

# CALCUTTA HIGH COURT

Aparna Basu

Vs.

Bar Council of India

F.M.A. No. 348 of 1983

(M.M. Dutt and C.K. Banerji, JJ.)

11.08.1983

## JUDGMENT

### **M.M. Dutt, J.**

1. In this appeal the appellant Smt. Aparna Basu Mallick has challenged the propriety of the judgment of a single Judge of this Court discharging the Rule Nisi issued on her application under Article 226 of the Constitution of India.

2. The appellant is an M.A. in Political Science of the Calcutta University and an M.A. in Modern History of the Rabindra Bharati University. After obtaining the Master's Degree, the appellant started prosecuting her studies in LL.B. Course of the Calcutta University. At that time, Regulation 35 of the Calcutta University First Regulations, 1951 framed under the Calcutta University Act, 1951 was as follows :

"A woman candidate may be allowed to appear as a non-collegiate student (1) at the preliminary Law Examination one year after her graduation from this University, (2) at the Intermediate Law

Examination one year after passing the Preliminary Law Examination, and (3) at the Final Law Examination one year after her passing the Intermediate Law Examination of this University. There is no prescribed application Form for this purpose. Intending candidates must apply in plain sheet of paper, together with the usual non-Collegiate Students' Fee of Rs. 30/- and the B.A./B.Sc./B.Com. diploma or Mark Sheet in original".

3. It is the case of the appellant that before she started studying the LL.B. Course she was aware of Regulation 35 as set out above. She passed the Preliminary Law Examination in 1977 and, thereafter, the Intermediate Law Examination which was held in 1979. She passed the Final Law Examination in 1980 and obtained a degree in Law from the University of Calcutta in compliance with Regulation 35.

4. Thereafter, the appellant applied in the prescribed form to the respondent No. 2, the Bar

Council of West Bengal for her enrolment as an advocate and paid the sum of Rs. 250/- as the enrolment fee. She also performed all the requirements and/or formalities as required by the respondent No. 2, the Bar Council of West Bengal. But the Assistant Secretary of the Bar Council of West Bengal by his letter dated February 19, 1982, informed the appellant that the Enrolment Committee of the Council was unable to enrol the appellant as an advocate as the appellant did not fulfil the conditions laid down in Rule 1, sub-rule (1)(c) of Part IV of the Bar Council of India Rules framed by the Bar Council of India under Sections 7(h) and (i), 24(1)(c)(iii) and (iiia) and 49(1)(d) of the Advocates Act, 1961, hereinafter referred to as "the Act". In other words, the application of the appellant for her enrolment as an advocate was rejected by the Bar Council of West Bengal.

5. Being aggrieved by the rejection of her application for enrolment, she filed a writ petition before the learned Judge and obtained a Rule Nisi out of which this appeal arises. In the writ petition, she *inter alia* prayed for a declaration that the provision of Rule 1(1), sub-rule (c), Part IV of the Bar Council of India Rules was *ultra vires* Articles 14 and 19(1)(g) of the Constitution of India. She also prayed for a writ in the nature of *certiorari* for the quashing of the decision of the Bar Council of West Bengal rejecting her application for enrolment as contained in the letter dated February 19, 1982 of the Assistant Secretary of the said Bar Council.

6. The rule was opposed by the Bar Council of India as also by the Bar Council of West Bengal. While the Bar Council of West Bengal filed an affidavit-in- opposition, no affidavit was filed by the Bar Council of India. On the other hand, the University of Calcutta in its affidavit-in- opposition affirmed by Sri Pratim Kumar Mukherjee, the Registrar of the University, supported the appellant.

7. At this stage, we may refer to some of the provisions of the 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. Section 2 of the Act is the definition section. Clause (a) of Section 2(1) of the Act defines "advocate" as meaning an advocate entered in any roll under the provisions of the Act. Under Clause (h) of Section 2(1), "law graduate" means a person who has obtained a bachelor's degree in law from any University established by law in India. Section 3 of the Act provides for the establishment of State Bar Councils. Section 4 provides for the constitution of the Bar Council of India. Section 6 of the Act lays down the functions of the State Bar Councils. One of the functions of a State Bar Council as contained in Clause (a) of Section 6(1) is to admit persons as advocates on its roll. Section 7 lays down the functions of the Bar Council of India, Clauses (h) and (i) of Section 7(1) provides as follows :

"7. The functions of the Bar Council of India shall be :-

(h) 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;

(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".

Section 24(1) of the Act reads as follows :-

"24(1). Subject to the Provisions of this Act and the Rules made thereunder, a person shall

be qualified to be admitted as an advocate on a State Roll, if he fulfils the following conditions, namely :-

(a) he is a citizen of India.

Provided that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State Roll, if citizens of India, duly qualified, are permitted to practise law in that country :

(b) he has completed the age of twenty one years.

(c) he has obtained a degree in law-

(i) before the 12th day of March, 1967, from any University in the territory of India; or

(ii) before the 15th day of August, 1947 from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three-year course of study in law from any University in India which is recognized for the purpose of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purpose of this Act by the Bar Council of India; or

(iv) in any other case, from any University outside the territory of India, if the degree is recognized for the purposes of this Act by the Bar Council of India or he is a barrister and is called to the Bar on or before the 31st day of December, 1976; or has passed the articled clerk's examination or any other examination specified by the High Court of Bombay or Calcutta for enrolment as an attorney of that High Court; or has obtained such other foreign qualification in law as is recognized by the Bar Council of India for the purpose of admission as an Advocate under this Act;

(d) omitted;

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899, and an enrolment fee payable to the State Bar Council of two hundred and fifty rupees :

Provided that where such person is a member of the Scheduled Castes or the Scheduled Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Council shall be one hundred and twenty five rupees.

Explanation : For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination."

8. Section 49 of the Act confers power on the Bar Council of India to make rules for discharging its functions under the Act. One of the rules that can be framed by the Bar Council of India under Section 49(1) of the Act is that contained in clause (d) thereof, which is as follows :

"(d) the standards of legal education to be observed by the Universities in India and the inspection of Universities for that purpose."

9. The Part IV of the Bar Council of India Rules contains rules under Sections 7(h) and (i), 24(1)(c)(iii) and (iiia) and 49(1)(d) of the Act. Sub-rules (1) and (2) of Rule 1 of such Rules as framed by the Bar Council of India under the said provisions of the Act provides as follows :

#### "PART-IV

Standards of Legal Education and Recognition of Degrees in Law for Admission as Advocate (Rules under Sections 7(b) and (i), 24(1)(c)(iii) and (iiia) and 49(1)(d) of the Act)

1. (1) Save as provided in Section 24(1)(c)(iiia) of the Act, a degree in law obtained from any University in the territory of India after the 12th day of March, 1967 shall not be recognized for purposes of Section 24(1)(c)(iii) of the Act unless the following conditions are fulfilled :

(a) That at the time of joining the course of instruction in law for a degree in law, he is a graduate of a University, or possesses such academic qualifications which are considered equivalent to a graduates' degree of a University by the Bar Council of India;

(b) that the law degree has been obtained after undergoing a course of study in law for a minimum period of three years as provided in these rules;

(c) that the course of study in law has been by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University; and

(d) that the law degree has been obtained without undergoing any other course of instruction simultaneously during the period of three years of study in law.

Provided that this rule shall not apply to those students who are already undergoing double course of studies in any University before 1-1-1972.

(2)(a). The Council shall publish a notification in the Gazette of India and the prominent newspapers in India, names of Universities whose degrees are recognized under the rules in this Chapter; and

(b) send a copy of the notification above referred to, to all the Universities."

10. Under Rule 1(1) of Part IV of the Bar Council of India Rules, after March 12, 1967, a degree in law obtained from any University shall not be recognized for the purpose of Section 24(1)(c)(iii) of the Act unless certain conditions including the conditions as contained in Clause (c) are fulfilled. Under Clause (c) of Rule 1(1), the degree in law will not be recognized unless the course of study in law has been by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognized by a University. It is not disputed that in view of Regulation 35 of the Calcutta University First Regulations, which has been quoted above the appellant being a woman was not required to attend lectures, tutorials and moot courts and she appeared and passed the three law examinations as a non-collegiate student after prosecuting a

three-year Degree Course of the Calcutta University, and obtained a law degree. It has been already noticed that in view of Rule 1(1)(c) of Part IV of the Bar Council of India Rules, the Bar Council of West Bengal rejected the application of the appellant for her enrolment as an advocate.

11. It appears from the affidavit-in-opposition affirmed by Sri Pratip Kumar Mukherjee, the Registrar of the Calcutta University that in view of Rule 1(1)(c), Part IV of the Bar Council of India Rules, the Calcutta University Council by its resolution dated December 7, 1979 added a proviso to Regulation 35 of the Calcutta University First Regulations as follows :

"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."

12. The above proviso and/or amendment to Regulation 35 was made in view of the said Bar Council of India Rules as amended, which was intimated to the Calcutta University by the Secretary of the Bar Council by his letters dated August 24, 1979 and December 5, 1979.

13. It further appears from the affidavit-in-opposition of the said Pratip Kumar Mukherjee, the Registrar of the Calcutta University that before the Bar Council of India amended Rule 1(1), Part IV of the Bar Council of India Rules, no consultation was made by the Bar Council of India with the University of Calcutta. The said averment stands uncontroverted by the Bar Council of India as it has not filed any affidavit denying the same. The Bar Council of West Bengal also has not filed any affidavit denying the said averment, although it filed an affidavit-in-opposition to the writ petition.

14. At the hearing of the Rule Nisi, it was contended on behalf of the appellant that the appellant having obtained the Degree of Bachelor of Law after complying with all the requirements as laid down in Regulation 35 of the Calcutta University First Regulations, the Bar Council of West Bengal had no authority to refuse to enrol her as an advocate. Further, it was contended that the impugned Rule 1(1) of Part IV of the Bar Council of India Rules was framed by the Bar Council of India in excess of its power as conferred on it by the provisions of Section 49(1)(d) of the Act. It was urged that even assuming that by the impugned rule, the Bar Council of India purported to lay down the standard of legal education in exercise of its power as conferred on it by the provision of Section 7(h) of the Act, the impugned rule not having been framed and/or such purported standard of legal education having been laid down without any consultation with the University of Calcutta, as required by the said provision, the impugned rule was invalid. The learned Judge overruled all the above contentions made on behalf of the appellant and discharged the Rule Nisi. Hence this appeal.

15. One of the functions of the Bar Council of India as contained in Section 7(i) of the Act is 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. Section 24(1) of the Act provides that a person shall be qualified to be admitted as an advocate on a state roll on certain conditions one of which being that contained in clause (c)(iii) thereof, namely, that he has obtained a degree in law after the 12th day of March, 1967, after undergoing a three-year-course of study in law from any

University in India which is recognized for the purpose of the Act by the Bar Council of India. Thus both under Section 7(i) and Section 24(1)(c)(iii), one of the functions of the Bar Council of India is to recognize Universities whose degree in law is a qualification or condition for enrolment. The function of the Bar Council of India, therefore, is to recognize Universities and not the degree in law. Clause (c)(iv) of Section 24(1) of the Act, however, lays down a condition, *inter alia*, that if the degree in law has been obtained from any University outside the territory of India, such degree is recognized for the purposes of the Act by the Bar Council of India. So under clause (c)(iii) of Section 24(1), the condition is that in the case of a degree in law of an Indian University, the University is recognized by the Bar Council of India. But under clause (c)(iv) of Section 24(1), and if the degree in law is of a University other than an Indian University, a different condition has to be fulfilled namely, that the degree is recognized by the Bar Council of India. Thus before claiming enrolment as an advocate, besides other conditions, a person has to fulfill the conditions that he has obtained a degree in law and, if the degree has been obtained from an Indian University, he has to fulfill a further condition that such University has been recognized by the Bar Council of India, but if the degree has been obtained from a University outside the territory of India, that the degree is recognized by the Bar Council of India.

16. It is an admitted fact that the University of Calcutta has long been recognized by the Bar Council of India as a University whose degree in law shall be a qualification for the enrolment as an advocate. The appellant, therefore, fulfils all the conditions of Section 24(1) of the Act as applicable to her including the condition that she has obtained a degree in law from a University, that is, the Calcutta University which has been recognized by the Bar Council of India for the purpose of the Act. Accordingly, the appellant is entitled to claim enrolment as an advocate.

17. It is, however, urged by Mr. Swadesh Bhusan Bhunia, learned counsel appearing on behalf of the Bar Council of India that as the provision of Section 24(1) of the Act has been made subject to the provisions of the Act and the rules made thereunder, the Bar Council of India can by rules framed under the Act, alter or amend the conditions of enrolment which it has done by the impugned Rule 1(1) of Part IV of the Bar Council of India Rules. It is true that Section 24(1) has been made subject to the provisions of the Act and the rules framed thereunder, but such rules have to be made by the Bar Council of India in accordance with the provisions of the Act, that is to say, within the ambit of its rule-making power as conferred by Section 49(1) of the Act. Clause (d) of Section 49(1) which has been strongly relied upon by the learned counsel for the Bar Council of India does not, on the face of it, authorize the Bar Council of India to lay down conditions of enrolment. Under Clause (d), the Bar Council of India can frame rules relating to the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. "Standards of legal education" and "conditions of enrolment" are two distinct matters, one having no connection with the other. The impugned Rule 1(1) of Part IV of the Bar Council of India Rules, in our opinion, does not lay down any standard of legal education. It merely lays down that after March 12, 1967, a degree in law obtained from any University in the territory of India shall not be recognized for purposes of Section 24(1)(c)(iii) of the Act unless certain conditions as specified in clauses (a) to (d) are fulfilled. The impugned rule, therefore, lays down the conditions of enrolment for the purpose of Section 24(1)(c)(iii) of the Act which provides *inter alia* that where the degree in law has been obtained from an Indian University, such University is recognized by the Bar Council of India. Under Section 24(1)(c)(iii), the condition is that the Indian University shall be recognized by the Bar Council of

India, but by the impugned rule an additional condition is imposed, namely, the degree in law shall not be recognized unless certain conditions are fulfilled. In the first place, Section 49(1)(d), as has been already discussed, does not confer any power on the Bar Council of India to frame rules laying down conditions of enrolment as an advocate and, secondly, neither Section 7(i), nor Section 24(1)(c)(iii) nor any other provision of the Act confers any power on the Bar Council of India to recognize the degree in law of any Indian University or to lay down conditions of such recognition. Indeed, it is not the function of the Bar Council of India under the Act to recognize the degree in law of an Indian University. Its function for the purpose of Section 24(1)(c)(iii) is to recognize the Indian University for the purposes of the Act. Further, by the impugned Rule 1(1), the Bar Council of India purports to amend Section 24(1)(c)(iii) of the Act which it cannot. In the circumstances, the impugned Rule 1(1) of Part IV of the Bar Council of India Rules is *ultra vires* the provisions of Sections 49(1)(d) and 24(1)(c)(iii) and also Section 7(i) of the Act, and is illegal and invalid. The learned Judge has not adverted to the above grounds of the illegality and invalidity of the impugned rule.

18. It is contended by Mr. Nani Coomer Chakraborty, learned counsel appearing on behalf of the appellant, that even assuming that by the impugned rule, the Bar Council of India purports to lay down standards of legal education being one of its functions under Section 7(h) of the Act, the impugned rule having been framed by the Bar Council of India without any prior consultation with the University of Calcutta, the impugned rule is illegal and invalid. A similar contention has also been made by Mr. Sudhendu Mukherjee, learned counsel appearing on behalf of the University of Calcutta. On the other hand, it is submitted on behalf of the Bar Council of India that the provision of Section 7(h) of the Act in so far as it provides for consultation with the Universities by the Bar Council of India for the purpose of laying down the standards of legal education, is directory and not mandatory and consequently, non-consultation by the Bar Council of India with the University will not make the impugned rule invalid on that ground. It is also submitted on behalf of the Bar Council of India that there are documents to show that such consultation was made by it with the Calcutta University.

19. As on another ground we have held the impugned rule to be invalid. It is not necessary for us to consider whether non-consultation by the Bar Council of India with the University of Calcutta before the impugned rule was made will render it inoperative and void.

20. For the reasons aforesaid, the judgment and order of the learned Judge is set aside and the Rule Nisi is made absolute. The impugned Rule 1(1), Part IV of the Bar Council of India Rules is declared inoperative and void. Let a writ in the nature of *certiorari* issue quashing the impugned rule and the decision of the Bar Council of West Bengal rejecting the application of the appellant for her enrolment as an advocate as contained in the said letter dated February 19, 1982 of the Assistant Secretary of the said Council. Further, let a writ in the nature of *mandamus* issue commanding the respondents Nos. 1, 2 and 3 to enrol the appellant as an advocate and to take immediate steps in that regard.

21. The appeal is allowed, but in the facts and circumstances of the case, there will be no order as to costs.

22. On the prayer made on behalf of the learned Advocate for the Bar Council of India, we stay the operation of this judgment for a period of two weeks from date.

**C.K. Banerji, J.**

23. I agree.

Appeal allowed.