

CALCUTTA HIGH COURT

Aparna Basumallik

Vs.

Bar Council of India

C.O. No. 4645 (W) of 1982

(B.C. Ray, J.)

14.09.1982

ORDER

B.C.Ray, J.

1. This application is at the instance of the petitioner challenging the validity of the letter dated 19-2-82 communicating the decision of the State Bar Council on the basis of the decision of the Bar Council of India that the petitioner's application for enrolment in the State Bar Council's roll to practise as an Advocate has not been entertained as she did not fulfil the conditions laid down in Rule 1(c) as framed by the Bar Council of India under Sections 7(h)(i), 24(1)(c)(iii) and (iii)(a) and Section 49(1)(d) of the Advocates Act, 1961 and she was asked to collect the enrolment fee of a sum of Rupees 250/- deposited by her with the Bar Council of West Bengal. The petitioner has stated in her petition that she passed the B.A. Examination in 1972 from the University of Calcutta and thereafter she passed the M.A. Examination from the Calcutta University in Political Science and also in Modern History from Rabindra Bharati University. It has been stated that after obtaining the aforesaid degrees the petitioner in accordance with Rule 33 of the Rules framed by the Calcutta University commenced her studies for LL.B. Course in order to become a practicing Advocate after completing the LL.B. Course and after passing the Final LL.B. Examination from the University of Calcutta. It is stated that she was to appear in the Preliminary Law Examination in 1976 but due to some difficulties the said examination was held sometime in 1977 and she duly passed the Preliminary Law Examination. She also passed the Intermediate Examination in Law after appearing in 1979 as the examination which was due to be held in 1978 could not be held owing to some disturbances and finally she being a batch of 1978 but due to the examination being not held in 1979 and was held in March, 1980 she appeared in the Final Examination in Law and duly passed the same. Thus she became a Law Graduate from the Calcutta University. It has been stated that after obtaining provisional certificate from the University of Calcutta she applied in the form prescribed to the respondent No. 2, the Bar Council of West Bengal, with a deposit of necessary fee of Rs. 250/- for admission and enrolment as an Advocate. This application form was numbered as File No. 441/81 dated 11-2-81. It has been stated that the respondent No. 2 suddenly changed the application form for admission as an Advocate sometime in June, 1980 and since then it began to issue the changed application forms with instruction to apply in the new application forms instead of the old

application forms which were issued before June, 1980. The petitioner, however, in the column mentioned "N.C." that is Non-Collegiate. Thereafter the impugned letter dated 19-2-82 was sent to the petitioner informing her that her application for enrolment as an Advocate in the State Roll maintained by the State Bar Council has been refused for non-compliance of certain provisions of the Advocates Act, 1961.

2. It has been challenged in this application that the Bar Council of India which has been empowered to make rules providing the standards of education in law in consultation with the Universities in India. But the University did not indicate either in their curriculum or in the rules framed in connection with the study of law that a private student even if he or she passes the Final Law Examination and becomes a Law Graduate will be debarred from practicing in Court unless he or she attends a regular course of studies for a period of three years under the University in any University Law College. It has been submitted on behalf of the petitioner that Rule 35 clearly provides that private female candidates after studying law and without attending classes may appear in the examinations in law and after being successful they will be entitled to get law degree from the Calcutta University. It has been submitted that the petitioner being totally unaware of the restriction that has been imposed by framing rules pursuant to the provisions of Section 49(1)(d) more particularly the rule in sub-rule (c) of Rule 1 to the effect that law graduate who has not attended regularly the requisite number of lectures, tutorial classes and moot courts in Law College recognized by a University shall not be permitted to be enrolled according to the provisions of Section 24 of the said Act and also to practice the profession of law and his or her such degree shall not be recognized for this purpose by the State Bar Council or for that the Bar Council of India. It has, therefore, been submitted that this restriction which is purported to have been introduced by the aforesaid rule cannot affect the petitioner more so because the Calcutta University adopted at its meeting this condition embodied in Rule 1(c) as a proviso to Rule 35 sometimes in May, 1980 when the petitioner had already appeared in the Final LL.B. Examination and obtained the degree. It has been also submitted that this rule particularly the conditions that have been embodied in Rule 1(c) are *ultra vires* of the rule-making power conferred by Section 49(1)(d) of the said Act and as such it is declared to be a void one and so unenforceable. It has also been submitted in this connection that Section 7(1)(h) and (I) which merely confers power on the Bar Council of India to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils, and to recognize Universities whose degrees in law shall be a qualification for enrolment as an Advocate does not entitle the Bar Council of India to frame rules. Thereafter also other submissions are made in this regard in the writ application.

3. On 1-6-82 after hearing the petitioner this Court directed the petitioner to intimate the Bar Council of India and the matter was fixed for hearing a week thereafter.

4. An A.O. has been filed on behalf of respondent Nos. 2 and 3 sworn by one Sri Chittaranjan Dey, the Assistant Secretary of the Bar Council of West Bengal. It has been stated in para 5 of the said A.O. that the Bar Council of West Bengal is a State Bar Council as constituted under Section 3 of the Advocates Act, 1961, and it is a body corporate under the provisions of the said Act. It has further been stated that the State Bar Council cannot but act under the general supervision and control of Bar Council of India and the rules framed thereunder and the Bar Council of India controls and governs the functions of each of the State Bar Councils including that of West Bengal and also lays down standards of Legal Education whose degrees in law shall

be a qualification for enrolment as an Advocate. With regard to the statements made in paragraph 5 of the writ application it has been stated that Rule 35 of the rules regulating permission to appear as non-collegiate students at the LL.B. Examination of the Calcutta University for prosecuting legal education by women students and not for enrolment as Advocates under a State Bar Council. It has also been stated in paragraph 9 of the said A.O. that the mere passing of LL.B. examination of any recognized University does not confer any right to any candidate to be enrolled as an Advocate in the Roll of the State Bar Council and the enrolment rules as framed by the Bar Council of India is necessary to be complied with under the Advocate's Act, 1961 for enrolment as an Advocate on a State Roll and the State Bar Council has no say in the matter. It has been further stated therein that the University may formulate the rules and regulations or confer degrees for legal education but the Bar Council of India lays down the standard necessary for enrolment as Advocate on a State Roll. It has also been stated in paragraph 10 of the said affidavit that the conferment of a degree of law would not entitle one to become an Advocate and as it appeared that the petitioner had not undergone the course of study in law by regular attendance at the requisite number of lectures, tutorials and moot Courts in a college recognized by a University but had only secured a law degree as a non-collegiate student nor having the opportunity of attending lectures, moot courts etc. necessary for the preparation of enrolment as an Advocate. It has been further stated that this will be clear from her declaration against item No. 7(1) of the application form for enrolment as an Advocate wherein she declared against that column "N.C." "University of Calcutta". It has been further stated in paragraph 11 that the State Bar Council has not changed the application form for admission as an Advocate all of a sudden in June 1980 but the same has been changed in due course acting under the instruction incorporated by the Bar Council of India after the approval thereof and the same has been introduced in June, 1980. It has also been averred in paragraph 13 of the said A.O. that as the petitioner could not fulfill the conditions as laid down in Rule 1(c) framed by the Bar Council of India under Sections 7(h) and (i), 24(1)(c)(iii) and (iiia) and 49(1)(d), the enrolment committee of the said State Bar Council respondent No. 3 was unable to enrol the petitioner as an Advocate in its meeting held on 27-2-1981. The action proposed to be taken by the enrolment committee of the State Bar Council in the matter of enrolment application of the petitioner Smt. Aparna Basu Mallick was ratified by the Bar Council of India in its meeting held on 25th and 26th July, 1981. It has been further stated in paragraph 14 that the present rules of the Bar Council of India as revised had been published in the Gazette of India on 6-9-1975 in Part III Section 4 (pages 1671 to 1697) on which date the said rules came into force. The other portions of the affidavit being not relevant, for our present purpose are not recited herein.

5. Mr. Chakraborti, appearing on behalf of the petitioner has made a four-fold submissions before this Court. The first submission is that the petitioner having appeared in the preliminary law examination in accordance with the provisions of Regulation 35 framed by the Calcutta University entitling a private woman candidate to appear in the law examination without attending lectures, tutorials, moot Courts and also other requirements and having duly passed all the three examinations held by the Calcutta University and the last final examination which was scheduled to be held sometime in 1979 was held in March 1980 and she having been successful and having been admitted to the Degree of Bachelor of Law by the Calcutta University, the State Bar Council is not entitled to deprive her of the benefit of the degree by refusing to enrol her in the State roll maintained by the State Bar Council and thereby denying her permission to practise the profession of law as an Advocate. It has been submitted by Mr. Chakraborty in this connection that even assuming for argument's sake that the impugned rule as embodied in Rule

1(c) laying down the standard of legal education to be borne by the University had been duly met, still then as the same was not embodied and/or incorporated in the curriculum and/or in the prospectus embodying the rules for legal studies in law colleges maintained under the University of Calcutta, the petitioner who has been duly permitted to appear as a private Student, i.e., a non-collegiate student in all the three examinations held by the Calcutta University should not be debarred from having the benefit of the said degree by denying her on the basis of the aforesaid rule framed by the Bar Council of India to be enrolled as an Advocate and to practice as such. If there is any default on the part of the University to follow the standard prescribed by the Bar Council of India in framing the aforesaid rule, the Bar Council of India may take appropriate steps against the University but the petitioner who was a student and who duly passed the law examinations and obtained the law degree should not be prevented from the benefit of being enrolled and also of practicing as an Advocate.

6. The second branch of Mr. Chakraborti's submission is that the rule that has been framed laying down the standard of legal education and recognition of degrees in law for admission as an Advocate, more particularly Clause (c) of Rule 1 is in excess, or in other words, *ultra vires* the powers conferred upon the Bar Council of India under Section 49(1)(d) of the Advocate's Act, 1961. It has been submitted in this connection that the making of that rule laying down that condition cannot under any circumstance be taken to be as one laying down "standards of legal education to be observed by the Universities in India". Mr. Chakraborti further submitted that the standards as referred to in that section as well as in Section 7(h), refers to the curriculum or course of studies to be followed by the Universities in the conferment of degrees in law. It does not include within its fold the laying down of the condition that a student has to attend the requisite number of lectures, moot Courts etc. Therefore, this Rule is *ultra vires* of the rule making powers conferred on the Bar Council of India.

7. The 3rd branch of Mr. Chakraborti's submission is that Section 7(h) which enumerates the functions of the Bar Council of India, states that its function would be "to promote general education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Council." It has been submitted by Mr. Chakraborti that even if it is assumed for argument's sake that by laying standards the conditions that have been specified in Rule 1(c) can be done by the Bar Council of India still then there is nothing to show and more so because it appears from the affidavit sworn on behalf of the University of Calcutta by its Registrar Sri Pratip Mukherjee in paragraph 14 that they were not consulted as appears from the papers before framing the aforesaid rules by the Bar Council of India. It has, therefore, been contended by Mr. Chakraborti that this rule cannot be enforced so far as this particular case is concerned. It has also been submitted by Mr. Chakraborti that Section 24 prescribes the conditions which are required to be fulfilled by a person in order to entitle himself to be admitted as an Advocate in the State Roll. Sub-section 1(1)(c)(iii) of Section 24 provides that after 12th March, 1967 a person after undergoing a 3 year course of study in law from any University in India recognized for the purpose of this Act by the Bar Council of India is entitled to have himself admitted as an Advocate on a State Roll. The petitioner has already obtained the law degree from the Calcutta University whose degree is recognized by the Bar Council of India for this purpose and as such apart from anything else it is imperative on the Bar Council of India and for that the State Bar council to allow the application made by the petitioner and to grant her necessary permission for enrolment as an Advocate on the State Roll and to permit her to practice law as a profession.

8. Mr. Chakraborty has lastly submitted that Rule 1 of the rules framed by the Bar Council of India laying down the norms of legal education to be followed in the Universities in order to entitle the holders of the degrees to be enrolled as an Advocate in the State Roll, does not empower the Bar Council of India to frame rules with regard to Clauses (h) and (i) of Section 7 as well as with regard to Section 24(1)(c)(iii) and (a) of the said Act as these provisions do not empower the Bar Council of India to frame rules and as such the impugned rule that has been framed pursuant to the provisions of this Act are also bad and unenforceable.

9. Mr. P.K. Sen Gupta appearing on behalf of respondent Nos.2 and 3 i.e. the State Bar Council and the Enrolment Committee of the Bar Council of West Bengal has, on the other hand, submitted that the conferment of law degree on a particular woman candidate even though she has not attended any colleges of the University but appeared in the law examination of the University as a private candidate, has nothing to do with her enrolment as an Advocate under the Advocates Act inasmuch as to be enrolled in the State Roll she has to conform to the norms and/or the essential requirements that has been provided in Section 7 read with Section 24 and also the rules framed under Section 49(1)(d) of the Advocates Act, 1961. It is merely because the University has conferred a law degree on a candidate does not *ipso facto* entitle him/her to be enrolled in the State Roll unless and until he/she complies with the other requirements specified by the aforesaid sections and the rules framed thereunder by the Bar Council of India. It has been submitted in this connection by Mr. Sen Gupta that the Bar Council of India has been empowered by the Advocates Act, 1961 to lay down the standards and professional conduct and etiquette of Advocates and to promote legal education and to lay down the standards of education in consultation with the Universities of India imparting such education and the State Bar Councils and also to recognize Universities whose degrees in law shall be a qualification for enrolment as an Advocate and for that purpose to visit and inspect Universities. It has also been provided in Section 24 that a person in order to be qualified to have himself admitted as an Advocate on a State Roll has to conform to the conditions laid down in Section 24. Therefore, mere obtaining a degree from the Calcutta University is not the sole qualification to be acquired for the purpose of enabling her to get enrolled of her name in the State Roll and in this connection Mr. Sen Gupta referred to the provisions of Section 7(i) which says that degree in law "shall be a qualification for enrolment as an Advocate." Mr. Sen Gupta therefore urged that amongst other qualifications one of the qualification is the obtaining of a degree in law. The second branch of Mr. Sen Gupta's argument is that this rule was framed by the Bar Council of India as early as in 1975 and it was also published in the Gazette of India. Therefore the Calcutta University has to comply with this requirement if it wants that students obtaining law degree from this University may be enrolled in the State Roll for practicing as Advocates. It has been submitted by Mr. Sen Gupta that if the University does not conform to the standard as provided in these rules the consequences will be the Bar Council of India and for that the State Bar Council is not under any obligation to permit her to practice law as profession by having her name enrolled in the State Roll.

10. It has been lastly submitted by Mr. Sen Gupta that the statement that has been made in paragraph 14 of the A.O. sworn on behalf of the University by its Registrar cannot be of any avail in view of the fact that those rules were made by the Bar Council of India and were published in the Gazette of India which the Calcutta University ought to have taken notice of and ought to have incorporated in their curriculum of studies in law. As this has not been done by the University, that cannot be an excuse that the students, who have been allowed to appear in law

examination as a private candidate without attending classes, on obtaining the law degree be permitted to practice in law on consideration of the great hardship that will be caused to him or her for no fault of his or her.

11. Mr. Bhunia appearing on behalf of the Bar Council of India, respondent No.1, adopted the argument of Mr. Sen Gupta and urged before this Court by referring to the provisions of Section 24(1)(c)(iii) that a person shall be qualified to be admitted as an Advocate on a State Roll after 12th day of March, 1967 after undergoing " a 3-year Course of study in law from any University of India." This clearly provides that a student has to undergo a 3-year course of study in any college of law recognized by the University of Calcutta in this particular case. In other words, Mr. Bhunia has submitted before this Court that this provision enjoins that a person who has not studied that 3-year course in any law college under the University of Calcutta or in other words who has appeared like the petitioner without attending any class in an affiliated law college as a student cannot have the benefit of this provision. Mr. Bhunia has drawn the attention of this Court in this connection by referring to Section 7(i) that conferment of a degree by a University whose degree is recognized by the Bar Council of India is one of the qualifications for enrolment as an Advocate and this is not the sole qualification for this purpose. In this connection Mr. Bhunia has also referred to Section 49 (1) (af), (ag) and (ah) which lays down respectively the minimum qualifications required for admission to a course of degree in law in any recognized University, meaning the admission to a degree college in law and also studying law for the prescribed period, the class or category of persons entitled to be enrolled as advocates, and the condition subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a Court. Mr. Bhunia has submitted referring to all these provisions that these are the matters with respect to which the Bar Council of India is empowered to make rules, and the instant rule more particularly Rule 1(c) laying down the standard cannot under any circumstances be regarded as in excess or *ultra vires* of the powers of making rules conferred by Section 49(1)(d) of the said Act. Mr. Bhunia submitted that the instant rule is not *ultra vires* but *intra vires* of the rule making powers conferred on the Bar Council of India and the petitioner having not conformed to that requirement has been rightly denied permission to have her name enrolled in the State Roll for practicing as an Advocate.

12. The first question that requires to be decided is whether the Bar Council of India is competent by virtue of the rule making power conferred on it under Section 49 of the said Act to frame rules laying down the standards of legal education to be observed by the Universities and whether the rule that has been framed laying down the standards of legal education by the Bar Council of India in 1975 including Rule 1(c) is within the rule making power conferred on it. Undoubtedly Section 49(1)(d) in its foot note mentions "general power of the Bar Council of India to make rules." Section 49(1) states that the Bar Council of India may make rules for discharging its functions under this Act, and in particular, such rules may prescribe and in Clause (d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. Therefore, the Bar Council of India has been vested with powers to make rules in order to enable it to discharge its functions that has been conferred on it under the Act. The functions of the Bar Council of India have been specified in Section 7 of the Act. Clause (d) of that section empowers the Bar Council of India to lay down standards of professional conduct and etiquette for advocates. Clause (h) which is relevant for our purpose also empowers the Bar Council of India to promote legal education and to lay down standards of

such education in consultation with the Universities in India imparting such education and the State Bar Councils and Clause (i) to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities. Therefore the power to make rules for efficiently carrying out the purpose of this Act as has been stated on behalf of the Bar Council of India also includes within it the power to lay down standards of legal education including the standards that have been specified in Rule 1(c). The argument of Mr. Chakraborti (is) that Section 7(h) and (i) and Section 24(1)(c)(iii) do not empower the Bar Council of India to frame rules and as those provisions have been referred to while framing the rules by the Bar Council of India, the rules are *ultra vires* of the powers conferred by Section 49(1)(d). This argument, in my opinion, is not sustainable for the simple reason that the Bar Council of India has been empowered to lay down the standards of education in consultation with the Universities and it has also been empowered to make rules for discharging its functions under this Act and one of its functions includes laying down standards of legal education. Therefore it cannot be said that the rules impugned as framed by the Bar Council of India are in excess of the powers conferred on it by Section 49 of the said Act. I am, therefore, unable to accept this submission of Mr. Chakraborti that the impugned rule is *ultra vires* of the rule making powers conferred upon the Bar Council of India under Section 49 of the said Act. I am constrained to hold that the rule that has been framed is in my opinion, not *ultra vires* but *intra vires* the rule making powers conferred by the Bar Council of India.

13. The next question that poses itself for consideration is whether the petitioner who has duly obtained a law degree from the University of Calcutta is entitled to have her name enrolled in the State Roll and the order impugned which has been annexed as Annexure B to the writ application rejecting her application for enrolment in the State Roll is a valid and proper order or not. To decide this question it is necessary to consider the definition of Advocate as made in Section 2(1)(a). "Advocate" means an Advocate entered in any roll under the provisions of this Act. Therefore a person in order to be termed as an advocate must not only possess a degree in law but must have his name entered in any roll maintained under the provisions of this Act viz., either the roll maintained by the Bar Council of India or the roll maintained by the various State Bar Councils termed as State Roll. Section 6(1)(a) recites that one of the functions of the State Bar Council is to admit persons as advocates on its roll. Section 24 provides the requirements to be fulfilled by a person in order to get himself or herself admitted as Advocate on State Roll. Section 24(1)(c)(iii) provides that a person after 12th day of March 1967 after undergoing a 3 years course of study in law from any University in India recognized by the Bar Council of India and who fulfils other conditions as may be specified by the rules made by the State Bar Council under this chapter will be admitted as an advocate in the State Roll. Section 7(i) provides further that the degree of a recognized University shall be one of the qualifications for enrolment as an advocate. The Bar Council of India has been empowered to lay down standards of legal education to be followed in the Universities whose degree will be recognized by the Bar Council of India and pursuant to that power as I have said hereinbefore the Bar Council of India has framed rules in 1965 (1975?) laying down the standards of legal education. One of the standards that has been specified in Clause (c) of Rule 1 is that the degree has to be obtained after prosecuting the course of study in law by attending requisite number of lectures in a college recognized by a University. Therefore to entitle a person to have himself enrolled this requirement has to be complied with. The petitioner, in this case, did not attend college but she appeared in all the three tier of law examinations as a private student pursuant to regulation 35 framed by the Calcutta University. She became successful and obtained LL.B. degree in 1980. It

is also a fact as is evident from the statements made in the affidavit sworn on behalf of respondent No. 4 by the Registrar of the Calcutta University that the petitioner was due to appear in the final LL.B. examination in 1979 but as the examination was not held in that year she appeared in March, 1980 and passed the final LL.B. examination. It has been stated that it does not appear from the records of the University that the Bar Council of India amended rule in Part IV in consultation with this University. It has been further stated that since the legal education is conducted on the advice of the Bar Council of India, the University amended Rule 33 by its notification No. CSR/31/80 dated 17-6-1980 whereby it has been provided that the women candidates allowed to appear as non-collegiate students at the LL.B. examination shall be informed in advance that they shall not be eligible for enrolment as advocates and the degree to be awarded to them shall bear an inscription to the effect that they have obtained the degree as non-collegiate students. It was tried to be contended that since this proviso debarring a non-collegiate woman student after obtaining law degree from practicing legal profession and enrolling in the State Roll, cannot be made applicable to the case of the petitioner as she obtained the degree long before the introduction of this amended regulation. It has also been submitted in this connection by referring to the decision reported in AIR 1976 Supreme Court 376 that the petitioner having been allowed to appear in the law examinations and having been conferred the law degree, cannot be debarred from the benefit of practicing as an advocate. It has also been submitted that if there is any default in compliance with the requisite conditions and/or standards laid down by the rules framed by the Bar Council of India, the University should be penalized and not the petitioner. I am unable to accept this part of the argument in spite of the fact that the University did not follow the standard of education in law that has been laid down in the aforesaid rule by the Bar Council of India and did not make its curriculum accordingly. But I cannot be unmindful of the fact that to practice the profession of law as an Advocate is a right conferred on the person fulfilling the requirements laid down in the Advocates Act 1961. In other words it is a right conferred by a statute and as such if there is any non-compliance of the essential requirements laid down by the statute and also the statutory rules which are undoubtedly part of the statute, then this Court on mere consideration of hardship or working injustice because of the University's lack of taking steps in remodeling its curriculum in the light of the rules framed by the Bar Council of India, cannot issue a mandate directing the authorities concerned to make an order which is contrary to the provisions of the Act and the rules. I have already held hereinbefore that the impugned rule is intra vires and as the said rule specifies the standards of legal education to be followed in the Universities for recognition of the degree of law, it cannot be held to be directory as has been urged by Mr. Chakraborti. These rules are, in my opinion, mandatory inasmuch as these are in accordance with the provisions of Section 7(h) and (i) and also Section 49(1)(d) of the Act. A person holding law degree is under obligation to conform and/or to comply with all the requirements laid down in the statute and the rules framed thereunder in order to enable him to get his name enrolled in the State Roll and to practice as an advocate under the Advocates Act. I have already said that right to practice as an advocate is a statutory right and this statutory right has to be claimed after complying with the necessary prerequisites. Therefore I am unable to accept the submission that has been made by Mr. Chakraborti. I cannot also accept the submission of Mr. S. Mukherjee appearing on behalf of the Calcutta University that they were not informed prior to 12-5-1980 that unless these conditions as laid down in the aforesaid rule framed by the Bar Council of India are observed the holder of the LL. B. degree - the degree conferred by the Calcutta University - will not be recognized by the Bar Council of India and no permission will be granted for enrolment of the candidate's name as an Advocate in the State Roll for practicing as an Advocate. This argument on the face of the

clear provisions of the statute is not sustainable as, in my opinion, it is totally devoid of any merit. I am really sorry and I cannot but observe in this connection that the Calcutta University should have been aware of the provisions of the Advocate's Act which was published in 1961 and also of the rules framed by the Bar Council of India which were published in the Gazette as early as in 1975 and should have taken steps accordingly in moulding its curriculum or studies of law in colleges affiliated to the University of Calcutta. Had this been done this petitioner would not have suffered as I have said hereinbefore. The decision cited in AIR 1976 Supreme Court 376, in my opinion, can have no application to the present case as the facts of that case are entirely different from the facts of the instant case. In that case the appellant came before the Supreme Court challenging the steps taken by the Kurukshetra University purported to debar him from appearing in Part II Law Examination to be held in May 1973 because he did not have requisite percentage in attendance while appearing in Part I examination and thereby committed fraud. It was held by the Supreme Court that this ought to have been detected before he was allowed to appear in the Part I examination, but the authorities of the university did not scrutinize the form and did not deduct the percentage and he was allowed to appear in the Part I examination which he duly passed. It has therefore been observed as follows (at p. 381) :

"If the Universities authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the Examination then by force of the University Statute the University had no power to withdraw the candidature of the candidate."

In the instant case there is no question of withdrawal of the candidature of the candidate from appearing in the examination. Therefore this case has got no application. The other decision cited in (1980) 3 SCC 202 merely holds that the terms and conditions of service are intended to be construed reasonably and too technical a view can defeat the essential spirit and intent embodied in them. This observation has also got no application in the facts of the present case as it does not concern the terms and conditions of the service of the petitioner.

14. It appears from the communication being Annexure-B to the writ petition made by the Bar Council of West Bengal that in accordance with Section 26 of the Bar Council Act the Bar Council referred the application for admission of the petitioner as an Advocate to the Bar Council of India as it did not agree to allow the application for non-compliance with the rules framed by the Bar Council of India and the Bar Council of India, it appears, also endorsed the view that has been taken by the State Bar Council in accordance with the provisions of Section 26 of the said Act.

15. For the reasons aforesaid the submissions advanced on behalf of the petitioner having failed this application fails and is dismissed.
Application dismissed.