

Before Rajesh Bindal & Harinder Singh Sidhu, JJ.

RAKESH PUNIA —Petitioner

versus

BAR COUNCIL OF INDIA AND ANOTHER—Respondents

CWP No. 24392 of 2015

December 21, 2016

Constitution of India, 1950— Articles 19(1) (c), 226— Advocates Act, 1961— Ss. 6 (1) (dd), 6(1) (h), 6 (1) (i), 15, 35, 36 and 49—Advocates welfare Fund Act, 2001— Ss. 2 (p), 2 (q), 16, 17, 18, 26 and 27—The Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015—Ss. 4(e), 4(g), 6, 8 and 28—Bar Association (Constitution and Regulation) Rules, 2015—Bar Association elections—conduct of—Subordinate legislation— Validity of—Interpretation of statutes—Rules of purposive construction and strict interpretation—Challenge to the 2015 Rules being ultra vires and beyond the rule making power of the State Bar Council—It cannot regulate conduct of elections of Bar Associations which are private associations of lawyers regulated by their own bye-laws—Besides, there was procedural breach in framing the 2015 Rules—Held, the statutes and rules point to pivotal role of the Bar Associations not only in administration of justice and generally promoting the advocates’ interests but also in implementing statutory and non-statutory schemes for their welfare—In fact, such schemes would be impossible to implement without the Bar Associations that reach, involve and touch every member of the profession—Perhaps S.6(1)(d) was inserted in 1961 Act with this realization to empower State Bar Councils to promote growth of Bar Associations for implementing the welfare schemes—Under the 2001 Act it is a precondition for becoming a member of the Welfare Fund for an advocate to be a member of the Bar Association duly recognized by the State Bar Council—S.15 of the 1961 Act confers Rule making power on the Bar Councils in respect of matters in Chapter II of the Act—No provision in the Act of 1961 or the Act of 2001 specifically empowers the Bar Councils to make rules regarding elections to Bar Associations—While considering the validity of a subordinate legislation the Court will have to consider the nature, object and Scheme of the enabling Act—In ensuring that the rules framed are within the field circumscribed by the parent Act, the Court would be justified in giving the provision a purposive construction to effectuate

the object of the Act—It has been held that it would not be in consonance with the principles of law to give strict interpretation to the State Bar Council's power to make rules, unless restricted in scope by specific language—And provisions delegating power as S.15 are of generic nature—It has been emphasized that power to frame rules has to be given a wider scope to render the legislative object achievable—On these considerations the State Bar Council was held empowered to frame rules which have as their object to bring about uniformity and transparency in matters relating to the elections of the Bar Associations within its jurisdiction—In fact framing of such Rules may be considered an inevitable necessity to effectuate the broad legislative scheme evidenced by the Acts and Rules under reference—Further held, the Rules framed to regulate elections of the Bar Associations with the aforesaid objective do not violate rights of the petitioners under Article 19 (1) (c) of the Constitution—It was also found that the Rules were framed after complying with all the statutory pre-requisites for their validity—The petition was dismissed with the observations that the Court has not gone into the validity of individual provisions of the 2015 Rules.

Held that reference to the above statutes, Rules and decisions of the Supreme Court distinctly point to the pivotal role that the Bar Associations play not only in the administration of justice and generally promoting the interests of the Advocates but also in implementing the statutory or non-statutory schemes for their welfare. In fact such schemes would be impossible of implementation without associating the Bar Associations, because it is only the Bar Associations that reach, involve and touch every practicing member of the profession. Perhaps it is in realization of this fact that Section 6(1)(dd) was inserted in the 1961 Act by the 1993 (Amendment) Act, to empower the State Bar Councils to promote growth of Bar Associations for purposes of implementing the welfare schemes for advocates.

(Para 39)

Further held that, as per the 2001 Act, it is a pre-condition for becoming a member of the Advocates' Welfare Fund for an advocate to be a member of a Bar Association duly recognized by the State Bar Council. As per Section 16, every Bar Association, whether existing prior to the enforcement of the 2001 Act or formed thereafter, is required to get itself registered with the State Bar Council. As per Section 16(3) every application for recognition is required to be accompanied by a copy of the Rules and bye-laws of the association,

names and addresses of the office-bearers of the association; a list of members of the association containing the name, address, age, enrollment number, date of enrollment and ordinary place of practice. As per Section 16(4), the State Bar Council may after making such enquiry as it deemed necessary, recognize the association. The decision of the Bar Council regarding recognition of an association has been made final. Section 17 of this Act obliges every State Bar Association and State Advocates' Association to furnish to the State Bar Council a list of its members on or before 15th April, every year. As per Section 17(2)(c), every State Bar Association or State Advocates Association is required to inform the State Bar Council of such other matters as may be required by the State Bar Council from time to time.

(Para 40)

Further held that, the power to frame rules under the 2001 Act have been conferred on the Central and State Government as per Sections 35 and 36 thereof. However, in Section 15 of the 1961 Act the power to frame rules in respect of matters in Chapter II of the Act, which comprises Sections 3 to 15, have been conferred on the Bar Councils which includes the Bar Council of India and the State Bar Councils. Though as per Section 15(3) no Rules made by State Bar Council shall have effect unless approved by the Bar Council of India.

(Para 41)

Further held that, one thing is clear that none of these provisions in specific terms empower the State Bar Councils to make rules regarding the elections to Bar Associations. The question is whether such rule making power can be inferred from the general Rule making power to carry out the purposes of the Chapter II as conferred under Section 15(1) of the 1961 Act, keeping in view the functions of the Bar Council, particularly in Section 6(1) (dd) which relates to promoting growth of Bar Associations for the purposes of effective implementation of welfare schemes; Section 6(1)(h) which relates to performing all other functions conferred on it by or under the Act and Section 6(1)(i) which empowers the Bar Council to do all other things necessary for discharging its functions.

(Para 43)

Further held that, the scope of rule making power under a Statute has been subject matter of judicial decisions. It has been held that the court while considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act

and then decide whether the subordinate legislation conforms to the parent statute. It has been held that the Court while ensuring that the rules framed are within the field circumscribed by the parent Act the Court would be justified in giving the provision a purposive construction to effectuate the object of the Act.

(Para 44)

Further held that, we also find no merit in the argument of the Ld. Counsel for the petitioners that the 2015 Rules are invalid as proper procedure was not followed. In view of the proceedings of the Bar Council of Punjab and Haryana and the communications referred to by the Ld. Counsel for the Bar Council, we find that the statutory prerequisites for the validity of the Rules were complied with. The draft Rules after being framed by the Rules Drafting Committee, were considered by the Bar Council of Punjab and Haryana, which sent the same for approval to the Bar Council of India. The General House of the Bar Council of India approved the same in its meeting held on 2.5.2015.

(Para 53)

Further held that, it is clarified that in the present set of petitions, we have only addressed the question of the competence of the State Bar Council to frame rules for regulating the elections of the Bar Associations and have held that the regulation of elections to the Bar Associations through framing of such Rules intended to achieve fairness and transparency in the election process is not ultra vires the provisions of the 1961 Act. It is also not violative of the fundamental rights under Article 19(1)(c) of the Constitution. We have not gone into the validity of individual provisions of the 2015 Rules as no argument was addressed regarding any individual provision. So this decision should not be construed as having opined on and affirmed the validity of each and every provision of the 2015 Rules.

(Para 55)

Raman Sharma, Gagandeep Rana and Divay Sarup, Advocates
for the petitioner.

D.K.Jangra and Rakesh Gupta, Advocates
for respondent No.2 – Bar Council of Pb. & Hr.

HARINDER SINGH SIDHU, J.

(1) This judgment shall dispose of CWP Nos.5232, 23865, 24392 and 25912 of 2015 as similar issues are involved therein.

(2) The question raised in the present petitions is whether the Bar Association (Constitution and Registration) Rules, 2015 (for short “the 2015 Rules”) are ultra vires being beyond the Rule making powers of the State Bar Council under the Advocates Act, 1961 (for short “the 1961 Act”) ? And further whether the said Rules are violative of the rights of the petitioners as guaranteed under Article 19(1)(c) of the Constitution?

(3) Vide judgment dated 04.08.2015, this Court had disposed of a bunch of petitions bearing CWP No.6047 of 2015, *Harjot Singh Harikey* versus *Bar Council of Punjab and Haryana High Court and other connected cases* which raised issue of validity of the 2015 Rules. As during the course of hearing of those petitions, challenge to the Rules was given up, the cases were disposed of in terms of an agreed order. SLP (Civil) No. 26871 of 2015 titled 'Deepak Kundu and others Vs. Bar Council of Punjab and Haryana and others' was filed wherein a grievance was raised by the Rohtak and Panipat Bar Associations that they were not parties to the proceedings before the High Court, yet an order binding them was passed. In view of the fact that these two Bar Associations had not been heard before passing the agreed order, the order of the High Court was set aside and the matter remitted to the High Court to decide the writ petition on merits after hearing all the contesting parties. Certain other SLPs were also similarly disposed of.

(4) Learned counsel for the petitioners in CWP No.5232 of 2015 has argued that the State Bar Council has no power under Section 6 or 15 or any other provision of the 1961 Act to regulate the conduct of elections of the Bar Associations which are private Associations of Lawyers regulated by their own Bye-laws. He accordingly argues that the 2015 Rules are ultra vires the 1961 Act and thus being without any statutory basis cannot bind the Bar Associations. He further argues that these Rules violate the rights of the petitioners to form associations which is guaranteed under Article 19(1)(c) of the Constitution.

(5) Ld. Counsel next raised an argument regarding procedural breach in the framing of the Rules. He argued that as per Rule 52(h) of the 'Rules Regarding the Election of Chairman, Vice-Chairman & Members of Various Committees', the function of drafting Rules is assigned to the 'Rules Drafting Committee' which is to place the draft before the Bar Council of Punjab & Haryana. It has been argued that the impugned Rules were not drafted by the Rules Drafting

Committee nor were the draft Rules placed before the Bar Council of Punjab and Haryana for approval. Rather the Rules were sent to the Bar Council of India for approval without having been approved by the State Bar Council. Thus Rule 52(h) of the said Rules has been violated.

(6) Mr. Harjot Singh Harikey Advocate who had earlier filed CWP No.6047 of 2015, in which there was no specific challenge to the 2015 Rules was permitted to intervene. He did not dispute the power of the Bar Council to frame the Rules and in fact, argued that the framing of the Rules is desirable.

(7) Ld. Counsel for the Bar Council of Punjab and Haryana argued that the source of power of the State Bar Council to frame the Rules lay in Sections 6(dd), 6(h) and 6(i) read with Section 15 of the Advocates Act. He also relied on Sections 16,17, and 18 of the Advocates Welfare Fund Act, 2001 (for short “the 2001 Act”). He further states that in framing these Rules the objective of the State Bar Council is only to ensure transparency and fairness in the elections of the Bar Associations and not to exercise any control or otherwise interfere with their functioning and they would continue to enjoy the fullest autonomy as before. He states that as required in terms of Section 15(3) of the 1961 Act, the 2015 Rules have been duly approved by the Bar Council of India in its meeting held on 02.05.2015 and are thus, legal and valid.

(8) Reliance was placed by him on a decision of Delhi High Court in *P.K.Dash, Advocate & Co. versus Bar Council of Delhi & Ors.*¹ to contend that Bar Associations cannot be regarded as purely private associations but have a predominantly public character as their actions can, in many instances, affect court functioning and hence, the need to ensure transparency and fairness in the election process.

(9) Denying that there was any procedural breach in the framing of the Rules, Ld. Counsel referred us to letter dated 2.2.2015 addressed by the Chairman Bar Council of Punjab & Haryana to the Chairman Rules Drafting Committee on the subject of framing of the Rules relating to elections of office bearers of Bar Associations. Along with the letter he had forwarded a report based on the suggestions received from Presidents and office bearers of Bar Associations with a request to frame the rules immediately. He also referred to letter dated 10.2.2015 from the Chairman Rules Drafting Committee to the Chairman State Bar Council whereby he forwarded the draft Rules. He

¹ AIR 2016 Delhi 135

next referred to copy of resolution No. 7 approved by the Bar Council of Punjab and Haryana in its meeting held on 1.3.2015 wherein it was resolved that the newly framed Rules be sent to the Bar Council of India for approval u/s 15(3) of the 1961 Act. The Rules were forwarded to the Bar Council of India for approval on 5.3.2015. The Bar Council of India approved the Rules in the meeting of the General House held on 2.5.2015. He thus argued that the Rules were drafted by the Rules Drafting Committee, thereafter considered and approved by the Bar Council of Punjab and Haryana and later approved by the Bar Council of India, and are thus in order.

(10) We have heard Ld. Counsel for the parties and perused the record.

(11) As the core issue in these petitions is the competence of the State Bar Council to frame the Rules, we need not refer to the earlier litigation, which provided the immediate catalyst for the framing of the Rules, though there was no specific direction issued by this Court regarding the framing of the Rules as clarified in order dated 25.03.2015 passed in CM-988-989-LPA-2015 in LPA No. 1427 of 2014 *Mohinder Singh Chauhan* versus *Bar Council of Punjab & Haryana & Anr.*

(12) It is stated on behalf of the respondent Bar Council that before finalizing the Rules the Presidents/ Secretaries/ office bearers of all the Bar Associations from Punjab and Haryana were invited for a meeting and after getting their proposals the said Rules were formulated.

(13) The Aims and Objects of the Rules are stated in Rule 1 as under:

“Aims and Objects:-

- i) To bring the uniformity, Transparency relating to the elections of the Office Bearers of the All Bar Associations comes within the jurisdiction of the Bar Council of Punjab and Haryana.
- ii) To avoid the complicity by laws framed by various Bar Associations which are affecting Purity, Fairness and Democratic value in the annual elections of the Bar Association.”

RELEVANT STATUTORY PROVISIONS

(14) In order to decide the issue, it would be necessary to refer to the relevant provisions of the Advocates Act, 1961 and the general scheme and objectives thereof. Also relevant would be The Advocates Welfare Fund Act, 2001, which extends to the whole of India except certain States which have framed their own Advocates Welfare Acts as mentioned in Schedule II of the Act. A reference to certain Rules framed by the Bar Council of India and decisions of the Supreme Court wherein the important public functional aspect of the role played by the Court annexed Bar Associations has been highlighted, would also be helpful.

(i) The Advocates Act, 1961

(15) As stated in the preamble to the 1961 Act, it is an Act 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 objective and reason for the enactment is reflected in the Statement of Objects and Reasons thereof, which are reproduced as under:

“The Bill seeks to implement the recommendations of the All India Bar Committee made in 1953, after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration insofar as the recommendations relate to the Bar and to legal education.

2. The main features of the Bill are, _

(1) the establishment of an All India Bar Council and a common roll of advocates, and advocate 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 divisions of advocates into senior advocates and other advocates based on merit;

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

3. Following the recommendations of the All India Bar Committee and the Law Commission, the Bill recognizes the continued existence of the system known as the dual system now prevailing in the High Courts of Calcutta and Bombay, by making suitable provisions in that behalf. It would, however, be to the two High Courts, if they so desire, to discontinue this system at any time.

4. The Bill, being a comprehensive measure, repeals the Indian Bar Councils Act, 1926, and all other laws on the subject.

5. The notes on clauses explain, wherever necessary, the various provisions of the Bill.”

(16) As held by Hon'ble the Supreme Court in *Bar Council of U.P.* versus *State of U.P.*², the 1961 Act, in its pith and substance, is an enactment dealing with qualifications, enrolment, right to practise and discipline of advocates.

(17) There was no reference to or mention of Bar Associations or Advocates Association in the 1961 Act as originally enacted. Several amendments have been made to the 1961 Act since then whereby the scope of the Act has been enlarged and the Bar Associations have been accorded statutory recognition. Later enactments and Rules have also prescribed specific role for the Bar Associations.

(18) The functions of the State Bar Councils are prescribed in Section 6 of the 1961 Act, which as amended up to date is as under:

“6. Functions of State Bar Councils- (1) The functions of a State Bar Council shall be-

- (a) to admit persons as advocates on its roll.
- (b) to prepare and maintain such roll
- (c) to entertain and determine cases of misconduct against advocates on its roll
- (d) to safeguard the rights, privileges and interest of advocates on its roll

[(dd)to promote the growth of Bar Associations for the purpose of effective implementations of the welfare schemes referred to in clause (a) of sub section (2) of this

² AIR 1973 SC 231

section and clause (a) of sub section (2) of section 7;]

(e) to promote and support law reform

[(ee) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest.

(eee) to organize legal aid to the poor in the prescribed manner]

(f) to manage and invest the funds of the Bar Council

(g) to provide for the election of its members.

[(gg) to visit and inspect Universities in accordance with the directions given under clause (I) of sub-section (1) of section 7;]

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions

[(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of -

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

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

(c) Establishing law libraries].

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.]

(19) Section 6 as originally enacted detailed the functions of the State Bar Council as under:-

“6. Functions of State Bar Council. - (1) The functions of a State Bar Council shall be-

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

- (c) to entertain and determine cases of misconduct against advocates on its roll;
 - (d) to safeguard the rights, privileges and interests of advocates on its roll;
 - (e) to promote and support law reform;
 - (f) to manage and invest the funds of the Bar Council;
 - (g) to provide for the election of its members;
 - (h) to perform all other functions conferred on it by or under this Act
 - (i) to do all other things necessary for discharging the aforesaid functions.
- (2) A State Bar Council may constitute a fund in the prescribed manner for the purpose of giving financial assistance to indigent or disabled advocates.”

Amendments were made to Section 6 in the years 1973 and 1993, which had the effect of enlarging the functions of the State Bar Councils. Section 6(1)(ee) was inserted by the Advocates (Amendment) Act, 1973 to provide for conducting seminars and to organise talks on legal topics by eminent jurists and to publish journals and papers of legal interest. Section 6(1)(eee) was also inserted by the same amending Act enabling the State Bar Councils to organise legal aid to the poor. Scope of sub-section (2) was enlarged by substituting a new sub-section in place of earlier sub-section (2). As per the substituted sub-section, a State Bar Council may constitute one or more funds for the purpose of giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates and for giving legal aid or advice in accordance with Rules made in this behalf. A new sub-section (3) was inserted enabling the State Bar Council to receive grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2).

(20) The functions of the State Bar Councils were further significantly enlarged by the Advocates (Amendment) Act, 1993.

(21) As provided for in Section 6(1)(dd), which has been heavily relied upon by the Ld. Counsel for the respondent, it is the function of the Bar Council to promote the growth of Bar Associations for the

purpose of effective implementation of the welfare schemes referred to in clause (a) of sub section (2) of section 6 and clause (a) of sub section (2) of section 7. Section 6(2)(c) which enables constitution of funds for the purpose of establishing law libraries was also inserted in 1993.

(22) In order to understand the full significance of the above amendment, a reference to the Statement of Objects and Reasons of the Advocates (Amendment) Act 1993 would be helpful:

“Statement of Objects and Reasons of Act 70 of 1993

On the basis of various proposals made by the Bar Council of India and certain other bodies and the experience gained in the administration of the Advocates Act, 1961 (25 of 1961), it is found necessary to amend the Act with a view to enabling the Bar Council of India and the State Bar Councils to function more effectively for the betterment of the legal profession.

1. The Bill proposes, inter alia, to:-

- (i) empower the State Bar Councils to promote the growth of Bar Associations for purposes of implementing the welfare schemes for advocates and to visit and inspect Universities on the directions of the Bar Council of India and to constitute funds for establishing law libraries.
- (ii) provides for automatic cessation of membership of members of the State Bar Councils in the event of non-holding of elections within the stipulated period for making consequential arrangements;
- (iii) enable the Bar Council of India and the State Bar Councils to meet at places other than their respective headquarters;
- (iv) increase the enrolment fee from two hundred and fifty rupees to seven hundred and fifty rupees without disturbing the fee payable at present by persons belonging to the Scheduled Castes or the Scheduled Tribes;
- (v) empower the State Bar Councils not to admit a person as an advocate on a State roll if he has been dismissed or removed from any employment or office under the State

on charge involving moral turpitude.

(vi) empower the Supreme Court of India to make rules for determining the persons who shall be entitled to plead before that Court.

(2) The Bill seeks to achieve the above objects.”

Clearly, one of the main objectives of the 1993 amendment was to empower the State Bar Councils to promote growth of Bar Associations for purposes of implementing the welfare schemes for advocates. It was towards this end that Section 6(1)(dd) was inserted. This aspect was referred to by Hon'ble the Supreme Court in *Supreme Court Bar Assn. v. B.D. Kaushik*, (2011) 13 SCC 774 by observing that one of the main functions of the State Bar Councils under the 1961 Act is to promote growth of Bar Associations for the purpose of effective implementation of the welfare schemes. The Court observed as follows:

“23. The Advocates Act, 1961 provides for the creation of different State Bar Councils, whose one of the main functions is to admit advocates on its rolls and to promote the growth of Bar Associations for the purpose of effective implementation of the welfare schemes. It further enables the Bar Councils to make their own rules. Section 17 of the Advocates Act provides that every State Bar Council shall prepare and maintain the roll of advocates. Section 17(4) further states that no person shall be enrolled as an advocate on the roll of more than one State Bar Council.”

(23) Section 15 of the 1961 Act confers rule making power on both the Bar Council of India and the State Bar Councils to make Rules for carrying out the purposes of Chapter II. Besides generally empowering the Bar Councils to make rules to carry out the purposes of Chapter II, which comprises Sections 3 to 15, it enumerates specific purposes for which the Rules may provide for. Section 15 is reproduced below:

“15. Power to make rules.—(1) A Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

[(a) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot, the

preparation and revision of electoral rolls and the manner in which the results of election shall be published;]

(b)[***]

[(c) the manner of election of the Chairman and the Vice-Chairman of the Bar Council;]

(d) the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council [or to the office of the Chairman or Vice-Chairman] shall be finally decided;

(e)[***]

(f) the filling of casual vacancies in the Bar Council;

(g) the powers and duties of the Chairman and the Vice-Chairman of the Bar Council;

[(ga) the constitution of one or more funds by a Bar Council for the purpose of giving financial assistance or giving legal aid or advice referred to in sub-section (2) of Section 6 and sub-section (2) of Section 7;

(gb) organisation of legal aid and advice to the poor, constitution and functions of committees and sub-committees for that purpose and description of proceedings in connection with which legal aid or advice may be given;]

(h) the summoning and holding of meetings of the Bar Council, [* * *] the conduct of business thereat, and the number of members necessary to constitute a quorum;

(i) the constitution and functions of any committee of the Bar Council and the term of office of members of any such committee;

(j) the summoning and holding of meetings, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;

(k) the qualifications and the conditions of service of the secretary, the accountant and other employees of the Bar Council;

(l) the maintenance of books of accounts and other books

by the Bar Council;

- (m) the appointment of auditors and the audit of the accounts of the Bar Council;
 - (n) the management and investment of the funds of the Bar Council.
- (3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.”

(ii) The Advocates Welfare Fund Act, 2001

(24) The Advocates Welfare Fund Act, 2001 was enacted to effectuate the objective of promoting the welfare of advocates, to provide social security in the form of financial assistance to junior advocates and organise welfare schemes for indigent or disabled advocates. A very significant, in fact the central role, was envisaged for the Bar Associations recognized by the State Bar Councils in the implementation of this Act.

(25) A reference to the Statement of Objects and Reasons of this Act would be necessary:

“Statement of Objects and Reasons.- Social security in the form of financial assistance to junior lawyers and welfare schemes for indigent or disabled advocates, has long been a matter of concern for the legal fraternity. Clause (a) of sub-section (2) of Section 6 and clause (a) of sub-section (2) of Section 7 of the Advocates Act, 1961, confer powers upon the State Bar Councils as well as the Bar Council of India, inter alia, to constitute through their rules one or more funds for the purpose of ‘giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates’. Sub-section (3) of Section 6 and sub-section (3) of Section 7 of the Advocates Act further provide that a State Bar Council as well as the Bar Council of India may receive grants, donations, gifts or benefactions for the said purpose which shall be credited to the appropriate fund or funds constituted under sub-section (2) of the said sections. Welfare schemes have accordingly been introduced in some States. Most of the States have enacted legislations on the subject. However, there is neither any uniformity nor the said provisions are considered

adequate. Moreover, the Advocates Act, 1961 does not authorise levy of any welfare fund stamp on vakalatnama. There has, therefore, been felt a need for a Central legislation applicable to the Union Territories and the States which do not have their own enactments on the subject, for constitution of “Advocates’ Welfare Fund” by the appropriate Government. The Fund will, inter alia, be composed of contributions made by a State Bar Council, any voluntary donation or contribution by the Bar Council of India, advocates’ associations, other associations or institutions or persons, any grant made by the appropriate Government, sums collected by way of sale of “Advocates’ Welfare Fund Stamps”.

2. All practising advocates shall become members of the Fund on payment of an application fee and annual subscription. The Fund shall vest in, and be held and applied by, the Trustee Committee established by the appropriate Government. The Fund will, inter alia, be used for making ex gratia grant to a member of the Fund in case of a serious health problem, payment of a fixed amount on cessation of practice and in case of death of a member, to his nominee or legal heir, medical and educational facilities for the members and their dependents, purchase of books and for common facilities for advocates. The income accrued to the Fund, shall be exempted from income tax.

3. The Bill seeks to achieve the above object.”

(26) For claiming the benefits under this Act the name of the advocate should be entered in the state roll maintained by the State Bar Council and he should also be a member of a State Bar Association or a State Advocates' Association recognized by the State Bar Council. In fact, the very definition of 'advocate' in Section 2(a) of the Act incorporates this condition. Section 3 of the Act envisages constitution of 'Advocates' Welfare Fund' into which shall be credited the amounts received from various sources and which shall form the corpus for disbursing the benefits envisaged under the Act. Chapter-IV of the Act deals with recognition of association of Advocates by the State Bar Council. As per Section 16, any association of advocates registered before the commencement of the Act is required to apply for recognition to the State Bar Council. Similarly, any association of advocates registered after the commencement of this Act is required to

apply for recognition to the State Bar Council within three months of its registration. As per Section 16(3) every application for recognition is required to be accompanied by a copy of the Rules and bye-laws of the association, names and addresses of the office-bearers of the association; a list of members of the association containing the name, address, age, enrollment number, date of enrollment and ordinary place of practice. As per Section 16(4), the State Bar Council may after making such enquiry as it deems necessary, recognize the association. The decision of the Bar Council regarding recognition of an association has been made final. Section 17 of this Act obliges every State Bar Association and State Advocates' Association to furnish to the State Bar Council a list of its members on or before 15th April, every year. As per Section 17(2), every such association is required to inform the State Bar Council of any change in the membership including admissions and re-admissions, the death or cessation of practice or voluntary suspension of practice within thirty days from such occurrence. As per Section 17(2)(c) every State Bar Association or State Advocates Association is required to inform the State Bar Council of such other matters as may be required by the State Bar Council from time to time. As per Section 18(1), every advocate practising before the commencement of this Act in any Court, Tribunal or other authority in a State and who is a Member of a State Bar Association or State Advocates' Association (which as per their definition in Sections 2(p) and 2(q) respectively, means an association recognized by the State Bar Council under Section 16), shall apply within six months of the commencement of the Act to the Trustee Committee for admission as the Member of the Advocates Welfare Fund. Similarly, advocates admitted on the roll of a State Bar Council after the commencement of the Act and being members of a State Bar Association or States Advocates' Association are required to apply within six months of their enrollment as an advocate.

(27) Thus, as per the scheme of the 2001 Act, it is a pre-condition for becoming a member of the Advocates' Welfare Fund for an advocate to be a member of a Bar Association duly recognized by the State Bar Council.

(28) Section 26 of the 2001 Act deals with the printing and distribution of Advocates Welfare Fund stamps by the State Bar Council. As per sub-section (1), the appropriate government, on the request of the State Bar Council is required to print 'Advocates' Welfare Fund Stamps' the custody whereof as per sub-section (3) of

Section 26 would be with the State Bar Council. As per sub-section (4) of Section 26, the State Bar Council shall control the distribution and sale of the stamps through the State Bar Associations and State Advocates Associations. Sub-section (5) of Section 26 requires the State Bar Council, the State Bar Associations and State Advocates Association to keep proper accounts of the stamps in such manner as may be prescribed. As per Section 26(6) the State Bar Associations and the State Advocates' Associations shall purchase the stamps from the State Bar Council after paying the value thereof reduced by 10% of such value towards incidental charges. Section 27 requires every advocate to affix a stamp of the value of Rs. 5/- on every vakalatnama filed in a District Court or in a Court subordinate to District Court and of Rs.10/- on every vakalatnama filed in a Tribunal or other authority or a High Court or Supreme Court. Any contravention of this requirement would disentitle the advocate from the benefits of the fund.

(29) The power to frame Rules for carrying out the provisions of this Act has been conferred on the Central Government in terms of Section 35 of this Act. As per Section 36, the appropriate State Government may also make Rules for carrying out the provisions of this Act, which are not inconsistent with the Rules, if any, made by the Central Government.

(30) The relevant provisions of the 2001 Act which highlight the pivotal position of the Bar Associations recognized by the State Bar Council in the scheme of this Act are reproduced below:

“2. Definitions.—In this Act, unless the context otherwise requires,—(a) “advocate” means an advocate whose name has been entered in the State roll prepared and maintained by a State Bar Council under section 17 of the Advocates Act, 1961 (25 of 1961) and who is a member of a State Bar Association or State Advocates’ Association;

(p) “State Advocates’ Association” means an association of advocates in a State recognised by the Bar Council of that State under section 16;

(q) “State Bar Association” means an association of advocates recognised by the Bar Council of that State under section 16;

CHAPTER II

CONSTITUTION OF ADVOCATES' WELFARE FUND

3. **Advocates' Welfare Fund.**— (1) The appropriate Government shall constitute a fund to be called the "Advocates' Welfare Fund". Advocates' Welfare Fund is to be constituted by State Governments for the advocates admitted on the rolls of the Bar Councils of the respective States and by the Central Government for the advocates admitted on the rolls of the Bar Councils of the Union territories.

(2) There shall be credited to the Fund—

(a) all amounts paid by a State Bar Council under section 15;

(b) any other contribution made by a State Bar Council;

(c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any State Bar Association, any State Advocates' Association or other association or institution, or any advocate or other person;

(d) any grant which may be made by the Central Government or a State Government to the Fund after due appropriation made in this behalf;

(e) any sums borrowed under section 12;

(f) all sums collected under section 18;

(g) all sums received from the Life Insurance Corporation of India or any other insurer on the death of any member of the Fund under any Group Insurance Policy;

(h) any profit or dividend or refund received from the Life Insurance Corporation of India or any other insurer in respect of policies of Group Insurance of the members of the Fund;

(i) any interest or dividend or other return on any investment made out of any part of the Fund;

(j) all sums collected by way of sale of stamps under section 26.

(3) The sums specified in sub-section (2) shall be paid to, or collected by, such agencies, at such intervals and in such manner, as may be prescribed.

CHAPTER IV

RECOGNITION OF ANY ASSOCIATION OF ADVOCATES

16. Recognition by a State Bar Council of any association of advocates.—

(1) Any association of advocates known by any name which is registered as an association before the date of commencement of this Act may, before the date to be notified by a State Bar Council in this behalf, apply for recognition to the State Bar Council in such form as may be prescribed.

(2) Any association of advocates known by any name which is registered as an association on or after the date of commencement of this Act may, within three months from the date of its registration as an association, apply for recognition to the State Bar Council in such form as may be prescribed.

(3) Every application for recognition under sub-section (1) or sub-section (2) shall be accompanied by,—

- (a) a copy of the rules or bye-laws of the association;
- (b) names and addresses of office bearers of the association;
- (c) a list of members of the association containing the name, address, age, enrolment number and date of enrolment with the State Bar Council and the ordinary place of practice of each member.

(4) The State Bar Council may, after such enquiry as it deems necessary, recognise the association and issue a certificate of recognition in such form as may be prescribed.

(5) The decision of the State Bar Council on any matter regarding recognition of an association under sub-section (4) shall be final.

Explanation.—In this section, “registered” means registered or deemed to be registered under the Societies Registration

Act, 1860 (21 of 1860), or any other law for the time being in force.

17. Duties of State Bar Associations and State Advocates' Associations.—

(1) Every State Bar Association and State Advocates' Association shall, on or before the 15th day of April of every year, furnish to the State Bar Council a list of its members as on the 31st day of March of that year.

(2) Every State Bar Association and State Advocates' Association shall inform the State Bar Council of—

(a) any change in the membership including admissions and re-admissions within thirty days of such change;

(b) the death or other cessation of practice or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof;

(c) such other matters as may be required by the State Bar Council from time to time.

CHAPTER V

MEMBERSHIP AND PAYMENT OUT OF ADVOCATES' WELFARE FUND

18. Membership in Fund.—(1) Every advocate practising, before the commencement of this Act, in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates' Association in that State, shall apply, within six months of the commencement of this Act, to the Trustee Committee for admission as a member of the Fund, in such form as may be prescribed.

(2) Every person,—

(a) admitted as an advocate on the roll of a State Bar Council, after the commencement of this Act;

(b) practising in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates' Association in that State, shall apply, within six months of his enrolment as an advocate, to the Trustee Committee, for admission as a member of the Fund in such form as may be prescribed.

(3) On receipt of an application under sub-section (1) or sub-section (2), the Trustee Committee shall make such enquiry as it deems fit and either admit the applicant to the Fund or, for reasons to be recorded in writing, reject the application:

Provided that no order rejecting an application shall be passed unless the applicant has been given an opportunity of being heard.

(4) Every applicant shall pay an application fee of two hundred rupees along with the application to the account of the Trustee Committee.

(5) Every advocate, being a member of the Fund, shall pay an annual subscription of fifty rupees to the Fund on or before the 31st day of March of every year:

Provided that every advocate, who makes an application under sub-section (1) or sub-section (2), shall pay his first annual subscription within three months of his becoming a member of the Fund:

Provided further that a senior advocate shall pay an annual subscription of one thousand rupees.

(6) Any member of the Fund, who fails to pay the annual subscription for any year before the 31st day of March of that year, shall be liable to be removed from the membership in the Fund.

(7) A member of the Fund removed from the membership in the Fund under sub-section (6) may be re-admitted to the Fund, on payment of arrears along with re-admission fee of ten rupees, within six months from the date of such removal.

(8) Every member of the Fund shall, at the time of admission to the membership in the Fund, make nomination conferring on one or more of his dependants the right to receive, in the event of his death, any amount payable to the member under this Act.

(9) If a member of the Fund nominates more than one person under sub-section (8), he shall specify in the nomination, the amount or share payable to each of the nominees.

(10) A member of the Fund may, at any time, cancel a nomination by sending a notice in writing to the Trustee Committee.

(11) Every member of the Fund, who cancels his nomination under sub-section (10), shall make a fresh nomination along with registration fee of five rupees.

(12) Every member of the Fund, whose name has been removed from the State roll under section 26A of the Advocates Act, 1961, (25 of 1961), or who voluntarily suspends practice, shall, within fifteen days of such removal or suspension, intimate such removal or suspension to the Trustee Committee and if any member of the Fund fails to do so without sufficient reason, the Trustee Committee may reduce, in accordance with such principles as may be prescribed, the amount payable to that member under this Act. Every advocate practising in any court, tribunal or other authority in a State and being a member of a State Bar Association or a State Advocates' Association in that State is to apply to the Trustee Committee for admission as a member of the Fund. Every applicant has to pay an application fee of two hundred rupees along with the application. Every advocate being admitted as member of the Fund is required to pay an annual subscription of fifty rupees to the Fund on or before the 31st day of March of every year. Failure to pay the annual subscription before 31st day of March of that year, shall make him liable to be removed from the membership of the Fund.

CHAPTER VI

PRINTING, DISTRIBUTION AND CANCELLATION OF STAMPS

26. Printing and distribution of Advocates' Welfare Fund Stamps by State Bar Council.—(1) The appropriate Government shall, on a request made by the State Bar Council in this behalf, cause to be printed and distributed Advocates' Welfare Fund Stamps of the value of five rupees or such other value, which may be prescribed, inscribing therein "Advocates' Welfare Fund Stamp", in such design as may be prescribed.

(2) Every stamp referred to in sub-section (1) shall be of the

size 2.54 c.m. by 5.08 c.m. and sold to the advocates.

(3) The custody of the stamps shall be with the State Bar Council.

(4) The State Bar Council shall control the distribution and sale of the stamps through the State Bar Associations and the State Advocates' Associations.

(5) The State Bar Council, the State Bar Associations and the State Advocates' Associations shall keep proper accounts of the stamps in such form and manner as may be prescribed.

(6) The State Bar Associations and State Advocates' Associations shall purchase the stamps from the State Bar Council after paying the value thereof as reduced by ten per cent. of such value towards incidental expenses.”

(iii) The Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015

(31) The Bar Council of India, in exercise of powers conferred on it by section 49(1) (ag), 49 (ah) 49(i) of the 1961 Act, has framed the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 (for short 'the Verification Rules'). These Rules have been framed with the objectives, amongst others, to introduce certain electoral reforms in the elections to Bar Council/Bar Association. This was necessitated as in the recent past, the Bar Council of India and the State Bar Councils had come across cases of rigging in the polls and allegations of bogus voting. It was noticed that State Bar Councils and/or majority of Bar Associations of the country had no record of the Advocates who died after enrolment or who joined other jobs, business or professions. Such non- practicing advocates also managed to get benefits under various welfare schemes for advocates floated both under State Legislations as well as under various welfare schemes framed by different State Bar Councils and by Bar Council of India.

(32) The objectives of the framing of these Rules is fully explained in the Statement of objects and reasons of these Rules which is as under:

“The legal profession is an Honorable one and it has critical role to play in protecting and promoting the Civil and Constitutional rights of the people. An independent and

fearless Bar is vital and crucial for sustaining and promoting a true and healthy democracy. The Bar which is subject to manipulation and influence from extraneous powers, howsoever mighty and esteemed they may be, cannot do justice either to the Legal Profession or to the Rule of Law. Bench and Bar are the two wheels of a chariot and one cannot function without the other. Sadly, this profession has fallen under a cloud.

In the Joint Meeting of the representatives of all State Bar Councils and Bar Council of India, concerns were raised by all that trend of Advocates switching over to other professions/services/business without any information to the State Bar Council has reached alarming proportions. This trend is endangering the legal profession as a whole. It has also made a dent in its sanctity and standards. Names of such advocates continue to be included in the "Roll of advocates" being maintained by the State Bar Councils, notwithstanding the fact that they have left the legal profession or have since died. Though under section 19 of the Advocates Act, the State bar Councils are under legal obligation to send a copy of the Roll of advocates prepared by it under section 17 of the Act and subsequent alterations/additions thereto but practically no state bar Council has observed this mandatory provision of the Act up till now.

Under these circumstances it appears that a definite trend is visible that the control of Bar Associations and of other elected bodies under the Advocates Act is slipping out of the hands of the advocates who practice law. It is also being experienced that after certificate of enrolment is issued to an advocate, practically no communicative and continuing contact survives between him and the Council.

Under the existing state of affairs, All India Bar Examination introduced on the directions/observations of the Supreme Court of India to improve the standard of legal profession has also failed to fully achieve its objective.

Advocates enrolled with the State Bar Councils obtain "Provisional Certificate of Practice" (valid for 2 years) and thereafter most of them are practicing Law without caring to appear for All India Bar Examination and to pass it.

Various welfare schemes for advocates have been floated in India both under State Legislations as well as under various welfare schemes framed by different State Bar Councils and by Bar Council of India but benefits thereunder are being enjoyed by those also who have left the profession.

There is also an urgent need for laying down some conditions for practicing law in different Courts so as to give due weightage and credence to experience. Before an advocate could practice law in higher Courts, there is need that he is exposed to real court experience in lower Courts/trial Courts. This will help in integrating the whole judicial system from the perspective of the Bar.

Therefore, in order to achieve better and effective administrative and disciplinary control of the local Bar Associations, State Bar Councils and the Bar Council of India over the advocates entered on the Rolls of advocates being maintained by different State Bar Councils under section 22 of the Advocates Act and further in order to weed out advocates who have left practice, the Bar Council of India, in the exercise of powers conferred on it by section 49(1) (ag), 49 (ah) 49(i) of the Advocates Act, 1961 and by all other enabling and residuary powers vested in it, had brought the rules titled “ Bar Council of India Certificate of Practice and Renewal Rules, 2014” for the purposes of carrying into effect the provisions and objectives of the Act:-

But in some of the places, the Advocates raised objection with regard to the word Renewal, though in fact it is not the renewal of enrolment, rather it aimed at periodical verification of the details of an Advocate already enrolled with some State Bar Council. The aim was/is only to verify the place where the Advocate normally practices, the Bar Association of which he is a member (if any), the address/ email id, enrolment number/year, the Institutions from which the Advocate has passed his Graduation and LL.B. The purpose is the maintenance of record of all the Advocates of the country; two passport size photographs of Advocate was/is also required to be furnished to the State Bar Council. The other object was/is also to introduce

certain electoral reforms in the Bar Council/Bar Association elections, because in recent past, the Bar Council of India and the State Bar Councils have come across the cases of rigging in the polls and the allegations of bogus voting has now become frequent, since the State Bar Councils and/or majority of Bar Associations of the country have no record of the Advocates who died after enrolment or who joined other jobs, business or professions; the Bar Council of India being the regular of Legal profession and Legal education of the country has, therefore, decided to undertake the detailed verification and then to prepare a Voters' List alongwith recent photographs of the Advocate (Voter). The Council has framed these Rules in the light of the verdict of Hon'ble apex Court in the case of Supreme Court Bar Association. The Bar Council of India has already decided to develop the web-portal for this purpose to have full details of all the Advocates of the country, all the Institutions imparting Legal Education, details of Law students, the Law Teachers and details of all the Bar Associations. The detailed information and photograph is necessary for that purpose also. Furthermore, since some of the Bar Associations have raised baseless objection with regard to the sum of Rs.500/- as Practice Fee (as per them it is a heavy amount); the major portion (about Rs.400/-) of this Rs.400/- was aimed (in 2014 Rules) for providing welfare schemes (like Insurance for Advocates and their family members and improvement of infrastructure and Library of Bar Associations, Pensions etc.) But due to objection, now the Council has resolved to segregate this amount of Rs.400/- for welfare-schemes from the process fee of verification. Now only Rs.100/- is to be charged from the Advocates as Process fee and rest of Rs.400/- would be optional not mandatory, depending upon the decision of concerned State Bar Council and the concerned Advocate. Even from this process fee of Rs.100/-, besides the expenditure incurred for undertaking the work of verification, the State Bar Council, Bar Associations and Bar Council of India are required to spend the rest of the amount for the improvement of infrastructures of Associations only. State Bar Councils shall be required to open and maintain a separate Bank Account for this purpose

which would be audited every year. The report of Audit shall be sent to Bar Council of India and the Bar Association soon after the submission of report.

The Bar Council of India has also come to know that a number of fake (farzi) persons (without any Law Degree or enrolment certificate) are indulged in Legal practice and are cheating the Litigants, courts and other stake-holders; and neither the Bar Associations nor the concerned State Bar Councils have any control over such fake persons. Shockingly, it has come to the notice of the Council that at some places, the office-bearers of Bar Associations or some vote-seekers knowingly make such people members and voters of their Associations with a motive to get their votes in the elections of Bar Associations or Bar Councils. Similarly, many persons, after getting enrolled as Advocates in any State Bar Council, get involve in Property-Dealings, contract or switch over to some other business, profession or job and have no more concern with the Legal profession. Such “non-practicing Advocates” are sometimes being used by some of the office- bearers/ candidates for elections of Bar Associations or Bar Councils (only for their votes). But in fact, the Council has realized that such practice is degrading the standard of Legal profession, and this mal-practice has to be stopped.

Few of the office-bearers/representatives of some of the Bar Associations had raised unnecessary objections and protests to these reformative steps. Such protests were/are only to serve their vested interests. Bar Council of India has to maintain the dignity and standard of Legal profession, we shall have to oust fake people from the court-campus and we shall have to identify the “non-practicing Advocates”, (who are involved in other job, business or profession). We are to ensure that such Advocates do not involve in deciding the fate of our Associations and the Bar Councils; And such Advocates are not allowed to get any benefit of welfare schemes or to practice Legal profession so long they are in any other business, job or profession.

It is due to these reasons, the Council has decided to make provisions for identification of such fake persons and non-practicing Advocates. And the Council has also felt it

necessary to discourage those Advocates who raise unnecessary protests with an intent to keep and protect the fake and/or non-Practicing Advocates with an object to get their votes. Therefore, the Council has resolved to make suitable provisions in these Rules so that if any Advocate is found to be indulged in making deliberate effort to -

- (i) Protect fake people practicing legal profession illegally
- (ii) to create any hurdle in identification of “non- Practicing Advocates” and
- (iii) create any objection in verification of the certificate of practice, credentials, place of Practice and details of Advocates, such Advocates would be debarred from contesting any election of Bar Association or Bar Council for a period of three years from the date of order to this effect.

Under the circumstances and for the abovementioned reasons, the Council has resolved to repeal the “Bar Council of India Certificate of Practice and Renewal Rules 2014” and has made and passed the new “ Bar Council of India Certificate and place of Practice (Verification) Rules 2015”, and has decided to implement it.”

(33) Under these Rules also, a central role is envisaged for the local Bar Associations. Rule 6 provides that an advocate, after having obtained a Certificate of Enrollment under the 1961 Act, is required to get himself registered as a member of the Bar Association where he ordinarily practices law or intends to practice law. If he does not intend to be a member of any Bar Association duly recognized by concerned State Bar Council, then he is required to intimate the State Bar Council and further explain as to how he will avail the benefits of any welfare scheme floated by the State Bar Council or the Local Bar Association. The decision of State Bar Council shall be final in this regard. As per Rule 8.4 (iv), to obtain Certificate of Practice the applicant advocate is required to get it certified by the President/ Secretary or by any other duly authorized office bearer of the Association, that the applicant is a bona fide member of the concerned Bar Association and that he has not left law practice. Similarly for resumption of practice a certificate of the President/ Secretary of the Bar Association of which he intends to

become a member is required. The relevant provisions of these Rules are reproduced below:

“4. Definitions .-

(e) State Bar Council means the State Bar Councils as defined under section 3 (1) (a) of the Advocates Act, 1961.

(g) Bar Association of a given area/town/city means an area/ territory and court work based association of advocates, whether registered under the Societies Registration Act (Act No. XXI of 1860) or not having its area/territory defined in terms of the whole or part of the territorial jurisdiction of Courts/Tribunals/Persons or any other Authorities legally competent to take evidence before which its members ordinarily practice law and it includes Bar Association exclusively dealing in specific fields of law viz. Income Tax, Corporate law, Central/State Excise Law etc. in relation to the authorities/tribunals/boards etc. there-under.

CHAPTER II

LOCAL BAR ASSOCIATIONS

6. Advocate to be a member of the Bar Association where he/she normally practices law -

An advocate, after having obtained a Certificate of Enrollment under section 22 of the Advocates Act, 1961, is required to get himself registered as a member of the Bar Association where he ordinarily practices law or intends to practice law. And if any Advocate does not intend to be a member of any Bar Association duly recognized by concerned State Bar Council, then he shall be required to intimate the same to the State Bar Council and he shall have to explain as to how shall he be getting the benefits of any welfare scheme floated by the State Bar Council or the Local Bar Association. The decision of State Bar Council shall be final in this regard.

In case an advocate leaves one Bar Association and joins another by reason of change of place of practice or by reason of change of field of law, he/she shall intimate such change with all the relevant particulars to the State Bar Council, of which he is a member. Such fact of leaving as

well as of joining shall be independently intimated to the aforesaid said Bar Council within a period of one month.

Bar Associations to apply to the respective Bar Council within whose jurisdiction they are located, for being recognized under these rules. Recognition shall be accorded to such a Bar Association only which falls within the definition of Bar Association as defined in these rules.

8. Application for verification of “Certificate to practice and place of Practice” by advocates enrolled on or before June 12, 2010:

An advocate graduating in law in academic year 2009-2010(1st July, 2009 to 30th June, 2010) and thereafter, enrolled on the “Roll of Advocates” on or after June 12, 2010, is required 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 under Rule 9.

An advocate having obtained graduate degree in law before the academic year 2010 enrolled on the “Roll of Advocates”, is 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 the enforcement of these Rules/date of enrolment.

Every application for issuance of verified Certificate of Practice shall be submitted in the prescribed format as given in Form A Column I and Column II annexed with these Rules disclosing all the necessary informations as required there under to the State Bar Council, with which he/she is enrolled.

Every such application shall be accompanied by the following documents, certificates, declaration, fee etc: -

- (i) Verification fee/process fee in the sum of Rs.100/- (rupees one hundred only) by way of Bank Drafts/Account payee bank cheque or cash in the name of :-
 - a Secretary State Bar Council, with which the applicant is

enrolled (or it may be paid in cash also);

Out of this Rs. 100/-, the Secretary, State Bar Council shall send a sum of Rs. 20/- to the concerned Bar Association and Rs. 30/- to Bar Council of India, rest Rs. 50/- is to be kept in the Account of State Bar Council.

- (ii) A declaration in the prescribed format as given in Column II of Form 'A' annexed with these Rules;
- (iii) Two passport size photographs duly attested by the President/ Secretary of the Bar Association or by any other office bearer of the Association who is duly authorized for this purpose by the Bar Association, of which the applicant is a member, or by a member of the State Bar Council duly authorized by the State Bar Council or Bar Council of India;
- (iv) Certificate in Form A Column III issued by the President/ Secretary or by any other office bearer of the Association, who is duly authorized for this purpose by the Bar Association/ to the effect that the applicant advocate is a bona fide member of the concerned Bar Association and that he has not left law practice OR By any member of State Bar Council duly authorized by State Bar Council or by the Bar Council of India.

In case, the applicant has been a member of different Bar Associations at different times since the issuance of certificate of enrolment under section 22 of the Advocates Act, 1961, such certificates may be obtained from the Presidents/Secretaries of the different Bar Associations, of which the applicant remained a member, at different times.

In case, the certificate of enrolment under section 22 of the Advocates Act, 1961 was granted more than five (5) years prior to the date of application, such certificate/certificates needs to be confined only to a period of five (5) years.

Provided that in case it is established at any stage that any such Authority has deliberately issued a certificate in Column III of FORM 'A' even after knowing that the Advocate is not in practice, the State Bar Council will be at Liberty to take appropriate action against such Authority issuing such certificate.

That the aforesaid application may be filed by the applicant along with all the aforesaid documents either by hand in the Office of the State Bar Council against proper receipt or send to the Secretary under registered post or through the Bar Association, of which he/ she is a member.

28. Resumption of Practice

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.

Application for resumption shall be made in Form C along with resumption fee of Rs.2, 000/- and declaration.

Such an application shall be supported by a certificate in Column III of Form A issued by the President/Secretary of the Bar Association, of which the applicant intends to become member for doing practice in law.

The State Bar Council shall refer such an application for resumption to the Administrative Committee which may pass an appropriate order allowing or dismissing such application provided that such an application shall be allowed only if the Administrative Committee is satisfied that the intent of the applicant to resume law practice is bona fide.

In case application for resumption is allowed, the name of the applicant shall be taken out of the list of the “non-practicing advocates” and such exclusion shall be duly notified and published as provided by rule 20.3 qua “list of non-practicing advocates”.

That from the date of publication under Rule 28.4, all disabilities suffered by the applicant under rule 21, shall not survive but he/she shall not be entitled for any benefits/privileges that were denied to him under Rule 21 for the period his/her name remained in the “list of non-practicing advocates”.

Out of Rs.2000/-, a sum of Rs.1000/- shall be utilized by State Bar Council for the purpose of welfare of Advocates and Rs.500/- shall be transferred to the concerned Bar

Association and Rs. 500/- shall be utilized by Bar Council of India for the welfare of Advocates.”

THE SUPREME COURT ON THE ROLE OF BAR ASSOCIATIONS AND THE IMPERATIVE OF ENSURING FAIR ELECTIONS THERETO :

(34) Hon'ble the Supreme Court in recent cases has recognized the importance and the vital role played by the Bar Associations and emphasized the responsibility of the Bar Associations in regulating conduct of its members and of being accountable for default. From implementing the Vishaka guidelines, to directing that there shall be no strike calls, the Bar Associations have been held to be accountable. *Medha Kotwal Lele versus Union of India*³, *Common Cause, A Registered Society versus Union of India*⁴

(35) The functioning of the court- annexed Bar Associations as part of the machinery for administration of justice was underscored by the Supreme Court in *Supreme Court Bar Assn. versus B.D. Kaushik*⁵ in the following words:

“28. There is no manner of doubt that court-annexed Bar Associations constitute a separate class different from other lawyers’ associations such as Lawyers’ Forum, All India Advocates’ Association, etc. as they are always recognised by the court concerned. Court-annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and the Bar are like two wheels of a chariot and one cannot function without the other. The court-annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practising in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers

³ (2013) 1 SCC 297

⁴ (2006) 9 SCC 295

⁵ (2011) 13 SCC 774

at concessional rates for members regularly practising in the court, parking place and canteen besides several other amenities. In the functions organised by the court-annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration.”

In this case, Hon'ble the Supreme Court upheld the amendment of Rule 18 of the Supreme Court Bar Association Rules and Regulations, which restricted voting right of a Member of the Supreme Court Bar Association to contest any post or cast a vote at election of Supreme Court Bar Association, if such Member had exercised right to vote in any High Court/District Court Bar Association election.

(36) In *Sudha* versus *Chennai Advocates Assn.*⁶, the Supreme Court repelled a challenge to bye laws of a Bar Association which imposed certain conditions for participation of its members in the elections. It was prescribed that a member of the Association having practice of less than two years would not be entitled to vote and that a member of the Association who has not put in three years of practice would not be entitled to contest the election. An entry fee and yearly subscription for members of the Bar was imposed. A certain amount was required to be deposited for contesting the elections.

(37) Hon'ble the Supreme Court held that these amendments which had been carried out to deter non-lawyers from participating in the elections of the Bar Associations could hardly be regarded as being against the legal profession. The Court noticed that the legal profession is different from other professions in that what lawyers do, affects not only an individual but the administration of justice which is the foundation of civilized society. It was stressed that it is the duty of the Bar Associations to ensure that there is no unprofessional and/or unbecoming conduct by the advocates at the time of election of the office bearers of the association. The observations of the Court which are instructive in the present context, as some such conditions are a part of the impugned Rules, are reproduced below:

“40. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to

⁶ (2010) 14 SCC 114

it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The different Associations of the members of the Bar are being formed to show the strength of lawyers in case of necessity. The lawyer while exercising vote in an election of office-bearers of the Association must conduct himself in an exemplary manner. Those who are concerned about the high standard of the profession are supposed to take appropriate action to see that the election takes place peacefully and in an organised manner.

41. Many a time it is noticed that those who are not lawyers get entry into the Association room by putting on merely black coat as at the time of election the feelings are running high. Such elements take undue advantage of the situation and bring a bad name to the Association of the advocates. Therefore, to deter such elements the amendments have been carried out in the bye-laws. Those amendments carried out in the bye-laws of the Association can hardly be regarded as against the legal fraternity in general and as against junior members of the Bar in particular.

42. In every society or association some code of conduct has to be laid down as to in which manner the voting should be done and who would be competent to vote. The associations of advocates are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to prevent interference in administration of justice. It is the duty of the associations to ensure that there is no unprofessional and/or unbecoming conduct by the advocates at the time of election of the office bearers of the association. This being their duty it was

necessary to amend the bye-laws of the Association.

43. The amendment prescribing that a member of the Association having practice of less than two years would not be entitled to vote or that a member of the Association who has not put in three years of practice would not be entitled to contest the election are reasonable and are meant for enhancing the status and image of members of the Bar. These restrictions have been brought to uphold the dignity of courts and majesty of law and to ensure that there is no unprofessional and/or unbecoming conduct. The other amendments to which the learned counsel for the appellant has taken exception also do not impose unreasonable restriction on the members of the Association.

44. Clause 12 of the amended bye-laws refers to the eligibility criterion to cast vote and to contest the election and the same has not been regarded as unreasonable. Clause 10 of the amended bye-laws prescribes entry fee and yearly subscription for the members of the Bar. The prescription of Rs 2000 as entry fee and yearly subscription of Rs 1000 as well as Rs 2000 can hardly be regarded as exorbitant. One who is a member of the Association of advocates can realise that several expenditures have to be incurred by the Association on behalf of its members. Further staff has to be employed to carry out day-to-day instructions and they have to be paid reasonable salary. Having regard to the circumstances prevailing as on today, the prescription of entry fee or yearly subscription can hardly be regarded as exorbitant. It is also noticed in several Bar Associations that certain members without making payment of entry fee or yearly subscription enjoy the facilities provided by the Association. In some cases it is found that some advocates become members of the Association by making payment of yearly subscription initially but thereafter do not renew their membership and go on enjoying all the facilities provided by the Association. Under the circumstances, the stipulation that in case of non-renewal of membership, a member will have to pay a sum of Rs.5000 for reviving his membership can hardly be regarded as arbitrary.

45. Again Clause 17 which prescribes deposit of amount for contesting the elections cannot be regarded as arbitrary. If

no amount is required to be deposited for contesting the elections the same is likely to result into chaos and undeserving elements would take advantage of the situation. In the lighter vein someone mentioned in the Court that if no amount is required to be deposited for contesting elections all the members of the Association would contest elections and there would be no voters. Therefore, the plea that the amount required to be deposited for contesting the elections should be reduced to a reasonable level cannot be accepted nor can the said clause be regarded as illegal or arbitrary.”

(38) The Delhi High Court in *P.K.Dash's* case (supra) repelled the contention that the Bar Associations were purely private bodies voluntarily formed with their own constitution, hence, the court, in exercise of the powers under Article 226, could not mandate the introduction of 'One Bar One Vote' principle. The Court held that in view of the importance of the role of Advocates in the judicial decision making, and the role of Bar Associations in the administration of justice, they can aptly be said to be performing public functions and the Court could direct that the amendments be made to the Bar Association Rules to include the 'One Bar One Vote' rule to ensure free and fair elections. It was observed:

“36. Given this position of Advocates in Courts in India, and the importance of their role in judicial decision making, their conduct in respect of matters not regulated by law may appear, on the facade, beyond the pale of what may be described as "public functions". Yet, that is not the case. Bar Associations like the respondents, apart from the statutory bodies such as Bar Councils, also occupy a pivotal role in Court administration and functioning. This can be gathered from the fact that Court procedure is framed after consultation with such Bar Associations, important policy and administrative decisions such as rules to allot chambers, use of common spaces, allotment of commercial spaces, their identification (all meant for the use of the litigant public and members of the Bar) earmarking of parking lots, policies and rules for designation of senior counsel under the Advocates Act, are taken, more often than not, with the consultation and inputs from these Bar Associations, in view of their representative nature. Any dispute within such

association invariably has repercussions in court functioning. Conflicts with members of the public, interface with the local administration and police authorities routinely - for security of court, court precincts, chambers, etc. need active participation by Bar Associations. Often, individual grievances of members of the Bar in court premises require intervention and deft handling on the part these Associations, in the absence of which Court proceedings would be disrupted. Above all, elections of Bar Associations quite often lead to large-scale requests for adjournments, and litigants have to pay the price. Intervention through court policies requiring discipline in canvassing for votes and what is permissible in the form of leaflets and pamphlets, use of speakers, etc. by the Bar Associations, if left unregulated would also seriously undermine court functioning. These show that Bar Associations' activities have a predominantly public character, and can, in many instances, affect court functioning. As a result, it is held that the nature of relief sought in these proceedings is intrinsically connected with public functioning of the court and affect them. Consequently the present proceedings are maintainable under Article 226 of the Constitution of India.”

Discussion :

(i) **Whether the 2001 Rules are ultra vires being beyond the Rule making powers of the State Bar Council ?**

(39) Reference to the above statutes, Rules and decisions of the Supreme Court distinctly point to the pivotal role that the Bar Associations play not only in the administration of justice and generally promoting the interests of the Advocates but also in implementing the statutory or non- statutory schemes for their welfare. In fact such schemes would be impossible of implementation without associating the Bar Associations, because it is only the Bar Associations that reach, involve and touch every practicing member of the profession. Perhaps it is in realization of this fact that Section 6(1)(dd) was inserted in the 1961 Act by the 1993 (Amendment) Act, to empower the State Bar Councils to promote growth of Bar Associations for purposes of implementing the welfare schemes for advocates.

(40) As per the 2001 Act, it is a pre-condition for becoming a member of the Advocates' Welfare Fund for an advocate to be a member of a Bar Association duly recognized by the State Bar Council. As per Section 16, every Bar Association, whether existing prior to the enforcement of the 2001 Act or formed thereafter, is required to get itself registered with the State Bar Council. As per Section 16(3) every application for recognition is required to be accompanied by a copy of the Rules and bye-laws of the association, names and addresses of the office-bearers of the association; a list of members of the association containing the name, address, age, enrollment number, date of enrollment and ordinary place of practice. As per Section 16(4), the State Bar Council may after making such enquiry as it deemed necessary, recognize the association. The decision of the Bar Council regarding recognition of an association has been made final. Section 17 of this Act obliges every State Bar Association and State Advocates' Association to furnish to the State Bar Council a list of its members on or before 15th April, every year. As per Section 17(2)(c), every State Bar Association or State Advocates Association is required to inform the State Bar Council of such other matters as may be required by the State Bar Council from time to time.

(41) The power to frame rules under the 2001 Act have been conferred on the Central and State Government as per Sections 35 and 36 thereof. However, in Section 15 of the 1961 Act the power to frame rules in respect of matters in Chapter II of the Act, which comprises Sections 3 to 15, have been conferred on the Bar Councils which includes the Bar Council of India and the State Bar Councils. Though as per Section 15(3) no Rules made by State Bar Council shall have effect unless approved by the Bar Council of India.

(42) The case of the petitioners is that there is no provision in the 1961 Act which empowers the State Bar Council to make any rule to regulate elections to the Bar Associations, which are private voluntary Associations whereas the stand of the State Bar Council is that it derives such a power from the provisions of Sections 6(1) (dd), 6(1)(h), 6(1)(i) read with Section 15 of the 1961 Act and Sections 16, 17 and 18 of the 2001 Act.

(43) One thing is clear that none of these provisions in specific terms empower the State Bar Councils to make rules regarding the elections to Bar Associations. The question is whether such rule making power can be inferred from the general Rule making power to carry out the purposes of the Chapter II as conferred under Section

15(1) of the 1961 Act, keeping in view the functions of the Bar Council, particularly in Section 6(1) (dd) which relates to promoting growth of Bar Associations for the purposes of effective implementation of welfare schemes; Section 6(1)(h) which relates to performing all other functions conferred on it by or under the Act and Section 6(1)(i) which empowers the Bar Council to do all other things necessary for discharging its functions.

(44) The scope of rule making power under a Statute has been subject matter of judicial decisions. It has been held that the court while considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. It has been held that the Court while ensuring that the rules framed are within the field circumscribed by the parent Act the Court would be justified in giving the provision a purposive construction to effectuate the object of the Act.

(45) In *Union of India* versus *S. Srinivasan*⁷, the Supreme Court observed as under:

30. In this context, it would be apposite to refer to a passage from State of T.N. v. P. Krishnamurthy wherein it has been held thus: (SCC p. 529, para 16)

“16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

32. Keeping in view the aforesaid enunciation of law, we think it appropriate to consider the nature, object and scheme of the enabling Act, the power conferred under the

⁷ (2012) 7 SCC 683

Rule, the concept of purposive construction and the discretion vested in the delegated bodies.”

(46) In *Pratap Chandra Mehta* versus *State Bar Council of M.P.*⁸, Hon'ble the Supreme Court while examining powers of the State Bar Council to frame Rules under Section 15 of the 1961 Act stressed upon the necessity of giving a purposive construction to achieve the object of the Statute. It was held that the responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act was of a very wide connotation and scope. The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and to do all things necessary for discharging its functions under the Act. It was held that it would not be in consonance with the principles of law to give that power a strict interpretation, unless restricted in scope by specific language. This is particularly so as the provisions delegating power are of a generic nature such as Section 15(1) which requires Bar Councils to frame rules “to carry out the purposes of this Chapter” and Section 15(2), which further uses generic terms whereby the Bar Council is empowered to frame rules “in particular and without prejudice to the generality of the foregoing powers”. It was emphasized that the power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable. The Court observed as under:

“48. In our view, Sections 6(1)(h) and 6(1)(i) have to be read and interpreted conjointly. We see no reason why the expression “manner of election of its members” in Section 6(1)(g) should be given a restricted meaning, particularly in light of Sections 6(1)(h) and 6(1)(i). The responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act is of a very wide connotation and scope. No purpose would be achieved by giving it a restricted meaning or by a strict interpretation. The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and perfectly and to do all things necessary for discharging its functions under the Act. The term of office of the members of the State Bar Council is also prescribed under Chapter II, which shall be five years from the date of

⁸ (2011) 9 SCC 573

publication of the result of the election. On failure to provide for election, the Bar Council of India has to constitute a special committee to do so instead.

49. Section 15(2) then provides that without prejudice to the generality of the foregoing powers, rules may be framed to provide for the preparation of electoral rolls and the manner in which the result shall be published. In terms of Section 15(2)(c), the manner of the election of the Chairman and the Vice-Chairman of the Bar Council and appointment of authorities which would decide any electoral disputes is provided. The expression “manner of election of the Chairman” again is an expression which needs to be construed in its wide connotation. The rules so framed by the State Bar Council shall become effective only when approved by the Bar Council of India in terms of Section 15(3) of the Advocates Act.

50. The power of the State Bar Council to frame rules under Section 15 of the Advocates Act as a delegate of the Bar Council of India has to be construed along with the other provisions of the Advocates Act, keeping in mind the object sought to be achieved by this Act. In this regard, greater emphasis is to be attached to the statutory provisions and to the other purposes stated by the legislature under the provisions of Chapter II of the Advocates Act. This is an Act which has been enacted with the object of preparing a common roll of advocates, integrating the profession into one single class of legal practitioners, providing uniformity in classification and creating autonomous Bar Councils in each State and one for the whole of India. The functioning of the State Bar Council is to be carried out by an elected body of members and by the office-bearers who have, in turn, been elected by these elected members of the said Council. The legislative intent derived with the above stated objects of the Act should be achieved and there should be complete and free democratic functioning in the State and All-India Bar Councils.

51. The power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable. The functions to be performed by the Bar Councils and the manner in which these

functions are to be performed suggest that democratic standards both in the election process and in performance of all its functions and standards of professional conduct need to be adhered to. In other words, the interpretation furthering the object and purposes of the Act has to be preferred in comparison to an interpretation which would frustrate the same and endanger the democratic principles guiding the governance and conduct of the State Bar Councils.

52. The provisions of the Advocates Act are a source of power for the State Bar Council to frame rules and it will not be in consonance with the principles of law to give that power a strict interpretation, unless restricted in scope by specific language. This is particularly so when the provisions delegating such power are of generic nature, such as Section 15(1) of the Act, which requires the Bar Councils to frame rules to “carry out the purposes of this Chapter” and Section 15(2), which further uses generic terms and expressly states that the Bar Council is empowered to frame rules “in particular and without prejudice to the generality of the foregoing powers”. If one reads the provisions of clauses (a), (c), (g), (h) and (i) of sub-section (2) of Section 15 of the Act, then, it is clear that framing of rules thereunder would guide and control the conduct of business of the State Bar Councils and ensure maintenance of the standards of democratic governance in the said Councils. Since the office-bearers like the Chairman and the Vice-Chairman are elected by a representative body i.e. by the advocates who are the elected members of the Council, on the basis of the confidence bestowed by the advocates/electorate in the elected members, there seems to be no reason why that very elected body cannot move a “no-confidence motion” against such office-bearers, particularly, when the rules so permit.

58. The above enunciated principles clearly show that the language of the statute has to be examined before giving a provision an extensive meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent

Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court.

60. Purposive construction, to a large extent, would help to resolve the controversy raised in the present case. The purpose of the Advocates Act is the democratic and harmonious functioning of the State Bar Councils, to achieve the object and purposes of the Act. We are unable to see how the provisions of Rule 122-A fall foul of the ambit and scope of Section 15 of the Advocates Act and, for that matter, any other provisions of that Act. On the contrary, they are in line with the scheme of the parent Act.”

(47) Based on the aforesaid considerations, we are satisfied that the State Bar Council is empowered in terms of the above referred provisions to frame rules which have as their object to bring about uniformity and transparency in matters relating to the elections of the Bar Associations, within its jurisdiction. In fact framing of such Rules may be considered an inevitable necessity to effectuate the broad legislative scheme evidenced by the Acts and Rules referred to above wherein the Bar Associations recognized by the State Bar Council have been assigned a Central role as also in view of the role and importance of the Bar Associations in the administration of justice and the imperative noticed and stressed even by Hon'ble the Supreme Court to ensure that the Associations are truly the representatives of the Advocates practicing in the Courts. Accordingly we do not find any merit in the argument of the petitioner that the Rules are ultra vires being beyond the Rule making power of the State Bar Council.

(48) It is also noteworthy, as is stated on behalf of the Bar Council, that the Rules have been framed after exhaustive consultation with the Bar Associations in Punjab and Haryana. Before finalizing the Rules a meeting of the Presidents/ Secretaries/ office Bearers of all the Bar Associations from Punjab and Haryana was called and it was only after getting their proposals and suggestions that the rules were framed. The Rules thus reflect the broad consensus of the representatives of the advocates on this issue.

(ii) Whether the regulation of elections of the Bar

Associations is violative of the rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution of India?

(49) On the issue of whether framing of the Rules to regulate elections violates the fundamental rights of the petitioners under Article 19(1)(c) of the Constitution, a complete answer is furnished by the decision of the Delhi High Court in *P.K.Dash's* case (supra). In that case, a petition was filed in the Delhi High Court praying for directions from the Court that the rules governing allotment of Chambers for advocates in various court complexes should be amended to restrict eligibility to one chamber in the entire territory of Delhi, even though they may be members of more than one bar association. It was also prayed that the Bar Council of Delhi should ensure introduction of 'One Bar One Vote' throughout all the Bar Associations in Delhi. Those resisting the introduction of the 'One Bar One Vote' principle relied on the fundamental right to form associations under Article 19(1)(c) of the Constitution and the consequential autonomy to conduct the affairs of the association as per their own volition.

(50) Accordingly, the Court had to decide as to whether the direction by the Court to enforce the 'One Bar One Vote' would violate the rights under Article 19(1)(c) of the Constitution. The Court held that this restriction would not constitute violation of the rights under Article 19(1)(c) of the Constitution. Referring to various decisions of Hon'ble the Supreme Court holding that the right to form associations or unions was not absolute, but subject to reasonable restrictions, it was observed as under:-

“43. The right to association is not uni-dimensional. It cannot be viewed solely from the perspective of the individual seeking membership of an association. The association itself has the right to restrict or contour its membership. There is nothing unreasonable in an association set up for a particular purpose, admitting, or conferring full benefits of its membership only upon those who fulfil to the extent required by it, the conditions required. As recounted earlier, the right to association encapsulates the right to continuance of the association. The A.P. Dairy Development Corporation Federation case (supra) emphasised that; at the same time, the Court held that "there cannot be any objection to statutory interference with their composition or functioning merely on the ground

of contravention of individuals right of freedom of association by statutory functionaries." The regulation of the association's functioning through law was held not to extend to the benefit of life offices and life membership in *Periyar Self-Respect Propoganda Institution v. State of Tamil Nadu*, AIR 1988 Mad. 27. In *Toguru Sudhakar Reddy and Anr. v. State of AP*, 1992 (SLT Soft) 604 : AIR 1994 SC 544, the Supreme Court held that the power of the Government to nominate women to the co-operative societies under Section 31 of the A.P. Co- operative Societies Act was valid; this provision was construed to be in furtherance to Article 15 (3) of the Constitution of India. Consequently it is held that the respondents' submission that the introduction of the one man one vote rule would impair the internal autonomy of the Bar Associations in Delhi, is without merit.

44. This Court has already dealt with its jurisdiction under Article 226 of the Constitution to entertain petitions in respect of bodies involved in public functions, and to issue directions to them. A subsidiary though important question that needs to be addressed, in the light of the respondent associations' contention is that in view of specific provisions in their Constitutions/Bye-laws prescribing the manner of amendment whether the Court can issue directions and incorporate such conditions. Here, it is important to notice that the rationale for introducing the one man one vote rule are powerful: it ensures orderliness in court proceedings, avoids loss of time (where adjournments on the part of practitioners in given courts are sought, merely to enable them to canvass in for and cast votes in elections in the concerned court (to which the association is annexed) and other courts as well) and eliminates conflicting or divided loyalties of members of multiple Bar Associations, who might be holding executive positions in more than one Bar Association. Most importantly, lawyers practicing in a given court are ensured that their voices are heard and their grievances are highlighted from one of their regular practitioners, who have a stake in its welfare.

45. The Court's role in regulating court time and also mandating rules of conduct for Advocates in not only

conduct of proceedings, but generally in matters connected with Court functioning can be found in Section 34 of the Advocates Act (2); it is also part of the High Court's inherent power to regulate procedure and its affairs, or matters connected therewith, as a Court of Record (Article 215 of the Constitution). The amplitude of power under Article 215 is emphasised only by the clarification that it includes the power to punish for contempt: i.e., the High Court" shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself." Coupled with these, and the power of superintendence over the courts subordinate to it, by virtue of Article 227 of the Constitution of India, the self-regulatory nature of its functions is reinforced. Therefore, as regards activities of bodies and associations which are intrinsically connected with the discharge of a court's administrative and judicial responsibilities, the absence of any enacted law is not a factor restricting the use of such power. As mentioned earlier, in regard to chamber allotment, rules for allotment, participation in decisions connected with some of the court's administration, Bar Associations play a significant role. These are in effect recognised Bar Associations. This being the case, the insistence of the court that such associations should follow standard norms to ensure orderliness and efficiency are as inherent to its functioning as the power of a Presiding Officer of a court to regulate the conduct of the proceedings on a day to day basis. Therefore, the submission that this court lacks power to frame a rule, or mandate the framing of such rules, is devoid of merit. This Court is fortified in its conclusions in this regard, by two decisions of the Supreme Court..."

(51) Though, the above decision has been rendered in the context of the High Court's power to mandate introduction of 'One Bar One Vote', but the principle thereof would be applicable to the Rules framed by the Bar Council for regulating the elections to the Bar Associations which rules have been framed with the avowed objective to ensure fairness and transparency in the election process and holding of elections at regular intervals.

(52) Thus, there is no merit in the argument of the Ld. Counsel for the petitioners that the mere framing of Rules by the Bar Council to

regulate the elections of the Bar Associations with the objective aforesaid violates the rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution.

(iii) Whether the Rules are invalid on any procedural ground?

(53) We also find no merit in the argument of the Ld. Counsel for the petitioners that the 2015 Rules are invalid as proper procedure was not followed. In view of the proceedings of the Bar Council of Punjab and Haryana and the communications referred to by the Ld. Counsel for the Bar Council, we find that the statutory pre-requisites for the validity of the Rules were complied with. The draft Rules after being framed by the Rules Drafting Committee, were considered by the Bar Council of Punjab and Haryana, which sent the same for approval to the Bar Council of India. The General House of the Bar Council of India approved the same in its meeting held on 2.5.2015.

(54) Thus, there is no merit in the present set of petitions and the same are dismissed.

(55) It is clarified that in the present set of petitions, we have only addressed the question of the competence of the State Bar Council to frame rules for regulating the elections of the Bar Associations and have held that the regulation of elections to the Bar Associations through framing of such Rules intended to achieve fairness and transparency in the election process is not ultra vires the provisions of the 1961 Act. It is also not violative of the fundamental rights under Article 19(1)(c) of the Constitution. We have not gone into the validity of individual provisions of the 2015 Rules as no argument was addressed regarding any individual provision. So this decision should not be construed as having opined on and affirmed the validity of each and every provision of the 2015 Rules.

Tribhuvan Dahiya