IN THE SUPREME COURT OF INDIA
CIVIL APPELATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. 22337 OF 2008

<u>IN THE MATTER OF</u>

BAR COUNCIL OF INDIA …PETITIONER

VERSUS

BONNIE FOI LAW COLLEGE …RESPONDENT

SUBMISSIONS OF MR. K.V. VISWANATHAN, SR. ADV., AMICUS CURIAE

Submitted By
K.V. Viswanathan, Senior Advocate

Assisted By:
Amartya A. Sharan, Advocate
Rahul Sangwan, Advocate
M.G. Aravind Raj, Advocate

Filed on _.09.2022

In the Supreme Court of India
Bar Council of India [*Petitioner*] v. Bonnie Foi Law College [*R1*]
SLP (Civil) 22337/2008

Table of Contents

I. The Bar Council of India: its role under the statutory scheme ... 3

A. Legislative history leading up to the Advocates Act ... 3

B. Reports of Law Commission of India – Post enactment of the Advocates Act ... 7

C. Case Laws on powers of the Bar Council ... 7

II. Evolution of Relevant Provisions of the Advocates Act ... 9

III. V. Sudeer v. Bar Council of India (1999) 3 SCC 176 : An Analysis ... 15

A. Proposition A: Under the scheme of the Advocates Act, any person who is enrolled as an advocate on a State roll acquires an exclusive and unfettered right to practise throughout the territories to which the said Act extends. ... 15

B. Proposition B: After the 1973 Amendment, any person who fulfils the conditions under sub-sections (1), (2) or (3) of Section 24 is qualified to be admitted as an advocate on a State roll unless she is disqualified under Sec. 24A ... 16

C. Proposition C: Any rules framed by the BCI under Sec. 49 of the Act which cannot be traced to any of its statutory functions are *ultra vires*, because the rule-making powers of the BCI are ancillary powers for discharging its statutory functions. ... 17

D. Proposition D: It is not one of the statutory functions of the Bar Council of India to lay down conditions subject to which a person may be enrolled as an advocate under the Act. ... 18

E. Proposition E: From propositions C and D, it follows that the Bar Council of India Training Rules, 1995 were *ultra vires* the Advocates Act and invalid ... 21

F. Proposition F: Even if propositions C and D are ignored, the Bar Council of India Training Rules, 1995 did not qualify as rules under clauses (ag) or (ah) of Section 49(1) of the Act. ... 21

IV. Errors in V. Sudeer ... 22

A. The Bar Council of India's powers at a pre-enrolment stage are not ousted through amendment to Section 7(a) of the Act – Ideological underpinnings of role played by the Bar Council of India vis-à-vis the State Bar Councils ... 22

B. The *Sudeer* court failed to consider that sub-section (1) of Sec. 24 is subject to the other provisions of the Act and rules made thereunder. ... 24

C. This Hon'ble Court in *Sudeer* erred in concluding that it is not one of the statutory functions of the Bar Council of India to frame rules which impose pre-enrolment conditions. ... 27

D. The Hon'ble Court in *Sudeer* failed to appreciate that Section 49 confers a general rule making power and every listed power may not be shoehorned into any specific section or statutory function of the Bar Council of India. ... 34

E. This Hon'ble Court erred in holding that the BCI Training Rules did not fit the rule-making powers under Section 49(1) (ag) or (ah). ... 37

F. Viability of an examination to be conducted post-enrolment aspect ... 40

V. Answers to Questions ... 41

Note submitted by Mr. K. V. Viswanathan, Amicus Curiae

1. The issues to be considered by this Hon'ble Court were formulated by a three-judge bench of this Hon'ble Court in its order dated 18.03.2016 ~ as follows :

> "(1) Whether Pre-enrollment training in terms of Bar Council of India Training Rules, 1995 framed under Section 24(3)(d) of the Advocates Act, 1961 could be validly prescribed by the Bar Council of India and if so whether the decision of this Court in Sudeer vs. Bar Council of India & Anr. [(1999) 3 SCC 176) requires reconsideration.
> (2) Whether a pre-enrolment examination can be prescribed by the Bar Council of India under the Advocates Act, 1961.
> (3) In case questions Nos. 1 and 2 are answered in the negative whether a post-enrollment examination can be validly prescribed by the Bar Council of India in terms of Section 49(1)(ah) of the Advocates Act, 1961."

2. In order to fully articulate the answers to the above questions, I submit that the role of the Bar Council of India under the statutory scheme must first be appreciated. I have addressed this aspect in Part I of this note. In Part II I provide a chart showing the evolution of the relevant provisions of the Advocates Act. In Part III, I have culled out the propositions from which the *Sudeer* court concluded that the Bar Council of India cannot validly prescribe a pre-enrollment course of training which would create a class of 'trainee advocates' with limited rights to practice before courts. In Part IV, it is submitted that the judgment in ***V. Sudeer v. Bar Council of India*** **(1999) 3 SCC 176** requires reconsideration on account of certain errors which become apparent on a careful reading thereof. In Part V, I have placed my proposed answers to the above-mentioned questions.

I. THE BAR COUNCIL OF INDIA: ITS ROLE UNDER THE STATUTORY SCHEME

A. Legislative history leading up to the Advocates Act

3. The demand for setting up of an "All India Bar" had been resounding through the legal fraternity from the time of the British Rule in the country, particularly in the context of the removal of distinctions between Barristers and Vakils. The demands ultimately forced the hand of the then Government of India in the year 1923, which set-up an "Indian Bar Committee" under the chairmanship of Sir Edward Chamier, a retired

Chief Justice of the Patna High Court and the then Legal Advisor and Solicitor to the Secretary of State. Upon receipt of the Chamier Committee's recommendations relating to Bar Councils, albeit only as Bar Councils for each High Court, the legislature enacted the Indian Bar Councils Act, 1926. [**S.No. 2, Page 23-24 of the Learned Attorney General's Compilation**].

4. The Indian Bar Councils Act, 1926 provided for the constitution and incorporation of Bar Councils for each High Court. Section 8 of the said Act empowered the High Courts to enrol persons into a roll of advocates to be maintained by it and also issue a certificate of enrolment for such persons, while the Bar Council was merely entrusted with the task of making changes to the roll prepared by the High Court. While Section 9 of the said Act empowered the Bar Council to make rules to regulate the admission of persons to be advocates of High Court, which inter alia included the power to frame rules regarding qualifications to be possessed by persons applying for admission as advocates, these Rules could be framed only with the previous sanction of the High Court. Even the general power of the Bar Council to make rules was made subject to previous sanction of the High Court through Section 15 of the Act. It becomes clear, from a reading of the provisions of this Act, that while Bar Councils were set-up for the High Courts, their powers and functions were sub-servient to the High Courts and the role of the Bar Council as an independent regulatory body was not brought into being.

5. Post Independence, the All-India Bar Committee was constituted by the Government of India in the year 1951 and was tasked to inter alia examine and report on the "desirability and feasibility of a completely unified Bar for the whole of India" and the "continuance or abolition of different classes of legal practitioners, like advocates of the Supreme Court, advocates of the various High Courts…". In the report prepared by the Committee, which was submitted in 1953, it was recommended that the uniform minimum qualification for admission to the roll of advocates should be a law degree obtained after at least a two years' study of law [after graduation from any Arts, Science or Commerce course] and a further one year of apprentice course in practical subjects followed by an examination in these subjects by the State Bar Councils [**S.No. 2 at Page 32 Para 60 of Learned Attorney General's Compilation**]. The Committee further recommended that on application for enrolment, the State Bar Council on being satisfied that the candidate possesses the requisite minimum qualifications and other requirements under the Rules, shall enter the name of the Candidate in the Register of Advocates kept by it [**S.No. 2 at Page 33 Para 63 of Learned Attorney General's

Compilation]. Thereafter, the Committee then recommended that the functions of the State Bar Council were to include inter alia the power to provide and make arrangements for imparting legal education, holding examinations and training of Advocates under the directions of the All-India Bar Council. [**S.No. 2 at Page 47 Para 91 of Learned Attorney General's Compilation**]

6. While the Advocates Act, 1961 was yet to be tabled in the parliament, the Law Commission of India in its 14th Report on Reform of Judicial Administration sought to endorse the views of the All India Bar Committee and further provided insight into the considerations that led to the need for a central legislation for Advocates. The Committee noted that every student of the law must, after a two-year study in a University, have a practical course in law to be imparted by the Bar Councils. [**S.No. 3 at Page 90-91 r/w Page 96 of the Learned Attorney General's Compilation**]. Thereafter, in the context of law examinations to be conducted at the end of the practical course, the Report stated the following, which is of significance even today [**S.No. 3 at Page 107-108 r/w Page 110 of the Learned Attorney General's Compilation**]:

> "**47.** We have already recommended the division of legal training into two years training in the principles and theory of the law to be imparted in full-time institutions and a year's practical training to be imparted under the direction of a body of professional men. At the end of the University training of two years, the law graduate will have to decide whether he wishes to embark on an academic career through research in law or a professional career through a practical training in law…A practical training is as essential to the making of a professional lawyer as a thorough academic training. The matter has been picturesquely put in the following words by a writer: "All the theory in the world ill equips the lawyer who has all the legal lore at his fingertips, but doesn't know how to draw a summons, a will, a deed or a bill of sale. Law schools furnish their graduates with new, shiny, potent tools. Unfortunately, the average graduate has as little knowledge of how to use them as a two year old child has of how to use a blow torch…Perhaps, Chief Justice Vanderbilt had graduates of this kind in mind when he observed that law schools should be concerned not only with the principles of law "but with the know-how of putting the principles to work. <u>The law schools of the country cannot continue to lag behind the engineering and scientific schools with their laboratory work or the</u>

medical colleges with their clinics. It is not right that young lawyers should learn the skills required in the profession at the expense of their clients"

48. We have to consider the nature of the bodies to which the task of imparting this practical instruction and holding the necessary tests at the end of it should be entrusted. The legal profession is vitally interested in this task because it will be the examination at the end of this practical training which will regulate the entrance to the profession. A body consisting of professional men would be the most competent to lay down from time to time the essential requirements of this practical training and the nature of the test that should follow it.

60. The year's professional course should be followed by a stiff test. Where examinations are at present being held by the Bar Council, the tendency is to make the test almost a nominal one. The pupils pass it with very little preparation and percentage of failures is very small. In our view, the examination at the end of the professional training should be a very strict test. Whereas very stiff tests are applied for admission to other professions like engineering and medicine, it has been customary to regard the legal profession as one which needs very little training. Not an uncommon notion even among legal practitioners is that the lawyer will have plenty of opportunity of practical training after he has started to practice…It should be the duy of the professional bodies that conduct these courses of instruction and examinations to see that the young man admitted to the profession is well-equipped and fully fit to do justice to the cases of his clients."

[Emphasis Supplied]

7. These observations apart, the **14th Report of the Law Commission** also endorsed the view of the All India Bar Committee that there was a need for a unified Indian Bar with a single statutory body to govern and regulate the Bar as also the academic side of legal education [**S.No. 3 at Page 111 of the Learned Attorney General's Compilation**]. The Law Commission also emphasised the need for a strong bar and for subjecting an entrant to training and an examination, since the Bar forms the "main recruiting ground for the judiciary" [**S.No. 3 at Page 123 of the Learned Attorney General's Compilation**]

B. Reports of Law Commission of India – Post enactment of the Advocates Act

8. To further emphasise on the need for a Bar Exam and Training for lawyers, reference may be made to the Law Commission of India's **184th Report on the Legal Education & Professional Training and Proposals for Amendments to the Advocates Act, 1961 and the University Grants Commission Act, 1956, of 200**2. The Report categorically noted that law graduates must not be allowed to address any Court straightaway without further training and a Bar Examination, linking it specifically to the fact that any mistake committed could adversely impact the interest of the clients. [**S.No. 13 at Page 614-619 Para 12.14 – 12.19 of the Learned Attorney General's Compilation**] . The very same considerations are to be found in the Law Commission of India's **266th Report on the Advocates Act, 1961 (Regulation of Legal Profession), 2017** [**S.No. 17 at Page 785 of the Learned Attorney General's Compilation**]. Both these reports further reinforce the observation in the **14th Law Commission Report**, that the training in a profession cannot be at the expense of their clients. While the Law Commission's recommendation in the **184th Report** and the **266th Report** was for suitable amendments to be introduced the Advocates Act, the focus for the purposes of this Chapter of the Note is with regard to the powers of the Bar Council and the requirement for a Qualifying Examination, while the aspect on requirement for amendments to the Act will be addressed in *Chapter IV* of the Note.

C. Case Laws on powers of the Bar Council

9. In the context of powers of the Bar Council, the observations made by a Constitution Bench of this Hon'ble Court in ***O.N. Mohindroo v. Bar Council of Delhi*** **(1968) 2 SCR 709** are of relevance. This Hon'ble Court, while holding that the Advocates Act in pith and substance falls under Entry 77 and 78 of List I, also noted the object of the Act which was to "constitute one common bar" and to "provide machinery for its regulated functioning". To that end, it was noticed that it was an enactment which concerns itself with qualifications, enrolment etc. of advocates and the entrustment of powers to the bodies under it for regulating the working of the profession. [**Para 7 r/w 9**].

10. In ***Bar Council of India v. Board of Management, Dayanand College of Law*** **(2007) 2 SCC 202**, this Hon'ble Court was faced with the issue regarding a conflict between the Advocates Act and the Universities Act, specifically with respect to the qualifications of a principal of a law college. In this context, after noticing that while the appointment of a principal of a

law college might not be strictly within the powers of the Bar Council of India, this Hon'ble Court categorically stated that as an apex professional body, the Bar Council of India is concerned with the standards of legal profession and the equipment of those who seek entry into that profession and that consequently, its role under the Advocates Act cannot be considered to be taken away by the Universities' Acts [**Para 14**].

11. This apart, this Court in ***Ashwini Kumar Upadhyay v. Union of India*** **(2019) 11 SCC 683** held that the Bar Council of India is bestowed with the function and duty to regulate enrolment of advocates and the terms and conditions of professional conduct. [**Para 10**]

II. EVOLUTION OF RELEVANT PROVISIONS OF THE ADVOCATES ACT

12. According to *Sudeer*, the original Advocates Act, 1961 provided for pre-enrolment training and examinations prescribed by the State Bar Councils, which were done away with by Act 60 of 1973 without providing a corresponding power to the Bar Council of India to impose any similar pre-enrolment conditions. This narrative was used to support the conclusion that pre-enrolment training could not be prescribed by the Bar Council of India within the scheme of the Advocates Act. The following table is intended as a guide to the said discussion:

Provisions/Relevant years	**1961-64**	**1964-73** THE ADVOCATES (AMENDMENT) ACT, 1964 (Act no. 21 of 1964)	**1974 onwards** THE ADVOCATES (AMENDMENT) ACT, 1973 (Act no. 60 of 1973)
Section 7 ("Functions of Bar Council of India")	• Clause (a) said that one of the functions of the BCI was "to prepare and maintain a common roll of advocates". • Clause (l) permits the BCI "to perform all other functions conferred on it by or under this Act". • Clause (m) enables the BCI "to do all other things necessary for discharging the aforesaid functions".	No changes.	• Clause (a) of Sec. 7(1) was omitted.

Section 24
("Persons who may be admitted as advocates on a State roll")
	• Sec. 24(1) determined the persons who could be admitted as advocates on the State roll by the State Bar Council. The sub-section was made "[s]ubject to the provisions of this Act, and the rules made thereunder".
	  ○ Under clause (d) of Sec. 24(1), the State Bar Council, as a condition required an applicant to undergo a course of training in Law and also required him to pass an examination after such training.
	• There was no clause whereby BCI could exempt candidates from the State-level pre-enrolment requirements.
		• Sec. 24(1)(d) was amended such that the examination prescribed by the State Bar Council could be taken during or after completion of the training course.
		• Sub-section (3) was added, enabling certain persons who were not eligible to be enrolled under sub-section (1) to be enrolled.
		  ○ Clause (d) of sub-section (3) permitted admittance of persons on the State roll who were "entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf".
			• Clause (d) of Section 24(1) was omitted.

Section 28 ("Power to make rules") (State Bar Council)	• Sec. 28(1)(d) empowered the State Bar Council to make rules with respect to "the conditions subject to which a person" could be admitted as an advocate on the State roll. • Under sub-section (2)(b), the State Bar Council could make rules with respect to a course of practical training in law and the examination to be passed after such training for admission as an advocate on the roll of the Bar Council.	Sub-section (2)(b) was amended such that rules could be made regarding the exam to be taken either during or after the relevant training course.	Sub-section (2)(b) was deleted.
Section 29 ("Advocates to be the only recognised class of persons entitled to practise law")	Sec. 29 states: "Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates."	Sec. 29 was brought into force on 05.04.1969.	

Section 30 ("Right of advocates to practise")	"Subject to the provisions of this Act, every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends,— *(i)* in all courts including the Supreme Court; *(ii)* before any tribunal or person legally authorised to take evidence; and *(iii)* before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."		• The word "common roll" was replaced with the word "State roll". • On 15.06.2011, Sec. 30 was brought into force.
Section 33 ("Advocates alone entitled to practise")	"Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under this Act."	On 05.04.1969, Sec. 33 was brought into force.	

Section 49 (“General power of the Bar Council of India to make rules”)		• Clause (af) was introduced empowering the BCI to make rules with regard to “the category of persons who may be exempted from undergoing a course of training in Law and passing an examination prescribed under clause (d) of Section 24”. • Clause (ag) was inserted empowering BCI to make rules regarding the class or category of persons entitled to be enrolled as advocates. • Clause (ah) was introduced empowering BCI to adopt rules regarding the conditions subject to which an advocate would have the right to practise and the circumstances under which a person shall be	• Clause (af) of Sec. 49(1) was substituted. The clause now enabled BCI to make rules regarding “the minimum qualifications required for admission to a course of degree in Law in any recognized university”. • Clause (ag) and (af) were retained.

		deemed to practise as an advocate in a court.	
Other changes			Sec. 24A was inserted whereby certain persons were disqualified from enrolment even though they were otherwise eligible to be enrolled.

III. *V. SUDEER v. BAR COUNCIL OF INDIA* (1999) 3 SCC 176 : AN ANALYSIS

13. In *V. Sudeer*, this Hon'ble Court concluded that on a proper construction of the provisions of the Advocates Act, 1961, the BCI was not legally competent to make the Bar Council of India Training Rules, 1995 and thus the said Rules were invalid. On a careful reading, the following *rationes decidendi* or propositions emerge from the judgment:

   a. Proposition A: Under the scheme of the Advocates Act, any person who is enrolled as an advocate on a State roll acquires an exclusive and unfettered right to practise throughout the territories to which the said Act extends.
   b. Proposition B: After the 1973 Amendment, any person who fulfils the conditions under sub-sections (1), (2) or (3) of Section 24 is qualified to be admitted as an advocate on a State roll unless she is disqualified under Sec. 24A.
   c. Proposition C: Any rules framed by the BCI under Sec. 49 of the Act which are not pegged to any of its statutory functions are ultra vires, because the rule-making powers of the BCI are ancillary powers for discharging its statutory functions.
   d. Proposition D: It is not one of the statutory functions of the Bar Council of India to lay down conditions subject to which a person may be enrolled as an advocate under the Act.
   e. Proposition E: From propositions C and D, it follows that the Bar Council of India Training Rules, 1995 were ultra vires the Advocates Act and invalid.
   f. Proposition F: Even if propositions C and D are ignored, the Bar Council of India Training Rules, 1995 did not qualify as rules under clauses (ag) or (af) of Section 49(1) of the Act.

A. Proposition A: Under the scheme of the Advocates Act, any person who is enrolled as an advocate on a State roll acquires an exclusive and unfettered right to practise throughout the territories to which the said Act extends.

14. "[…] [O]nce an applicant is enrolled as an "advocate" in the "State Roll" maintained by the State Bar Council, he gets the right of audience subject to the scheme of priorities as mentioned in Section 23 and naturally "audience" implies the full right of addressing the court on all legal and factual issues involved in the case in which he appears as an advocate under the Act". **187a**

15. “The “right to practise” naturally is available to those advocates who are enrolled under the Act and whose names are mentioned in the State Roll as per Section 17 of the Act. […] The moment a person is enrolled as an “advocate” on the State Roll, he would become statutorily entitled to practice as laid down under [sub-section (1) of] Section 17 […]”. **194b-d**

16. “So far as clause (i) of Section 30 is concerned, it is not in dispute that even though the main section has not come into force, all persons who are enrolled as advocates on the State roll are entitled as of right to practice in all courts, including the Supreme Court and no one has challenged their said right”. **194h**

17. “A conjoint reading of Sections 23, 29 and 33 leaves no room for doubt that once a person is found qualified to be admitted as an advocate on the State Roll having satisfied the statutory conditions of eligibility laid down in sub-section (1) of Section 24, he will automatically become entitled as of right to practice full-fledged in any court including the Supreme Court”. **195b-c**

18. “Entitlement to practice the profession of Law necessarily means full-fledged entitlement to plead and argue cases of their clients before the courts of law. There cannot be any truncated right to practice the profession of Law […].” **204c-d**

19. **“**Right to practice as available to an advocate duly enrolled under the Act is a full-fledged right to practice which […], would include not only seeking adjournments but also to plead and argue for the client for whom he appears before the court.” **207g**

20. **“**[An advocate’s] right once granted cannot be restricted qua his acting in the court when remaining enrolled as an advocate on the State Roll.” **209c**

B. Proposition B: After the 1973 Amendment, any person who fulfils the conditions under sub-sections (1), (2) or (3) of Section 24 is qualified to be admitted as an advocate on a State roll unless she is disqualified under Sec. 24A.

21. Clause (a) of Sec. 7 of the original Act prescribing BCI's function of maintaining the Rolls of Advocates was omitted with effect from 31.01.1974. Thus after 31.01.1974 only State Bar Councils are concerned with maintaining the State Rolls of advocates. **192h -193a**

22. "[…] [T]he Bar Council of India itself […] decided that a degree of Law obtained by a person after undergoing three years' course of study after graduation would be enough for qualifying him to be enrolled as an advocate under the Act and, therefore, pre-enrolment training till then required of him before getting enrolment was not necessary. This decision of the Bar Council of India was accepted by Parliament and […] additional eligibility condition for enrolment as an advocate [under Section 24(1)(d)] was deleted [by the 1973 Amendment]." **191b**

23. The 1973 Amendment also deleted clause (b) of Sec. 28(2) which empowered the State Bar Council to make rules relating to pre-enrolment training course/exam. **193d-f**

24. The said amendment also substituted clause (af) of Section 49(1) and now enabled Bar Council of India to make rules regarding "the minimum qualifications required for admission to a course of degree in Law in any recognized university". **195f**

25. No express provision was brought in to transfer the State Bar Council's power to make rules regarding pre-enrolment requirements, to the Bar Council of India. The same legislature which dispensed with State-level pre-enrolment bar examination and training course cannot be presumed to have "impliedly permitted the Bar Council of India itself to prescribe pre-enrolment training to new entrants at the Bar simultaneously with the withdrawal of the same training from 1974 onwards". **196g**

26. While taking away power of State Bar Councils to prescribe pre-enrolment training/exam, legislature inserted Sec. 24A which disqualified certain persons from enrolment even though they were otherwise eligible to be enrolled. At the same time, persons who had not taken training course/exam were not disqualified. **193c**

C. Proposition C: Any rules framed by the BCI under Sec. 49 of the Act which cannot be traced to any of its statutory functions are *ultra vires*, because the rule-making powers of the BCI are ancillary powers for discharging its statutory functions.

27. "A mere look at [Section 49] makes it clear that the rule-making power for fructifying and effectively discharging its statutory functions laid down by the Act. Consequently, rules to be framed under Section 49(1) must have a statutory peg on which to hang. If there is no such statutory peg, the rule which is sought to be enacted dehors such a peg will have no foothold and will become stillborn". **202b-c**

28. "Any rule framed by the rule-making authority going beyond its statutory functions must necessarily be held to be ultra vires and inoperative at law". **202e-f**

29. "The rule-making power under Section 49(1)(ag) is ancillary to the statutory function entrusted to the Bar Council of India by Section 24(3)(d) and it cannot travel beyond the said statutory sphere". **203h**

D. Proposition D: It is not one of the statutory functions of the Bar Council of India to lay down conditions subject to which a person may be enrolled as an advocate under the Act.

i. After deletion of clause (a) of Sec. 7, BCI has no role to play in 'maintaining' the Rolls of Advocates, by imposing pre-enrolment conditions or otherwise.

30. "It is to be noted that clause (a) of Section 7, which originally stood, got omitted with effect from 31-1-1974. That clause (a) pertained to "maintenance of Rolls of Advocates". Hence from 1974, the Bar Council of India was not concerned with maintenance of Rolls of Advocates which function became the sole concern of State Bar Councils only". **192h-193a**

31. "To reiterate granting of admission to a person for being enrolled as an advocate under the Act is a statutory function of the State Bar Council only. The Bar Council of India has no role to play on this aspect". **200e**

ii. No such function emanates from clause (h) of Sec. 7(1).

32. "But even accepting [a wide] legal connotation of the term "legal education", the question remains as to how the Bar Council of India can promote legal education. […] The words "universities in India imparting such education" as found in clause (h) of sub-section (1) leave no room for doubt that the question of imparting legal education is entrusted to the universities in India and not to the Bar Council of India. All that the Bar Council of India can do is to suggest ways and means to promote such legal education to be imparted by the universities and for that purpose, it may lay down the standards of education, syllabi in consultation with the universities in India. It is, therefore, difficult to appreciate how for promoting legal education through the universities imparting legal education in India, the Bar Council of India can itself take up the role of laying down pre-enrolment training for applicants seeking to enter the legal profession by getting enrolled under Section 24 of the Act". **201b-e**

iii. Sec. 24(1), which is expressly subject to rules made under the Advocates Act, does not empower BCI to impose pre-enrolment conditions.

33. "[The Bar Council of India] contended that Section 24(1) of the Act itself enables the rule-making authorities to enact rules which may go beyond the statutory provisions of Section 24(1) as enacted by the legislature and, therefore, the Bar Council of India as a rule-making authority can by exercise of the said power add to the conditions of enrolment as expressly laid down by Section 24(1). It is not possible to agree with this submission for the simple reason that Section 24 itself contemplates the qualifications of a person who seeks admission as an advocate on the State Roll. To reiterate granting of admission to a person for being enrolled as an advocate under the Act is a statutory function of the State Bar Council only. The Bar Council of India has no role to play on this aspect. All it has to do is to approve any rules framed by the State Bar Council under Section 24(1) laying down further qualifications for a person to be enrolled by it on the State Roll as an advocate. We have, therefore, to read the rule-making power mentioned under Section 24(1) conjointly with the rule-making power of the State Bar Council as provided by [Section 28]". **200d-f**

34. Section 28(1) empowers the State Bar Council to make rules to carry out the purposes of Chapter III of the Act ("Admission and enrolment of advocates"). Clause (d) of Section 28(2) enables making of rules providing for "the conditions subject to which a person may be admitted as an advocate on any [State] roll". **200g**

iv. Rules under Sec. 24(3)(d) can only expand, but cannot narrow down, the class of persons who are entitled to be admitted as advocates.

35. "The Objects and Reasons for enacting [Section 24(3)(d)], […] have clearly laid down that it was felt by the legislature that despite the operation of Sections 17 and 24 of the Act, there were some persons who though not covered by the said provision and had not satisfied the conditions for enrolment as laid down in these provisions deserved to be enrolled as advocates. With that end in view, the Bar Council of India was provided with the rule-making power under sub-section (3)(d) of Section 24 by way of an enabling provision to extend the statutory coverage of Section 24(1) for bringing in such otherwise ineligible candidates for enrolment […]. This enabling provision available to the Bar Council of India […] did not touch upon the question of eligibility in connection with pre-enrolment training and examination or to put it differently, the enabling power available to the Bar Council of India […] did not cover the question of pre-enrolment training and examination at all. It must, therefore, be held on the

express language of Section 24 sub-section (3)(d) that the rule-making power of the Bar Council of India proceeded only in one direction, namely, for bringing into the sweep of Section 24(1), all those who were not entitled to be enrolled as advocates under the provisions of Section 24(1). The non obstante clause with which sub-section (3) of Section 24 starts provides that despite the conditions mentioned for enrolment in sub-section (1) of Section 24 having not been satisfied by the person concerned, if the Bar Council of India thought that such a person also deserved to be enrolled as an advocate, then the rule-making power under clause (d) of sub-section (3) of Section 24 could be resorted to by the Bar Council of India. The said power […] could never be utilised in the reverse direction for disqualifying those from enrolment who were otherwise qualified to be enrolled as per sub-section (1) of Section 24. It was a power given to the Bar Council of India to extend the coverage of Section 24(1) and not to whittle it down." **198f-199e**

36. "[…] [I]t cannot be said that the rule-making power under sub-section (3)(d) of Section 24 still enables the Bar Council of India, after deletion of Section 24(1)(d) to promulgate such a Rule by which almost by the back door such an additional condition for enrolment to restrict the entry of otherwise eligible candidates for enrolment under Section 24(1) can be imposed. Consequently, Section 24 sub-section (3)(d) of the Act cannot be legitimately invoked by the Bar Council of India for sustaining the impugned Rules." **200b-c**

37. "[…] [T]he enactment of Section 24(3)(d) and Section 49(1)(ag) could never have been intended to include implied power/function to make pre-enrolment training rules and that too by the Bar Council of India which had nothing to do at the initial stage of enrolment of advocates on the State Rolls." **204b-c**

v. The various clauses under Sec. 49(1) of the Act do not set out any statutory functions of the Bar Council.

38. "The rule-making power under Section 49(1)(ag) is ancillary to the statutory function entrusted to the Bar Council of India by Section 24(3)(d) and it cannot travel beyond the said statutory sphere". **203h**

39. "After an advocate is enrolled as a full-fledged advocate, how his right to practise is to be conditioned may be made a subject-matter of the rule-making power of the Bar Council of India as per Section 49(1)(ah). But in the facts of the present case, the aforesaid provision cannot be of any help to the respondent-Bar Council of India for sustaining the impugned Rules

[…] provision for pre-enrolment training of prospective advocates is not entrusted by the legislature to the Bar Council of India while laying down its statutory functions under Section 7 […]. Therefore, the very first part of Section 49 will hit the said Rule as it would not be a Rule for discharging the statutory function of the Bar Council of India”. **205a-b**

E. Proposition E: From propositions C and D, it follows that the Bar Council of India Training Rules, 1995 were *ultra vires* the Advocates Act and invalid.

F. Proposition F: Even if propositions C and D are ignored, the Bar Council of India Training Rules, 1995 did not qualify as rules under clauses (ag) or (ah) of Section 49(1) of the Act.

40. Even on the assumption that the Training Rules were traceable to a statutory function of the BCI, the Training Rules as adopted did not fall within the terms of any of the clauses of Section 49(1).

i. The Training Rules did not qualify as rules under clause (ag) of Sec. 49(1).

41. “ […] [T]he rule-making power contemplated by the legislature under Section 49(1)(ag) for being exercised by the Bar Council of India was pertaining to only those classes or categories of persons who were thought fit to be enrolled as advocates though they might not be eligible to be enrolled under Section 24(1) of the Act as it stood on the statute-book. In other words, this enabling rule-making power only by which the Bar Council of India could add to the category of eligible persons for enrolment which would have otherwise remained outside the sweep of the statutory scheme of eligibility for enrolment as laid down by Section 24(1), did not contemplate any power to curtail the existing eligibility of the applicants under Section 24(1) for enrolment as advocates”. **203c-e**

ii. The Training Rules did not constitute rules under clause (ah) of Sec. 49(1).

42. “[…] [R]ule-making power under Section 49(1)(ah) deals with a situation which is post-enrolment of an advocate and does not deal with pre-enrolment situation for a candidate seeking enrolment. The impugned Rules provide for pre-enrolment training.” **204f**

IV. ERRORS IN *V. SUDEER*

A. The Bar Council of India's powers at a pre-enrolment stage are not ousted through amendment to Section 7(a) of the Act – Ideological underpinnings of role played by the Bar Council of India vis-à-vis the State Bar Councils

43. This Hon'ble Court in ***V. Sudeer*** (supra) has, while identifying the roles and functions of the State Bar Councils and the Bar Council of India under the Act, specifically rendered a finding that while the former has the function of "maintenance of rolls" under the Act, the latter is not concerned with the same. Consequently, it was the opinion of this Hon'ble Court that the Bar Council of India could not prescribe any pre-enrolment conditions since the function relating to the rolls are found to be vested with the State Bar Councils.

44. At this juncture, it is important to note, based on a reading of the Advocates Act, as to the specific terminology used in the different sections of the Act and to cull out the underlying meaning for each of these terms. **Section 6(a)** prescribes that the State Bar Councils are to admit persons as advocates on its roll, while **Section 6(b)** stipulates that the State Bar Councils are to prepare and maintain such a roll. Section 24(1)(e) read with Section 28(2)(d) of the Act empower the State Bar Councils to prescribe conditions subject to which a person may be admitted as an advocate on any such roll. Therefore, a plain reading of the above-mentioned provisions indicates that the functions of the State Bar Council relate to maintenance of rolls and the admission of persons as advocates on its rolls. In stark contrast to these functions given to the State Bar Councils, the Rule making power of the Bar Council of India under Section 49(1)(ag) of the Act clearly relates to prescribing rules to specify which class or category of persons would be **ENTITLED to be enrolled as advocates**. The scope of the Bar Council of India's powers under the Act is therefore in relation to determining the entitlement to be enrolled as advocates.

45. In this context, reference needs to be made to the meaning of the terms "conditions", "enroll" and "entitle" to understand the true import of these provisions. In ***P. Ramanatha Aiyar's Advanced Law Lexicon*** the above-mentioned terms are defined in the following manner:

> "***Condition.***
> Thing on whose fulfilment another thing or act is made to depend. "Condition" is a restraint or bridle annexed and

joined to a thing, so that by the non-performance or not doing thereof the party to the condition shall receive prejudice and loose (*sic* lose) and; by the performance and doing of the same, profit and advantage,' (Termes de la Ley)

Enrol, Enrolment

Enrolment in English law is the registering or entering on the rolls of Chancery, King's Bench, Common Pleas, or Exchequer, or the Clerk of the Peace in the record of the quarter sessions, of any lawful act

Enrolled.

To enrol, enlist, register, record... Enrol is generally applied to the act of inserting names in an orderly manner into any book; enlist is a species of enrolling applicable only to the military. The enrolment is an act of authority; the enlisting is the voluntary act of an individual. Soldiers are mostly raised by means of enlisting. To enrol and register both imply writing down in a book; but the former is a less formal act than the latter. The object of registering differs from that of enrolling; what is registered serves for future purposes, and is of permanent utility to society in general; but what is enrolled often serves only a particular or temporary end.

Entitle.

To give a claim, right, or title to; to give a right to demand or receive, to furnish with grounds for claiming…The interpretation is in each case a question of construction, and no definite rule can be laid down.

Entitle to.

The expression 'entitle to' occurring in Section 38 of the Act would mean that a person has acquired certain characteristics to enable him to be a member of any of the bodies of the University. In the case of elections, the entitlement would only mature on the person being duly elected. AIR 2002 P & H 168, 179, para 30 . [Punjab University Act (7 of 1947), S. 38]"

[Emphasis Supplied]

46. Reading the above-mentioned definitions with the functions entrusted with the State Bar Councils and the powers vested in the Bar Council of India, the spheres in which both these bodies function become clear. The State

Bar Council being tasked with the function of enrolling persons as advocates would mean the act of inserting names in an orderly manner into the register/roll maintained by such State Bar Council and any condition to be specified by the State Bar Council would be a thing which needs to be positively fulfilled in order for the State Bar Council to then proceed to admit the person on the rolls. This could mean either conditions which are in the nature of the forms to be filled and documents to be provided, or in relation to the prescription that a person must not be in employment at the time of seeking enrolment, on fulfilment of which the State Bar Council would undertake the act of inserting names into a register. Whereas, in the case of the Bar Council of India, **Section 49(1)(ag)** of the Advocates Act [which will be expanded upon in the headings that follow] empowers the Bar Council to prescribe rules that could prescribe a class or category of persons who are entitled to be enrolled. The meaning of "entitle", as set-out above, would indicate that the Bar Council of India could prescribe such conditions which would give the right or claim to a person to be enrolled as an advocate. This therefore implies a power for the Bar Council of India which exists in consonance with the powers and functions of the State Bar Councils and could be exercised to prescribe conditions that would have to be satisfied in order for a person to obtain the very right to be enrolled.

47. Therefore, it is humbly submitted that this Hon'ble Court's finding in ***V. Sudeer*** **(supra)** that the Bar Council of India has no say in relation to the prescription of conditions subject to which a person may be enrolled as an advocate is erroneous and requires reconsideration by this Hon'ble Court. On a reading of the Act, it becomes clear that the Bar Council of India's role prior to enrolment is not ousted and more particularly, it cannot be considered to have been ousted on the basis of the fact that its role does not relate to the maintenance of rolls.

B. The *Sudeer* court failed to consider that sub-section (1) of Sec. 24 is subject to the other provisions of the Act and rules made thereunder.

48. Having considered the theoretical underpinnings of the functions vested in the State Bar Council and the Bar Council of India, it is then apposite to refer to one of the major reasons cited in ***V. Sudeer*** (supra) for holding that training and examination cannot be provided at a pre-enrolment stage by the Bar Council of India. In concise terms the reasoning reads thus: **Section 24(1)(d)** and **Section 28(2)(b)** of the Advocates Act empowered the State Bar Councils to provide for a pre-enrolment training and examination; The power to frame such rules was subject to approval of the Bar Council of India; This specific power entrusted with the State Bar Councils has been

repealed through the Amendment Act of 1973, citing that the same was not required in view of the 3 year law courses in the Country; When such a power was vested in a body and thereafter repealed, the Bar Council of India cannot claim to have had the power to hold examinations.

49. These findings of this Hon'ble Court, based on a reading of the provisions of the Act that existed and the amendments made thereto, require to be addressed on a wholesale reading of the Advocates Act. *Firstly*, **Section 24(1)(d)** of the Act which, prior to the Amendment Act of 1973, prescribed a pre-enrolment training and examination at the behest of the State Bar Councils must be read with the opening words of the said sub-section itself. **Section 24(1)** of the Act opens with the words "subject to the provisions of this Act, and the rules made thereunder" thereby making the conditions under **Section 24(1)** and its sub-clauses, directly subject to the rules framed under the Act. As held by this Court in ***Ashok Leyland Ltd. v. State of T.N*** **(2004) 3 SCC 1**, the term "subject to" means that it is subordinate or subservient to or governed or affected by whatever is prescribed [**Para 93**]. That the provisions under **Section 24(1)** of the Act are subject to the other provisions of the Act, and in particular, the rule-making power of the Act under **Section 49** of the Act is clear from a reading of the very opening words and this is then fortified by the opinion of this Court in ***Satish Kumar Sharma v. Bar Council of H.P*** **(2001) 2 SCC 365**. In ***Satish Kumar Sharma*** (supra), this Court categorically held that the enrolment under **Section 24** of the Act is subject to the Rules framed by the Bar Council of India under **Section 49** of the Act, even if no Rules were framed under **Section 24(1)(e)** or **Section 28(2)(b)** of the Act itself. [**Para 9**]

50. *Secondly*, in light of the submissions made in the heading immediately preceding the present heading, the Court's rejection of the nexus between **Section 24(1)** and **Section 49** of the Act based on the fact that the Bar Council of India had no role to play in imposing pre-enrolment conditions, does not hold water. Since the Bar Council of India is clearly entrusted with the rule making power to prescribe those persons that are entitled to be enrolled, it is humbly submitted that **Section 24(1)** of the Act and its opening words would make the Section and the conditions leading up to attaining the right to be enrolled subject to the Rule making power under **Section 49** of the Act.

51. *Thirdly*, it is submitted that even assuming that the Act, prior to the Amendment Act of 1973, had empowered the State Bar Council to prescribe training and examination, it does not take away from the power that is vested in the Bar Council of India under **Section 49** of the Act. It is humbly submitted that the legislature is not expected to have any

superfluous provisions that specifically empower the Bar Council of India with this specific action regarding pre-enrolment training and examination, while the purport of **Section 49** of the Act and in particular **Section 49(1)(ag)** empowers the Bar Council of India. Therefore, the Court's reasoning that there being no express provision being brought in to transfer the State Bar Council's power to the Bar Council of India requires to be reconsidered.

52. *Fourthly*, it is submitted that while assuming that the Amendment Act of 1973 did take away the express power vested in the Act for holding of pre-enrolment training and examination, it would still not take away the over-arching rule making power that is vested with the Bar Council of India. In this regard, context may be given to the introduction of an examination and the very act of repeal of the same. In the **All-India Bar Committee's Report, 1953**, it was recommended that the uniform minimum qualification for admission to the roll of advocates should be a law degree after at least 2 years of study of law followed by a one year apprentice course in practical subjects followed by an examination in these subjects. [**S.No. 2 at Page 32 Para 60 of Learned Attorney General's Compilation**]. The functions recommended for the State Bar Councils by the Committee also read as follows:

> "power to provide and make arrangements for imparting legal education, holding examinations and training of Advocates under the directions of the All-India Bar Council"

53. Thereafter, in the **14th Report** of the **Law Commission of India on Reform of Judicial Administration**, the Commission specifically approved a two-year study at a university followed by a practical course in law which will then be followed by an examination. The specific context requiring an examination and training, as a power specifically vested with the State Bar Councils is that the University education was to be for two years followed by a specific one year training and examination, to further equip a graduate with the skills required to be an advocate. This can be read to be part of the intention to have a thorough legal education for candidates, given the yearly structure that was proposed for the candidates. It is therefore, in this background and context that the State Bar Councils were vested with the power to prescribe pre-enrolment training and examination. It is submitted that it is in this light that the repeal in the year 1973 is also to be considered. The requirement for a one-year training and examination in order to equip a graduate with the skills while he was still part of the education system was found to be unnecessary due to the 3 year law

course's introduction and as a consequence the power of the State Bar Councils was explicitly repealed.

54. However, having considered the context in which the above-mentioned examination was to be conducted, it is humbly submitted that this examination which was specifically brought into the Act to be part of the legal education curriculum of a candidate having found to be unnecessary based on its linkage to the duration of the Course, would not in any manner restrict the over-arching power of the Bar Council of India under **Section 49** of the Act and more specifically through insertion of **Section 49(1)(ag)** of the Act, which empowers the prescription of conditions that could **ENTITLE** someone to be enrolled. In a nutshell, the submission is that even assuming that the State Bar Councils were specifically empowered and the said power was repealed, that examination and the power to conduct it was in the specific context of equipping a graduate due to the duration and structure of his legal curriculum, whereas any exam to be prescribed by the Bar Council of India would be specifically as a pre-condition to acquiring the right to be enrolled in the bar i.e. an entry level examination to qualify a person to be enrolled. As a consequence, it is humbly submitted that the power to hold examination which was vested in the State Bar Councils was in a specific context and the presence or repeal of the said power cannot entrench upon the rule-making power vested in the Bar Council of India.

55. *Lastly*, it is submitted that this Hon'ble Court's reliance on **Section 24-A** of the Act is misplaced since the power to disqualify a person from enrolment is materially different from prescribing conditions subject to which the very right to be enrolled arises.

56. Therefore, it is humbly submitted that notwithstanding the Amendment Act of 1973, the Bar Council of India has and always had the power to prescribe an examination and training at a stage prior to the enrolment.

C. This Hon'ble Court in *Sudeer* erred in concluding that it is not one of the statutory functions of the Bar Council of India to frame rules which impose pre-enrolment conditions.

57. There can be no quarrel with proposition C emerging from the judgment in *Sudeer* in view of the opening words of Sec. 49(1) of the Act, which read: "The Bar Council of India may make rules for discharging its functions under this Act […]". The rule-making power of the BCI is undoubtedly incidental and ancillary to its performance of the statutory functions.

58. However, in applying this principle to the Advocates Act, this Hon'ble Court failed to consider that the BCI Training Rules, 1995 could be 'traced' to the BCI's function of exercising general supervision and control over State Bar Councils under clause (g) of Sec. 7(1) of the Act [**i**]. Secondly, this Hon'ble Court erred in interpreting Section 7 of the Act as a provision which exhaustively lists the BCI's statutory functions [**ii**]. Thirdly, it is submitted that an additional statutory function of the BCI can be culled out from Sec. 24(1) of the Act: to lay down conditions subject to which any person must be treated as "qualified to be admitted as an advocate on a State roll" [**iii**]. Lastly, I submit that this Hon'ble Court failed to appreciate that the rule-making powers listed under the various clauses of Sec. 49(1) *per se* indicate statutory functions of the BCI [**iv**]. For all these reasons, I respectfully submit that BCI does have a statutory function of laying down conditions subject to which a person may be deemed 'qualified' or 'entitled' to be enrolled as an advocate on a State roll. Such conditions could include a condition that the applicant must pass a bar examination, or that she must undergo a training course prescribed by the Bar Council of India.

59. Before articulating the afore-mentioned arguments, I would place extracts of this Hon'ble Court's judgment in ***Khargram Panchayat Samiti v. State of W.B.*****, (1987) 3 SCC 82** which are instructive with respect to incidental and ancillary powers:

> "**4.** In our judgment, the view taken by the High Court that although the Panchayat Samiti was vested with the power to grant a licence for the holding of a hat or fair under Section 117 of the Act, yet it had no consequential or incidental power to specify a day for holding of such hat or fair, is manifestly erroneous and cannot be supported. It failed to appreciate that under the Act the power of general administration of the local area vests in the Panchayat Samiti only to grant a licence to hold a hat or fair under Section 117 of the Act, but such power of general administration necessarily carries with it the power to supervise, control and manage such hat or fair within its territorial jurisdiction. The conferment of the power to grant a licence for the holding of a hat or fair under Section 117 of the Act includes the power to make incidental or consequential orders for specification of a day on which such hat or fair shall be held. The decision of the High Court runs counter to the well accepted principles. It overlooks that the statutory bodies like the Panchayat Samiti enjoy a wide "incidental power" i.e. they may do everything which is 'calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions' and the doctrine of ultra vires is

not to be applied narrowly. It is well accepted that the conferral of statutory powers on these local authorities must be construed as impliedly authorising everything which could fairly and reasonably be regarded as incidental or consequential to the power itself. See: De Smith's *Judicial Review of Administrative Action*, 4th Edn., p. 95, HWR Wade's *Administrative Law,* 5th Edn., p. 217, Craies on *Statute Law,* 6th Edn., p. 276, *Attorney-General* v. *Great Eastern Railway* [LR (1880) 5 AC 473] , *Baroness Wenlock* v. *River Dee Co.* [LR (1885) 10 AC 354] De Smith in his celebrated work *Judicial Review of Administrative Action*, 4th Edn. at p. 95 puts the law tersely in these words:

> "The House of Lords has laid down the principle that whatever may fairly be regarded as incidental to, or consequent upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires."

This principle was enunciated by Lord Selborne in *Attorney-General* v. *Great Eastern Railway* [LR (1880) 5 AC 473] in these words:

> "The doctrine of ultra vires ought to be reasonably, and not unreasonably, understood and applied and whatever may be fairly regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires."

These words have been quoted by Professor Wade in his monumental work *Administrative Law,* 5th Edn. at p. 217 and also by Craies on *Statute Law,* 6th Edn. at p. 276. Craies also refers to the observations of Lord Watson in *Baroness Wenlock* v. *River Dee* Co. [LR (1885) 10 AC 354] to the effect:

> "Whenever a corporation is created by Act of Parliament, with reference to the purposes of the Act, and solely with a view to carrying these purposes into execution, I am of opinion not only that the objects which the corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions."

5. This Court in *V.T. Khanzode* v. *Reserve Bank of India* [(1982) 2 SCC 7 : 1982 SCC (L & S) 147] has followed the *dictum* of Lord Selborne in *Great Eastern Railway case* [LR (1880) 5 AC 473] and reaffirmed the principle that the doctrine of ultra vires in relation to the powers of a statutory corporation have to be understood reasonably, and so understood, whatever may fairly be regarded as incidental to, or consequential upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires. It had earlier been laid down by a Constitution Bench in the case of *State of U.P.* v. *Batuk Deo Pati Tripathi* [(1978) 2 SCC 102 : 1978 SCC (L & S) 147] that a power to do a thing necessarily carries with it the power to regulate the manner in which the thing may be done. The High Court failed to appreciate that the power to grant a licence for the holding of a hat or fair under Section 117 of the Act necessarily carries with it the power to specify a day on which such hat or fair shall be held. Such power to specify a day must be held to be a power incidental to or consequential upon the principal power of issuing a licence under Section 117 of the Act for holding of a hat or fair. The Rules or the absence of it do not detract from the substantive power conferred by a statute. The essence and content of the power of a Panchayat Samiti under Section 117 of the Act is issuance of a licence for the holding of a hat or fair and not mere maintenance of sanitation, health and hygiene as held by the High Court."

[Emphases added]

i. The BCI Training Rules, 1995 could have been 'traced' to the BCI's function of exercising general supervision and control over State Bar Councils under clause (g) of Sec. 7(1) of the Act.

60. Section 7(1)(g) of the Advocates Act is an important provision which says that it shall be a function of the Bar Council of India "to exercise general supervision and control over State Bar Councils".

61. In fairness to the *Sudeer* court, this provision was not pressed into service as one of the possible "statutory pegs" on which the BCI Training Rules, 1995 could "hang". However, the "general supervision and control" to be exercised by the Bar Council would include supervision and control over the ministerial acts performed by the State Bar Councils in 'enrolling' persons as advocates and 'maintaining' the State Rolls of Advocates.

62. The BCI’s function of “general supervision” over State Bar Councils would include the authority to specifically direct State Bar Councils not to enroll persons who had not undertaken the training course prescribed under the Training Rules, 1995. In ***Hassan Coop. Milk Producer's Society Union Ltd. v. ESI Corpn.*, (2010) 11 SCC 537** this Hon’ble Court analyzed the degree of ‘supervision’ that is necessary to qualify a worker as an ‘employee’ under Sec. 2(9) of the Employees’ State Insurance Act, 1948. In ¶30 at page 551 of the report, this Hon’ble Court stated: “[…] The ordinary meaning of the word “supervision” is “authority to direct” or “supervise” i.e. to oversee. The expression “supervision of the principal employer” under Section 2(9) means something more than mere exercise of some remote or indirect control over the activities or the work of the worker”. (Emphasis added)

63. Furthermore, the BCI’s function of “control”, or, as the case may be, “general control” over State Bar Councils would also include a similar power or function. While interpreting the scope of the “supervision and control” to be exercised by the Municipal Commissioner of the petitioner Corporation over the municipal officers and servants, this Hon’ble Court in ***Corpn. of Nagpur City v. Ramchandra*, (1981) 2 SCC 714** stated in paragraph 4 at page 718 of the report: “

> “4. It is thus now settled by this Court that the term “control” is of a very wide connotation and amplitude and includes a large variety of po wers which are incidental or consequential to achieve the powers-veste d in the authority concerned. In the aforesaid case, suspension from ser vice pending a disciplinary inquiry has clearly been held to fall within t he ambit of the word ‘control’. On a parity of reasoning, therefore, the plain language of clause (*b*) of Section 59(3), as extracted above, irresi stibly leads to the conclusion that the Municipal Commissioner was ful ly competent to suspend the respondents pending a departmental inquir y and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. T he High Court was, therefore, in error in holding that the order of susp ension passed by the Municipal Commissioner was without jurisdictio n. In this view of the matter the order of the High Court cannot be mai ntained and has to be quashed.”

64. Thus, while performing its function of generally supervising and controlling the State Bar Councils, the BCI is entitled to require the State Bar Councils to perform their own functions in a specific manner. As correctly observed in *Sudeer*, after the 1973 Amendment, the maintenance of the State rolls and enrolment of persons thereon are functions of the State

Bar Council. Equally, the 1973 Amendment did not touch the BCI's function of general supervision and control over the State Bar Councils under clause (g) of Section 7. While supervising and controlling the State Bar Councils, nothing would prevent the BCI from requiring the State Bar Councils <u>not</u> to admit any person on the roll, who did not undergo the training course prescribed under the 1995 Training Rules.

65. Hence the judgment in *Sudeer* is *per incuriam* insofar as the possibility of sustaining the Training Rules, 1995 on the touchstone of Sec. 7(1)(g) was not considered.

ii. The list of statutory functions of Section 7 of the Act is not exhaustive.

66. In *Sudeer*, this Hon'ble Court failed to appreciate that although Sec. 7 of the Act bears the heading "Functions of Bar Council of India", the list of functions under the various clauses of sub-section (1) is clearly not exhaustive. *Prima facie*, the opening words of sub-section (1) ("The functions of the Bar Council of India shall be– […]") may invite the interpreter to say that the BCI shall *only* perform the listed functions. However, this impression is dispelled by clauses (l) and (m) of the sub-section which are couched in wide terms.

67. Clause (l) says that it shall be a function of the Bar Council of India "to perform all other functions conferred on it by or under this Act". Thus, the said clause contemplates that there could be "other functions" conferred on the Bar Council of India not only "under this Act", i.e., by rules made under this Act, but also "by" the Advocates Act itself. Thus, a full list of the functions of Bar Council of India must be gleaned from the entirety of the Advocates Act and not only from Section 7. In fact, the function (as distinguished from the "general power") of the Bar Council of India to make rules pursuant to Section 49 of the Act must be traced to clause (l), since there is no other specific clause in the list which enables the BCI "to make such rules as it is empowered to make under this Act".

68. Clause (m) takes the remit of the Bar Council of India still further and confers on it the function of "[doing] all other things necessary for discharging aforesaid functions". It is submitted that this clause, by way of abundant caution, expressly confers incidental and ancillary functions on the Bar Council. Thus, it is a statutory function of the Bar Council to do anything which is <u>"calculated to facilitate, or is conducive or incidental to, the discharge of" any of express functions.</u>

69. It appears that the attention of the *Sudeer* court was not invited to these clauses of Sec. 7, resulting in the narrow range of statutory functions contemplated in the decision. In light of these clauses, it is submitted that additional statutory functions can be culled from other provisions of the Advocates Act, and each of these additional statutory functions will carry corresponding incidental and ancillary functions. It would follow that the scope of rules which may be made by the Bar Council of India is much wider than the space carved out therefor in the *Sudeer* judgment.

iii. An additional statutory function of the BCI can be culled out from Sec. 24(1) of the Act: to lay down conditions subject to which any person must be treated as "qualified to be admitted as an advocate on a State roll" .

70. Having established that statutory functions of the BCI can flow from provisions other than Sec. 7 of the Advocates Act, it is next submitted that one such function may be derived from the opening words of Sec. 24(1) of the Act: "Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfils the follow conditions, namely […]".

71. It is submitted that the expression "rules made thereunder" in Sec. 24(1) would take into its fold all rules made under the Act, and not only rules made by the State Bar Council under Sec. 28(2)(d) of the Act. Reliance is placed on paragraph 9 of the judgment of this Hon'ble Court in ***Satish Kumar Sharma*** (supra) in this regard. *See* ¶49 above. Thus, the conclusion in *V. Sudeer* to the effect that Sec. 24(1) read with rules made by the State Bar Council under Sec. 28(2)(d) would constitute a complete code with regarding to admission and enrolment of lawyers cannot be sustained.

72. It is further respectfully submitted that on a conjoint reading of Section 7(1)(l) and Sec. 24(1), the Advocates Act confers the BCI with a statutory function of prescribing rules subject to which any person may be treated as "qualified to be admitted as an advocate on a State roll". *A fortiori*, such rules may lay down a condition that a candidate may not be qualified to be admitted as an advocate on a State roll unless she has undertaken a pre-enrolment training course or exam prescribed by the Bar Council of India. In *V. Sudeer*, to the extent that this statutory function was not considered by this Hon'ble Court as a legal basis for the BCI Training Rules, 1995, the decision must be reconsidered.

iv. The rule-making powers listed under the various clauses of Sec. 49(1) per se indicate statutory functions of the BCI.

73. The *Sudeer* court, on account of the narrow view of the BCI's functions, also failed to appreciate that the rule-making powers listed under Sec. 49(1) could *per se* indicate statutory functions the Bar Council. Under settled canons of statutory interpretation, this Hon'ble Court ought not to give undue weight to the heading of Section 49, which reads: "General power of the Bar Council of India to make rules". As held by this Hon'ble Court in ***Raichurmatham Prabhakar v. Rawatmal Dugar*, (2004) 4 SCC 766** "[…] it is permissible to assign the heading or title of a section a limited role to play in the construction of statutes. […] In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder" [**Para 14/Page 775**]. Thus, if it appears from any of the clauses of Sec. 49(1) that it not only confers rule-making powers on the Bar Council of India, but also confers a specific statutory function in that regard, the heading of the said Section may not be invoked to oppose such a construction.

74. Furthermore, it is important to connect the various clauses of Section 49(1) with the beginning of said Section, which reads: "The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe– […]". The listed clauses not only express the intention of the legislature to empower the BCI to make rules under various heads. Each clause also evinces the legislator's opinion that the said domains qualify as 'functions' of the Bar Council of India under the Act.

75. Thus, even if this Hon'ble Court concludes that no other provision of the Advocates Act confers the Bar Council of India with a function of laying down pre-enrolment conditions, it is submitted that clause (ag) of Section 49(1) would *per se* afford a basis to infer that the BCI has such a function.

D. The Hon'ble Court in *Sudeer* failed to appreciate that Section 49 confers a general rule making power and every listed power may not be shoehorned into any specific section or statutory function of the Bar Council of India.

76. Having submitted that this Hon'ble Court's decision in ***V. Sudeer* (supra)** was not justified in holding that the Rules framed under **Section 49** of the Act must have a specific statutory peg which is not to be found in the Act, it is submitted that the powers conferred on the Bar Council of India are

sufficiently broad enough and further that the restricted interpretation of the functions of the Bar Council of India are erroneous.

77. The decisions of this Hon'ble Court concerning the wide-ranging powers of the Bar Council of India have already been referred to in *Chapter I (C)* of this Note. On the basis of the abovementioned decisions, it is humbly submitted that the responsibility of maintaining the standards of education, regulating enrolment of advocates and the equipment of those who seek entry into that profession are all functions which are not always explicitly found in the rule-making power enumerated under **Section 49** of the Act and would therefore go to show the over-arching nature of powers vested in the Bar Council of India.

78. This apart, it is humbly submitted that the decision of this Hon'ble Court in ***V. Sudeer*** **(supra)** was not justified in shoe-horning the rule-making powers under **Section 49(1)(ag)** of the Act to certain specific provisions of the Act. *Firstly*, this Court held that the power under **Section 49(1)(ag)** is only ancillary to the statutory function entrusted in the Bar Council of India by **Section 24(3)(d)** of the Act. This finding is based, *inter alia*, on the fact that the both these provisions were introduced by way of the same Amendment Act of 1964. **Section 24(3)** provides that notwithstanding anything contained in **Section 24(1)**, certain categories of persons could be entitled to be enrolled under the Act, and **Section 24(3)(d)** specifically states that a person could be made to be entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf. Further, the said provision states that these persons so identified are to then follow a specified procedure under the Section in order to be enrolled. Therefore, clearly this is a Section which empowers the Bar Council of India to specify certain category of persons to be entitled to be enrolled. **Section 49(1)(ag)** does refer to the class or category of persons entitled to be to enrolled as advocates. However, the restricted reading given by this Hon'ble Court in ***V. Sudeer*** **(supra)** will not be in line with the scheme or purpose of the Act. Rather, the reading of these provisions would be that the rule-making power under **Section 49(1)(ag)** will exercised to determine the persons who will be **entitled** to be enrolled and this would include the category of persons who either undergo a mandated training or examination. Thereafter, once these persons are identified, the ministerial act of enrolling such persons, subject to conditions that may be specified, is carried out under **Section 24(3)(d)** of the Act. This harmonious reading of these provisions would be in line with the delineated functions under the Act which relate to the "maintenance of the rolls" with regard to the State Bar Councils and the over-arching power to determine those who are **entitled** to be enrolled.

79. *Secondly*, this Court then goes on to form a linkage between **Section 29** and **Section 49(1)(ag)** of the Act to hold that the rule-making power is to be construed as relating to this other statutory function. However, it is humbly submitted that on a plain reading of the said provisions, this reasoning is fallacious for the following reasons. **Section 29** of the Act occurs under *Chapter V* of the Act which provides that Advocates are the only class of persons who are **entitled** to practice. **Section 30** of the Act provides that every Advocate who is enrolled is entitled to practice. It becomes clear therefore that under the Act, a person has to get enrolled first and thereafter they obtain the right to practice. However, **Section 49(1)(ag)** squarely relates to **entitlement** to be enrolled, which is a step prior to **entitlement** to practice. Therefore, to restrict the scope of **Section 49(1)(ag)** to **Section 29** of the Act would not be in line with the scheme or purpose of the Advocates Act. In stark contrast, **Section 49(1)(ah)** specifically deals with powers in relation to the right to practice, which words are absent in **Section 49(1)(ag)**.

80. *Thirdly*, it is submitted that this Hon'ble Court failed to consider that the Advocates Act has been drafted and structured in a particular manner so as to provide for broad and over-arching functions to the Bar Council of India. Each Chapter under the Act has its separate rule-making power – **Section 15** of the Act is a rule-making power vested in the Bar Council, including the Bar Council of India, in relation to *Chapter I*; **Section 24(1)** makes the provision subject to rules made under the Act and **Section 28** of the Act is a rule-making power vested with the State Bar Council in relation to *Chapter III*; **Section 34** of the Act is a rule-making power vested with the High Courts in relation to practice as occurring in *Chapter -IV* of the Act. However, **Section 49** of the Act occurs in *Chapter VI* which provides for Miscellaneous provisions and is therefore to be construed as the rule-making power vested in the Bar Council of India in relation to its overarching functions under the Act and given that it exercises such powers as the primary regulator of the profession in this Country.

81. Therefore, it is submitted that the attempt to shoe-horn the powers under **Section 49** of the Act to only specifically worded Sections in the Act would deter the underlying intent and purpose of the Act and weaken the powers vested in the Bar Council of India.

E. This Hon'ble Court erred in holding that the BCI Training Rules did not fit the rule-making powers under Section 49(1) (ag) or (ah).

i. General Rule making powers should be construed to render the legislative object achievable

82. It is humbly submitted that in considering the vires of any subordinate legislation i.e. BCI Rules in the instant matter, the court ought to start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and the other invalid, the courts must adopt that construction which makes it valid as held by this hon'ble court in ***St. Johns Teachers Training Institute v. Regional Director, NCTE*, (2003) 3 SCC 321** [**Para 12**]

83. The power of the BCI to formulate rules under Section 49(1) of the Advocates Act, is a general rule-making power conferred on the statutory authority by the legislature under the act. The power is wide in its ambit to cover all the aspects on which BCI can make rules to further the scheme of the act. The Hon'ble court erred in holding that the rule-making power contemplated by the legislature under Section 49(1)(ag) for being exercised by the Bar Council of India was pertaining to only those classes or categories of persons who were thought fit to be enrolled as advocates. However, if the power is conferred to make any subordinate legislation in general terms on any authority, the particularisation of topics mentioned under the act can only be construed as merely illustrative and does not limit the scope of the general power as per this court's decision in ***Rohtak and Hissar Districts Electric Supply Co. v. State of U.P.*, (1966) 2 SCR 863** [**Para 10**]

84. This Hon'ble Court while discussing the powers of Bar Councils and the interpretation furthering the purpose of the act has also held that power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable *viz.* ***Pratap Chandra Mehta v. State Bar Council of M.P.,*** **(2011) 9 SCC 573 [Paras 50-52]**

> "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 abovestated 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 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 of 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."

[Emphases supplied]

ii. Principle of Plain Meaning

85. Section 49(1)(ag) in plain and unambiguous terms gives the clear interpretation that the rules under this clause can be made for any class or category of persons entitled to be enrolled as advocates. In interpreting the same in context of section 24(3)(d) the court has tried to give the clause a different meaning altogether contrary to the intention of legislature while also restricting the power of BCI to make the rules for the said category of persons. If the true intention of the legislature was to create a necessary connection between the rule making power under 49(1)(ag) and 24(3)(d), nothing prevented the legislature from expressly stating the same in the text of the provision itself. It is a settled principle of interpretation that if the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do, in such case, best declare the intention of the legislature as held by this Apex Court in case of ***Lalu Prasad Yadav v. State of Bihar*, (2010) 5 SCC 1 [Para 23]**. Also in ***State of U.P. v. Dr. Vijay Anand Maharaj*, (1963) 1 SCR 1 [Para 8]**, this Court has held that when a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself.

86. A Constitution Bench of this Court in ***Union of India v. Hansoli Devi* [(2002) 7 SCC 273]** also approved the rule exposited by Lord Chief Justice Tindal in ***Sussex Peerage case* [(1843-60) All ER Rep 55 (HL)]** and stated the legal position thus:

> "9. … It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

87. Hence, in the light of the cited judgments and finding of this court in ***State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 [Para 42]** that when the meaning of words is plain it is not the duty of the courts to busy themselves with supposed intentions, the Hon'ble court in the judgment of V. Sudheer ought to have gone by the plain and unambiguous meaning of

words mentioned in Section 49(1)(ag) in holding the training rules to fall under the ambit of the said section and intra vires of the act while preserving the general rule making power of BCI.

F. Viability of an examination to be conducted post-enrolment aspect

88. In the event that this Hon'ble Court were to hold that the Bar Council of India was not empowered to provide for a pre-enrolment training and examination and consequently that the decision in ***V. Sudeer (supra)*** to that extent requires no reconsideration, the question then arises as to whether the Bar Council of India could prescribe a post-enrolment examination under **Section 49(1)(ah)** of the Act.

89. In this regard, it is important to set-out the statutory scheme, specifically in relation to the post-enrolment scenario. As has been submitted above, the enrolment under the Advocates Act then leads to the next step, which is that an Advocate who is enrolled is then entitled to practice. **Section 30** of the Act provides the 'Rights of Advocates to practice" and stipulates that subject to the provisions of the Act, every Advocate who is enrolled shall be entitled as of right to practice throughout the Country. **Section 49(1)(ah)** provides for the rule making power of the Bar Council of India with regard to conditions subject to which an advocate shall have the right to practice. At first glance, it appears that the provision under **Section 49(1)(ah)** could be invoked to provide for a training and examination after enrolment with a truncated/limited right to practice or even one with the provisional undertaking in the form as it exists today.

90. However, it is important to contrast the words used in **Section 30** of the Act with **Section 24** and **Section 29** of the Act. While the former makes the right to practice subject to the provisions of the Act, the latter provisions make their respective aspects subject to provisions of the Act and the *rules made thereunder*. Therefore, the right to practice under **Section 30** of the Act could only be restricted by another provision in the Act and not to the rules made under any provision in the Act. If this interpretation were to stand, then the framing of the All India Bar Examination in its current format would have to be held illegal.

91. At the same time, it is also important to refer to the decisions of this Court in relation to **Section 34** of the Act which is a provision which empowers the High Courts to frame rules that may curtail the right to practice. In ***Jamshed Ansari v. High Court of Allahabad*** **(2016) 10 SCC 554**, a two-judge bench of this Court held that **Section 30** of the Act and the right to practice would be subject to **Section 34** of the Act which is again only a

rule-making power granted to High Courts. **[Para 24-25]**. Further, in ***N.K. Bajpai v. Union of India*** **(2012) 4 SCC 653**, a two-judge bench of this Court held that the right to practice law is a restricted statutory right which is controlled by the provisions of the Advocates Act as well as the Rules framed by Bar Council under that Act. **[Para 59]**.

92. Therefore, while it is clear from a reading of the scheme of this Act that the right to practice in itself is only subject to the Act and not the rules made thereunder, the previous interpretations of the provisions of this Act making the right to practice subject to the provisions that grant the rule-making power is also of significance. If the latter were to be held to be valid then the exam in its current form could be sustained but it would be at the expense of expanding the scope of the restriction on **Section 30** of the Act. However, if the former path is to be adopted, the post-enrolment examination cannot be provided for unless there is a specific provision that to end under the Advocates Act.

V. ANSWERS TO QUESTIONS

93. On the basis of submissions made hereinabove, and upon perusal of the scheme of the Advocates Act and the legal principles culled out, the answer to the Questions framed by this Hon'ble Court *vide* Order dated **18.03.2016** are as follows:

(1) The Bar Council of India is empowered to prescribe a pre-enrolment training under the Advocates Act, 1961 and to that extent the decision of this Court in ***V. Sudeer*** **(supra)** is *per incuriam* and deserves to be set aside.
(2) The Bar Council of India is empowered to prescribe a pre-enrolment examination in the exercise of its powers under the Advocates At, 1961
(3) In case the question no. 1 and 2 are answered in the negative, due to the words occurring in **Section 30** of the Advocates Act, 1961, any post-enrolment examination would require a statutory amendment to bring it to into place and to be *inter vires* the Act.

* * *

Drawn by:
Amartya A. Sharan, Advocate
Rahul Sangwan, Advocate
M.G. Aravind Raj, Advocate
Settled by:
K.V. Viswanathan, Senior Advocate

Dated: 27.09.2022