

CASE NO.:
Appeal (civil) 5301-5302 of 2001

PETITIONER:
BAR COUNCIL OF INDIA

RESPONDENT:
BOARD OF MANG. DAYANAND COLL. OF LAW AND ORS

DATE OF JUDGMENT: 28/11/2006

BENCH:
H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

P.K. BALASUBRAMANYAN, J.

1. The Bar Council of India challenges the judgments of the High Court of Allahabad in two Writ Petitions holding that the appointment of respondent No. 5 in these appeals as the Principal of the Dayanand College of Law was valid and within the competence of the State of Uttar Pradesh and the Chhatrapati Shri Sahu Ji Maharaj Kanpur University, Kanpur. Respondent No. 5 was appointed Principal of the said Law College on 11.12.1995. On an inspection, the Bar Council of India found that respondent No. 5 did not possess a qualification in law and hence withdrew its recognition to the College. At that stage, the Management of the College filed Civil Miscellaneous Writ Petition No. 48183 of 2000 questioning the validity of the appointment of respondent No. 5 as the Principal of the College. Meanwhile, respondent No. 5 was transferred as the Principal of Nagrik Degree College and he challenged the said order of transfer on the ground that he was competent to hold the post of Principal of the Law College and the reason for his transfer was unsustainable and that a Principal could not be transferred to another College as sought to be done. The bone of contention in the Writ Petitions was whether a person who did not possess a degree or a postgraduate degree in law and was not qualified to practise law, could be appointed as the Principal of a Law College and whether it was not essential to have a degree in law before one could be appointed as Principal of a Law College. The Bar Council of India was not a party to the Writ Petitions. The High Court took the view that going by the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as, "the University Act"), such an appointment could be made notwithstanding anything contained in the Advocates Act, 1961 or in the Rules framed by the Bar Council of India. The High Court proceeded on the basis that there was a conflict between the two enactments, namely, the University Act and the Advocates Act and in terms of Article 254(2) of the Constitution of India, the University Act, the later State Act with the assent of the President, would prevail over the Advocates Act and since appointment to the post of a Principal of a College affiliated to a University was governed by the University Act, the appointment of respondent No. 5 as Principal of the Law College was liable to be upheld. It was also held

that the Bar Council of India did not have any control regarding legal education. The order transferring respondent No. 5 away from the post of Principal of the Law College was consequently set aside. No notice was also issued to the Bar Council of India, the apex professional body of Advocates, before taking such a decision. However, taking note of the consequences of the decision rendered by the High Court, the Bar Council of India has filed these appeals challenging the decision of the High Court with the leave of this Court.

2. The appointments to Higher Educational Institutions in the State of Uttar Pradesh including Degree Colleges is done by the Higher Education Services Commission constituted under the Uttar Pradesh Higher Education Services Commission Act, 1980 (hereinafter referred to as, "the Act") and in terms of Uttar Pradesh Higher Education Services Commission (Procedure for selection of teachers) Regulations, 1983. Section 12 of the Act insists that every appointment of a teacher shall be in terms of the Act and a teacher is defined to include a Principal. Section 12(1) provides that any appointment made in contravention of the Act would be void. On the basis of the relevant Regulations framed under Section 31 of the said Act, advertisements are to be issued inviting applications for appointment of Principals to various degree colleges that had made requisitions in that behalf or had reported vacancy and on the basis of the procedure for selection, a list is to be prepared of the candidates eligible for appointment as Principals. The appointments to various Colleges are made from the said panel depending on circumstances including the preference of the candidates. Statute 11.14 provides the qualification to be possessed for the post of Principal in the colleges affiliated to the Kanpur University. Prior to 13.1.1995, Statute 11.14 (i)(b) provided that the Principal must possess "a doctorate degree in one of the subjects taught in the college, with 7 years' experience of teaching degree class". With effect from 13.1.1995, the said Statute was amended and clause (b) thereafter read, "a doctorate degree, with 7 years' experience of teaching degree class". In other words, the requirement that the appointee must have a doctorate degree in one of the subjects taught in the College was done away with. Until 13.1.1995, a person could be appointed Principal of a Law College only if he possessed a doctorate degree in law or in one of the branches of law taught in that College. But after 13.1.1995, on an ordinary literal interpretation of the amended clause, a person possessing a doctorate degree in a subject wholly unrelated to law could also be appointed the Principal of a Law College. Respondent No. 5 herein, who was one among the candidates selected and included in the panel and who was appointed as Principal of the Dayanand Law College had a doctorate in Philosophy and had no degree or qualification in law.

3. The management initially accepted the appointment of respondent No. 5 as Principal. It is said that he was teaching Ethics and Ancient Law in the College. As noticed earlier, on an inspection made by the Bar Council of India, it came out that the Principal did not have any qualification in law. The Bar Council of India, therefore, withdrew the recognition granted to the College. This placed the students coming out of the College in jeopardy since the Bar Council of India could deny them

enrolment and entry into the profession on the ground that the Institution in which they studied did not have recognition. It was then, that the management, acting through its Secretary, filed the Writ Petition praying for the issue of a writ of quo warranto, calling upon respondent No. 5 to show on what authority he was holding office. In that situation, respondent No. 5 was transferred as Principal of another College. It is the case of respondent No. 5 that he could not join that post since an interim order was passed by the High Court restraining him from taking charge as Principal of that College and this compelled him to file a writ petition questioning his very transfer. It is in that context that the High Court held that the appointment of respondent No. 5 was consistent with the University Act and since that Act prevailed over the Advocates Act and the relevant rules of the Bar Council of India, the status of respondent No. 5 could not be questioned. Based on that decision, the High Court also set aside the order transferring respondent No. 5. No doubt, it also took the view that such a transfer of Principal was not contemplated by the University Act or the Regulations thereunder.

4. There is no doubt that the University Act, 1973 had the assent of the President of India and it was an enactment later in point of time to the Advocates Act, 1961. According to the High Court, since the appointment of the Principal of the Law College was made on the basis of the relevant provisions of the University Act, and the Regulations framed thereunder and based on the qualification prescribed by the Statute 11.14 as it stood on the date of appointment, the provisions of the Advocates Act or the rules of the Bar Council of India could not be invoked to nullify his appointment or to question his authority as Principal. Thus, the High Court postulated a conflict between a State Law that had the assent of the President and a prior Central enactment and based on Article 254(2) of the Constitution granted relief to respondent No. 5.

5. The High Court also observed that the Bar Council of India had no role in legal education as such and that its role was confined to controlling the profession of Advocates and the commencement of the profession, that is, enrolment as an Advocate and hence the Bar Council of India could not make any prescription regarding legal education or about those who are to teach law, or who are to be the Principal of a College of Law. It also proceeded on the basis that the Advocates Act is a legislation under Entry 25 or 26 of List III of the Seventh Schedule to the Constitution of India and since the State law is under Entry 25 of List III of the Seventh Schedule to the Constitution, the State law would prevail in the context of Article 254 (2) of the Constitution. The Bar Council of India feels aggrieved by these findings of the High Court and is before this Court with these appeals.

6. Learned counsel for the Bar Council of India submitted that the High Court was first of all in error in holding that the legislative power for enacting the Advocates Act is traceable to Entry 26 of List III of the Seventh Schedule to the Constitution. Learned counsel relied on the decision of the Constitution Bench in O.N. Mohindroo vs. The Bar Council of Delhi & Ors. [(1968) 2 S.C.R. 709] to contend that the said legislation falls

under Entries 77 and 78 of List I of the Seventh Schedule to the Constitution. Learned counsel also sought to derive support from the decision in The Bar Council of Uttar Pradesh Vs. The State of U.P. & Anr. [(1973) 2 S.C.R. 1073] in that regard. With reference to the decision in M/s Ujagar Prints & Ors. Vs. Union of India & Ors. [(1989) 3 S.C.C. 488], learned counsel reemphasized that pith and substance rule had to be applied and even if the law is traceable to more than one entry, it would still continue to be a legislation under Entries 77 and 78 in List I. He further submitted that the High Court was in error in proceeding on the basis that both the legislations fell under List III of the Seventh Schedule and consequently the University Act would prevail. This was sought to be met by learned counsel for respondent No. 5 and for the State by contending that the Advocates Act could only be traced to Entry 26 of List III of the Seventh Schedule and the High Court was right in finding that the University Act would prevail.

7. The Bar Council of India is constituted under Section 4 of the Advocates Act. It consists of the Attorney General of India, the Solicitor General of India, both in their ex officio capacities and one member elected by each State Bar Council from amongst its members. It is a body corporate. The functions assigned to it are enumerated in Section 7 of the Act. The functions relevant for our purpose are contained in Section 7(1) (h) and Section 7(1)(i). They read:

"7(1)(h) 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;"

7(1)(i) to recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;"

The duty of admission and enrolment of Advocates is entrusted to the State Bar Council except in the case of Supreme Court advocates which is with the Bar Council of India. After 12.3.1967, a person may be admitted as an advocate on a State roll only if he has obtained a degree in law from a University recognized by the Bar Council of India. Section 24, to the extent it is relevant here, reads:

"24. Persons who may be admitted as advocates on a State roll. \026 (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 fulfills the following conditions, namely:-

- (a) \005\005\005\005\005\005\005\005\005.
- (b) \005\005\005\005\005\005\005\005\005\005
- (c) he has obtained a degree in law--
- (i) before the 12th day of March, 1967 from any University in the

territory of India; or
(ii) before the 15th of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or
(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia) after undergoing a three years course of study in law from any University in India which is recognized for the purposes of this Act by the Bar Council of India; or
(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognized for the purposes of this Act by the Bar Council of India; or
(iv) in any other case, from any University outside the territory of India, if the degree is recognized for the purposes of this Act by the Bar Council of India] or;

he is a barrister and is called to the Bar on or before the 31st day of December, 1976 or has passed the articulated clerks' examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court; or has obtained such other foreign qualification in law as is recognized by the Bar Council of India for the purpose of admission as an advocate under this Act;"

Section 49 confers the power to make rules for discharging the functions of the Bar Council of India. Relevant topics for our purposes are set down hereunder:

"49(1)(af) the minimum qualifications required for admission to a course of degree in law in any recognised University;"

and
"49(1)(d). the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;"

8. The Bar Council of India Rules are framed by the Bar Council of India in exercise of its rule making power. Part IV thereof deals with legal education, the duration of it, the syllabi etc. Section A deals with five-year law course and Section B deals with three-year law course.

Under Section A Rule 2, a degree in law obtained from a University shall not be recognized for the purpose of enrolment as an advocate under the Advocates Act unless the conditions laid down therein are fulfilled. Only then a student coming out of that University could get enrolled as an advocate. Provision has also been made regarding teachers of law. Rule 12 reads:

"12. Full-time teachers of law including the Principal of the College shall ordinarily be holders of a Master's degree in law and where the holders of Master's degree in law are not available, persons with teaching experience for a minimum period of 10 years in law may be considered. Part-time teachers other than one with LL.M. degree shall have a minimum practice of five years at the Bar."

9. Rule 17(1) stipulates that no college after the coming into force of the Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India. Thus, though the Bar Council of India may not have been entrusted with direct control of legal education in the sense in which the same is entrusted to a University, still, the Bar Council of India retains adequate power to control the course of studies in law, the power of inspection, the power of recognition of degrees and the power to deny enrolment to law degree holders, unless the University from which they pass out is recognized by the Bar Council of India.

10. The first task of a court confronted with a set of parallel provisions relating to the appointment of a principal of a law college like the one in the amended provision of the Statute under the University Act and the Rules made by the Bar Council of India which could ultimately refuse to admit a graduate of law coming out of the University to enrolment as an advocate, which alone would entitle him to practice, is to see whether the provisions could not be reconciled or harmoniously construed so as to achieve the object of both the enactments. Prior to 13.1.1995, there was no conflict between Statute 11.14 and Rule 12 of the Rules of the Bar Council. In 1995, in the University Statutes, the requirement of the Principal having to be the holder of a doctorate in one of the subjects taught in the College, was done away with. Obviously, such a provision could not be understood as controlling fully professional education like that in Medicine, Engineering or Law. No doubt, the University has not made a distinction in that regard in this context. But obviously, it does not appeal to common sense to say that an engineer could be appointed the Principal of a Medical College or a Great Physician could be appointed as the Principal of an Engineering College. Same is the position regarding the appointment of a doctorate in Science or a doctorate in Philosophy as the Principal of a law college.

11. The aim of most of the students who enter the law college, is to get enrolled as Advocates and practice law in the country. To do that, they have necessarily to have a degree from a University that is recognized by the Bar Council of India. Therefore, the court, in a situation

like the present one, has to ask itself whether it could not harmoniously construe the relevant provisions and reach a conclusion consistent with the main aim of seeking or imparting legal education. So approached, nothing stands in the way of the court coming to the conclusion that though under the relevant Statute of the University as amended, theoretically, it may be possible to appoint a Doctor of Philosophy or a Doctor of Science as the Principal of a Law College, taking into account the requirements of the Advocates Act, the Rules of the Bar Council of India and the main purpose of legal education, the Court would be justified in holding that as regards the post of the Principal of a Law College, it would be necessary for the proposed incumbent also to satisfy the requirements of the Rules of the Bar Council of India. Such a harmonious understanding of the position recognizing the realities of the situation, would justify the conclusion that a Doctorate holder in any of the law subjects could alone be appointed as the Principal of a Law College. The High Court, in our view, made an error in not trying to reconcile the relevant provisions and in not making an attempt to harmoniously construe the relevant provisions so as to give efficacy to all of them. A harmonious understanding could lead to the position that the Principal of a Law College has to be appointed after a process of selection by the body constituted in that behalf, under the University Act, but while nominating from the list prepared, and while appointing him, it must be borne in mind that he should fulfill the requirements of the Rules of the Bar Council of India framed under the Advocates Act and it be ensured that he holds a Doctorate in any one of the branches of law taught in the law college. We do not see anything in the University Act or the Statutes framed thereunder, which stands in the way of the adopting of such a course. Therefore, when a request is made for selection of a Principal of a law college, the University and the Selection Committee has to ensure that applications are invited from those who are qualified to be principals of a law college in terms of the Rules of the Bar Council and from the list prepared, a person possessing the requisite qualification, is nominated and appointed as the Principal of a law college.

12. It is clear from the decision of the Constitution Bench in O.N. Mohindroo vs. The Bar Council of Delhi & Ors. (supra) that in pith and substance, the Advocates Act falls under Entries 77 and 78 of List I of the Seventh Schedule. That apart, it is not necessary to postulate a conflict of legislation in this case as we have indicated earlier. It is true that under the University Act, the selection of a Principal of a College affiliated to the concerned University has been left to a Higher Education Services Commission and respondent No. 5 was included in the panel of selected candidates pursuant to a due selection by that Commission. It is also true that theoretically the State Government on the recommendation of the Director of Higher Education could appoint any one from that list as Principal of any College including a Law College. But when concerned with the appointment of a Principal of the Law College, there cannot be any difficulty either in the Recommending Authority or in the State Government recognizing the fact that a person duly qualified in law is required to be the Principal of that Law College in the interests of the students coming out of that College in the light of the

Advocates Act, 1961 and the rules framed by the Bar Council of India governing enrolment of Advocates and their practice. It must be the endeavour of the State and the Recommending Authority to ensure that the students coming out of the College are not put to any difficulty and to ensure that their career as professionals is in no way jeopardized by the action of the Government in appointing a Principal to a Law College. Therefore, even while adhering to its process of selection of a Principal, it behoves the State to ensure that the appointment it makes is also consistent with the Advocates Act and the rules framed by the Bar Council of India. It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of Universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pedantic view of the situation, the State Government and the Recommending Authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with. We are of the view that the High Court was not correct in its approach in postulating a conflict between the two laws and in resolving it based on Article 254(2) of the Constitution. Of course, the question whether the assent to the Act would also extend to the statute framed under it and that too to an amendment made subsequent to the assent are questions that do not call for an answer in this case in the light of the view we have adopted.

13. According to us therefore, notwithstanding the procedure to be followed under the University Act and Statute 11.14 as amended, it is necessary for the Recommending Authority and the State Government when concerned with the appointment of a Principal of a Law College, also to adhere to the requirements of the Advocates Act and the rules of the Bar Council of India. This would ensure a harmonious working of the Universities and the Bar Council of India in respect of legal education and the avoidance of any problems for the students coming out of the Institution wanting to pursue the legal profession. We therefore hold that the State Government and the Recommending Authority were not justified in recommending and appointing respondent No. 5 as the Principal of the Dayanand Law College.

14. It is somewhat difficult to appreciate why clause (b) of Statute 11.14 (ii) was amended by dropping the requirement that the Principal should hold a doctorate degree in one of the subjects taught in the college. Does the State and the University want a square peg in a round hole? Is it consistent with good educational policy to appoint a Scientist as the Principal of an exclusive Art or Commerce College or a Doctor of Literature or History, as the Principal of an exclusive Science College? It is, therefore, necessary for the concerned authorities to look into this aspect and consider whether clause (b), as it stood prior to 13.1.1995, should be not restored in the interests of education in general.

15. It was stated during the course of arguments that the Bar Council of India itself has watered down the

requirement that the Principal of a Law College must have a Postgraduate degree in law and has now provided that it is enough if he has a mere degree in law. This again is a matter for the Bar Council of India to ponder over and to consider whether there is any justification in watering down the qualification for a Principal as either a doctorate in law or a postgraduate degree in law. We are sure that what was envisaged as the body of Peers would seriously consider this question. Similarly, the argument by learned counsel for the respondents that the Bar Council of India takes no interest in legal education or in keeping up the standards of the profession, is something that the Bar Council of India should take note of so that it could take steps to rectify the situation, if there is any substance in that submission.

16. We find that consistent with the Advocates Act and the rules of the Bar Council of India, respondent No. 5 could not have been appointed as the Principal of a Law College, however, eminent he might be as a philosopher, friend and guide to the students and his competence to teach Ethics could be recognized. It is submitted on behalf of the respondent No. 5 that he was not responsible for his appointment as the Principal of the Law College and he has suffered because of this controversy which is not of his making and since he was relieved from the post of the Principal of the Law College subsequent to the interim order passed by this Court in these appeals. It is submitted that though he was transferred as the Principal of another Institution, he could not take charge because of some interim orders passed by the High Court in a Writ Petition filed by some interested persons. Now, that we have clarified the position, we have, no doubt, that the authorities that be and the High Court will deal with the grievances of respondent No. 5 regarding his status and posting in an expeditious manner, if moved in that behalf and take an appropriate decision consistent with what we have stated in this judgment.

17. The appeals are thus allowed, the judgments of the High Court are set aside. The Writ Petition filed by the management is allowed and the Writ Petition filed by respondent No. 5 is dismissed. The parties are directed to suffer their respective costs.