

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 334 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 2403 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/LETTERS PATENT APPEAL NO. 334 of 2025

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HIGH COURT OF GUJARAT

Versus

NEHA VIVEK DWIVEDI & ORS.

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Appearance:

MR G.M. JOSHI, SENIOR ADVOCATE, with MR CHINTAN N DESAI(9940)
 for the Appellant(s) No. 1

MR.SUDHNASHU JHA FOR RESPONDENT NOS.1 AND 2

MR.MITHIL MEHTA FOR RESPONDENT NO.3

MR SAURABH MEHTA FOR RESPONDENT NO.3

MS.NIRALI SARDA, AGP FOR RESPONDENT NO.4

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CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE GITA GOPI

Date : 27/02/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present Letters Patent Appeal filed under Clause 15 of the Letters Patent, 1865 emanates from the interim order dated 24.02.2025 passed by the learned Single Judge in the captioned writ petition directing the respondent No.2 - Bar Council of Gujarat (BCG) to issue Provisional Certificate of practice to the petitioners and also to the respondent No.1 i.e. the present appellant - High Court of Gujarat to allow the petitioners to participate in the recruitment process for the post of Civil Judges. However, the learned Single Judge has clarified that no appointment shall be given to the petitioners even if, they succeed, till the issue about the recognition of

the college from where the petitioners have studied, is decided by this Court.

2. Learned Senior Advocate Mr.G.M.Joshi assisted by learned advocate Mr.Chintan N. Desai appearing for the appellant - High Court of Gujarat has submitted that as per Clause (2) of the advertisement, the original petitioners are supposed to be practicing as Advocates in Courts of Civil and/ or Criminal Jurisdiction on the last date fixed for submission of Online Application. It is submitted that the said clause has been introduced in view of Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005, which mandates that in order to get recruited in the cadre of Civil Judges by way of direct recruitment, the candidate must be practicing as an advocate in Courts of Civil and / or Criminal jurisdiction on the last date fixed for receipt of applications; or must have worked in Courts or other allied departments for at least five years. It is submitted that in view of the directions issued by the learned Single Judges in the writ petitions filed by the present respondents - original petitioners, the Bar Council of Gujarat has issued Enrolment Intimation Letters dated 26.02.2025 and also issued provisional permission to practice as advocates, but they cannot be said to be practicing advocates. It is submitted that the statutory Rules will prevail over the Enrollment Intimation Letters as well as provisional permission to practice as advocates, which have been issued on 26.02.2025.

3. In support of his submission, learned Senior Advocate Mr. Joshi has placed reliance on the judgment of the Supreme

Court in the case of Abhimeet Sinha & Ors. vs High Court Of Judicature At Patna, (2024) 7 S.C.C. 262 and has submitted that the statutory Rules will govern the recruitment process. It is submitted that as on today, it cannot be said that the petitioners are practicing advocates in Courts of Civil or Criminal Jurisdiction on the last date fixed for receipt of applications.

4. Learned Senior Advocate Mr.Joshi has submitted that the writ petition filed by the present respondent Nos.1 and 2 – original petitioners, who are similarly situated to other candidates, have assailed the action of the Bar Council of India (BCI), wherein the colleges, from which they have obtained the Law Graduate Degree, have not been granted approval of conducting three years course of LL.B, and it is held that the said college is functioning in total violation and in contravention to the Legal Education Rules. It is submitted by learned Senior advocate Mr.Joshi that on the last moment the writ petitions are filed with a sole prayer seeking directions on the appellant – High Court of Gujarat to permit such candidates to appear in the interview and the administration is put into grave inconvenience because of such interim orders. Thus, it is urged that the interim order may be stayed.

5. Learned advocate Mr.Mithil Mehta appearing for the respondent No.3 – Bar Council of Gujarat (BCG) has submitted that in fact, the BCG cannot issue the Certificate of Practice, but as per the All India Bar Examination Rules, 2010, the Certificate of Practice can only be issued by the Bar Council of

India (BCI) and since, the learned Single Judge has directed the Bar Council of Gujarat, to issue such certificate, the Enrollment Intimation Letters have been issued on 26.02.2025 and on the very same date, the provisional permission to practice as advocates has been issued, as the Bar Council of Gujarat had no other option but to enroll them in view of the directions issued by the learned Single Judge. It is also submitted that the Bar Council of India is not made a party respondent in any of the writ petitions, except the present petition. It is submitted that the writ petition with regard to the recognition of the colleges is still pending and hence, the Enrolment Letters, which have been issued are conditional and it is specifically mentioned that they will not appear and argue the cases in any Courts of India and they cannot wear advocate's gowns and bands until they are admitted to the practice of law. It is submitted that the provisional permission to practice as advocates, is issued in view of the aforesaid directions though, it clarifies that such certificate has to be issued by the Bar Council of India and the certificates is valid up to 24.02.2027 or till you pass the All India Bar Exam. Thus, it is urged that as on today, the respondents - original petitioners cannot be said to be practicing advocates.

6. We have heard the learned advocates appearing for the respective parties. The learned Single by the interim order has issued the below mentioned directions. The same are as under:

*"Issue **NOTICE** to the respondents returnable on 27.02.2025. Learned advocate Mr. Chintan Desai waives service of notice for and on behalf of the respondent no. 1, learned advocate Mr. Mehta waives service of notice for and on behalf of the respondent no. 2*

and learned AGP Ms. Tanushree Shrimal waives service of notice for and on behalf of the respondent no. 3.

In the meantime, the respondent no. 2 – Bar Council of Gujarat is directed to issue provisional certificate of practice to the petitioners and the respondent no. 1 is directed to allow the petitioners only to the limited extent of participating in the recruitment process for the post of civil judges. However, no appointment shall be given to the petitioners even if, they succeed, till the issue about the recognition of the college from where the petitioners have studied is decided by the Court.”

7. It is not in dispute that the colleges from which the respondents – original petitioners have completed their LL.B. course, were scrutinized by the Bar Council of India and in a meeting held on 16.01.2024, the Standing Committee of the Bar Council of India has categorically declared as under:

“Keeping in view of the aforesaid adverse report submitted by the inspection team, the Standing Committee is of the view that as the CLE is functioning in total violation to and in contravention to the Legal Education Rules, the approval of affiliation to three year L.L.B. course cannot be granted. Hence, it is rejected.”

The said action is subject matter of challenge by the candidates before this Court in various writ petitions. In view of the order passed by the learned Single Judge dated 23.10.2024, the Bar Council of Gujarat has issued provisional permission to practice as advocates on 26.02.2025. On the very same day, an Enrolment Intimation Letters have been issued giving the enrolment numbers and date to such candidates with a condition that they will not appear and argue the cases in any Courts of India and they cannot wear Advocate’s gowns and bands until they are admitted to the practice of law. After this provisional permission granted by the Bar Council of Gujarat on 26.02.2025, pursuant to their

enrolment, they are allowed to practice for two years from the date of enrolment subject to filing of undertaking in the Proforma to be submitted to the State Bar Council. It is mentioned in the provisional permission to practice as an advocate that such Provisional Certificate is valid upto 24.02.2027 or till they pass the All India Bar Council exam.

8. At this stage, we may refer to Rule 7(2)(b) of the Gujarat State Judicial Service Rule, 2005. The same is incorporated as under:

“7(2)(b) must be practicing as an Advocate in courts of Civil and/or Criminal jurisdiction on the last date fixed for receipt of applications; or must have worked in Courts or other allied departments for at least five years;

9. As per the said Rule, a candidate must be practicing as an advocate in Courts of Civil and / or Criminal Jurisdiction on the last date fixed for receipt of applications. Unquestionably, the present respondents – original petitioners on the date of receipt of the applications are not actually practicing as advocates, either in Courts of Civil and / or Criminal Jurisdiction.

10. It is also not in dispute that the Bar Council of India is not arraigned as a party respondent in the present petition. As on today, the respondents – original petitioners are unable to show that in which Court they are actually practicing. Their period of practice or whether they are practicing on Civil Side or Criminal Side is also unknown. The authorities, who can issue such certificate are mentioned in Clause-6 (XII) of the Advertisement, have not issued the Certificate of Practice.

None of the respondents have the certificates specified per the mandate of Rule 7(2)(b) of the Gujarat State Judicial Service Rule, 2005.

11. At this stage, it is pertinent to note that in the writ petition, the petitioners have made a sole prayer for directing the respondent authorities to allow them to appear for Civil Judge Recruitment Examination initiated by respondent No.1 i.e. the present appellant - High Court of Gujarat and prayer 8(b) pertains to allow them to appear provisionally for Civil Judge Recruitment Examination. Thus, by granting interim order, the learned Single Judge has allowed the writ petition without examining the Rules. The respondents - original petitioners have not challenged the Rules. We have also perused the averments of the writ petition. The writ petition is bereft of any provision of law, under which the petitioners are claiming to appear in the recruitment process. None of the petitioners are able to point out that under which provisions of law, they can be allowed to appear in the recruitment process, even though they are not eligible as per the requirement of Rule 7(2)(b) of the Gujarat State Judicial Service Rule, 2005 nor they have able to satisfy that they are holding the Provisional Certificate issued by the authorities, as mentioned in Clause 6(XII).

12. The learned Single Judge, while granting the interim relief, has not discussed about the Rules, as mentioned hereinabove and the effect of such Rules. The learned Single Judge has premised the interim order only on the basis of the direction issued by the learned Single Judge in other writ

petitions, which are filed by the candidates challenging the actions of the Bar Council of India pertaining to the colleges from which they have obtained LL.B. Degree. The Bar Council of India has refused to approve the affiliation of the colleges from where the respondents - original petitioners have done their three years LL.B. course. The legality of their LL.B. course is yet to be examined. In such circumstances, the respondents - original petitioners cannot be allowed to participate in the recruitment process of Civil Judges. Their substratum of having done a valid and legal LL.B. course is unstable, and unless it is validated and declared legal, they cannot claim themselves to be legally practicing as per the requirement of Rule 7(2)(b) of the Gujarat State Judicial Service Rule, 2005. The sanctity of requirement of statutory Rule cannot be sullied by the process which is yet to be declared lawful. The obligation of statutory Rule has to be absolutely satisfied and is not reliant on future happenings.

13. Hence, we are inclined to stay the interim order passed by the learned Single Judge. The interim order does not deal with the provisions, as mentioned hereinabove, more particularly, Rule 7(2)(b) of the Gujarat State Judicial Service Rules, 2005 and satisfy such requirements. The learned Single Judge was supposed to delve into such Rules though, they are referred in the impugned order. We do not find any findings dealing with the Rules of the Gujarat State Judicial Service Rules, 2005 and also the provisions of the advertisement, mentioned hereinabove.

14. Issue **Notice** returnable on **05.03.2025**. Learned advocate Ms.Sudhanshu Jha waives service of notice on behalf

of respondent Nos.1 and 2, learned advocate Mr.Mithil Mehta waives service of notice on behalf of respondent No.3-BCG and learned AGP Ms.Nirali Sarda waives service of notice on behalf of respondent No.4-State.

15. The interim order dated 24.02.2025 passed by the learned Single Judge in the captioned writ petition is hereby stayed.

16. It is clarified that the observations made in the present order are only confined with regard to the interim order permitting the original petitioners to appear in the recruitment process.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI,J)

Pankaj / (P.C. Board)