

IN THE HIGH COURT OF PUNJAB AND HARYANA

(EXTRAORDINARY CIVIL JURISDICTION)

CIVIL WRIT PETITION NO. -----OF 2010

IN THE MATTER OF :

Fatehpal Singh Singh

R/o Panchkula

PETITIONER

VERSUS

1. Union of India  
Through its Secretary  
Govt. of India New Delhi

2. Bar Council of India  
Through its Chairman  
New Delhi.

RESPONDENTS

AND IN THE MATTER OF :

Article 14 read with Article 19 (1) G

AND IN THE MATTER OF:

Article 246 read with entry 77 list 1, 7<sup>th</sup> schedule.

AND THE MATTER OF:

Denial of the right to practice as provided in the Advocates Act, 1961 provisions: Section 2 (1) A, Section 24 (1), Section 24 (3) and Sections 29, 30 and 33.

AND THE MATTER OF:

Civil writ petition under Article 226 of Constitution of India Challenging the arbitrary and unreasonable actions of the Bar Council of India in laying down rules to conduct the Bar Exams to grant the Right to Practice of enrolled Advocates.

TO,

THE HON'BLE CHIEF JUSTICE AND  
HIS COMPANION JUSTICES OF THE PUNJAB AND HARYANA HIGH COURT  
AT CHANDIGARH.

The petitioner above named most respectfully S H E W E T H:-

1. The petitioner is a citizen of India. He was born on 24<sup>th</sup> October 1983 ( Twenty Forth October Nineteen Eighty Three).
2. The Petitioner has passed his B.A., LL.B Degree from Nalsar Law University, Hyderabad on May 25<sup>th</sup>, 2010. He has further been admitted to the rolls of the Bar Council of Punjab and Haryana (Check name) on 1<sup>st</sup> of June 2010. The true copies of the provisional certificates and marks statement of the petitioner in respect of his B.A., LL.B Degree are marked as Annexure-A. His certificate of enrollment is marked as Annexure – B.
3. Respondent No. 1 is the Union of India through The Secretary, Ministry of Law and Justice, responsible under the Constitution for lay down legislation related to the practice of law and the conduct of advocates.
4. Respondent No. 1 appoints Commission and Committees to advise it on the national pattern of legal education general policies for the development of legal education, legal petition and law as a whole in all stages.
5. Respondent No. 1 is also responsible under the Constitution for the administration of the Union Territories and has executive and legislative authority for all subjects including reforms and legal education.
6. Respondent No. 2 is a body created in furtherance of the provisions of the Advocates Act, 1961. Its primary responsibility is to the determine and co-ordinate the stands of legal education in the Country and law down qualifications and conditions necessary for enrollment to the State Bar Councils in the Country.

7. It is respectfully submitted that all the above named Respondents have to Act in coordination with each other in order to ensure a fair and uniform system for the legal profession as envisaged by national policies and National Knowledge Commission.
8. That around 14 December 2009, the Hon'ble Supreme Court in Union of India v. Bonnie Foi Law College and Ors., SLP No 22337/2008 had asked the Union of India about the conducting of such Bar Exam. The Hon'ble Chairman of the Bar Council of India, then acting as the Solicitor General of India for the Union of India, had submitted that a three member panel had been formed to see the viability of the exam and the manner in which it ought to be conducted. He also submitted to Court that a Directorate of Legal Education would come into force by the 31<sup>st</sup> of December 2010. A copy of the Order of the Supreme Court is marked as Annexure C.
9. Respondent No. 2 adopted a resolution on 10<sup>th</sup> April 2010 to conduct an All India Bar Exam. The exam was to be conducted so that the passing of the same would entitle an advocate to practice law in India. No official news of the same resolution was published until and around the 2<sup>nd</sup> of June 2010 where in the news of the resolution and the draft rules were put up on the website of Respondent No. 2. A copy of the draft rules and resolution as available on the Bar Council of India website as late as 27<sup>th</sup> June 2010 is marked as Annexure –D .
10. That on the 2<sup>nd</sup> of June, 2010, newspapers reported that an All India Bar Exam would be conducted and that private legal consulting firm Rainmaker would be in-charge of conducting the exam. That presentations were also made by the firm as to how the exam would be conducted. A copy of the newspaper items is marked as Annexure – E. A copy of the presentation made by consulting firm Rainmaker about the conduct of this exam is marked as Annexure- F.
11. Till the 12<sup>th</sup> of June, 2010, no official notification was passed regarding the conduct of the exam and the petitioner's future along with other law students was left hanging till such time. On the 12<sup>th</sup> of June, the said draft rules on the website of Respondent No. 2 were notified.
12. As the delayed notification of the exam came as a sudden shock to the Petitioner's future, he was further informed that he wouldn't be able to practice or appear in Courts till such time he passed the exam. In effect, he would be unemployed or under a senior without a source of income till the passing of such exam. The source of such information was the website of respondent No. 2 that in the Frequently Asked Questions (FAQ's) page categorically stated that all those persons graduating in the academic year 2009-2010 have mandatorily to pass the bar exam before they will be permitted to practice the profession of law. Moreover, that the qualification of passing the Bar Exam shall not apply to those persons who have graduated prior to 2009-2010. A copy of the same is attached herewith as Annexure G.
13. That the petitioners herein have graduated from one of the premier law institutes in the country. Moreover, that throughout the course in law school, the petitioners have

mandatorily been made to undergo several internships at law firms, corporate house, and lawyers.

14. In view of the enrollment procedure provided by the State Bar Council and the Advocate Act, The petitioner enrolled as an Advocate on the state rolls on 01 June 2010.
15. The Petitioner met the qualifications prescribed to be enrolled and entail a right to practice under the Advocates Act, 1961 and paid the required fees for the purposes of enrollment which was completed on 2<sup>nd</sup> June 2010. The petitioner's name was subsequently entered on the state rolls of Punjab and Haryana Bar Council.
16. The present petition raises vital questions of public as well as private importance for determination by this Hon'ble Court. The vital question of law involved concerns the career of a large number of young students who in spite of economic and financial difficulties have obtained their education.
17. This petition also raises the question of the definition of an 'Advocate' as per the Advocates Act, 1961.
18. The present petition also raises a cry on the ground of restriction of the Right to Practice which is adversely oppressing his Right to Work.
19. The impugned rules of the Bar Council of India is ultra vires the Constitution and the Advocate Act, 1961, arbitrary, discriminatory, unreasonable, unjust, invalid and unfair and following amongst others

#### GROUNDS

- A. That Section 24 of the Advocates Act, 1961 (the Act) deals with enrollment of Advocates, and that Section 24 of the Act is further subject to other provisions of the Act and the Rules framed there under.
- B. That as per the three – member Committee report submitted by the Chairman of Respondent No. 2 to the Hon'ble Supreme Court, at page no. 54, the Chairman has categorically stated that the requirement to clear the Bar Exam shall be introduced only by means of a statutory amendment.
- C. That Respondent No. 2 is not empowered under its constituent statute to conduct a Bar Exam. As such, only the Law Ministry may prescribe the requirement of an All India Bar Exam, and not Respondent No. 2. The object and purpose of the establishment of

Respondent No. 2 is to deal with only those classes of persons qualified as advocates, and not those who are in the process of qualifying.

- D. That the Rules issued by Respondent No. 2 are arbitrary and devoid of any logic, inasmuch as they specify that only those graduating in the academic year 2009-2010 are required to pass the Bar Exam. As such, the object of the Act and the Notice is to regulate and raise the level of those persons permitted to practice law. Adopting this stance, the Petitioner has passed his B.A., LL.B Degree from Nalsar Law University, Hyderabad on May 25<sup>th</sup>, 2010. He has further been admitted to the rolls of the Bar Council of Punjab and Haryana on 01 June 2010. The true copies of the provisional certificates and marks statement of the petitioner in respect of his B.A., LL.B Degree are marked as Annexure-A. His certificate of enrollment is marked as Annexure – B.
- E. That the Respondents have willingly delayed the issuance of the notice. The Ministry of Law and Justice and Respondent No.2 have been in talks since January 2010 regarding the possibility of holding an All India Bar Exam, but an official statement was only released as late as June 2010. Moreover, the Rules were released as a draft on June 2, 2010, specifying that the date of the exam is scheduled for December 5, 2010. As such, those graduating in 2009-2010 will be denied the right to perform official legal work by virtue of the notice. Such draft rules were notified only on the 12<sup>th</sup> of June 2010.
- F. That several persons graduating in 2009-2010 have already enrolled themselves at several State Bar Councils. Though Section 30 of the Act is subject to other provisions and Rules framed under the Act, there exists no post enrollment qualification to be fulfilled prior to which such persons will be allowed to practice law.
- G. That having once cleared the requirements of Section 24 of the Advocates Act, 1961, the Petitioner has a right to practice as laid down under Section 30 of the said Act and there can be no further qualifications prescribed. The process of prescribing a post enrollment Bar Exam without having a corresponding Section in the Act would have the effect of denying any vested rights that would have accrued to those persons already enrolled.
- H. That the right to practice and conditions pertaining thereto are contained in Chapter IV of the Advocates Act, 1961, whereas the rule making power of the Respondents is contained in Chapter VI of the said Act. Moreover, that Chapter IV is an exhaustive, exclusive code in itself, being more specific in character, and thus cannot be governed by the provisions of Chapter VI of the said Act.
- I. That the conduct of Respondent No. 2 has been haphazard inasmuch as all the notices and clarifications have been issued, in June 2010, which is a mere month prior to the commencement of work for most 2010 graduating law students, and considering this, none of them will be allowed to work in the capacity of 'advocates', but will be put in the same position as interns.

- J. That on enrollment, one of the rights that accrues to a person is the right to practice. Thus, the notice cannot have retrospective effect of denying any such rights that may have accrued to those persons enrolled.
- K. That Section 30 of the Advocates Act gives a right to all registered under S.24 of the act with their names on the state rolls to practice throughout the territory to which the act extends thus vesting a right upon those registered as advocates *nemo potest mutare consilium suum in alterius injuriam* therefore no one is allowed to change his mind to the injury of other. So the legislature should also not change its mind to prejudice of a vested right. This can only be taken away by amending the act by the legislature.
- L. That the Petitioner has passed his B.A., LL.B Degree from Nalser Law University, Hyderabad on May 25<sup>th</sup>, 2010. He has further been admitted to the rolls of the Bar Council of Punjab and Haryana on 01 June 2010. The true copies of the provisional certificates and marks statement of the petitioner in respect of his B.A., LL.B Degree are marked as Annexure-A. His certificate of enrollment is marked as Annexure – B.
- M. Whereas the power of a rule making authority is conferred for promoting the policy and purpose of the act and the power cannot be used for any extraneous or irrelevant purpose such as over riding the provisions of the parent act. This power *cannot be exercised in such a way as to bring into existence substantive rights or disabilities not contemplated by the parent act itself.*
- N. Further the Bar exams were expressly excluded from the preview of the Act in 1973. Clearly a rule including them again is beyond the rule-making power of the Bar Council. Whereas in the final report of the 3 member committee on reform of legal education it has been submitted in its conclusion and recommendation on page 54 that “The Committee is therefore, of the opinion that qualifying a bar examination should be made a requirement prior to admission to the Bar by all State Bar Councils across the country. In light of the decision of the Supreme Court in the V. Sudeer case, such a requirement may be introduced in the Advocates Act, 1961 by means of a statutory amendment.”
- O. Whereas the Supreme Court has in several cases has restricted a rule making body from making rules with retrospective effect.
- P. Whereas Chapter III of Part VI of the Bar Council India Rules bare the intent of being rules governing misconduct and discipline and not enrollment conditions as advocates as they law no bearings to S.24 and S.30. The intent of the act under s.49 1(ah) is to provide penal authority to the bar council for disciplinary proceedings and not powers to evaluate the educational quality.
- Q. Whereas the standard of education under S.49 1(j) can be affected only if they have been approved by the Chief Justice of India.

- R. That the role of examinations can be to the academic/intellectual/physical capability of the person undergoing it for which had been provided for in S.24 sub-section 1 clause (d) which has been omitted by Act 60 of 1973,S.18(w.e.f. 31-1-1974).
- S. That such a discrimination is only put against students joining the profession and not other class of people such as judicial officers who also are permitted to join the profession. Taking an exam for the right to practice whereby making an exclusive right for the students graduating in the year 2009-2010 or making it mandatory for anyone who wishes to join the profession this year. Thereby giving preferential treatment to judicial officer retiring this year or who wish to join the profession.
- T. That if the Bar exams are to take place it shall change the definition of Advocate under S.2(a) of Advocates Act,1961 also will have change S.24 Person who may be admitted as advocates on State roll.
- U. Whereas the role of the State roll under S.30 and Enrolment under S.24 of the Act shall be omitted by the Right to practice by the Bar Council Rules 9 to 11 in Part VI, Chapter III of the Bar Council of India Rules – Conditions for Right To Practice – under Section 49(1)(ah) of the Advocates Act, 1961] giving it authority over the Advocates Act, 1961.
17. The Petitioner has no other efficacious remedy except to approach this Hon'ble Court.
18. The Petitioner has not filed any other similar petition either before this Hon'ble Court or before the Supreme Court of India.
19. The Petitioner craves leave of this Hon'ble Court to amend or add to the grounds if so required.
- 20 The Petitioner is a resident in the State of Punjab and his name is on the roles of the Bar Council of Punjab and Haryana. This Hon'ble Court has therefore jurisdiction to entertain and try this petition.
- 21 There has been no undue delay in filing of this petition.
22. The requisite court fees of -----has been affixed on this petition.

PRAYER:

The Petitioner most humbly prays that this Hon'ble Court may be please to:-

- a) Declare the impugned rules framed by Respondent No. 2 as invalid, unconstitutional and arbitrary;
- b) Issue appropriate writ in the nature of mandamus directing the Respondents to grant the Right to practice to the Petitioner; and
- c) Issue any other further order/orders or direction/directions as this Hon'ble Court may deem fit and appropriate on the facts and in the circumstances of this case.

FOR THIS ACT OF KINDNESS THE PETITIONER ABOVE NAMED SHALL EVER PRAY.

PETITIONER

THROUGH

CHANDIGARH

ADVOCATE

DATED: