a period of 2 years from the date of enrollment subject to filing of an undertaking in the proforma to be submitted to the State Bar Council. The Provisional Certificate remains valid for 2 years or till the advocate passed the All India Bar Examination whichever is earlier. In case the advocate does not pass the examination within the said period, the concerned person ceases to be an advocate till passing of All India Bar Exam.*

** The Bar Council of Gujarat, has framed the Bar Council of Gujarat (Enrollment Rules) under Section 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961 (hereinafter referred to as "the Enrollment Rules"). As is mentioned in Rule 1 of the Enrollment Rules, a person who is otherwise qualified to be admitted as an advocate but is either in full or part time service or employment or is*

engaged in any trade, business or profession is not to be admitted as an advocate. Rule 2 of the Enrollment Rules requires every person applying to be admitted as an advocate, to make a declaration in his application that he is not in full or part time service or employment and that he is not engaged in any trade, business or profession contrary to the rules of State Bar Council and of the Bar Council of India made under the Act. In case, he is, he has to disclose full particulars of such service, employment or engagement. Rule 10 provides that in the event of Rule 2 coming into force, the advocate has to deposit his enrollment certificate with the Bar Council as a mark of his having ceased to practice and that such certificate shall lie in deposit with the Council, until the advocate makes a declaration that the circumstances mentioned in Rule 2 have ceased to exist and that he intends to resume his practice.

2016 The writ applicant took up studies of law after a gap of 20 years since her graduation in Commerce and obtained degree of Bachelor of Laws during the period between 2016 and 2019.

2018 The son of the writ applicant joined a University for a Bachelor Degree.

2019 After getting degree of Bachelor of Laws, the writ applicant applied for enrollment as an Advocate with a view to clear the Bar Council Examination and getting enrollment certificate. The writ applicant duly filled in the application form and also paid fees of Rs.16,600/- as required. The writ applicant also duly declared that she is in employment.

** The Bar Council of Gujarat, however, did not accept the form of the writ applicant. The writ applicant was told that the application was not accepted as the writ applicant had declared that she was in employment and that a form of only that person who makes a declaration that she is not employed either in full or part time service or employment and is not engaged in any trade, business or profession can be accepted, Further persons above the age of 30 are required to furnish an affidavit to confirm that they are at present unemployed and their means of financial support. This affidavit is not required where the candidate is below 30 years of age. The writ applicant was asked to resign in*

order to sit for the examination.

** The writ applicant also explained that unless she clears the exam and has the enrollment certificate, which is essential to continue in the field of advocacy, it is not possible for the writ applicant to give up her current employment and lose regular income. The requests, however, were not accepted. The writ applicant's form stands not accepted as on today.*

The writ applicant submits that the process of giving up her current job and taking up law as a full time profession has to be a gradual process. The writ applicant can give up her current job and take up profession of law only when her circumstances permit her to do so. The writ applicant declares that she would not be engaged in two professions or services or employments simultaneously. The writ applicant further submits that the aforesaid rule is manifestly arbitrary, unreasonable, violative of Article 14, 19(1)(g) and 21 of the Constitution of India. Hence, this petition."

3. We have heard Ms. Megha Jani, the learned counsel appearing for the writ applicant, Mr. R.C. Jani, the learned counsel appearing for the Bar Council of Gujarat and Mr. Manan A. Shah, the learned counsel appearing for the Bar Council of India.

4. With the consent of the parties concerned and in the peculiar facts and circumstances of the case and also with a view to protect the interest of all concerned, we pass the following interim order.

(i) The writ applicant shall submit an application for enrollment on or before 09.10.2020, the copy of which is at Annexure-D to the writ application.

(ii) The interim order is passed only for the purpose of allowing the writ applicant to appear in the All India Bar Examination and this order shall not be treated as a permission to the writ applicant to continue with both, i.e, her employment and practice.

(iii) Since fees of Rs.16,600/- is already lying deposited

with the Bar Council of Gujarat, the payment of further fees shall not be insisted upon. In case the current rules require deposit of fees higher than Rs.16,600/-, the writ applicant undertakes to pay such fees promptly.

(iv) The Bar Council of Gujarat shall accept such application and shall not require the writ applicant to resign from her current employment.

(v) The Bar Council of Gujarat shall issue Provisional Enrollment Certificate to the writ applicant on or before 15.10.2020, considering that the online registration for the next All India Bar Examination closes on 17.10.2020.

(vi) The respondents shall permit the writ applicant to appear in the All India Bar Examination, as may be held.

(vii) The writ applicant undertakes that she will not practice as an advocate on the basis of the Provisional Enrollment Certificate issued to her.

(viii) The writ applicant shall further undertake that if after the issuance of enrollment certificate and after passing of the All India Bar Exam, if she continues to be in full or part time service or employment or is engaged in any trade, business or profession, she shall deposit her enrollment certificate with the Bar Council and shall not practice as an Advocate.

(ix) The writ applicant shall file undertaking in terms of this order on or before 09.10.2020.

5. As stated above, this interim order is passed having regard to the peculiar facts and circumstances of this case and shall not be treated or cited as a precedent.

6. The main matter shall now be notified only if any of the counsel files a note with the Registry with a request to notify the matter for the purpose of hearing. “

3. After this Court passed the above quoted order dated 06.10.2020, the Bar Council of India came up with a Misc. Civil Application No.01 of 2020, seeking review/recall of the order

dated 06.10.2020, referred to above. The review/recall is prayed for on the following grounds:-

“4. This Hon’ble Court vide order dated 6.10.2020 was pleased to give certain directions as contained in Para 4 of the order. However, it is pertinent to note that though the deponent had not given any consent on behalf of the Bar Council of India nor had instructed the Counsel concerned giving any such consent before this Hon’ble Court, however, Para 4 of the order records that there was consent of the parties concerned.

5. The applicant submits that the applicant cannot give any such consent in view of the fact that this Hon’ble Court as well as the Hon’ble Supreme Court in the case of Jalpa Desai vs. Bar Council of India & Ors. (supra) has specifically held that a person who is holding a job cannot be allowed to be enrolled as an advocate. If the opponent No.1-original petitioner, who is holding a job, is allowed to be enrolled as an advocate, then the same would open flood gates for others. Even otherwise, the same is contrary to the Bar Council of Gujarat (Enrollment) Rules and well settled principles of law, of this Hon’ble Court and the Apex Court. The relevant judgments passed by this Hon’ble Court and Hon’ble Supreme Court are already annexed at Annexure-R2 (pg. 87 to 130) in the affidavit-in-reply filed on behalf of applicant-Bar Council of India in Special Civil Application No.15123 of 2019. The applicant therefore prays this Hon’ble Court to review/recall the order dated 6.10.2020 passed in captioned petition and the mention of consent as recorded in Para-4 of the order be removed.

6. The applicant humbly submits that the order dated 6.10.2020, would run contrary to the rules framed by the Bar Council of India, Bar Council of Gujarat and the settled law as per the judgments of this Hon’ble Court and the Hon’ble Apex Court. The applicant therefore prays this Hon’ble Court to recall the order dated 6.10.2020 passed in captioned petition.

7. The applicant humbly prays this Hon’ble Court to permit the applicant to rely on the contents of the affidavit in reply filed by the applicant in the captioned petition at the

time of hearing of the present applicant, and the same may be considered as a part and parcel of this application.”

4. At the same time, the applicant also came up with a Civil Application No.02 of 2020 with the following prayers:-

“(A) The Hon’ble Court may be pleased to direct the Respondents to give Enrollment number to the Applicant on the same line and in the same format as given to all other applicants who apply for enrollment as an Advocate and which is acceptable to and compatible with the online All India Examination portal;

(B) For interim relief for the para A above;

(C) For exemplary costs;”

5. In the civil application filed by the writ applicant, the following has been pointed out:-

“2. This Hon’ble Court vide order dated 6.10.2020 passed an interim order for the purpose of allowing the writ applicants to appear in the All India Bar Examination.

3. In terms of the aforesaid order, the applicant submitted an application for Enrollment on 09.10.2020. The applicant also paid required fees. The applicant has filed an undertaking dated 09.10.2020 before the Hon’ble Court in terms of the order dated 06.10.2020.

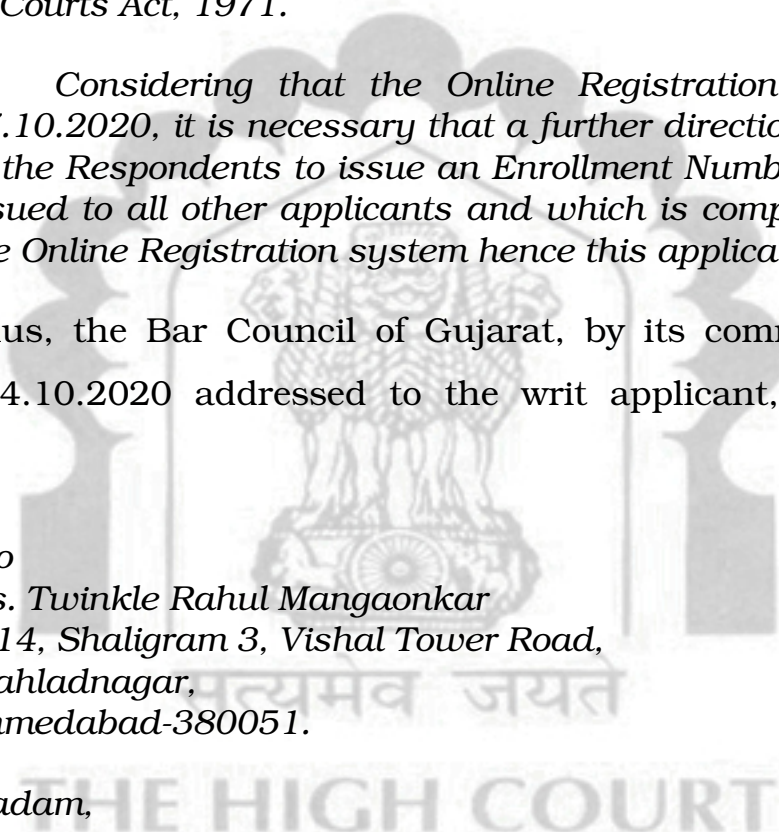
4. Bar Council of Gujarat issued provisional enrollment certificate to the applicant on the evening of 14.10.2020.

5. To the shock of the applicant, the applicant is unable to get herself registered for the All India Bar Examination as the Enrollment Number which is mentioned in the Certificate is not accepted by the Online Registration system. Enrollment Number issued by the Bar Council is usually like G/123/2020 or G/1234/2020 consisting of only numerals except for ‘G’. In the case of the applicant, the Bar Council has issued the Enrollment Number as G/Provisional-I/2020 which is not accepted by the Online Registration system.

6. As is recorded in the order dated 06.10.2020 passed by this Hon'ble Court the last date for Online Registration of the said Form is 17.10.2020. The act on the part of the Bar Council of Gujarat of giving an Enrollment Number which is not compatible with the online registration format is nothing else but an attempt to frustrate the orders passed by this Hon'ble Court amounting to clear disobedience and contempt of the order of the Hon'ble Court. The applicant reserves the right to file an appropriate application under The Contempt of Courts Act, 1971.

7. Considering that the Online Registration closes on 17.10.2020, it is necessary that a further direction is issued to the Respondents to issue an Enrollment Number which is issued to all other applicants and which is compatible with the Online Registration system hence this application."

6. Thus, the Bar Council of Gujarat, by its communication dated 14.10.2020 addressed to the writ applicant, stated as under:-

"To
Ms. Twinkle Rahul Mangaonkar
A-14, Shaligram 3, Vishal Tower Road,
Prahladnagar,  अत्यमेव जयते
Ahmedabad-380051.

Madam,

I here to inform you that as per the oral order dated 06.10.2020 passed by the Hon'ble High Court of Gujarat in Special Civil Application No.15123 of 2019, the Bar Council of Gujarat office had received your enrollment application form on 09.10.2020, without insisting fees of Rs.16,000/- as the same was deposited by you earlier.

I have further to inform you that your enrollment application was placed before the Enrollment Committee of the Bar Council of Gujarat in its meeting dated 13.10.2020 as per the aforesaid oral order dated 6.10.2020 with regard to issue Provisional Enrollment to you. The Enrollment Committee considered that the Hon'ble High Court has passed order only for the purpose of allowing you to appear

in the All India Bar Examination, as may be held and this order shall not be treated as a permission to you to continue with both i.e. your employment and practice. Therefore, it is resolved to provisionally enroll you subject to only appearing in the All India Bar Examination. Particulars regarding your provisional Enrollment and its date are as under:-

<i>Enrollment No.</i>	<i>G/Provisional-I/2020</i>
<i>Date of Enrollment</i>	<i>13/10/2020</i>

The Enrollment Committee further considered that you have to submit undertaking on or before 09.10.2020 to the Hon'ble High Court of Gujarat in respect of that you will not practice as an advocate on the basis of provisional enrollment certificate issued to you and if after the issuance of enrollment certificate and after passing of th All India Bar Exam, if you continues to be in full or part time service or employment or is engaged in any trade, business or profession, you shall deposit your enrollment certificate with the Bar Council of Gujarat and shall not practice as an advocate.

I have to further inform you that you will not file any vakalatnama and appear and argue cases in any of the courts or Tribunals or such other authorities in India or cannot wear Advocate's robe in any manner.

*Thanking You,
Sd/-
(P.M. Parmar)
I/c Secretary,
Bar Council of Gujarat."*

7. We also incorporate the undertaking filed by the writ applicant before this Court as under:-

"Undertaking of the Petitioner

I, Twinkle Rahul Mangaonkar, Age 46 years, Occupation Service, residing at A/14, Shalimar-3, Vishal Tower Road, Prahladnagar, Ahmedabad-380051 do solemnly affirm and state as under;

1. I am the petitioner in Special Civil Application No.15123 of 2019. I have read order dated 06.10.2020 passed in the aforesaid Special Civil Application. In compliance with the terms recorded in para-4 of the said order, I undertake that I shall not practice as an Advocate on the basis of the Provisional Enrollment Certificate issued to me.

2. I further undertake that if after the issuance of enrollment certificate and after passing of the All India Bar Exam, I continue to be in full or part time service or employment or is engaged in any trade, business or profession, I shall deposit my enrollment certificate with the Bar Council and shall not practice as an Advocate.

What is stated hereinabove is true to my knowledge.

Solemnly affirmed on this 9th day of October, 2020 at Ahmedabad.”

8. The Bar Council of Gujarat acted very smart so as to see that the order passed by this Court dated 06.10.2020 is diluted or not given effect too. The Bar Council of Gujarat issued the provisional enrollment certificate to the writ applicant on the evening of 14.10.2020. However, much to the dismay of the writ applicant, she was not able to get herself registered for the All India Bar Examination as the Enrollment Number mentioned in the certificate is not being accepted by the On-line Registration System. The Enrollment Number ordinarily issued by the Bar Council is like G/123-2020 or G/1234-2020, i.e., consisting of numeral except for the 'G'. The Bar Council of Gujarat issued the Enrollment Number as G/Provisional-I/2020, which has not been accepted by the On-line Registration System.

9. The Bar Council of India also seems to be putting up a defiant stance by saying that as the writ applicant is serving in a

private office, she is not entitled to be enrolled as an Advocate. The argument canvassed on behalf of the Bar Council of India is that if the writ applicant is permitted to be enrolled as an Advocate, the same may open flood gates for the others.

10. In short, the Bar Council of India as well as the Bar Council of Gujarat has a common argument to canvas that the rules framed by the Bar Council of Gujarat (Enrollment) Rules under Section 28(2)(d) read with Section 24(1)(e) of the Advocates Act, 1961 (for short "the Act, 1961") puts an embargo upon the writ applicant unless she resigns from her present employment and files an affidavit to that effect. The Bar Council of India seeks to rely upon Rule 49 of its Rules.

11. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the writ applicant is entitled to any relief from this Court.

12. According to the writ applicant, the enrollment of advocates is governed under Advocates Act, 1961. Section 24 of the Act provides that a person shall be qualified to be admitted as an advocate on the state roll if he fulfills the conditions mentioned in the section. One of the conditions is that of fulfilling such other conditions as may be specified in the rules made by the State Bar Council under Chapter III of the Act. The State Bar Council, in the present case, has framed the Bar Council of Gujarat (Enrollment) Rules under Section 28(2)(d) read with Section 24(1)(e) of the Act, 1961.

13. As is mentioned in Rule 1 of the Enrollment Rules, a person who is otherwise qualified to be admitted as an Advocate but is either in full or part time service or employment or is engaged in any trade, business or profession is not to be admitted as an Advocate.

14. Rule 2 of the Enrollment Rules requires every person applying to be admitted as an Advocate to make a declaration in his application that he is not in full or part time service or employment and that he is not engaged in any trade, business or profession contrary to the rules of State Bar Council and of the Bar Council of India made under the Act. In case, he is, he has to declare full particulars of such service, employment or engagement.

15. Rule 10 provides that in the event of Rule 2 coming into force, the advocate has to deposit his enrollment certificate with the Bar Council as a mark of his having ceased to practice and that such certificate shall lie in deposit with the Council, until the advocate makes a declaration that the circumstances mentioned in Rule 2 have ceased to exist and that he intends to resume his practice.

16. Ms. Megha Jani, the learned counsel appearing for the writ applicant has argued that the rule in question is manifestly arbitrary, unreasonable and violative of Articles 14, 19(1)(g) and 21 respectively of the Constitution of India. She would argue that the rule, on one hand, prohibits even an entry of a person who is engaged in any service, employment, trade, business or profession at the stage of enrollment, while making it permissible

for an enrolled advocate to change his profession and also to get back to the profession as a lawyer thereafter. It is argued that the rule should be declared as violative of the above referred articles of the Constitution.

17. Ms. Jani, in the alternative, submitted that this Court may read down the relevant rules of the State Bar Council to the effect that a person who makes a declaration that she is engaged in any service, employment, trade, business or profession, may be admitted as an advocate, however, the enrollment certificate may remain in the custody of the Bar Council until the advocate makes a declaration that the circumstances mentioned in Rule 2 have ceased to exist and that he/she intends to resume.

18. Mr. Manan Shah, the learned counsel appearing for the Bar Council of India and Mr. R.C. Jani, the learned counsel appearing for the Bar Council of Gujarat have relied upon a decision of this Court in the case of **Jalpa Pradeepbhai Desai vs. Bar Council of India**, reported in AIR (Guj) 2017 O 134 and the decision of the Supreme Court in the case of **Satish Kumar Sharma vs. The Bar Council of Himachal Pradesh**, reported in AIR 2001 SC 509.

19. Rule 2 of the Bar Council of Gujarat (Enrollment) Rules, reads thus;

“2) Every person applying to be admitted as an Advocate shall in his application make a declaration that he is not in full or part-time service or employment and that he is not engaged in any trade, business or profession contrary to the rules of the State Bar Council and of the Bar Council of India made under the Act. But in case he is in such full or part-time service or employment or is engaged in any trade,

business or profession he shall in the declaration disclose full particulars of his service, employment or engagement. He shall also undertake that if, after his admission as an Advocate, he accepts full or part-time service or employment or is engaged in any trade, business or profession disqualifying him from admission, he shall forthwith inform the Bar Council of such service or employment or engagement and shall cease to practise as an advocate, provided that the above undertaking shall not apply to a person who accepts service as a part-time professor, part-time lecturer or part-time teacher-in-law if the hours of his duty in the Court are not in conflict with the hours of his duty in the institution where he teaches law and if it is not inconsistent with the dignity of the profession. This shall be subject to such directions, if any as may be issued by the Bar Council of India from time to time.”

20. Rule 10 of the Bar Council of Gujarat (Enrollment) Rules, reads thus;

“(10) In the event of the Rule 2 coming into force, the Advocate shall deposit his Enrolment Certificate with the Bar Council as a mark of his having ceased to practise and it shall lie in deposit with the Council until the Advocate makes a declaration that the circumstances mentioned in the Rule 2 have ceased to exist and that he intends to resume his practise. ”

21. Rule 49 of the Bar Council of India Rules, reads thus;

“49. An Advocate shall not be full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an Advocate so long as he continues in such employment.

Nothing in this rule shall apply to a Law Officer of the Central Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his

being a full time salaried employee.

Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer.”

22. It is a settled law that in interpreting a statute or a rule, the Court must bear in mind that the legislature does not intend what is inconvenient and unreasonable. If a rule leads to an absurdity or manifest injustice from any adherence to it, the Court can step in. A statute or a rule ordinarily should be most agreeable to convenience, reason and as far as possible to do justice to all. A law/rule should not be made without a purpose or object and when it is found so, the Court should not be hesitant in applying the principle of 'reading down' or 'reading into' the provision to make it effective and workable, more particularly when it is found that the object is illusory and appears to be nothing but a shadow hunting process. A law/rule should be beneficial in the sense that it should suppress the mischief and advance the remedy. In interpreting a rule, it is legitimate to take into consideration the reasonableness or unreasonableness of any provision. Gross absurdity must always be avoided in a statute/rule. The expression reasonable means rational, according to the dictate of reason and not excessive or immoderate.

23. The principal question that arises is whether we should strike down Rules 1 and 2 of the Bar Council of Gujarat (Enrollment) Rules being violative of Article 14 of the Constitution or we should uphold the validity by adopting the principle of 'reading down' or 'reading into' so as to make the

rule effective and workable and ensure the attainment of the object of the rule. Ordinarily, the Courts would be reluctant to declare a law or rule invalid or ultra-vires on account of unconstitutionality. The Court should make all possible endeavour to interpret in a manner which would be in favour of the constitutionality, as declaring the law or a rule unconstitutional should be one of the last resorts which the Court may take.

24. A validity of a rule has to be adjudged on three well recognized tests: (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution (Maharashtra State Board of Secondary and Higher Secondary Education Vs. P.B. Mukarsheth, AIR 1984 SC 1543). There is presumption in favour of the validity of the rule.

25. In **Venkayya Vs. Pullayya** reported in AIR 1942 Mad. 466, a Division Bench of the Madras High Court, after referring to a decision by the House of Lords in *Blackwood Vs. London Chartered Bank of Australia* (1874) 5 PC 92, at p.108 observed as under:-

"As has been pointed out by the House of Lords in (1874) 5 PC 92, at pg. 108, the tests to apply in considering whether rules are within the powers of the rule-making authority under a statute are: (1) Whether the rules are reasonable and convenient for carrying the Act into full effect; (2)

Whether the rules relate to matters arising under the provisions of the Act; (3) Whether they relate to matters not in the Act otherwise provided for and (4) Whether they are consistent with the provisions of the Act. The validity of a rule is to be determined not so much by ascertaining whether it confers rights or merely regulates procedure, but by determining whether the rule is in conformity with the powers conferred under the statute and whether it is consistent with the statute, reasonable and not contrary to general principles."

26. We may quote with profit the observations of the Supreme Court in the case of **Namit Sharma Vs. Union of India** reported in (2013) 1 SCC 745. In that case, the subject matter before the Supreme Court was the one under the Right to Information Act, 2005. The Court made the following observations in paragraphs 51 and 61, which are reproduced hereinbelow:-

"51. Another most significant canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of 'reading down' or 'reading into' the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by this court in its various pronouncements."

"61. It is a settled principle of law, as stated earlier, that courts would generally adopt an interpretation which is favourable to and tilts towards the constitutionality of a statute, with the aid of the principles like 'reading into' and/or 'reading down' the relevant provisions, as opposed to

declaring a provision unconstitutional. The courts can also bridge the gaps that have been left by the legislature inadvertently. We are of the considered view that both these principles have to be applied while interpreting Section 12(5). It is the application of these principles that would render the provision constitutional and not opposed to the doctrine of equality. Rather the application of the provision would become more effective."

27. In the aforesaid context, we may also refer to and rely on a decision of the Supreme Court in the case of **Ahmedabad Municipal Corporation and anr. Vs. Nilaybhai R. Thakore and anr.** reported in 2000 (1) G.L.H 388. In that case, under Rule 7 of the impugned Rules, "a local student" was defined as a student who has passed SSC/new SSC examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal limits. According to that Rule, it was only those students who had qualified from the educational institutions situated within the Municipal limits would be eligible to be treated as 'local students'. While the permanent resident students of Ahmedabad city who for fortuitous reasons, happen to acquire qualification from educational institutions situated just outside the Municipal limits, namely, AUDA, would not be eligible for being treated as the local students. The Supreme Court noticed that the object of the rule was to provide medical education to the students of Ahmedabad who had acquired the necessary qualification, their selection being based on merit. If that was the object, the Supreme Court observed whether the classification based only on the location of the educational institutions within or outside the Municipal area would be a reasonable classification. The Court held that the answer had to be in the negative. However, despite coming to the

conclusion that the High Court was right in holding that the rule in question suffered from an element of arbitrariness, the remedy did not lie in striking down the impugned Rules, the existence of which was necessary in the larger interest of the institution as well as the populace of the Ahmedabad Municipal Corporation. The Court observed that the striking down of the rule would mean opening the doors of the institution for admission to all the eligible candidates in the country, which would definitely be opposed to the very object of the establishment of the institution by a local Body. In such circumstances, the following observations of the Supreme Court in paragraph 14 are very apt and could be made applicable to the facts of the present case.

“14. Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the rule in question is only a subordinate legislation and by declaring the rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied on by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher ([1949] 2 K.B. 481 (CA)) wherein he held;

“[When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, ... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. ... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can

and should iron out the creases."

This statement of law made by Lord Denning has been consistently followed by this Court starting in the case of M. Pentiah v. Muddala Veeramallappa 1961 AIR(SC) 1107) and followed as recently as in the case of S. Gopal Reddy v. State of A.P. (1996 (4) SCC 596, 608 : 1996 SCC(Cri) 792 : 1996 AIR(SC) 2184, 2188) (SCC at 608 : AIR at p. 2188). Thus, following the above rule of interpretation and with a view to iron out the creases in the impugned rule which offends Article 14, we interpret Rule 7 as follows "Local student means a student who has passed HSC (sic SSC)/New SSC Examination and the qualifying examination from any of the high schools or colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who acquires the above qualifications from any of the high schools or colleges situated within the Ahmedabad Urban Development Area."

28. We now go back to the pivotal issue. What is the object behind Rules 1 and 2 of the State Bar Council (Enrollment) Rules and Rule 49 of the Bar Council of India Rules?. Why such a restriction is sought to be imposed?. Why the statute does not permit a person enrolled as an advocate with any particular Bar Council of the State from taking up any other vocation?.

29. According to the Black's Law Dictionary, a lawyer is "a person learned in the law; as an attorney, counsel or solicitor, a person licensed to practice law". The legal profession is not a business or a trade. A person practicing law has to practice in the spirit of honesty and not in the spirit of mischief-making or money-getting. The advocate is expected to devote full time to his profession of law. Although, the profession is called a noble profession, yet it does not remain noble merely by calling it as such unless there is a continued, corresponding and expected performance of a noble profession. Its nobility has to be

preserved, protect and promoted. An institution cannot survive in its name or on its part glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich, traditions consistent with its grace, dignity, utility and prestige. Hence, the provisions of the Act and Rules made thereunder, inter alia, are aimed at to achieve the same. Such provisions of the Act and Rules should be given effect to in their true spirit and letter to maintain clean and efficient Bar in the Country to serve the cause of justice which again is noble one. {see Satish Kumar Sharma (supra)}.

30. The Supreme Court in ***Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra & Goa***, reported in 1996 AIR 1708, while dealing with the validity of Rule 1 of the Maharashtra and Goa Bar Council Rules relating to enrollment of Advocates eligibility conditions, has observed in Para-20 that “legal profession requires full time attention and would not countenance an Advocate riding two horses or more at a time”.

31. We have quoted Rule 49 of the Bar Council of India Rules in paragraph 21 of this judgment. Rule 49 provides that an advocate shall not be a full time salaried employee of any person, government, firm, corporation or concern. The rule further provides that so long as such advocate continues to practice, there is no problem but if an advocate takes up any such employment referred to above, he is obliged to intimate such fact to the Bar Council on whose roll his name appears. The advocate

was thereupon ceased to practice as an advocate so long as he continues in such employment. In fact by reading down the Rules 1 and 2 of the State Bar Council (Enrollment) Rules, we are bringing the Rules 1 and 2 respectively of the State Bar Council in tune or in conformity with Rule 49 of the Bar Council of India Rules. Rule 49 specifically talks about “an advocate”. It is suggestive of the fact that a person can be termed as an advocate only after he is lawfully enrolled on the Bar Council. This is suggestive of the fact that if a practicing advocate decides to take up any other job with any person, government, firm, corporation or concern, his duty is to intimate the Bar Council and after the necessary intimation he would cease to practice as an advocate.

32. It is too much to say that a person desirous to get himself enrolled as an Advocate with the State Bar Council should be asked at its inception to give up any other vocation, business or job and only, thereafter, he can be enrolled on the roll of the State Bar Council. We are dealing with a matter, in which, as single mother has come before us saying that no sooner she is enrolled as an Advocate after clearing the Bar Council Entrance Exam, then she would file a declaration on oath that she has given up the job which she has as on date. The lady is in a helpless situation. Today, if she gives up her job being a single mother, and god forbid if she is unable to clear the All India Bar examination, then she would be left without any means of livelihood. She has made herself very clear that she may be issued a provisional Sanad and such provisional Sanad shall remain in deposit with the Bar Council of Gujarat and she would obtain the final Sanad after clearing the Bar Council of India

Exam. She has already filed an undertaking to this effect. We have quoted the entire undertaking in the earlier part of our judgment. If that be so, may it not be said that the object of Rules 1 and 2 respectively of the Bar Council of Gujarat (Enrollment) Rules as well as Rule 49 of the Bar Council of India Rules is protected and sub-served.

33. In such circumstances, referred to above, we read down Rules 1 and 2 respectively of the Bar Council of Gujarat (Enrollment) Rules so as to read that a person may be either in full or part time service or employment or is engaged in any trade, business or profession, who otherwise is qualified to be admitted as an Advocate shall be admitted as an Advocate, however, the enrollment certificate of such a person shall be withheld with the Bar Council and shall lie in deposit with the Council until the concerned person makes a declaration that the circumstances mentioned in Rule 2 have ceased to exist and that he or she has started his/her practice.

34. We, accordingly, direct the Bar Council of Gujarat as well as the Bar Council of India to act accordingly after applying the rules in consonance with what has been stated above and issue a provisional Sanad to the writ applicant so as to entitle her to appear in the Bar Council of India Exam.

35. The Bar Council of Gujarat shall issue the Enrollment Number to the writ applicant on the same line and in the same format as given to all other applicants who apply for enrollment as an Advocate and which is acceptable to and compatible with the On-line All India Bar Examination portal. Let this exercise be undertaken at the earliest and the registration number shall

be given to the writ applicant within a period of three days from the date of issue of the writ of this order.

36. With the above, this writ application stands disposed of.

37. In view of the order passed in the main matter, the Misc. Civil Application as well as the Civil Application also do not survive and are disposed of accordingly.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

Vahid

