

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9976 of 2016

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1. Amar Sinha, son of (Late) Kameshwar Prasad Sinha, Resident of for Area Munger, P.S. - Kotwali, At & District - Munger.

2. Prabhat Kumar, son of Sri Rajeshwar Prasad Shukla, Resident of Mohalla - Bari Bazar Kallubara Lane, P.O. - Munger P.S. - Kotwali, District - Munger.

.... **Petitioner/s**

Versus

1. Bar Council of India through its Chairman, 21 Rouse Avenue, Institutional Area, Near Bal Bhawan, New Delhi - 110002.

2. The Chairman, Bar Council of India, 21 Rouse Avenue, Institutional Area, Near Bal Bhawan, New Delhi - 110002.

3. Bihar State Bar Council through its Secretary, Bar Council Bhawan, Patna High Court, Patna.

4. Chairman, Bihar State Bar Council, Bar Council Bhawan, Patna High Court, Patna.

.... **Respondent/s**

With

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Civil Writ Jurisdiction Case No. 9668 of 2016

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Patanjali Rishi, Advocate on Record, Patna High Court, S/o Shri Birendra Kumar, r/o Nala Road D' Block, P.S. - Kadam Kuan, District - Patna.

.... **Petitioner/s**

Versus

1. The Bar Council of India through its Secretary, a statutory body constituted under the Advocates Act, 1961, having its office at 21, Rouse Avenue Institutional Area, New Delhi - 110002.

2. The Secretary, Bar Council of India, 21, Rouse Avenue Institutional Area, New Delhi - 110002.

3. The Bar Council of Bihar, Bar Council Bhawan, P.S. - Kotwali, District - Patna.
4. The Secretary, Bar Council of Bihar, Bar Council Bhawan, P.S. - Kotwali, District - Patna.

.... **Respondent/s**

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Appearance :

(In CWJC No.9976 of 2016)

For the Petitioner/s : Mr. Rajesh Kumar, Adv.

For the Respondent/s : Mr. Vishwajeet Kr. Mishra, Adv.

(In CWJC No.9668 of 2016)

For the Petitioner/s : Mr. Patanjali Rishi (In person)

For the Respondent/s : Mr. Vishwajeet Kr. Mishra, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT & ORDER

(C.A.V.)

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 30-09-2016

Howsoever noble a profession may be, the nobility of the profession depends on the nature and conduct of the persons, who practise such profession. If the conduct of even a small number of the persons of such a profession does not meet the requisite standards, ethical or otherwise, which may be required for the profession to maintain itself as a noble profession, some steps may have to be taken to ensure



that the persons, practicing such a profession, which is, otherwise, noble, do not bring the profession to disrepute. Necessary regulatory measures are, therefore, required to be taken to ensure that the profession remains noble. The present writ petitions illustrate such a situation inasmuch as the present set of writ petitions puts to challenge the regulatory measures, adopted by the Bar Council of India, with the avowed object of ensuring that the profession of law does not lose its sheen and its nobility is maintained.

2. Since these two applications, filed under Article 226 of the Constitution of India, involve common issue on the question of validity of the Certificate and Place of Practice (Verification) Rules, 2015 (*hereinafter referred to as the "Rules"*), both of them have been heard together and are being disposed of by the present common judgment and order.

3. In C.W.J.C. No. 9976 of 2016 (Amar Sinha & Anr. Vs. Bar Council of India & Ors.), there are two petitioners, who claim to be the regular practitioners at Munger District Court and who have been Members of the District Bar Association, Munger. Petitioner No. 1 has claimed that he has fairly long standing at the Bar and had been twice the Secretary of the District Bar Association, Munger, and twice, the President of the District Bar Association, Munger.

Petitioner No. 2 of the said case has claimed that he had been Member of Vigilance Committee of the District Bar Association, Munger, Member of Executive Committee of the Association, Munger, and was twice elected as Treasurer of the District Bar Association, Munger.

4. The sole petitioner of C.W.J.C. No. 9668 of 2016 (Patanjali Rishi Vs. The Bar Council of India & Ors.) has claimed that after obtaining his LL.B. (Hons.) degree, he has cleared All India Bar Examination, March 2011, conducted by the Bar Council of India, under All India Bar Examination Rules, 2010, and he is practicing as an Advocate since 2010. He is also said to have cleared the Advocates on Record Examination, 2013, conducted by Patna High Court, and has, thus, status of "*Advocate on Record*" of the Patna High Court.

5. It is the main case of petitioners of C.W.J.C. No. 9976 of 2016 that under Section 29 of the Advocates Act, 1961 (*hereinafter referred to as the "Act"*), Advocates are the only class of persons entitled to practise the profession of law. Advocate means, according to them, "*Advocate entered in any roll*" under the provisions of the Act, within the meaning of Clause (a) of sub-Section (1) of Section 2 of the Act. It is also their case that Section 16 of the Act contemplates only two types of Advocates, namely, "*Advocates and Senior Advocates*", and there cannot be any third category of the

Advocates entered, in the roll, under the provisions of the Act.

6. In the second case, i.e., C.W.J.C. No. 9668 of 2016, Rule 5 (a) of the Rules are sought to be declared *ultra vires* on the ground of the same is violative of Article 14 of the Constitution of India. There is an additional plea that Rule 5 (a) of the Rules should be read down to include the "*Advocates on Record*" of this Court from the exempted category of the Advocates from the process of verification.

7. Before we consider and address legal submissions advanced by and on behalf of the petitioners, putting to challenge the provisions under the Rules, it would be apt to look into the provisions under the Act and the Rules the background in which impugned provisions have been made, from the point of view as to whether the Bar Council of India possesses statutory power conferred upon it, under the Act, to make such Rules.

8. The Rules have been framed, as is evident from the preamble of the Rules, in exercise of powers conferred on the Bar Council of India (*hereinafter referred to as the "BCI"*), under Section 49(1)(ag), 49(1)(ah) and 49(1)(i) of the Act, as also, in exercise of powers conferred under Part V, Chapter I, Rule 1(1) & (2) and Rule 2 of the Bar Council of India Rules, Chapter III sub-Rule 3, 4 and Part-IX Rules 17, 18(h), 20, 22 and 24 of the Bar Council of India

Rules.

9. Section 49 of the Act confers upon the BCI a general power of making Rules for discharging its functions, under this Act and it gives, in particular, list of subjects on which the Bar Council of India may make Rules, which contain, *inter alia*, Sections 49(1)(ag), 49(1)(ah) and 49(1)(i) of the Act, which read as follows:-

"49(1)(ag) *the class or category of persons entitled to be enrolled as advocates;*

49(1)(ah) *the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a Court; and*

49(1)(i) *general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced."*

10. Section 7 of the Act outlines the functions of the BCI, which includes laying down standards of professional conduct and etiquette for advocates (Clause (b) of sub-Section 1), to safeguard the rights, privileges and interests of advocates (Clause (d) of sub-Section 1), to perform all other functions conferred on it by or under this Act (Clause (l) of sub-Section 1) and to do all other things necessary for discharging the aforesaid functions (Clause (m)

of sub-Section 1).

11. On a concise reading of Clauses (b), (d), (l) and (m) of sub-Section (1) of Section 7 of the Act, it is not very difficult to discern that it is one of the important functions and powers of the BCI not only to determine the class or category of persons, who can be said to be entitled to be enrolled as Advocates, but also to regulate the conditions, subject to which an Advocate shall have the right to practise and the circumstances in which a person shall be deemed to have practiced as an Advocate in a Court.

12. We, now, need to take note of the provisions, under the Rules, which are under challenge.

13. Rule 5 of the Rules places necessity of holding a valid and verified certificate of practice issued either under All India Bar Examinations Rules or under these Rules. However, certain categories of Advocates or Senior Advocates, designated under Section 16 of the Act, and the Advocates on Record of the Supreme Court of India as exempted from such requirement. The Senior Advocates and Advocates on Record of Supreme Court of India are required to send their two passport size photographs with their names and current addresses to the concerned Bar Council through their respective Associations (Clause (a) of Rule 5). Chapter II of the Rules lays down that an Advocate, after having



obtained Certificate of Enrollment, under Section 22 of the Act, is required to get himself registered as a Member of one of the Bar Associations, where he, ordinarily, practises law or intends to practise law. In the event, he does not intend to be the Member of any Bar Association, duly recognized by the concerned State Bar Council, he will be required to intimate this fact to the concerned State Bar Council and shall have to explain as to how shall he be getting the benefits of any welfare scheme, floated by the State Bar Council or Local Bar Association.

14. Sub-Rule (3) of Rule 6 has made it mandatory for the Bar Associations to apply to the respective Bar Council, within whose jurisdiction they are located, for being recognized under these Rules.

15. Chapter IV of the Rules deals with the manner in which applications for verification of "*Certificate to Practice and Place of Practice*" by an Advocate, enrolled before 12.06.2010, after having graduated in law in the academic year 2009-2010 and those, having obtained graduate degree in law before academic year 2010, enrolled in the "*Roll of Advocates*", is to be processed.

16. In the former case, it requires applying for issuance of certificate of practice under All India Bar Examination Rules, 2010, whereas in the later, i.e., in cases



where the Advocates obtained graduate degree in law, before the academic year 2010 and are already enrolled in the "*Roll of Advocates*", they have been made to apply for verification of "*Certificate of Practice and Place of Practice*" from the State Bar Council in which he/she is enrolled as an Advocate within a period of 6 months of the enforcement of these Rules/date of enrollment.

17. Before we proceed, we must refer to the fact that in exercise of powers conferred on the Bar Council of India, under Section 49(1)(ah) of the Act, *Bar Council of India Rules have been amended by inserting Rules 9 to 11, in Chapter III, of the Bar Council of India Rules conditions for right to practice, laying down, inter alia, that no Advocate, enrolled under Section 24 of the Act, shall be entitled to practise under Chapter IV of the Act, unless such Advocates have successfully passed the All India Bar Examination, conducted by the Bar Council of India. It has, however, been clarified that such examination shall be mandatory for law students, graduate in academic year 2009-2010 and onwards and enrolled as an Advocate under Section 24 of the Act.*

18. Rule 8, under Chapter IV of the Rules, deals with application for verification of "*Certificate to Practice and Place of Practice*" by Advocates enrolled on or after 12.06.2010. Such Advocates, who graduated in law in the



academic year 2009-2010 (1st July, 2009 to 30th June, 2010) and, thereafter, enrolled on the "*Roll of Advocates*" on or after 12.06.2010, have been made to apply for issuance of "*Certificate of Practice*", under All India Bar Examination Rules, 2010, and for verification of such "*Certificate of Practice*" from the State Bar Council in which he/she is enrolled as an Advocate. Rule 8.2 of the Rules prescribes that such Advocates enrolled on the "*Roll of Advocates*" after having obtained graduate degree in law, before the academic year 2010, are required to apply for verification of "*Certificate of Practice and Place of Practice*" from the State Bar Council in which he/she is enrolled as an Advocate, under this Rule, within a period of 6 months of enforcement of these Rules/date of enrollment. Rule 8.3 of the Rules prescribes the procedure of submission of application for obtaining the said "*Certificate of Practice and Place of Practice*".

19. Rule 9, under Chapter IV of the Rules, requires that "*Certificate of Practice*" issued to an Advocate, under Rule 13 of these Rules or under All India Bar Examination Rules and Verification thereof, shall be valid for a period of 5 years only and would be liable to be verified every 5 years by filing an application for verification, in advance within a period of 6 months, before the validity period of "*Certificate of Practice*" or of its verification expires.



20. Rule 13, under Chapter IV of the Rules, prescribes that every application received for verification of "*Certificate of Practice and Place of Practice*" shall be scrutinized by the office within a period of 1 month from the date of its receipt and if found in order, the same shall be placed along with the personal file of the applicant, before the Administrative Committee, for passing requisite order allowing or dismissing the application. The said Rule 13 of the Rules very categorically prescribes that such application is liable to be dismissed only in case it is found that the Advocate has left law practice and that he/she has no *bona fide* intent and interest in continuing it in future also and such an Advocate shall be treated as a "*non-practicing Advocate*" under these Rules. It also contemplates that no adverse order shall be passed, under this Rule, unless a reasonable opportunity of being heard is afforded to the applicant.

21. Rule 13, under Chapter IV of the Rules, is relevant for the present purpose and is, accordingly, being reproduced hereinbelow:-

"13. Order on the application for verification of Certificate of Practice.- *That every application for verification of certificate of practice and place of practice received shall be scrutinized by the Office within a period of one month from the date of its receipt*



and if found in order, it shall be placed along with the personal file of the applicant before the Administrative Committee, for passing the requisite order allowing or dismissing the application.

Such application is liable to be dismissed only in case it is found that the advocate has left law practice and that he/she has no bona fide intent and interest in continuing it in future also and such an advocate shall be treated as a non-practicing advocate under these Rules."

22. Rule 14, under Chapter IV of the Rules, allows any Advocate or any person to file an objection petition, before the State Bar Council, seeking to add the name/names of an Advocate/Advocates in the list of "*non-practicing Advocates*", on the ground that such an Advocate has left law practice and that he/she has no *bona fide* intent and interest in continuing it in future also. Rule 14.2 of the Rules provides that Rules A. I(1) and A. I(2) of Chapter I of Part VII of the Bar Council of India Rules relating to complaints, under Section 35 of the Act, shall, *mutatis mutandis*, apply to these objection petitions except that such objection petition shall be accompanied by a security amount of Rs. 10,000/- and not such fee, as prescribed in the

aforementioned Bar Council of India Rules, relating to complaints made under Section 35 of the Act.

23. Chapter V of the Rules lays down the procedure for follow up action. It mandates that once an application for verification of "*Certificate of Practice*" is allowed, under Rule 13 of the Rules, the office of the State Bar Council shall prepare the verified certificate in the prescribed format, in duplicate, duly signed by the Chairman of the State Bar Council or by such Member of the State Bar Council, who is specifically authorized for the said purpose.

24. Rule 15.2, under Chapter V of the Rules, requires the State Bar Council to make Rules and issue an Identity Card of such Advocates containing their photographs. The said Identity Card shall be valid for a period of 5 years from the date of issuance and the same shall be required to be produced at the time of voting for election of State Bar Council or Bar Associations.

25. Chapter VI of the Rules discloses the consequences of dismissal of an application, under Rule 13 of the Rules, or failure to make such application. If an Advocate fails to make an application, as stipulated under the Rules, within the stipulated period or he makes such application, but fails to remove the shortcomings/defects in the application despite intimation within the prescribed period, it shall *prima*

facie be presumed that such Advocate has left law practice and that he/she has no *bona fide* intent and interest in continuing it in future also so states Rule 17 of Rules.

26. Rule 18, under Chapter VI of the Rules, lays down the follow up action with respect to such Advocates, who fall under Rule 17 of the Rules and it prescribes that list of such Advocates shall be prepared by the State Bar Council, titled as "*List of the Defaulting Advocates*". Such Advocates shall be given due notice of the fact that their name/names stood included in the "*List of the Defaulting Advocates*" in the manner prescribed therein. Such Advocates, whose names figured in the said list, have been permitted to apply for issuance/verification of "*Certificate of Practice*" within a period of 6 months from the publication of the said list by the State Bar Council. If such application is filed, the same shall be processed by the office in accordance with the procedure, prescribed under Rules 10 to 12 of these Rules, and finally an order on such applications shall be made under Rule 13 of the Rules, states Rule 19 of the Rules.

27. Rule 20, under Chapter VI of the Rules, lays down, *inter alia*, that on expiry of a period of 6 months of the publication of "*List of the Defaulting Advocates*" if there is a failure on the part of the Advocates to respond to the said publication or failure to remove the defects, the State Bar



Council will be required to pass an order directing that name/names of such Advocate/Advocates, appearing in the "*List of the Defaulting Advocates*", be put in the list of "*non-practicing Advocates*". Advocates, whose names are included in the list of "*non-practicing Advocates*", will not be entitled to practise law and to other privileges and rights, under Rule 21 of the Rules.

28. Rule 21, under Chapter VI of the Rules, being relevant, is extracted hereinbelow:-

"21. Non-practicing Advocates as included in the list of "non-practicing Advocates" not entitled to practice law and to other privileges and rights.-21.1 *From the date of publication of the aforesaid list of non-practicing Advocates, all such advocate/s whose name/names has/have been included in the aforesaid list, shall not be entitled to appear in any Court of Law, before any Tribunal or person legally authorized 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 practice, notwithstanding the fact that name/names of such advocates is/are entered in the State Roll and that he is holding certificate of enrolment under section 22 of the Advocates Act.*

Further, name/s of such advocate/s

shall not be included in the electoral roll for the purposes of elections to the State bar Councils. Such an advocate/s shall cease to be a member of any Bar Association and further he/she shall not be entitled to cast vote/s in any elections of the Bar Associations.

The status and rights of such advocate/s "as advocate/s entitled to participate and receive benefits" under Welfare Schemes of Bar Council of India created under Rules 40 to 44-B of Section IV-A of Chapter II contained in Part VI of the Bar Council of India Rules and other schemes floated by the State Bar Council shall come to an end w.e.f. the date of publication of the List/name/names of non-practicing Advocates under Rule 20.4 with the exception that such an advocate would be entitled to receive such benefits under the relevant scheme/s, if any, which have already accrued in his/her favor."

29. Chapter VII of the Rules deals with updating and records of practice and non-practicing Advocates. Chapter VIII of the Rules provides for appeal/revision, etc., against the orders passed under Rule 13/20.2 of the Rules.

30. Chapter IX is another significant chapter, under the Rules, which deals with resumption of practice. It



lays down that if an Advocate, whose name has been included in the "*list of non-practicing Advocates*", published under Rule 20.4, intends to resume law practice in the changed circumstances, he may apply to the State Bar Council that his/her name may be taken out of such list in prescribed format along with resumption fee and a declaration. If any such application is made, the same is to be laid before the Administrative Committee of the State Bar Council, which may pass an appropriate order allowing or dismissing such application, provided, however, that such application shall be allowed only if the Administrative Committee is satisfied that the intent of the applicant to resume law practice is *bona fide*. It also prescribes that once such application is allowed, the name of the applicant shall be taken out of the list of "*non-practicing Advocates*" and such exclusion shall be duly notified and published as provided under the Rules.

31. Chapter X of the Rules deals with verification process and fee fund, etc., whereas Chapter XI deal with miscellaneous provisions, including saving and repeal clauses, which are not much relevant for the present adjudication.

32. As has been noticed in the very beginning of the present judgment, it is the case of the petitioners that the Advocates Act, 1961, under which the Rules have



purportedly been framed, recognizes only two classes of Advocates, namely, *Advocates and Senior Advocates*. Learned Counsel for the petitioners has vehemently contended that the Bar Council of India, by framing Rules, under the Act, cannot create another class of Advocates, namely, "*non-practicing Advocates*". It is also their plea that Section 30 of the Act, unambiguously, lays down that an 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. According to the petitioners, the statutory right, conferred under Section 30 of the Act, to practise law is being taken away, with the framing of the impugned Rules, by creating a class of "*non-practicing Advocates*". According to them, enrollment, in the Roll of State Bar Council, is the only statutory requirement, which makes a law graduate, entitled to practise law and on the basis that he had not been in practice for specified period of time, such right, conferred by the Central Legislation, cannot be taken away by a Sub-Ordinate Legislation.

33. The question, which has emerged before us for decision is: as to whether the impugned Rules are in conflict with any provisions of the Advocates Act, 1961, or are beyond rule making power, conferred on the Bar Council of India, under the Act.

34. We have already quoted the provisions of Section 49 of the Act, which confer upon the Bar Council of India, general power to make rules for the purpose, *inter alia*, to:-

(i) the class or category of persons entitled to be Advocates; and

(ii) conditions subject to which an Advocate shall have right to practice and the circumstances under which a person shall be deemed to be practice as an Advocate in a Court.

35. Section 24 of the Act specifies the qualification of a person to be admitted as an Advocate on the State Roll, which includes that he should be a citizen of India, has completed the age of 21 years and has obtained a degree in law. Section 24(1)(e) of the Act prescribes that a person to be admitted as an Advocate on a State Roll must also fulfil such other conditions, as may be specified in the Rules, made by the State Bar Council under the said chapter, i.e., Chapter III of the Act. Section 29 of the Act recognizes the Advocates to be the only class of persons entitled to practise law. Section 30 of the Act confers upon every Advocate, whose name is entered in the State Roll, entitlement, as of right, to practise. The said right is, however, subject to the provisions of the Act. We must notice that both the sections, i.e.,

Sections 24 and 30 of the Act, are subject to other provisions of the Act.

36. Coming to Section 49 of the Act, which reads "(1) the Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe–

x x x x x x x x

(ag) the class or category of persons entitled to be enrolled as advocates."

37. The Legislature, therefore, has recognized it to be one of the functions of the Bar Council of India to make Rules for the class or category of persons, who may be held entitled to be enrolled as Advocates, though Section 24 of the Act lays down the qualification of a person to be admitted as an Advocate. In our view, this is because Section 24 of the Act is subject to other provisions of the Act and Section 49(1)(ag) of the Act confers upon the Bar Council of India power to frame rules as to class or category of persons, who shall be entitled to be enrolled as Advocates.

38. Similarly, the Bar Council of India has been conferred the power of making Rules laying 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 be practising as an Advocate in a Court. On the



one hand, Section 30 of the Act states that every Advocate, whose name is entered in the State Roll, shall be entitled, as of right, to practise, whereas Section 49(1)(ah) of the Act confers upon the Bar Council of India the power to frame rules laying down the conditions subject to which an Advocate shall have such right to practise. There is no conflict between the provisions under Section 30 of the Act and Section 49(1)(ah) of the Act inasmuch as the right to practise as Advocates, under Section 30 of the Act, is subject to the provisions of the Act. In our view, if any rule has been framed, in exercise of statutory provisions, viz., Section 49(1)(ah) of the Act, which is within the ambit of rule-making power and not otherwise unreasonable and arbitrary, can be well described as falling within the provisions of the Act. In our considered view, therefore, the right of an Advocate to practise, under Section 30 of the Act, is subject to the rules framed by the Bar Council of India, under Section 49 of the Act.

39. We have posed a question to ourselves as to whether the impugned Rules take away entitlement of an Advocate to practise and the answer to our own question in negative. As has been noticed above, under the impugned Rules, an Advocate, whose name stands entered in the State Roll, has been made to make application for verification of



"Certificate to Practice and Place of Practice". The said Rules have been framed only for the verification as to whether the concerned Advocate has left practice of law for all practical purposes and that he or she has no *bona fide* intent and interest in continuing practice in future also. The Rules prescribe for adequate opportunity to the Advocate concerned before making of an order by the Administrative Committee to the effect that he or she has left law practice and that he or she has no *bona fide* intent and interest in continuing it in future also. Chapter IX of the Rules gives the Advocate an opportunity to resume practice by making an application under Rule 28 of the Rules. In such background, it cannot be said that the Rules take away the right of a practicing Advocate to practise law.

40. Literally, the meaning of the word "practice" is "repeated action; habitual performance; and a succession of acts of similar kind. A person may be having a license to practise law under the Act, but if he abandons his profession or leaves his law practice, having no *bona fide* intent and interest in continuing it in future, there is no reason why he should maintain the right to practise solely on the basis of the fact that at some point of time, after having obtained law degree, he had enrolled himself as an Advocate.

41. We have gone through the statement of



objects and reasons for framing of the impugned Rules. The Bar Council of India noticed, on the basis of information available to it, that a trend has developed of Advocates switching over to other professions, jobs and business, without any information to the State Bar Council, which, according to the Bar Council of India, is a dangerous trend. The Bar Council of India also noticed that there were various welfare schemes floated for the Advocates in India, under the State Legislation as well as under various welfare schemes, framed by different Bar Councils and by Bar Council of India; but those, who had left the profession for all practical purposes, were enjoying the benefits of such welfare schemes. The Bar Council of India, therefore, decided to go for periodical verification of the details of Advocates, enrolled with various State Bar Councils, with the sole purpose to ascertain as to whether such persons are practising and, if so, places of their practice. It further appears that the Bar Council of India found that a number of fictitious persons, without having law degree or enrollment certificate, have fraudulently indulged in legal practice and involved themselves in the acts of deceit, trickery and sharp practices. The Bar Council of India also noticed that some of the persons, after getting enrolled as Advocates, in any State Bar Council, engaged themselves in public dealings, contract

works or switch over to some other business, professions or jobs, disengaging themselves altogether from the legal profession. Such persons are being used in elections for Bar Associations/Bar Councils for casting votes in favour of persons contesting elections, which had the effect of degrading the standard of legal profession.

42. Upon closer scrutiny of the Rules, under challenge, we find that the net effect of the exercise, undertaken by the Bar Council of India, with the help of the impugned provisions, is:-

(i) to verify as to whether the persons, enrolled as an Advocate, are in practice of law or have left the practice with no *bona fide* intent and interest in continuing it in future;

(ii) to prepare a list of such persons to be displayed for general information; and

(iii) to prohibit such "*non-practicing Advocates*" from practising law unless they are allowed to resume practice under Rule 28 of the Rules.

43. No Advocate, enrolled under the Act, who is in practice, can have grievance against framing of the impugned Rules inasmuch as the Rules, as a matter of fact, safeguard their interest and the interest of the profession of law too.

44. In our view, an act, aimed at doing some



public good, cannot be questioned as being arbitrary or illegal unless it violates any constitutional provisions or the law, whereunder such act has been done. The Supreme Court, in case of ***Ajay Canu v. Union of India***, reported in **(1998) 4 SCC 156**, ruled that a restriction, which is in the interest of general public, is a reasonable restriction, protected under Article 19 (5) of the Constitution of India. In ***Ajay Canu's*** case (supra), the State Government of Andhra Pradesh had framed rules and a notification was issued by the Commissioner of Police, in exercise of powers under Sections 21 (1) of the Hyderabad Police Act, making it compulsory for the driver of the two-wheeler vehicles to wear headgear, which were challenged on the ground of same being violative of fundamental rights guaranteed under Article 19 (1) (d) and Article 21 of the Constitution of India. The Supreme Court held that the rule helped the drivers of the two-wheeler vehicles to drive their vehicles in exercise of their freedom of movement without being subjected to constant apprehension of a fatal injury, in case of any accident.

45. In the present case, by making the rules under challenge, Bar Council of India has aimed at identifying such unscrupulous persons, who are maintaining their names on the rolls of the State Bar Council, merely on papers, without having any practice at the Bar at all and with no



intention to practise law even in future. The impugned Rules are aimed at public good. Such persons enroll themselves on the rolls of the Bar Council to justify that they are in active practice. The impugned Rules, in our opinion, are aimed at protecting and safeguarding the interest of such members of the Bar, who are in active practice, which cannot be said to be unreasonable.

46. The impugned Rules, in view of the discussions as above, cannot be said to be violative of the provisions of Section 16 or Section 30 of the Act. The impugned Rules are within the ambit of the Rule making power of the Bar Council of India under Section 49(1)(ah) of the Act and cannot be said to be beyond jurisdiction.

47. We are further of the view that the impugned Rules cannot be said to be unreasonable or arbitrary keeping in mind the background in which the Rules have been framed. None of the provisions can be said to be prejudicial to any person, who is a *bona fide* legal practitioner.

48. We do not find any merit in C.W.J.C. No. 9976 of 2016 (Amar Sinha & Anr. Vs. Bar Council of India & Ors.), which is accordingly dismissed.

49. Coming to the issue raised in the second case, i.e., C.W.J.C. No. 9668 of 2016, with a plea that "*Advocates on Record*" of this Court should be exempted from

the applicability of the Rules, as has been done for the "Advocates on Record" of Supreme Court of India, we find no substance in the plea so raised. We do not find any reason as to why there should be exemption from applicability of the impugned Rules in respect of "Advocates of Record" of this High Court.

50. C.W.J.C. No. 9668 of 2016 (Patanjali Rishi Vs. The Bar Council of India & Ors.) stands accordingly dismissed.

51. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, CJ. : I agree.

(I. A. Ansari, CJ.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	02.08.2016
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