

**Case :-** WRIT - C No. - 65298 of 2014

**Petitioner :-** Shashi Kant Upadhyay Advocate (In Person)

**Respondent :-** High Court Of Judicature At Allahabad Thru' R.G.

**Counsel for Petitioner :-** S.K. Upadhyay (In Person)

**Counsel for Respondent :-** Manish Goyal

**Hon'ble Dr. Dhananjaya Yeshwant Chandrachud, Chief Justice**  
**Hon'ble Pradeep Kumar Singh Baghel, J.**

The petition under Article 226 of the Constitution has been filed and argued in person by an Advocate enrolled with the Bar Council of Uttar Pradesh, seeking to challenge the constitutional validity of the provisions of Rule 3-A of Chapter XXIV of the Allahabad High Court Rules, 1952<sup>1</sup>. This rule was made in exercise of powers conferred by Section 34 (1) of the Advocates Act, 1961 and was notified on 26 May 2005. Rule 3-A is in the following terms:

**“3-A. (i)** Unless the Court grants leave, an Advocate who is not on the Roll of Advocates in the High Court at Allahabad or Lucknow shall not be allowed to appear, act or plead in the High Court at Allahabad or Lucknow as the case might be unless he files appointment along with an Advocate who is on such roll for Allahabad Cases at Allahabad and for Lucknow Cases at Lucknow.

(ii) The High Court shall prepare a Roll of Advocates in Parts 'A' and 'B' of those who ordinarily practise in the High Court, Part 'A' for Allahabad and Part 'B' for Lucknow.

(iii) The roll of advocates shall bear in regard to each advocate entered, his full name, father's name, passport size coloured photographs, enrolment number, date of enrolment,

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<sup>1</sup> Rules of 1952

complete postal address both of residence and office which shall be in the municipal limits of the city of Allahabad or Lucknow as the case might be.

(iv) The rolls shall be prepared and revised periodically in the manner and under the authority as may be prescribed by the Chief Justice.

(v) This Rule 3-A shall come into force after notification by the Chief Justice that both the Rolls for Allahabad and Lucknow in Parts 'A' and 'B' are complete.”

The Advocates Act, 1961<sup>2</sup> was enacted by Parliament to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All-India Bar. The Statement of Objects and Reasons accompanying the introduction of the Bill in Parliament provided that the main features of the Bill were:

“(1) The establishment of an All India Bar Council and a common roll of advocates, and advocates on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court;

(2) The integration of the bar into a single class of legal practitioners known as advocates;

(3) The prescription of a uniform qualification for the admission of persons to be advocates;

(4) The division of advocates into senior advocates and other advocates based on merit;

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<sup>2</sup> Act of 1961

(5) The creation of autonomous Bar Councils, one for the whole of India and one for each State.”

Sub-section (2) of Section 1 of the Act of 1961 provides that the Act extends to the whole of India. Sub-sections (3) and (4) of Section 1 of the Act of 1961 provide for the date or dates on which the provisions of the Act would come into force and are in the following terms:

“(3) It shall, in relation to the territories other than those referred to in sub-section (4), come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

(4) This Act shall, in relation to the State of Jammu and Kashmir and the Union Territory of Goa, Daman and Diu, come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.”

The expression 'appointed day' was defined in Section 2 (b) in relation to a provision of the Act to mean the day on which that provision comes into force. Chapter IV of the Act deals with the right to practise. Section 29 provides that subject to the provisions of the Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates. In this context, it would be necessary to note that the expression 'advocate' as defined in Section 2 (1) (a) means an advocate

entered in any roll under the provisions of the Act.

Section 30 of the Act of 1961 deals with the right of advocate to practise and is in the following terms:

**“30. Right of advocates to practise.** – Subject to the provisions of this Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which this Act extends,

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- (i) in all courts including the Supreme Court;
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.”

Section 34 of the Act of 1961 confers a power to make rules on the High Courts and is as follows:

**“34. Power of High Courts to make rules.** – (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(1-A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any court subordinate thereto.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final

examinations for articled clerks to be passed by the persons referred to in Section 58-AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.

(3) [\*\*\*]

Sub-section (3) of Section 34 was omitted by Amending Act 107 of 1977 with effect from 1 January 1977. Prior to its omission, sub-section (3) provided that until rules are made under the section, any rules made by a High Court under its Letters Patent or any other law relating to any of the matters specified in the section which were in force immediately before the appointed day, shall continue in force so far as consistent with the Act, and shall be deemed to be rules made under the section.

Section 30 was brought into force with effect from 15 June 2011 by a notification published in the Gazette of India<sup>3</sup>.

Rule 3-A of Chapter XXIV of the Rules of 1952 provides that an advocate who is not on the roll of advocates in the High Court at Allahabad or Lucknow, shall not be allowed to appear, act or plead in the High Court at Allahabad or Lucknow, as the case may be, unless he files an appointment along with an advocate who is on such roll for Allahabad cases at Allahabad and for Lucknow cases at Lucknow. The rule contemplates the preparation of a roll of advocates in Part 'A' for

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<sup>3</sup> Ministry of Law and Justice (Deptt. of Legal Affairs), Noti. No.S.O.1349 (E), dated June 9, 2011, published in the Gazette of India, Extra., Part II, Section 3 (ii), dated 9<sup>th</sup> June, 2011, p.1, No.1139. In exercise of the powers conferred by sub-section (3) of Section 1 of the **Advocates Act, 1961** (25 of 1961), the Central Government hereby appoints the 15<sup>th</sup> day of June, 2011 as the date on which Section 30 of the said Act shall come into force.

Allahabad and in Part 'B' for Lucknow. The rolls are to be prepared and revised periodically in the manner and under the authority as prescribed by the Chief Justice. Rule 3-A was to come into force after notification by the Chief Justice that both rolls for Allahabad and Lucknow in Parts 'A' and 'B' were completed. Rule 3-A has come into force.

Now, it is in this background, thus we would have to assess the submissions which have been urged by the petitioner. The challenge to Rule 3-A of Chapter XXIV of the Rules of 1952 is on the following grounds:

(i) Section 34 has not been brought into force under Section 1 (3). Hence no rules could be framed. Alternatively, even if Section 34 has been brought into force, rule 3-A was notified on 26 May 2005 and was enforced after the preparation of advocate rolls for Allahabad and Lucknow in 2011. In the meantime, Section 30 was enforced with effect from 15 June 2011. Consequently, after the enforcement of Section 30, every advocate whose name is entered in the State roll is entitled to practise as of right throughout the territories to which the Act extends, including in all Courts and Tribunals. This right under Section 30 cannot be taken away by the rules which have been made by the High Court under Section 34 (1);

(ii) Under Section 30, an advocate whose name is born on the State roll has a full-fledged right to practise throughout the territories of

India and this right is abridged by Rule 3-A of Chapter XXIV of the Rules of 1952;

(iii) Article 145 of the Constitution specifically confers upon the Supreme Court a power to frame rules for regulating the practise and procedure of the Court, including rules as to persons practising before the Supreme Court. No such power has been conferred on the High Courts by the Constitution and, hence, by necessary implication such a power has been excluded from the jurisdiction of the High Courts; and

(iv) Rule 3-A violates the fundamental right conferred by Article 19 (1) (g) of the Constitution.

On the other hand, it has been urged on behalf of the respondents that;

(i) Section 30 confers a right to practise throughout the territories of India. Section 34 operates in a different field and empowers the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the Courts subordinate thereto;

(ii) The Rules contemplated in sub-section (1) of Section 34 are to deal with the **conditions** subject to which an advocate may be permitted to practise in the High Court and the Courts subordinate thereto and do not abridge the right to practise throughout the territories of India in any Court or Tribunal;

(iii) Section 30 is subject to the provisions of the Act which

would include the provisions of Section 34. Contrariwise, Section 34 has not been made subservient to Section 30. Section 49 (1) (*ah*) empowers the Bar Council of India similarly to frame rules prescribing the conditions subject to which an advocate shall have a right to practise. This is an indicator of the legislative intent that the conditions subject to which an advocate shall have a right to practise are distinct from the right to practise itself.

The rival submissions now fall for consideration.

Section 30 is expressly made subject to the provisions of the Act. Section 30 provides that every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which the Act extends, including in all Courts or Tribunals; before every tribunal or person legally authorised to take evidence and, before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise. In other words, what Section 30 legislates is the entitlement as of right to practise of every advocate whose name is entered in the State roll. While legislating a statutory provision in the nature of Section 30, Parliament, at the same time, made it subject to the other provisions of the Act. Parliament envisaged that the High Courts could make rules laying down the conditions subject to which an advocate would be permitted to practise in each High Court and the Courts subordinate thereto. A rule making power was expressly conferred upon the High Court by sub-section (1)



of Section 34. Hence, the entitlement which is conferred by Section 30 to practise is yet subject to the other provisions of the Act.

The matter may be looked at from either of two perspectives. The first is that the conditions subject to which an advocate shall be permitted to practise are not in derogation of the entitlement which is recognized by Section 30. Sections 30 and 34 operate in different fields. Section 30 confers an entitlement, while Section 34 recognizes the rule making power of the High Court to lay down the conditions subject to which an advocate may be permitted to practise before it and Courts subordinate to it. The second perspective is that in any event, the entitlement which is statutorily conferred by Section 30 is, at the same time, made subject to the provisions of the Act which would include Section 34. Section 34 (1) is in the nature of a regulatory power under which the High Courts have been permitted to frame rules defining the conditions subject to which an advocate would be permitted to practise in the High Court or any Courts subordinate thereto.

There is no merit in the submission that Section 34 has not been brought into force. As a matter of fact, Section 34 was brought into force by a notification dated 5 April 1969 of the Union Ministry of Law (Department of Legal Affairs)<sup>4</sup>. The notification was issued in exercise of the power conferred by sub-section (3) of Section 1. The Central Government appointed 1 June 1969 as the date on which the provisions

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<sup>4</sup> Gazette of India, Extra., Part II, Section 3-Sub-section (ii), pg. 569.

of Sections 29, 31, 33 and 34 of Chapter IV would come into force.

Rule 3-A of the Rules of 1952 was notified on 26 May 2005. Rule 3-A contemplates that two rolls would be prepared; Part 'A' comprising of advocates who ordinarily practise at Allahabad and Part 'B' for Lucknow. Rule 3-A does not impose a prohibition on the practise of law. All that the roll prescribes is that an advocate who is not on the roll of advocates in the High Court at Allahabad or Lucknow will be allowed to appear, act or plead only if he files an appointment along with an advocate who is on such roll for Allahabad cases at Allahabad and for Lucknow cases at Lucknow. Rule 3-A (i), in fact, also recognizes that the Court may grant leave so as to enable an advocate who is not on the roll of advocates either at Allahabad or Lucknow to appear, act or plead even without filing an appointment along with an advocate who is on such roll. The requirement that an advocate who is not on the roll of advocates at Allahabad or Lucknow can appear, act or plead only upon filing an appointment along with an advocate who is on such roll is, hence, subject to the leave being granted by the Court in which event, even the requirement would not apply. Sub-clause (v) of Rule 3-A contemplates that the rule would come into force after notification by the Chief Justice that both the rolls for Allahabad and Lucknow in Parts 'A' and 'B' have been completed. That exercise was concluded and the rule is undisputedly in force.

In our opinion, the fact that the preparation of the rolls in Parts 'A'

and 'B' was completed after the date of enforcement of Section 30 on 15 June 2011 would make no difference to the legal position. Once as a matter of statutory interpretation Sections 30 and 34 are held to operate in different fields, the date on which Rule 3-A came into force would make no difference to the ultimate conclusion. Whether Rule 3-A came into force before or after the commencement of Section 30, would make no difference to the legal position. The rule making power under Section 34 would continue to operate even after the enforcement of the provisions of Section 30 on 15 June 2011.

The provisions of Section 34 and its relationship with Section 30 was considered in a judgment of the Supreme Court in **Pravin C. Shah v. K.A. Mohd. Ali**<sup>5</sup>. Rule 11 of the Rules framed by the High Court of Kerala under Section 34 (1) of the Act of 1961 provided that no advocate who has been found guilty of contempt of Court would be permitted to appear, act or plead unless he has purged himself of the contempt. The Supreme Court noted that the right of an advocate to practise envelopes several acts to be performed by him in discharge of professional duties since apart from appearing in the Court, an advocate can be consulted by his clients, would give legal opinion, draft instruments, pleadings, affidavits or any other documents among other things. The Supreme Court held that the power to formulate rules for regulating proceedings inside the Court would be distinct from the practise of law. While the Bar

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5 AIR 2001 SC 3041

Council controls the practise of law, the High Court has to be in control of the regulation of its own proceedings. These principles were reiterated in a subsequent decision of the Constitution Bench of the Supreme Court in **Harish Uppal (Ex-Capt.) v Union of India**<sup>6</sup>.

A Division Bench of this Court considered the provisions of Sections 30 and 34 in **Prayag Das v. Civil Judge, Bulandshahr**<sup>7</sup>. The Division Bench held as follows:

“9. ...The High Court has a power to regulate the appearance of Advocates in Courts. The right to practise and the right to appear in courts are not synonymous. An Advocate may carry on chamber practise or even practise in court is various other ways e.g., drafting and filing of pleading and Vakalatnama for performing those acts. For that purpose his physical appearance in court may not at all be necessary. For the purpose of regulating his appearance in court the High Court should be the appropriate authority to make rule and on a proper construction of Section 34 (1) of the Advocates Act it must be inferred that the High Court has the power to make rule for regulating the appearance of Advocates, and proceedings inside the courts. Obviously the High Court is the only appropriate authority to be entrusted with this responsibility. However, so far as the basic qualification of an Advocate entitling him to practise without physically appearing in court, or disentitling him from doing so are concerned, the determination of such conditions must remain within the exclusive province of the

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6 AIR 2003 SC 739.

7 AIR 1974 (Allahabad) 133.

Bar Council.”

The decision of the Division Bench of this Court in **Prayag Das** (supra) was cited with approval in the judgment of the Supreme Court in **Pravin C. Shah** (supra). A Division Bench of the Patna High Court has also followed the judgment of the Division Bench of this Court, in **Abhay Prakash Sahay Lalan v. High Court of Judicature at Patna**<sup>8</sup>, where it has been held as follows:

“6. ... Under Section 34 (1) of the Advocates Act, 1961, the High Court has power to frame rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the Courts subordinate thereto. The rules that may be framed are regulatory in character, and are not prohibitory. The rules may include, *inter alia*, the provision for holding of test/examination followed by a training by advocates who desire to practise before the High Court or the Courts subordinate thereto.”

The judgment of the Patna High Court was cited with approval in the judgment of the Constitution Bench of the Supreme Court in **Harish Uppal** (Supra). Finally, we may also advert to a decision of a learned Single Judge of the Calcutta High Court in **Chunilal Basu v. The Hon'ble Chief Justice of the High Court at Calcutta**<sup>9</sup>, wherein it has been held that sub-section (2) of Section 34 is merely an enabling

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8 AIR 1998 PATNA 75

9 AIR 1972 CALCUTTA 470

provision giving authority to the High Court to make rules for some specified purposes.

We find no merit in the submission based on the provisions of Article 145 of the Constitution. The conferment of a specific power on the Supreme Court in Article 145 to frame rules for regulating generally the practise and procedure of the Court, including rules as to persons practising before the Court, is not in derogation of the statutory power which has been conferred upon the High Court by Section 34 (1) of the Act of 1961. The power under Section 34 (1) is to frame rules laying down the conditions subject to which an advocate shall be permitted to practise **in the High Court and Courts subordinate to it**. Rule 3-A does not abridge or encroach upon the right to practise a profession conferred by Article 19 (1) (g). Rule 3-A is a regulatory measure. Regulating the conditions subject to which a person may practise before the High Court is an incident of this constitutional position of the High Courts. The High Court exercises control and supervision over the district judiciary. The intent of Rule 3-A is to provide accountability of persons who appear before the High Court and subordinate Courts. The stream of justice has to be unsullied.

For these reasons, we hold that;

(i) Section 30 of the Act of 1961 statutorily recognizes an entitlement as of right to practise throughout the territories for every advocate whose name is entered in the State roll. However, Section 30 is

subject to the other provisions of the Act which would include Section 34;

(ii) The rule making power which is conferred upon the High Courts in Section 34 (1) is not in derogation of, nor does it abridge the entitlement as of right to practise which is conferred by Section 30. Section 34 is in the nature of an enabling provision which enables the High Court to regulate the conditions subject to which an advocate shall be permitted to practise in the High Court or in any court subordinate thereto;

(iii) Rule 3-A of Chapter XXIV of the Rules of 1952, which has been framed in exercise of the power conferred by Section 34 (1) is not *ultra vires* or unconstitutional;

(iv) There is no violation of the fundamental right to practise the profession law guaranteed under Article 19 (1) (g) of the Constitution. The Advocates Act, 1961 regulates the right to practise and the rules, which have been framed by the High Court, are in pursuance of an express conferment of such power by Parliament under Section 34 (1) of the Act of 1961.

For these reasons, we find no merit in the writ petition, which shall, accordingly, stand dismissed. There shall be no order as to costs.

**Order Date :- 26.3.2015**  
RKK/-

(P.K.S. Baghel, J)      (Dr. D. Y. Chandrachud, CJ)