THE HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Heard through Video Conferencing

Writ Petition No.14013/2020

Chanchal Tiwari and others ... Petitioners

versus

Union of India and others ... Respondents

and

Writ Petition No.14228/2020

Navin Ahuja and another ... Petitioners

versus

Union of India and others ... Respondents

Appearance:

Shri Sanjay Verma, learned counsel for the petitioners.

Shri J.K. Jain, learned Assistant Solicitor General for the respondent No.1/Union of India.

Shri Udayan Tiwari, learned counsel for respondent No.2.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice

Hon'ble Shri Justice Rajeev Kumar Dubey, Judge

Date of decision : **14.10.2020**

O R D E R

Per Sanjay Yadav, ACJ :-

These writ petitions at the instance of Advocates provisionally enrolled with the Madhya Pradesh State Bar Council, take exception to Rule 9 of All India Bar Examination Rules, 2010 and seek that it be declared ultra vires and direction be issued to the Bar Council of India to declare the result of centre of Jabalpur and Bhopal of the examination conducted on 15.09.2019. Further direction is sought for the Madhya Pradesh State Bar Council to extend the period of provisional enrollment.

2. That, Rules 9 to 11 of All India Bar Examination Rules, 2010 were brought in vogue vide Resolution No.73/2010; whereby, the Bar Council of India resolved that being vested with the power of laying down conditions subject to which advocates shall have the right to practise the profession of law under the Advocates Act, 1961 (for short, 'Act of 1961') shall conduct an All India Bar Examination, the passing of which would entitle the advocate to a Certificate of Practice which would permit him/her to practice the profession of law under the Advocates Act, 1961. The Bar Council of India, therefore, approves the Rules framed by the Directorate of Legal Education for the conduct of the All India Bar Examination.

3. In furtherance to said Resolution, Rules 9 to 11 were inserted in Part VI, Chapter III of the Bar Council of India Rules – Conditions for Right to Practise – under Section 49(1)(ah) of Act of 1961. It was published in the Gazette of India on 12.06.2010.

4. Rule 9 which is under challenge, mandates that :

> "9. No Advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such Advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all Law students graduating from academic year 2009-2010 and onwards and enrolled as Advocates under Section 24 of the Advocates Act, 1961."

5. Exception to Rule 9 is taken on the contentions that it is beyond the competency of the Bar Council of India to frame such Rule which tends to deprive advocates who are enrolled under Section 24 of the Act of 1961. It is urged that post enrollment eligibility criteria is dehors Sections 24 and 30 of Act of 1961. Reliance is placed on the decision in **V. Sudeer vs Bar Council of India, (1999) 3 SCC 176** to bring home the submissions.

6. Considered the submissions.

7. Section 24 of Act of 1961 makes provision regarding persons who may be admitted as advocates on a State roll. It stipulates :

> "24. Persons who may be admitted as advocates on a State roll.—(1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the following conditions, namely :—
>
> (a) he is a citizen of India :
>
> Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;
>
> (b) he has completed the age of twenty-one years;
>
> (c) he has obtained a degree in law—
>
> (i) before the 12th day of March, 1967, from any University in the territory of India; or
>
> (ii) before the 15th day of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or
>
> (iii) after the 12th day of March, 1967, save as provided in sub-clause (iii-a), after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iii-a) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68, or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India; or

he is a barrister and is called to the Bar on or before the 31st day of December, 1976; 5or has passed the articled clerk's examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court; or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act

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

(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 8[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:

Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be one hundred rupees and to the Bar Council of India, twenty-five rupees.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination.

(2) Notwithstanding anything contained in sub-section (1), a vakil or a pleader who is a law graduate may be admitted as an advocate on a State roll if he—

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day; and

(b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

(3) Notwithstanding anything contained in sub-section (1), a person who—

(a) has, for at least three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory; or

(aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate to practise the profession of law (whether by way of pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date; or

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(c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or

(d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf,

may be admitted as an advocate on a State roll if he—

(i) makes an application for such enrolment in accordance with the provisions of this Act; and

(ii) fulfils the conditions specified in clauses (a), (d), (e) and (f) of sub-section (1).”

8. Evidently, the right created under Section 24 has been subjected to the provision of Act of 1961; meaning thereby, that it does not exclude other provisions contained in the Act of 1961.

9. That, Section 30 of Act of 1961 makes provision as to right of advocates to practise. It stipulates :

“**30. Right of advocates to practise**. - Subject to 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, -

(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."

10. Section 30 was brought into force w.e.f. 15.06.2011 vide Notification No.501344(E) dated 09.06.2011 published in the Gazette of India on 09.06.2011 by the Central Government in exercise of its power under Section 1(3) of Act of 1961.

11. Furthermore, Section 49 confers on the Bar Council of India general power to make rules for discharging its functions under the Act of 1961. Clause (ah) whereof empowers the Bar Council of India to lay down the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a Court. In other words, the Bar Council of India is conferred with the power to frame Rules laying down conditions post enrollment subject to which an advocate shall have right to practise. In other words, an

advocate getting enrolled under Section 24 can be subjected to further conditions before he is permitted to practise as an advocate in court.

12. In **V. Sudeer** (supra), wherein, in paragraph 26, their Lordships were pleased to observe :

> 26. That takes us to the last provision on which reliance was placed by Shri Rao, learned Senior Counsel for the respondent. That is Section 49(1)(ah). A mere look at the said provision shows that it confers rule-making power on the Bar Council of India to prescribe conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court. It is, therefore, obvious that once a person has been enrolled as an advocate under the Act, his right to practise can be made subject to certain conditions if the Bar Council of India seeks to impose such conditions on an enrolled advocate. In other words, rule-making power under Section 49(1)(ah) deals with a situation which is post-enrolment of an advocate …….. . The entitlement of an enrolled advocate is to be culled out from a conjoint reading of Sections 17, 24(1) and the definition of advocate as found in Section 2(1)(a). Once a person is enrolled as an advocate, how the right to practise of such enrolled advocate can be regulated or

monitored may legitimately form the subject-matter of a rule framed under Section 49(1)(ah). ..”

13. When the impugned Rule 9 of the All India Bar Examination Rules, 2010, which envisages “No Advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practice under Chapter IV of the Advocates Act, 1961, unless such Advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all Law students graduating from academic year 2009-2010 and onwards and enrolled as Advocates under Section 24 of the Advocates Act, 1961”, is tested on the anvil of above analysis, the same cannot be said to be *ultra vires* Sections 24 and 30 of the Advocates Act, 1961 as would warrant an interference. Consequently, challenge to validity of Rule 9 is negatived.

14. As regard to declaration of result of the examination. It is borne out from the record that the examination at centre of Jabalpur and Bhopal has been cancelled because of the mass copying. In view whereof, no direction can be issued for declaration of result as the examination stand cancelled. However, petitioners would be at liberty to file appropriate application before the Bar Council of

India for conducting fresh examination. It is for the Bar Council of India to take the call. Meanwhile, the petitioners are also at liberty to file representation before Madhya Pradesh State Bar Council, seeking extension of the provisional registration in these fact situation.

15. We have no manner of doubt that the representation so filed, shall be dwelt upon objectively by the Bar Council of India and Madhya Pradesh State Bar Council.

16. In the result, the petitions stand **disposed of** finally in above terms. No costs.

(Sanjay Yadav)
Acting Chief Justice

(Rajeev Kumar Dubey)
Judge

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