

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 13020 / 2015

1. The Rajasthan High Court Advocates Association, Jodhpur
through its President, Ranjeet Joshi s/o Shri Ranchhor Dassji Joshi

aged 59 years b/c Pushkarna Brahmin, r/o 358, Kamla Nehru
Nagar, Jodhpur.

2. The Rajasthan High Court Lawyers Association, Jodhpur through
its President Dilip Singh Rajvi s/o Late Shri Amar Singhji Rajvi

aged 52 years b/c Rajput r/o 184, Hanumant Nagar B.J.S. Colony,
Paota main road, Jodhpur.

----Petitioners

Versus

1. The Bar Council of Rajasthan through its Secretary, Rajasthan
High Court Building, Jodhpur.

2. The Bar Council of India through its Secretary, 21 Rouse
Avenue Institutional Area, Near Bal Bhawan New Delhi.

----Respondents

D.B.Civil Writ Petition No. 13021 / 2015

The-Bar Association, Udaipur (Registration No.24/2012-13) a
society registered under Rajasthan societies registration act 1958
having its registered office at district & session Judge court
building, Udaipur through President Praveen Khandelwal Aged 47

years, having office at district & session Judge court building,
Udaipur

-----Petitioner

Versus



1. The Bar Council of Rajasthan through its Secretary,
Rajasthan High Court Building, Jodhpur.

2. The Bar Council of India through its Secretary, 21 Rouse
Avenue Institutional Area, Near Bal Bhawan New Delhi.

-----Respondents

D.B.Civil Writ Petition No. 13568 / 2015

The District Bar Association, Bhilwara (Registration
No.10/Bhilwara/2006-07) a society registered under Rajasthan
societies registration act 1958 having its registered office at
district & session Judge court building, Bhilwara through President
Vikram Singh Rathore Aged 39 years, having office at district &
session Judge court building, Bhilwara.

-----Petitioner

Versus

1. The Bar Council of Rajasthan through its Secretary,
Rajasthan High Court Building, Jodhpur.

2. The Bar Council of India through its Secretary, 21 Rouse Avenue Institutional Area, Near Bal Bhawan New Delhi.

-----Respondents

D.B.Civil Writ Petition No. 13668 / 2015



The District Bar Association, Chittorgarh (Registration No.60/Chittorgarh/2012-13) a society registered under Rajasthan societies registration act 1958 having its registered office at district & session Judge court building, Chittorgarh through President Shyam Lal Sharma Aged 45 years, having office at district & session Judge court building, Chittorgarh.

-----Petitioner

Versus

1. The Bar Council of Rajasthan through its Secretary, Rajasthan High Court Building, Jodhpur.
2. The Bar Council of India through its Secretary, 21 Rouse Avenue Institutional Area, Near Bal Bhawan New Delhi.

सत्यमेव जयते

-----Respondents

D.B.Civil Writ Petition No. 14761 / 2015

The-Bar Association, Jaipur(Registration No.79 of 1957-58), a Society registered under Rajasthan Societies Registration Act 1958 having its office at Civil Court Building, Bani Park, Jaipur through

General Secretary Sanjay Vyas S/o Shri Ram Chandra Vyas, aged 39 years, resident of P.No.40, Barkat Nagar, Tonk Fatak, Jaipur.

-----Petitioner

Versus



1. The Bar Council of Rajasthan through its Secretary, High Court Compound, Jodhpur.

2. The Bar Council of India through its Secretary, 21 Rouse Avenue Institutional Area, Near Bal Bhawan New Delhi.

-----Respondents

D.B.Civil Writ Petition No. 14846 / 2015

The Rajasthan High Court Bar Association, Jaipur (Registration No.159 of 1958-59), a society registered under the Rajasthan Societies Registration Act 1958 having its office at Rajasthan High court Premises, Jaipur through its General Secretary Prahlad Sharma S/o Late Shri Mool Chand Sharma, aged 45 years, R/o 16, Ashok Vatika, Gopalpura Bypass, Jaipur (Rajasthan).

Versus

1. The Bar Council of Rajasthan through its Secretary, High Court Compound, Jodhpur.

2. The Bar Council of India through its Secretary, 21 Rouse Avenue Institutional Area, Near Bal Bhawan New Delhi.

----Respondents



D.B.Civil Writ Petition No. 2032 / 2016

The District Bar Association (Registration No.33/1937), a society registered under Rajasthan societies registration act 1958 having its registered office at district & session Judge court building, Ajmer through President Mohan Singh Rathore Aged 55 years, having office at district & session Judge court building, Ajmer.

---Petitioner

Versus

1. The Bar Council of Rajasthan through its Secretary, High Court Compound, Jodhpur.
2. The Bar Council of India through its Secretary, 21 Rouse Avenue Institutional Area, Near Bal Bhawan New Delhi.

---Respondents

सत्यमेव जयते

D.B.Civil Writ Petition No. 2045 / 2016

The-Bar Association, Jaipur (Registration No.79 of 1957-58), a Society registered under Rajasthan Societies Registration Act 1958 having its office at Civil Court Building, Bani Park, Jaipur through

General Secretary Sandeep Luhadia, S/o Shri Kamal Prakash Jain, aged 44 years, R/o 3/269, Malviya Nagar, Jaipur.

----Petitioner

Versus

1. The Bar Council of Rajasthan through its Secretary, High Court Compound, Jodhpur.

2. The Bar Council of India through its Secretary, 21 Rouse Avenue Institutional Area, Near Bal Bhawan New Delhi.

----Respondents



For Petitioner(s) : Mr. M.R.Singhvi, Senior Advocate, assisted by Mr. Bhavit Sharma.

For Respondent(s) : Mr. M.S.Singhvi, Senior Advocate, assisted by Mr. Vineet Dave, Mr. Rajat Dave & Mr. Vivek Aggarwal, for the respondent No.1. Mr. Pritam Solanki, for the respondent No.2.

HON'BLE MR. JUSTICE GOVIND MATHUR

HON'BLE MR. JUSTICE KAILASH CHANDRA SHARMA

Order

06/02/2017

REPORTABLE

To challenge "The Bar Associations of Rajasthan Rules, 2013" (hereinafter referred to as 'the Rules of 2013'), the prominent Bar Associations operating at different stations in the State of Rajasthan, are before us as petitioners in the petitions preferred under Article 226 of the Constitution of India. The petitioner Bar Associations are societies, either registered under

the Societies Registration Act, 1860 or under the Rajasthan Societies Registration Act, 1958.

The case of the petitioner associations is that the State Bar Council is having no competence to enact the Rules of 2013, prescribing complete code relating to constitution, election, management, working, funding etc. of the Bar Associations. The Rules, as per the petitioners, deserve to be declared ultra vires being enacted by the State Bar Council beyond the competence vested in it. The Rajasthan State Bar Council enacted the Rules aforesaid with preamble that reads as follows:-

“The profession of advocacy is a noble one because the advocate serves the society with all decency, responsibility and with dignity. Advocates are the representative class of society. The leaders of bar project the standard and quality of their members. In recent past years the procedure to choose leaders of Bar Associations has been polluted. Also, the fact is there that the welfare schemes introduced by Rajasthan Bar Council and the Bar Council of India are not being properly implemented.

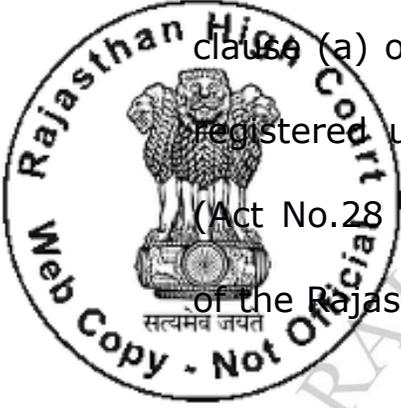
It is the duty of state Bar Council to promote the growth of Bar Associations for the purpose of effective implementation of the welfare schemes prepared by it. Therefore, in order to give effective implementation of the welfare schemes for the advocates of state of Rajasthan and also to provide systematic and disciplined election process for the Bar Associations of



state of Rajasthan, these rules are framed under the powers conferred under section 6(dd) of the Advocates Act, 1961.”

The rules aforesaid were approved by the Bar Council of India on 17.6.2014 and came into force on 31.5.2015. As per

clause (a) of Rule 2 of the Rules of 2013 “Bar Association means registered under the Rajasthan Societies Registration Act, 1958 (Act No.28 of 1958) and recognized/registered under Section 14 of the Rajasthan Advocates Welfare Fund Act, 1987”.



As per clause (g) of Rule 2 aforesaid “Advocate” means a person whose name has been entered on the State roll of advocates prepared and maintained by the Bar Council of Rajasthan State under Section 17 of the Advocates Act, 1961 and who is a member of a bar association.

Rule 3 of the Rules of 2013 makes it necessary for every Bar Association to have its registration under the Rajasthan Societies Registration Act, 1958 and recognition/registration under Section 14 of the Rajasthan Advocates Welfare Fund Act, 1987. It is also required to consist of all those persons who have signed the Memorandum of Association and all others who became members of the Association under the Rules of 2013.

Rule 4 provides objects for an Association and those are as follows:-

“(a) To promote the development of legal science and studies and to watch legislation for the purpose of assisting in the progress of sound legislation;

(b) To safeguard and promote the interest of the legal profession and its members in general and of the members of the Association in particular;



(c) To promote a high professional tone, standard and conduct amongst the members of the legal profession and to check unprofessional practices;

(d) To maintain a library of legal literature and of other subjects likely to be useful to the members of the Associations;

(e) To provide a meeting place for the members of the Association particularly for study and discussion of law;

(f) To bring to the notice of the Bar Council, the High Court, the Supreme Court or the Central or State Governments regarding matters affecting the legal profession in general and the members of the Association in particular;

(g) To prepare and implement schemes for giving assistance to members of their families in distressed circumstances;

(h) To protect the independency unity and autonomy of the Bar, so provided under the Advocates Act;

(i) To safeguard the rights, privileges and interests of Advocates on its Roll;

(j) To promote the growth of Bar Association or the purpose of effective implementation of the Welfare Scheme framed by the Bar Association as well as the Bar Council;

(k) To promote and support law reforms to conduct seminars and organized talks on legal topics by eminent jurists and public journals and papers of legal interested;

(l) To organize legal aid to the poor in the prescribed manner to manage and invest the funds of the Bar Association;

(m) To protect constitution and law of the land;

(n) To do all such acts or take such steps as might be necessary for the well being of the Association, or for the fulfillment of these objects;

(o) To conduct the election of the Bar Association properly in one day in the State of Rajasthan with right to vote to the Member at one place [**in one Bar Association**] as per his choice [**but he may become the member/(s) of more than one Bar Association as non voting member.**]"

As per Rule 5, an association can have three types of members viz. Life Member, Ordinary Member and Non-Voting Member.

Rule 6 provides for maintaining a register of members and Rule 7 relates to admission of members and according to that any person with the Bar Council of Rajasthan wishing to become an ordinary/life member/non voting member, may apply in writing to the President/General Secretary/Secretary of the Association for admission through an application signed by him/her alongwith latest coloured photograph and bearing the signature of at least two members of the association having at least five years of membership of the association.



As per Rule 8, the General Secretary of the Association shall place the application alongwith objections, if any, before the Executive Committee for its consideration. The Executive Committee, if rejects the application, then such advocate shall not be entitled to apply again for the membership for a period of one year from the date of rejection of the application.



Rule 12 pertains to eligibility to contest and right of vote and that reads as follows:-

“(i) The member, who exercises his right to vote in any other Bar Association of (High Courts, District Courts or Bar Association at any level) either in Rajasthan or India, except the Bar Association of his choice, shall not be eligible to contest and shall have no right to vote.

(ii) Every member before casting or contesting the election his vote shall, in a prescribed form, give a declaration that he is not casting his vote or contesting the election in any other election of advocates in any other Bar Association.

If such a declaration is found to be false, then his membership shall automatically be suspended for three years and he will not be entitled to become member of any Bar Association during that period.”

Every Bar Association is required to have its Executive Committee and office bearers as per Rules 13 and 14, which are as follows:-

“13. Office Bearers.- The Association shall have the following office bearers who shall be elected every year in the Annual General Meeting-

- (i) A President
- (ii) A Vice-President
- (iii) A General Secretary [/Secretary]
- (iv) A Joint Secretary
- (v) A Treasurer
- (vi) A Library Secretary

14. Executive Committee.- The affairs of the Association shall be managed and its entire business including the investment of its funds shall be conducted by and under the control of Executive Committee consisting of:-

- (i) Office bearers referred under Rule 13;

[xxx]

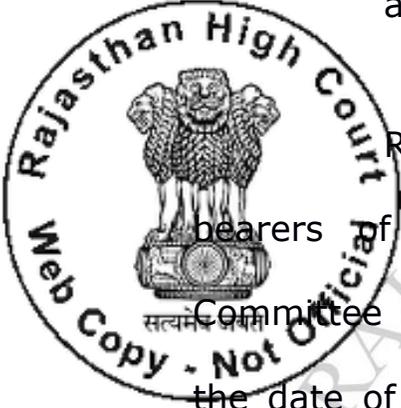
(ii) [Ten] members (who have rendered more than [15] years of regular and active practice in the [High] Court) nominated by President in consultation with the other elected office bearers of the Association.

(iii) 5 Members (who have rendered more than 15 years of regular and active practice in the District and Subordinate Court) nominated by President in



consultation with the other elected office bearers of the Association.]

[Provided that in case, 15 years of regular and active practice Advocates are not available, the President may nominate Member of less than 15 years of regular and active practice of the Executive Committee.]”



Rule 16 of the Rules of 2013 provides that “the office bearers of the association and members of the Executive Committee shall hold the office till completion of one year from the date of their election failing which the administration of the association will vest in the committee, which will be constituted amongst the senior members of that Bar Association by Bar Council, who will hold the election within a period of 45 days” as per the Rules of 2013.

Rule 17 provides functions of the Executive Committee and Rule 19 pertains to the functions of the President. As per Rule 18, the Executive Committee shall not have the power, without the previous sanction of Association to spend within one year any sum not exceeding Rs.10,000/- out of the fixed deposits of the Association.

Rules 20, 21, 22, 23 and 24 of the Rules of 2013 provide functions of the Vice President, General Secretary, Joint Secretary, Library Secretary and Treasurer respectively.

Rules 25 and 26 pertain to Annual General Meeting and Business at the Annual General Meeting respectively.

Rule 45 relates to expulsion of a member from the association and Rule 47 empowers the Executive Committee to frame bye-laws for the purpose of carrying out the objects or to regulate activities of the association. The bye-laws can be enforced only after having approval by the State Bar Council.



Rule 50 of the Rules of 2013 provides a procedure of elections of the Bar Associations.

The foremost argument advanced by Shri M.R.Singhvi, learned Senior Advocate, appearing on behalf of the petitioners is that Section 6(1)(d) [wrongly referred in preamble of the Rules of 2013 as 6(dd)] of the Advocates Act, 1961, nowhere extends any competence to any Bar Council to enact the rules like the Rules of 2013. The Bar Council, as per Section 15 of the Act of 1961 is empowered to make rules to carry out the purposes of Chapter-II of the Act that relates to functions and constitution of the Bar Council of India and State Bar Council. It is also urged that the Rajasthan Advocates Welfare Fund Act, 1987 also does not empower the State Bar Council to frame the rules except to carry out the purposes of the Act of 1987, as such, enactment of the rules lack competence. Without prejudice to the issue relating to competence, learned counsel has questioned validity of several

provisions on different counts, specially pointing out their non-functionality as well as their conflict with the existing bye-laws of the associations, enacted as per requirement of the Societies Registration Act, 1860 or the Rajasthan Societies Registration Act, 1958, as the case may be.



At this stage, we are not inclined to give details of the argument advanced by learned counsel to challenge independent provision of the Rules of 2013, as we desire to begin with examination of the issue relating to competence of the State Bar Council to enact the Rules of 2013.

While meeting with the argument advanced by learned counsel appearing on behalf of the petitioner associations, Shri M.S.Singhvi, learned Senior Advocate, appearing on behalf of the Bar Council has narrated details about the need of the control and discipline in legal profession, specially among the advocates, which as per him is falling down day by day. Reference of several incidents is also given where the Bar Associations failed to maintain decency as required in legal profession. Shri Singhvi has also cited concern of Hon'ble Supreme Court as well as Delhi High Court as referred in the judgments, reference of which shall be given in subsequent paras. On merits, it is stated that Section 6 of the Act of 1961 provides different functions which are to be discharged by Bar Councils and in particular Section 6(1)(dd) puts an embargo on a State Bar Council to promote the growth of Bar

Association for the purpose of effective implementation of the welfare schemes referred in Section 6(2)(a) and Section 7(2)(a).

The stand of the Bar Council as taken in its reply to the writ petition, reads as follows:-



It is relevant to mention here that the Bar Council of India and the Bar Council of Rajasthan are statutory bodies constituted under the Advocates Act, 1961. Section 6 of the Act of 1961 inter alia provides for functions of the State Bar Councils. Section 6(1)(dd) provides for function of State Bar Council to promote the growth of Bar Associations for the purpose of effective implementation of the Welfare Schemes referred to in Section 6(2)(a) and Section 7(2)(a). It would be relevant to mention here that Section 6(2)(a) provides for constitution of funds in the prescribed manner for the purpose of giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates. Similarly, Section 7(2)(a) which provides inter alia for the functions of Bar Council of India also relates to constitution of funds in the prescribed manner for the purpose of giving financial assistance to organize Welfare Schemes for the indigent, disabled or other advocates. Further, as per Section 6(1)(d) of the Act of 1961, one of the functions of the State Bar Council is to safeguard the rights privileges and interest of the advocates on its roll and as per Section 6(1)(i) the State Bar Council is entitled to do all other things necessary for discharging the functions mentioned in sub-clauses (a) to (h) of Section 6(1) of the Act of 1961."

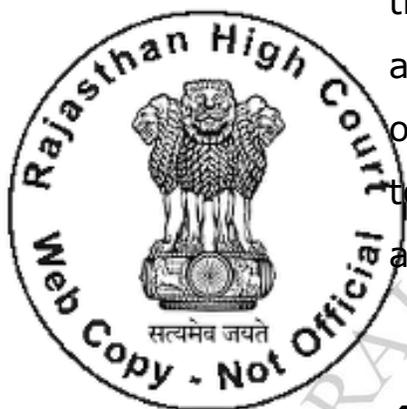
According to learned counsel appearing on behalf of the Bar Council power of State Bar Council under Section 15 of the Act of 1961 is quite wide and i.e. not open for the restrictive interpretation so as to achieve and not frustrate objects and purposes of the Advocates Act, specially looking to the fact that the provisions of Section 15 are generic by nature. To substantiate the argument, reliance is placed upon the judgment given by Supreme Court in Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh & Ors., reported in (2011)9 SCC 573, discussing and holding as under:-



"46. As already noticed, the thrust of the challenge to the vires of Rule 122A is primarily that Section 15 of the Advocates Act does not contemplate the framing of such a Rule by the State Bar Councils. Rule 122A is stated to be ultra vires Section 15 of the Advocates Act and, it is argued, that the introduction of such provision suffers from the vice of excessive delegation. Section 15 of the Advocates Act empowers the State Bar Councils to frame Rules to carry out the purposes of this Chapter. 'This Chapter' obviously means Chapter II of the Act. Let us examine what Chapter II contains.

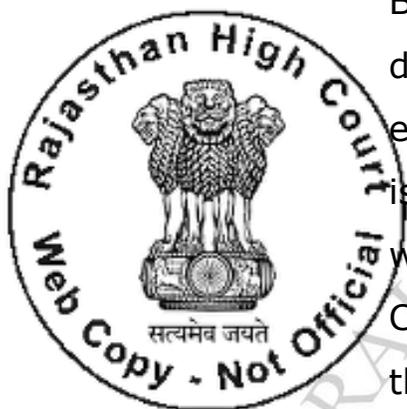
47. Section 3 requires the constitution of the State Bar Councils. Section 3(3) contemplates that there shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the State Bar Council in such manner as may be prescribed. As already noticed above, another important provision is Section 6 of the

Act, which details the functions to be performed by the State Bar Councils. Inter alia, the functions to be performed by the State Bar Councils include, under Sections 6(1)(d), to safeguard the rights, privileges and interests of the advocates on its roll. Under Section 6(1)(g), the function of the Bar Council is to provide for the election of its members and under Sections 6(1)(h) and 6(1)(i), the State Bar Council has to perform all other functions conferred on it by or under this Act and to do all other things necessary for discharging the aforesaid functions.



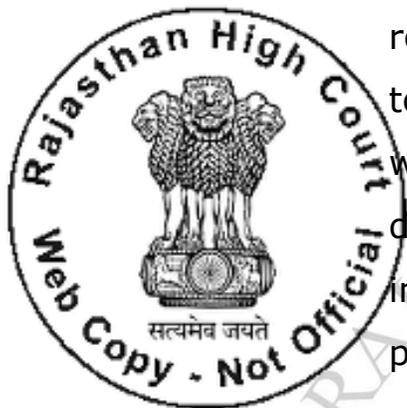
48. In our view, Sections 6(1)(h) and 6(1)(i) have to be read and interpreted conjointly. We see no reason why the expression 'manner of election of its members' in Section 6(1)(g) should be given a restricted meaning, particularly in light of Sections 6(1)(h) and 6(1)(i). The responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act is of a very wide connotation and scope. No purpose would be achieved by giving it a restricted meaning or by a strict interpretation. The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and perfectly and to do all things necessary for discharging its functions under the Act. The term of office of the members of the State Bar Council is also prescribed under Chapter II, which shall be five years from the date of publication of the result of the election. On failure to provide for election, the Bar Council of India has to constitute a special committee to do so instead.

49. Section 15(2) then provides that without prejudice to the generality of the foregoing powers, rules may be framed to provide for the preparation of electoral rolls and the manner in which the result shall be published. In terms of Section 15(2)(c), the manner of the election of the Chairman and the Vice-Chairman of the Bar Council and appointment of authorities which would decide any electoral disputes is provided. The expression 'manner of election of the Chairman' again is an expression which needs to be construed in its wide connotation. The rules so framed by the State Bar Council shall become effective only when approved by the Bar Council of India in terms of Section 15(3) of the Advocates Act.



50. The power of the State Bar Council to frame rules under Section 15 of the Advocates Act as a delegate of the Bar Council of India has to be construed along with the other provisions of the Advocates Act, keeping in mind the object sought to be achieved by this Act. In this regard, greater emphasis is to be attached to the statutory provisions and to the other purposes stated by the legislature under the provisions of Chapter II of the Advocates Act. This is an Act which has been enacted with the object of preparing a common roll of advocates, integrating the profession into one single class of legal practitioners, providing uniformity in classification and creating autonomous Bar Councils in each State and one for the whole of India. The functioning of the State Bar Council is to be carried out by an elected body of members and by the office-bearers who have, in turn, been elected by these elected members of the said Council. The legislative intent derived with the above stated objects of the Act

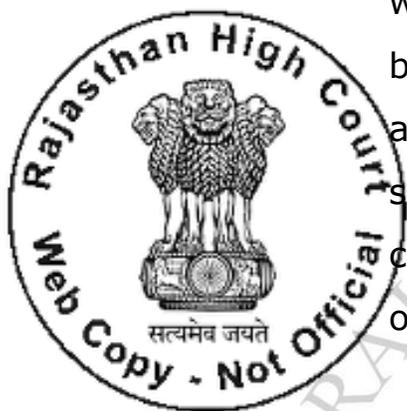
should be achieved and there should be complete and free democratic functioning in the State and All India Bar Councils.



51. The power to frame rules has to be given a 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 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 which 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.

52. The provisions of the Advocates Act are a source of power for the State Bar Council to frame rules and it will not be in consonance with the principles of law to give that power a strict interpretation, unless restricted in scope by specific language. This is particularly so when the provisions delegating such power are of generic nature, such as Section 15(1) of the Act, which requires the Bar Councils to frame rules to 'carry out the purposes of this Chapter' and Section 15(2), which further uses generic terms and expressly states that the Bar Council is empowered to frame rules 'in particular and without prejudice to the generality of the foregoing powers'. If one reads the provisions of Clauses (a), (c), (g), (h) and (i) of Sub-section (2) of Section 15 of the Act, then, it is clear that framing of

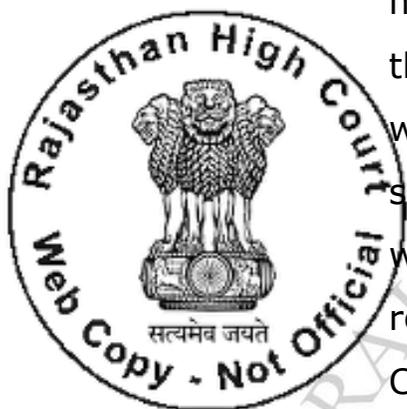
rules thereunder would guide and control the conduct or business of the State Bar Councils and ensure maintenance of the standards of democratic governance in the said Councils. Since the office bearers like the Chairman and the Vice-Chairman are elected by a representative body i.e. by the advocates who are the elected members of the Council, on the basis of the confidence bestowed by the advocates/electorate in the elected members, there seems to be no reason why that very elected body cannot move a 'no confidence motion' against such office bearers, particularly, when the rules so permit.



53. The Bar Council of India, as already noticed, has also framed rules and permitted moving of 'no confidence motion' against its Chairman/Vice-Chairman subject to compliance of the conditions stated therein. Similarly, Rule 122A of the M.P. Rules contemplates the removal of a Chairman/Vice-Chairman by a motion of no confidence, passed by a specific majority of the members and subject to satisfaction of the conditions stated therein. This provision, thus, can neither be termed as vesting arbitrary powers in the elected body, nor can it be said to be suffering from the vice of excessive delegation. The power delegated to the elected body is within the framework of the principal Act, i.e., Section 15, read with the other provisions, of the Advocates Act.

54. In terms of Rule 120 of the M.P. Rules, a person can be elected as Chairman/Vice-Chairman only by majority and in case there is a tie, the election shall be decided by drawing of lots. Under Rule 118 of the M.P. Rules a Chairman/Vice-Chairman has to be elected

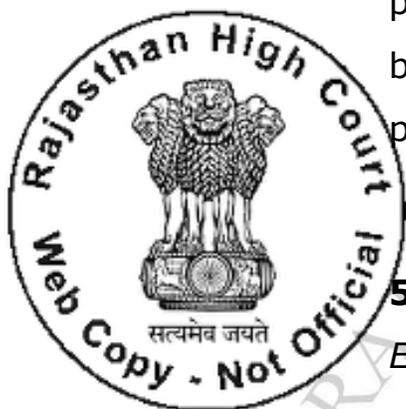
from amongst its members for two years. In other words, the term of office of the Chairman/Vice-Chairman is controlled by the fact that he has to be elected to that particular office. The removal contemplated under Rule 122A is not founded on a disciplinary action but is merely a 'no confidence motion'. It is only the loss of confidence simpliciter i.e. the majority of the members considering, in their wisdom, that the elected Chairman/Vice-Chairman should not be permitted to continue to hold that office, which is the very basis for such removal. One must remember that Rules 118 to 122B all come within Chapter XVIII of the M.P. Rules and, as such, have to be examined collectively. But for this Chapter, it cannot be even anticipated as to who and how the office of the Chairman/Vice-Chairman of the State Bar Council shall be appointed.



55. Now, let us examine some judgments to substantiate what we have aforesaid. In the case of *General Officer Commanding-in-Chief v. Subhash Chandra Yadav* this Court stated the principle that the rules framed under the provisions of a statute form part of the statute, i.e., the rules have statutory force. But a rule can have the effect of a statutory provision provided it satisfies two conditions: (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the statutory authority framing the rule.

56. In the case of *Kunj Behari Lal Butail v. State of H.P.*, this Court noticed that it is very common for the legislature to provide general rule making power to

carry out the purposes of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed thereunder satisfy this test of functionality. This test will determine if the rule falls foul of such general power conferred on the delegatee. If the rule making power is expressed in usual general form, then it has to be seen if the rules made are protected by the limits prescribed by the parent Act.

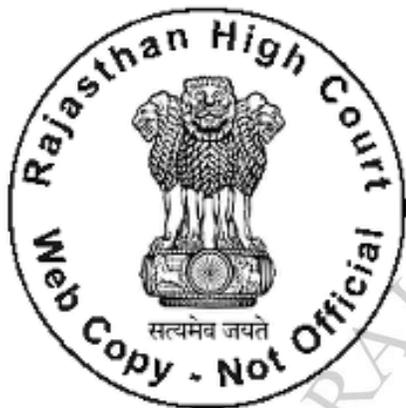


57. Still in the case of *Global Energy Ltd. v. Central Electricity Regulatory Commission*, this Court was concerned with the validity of Clauses (b) and (f) of Regulation 6A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and other Related Matters) Regulations, 2004 and dealing with this aspect, the Court expressed the view that in some cases guidelines could be assumed, by necessary implication, as already laid down and, while relying upon the case of *Kunj Behari Lal Butail* (supra), the Court held as under:

"26. We may, in this connection refer to a decision of this Court in *Kunj Behari Lal Butail v. State of H.P.* wherein a three-Judge Bench of this Court held as under: (SCC p. 47, para 14)

'14. We are also of the opinion that a delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or

obligations or disabilities not contemplated by the provisions of the Act itself.'



27. The power of the regulation-making authority, thus, must be interpreted keeping in view the provisions of the Act. The Act is silent as regards conditions for grant of licence. It does not lay down any pre-qualifications therefor. Provisions for imposition of general conditions of licence or conditions laying down the pre-qualifications therefor and/or the conditions/qualifications for grant or revocation of licence, in absence of such a clear provision may be held to be laying down guidelines by necessary implication providing for conditions/qualifications for grant of licence also."

58. The above enunciated principles clearly show that the language of the statute has to be examined before giving a provision an extensive meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court."

At this stage, it would be appropriate to mention that in the case of Pratap Chandra Mehta (supra) the Apex Court was examining validity of Rules 121 and 122-A of the State Bar Council

of Madhya Pradesh Rules enacted by the Bar Council of Madhya Pradesh invoking powers under Section 15 of the Act of 1961. Rule 121 referred above provides that the Chairman, the Vice Chairman and the Treasurer of the Council, shall hold office for a period of two years or till they cease to be members whichever is earlier

and Rule 122-A provides that the officers designated could be removed by a vote of no-confidence passed by majority of the members, present and voting in a meeting of the Council especially called for the purpose, provided that at least 7 members of the Council have signed the requisition for holding such special

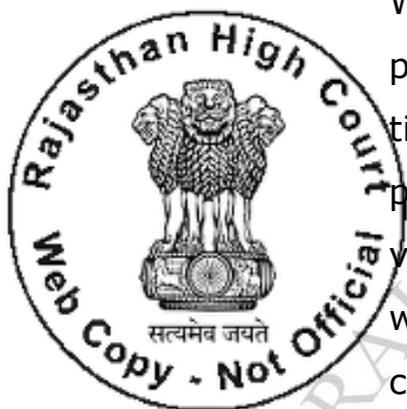
meeting, and such meeting shall be called within a period of 21 days from the date of receipt of the requisition by the Secretary.

The argument advanced was that the Rules under challenge are ultra vires to Section 15 of the Act of 1961 for the reason that there is no nexus between the rule making power of the State Bar Councils and the powers provided under Section 15(1) or 15(2)(c) of the Advocates Act. The delegation of the legislative power was also challenged being excessive. In addition to the argument aforesaid it was also urged that under Section 15(1) of the Act of 1961 there is no enabling provision empowering State Bar Councils to enact provisions for removal of office bearers of the State Bar Councils by no confidence motions.

On behalf of the Bar Council, the need of the Rules of 2013 is emphasised by stating as follows:-



“It is submitted that profession of advocacy has always been looked upon as a noble profession of high dignity. From a bare perusal of the provisions of Section 6 and 7 of the Act of 1961, it is clear that the existence of Bar Associations has been envisaged under the Act of 1961 for the purpose of effective implementation of the Welfare Schemes for advocates which is the main purpose of the petitioners. However, with passage of time it was felt that the many persons from the profession used to take multiple memberships of various Bar Associations which created problems in working atmospheres of the courts. Under these circumstances, necessity to bring into effect the concept of one bar one vote arose. It is also relevant to mention here that in the matter of Supreme Court Bar Association v. B.D.Kaushik reported in 2011 (11) JT 257, the issues of multiple memberships of bar associations and non practicing advocates were considered and the concept of one bar one vote was recognized and upheld by the Hon'ble Supreme Court. The main purpose of Bar Associations is to look after the welfare of advocates. In order to ensure effective implementation of Welfare Schemes and at the same time, for providing systematic and disciplined election process for the Bar Associations of State of Rajasthan, the Bar Associations of Rajasthan Rules, 2013 have been framed by the answering respondent no.1 in exercise of powers conferred under Section 6(1)(dd) of the Act of 1961. It is submitted that the respondent no.1 is having full powers and competence to frame the Rules of 2013. Moreover, the Rules of 2013 alongwith amendments have been approved by the Bar Council of India vide its order dated 9.5.2015 which has been produced by the petitioners themselves. The petitioners have miserably failed to establish any lack of



competence or jurisdiction on the part of answering respondent no.1 to frame the Rules of 2013. Hence, the Rules of 2013 cannot be said to be ultra vires, invalid or contrary to the Advocates Act, 1961.

It is also submitted that in view of the directions given



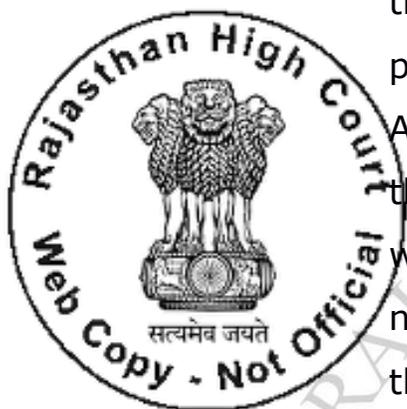
by a Division Bench of this Court in D.B. Civil Writ Petition No.18688/2013 (Poonam Chand Bhandari v. The High Court of Judicature for Rajasthan, Jodhpur and others), decided on 9.10.2014, the instant petitions for writ should be dismissed at threshold. In the writ petition aforesaid directions were given to

enforce the Rules of 2013 in following terms:-

“In view of the above discussion, we direct, in the spirit of the directions issued by the Hon’ble Supreme Court in Supreme Court Bar Association And Others v. B.D.Kaushik (supra), and the mandate of the Bar Associations of Rajasthan Rules, 2013, that the principle of “One Bar One Vote”, will be applicable for Advocates in the State of Rajasthan, and that every Advocate, even if he/she is a member of more than one Bar Association, will be entitled to vote in the meetings of only one Bar Association of his choice for electing the office bearers, and for that purpose, he/she will have to indicate his/her choice, clearly and unequivocally, by way of giving an affidavit, which is a condition precedent for membership in Schedule 1 of the Bar Associations of Rajasthan Rules, 2013.

We further direct that since the elections to elect the office bearers of the Bar Associations, are proposed by the Bar Council of Rajasthan in the second week of

December, 2014, as stated by learned counsel appearing for the Bar Council of Rajasthan, each Advocate of any category, practicing in the State of Rajasthan and who is a member of any Bar Association, or of more than one Bar Association, will file an affidavit in the proforma, prescribed in Schedule 1 of the Bar Associations of Rajasthan Rules, 2013. The proforma along with an affidavit will be filed by every Advocate within a period of four weeks from today, in the respective Bar Associations. Every Bar Association will forward a list of all such Advocates with their names, address, enrolment number and date of filing of the application on proforma in Schedule 1, with affidavit to the Bar Council of Rajasthan will file an affidavit in the Court giving the details of the list received by it, in a tabulated form.”



To review the order dated 9.10.2014, an application was filed, but that too came to be dismissed under an order dated 26.11.2014. An application thereafter was filed by one Shri Bhuvnesh Sharma to recall the order dated 9.10.2014, but that too came to be dismissed on 9.2.2015 with observation that the Rules of 2013 are in force and shall continue to prevail until a decision otherwise is taken by the Bar Council of India.

Shri M.S.Singhvi, learned Senior Advocate further submitted that in light of the judgment given by the Apex Court in the case of B.D.Kaushik (supra) the Court annexed Bar Associations constitute a separate class different from the other lawyers associations. Court annexed Bar Associations function as

part of the machinery for administration of justice and for that the courts are providing several amenities to the associations and its members. The members of such associations are regularly practicing in the court and the associations are responsible for their proper conduct in court and for ensuring proper assistance to the court. The office bearers and other members of such associations are also in regular interaction with the Judges and being officers of the court the courts are also showing due consideration for them. In the case of B.D.Kaushik (supra), as per learned counsel, the Apex Court issued several directions to regulate legal profession and the Rules of 2013 are in consonance to that, therefore, the same cannot be said illegal, ultra vires or without jurisdiction. The Rules of 2013 have been framed to protect the rights, privileges and interests of advocates and that is in the welfare of the advocates.

By placing reliance upon a Division Bench judgment of Delhi High Court in batch of writ petitions led by PK Dash, Advocate & Ors. v. Bar Council of Delhi & Ors., decided on 31.5.2016, it is urged on behalf of the Bar Council that the High Court cannot ignore the ills existing and developing in the court annexed bar associations. The court is supposed to appreciate all rational steps taken to regulate the legal profession including necessary restrictions as prescribed under the Rules of 2013. The courts are the most sharp weapon to eradicate injustice and to ensure justice to each and every citizen and for the purpose



advocates are supposed to extend effective assistance. If the court annexed bar associations fail to do so by boycotting the courts or by any other means and convert the body itself as a political ring, then that is nothing but an effort to fail the system of justice. If the associations do not function in public interest or by any means causes harm to the cause of justice, then the public interest demands for regulating the assisting agency by appropriate steps. Such steps, if are taken in public interest, then these are not supposed to be interfered by the courts by invoking the constitutional authority under Article 226 of the Constitution of India, which is essentially meant to ensure justice to Indian citizens or to say 'person at large',.



With usual fairness Shri M.S.Singhvi, learned Senior Advocate, submits that there may be certain errors in drafting of the Rules of 2013 and those may be rectified in time to come, but looking to the need of time and bright prospective intentions of the Bar Council, merely on the count of errors, the rules cannot be declared bad or beyond legislative competence. It is asserted that acceptance of the argument advanced on behalf of the petitioner Associations shall frustrate the efforts made by the Supreme Court in the case of B.D.Kaushik (supra) and by this Court in the case of Poonam Chand Bhandari (supra) to regulate discipline among the advocates. Reliance is also placed upon a judgment of Apex Court in ONGC Ltd. v. Sendhabhai Vastram Patel & Ors., reported in (2005)6 SCC 454, to assert that while exercising powers under

Article 226 of the Constitution of India this Court must not exercise its discretion to fail the campaign to purify a pious profession suffering from serious ills merely for the reason that it would be lawful to do so. To substantiate the same argument reliance is also placed upon the judgments given by the Apex



Court in High Court of Judicature at Bombay v. Brijmohan Gupta, (2003)2 SCC 390; Inder Prakash Gupta v. State of J & K, (2004)6 SCC 786 and N.K.Prasada v. Government of India, (2004)6 SCC

An alternative argument is also advanced to the effect that as per Section 32 of the Rajasthan Advocates Welfare Fund Act, 1987 the Bar Council may, with the previous approval of the State Government, by notification in official gazette, make rules for carrying out the purposes of the Act of 1987 and the Rules of 2013 are nothing but an extension of the purposes of the Act of 1987.

Heard learned counsels.

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At the threshold we would like to join ourselves with the concern expressed by learned counsel appearing on behalf of the Bar Council about deteriorating standards in legal profession, individually as well as collectively. As a matter of fact learned counsel appearing on behalf of the petitioners too has shown his deep concern about the state of affairs existing in the profession

of law. All the stake holders are unanimous and at consensus that serious efforts are highly desirable to restore glory of legal profession that had support of great legal luminaries, who nurtured admirable traditions and settled high standards, which are supposed to be maintained by the present generation and also by the generations to come in the profession. The traditions prevailing and high standards settled develop a healthy machinery that ultimately supports the cause of creating the system. Though most of the persons, who are part of the legal system, wish to strengthen the traditions and standards, but at the same time there may be certain tendencies and elements those may culture a virus of causing decay in it. To have protection from that, the torch bearers in the field must always be vigilant and on-toes. Hon'ble the Supreme Court in the case of Bidi Supply Co. v. Union of India & Ors., AIR 1956 SC 479, pointed out the need of such guarding and we quote- "We have received a rich heritage from a variegated past. But it is a treasure which can only be kept at the cost of ceaseless and watchful guarding. There is no room for complacency, for in the business of constant vigilance we run the risk of losing it".

In entirety, looking to the objective conditions, we appreciate anxiety of the Rajasthan Bar Council to regulate working of the Bar Associations in the State in light of the directions given by the Supreme Court in two orders passed in the case of B.D.Kaushik (supra) and also the directions given by



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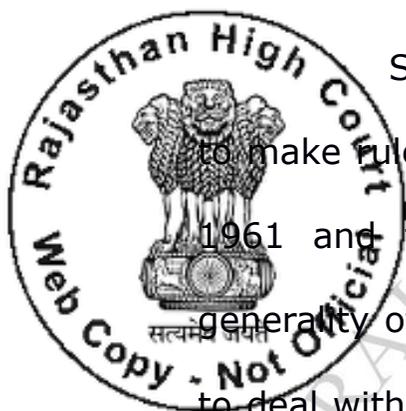
Division Bench of this Court in the case of Poonam Chand Bhandari (supra), but while doing so, it is to be kept in mind that whatever action is taken or is to be taken, that should be in accordance with law. The rule of law is a fundamental feature of our constitutional system, so also the right to obtain judicial redress, therefore, in the instant petitions for writ we would certainly examine vires of the Bar Council of Rajasthan to enact the Rules of 2013. We cannot be precluded from doing so by citing the interest of legal profession or the interest of institution which is otherwise to be protected by adhering the law. The rules/guidelines/norms in light of the observations made by the Supreme Court in the case of B.D.Kaushik (supra) and also otherwise required to strengthen the legal profession, have to be provided in accordance with law and not by deviating from law.

The Bar Council, while enacting the Rules of 2013, based upon Section 6(dd) of the Act of 1961. Learned counsel appearing on behalf of the Bar Council states that the reference of Section 6(dd) of the Act of 1961 in the preamble is required to be read as Section 6(1), Section 6(2) read with Section 15 of the Advocates Act, 1961 and Section 32 of the Rajasthan Advocates Welfare Fund Act, 1987.

The issue before us in the instant petitions for writ is whether the Bar Council is having any competence to enact rules by invoking authority under Section 15 of the Act of 1961 or under



Section 32 of the Act of 1987 in relation to constitution, management, business, elections, powers of the office bearers, funding etc. of the Bar Associations which are created under the Societies Registration Act with their own aims and objects?



Section 15 of the Act of 1961 empowers a Bar Council to make rules to carry out the purpose of Chapter-II of the Act of 1961 and further in particular, and without prejudice to the generality of the power given under sub-section (1) of Section 15 to deal with the matters referred under sub-section (2) of Section 15. The emphasis of learned counsel appearing on behalf of Bar Council is that the matters referred in sub-section (2) of Section 15 of the Act of 1961 empowers the council to frame the rules as of the Rules of 2013. Section 15 referred above is as follows :-

“15. Power to make rules.—

(1) A Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

1[(a) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot, the preparation and revision of electoral rolls and the manner in which the result of election shall be published;]

2[***]

3[(c) the manner of election of the Chairman and the Vice-Chairman of the Bar Council;]

(d) the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council 4[or to the office of the Chairman or Vice-Chairman] shall be finally decided; 5[***]

(f) the filling of casual vacancies in the Bar Council;

(g) the powers and duties of the Chairman and the Vice-Chairman of the Bar Council; 6[(ga) the constitution of one or more funds by a Bar Council for the purpose of giving financial assistance or giving legal aid or advice referred to in sub-section (2) of section 6 and sub-section (2) of section 7;] 6[(gb) organisation of legal aid and advice to the poor, constitution and functions of committees and sub-committees for that purpose and description of proceedings in connection with which legal aid or advice may be given;]

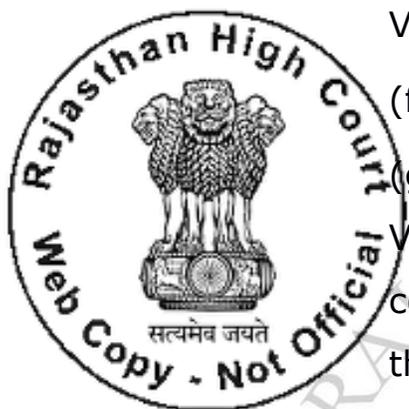
(h) the summoning and holding of meetings of the Bar Council, 7[***] the conduct of business thereof, and the number of members necessary to constitute a quorum;

(i) the constitution and functions of any committee of the Bar Council and the term of office of members of any such committee;

(j) the summoning and holding of meetings, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;

(k) the qualifications and the conditions of service of the secretary, the accountant and the other employees of the Bar Council;

(l) the maintenance of books of accounts and other books by the Bar Council;



(m) the appointment of auditors and the audit of the accounts of the Bar Council;

(n) the management and investment of the funds of the Bar Council.

(3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India."



Section 6 of the Act of 1961, which is part of Chapter-II, pertains to functions of State Bar Councils and that reads as follows:-

"6. Functions of State Bar Councils.- (1) The functions of a State Bar Council shall be –

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section(2) of this section and clause (a) of sub-section (2) of Section 7;

(e) to promote and support law reform;

(ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(eee) to organise legal aid to the poor in the prescribed manner;

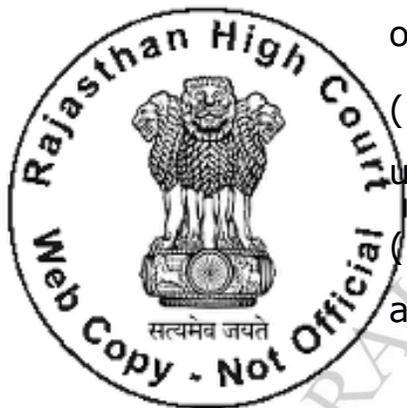
(f) to manage and invest the funds of the Bar Council;

(g) to provide for the election of its members;

(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of Section 7;

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions.



(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of--

(a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

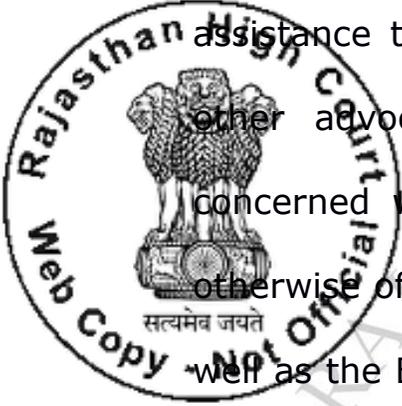
(c) establishing law libraries.

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section."

So far as clause (dd) of sub-section(1) of Section 6 of the Act is concerned, that pertains to growth of Bar Associations for the purpose of effective implementation of welfare schemes referred in clause (a) of sub-section(2) of Section 6 and clause (a) of sub-section(2) of Section 7. Clause (a) of sub-section (2) of

Section 6 of the Act of 1961 relates to giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates and clause (1) of sub-section(2) of Section 7 provides that the Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of giving financial assistance to organise welfare schemes for indigent, disabled or other advocates. This function of Bar Council is not at all concerned with constitution, election, management and funding otherwise of the Bar Associations. The Bar Council of Rajasthan as well as the Bar Council of India to accomplish functions prescribed under Section 6(1)(dd), has already taken several steps by different circulars and also by enactments through State legislature and by invoking delegated legislative powers extended by the State legislature enactments. We are having no hesitation in holding that Section 6(1)(dd) of the Act of 1961 cannot be a reason to control constitution, management, business, elections, powers of the office bearers, funding etc. of the Bar Associations, which are having their own bye-laws in all the fields above and those too are in consonance with the provisions of the Societies Registration Act.

The other function, on which learned counsel appearing on behalf of the Bar Counsel relies, is clauses (h) and (i) of Section 6(1) of the Act of 1961, that empowers the Bar Council to perform all other functions conferred on it by or under this Act and also to do all other things necessary for discharging the functions



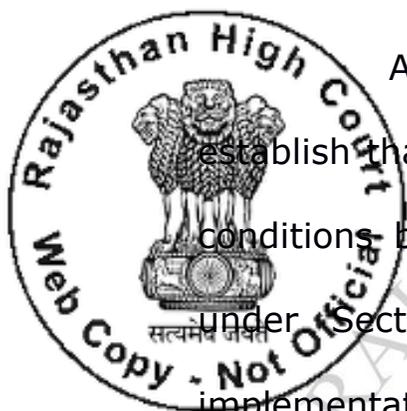
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prescribed under sub-section(1). The provisions aforesaid, on their plain reading, makes it clear that the field of their operation too is with regard to the other functions given under sub-section(1) of Section 6 of the Act of 1961. None of the functions, as already stated, pertains to the issues which are sought to be addressed under the Rules of 2013. The power of the Bar Council to frame Rules with regard to all the functions referred in Section 6 of the Act of 1961 is quite limited.



As per Section 15 of the Act of 1961 the Bar Council may make rules to carry out the purposes of Chapter-II of the Act of 1961 only. It may also frame the rules relating to the matters referred under sub-section (2) of Section 15 of the Act aforesaid but none of the fields to which the Rules of 2013 addresses in any manner relates to Chapter-II of the Act of 1961 or to any of the issue given under sub-section (2) of Section 15. The subjects given under sub-section (2) of Section 15 relates to elections of members of the Bar Council, preparation and revision of electoral rolls and the manner in which the result of election shall be published, the manner of election of the Chairman and Vice-chairman of the Bar Council and several other matters connected to the affairs of the constitution and administration of the Bar Council. The Bar Council is empowered to enact rules in relation to the matters given in sub-section (2) but not for other matters, including the issues relating to constitution and management of the Bar Associations. The Bar Council, thus, in our considered

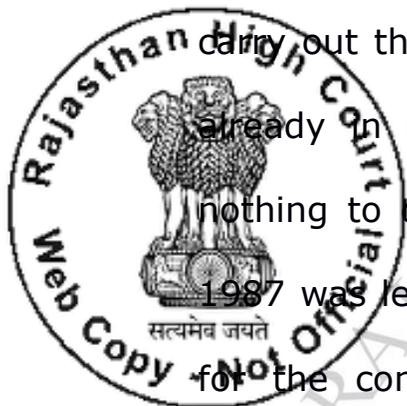
opinion, is not possessing vires to enact the rules which are addressing the fields under the Rules of 2013. The Rules of 2013 as such are ultra vires to the powers vested with the Bar Council as per Section 15 of the Act of 1961.



An effort is also made on behalf of the Bar Council to establish that being a funding source the council may put certain conditions by making statutory provisions by invoking authority under Section 15 of the Act of 1961 to ensure effective implementation of all Welfare Schemes. We are having no doubt about this authority of Bar Council, but this one is a field absolutely different from day to day management of the Bar Associations and also the fields to which Rules of 2013 control. The financial aid, if any, is given by the Bar Council, then the Bar Council may regulate that by having its own set of norms to that effect, but not by controlling the membership of the Bar Associations, the nature of membership of the Bar Associations, the mode of elections of the Bar Associations, the office bearers of the Bar Associations, the term of the office bearers of the Bar Associations, the authority to use funds of the Bar Associations and other incidental issues.

So far as the powers under Section 32 of the Rajasthan Advocates Welfare Fund Act, 1987 are concerned, those can be invoked by the Bar Council to make rules for carrying out the purposes of the Act of 1987. Necessary rules in this regard have

already been enacted by the Bar Council of Rajasthan in the name of "The Rajasthan Advocates Welfare Fund Rules, 1988". We are not supposed to be misunderstood here by saying that after framing the Rules of 1988 the powers under Section 32 cannot be invoked by the Bar Council. We just wanted to convey that to carry out the purposes of the Act of 1987, the Rules of 1988 are already in currency and further that the Rules of 2013 have nothing to do with the purposes of the Act of 1987. The Act of 1987 was legislated by the Rajasthan State Legislature to provide for the constitution of advocates welfare fund and utilisation thereof for payment of certain death and retirement benefits to the advocates in the State and for the matters connected therewith and incidental thereto. It is to ensure social security to the members of legal profession in the State of Rajasthan. For this purpose, it was considered expedient to constitute by law an advocate welfare fund by law, to be managed by a statutory trustee committee so that in the event of removal of the name of an advocate from the State roll maintained by the Bar Council on account of his retirement or death, he or his nominee or his dependent, as the case may be, may get from the said fund a lump-sum amount calculated on the basis of the years of his standing. This purpose of the Act by no stretch of imagination can be secured by the Rules of 2013 which appears to have been meant to take care of the constitution, election, management, working, funding etc. of the Bar Associations. In light of whatever



stated, we are of the view that even Section 32 of the Act of 1987 does not make the Rules of 2013 intra-vires

Learned counsel appearing on behalf of the Bar Council desires to gather much support from the judgment given by the Supreme Court in the case of Pratap Chandra Mehta (supra), but in our considered opinion, that is of no consequence in the instant controversy. In the case aforesaid the Court was examining a rule pertaining to removal of the office bearers of Bar Council by no confidence motion. The Apex Court, while examining validity of such rule, noticed that the powers of election of the office bearers of the Bar Council are given in Chapter-II, the matters referred under Section 15(1) of the Act of 1961 deals with all the affairs of the Bar Council and the removal of the office bearers is nothing but an affair of the Bar Council and also extension of the election, therefore, held the Bar Council entitled to enact the rules. While examining scope of Section 6 and Section 15 of the Act of 1961 in this perspective, the Court held that a rule is required to be interpreted by providing extensive meaning to it with purposive construction to perpetuate the object of the Act. The interpretation of Rule 15, as discussed in the case of Pratap Chand Mehta (supra), too will not arm the Bar Council to frame the Rules as of 2013, as neither the issues addressed under the Rules are connected with Chapter-II nor are the matter having remote connectivity with the fields mentioned in Section 15(2) of the Act of 1961.



In the cases in hand, the factual contours are quite different from the facts and issues adjudicated in the case of Pratap Chand Mehta. The Rules of 2013 are not dealing with the elections and administration of Bar Council, but with the constitution, election, management, working, funding etc. of the Bar Associations, the bodies registered under the Societies Registration Act.



The argument advanced that this Court is not required to interfere in the instant matters as the Rules of 2013 have been enforced in pursuance to the directions given by a Division Bench of this Court in Poonam Chand Bhandari (supra), too is having no merit. True it is, in the case of Poonam Chand Bhandari (supra) a direction was given to enforce the Rules of 2013, but while issuing such directions, the Court in quite unambiguous terms noticed that the parties before it did not question validity of the rules. No occasion as a matter of fact was there to do so as the rules till then were not even enforced.

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It is further submitted that the petitioner Associations are court annexed associations, therefore they bear heavy responsibility to maintain dignity of Courts as well as of profession. The office bearers of court annexed Bar Associations remain in contact of judges and other officials connected with the affairs of justice delivery system, hence, need of mature and

responsible leaders of Bar is highly desirable. By the Rules of 2013, the Bar Council has taken steps only to have mature and responsible Bar Associations with leaders accountable to the profession. The Bar Council being a statutory representative body of the Advocates is having all authority to lay down a code to control the profession in consonance with the provisions of the Advocates Act, 1961.



We do not undermine the role of court annexed Bar Associations and the responsibility attached with the office bearers of such Associations. There is no doubt about anxiety of Bar Council to have mature and responsible Bar Associations with mature leadership, but this pious object is not supposed to be achieved by imposing rules without having jurisdiction, but by taking appropriate measures available under the Advocates Act. The Bar Council is under statutory obligation to have orientation, refresher and training courses for Advocates. The Council is also required to have all necessary measures to enrich academic and professional standards of the Advocates. Much activities in these fields are required to be taken instead of travelling beyond the authority vested. Though we were not inclined to comment, but on going through the Rules of 2013 in lucid, we would certainly like to put a mark of displeasure about casual attitude adopted by the Bar Council even in enacting rules, if had any authority. The complete set of Rules is full of grammatical errors including the errors of expression.

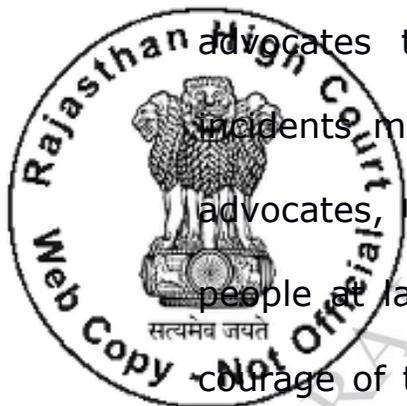
The Rules of 2013, as such, cannot be saved from the vice of ultra vires, hence, deserves to be declared illegal. Accordingly, the writ petitions are allowed. The Rules of 2013 are hereby declared illegal being enacted by the Bar Council of Rajasthan without having competence to do so.



Before parting with the petitions, as already expressed, we would like to state that this Court is aware with the need of having necessary guidelines/norms to strengthen the Bar Associations, more specifically the legal profession, members of which are part of Bar Associations, therefore, as consented by learned counsel for the petitioners, the Court while exercising powers under Article 226 of the Constitution of India, deems it appropriate to extend certain norms and guidelines in tune with the directions given by the Apex Court in the case of B.D.Kaushik (supra). We would also like to make it clear that the Court is not intend to use the powers under Section 34 of the Act of 1961, which is otherwise vested with High Court and that too for the fields referred in Section 34 only. We intend to invoke the plenary powers vested with High Court being the Court of record under Article 215 of the Constitution of India. Learned counsel for the petitioners with all firmness stated at Bar that the Bar Associations shall adhere the directions given by this Court, if prescribed for betterment of the Bar Associations and more specifically for the profession. He is also not having any objection in accepting the

guidelines given by the Supreme Court in the case of B.D.Kaushik (supra) to the Supreme Court Bar Association for the Bar Associations existing at different stations in the State of Rajasthan. We would like to express our deep confidence in capability of the Bar Associations and the community of the advocates to meet every challenge before them. Some bad incidents may cause stigma to the image of the community of advocates, but cannot demolish its glorious role in service of people at large. We are of firm opinion that strength, spirit and courage of this intellectual community is sufficient to restore the glory and traditions under cloud and to develop resistance to meet with the bacteria causing ailments. Hence, with a view to extend a supportive hand, we may provide norms/guidelines in light of the directions given by the Supreme Court in the case of B.D.Kaushik (supra) and also in addition thereto, but only with the assistance of the representatives of the advocates, and for that purpose we deem it appropriate to constitute a committee, which shall suggest necessary norms, to regulate all the issues discussed, by keeping in mind the judgments/orders passed by the Hon'ble Supreme Court in the case of B.D.Kaushik (supra) as well as by this Court in Poonam Chand Bhandari's (supra) case. Accordingly, a committee is constituted consisting eleven members viz. -

1. Shri N.M.Lodha, Advocate General;
2. Shri Biri Singh, Senior Advocate, Former Chairman, Bar Council of India;



3. Shri Jagmal Singh, Senior Advocate, Former Chairman, Bar Council of Rajasthan;

4. Shri Mahesh Chandra Gupta, Advocate at Kota, Former Chairman, Bar Council of Rajasthan;

5. Shri Harsh Mehta, Advocate at Udaipur, Former Chairman, Bar Council of Rajasthan;

6. Shri Indraj Saini, Advocate at Jaipur, Former Chairman, Bar Council of Rajasthan;

7. Shri Bhawani Singh Shaktawat, Advocate at Ajmer, Former Chairman, Bar Council of Rajasthan;

8. President, Rajasthan High Court Advocates Association, Jodhpur;

9. President, Rajasthan High Court Lawyers Association, Jodhpur;

10. President, Bar Association, Jaipur; and

11. President, Rajasthan High Court Bar Association, Jaipur.

The Committee may suggest the norms/guidelines on or before 20.03.2017.

सत्यमेव जयते

Shri N.M. Lodha, the Advocate General, shall be the Chairman of the Committee.

The Secretary, Bar Council of Rajasthan shall also act as the Secretary to the committee aforesaid to extend all administrative and ministerial support.

Let these petitions be listed for further orders on
21.03.2017.

(KAILASH CHANDRA SHARMA)J.

(GOVIND MATHUR)J.



RAJASTHAN HIGH COURT



सत्यमेव जयते