2024 INSC 558

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 352 of 2023

Gaurav Kumar …Petitioner

Versus

Union of India and Ors. …Respondents

With
T.C.(C) No. 28 of 2023
With
T.C.(C) No. 29 of 2023
With
T.C.(C) No. 30 of 2023
With
T.P.(C) No. 2526 of 2023
With
T.P.(C) No. 1982 of 2023
With
T.P.(C) Nos. 2088-2089 of 2023
With
T.P.(C) No. 2171 of 2023
With
T.P.(C) No. 2123 of 2023
And With
T.P.(C) No. 2734 of 2023

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

Table of Contents

A. Background 4

B. Issues 8

C. Submissions 8

D. Legal background 13

i. All India Bar Committee 13

ii. Advocates Act: A Complete Code 17

iii. Delegated legislation 20

iv. Power to levy fees 22

v. Regulatory fees 25

E. Fees charged by the SBCs 28

F. SBCs cannot charge enrolment fees beyond the mandate of Section 24(1)(f) 31

i. Legislative Scheme 31

ii. Bar Councils cannot levy fees beyond the express stipulation of law 39

G. All fees charged at the time of enrolment are 'enrolment fees' 46

i. Charges other than the enrolment fee cannot be a valid pre-condition ... 48

ii. Article 14: substantive equality and manifest arbitrariness.....51

iii. Article 19(1)(g): unreasonableness 60

H. Financial implications for the SBCs and the BCI.....65

I. Conclusions 67

1. The proceedings under Article 32 of the Constitution address a challenge to the validity of the enrolment fees charged by State Bar Councils.[1] The grievance is that the fees charged by the SBCs at the time of admission of persons on State rolls are more than the enrolment fee prescribed under Section 24(1)(f) of the Advocates Act 1961.[2]

A. Background

2. The Advocates Act was enacted to amend and consolidate the law relating to legal practitioners and constitute a common Bar for the whole country. The enactment establishes the SBCs[3] and the Bar Council of India.[4] Section 6 of the Advocates Act entrusts myriad functions to the SBCs. These functions comprehend entry into and conduct of legal professionals, including admission of advocates to their rolls, preparation and maintenance of rolls, determination of cases of misconduct against advocates on the rolls and safeguarding the rights, privileges and interests of advocates. The statute empowers the SBCs to organize legal aid for the poor, promote and support law reform, conduct academic discourses, and publish journals and papers on matters of legal interest.

3. The functions of the BCI have been enumerated under Section 7. These include laying down standards of professional conduct and etiquette for advocates, enunciating the procedure to be followed by its disciplinary committee and the disciplinary committee of the SBCs, safeguarding the

[1] "SBCs"
[2] "Advocates Act"
[3] Section 3, Advocates Act
[4] "BCI"; Section 4, Advocates Act

rights, privileges, and interests of advocates, and promoting law reform. BCI is empowered to exercise general supervision and control over the SBCs. BCI is also empowered to impart legal education and lay down standards for legal education in consultation with the universities whose degrees in law would be a qualification for enrolment as an advocate and, for that purpose, visit and inspect universities.

4. Chapter III of the Advocates Act pertains to the admission and enrolment of advocates. Section 17 mandates the SBCs to prepare and maintain a roll of advocates. An application for admission as an advocate on a State roll is made to the SBCs.[5] The SBCs are required to issue a certificate of enrolment to every person whose name is enrolled in the roll of advocates.[6] Section 24 prescribes the qualifications and conditions for a person to be admitted as an advocate.[7]

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[5] Section 25, Advocates Act
[6] Section 22, Advocates Act
[7] Section 24, Advocates Act [It reads:

24. Persons who may be admitted as advocates on a State roll.—(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 other 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 (iii-a), after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(*iii-a*) 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

5. To qualify to be admitted as an advocate on a State roll, a person must:

(a) be a citizen of India;

(b) complete the age of twenty-one years;

(c) obtain a degree in law;

(d) fulfil such other conditions as may be specified in the rules made by the SBCs under Chapter III; and

(e) pay an enrolment fee of Rupees six hundred payable to the SBC and Rupees one hundred to the BCI along with any stamp duty, if chargeable. In the case of a person belonging to the Scheduled Castes or Scheduled Tribes, the enrolment fee of Rupees one hundred is payable to the SBC and Rupees twenty-five to the BCI.

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year from any University in India which is recognised for the purposes 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 recognised 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 at Bombay or Calcutta for enrolment as an attorney of that High Court;] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act];

(*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 (2 of 1899), and an enrolment fee payable to the State Bar Council of [six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]:

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 Bar Council shall be [one hundred rupees and to the Bar Council of India, 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.]]

6. The SBCs charge enrolment fees stipulated under Section 24(1)(f) of the Advocates Act to admit law graduates on their State roll. At the time of enrolment, the SBCs also charge various "fees" and "charges" in addition to the enrolment fees in the form of library fund contributions, administration fees, identity card fees, welfare funds, training fees, processing fees, certificate fees, etc. The amount of fees charged by the SBCs differ significantly. This results in a situation where a law graduate has to pay somewhere between Rupees fifteen thousand to Rupees forty-two thousand (depending upon the SBC) as cumulative fees at the time of enrolment.

7. The petitioner instituted proceedings under Article 32 of the Constitution seeking a declaration that the fees charged by the SBCs at the time of enrolment violate Section 24(1)(f) of the Advocates Act. In its order dated 10 April 2023, this Court issued notice while observing that the petitioner has raised a significant issue about the enrolment fees charged by the SBCs. By an order dated 17 July 2023, this Court transferred to itself the petitions dealing with similar issues from the High Court of Kerala,[8] the High Court of Judicature at Madras at Madurai,[9] and the High Court of Judicature at Bombay.[10] Given this background, we now deal with the challenge to the validity of enrolment fees charged by the SBCs.

[8] Akshai M Sivan v. Bar Council of Kerala, Writ Petition (Civil) No. 3068 of 2023
[9] Manimaran v. Bar Council of India, Writ Petition (MD) No. 8756 of 2023
[10] Amey Shejwal v. Bar Council of Maharashtra and Goa, Writ Petition No. 3795 of 2021

B. Issues

8. The petitions give rise to the following issues:

   a. Whether the enrolment fees charged by the SBCs are in contravention of Section 24(1)(f) of the Advocates Act; and

   b. Whether payment of other miscellaneous fees can be made a pre-condition for enrolment.

C. Submissions

9. Mr Gaurav Kumar, the petitioner-in-person, made the following submissions:

   a. Section 24(1)(f) expressly prescribes the enrolment fee chargeable by the SBCs and the BCI for persons to be admitted as an advocate. SBCs are charging exorbitant enrolment fees, often under different heads, in derogation of Section 24(1)(f);

   b. Once there is a specific provision prescribing enrolment fees, the SBCs or the BCI through their delegated rule-making power cannot charge fees beyond the substantive provision. Therefore, the BCI and the SBCs cannot invoke their powers to frame rules under Section 49(1) and Section 28(1) of the Advocates Act respectively to prescribe enrolment fees that are at variance with Section 24(1)(f);

   c. The term ‘subject to the provisions of this Act’ at the beginning of Section 24 has been misconstrued to permit charging enrolment fees beyond the statutory prescription. It only means that other provisions of the Act must be

considered while deciding the 'eligibility' of law graduates to be admitted as advocates on the state rolls;

d. Section 6(3) of the Advocates Act prescribes how the SBCs may constitute 'funds' to fulfil their functions under Section 6(2). It does not allow imposing additional charges under different heads along with the enrolment fees or charging exorbitant fees as a mandatory condition for persons to get enrolled;

e. The exorbitant enrolment fees prevent law graduates belonging to economically weaker sections of society from getting admitted to the rolls of the SBCs. Such an indirect bar on law graduates enrolling as advocates offends Article 19(1)(g) of the Constitution. It also makes the process of enrolment coercive, improper, unjust and unfair, violating Article 14 of the Constitution; and

f. The Advocates' Welfare Fund Act 2001 enacted by Parliament allows for the collection of funds through various sources for the welfare of advocates. This amount does not need to be collected by levying exorbitant enrolment fees.

10. Mr Manan Kumar Mishra, senior counsel made the following submissions on behalf of the BCI:

a. Bar Councils require adequate operational funds to effectively discharge their functions. They require funds for day-to-day functioning including administrative expenses, staff salaries, infrastructure maintenance and technological advancements. Inadequate funding will hinder the ability of SBCs to comply with their statutory obligations under the Advocates Act;

b. The enrollment fee prescribed under Section 24(1)(f) was fixed by the legislature in 1993 and has not been modified since. It fails to account for inflation and is not adequate to meet current financial demands. Unlike other professional bodies that levy an annual subscription fee on members, SBCs rely on the one-time enrolment fee;

c. The fees charged by SBCs at the time of enrollment include additional expenses incurred in the enrolment process along with the enrolment fee prescribed by the Act, such as online data processing fee, identity card fee and verification process fee. Therefore, the fees charged do not violate Section 24(1)(f) and are linked to the services being rendered by the SBCs;

d. Section 6(2) lays down the functions of the SBCs and places enrolment of advocates exclusively within their domain. An entity on whom statutory powers or duties have been conferred impliedly possesses incidental powers necessary for its effective exercise;

e. Section 15 of the Act provides SBCs with the power to make rules to carry out the purposes of Chapter II of the Act (including Section 6). This general power to frame Rules includes the power to levy charges for services rendered under the Act;

f. Merely because a charge is levied at the time of ‘enrollment’ does not make it an enrollment fee. The ‘enrollment fee’ charged by most SBCs under Section 24(1)(f) continues to be six hundred rupees and the remaining amount is usually attributable to additional charges for other services. SBCs may be directed to comply with Section 24(1)(f) while charging an ‘enrollment fee’. But this must be distinguished from other charges levied at

the time of enrolment. Such charges are permissible provided they pass the test of *quid pro quo* in terms of services rendered in return for the charges levied; and

g. The BCI has the power to frame rules to charge reasonable fees under Section 49(1) (ah) and Section 49(h). The term 'any matter' used in Section 49(h) also includes matters relating to the enrolment of an advocate. In exercise of this power and to ensure uniformity, the BCI has placed on record before this Court, the draft Uniform Rules (For Enrolment and Other Fees To Be Charged By The State Bar Councils) 2023[11] laying down a uniform fee to be charged by all SBCs at the time of enrollment.

11. In view of the above submissions, the BCI has submitted that this Court exercise its extraordinary powers under Article 142 to implement a uniform enrolment fee structure that adequately caters to the financial requirements of the SBCs until legislative amendments are made to the Advocates Act. Additionally, it has urged this Court to direct the Union Government to revise the enrolment fee prescribed in Section 24(1)(f).

12. The SBCs have filed counter affidavits justifying the imposition of the fees charged by them at the time of enrollment. In essence, they contend that (i) the statutorily prescribed enrolment fee in Section 24(1)(f) fails to account for the current economic situation; (ii) the SBCs are charging fees in addition to the statutorily prescribed enrolment fee in return for services such as library fee and ID card fee under their rule-making powers under Section 15 and

[11] "BCI Draft Enrolment Rules"

Section 28; and (iii) the additional charges are essential to enable the SBCs to fulfil their statutory functions. In order to fulfil these statutory functions, the SBCs *inter alia* run various welfare programs, insurance schemes, seminars and training programmes, which require adequate funding.

13. Mr Raghenth Basant, senior counsel appearing for the petitioners before the Kerala High Court assailed the levy of enrollment fees by the Bar Council of Kerala in excess of the fee prescribed in Section 24(1)(f). Mr Basant made the following submissions:

a. Rules prescribed by the SBCs under general provisions such as Section 24(1)(e) cannot be with respect to the enrolment fee which has been specifically dealt with in Section 24(1)(f);

b. Rule-making powers cannot be used to frame rules contrary to the Advocates Act, especially in the absence of any provision stipulating that the BCI or the SBCs are entitled to increase the statutory enrolment fee as they deem fit;

c. The 1993 amendment which increased the statutory enrolment fee to its present form indicates that Parliament has been conscious of the need to increase the enrolment fee as and when required and is the only competent authority to carry out such changes; and

d. Other fees charged by the Bar Council of Kerala, such as the sums charged under Rule 40 of Section IVA under Chapter II of Part VI of the Bar Council of India Rules[12] cannot be made a condition precedent for enrolment. Rule

[12] "BCI Rules"

40 of the BCI Rules prescribes that the payment be made by an advocate on the rolls of the SBC and thus, it cannot be a pre-requisite for enrolment.

D. Legal background

i. All India Bar Committee

14. The establishment of the High Courts by Letters Patent in the Presidencies of Calcutta, Bombay, and Madras brought all courts in the territories of British India under a unified system. The Letters Patent also allowed the High Courts to enroll advocates, vakils, and attorneys. The Legal Practitioners Act 1879 empowered the High Courts not established by royal charters to make rules for the qualifications and admission of persons seeking to be advocates of the Court.[13] Initially, barristers and solicitors predominated the Original Side practice in the High Courts.[14] Gradually, both advocates and vakils (who were Indian non-barristers) could act and plead before all High Courts, except for the Calcutta High Court which excluded vakils from the Original Side.[15] This distinction between advocates and vakils led to the demand for the creation of an all-India Bar.

15. To give effect to this demand, the colonial legislature enacted the Indian Bar Councils Act 1926[16] "to provide for the constitution and incorporation of Bar Councils and to confer powers and impose duties on such Bar Councils." Section 3 prescribed the constitution of a Bar Council for every High Court.

[13] Section 41, Legal Practitioners Act 1879
[14] Report of the All-India Bar Committee (1953) 15
[15] Ibid
[16] "1926 Act"

Section 8 pertained to the admission and enrolment of Advocates. It authorized the High Courts to prepare and maintain a roll of advocates. Section 9 empowered the Bar Councils to make rules regulating the admission of persons to be advocates of the High Court including the charging of fees payable to the Bar Councils in respect of enrolment. Thus, the 1926 Act empowered the Bar Councils to prescribe fees in respect of enrolment. However, the 1926 Act did not substantially fulfil the demands of the Indian legal practitioners for an all-India Bar. In 1951, the Government set up the All-India Bar Committee to inquire into this issue and provide a feasible legal solution.

16. The Committee recommended setting up of the SBCs and an All-India Bar Council, uniform minimum qualification for admission to the roll of Advocates, a common roll of Advocates maintained by the respective SBCs, and permitting the enrolled advocates to practice in any court in India, including the Supreme Court. The Committee's observations on the finances of the BCI and the SBCs are relevant:

> "It is obvious that in order to carry on its duties the All-India Bar Council and the State Bar Councils shall require funds. At present the Advocates, at the time of their enrolment, pay a certain amount ranging from Rs. 25/- to Rs. 100/- which goes to the Bar Council besides Rs. 250/- to Rs. 1,125/- which goes to the State. Entrants to the professions other than the legal profession are not required to pay any amount to the State as and by way of admission fee. Persons exercising any profession, calling or vocation including Advocates in several places have to pay a licence fee, but there is no reason why there should be a taxation by the State at the time of enrolment of Advocates only. **The Committee suggests that an Advocate at the time of his admission shall pay a sum of Rs. 500/- to the**

> **State Bar Council to which he makes his application and nothing should be payable to the State. This amount may be paid in a lump sum or an Advocate may elect to pay annual amounts of Rs. 50/- with an option to pay Rs. 500/- at any time, amounts already paid not being deducted**. Those Vakils and Pleaders who according to the recommendations of the Committee become eligible to be enrolled as Advocates may pay Rs. 500/- in lump sum or an annual amount of Rs. 50/- with the option mentioned above. Each State Bar Council shall for the first five years contribute 40% of the enrolment fees received by it to the All-India Bar Council. At the end of the first 5 years the proportion of the contribution may be reconsidered."[17]
>
> (emphasis added)

17. The Committee was aware of the fact that the SBCs will require funds to carry out their functions and duties. Consequently, the Committee recommended that an advocate should pay an enrolment fee of Rupees five hundred to the SBCs "at the time of his admission". The Committee suggested that this amount could either be paid as a lump sum or on a yearly instalment basis. In 1958, the Law Commission of India observed that the amount of Rupees five hundred proposed by the All-India Bar Committee was excessive. It instead suggested an enrolment fee of Rupees one hundred twenty-five.[18]

18. In 1959, the Legal Practitioners Bill 1959 was introduced in Parliament. The Bill was referred to a Joint Committee of Parliament which submitted its

[17] All-India Bar Committee (supra) 40
[18] Law Commission of India, Fourteenth Report, Reform of Judicial Administration 1958 (Volume 1) 575. [It observed: "It appears to us that the amount of Rs. 500 proposed by the Committee is excessive. At present various State bar Councils are receiving payments which range from Rs. 50 to Rs. 100 from each entrant to the profession and so far we have been able to ascertain, not only are the amounts received sufficient to finance their activities but some of these Councils have accumulated out of these and other receipts substantial amounts which have been invested by them. The creation of the All India Bar Council envisaged by the Bar Committee will no doubt involve substantial additional expenditure. Considering all aspects of the matter, we suggest that an enrolment fee of Rs 125 may be charged by the State Bar Council from each entrant out of which Rs. 25 may be paid by the State Bar Council to the All India Bar Council."]

recommendations in 1960. The Joint Committee recommended renaming the proposed enactment as the Advocates Act because there would only be one class of legal practitioners in India, that is, advocates. Importantly, the Joint Committee recommended reducing the proposed enrolment fee from Rupees five hundred to Rupees two-hundred and fifty. The aim behind reducing the enrollment fee was "to bring in as many eligible lawyers within its [the legislation's] fold as possible."[19]

19. The recommendation of the Joint Committee was accepted by Parliament and incorporated under Section 24(1)(f). During the Parliamentary debates preceding the passage of the Advocates Act, many members suggested that the enrolment fee of Rupees two-hundred fifty was exorbitant.[20] It was suggested that the enrolment fee should be further reduced or abolished altogether.[21] The then Minister of Law (Mr A K Sen) justified the rationale for prescribing Rupees two hundred fifty as enrolment fee thus:

> "So far the Bar Council is concerned, a fee of Rs. 250 is not very unreasonable especially having regard to the fact that when we are setting up an autonomous body, we must give it enough funds to make it effective and useful. **If it is to discharge all the functions given to it under this statute, then it requires funds and therefore Rs. 250 per entrant is not too much of a fee to pay when the**

[19] The Legal Practitioners Bill 1959, Report of the Joint Committee (28 March 1960) xiii. (Raghubir Sahai and Khuswant Rai, the members of the Joint Committee noted: "The Constitution of an All India Bar was demand of the country since long and this Bill has been brought forward to meet it. Its aim would be to bring in as many eligible lawyers within its fold as possible. That is why the enrolment fee has been reduced from Rs. 500/- originally proposed in the Bill to Rs. 250/-. It would have been much better if this could be reduced to Rs. 125/- as suggested by the Law Commission and the stamp duty would have been done away with altogether.")
[20] Shri Shankaraiya, Legal Practitioners Bill, Lok Sabha (27 April 1961) 14162
[21] Legal Practitioners Bill, Lok Sabha (27 April 1961) 14164

> **Bar Council is going to function in so many different ways**."[22]
>
> (emphasis added)

The statement of the Law Minister indicates that the enrolment fee was meant to allow the SBCs to effectively discharge "all functions" under the Advocates Act.

20. In 1973, the enrolment fee payable by the members of the Scheduled Castes and Scheduled Tribes was reduced to Rupees one hundred twenty-five. Subsequently, Section 24(1)(f) was amended in 1993 to revise the fees payable by general candidates from Rupees two hundred fifty to Rupees seven hundred fifty, without increasing the fees payable by candidates belonging to the SC and ST category. The enrolment fees were increased given the representations made by the Bar Councils.[23] This indicates that Parliament is aware and responsive to the financial problems faced by the Bar Councils.[24]

ii. Advocates Act: A Complete Code

21. In **O N Mohindroo** v. **Bar Council of Delhi**,[25] a Constitution Bench held that the Advocates Act was enacted by Parliament under the legislative field of

[22] Rajya Sabha, Advocates Bill 1961 (4 May 1961) 2125.
[23] Shri H R Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs, Lok Sabha (26 November 1992) 451. [The minister stated: "The Bar Council of India and the State Bar Councils represented that the expenses involved in the administration of the Bar Council of India and the State Bar Councils are growing every year and that it has become necessary to revise the enrolment fee upwards from Rs. 250/- to Rs. 750/- without disturbing the fee payable in case of persons belonging to Scheduled Castes and Scheduled Tribes."]
[24] Bar Council of Maharashtra v. Union of India, 2002 SCC OnLine Bom 251 [3]
[25] 1968 SCC OnLine SC 3

Entries 77[26] and 78[27] of List I. It was observed that the object of the Advocates Act is to constitute one common Bar for the whole of the country and to provide machinery for its regulated functioning. It was further observed that the expression "persons entitled to practice" under Entries 77 and 78 of List I includes within its scope the determination or prescription of qualifications and conditions entitling a person to practice as an advocate before the Supreme Court or the High Courts.[28]

22. In **Bar Council of U P** v. **State of U P**,[29] the issue before a three-Judge Bench was whether the State legislature could impose stamp duty on the certificate of enrolment issued by the SBCs. It was held that the enrolment fee payable under Section 24(1)(f) is covered by Entry 96 in List I. Concerning the imposition of stamp duty, it was held that stamp duty payable on the certificate of enrolment cannot be regarded as a condition prescribed for enrolment because it pertains to the domain of taxation.[30] It was held that the State Legislature was competent to levy stamp duty under Entry 44 of List III of the Seventh Schedule.

23. The Advocates Act was enacted to implement the recommendations of the All-India Bar Committee. According to the Statement of Objects and Reasons, the main features of the enactment are:

[26] Entry 77, List I, Seventh Schedule, Constitution of India. [It reads: 77. Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court"]
[27] Entry 78, List I, Seventh Schedule, Constitution of India. [It reads: 78. Constitution and organization (including vacations) of the High Court except provisions as to officers and servants of High Court; persons entitled to practice before High Courts.]
[28] O N Mohindroo (supra) [9]; Bar Council of U P v. State of U P, (1973) 1 SCC 261 [11]
[29] (1973) 1 SCC 261
[30] Bar Council of U P (supra) [14]

(i) establishment of an All-India Bar Council and a common roll of advocates, and advocates on the common roll having a right to practice in any part of the country and any Court, including the Supreme Court;

(ii) integration of the bar into a single class of legal practitioners known as advocates;

(iii) prescription of a uniform qualification for the admission of persons to be advocates;

(iv) division of advocates into senior advocates and other advocates based on merit; and

(v) creation of autonomous Bar Councils, one for the whole of India and one for each State.

24. The 1926 Act did not prescribe any qualifications to be possessed by persons applying for admission as advocates. Under the 1926 Act, the Bar Councils prescribed qualifications, but the enrollment was carried out by the High Courts. Under the Advocates Act, the enrolment process is completely undertaken by the SBCs. The SBCs are mandated to maintain and prepare a State roll and admit persons as advocates on the roll if they fulfil the statutory prescriptions, along with any other qualifications laid down by the SBCs. Section 24(1) of the Advocates Act statutorily engrafts the minimum qualifications to be possessed by advocates seeking enrolment. The provision specifies the qualifications to be possessed by persons to be admitted as an advocate on a State roll. Additionally, the SBCs can also specify other conditions by rules.

25. Section 24A provides that no person shall be admitted on a State roll if he is: (i) convicted of an offence involving moral turpitude; (ii) convicted of an offence under the provisions of the Untouchability (Offences) Act 1955; and (iii) dismissed or removed from employment or office under State on any charge involving moral turpitude. Section 25 provides that an application for admission as an advocate shall be made to the SBC within whose jurisdiction the applicant proposes to practice. Section 26 mandates the SBCs to refer every application for admission to their enrolment committee for decision. The SBCs are also empowered to remove the names of advocates from the State roll.[31] Section 28 empowers the SBCs to make rules for the admission and enrolment of advocates.

26. The provisions of the Advocates Act indicate that it provides a complete machinery[32] to deal with the admission and enrolment of advocates. The SBCs are vested with sufficient powers to ensure effectual and complete implementation of the enactment. In **Dr Haniraj L Chulani** v. **Bar Council of Maharashtra and Goa**, this Court held that the Advocates Act provides a complete code for regulating the legal education and professional qualifications of an aspirant seeking entry into the legal profession.[33]

iii. Delegated legislation

27. The basic principle underlying the concept of delegated legislation is that the legislature cannot directly exert its will in every detail.[34] It lays down the

[31] Section 26A, Advocates Act
[32] *See* Girnar Traders v. State of Maharashtra, (2011) 3 SCC 1 [80]
[33] (1996) 3 SCC 342 [17]
[34] Mahachandra Prasad Singh (Dr.) v. Bihar Legislative Council, (2004) 8 SCC 747 [13]

legislative policy and delegates the subsidiary or ancillary powers to the delegated or subordinate authorities to carry out the legislative policy.[35] It is now a settled legal principle that the legislature cannot abdicate essential legislative functions to the delegated authority.[36] The legislature can entrust subsidiary or ancillary legislation to the delegate. Before such delegation, the legislature should enunciate the policy and the principles for the guidance of the delegated authority.[37] As a corollary, the delegated authority must carry out its rule-making functions within the framework of the law. The delegated legislation must be consistent with the law under which it is made and cannot go beyond the limits of policy and standards laid down in the law.[38]

28. Although delegated legislation enjoys the presumption of constitutionality, it does not enjoy the same immunity as the parent legislation. It is now well-established[39] that delegated legislation can be challenged on the following grounds:

(i) lack of legislative competence to make delegated legislation;

(ii) violation of fundamental rights guaranteed under the Constitution;

(iii) violation of any provision of the Constitution;

(iv) failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act;

(v) repugnance to any other enactment; and

[35] In re Delhi Laws Act 1912, (1951) SCC 568 [22]
[36] Vasantlal Maganbhai Sanjanwala v. State of Bombay, 1960 SCC OnLine SC 27 [4]
[37] Harishankar Bagla v. State of MP, (1954) 1 SCC 978 [12]
[38] Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi, 1968 SCC OnLine SC 13 [13], [71]
[39] Indian Express Newspapers (Bombay) (P) Ltd v. Union of India, (1985) 1 SCC 641 [77]; State of Tamil Nadu v. P Krishnamurthy, (2006) 4 SCC 517 [15]

(vi) manifest arbitrariness.

29. Modern legislation often contains provisions enabling the delegate of the legislature to frame subordinate legislation. The statutory provision for delegation is often couched in general terms empowering the delegate the power to frame rules "to carry out the purposes of this Act" or a particular segment of the statute contained in a Chapter. The general provision is then followed by a provision enumerating specific matters on which the delegate may frame rules. A similar legislative scheme is reflected in Sections 15 and 28 of the Advocates Act. Where a rule-making power is conferred upon the delegate in general terms, a subsequent enumeration of matters on which the delegate may frame rules is illustrative and does not limit the scope of the general power.[40] The enumerated matters in such a situation provide guidelines for the delegated authority while framing rules in exercise of the general power.[41]

iv. Power to levy fees

30. Article 265 of the Constitution stipulates that no tax shall be levied or collected except by the authority of law. Article 366(28) defines taxation or tax to include the imposition of a tax or impost, whether general, local or special.

31. In **CIT** v. **McDowell and Co. Ltd**.,[42] a three-Judge Bench of this Court enunciated the principles for interpreting Article 265 read with Article 366(28):

[40] Azfal Ullah v. State of U P, 1963 SCC OnLine SC 76 [13]; Rohtak and Hissar Districts Electric Supply Co. Ltd v. State of Uttar Pradesh, 1965 SCC OnLine SC 75 [18].
[41] D K Trivedi and Sons v. State of Gujarat, 1986 Supp SCC 20 [33]
[42] (2009) 10 SCC 755

"21. "Tax", "duty", "cess" or "fee" constituting a class denotes various kinds of imposts by State in its sovereign power of taxation to raise revenue for the State. Within the expression of each specie each expression denotes different kinds of impost depending on the purpose for which they are levied. This power can be exercised in any of its manifestations only under any law authorising levy and collection of tax as envisaged under Article 265 which uses only the expression that no "tax" shall be levied and collected except authorised by law. It in its elementary meaning conveys that to support a tax legislative action is essential, it cannot be levied and collected in the absence of any legislative sanction by exercise of executive power of State under Article 73 by the Union or Article 162 by the State.

22. Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well-known and well-settled characteristic of "tax" in its wider sense includes all imposts. Imposts in the context have following characteristics:

(*i*) The power to tax is an incident of sovereignty.

(*ii*) "Law" in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.

(*iii*) The term "tax" under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.

(*iv*) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax" in its technical sense as an impost, general, local or special."

32. The Seventh Schedule to the Constitution differentiates between taxing entries and general entries. Subjects pertaining to the levy of taxes must be traced to specific taxing entries enumerated in either List I or List II.[43] In addition, Parliament has the residuary power under Article 248 read with Entry 97 of List I to legislate on matters not enumerated in List II or List III, including on matters of taxation. The power of the legislature to levy fees is dealt with under separate heads: (i) Entry 96 of List I empowers Parliament to levy fees in respect of any matters in List I; (ii) Entry 66 of List II empowers the State legislatures to levy fees in respect of any matters in List II; and (iii) Entry 47 of List III empowers both Parliament and the State legislatures (subject to Article 254) to levy fees for any matter enumerated in List III. Parliament has prescribed an enrolment fee under Section 24(1)(f) of the Advocates Act under Entry 96 of List I.

33. The legislature can delegate its power to levy fees.[44] Since a fee is an impost and a compulsory exaction of money, the power of a delegate to levy fees must flow from the express authority of law. In **Ahmedabad Urban Development Authority** v. **Sharadkumar Jayantikumar Pasawalla**[45] this Court observed:

> "7. […] In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope for implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and

[43] M P V Sundararamier & Co. v. State of Andhra Pradesh, 1958 SCC OnLine SC 22
[44] Kandivali Coop. Industrial Estate v. Municipal Corporation of Greater Mumbai, (2015) 11 SCC 161 [25]
[45] (1992) 3 SCC 285 [7]

> ancillary power in the matter of exercise of fiscal power."

34. The principles that flow from the above discussion are: (i) a fee is an impost in terms of Article 366(28); (ii) the expression "tax" occurring in Article 265 means all imposts, including fees and therefore any fee must be levied by the authority of a valid law; (iii) fees being a compulsory exaction of money, the power to levy fees cannot be implied; (iv) delegation of the power to levy fees to a delegate of the legislature should be specifically provided for under the parent legislation; and (v) the delegate must strictly act within the parameters of the legislative policy laid down by the parent legislation when levying fees and taxes.

v. Regulatory fees

35. Article 110 of the Constitution, though in a different context, recognizes that that fees imposed under the authority of law may include (i) fees for licences; and (ii) fees for service.[46] In **Commissioner, Hindu Religious Endowments, Madras** v. **Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**,[47] a Constitution Bench explained the concept of licence fees thus:

> "47. […] In the first class of cases, the Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privilege that is conferred. A most common

[46] Article 110(2), Constitution of India. [It reads:
"110. Definition of "Money Bills"-
[…]
(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."]
[47] (1954) 1 SCC 412

> illustration of this type of cases is furnished by the licence fees for motor vehicles. Here the costs incurred by the Government in maintaining an office or bureau for the granting of licences may be very small and the amount of imposition that is levied is based really not upon the costs incurred by the Government but upon the benefit that the individual receives. In such cases, according to all the writers on public finance, the tax element is predominant, and if the money paid by the licence-holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot but be regarded as a tax"

In **Shirur Mutt** (supra), it was held that a fee is money taken by the Government "as the return for the work done or services rendered."[48] Therefore, a fee was characterised by an element of *quid pro quo* between the payer and the public authority.

36. In a series of subsequent decisions, this Court held that a levy can be regarded as a fee if it has a "reasonable relationship" with services rendered by the public authority.[49] The traditional view that there must be an actual *quid pro quo* for a fee has not been applied in the strict sense in subsequent decisions of this Court. It has been held that the relationship between the levy of a fee and services rendered is one of general character and not of mathematical exactitude.[50]

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[48] Shirur Mutt (supra) [48]
[49] H H Sudhindra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, 1963 Supp (2) SCR 302 [18]. [It was observed: "18. […] A levy in the nature of a fee does no cease to be of that character merely because there is an element of compulsion or coerciveness present in it, not is it a postulate of a fee that it must have direct relation to the actual services rendered by the authority to each individual who obtains the benefit of service. If with a view to provide a specific service, levy is imposed by law and expenses for maintaining the service are met out of the amounts collected there being a reasonable relation between the levy and the expenses incurred for rendering the service, the levy would be in the nature of a fee and not in the nature of a tax."]; Indian Mica Micanite Industries v. State of Bihar, (1971) 2 SCC 236 [15].
[50] Kewal Krishan Puri v. State of Punjab, (1980) 1 SCC 416 [23]; Sreenivasa General Traders v. State of A P, (1983) 4 SCC 353 [31].

37. In **Corporation of Calcutta** v. **Liberty Cinema**,[51] a Constitution Bench observed that licence fees are not necessarily charged in return for services rendered. This Court referred to a Privy Council decision[52] which inter alia held that licence fees could be charged to defray the costs of administering the local regulations. In **Secunderabad Hyderabad Hotel Owners' Association** v**. Hyderabad Municipal Corporation**,[53] this Court observed that licence fees could broadly be classified as either regulatory or compensatory. It was observed that licence fees are regulatory when the activities for which a licence is given are required to be regulated or controlled. It was further held that the fees charged for regulation of activities could be validly classified as fees although no service is rendered. A regulatory fee such as a licence fee enables authorities to supervise, regulate, and monitor the activity related to which the licence has been issued and to secure proper enforcement of the legal provisions.[54]

38. The principle which follows from the above discussion is that the State grants a licence to regulate a particular trade, business, or profession.[55] These regulatory activities entail a duty on behalf of the State or its instrumentalities to supervise, regulate, and monitor that particular trade, business, or profession. Because such activities require the State to expend public resources, the State can charge licence fees to defray the administrative

[51] 1964 SCC OnLine SC 65 [8]
[52] George Walkem Shannon v. Lower Mainland Dairy Products Board, 1938 AC 708.
[53] (1999) 2 SCC 274 [9]
[54] Vam Organic Chemicals Ltd v. State of U P, (1997) 2 SCC 715 [18]; A P Paper Mills Ltd. v. Government of A P, (2000) 8 SCC 167 [24].
[55] Indian Mica Micanite Industries v. State of Bihar, (1971) 2 SCC 236 [14]

costs. The enrolment fee stipulated by Section 24(1)(f) of Advocates Act meets the characteristic of a regulatory fee.

39. Having encapsulated the broad gist of the historical and legal context, we now deal with the issues arising in these petitions.

E. Fees charged by the SBCs

40. Presently, the SBCs charge different fees from advocates at the time of enrolment. Most SBCs charge an enrolment fee in addition to other miscellaneous fees. For instance, the Bar Council of Maharashtra and Goa is charging library fees, certificate fees, administration fees, identity card fees, training fees, and welfare fund contributions. Resultantly, the enrolment fee and the other fees charged by the SBC amounts to Rupees fifteen thousand for general candidates and Rupees fourteen thousand five hundred for candidates from SC and ST category.

41. The Bar Council of Odisha is charging Rupees forty-two thousand one hundred from advocates at the time of enrolment. In their counter affidavit, the SBC concedes the fact that Section 24(1)(f) only mandates the SBCs to charge Rupees seven hundred fifty in total at the time of enrolment. However, the SBC sought to justify charging the enhanced enrolment fee and other fees from the advocates “having regard to the functions of the Odisha Bar Council” under the Advocates Act. The SBC further claims that in line with its functions under Section 6, it has created various welfare funds for the benefit of advocates on its roll and utilizes the contributions received from the fees towards this end. Resultantly, the SBC is charging Rupees twenty-six

thousand nine hundred as a one-time deposit to enable an advocate to avail of a lifetime benefit of various welfare schemes. This amount is in addition to the enrolment fee of Rupees six thousand, processing/ development fees of Rupees seven thousand, and other miscellaneous charges. The SBC justified charging Rupees six thousand as the enrolment fee on the basis of a BCI resolution dated 26 June 2013. The BCI resolution reads thus:

> "The council is of the unanimous view that the enrolment fee fixed earlier is too less amount and it has never been revised after the year of 1961. The council resolves that the enrolment fee per candidate will be Rs 6000 and for SC/ST Candidates, it should be Rs 3000. This provision is applicable throughout the country and out of this as per the provisions of the Act, 20% amount is to be sent to the Bar Council of India by all the State Bar Councils. These rules will come into effect the day it is published in the Gazette of India. Soon after the publication the office is directed to communicate this resolution to all the State Bar Councils and all the Bar Associations of the country. It is made clear that this resolution is confined to the enrolment fee only and the other charges fixed or prescribed by the different State Bar Councils would be applicable as of their own suitability."[56]

In view of the above resolution, the BCI directed all the SBCs to charge the revised enrolment fee.[57]

42. All the SBCs justify charging the miscellaneous fees for the following reasons: (i) the miscellaneous fees are one-time fees paid by the advocates to the Bar Councils; (ii) the fees are charged as a one-time lump sum because advocates do not pay the fees periodically after their enrolment; (iii) the SBCs

[56] Resolution No. 32 of 2013, Gazette Notification dated 28 June 2013.
[57] BCI. D 7114/2016(C1) dated 22 December 2016

do not get any financial assistance from the Government and have to sustain their operations, including payment of salaries to their employees, from the amount collected by way of enrolment fee and miscellaneous fees; and (iv) the lump sum fees are intended to defray the expenditure incurred by each SBC while discharging myriad statutory functions including continuing legal education and welfare schemes for advocates.

43. The Bar Council of Manipur has stated that it meets all its expenses including the staff salary and office maintenance from the enrolment fees. The SBC charges Rupees sixteen thousand six hundred fifty as enrolment fees from general candidates. Out of this, nine thousand five hundred is allowed to be used for office expenses while the balance is deposited into other accounts and used for specified purposes. According to the SBC, the average annual enrolment in Manipur is of a hundred advocates. Therefore, the total enrolment fee collected by the SBC is Rupees nine lakh fifty thousand against the overall annual expense of Rupees nine lakh.

44. The legal profession is a serious occupation and requires advocates to maintain exemplary conduct both inside and outside the court.[58] The SBCs and the BCI perform the important function of regulating and maintaining the standards of conduct required from advocates. The Bar Councils conduct activities related to providing advocates knowledge about the substantive and procedural aspects of law. Many SBCs have published books and manuals and assisted members of the legal profession in acquiring the practical skills

[58] In Re Sanjiv Dutta, Deputy Secretary, Ministry of Information and Broadcasting, (1995) 3 SCC 619 [20]; Ajitsinh Arjunsinh Gohil v. Bar Council of Gujarat, (2017) 5 SCC 465 [39]

required for the successful pursuit of a career as an advocate. The Bar Councils conduct welfare schemes for advocates. During the period of the Covid pandemic and even at other times, the Bar Councils have stepped in to provide relief to advocates and their families. In doing so many Bar Councils have provided significant aid to advocates. The enrolment fee and other miscellaneous fees are the only source of income available to the SBCs to perform their functions under the Advocates Act and implement welfare schemes for advocates. However, the imposition of the enrolment fee and other miscellaneous fees by the SBCs must be consistent with the Constitution and the scheme of the Advocates Act.

F. SBCs cannot charge enrolment fees beyond the mandate of Section 24(1)(f)

i. Legislative Scheme

45. Parliament has enacted the Advocates Act under Article 246 read with Entries 77 and 78 of List I to deal with legal practitioners and their qualifications, enrolment, right to practice, and discipline. The Advocates Act establishes the SBCs and the BCI to create a common all-India bar. The SBCs have been entrusted with the function of admitting persons as advocates on the State roll. Persons who are admitted on the roll are entitled to the right to practice in all courts, tribunals, or authority throughout the territory of India.[59]

46. Sections 15 and 28 of the Advocates Act vests a rule-making power in the SBCs. The rule-making power under Section 15 is available to both the SBCs

[59] Section 30, Advocates Act

and the BCI. Section 15(1) specifies that a Bar Council "may make rules to carry out the purposes of this Chapter." A Bar Council can make rules providing for the election of members, Chairman and Vice-Chairman, filing of casual vacancies, constitution of one or more funds to give financial assistance or legal aid or advice, organization of legal aid, etc. Section 15(3) provides that no rule made by the SBCs shall have effect unless it is approved by the BCI. Thus, the scope of the rule-making powers of the SBCs and the BCI under Section 15 pertains to the subjects in Chapter II. Other than Section 15, Chapter II comprises of Sections 3 to 14:

(a) Section 3 provides for establishment of the SBCs;

(b) Section 4 establishes the BCI;

(c) Section 5 provides that every Bar Council should be a body corporate;

(d) Section 6 lays down the functions of the SBCs;

(e) Section 7 lays down the functions of the BCI;

(f) Section 7A pertains to membership in international bodies;

(g) Section 8 specifies terms of office of the members of the SBCs;

(h) Section 8A talks about constitution of a special committee in the absence of an election;

(i) Section 9 deals with disciplinary committees;

(j) Section 9A talks about constitution of legal aid committees;

(k) Section 10 provides for constitution of committees other than disciplinary committees;

(l) Section 10A pertains to transaction of business by Bar Councils and committees;

(m) Section 11 allows Bar Councils to appoint staff;

(n) Section 12 mandates Bar Councils to maintain books of account for audit;

(o) Section 13 provides that vacancies in Bar Councils cannot be a ground to challenge the validity of acts done by a Bar Council; and

(p) Section 14 pertains to challenges to elections to Bar Councils.

47. Chapter II establishes Bar Councils and delineates their functions and responsibilities. The provisions of the Chapter II also empower Bar Councils to constitute disciplinary and other committees and appoint qualified staff. The rule-making powers granted to Bar Councils under Section 15 are regulatory powers and must be construed widely[60] because they support the objective of regulation of the legal profession.

48. In **Pratap Chandra Mehta** v. **State Bar Council of MP**,[61] a two-Judge Bench of this Court observed that the power of Bar Councils to frame rules must be interpreted broadly:

> "51. The power to frame rules has to be given wider scope, rather than a restrictive approach so as to render the legislative object achievable. The functions to be performed by the Bar Councils and

[60] Gupta Modern Breweries v. State of Jammu and Kashmir, (2007) 6 SCC 317 [20]
[61] (2011) 9 SCC 573

> the manner in which these functions are to be performed suggest that democratic standards both in the election process and in performance of all its functions and standards of professional conduct need to be adhered to. In other words, the interpretation furthering the object and purposes of the Act has to be preferred in comparison to an interpretation which would frustrate the same and endanger the democratic principles guiding the governance and conduct of the State Bar Councils."

49. The SBCs have broad powers under Section 15 to give effect to the provisions of Chapter II. Although the rule-making power under Section 15 is broad, it is confined to the subject matters of Chapter II. In **Bar Council of Delhi** v. **Surjeet Singh**,[62] the issue before a three-Judge Bench was whether the Bar Council of Delhi could frame election rules prescribing qualifications and conditions entitling an advocate to vote at Bar Council elections. It was held that the SBCs cannot use the rule-making power under Section 15 to override the specific provisions of the Advocates Act. This Court observed that Sections 3(4) and 49(1)(a) empowered the BCI to prescribe qualifications or conditions subject to which an advocate may be entitled to vote at an election to the SBCs. Resultantly, it was held that Section 15(1) cannot be interpreted to confer rule-making powers on the SBCs which are expressly provided to the BCI.[63]

50. In **Surjeet Singh** (supra), it was argued that the election rules of the Bar Council of Delhi were valid because they were approved by the BCI according to Section 15(3). It was further argued that the approval provided by the BCI

[62] (1980) 4 SCC 211
[63] Reiterated in Bar Council of Maharashtra and Goa v. Manubhai Paragji Vashi, (2012) 1 SCC 314 [16]

had the effect of making it a rule made by the BCI itself. Speaking for the three-Judge Bench, Justice N L Untwalia held that there is a difference between making a rule and granting approval to a rule:

> "8. […] Any rule made by the State Bar Council cannot have effect unless it is approved by the Bar Council of India. But the approval of the Bar Council of India can make the rule made by the State Bar Council valid and effective only if the rule made is within the competence of the State Bar Council, otherwise not. Mere approval by the Bar Council of India to a rule ultra vires the State Bar Council cannot make the rule valid. Nor has it the effect of a rule made by the Bar Council of India. Making a rule by the Bar Council of India and giving approval to a rule made by the State Bar Council are two distinct and different things. One cannot take the place of the other."

51. We can derive the following principles concerning the rule-making power of the SBCs under Section 15: (i) the SBCs can exercise rule-making powers only for the subject matters specified under Chapter II; (ii) although the SBCs have a broad rule-making power, it must be exercised to further the object and purpose of the Advocates Act; (iii) the SBCs cannot use their rule-making power under Section 15 with respect to subject matters on which the BCI has been granted exclusive power to make rules under the Advocates Act; and (iv) approval by the BCI to an invalid rule made by the SBCs cannot be deemed to validate the invalid rule.

52. The scope of the rule-making power of Bar Councils under Section 15 pertains to carrying "out the purposes of" Chapter II. As mentioned above, the purposes of Chapter II can be determined from Sections 3 to 14. Therefore,

the scope of the rule-making power of Bar Councils under Section 15 extends to give effect to the provisions of Chapter II, namely, Sections 3 to 14.

53. Chapter III pertains to the admission and enrolment of advocates. As discussed in the earlier segment of this judgment, the Advocates Act is a complete code for admission of advocates on the State roll. Section 28 empowers the SBCs to make rules to carry out the purposes of Chapter III. According to Section 28(2), the SBCs can make rules providing for the:

(a) time within which and form in which an advocate shall express an intention for the entry of their name in the State roll under Section 20;

(b) form in which an application shall be made to the SBCs for admission as an advocate and how such application shall be disposed of by the enrolment committee of the SBCs;

(c) conditions subject to which a person may be admitted as an advocate; and

(d) instalments in which the enrolment fee may be paid.

54. The admission of persons as advocates on the State roll is within the exclusive domain of the SBCs.[64] The Advocates Act vests rule-making power under Section 28 with the SBCs, who are the chosen representatives of legal practitioners, to regulate and control the admission of people to the legal profession. In **Dr. Haniraj L Chulani** (supra), the issue before a three-Judge Bench was whether an SBC can refuse admission as an advocate to a medical practitioner who does not want to give up their medical practice. This

[64] Indian Council of Legal Aid and Advice v. Bar Council of India, (1995) 1 SCC 732 [11]

Court held that the rule-making power conferred on the SBCs to lay down further conditions for controlling the entry to the legal profession is not unfettered.[65] It was held that the rule-making power of the SBCs draws sustenance from the guidelines laid down by the Advocates Act. It was further observed that the "[r]ule-making power conferred on the SBCs is inherently hedged in with the obligation to frame only such rules regarding enrolment which would fructify the purpose of having efficient members of the Bar who can stand up to the expectation of the noble and learned profession to which they are to be given entry." Given the above reasoning, it was held that the rule enacted by the SBC barring a medical practitioner from simultaneously practicing law was valid.

55. Section 24 lays down the eligibility qualifications for a person who seeks admission as an advocate on the State roll. Section 24(1)(e) provides that such a person must also fulfil "such other conditions as may be specified in the rules made by the State Bar Council under this Chapter." The use of the expression "other conditions" indicates that the SBCs can prescribe conditions and qualifications in addition to what has already been prescribed statutorily under Section 24(1). Section 24(1) lays down requirements such as citizenship, age, and educational efficiency that make a person eligible to be admitted on a State roll. These minimum qualifications enable a person to effectively perform their responsibilities as legal professionals. In addition, the BCI can also prescribe "such other conditions" in addition to the qualifications already prescribed under Section 24(1). Generally, a condition is a

[65] Dr. Haniraj L Chulani (supra) [18]

qualification, restriction, or limitation.[66] However, the "conditions" to be imposed by the SBCs should be consistent with the qualifications already prescribed by the statute. The BCI cannot prescribe any conditions or qualifications that: (i) seek to modify what has already been prescribed by the statute; (ii) are contrary to the stipulated qualifications; and (iii) are inconsistent with the object and purpose of the Advocates Act.

56. Section 24(1)(e) has to be read conjointly with Section 28(1)(d) which empowers the SBCs to make rules prescribing "the conditions subject to which a person may be admitted as an advocate on any such roll." Since Section 24(1) already prescribes the basic substantive qualifications, the SBCs are empowered under Section 24(1)(e) read with Section 28(1)(d) to make rules concerning other conditions not already prescribed under Section 24(1).

57. Section 49 pertains to the general power of the BCI to make rules. It provides that the BCI may make rules for discharging its functions under the Advocates Act. The BCI may prescribe rules providing for the conditions subject to which an advocate may be entitled to vote at Bar Council elections, qualifications for membership of Bar Councils and disqualification for such membership, minimum qualifications required for admission to a course for a degree in law in any recognised university, etc. Importantly, Section 49(1)(h) empowers the BCI to make rules prescribing the fees which may be levied in respect of any matter under the Advocates Act. Pursuant to this, the BCI has prescribed fees under Part VIII of the BCI Rules. It mandates the SBCs to levy fees not

[66] Union of India v. Rajdhani Grains & Jaggery Exchange Ltd, (1975) 1 SCC 676 [13]

exceeding the limits prescribed under Part VIII. The BCI has prescribed fees for varied purposes including petitions challenging the election of one or more members of the SBCs, complaints of professional misconduct under Section 35, certificates as to the date of enrolment and the continuance of the name of the advocate on the roll. The above legislative scheme suggests that the SBCs and the BCI act as the delegates of Parliament under the Advocates Act.

ii. Bar Councils cannot levy fees beyond the express stipulation of law

58. While acting as a delegate of Parliament, the SBCs and the BCI can frame rules under the Advocates Act. However, any rule enacted by the SBCs is only ancillary and cannot be so exercised to bring into existence substantive rights, obligations or disabilities not contemplated by the provisions of the parent enactment.[67] Further, the rules must align with the object and purpose of the Advocates Act, namely, the creation of a common bar and regulation of legal practitioners and their qualifications, enrolment, right to practice, and discipline.

59. A legislation can confer the power to make subordinate legislation upon a delegate. In conferring such powers, the legislation has to specifically law down the policy, principles, and standards that will guide the subordinate authority.[68] The legislative policy can be determined from the preamble and the provisions of an enactment.[69] The delegate derives its legislative powers

[67] Kunj Behari Lal Butail v. State of H P, (2000) 3 SCC 40 [14]
[68] Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. CST, (1974) 4 SCC 98 [12]
[69] Harishankar Bagla v. State of Madhya Pradesh, (1954) 1 SCC 978 [12]

from the parent statute. Unlike the legislature, which has sovereign legislative powers derived from the Constitution, the delegated authority is conferred powers by the parent enactment. Therefore, delegated authority must strictly conform to the provisions of the statute under which it is framed.[70] A delegate cannot alter or change the legislative policy.[71] A delegate cannot override the provisions of the parent enactment either by exceeding the legislative policy or making provisions inconsistent with the enactment.[72]

60. In **Agricultural Market Committee** v. **Shalimar Chemical Works Ltd**.,[73] the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act 1966 allowed the market committee to levy market fees on all transactions of purchase and sale provided the transactions took place within the notified market area. Section 12 created a legal fiction by providing that if any notified agricultural produce, livestock, or products of livestock is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The market committee framed bylaws providing that the notified agricultural produce, livestock or products of livestock shall be deemed to have been purchased or sold after the notified commodity has been weighed, measured, counted or when it is taken out of the notified market area. Thus, the bylaws introduced additional circumstances to the legal fiction contemplated under Section 12.

[70] Indian Express Newspapers (Bombay) (P) Ltd v. Union of India, (1985) 1 SCC 641 [75]; General Officer Commanding-in-Chief v. Subhash Chandra Yadav, (1988) 2 SCC 352 [14].
[71] Rajnarain Singh v. Patna Administration Committee, (1954) 2 SCC 82 [32]
[72] Avinder Singh v. State of Punjab, (1979) 1 SCC 137 [18]; J K Industries Ltd. v. Union of India, (2007) 13 SCC 673 [133]
[73] (1997) 5 SCC 516

61. A two-Judge Bench of this Court identified the following relevant principles in matters of delegated legislation:

> **"**26. […] the delegate which has been authorized to make subsidiary rules and regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act."

Given the above principle, it was observed that Section 12 is a fiscal provision and had to be construed strictly. It was further observed that any circumstance, situation, factor, or condition which was not contemplated by the Act could not be taken into consideration to raise the presumption regarding sale or purchase of the notified agricultural produce. It was held that the bylaw introduced additional factors such as 'weighed', 'measured', and 'counted' which were not contemplated under Section 12. Therefore, the bylaws were held to be ultra vires for widening the scope of the presumption under Section 12.

62. In **Assam Co. Ltd.** v. **State of Assam**,[74] the State Government framed a rule empowering the State authorities to reexamine the computation of agricultural income made by the Central officers. It was contended that this rule was beyond the power delegated under the Assam Agricultural Income Tax Act. A three-Judge Bench of this Court observed:

> "10. […] It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is

[74] (2001) 4 SCC 202

> fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making a provision that is inconsistent with the Act. Any rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the rule goes beyond what the Act contemplates, the rule becomes in excess of the power delegated under the Act, and if it does any of the above, the rule becomes ultra vires the Act."

63. In **Assam Co. Ltd.** (supra), it was observed that enactment empowered the State Government to make such rules as were necessary for carrying out the purposes of the enactment. It was further observed that the object and the scheme of the enactment did not empower the State authorities to recompute agricultural income contrary to the computation made by the Central officers. It was held that the rule framed by the State government was *ultra vires* because it enlarged the scope of the enactment.

64. In **Consumer Online Foundation and Others** v. **Union of India**,[75] this Court was dealing with the validity of the levy of development fees on embarking passengers by the lessees of the Airports Authority of India[76] at the international airports in New Delhi and Mumbai. The unamended Section 22A of the Airports Authority of India Act 1994[77] empowered the AAI, after the previous approval of the Central Government, to levy development fees on embarking passengers "at the rate as may be prescribed." A two-Judge Bench of this Court held that the development fee was in the nature of a cess or tax

[75] (2011) 5 SCC 360
[76] "AAI"
[77] "AAI Act"

for generating revenue for the specified purposes mentioned in Section 22A.[78] Further, it was held that the power to levy a development fee under Section 22 could not be exercised without the rules prescribing the rate at which the development fee was to be levied. Since no rules were framed prescribing the rate of development fee, it was held that the levy was without authority of law.

65. In **Consumer Online Foundation** (supra), the Central Government determined the rate of development fee in two letters communicated to the lessees. This Court held that under Section 22A the Central Government only had the power to grant its approval to the levy and collection of development fees but had no power to fix the rate at which the development fee would be levied and collected from embarking passengers. The rates determined by the Central Government were held to be ultra vires the AAI Act.

66. From the above discussion, we can cull out the following principles: (i) a delegate cannot act contrary to the express provisions and object of the parent legislation; (ii) a delegate cannot widen or constrict the scope of the parent legislation or the legislative policy prescribed under it; and (iii) a fiscal provision has to be construed strictly and a delegate cannot consider any circumstance, factors or condition not contemplated by the parent legislation.

67. The legislative policy of enrolment and admission of advocates is contained in Chapter III of the Advocates Act. Section 24(1) lays down the qualifications subject to which an advocate may be admitted on a State roll. Section 24(1)(f)

[78] Section 22A, AAI Act.

provides that the enrolment fee payable by general candidates is Rupees seven hundred fifty and by SC and ST candidates, Rupees one hundred and twenty-five. Section 24(1)(f) reflects the legislative policy of the Advocates Act that subject to the fulfilment of other conditions of Section 24(1), the payment of the stipulated monetary amount will make a person eligible to be admitted as an advocate.

68. Presently, the SBCs charge enrolment fees in the following manner: (i) they charge an enrolment fee according to the legal stipulation under Section 24(1)(f), but charge miscellaneous fees, and (ii) they charge an enrolment fee beyond the legal stipulation in addition to charging miscellaneous fees. Section 24(1)(f) expressly stipulates that the total enrolment fees shall be Rupees seven hundred fifty for advocates belonging to the general category and Rupees one hundred twenty-five for advocates belonging to the SC and ST category. The SBCs cannot charge "enrolment fees" beyond the express legal stipulation under Section 24(1)(f) as it currently stands. Therefore, prescribing enrolment fees beyond Rupees seven hundred for general candidates and Rupees one hundred twenty-five for SC and ST candidates is contrary to Section 24(1)(f). The subject matter of enrolment fee is covered by the Advocates Act. Therefore, the SBCs, being delegated authorities, do not have any legislative powers to prescribe enrolment fees contrary to the statutory stipulation.

69. As discussed in the above segments of this judgment, the legislature prescribed the enrolment fee under Section 24(1)(f) to cover "all functions" carried out by the SBCs and the BCI under the Advocates Act. The legislative

history suggests that the legislature was averse to imposing any charges other than enrolment fees at the time of enrolment. This was in furtherance of the legislative object to foster an inclusive Bar. However, the SBCs are imposing miscellaneous fees and charges in the guise of an enrolment fee, which cumulatively exceed the statutory stipulation under Section 24(1)(f). The decision of the SBCs to charge an enrolment fee beyond the stipulated amount is contrary to the legislative object of the Advocates Act.

70. Section 24(1)(f) is a fiscal regulatory provision and has to be construed strictly. Parliament has prescribed the enrolment fees in the exercise of its sovereign legislative powers. The SBCs and the BCI, being delegates of Parliament, cannot alter or modify the fiscal policy laid down by Parliament. The delegate can create substantive rights and obligations only to the extent to which the parent enactment empowers the delegate.[79] By prescribing additional fees at the time of enrolment, the SBCs have created new substantive obligations not contemplated by the provisions of the Advocates Act. The basis for the fees imposed by the SBCs has to be traceable to the provisions of the statute. There is no express provision in the Advocates Act empowering the SBCs to levy fees, except for the enrolment fee and stamp duty, if any, under Section 24(1)(f), at the time of admission of advocates on the State roll. The decision of the SBCs to charge miscellaneous fees is contrary to the legislative prescription of the Advocates Act.

[79] *See* Global Energy Ltd. v. Central Electricity Regulatory Commission, (2009) 15 SCC 570 [25]

71. On 26 June 2013, the BCI passed a resolution directing the SBCs to charge Rupees six thousand as enrolment fees for general candidates and Rupees three thousand for SC and ST candidates. Importantly, the resolution stated that the SBCs could charge other fees according to "their own suitability." On 22 December 2016, the BCI addressd a letter to all the SBCs directing them to charge the revised enrolment fees. The BCI resolution dated 26 June 2013 prompted many SBCs such as the Odisha Bar Council to enhance their enrolment fees. Section 24(1)(f) stipulates the enrolment fee to be charged by the SBCs. In the face of the express stipulation of law, the BCI had no authority to pass a resolution revising the enrolment fees charged by the SBCs. The fact that the enrolment fee stipulated under Section 24(1)(f) has not been revised by the legislature does not clothe the BCI with any authority to direct the SBCs to charge revised enrolment fees. Since the BCI exercises general supervision and control over all the SBCs, it is incumbent upon it to ensure that the SBCs strictly follow the mandate of the Advocates Act. The resolution dated 26 June 2013 is devoid of legal authority and contrary to Section 24(1)(f) of the Advocates Act.

G. All fees charged at the time of enrolment are 'enrolment fees'

72. In this batch of matters, we have transferred to this Court similar petitions pending before the Kerala High Court. In **T Koshy** v. **Bar Council of Kerala**,[80] the SBC was charging special fees for enrolment from candidates who had retired from government service. A Single Judge of the Kerala High Court

[80] 2016 SCC OnLine Ker 41055

observed that the special fees were charged in addition to the enrolment fees and other miscellaneous charges such as application form fee, registration fee, enrolment certificate fee, and verification fee. The vires of the miscellaneous fees was not challenged before the High Court. The High Court construed the special fee charged by the SBC as an enrolment fee and held that the amount charged by the SBC was over and above the enrolment fee stipulated by Section 24(1)(f). In appeal, the Division Bench of the High Court upheld the judgment of the Single Judge by holding that Section 28(2)(d) did not empower the SBC "to prescribe any fee for enrolment, either in the form of enrolment fee or special fee."[81] The Special Leave Petition filed by the SBC was dismissed by this Court on 4 June 2019.[82]

73. In adjudicating upon WP (C) No. 3068 of 2023,[83] another Single Judge of the Kerala High Court relied on **T Koshy** (supra) to observe that the SBC is only entitled to collect the enrolment fee stipulated under Section 24(1)(f) of the Advocates Act. Subsequently, the writ petition was heard by a Division Bench of the Kerala High Court which passed an interim order directing the SBC to admit the petitioners on the State roll by accepting Rupees seven hundred fifty as enrolment fees.

74. Given the above background, two issues arise for consideration: (i) whether the miscellaneous fees which are charged in addition to the enrolment fee at the time of enrolment can be considered as enrolment fee; and (ii) whether

[81] Bar Council of Kerala v. T Koshy, W A No. 2170 of 2017.
[82] Bar Council of Kerala v. N S Gopakumar, SLP(C) No. 44268 of 2018.
[83] Akshai M Sivan v. Bar Council of Kerala, WP(C) No. 3068 of 2023 (order dt. 12 June 2023)

the SBCs or the BCI can charge miscellaneous fees as a pre-condition for enrolment.

i. Charges other than the enrolment fee cannot be a valid pre-condition

75. Section 24(1) of the Advocates Act lays down the conditions subject to which an advocate may be admitted on a State roll. Section 24(1)(f) provides that the enrolment fee is paid by the advocate "in respect of the enrolment." The use of the phrase "in respect of the enrolment" conveys that the fee is paid for the entire enrolment process. Under the Advocates Act, the process of enrolment commences when an applicant makes an application to the SBC within whose jurisdiction the applicant proposes to practice. Thereafter, the enrolment committee of the SBC scrutinizes the application on the basis of the eligibility qualifications laid down under Section 24(1). The name of an applicant who is found eligible is entered on the roll of advocates and a certificate of enrolment is issued to the applicant by the SBC. The enrolment fee prescribed under Section 24(1)(f) comprehends the whole enrolment process.

76. On 27 December 2016,[84] the BCI passed a resolution fixing the verification fees charged by the SBCs at the time of submission of enrolment forms. The resolution was in the following terms

> "The State Bar Councils/ Enrolment Committees of the State Bar Councils shall require the Xerox as well as the original certificates of the candidates applying for enrolment. Following certificates shall be

[84] Communication dated 28 January 2017 by the BCI to the secretaries of the SBCs, BCI:D 529/2017(Council) dated 28 January 2017.

required to be submitted alongwith the enrolment forms:-

(a) Certificate of concerned Board for Secondary/10th examination.

(b) Certificate of concerned Board for Senior Secondary or intermediate examination.

(c) Certificate of graduation, if any or/and the LLB degree or the provisional certificates of these Degrees granted by the University as well as the mark-sheets of all the three or five year of LL.B. examinations.

The office of State Bar Councils shall charge a sum of Rs. 2500/- for verification of the said certificates from the candidates at the time of submission of the enrolment forms only."

77. In view of the BCI resolution, many SBCs increased the verification fees charged by them. Currently, the SBCs charge various fees such as verification fees, application fees, registration fees, and identity card fees at the time of enrolment. The SBCs charge these fees as concomitant to the process of enrolment. For instance, a verification fee is charged for the verification of academic qualification certificates of the candidates. The verification fee is collected from the candidates "at the time of submission of enrolment forms." These additional fees are in furtherance of the process of enrolment of advocates and are encompassed within the meaning of the phrase "in respect of the enrolment" appearing in Section 24(1)(f).

78. Additionally, the SBCs also collect charges such as building fund and benevolent fund from advocates at the time of enrolment. These charges are

per se not related to the process of enrolment, but in most cases the candidates have no choice but to pay the levies. The SBCs admit that they charge the fees at the time of enrolment as a one-time payment for all the services offered by them. The SBCs contend that they charge these fees at the time of enrolment because the advocates do not pay periodic fees after enrolment.

79. Admission on the roll of advocates is a pre-requisite for any person intending to practice law in India. At the time of enrolment, candidates have little agency but to pay the miscellaneous fees imposed by the SBCs to get enrolled. Non-payment of the fees means that a candidate cannot get enrolled on the State roll. Thus, all the miscellaneous fees collected from a candidate at the time of enrolment essentially serve as a pre-condition to the process of enrolment. Section 24(1) specifically lays down the pre-conditions subject to which an advocate can be enrolled on State rolls. Since Section 24(1)(f) specifies the amount that can be charged by the SBCs as an enrolment fee, the SBCs and the BCI cannot demand payment of fees other than the stipulated enrolment fee as a pre-condition to enrolment.

80. Rule 40 under Section IVA of Chapter II of Part VI under the BCI Rules mandates every advocate borne on the rolls to pay the SBC a sum of Rupees three hundred every third year.[85] The sum under Rule 40 can only be collected

[85] Rule 40, Section IVA, Chapter II, Part VI, BCI Rules. [It reads:
"40**.** Every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 300 every third year commencing from 1st August, 2001 along with a statement of particulars as given in the form set out at the end of these Rules, the first payment to be made on or before 1st August, 2001 or such extended time as notified by the Bar Council of India or the concerned State Bar Council.

Provided further however that an advocate shall be at liberty to pay in lieu of the payment of Rs. 60043 every three years a consolidated amount of Rs. 1000. This will be a life time payment to be kept in the fixed deposit

from advocates already admitted on the State rolls. Therefore, this sum cannot be collected from persons at the time of enrolment. It must be collected from advocates after they are admitted on the State roll.

ii. Article 14: substantive equality and manifest arbitrariness

81. Article 14 has a substantive content that mirrors the quest for ensuring fair treatment of an individual in every aspect of human endeavour and existence.[86] In **Joseph Shine** v. **Union of India**,[87] one of us (D Y Chandrachud, J) observed that substantive equality is directed at eliminating individual, institutional, and systemic discrimination against disadvantaged groups which effectively undermines their full and equal participation in society at the social, economic, political, and cultural levels. It was further observed:

> **"172.** The primary enquiry to be undertaken by the Court towards the realisation of substantive equality is to determine whether the provision contributes to the subordination of a disadvantaged group of individuals. The disadvantage must be addressed not by treating a woman as "weak" but by construing her entitlement to an equal citizenship. The former legitimises patronising attitudes towards women. The latter links true equality to the realisation of dignity. The focus of such an approach is not simply

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by the concerned State Bar Council. Out of life time payment, 80% of the amount will be retained by the State Bar Council in a fixed deposit and remaining 20% has to be transferred to the Bar Council of India. The Bar Council of India and State Bar Council have to keep the same in a fixed deposit and the interest on the said deposits shall alone be utilized for the Welfare of the Advocates"44.

Explanation 1.—Statement of particulars as required by Rule 40 in the form set out shall require to be submitted only once in three years.
Explanation 2.—The Advocates who are in actual practise and are not drawing salary or not in full time service and not drawing salary from their respective employers are only required to pay the amount referred to in this rule.

Explanation 3.—This rule will be effective from 1-10-2006 and for period prior to this, advocates will continue to be covered by old rule."]

[86] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 [409]
[87] (2019) 3 SCC 39 [171]

> on equal treatment under the law, but rather on the real impact of the legislation. Thus, Section 497 has to be examined in the light of existing social structures which enforce the position of a woman as an unequal participant in a marriage."

82. In **Navtej Singh Johar** v. **Union of India**,[88] a Constitution Bench held that Section 377 undermined substantive equality because it created barriers, systemic and deliberate, for the effective participation of the members of the LGBTIQ+ community in the workforce.

83. In **Bonnie Foi Law College** (supra), a Constitution Bench of this Court recognized the effect of the exorbitant enrolment fees charged by the SBCs:

> **"54.** We also have one caveat arising from the plea that different State Bar Councils are charging different fees for enrolment. This is something which needs the attention of the Bar Council of India, which is not devoid of the powers to see that a uniform pattern is observed and the fee does not become oppressive at the threshold of young students joining the Bar."

84. The burden of payment of enrolment fees and other miscellaneous fees imposed by the SBCs falls equally on all persons seeking enrolment. While the burden is facially neutral, it perpetuates structural discrimination against persons from marginalized and economically weaker sections of the society. In more than one way, the process of enrolment perpetuates a culture[89] of systemic exclusion and discrimination that impacts the entry of law graduates into the legal profession and even beyond. A law graduate in India undergoes legal education which typically entails a study of a three-year LLB course or

[88] (2018) 10 SCC 1 [453]
[89] *See* Nitisha v. Union of India, (2021) 15 SCC 125 [77]

an integrated five-year course. The model of legal education in India is largely centred around a standardized admissions test. Candidates desirous of taking the admission test have to pay a hefty fee for taking the examination and in many cases engage tutors or coaching classes to prepare for these tests. Although the engagement of tutors or purchase of preparation material is a choice a candidate can choose not to make, it puts them against a cohort of competitors who have engaged such help. Once admitted to a recognized institute for legal education, a student has to afford the fees of the college either by paying on their own or by availing of a student loan. Students are also expected and sometimes mandated to partake in internships, research work, and co-curricular and extra-curricular activities among others.[90] Partaking in these activities entails additional expenses.

85. Young law graduates seeking to enter litigation start from a position of disadvantage. In **S Seshachalam** v. **Bar Council of Tamil Nadu**,[91] Justice R Banumathi summed up the struggle of young advocates in apt words:

> **"26.** The profession of Law is a noble calling. The legal fraternity toils day and night to be successful in the profession. **Although it is true that slowly working one's way up is the norm in any profession, including Law, but initially young advocates have to remain in the queue for a prolonged period of time and struggle through greater hardships. Despite being extremely talented, a number of young lawyers hardly get proper opportunity or exposure in their profession. New entrants to the profession in the initial stages of the profession suffer with the meagre stipend which young lawyers may receive during their initial years, coupled with**

[90] Rule 25, Part IV of the Rules of Legal Education 2008, BCI mandates law students to complete an internship under an advocate for a minimum of 12 weeks for the three year law course and twenty weeks for the five year law course.
[91] (2014) 16 SCC 72

> **the absence of a legislation concerning this, they struggle to manage their food, lodging, transportation and other needs. Despite their valiant efforts, they are unable to march ahead in their profession. It is only after years of hardwork and slogging that some of the fortunate lawyers are able to make a name for themselves and achieve success in the profession**. For the majority of the legal fraternity, everyday is a challenge. Despite the difficult times, the lawyer who sets up practice straight after enrolment, struggles to settle down … in the profession. Some of the lawyers remain struggling throughout their lives yet choose to remain in the profession. It is something like "*riding a bicycle uphill with the wind against one*".
>
> (emphasis added)

86. Young law graduates who start litigating right after graduation earn anywhere between Rupees ten thousand to Rupees fifty thousand per month, depending upon the location of their practice and the chambers they join. The structure of the Indian legal setup is such that the struggle for getting acceptance in chambers and law firms is greater for those who belong to the marginalized sections, first-generation advocates, or law graduates without a degree from a National Law University. A recent report suggests that many law students from the Dalit community face English language barriers, reducing their opportunities of practicing before the High Courts and the Supreme Court where the court proceedings are in English.[92] In a legal system that is predisposed against the marginalized, the pre-condition of

[92] Challenges for Dalits in South Asia's Legal Community, Chapter III – Dalit Justice Defenders in India, American Bar Association (2021) 16

paying exorbitant fees in the name of enrolment fee creates a further barrier for many.

87. In **Neil Aurelio Nunes** v. **Union of India**,[93] a two-Judge Bench of this Court, explained the redundancy of the concept of merit and the struggles of a first-generation learner:

> **"33.** The crux of the above discussion is that the binary of merit and reservation has now become superfluous once this Court has recognised the principle of substantive equality as the mandate of Article 14 and as a facet of Articles 15(1) and 16(1). An open competitive exam may ensure formal equality where everyone has an equal opportunity to participate. However, widespread inequalities in the availability of and access to educational facilities will result in the deprivation of certain classes of people who would be unable to effectively compete in such a system. Special provisions (like reservation) enable such disadvantaged classes to overcome the barriers they face in effectively competing with forward classes and thus ensuring substantive equality. **The privileges that accrue to forward classes are not limited to having access to quality schooling and access to tutorials and coaching centres to prepare for a competitive examination but also include their social networks and cultural capital (communication skills, accent, books or academic accomplishments) that they inherit from their family. The cultural capital ensures that a child is trained unconsciously by the familial environment to take up higher education or high posts commensurate with their family's standing. This works to the disadvantage of individuals who are first-generation learners and come from communities whose traditional occupations do not result in the transmission of necessary skills required to perform well in open examination. They have to put in surplus effort to compete with their peers from the forward communities. On the other hand, social networks (based on community linkages) become useful when individuals seek guidance**

[93] (2022) 4 SCC 1

> **and advice on how to prepare for examination and advance in their career even if their immediate family does not have the necessary exposure. Thus, a combination of family habitus, community linkages and inherited skills work to the advantage of individuals belonging to certain classes, which is then classified as "merit" reproducing and reaffirming social hierarchies**."
>
> (emphasis added)

88. Social capital and networks play an important role in the Indian legal setup in advancing legal careers. Most litigation chambers hire advocates through networks and community linkages. The structure of the Indian legal system is such that social capital and networks also play an important role in getting clients. The lack of social capital and network is acutely felt by advocates from marginalized communities.[94] The marginalized sections of our society face insurmountable obstacles in navigating the Indian legal system.[95] This is further compounded by their lack of representation in the legal profession. Greater representation of the marginalized communities in the legal profession will increase the diversity within the profession, enable the marginalized sections to trust the legal system and facilitate the delivery of legal aid and services to unrepresented communities.

89. Section 24(1)(f) prescribes an enrolment fee of Rupees seven hundred fifty from general candidates and Rupees one hundred twenty-five from SC and ST candidates. Therefore, the enrolment fee prescribed for candidates from the SC and ST communities is far less than the fees paid by a candidate from

[94] Challenges for Dalits in South Asia's Legal Community, Chapter III – Dalit Justice Defenders in India, American Bar Association (2021) 17
[95] Hariram Bhambhi v. Satyanarayan, 2021 SCC OnLine SC 1010 [12]

the general category. In 1993, Parliament increased the enrolment fee for general candidates from Rupees two-hundred fifty to Rupees seven-hundred fifty, without disturbing the fees paid by candidates from the SC and ST community. This shows that Parliament is conscious of the socio-economic marginalization of the SC and ST community. However, the present enrolment fee structure reinforces the socio-economic marginalization of the SCs and STs. For instance, the Bar Council of Maharashtra and Goa charges a cumulative fee of Rupees fifteen thousand from the general candidates and Rupees fourteen thousand five hundred from SC and ST candidates. Similarly, in Manipur, the general category candidates pay Rupees sixteen thousand six hundred fifty as an enrolment fee while a candidate from the SC and ST category pays Rupees sixteen thousand fifty. Thus, the candidates from the SC and ST category practically pay as much as the candidates from the general category. This is evidently against the legislative policy of the Advocates Act.

90. Dignity is crucial to substantive equality. The dignity of an individual encompasses the right of the individual to develop their potential to the fullest.[96] The right to pursue a profession of one's choice and earn livelihood is integral to the dignity of an individual. Charging exorbitant enrolment fees and miscellaneous fees as a pre-condition for enrolment creates a barrier to entry into the legal profession. The levy of exorbitant fees as a pre-condition to enrolment serves to denigrate the dignity of those who face social and

[96] K S Puttaswamy v. Union of India, (2017) 10 SCC 1 [525]

economic barriers in the advancement of their legal careers.[97] This effectively perpetuates systemic discrimination against persons from marginalized and economically weaker sections by undermining their equal participation in the legal profession. Therefore, the current enrolment fee structure charged by the SBCs is contrary to the principle of substantive equality.

91. In **Ravinder Kumar Dhariwal** v. **Union of India**,[98] a three-Judge Bench of this Court held that substantive equality is aimed at producing equality of outcomes through different modes of affirmative action. The purpose of the Advocates Act of creating an inclusive Bar cannot be defeated by having exclusionary conditions which seek to create social and economic barriers. The Bar Councils have a responsibility in the public interest to ensure greater representation of persons from marginalized communities in the legal profession.

92. The decision of the SBCs to charge exorbitant fees also suffers from the vice of manifest arbitrariness. In **Khoday Distilleries Ltd** v. **State of Karnataka**,[99] this Court laid down the following principles for challenging delegated legislation: (i) the test of arbitrary action which applies to executive actions does not necessarily apply to delegated legislation; (ii) a delegated legislation can be struck down only if it is manifestly arbitrary; and (iii) a delegated legislation is manifestly arbitrary if it is not in conformity with the statute or offends Article 14. In **Clariant International Ltd**. v. **SEBI**,[100] a three-Judge

[97] *See* Neil Aurelio Nunes (supra) [35]
[98] (2023) 2 SCC 209 [37]
[99] (1996) 10 SCC 304 [13]
[100] (2004) 8 SCC 524 [63]

Bench of this Court held that when any criterion is fixed by a statute or by a policy, the subordinate authority must follow the policy formulation broadly and substantially. Non-conformity with the legislative policy will render delegated legislation arbitrary.[101]

93. In **Shayara Bano** v. **Union of India**,[102] a Constitution Bench held that manifest arbitrariness must be something done by the legislature capriciously, irrationally, and/or without adequate determining principles. It was further held that legislation which is excessive and disproportionate would also be manifestly arbitrary. In **Joseph Shine** (supra), one of us (D Y Chandrachud, J) held that an "adequate determining principle" is a principle that aligns with constitutional values. With respect to a piece of delegated legislation, an adequate determining principle is a principle that aligns with the legislative policy of the parent enactment as well as constitutional values. Delegated legislation that is forbiddingly excessive or disproportionate will also be manifestly arbitrary.[103]

94. As held in the preceding segments of this judgment, the SBCs at the time of enrolment charge fees in contravention of Section 24(1)(f) and the legislative policy of the Advocates Act. Therefore, the excess enrolment fees charged by the SBCs are manifestly arbitrary. Further, the effect of charging exorbitant enrolment fees as a pre-condition for enrolment has created entry barriers, especially for people from marginalized and economically weaker sections, to

[101] Secretary, Ministry of Chemicals & Fertilizers, Government of India v. Cipla Ltd., (2003) 7 SCC 1 [9]
[102] (2017) 9 SCC 1 [101]
[103] Franklin Templeton Trustee Services (P) Ltd. v. Amruta Garg, (2021) 9 SCC 606 [79]

enter into the legal profession. Thus, the current enrolment fee structure is manifestly arbitrary because it denies substantive equality.

iii. Article 19(1)(g): unreasonableness

95. Section 30 of the Advocates Act inheres in every advocate whose name is entered in the State roll the right to practice in all courts throughout the territory of India. Article 19(1)(g) of the Constitution provides that all citizens of India shall have the right to practice any profession or to carry on any occupation, trade, or business. Article 19(6) subjects the right under Article 19(1)(g) to reasonable restrictions. Further, the provision allows the State to make any law relating to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business. Thus, the right to practice law is not only a statutory right but also a fundamental right protected under Article 19(1)(g).[104] However, the right of citizens to practice law can be regulated and is not absolute.[105] Under the Advocates Act, only those advocates who are admitted on the State roll have a right to practice throughout the territory of India.[106]

96. In **Chintamanrao** v. **State of Madhya Pradesh**,[107] a Constitution Bench explained the purpose of the expression "reasonable restrictions" thus:

> **"8.** The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course

[104] N K Bajpai v. Union of India, (2012) 4 SCC 653 [25]
[105] Jamshed Ansari v. High Court of Judicature at Allahabad, (2016) 10 SCC 554 [17]
[106] N K Bajpai (supra) [25]
[107] 1950 SCC 695

> which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(*g*) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

97. In **Rashid Ahmed** v. **Municipal Board, Kairana**,[108] a Constitution Bench of was called upon to decide the validity of bye-laws framed by the Municipal Board. Bye-law 2 provided that no person could establish any new market or place for wholesale transactions without the previous permission of the Municipal Board. Justice S R Das (as the learned Chief Justice then was), speaking for the Constitution Bench, held:

> **"11.** The Constitution by Article 19(1) guarantees to the Indian citizen the right to carry on trade or business subject to such reasonable restrictions as are mentioned in clause (6) of that article. The position, however, under Bye-law 2 is that while it provided that no person shall establish a market for wholesale transactions in vegetables except with the permission of the Board, there is no bye-law authorising the respondent Board to issue the licence. The net result is that the prohibition of this bye-law, in the absence of any provision for issuing licence, becomes absolute."

98. In **Mohammad Yasin** v. **Town Area Committee, Jalalabad**,[109] a Constitution Bench of this Court was called upon to determine the validity of the bye-laws framed by the Town Area Committee imposing licence fees on any person intending to sell in wholesale at any place in the town area. The issue before this Court was whether the Committee had legal authority to impose the fees.

[108] 1950 SCC 221
[109] (1952) 1 SCC 205

Justice S R Das (as the learned Chief Justice then was) observed that a "licence fee on a business not only takes away the property of the licensee but also operates as a restriction on his right to carry on his business, for without the payment of such fee the business cannot be carried on at all." It was held that the restriction on the fundament right under Article 19(1)(g) can be imposed by the State according to Article 19(6). It was held that an illegal impost is an unreasonable restriction on the right to carry on occupation, trade or business under Article 19(1)(g):

> "12. […] If, therefore, the licence fee cannot be justified on the basis of any valid law no question of its reasonableness can arise, for an illegal impost must at all times be an unreasonable restriction and will necessarily infringe the right of the citizen to carry on his occupation, trade or business under Article 19(1)(*g*) and such infringement can properly be made the subject-matter of a challenge under Article 32 of the Constitution."

99. In **Mohammad Yasin** (supra), the United Provinces Town Areas Act 1914 empowered the Town Area Committee to charge fees for the use or occupation of any immoveable property vested in or entrusted to the management of the Town Area Committee, including any public street or place. It was held that this power did not include the power to levy licence fees on a person intending to sell in wholesale at any place in the town area. Therefore, it was held that the licence fee imposed by the Town Area Committee was ultra vires the 1914 Act:

> **"20.** In our opinion, the bye-laws which impose a charge on the wholesale dealer in the shape of the prescribed fee, irrespective of any use or occupation

> by him of immovable property vested in or entrusted to the management of the Town Area Committee including any public street, are obviously ultra vires the powers of the respondent Committee and, therefore, the bye-laws cannot be said to constitute a valid law which alone may, under Article 19(6) of the Constitution, impose a restriction on the right conferred by Article 19(1)(*g*). In the absence of any valid law authorising it, such illegal imposition must undoubtedly operate as an illegal restraint and must infringe the unfettered right of the wholesale dealer to carry on his occupation, trade or business which is guaranteed to him by Article 19(1)(*g*) of our Constitution."

100. In **Cooverjee B Bharucha** v. **Excise Commissioner**,[110] another Constitution Bench held that a licence fee levied without the authority of law was not protected under Article 19(6). In **R M Seshadri** v. **District Magistrate**,[111] the District Collector imposed a condition compelling the licencee to exhibit at each performance one or more approved films of such length and for such length of time as directed by the Government. The condition was challenged for violation of Article 19(1)(g). A Constitution Bench of this Court observed that the condition was couched in wide language and did not lay down any guideline to the licencing authority. It was held that a "condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable restriction."

[110] (1954) 1 SCC 18 [9]
[111] (1954) 2 SCC 320

101. We can cull out the following principles from the above discussion: (i) the power of the authority to impose restrictions on the right under Article 19(1)(g) is not absolute and must be exercised in a reasonable manner; (ii) any fees or licences levied by the authorities must be valid and levied on the basis of the authority of law; and (iii) delegated legislation which is contrary to or beyond the scope of the legislative policy laid down by the parent legislation places an unreasonable restriction in violation of Article 19(1)(g).[112]

102. According to the current enrolment fee structure of the SBCs, an advocate has to pay anywhere between Rupees fifteen thousand to Rupees forty-two thousand as a pre-condition to enrolment. As held in the above segments of this judgment, the SBCs charge enrolment fees in excess of the stipulated fee prescribed under Section 24(1)(f). The excess enrolment fee imposed by the SBCs is without authority of law. Compounded with this there are no reasonable criteria behind the decision of the SBCs to charge such exorbitant amounts as enrolment fees. The SBCs cannot have unbridled powers to charge any fees given the express legislative policy under Section 24(1)(f). Imposing excessive financial burdens on young law graduates at the time of enrolment causes economic hardships, especially for those belonging to the marginalized and economically weaker sections of the society. Therefore, the current enrolment fee structure charged by the SBCs is unreasonable and infringes Article 19(1)(g).

[112] Minerva Talkies v. State of Karnataka, 1988 Supp SCC 176 [15]

H. Financial implications for the SBCs and the BCI

103. As discussed in the above segments of this judgment, we are cognizant of the fact that the SBCs and the BCI depend entirely on the amount collected from candidates at the time of enrolment for performing their functions under the Advocates Act, including payment of salaries to their staff. According to the legislative scheme of the Advocates Act, the Bar Councils must only charge the amount stipulated under Section 24(1)(f) as an enrolment fee. Instead of devising ways and means to charge fees from enrolled advocates for rendering services, the SBCs and the BCI have been forcing young law graduates to cough up exorbitant amounts of money as a pre-condition for enrolment.

104. Once the advocates are enrolled on the State rolls, the Bar Councils can charge fees for the services provided to the advocates in accordance with the provisions of the Advocates Act. It is for the SBCs and the BCI to devise an appropriate method of charging fees that is fair and just not only for the law graduates intending to enroll, but also for the advocates already enrolled on the State rolls. There are several reasonable ways by which the SBCs and BCI can and already do collect funds at later stages of an advocate's career. For instance, under the Advocates Welfare Fund Act 2001, advocates must affix mandatory welfare stamps on *vakalatnamas* which are used to collect funds for advocate welfare. Unlike an enrollment fee charged before a graduate is given a fair chance to earn a living, such sources of income are directly correlated to the advocates' practice.

105. It is clarified that the only charges permissible at the stage of enrolment are those stipulated under Section 24(1)(f) of the Advocates Act. All other miscellaneous fees, including but not limited to, application form fees, processing fees, postal charges, police verification charges, ID card charges, administrative fees, photograph fees etc. charged from the candidates at the time of admission are to be construed as part of the enrollment fee. The fees charged under these or any similar heads cannot cumulatively exceed the enrolment fee prescribed in Section 24(1)(f).

106. The Advocates Welfare Fund Act 2001[113] is enacted to provide for the constitution of a welfare fund for the benefit of advocates. Section 3 provides that the appropriate government shall constitute an Advocates Welfare Fund. Section 15 mandates the SBCs to pay annually to the welfare fund an amount equal to twenty per cent of the enrolment fee received by it under Section 24(1)(f) of the Advocates Act.[114] This decision will not have any effect on the obligation of the SBCs under Section 15 because they will continue to charge the enrolment fee as stipulated under Section 24(1)(f).

107. The SBCs and the BCI are directed to ensure that the fees charged at the time of enrollment comply with Section 24(1)(f) and the provision is not defeated either directly or indirectly under the garb of different nomenclatures. The SBCs cannot charge an enrolment fee or miscellaneous fees above the amount prescribed in Section 24(1)(f). No case is made out for this Court to

[113] "2001 Act"
[114] Section 15, Advocates Welfare Fund Act 2001. [It reads:
15. Payment of certain monies to Fund by State Bar Council – The State Bar Council shall pay to the Fund annually an amount equal to twenty per cent of the enrolment fee received by it under clause (f) of Section 24 of the Advocates Act, 1961 (25 of 1961).]

exercise its power under Article 142 to implement the BCI Draft Enrolment Rules in their current form.

108. The result of this decision would have entitled advocates who have paid the excess enrolment fee to a refund from the SBCs.[115] The SBCs have been levying the enrolment fees for a considerable duration and utilizing the collected amounts to carry out their day-to-day functioning. Therefore, we declare that this judgment will have prospective effect. Resultantly, the SBCs are not required to refund the excess enrolment fees collected before the date of this judgment.

I. Conclusions

109. In view of the above discussion, we conclude that:

a. The SBCs cannot charge "enrolment fees" beyond the express legal stipulation under Section 24(1)(f) as it currently stands;

b. Section 24(1)(f) specifically lays down the fiscal pre-conditions subject to which an advocate can be enrolled on State rolls. The SBCs and the BCI cannot demand payment of fees other than the stipulated enrolment fee and stamp duty, if any, as a pre-condition to enrolment;

c. The decision of the SBCs to charge fees and charges at the time of enrolment in excess of the legal stipulation under Section 24(1)(f) violates Article 14 and Article 19(1)(g) of the Constitution; and

[115] *See* Somaiya Organics (India) Ltd v. State of U P, (2001) 5 SCC 519 [46]

d. This decision will have prospective effect. The SBCs are not required to refund the excess enrolment fees collected before the date of this judgment.

110. In view of the above, the writ petition, transferred cases and transfer petitions are disposed of.

111. Pending application(s), if any, stand disposed of.

…….…..…..…..……..…..CJI.
[Dr Dhananjaya Y Chandrachud]

……..…..…..…..……..…..J.
[J B Pardiwala]

New Delhi;
July 30, 2024