IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THE HONOURABLE THE ACTING CHIEF JUSTICE
P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

Writ Petition No.13352 of 2025
CNR.No.HBHC010200052025

Date of Order: 03.11.2026

Reserved on: 09.07.2026 **Pronounced on: 03.11.2026**
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Between:

Vijay Gopal

…Petitioner

AND

The State of Telangana,
Law Department, Rep. by Secretary to Government Legal Affairs
Legislative Affairs and Justice Law Department,
Dr. B. R.Ambedkar, Telangana State, Secretariat,
Saifabad, Hyderabad, Telangana - 500022 and three others.

…Respondents

ORDER: *(per Hon'ble the Acting Chief Justice P.Sam Koshy)*

Heard Mr. Vijay Gopal, petitioner / party-in-person; and Mr. D. Surender Kumar, learned Assistant Government Pleader for Home and Legislative Affairs appearing for respondent No.1.

2. The present is a Writ Petition which has been filed by petitioner in person, who is otherwise basically a Lawyer. The challenge is to the validity of Section 12 of the Telangana Advocates Welfare Fund

Act, 1987 **(for short the 'Act of 1987')** which requires fixing of 100 INR welfare fund stamp on the Vakalat, by the name "Nyayavadula mariyu vari Gumasthala Samkshema Nidhi", and also Section 12A of the Act which distributes the aforecollected Rs.100/- to the Telangana Advocates Fund and also to the Telangana Advocates Clerks Welfare Fund, to be arbitrary, illegal, ultra vires Section 30 of the Act of 1987 and ultra vires Article 14, 19(1)(c), 19(1)(g), 31(c), 246(1) and 254(1) of the Constitution of India.

3. The petitioner contended that though in the Act of 1987 there was no clause which required welfare fund stamp to be affixed on any of the Vakalat filed by the lawyers; however since 1992 welfare fund is started to have been collected and the said collections were split between the Advocates and the Advocates Clerks. In the year 1992, Rs.8/- stamp was affixed, of which Rs.6/- would go to the Advocates Welfare Fund and Rs.2/- for the Advocates Clerks Welfare Fund. This amount stood enhanced to Rs.12/- in the year 1998 with a split of 10:2 between the Advocates and the Advocates Clerks. This amount was subsequently enhanced to Rs.20/- in the year 2003 with a split of 15:5. Later, this amount again got enhanced to Rs.30/- in the year 2006 with a split of 25:5. This amount later got further revised in the year 2011 to Rs.50/- with a split of 43:7. This amount stood further

revised to Rs.100/- with a split of 86:14, which subsequently in 2025, was further revised for the last time to Rs.250/- with a ratio of 215:35 between the Advocates and the Advocates Clerks respectively.

4. The challenge to the aforesaid provision is primarily on four basic grounds. Those are:-

i. The imposition of such stamp duty is nothing but a colourable exercise of legislation.

ii. In the teeth of the provisions of Article 244, 255 and 256 of the Constitution of India, the said provision of law under the Act of 1987 is in contradiction to the Constitution of India and therefore the said provision is bad on the ground of doctrine of repugnancy.

iii. The said provision of law is illegal and unconstitutional on applying the doctrine of severability for being violative of the fundamental right guaranteed under Article 19(1)(g) without compliance to the mandate of Article 31(c) of the Constitution of India.

iv. The entire collection of Rs.250/-, which was earlier Rs.100/-, is being paid or collected by the Bar Association is not deposited with the State Exchequer. Thus, it is violative of Article 283 of the Constitution of India.

5. The Act of 1987 was enacted by the name "Andhra Pradesh State Welfare Fund Act, 1987" which received the assent of the President of India on 23.07.1987. At the time of enactment of the Act there was no mandatory provision for the Advocates to pay the welfare fund. In due course of time, the Act of 1987 stood amended and thereby got inserted the requirement of putting a mandatory stamp of payment of Rs.30/- on each on the Vakalat that is filed by an Advocate on behalf of the litigant. The said affixing stamp worth Rs.30/- was made mandatory for anyone who files a Vakalat in order to appear on behalf of one of the litigants in any of the Courts in the State of Andhra Pradesh, as it then stood. Subsequently, it underwent another amendment, wherein the stamp required to be affixed was increased from Rs.30/- to Rs.50/-, and in the year 2018 it again got increased to Rs.100/- by way of yet another amendment, and from the year 2025 onwards the same stands amended to Rs.250/-. The amount so collected is distributed between the two sections i.e. 86% goes to the Advocates Welfare Fund and 14% goes to the Advocates Clerks Welfare Fund.

6. Alleging the said provision to be unconstitutional and outside the legislative competence of the State Government, it was contended

by the petitioner that the subject otherwise falls within the domain of the Centre under Item 78 List 1 of the Schedule VII, read with Article 246 of the Constitution of India, and thus the power to enact the law in this regard vests exclusively with the Central Government and not with the State Government. Therefore, the doctrine of colourable legislation gets attracted in the facts of the present case, and the said provision therefore deserves to be declared as unconstitutional.

7. According to the petitioner what could not be done directly cannot be done indirectly either, and therefore the said provision is hit by the doctrine of colourable legislation. In support of his contention, he relied upon the case of **Asst. Direction of Inspection vs. Kumari A.B. Shanti**[1] and also the case of **Jaorah Sugar Mills Pvt. Ltd. vs. The State of Madhya Pradesh and Others**[2].

8. It was the further contention of the petitioner that except for the presidential assent that was obtained while enactment of the Act of 1987, no further amendments that were brought particularly in respect of the fixation of the rate at which the stamp duty is being enhanced has got the presidential assent and at the time of enactment of the Act there was no such mandatory clause which has subsequently been

[1] (2002) 6 SCC 259
[2] 1965 SCC OnLine SC 37

inserted has the presidential assent. For this reason also the said provision becomes unconstitutional.

9. Referring to the provisions of the Act of 1987, which according to the petitioner is a complete code in itself, and which regulates practice of law in India in respect of a lawyer, according to the petitioner the main Sections under the Act are Sections 6, 7, 15, 30 or 31. However, all these provisions or any other Section in the Act mandates payment of any sort of welfare fund even if it is for the Advocates or Advocates Clerks required to practice law in India. According to the petitioner, the Act of 1987 itself permits an Advocate once enrolled with the Bar Council of India to practice anywhere in India without there being any requirement of payment of welfare fund. It was further contended that the Central Advocates Welfare Fund Act, 2001 was enacted by the Central Government under similar fittings as that of the Act of 1987; however the said Central Act does not place any restrictions on the practice of law on non-payment of the welfare fund. According to the petitioner, the Central Act only contemplates any Advocate not paying welfare stamp being disentitled for any of the benefits under the welfare scheme of the concerned Bar Council of the State.

10. The petitioner clubbed his arguments into the below mentioned list:

1) That the impugned provision, Section 12 of the Act, is bad in law as it is not within the legislative competence of the Telangana State as making law to practise before the High Court is within the exclusive domain of the Parliament and state legislations are subject to Article 245 of the Constitution.
2) That the Amendment of 2018 by which the stamp value was increased from Rs.50/- to Rs.100/- is bad in law in terms of Article 245, 254 and 246 of the Constitution.
3) That the 'Advocates Welfare' is not a state subject to be legislated and cannot be thereafter imposed upon Advocates to pay the welfare fund.
4) That the collecting or mandating "advocate welfare fund" by payment of Rs.100/- from advocates as though it is a 'tax' is a violation of basic principles of 'Donation'.
5) That the 'Advocates Act, 1961' also recognizes voluntary collection of donation / gifts / grants under Sections 6 and 7 of the Act, but does not enforce or impose 'welfare funds' on the Advocate.

11. On the other hand, the learned Assistant Government Pleader argued that Section 12 of the Act of 1987 is a validly enacted provision mandating affixation of the welfare stamp on every Vakalat, and the filing Section of this Court in declining to accept a Vakalat without the requisite stamp does no more than give effect to a presently subsisting and unstayed statutory provision. The averment that this amounts to a denial of the right to practice is incorrect and is at the highest a procedural requirement attached to the manner of filing a Vakalat.

12. Learned Assistant Government Pleader also argued that Article 254 deals with repugnancy between a State law and a Parliamentary law occupying the same field in the Concurrent List which has no application as Article 245 is subject to all the laws made under the Constitution, which is not in dispute as a proposition of law, but it is denied that the Act of 1987 or its amendments fail this test. The progressive enhancement of the stamp value over three successive amendments reflects ordinary legislative revision of a welfare levy and discloses no constitutional infirmity.

13. Learned Assistant Government Pleader further argued Section 12 of the Act of 1987 is not unconstitutional or outside the legislative

competence of the State or that it amounts to colourable legislation venturing into a legislative domain reserved to Parliament under Entry 78, List I (Union List), Seventh Schedule to the Constitution, and that the Act of 1987 is, in pith and substance, a social welfare legislation for the legal profession, squarely traceable to Entry 23 (Social security and social insurance) and Entry 26 (Legal, medical and other professions) of the Concurrent List (List III), Seventh Schedule, but it clearly does not legislate upon persons entitled to practice before the High Courts.

14. Learned Assistant Government Pleader contended that the welfare fund stamp is not a donation to a private association of the kind referred to by the petitioner. The 'Telangana Advocates Welfare Fund Committee', to which the proceeds are credited, is a statutory body constituted under and recognized by the Act, and not a private congregation of persons such as a voluntary Bar Association. It was further contended that the contribution is a statutory levy directed to a defined welfare purpose for the benefit of Advocates themselves, and its compulsory nature does not render it violative of the right to freedom of association under Article 19(1)(c), since the petitioner is not being compelled to join any association, but only to contribute, as a condition of filing a Vakalat, towards a statutory welfare fund of

which he is himself a potential beneficiary. Moreover, the submission that the State cannot make such a provision "unless it is a tax" proceeds on the incorrect premise that a compulsory exaction can only be either a tax or a voluntary donation, a statutory welfare fee of the present kind is a well-recognized third category, distinct from both, and its validity does not depend upon its characterization as a tax under Article 265.

15. Learned Assistant Government Pleader also contended that the welfare fund stamp is a "donation" to a third party falling outside the competence of the State to legislate. As submitted above, the levy is a statutory welfare fee credited to a fund administered under the Act itself and is not a payment to an external or private third party. The averment that Advocates separately pay Court fee under the Telangana Court Fee and Suits Valuation Act, 1956 is misconceived.

16. Learned Assistant Government Pleader further contended that Sections 6 and 7 of the Advocates Act, 1961 merely empowers the State Bar Council and the Bar Council of India to constitute welfare funds and to receive voluntary contributions towards such funds and that they neither occupy the field of, nor place any limitation upon, independent power of a State Legislature to enact a separate welfare

statute under the Concurrent List, mandating a statutory contribution of the kind found in Section 12 of the impugned Act.

17. Having heard the contentions put forth on either side and on perusal of records, the questions that fall for our determination are:

a) Whether Section 12 and Section 12A of the Act of 1987 as amended from time to time are beyond the legislative competence of the State Legislature by reason of Entry 78 of List I of the Seventh Schedule or amounts to colourable legislation ?

b) Whether the said provisions are repugnant to the Advocates Act, 1961 or the Advocates Welfare Fund Act, 2001 and whether the amendments enhancing the value of the welfare stamp are invalid for want of Presidential assent under Article 254(2) of the Constitution ?

c) Whether the said provisions violate Articles 14 and 19(1)(c) and 19(1)(g) of the Constitution and whether they fail for non-compliance with Article 31C ? and

d) Whether the levy is invalid because it is neither a tax nor a fee and because the proceeds are not credited to the State Exchequer as contemplated by Article 283 ?

18. A statute enacted by a competent legislature carries a presumption of constitutionality. The burden lies on the person who attacks it to show clearly that it transgresses a constitutional limit. The Court does not enquire into the wisdom or the adequacy of a legislative measure. It examines only whether the legislature had the power to enact it and whether it offends any fundamental right. The petitioner is an Advocate who has argued his case in person with commendable care. We have considered each ground in turn.

19. The first ground is that the subject falls exclusively within Entry 78 of List I which covers persons entitled to practise before the High Courts and that the State therefore lacked the power to legislate. The test for competence is the doctrine of pith and substance. The Court looks at the true nature and character of the enactment. If the law is in its true character a law on a subject within the competence of the State Legislature, then it is valid even if it incidentally touches a subject assigned to Parliament.

20. The Act of 1987 provides for the constitution of a welfare fund for Advocates and a separate fund for Advocates clerks. It creates a statutory committee to administer them and fixes the manner of contribution and distribution. In pith and substance it is a measure of

social welfare for members of the legal profession and their staff. That subject finds a place in Entry 23 of List III which deals with social security and social insurance and in Entry 26 of List III which deals with legal medical and other professions. The State Legislature is competent to legislate on those entries.

21. Entry 78 of List I deals with the qualifications and the right to practise before the High Courts. The impugned provisions do not prescribe who may be enrolled as an Advocate. They do not regulate the conduct of Advocates, or confer, or take away the right to appear. They provide only that a prescribed welfare stamp be affixed to a Vakalat and that the proceeds be applied to welfare purposes. Any effect on the field of Entry 78 is incidental. Section 12 does not deal with the entitlement to practise. It deals with a contribution that accompanies the filing of a Vakalat.

22. The petitioner relies on the judgment in the case of **Kumari A.B. Shanti** (supra) and **Jaorah Sugar Mills Pvt. Ltd.** (supra). The doctrine of colourable legislation is that what a legislature cannot do directly it cannot do indirectly. We have no quarrel with that proposition. The doctrine however applies only where the legislature has in fact trespassed on a field outside its competence while

pretending to act within it. It has nothing to do with motive. Since the State Legislature has competence over the subject matter under Entries 23 and 26 of List III, there is no room for a charge of colourable exercise. The first question is answered against the petitioner.

23. The petitioner relied on Articles 244, 255, and 256 and on the doctrine of repugnancy. Article 254 alone deals with repugnancy between a State law and a law made by Parliament on a Concurrent subject. The other Articles cited do not bear upon the controversy. Article 244 deals with the administration of Scheduled Areas. Article 255 treats certain requirements of recommendation and previous sanction as matters of procedure. Article 256 deals with the obligation of States in relation to Union laws. We proceed on the footing that the petitioner intended to invoke Article 254.

24. Repugnancy arises when a State law and a Union law operate on the same field and a direct conflict exists between them. It may also arise when Parliament has evinced an intention to occupy the whole field. The conflict must be real. Articles 254(1) and 254(2) apply only if a State law is repugnant to an existing law of Parliament. If a State law is repugnant and has received Presidential assent it

prevails in the State. Where no repugnancy exists, Presidential assent is not a condition of validity.

25. The petitioner points to Sections 6 and 7 of the Advocates Act, 1961. Those provisions empower the Bar Council of India and the State Bar Councils to constitute welfare funds and to receive grants donations and gifts. Nothing in them prohibits a State Legislature from enacting a statute that makes a compulsory contribution for a welfare fund. The Advocates Act authorises certain kinds of funds. It does not declare that no other mode of funding is permissible. The two enactments operate side by side without any conflict.

26. The petitioner next relies on the Advocates Welfare Fund Act, 2001 enacted by Parliament. As the petitioner himself describes it the Central Act does not make payment a condition for practice. It only provides that an Advocate who has not paid the welfare stamp may be denied the benefits of the scheme. The absence in the Central Act of a compulsory levy is not a prohibition. The silence of Parliament on a matter cannot be read as a negative command. The State Act supplements the Central scheme and does not contradict it. No direct conflict has been shown and there is no impossibility of obedience to both. The petitioner's own statement that the Central Act

contemplates stamps, further indicates that the two Acts share a common approach.

27. As to Presidential assent, the petitioner concedes that the Act received assent on 23.07.1987. The amendments revised the value of the stamp and the apportionment of the proceeds between the two funds. They did not alter the character of the scheme. Since we find no repugnancy to any existing law of Parliament, Article 254(2) is not attracted and the amendments did not require fresh assent. The second question is also answered against the petitioner.

28. Article 19(1)(c) guarantees the right to form associations. The Welfare Fund Committee to which the proceeds are credited is a statutory body constituted under the Act. It is not a private voluntary association. The petitioner is not compelled to join any association. He is asked to contribute a fixed sum to a statutory fund when filing a Vakalat. The fund exists for the benefit of Advocates and their clerks of whom he is himself a potential beneficiary. There is no compulsion to associate with others against his wishes.

29. Article 19(1)(g) guarantees the right to practise any profession. The right is subject to reasonable restrictions in the interest of the general public under Article 19(6). The welfare stamp does not

prevent the petitioner from practising. It does not limit the number of cases he may take up. It is a small recurring contribution that supports a fund for Advocates who face illness or old age or other hardship and for the clerks who assist them. A contribution of that kind towards the welfare of the profession is a reasonable burden. We cannot say that it amounts to an unreasonable restriction. The Registry in declining to accept a Vakalat without the stamp, acts in compliance with the statute and exercises no discretion of its own. The requirement is procedural and attaches only to the manner of filing.

30. The petitioner argues that the law is bad because it does not satisfy Article 31C. Article 31C is a protective provision; it saves certain laws that give effect to specified directive principles from challenge under Articles 14 and 19. It is not a condition that every law must satisfy in order to be valid. A law that is valid on its own footing does not need the shelter of Article 31C. Since we hold that the impugned provisions do not violate Article 19, there is no occasion to consider whether Article 31C would apply.

31. Under Article 14, the petitioner has not shown any unequal treatment. Every Advocate who files a Vakalat pays the same stamp. The ratio in which the proceeds are shared between the Advocates

Welfare Fund and the Advocates Clerks Welfare Fund is a matter of legislative policy and has a rational basis in the number of potential beneficiaries and the nature of the benefits. The gradual enhancement of the stamp value over successive amendments reflects ordinary legislative revision of a welfare levy to keep pace with the cost of the benefits. The adequacy of the sum is not a matter for judicial review. The third question is again answered against the petitioner.

32. The petitioner says that the exaction is neither a tax nor a fee. He says that if it is a donation the State cannot compel it and if it is a tax the Act must say so. We do not accept the dichotomy. Article 265 requires only that no tax be levied or collected except by authority of law. The Act of 1987 itself supplies that authority. Whether the exaction is labelled a fee a levy or a statutory contribution for a defined purpose is of secondary importance when the legislature has the competence to enact it. A donation implies a voluntary gift. Here the obligation arises from the statute and cannot be called a donation. The use of a stamp is only a mode of collection.

33. Article 283 deals with the custody of the Consolidated Fund of India and the Contingency Fund and with money credited to the public accounts. The petitioner contends that the entire sum is collected

through the Bar Associations and is not deposited with the State Exchequer. The proceeds of the welfare stamp are impressed with a trust for a particular statutory purpose. They do not become the revenue of the State by reason of the mechanism of their collection. The petitioner has not shown any provision of the Act that requires them to be credited to the Consolidated Fund. Even if there was some deficiency in the manner of custody or accounting it would go to the administration of the fund and would not affect the validity of Section 12 or Section 12A. The fourth question is also answered against the petitioner.

34. The petitioner had a further complaint that Advocates already pay Court fee under the Telangana Court Fee and Suits Valuation Act, 1956 and should not be asked to pay again. The two payments serve different purposes. The court fee is a charge for access to the machinery of justice. The welfare stamp supports the Advocates and clerks who work within that machinery. The existence of one does not preclude the other.

35. For the reasons recorded above, we hold that Section 12 and Section 12A of the Act of 1987 as amended from time to time is within the legislative competence of the State. It is neither repugnant

to any law made by Parliament, nor do they violate Articles 14 19(1)(c) and 19(1)(g). They are valid exercises of legislative power and warrant no interference by this Court.

36. For the foregoing reasons, the Writ Petition stands **dismissed**.

37. Before we part with this judgment, it deserves to be said that a society that expects its members to serve it must also expect them to bear a small share of the burden of caring for one another. The sum that is asked of every Advocate when a Vakalat is filed is slight. It is not a toll on the right to practise. It is the thread by which a profession ties together those who are fortunate with those who fall into hardship. A fund of this kind is built from many small contributions. No individual contribution is great but together they form a safety net that no one could build alone. An individual objection to a modest sum must yield where the sum is collected under valid law and applied to a larger interest in which the contributor himself shares. The law protects the individual from arbitrary exactions. It does not exempt the individual from contributing towards a shared and lawful purpose. Hence, the amounts collected by the State under the Act are legal and warrant no interference by this Court.

38. The purpose of the welfare fund has been further fortified by Section 38 of the Advocates Welfare Fund Act, 2001 which does not supersede the already existing and notified fund Act of the respective States. Hence, since the Central statute expressly exempted the notified fund Acts of the respective States which includes the State of Andhra Pradesh (State of Telangana after bifurcation), it stands proved that the State Welfare Fund Act is found to be beneficial in nature in the wisdom of the Parliament and for the stakeholders who intend to stand benefitted, which is ultimately a more compelling ground to not declare the impugned Act as *ultra vires* or unconstitutional.

39. There are few certainties in the life of a professional and fewer still in the life of one who works at the bar. The advocate and the clerk live by the court's calendar and not by the clock of their own lives. In an age that moves faster each year no one can say what a single day will bring. Illness or accident or a sudden death can end a career and a household's security together. It is in that hour of loss that a welfare fund proves what it is for. The stamp that is affixed to a Vakalat costs the contributor little and is soon forgotten. Gathered over many hands and many years it becomes the immediate financial

support to which a widow or an orphaned child or an aged parent can turn before any other help arrives. A family that has lost its earning member has no time to wait for a remedy that is slow in coming. The fund exists so that grief is not made heavier by want. It is a promise that the fraternity makes to itself that the dependents of those who served the cause of justice will not be left to stand alone. When we weigh that promise against the objections raised before us we find no reason in the Constitution to break it. The uncertainty of life is not an argument for taking this safeguard away. It is the strongest reason for keeping it. The Act and the Fund are therefore neither unconstitutional nor *ultra vires* the Constitution.

40. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs.

P. SAM KOSHY, ACJ

NARSING RAO NANDIKONDA, J

Date: 03.11.2026
Gsd