

**CASE COMMENT – BAR COUNCIL OF INDIA VS BONNIE FOI LAW COLLEGE
& ORS**

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CIVIL APPEAL NO. 969 OF 2023, ARISING OUT OF SLP (C) NO. 22337 OF 2008

PETITIONER APPELLANT – BAR COUNCIL OF INDIA

RESPONDENT – BONNIE FOI LAW COLLEGE & ORS

BENCH - Sanjay Kishan Kaul, Sanjay Khanna, Abhay S. Oka, Vikram Nath, J.K. Maheshwari

Dated – 10.2.2023

INTRODUCTION

The Supreme Court of India has decided in this case that the Bar Council of India has the power to conduct the pre-enrolment examination (AIBE) to maintain the standards of lawyers practicing. The five-judge Constitutional Bench was made to decide this case consisting of Sanjiv Khanna, Abhay S. Oka, Vikram Nath, Sanjay Kishan Kaul, and J.K> Maheshwari.

The Constitutional Bench observed that there are no provisions in the Advocate Act 1961¹, which bar or prohibit the Bar Council of India from conducting pre-enrolment examinations (all India Bar examination) because the Bar Council is extremely concerned with the quality of Law Practitioners who want to obtain a license from it.

The Court later decided that it is Bar Council's to decide the examination at what stage it should be held pre or past because it is mainly concerned authority related to it and further addressing the court said that there are consequences concerning the interregnum period which would be in both situations pre or past examination later the court said that they are not right authority to enquire in it and it would be better than this matter is left for bar council to look into both the situations.

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¹ Advocate Act, 1961



FACTS

The initiation of the disputed matter between the parties can be traced down from when Bonnie Foi Law College filled out an application for affiliation to carry on a legal education course in the college. An inspection team was appointed for the inspection by the court on 29.06.2009, the Inspection Team after the inspection submitted their report showing that there were defects in the functioning of the college and the infrastructure was also imperfect according to the standards. Later on 24.08.2009, the court ordered some specific conditions to be fulfilled by the respondent, thereon the college affirmed to fulfilled the conditions.

At the time of this matter, An Order dated 29.06.2009 was passed which pointed out the larger questions of decreasing standards of legal education which is given in law colleges & universities all over India. This order led to the formation of the committee which was appointed to deal with this question. The Committee consisted of members as then Solicitor General of India Mr. Gopal Subramaniam as Chairman, Mr. M.N. Krishnamani then President of the Supreme Court Bar Council, and Mr. S.N.P. Sinha then Chairman of the Bar Council of India. The Committee was said to examine the issues which were related to the recognition and affiliation of colleges conducting law courses and it was also supposed to identify the areas in which there was a requirement for any remedy and to notice the factor which was forthcoming the application of existing norms. On 06.10.2009 a report was submitted by the committee before the court.

The Report submitted by the Committee highlighted two aspects to improve the legal profession's standards. The first was to introduce a Bar examination for the law that there shall be a compulsory need for apprenticeship under a Senior Lawyer before Bar admission.

ISSUES

ON 18.03.2016 a reference order was made by a three-judge bench that the questions which are involved in this matter affect the legal profession in a very important sense. The Court said that these questions should be answered by a constitutional bench for a better understanding of the issues involved. The reference order mentioned three main issues to be solved by the Supreme Court's Constitutional Bench, which are as given under.

1. Whether pre-enrolment training in terms of Bar Council of India Training Rules, 1995 framed under Section 24(3)(d) of the Advocates Act, 1961² could be validly prescribed by the Bar Council of India and if so whether the decision of this Court in *Sudeer vs. Bar Council of India & Anr.*³ requires reconsideration.
2. Whether a pre-enrolment examination can be prescribed by the Bar Council of India under the Advocates Act, 1961⁴.
3. In the case of question Nos. 1 and 2 are answered in the negative, whether a post-enrolment examination can be validly prescribed by the Bar Council of India in terms of Section 49(1) (ah) of the Advocates Act, 1961⁵.”

SOME CASE LAWS DEBATED BEFORE THE HONORABLE COURT

Three important judgments were debated before the court. The first judgment was this Court v. *Sudeer*⁶, in this case, it was discussed whether the 1995 rules were within the competence of the Bar Council of India or not. The Hon'ble bench recognized that it is an exclusive right to practice if a person has enrolled himself as an advocate on the state roll. The court mentioned sections 23, 29 and 33⁷ clarifies that any person who is qualified to be enrolled as an advocate on a state role by satisfying the conditions of section 24(1)⁸, will be entitled to practice in any court including Supreme Court. In this the concept of pre-enrolment and training was held to be unnecessary and on many grounds, the 1995 rules were held ultra-virus, it was held invalid.

In the second judgment of the *Indian Council of Legal Aid and Advice & Ors. V. Bar Council of India & Anr*⁹. The Court removed the age cap which was put there that an enrollment application shall be accepted to enroll as an advocate if the person has completed the age of 45 years.

²Advocates Act, 1961, section 24(3)

³*Sudeer vs. Bar Council of India & Anr* (1999) 3 SCC 176

⁴Advocates Act, 1961

⁵Advocates Act, 1961, section 49 (1) (ah)

⁶*Sudeer vs. Bar Council of India & Anr* (1999) 3 SCC 176

⁷Advocates Act, 1961, sections 23, 29 and 33

⁸Advocates Act, 1961, section 24 (1)

⁹ *Indian Council of Legal Aid and Advice & Ors. V. Bar Council of India & Anr* 995 AIR 691, 1995 SCC (1) 732

Next, in the third judgment of Dr. Haniraj L. Chulani V. Bar Council of Maharashtra & Goa¹⁰. In this case, the petitioner was a practicing doctor since 1970 and he wanted to enroll as an advocate also. The Court said that the Bar Council has the power to decide in certain cases to refuse enrollment as an advocate. Later the Court mentioned that Bar Council shall take all necessary steps at the entry stage to filter students for law courses at the entry point of the profession by providing an examination or training course before enrolment as an advocate.

Later the Hon'ble Court to understand and resolve the issues appointed Mr. K.V. Vishwanathan, Senior Advocate as Amicus Curiae to help and assist the court regarding the matter.

CONSTITUTION BENCH'S ORDER

The Court overserved that parliament has enacted the Advocate Act to consolidate the law relating to the legal profession. Bar Council was set as the Apex body under section 7 of this act¹¹. But the provisions of the act do not provide any direct control over legal education, yet being the apex body, it is concerned with the standards of legal education and profession.

Hence, it was held that neither any provisions of the act nor the universities impart legal education prohibit BCI from holding the pre-enrolment examination.

The Court disagreed with the view which was taken in the case of V. Sudeer and the Court also mentioned section 49 (1) (ag) of the act¹², which says that BCI has the power to make rules regarding the legal profession. Hence, the court held V. Sudeer case lays down the incorrect position of law.

SUPREME COURT'S SUGGESTIONS TO BCI REGARDING THE CONDUCT OF AIBE

- The Court suggested that AIBE shall be conducted at least twice a year so that all the students who have obtained law degrees are not left idling their time.
- The second suggestion was made that in Indian law universities and colleges declare results at different times and because of this, a person may lose the chance to appear

¹⁰ Dr. Haniraj L. Chulani V. Bar Council of Maharashtra & Goa 1996 AIR 1708, 1996 SCC (3) 342

¹¹ Advocate Act, 1961, section 7

¹² Advocate Act, 1961, section 49 (1) (ag)

for the examination. So, it was suggested that a student who has cleared all examinations to be eligible to pursue the final semester of the final year law course, on providing sufficient proof of the same, could be allowed to take the All India Bar Examination.

- The Court suggested that a person during the period between the passing date of examination and the date of enrolment, any graduate should be able to do all the tasks which are related to the legal profession other than pleading before the court.
- To determine seniority in the case pre-enrollment and post-enrollment processes shall be followed similarly as given under section 21 of the act¹³.
- Later the court said that the number of attempts to pass the All India Bar Examination should be limited, although the court did not specify any number of attempts. In the case of the post-enrollment examination, two years are already given between enrolment and passing of the All India Bar Examination.
- A suggestion about a sabbatical break was given by the court, as sometimes a person may take other jobs and enroll himself again, in some cases after retirement also the court said that if there is a situation of substantial break, rules should be specified to regain the qualifications by the BCI, the person would have to appear for re-exam and AIBE once again to be fit as an advocate.
- Another suggestion was given regarding the validity of results obtained by a person in pre-enrollment or post-enrollment Bar Examination may be limited by time. The Court said this would be better considered by the BCI if it wants to make policy and can exercise power given under section 48(b)¹⁴ to issue directions to State Bar Councils.
- Lastly, the Court suggested that a uniform fee for enrollment shall be specified as different states are charging different fees for the examination and fees should not become oppressive at the threshold of young students joining the Bar.

CONCLUSION AND ANALYSIS

The Court has observed in this case that the bar council of India is the Apex Authority to deal with matters related to the legal profession. The Advocate Act also specifies the powers to make rules and regulations regarding matters related to the legal profession. The Bar Council

¹³Advocate Act,1961, section 21

¹⁴Advocates Act,1961, section 48 (B)

of India must maintain the standard and quality of the legal profession. Although the Advocate Act does not Specify the power of BCI to make rules regarding legal education the Court has rightly observed that there are no provisions that prohibit the BCI to make rules for legal education in universities and colleges, as BCI must maintain the standards, the court said it can make rules and policies to make legal education better.

The Bar Council of India should follow the Suggestions which are given by the Hon'ble Court and try to Comply with them so the issues can be resolved properly. Most of the issues in the case are asked to be solved by the BCI as it is the main concern authority about the legal profession. The court also clarified that this ruling will only apply to future situations and will not disrupt the conditions that existed during the transition period.

