

IN THE HIGH COURT OF ORISSA, CUTTACK

W. P (C) (PIL) No. 11144 of 2022

Code No.....

IN THE MATTER OF:

Binayak Subudhi

.....Petitioner

-Versus-

Union of India & Ors.

..... Respondents

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Cuttack

Drawn and filed by

Date:

████████████████████
Advocate
(Enl. No. - ██████████)
(Mob. No. - ██████████)

IN THE HIGH COURT OF ORISSA, CUTTACK

W.P. (C) (PIL) No. 11144 OF 2022

Code No.....

IN THE MATTER OF: PUBLIC INTEREST LITIGATION

AND

IN THE MATTER OF: A Writ petition under Article 226 of the Constitution of India, challenging the actions of the Respondent No. 3 with regard to arbitrarily fixing the enrolment fees and praying for issuance of an appropriate Writ, Order(s) or Direction(s) to the Respondents to fix the enrolment fees in consonance with Section 6(2), 24(1)(e) & (f), 28(1)(d) & (e) & (2) & (3), of the Advocates Act, 1961, Rule 15 of PART-IX of the BCI Rules, Rule 4(f) of Chapter IV of Orissa State Bar Council Rules, 1989, and Section 15 (1) of the Odisha Advocates Welfare Fund Act, 1987

AND

IN THE MATTER OF: Orissa High Court Public Interest Litigation
Rules, 2010

AND

IN THE MATTER OF: Article 14, 19 (1) (g) and 21 of the
Constitution of India

AND

IN THE MATTER OF:
Binayak Subudhi

.....PETITIONER

-Versus-

1. Union of India, Represented by its Secretary,
Ministry of Law and Justice Dept., 4th Floor,
A-Wing, Shastri Bhawan, New Delhi-
110001
2. Bar Council of India, represented by its
Secretary, 21 Rouse Avenue Institutional
Area, Near Bal Bhawan, New Delhi-110002
3. Odisha State Bar Council, represented by its
Secretary, High Court premises, Kacheri

Road, P.O. Chandini Chowk, Cuttack -
753002, Dist- Cuttack.

.....RESPONDENTS

The matter out of which this Writ Petition arises was never before this Hon'ble Court as per the instruction supplied by the Petitioner.

TO

**THE HON'BLE CHIEF JUSTICE OF ORISSA HIGH COURT
AT CUTTACK AND HIS COMPANION JUSTICES OF THE
SAID HON'BLE COURT;**

**THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED;**

MOST RESPECTFULLY SHEWETH:-

1. That the present petition under Article 226 of the Constitution of India is being filed by way of public interest litigation and the Petitioner has no personal interest in the matter. The present petition is being filed in the interest of the law students and law graduates, challenging the action of the Respondent No. 3 with regard to imposition of arbitrary, illegal and exorbitant enrolment fees charged by Respondent No. 3, for registering law graduates as advocates in the state Bar Roll as prescribed in the Advocates Act, 1961 and praying for issuance of an appropriate Writ, Order(s) or Direction(s) to the Respondent No. 3 to fix the enrolment fees in

consonance with Section 6(2), 24(1)(e) & (f), 28(1)(d) & (e) & (2) & (3), of the Advocates Act, 1961, Rule 15 of PART-IX of the BCI Rules, Rule 4(f) of Chapter IV of Orissa State Bar Council Rules, 1989, and Section 15 (1) of the Odisha Advocates Welfare Fund Act, 1987.

2. That the Petitioner is a citizen of India and currently resides at the address mentioned herein above. The Petitioner has graduated from his law school in May 2020, and got registered as an Advocate at the Odisha State Bar Council in December, 2020 vide Enrolment No

3. That the Petitioner is filing the present petition on his own and not at the instance of someone else. The litigation cost including the Advocate's fee and the travelling expenses of the lawyer has not been paid since the lawyer is committed to file this petition *pro bono*.

4. That the facts of the case in brief are as follows:

4.1 That it is humbly submitted that the Petitioner graduated in law and got registered as an Advocate at the Odisha State Bar Council in December, 2020 vide Enrolment No.

. That, before getting enrolled the Petitioner on enquiring with the office of the Respondent No. 3 about the enrolment process and the approximate fee for the same, he was surprised to learn that the enrolment fees charged by

the Respondent No. 3 is approximately Rs. 42,100/-. That, such fee for enrolment is the most exorbitant and expensive, that is being charged by the Respondent No. 3 in comparison to any other State Bar Council in India for a fresh law graduate. (The said fees of Rs.42,100/- is for an unreserved applicant who is below 25 years of age). The recent enrolment form that is available at the office of the Respondent No. 3 is annexed herewith and marked as ANNEXURE- 1.

4.2 That, for the sake of brevity and convenience of the Hon'ble Court, the Petitioner analysed the enrolment fees of seventeen other State Bar Councils in India, comparing it to that of the Respondent No. 3. As per the preliminary research done by the Petitioner, Respondent No. 3 charges the most exorbitant enrolment fee in India, as in comparison to other State Bar Councils. For the convenience of the Hon'ble Court, a brief comparison of the enrolment fees of some State Bar Councils in India is stated herein. The enrolment fees of the Delhi Bar Council is Rs.15,300/-, the Bar Council of Maharashtra and Goa is Rs 15,500/-, the Bar Council of Andhra Pradesh is Rs.13,250/-, the Bar Council of West Bengal is Rs.10,800/-, and the Bar Council of Tamil Nadu and Puducherry is Rs.14,100/-. The comparative enrolment fee chart of other State Bar Councils including that of Respondent No. 3, along with the detailed enrolment fee particulars of the State Bar Councils is annexed herewith and marked as ANNEXURE-

2 Series. In this chart the total enrolment fees is mentioned under different heads as per the particulars mentioned in the enrolment form or in the website or in the online enrolment application of the respective State Bar Councils.

4.3 That, it is further submitted that, the Petitioner came to learn from the discussion with the members of the Respondent No. 3, that there are various reasons for determining such exorbitant enrolment fees. Here are the below-mentioned reasons:-

- i. That the State Bar Council of Odisha does not receive sufficient grant from the Govt. of Odisha to run its office. So, the only way to obtain funds to run the office is to increase the enrolment fees for that purpose.
- ii. That the reason for making fees mandatory for participating or getting admitted in the welfare funds and schemes created by the Respondent No. 3, and not optional, is because they fear that no applicant will agree to pay their money in the way of enrolment fee for such welfare funds and schemes. As a result the funds and schemes will not get fresh money to pay to those who claim the benefits under such welfare funds and schemes to which advocates got admitted earlier during enrolment. (From hereafter, an applicant will be understood and interpreted as person who is eligible for becoming a member of the Bar, and who desires to be enrolled as an

Advocate by fulfilling the prescribed criteria in the Advocates Act, 1961)

- iii. Moreover, the welfare schemes are made keeping in mind the adversities and insecurities that the advocates of the poor background might face when they join the profession of litigation.
- iv. That, the Respondent No-3 has enhanced the enrolment fees as per the Bar Council of India Rules, notifications and circulars. Such amendments, rules and notifications made by Respondent No. 3 with respect to the enrolment fees come into effect, only after due approval by the Respondent No- 2.

4.4 That it is further submitted that the below mentioned table encapsulates the total enrolment fees charged by the Respondent No. 3 and the reasons that the Petitioner came to learn about for the usage of enrolment fees charged by the Respondent No. 3. The details of this below mentioned table is derived from the enrolment form which is annexed under Annexure – 1 of the writ petition.

Sl. No.	Fees	Head under which fee is being charged	Reason learnt by the Petitioner about the usage of the fees
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			collected under the respective heads
1.	Rs. 2,000/-	Enrolment Form fees	This is the application form fees for enrolment, available in the office of the council.
2.	Rs. 12,000/-	Secretary, Odisha State Bar Council	This fee is used entirely for the administrative purposes of the council that includes paying salary to the employees, office running expenses, etc)
3.	Rs. 1,200/-	Bar Council of India	One part of the fees goes to the Respondent No. 2 as statutory fees prescribed under Advocates Act and the rest stays with the Respondent No. 3.
4.	Rs. 10,000/-	Advocates welfare-cum-death benefit scheme fund,	This fund is used to pay back Rs. 1,00,000/- to those who suffer an unfortunate death due to

		Orissa State Bar Council	any reason, during their practice. The quantum of the fees for this fund increases as per increase in the applicant's age bracket due to pro rata calculation.
5.	Rs. 5,000/-	Advocates Welfare Fund of Odisha State Bar Council	This fund is used to support those advocates who suffer from any accidental injury or health concerns or disability during their practice.
6.	Rs. 5,000/-	Odisha State bar Council Advocates Welfare Corpus Fund	This fee is used for emergencies and uncalled for situations like covid -19, wherein the council will pay the indigent advocates.
7.	Rs. 3,600/-	Advocates Welfare Fund of Bar Council of India for the State of Orissa	This fund is divided into 2 parts. Rs. 3000/-, is a mandatory fee that is statutorily backed by rule 40 of the Chapter II

			part VI of BCI Rules. The remaining Rs. 600/- goes to the registered Bar Associations for providing welfare reliefs to the applicants.
8.	Rs. 3,300/-	Advocates Welfare Fund Trust	This fund is for miscellaneous purposes by the trust committee managing the welfare related funds
Total	<u>Rs. 42,100/-</u>		

4.5 It is humbly submitted that Admission and Enrolment of Advocates is stated in Chapter III of the Advocates Act 1961 (hereinafter ‘Act’). Section 24(1)(f) of the Act provides that for being admitted as an advocate. Section 24(1)(f) of the Act read as follows:-

“24. Persons who may be admitted as advocates on a State roll. — (1) Subject to the provisions of this Act, and the rules made there under, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:—

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act,

1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of [six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]”

However, contrary to the aforesaid legislative mandate, the Respondent No. 3 charges approx. Rs. 42,000/- for a general category applicant of below 25 years of age. Subsequently the total enrolment fee increases as per one's age.

4.6 That, it is respectfully submitted that the Respondent No. 3 is bound by the rule for determining the enrolment fees as prescribed under Rule 15 of PART-IX of the BCI Rules. The said rule read as follow:-

“15. Enrolment - (1) In addition to the enrolment fee laid down in Section 24 of the Advocates Act, person desirous of being enrolled as advocates shall also be liable to pay to the State Councils, Stamp Duty payable by them under the Indian Stamp Act and such Bar Councils shall be entitled to recover the same before making the entry of their names in the rolls. (2) Every candidate seeking enrolment as an Advocate shall be required to affirm and subscribe to the following declarations:

(a) ‘I shall uphold the Constitution and the Laws’;

(b) 'I shall faithfully discharge every obligation cast on me by the Act and the Rules framed thereunder'."

From a simple reading of the Rule 15, it is clear that the enrolment process does not involve any other fees other than the statutory fees and Stamp Duty as mentioned under Section 24 (1)(f). That, it is to bring to the notice of this Hon'ble Court that, the State Bar Councils of Andhra Pradesh, Madhya Pradesh and Karnataka have included the stamp duty fee in their enrolment fees, as can be referred from Annexure - 2 Series. It is further stated that the Respondent No. 3 does not comply with this statutory provision, moreover it transcends its powers under the Act by charging exorbitant, illegal and mandatory fees in stark contrast to the provisions of Advocates Act, 1961.

4.7 It is also pertinent to mention that Rule 4(f) of Chapter IV of the Odisha Bar Council Rules, 1989 framed under Section 28(2)(d) r/w Section 24(1)(e) of the Act read as follows:-

“(f) A receipt from the Secretary of the Bar Council that the applicant has paid the fees prescribed for enrolment under Section 24(1)(f).”

From a simple reading of the above provision, it is understood that the Respondent No. 3 acknowledges through the rules made by itself, the amount of enrolment fee prescribed in Section 24 (1)(f). Further, it is also pertinent to understand

that from such acknowledgement of the predetermined statutory enrolment fee prescribed in Section 24 (1)(f), the Respondent No. 3 has been intentionally neglecting and overlooking its own rules. It is therefore submitted that such an act of conscious neglect and disobedience to abide by the statutory provisions already laid down regarding the enrolment fees amounts to gross violation of the statutory provisions.

4.8 It is to further submit that the Respondent No. 3 derives their power to create funds and welfare schemes under Section 6(2) of the Act. However, as per Section 6(2) of the Act, the Respondent No. 3 is empowered to constitute one or more such funds only for the purposes of giving legal aid, giving financial assistance to organise welfare schemes for the indigent, disabled and other advocates and establishing law libraries. The Section 6(2) read as follows:-

“6. Functions of State Bar Councils - (2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of—

(a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;]

[(c) establishing law libraries.]]”

That from a simple reading it is understood that the language of the Act only allows the Respondent No. 3 to create funds and welfare schemes for the indigent, disabled or other advocates, and not make it mandatory for all applicants making it a condition precedent for the enrolment process. That, through a reasonable interpretation, it is evident that the above provision does not mean that such funds and welfare schemes created as per Section 6(2), can be made mandatory or condition precedent by the Respondent No. 3 for any applicant to get himself enrolled in the state roll. Therefore it can be said that the Respondent No. 3 have exercised their powers in excess of that which is conferred by the Act.

- 4.9 That, it is submitted that an applicant cannot be compelled to contribute for the funds and welfare schemes duly constituted under Section 6(2) of the Advocates Act, 1961, since no provision of the said Act empowers the Respondent No. 3 to seek contribution towards these funds from an applicant and more so by making it a condition precedent for enrolment. No statute in this regard contemplates that the Respondent No. 3 must compulsorily charge such exorbitant fees for funds or schemes created by it and make it mandatory for the applicant to pay such fees at the time of enrolment. In furtherance to the above mentioned submission, it is pertinent to note that the following funds and welfare schemes created by the Respondent No. 3 cannot be made mandatory or condition

precedent for enrolment:- (a. Advocates welfare-cum-death benefit scheme fund, Orissa State Bar Council; b. Odisha State bar Council advocates welfare corpus fund; c. Advocates welfare fund Trust.)

4.10 Moreover, Section 15(1) of the Odisha Advocates Welfare Fund Act, 1987 states that:-

“15. Membership in the Fund. - (1) every advocate practising in any court in the state and being a member of a bar association or a society recognised by the bar council may apply to the committee for admission as a member of the fund in such form as may be prescribed.”

That, from a simple reading it is understood that the fund(s) constituted under the Odisha Advocates Welfare Fund Act, 1987 is nor mandatory or condition precedent for enrolment. The word ‘may’ used in Section 15(1), expounds that membership in any fund(s) created by the Respondent No. 3 is at the option of the advocate or applicant. The interpretation of the language used in the Section 15(1) means that, such funds or welfare schemes that are created by the Respondent No. 3 using the underlying power under Section 6(2) of the Advocates Act, 1961, are optional and are not to be enforced on every applicant to pay such hefty amounts to become a member of the fund. It is therefore submitted that, all the funds and welfare schemes that have been created contrary to the mandate of Section 6(2), making them a condition precedent

for enrolment are in gross violation to the provisions of the Advocates Act, 1961 and hence is illegal, arbitrary and *de hors* the provisions of the Advocates Act, 1961.

4.11 It is humbly submitted that the Respondent No. 3 is a statutory delegated body under the Advocates Act, 1961 and the rules, regulations, bye-laws, schemes, and orders made by the Respondent No. 3 under the statutory powers are all comprised as delegated legislation. It is pertinent to mention that the Respondent No. 3 are bestowed with the power to frame rules statutorily imposing conditions, which are to be fulfilled by a candidate who seeks enrolment on the State roll as prescribed under Section 24(1)(e) and Section 28(2)(d) of the Act, cannot be interpreted in any manner to empower the Respondent No. 3 to levy such an additional, exorbitant and mandatory fees for any such heads under the guise of enrolment fees. Section 24(1)(e) read as below:-

“ 24. Persons who may be admitted as advocates on a State roll.— (1) Subject to the provisions of this Act, and the rules made there under, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely:—

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;”

Section 28 reads below:-

“28. Power to make rules. — (1) A State Bar Council may make rules to carry out the purposes of this Chapter. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

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

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

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

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

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

4.12 It is further submitted that Section 28(1) confers general rule making powers on the State Bar Councils to carry out the purpose of Chapter III and Section 28(2)(d) empowers the respective State Bar Councils to prescribe the conditions

subject to which a person may be admitted as an advocate on any such roll and Section 28(2)(e) authorizes the respective State Bar Councils to prescribe the instalments in which the enrolment fee may be paid. Clearly, the Respondent No. 3 has treated such rule making powers with derision by disobeying the statutory provision that has fixed the enrolment fees already. Moreover, any such rules made by Respondent No. 3 cannot be made valid merely on account of the so called approval granted thereto by the Respondent No. 2 by purported resort to the provisions contained in Section 28(3). When a certain enrolment fee is clearly laid down in a statute with references to additional stamp duty cost, the Respondent's rule-making powers are restricted by the statute itself with respect to fixing the enrolment fees and the criteria for enrolment. The delegation of power under Section 24 (1)(e) & 28 cannot be used unbridled or in excess to legislative intent of the statute to determine the enrolment fees arbitrarily or unreasonably. It is further pertinent to note that the Respondent No. 3 is the sole authority for the welfare of advocates in the State of Orissa and such gross violation of the Act by misusing the rule-making powers to fix such an exorbitant, arbitrary and mandatory fees for enrolment is utter deviance from the legislative intent of the Act. Therefore, such an illusory attempt of disregarding and misusing the rule-making powers delegated to the Respondent No. 3 is in direct contrast to the Act.

4.13 In furtherance of the above submissions, it is humbly submitted that the Respondent No. 3 by charging such illegal, exorbitant and arbitrary enrolment fees have violated the right to equality and equality before the law as established in the Article 14 of the law students and law graduates of the state of Odisha. That, Advocates as defined under the Advocates Act, 1961 form a single class and the criteria to be registered as an Advocate. That, Respondent No. 3, by charging such exorbitant enrolment fees causes discrimination among the law students and law graduates of Odisha with that, from other States, as it is much easier, economical and affordable to get enrolled in other State Bar Councils rather than getting enrolled with Respondent No. 3. It is submitted that, Article 14 bars discrimination and prohibits discriminatory laws and it strives to treat all persons in similar circumstances alike, both in privileges and liabilities. The fact that any law graduate in order to get himself enrolled, has to complete his law degree from a recognised law college, get registered with a Bar Association and has to complete his AIBE exam to get permanently enrolled in the Bar of any State of his choice applies equally to all law graduates, likewise all applicants desiring to become Advocates should be charged for enrolment fees in consonance to the Advocates Act, BCI Rules and other State Acts, to get themselves registered as Advocates, is ought to be same.

4.14 That, by charging such exorbitant fees of Rs. 42,100/- for enrolment Respondent No. 3 have acted in complete contrast to the objectives of the Advocates Act and have also violated the principle of 'equals should be treated alike'. Respondent No. 3 by charging nearly twice the amount of enrolment fees charged by some State Bar Councils, and against the statutory mandate, is discriminating among the law graduate from state of Odisha and other States, restricting and limiting the entry of the law graduates to get themselves enrolled to pursue their legal careers. Moreover, the Respondent No. 3, by making the funds and welfare schemes mandatory made the enrolment fee more unaffordable for those law graduates from economically weaker sections.

4.15 That, in addition to the above mentioned fees, for a law graduate to get enrolled with the Odisha State Bar Council, he has to pay an additional amount ranging from Rs. 5,000/- to Rs.15,000/-, for membership in any Bar Association depending on the respective Bar Association fees, and also undertake the AIBE exam by paying a registration fees of Rs. 3,500/- which are a statutory obligation to get enrolled as an Advocate and also for becoming a member in any Advocate welfare fund schemes made by the Bar Council of India or the State Bar Councils. So, the total amount paid by any law graduate from Odisha, to get himself enrolled with

Respondent No. 3 is approx. Rs. 52,500/-, which is extremely exorbitant for every individual, let alone for the one from economically weaker background. It is therefore submitted that, for a fresh law graduate paying such exorbitant fees for enrolment, and even before earning a single penny is extremely burdensome and cruel.

4.16 That, It is respectfully submitted that the petitioner is not challenging the fees charged for membership in any Bar Association in Odisha or the AIBE registration fees in the present petition, it is just to emphasise the actual burden of paying such cumulative fees in total, by the law graduates and law students for starting their legal careers, even before starting to earn a single penny. Hence, Respondent No. 3, has deliberately violated the right to equality of the law students and law graduates by abusing their position and power charging exorbitant enrolment fees from the applicants and discriminating them from the law graduates and law students from other State Bar Councils.

4.17 It is furthermore imperative to point out that the actions of the Respondent No. 3 have caused serious fundamental right violation of Article 19(1)(g) by interfering in the statutory mandate of determining the enrolment fees, which it neither has the power to do so or even to make it condition precedent for enrolment. The determination of the enrolment fees

becomes challengeable under Article 19(1)(g) as it directly interferes with the statutory mandate, because such exorbitant enrolment fees restricts and prohibits law students and law graduates to enter the legal profession freely. Article 19(1)(g) guarantees to all citizens the right to practise any profession or to carry on any occupation, trade or business. It includes all avenues and modes through which a person earns his livelihood. In the present scenario, the Respondent No. 3 by fixing such exorbitant illegal and mandatory enrolment fees is causing hindrance for those from economically weaker sections to get themselves registered as advocates and practice litigation. Such a policy, is a direct contrast to the sole function of the Respondent No. 3 as well as against the public interest. Thus, any such administrative decision of the Respondent No. 3 which is not within the scope of its authority as provided in the various provisions of the Advocates Act, and imposing such indirect restriction on law students and law graduates to enter the legal profession against their fundamental right to carry on business or profession is void under Article 19(1)(g).

4.18 It is submitted that, such an indirect restriction on the law graduates and law students causes violation of Article 19(1)(g) it further violates the right to livelihood interpreted under Article 21, as no person can live without the means of living, that is, the means of livelihood. Such deprivation of

livelihood caused by the Respondent No. 3 would denude the life of the law students and law graduates desirous to join the profession of litigation and would make their life impossible to live. The right to life includes right to livelihood and the right to livelihood therefore cannot hang on to the fancies of Respondent No. 3 while carrying out its functions as prescribed under the Act. Thus, such misuse of the rule making powers by the Respondent No. 3 having direct consequences on the future and livelihood of many law students and law graduates amounts to flagrant and blatant violation of their fundamental rights.

5. It is humbly submitted that the source of information of the facts pleaded is based on personal knowledge of the Petitioner. The Petitioner has verified the facts personally which are based on records, information or pdf available on the official websites of other State Bar Councils.
6. The Petitioner humbly submits that, two representations as per the Rule 8 of Orissa High Court Public Interest Litigation Rules, 2010 have been filled as of now dated 13.08.2021 and 06.01.2022 providing the Respondent No. 3 an opportunity to revert to the issues mentioned in both the representations. However, no such reply or notice has been received by the Petitioner with regards to the representations. A copy of the representations is annexed herewith and marked as **ANNEXURE - 3**. It is also submitted that, waiting for

the Respondent's reply to the representation will only delay the present matter and will cause serious damage to the cause that is already neglected for several years together.

7. It is submitted that to the best of knowledge of the Petitioner, no public interest petition raising the same issue is filed before the Hon'ble Court or before any other Court.
8. It is most humbly submitted before the Hon'ble Court that the present petition has been filed on the following amongst other grounds:

GROUND

- A. BECAUSE, the present public interest litigation is maintainable under Article 226 of Constitution. To ensure that the present petition is maintainable, the following ground is threefold in nature:
 - i. *Locus standi* of a Petitioner is *sine qua non* i.e., condition precedent in public interest litigation. A petition filed by an individual on behalf of the public at large or class of persons who are not in position to move to court against the violation of their fundamental right. Any individual or organization against the violation of any fundamental or constitutional right of the persons who due to economic or social disability cannot approach the court, can file public interest litigation.
 - ii. That the present petition is filed in interest of law students and law graduates who come from different economic strata and wish to make their career inter alia amongst litigation,

corporate practice etc. However, the Respondent makes it really difficult for all the fresh law graduates, especially for those hailing from economically weaker sections to register themselves as Advocates by charging such burdensome fees which is a direct setback for promoting an inclusive legal profession.

- iii. That the fundamental rights of the law students and law graduates are getting transgressed by the Respondent by charging such exorbitant and illegal enrolment fees which is in direct contrast to the statutory prescribed fees. The Respondent No. 3 has caused gross violation of Article 14, 19(1)(g) and 21 of the Constitution of India.

- B. BECAUSE, the Respondent No. 3 have blatantly violated the law regarding fixing the amount of enrolment fee in direct contrast to the stipulated fee fixed by the Parliament in Section 24(1)(f) of the Advocates Act. The Respondent No. 3 has resorted to collect heavy amounts under several heads of fee, excessive and disproportionate to the fees collected by other State Bar Councils. The statutory fees of Rs. 750/- along with stamp duty if any chargeable as prescribed by the Act, is overlooked by the Respondent No. 3 to determine the enrolment fee amounting to Rs. 42,100/- using its rule making powers under the Act is illegal, arbitrary, and *de hors* of the intent and objective of the Advocates Act, 1961.

- C. BECAUSE, the Respondent No. 3 has deliberately neglected the Rule 15 of PART-IX of the BCI Rule and Rule 4(f) of Chapter IV of the Odisha Bar Council Rules, 1989. The said provisions reiterate the amount for enrolment as Rs. 750/- along with stamp duty if any chargeable which is predetermined by the legislature in the Advocates Act, 1961. Therefore, the Respondent have violated the provisions of the Advocates Act, 1961 by deliberately neglecting the above said provisions and hence such act of the Respondent is *de hors* the intent and objective of the Advocates Act, 1961.
- D. BECAUSE, the Respondents have wrongly interpreted their powers under Section 6(2) of Advocates Act, 1961, creating several welfare funds and schemes and making them mandatory for the applicants to contribute to such funds during the enrolment process. Moreover, the word ‘may’ in Section 15(1) of the Odisha Advocates Welfare Fund Act, 1987, expounds that admission to the funds created by the Respondent is at the option of the advocate or applicant. However, in reality the Respondent charges the applicants to compulsorily pay for the welfare funds and schemes made by it during the enrolment, is beyond the scope of powers of the Respondent and hence is illegal and gross violation of the Advocates Act, 1961.
- E. BECAUSE, the Respondent does not have the competence to frame any rules in respect of conditions stipulated in Section 24(1)(f), under the guise of rule-making power in respect of the field covered by Section 24(1)(e) and Section 28(2)(d) to interpret in any manner,

to empower themselves to levy such an additional, exorbitant and mandatory fees against the legislative mandate already pre-determined with respect to the enrolment fees. Since, the Parliament has consistently enunciated its clear objective and policy by engrafting a specific provision under Section 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, the Respondent No. 3 by virtue of its rule making powers under Section 28(2) of the Act cannot 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 Section 24(1)(f). Such a rule made by the Respondent No. 3 which is in direct contrast to Section 24(1)(f) of the Act, cannot be made valid merely on account of the so called approval granted thereto by the Respondent No - 2 by resorting to the provisions contained in Section 28(3). Hence, such exercise of the rule making powers in excess of the subordinate legislation would be nothing short of being illegal and beyond the scope of rule-making powers going by the well-known elementary principles regulating the power of subordinate legislation.

- F. BECAUSE, Respondent No. 3 have violated the right to equality and equal treatment before the law of the law students and law graduates as enshrined in Article 14, by charging illegal, exorbitant and arbitrary enrolment fees in contrast to the statutory mandate of Advocates Act, 1961 and also by causing irrational discrimination

among the law graduates from State of Odisha and other States, desirable to get themselves enrolled with their respective Bar Councils by charging them twice or more the amount of enrolment fees that is charged by other State Bar Councils. Respondent No. 3 is also causing serious discrimination against those belonging from economically weaker section by limiting them indirectly by charging such exorbitant enrolment fees.

G. BECAUSE, the collection of the impugned enrolment fee by the Respondent No. 3 is excessive and disproportionate and that it is also violative of the fundamental right to practise any profession or carry on any occupation, trade or business as enshrined under Article 19(1)(g). Moreover, the violation of Article 19(1)(g), further violates the right to livelihood that is interpreted as an extension of multifarious rights brought into the broad scope under Article 21 by the Apex court in various landmark judgments. Therefore, Respondent No. 3 by indirectly limiting the applicants to carry on their profession or further their legal career, by charging such exorbitant enrolment fees, restricts their right enshrined under Article 19(1)(g) and 21 of the Constitution of India, which is a blatant violation of the fundamental rights of the applicants.

9. Hence, aggrieved by the gross discrimination and injustice done by the Respondents, the illegal practice of levying enrolment fees contrary to the statutory provisions of the Advocates Act, 1961, Bar Council of India Rules, Orissa State Bar Council Rules, 1989, Orissa

Advocates Welfare Fund Act, 1987, Odisha Bar Council Rules, 1989 and the Constitution of India as laid down by the Legislature, the Petitioner is left with no efficacious or alternative remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India filling the present writ petition invoking the extra-ordinary jurisdiction of this Hon'ble Court. That the Petitioner most respectfully prays that this Hon'ble, Court may be pleased to pass the following order:

P R A Y E R

It is therefore, prayed that this Hon'ble Court may graciously be pleased to admit this PIL writ petition, issue *RULE NISI* calling upon the Opposite Parties to show cause, and if the opposite parties fail to show cause or show insufficient cause, the said rule be made absolute in granting the relief's prayed for issuance of appropriate Writ(s), Order(s) or Direction(s) to:

1. Declare, that the enrolment fees charged by the Respondent No. 3 in excess of the fees determined statutorily is illegal, arbitrary, exorbitant, discriminatory and contrary to the provisions of the Advocates Act, 1961.
2. Direct, the Respondent No. 3 to freshly determine the enrolment fees in strict accordance with Section 6(2), 24(1)(e) & (f), 28(1)(d) & (e) & (2) & (3), of the Advocates Act, 1961, Rule 15 of PART-IX of the BCI Rules, Rule 4(f) of Chapter IV of Orissa State Bar Council Rules, 1989, and Section 15 (1) of the Odisha Advocates Welfare Fund Act, 1987.

3. Direct the Respondent No. 3, to make membership into any funds and welfare schemes made exclusively by Respondent No. 3 as optional and not mandatory or condition precedent for enrolment.

And may further be pleased to pass any other order(s), as deemed fit and proper;

And for this act of kindness the Petitioner shall as in duty bound ever pray.

Cuttack.

Drawn and filed by

Date:

Ramdas Achary

Advocate

Advocate