

PETITIONER:
(DR.) HANIRAJ L. CHULANI

Vs.

RESPONDENT:
BAR COUNCIL OF MAHARASHTRA & GOA

DATE OF JUDGMENT: 08/04/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
AHMADI A.M. (CJ)
MANOHAR SUJATA V. (J)

CITATION:
1996 AIR 1708 1996 SCC (3) 342
JT 1996 (4) 162 1996 SCALE (3)354

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.B. Majmudar. J
Leave granted.

A short but an interesting question falls for determination in the present case. It runs as under :

"Whether the respondent-State Bar Council of Maharashtra & Goa was justified in refusing enrollment of the appellant as an advocate under the Advocates Act, 1961 as he is a medical practitioner who does not want to give up his medical practice but wants simultaneously to practice law.

In order to appreciate the contours of controversy centering round this question, a few relevant facts leading to these proceedings are required to be noted at the outset.

The appellant is a permanent resident of Bombay. He is a medical practitioner (colorectal surgeon) since 1970. During the continuance of his said profession as a medical practitioner, the appellant joined LL.B. Degree Course and obtained Degree of Bachelor of Laws on 4th March 1991. Thereafter the appellant applied to the respondent State Bar Council of Maharashtra & Goa for being enrolled as an advocate under the Advocates Act, 1961 (hereinafter referred to as 'the Act'). This application was moved by the appellant on 26th July 1991. The appellant insisted that even though he is a medical practitioner he is entitled to simultaneously carry on the profession as an advocate. The Enrollment Committee of the respondent-State Bar Council rejected his request for being enrolled as an advocate simultaneously with his carrying on his medical practice as a surgeon. The appellant was ultimately informed on 16th November 1992 that his application for enrollment as an

advocate was rejected. He was also supplied a copy of the reasons for 'refusal for grant of a sanad'. The appellant feeling aggrieved by the said refusal filed writ petition No.2584 of 1992 in the High Court of Bombay. After hearing the petitioner a Division Bench of the High Court summarily dismissed his writ petition on 14th December 1992. It is thereafter that the appellant moved the present proceedings by way of special leave petition. By an order dated 30th November 1993 delay in filing the special leave petition was condoned and notice was ordered to be issued to the Bar Council of Maharashtra & Goa with a direction that the notice will state that the matter will be disposed of at the notice stage itself. Subsequently after hearing the learned senior counsel for the appellant by an order dated 21st September 1995 notice was ordered to be issued to Bar Council of India as well as the Medical Council of India.

Rival Contentions

We have heard the learned senior advocate for the appellant as well as the learned advocates for the respondents in support of their respective stands. Learned senior counsel for the appellant submitted that Rule (1) framed by the respondent-Bar Council of Maharashtra under Sections 28(2) and 24(1)(e) of the Act was ultra vires and illegal. In this connection she submitted that in so far as the said rule prohibits a person who is otherwise qualified to be admitted as an advocate from being enrolled as an advocate if he is carrying on any other profession like medical profession in the present case, it suffers from the vice of excessive delegation of legislative power and even otherwise the said rule is unconstitutional being violative of Article 19(1)(9) of the Constitution and is not saved by sub-article (6) thereof as it imposes unreasonable restriction on the right of a citizen to pursue any profession of his choice and that the rule is equally violative of Articles 14 and 21 of the Constitution of India as it seeks to deprive right of livelihood to the appellant in a most unreasonable manner. It was contended that there was nothing obnoxious of illegal in a practising doctor insisting on being enrolled as an advocate and in carrying on practice both as a medical practitioner as well as an advocate. As the medical profession cannot be said to be in any way less dignified profession and once the appellant is found to be qualified to be enrolled as an advocate as per the Act, the State Bar Council by framing such a rule could not have restricted his entry to the profession of advocates especially when the appellant was ready to give an undertaking that during court hours he would not carry on his medical profession. Learned counsel appearing for the State Bar Council on the other hand supported the decision of the High Court and contended that the rule framed by the State Bar Council does not suffer from any vice nor was it violative of any of the fundamental rights invoked by the appellant for getting it voided on that score. It may be stated that the Medical Council of India to whom notice was issued had referred this matter to its Executive Committee which was of the view that Medical Council of India has no objection to any medical practitioner holding registerable recognized medical certificate who is also qualified in law, practising medicine and law simultaneously.

In the light of the aforesaid rival contentions the following points arise for our determination.

1. Whether impugned Rule (1) framed by the State Bar Council of Maharashtra & Goa suffers from the vice of excessive delegation of legislative power and hence is void and inoperative at law.

2. Whether the said rule is violative of Article 19(1)(9) and is not saved by sub-article (6) thereof.

3. Whether the aforesaid rule is violative of Articles 14 and 21 of The Constitution.

We shall deal with the aforesaid points in the same sequence in which they are noted. However, before dealing with them it is necessary to have a glance at the relevant statutory settings in the light of which the aforesaid points will have to be considered.

Statutory Provisions

The genesis of the Advocates Act, 1961 is found in the felt need for providing a uniform and well-knit structure of legal profession which plays pivotal role in strengthening the system of administrative justice in the country. It is axiomatic that a properly equipped and efficient Bar can play a pre-eminent rôle not only in the system of justice but also in the constitutional government and rule of law. Realizing the importance of an independent/integrated Bar, the Indian Bar Committee appointed by Government of India in 1951 recommended, inter alia, the constitution of an All India Bar Council, State Bar Councils, a common roll of advocates and complete autonomy to the Bar in matters relating to qualification, administration, discipline, etc. of members of the profession. In 1958 the Law Commission in its fourteenth report on the Reform of Judicial Administration endorsed the recommendation of the All India Bar Committee and urged the Government to implement the same. In 1959, the Legal Practitioners' Bill incorporating the recommendations was introduced in Parliament which was later adopted with the changed name of Indian Advocates Act, 1961.

Though the demand for a unified All India Bar initially emerged mainly, if not wholly, as a protest against the monopoly of the British Barristers on the 'Original Side' of the Calcutta and Bombay High Courts and the invidious distinctions between the barristers and non-barristers, after independence it assumed the status of a professional claim and a national necessity in the search for better delivery of justice to the people. It was assumed that a unified Bar for the whole country with monopoly in legal practice and autonomy in matters of professional management would advance the cause of justice in society. The role of the profession in the national movement for Independence and the professional standards displayed by native lawyers including Vakils, Pleaders and Mukhtars, convinced Parliament to adopt the Advocates Act giving a unique status and structure to the Indian Bar.

The Advocates Act amended and codified the law relating to legal practitioners and provided for the constitution of an All India Bar. The complete control and jurisdiction regarding enrollment of advocates and their discipline, which had all along been with the High Courts, stood transferred to the Bar Council of India and State Bar Councils. The Bar Councils have become complete autonomous bodies with elected representatives of advocates.

Every State Bar Council has (a) one or more Disciplinary Committees; (b) an Executive Committee consisting of five members; (c) an Enrollment Committee consisting of three members; and such other committees as may be found necessary.

The Act came into force with effect from 19.5.1961. The dictionary of the Act is to be found in Section 2, clause (a) whereof defines an advocate as a person entered in any roll under the provisions of the Act as such and the term 'roll' according to clause (k) means a roll of advocates

prepared and maintained under the Act. Section 3 provides that there shall be a Bar Council for each of the States to be known as the Bar Council of that State. Section 4 next provides for a Bar Council for the territories to which the Act extends to be known as the Bar Council of India. The functions of the State Bar Council and the Bar Council of India have been set out in Sections 6 and 7 respectively. The functions of the State Bar Council include admission of persons as advocates on its roll, preparation and maintenance of such roll, safeguarding the rights, privileges and interests of advocates on its roll and to do all things necessary for discharging the above functions. The functions of the Bar Council of India include the laying down of standards of professional conduct and etiquette for advocates and for safeguarding their rights, privileges and interests. Chapter III which deals with "Admission and Enrollment of Advocates" comprises of Sections 16 to 28. Section 16 provides that there shall be two classes of advocates, senior advocates and other advocates; Section 17 sets out how every State Bar Council shall prepare and maintain a roll of advocates; Section 18 deals with the transfer of name of an advocate from one State to another; Section 19 enjoins upon every State Bar Council to send copy of the roll of advocates to the Bar Council of India; Section 20 makes special provision for Enrollment of every advocate who was entitled to practise in the Supreme Court immediately before the appointed day and whose name is not entered in the roll of a State Bar Council; Section 21 relates to the fixation of seniority; Section 22 provides for issuance of certificate of Enrollment and Section 23 confers the right of pre-audience on the Attorney General of India, the Solicitor General of India, the Additional Solicitor General of India, etc. Section 24 to the extent it is relevant for our purpose provides as under :

"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;
- (b) he has completed the age of twenty-one years; and
- (c) he has obtained a degree in law-

.....

(d)

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

(f)

Section 24-A provides that no person shall be admitted as an advocate on a State roll, for the period indicated in the proviso, if he is convicted of an offence involving moral turpitude, or if he is convicted of an offence under the provisions of Untouchability (Offences) Act, 1955 or if he is dismissed or removed from employment or office under the State on any charge involving moral turpitude; Section 25 indicates the authority to whom applications for Enrollment may be made; Section 26 provides for the disposal of such

applications; Section 26-A confers power on the State Bar Council to remove any name from its roll; Section 27 provides that where a State Bar Council has refused application of any person for admission as an advocate, no other State Bar Council shall entertain his/her application for admission on its roll except with the previous consent of the former and of the Bar Council of India. Section 28 confers power on a State Bar Council to make rules to carry out the purposes of the Chapter which may in particular, inter alia, provide for the conditions subject to which a person may be admitted as an advocate on its roll. Chapter IV deals with the "Right to Practise". Section 29 says that subject to the provisions of the Act and any rule made thereunder there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates. According to Section 30 every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the territories to which the Act extends in all courts including the Supreme Court of India, before any Tribunal or person legally authorized to take evidence and before any authority or person before whom such advocate is, by or under any law for the time being in force, entitled to practise. Section 33 further provides that no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under the Act. Chapter V deals with "Conduct of Advocates". Under Section 35 where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct it shall refer the case for disposal to its disciplinary committee. Section 37 provides for an appeal to the Bar Council of India against an order made by the disciplinary committee of a State Bar Council. Section 36 provides that where on receipt of a complaint or otherwise, the Bar Council of India has reason to believe that any advocate whose name is any entered on any State roll has been guilty of professional or other misconduct, it shall refer the case to the disciplinary committee. Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or 37 may prefer an appeal to the Supreme Court of India under Section 38 of the Act. The powers of the disciplinary committee have been enumerated in Section 42. Chapter VI deals with 'Miscellaneous' matters.

Having noted the relevant provisions of the Act it will be apposite to consider the scheme underlying the Act. This Court had an occasion to consider this very scheme in the case of *Indian Council of Legal Aid & Advice & Ors. v. Bar Council of India & Anr.* 1995) 1 SCC 732. A three member Bench of this Court presided over by one of us A.M. Ahmadi, C.J. had to consider whether Rule (9) framed by Bar Council of India barring enrollment to persons who had completed 45 years of age was violative of Article 14 of the Constitution of India being discriminatory, unreasonable and arbitrary. While considering the said question the following pertinent observations were made on the scheme of the Act in para 6 of the Report :

We have briefly noticed the relevant provisions of the Act in the earlier part of this judgment. We may now briefly indicate the scheme. Before we do so it may not be out of place to mention that the profession of law is one of the

oldest profession and was practised in one form or the other in the hoary past. After the advent of the British in India, certain rules in regard to the practise of law were introduced. Before independence there were Mukhtars and Vakils who were permitted to practise law in moffusil courts even though not all of them were Law graduates. However, slowly and gradually they were allowed to wither away and their place was taken by Pleaders who were, after securing a degree in Law, permitted to practise at the district level. Those who were enrolled as advocates could practise in any court subordinate to the High Court including the High Court. The difference between a Pleader and an Advocate was merely on account of the fee charged for enrollment. After independence, came the Act which was enacted "to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an all-India Bar". The Act creates an all-India Bar with only one class of legal practitioners, namely, advocates, who of course are classified as senior advocates and other advocates (Section 16). The general superintendence of ethics and etiquette of the profession is the responsibility of the Bar Councils created under the Act and they have been charged with the duty to punish their members for misconduct. The Act envisages the existence of a Bar Council for every State. The function of admission of persons as advocates is entrusted to every State Bar Council which is required to prepare and maintain a roll for that purpose. While disciplinary jurisdiction is conferred on the state Bar Councils to punish its members for misconduct, it is at the same time charged with the duty to safeguard their rights, privileges and interests. They must perform all the functions conferred on them by or under the Act and do everything that is necessary to discharge the functions set out in Section 6. So far as the Bar Council of India is concerned, its functions are of a more general nature, e.g., to lay down standards of professional conduct and etiquette for advocates, to

safeguard their rights, privileges and interests, to supervise and control the working of the State Bar Council, to promote legal education, to recognize universities, to organize legal aid to the poor and to perform all other functions conferred by or under the Act and do everything that may be necessary to discharge the functions enumerated in Section 7. Besides the above it too is required to exercise discipline and control over the members of the profession. Thus the functions are divided between the State Bar Councils and the Bar Council of India, although for obvious reasons overlaps are unavoidable. The rule-making power has been conferred on the State Bar Councils under Sections 15 and 28 and on the Bar Council of India under Section 49 of the Act.

While considering the relevant roles of the State Bar Councils and the Bar Council of India as envisaged by the Act the following pertinent observations were made in paragraph 11 of the Report :

It seems Parliament while enacting the Act created agencies at the State level as well as at the Central level in the form of State Bar Councils and Bar Council of India and invested them with rule-making powers on diverse matters touching the legal profession, presumably because it must have realized that matters pertaining to the profession are best left to informed bodies comprising of members of the said profession. However, while doing so it provided for basic substantive matters, e.g., eligibility for entry into the profession (Section 24), disqualification for enrollment (Section 24-A), authority entitled to grant admission (Sections 25 and 26), the authority which can remove any name from the roll (Section 26-A), etc., and placed them within the domain of a State Bar Council. Thus it is the State bar Council which alone must decide the question of enrollment of an applicant on its roll. Under Section 24 a person who is a citizen of India and possesses a degree in Law becomes qualified to be admitted as an advocate if he has completed twenty-one years of age, subject of course to the other provisions of the Act. No doubt he must fulfil the other conditions specified in the rules made by the

State Bar Council [Section 24(1)(8)]. Every person whose name is entered in the list of advocates has a right to practise in all courts including the Supreme Court, before any tribunal or other authority. It is, therefore, within the exclusive domain of the State Bar Councils to admit persons as advocates on their rolls or to remove their names from the rolls."

In the light of the aforesaid statutory settings it, therefore, becomes clear that it is for the concerned State Bar Councils by promulgating appropriate rules to regulate the entry of persons seeking to join legal profession. The respondent-State Bar Council of Maharashtra & Goa in exercise of its powers under Section 28(2)(d) read with Section 24(1)(e) of the Act has framed rules in this connection. Rule (1) with which we are concerned reads as under :

1. A person who is otherwise qualified to be admitted as an Advocate but is either in full or part time service or employment or is engaged in any trade, business or profession shall not be admitted as an Advocate.

Provided however that this rule shall not apply to :

(i) Any person who is a Law Officer of the Central Government or the Government of a State or of any Public corporation or body constituted by Statute.

For the purpose of this clause a "Law Officer shall mean a person who is so designated by the terms of his appointment and who by the said terms is required to act and/or plead in Court on behalf of his employer.

(ii) Any person who is an Articled Clerk of an Attorney;

(iii) Any person who is an assistant to an Advocate or to an Attorney who is an Advocate;

(iv) Any person who is in part-time service as a Professor, Lecturer or Teacher-in-Law;

(v) Any person who by virtue of being a member of a Joint Hindu Family has an interest in a joint Hindu Family business, provided he does not take part in the management thereof; and

(vi) Any person who is not personally engaged in any business but is a sleeping partner in a firm doing business, provided that in the opinion of the Bar Council of Maharashtra the nature of the business is not inconsistent with the dignity of the profession.

(vii) Any person who is a Director or Chairman of the Board of

Directors of a company with or without any ordinary sitting fees, provided none of his duties are of an Executive character and he is not a Managing Director or a Secretary of the said company, or of any other company.

(viii) Any person who has inherited or succeeded by survivorship to a family business but who is not personally participating in the management thereof.

(ix) Any person who either prior to or after his application for enrollment under Section 24 holds or continues to hold a share with others in any business which descended to him by survivorship or inheritance or by Will provided he does not personally participate in the management thereof.

(x) Any person who reviews Parliamentary Bills for a remuneration, edits legal text-books at a salary, does "press Vetting" for news-papers, sets and examines question papers or is a part-time teacher or lecturer or an assistant to an editor of a Law journal provided his hours or work and/or engagement do not conflict with the hours of court, and subject to the rules against advertising and full-time employment to which an Advocate after enrollment is subject to, is engaged in broadcasting, journalism, lecturing and teaching subjects, both legal and non-legal.

(xi) Any other person or class of persons as the Bar Council may from time to time exempt."

The said rule which is impugned in the present proceedings clearly bars an otherwise qualified person from being enrolled as an advocate if he is engaged in any other profession. It is based on the premise that an advocate must devote his full time and attention to the legal profession. It is because of the aforesaid provision in the rule that appellant's entry to the legal profession is denied by the respondent-State Bar Council as the appellant is already an active medical practitioner carrying on his profession as a surgeon and which professional activity he insists on continuing simultaneously with being an advocate though as submitted by his learned senior counsel the appellant is willing to stagger the time during which he would carry on either of the two professions in the course of the day. At this stage also it is necessary to note that the Bar Council of India has also framed rules called Bar Council of India Rules in exercise of its powers under Section 49 of the Act. In Chapter III of Part VI of the Rules dealing with the 'Conditions for right to practice', are found rules frame under Section 49(1)(ah) of the Act which deals with the conditions subject to which an advocate shall have the right to practise', and the circumstances under which a person shall be deemed to practise as an advocate in a

court'. The relevant rule is Rule 2 which states that an advocate shall not enter into a partnership or any other arrangement for sharing remuneration with any person of legal practitioner who is not an Advocate. Our attention was also invited to Rule 47 found in Section VII of Chapter II of Part VI of the said Rules dealing with 'Standards of Professional Conduct and Etiquette' which contains rules framed by the Bar Council of India under Section 49(1)(c) of the Act read with the proviso thereto. The aforesaid rule-making power pertains to standards of professional conduct and etiquette to be observed by the advocates. This rule states that an advocate shall not personally engage in any business; but he may be a sleeping partner in a firm doing business provided that, in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession. This rule framed by the Bar Council of India was sought to be contrasted with the impugned rule framed by the respondent-State Bar Council. It was submitted that as per Rule 47 framed by the Bar Council of India an advocate is not allowed to personally engage in any business. The said rule does not prohibit him from carrying on any other profession while the impugned rule bars the entry of even a professional carrying on any other profession which is equally dignified from being enrolled as an advocate.

It is in the background of the aforesaid statutory provisions and the relevant rules that we now proceed to deal with the points for determination that have fallen for our consideration.

Point No.1

So far as the question of excessive delegation of legislative power is concerned we must note at the outset that the Act has been enacted, as seen earlier, with a view to regulate the right of advocates to practise law. The rules framed by the Bar Council of India especially relating to standards of professional conduct and etiquette clearly aim at securing high standards of competence in legal services and seek to strengthen professional relationships among its members and promote the welfare of the society as a whole. Specific norms have been laid down in respect of conduct of the persons practising the profession vis-a-vis the public, the court, the client, the opposite lawyer and professional brethren. Lawyer's duty to train juniors and impart free legal aid to poor is part of the ethics. The code thus provides standards for identification and measurement of professional deviance. As noted earlier the Act besides highlighting the essential functions of Bar Council of India provides for enforcement of the same and sets up disciplinary authorities to chastise and, if necessary, punish members of the profession for misconduct. The punishment may include suspension from practice as well as removal of the name from the roll of advocates. Section 49(1) confers power on the Bar Council of India to make rules, inter alia, for discharging its functions under the Act. Section 49(1)(ag) when read with Section 24 of the Act confers wide powers on the Bar Council of India to indicate the class or category of persons who may be enrolled as advocates which power would include the power to refuse enrollment in certain circumstances. The obligation to maintain the dignity and purity of the profession and to punish ensuring members carries with it the power to regulate entry into the profession with a view to ensuring that only profession-oriented and service-oriented people join the Bar and those not so oriented are kept out. The role of an advocate is essentially different from the role

of any other profession an advocate is said to belong to a noble profession. The Act itself envisages the State Bar Councils who are the elected peers of advocates themselves to lay down the standards for the professional conduct and etiquette. That would naturally bring in its wake the power to regulate entry to such a noble profession. It is said that law is a jealous mistress that calls for undivided loyalty and unflinching attention from her devotees. Dry drudgery of desks' dead wood is the essential requirement of an advocate aspiring to win laurels in the profession. The attack on the impugned rule on the ground of excessive delegation of legislative power will have to be examined in the light of scheme of the Act which has entrusted the power and the duty to elected representatives of the profession constituting the State Bar Councils to lay down the high standards of professional etiquette as expected of the advocates enrolled by it. It is pertinent to note that the Act has entrusted to the Bar Council of India, amongst others, the functions to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Bar Council of India is entrusted with the function to recognize Universities whose degree in law shall be a qualification for enrollments as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities with such directions as it may give in this behalf. It conducts seminars and organize talks on legal topics by eminent jurists and publishes journals and papers of legal interest. In this connection, it also exercises general supervision and control over the State bar Councils. It is also entrusted with the task of promoting and supporting law reform. All these provisions as laid down by Section 7 of the Act leave no room for doubt that even prior to the enrollment as advocate the teaching of law and laying down of the curriculum for law courses are also the tasks entrusted to the Bar Council of India, which is the apex body of professionals monitoring these matters in conjunction with the State Bar Councils. Thus even at pre-entry stage of an advocate to the profession his equipments as a student of law and the requirement of basic legal education with which he should be armed before he can aspire to be enrolled as an advocate are also looked after by the Bar Council of India and the concerned State Bar Council which works under the general supervision and control of the apex body, namely, the Bar Council of India. Thus the Bar Council of India is cast with the duty to take all such steps as it considers necessary to filter students at the entry stage to the law course e.g. by providing an entrance test, as well as at the entry point to the profession, e.g. by providing an examination or a training course before enrollment as an advocate. The Act also deals with the topic of regulation of professional conduct of advocates from the entry point itself.

The concerned State Bar Councils have to monitor the role of advocates so long as they continue to practise law after initial entry. As the enrollment by the State Bar Council entitles an advocate after entry to the profession, to practise the noble profession of law and who becomes, by such enrollment, an officer of the court, the said entrant can be validly subjected by the concerned Bar Council to the strict requirements of the profession for enabling such an aspirant to effectively cater to the needs of the legal profession. The power and the duty entrusted to the State Bar Councils to monitor such entry, in the light of the

nature of the profession to which such entry is given would themselves supply the necessary yardstick and guidelines for the exercise of such power by the elected body of advocates constituting the concerned Bar Councils. The scheme of the Act thus lays down a complete code for regulating the legal education and professional equipments of an aspirant seeking entry to legal profession from the grassroot level where he is student of law till he equips himself with essential legal knowledge and seeks enrollment and even thereafter till he practices law and completes his professional career as advocate. Thus, from the pre-entry point to legal Profession till the exit point from the legal profession, the Bar Council of India and the State Bar Councils monitor the career of the legal practitioner. It is the entire scheme of the Act when considered in the light of the nature of the legal profession to which such entry is given which has to be kept in view while considering the submission of learned senior counsel for the appellant that the power given to the State Bar Councils to regulate such entries by framing rules is a piece of excessive delegation of legislative power. It cannot be gainsaid that law is universally described as an honourable profession. An advocate is an officer of justice and friend of the court. A conduct, therefore, which is unworthy of him as an officer of justice cannot be justified by stating that he did it as the agent of his client. His status as an officer of justice does not mean that he is subordinate to the Judge. It only means that he is an integral part for the Administration of justice. Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold. Members of the profession claimed that they are the leaders of thought and society. The central function that the legal profession must perform is nothing less than the administration of justice.

The aforesaid well established connotations and contours of the requirements of legal profession themselves supply the necessary guideline for the concerned Bar Councils to frame rules for regulating the entries of persons to the profession. As noted earlier, the impugned rule has been framed by the Maharashtra State Bar Council in the exercise of its rule-making power under Section 24(1)(e) read with Section 28(2) of the Act. Section 24 deals with 'Persons who may be admitted as advocates on a State roll'. Sub-section (1) thereof provides that 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 conditions laid down in the Section. Amongst other conditions are found conditions which the entrant has to fulfil as may be specified by the Rules made by the State Bar Council under Chapter III dealing with 'Admission and Enrollment of Advocates'. Section 28 sub-section (2) similarly gives power to the State Bar Council to make rules for carrying out the purposes of the Act and in particular such rules may provide the conditions subject to which a person may be admitted as an advocate. Such rule-making power flows from Section 28(2)(d). Even though the aforesaid rule making power is couched in wide terms the said power entrusted to the State Bar Council cannot be said to be unfettered or unhedged. The said rule-making power draws its sustenance from the guidelines laid down by the Act itself which entrusts the duty to the concerned State Bar Council to regulate entry to the legal profession which has the aforesaid well established connotations and attributes. The concerned Bar Councils are entrusted by the legislature itself with the aforesaid rule-making power

enabling them to determine the requirements of the concerned State Courts where the new entrants have to practise and to lay down appropriate conditions regulating such entries. As the power to make rules is entrusted by legislature to the chosen representatives of legal practitioners themselves who would be alive to the requirements of the concerned State where the Bar Council functions and the needs of the litigating public residing in the States in the light of the set-up of courts in the States concerned, it cannot be said that the power is in any way unfettered or uncanalised so as to amount to total effacement of legislative control. Sufficient guidelines are laid down by the legislature itself while conferring such powers on the State Bar Councils. The guideline flow from the nature of the profession to which admissions are to be given, the selection of the chosen representatives of the profession to be the recipients of such power and the requirements of the Statute itself laying down the conditions for regulating professional conduct of advocates as discernible from various provisions of the Act and the rules framed by a Central Bar Council itself for the guidance of all State Bar Councils functioning in the country which entrusted with the task of regulating the conduct of legal profession throughout the country under supervision and guidance of Central Bar Council. The entire edifice of the Act in this connection has to be kept in view for finding out the relevant guidelines for enlightening the path of State Bar Councils entrusted with the task of framing rules regulating entries of new aspirants who are to be permitted to enter the fold of legal profession.

In this connection the learned senior counsel for the the appellant invited our attention to the decision of this Court in A.N. Parasuraman & Ors. v. State of Tamil Nadu (1989) 4 SCC 683 and Ajoy Kumar Banerjee & Ors. etc. etc. v. Union of India & Ors. (1984) 3 SCC 127 for buttressing her submission that legislature cannot delegate essential legislative functions to its delegate. There cannot be any dispute about the settled legal position on this aspect. However, as discussed by us earlier, in the set-up of the entire scheme of the Act and the rules framed by the Central Bar Council and in the light of the nature of the power entrusted to the elected body of advocates themselves it cannot be said that while regulating the entry to the legal profession the Bar Councils would find themselves without any yardstick or guideline and would be trading an unchartered sea and consequently the rules of enrollment framed by them would fall foul on the altar of permissible delegation of legislative power. It is, therefore, not possible to agree with the contention of the learned senior counsel for the appellant that the impugned rule suffers from the vice of excessive delegation of legislative power or by providing rule-making power to the State Bar Councils for regulating entries of new advocates seeking to join the profession the legislature has effaced itself. The power conferred on the State Bar Councils to lay down further conditions for controlling the entries to the legal profession cannot be said to be an unguided power conferred on them. The conditions which the State Bar Councils can lay down by rules must be conditions which would be germane to the high and exacting standards of advocacy expected of the new entrants to the fold of the profession. Implicit in the conferment of such rule-making power is the guideline laid down by the legislature itself that the conditions must be commensurate with the fructification of the very purpose of the Act of putting the profession of advocates on a sound

footing so that the concerned new entrant can well justify his role as an officer of the Court admitted to the fold of the noble profession to which he seeks his admission. Any conditions laid down by the State Bar Councils for fructifying this laudable object of legislature would remain germane to the exercise of this power and can well be said to be logically flowing from it. It cannot, therefore, be said that any unguided and unchartered power is handed over on a platter by the legislature to the concerned Bar Councils for regulating entry to the legal profession. Rule-making power conferred on the State Bar Councils is inherently hedged in with the obligation to frame only such rule, regarding enrollment 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. Any rule which effectuates this purpose will be within the permissible field and will not fall foul on the altar of Article 14 and Article 19(1)(9) read with Article 19(6). Any rule framed for enrollment which does not meet this yardstick will be a taboo. Hence it cannot be said that the rule making power entrusted to the State Bar Councils suffers from absence of any guidelines or exhibits effacement of legislative power. The first point for determination, therefore, is answered in the negative by holding that the impugned rule does not suffer from vice of any excessive delegation of legislative power. That takes us to the consideration of Point No.2.

Point No.2.

It is no doubt true that under Article 19, sub-Article (1)(g) all citizens have a right to practise any profession, or to carry on any occupation, trade or business and any profession may include even plurality of professions. However, this is not an absolute right. It is subject to sub-Article (6) of Article 19 which lays down that nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause. It cannot be gainsaid that litigants are also members of general public and if in their interest any rule imposes a restriction on the entry to the legal profession and if such restriction is found to be reasonable Article 19(1)(g) would not get stultified. It is true that the appellant as a citizen of India having obtained the qualification required for being enrolled as an advocate can legitimately aspire to be enrolled as an advocate but his aforesaid right is fettered by the impugned rule framed by the State Bar Council. We have to consider whether the said restriction imposed by the rule is in any way unreasonable. We have to keep in view the fact that the impugned rule restricts entry of a person who is otherwise qualified for being enrolled as an advocate if he is already carrying on any other profession. Question is whether such a person carrying on other profession can be validly told off the gates by the State Bar Council by resorting to the impugned rule. In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other profession simultaneously with the legal profession. As we have seen earlier legal profession requires full time attention and would not countenance an advocate riding two horses or more at a time. He has to be full time advocate or not at all.

Learned senior counsel for the appellant submitted that, even though the appellant is a practising surgeon he undertaking, if given entry to the legal profession, not to practise medicine during the court hours. This is neither here nor there. It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously. Such an insistence on his part itself would create an awkward situation not only for him but for his own clients as well as patients. It is easy to visualize that a practising surgeon like the appellant may be required to attend emergency operation, even beyond court hours either in the morning or in the evening. On the other hand the dictates of his legal profession may require him to study the cases for being argued the next day in the court. Under these circumstances his attention would be divided. We would naturally be in a dilemma as to whether to attend to his patient on the operation table in the evening or to attend to his legal profession and work for preparing cases for the next day and to take instructions from his clients for efficient conduct of the cases next day in the court. If he is an original side advocate he may be required to spend his evenings and even late nights for making witnesses ready for examination in the court next day. Under these circumstances as a practising advocate if he gives attention to his clients in his chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theater or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives without the aid of his expert hand as a surgeon. Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have worst of both the worlds. Such a person aspiring to have simultaneous enrollment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. It is axiomatic that an advocate has to burn midnight oil for preparing his cases for being argued in the court next day. Advocate face examination every day when they appear in courts. It is not as if that after court hours advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give whole-hearted and full time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise. If he is permitted to simultaneously practise as a doctor then the requirement of his full time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full time occupation. It is for ensuring the full time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil

their role as an officer of the court and can give their best in the administration, of justice, that the impugned rule has been enacted by the State legislature. It, therefore, cannot be said that it is in any way arbitrary or that it imposes an unreasonable restriction on the new entrant to the profession who is told not to practise, simultaneously any other profession and if he does so to deny to him entry to the legal profession. It is true as submitted by learned senior counsel for the appellant that the rule of Central Bar Council does not countenance an advocate simultaneously carrying on any business and it does not expressly frown upon any simultaneous profession. But these are general rules of professional conduct. So far as regulating enrollment, to the profession is concerned it is the task entrusted solely to the State Bar Council by the Legislature as seen earlier while considering the scheme of the Act. While carrying on that task if the entry to the profession is restricted by the State Bar Council by enacting the impugned rule for not allowing any other professional to enter the Bar. When he does not want to give up the other profession but wants to carry on the same simultaneously with legal practice, it cannot be said that the Bar Council has by enacting such a rule imposed any unreasonable restriction on the fundamental right of the prospective practitioner who wants to enter the legal profession.

Learned senior advocate for the appellant vehemently contended that such a rule is not found to have been framed by other State Bar Councils. In our view that would not make any difference. We are called upon to decide the question whether the impugned rule framed by the respondent-State Bar Council stands the test of Article 19(1)(9) or not. While deciding that question whether other State Bar Councils permit by their rules entry of other professional to the legal profession, would be an aspect which would not be strictly relevant. In our view the impugned rule does not impose any unreasonable restriction on the right of the professional carrying on any other avocation and insisting on continuing to carry on such profession, while it prohibits entry of such a person to the legal profession. If the contention of the learned senior counsel for the appellant is countenanced and any person professing any other profession is permitted to join the legal profession having obtained the Degree of Law and having fulfilled the other requirements of Section 24, then even chartered accountants, engineers and architects would also legitimately say that during court hours they will practise law and they will simultaneously carry on their other profession beyond court hours. If such simultaneous practices of professionals who want to carry on more than one profession at a time are permitted, the unflinching devotion expected by the legal profession from its members is bound to be adversely affected. If the peers being chosen representatives of the legal profession constituting the State Bar Council, in their wisdom, had thought it fit not to permit such entries of dual practitioners to the legal profession it cannot be said that they have done anything unreasonable or have framed an arbitrary or unreasonable rule.

Point No. 3

So far as the challenge to the impugned rule on the touchstone of Article 14 is concerned it cannot be said that the rule is unreasonable, arbitrary or capricious from any angle. On the same ground on which the rule is found not to have fallen foul on the anvil of Article 19(1)(g) as the

impugned rule has to be treated as imposing a reasonable restriction on the said fundamental right it also, therefore, has to be held not to be arbitrary or unreasonable from any viewpoint. The rule carves out a well defined class of professionals carrying on other professions and denies to members of this well defined class entry to the legal profession so long as they insist on carrying on any other profession simultaneously with the legal profession. The said classification has a reasonable nexus to the object sought to be achieved, namely, the efficiency of advocates belonging to the legal profession and the better administration of justice for which the legal profession is a partner with the judiciary. The challenge mounted on the rule in the light of Article 14, therefore, has to fail.

That leaves out the challenge to the rule in the light of Article 21. It is difficult to appreciate this challenge. It is no doubt true that right to live includes right to livelihood. However the appellant is not denied his right to livelihood. He is already a professional carrying on the profession of a medical practitioner. He wants to have a second string to his bow. He wants simultaneously to be permitted to practise law with a view to earn additional or more livelihood. So far as his aforesaid demand is concerned the impugned rule requires that unless he gives up that other practice and joins wholeheartedly the legal profession he cannot be permitted to enter the legal profession. That rule cannot be said to be laying down a procedure not established by law. On the contrary that procedure has been found to be well sustained under Article 19(1)(g) read with Article 19(6). Once that conclusion is reached the absolute requirement of Article 21 would be out of the way. Appellant cannot be said to have been deprived of his right to livelihood by pursuing two professions, contrary to any established procedure of law. Consequently the impugned rule cannot be faulted on the touchstone of Articles 21. The third point for determination also, therefore, is decided against the appellant.

Before parting we may mention one submission highlighted by learned senior counsel for the appellant. She submitted that under rule-making power of the State Bar Council condition for enrollment can be imposed. But in the guise of imposing such conditions, the impugned rule has travelled further and has laid down a disqualification for enrollment which is beyond the scope of Section 24-A. It is true as submitted by learned senior counsel for the appellant that in a way the enactment of this rule imposes a disqualification for enrollment. However once it is found that the rule falls within the parameters of rule-making power as entrusted by the legislature to the State Bar Councils as per Section 24(1)(e) read with Section 28(2)(d) it cannot be said that such disqualification could not be legitimately imposed by the State Bar Council. She next submitted that the Medical Council of India has no objection to the appellant's simultaneously practising law along with his practising law along with his practising as a surgeon. She also submitted that in foreign countries in some of the States such simultaneously practice is permitted. In our view all this is besides the point. Whether the Medical Council of India has no objection to their members' practising law or whether in foreign countries under certain circumstances other professionals are permitted to simultaneously practise law would not be strictly relevant in deciding the short question with which we are concerned, namely, whether the State Bar Council had undertaken an

impermissible exercise in enacting the impugned rule restricting entries of other professionals to the legal profession while they are not prepared to give up their other professions and on the contrary insist on simultaneously practising more than one professions. While deciding this question the wider question whether there can be a better rule than one framed by the State Bar Council would be besides the point and cannot be of any assistance. Such a contention, therefore, cannot be of any avail to the learned senior counsel for the appellant.

The aforesaid were the only contentions canvassed on behalf of the appellant and as they fail the appeal also fails and will stand dismissed. In the facts and circumstances of the case there will be no order as to costs.

