

**CASE COMMENT: GAURAV KUMAR V. UNION OF INDIA**

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**BENCH:** Chief Justice of India Dhananjaya Y. Chandrachud, Justice JB Pardiwala and Justice Manoj Misra of the Supreme Court.

**INTRODUCTION**

Lawyers are the foot soldiers of our Constitution. – Rennard Strickland and Frank T. Read.<sup>1</sup> In India, dedication, hard luck and adherence to a particular education and degree are prerequisites for becoming an advocate in India. Section 24 of the Advocate’s Act, 1961 states certain conditions as may be necessary for becoming an advocate. However, even after completing the degree, the scuffles of an advocate did not come to an end. Every advocate has to register themselves to the Bar Council of India as well as to their respective State Bar Council. An advocate has to submit the amount in BCI and SBCs for registration. For instance, the enrolment fee is ₹ 42,100 in Odisha, ₹ 25,000 in Gujarat, ₹ 23,650 in Uttarakhand, ₹ 21,460 in Jharkhand and ₹ 20,050 in Kerala. But it was contrary to what is stated in Section 24(1)(f) of the Advocates Act. According to the section, the enrolment fee for the SBCs is Rs. 600 and for the BCI is Rs. 150 for general candidates. For Scheduled Caste and Scheduled Tribe candidates, the fees are Rs. 25 and Rs. 100, respectively.

In this case, the writ petition was filed against the union government, Bar Council of India and State Bar Councils for charging the exorbitant enrolment fees and declaring the amount taken as arbitrary, unreasonable, and illegal.

**FACTS OF THE CASE**

In the Gaurav Kumar v. Union of India,<sup>2</sup> the petitioner challenged section 24 (1)(F) of The Advocate Act, 1961 stipulating that to be admitted as an advocate, an applicant must pay enrolment fees of Rs. 600 to the State Bar Council and Rs.150 to the Bar Council of India. In addition to this, if the applicant belongs to a Scheduled Caste or Scheduled Tribe, then the enrolment amount paid to the Bar Council of India (‘BCI’) is Rs 25 to the Bar Council of India

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<sup>1</sup> THE LAWYER MYTH, Rennard Strickland and Frank T. Read.

<sup>2</sup> A YOUNG ADVOCATES PLIGHT: Gaurav Kumar v. Union of India.

and an amount of Rs100 to be paid to the respected State Bar Council. The fees asked by the SBCs exceeded the amount, stated in the section.

## BACKGROUND

The Advocate Act 1961 was established with the view to amend and consolidate laws regarding legal practitioners and creating a common bar council for advocates in India. The act also chartered the formulation of State Bar Councils (SBCs) with the formation of the Bar Council of India (BCI). The SBC and the BCI are provided with the duty to manage the admission of advocates to their respective roles, regulation of matters of the privilege of advocate, safeguarding their interest or any matter of discipline. The statute capacitates BCI to supervise the SBC's functioning of providing legal aid to the person in need and also raising standards of legal education. With respect to the provided facilities as well as the functioning of BCI and SBC, the act also provides for a section that is section 24 (1)(f) specifying an enrolment fee to be paid by a candidate seeking admission in the bar.

The fees were only Rs 750 and Rs125 for general and candidates under the SC/ST category respectively. However, with change in time, the Bar started to do various other things under the name of enrolment fees including welfare funds, identity card fees and many others which exorbitantly increased the fees which were issued for candidates from weaker societies.

## ISSUES

1. Can the Bar Council ask for fees more than what is actually stated in the statute in the name of other stated fees?
2. Additional fees imposed by the Bar Council infringing the fundamental right of advocates under article 19(1)(f) as the fees at such premium, would not allow the candidate to practice their right to practice a profession, which is an infringement of their fundamental right
3. The matter in question was the scope of power delegated to the Bar Councils under the Advocates Act. The court has to inquire into the matter of obtruding imposition of fees as outmaneuvering of delegated legislation.

## LEGAL ANALYSIS

1. **Violation of Fundamental Right:** The Court held that exorbitant enrollment fees charged by State Bar Councils (SBCs) contravenes an aspiring lawyer's right to choose

a profession and dignity under Articles 19(1)(g) and 21 of the Constitution of India. The Court directed that enrollment fees cannot exceed Rs. 750 for general category advocates and Rs. 125 for SC/ST category advocates.

2. **Section 24 of Advocate Act:** The court held that the additional enrolment charges were in contravention of the statutory provision of section 24(1)(f) which states the enrolment fees of candidates under the general category for Rs750 and for candidates under SC/ST category for Rs125. Thus, the enrolment fees charged by the SBCs are arbitrary in nature. Further, the effect of charging such fees has resulted in creating barriers for individuals who are from economically weaker sections of society to enter the legal profession.

### **RIGHT TO PROFESSION, DIGNITY, AND EQUALITY**

- **Right to Profession:** Article 19(1)(g) of the Constitution of India "All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business."
  - Subject to Article 19(6), which allows for reasonable restrictions.
- **Right to Dignity:** Article 21 of the Constitution of India "No person shall be deprived of his life or personal liberty except according to procedure established by law."
  - The Supreme Court has interpreted this to include the right to live with human dignity.
- **Right to Equality:** Article 14 of the Constitution of India "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
- These fundamental rights are often read together by the courts to ensure substantive equality and protection of individual dignity in professional spheres.

### **JUDGEMENT**

The Bench of Chief Justice DY Chandrachud, Justice JB Padriwala and Justice Manoj Misra opined that delegated authorities do not have any legislative power to prescribe enrolment fees clashing with the statutory stipulation. Section 24 of the Advocates Act is a fiscal regulatory provision and has to be construed strictly. Parliament has prescribed the enrolment fees and the exercise of its sovereign legislative powers, the State Bar Councils in the Bar Council of India

being delegates of Parliament cannot alter or modify the fiscal policy laid down by the Parliament...The result of the decision would entitle the advocates who have paid the excess enrolment fees to a refund from the SBCs...Therefore, we declare that this judgment will have a prospective effect. Resultantly, the SBCs are not required to refund the excess enrolment fees."

**RECENT CONTENTION:** In answer to the filled PIL questioning about exorbitant enrolment charged by various SBCs which are denying young lawyers to enrol, the court held that these fees' structure may not be suited for candidates from economically weaker sections and may levy a huge economic constraint on the head of budding lawyers.

### **OTHER CASES IN RESPECT OF JUDGMENT**

**O.N. Mohindroo v. Bar Council of Delhi, (1968):** In this case, the Constitution Bench acknowledged that the Advocate Act was put into practice to bring into effect a unified body for the purpose of legal affairs in India. The Court also inserted, that the Parliament has the power to regulate the legal profession as well as the authority which may be looking into the functioning of legal authority and that delegated bodies like SBCs must adhere strictly to the legislative framework.

**Bar Council of U.P. v. State of U.P., (1973):** In this case, it was contended by the Supreme Court that the imposition of any tax or fee in the matter of Bar Council by the state legislature is arbitrary and the state legislature cannot impose such fees. Similarly, in the present case, the Court held that SBCs could not levy fees beyond what is prescribed by Parliament.

**Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997):** In this case, it was acknowledged by the court that a delegated authority like SBC's while accredited with the authority to make subsidiary rules, cannot extend the scope of the parent legislation. This principle was put into application by the court in the current case, compelling the SBCs, as delegated authorities, to be ineffectual in the imposition of financial obligations beyond the limits set by the Advocates Act.

### **CONCLUSION**

It is necessary that authority after being delegated with performing crucial functions must ensure fairness and non-arbitrariness. The authority must look into all aspects while

formulating any laws, policies, or rules which may involve the general public. The rules and conditions must be such that it is favourable to all without any restriction. Any rule or regulation must be made keeping in mind different outlooks like the economic or financial ability of a person, or class of people from different regions and places. The condition should be such that the person may fulfil all conditions without any difficulty and without any discrimination.

