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Gaurav Kumar v. Union of India: Exorbitant Bar Council Enrolment Fees

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ABSTRACT

This Study looks at the Constitutional and legal ramifications of the case titled “Gaurav Kumar v. Union of India” with particular attention to the claims that the state bar councils charged outrageous enrollment fees. The financial strain on would-be advocates, their entry into the legal field, and the wider implications for social justice are also covered in the paper. The purpose of the paper is to determine whether or not these fees are consistent with the concepts of equity and reasonableness by examining the constitutional demands, judicial decisions, and stakeholder comments.

The Proceedings under Article 32. The Constitution of India addresses a challenge to the validity of the enrolment fees charged by the state bar councils. The grievance is that the fees charged by the SBCs at the time of admission of persons on state rolls are more than the enrolment fee prescribed under Section 24(1)(f) of the “Advocates Act of 1961”.

Keywords: SBCs, BCI.

I. INTRODUCTION

The Advocates Act was enacted to amend and consolidate the law relating to legal Practitioners and constitute a common bar for the whole country. The enactment establishes the SBCs³ and the Bar Council of India. Section 6 of the Advocates Act entrusts myriad functions to the SBCs. These Functions comprehend entry into and conduct of legal, Professionals, including admission of advocates to their rolls, preparation and maintenance of rolls, determination of cases of misconduct against advocates on the rolls, and safeguarding the rights, privileges, and interests of advocates. The Statute empowers the SBCs to organize legal aid for the poor, promote and support law reform, conduct academic discourses, and publish journals and papers on matters of legal interest.

The functions of the BCI⁴ have been enumerated under Section 7. These include laying down standards of professional conduct and etiquette for advocates, enunciating the procedure to be

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followed by its disciplinary committee and the disciplinary committee of the SBCs, safeguarding the rights, privileges, and interests of advocates, and promoting law reform. BCI is empowered to exercise general supervision and control over the SBCs. BCI is also empowered to impart legal education and lay down standards for legal education in consultation with the universities whose degrees in law would be a qualification for enrolment as an advocate and, for that purpose, visit and inspect universities.

Chapter III of the Advocates Act pertains to the admission and enrolment of advocates. Section 17 mandates the SBCs to prepare and maintain a roll of advocates. An application for admission as an advocate on a state roll is made to the SBCs. The SBCs must issue a certificate of enrolment to every person whose name is enrolled in the roll of advocates. Section 24 prescribes the qualifications and conditions for a person to be admitted as an advocate.

To qualify to be admitted as an advocate on a state roll, a person must:

- (a) be a citizen of India.
- (b) complete the age of twenty-one years.
- (c) obtain a law degree.
- (d) fulfil such other conditions as may be specified in the rules made by the SBCs under Chapter III; and
- (e) pay an enrolment fee of Rupees six hundred payable to the SBC and Rupees one hundred to the BCI along with any stamp duty, if chargeable. For a person belonging to the Scheduled Castes or Scheduled Tribes, the enrolment fee of Rupees one hundred is payable to the SBC and Rupees twenty-five to the BCI.

The SBCs charge enrolment fees stipulated under Section 24(1)(f) of the Advocates Act to admit law graduates on their State roll. At the time of enrolment, the SBCs also charge various “fees” and “charges” in addition to the enrolment fees in the form of library fund contributions, administration fees, identity card fees, welfare funds, training fees, processing fees, certificate fees, etc. The amount of fees charged by the SBCs differ significantly. This results in a situation where a law graduate has to pay somewhere between Rupees fifteen thousand to Rupees forty-two thousand (depending upon the SBC) as cumulative fees at the time of enrolment.

The petitioner instituted proceedings under Article 32 of the Constitution seeking a declaration that the fees charged by the SBCs at the time of enrolment violate Section 24(1)(f) of the Advocates Act. In its order dated 10 April 2023, this Court issued notice while observing that the petitioner has raised a significant issue about the enrolment fees charged by the SBCs. By

an order dated 17 July 2023, this Court transferred to itself the petitions dealing with similar issues from the High Court of Kerala, the High Court of Judicature at Madras at Madurai, and the High Court of Judicature at Bombay. Given this background, we now deal with the challenge of the validity of enrolment fees charged by the SBCs.

(A) Issues

The petitions give rise to the following issues:

- a. Whether the enrolment fees charged by the SBCs are in contravention of Section 24(1)(f) of the Advocates Act; and
- b. Whether payment of other miscellaneous fees can be made a pre-condition for enrolment.

(B) Submissions

Mr. Gaurav Kumar, the petitioner-in-person, made the following submissions:

- a. Section 24(1)(f) expressly prescribes the enrolment fee chargeable by the SBCs and the BCI for persons to be admitted as an advocate. SBCs are charging exorbitant enrolment fees, often under different heads, in derogation of Section 24(1)(f).
- b. Once there is a specific provision prescribing enrolment fees, the SBCs or the BCI through their delegated rule-making power cannot charge fees beyond the substantive provision. Therefore, the BCI and the SBCs cannot invoke their powers to frame rules under Section 49(1) and Section 28(1) of the Advocates Act respectively to prescribe enrolment fees that are at variance with Section 24(1)(f).
- c. The term ‘subject to the provisions of this Act’ at the beginning of Section 24 has been misconstrued to permit charging enrolment fees beyond the statutory prescription. It only means that other provisions of the Act must be considered while deciding the ‘eligibility’ of law graduates to be admitted as advocates on the state rolls.
- d. Section 6(3) of the Advocates Act prescribes how the SBCs may constitute ‘funds’ to fulfill their functions under Section 6(2). It does not allow imposing additional charges under different heads along with the enrolment fees or charging exorbitant fees as a mandatory condition for persons to get enrolled.
- e. The exorbitant enrolment fees prevent law graduates belonging to economically weaker sections of society from getting admitted to the rolls of the SBCs. Such an indirect bar on law graduates enrolling as advocates offends Article 19(1)(g) of the Constitution. It

also makes the process of enrolment coercive, improper, unjust and unfair, violating Article 14 of the Constitution; and

- f. The Advocates' Welfare Fund Act 2001 enacted by Parliament allows for the collection of funds through various sources for the welfare of advocates. This amount does not need to be collected by levying exorbitant enrolment fees.

Mr. Manan Kumar Mishra, senior counsel made the following submissions on behalf of the BCI:

- a. Bar Councils require adequate operational funds to effectively discharge their functions. They require funds for day-to-day functioning including administrative expenses, staff salaries, infrastructure maintenance, and technological advancements. Inadequate funding will hinder the ability of SBCs to comply with their statutory obligations under the Advocates Act.
- b. The enrolment fee prescribed under Section 24(1)(f) was fixed by the legislature in 1993 and has not been modified since. It fails to account for inflation and is not adequate to meet current financial demands. Unlike other professional bodies that levy an annual subscription fee on members, SBCs rely on the one-time enrolment fee.
- c. The fees charged by SBCs at the time of enrolment include additional expenses incurred in the enrolment process along with the enrolment fee prescribed by the Act, such as online data processing fee, identity card fee, and verification process fee. Therefore, the fees charged do not violate Section 24(1)(f) and are linked to the services being rendered by the SBCs.
- d. Section 6(2) lays down the functions of the SBCs and places enrolment of advocates exclusively within their domain. An entity on whom statutory powers or duties have been conferred impliedly possesses incidental powers necessary for its effective exercise.
- e. Section 15 of the Act provides SBCs with the power to make rules to carry out the purposes of Chapter II of the Act (including Section 6). This general power to frame Rules includes the power to levy charges for services rendered under the Act.
- f. Merely because a charge is levied at the time of 'enrolment' does not make it an enrolment fee. The 'enrolment fee' charged by most SBCs under Section 24(1)(f) continues to be six hundred rupees and the remaining amount is usually attributable to additional charges for other services. SBCs may be directed to comply with Section

24(1)(f) while charging an ‘enrolment fee’. But this must be distinguished from other charges levied at the time of enrolment. Such charges are permissible provided they pass the test of *quid pro quo* in terms of services rendered in return for the charges levied; and

- g. The BCI has the power to frame rules to charge reasonable fees under Section 49(1) (ah) and Section 49(h). The term ‘any matter’ used in Section 49(h) also includes matters relating to the enrolment of an advocate. In exercise of this power and to ensure uniformity, the BCI has placed on record before this Court, the draft Uniform Rules (For Enrolment and Other Fees to Be Charged by The State Bar Councils) 2023 paying down a uniform fee to be charged by all SBCs at the time of enrolment.

In view of the above submissions, the BCI has submitted that this Court exercise its extraordinary powers under Article 142 to implement a uniform enrolment fee structure that adequately caters to the financial requirements of the SBCs until legislative amendments are made to the Advocates Act. Additionally, it has urged this Court to direct the Union Government to revise the enrolment fee prescribed in Section 24(1)(f).

The SBCs have filed counter affidavits justifying the imposition of the fees charged by them at the time of enrolment. In essence, they contend that (i) the statutorily prescribed enrolment fee in Section 24(1)(f) fails to account for the current economic situation; (ii) the SBCs are charging fees in addition to the statutorily prescribed enrolment fee in return for services such as library fee and ID card fee under their rule-making powers under Section 15 and Section 28; and (iii) the additional charges are essential to enable the SBCs to fulfill their statutory functions. In order to fulfill these statutory functions, the SBCs *inter alia* run various welfare programs, insurance schemes, seminars, and training programs, which require adequate funding.

Mr. Raghunath Basant, senior counsel appearing for the petitioners before the Kerala High Court assailed the levy of enrolment fees by the Bar Council of Kerala in excess of the fee prescribed in Section 24(1)(f). Mr. Basant made the following submissions:

- a. Rules prescribed by the SBCs under general provisions such as Section 24(1)(e) cannot be with respect to the enrolment fee which has been specifically dealt with in Section 24(1)(f).
- b. Rule-making powers cannot be used to frame rules contrary to the Advocates Act, especially in the absence of any provision stipulating that the BCI or the SBCs are entitled to increase the statutory enrolment fee as they deem fit.

- c. The 1993 amendment which increased the statutory enrolment fee to its present form indicates that Parliament has been conscious of the need to increase the enrolment fee as and when required and is the only competent authority to carry out such changes; and
- d. other fees charged by the Bar Council of Kerala, such as the sums charged under Rule 40 of Section IVA under Chapter II of Part VI of the Bar Council of India Rules cannot be made a condition precedent for enrolment. Rule 40 of the BCI Rules prescribes that the payment be made by an advocate on the rolls of the SBC and thus, it cannot be a pre-requisite for enrolment.

II. FEES CHARGED BY THE SBCS

Presently, the SBCs charge different fees from advocates at the time of enrolment. Most SBCs charge an enrolment fee in addition to other miscellaneous fees. For instance, the Bar Council of Maharashtra and Goa is charging library fees, certificate fees, administration fees, identity card fees, training fees, and welfare fund contributions. Resultantly, the enrolment fee and the other fees charged by the SBC amount to Rupees fifteen thousand for general candidates and Rupees fourteen thousand five hundred for candidates from SC and ST categories.

The Bar Council of Odisha is charging Rupees forty-two thousand one hundred from advocates at the time of enrolment. In their counter affidavit, the SBC concedes the fact that Section 24(1)(f) only mandates the SBCs to charge Rupees seven hundred fifty in total at the time of enrolment. However, the SBC sought to justify charging the enhanced enrolment fee and other fees from the advocates *“having regard to the functions of the Odisha Bar Council”* under the Advocates Act. The SBC further claims that in line with its functions under Section 6, it has created various welfare funds for the benefit of advocates on its roll and utilizes the contributions received from the fees towards this end. Resultantly, the SBC is charging Rupees twenty-six thousand nine hundred as a one-time deposit to enable an advocate to avail of a lifetime benefit of various welfare schemes. This amount is in addition to the enrolment fee of Rupees six thousand, processing/development fees of Rupees seven thousand, and other miscellaneous charges. The SBC justified charging Rupees six thousand as the enrolment fee on the basis of a BCI resolution dated 26 June 2013. The BCI resolution reads thus:

“The council is of the unanimous view that the enrolment fee fixed earlier is a too small amount and it has never been revised after the year 1961. The council resolves that the enrolment fee per candidate will be Rs. 6000 and for SC/ST Candidates, it should be Rs. 3000. This provision is applicable throughout the country, and out of this as per the provisions of the Act, 20% amount is to be sent to the Bar Council of by all the State Bar

Councils. These rules will come into effect the day it is published in the Gazette of India. Soon after the publication the office is directed to communicate this resolution to all the State Bar Councils and all the Bar Associations of the country. It is made clear that this resolution is confined to the enrolment fee only and the other charges fixed or prescribed by the different State Bar Councils would be applicable as of their own suitability.”

In view of the above resolution, the BCI directed all the SBCs to charge the revised enrolment fee.

All the SBCs justify charging the miscellaneous fees for the following reasons : (i) the miscellaneous fees are one-time fees paid by the advocates to the Bar Councils; (ii) the fees are charged as a one-time lump sum because advocates do not pay the fees periodically after their enrolment; (iii) the SBCs do not get any financial assistance from the Government and have to sustain their operations, including payment of salaries to their employees, from the amount collected by way of enrolment fee and miscellaneous fees; and (iv) the lump sum fees are intended to defray the expenditure incurred by each SBC while discharging myriad statutory functions including continuing legal education and welfare schemes for advocates.

III. ARTICLE 14: SUBSTANTIVE EQUALITY AND MANIFEST ARBITRARINESS

Article 14 has substantive content that mirrors the quest for ensuring fair treatment of an individual in every aspect of human endeavours and existence. In *Joseph Shine V. UOI*⁵, one of us (D Y Chandrachud, J) observed that substantive equality is directed at eliminating individual, institutional, and systemic discrimination against disadvantaged groups which effectively undermines their full and equal participation in society at the social, economic, political, and cultural levels.

(A) Article 19(1)(g): unreasonableness

Section 30 of the Advocates Act inheres in every advocate whose name is entered in the State roll the right to practice in all courts throughout the territory of India. Article 19(1)(g) of the Constitution provides that all citizens of India shall have the right to practice any profession or to carry on any occupation, trade, or business. Article 19(6) subjects the right under Article 19(1)(g) to reasonable restrictions. Further, the provision allows the State to make any law relating to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade, or business. Thus, the right to practice law is not only a statutory right but also a fundamental right protected under Article 19(1)(g). however, the right

⁵ *Joseph Shine v. Union of India*, (2018) 2 SCC 189

of citizens to practice law can be regulated and is not absolute. Under the Advocates Act, only those advocates who are admitted on the State roll have a right to practice throughout the territory of India.

IV. FINANCIAL IMPLICATIONS FOR THE SBCS AND THE BCI

As discussed in the above segments of this judgment, we are cognizant of the fact that the SBCs and the BCI depend entirely on the amount collected from candidates at the time of enrolment for performing their functions under the Advocates Act, including payment of salaries to their staff. According to the legislative scheme of the Advocates Act, the Bar Councils must only charge the amount stipulated under Section 24(1)(f) as an enrolment fee. Instead of devising ways and means to charge fees from enrolled advocates for rendering services, the SBCs and the BCI have been forcing young law graduates to cough up exorbitant amounts of money as a pre-condition for enrolment.

Once the advocates are enrolled on the State rolls, the Bar Councils can charge fees for the services provided to the advocates by the provisions of the Advocates Act. It is for the SBCs and the BCI to devise an appropriate method of charging fees that is fair and just not only for the law graduates intending to enrol but also for the advocates already enrolled on the State rolls. There are several reasonable ways by which the SBCs and BCI can and already do collect funds at later stages of an advocate's career. For instance, under the Advocates Welfare Fund Act, of 2001, advocates must affix mandatory welfare stamps on Vakala Namas which are used to collect funds for advocate welfare. Unlike an enrolment fee charged before a graduate is given a fair chance to earn a living, such sources of income are directly correlated to the advocates' practice.

It is clarified that the only charges permissible at the stage of enrolment are those stipulated under Section 24(1)(f) of the Advocates Act. All other miscellaneous fees, including but not limited to, application form fees, processing fees, postal charges, police verification charges, ID card charges, administrative fees, photograph fees, etc. charged from the candidates at the time of admission are to be construed as part of the enrolment fee. The fees charged under these, or any similar heads cannot cumulatively exceed the enrolment fee prescribed in Section 24(1)(f).

The Advocates Welfare Fund Act, 2001 is enacted to provide for the constitution of a welfare fund for the benefit of advocates. Section 3 provides that the appropriate government shall constitute an Advocates Welfare Fund. Section 15 mandates the SBCs to pay annually to the welfare fund an amount equal to twenty percent of the enrolment fee received by it under

Section 24(1)(f) of the Advocates Act. This decision will not have any effect on the obligation of the SBCs under Section 15 because they will continue to charge the enrolment fee as stipulated under Section 24(1)(f).

The SBCs and the BCI are directed to ensure that the fees charged at the time of enrolment comply with Section 24(1)(f) and that the provision is not defeated either directly or indirectly under the garb of different nomenclatures. The SBCs cannot charge an enrolment fee or miscellaneous fees above the amount prescribed in Section 24(1)(f). No case is made out for this Court to exercise its power under Article 142 to implement the BCI Draft Enrolment Rules in their current form.

The result of this decision would have entitled advocates who have paid the excess enrolment fee to a refund from the SBCs. The SBCs have been levying the enrolment fees for a considerable duration and utilizing the collected amounts to carry out their day-to-day functioning. Therefore, we declare that this judgment will have a prospective effect. Resultantly, the SBCs are not required to refund the excess enrolment fees collected before the date of this judgment.

V. CONCLUSIONS

Given the above discussion, we conclude that:

- a. The SBCs cannot charge “enrolment fees” beyond the express legal stipulation under Section 24(1)(f) as it currently stands.
- b. Section 24(1)(f) specifically lays down the fiscal pre-conditions subject to which an advocate can be enrolled on State rolls. The SBCs and the BCI cannot demand payment of fees other than the stipulated enrolment fee and stamp duty, if any, as a pre-condition to enrolment.
- c. The decision of the SBCs to charge fees and charges at the time of enrolment in excess of the legal stipulation under Section 24(1)(f) violates Article 14 and Article 19(1)(g) of the Constitution; and
- d. This decision will have a prospective effect. The SBCs are not required to refund the excess enrolment fees collected before the date of this judgment.
- e. Given the above, the writ petition, transferred cases, and transfer petitions are disposed of.
- f. Pending application(s), if any, stand disposed of.

VI. REFERENCES

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