

Bar Council Of India vs Aparna Basu Mallick on 25 January, 1994

Equivalent citations: 1994 AIR 1334, 1994 SCC (2) 102, AIR 1994 SUPREME COURT 1334, 1994 (2) SCC 102, 1994 AIR SCW 766, 1995 SCFBRC 32, (1994) 1 JT 141 (SC), 1994 (1) JT 141, 1994 (1) UJ (SC) 257, (1994) 1 CURLJ(CCR) 286, (1994) 2 SCT 72, (1994) 1 SERVLR 484

Author: A.M. Ahmadi

Bench: A.M. Ahmadi, M.M. Punchhi

PETITIONER:
BAR COUNCIL OF INDIA

Vs.

RESPONDENT:
APARNA BASU MALLICK

DATE OF JUDGMENT 25/01/1994

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
PUNCHHI, M.M.

CITATION:
1994 AIR 1334 1994 SCC (2) 102
JT 1994 (1) 141 1994 SCALE (1) 194

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by AHMADI, J.- This civil appeal and writ petition raise common questions which are capable of being disposed of by a common judgment. The facts in their abridged form may be noticed at the outset.

Facts of Civil Appeal No. 8816 of 1983

2. Respondent 1, a postgraduate in Political Science and Modern History, undertook studies in LL.B. course of the Calcutta University as a non-collegiate woman candidate under Regulation 35 of the Calcutta University, First Regulations, 1951 framed under the Calcutta University Act, 1951. The said regulation may be extracted at this stage:

"A woman candidate may be allowed to appear as 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 on 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."

On December 14, 1979, a proviso was added to the said regulation in following terms:

"Provided that the women candidates allowed to appear as noncollegiate students at the LL.B. Examination shall be informed in advance that they shall not be eligible for enrollment 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."

Respondent 1 passed the Preliminary Law Examination in 1977, the Intermediate Law Examination in 1979 and the Final Law Examination in 1980. On the successful completion of the course she was conferred the law degree in terms of Regulation 35 by the Calcutta University. Soon thereafter she applied to the Bar Council of West Bengal, for enrollment as an advocate and paid the fee of Rs 250. However, she was informed by the Assistant Secretary of the Bar Council that she was not entitled to be enrolled as she did not fulfill the condition of Rule 1(1)(c) of Part IV of the Bar Council of India Rules, 1975, hereafter called 'the Rules', which were brought into force w.e.f. September 6, 1975, framed under the provisions of the Advocates Act, 1961, hereinafter called 'the Act'. On learning of the rejection of her application for enrollment she moved the High Court of Calcutta by a writ petition under Article 226 of the Constitution. It was inter alia contended that Rule 1(1)(c) was ultra vires Articles 14 and 19(1)(g) of the Constitution and consequently the rejection of her application for enrollment was also illegal and invalid and hence the Bar Council of West Bengal should be directed to enroll her. The writ petition was contested by the Bar Council of India as well as the Bar Council of West Bengal which filed a counter-affidavit in support of the validity of the rule as well as its action based thereon. It is, however, significant to note that the University of Calcutta supported the petition.

3. When the writ petition came up for hearing before the learned Single Judge, the attack on Rule 1(1)(c) of Part IV was twofold, namely, that it violated Articles 14 and 19(1)(g) of the Constitution and was ultra vires Section 49(1)(d) of the Act and since it was framed without consulting the

University it was invalid and could not impinge on Regulation 35. The learned Single Judge overruled all the aforesaid contentions and discharged the rule nisi. Against the said decision an appeal came to be preferred. The Division Bench held that Rule 1 (1)(c) did not lay down any standard of legal education but provided that after March 12, 1967 a law degree obtained from any University in India shall not be recognised for the purpose of Section 24(1)(c)(iii) of Act unless the conditions specified in clauses (a) to (d) were satisfied. It further held that Section 49(1)(d) of the Act did not confer power to lay down conditions for enrollment, neither could such conditions be imposed under Sections 7(i) and 24(1)(c)(iii) of the Act. Indeed, the Court held, it was not the function of the Bar Council of India to lay down such conditions for recognition of the law degree. It further pointed out that the purport of Rule 1(1) was to amend Section 24(1)(c)(iii) and Section 7(i) of the Act which was clearly illegal. Thus the Division Bench held Rule 1 (1)(c) ultra vires Sections 7(i), 24(1)(c)(iii) and 49(1)(d) of the Act. On the plea that the rule was illegal as it was framed without prior consultation with the University, it declined to express any view. The appeal was thus allowed and hence this appeal by special leave.

4. We may mention that the Division Bench of the Calcutta High Court while allowing the appeal quashed the decision of the Bar Council and directed a mandate to issue commanding enrollment of the appellant as an advocate. The operation of the judgment was stayed for two weeks at the behest of the Bar Council of India. This Court while granting special leave stayed the operation of the impugned judgment until further orders.

Facts of Writ Petition No. 1153 of 1991

5. The petitioner who passed his Bachelor of Arts examination in 1953 and acquired a Master's degree in Economics in 1956, joined the Punjab Civil Service, Executive Branch, on May 8, 1957, which on reorganisation of the State w.e.f. November 1, 1966 was designated as Haryana Civil Service, Executive Branch. In due course he was promoted to the Indian Administrative Service and was allotted the year 1979. The petitioner contends that while in service of the Punjab and Haryana Governments he held a judicial office for more than ten years and exercised quasi-judicial powers for over seven years while performing duties in different capacities.

He has enumerated the different executive offices held by him from 1957 to 1990 which required him to exercise powers of Magistrate III Class and Magistrate 11 Class, Collector under Punjab Excise Act, 1914, revisional power of State Government under Section 42 of the East Punjab Consolidation of Holdings and Prevention of Fragmentation Act and under Sections 14 and 15 of the Haryana Cooperative Societies Act, 1984.

6. The petitioner further contends that on the recommendation of the Academic Council, vide Resolutions 30 and 33 dated September 15, 1973, the Executive Council of the Kurukshetra University decided by Resolution 6 of January 3, 1974 that the facility to appear as a private candidate for the LL.B. (Professional) examination be extended to the following:

"A member of any of the following services who has served in the State of Haryana for at least 3 years is also eligible to be admitted to the LL.B. examination:

- (i) Indian Administrative Service;
- (ii) Indian Police Service;
- (iii) Haryana Civil Service (Executive and Judicial);
- (iv) Haryana Police Service."

Officers of the Income Tax Department enumerated in Section 116 of the Income Tax Act were also added to this list by Resolution 26, dated March 5, 1974.

7. The petitioner claims to have undertaken a three-year LL.B. (Professional) course from May 1975 and to have appeared in the examinations held in 1975, 1976 and 1978 and secured a degree in 1978. According to him the question paper setters and the examiners of the answer books were the same for non-institutional as well as institutional candidates and no separate marks were reserved for internal assessments. Thus according to the petitioner the yardstick for assessing the worth of the candidates belonging to both the classes was the same and hence any discrimination on the basis of one belonging to the non-institutional category would fall within the mischief of Article 14 of the Constitution.

8. The Kurukshetra University is recognised for the purpose of Section 7 of the Act as one of the Universities whose degree in law is considered adequate qualification for enrollment as an advocate. The petitioner contends that by virtue of his experience spread over three years as an officer belonging to the Haryana Civil Service, he was considered eligible to appear in the LL.B. (Professional) examination as a non-collegiate student and had secured the degree in law after successfully clearing the examinations. The petitioner, to emphasise his point, contends that he possesses the qualifications for appointment as an Advocate General under Article 165 of the Constitution. In 1990 the petitioner decided to quit government service and thereafter applied on May 10, 1991 for enrollment as an advocate paying the fee of Rs 250 for such enrollment. In his application he made it clear that he would resign from government service as soon as his eligibility for enrollment as an advocate was determined. Since he received no communication he made inquiries and learnt from the Assistant Secretary of the Bar Council of Punjab and Haryana, Respondent 2, that his case was referred to the Bar Council of India, Respondent 1 and the decision was awaited from the latter. Thereupon he requested Respondent 1 to take a final decision on his application but he received no communication in that behalf from Respondents 1 and 2 even after the expiry of more than reasonable time. On inquiry he also learnt that no non-collegiate degree holder had ever been enrolled since September 6, 1975, the date from which the rules came into force, as an advocate and hence he thought it futile to wait and moved this petition under Article 32 of the Constitution read with Article 19(1)(g) thereof. Rule nisi was issued on January 20, 1992.

9. We may now notice the relevant provisions of law having a bearing on the question at issue before us. The Act was enacted inter alia to provide for the constitution of Bar Councils and an All India Bar. Section 3 provides for the constitution of State Bar Council and Section 4 for the Bar Council of India. Section 6 enumerates the functions of the former, which include the admission of persons as

advocates on its roll, whereas Section 7 enumerates the functions of the latter which include among others (b) laying down of standards of professional conduct and etiquette for advocates (h) promotion of legal education and laying down standards of such education in consultation with the Universities of India imparting such education and (i) recognition of Universities whose degree in law shall be a qualification for enrollment as advocates. Section 17 enjoins that every State Bar Council shall prepare and maintain a roll of advocates. Section 24 indicates the persons who may be admitted as advocates on a State roll. Such persons must be citizens of India and must have completed twenty-one years of age. Clauses (c) and (e) of Section 24(1) to the extent relevant provide:

"(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 fulfill the following conditions, namely: 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 citizen of India, duly qualified, are permitted to practice law in that other country;

(c) he has obtained a degree in law-

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

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

10. We are not concerned with sub-clause (iii-a) which concerns cases of persons who have undertaken the study from the academic year 1967-68 or prior thereto. Section 28 confers on the State Bar Councils the power to make rules to provide for the conditions subject to which a person may be admitted as an advocate on any such roll. Section 49 confers general powers on the Bar Council of India to make rules in regard to the matters enumerated in the various clauses thereof which include the prescribing of standards of legal education to be observed by Universities in India. In pursuance of the power so conferred, the Bar Council of India framed rules, Part IV whereof concerns "Standards for Legal Education and Recognition of Degrees in Law or Admission as Advocates".

11. We may now reproduce sub-rule (1) of Rule 1 of Part IV of the Rules as it stood at all material times:

"1. (1) Save as provided in Section 24(1)(c)(iii-a) 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 recognised 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."

Rule 2 required the Council to publish by a notification in the Gazette of India and prominent newspapers, the names of Universities whose degrees are recognised under the rules and forward copies thereof to the Universities concerned. Thus, under Rule 1(1) after March 12, 1967, a degree of law obtained from any University shall not be recognised for the purpose of Section 24(1)(c)(iii) of the Act unless the conditions stated in clause (c) are satisfied. Under the said clause the degree of law was not to be recognised 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 recognised by a University. Respondent 1 of the first mentioned appeal admittedly appeared and passed the three law examinations as non-collegiate student without attending lectures, tutorials and moot courts. Her contention is that before she started the study of law she was aware of the requirement of Regulation 35 and had obtained the law degree in compliance therewith. It is not disputed that the proviso was added to the said Regulation on December 14, 1979 before she passed the final examination in 1980. This proviso was added to make the Regulation consistent with the Rules. It may

14. Now under Section 7, one of the functions of the Bar Council of India is to recognise Universities whose degree in law shall be a qualification for enrollment as an advocate and for that purpose to visit and inspect the Universities. This power of recognition of Universities is conferred where the degree of law of that University entitles the degree holder for enrollment as an advocate. Under Section 24(1)(c)(iii) which is relevant for this purpose, a person shall be qualified to be admitted as an advocate on a State roll if he fulfill the conditions of having undergone a three year course of study in law from any University in India which is recognised by the Bar Council of India. Sub-section (3) of Section 24 is an exception clause to sub-section (1) as it begins with a non-obstante clause which entitles a person to be enrolled as an advocate under special rule made in that behalf. No such rule was relied upon as having been made under sub-section (3) of Section 24. Section 49(1)(d) empowers the Bar Council of India to make rules which may prescribe the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. If the acquisition of a degree in law is essential for being qualified to be admitted as an advocate on a State roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by Universities in the country. On a conjoint reading of these provisions of the Act with Rule 1 (1)(c) in Part IV of the Rules which prescribe the standards for legal education and recognition of degrees in law as well as admission as advocates, it is difficult to understand how one can say that the said Rule is inconsistent with any of the provisions of the Act. What Rule 1 (1)(c) requires is that the course of study in law must be

completed by regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University. As pointed out earlier, this Court in Baldev Raj Sharma case² pointed out that there was a substantial difference between a course of studies pursued as a regular student and the course of studies pursued as a private candidate. The policy underlying the relevant provisions of the Rules is to lay emphasis on regular attendance of the law classes. It is, therefore, clear that a candidate desiring enrollment as an advocate must fulfill the conditions set out under the relevant clause of Section 24 read with Rule 1 (1)(c) of the Rules. In the present case since both the candidates admittedly did not pursue any regular course of study at any college recognised by the University by attending the law classes, lectures, tutorials and moot courts, they cannot be said to have complied with the requirements for enrollment as an advocate. In that view of the matter we think that the view taken by the Calcutta High Court in *Aparna Basu Mallick v. Bar Council of India*³ is erroneous.

15. Our attention was then invited to the decision taken by the Bar Council of India in the case of one Gulwant Singh who had joined the course of instruction for first year LL.B. in the academic year 1967-68 as a private candidate and obtained a law degree of three years from the Punjab University as a private candidate. On a reference being made to the Bar Council of India, the latter opined that he was entitled to be enrolled even though he had passed the law degree as a private candidate. On the analogy of this candidate, it was submitted that both the candidates before us were also entitled to be enrolled as advocates. We do not think that the submission is well founded for the simple reason that the case of Gulwant Singh fell within the scope of Section 24(1)(c)(iii-a) since he had commenced the study in law from the academic year 1967- 68 and not after March 12, 1967.

16. It was lastly submitted that so far as the Calcutta student was concerned, her case was governed by Regulation 35 which specifically permitted a woman candidate to appear as non-collegiate student. This Regulation underwent a change on the addition of the proviso by the Resolution of December 7, 1979 which required the University to inform the woman candidate in advance that she will not be eligible for enrollment as an advocate and the degree to be awarded shall bear an inscription to the effect that it was obtained as a non-collegiate student. Regulation 35 could not hold the field unless it was consistent with the provisions of the Act and the Rules. That is why the proviso was required to be added to the Regulation. But if the University had omitted to insert the proviso that would not have entitled a woman candidate for enrollment as an advocate on securing a degree as a non-collegiate. Unless the degree of law was secured consistently with the requirements of the provisions of the Act and the Rules, it would not serve as a qualification for enrollment. The proviso was added to Regulation 35 by way of extra caution. After the incorporation of Rule 1(1)(c) in its present form, Regulation 35 could not entitle a woman candidate to be enrolled as an advocate if she secured the degree as a non- collegiate.

17. For the above reasons, we are of the opinion that Civil Appeal No. 8816 of 1983 deserves to be allowed. We allow the same, reverse the decision of the Division Bench of the Calcutta High Court and restore the decision of the learned Single Judge dismissing the writ petition which decision is reported as *Apama Basu Mallik v. Bar Council of India*³ For the same reasons Writ Petition No. 1153 of 1991 must also fail and shall stand dismissed. The CMPs and the IA will also stand disposed of. There will, however, be no order as to costs in both the matters.