

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH
WRIT PETITION No. 7551 of 2016**

BETWEEN:-

**HIGH COURT ADVOCATES BAR ASSOCIATION THR. ITS
SECRETARY 1ST FLOOR M.P. HIGH COURT BUILDING
JABALPUR (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI ANIL KHARE - SENIOR ADVOCATE, SHRI MANOJ SHARMA -
SENIOR ADVOCATE, SHRI SANJAY AGRAWAL - SENIOR ADVOCATE,
ASSISTED BY SHRI K.N. FAKHRUDDIN - ADVOCATE, SHRI RAJMANI
MISHRA - ADVOCATE, SHRI ABHISHEK GULATEE - ADVOCATE AND
SHRI MANOJ KUMAR RAJAK - ADVOCATE)***

AND

- 1. BAR COUNCIL OF INDIA NEW DELHI THR. ITS
SECRETARY 21 ROUSE AVENUE INSTITUTIONAL
AREA NEAR BAL BHAWAN NEW DELHI (DELHI)**
- 2. SECRETARY STATE BAR COUNCIL HIGH COURT
CAMPUS JABALPUR (MADHYA PRADESH)**
- 3. SECRETARY MADHYA PRADESH HIGH COURT
BAR ASSOCIATION HIGH COURT CAMPUS
(MADHYA PRADESH)**
- 4. SECRETARY GENERAL DEMOCRATIC LAWYERS
FORUM 80/2 TULSINAGAR COLONY, CHERITAL
WARD (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI UDYAN TIWARI - ADVOCATE FOR THE RESPONDENT NO.1,
SHRI VIPIN YADAV - ADVOCATE FOR THE RESPONDENT NO.2, SHRI
SANJAY VERMA - ADVOCATE FOR THE RESPONDENT NO.3 AND SHRI
RAVINDRA GUPTA - ADVOCATE FOR THE RESPONDENT NO.4)***

***Reserved on : 16.02.2024
Delivered on : 03.05.2024***

*This petition having been heard and reserved for orders, **Hon'ble Justice Vivek Agarwal** pronounced the following:*

ORDER

This writ petition is filed by the High Court Advocates Bar Association, through its Secretary, challenging the order dated 5.02.2018, whereby, the Bar council of Madhya Pradesh (Recognition Committee) in Recognition Case No.01/2017, where, High Court Advocates Bar Association, Jabalpur, was an applicant, Madhya Pradesh High Court Bar Association, Jabalpur, who is respondent No.2 herein, was an objector and Democratic Lawyers Forum, Jabalpur, was an intervener therein and is respondent No.4 herein, were also parties and represented through their counsel, took a decision to not to grant separate recognition, to the High Court Advocates Bar Association, Jabalpur. While rejecting the application of the High Court Advocates Bar Association for recognition, the Recognition Committee expressed its anguish to the situation under which some Senior Advocates were compelled to dissociate themselves from the objector Association and to search for separate facility/accommodation. It also directed the State Bar Council to take note of the acts of intolerance and directed to frame appropriate rules to meet said situation.

2. Vide amendment made on 01.11.2023 in compliance of the Court's order dated 01.03.2016, filed by the petitioner High Court Advocates Bar Association, it is added that before the State Bar Council of Madhya Pradesh the object seeking recognition is for the purposes of availing benefits of the welfare schemes launched by the Bar Council of India and the State Bar Council.

3. Shri Sanjay Agrawal, learned Senior Advocate, submits that the petitioners

are also challenging the resolution Annx.P/5, Annx.P/6 and Annx.P/12, passed from time to time being Resolution No.216/GB/07, dated 13.10.2007 (Annx.P/5), whereby, an application received from the President High Court Advocates Bar Association, Jabalpur, in respect of granting recognition to it was considered and it was resolved that as per norms and policies of the State Bar Council of Madhya Pradesh at a place where the Bench of Hon'ble High Court of Madhya Pradesh is functioning, only one Bar Association can be given recognition. Under the above circumstances, it noted that it is not possible for the Council to concede the request of the High Court Advocates Bar Association, Jabalpur.

4 . Similarly, prior to that, a resolution was passed on 25.11.2005, bearing Resolution No.262/GB/05, whereby, the State Bar Council of Madhya Pradesh, resolved by placing on record that at one place, there shall be only one Bar Association except High Court Bar Association at Gwalior, Indore & Jabalpur, which have been given special recognition. The General body of the Bar council resolved to request Hon'ble the High Court, district Judges in all districts as well as Government of Madhya Pradesh to invite only leaders of recognized Bar Association for any function.

5. It is also resolved that if the State Bar Council of Madhya Pradesh and the recognized Bar Association are not given due respect and a proper recognition by any of the authorities/institutions, then Bar Council will be constrained to think about it otherwise.

6 . Petitioners are also challenging order Annx.P/12, which is the resolution dated 05.02.2018, rejecting application for recognition to the Madhya Pradesh High Court Advocates' Bar Association.

7. Shri Sanjay Agrawal, learned Senior Advocate, submits that as per the

provisions contained in Section 2(m), 6(1)(a), 6(1)(dd), Section 6(2), Section 15(1) and Section 15(3), Section 28 and Sections 49(ag) and (ah) of the Advocates Act, 1961 are *pari materia* for deciding this case.

8 . Reliance is also placed on the provisions contained in Section 2(a), 2(b) and Section 16 of the Adhivakta Kalyan Nidhi Adhiniyam, 1982 (hereinafter referred to as 'the Act of 1982 for short) and submits that in view of the aforesaid provisions, the order of rejection passed by the State Bar Council is *de hors* the law. It is pointed out that vide order sheet dated 22.02.2017, a Coordinate Bench of this Court headed by Justice Shri Rajendra Menon, Acting Chief Justice and Justice Shri H.P. Singh, as they were then, had noted that the Bar Council did not act in accordance with law and directed the Bar Council to decide pending application as was filed by the petitioner vide order Annx.P/9.

9. When this case was taken up for hearing by this Bench after the previous Bench had recused itself from hearing the matter vide order dated 17.01.2024, requesting Hon'ble the Chief Justice for further action and this case has come to be placed before this Bench which started hearing on 25.01.2024, learned *amicus curiae*, did not appear on any of the dates. As far as this Bench understands appointment of *amicus curiae* is for the life of the case unless he chooses to withdraw himself from the matter under intimation to the Court.

10. After arguing that Bar Council has not acted in accordance with law, as noted by a Coordinate Bench, it is submitted that they are also placing reliance on the provisions contained in the Certificate and Place of Practice (Verification) Rules, 2015 and Society Registrakaran Adhiniyam, and reading extensively from Rule 4(9), 34, 6.1, 6.2 and 6.3 of the said Rules, it is submitted that the act of the Bar Council in denying recognition is illegal.

11. Placing reliance on the Division Bench Judgment of Madras High Court in ***Madras High Court Association, Chennai, Secretary Bar Council of Tamil Nadu and another (AIR 2015 Madras 213)***, so also on the judgment of Madras High Court in ***Gobichettipalayam Association Vs. The Bar Council of Tamil Nadu [2012 SC Online Madras 2050]***, it is submitted that Coordinate Bench vide its order dated 22.02.2017, had observed that there is nothing in the statute, rules or regulation which prohibits recognition of a Bar Association in one Court or one place where already a Bar Association is functioning under recognition by the State Bar Council.

12. Shri Sanjay Agrawal, Sr. Advocate, fairly admits that earlier orders of rejection have merged in order Annx.P/12 dated 05.02.2018 and, therefore, his main emphasis will be on challenging the order dated 05.02.2018 and getting it set aside.

13. Shri Vipin Yadav, appearing for the Madhya Pradesh State Bar council, submits that return was filed by the Bar Council in the year 2017, whereas, impugned order was passed in February 2018 and petitioners took long five years to amend the petition. It is also submitted that petitioner has membership of 330 members, whereas, respondent No.3 High Court Bar Association has membership of 1600 members. All the 330 members belonging to the petitioner Association are either members of the respondent No.3 Association or the District Court Bar Association. Therefore, there will be no deprivation of the facilities which are available to a member of registered Bar Association.

14. Shri Vipin Yadav also raises a question on the locus of the petitioner by submitting that there is no resolution of the general body of the petitioner Association to file the petition and since all the 330 members are getting facilities by virtue of their being a member either of the High Court Bar

Association or of the District Court Bar Association, petition is liable to be dismissed.

15. Shri Yadav, places reliance on the Division Bench decision of this High Court in *Swakshagrahi Sangh, Janpad Panchayat, Niwas Vs. Union of India, in W.A.No.91/2022, decided on 15.03.2022*, so also on the judgment of High Court in *Prabhat Vs. Barkatulla University [2011 ILR MP 1691]*, that a writ petition for enforcement of the rights of its members as distinguished from the rights of the Association as a body can be filed by the Association acting through its office bearers whether the Association is registered or unregistered, incorporated or not, only when the Association can satisfy the Court that if an adverse decision is given in that petition, all the members of that Association or "body of individuals" will be bound by the decision. Thus, it is submitted that in absence of any resolution, no effective petition can be said to be maintainable.

16. Shri Sanjay Verma, learned counsel for the respondent No.3-M.P. High Court Bar Association submits that the delay in filing the amendment to challenge order Annx.P/12, is not properly explained and, thereafter, on reading para 4 of the petition, it is submitted that since delay is not properly explained, petition is liable to be dismissed on the ground of delay and laches.

17. Shri Udayan Tiwari, learned counsel appearing for the Bar Council of India, submits that there is no involvement of Bar Council of India for the present, as to whether grant recognition or not, is the specific and special prerogative of the State Bar council and at this stage, Bar Council of India has no role to play.

18. Shri Ravindra Gupta, learned counsel for the respondent No.4, submits

that no grounds have been made to seek a declaration that the resolutions dated 25.11.2005 and 13.10.2007 or the one thereafter passed on 05.02.2018 as ultra vires. Placing reliance on judgment of Supreme Court in ***Binoy Viswam Vs. Union of India and others (AIR 2017 SC 2967)*** and also ***Vasavi Engineering College Parents Association Vs. State of Telangana and others (AIR 2019 SC 4731)***, it is submitted that the petitioner has no locus in the matter and the principle being of one premises, one Bar which is applicable in the present case, therefore, petition be dismissed.

19. Learned counsel for the petitioner, thereafter, placing reliance on the achievements of the petitioner Association submits that petitioner Association has done remarkable work for the welfare of the Advocates and, therefore, they are entitled to be given separate recognition.

20. Reading from a long list of law lectures organized by the petitioner Association from time to time, it is submitted that their Association is registered under the Madhya Pradesh Society Registrarian Adhiniyam, 1973. Its' Bar room was inaugurated on 26.09.2008 by the then Hon'ble Chief Justice, its library was inaugurated on 14.11.2009 by the then Chief Justice in presence of other Supreme Court and High Court Judges.

21. Its' conference room was inaugurated on 08.04.2011 by the then Administrative Judge. E-Library was inaugurated on 30.04.2016 by the then Chief Justice. Additional space was allotted to the Bar Association by Hon'ble Shri Justice Hemant Gupta vide order dated 19.07.2017. Thus, it is submitted that petitioners have made huge investment and they cannot be thrown out lightly.

22. It is submitted that successive Chief Justices have recognized the petitioner Association and allotment of additional adjoining space by the then

Hon'ble Chief Justice Shri Hemant Gupta vide order dated 19.07.2017 is an indirect recognition to the petitioner Association, inasmuch as, that additional space was inaugurated by the then Chief Minister of the State of Madhya Pradesh and the then Chief Justice of the Madhya Pradesh High Court in presence of other Hon'ble Judges. It is also submitted that after having spent lacs and lacs of rupees, it cannot be said that they can be uprooted over night overlooking their expenses since 2006.

23 . It is further submitted that petitioner Association can exist as an Association without recognition from the State Bar Council and, therefore, there is no need to subject decision of Hon'ble the Chief Justice to allot space to the petitioner Association, to a judicial review. It is also submitted that President of petitioner Association is a member of the High Court Rule Making Committee, whereas, in Committee No.33, which is the Apex Committee for redressal of grievances of litigant and members of Bar Association President of the petitioner is a special invitee.

24. It is also submitted that in view of the law laid down by the Supreme Court in ***Supreme Court Bar Association and others Vs. B.D. Kaushik [(2011) 13 SCC 74]***, the decision to not to grant recognition, is arbitrary and unjust and, therefore, said order be set aside and Bar Council be directed to give recognition to the petitioner Association.

25. After hearing learned counsel for the parties and going through the record, statements of objects and reasons for enacting the Advocates' Act 1961, is to implement the recommendations of the All India Bar Committees made in 1953, after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendations

relate to the Bar and the legal education. As per the main features of the Bill which resulted in enactment, namely, the Advocates' Act 1961, are -

- "(1) the establishment of an All India Bar Council and a common roll having a right to practice in any part of the country and in any Court, including the Supreme Court;
- (2) the integration of the bar into a single class of legal practitioners known as advocates;
- (3) the prescription of a uniform qualification for the admission of persons to be advocates;
- (4) the division of advocates into senior advocates and other advocates based on merit;
- (5) the creation of autonomous Bar Councils, one for the whole of India and one for each State."

26. Thus, the emphasis of the Bill was to have integration of the Bar into a single class of legal practitioner known as advocates and the only division sought to be achieved was to classify the advocates into two classes, namely, senior advocates and other advocates based on merit.

27. Vide Act No.70 of 1993, on the basis of various proposals made by the Bar Council of India and certain other bodies and the experience gained in the administration of the Advocates Act, 1961 (25 of 1961), it was found necessary to amend the Act with a view to enable the Bar Council of India and the State Bar Council to function more effectively for the betterment of the legal profession. The Bill proposed, *inter alia*, to -

- "(i) empower the State Bar councils to promote the growth of Bar Association for purposes of implementing the welfare schemes for advocates and to visit and inspect Universities on the directions of the Bar Council of India and to constitute funds for establishing law libraries;

(ii) provide for automatic cessation of membership of members of the State Bar Councils in the event of non-holding of elections within the stipulated period and making consequential arrangements."

28. Thus, it is evident that the Act 70 of 1993, had an object to promote the growth of Bar Association for purposes of implementing the welfare schemes for advocates at its heart.

29. Thus, the purpose of a Bar Association mainly revolves with an object to seek implementation of the welfare schemes for the advocates. Section 2(m) of Advocates Act of 1961, defines "State Bar council" means a Bar Council constituted under section 3.

30. Section 6(1)(a) of Advocates Act of 1961, on which reliance is placed by Shri Sanjay Agrawal, learned Senior Advocate, deals with the functions of the State Bar Councils to admit persons as advocates on its roll.

31. Section 6(1)(dd) of Advocates Act of 1961, deals with the object to promote the growth of Bar Association for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7.

32. Section 6(2) of Advocates Act of 1961, empowers the State Bar council to constitute one or more funds in prescribed manner for the purposes of -

- (a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;
- (b) giving legal aid or advice in accordance with the rules made in this behalf;
- (c) establishing law libraries.

33. Similarly, sub-section (2) of Section 7 of Advocates Act of 1961, deals with the functions of the Bar Council of India.

34. Section 15(1) of Advocates Act of 1961, respectively deals with the power of a Bar Council to make rules to carry out the purposes of this Chapter. It further provides that no rule made under this Section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.

35. Section 28 of Advocates Act of 1961, deals with power to make rules and Section 49(ag) is part of Section 49, which deals with general power of Bar Council of India to make rules and Section 49(1)(ag) deals with the class or category of persons entitled to be enrolled as advocates.

36. Section 49(ah) of Advocates Act of 1961, deals with the conditions 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, has no meaning in the present context, inasmuch as, neither the class or category of persons entitled to be enrolled as advocates, nor the conditions subject to which right to practice and circumstances under which a person shall be deemed to be practice as an advocate, are going to be affected by non grant of recognition. Therefore, even provisions contained in Sections 49(ag) and 49(ah) have no application to the facts of the present case.

37. Thus, it is evident that except for Section 15(3) of the Advocates Act, 1961 too has no application to the facts of the present case. Mr. Udyan Tiwari, learned counsel appearing for the Bar council of India has admitted that it is a specific prerogative of the State Bar Council to grant or not to grant recognition. Thus, the policy decisions prescribing within 'One Bar Association at One Place', passed by the State Bar Council, inasmuch as, these resolutions being not the rules, will not be hit by sub-section (3) of Section 15 of the

Advocates Act of 1961, as suggested by Shri Sanjay Agrawal, learned Senior Advocate for the petitioner.

38. Shri Sanjay Agrawal, learned Senior Advocate, has put lot of emphasis on Section 2(a), 2(b) and Section 16 of the Act of 1982. Section 2(a) of the Act of 1982, defines "**advocate**" in the following terms :-

"2(a) "advocate" means a person whose name has been entered in the State roll of advocates prepared and maintained by the Bar Council of Madhya Pradesh under section 17 of the Advocates Act 1961 (No.25 of 1961) and who is a member of a Bar Association."

39. Section 2(b) of the Act of 1982, defines "**Bar Association**" and Section 16(1) thereof provides that an association of advocates, known by any name, functioning in any part of the State may, before a date to be notified by the Bar council in this behalf, apply for recognition and registration, to the Bar Council in such form and on payment of such annual subscription, or other fees as the Bar Council may, from time to time, determine. Sub-section (4) of Section 16, provides that the decision of the Bar Council regarding the recognition and registration of a Bar Association shall be final.

40. Before advertng to the provisions contained in Section 17 of the Act of 1982, it is apparent that the aim and object of the said Act is to provide for the constitution of a welfare fund for running various schemes for the social security and welfare of advocates in the State of Madhya Pradesh and for matters connected there with or incidental thereto.

41. When this aim and object are read with the duties of Bar Association, then it is evident that purpose of the Act of 1982, being to administer welfare schemes for the social security and welfare of advocates which can be

administered only through a Bar Association recognized by the Bar Council, then it is evident that by virtue of the fact that all the 330 odd members of the petitioner-Association being also members of the High Court Bar Association or the District Court Bar Association, which are duly recognized by the Bar Council of Madhya Pradesh under Section 16, are being administered the welfare schemes which is the aim and object of Act of 1982. Therefore, there appears to be no justification for registration of a parallel body when the aim and object of Act of 1982 and the aim and object of the Advocates Act 1961 are being already fulfilled. Thus, prima facie there is no justification for recognizing a parallel body without there being any averment that their members are being not administered the socially beneficial provisions of either the Advocates Act of 1961 or the Act of 1982.

42. In fact, law laid down in case of *Gobichettipalayam Association* (supra), is distinguishable on its own facts. In that case, facts are different. The splinter group which sought recognition was denied membership by the parent group, resulting in non-availability of the welfare fund, stamps and also benefit of other welfare schemes floated by the State/Bar Council of India when under those typical circumstances the High Court of Judicature at Madras opined that splinter group should have been given recognition, but facts of the present case are different. There is neither a pleading of non-availability of welfare scheme benefits nor any averment in this regard.

43. Similarly, in case of *Madras High Court Advocates Association Vs. The Secretary, Bar Council of Tamil Nadu Advocates Association* (supra), wherein, it is held that order by Bar Council granting recognition is an administrative order. Petitioner Association is not a person aggrieved by the impugned order. Recognition of an Association is contemplated by the Act, only to be a matter

between the Bar Council and the Association applying for it. Grant of recognition does not confer any benefit upon the Association except an obligation to vend welfare stamps and keep accounts. Paras 73, 74 & 74 of the said judgment read as under :-

"73. The power of the Bar council to grant recognition is a dynamic one both in terms of the provisions of the Statute and as a matter of necessity. Today, the courts functioning in various places in a town or city get relocated very often in an integrated complex put up for the purpose. Similarly, there are also cases where the courts functioning in a unified complex get relocated at different places. Therefore, disintegration and integration of existing associations and the birth of new associations have become a necessity of time.

74. There are also other situations, which lead to the birth of new associations. One such instance was in *Gobichettipalayam Bar Association* case.

75. We cannot lose sight of the fact that by the very nature of the profession that they carry on, no two members of the fraternity can agree upon the same thing in the same way. It is a profession of intellectuals (expected to be) where conflict of opinions is the rule and consensus is the exception. Therefore, it is inevitable that one group of persons or the other, break away from a recognized association on ideological basis (if there was any). In such circumstances, the power conferred upon the Bar council to recognize more than one association in a court centre has to be construed as a dynamic one, as otherwise there will be no scope for dissent. It is only in a society where dissent is welcome that a thesis newly formulated, would acquire the character of a synthesis, after being processed through a variety of objections and hypothesis."

44. Thus, it is evident that if petitioners Association claim themselves to be a break away from a recognized association, then they are required to plead and

prove that what was the ideological basis for drifting away from the parent Association. When examined in this back drop, then in absence of any pleadings to show that there was any ideological basis for formation of another Association i.e. the petitioner Association, law laid down in case of Madras High Court Advocates Association too will not have any application.

45. As far as law laid down in case of *Supreme Court Bar Association and others Vs. B.D. Kaushik* (supra), is concerned, para 28 and 80 have been referred to.

46. Para 28, of the judgment in *Supreme Court Bar Association and others Vs. B.D. Kaushik* (supra), deals with distinction between Court annexed Bar Association, which constitute a separate class different from other Lawyers', Association such as Lawyers', Forum, All India Advocates' Association etc. as they are always recognized by the Court concerned. It is held that Court annexed Bar Associations function as part of the machinery for administration of justice. Thus, for recognition to another Court annexed Bar Association, it is necessary for such Association, herein the petitioner Association, to point out that their members are being discriminated and have not been extended the benefits of welfare schemes as was the case in *Gobichettypalayam Bar Association*. In para 80, of *B.D. Kaushik (supra)* the principle is different, it is 'One Bar One Vote'. The purpose is to curtail demand of spaces by members of a Bar Association, claiming membership at different forums in view of the paucity of the space etc.

47. In view of the said facts, the Supreme Court exercising its power to make certain rules, regulations and give directions to fill up the vacuum till such time appropriate steps were taken to cover the gap, it is held that this is permissible

in light of judgment of Supreme Court in *Vineet Narain Vs. Union of India and others [(1998) 1 SCC 226]*. Para 84 of the judgment in case of *B.D. Kaushik* (supra) reads as under :-

"84. The power of this Court to make certain rules, regulations and give directions to fill up the vacuum till such time appropriate steps in order to cover the gap are taken, is recognised and upheld in several reported decisions of this Court. In *Vineet Narain v. Union of India [(1998) 1 SCC 226 : 1998 SCC (Cri) 307]* this Court has observed as under in para 51 of the reported decision : (SCC pp. 265-66)

"51. In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In *Erach Sam Kanga v. Union of India [WP No. 2632 of 1978 decided on 20-3-1979 (SC)]* the Constitution Bench laid down certain guidelines relating to the Emigration Act. In *Lakshmi Kant Pandey v. Union of India [(1984) 2 SCC 244]* (Foreign Adoption, In re), guidelines for adoption of minor children by foreigners were laid down. Similarly in *State of W.B. v. Sampat Lal [(1985) 1 SCC 317 : 1985 SCC (Cri) 62]*, *K. Veeraswami v. Union of India [(1991) 3 SCC 655 : 1991 SCC (Cri) 734]*, *Union Carbide Corpn. v. Union of India [(1991) 4 SCC 584]*, *Delhi Judicial Service Assn. v. State of Gujarat [(1991) 4 SCC 406]* (Nadiad case), *DDA v. Skipper Construction Co. (P) Ltd. [(1996) 4 SCC 622]* and *Dinesh Trivedi v. Union of India [(1997) 4 SCC 306]* guidelines were laid down having the effect of law, requiring rigid compliance. In *Supreme Court Advocates-on-Record Assn. v. Union of India [(1993) 4 SCC 441]* (Ind Judges case), a nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in *Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932]*, elaborate guidelines have

been laid down for observance in workplaces relating to sexual harassment of working women.”

48. Thus, two issues are dealt with in case of **B.D. Kaushik** (supra), namely, there should be 'One Bar One Vote', which is not the subject matter of the present controversy and another as discussed in paragraph 28, that there is a separate class of court annexed Bar Associations, different from other Lawyers' Association etc. Thus, when examined in the light of the ratio of *Supreme Court Bar Association Vs. B.D. Kaushik* (supra), then Court annexed Bar Association being a different class, cannot be allowed to be diluted by the Court merely for the convenience of certain members of the petitioner Association, without there being any ideological basis for their separation as has been discussed by the High Court of Judicature at Madras in *Madras High Court Advocates' Association* (supra).

49. Rules with regard to verification of certificate and place of practice of advocates in Clause 4(g), defines 'Bar Association' of a given area/town/city, means an area/territory and court work based Association of Advocates, whether registered under the Societies Registration Act or not, having its area/territory defined in terms of the whole or part of territorial jurisdiction of Courts/Tribunals/persons or any other Authorities legally competent to take evidence before which its members ordinarily practice law and it includes Bar Association exclusively dealing in specific fields of law viz. Income Tax/Corporate Law/Central/State Excise Law etc., in relation to the authorities/tribunals/boards etc. thereunder. Thus, it is evident that Verification of Certificate and Place of Practice Rules, 2015, in clause 4(g), places specific emphasis on Court Work Based Association of Advocates. Thus, when

examined from this aspect, then on the basis of the Court work, petitioners have no claim to form another Association of Advocates for the High Court of Madhya Pradesh at Jabalpur.

50. Clause 6.1, 6.2 and 6.3, deals with Advocate to be a Member of the Bar Association, where he/she normally practices law. These provisions too will have no application to claim separate recognition, inasmuch as, there is no rebuttal by Shri Sanjay Agrawal, learned Senior Advocate, to the submission made by Shri Vipin Yadav, Advocate, that all the members of the Petitioner Association are either members of the High Court Bar Association or the District Bar Association and are getting benefits of the Welfare Scheme floated by the State Bar Council or the local Bar Association.

51. In fact, Rule 6.1, provides that decision of the State Bar Council shall be final in this regard and when this aspect is taken into consideration, then decision to not to grant recognition cannot be said to be arbitrary or illegal.

52. Similarly, reliance on Rule 34 of the Rules of 2015, too will not help the petitioner, inasmuch as, Rule 34 provides for repeal of all resolutions/rules passed/framed either by any State Bar Council or by Bar Council of India, which are inconsistent with the Rules of 2015. When Rule 4(g), Rule 6.1, 6.2 & 6.3 on which reliance is placed are read with the provisions contained in Advocates Act 1961 and the Act of 1982, then in fact, they reinforce the concept of one Bar at One Place. Rule 4(g), specifically highlights Court Work Based Association on Advocates and that being so, there being no inconsistency, even Rule 34, will not have any application.

53. The Supreme Court in ***Ranjit Thakur Vs. Union of India and others*** [(1987) 4 SCC 611] has held that "*judicial review generally speaking, is not directed against a decision, but is directed against the "decision making*

process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In Council of Civil Service Unions Vs. Minister for the Civil Service, Lord Diplock said :

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community;....."

54. Thus, it is evident that while seeking a judicial review, it is necessary to point out that decision is illegal irrational and suffers from procedural

impropriety. It is submitted that since none of the three grounds have been made by the petitioner, therefore, petition is liable to be dismissed.

55. Supreme Court in *Union of India and others Vs. G. Ganayutham [(1997) 7 SCC 463]*, has held that ground for judicial review are mainly two, namely, 'Reasonableness and Rationality'. Besides this principle of proportionality can also be invoked where the Court is examining whether the restrictions on fundamental freedoms imposed by a Statute are within the Constitutional limits. In this case also referring to earlier judgment of Supreme Court in *Ranjit Thakur* (supra), aspect of proportionality has been dealt with.

In para 31, Hon'ble Supreme Court has held as under :-

"31. The current position of proportionality in administrative law in England and India can be summarised as follows:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury [(1948) 1 KB 223 : (1947) 2 All ER 680] test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational — in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled

out. These are the CCSU [1985 AC 374 : (1984) 3 All ER 935] principles.

(3)(a) As per Bugdaycay [R. v. Ministry of Defence, ex p Smith, (1996) 1 All ER 257] , Brind [(1991) 1 AC 696 : (1991) 1 All ER 720] and Smith [Cunliffe v. Commonwealth, [(1994) 68 Aust LJ 791] (at 827, 839) (also 799, 810, 821), Australian Capital Tel. Co. v. Commonwealth, 1992 CL p. 106 (at 157) (Aus), R. v. Oake, 1987 Law Reports of Commonwealth 477 (at 500) (Can), R. v. Big M Drug Mart Ltd., (1985) 1 SCR 295 (Can)] as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of “proportionality” and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend

fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14."

56. Thus, it is evident that there being no illegality, irrationality or procedural impropriety in the decision of the State Bar Council, it does not call for interference. Submission of Shri Vipin Yadav, learned counsel placing reliance on the decision of a Division Bench of this High Court in ***Swakshtagrahi Sangh, Janpad Panchayat Niwas Vs. Union of India and others, Writ Appeal No.91 of 2022, decided on 15.03.2022***, to point out that the petition in absence of resolution and authorisation, is not maintainable in the light of the decision of the High Court in ***Prabhat Vs. Barkatulla University [2011 ILR MP 1692]***, has strong foundation.

57. Thus, decision in ***Binvoy Viswam Vs. Union of India and others (AIR 2017 SC 2967)***, has a direct application to the facts of the case, inasmuch as, neither any violation of the Advocates Act of 1961 nor that of the Act of 1982, could be brought on record. Thus, the decision making of the Bar Council being not in question and in the light of the decision of Supreme Court in ***Ranjit Thakur*** (supra), three limbs of decision making being not questioned on the touchstone of they being either illegal, irrational or suffering from procedural impropriety, there is no scope for indulgence in the matter of decision taken by the State Bar Council of Madhya Pradesh.

58. Similarly, in the light of the law laid down in case of ***Vasavi Engineering College Parents Association*** (supra), wherein, it is held that in the garb of judicial review, Court neither can usurp jurisdiction of decision maker and make decision itself nor can act as appellate authority. Thus, there is no scope for

indulgence in the matter of decision taken by the State Bar Council of Madhya Pradesh, specially when petitioners have failed to make out a case of discrimination illegality, irrationality and procedural impropriety.

59. Thus, when it is not contended that by denying the recognition, the act of the State Bar Council has caused any affect to the fundamental freedom of petitioner Association, it cannot be said that petitioners have any right to seek separate recognition without there being any object for the same, specially when it has failed to make out a case that its members are being denied benefits of the welfare scheme, which they are even otherwise getting by virtue of their dual membership, High Court Bar Association or district Bar Association which are recognized Bar Associations. Thus, in view of para 34 of the judgment of Supreme Court in *G. Ganayutham* (supra), this Court is not able to come to a conclusion that on the basis of the material before us that the decision of the Bar Council is irrational according to Wednesbury or CCSU norms, the order of not granting recognition, cannot be set aside.

60. Accordingly, petition deserves to be and is, hereby, dismissed.

(VIVEK AGARWAL)
JUDGE

A.Praj.

(AVANINDRA KUMAR SINGH)
JUDGE