

PETITIONER:
BAR COUNCIL OF UTTAR PRADESH

Vs.

RESPONDENT:
STATE OF U.P. & ANOTHER

DATE OF JUDGMENT 01/12/1972

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
MATHEW, KUTTYIL KURIEN
MUKHERJEA, B.K.

CITATION:
1973 AIR 231 1973 SCR (2)1073
1973 SCC (1) 261

ACT:
Constitution of India, 1950, Seventh Schedule, List 1, entries 77, 78, and 96; List 11, entry 63 and List III, entry 44-U.P. amendment to Indian Stamp Act, 1899, levying stamp duty on certificate of enrolment granted under s. 22 of Advocates Act, 1961-If constitutionally valid.

HEADNOTE:
Prior to 1926, the enrolment of legal practitioners as advocates of Chartered High Courts, was under the Letters Patent, and, in the case of other High Courts, under s. 41 of the 'Legal Practitioners Act, 1879. The Bar Councils Act was enacted in 1926. Under s. 8 of the Act, the High Court shall prepare and maintain a roll of advocates. A fee was payable to the Bar Council in the case of persons entitled as of right to practise in the High Court immediately before the date on which the section came into force and by others who were admitted as advocates under that Act, and, in respect of the entry on the roll of the High Court, a stamp duty was payable under art. 30 of the schedule to the Indian Stamp Act 1899. [1077 D-E: 1078 F]

The Advocates Act, 1961, was enacted with the main objective of the integration of Bar into a single class of legal practitioners known as advocates and the prescription of uniform qualifications for the admission of such persons to the profession. The name of an advocate was entered in the common roll of advocates prepared and maintained by the Bar Council of India, which was to comprise of entries made in all State rolls and the names of advocates, entitled as of right to practise in the Supreme Court immediately before the appointed day, whose names were not entered in any State roll., Section 22 provides that a certificate of enrolment shall be issued by the State Bar Council to the advocate whose name is in the roll maintained by it, or by the Bar Council of India when his name is entered in the common roll without being entered in any State roll. Apart from fulfilling the qualifications and the conditions laid down by the Act and the rules framed under it, the advocate had to pay, under s. 24 (1) (f), an enrolment fee of-Rs. 250/to the State Bar Council. Under the Act, only that sum was payable; and even when an advocate desires to have his name

transferred from one State roll to another he could get it done without payment of any additional fee. The Act repealed s. 8 of the Bar Councils Act. After the repeal of the relevant provisions of the Bar Councils Act, and the Legal Practitioners Act, relating to admission of advocates, art. 30 of the Indian Stamp Act, had become obsolete, but different States inserted provisions levying duty on the certificate of enrolment granted under s. 22 of the Advocates Act. By the Indian Stamp (U.P. Amendment) Act, 1970, the stamp duty payable was prescribed at Rs. 250. [1081 C-H; 1082 A-B]

A writ petition challenging the provision made by the State Legislature imposing stamp duty on the certificate of enrolment to be issued by the State Bar Council as invalid and unconstitutional in view of the provision in the Advocates Act which prescribes a fee of Rs. 250/- only for enrolment as an advocate, was allowed by a single Judge of the High Court. In appeal, the Bench set aside the judgment.

Dismissing the appeal to this Court,
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HELD : (1) The levy of stamp duty by means of the Stamp Amendment Act in the State of U.P. was not covered by any of the Entries in List I and hence the State was competent to levy the duty and prescribe the rate under Entry 44, List III and Entry 63 of List 11 in the Seventh Schedule to the Constitution. [1086 C]

(a) So far as the persons entitled to practise before the Supreme Court or the High Court, the power to legislate in regard to them was carved out from the general power in Entry 26, List 111, relating to 'Legal, Medical and other professions' and is made the exclusive field 'for Parliament, under Entries 77 and 78 in List I.. That is, Parliament has exclusive power to prescribe, inter alia, the qualifications and conditions on the fulfilment of which persons would be entitled to practise before the Supreme Court or the High Court. Any fee which may be payable by such persons before they can claim to be entitled to practise would fall under Entry 96 of that List. [1083 D-H]
O. N. Mohindroo v. The Bar Council of Delhi & Ors. [1968] 2 S.C.R. 709, followed.

(b) Entry 44 of List III enables legislation with regard to the levy of stamp duty but the rates of Stamp Duty can be prescribed by Parliament only with regard to instruments falling under Entry 91, List 1, and by the State Legislature under Entry 63 of List 11. If the requirement of the payment of a stamp duty on the certificate of enrolment of an advocate is a condition precedent to the conferment on a person of the privilege of audience and representing suitors before the Supreme Court and the High Court, any legislation relating to it would be within the competence of Parliament. If, however, it is purely a taxation measure then it would fall in Entry 44 of the Concurrent List, in which event, both Parliament and the State legislature would be competent to legislate for the levy of duty, although, it is only under Entry 63 of List II that rates can be prescribed by the State legislature. The scheme of the Entries in the various lists is that taxation is not intended to be comprised in the main subject in which it might, on an extended construction, be regarded as included but is treated as a distinct matter for the purpose of legislative competence. [1083 H; 1084 A-H]

(c) The scheme of the Advocates Act, to have complete uniformity involved the question of the payment which an advocate had to make for getting a certificate with regard

to his entry on the roll either of the State Bar Council or the common roll of the Bar Council of India. The fee prescribed for the purpose by the Act was Rs. 250.00. But Parliament, while enacting this provision, made no provision that in addition to the fee of Rs. 250/- the advocate shall not have to pay any stamp duty which is essentially in the nature of a tax on the certificate of enrolment to be issued by the State Bar Council or exempting the advocate from the payment of stamp duty on the certificate of enrolment, which Parliament could have done under Entry 44 of List III. [1085 C-H]

(d) In the absence of any such provision the position is that although the Advocates Act relates to legal practitioners, in its pith and substance, it is an enactment dealing with qualifications, enrolment, right to practise and discipline of the advocates, coming under Entries 77 and 78 of List I. The fee of Rs. 250/- which an advocate must pay under s. 24 (1) (f) of the Act is covered by Entry 96 in List I which expressly relates to fees in respect of matters in that List. But the stamp duty which is payable on the certificate of enrolment pertains to the domain of taxation and it is hardly possible to regard it as a condition which can be

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prescribed under the entries in List I. The imposition of such a duty falls, in pith and substance, under Entry 44 of List III and the prescribing of rates under Entry 63 of List II. [1085 G-H]

M.P. V. Sundaramier & Co. v. The State of Andhra Pradesh

JUDGMENT:

S. Ananthakrishnan v. State of Madras, I.L.R. 1952 Mad. 933, approved.

(2) Once it is held that power to tax was within the competence of the State Legislature no question of repugnancy under Art. 254 of the Constitution could arise. A question of repugnancy can only arise in matters where both Parliament and State Legislature have legislative competence to pass laws, that is, when the legislative power is located in the Concurrent List. Moreover, in the present case, the provisions of Art. 254(2) have been complied with inasmuch as the assent of the President had been taken while enacting the impugned Amending Act.

[1086 D-F]

Prem Nath Kaul v. State of Jammu & Kashmir, [1959] Supp. 2 S.C.R. 270, 300 and State of Jammu and Kashmir v. M. S. Earooqi, C.A. 1572 of 1968 dt, 17-3-72, followed.

(3) There is no substance in the argument that the levy is discriminatory. Discrimination was stated to arise in two ways : (i) An advocate in one State has to pay only the enrolment fee of Rs. 250/ and no more, whereas, in Uttar Pradesh, he has to pay not only Rs. 250/- as enrolment fee but also a stamp duty as prescribed by the Stamp Amendment Act, and (ii) when an advocate whose name is borne on the roll of the Bar Council of a State, where no duty is leviable on the certificate of enrolment, wishes to get his name transferred to the roll of the Bar Council of Uttar Pradesh he shall have to pay the duty prescribed by the Stamp Amendment Act, while no such duty is leviable if he wishes to have his name transferred to the roll of another State where he will not have to pay the duty. But Art. 14 can have no application where the sources of authority of the Parliamentary and State legislation are different. [1087 B-E]

State of Madhya Pradesh v. G. C. Mandawar, [1955] 1 S.C.R. 599 followed.

(4) In order to achieve uniformity it is for the States to refrain from levying any stamp duty on the certificates of enrolment or for Parliament to enact proper legislation so as to do away with a feature which is certainly derogatory to the ultimate aim and goal of the Act of having a common Bar for the whole country with uniformity in all material respects. [1087 F-H]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 897 of 1971.
Appeal by special leave from the judgment and order dated July 9, 1970 of the Allahabad High Court in Special Appeal No. 143 of 1964.

A. K. Sen, S. V. Gupte, J. P. Goyal, A. P. 'Singh Chauhan and S.N. Singh for the appellant.

G. N. Dikshit and O. P. Rana, for the Respondents.

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The Judgment of the Court was delivered by

GROVER, J. This appeal by special leave against a judgment of the Allahabad High Court arises out of a petition filed by the Bar Council of U.P. under Art. 226 of the Constitution challenging the amendments made in Art. 30 of Schedule 1-B of the Indian Stamp Act by the U.P. Stamp (Amendment) Acts from 1962 onwards. The points which arise for determination are of some importance to the persons belonging to the legal profession.

The Advocates Act 1961, hereinafter called the 'Act' was enacted by the Indian Parliament and was published in the Government of India Gazette dated May 19, 1961. By a notification dated August 7, 1961 the Central Government fixed August 16, 1961 as the date on which the provisions of Chapters 1, 11 and VII of the Act were to come into force. The Bar Council of U.P. was constituted thereafter. Another notification was issued on November 24, 1961 by the Central Government bringing into force Chapter III of the Act with immediate effect. Other Chapters were brought into force by subsequent notifications. Under Chapter III the State Bar Council and the Bar Council of India were entrusted with the task of admission and enrolment of advocates. The Bar Council of the State was required to prepare and maintain a roll of advocates as also to enter the names and addresses of those persons who were entered as advocates on the roll of Advocates of the High Court under the Indian Bar Council Act 1926 immediately before the appointed date, i.e. December 1, 1961. The State Bar Council had also the duty or the obligation to enter on its roll all other persons who were admitted as advocates under the Act on or after the appointed day. Under s. 24 (1) (f) of the Act the State Bar Council was entitled to admit a person as an advocate on its roll if he paid a fee of Rs. 250/provided he fulfilled the qualifications prescribed by that section. But by reason of the amendment of Art. 30 by the U.P. Stamp Amendment Act 1962 an additional sum of Rs. 500/- became payable, as stamp duty on the entry as an advocate on the State roll of Uttar Pradesh. The next amendment was made by the State Legislature by enacting the Uttar Pradesh Taxation Laws Amendment Act 1969 which was brought into force by a notification dated September 13, 1969 with effect from October 1, 1969. Clause 3 of S. 3 of the Amendment Act of 1969 amended Article 30 of the Act. By this amendment stamp duty of Rs. 500/- was payable on "Certificate of enrolment under section 22 of the Advocates Act 1961 issued by the

State Bar Council Uttar Pradesh". The amendment was made with retrospective effect. The latest amendment was made by the Indian Stamp (U.P. Amendment) Act 1970 in s. 11 1 of the Indian Stamp Act

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as amended in its application to U.P. for clause (c) the following clause was substituted :

"Certificate of enrolment under S. 22 of the Advocates Act, 1961, issued by the State Bar Council of Uttar Pradesh".

In Schedule 1-B after Article 17, Article 17A was inserted. It was in -these terms

"Certificate of enrolment under s. 22 of the Advocates Act, 1961, issued by the State Bar Council of Uttar Pradesh".

The stamp duty payable has been prescribed at Rs. 250/-. Article 30 was Consequently omitted.

The question which was agitated before :the High Court and which has been raised before us is whether the provision made by the State Legislature for imposition of duty on the certificate of enrolment to be issued by the State Bar Council is invalid and unconstitutional in view of the provision in the Act which prescribes a fee of Rs. 250/- only for enrolment as an advocate. In order to decide this question it is essential to advert to the background in which the Act came to be enacted in 1961. The enrolment of legal practitioners as advocates of the High Court was made originally under one of the clauses of the Letters Patent in the case of Chartered High Courts in the country. So far as the High Courts which were not established by the Royal Charter were concerned s. 41 of the Legal Practitioners Act 1879 provided that such a High Court could from time to time with the previous sanction of the Provincial Government make rules as to the qualifications and admission of proper persons to be advocates of the court and, subject to such rules could enrol such and so many advocates as it thought fit.

The Bar- Council Act 1926 was enacted to provide for the constitution of Bar Councils and for other purposes. Sections 3 and 4 dealt with the constitution of Bar Council for every High Court. Section 8 related to admission and enrolment of advocates. That section, to the extent it is material, is reproduced below :

S.8 (1) "No person shall be entitled as of right to practise in any High Court unless his name is entered in roll of the advocates of the High Court maintained under this Act :

Provided that nothing in this sub-section shall apply to any attorney of the High Court.

(2) The High Court shall prepare and maintain a

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roll of advocates of the High Court in which shall be entered the names of-

(a) all persons who were, as advocates, vakils or pleaders entitled as of right to practise in (the High Court immediately before, the date on which this section comes into force in respect thereof ; and

(b) all other persons who have been admitted to be advocates of the High Court under this Act:

Provided that such persons shall have paid in respect of enrolment the stamp-duty, if any, chargeable under the Indian Stamp Act, 1899,

and a fee, payable to the Bar Council, which shall be ten rupees in the case of the persons referred to in clause (a) and in other cases such amount as may be prescribed.

(3)

(4)

(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section.

(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section and shall thereafter communicate to the Bar Council all alterations in and additions to, the roll as soon as the same have been made".

Thus the position under s. 8 was that a fee of Rs. 10/- was payable to the Bar Council in the case of persons who were, as advocates, vakils or pleaders entitled as of right to practise in the High Court immediately before the date on which s. 8 came into force as also others who were admitted to the advocates under the said Act. In respect of the entry on the roll of the High Court the stamp duty was payable under Art. 30 of Schedule 1-B of the Indian Stamp Act as amended in U.P.

Section 9 dealt with the qualifications and admission of advocates. It was provided thereby that the Bar Council could, with the previous sanction of the High Court, make rules to regulate the admission of persons to be advocates of the High Court. But such rules could not limit or in any way affect the power of the High Court to refuse admission to any person at its discretion. Under sub-s. (2) the rules could provide, inter alia, for the qualifications to be possessed by persons applying for admission as advocates and the charging of the fee payable to the Bar Council in respect of enrolment. Section 14 conferred a right on the advocates, inter alia, to practise in the High Court of which they

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were advocates and appear before any other Tribunal or person legally authorised to take evidence.

Prior to 1953 an All India Bar Committee was appointed which made recommendations in 1953 after taking into account the recommendation of the Law Commission on the subject of role of judicial administration in so far as the recommendation related to the Bar and to legal education. In the statement of objects and reasons of the Bill which came to be enacted as the Act the main features were stated to be as follows

(1) The establishment of an all India Bar Council and a common roll of advocates, and advocate on the common roll having a right to practise in any part of the country and in any Court, including the Supreme Court;

(2) the integration of the bar into a single class of legal practitioners known as advocates.

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

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

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

According to the preamble the Act was meant to amend and consolidate the law relating to legal practitioners and to

provide for the constitution of Bar Councils and an all India Bar. Chapter H dealt 'with Bar Councils. There was to be a Bar Council for each State and a Bar Council of India as provided by ss. 3 and 4 respectively. Under s7. 6 the functions of the State Bar Council, inter alia, were to admit persons as advocates on its roll and to prepare and maintain such roll. Section 7 dealt with the functions of Bar Council of India. Amongst them the Bar Council of India had to prepare and maintain a common roll of advocates; to lay down standards of professional conduct and etiquette for advocates; to safeguard the rights, privileges and interests of 'advocates etc. Chapter III dealt with admission and enrolment of advocates. Under s. 17 the State Bar Council was to maintain roll of advocates in which the names and addresses had to be entered of (a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Council Act 1926 immediately before the appointed day and who, within the prescribed time, expressed an intention in the prescribed manner to practise within the jurisdiction of the Bar Council and (b) all other persons who were admitted to be advocates on the roll of the State Bar Council under the Act on or after the appointed day. No person was to be enrolled as an advocate on the roll of

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more than one State Bar Council. Section 18 laid down that any person whose name was entered as an advocate on the roll of any State Bar Council could make an application to the Bar Council of India for the transfer of his name from the roll of that State Council to the roll of any other State Bar Council. On receipt of such application the Bar Council of India was to direct that the name of such person shall, without payment of any fee, be removed from the roll of the first named State Bar Council and entered in the roll of the other Bar Council and the State Bar Councils concerned were enjoined to comply with such a direction. Under S. 19 every State Bar Council had to send the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time and thereafter communicate all' alterations and additions etc. to any such roll. Section 20 con-. tained a similar provision making it obligatory on the Bar Council of India to maintain a common roll of advocates comprising the entries made in all State rolls and include the mates of all' advocates entitled as of right to practise in the Supreme Court immediately before the appointed day whose names were not entered in any State roll. Section 22 was in the following terms

"Certificate of enrolment.-There shall be issued a certificate of enrolment, in the prescribed form-:

- (i) by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act; and
- (ii) by the Bar Council of India to every person whose name is entered in the common roll without his name having already been, entered in any State roll".

Section 24 laid down the qualifications of persons who could be admitted as advocates on a State roll. These qualifications included the requirement of Completion of the age of 21 years and obtaining of a degree in law or being a Barrister- etc. and Clauses-, (e) and (f) of sub-s. (1) made it obligatory that such a person should fulfill. The other conditions which might be specified in the rules made by the Bar Council and should have paid an enrolment fee of Rs. 250/- to the State Bar Council. Under S. 25 the

application for admission had to be made in the prescribed form to the State Bar Council within whose jurisdiction the applicant proposed to practise. Chapter V related to the right to practise. From the appointed day there was to be only one class of persons entitled to practise the profession of law, namely, advocates. Every advocate whose name was entered in a common roll was entitled as of right to practise throughout the territories to which the Act extended in all courts including the Supreme Court, before any Tribunal or person legally authorised

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to take evidence and appear before any other authority or person before whom such advocate was by or under any law for the time being in force entitled to practise. No person could, after the appointed day be entitled to practise in any court or before any authority or person unless he was enrolled as an advocate under the Act. The High Court could make rules laying down conditions subject to which an advocate was to be permitted to practise in the High Court and the courts subordinate thereto. All these provisions were contained in Chapter IV of the Act. As provided by s. 52 nothing in the Act was to be deemed to affect the power of the Supreme Court to make rules under Art. 145 of the Constitution for laying down the conditions subject to which a senior advocate was entitled to practise in that court and for determining the persons who would be entitled to act in that court.

It is quite apparent that the main objective of the integration of the Bar into a single class of legal practitioners known as advocates and the prescription of uniform qualifications for the admission of such persons to the profession was sought to be achieved by the provisions of the Act. It was essential for an advocate, if he wanted to practise, to have his name on the common roll of advocates which was to be prepared and maintained by the Bar Council of India. The common roll, however, was to comprise entries made in all State rolls and was to include the names of advocates entitled as of right to practise in the Supreme Court immediately before the appointed day whose names were not entered in any State roll. If a person did not fall within the latter class his name had to be borne on the roll of advocates of the State Bar Council. Apart from fulfilling the qualifications laid down by the Act and the other conditions specified there in or by any rules framed under its provisions the advocate had to pay an enrolment fee of Rs. 250/- to the State Bar Council. Section 24(1), as already stated, contained the conditions for the admission of an advocate on the State roll and sub-clause (f) of sub-s. (1) constituted one of those conditions without the fulfilment of which a person could not be said to satisfy the requirements of s. 24. Under the Act only that sum or amount was payable and even when an advocate desired to have his name transferred from one State roll to another he could get the same done without payment of any additional fee: (Vide s. 18).

Now by the Act, section 8 of the Bar Councils Act apart from other sections was repealed. In spite of the repeal of that provision it appears that in the Indian Stamp Act Art. 30 continued to be so framed as to make a provision for levy of a duty on entry as an advocate on the roll of any High Court under the Indian Bar Councils Act 1926 or in exercise of the power conferred on such court by Letters Patent or by the Legal Practitioners Act

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1879. After the repeal of the relevant and material

portions of these enactments relating to-admission of advocates by the Act this Article would appear to have become obsolete. But different States inserted provisions levying duty on the certificate of enrolment in the roll, of advocates prepared and maintained by the State Bar Councils under the Act.

The learned single judge who heard the writ petition filed by the Bar Council of Uttar Pradesh allowed the same by a judgment dated November 12, 1963. He proceeded to consider whether the Stamp Amendment Acts which had been passed after the enactment of the Act were valid under the provisions of Article 246 of the Constitution. He was of the view that it was within the exclusive competence of the Parliament to legislate in respect of persons entitled to practise before the Supreme Court and the High Courts and the State Legislatures had no such competence. As S. 8 (2) (b) of the Indian Bar Council Act 1926 had been repealed and under S. 24 (1) (g) of the Act the Parliament had prescribed the payment of a fee of Rs. 250/- only for enrolment by the State Bar Council it must be assumed that the Parliament had deliberately omitted the previous pattern in regard to the payment of the stamp duty by the persons wishing to be enrolled as advocates of High Court while enacting the Act. The Act was a very comprehensive enactment and the Parliament had dealt with every aspect of the matter including the conditions which had to be fulfilled before a person could be admitted as an advocate on the State roll. As the levy of stamp duty on the certificate of enrolment was not one of those conditions prescribed by the Act-the State Legislature had, by levying stamp duty on such a certificate, encroached on the legislative field of Parliament. Principally on these grounds the learned judge allowed the writ petition

A special appeal against the judgment of the single judge was taken to a Division Bench. After referring to the various entries in the three lists it was held that no question of repugnancy arose between the Stamp Amendment Acts and the provisions of the Act. Special notice was taken of the omission in the Act of a provision barring the levy of stamp duty on the certificate of enrolment or entry on the roll relating to the admission of an advocate. It was pointed out that no question of repugnancy could arise under Art. 254 of the Constitution because the Stamp Amendment Laws had received the consideration of the President and his assent and thus the conditions laid down by Art. 254(2) had been complied with. The appeal was allowed and the judgment of the learned single judge was set aside.

Now Entries 77 and 78 in List I in the Seventh Schedule to the Constitution are as follows

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"77 Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; person entitled to practise before the Supreme Court.

78 Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before High Courts".

Entry 91 relates to rates of stamp duty in respect of certain instruments which do not cover an instrument or a document with which we are concerned, namely, certificate of enrolment is-sued under s. 22 of the Act. Entry 96 in the same list relates to fees in respect of any of the matters

in the List but not including the fee 'taken in any court. Entry 63 in List II relates to rates of stamp duty in respect of documents other than those specified in List I i.e. Entry 91. In the same List Entry 66 relates to fees in respect of any of the matters in that List but not including fee taken in any court. The following Entries in List III may be reproduced :

"26. Legal, medical and other professions".

"44. Stamp duties other than duties or fees collected by means of judicial stamp, but not including rates of stamp duty".

There is no dispute that the Act was enacted under Entries 77 and 78 in List I. It is equally clear that the words "persons entitled to practise" would include determining or prescribing the qualifications and conditions that a person should possess and satisfy before becoming entitled to practise as an advocate before, the Supreme Court or the High Courts. So far as persons entitled to practise before these courts are concerned "the power to legislate in regard to them is carved out from the general power relating to the provision in Entry 26 in List III and is made the exclusive field for Parliament". In other words the power to legislate in regard to persons entitled to practise before the Supreme Court and the High Courts is altogether excluded from Entry 26 in List II. (See 6. N. Mohindroo v.- The Bar Council of Delhi & Others(1). From the entries the following scheme with regard to persons entitled to practise will appear to emerge; (1) The Parliament has the exclusive power under Entry 77 and Entry 78 in List I to prescribe.

inter alia, the qualifications and conditions on the fulfilment of which persons would be entitled to practise before the Supreme Court or the High Courts. Any fee which may be payable by such persons before they can claim to be entitled to practise would fall under Entry 96 of that List; (2) Entry 44 of List III enables legislation with regard to its levy but

(1) [1968] 2 S.C.R. 709.

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the rates of the stamp duty can be prescribed by the Parliament only with regard to instruments falling within Entry 96 of List I and by the State Legislature under Entry 63 of List II.

The main question on which the controversy has centered is whether the levy of stamp duty on the certificate of enrolment of an advocate is a purely taxation measure or whether it is a part of the conditions prescribed by s. 24 of the Act which an advocate must satisfy before he becomes entitled to practise. If the requirement of the payment of such a duty is a condition precedent to the conferment on a person of the privilege of audience and representing suitors before the Supreme Court and the High Courts any legislation relating to it would be within the competence of the Parliament. If, however,, it is purely a taxation measure then it would fall within Entry 44 of the Concurrent List in which event both the Parliament and the State Legislature would be competent to enact legislation for the levy of the duty although it is only under Entry 63 of List II that rates can be prescribed by the State Legislature. In other words, the charging provisions can be enacted by both the Parliament and the State Legislatures subject to the provisions of Art. 254 of the Constitution. It is well settled that the scheme of the Entries in the various Lists is that taxation is not intended to be comprised in the main subject in which "it might on an extended construction be regarded as included but is treated as a distinct matter for

the purpose of legislative competence". Even under the residually power a. legislation conferred by Art. 248 the Parliament can only impose that tax which is not mentioned in either List III or List II.

It has been pointed out on behalf of the respondents that the Indian Bar Council Act 1926 was passed under the provisions of the Government of India Act 1915. Under that Act the States had no power to levy tax in the nature of a stamp duty. It was possibly for that reason that a provision was made in s. 8 (2) by the Central Legislature expressly saying that the persons who were to be enrolled as advocates shall have to pay stamp duty, if any, chargeable under the Indian Stamp Act 1899 and fee payable to the Bar Council. In the Government of India Act 1935 there was no entry equivalent to Entries 77 and 78 of the Constitution in List 1, Entry 57 in List I of the Act of 1935 corresponded to Entry 91 in List I of the Constitution. Entry 51 in List 11 of that Act corresponded to Entry 63 in List 11 of the Constitution. Entry 13 in the Concurrent List in the Schedule to the 1935 Act corresponded to Entry 44 in List III of the Constitution. Entry 16 in the Concurrent List in the Schedule to the Act was "legal, medical and other professions". It was similar to Entry 26 in List III of the Constitution. The stamp duty was payable to the Bar Council in Uttar Pradesh as provided by the Bar Council Act 1926

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under Entry 30 of U.P. Act III of 1936. After the Constitution came into force the U.P. Stamp Amendment Act 1952 was enacted. The charging section was S. 3 under which among others every instrument mentioned in Schedule I (A) or 1 (B) executed in Uttar Pradesh was chargeable with the duty of the amount indicated in those schedules. When the Act was enacted its provisions fell principally under Entries 77 and 78 in List I of the Seventh Schedule. These Entries, it has been strenuously argued on behalf of the respondents, do not include the taxing power, which was contained in the different Entries which have already been indicated. The stamp duty pertains to the domain of taxation and is covered by Entry 63 in List 11 read with Entry 44 in, List III.

As already noticed the entire scheme of the Act was to have complete uniformity so far as advocates were concerned for the whole country. This essentially involved the question of the payment which an advocate had to make for getting a certificate with regard to his entry on the roll either of the, State Bar Council or the common roll of the Bar Council of India. The fee prescribed for that purpose by the Act was Rs. 250/-. Unfortunately the Parliament while enacting the Act made no provision that in addition to the, fee of Rs. 250/- the, Advocate shall not have to pay any stamp duty which is essentially in the nature of a tax on the certificate of enrolment to be issued by the State Bar Council or exempt the payment of stamp duty on the certificate of enrolment. That could have been done under Entry 44 of List III. In the absence of any such provision the position which emerges may be stated thus. Although the Act relates to legal practitioners, in its pith and substance it is an enactment dealing with qualifications, enrolment, right to practise and discipline of the advocates. As has already been noticed the Act was held to be covered by the latter part of Entries 77 and 78 (Vide., o. N. Mohindroo's case (supra). The fee of Rs. 250/- which an advocate must pay under the provisions of S. 24(f) of the Act is covered by Entry 96 in List I which expressly relates to fees in respect of any of the matters in that

List. The stamp duty which is payable on the certificate of enrolment pertains to the domain of taxation and it is hardly possibly to regard it as a condition which can be prescribed for enrolment under the Entries in List 1. The imposition of such a duty falls in pith and substance under Entry 44 of List III and the prescribing of rates under Entry 63 of List 11. In *M. P. V. Sundaramier & Co. v. The State of Andhra Pradesh & Anr.*(1), it was observed after a full examination of the scheme of Entries at page 1480 :

"The above analysis-and it is not exhaustive of the Entries in the Lists-leads to the inference that

(1) [1959] S.C.R. 1422.

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taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Art. 248, Clauses (1) and (2) and of Entry 97 in List I of the Constitution".

In *S. Ananthakrishnan Y. State of Madras*(1) the levy of stamp duty on a document which gives a person the privilege or the right to plead and act on behalf of the suits was considered to fall within the taxing power of the State. It is difficult to escape the conclusion that the levy of stamp duty by means of the Stamp Amendment Acts in the State of Uttar Pradesh was not cove by any of the Entries in List I and therefore it could not be said that the State was incompetent to levy the duty and prescribe the rate under Entry 44 of List III and Entry 63 of List II in the Seventh Schedule to the Constitution. Any argument on th basis of legislative incompetence, has, therefore, to be repelled.

A contention sought to be raised on behalf of the appellant based on the question of repugnancy can hardly be of any avail Once it is held that the power to tax was within the competence of the State Legislature no question of repugnancy under Art. 25 of the Constitution could arise. The question of repugnancy can only arise in matters where, both the Parliament and the State Legislature have legislative competence to pass laws. In other words when the legislative power is located in the Concurrent List the question of repugnancy arises : See *Prem Nath Kaul v. State of Jammu & Kashmir*(2). Moreover in the present case the provisions of clause (2) of Art. 254 of the Constitution have bee complied with inasmuch as the assent of the President has taken while enacting the impugned Amending Acts. The laid down in the *State of Jammu & Kashmir v. M. S. Farooqi*(8) which has been invoked on behalf of the appellant cannot be applied. It is true that it was laid down therein that where the Parliament had occupied the field and had given clear indication of the manner in which any disciplinary action should be taken against the members of the AR India Services it was not open to the State Legislature to deal with infliction of disciplinary punishments in respect of those persons. Article 254 was applied although there was no repugnancy arising out of legislation under the Concurrent List. So far as the Constitution applicable to the State of. Jammu & Kashmir was concerned at the relevant time ,there was no Concurrent List. It was in that situation that Article 254 was applied as it existed in respect of the State of Jammu

(1) I.L.R. 1952 Mad. 933.

(2) [1959] Supp. 2 S.C.R. 270, 300.

(3) C.A. 1572 of 1968 dt. 17-3-1972.

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& Kashmir. Decisions of this Court that under Art. 254(1) the question of repugnancy arises where both Parliament and the State Legislature have operated in the same field in respect of, matters enumerated in the Concurrent List were distinguished by saying that the above cases are not applicable as the language of Art. 254 as applicable to Jammu & Kashmir was different.

Lastly we may deal with the point of discrimination which has also been raised on behalf of the appellant. It is based on the provisions contained in the Act which entitle an advocate on the roll of one State Bar Council to get his name transferred to the roll of another State Bar Council without payment of any additional fee. It has been urged that if an advocate whose name is borne on the roll of the Bar Council of a State where no duty is leviable on the certificate of enrolment wishes to get his name transferred to the roll of the Bar Council of Uttar Pradesh he shall have to pay the duty prescribed by the Stamp Amendment Acts. If, however, he wishes to have his name transferred to the roll of some other State where no duty is leviable he will have to pay no duty at all. Discrimination thus is stated to arise in two ways: (1) the advocate in one State has to pay only the enrolment fee of Rs. 250/- and no more; whereas in Uttar Pradesh an advocate has to pay not only Rs. 250/- as enrolment fee but also, a stamp duty as prescribed by the Stamp Amendment Acts. Secondly, in the matter of transfer also discrimination arises as has been indicated above. Such an argument can have no substance because Art. 14 can have no application where the sources of authority of the parliamentary and State legislation are different. See the State of Madhya Pradesh v. G. C. Mandawar(1).

We are certainly not happy with the result. As we look at the provisions of the Act and the entire scheme and purpose underlying it we have no doubt that it was intended to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. The advocates were to have complete facilities for enrolment and practising as advocates throughout the country once they had fulfilled the conditions laid down by S. 24. But no provision having been made that apart from the enrolment fee no stamp duty would be leviable on the certificate of enrolment or that the same will be exempt from stamp duty it has been left to the State legislature to amend the relevant schedules in the Stamp Act and impose such duties as they choose to levy on the certificate of enrolment. That has been done by the States of Uttar Pradesh and Mysore. We have not been informed about such legislation by other States. In order to achieve uniformity it is for the States to refrain from levying any stamp duty on the certificate of enrolment or the Parliament to enact,

(1) [1955] 1 S.C.R. 599.

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proper legislation so as to do away with a feature which is certainly derogatory of the ultimate aim and goal of the Act of having a common Bar for the whole country with uniformity in all material respects.

We are, however, constrained to dismiss this appeal but we make no order as to costs.

V.P.S.

Appeal dismissed.

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