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2023:DHC:3810

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 06 March 2023**
Judgment pronounced on: 30 May 2023

\+ W.P.(C) 8015/2020 & CM APPL. 41782/2022(Add. Document)

DAEYOUNG JUNG ..... Petitioner

Through: Mr. Ashim Sood, Ms. Senu Nizar, Mr. Ekansh Gupta, Mr. Velpula Audityaa, Ms. Reaa Mehta, Mr. Kuberinder Bajaj, Ms. Payal Chandra and Mr. Rhythm Buaria, Advs.

versus

BAR COUNCIL OF INDIA & ANR. ..... Respondents

Through: Mr. Preet Pal Singh, Mr. Saurabh Sharma and Mr. Shivam Sachdeva, Advs. for R-1.
Mr. Ajay Kumar Agarwal, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

JUDGMENT

1. Mr. Daeyoung Jung, a citizen of South Korea impugns the order of 23 July 2020 passed by the **Bar Council of India**[1] refusing his request for permission to be enrolled as an Advocate. He seeks to espouse a right which, according to him, would inhere in any duly qualified foreign national intending to pursue law as a profession in

[1] BCI

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India and seeks a declaration that his right to practise law in the country is not barred by statute.

2. BCI has on its understanding of the provisions of Section 24 of the **Advocates Act, 1961**[2] principally held that since duly qualified citizens of India have not been shown to be permitted to practice law in South Korea, the petitioner would be disentitled in terms of the Proviso to that Section. The writ petition essentially revolves upon the meaning to be ascribed to the phrase "*duly qualified*" as appearing in the Proviso which stands placed in Section 24(1)(a). The BCI has, additionally alluded to the "practical difficulties" associated with and challenges surrounding the enrolment of foreign nationals. It has contended that if a foreign national were to be enrolled with a State Bar Council, it is likely to encounter difficulties especially when proceedings for misconduct may be drawn. It has also referred to the situation which is likely to ensue if foreign nationals were to be accorded the privilege of enrolment and the consequential right to practice.

3. Jung is stated to have been residing in India for the past more than 16 years. Upon graduation in 2011, he was admitted to the B.A., LL.B. (Hons.) Course by the **National Academy of Legal Studies and Research, Hyderabad**[3]. He graduated on 06 August 2016 and received a B.A. LL.B. (Hons.) Degree. He is stated to have initially approached the **Bar Council of Delhi**[4] in February 2019 to obtain the

[2] the Act
[3] NALSAR
[4] BCD

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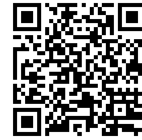

necessary enrolment documents. It is his assertion that the said request was orally denied by the BCD. BCD, while refusing to accede to his request is asserted to have informed the petitioner that he would have to approach BCI and obtain a letter from that body granting him permission to be enrolled as an advocate with the BCD.

4. In furtherance of the above, the petitioner made a representation dated 18 October 2019 to BCI. It was his assertion in that representation that since he did fulfil all the requirements stipulated in Section 24 of the Act, he was entitled to be enrolled. However, since no response was received on that representation, the petitioner approached this Court by filing W.P.(C) 67/2020 which came to be disposed of on 24 June 2020 with a direction to the BCI to decide his representation.

5. On 30 June 2020, the petitioner received a communication from the Assistant Secretary cum Law Assistant of BCI, requiring him to respond to the following queries:-

> "1. What are the terms and conditions for immigration in India for a Republic of Korea citizen, and what are the terms that are applicable on you, and what were/are the terms and conditions applicable on you as a minor and as a major? Kindly provide certified documents of the Korean Embassy/Consulate in India and immigration department of/ concerned Department of Govt of India regarding visa/permission granted to you to stay in India.
>
> 2. What was the reason for you not applying for Indian Citizenship, if you have been residing in india since your childhood?
>
> 3. Whether the Government of Republic of Korea/concerned authority in Republic of Korea has allowed Indian Citizens to be Enrolled as Advocates, therein, who are allowed to practice in Republic of Korea, and if they have been so allowed, under what

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terms and conditions? Kindly provide relevant documents which shall be required to be certified by the Government of Republic of Korea/concerned authority in Republic of Korea and by the Indian Embassy in Republic of Korea in the regard.

4. Who is the regulatory authority in Republic of Korea for Advocates and who regulates the practice of law in Republic of Korea, and what are the terms & conditions of the regulatory Authority for issuance of enrollment to an India Citizen for practice of law in Republic of Korea? Is the regulatory authority empowered to enroll Indian Citizens as Advocates in the Republic of Korea or is it the Government's domain to allow entry of foreign Lawyers into the Republic of Korea? Kindly provide relevant documents. The supporting documents shall be required to be certified by the regulatory authority for Advocates and by the Government, concerned Department of Republic of South Korea, and by the Indian Embassy/Consulate in Republic of Korea.

5. Has any Reciprocity agreement been entered into between the concerned authority in the Republic of Korea with any authority in India, for the above said purpose? Because, there is no such agreement existing with the Bar Council of India, and whether any such reciprocity agreements have been entered into between the concerned authority in the Republic of Korea with the concerned authority of any other country. Kindly provide relevant documents. The supporting documents shall be required to be certified by the regulatory authority for Advocates and by the Government, concerned Department of Republic of South Korea, and by the Indian Embassy/Consulate in Republic of Korea.

6. Kindly specify as to who is the concerned authority in Republic of Korea, who can take a decision for allowing entry and enrollment of Foreign National in the Republic of Korea, and whether the concerned authority in Republic of Korea is willing to enter into a Reciprocity Agreement with the Bar Council of India/Concerned Authority in India in terms of Section 47 of The Advocates Act, 1961."

6. The petitioner responded to the aforesaid email on 04 July 2020 asserting that he was entitled to retain his citizenship and immigration status and that those were matters clearly of no relevance if not immaterial to his right to seek enrolment in terms of Section 24 of the

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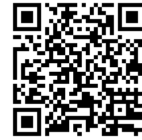

Act. In furtherance of his request to be enrolled with the BCD, the petitioner is also stated to have provided a clarification on the question of nationality based enrolment restrictions provided by the President of the Korean Bar dated 09 July 2020 and which is extracted hereinbelow:-

> "Dear sir,
>
> In furtherance of our e-mail dated 04.07.2020, we are attaching a clarification received from the regulatory authority in South Korea i.e. Korean Bar Association on the Petitioner's specific query whether Indian nationals can enroll to practice law in South Korea. The Korean Bar Association has affirmed that Indian nationals who satisfy other qualification requirements under the Attorney at Law Act and National Bar Examination Act are permitted to practice law in South Korea. Therefore, it is submitted, the Petitioner satisfies the proviso to s. 24(l)(a) of the Advocates Act, 1961 as Indian nationals in South Korea are permitted to enroll and practice as advocates.
>
> Further, the Korean Bar Association has also affirmed it is the regulatory authority for the profession of advocates in South Korea. In particular, they have stated that in order to establish a legal practice in South Korea, all persons will have to apply for registration with the Korean Bar Association under s.7 of the Attorney at Law Act as a prerequisite. We also invite your attention to our e-mail dated 04.07.2020 where we have explained that the Korean Bar Association is a statutory body established under Article 78 of the Attorney at Law Act and is responsible for regulating the profession of advocates including their entry and matters of discipline. Therefore, the Korean Bar Association is the South Korean counterpart of the Bar Council of India.
>
> Finally, As requested by you, this clarification from the regulatory authority (the Korean Bar Association) has been attested by the Indian Embassy in South Korea.
>
> We hope that this document will serve as a clarification that there is no bar on Indian nationals, who are duly qualified, from practicing as advocates in South Korea and that the Petitioner's request to apply for enrollment can be considered favorably. Please do let us know if a hearing is possible to allow us to answer any questions that the Committee may have.
>
> Thank you very much for your time."

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7. The petitioner also obtained clarifications on the eligibility of foreign nationals to take the Korean National Bar Exam from the Ministry of Justice, South Korea dated 23 July 2020 and which for the sake of completeness of the record is extracted hereunder:-

"Reply Content

Reply date	2020-07-23 15:12:04
Processed Result (reply content)	1. Hello, You have submitted an inquiry subjected 'Foreign national's eligibility to give the National Bar Examination, to practice as Advocate' via the Ministry of Justice's homepage (application number: IAA-2007-0593096). We provide the reply to the same inquiry as below. -On inquiry point 1.,4. 2. On inquiry point 1, [National Bar Examination Act] Article 3 states "The examination shall be supervised and administered by the Minister of Justice' and therefore we inform you that the national bar examination is administered by the Minister of Justice. 3. On inquiry point 4, as per law on law school admission eligibility [Act on the establishment and management of professional law schools] article 22; law on eligibility to write the National Bar Examination and disqualification to write the Examination [National Bar Examination Act] article 5 and 6, law on eligibility and disqualification to be attorney at law [Attorney at law Act] article 4 and 5, law on eligibility and refusal of enrollment as attorney [Attorney at law Act] article 7 and 8

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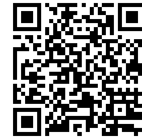

does not include any seperate restrictions on foreigners.

4. Thus unless other restrictions such as inadequate residential status are present, we do not discriminate against foreigner nationals including Indian nationals solely due to their nationality when it comes to law school admission, writing the national bar examination, acquiring attorney license, practicing as an attorney in Korea.

-On inquiry point 2., 3.

5. We understand that you have submitted an inquiry on the subject "Legal status of Korean Bar Association and role of Minister of Law on the same; whether enrollment to the Korean Bar Association is mandatory when practicing as an attorney".

6. Reply to your inquiry as per our review is as follows.
A. <inquiry point 2.>

○ Korean Bar Association is a corporate body, not an affiliated body under the Ministry of Justice but an autonomous attorney association established in order to preserve the dignity of attorneys-at-law, promote the improvement and development of legal services of attorneys-at-law and creation of legal culture (Attorney at law Act article 78, Act on the management of public institutions article 6).
○ However, Korean Bar Association as per Attorney at law Act, is supervised by the Minister of Law (Attorney at law Act article 86), Minister of Law's approval is required when it comes to amendment change of association rules, and their General Assembly Resolution content must be reported to the Minister of Law (Attorney at law Act article 79 and 86).

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> B. <inquiry point 3.>
>
> o In order for a person qualified to be an attorney to practice us an attorney at law, the person must register with the Korean Bar Association and also apply for membership and report practice at a local bar association of his choice (Attorney at law Act article 4, 7 and 15).
>
> 7. We hope that our reply satisfied your query, in case you required any additional explanation please contact law ministry legal department Mr. Hyung-oh Jeon (02-2110-3654, tony1002@spo.go.kr) for further assistance. Thank you.
>
> B. In case you have additional query, contact Mr. Euijun Jung (02-2110-3246, lhlj3436@korea.kr) for inquiry point 1 and 4, Mr. Hyungoh Jeon (02-2110-3654, tony1002@spo.go.kr) for inquiry point 2 and 3. Wishing you and your family good health and luck. Thank you. The end."

8. BCI thereafter proceeded to pass the impugned order on 23 July 2020. It becomes pertinent to note that when this matter was taken up on 25 July 2022, learned senior counsel appearing for the BCI had on instructions made a statement that it had decided to accept and grant the prayer of the petitioner for being accorded enrolment under the Act with the same being viewed as a stand-alone case and such enrolment not being treated as a precedent . The prayer for deferral of further proceedings in the writ petition was made in order to enable the BCI to complete all requisite formalities in that regard and in light of the statement noted above.

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9. On 21 September 2022, the Court was apprised of BCI having addressed a letter dated 13 September 2022 to various State Bar Councils with the objective of eliciting their views and inviting suggestions on the subject. In view of the aforesaid and on the request of learned counsel representing the BCI, the matter was adjourned continually on different dates. The Court was thereafter informed that BCI would like the matter to be heard on merits. The Court thus notwithstanding the unequivocal statement made by the BCI proceeded to do so.

10. The writ petition was thereafter substantively heard on merits and after hearing learned counsels for respective parties, the matter was closed for judgment. It may only be noted that despite the unequivocal statement which was made by BCI and came to be recorded by the Court in its order of 25 July 2022, it subsequently recanted the same. The Court was also not apprised of the views that may have been received by the BCI from State Bar Councils. In any case, since parties have addressed submissions on the seminal question which arises, the Court proceeds further.

11. For the purposes of appreciating the issues which arise, the Court deems it relevant to extract Section 24 of the Act, which reads thus:-

> "**24. Persons who may be admitted as advocates on a State roll**
>
> (1) Subject to the provisions of this Act, and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:—
>
> (a) <u>he is a citizen of India</u>:

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PROVIDED that subject to the other provisions contained in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;

(c) he has obtained a degree in law—

(i) before the 12th day of March, 1967, from any University in the territory of India; or

(ii) before the 15th August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three-year course of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iv) in any other case, from any University outside the territory of India, if the degree is recognised for the purposes of this Act by the Bar Council of India or;

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

(d) XXX

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(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of 8[six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council]:

PROVIDED that where such person is a member of the schedule castes or the schedule tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be one hundred rupees and to the Bar Council of India, twenty-five rupees.

Explanation.—For the purposes of this sub-section, a person shall be deemed to have obtained a degree in law from a University in India on that date on which the results of the examination for that degree are published by the University on its notice board or otherwise declaring him to have passed that examination.

(2) Notwithstanding anything contained in sub-section (1), a vakil or a pleader who is a law graduate may be admitted as an advocate on a State roll, if he—

(a) makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day, and

(b) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

(3) Notwithstanding anything contained in sub-section (1) a person who—

(a) XXX has, for at least three years, been a vakil or pleader or a mukhtar, or, was entitled at any time to be enrolled under any law XXX as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory;

(aa) before the 1st day of December, 1961, was entitled otherwise than as an advocate practise the

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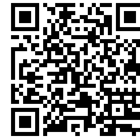

> profession of law (whether by of pleading or acting or both) by virtue of the provision of any law, or who would have been so entitled had he not been in public service on the said date; or
>
> (b) XXX
>
> (c) before the 1st day of April, 1937, has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935; or
>
> (d) is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf,
>
> may be admitted as an advocate on a State roll if he—
>
> (i) makes an application for such enrolment in accordance with the provisions of this Act; and
>
> (ii) fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).
>
> (4) XXX"

12. The aforesaid provision would have to be read along with the specific provisions relating to reciprocity which stand embodied in Section 47. The said provision reads as under:-

> "**47. Reciprocity**
>
> (1) Where any country, specified by the Central Government in this behalf by notification in the Official Gazette, prevents citizens of India from practising the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practise the profession of law in India.
>
> (2) Subject to the provisions of sub-section (1), the Bar Council of India may prescribed the conditions, if any, subject to which foreign qualifications in law obtained by persons other than citizens of India shall be recognised for the purpose of admission as an advocate under this Act."

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13. BCI in terms of the impugned order has proceeded to take the following stand. It firstly holds that in the absence of a provision similar to the Proviso placed in Section 24(1)(a) in the applicable statutes promulgated by the Republic of Korea, the petitioner would not be entitled to enrolment. It has in this regard also disregarded the clarification submitted by the President of the Korean Bar Association since the same does not have any "statutory force". It also takes the position that Section 24 confers a discretion in the BCI to grant an application for enrolment and that, consequently, it is not mandatory for a State Bar Council to enrol a foreign national and, in any case, enrolment cannot be claimed as a matter of right. Curiously, BCI also appears to have drawn adverse inference on account of a perceived reluctance of Jung to obtain citizenship of India. Dealing with this aspect, it has observed as under:-

> "We cannot lose sight of the fact that the petitioner is a Republic of Korean national and despite being in India since his childhood continues to be a Republic of Korea citizen residing in India under the conditions imposed by the Indian immigration authority. The Advocates Act, 1961 lays down a specific provisions regarding professional conduct of Advocates as per section 7 (1) (b) and Section 35 of the Act. The Bar Council of India has also framed rules of Professional Conduct and Etiquettes in Chapter II of Part VI of Bar Council of India Rules as mandated by Section 7 (1)(b) of the Advocate Act 1961 exercising its power under Section 49 of the Advocates Act, 1961. The said rules lays down duties of an Advocate to the Court, to the client, to his opponent and to his colleagues. Any act of professional misconduct involving violation of the said duties, obligations or any other misconduct even outside the scope of those mentioned in the said chapter, an Advocate can be proceeded with disciplinary action under Section 35 of the Advocates Act, 1961."

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14. It has then proceeded to observe and allude to the issues which would arise, if disciplinary proceedings were to be initiated against a foreign national. The relevant observations in this respect as appearing in the impugned order are extracted hereinbelow:-

> "An Advocate found guilty of professional misconduct can be punished as per the provision of Section 35 of the Advocates Act, 1961. The proceedings on a complaint under Section 35 are to be conducted by a disciplinary Committee of the Bar Council, which has same powers as vested in a civil court under the civil procedure 1908. If a foreign national, who is not a citizen of India is enrolled on the roll of the State Bar Council and engages himself in such professional activities in India which amounts to an act of professional misconduct enumerated in Advocates Act, 1961 and the rules framed by the Bar Council of India, action against him on a complaint made in this behalf will become impossible in case he leaves the territory of India, being a foreign citizen and goes out of the jurisdiction of Indian State Bar Councils, Bar Council of India and Courts. It is a very crucial and important aspect, which we cannot lose sight of while considering the application for enrolment by a candidate who is not an Indian citizen but a foreign citizen and continues to hold status as a foreign national like the present petitioner. This aspect of the matter also dissuades us from considering and allowing the request made by the petitioner in favour of enrolment with Indian State Bar Council."

15. The prayer for enrolment has been declined additionally upon BCI taking the view that Rule 49 of the **Bar Council of India Rules**[5] would bar the petitioner from being enrolled with the BCD. It would be pertinent to note that Rule 49 deals with the standards of professional misconduct and etiquettes and which proscribes an advocate from being in whole time employment. The said finding is based upon the fact that the petitioner is currently a salaried employee engaged in a contractual capacity by the Embassy of the Republic of

[5] Rules

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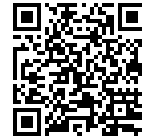

Korea. BCI has then referred to the perceived spectre of foreign nationals deluging State Bar Councils which are ill-equipped to manage an influx of foreign nationals seeking enrolment and the adverse impact that it was likely to have on the legal profession. They have in this connection held as under:-

> "While considering the present petition, it may be worthwhile to consider the larger issue of entry by foreign Lawyers in India. It is a contentious issue being raised and discussed in the Indian Bar over the last few decades. The Bar Council of India and all State Bar Councils in India and all Bar Associations of this country right from the Supreme Court Bar Association to District Court Bar Associations have always opposed the entry of foreign Lawyers in India. The issue has even reached upto the Hon'ble Supreme Court and Hon'ble Supreme Court after considering various aspects related of entry of foreign Lawyers in India gave a judgment in Civil Appeal Nos. 7875-7879 of 2015 (Balajee Vs. Union of India & Ors.) thereby holding that "Visit of any foreign lawyer on *fly in and fly out basis*…………..... Conversely, plea that a foreign lawyer is entitled to practice foreign law in India without subjecting himself to the regulatory mechanism of the Bar Council of India Rules can also be not accepted. We do not find any merit in the contention that the Advocates Act does not deal with companies or firms and only individuals. If prohibition applies to an individual, it equally applies to group of individuals or juridical persons".
>
> Although the facts of the aforesaid case are not the same as in the present case but the fundamental issue and moot point in both cases is the same as it relates to the entry of persons of foreign origin as a legal professional in India. The Hon'ble Supreme Court of India has issued directions to Bar Council of India to frame rules and regulations relating to entry of foreign Lawyers in India which is yet to be done.
>
> In sum and substance, permission to the present petitioner to get enrolled as an Advocate and practice law in India is bound to open flood gates of entry of similarly placed individuals in India as legal practitioner and regulating their activities as such is bound to pose a big challenge plus problem for Bar Council of India which leads us to support the view that such permission should not be granted.

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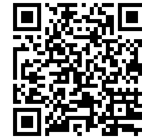

> A situation like this will lead to a very anomalous situation where it will become difficult for the Bar Councils in the country to regulate and control the conduct of such foreign nationals and would pose a very tough challenge to Bar Council of India to deal with the situation and exercise its powers and duties as a regulator of legal profession in the country."

16. Assailing the impugned order, Mr. Sood, learned counsel for the petitioner, firstly contended that the view as taken by BCI and resting on the mere fact that the petitioner was a foreign national is clearly flawed and contrary to the plain language of Section 24(1)(a) of the Act. It was submitted that BCI appears to have been unnecessarily prejudiced by the fact that the petitioner had not applied for or obtained Indian citizenship. It was his submission that BCI could neither have compelled the petitioner to take Indian citizenship nor is that a pre-requisite for the purposes of adjudging the eligibility of an individual seeking enrolment under Section 24(1)(a). Mr. Sood further submitted that BCI clearly misdirected the enquiry liable to be undertaken in terms of Section 24(1)(a) while seeking out a similar provision in statutes prevalent in South Korea. It was submitted that the right of the petitioner to be considered for enrolment in terms of the Proviso to Section 24(1)(a) is neither dependent nor does it hinge upon the existence of an identical provision in South Korean statutes. It was his submission that the Proviso itself contemplates a national of any other country being admitted as an advocate on the state roll and the same being subject only to the condition of duly qualified citizens of India being permitted to practice law in the reciprocating country.

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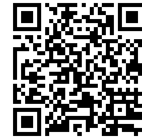

On a plain reading of the Proviso, Mr. Sood submitted that the line of enquiry as adopted by BCI was clearly misconceived.

17. He submitted that BCI has clearly committed a manifest illegality in seeking to import and read into Section 24 the requirement of a similar and akin provision in South Korean statutes. It was his contention that the aforesaid view is palpably irrational since it would be impossible to expect a foreign legislature to adopt or conform to the procedure prescribed by Indian law. Mr. Sood submitted that not only is the expectation as propounded by BCI absurd, it also amounts to reading a prescription into the statute which neither exists nor appears to be contemplated by the Legislature.

18. Mr. Sood also questioned the validity of the view as expressed by BCI in the impugned order contending that the petitioner is not entitled to relief in light of Section 47 of the Act. It would be pertinent to recall that the said provision prescribes that foreign nationals shall not be entitled to practise the profession of law in India if the Union Government finds that citizens of India have been prevented from practicing law in that country or where that nation subjects Indian citizens to unfair treatment and discrimination. It was submitted that undisputedly no such bar has been notified against the Republic of South Korea by the Union Government and that the impugned order is also not based on any material or decision taken by the Union Government in this respect.

19. Mr. Sood further submitted that the petitioner had also placed copious material before the BCI to establish that South Korean law

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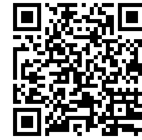

does not adopt any nationality-based restrictions. He referred to Articles 4, 5 and 8 of the South Korean **Attorney-At-Law Act** which provides for qualifications required of an individual seeking to be registered as an Attorney at law. He also drew the attention of the Court to the qualifications prescribed by Articles 5 and 6 of the South Korean **National Bar Examination Act**[6] which, similarly, do not require citizenship in the country of origin as an essential qualification to an applicant who seeks to take that examination. He also referred to the communications addressed by the President of the South Korean Bar Association as well as the Ministry of Justice, South Korea both of which had confirmed that the said nation does not adopt or prescribe nationality-based restrictions and that there is no bar on Indian nationals who are duly qualified from practicing as advocates in South Korea. It was pointed out that those communications unequivocally established that no country-based restrictions stand imposed either in connection with writing the South Korean National Bar Association examination or enrolling as an Attorney at law.

20. It was then submitted that the respondents have clearly proceeded on the incorrect premise that the words "*duly qualified*" must mean an individual holding a legal qualification granted in India as being valid and sufficiently empowering the said individual to practice law in the other country. Mr. Sood submitted that a holistic reading of the Proviso to Section 24(1)(a) would clearly establish that the statute only contemplates citizens of India who are duly qualified

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to practice law in the other country as being the determinative factor. According to Mr. Sood, as long as Indian citizens who hold the requisite qualifications recognised by South Korean law are permitted to practice law in that country, that would be sufficient to enable a South Korean national who holds a valid qualification as per the standards laid down under the Indian law to seek enrolment with a State Bar Council.

21. It was further submitted that BCI clearly appears to have proceeded on the misconception that the use of the word "may" in the Proviso confers a discretion upon it to either grant or refuse enrolment. It was the submission of Mr. Sood that once the qualifications prescribed in Section 24(1) are satisfied, BCI would have no discretion to reject an application for enrolment. It was submitted that the Proviso to Section 24(1)(a) must consequently be construed as being mandatory in character and the word "may" thus liable to be read as "shall". In support of the aforesaid submission, Mr. Sood also placed reliance upon the following decisions which are noticed hereinafter. Mr. Sood drew the Courts' attention to the following passages from the decision of the Supreme Court in **Official Liquidator v. Dharti Dhan (P) Ltd.**[7]**:-**

> "**7.** Sections 442 and 446 of the Act have to be read together. It is only where the object of the two sections, when read together, is served by a stay order that the stay order could be justified. That object is to expeditiously decide and dispose of pending claims in the course of winding up proceedings. A stay is not to be granted if the object of applying for it appears to be, as it does in the case before us, merely to delay adjudication on a claim, and, thereby to

[7] (1977) 2 SCC 166

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defeat justice. In other words, a stay order, under Section 442, cannot be made mechanically, or, as a matter of course, on showing fulfilment of some fixed and prescribed conditions. It can only be made judiciously upon an examination of the totality of the facts which vary from case to case. It follows that the order to be passed must be discretionary and the power to pass it must, therefore, be directory and not mandatory. In other words, the word "may", used before "stay" in Section 442 of the Act really means "may" and not "must" or "shall" in such a context. In fact, it is not quite accurate to say that the word "may", by itself, acquires the meaning of "must" or "shall' sometimes. This word, however, always signifies a conferment of power. That power may, having regard to the context in which it occurs, and the requirements contemplated for its exercise, have annexed to it an obligation which compels its exercise in a certain way on facts and circumstances from which the obligation to exercise it in that way arises. In other words, it is the context which can attach the obligation to the power compelling its exercise in a certain way. The context, both legal and factual, may impart to the power that obligatoriness.

8. Thus, the question to be determined in such cases always is whether the power conferred by the use of the word "may" has, annexed to it, an obligation that, on the fulfilment of certain legally prescribed conditions, to be shown by evidence, a particular kind of order must be made. If the statute leaves no room for discretion the power has to be exercised in the manner indicated by the other legal provisions which provide the legal context. Even then the facts must establish that the legal conditions are fulfilled. A power is exercised even when the court rejects an application to exercise it in the particular way in which the applicant desires it to be exercised. Where the power is wide enough to cover both an acceptance and a refusal of an application for its exercise, depending upon facts, it is directory or discretionary. It is not the conferment of a power which the word "may" indicates that annexes any obligation to its exercise but the legal and factual context of it. This as we understand it, was the principle laid down in the case cited before us: *Frederic Guilder Julius* v. *Right Rev*. *Lord Bishop of Oxford*: *Re* v. *Thomas Thellusson Carter* [5 AC 214] .

10. The principle laid down above has been followed consistently by this Court whenever it has been contended that the word "may" carries with it the obligation to exercise a power in a particular

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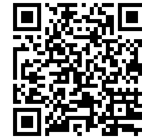

manner or direction. In such a case, it is always the purpose of the power which has to be examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with a duty to exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us: *Bhaiya Punjalal Bhagwandin* v. *Dave Bhagwatprasad Prabhuprasad* [(1963) 3 SCR 312 : AIR 1963 SC 120 : (1963) 2 SCJ 441] , *State of Uttar Pradesh* v. *Jogendra Singh* [(1964) 2 SCR 197 : AIR 1963 SC 1618 : (1963) 2 Lab LJ 444], *Sardar Govindrao* v. *State of M.P.* [(1965) 1 SCR 678 : AIR 1965 SC 1222 : (1966) 1 SCJ 480], *Shri A.C. Aggarwal, Sub-Divisional Magistrate, Delhi* v. *Smt Ram Kali* [(1968) 1 SCR 205 : AIR 1968 SC 1 : 1968 Cri LJ 82], *Bashira* v. *State of U.P.* [(1969) 1 SCR 32 : AIR 1968 SC 1313 : 1968 Cri LJ 1495] and *Prakash Chand Agarwal* v. *Hindustan Steel Ltd.* [(1970) 2 SCC 806 : (1971) 1 SCR 405] .

11. In the statutory provision under consideration now before us the power to stay a proceeding is not annexed with the obligation to necessarily stay on proof of certain conditions although there are conditions prescribed for the making of the application for stay and the period during which the power to stay can be exercised. The question whether it should, on the facts of a particular case, be exercised or not will have to be examined and then decided by the court to which the application is made. If the applicant can make out, on facts, that the objects of the power conferred by Sections 442 and 446 of the Act, can only be carried out by a stay order, it could perhaps be urged that an obligation to do so has become annexed to it by proof of those facts. That would be the position not because the word "may" itself must be equated with "shall" but because judicial power has necessarily to be exercised justly, properly, and reasonably to enforce the principle that rights created must be enforced."

22. Reliance was then placed on the following observations as entered in **Bachahan Devi v. Nagar Nigam, Gorakhpur[8]:-**

[8] (2008) 12 SCC 372

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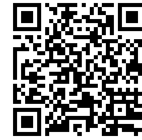

"**18.** It is well settled that the use of the word "may" in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word "may" as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word "may", the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word "may" involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word "may" should be interpreted to convey a mandatory force. As a general rule, the word "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words "may", "shall" and "must" are used interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances.

19. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. [Depending upon the] context, 'may' does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes [his] duty to exercise [that power]. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty." [**Ed.** : Quoting from *Mohan Singh* v. *International Airport Authority of India*, (1997) 9 SCC 132, p. 144, para 17.]

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word "may" will not prevent the court from giving it the effect of compulsion or obligation where the statute was passed purely in public interest and that rights of private citizens have

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> been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word "may" that power must be construed as a statutory duty. Conversely, the use of the term "shall" may indicate the use in optional or permissive sense. Although in general sense "may" is enabling or discretional and "shall" is obligatory, the connotation is not inelastic and inviolate. Where to interpret the word "may" as directory would render the very object of the Act as nugatory, the word "may" must mean "shall".
>
> **21.** The ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent; and the use of the words "may" and "shall" is not decisive of its discretion or mandates. The use of the words "may" and "shall" may help the courts in ascertaining the legislative intent without giving to either a controlling or a determining effect. The courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."

23. It was then pointed out that Section 24(1) is introduced in the Act with the caveat that it would be subject to its other provisions. Mr. Sood submitted that the only other provision which specifically deals with a nationality-based condition is Section 47. Learned counsel submitted that Section 47 clearly empowers the Union Government to restrain nationals of another country from practicing the law in India if it be found that citizens of India are either prevented by that other nation from doing so or are subjected to unfair discrimination. According to Mr. Sood, the denial of a right to practice the legal profession in India and insofar as it operates in respect of a foreign national is based upon the principles of reciprocity and the formation of the requisite opinion by the Union Government.

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24. It was submitted that Section 47 confers a discretion only upon the Union Government to bar foreign nationals and which proceeds to specify the two circumstances in which it may do so. In view of the aforesaid, it was Mr. Sood's submission that it would be wholly impermissible for the BCI to be recognised as being empowered to create a circumstance or an additional ground on which a foreign national may be refused enrolment. This, according to Mr. Sood, is an additional indicator of the word "may" as appearing in Section 24(1)(a) being liable to be read as "shall".

25. It was further submitted that BCI cannot be recognised to be conferred a discretion to refuse enrolment in light of Section 24(1) using the expression "*a person shall be qualified to be admitted*". Mr. Sood submitted that Section 24(1) in peremptory terms commands the BCI to admit a person to the State Roll if he fulfils the conditions prescribed therein. It was argued that once the person desirous of enrolment is found to meet the qualifications specified in the provision, he is necessarily entitled to be recognised as being qualified to be admitted to the State Roll.

26. It was then submitted that the impugned order is based on wholly irrelevant and perverse considerations as would be evident from the reasons which ultimately appear to have weighed with the BCI. It was submitted that not only is the impugned order rendered unsustainable on the ground of BCI having taken a wholly untenable and arbitrary view on the statutory provisions which apply, the impugned decision is also tainted by the vice of patently extraneous

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considerations having been borne in mind by BCI. Mr. Sood submitted that BCI clearly appears to have been prejudiced by the fact that the petitioner had not applied for Indian citizenship despite having stayed in the country since childhood. It was submitted that petitioner was not obliged in law to obtain Indian citizenship for the purposes of seeking enrolment. It was his submission that BCI, in any case, is not an authority charged with enforcing citizenship upon foreign nationals and it would have thus been well advised to exercise its powers strictly within the domain of the authority conferred upon it by the Act.

27. The insignificance of the nationality issue, according to Mr. Sood is further highlighted by the fact that the Proviso itself contemplates foreign nationals applying for enrolment and being accorded permission to practice law in the country. Mr. Sood submitted that said irrelevant considerations have had a direct impact on the final view taken by BCI on petitioner's enrolment.

28. It was submitted further that BCI has further erred in holding the petitioner as being disentitled from applying for enrolment by virtue of being employed in the South Korean Embassy. It was pointed out that Rule 49 incorporates a prohibition with respect to persons who are already enrolled as advocates and the said prescription has no application to a person who is yet to be enrolled. Mr. Sood drew the attention of the Court to Section 2(1)(a) which defines an "*advocate*" to mean one whose name is entered in any roll under the provisions of the Act. The "*roll*" has been defined in Section

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2(1)(k) to mean a roll of advocates prepared and maintained under the Act. The roll is maintained by State Bar Councils in accordance with the provisions of Section 17. Mr. Sood pointed out that it is thus apparent that it is only once a person comes to be inducted onto the rolls maintained by a State Bar Council that he would be entitled to be viewed as being an advocate. The submission was that the restriction which stands placed in Rule 49 is applicable at the post-enrolment stage and can thus possibly have no impact prior to the enrolment of a person under the Act. It was submitted that in any case once the petitioner is enrolled, he would necessarily have to comply with the professional standards which stand engrafted in Rule 49.

29. Mr. Sood submitted that BCI also appears to have passed the impugned order based on wholly extraneous factors such as a perceived inundation of foreign lawyers into India as well as the impediments in carrying out disciplinary action. It was submitted that BCI has in the impugned order observed that if the petitioner's enrolment was to be granted, it would open flood gates and lead to similarly placed individuals in India applying for enrolment as legal practitioners. Mr. Sood submitted that the aforesaid view as taken is clearly unsustainable and perverse bearing in mind the fact that petitioner is not a lawyer trained as per foreign qualification seeking enrolment but a foreign national living in India and who holds a qualification duly recognised under the statute.

30. It was in this regard further submitted that the reliance placed in on the judgment of the Supreme Court in **Bar Council of India v.**

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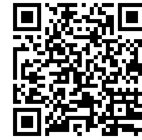

A.K. Balaji[9] is also clearly misplaced. It was pointed that *Balaji* was concerned with lawyers holding foreign decrees seeking to practice and pursue the legal profession in India without enrolling under the Act. Mr. Sood submitted that *Balaji* was not concerned with a foreign national who may be otherwise qualified to pursue the legal profession in India at all.

31. It was also pointed out that in terms of the impugned order BCI clearly appears to have raised additional disqualifications and restrictions falling outside the parameters contemplated in Section 24. This, according to Mr. Sood, would clearly fall foul of the principles laid down by the Supreme Court in **V. Sudeer v. Bar Council of India**[10] as well as **Indian Council of Legal Aid & Advice v. Bar Council of India**[11]. Mr. Sood referred to the following observations as appearing in *V. Sudeer*: -

> "**16.** It becomes at once clear that the impugned Rules are said to have been framed by the Bar Council of India in exercise of its statutory powers under Section 24(3)(*d*) of the Act. We have already traced the history of the aforesaid statutory provisions. It is no doubt true that sub-section (3) of Section 24 starts with a non obstante clause and provides that notwithstanding anything contained in sub-section (1), a person mentioned in categories (*a*), (*aa*), (*c*) and (*d*) may be admitted as an advocate on a State Roll if he applies as laid down in clause (1) and fulfils the conditions specified in clauses (*a*), (*b*), (*e*) and (*f*) of sub-section (1). The Objects and Reasons for enacting the said provision, as noted earlier, 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

[9] (2018) 5 SCC 379
[10] (1999) 3 SCC 176
[11] (1995) 1 SCC 732

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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 and even for such additional class of persons to be enrolled as advocates by exercise of the rule-making power of the Bar Council of India, they had to satisfy the statutory requirements of clauses (*a*), (*b*), (*e*) and (*f*) of sub-section (1) of Section 24. This enabling provision available to the Bar Council of India by rules to extend the scope of eligibility in favour of those who were ineligible under Section 24(1) to be enrolled as advocates 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 to make eligible otherwise ineligible persons for enrolment as advocates under Section 24(1) 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, to say the least, could be utilised for making ineligible persons eligible for enrolment despite what is stated under sub-section (1) of Section 24 but it 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. It is, therefore, difficult to appreciate the contention of learned Senior Counsel, Shri Rao for the Bar Council of India that by exercise of the said Rule, it could impose a further condition of disability of an otherwise eligible candidate to be enrolled even if he had satisfied all the statutory conditions laid down by Section 24 sub-section (1). To illustrate the nature of such rule-making power and the limited scope thereof, it may be visualised that as

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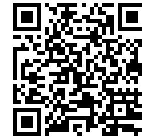

per Section 24 sub-section (1) clause (*c*), unless a person has obtained the degree of Law from any recognised university in India, he would not be entitled to be enrolled as an advocate. Still the Bar Council of India in its wisdom and discretion by exercising its enabling rule-making power under Section 24 sub-section (3)(*d*) read with Section 49(1) may permit a citizen of India who might have obtained a degree from a foreign university like a Law Degree from England or a Law Degree from Harvard Law School of America or a Law Degree from a Canadian or Australian University to be enrolled as an advocate. Such category of persons who could not have been enrolled on the express language of Section 24(1) could be enrolled by the State Bar Councils under Section 24(3)(*d*) if the Bar Council of India in exercise of its rule-making power had covered them for such enrolment. It is this beneficial and enabling power for bringing in the sweep of the umbrella of Section 24(1) those who would have otherwise been out of it which is conferred by sub-section (3)(*d*) of Section 24 on the Bar Council of India read with Section 49(1). It is also necessary to note that this power is available to the Bar Council of India from 1964 all throughout till date, while between 1963 and January 1974, pre-enrolment training and examination could be prescribed as a condition by the State Bar Councils as per the then existing condition (*d*) of sub-section (1) of Section 24 for such enrolment. Consequently, it 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.

17. We may also mention one additional submission of Senior Advocate, Shri P.P. Rao in support of the impugned Rules. He 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

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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(1) especially clause 2(*d*) thereof which provides as under:

> "28. (1) A State Bar Council may make rules to carry out the purposes of this Chapter.
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—
> (*a*)-(*c*) * * *
> (*d*) the conditions subject to which a person may be admitted as an advocate on any such roll."

18. Consequently, the submission of Shri P.P. Rao, learned Senior Counsel for the Bar Council of India that the Council also can exercise rule-making power under Section 24(1) for imposing an additional condition of qualification for a person to be enrolled on the State Roll obviously cannot be accepted."

32. The Court's attention was also drawn to paragraphs 8, 11 and 12 as appearing in the decision of the Supreme Court in *Indian Council of Legal Aid*: -

"**8.** The newly added rule seeks to bar the entry of persons who have completed the age of 45 years on the date of application for enrolment as an advocate from being enrolled as such by the State Bar Council concerned. While Section 24 of the Act prescribes the minimum age for enrolment as twenty-one years complete, there is no provision in the Act which can be said to prescribe the maximum age for entry into the profession. Since the Act is silent on this point the Bar Council of India was required to resort to its rule-making power. The rules made by the Bar Council of India under Section 49(1) of the Act are in seven parts, each part having its own chapters. Part VI is entitled "Rules Governing Advocates" and the said part has three chapters. Chapter I sets out the restrictions on senior advocates and is relatable to Sections 16(3) and 49(1)(*g*) of the Act, Chapter II lays down the standards of

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professional conduct and etiquette and is relatable to Section 49(1)(*c*) read with the proviso thereto and Chapter III deals with "Conditions for right to practise" and is stated to be made in exercise of power under clause (*ah*) of sub-section (1) of Section 49 of the Act. That clause reads as under:

> "(*ah*) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;"

On the plain language of the said clause it seems clear to us that under the said provision the Bar Council of India can lay down the 'conditions' subject to which "an advocate" shall have the right to practise. These conditions which the Bar Council of India can lay down are applicable to an advocate, i.e., a person who has already been enrolled as an advocate by the State Bar Council concerned. The conditions which can be prescribed must apply at the post-enrolment stage since they are expected to relate to the right to practise. They can, therefore, not operate at the pre-enrolment stage. By the impugned rule, the entry of those who have completed 45 years at the date of application for enrolment is sought to be barred. The rule clearly operates at the pre-enrolment stage and cannot, therefore, receive the shelter of clause (*ah*) of Section 49(1) of the Act. Under the said clause conditions applicable to an advocate touching his right to practise can be laid down, and if laid down he must exercise his right subject to those conditions. But the language of the said clause does not permit laying down of conditions for entry into the profession. We have, therefore, no hesitation in coming to the conclusion that clause (*ah*) of Section 49(1) of the Act does not empower the Bar Council of India to frame a rule barring persons who have completed 45 years of age from enrolment as an advocate. The impugned rule is, therefore, ultra vires the said provision.

11. It seems Parliament while enacting the Act created agencies at the State level as well as at the Central level in the form of State Bar Councils and Bar Council of India and invested them with rule-making powers on diverse matters touching the legal profession, presumably because it must have realised that matter pertaining to the profession are best left to informed bodies comprising of members of the said profession. However, while doing so it provided for basic substantive matters, e.g., eligibility for entry into the profession (Section 24), disqualification for enrolment (Section 24-A), authority entitled to grant admission (Sections 25 and 26), the authority which can remove any name

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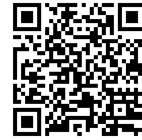

from the roll (Section 26-A), etc., and placed them within the domain of a State Bar Council. Thus it is the State Bar Council which alone must decide the question of enrolment of an applicant on its roll. Under Section 24 a person who is a citizen of India and possesses a degree in Law becomes qualified to be admitted as an advocate if he has completed twenty-one years of age, subject of course to the other provisions of the Act. No doubt he must fulfil the other conditions specified in the rules made by the State Bar Council [Section 24(1)(*e*)]. Every person whose name is entered in the list of advocates has a right to practise in all courts including the Supreme Court, before any tribunal or other authority. It is, therefore, within the exclusive domain of the State Bar Councils to admit persons as advocates on their rolls or to remove their names from the rolls. There is no provision in Chapter III dealing with admission and enrolment of advocates which restricts the entry of those who have completed 45 years as advocates. Nor has the State Bar Council made any such rule under its rule-making power.

12. There is no specific provision in Section 7 of the Act which enumerates the functions of the Bar Council of India empowering it to fix the maximum age beyond which entry into the profession would be barred. That is why reliance is placed on the rule-making power of the Bar Council of India enshrined in Section 49. That section empowers the making of rule by the Bar Council of India "for discharging its functions" under the Act, and, in particular, such rules may prescribe the class or category of persons entitled to be enrolled as advocates. The functions of the Bar Council of India enumerated in Section 7 do not envisage laying down a stipulation disqualifying persons otherwise qualified from entering the legal profession merely because they have completed the age of 45 years. On the other hand Section 24-A was introduced by Section 19 of Act 60 of 1973 with effect from 31-1-1974 to disqualify certain persons from entering the legal profession for a limited period. By the impugned rule every person even if qualified but who has completed 45 years of age is debarred for all times from enrolment as an advocate. If it had been possible to restrict the entry of even those class or category of persons referred to in Section 24-A by a mere rule made by the Bar Council of India, where was the need for a statutory amendment? That is presumably because matters concerning disqualification even for a limited period was considered to be falling outside the ken of rule-making power, being a matter of public policy. It is difficult to accept the interpretation that all those above the age group of 45 years constitute a class within the scope of clause (*ag*) of Section 49(1)

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> of the Act to permit the Bar Council of India to debar their entry into the profession for all times. In the guise of making a rule the Bar Council of India is virtually introducing an additional clause in Section 24 of the Act prescribing an upper age ceiling of completed age of 45 years beyond which no person shall be eligible for enrolment as an advocate or is inserting an additional clause in Section 24-A of the Act prescribing a disqualification. Viewed from either point of view we are clearly of the opinion that the rule-making power under clause (*ag*) of Section 49(1) of the Act does not confer any such power on the Bar Council of India. We are unable to subscribe to the view that all those who have completed the age of 45 years and are otherwise eligible to be enrolled as advocates constitute a class or category which can be disqualified as a single block from entering the profession. Besides, as stated above clause (*ag*) relates to identification and specification of a class or category of persons 'entitled' to be enrolled and not 'disentitled' to be enrolled as advocates. We, therefore, are of the opinion that the impugned rule is beyond the rule-making power of the Bar Council of India and is, therefore, ultra vires the Act."

33. Mr. Sood submitted that as would be evident from the principles laid down in the aforenoted two decisions, it would be wholly impermissible for BCI to frame barriers or restrictions which may result in persons otherwise qualified under the Act being rendered ineligible to be enrolled.

34. Mr. Sood lastly submitted that petitioner had enrolled in the NALSAR with the legitimate expectation and hope that he would be able to utilise his law degree and form a legal practice in India. It was submitted that at no point was the petitioner during the course of pursuing his five year B.A., LL.B (Hons) programme informed that his nationality would prevent him from being admitted to the State Bar rendering the degree ultimately granted ineffective. Mr. Sood pointed out that even today, BCI does not dispute or cast a doubt with

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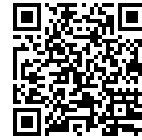

respect to the degree that the petitioner holds and which but for him being a foreign national would have otherwise clearly entitled him to be enrolled as an advocate. It was submitted that apart from BCI nominees being present on various councils of NALSAR University including its Academic Council even the University Grants Commission reserves seats for foreign nationals in institutes recognised by BCI. The degrees granted to such foreign nationals upon culmination of those courses cannot be utilized in various countries without a formal enrolment with the BCI. According to Mr. Sood, the aforesaid facts would clearly establish that the view taken by the BCI is not only arbitrary but also retrograde.

35. In view of the aforesaid, it was the submission of Mr. Sood that the impugned order is liable to be set aside and a formal declaration in favour of the petitioner liable to be granted.

36. Appearing for BCI Mr. Singh, learned counsel apart from reiterating the grounds which stand expressed in the impugned order has further submitted that a foreign national has no vested right to be enrolled as an advocate under the Act. He submitted that the Act vests absolute discretion in the Bar Council to consider an application for enrolment. It was further urged that BCI had constituted a Sub-Committee for examining the issues which stood raised and arose out of the application which was made by the petitioner and that it has on a holistic examination of all aspects proceeded to reject the same in terms of the impugned order.

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37. It was also submitted that the petitioner has failed to place on the record any material which may establish that an Indian citizen who is duly qualified to be registered under the Act is permitted to practice law in South Korea. According to Mr. Singh, as per the information gathered by BCI, no foreign degree of law has been accorded recognition and which may in turn enable the holder thereof to practice law in South Korea. It was submitted that the aforesaid would establish that although an Indian citizen who is duly qualified to practice law and be admitted on the rolls of a State Bar Council, the person is conferred no corresponding right to practice law in South Korea. Mr. Singh then submitted that the grant of relief as claimed by the petitioner would have a far-reaching and sweeping impact on the legal profession in India and in case foreign nationals were allowed to be enrolled as advocates, the same would have serious negative consequences since State Bar Councils do not have an effective mechanism in place to govern and regulate the enrolment of foreign nationals.

38. It was submitted that the issues raised in the petition relates to the entitlement of foreign lawyers to practice in India and that the subject of allowing the entry of persons of foreign origin to pursue the legal profession is a subject which is pending consideration with the BCI in terms of the directions issued by the Supreme Court. It was submitted that till such time as appropriate rules regulating the entry of foreign nationals is finalised, no relief is liable to be accorded to the petitioner.

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39. Turning then to the provisions of Section 24, it was submitted that the use of the expression "*may*" in the Proviso to Section 24(1)(a) is clearly indicative of a discretion which stands vested in the BCI and negates the contention of the petitioner that he is entitled to be enrolled as a matter of right. Mr. Singh further contended that till such time as Indian nationals who are duly qualified to be enrolled as advocates under the Act are permitted to practice law in South Korea, the case of the petitioner would not fall within the ambit of Sections 24 and 47. It was in the aforesaid backdrop that Mr. Singh submitted the writ petition is liable to be dismissed.

40. It was last urged by Mr. Singh that the contemporaneous material which has been referred to by the petitioner is also of no avail since a mere communication addressed by the President of the South Korean Bar Association cannot be viewed as being conclusive of the issues which stand raised. It was also contended that the Attorney-At-Law Act as well as the NBE Act also do not explicitly indicate that the statutory position as prevailing in South Korea would enable an Indian national to pursue a career as a legal practitioner in South Korea. It is the aforenoted rival submissions which fall for consideration.

41. Before proceeding ahead, it would be pertinent to extract some of the relevant provisions of the **Attorney-At-Law Act** which is stated to govern the procedure for enrolment of Attorneys-at-Law in South Korea. Article 4 of the aforesaid Act specifies the qualifications for Attorneys-At-Law. The said provision is extracted hereinbelow: -

"**Article 4 (Qualifications for Attorneys-at-Law)**

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Any person falling under any of the following subparagraphs shall be qualified to be an attorney-at-law: (Amended by Act No. 10627, May 17.2011)
1. A person who has completed the required curriculum of the Judicial Research and Training Institute after passing the judicial examination:
2. A person who is qualified as a judge or a prosecutor:
3. A person who has passed the bar examination.

[This Article Wholly Amended by Act No. 8991, Mar. 28. 2008]"

42. Article 5 spells out the grounds for disqualification which reads as under: -

"**Article 5 (Grounds for Disqualification of Attorneys-at-Law)**

Any of the following persons shall be disqualified from being an attorney-at-law: (Amended by Act No. 12589, May 20, 2014: Act No. 12887, Dec 30, 2014: Act No. 15251, Dec. 19, 2017)

1. A person who is sentenced to imprisonment without labor or greater punishment and for whom five years have yet to elapse after the execution of such sentence is complete or exemption from the execution of such sentence is made definite;
2. A person who is sentenced to a stay of execution of imprisonment without labor or greater punishment and for whom two years have yet to elapse since the lapse of the stay period;
3. A person who is in the period of a stay of sentence after he or she is sentenced to a stay of sentence of imprisonment without labor or greater punishment;
4. A person for whom five years have yet to elapse after he or she has been fired through an impeachment or disciplinary action or disbarred under this Act;
5. A person for whom three years have yet to elapse after he or she has been dismissed from office through disciplinary action;
6. A person for whom two years have yet to elapse after he or she has been discharged from office through disciplinary action;
7. A person who is under suspension from office imposed as part of a disciplinary action while serving as a public official (in such case, even if he or she retires during the period of suspension, he or she shall be deemed under suspension until such period under the relevant disciplinary action elapses);
8. A person who is under adult guardianship or limited guardianship;
9. A person who was declared bankrupt but is not yet reinstated;

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10. A person who was permanently disbarred under this Act."

43. Article 7 sets out the procedure for registration of an Attorney-At-Law who intends to establish a legal practice in South Korea. The same is reproduced hereinbelow: -

"**Article 7 (Registration of Qualifications)**

(1) Each attorney-at-law who intends to establish a legal practice shall register his or her name with the Korean Bar Association.

(2) Each person who intends to register as referred to in paragraph (1) shall file with the Korean Bar Association an application for registration through a local bar association with which he or she intends to be affiliated.

(3) Any local bar association may, upon receipt of an application for registration referred to in paragraph (2), append thereto its written opinion on whether the applicant is qualified as an attorney-at-law

(4) The Korean Bar Association shall, upon receiving an application for registration referred to in paragraph (2), register the name in its roster of attorneys-at-law and serve, without delay, a notice thereof on the applicant.

[This Article Wholly Amended by Act No. 8991, Mar. 28, 2008]"

44. Article 8 specifies the grounds on which an application for registration may be refused. That provision reads as follows: -

"**Article 8 (Denial of Registration)**

(1) When any person who has filed an application for registration under Article 7 (2) falls under any of the following sub-paragraphs, the Korean Bar Association may deny his or her registration, going through resolution by the Registration Review Committee established under Article 9. In such cases, where the registration is denied on the ground that the person falls under sub-paragraph 4, the Korean Bar Association shall determine a registration prohibition period of at least one year and up to two years after going through resolution by the Registration Review Committee pursuant to Article 9:
(Amended by Act No. 12589, May 20, 2014. Act No. 15251, Dec. 19, 2017)

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1.A person who is not qualified as an attorney-at-law referred to in Article 4;

2.A person who falls under the grounds for disqualification referred to in Article 5;

3.A person who has difficulties performing the duties of an attorney-at-law due to a mental disorder.

4.A person deemed clearly inappropriate to conduct the duties of an attorney-at-law due to the fact that he or she has been subject to criminal prosecution (excluding cases of being prosecuted for criminal negligence) or disciplinary action [excluding removal, dismissal, discharge from office, or suspension from office (limited to cases where the period of suspension imposed as part of a relevant disciplinary action has not yet elapsed)] due to unlawful conduct while working as a public official or has retired from office related to an unlawful conduct:

5.A person for whom his or her registration has been denied on the grounds prescribed in subparagraph 4 or for whom the registration prohibition period has not passed since his or her registration has been revoked under Article 18 (2) on the grounds prescribed in subparagraph 4:

6. Deleted. (by Act No. 12589, May 20, 2014)

(2) When the Korean Bar Association has denied the registration pursuant to paragraph (1), it shall serve a notice on the applicant, without delay, expressly giving reasons therefor. (Newly Inserted by Act No. 12589, May 20, 2014)

(3) When the Korean Bar Association neither grants nor denies registration by the time three months have passed since the date on which an application for registration referred to in Article 7 (2) was received, registration shall be deemed to have been granted.

(4) Any person whose registration is denied under paragraph (1) may raise an objection, clarifying the reason why the denial of registration is unjust, to the Minister of Justice within three months from the date on which a notice referred to in paragraph (1) is served.

(5) The Minister of Justice shall, when he or she deems the objection referred to in paragraph (4) well-grounded, order the Korean Bar Association to grant registration of the attorney-at-law in question. (Amended by Act No 12589, May 20, 2014)"

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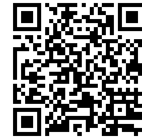

45. From a reading of the various provisions contained in the NBE Act, it appears that the South Korean statute envisages a National Bar Examination to test the legal ability and knowledge of persons who may be entitled to practice law in that country. As per Article 2, the National Bar Examination is administered in close connection with the curriculum of professional law schools and is administered and supervised by the Minister of Justice. Article 5 specifies the qualifications required for the aforesaid purpose. That provision reads as follows: -

> "**Article 5 (Qualifications for Application)**
>
> (1) A person who intends to apply for the Examination shall have earned a juris doctorate degree from a professional law school under Article 18(1) of the Act on the Establishment and Management of Professional Law Schools: Provided, That a person may apply for the Legal Ethics Examination prior to conferment of a juris doctorate degree from a professional law school, as prescribed by Presidential Decree.
>
> (2) A person shall be regarded as qualified for the application under the main clause of paragraph (1) if he/she is expected to earn a juris doctorate degree from a professional law school under Article 18 (1) of the Act on the Establishment and Management of Professional Law Schools: Provided, That in cases where such person falls to earn a juris doctorate degree at the expected time, he/she may be rejected or a decision to accept him/her may be cancelled (Newly Inserted by Act No. 10923. Jul. 25, 2011)
>
> (3) The methods for determining applications for application under paragraph (1) and (2) shall be prescribed by Presidential Decree (Amended by Act No. 10923, Jul. 25, 2011)
>
> (4) Where the Minister of Justice or a person applying for the Examination requests verification of qualifications of the person applying for the Examination, the head of a professional law school shall verify such qualifications. (Amended by Act No. 10923, Jul 25, 2011)"

46. The disqualifications which would disentitle a person from

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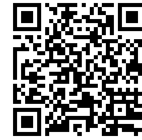

taking the National Bar Examination are specified in Article 6 and which provision reads thus: -

> "**Articles 6 (Reasons for Disqualification)**
>
> Any of the following persons may not apply for the Examination during the period of the Examination announced under Article 4: (Amended by Act No. 15154. Dec. 12. 2017)
>
> 1. A person under adult guardianship or a person under limited guardianship:
>
> 2. A person for whom five years have not passed since his/her imprisonment without labor or heavier punishment declared by a court was completely executed (including cases where it is deemed completed) or the non-execution of such sentence has not become final;
>
> 3. A person for whom two years have not passed since the suspension of the execution of his/her imprisonment with laboror heavier punishment has ended;
>
> 4. A person who is under suspension of the sentence of imprisonment without labor or heavier punishment;
>
> 5. A person for whom five years have not passed since the person was removed from office by impeachment or disciplinary measures:
>
> 6. A person for whom five years have not passed since the person was disbarred under the Attorney at Law Act;
>
> 7. A person for whom three years have not passed since the person was dismissed from office by disciplinary measures;
>
> 8. A person who is permanently disbarred under the Amory at Law Act"

47. The Attorney-At-Law Act while specifying the qualifications that must be possessed by a person stipulates that any person who has completed the required curriculum of the Judicial Research and Training Institute after passing the judicial examination is qualified to be an Attorney-at-Law. It additionally provides that a person who is either qualified as a Judge or a Prosecutor or one who has passed a bar

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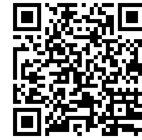

examination would also be qualified to be an Attorney-at-Law. Although Article 5 prescribes various grounds for disqualification, none of them lay in place a nationality requirement for the purposes of an individual being considered as qualified to be an Attorney-at-Law. The provisions of the NBE Act also do not prescribe that a foreign national would be disqualified from either taking the examination or being otherwise disqualified from pursuing the legal profession in South Korea.

48. That takes us then to the first and fundamental question of whether the provisions of the Act envisage a foreign national being inherently barred from seeking enrolment. As was noticed hereinbefore, the word "advocate" under the Act has been defined to mean an advocate entered in any roll maintained by the respective Bar Councils of States. A law graduate has been defined in Section 2(1)(h) to mean a person who has obtained a Bachelor's degree in law from any University established by law in India.

49. In terms of Section 17, every State Bar Council is obliged to prepare and maintain a roll of advocates which would include the names and addresses of all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 before the appointed date including persons being citizens of India who before 15 August 1977 were enrolled as advocates under the aforenoted Act. The roll also carries the names of all persons who are admitted to be advocates in terms of the provisions made in the Act.

50. Section 24 then prescribes the conditions which must be

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fulfilled by a person who seeks admission as an advocate on a State Roll. The requirement of nationality stands specified in Section 24(1)(a) which stipulates that a person who seeks enrolment must be a citizen of India. In addition to the above, the person must be twenty one years of age and have obtained a degree in law as per the specifications set out in Section 24(1)(c).

51. Section 24-A spells out the disqualifications for enrolment**.** The disqualifications are specified to be where a person may be convicted of an offence involving moral turpitude, stands convicted for an offence under the provisions of the Untouchability [Offences] Act, 1955 or had been dismissed or removed from employment or office under the State on any charge involving model turpitude. Undisputedly, Jung does not suffer from any of the disqualifications specified in Section 24-A nor is it the case of the respondent that he fails to meet the requirements specified in clauses (b) and (c) of Section 24(1). That only leaves the Court to consider whether the petitioner is entitled to seek enrolment by virtue of the Proviso to Section 24(1)(a).

52. Undoubtedly and on an *ex facie* reading of the Proviso to Section 24(1)(a), it is apparent that a national of any other country may also be admitted as an advocate on a State Roll. The Proviso thus undoubtedly does not completely oust foreign nationals from consideration. The Proviso to Section 24(1)(a), and as a Proviso is intended to function and operate generally, creates an exception to a person seeking enrolment being a citizen of India. It essentially speaks

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of categories of persons who, though not Indian nationals, may vie for enrolment. It is to that category of foreign nationals that the Proviso speaks. This thus leads the Court to the irresistible conclusion that foreign nationals are not *per se* barred from being considered for enrolment under Section 24 of the Act.

53. It becomes pertinent to note that the promulgation of the Act was preceded by the introduction of the **Legal Practitioners Bills, 1959**[12]. Clause 22 of the Bill corresponded to Section 24 of the present Act which ultimately came to be adopted. The Notes on Clauses with respect to Clause 22 read as follows: -

> "**Clause 22.** –This clause prescribes the qualifications for admission to the legal profession. In order to be eligible for admission to the legal profession a person must be a citizen of India. Foreigners may be admitted on reciprocal basis. The minimum educational qualifications are a bachelor's degree in Arts, Science or Commerce followed by a degree in law from any Indian University, or any foreign qualification in law which is recognised by the All-India Bar Council. A candidate for admission to the legal profession will also have to undergo a course of practical training and pass an examination in practical subjects. Provision has been made for exemption from the practical test of persons who by reason of their legal training should not be subjected to such a test. Existing vakils, pleaders and attorneys who are law graduates, or who are not law graduates but are entitled to be enrolled as advocates of a High Court can be admitted as advocates if they apply for such enrolment within one year from the commencement of the new law."

As is evident from the aforesaid extract, the right of foreign nationals to be entitled to seek enrolment, albeit on a reciprocal basis, was one which was recognised even at that stage.

[12] [Bill No.80 of 1959]

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54. The right of a foreign national to seek enrolment is made dependent on the solitary ground which stands incorporated as the penultimate part of the Proviso. The right of such a foreign national to be considered for enrolment is made subject only to the condition that citizens of India, if duly qualified, are also permitted to practice law in that other country from where the foreign national hails. The position which emerges is while duly qualified citizens of India are undoubtedly entitled to apply for enrolment, the right of foreign nationals is made contingent upon the State Bar Council being satisfied that Indian nationals are conferred an identical right to pursue the legal profession in that country. In the absence of a nationality restriction clause being found to exist in a foreign nation, its citizens would be entitled in law to apply for enrolment subject of course to them being compliant with the other parts of Section 24. The Court proposes to deal with the question of the meaning to be ascribed to the phrase "*duly qualified*" in the latter parts of this decision.

55. The position of the right of foreign nationals to seek enrolment may also be tested in the backdrop of Section 47 of the Act. A subject of a foreign country becomes disentitled to practice the profession of law in India in a situation where the Union Government has found that the country to which that national belongs prevents citizens of India from either pursing the legal profession or subjects them to unfair discrimination. Such nations have to be duly identified by the Union Government upon due enquiry and on it being satisfied that such a bar needs to be put in place, a notification to that effect issued in terms of

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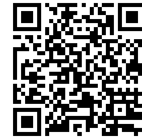

Section 47(1).

56. The provisions of Section 47 are based on the principles of reciprocity amongst Nation States. Section 47(1) is a power vested exclusively in the Union Government and thus not a subject in respect of which either the BCI or a State Bar Council may exercise jurisdiction. What clearly flows from Section 47(1) is the absence of any authority inhering in the BCI or a State Bar Council to debar citizens of a country from pursuing the legal profession, if otherwise qualified, in the absence of a notification issued by the Union in terms of that provision. The only enquiry which the BCI or the State Bar Councils are statutorily empowered to undertake is confined to the Proviso to Section 24(1)(a) of the Act. Undisputedly, the Union has not notified South Korea as a nation under Section 47(1) of the Act.

57. The Court then proceeds to consider how the phrase "duly qualified" in the Proviso to Section 24(1)(a) is liable to be understood. However, the answer to that question must be prefaced by the following observations. It becomes pertinent to note that both Sections 24 and 47 of the Act significantly use the expression *"citizen of India"* as distinguished from an *"advocate"*. This clearly appears to be of some discernible significance as would be evident from the discussion which follows.

58. It must be borne in mind that a person, in terms of the provisions of the Act, becomes entitled to be recognised as an advocate only if his/her name be included on the roll of a State Bar Council. This is fortified by the provisions contained in Sections 29,

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30 and 33 of the Act. A conjoint reading of Sections 29, 30 and 33 clearly establishes that it is only those persons whose names stand included on the roll maintained by a Bar Council and were thus entitled to be recognised as advocates who are permitted to practice law in the country. The Court seeks to lay stress and emphasis upon the fact that it is only when the name of a person comes to be included in the State Roll that he becomes entitled to be recognised as an advocate.

59. The word "advocate" and the meaning to be ascribed to that term was an issue which was ruled upon by the Supreme Court in *Indian Council of Legal Aid*. While dealing with the validity of a rule which sought to bar the entry of persons from claiming enrolment upon attaining the age of 45 years, the Supreme Court pertinently observed: -

> "**8.** The newly added rule seeks to bar the entry of persons who have completed the age of 45 years on the date of application for enrolment as an advocate from being enrolled as such by the State Bar Council concerned. While Section 24 of the Act prescribes the minimum age for enrolment as twenty-one years complete, there is no provision in the Act which can be said to prescribe the maximum age for entry into the profession. Since the Act is silent on this point the Bar Council of India was required to resort to its rule-making power. The rules made by the Bar Council of India under Section 49(1) of the Act are in seven parts, each part having its own chapters. Part VI is entitled "Rules Governing Advocates" and the said part has three chapters. Chapter I sets out the restrictions on senior advocates and is relatable to Sections 16(3) and 49(1)(*g*) of the Act, Chapter II lays down the standards of professional conduct and etiquette and is relatable to Section 49(1)(*c*) read with the proviso thereto and Chapter III deals with "Conditions for right to practise" and is stated to be made in exercise of power under clause (*ah*) of sub-section (1) of Section 49 of the Act. That clause reads as under:

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> "(*ah*) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;"
>
> On the plain language of the said clause it seems clear to us that under the said provision the Bar Council of India can lay down the 'conditions' subject to which "an advocate" shall have the right to practise. These conditions which the Bar Council of India can lay down are applicable to an advocate, i.e., a person who has already been enrolled as an advocate by the State Bar Council concerned. The conditions which can be prescribed must apply at the post-enrolment stage since they are expected to relate to the right to practise. They can, therefore, not operate at the pre-enrolment stage. By the impugned rule, the entry of those who have completed 45 years at the date of application for enrolment is sought to be barred. The rule clearly operates at the pre-enrolment stage and cannot, therefore, receive the shelter of clause (*ah*) of Section 49(1) of the Act. Under the said clause conditions applicable to an advocate touching his right to practise can be laid down, and if laid down he must exercise his right subject to those conditions. But the language of the said clause does not permit laying down of conditions for entry into the profession. We have, therefore, no hesitation in coming to the conclusion that clause (*ah*) of Section 49(1) of the Act does not empower the Bar Council of India to frame a rule barring persons who have completed 45 years of age from enrolment as an advocate. The impugned rule is, therefore, ultra vires the said provision."

60. Thus, it is manifest that it is only post enrolment that an individual can be recognised to be an advocate. Reverting then to the issue which stood formulated, it becomes relevant to note that the Proviso to Section 24(1)(a) speaks of "citizens of India", as distinct from an "advocate", who if duly qualified is permitted to practice law in any other foreign nation. The BCI contends that the words *"duly qualified"* must be interpreted to mean a citizen of India who holds any of the qualifications specified in Section 24(1)(c) and thus becoming automatically eligible to practice law in a foreign nation.

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The Court finds itself unable to sustain the aforesaid submissions for the following reasons.

61. It must be noted that the Proviso speaks of citizens of India as distinguished from advocates. The Proviso does not prescribe that the right of a foreign national to seek enrolment is dependent upon an "advocate" being permitted to practice law in a foreign country. Similar is the position which comes to the fore when one views Section 47. Section 47(1) too speaks of "citizens of India" and not Indian advocates who may be entitled to practice the profession of law. As had been observed in the preceding parts of this decision, Section 47 confers a power on the Union Government to notify certain countries whose citizens would be disentitled from pursuing the legal profession in India. That power is exercisable upon the formation of an opinion by the Union Government that the said country prevents citizens of India from practicing the legal profession or subjects them to unfair discrimination. The test both under the Proviso to Section 24(1)(a) as well as Section 47 is thus based upon citizens of India and their right to practice and pursue the legal profession in a foreign country. It is in the aforesaid backdrop that the phrase "duly qualified" is liable to be interpreted.

62. What further emerges from a holistic reading of the various provisions of the Act is the distinction which appears to have been consciously made between the words' "advocate" and "citizen of India" which are employed at different places of the enactment and with a clear intent to carry a distinct connotation. While a citizen of

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India does undoubtedly form subject matter of the statute, the moment that citizen comes to be included on the roll of a Bar Council, the person attains the status of an advocate under the Act. From the moment the name of a person stands entered on the roll maintained by a State Bar Council, the individual is recognised and conferred the status of an advocate duly recognised under the Act. What needs to be emphasised is that the Proviso does not speak of an *"advocates duly qualified"* but of *"citizens of India duly qualified"*. It is therefore manifest that the expression "duly qualified" is intended to mean an Indian citizen holding a qualification which enables him to practise the law in foreign nations.

63. The Court finds itself unable to read either Section 24(1)(a) or Section 47 as envisaging advocates of India being entitled to practice law in another country or for the conferment of such a right being the determinative factor for the purposes of an application for enrolment that may be made by a foreign national. As this Court reads the Proviso to Section 24(1)(a) together with Section 47, it is manifest that the right of a foreign national to seek enrolment or to practice law in India is hedged only by the enquiry on the question of whether a citizen of India, if otherwise duly qualified, is prevented from practicing law in the foreign nation. To put it in another way, as long as the right of the citizens of India who hold the requisite qualification to practice law in a foreign nation is preserved and no discriminatory measures adopted in the foreign nation, the nationals of the said country would clearly be entitled to seek enrolment in terms of the

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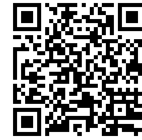

proviso to Section 24(1)(a). This, subject of course, to they being otherwise qualified to be enrolled.

64. The submissions addressed by BCI on this score are liable to be negated for yet another reason. As was noticed hereinbefore, BCI had sought to contend that it is only when Indian advocates are permitted to practise law in a reciprocating nation that a foreign national of that country would be entitled to seek enrolment. The aforesaid submission is addressed in ignorance of the significant fact that recognition of foreign degrees is a subject which stands reserved for consideration under Section 47(2) of the Act. The power to recognise law degrees other than those which would fall under Section 24 is a matter undoubtedly left for the consideration of the BCI. Section 47(2) comes into play where a foreign national seeks enrolment on the basis of a degree or qualification granted outside India and falling beyond the contours of Section 24. The issue of equivalence or recognition of degrees is clearly alien to the enquiry contemplated under the Proviso.

65. The arguments addressed on behalf of BCI on this score also overlooks the fact that Jung does not assert a right to enrolment based upon a qualification obtained outside India from a foreign university or institution. He holds a valid degree granted by NALSAR and it is on that basis alone that he sought to press his application for enrolment.

66. While the right of BCI to pursue reciprocity and collaboration amongst different jurisdictions following a common law legal system may be laudable, the claim of Jung was clearly not conditional upon

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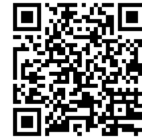

the degree awarded by NALSAR being accepted or recognised in South Korea. The Proviso to Section 24(1)(a) is not founded on the recognition of degrees by two competent statutory authorities but on the right of duly qualified citizens of India being granted the right to practise law in other jurisdictions alone. In view of the aforesaid discussion, the Court finds itself unable to accept the contentions urged at the behest of the BCI to the contrary.

67. The Court also bears in mind the significant observations as entered in *V. Sudeer* where upon a consideration of the rule making power engrafted in the statute the Supreme Court had held that while it would be open for BCI to bring persons otherwise ineligible within the zone of eligibility, the said power could not be exercised conversely. It was thus held that the BCI could not create a rule which rendered persons otherwise qualified ineligible. *V. Sudeer* thus in unequivocal terms restrains BCI from creating additional grounds of ineligibility.

68. The Court then finds that BCI while passing the impugned order clearly appears to have misdirected the enquiry which was liable to be undertaken in order to evaluate the application made by Jung. It must, at the outset, be stated that the query of why he never applied for or pursued an application for grant of Indian citizenship was wholly immaterial and uncalled for. It had absolutely no relevance for the purposes of considering his application for enrolment with the Bar. Equally irrelevant was the query posed by BCI relating to whether the competent authority in South Korea was willing to enter into a

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reciprocity agreement in terms of Section 47. Mr. Sood has rightly contended that the right of the petitioner to apply for enrolment was not dependent upon the existence of a provision identical to Section 24 in the Korean statutes.

69. As was noticed hereinabove, Jung's application for enrolment was not founded upon a foreign qualification that he may have held and on the strength of which he was desirous of attaining enrolment. He, undoubtedly, held the B.A., LL.B [Hons.] degree awarded by NALSAR. The queries so posed and to which the petitioner was forced to respond were clearly alien and unconnected to the factors germane for the purposes of considering his application for enrolment under Section 24(1)(a).

70. Equally inapt and irrational was the pursuit of BCI seeking to find a provision equivalent or parallel to Section 24 in the Attorney-At-Law Act and the NBE Act. Jung's prayer for enrolment was neither based on a claim of reciprocity between India and South Korea nor was it dependent upon the Parliament in South Korea adopting a provision identical to Section 24. His application for enrolment was liable to be considered solely on the basis of the provisions made in Section 24 and thus the innumerable other queries and considerations highlighted above and which appear to have formed the subject matter of consideration of the BCI were not only unwarranted but also misconceived.

71. It may be additionally noted that the Petitioner had addressed a very specific query to both the President, Korean Bar Association as

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well as the Ministry of Justice, South Korea on whether Indian nationals could enrol themselves with the Bar to practice law in South Korea. Responding to the same, the concerned authorities had clearly apprised the petitioner that in absence of a nationality bar, any interested individual could take the bar exam. Qualifications, disqualifications and other relevant provisions propounded in various provisions of the Korean law apply equally to South Koreans as well as Indian applicants clearly eliminating the discrimination concerns. In any case, no Korean statute was shown to raise a nationality bar disentitling an Indian citizen, otherwise qualified, from pursuing the legal profession. Therefore, the absence of an explicit provision corresponding to the Proviso to Section 24 [even though Section 24 contemplates no such explicit requirement] would not have warranted the rejection of Jung's application.

72. The Court also finds itself unable to appreciate the stand taken by the BCI with respect to the aforesaid material which had been placed for its consideration by the petitioner and which has been unceremoniously debunked on the ground that it had no statutory backing. Jung had placed adequate material before the BCI to establish the role and the function discharged by the Ministry of Justice as well as the South Korean Bar Association. It had also been asserted that those bodies performed functions akin to those of the BCI. There was thus no justification for the same having been outrightly rejected and eliminated from consideration.

73. BCI also appears to have borne in consideration the practical

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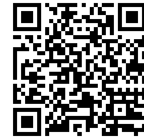

issues which it anticipated would arise in case disciplinary action were to be initiated against a foreign national who stood enrolled and who may or may not choose to remain in the country during those proceedings. In the considered opinion of this Court, the disciplinary action which the BCI is empowered to initiate must be answered bearing in mind the provisions of Section 35 of the Act. Section 35(3) empowers the respective Bar Councils to either reprimand an advocate, pass an order of suspension, or remove the name of an advocate from the state roll. Neither of those actions are dependent upon the physical presence of the foreign national in the country. Even if it were assumed for the sake of argument that a foreign national may flee the country after the initiation of disciplinary proceedings, the same would not act as a deterrent for the State Bar Councils to either reprimand, suspend or remove the advocate's name from the State Roll. Even if a foreign national were to choose not to attend or participate in the proceedings that may be drawn by the State Bar Council, it would always be open for that Council to proceed ex parte. It may be noted that the punishment prescribed in Section 35 do not extend to externment or incarceration which alone may have necessarily required the personal presence of the foreign national. The reasoning to the contrary as taken by the BCI can thus neither be countenanced nor approved.

74. BCI lastly appears to have harboured apprehensions with respect to the Petitioner's application for enrolment as being a precursor to a deluge of foreign lawyers entering India and for such

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foreign lawyers raising identical claims for enrolment. BCI clearly appears to have lost sight of the fact that Jung was not a *"foreign lawyer"* claiming a right to establish his own legal practice in India. In fact, and to the contrary, the petitioner is a foreign national who holds a degree in law which is duly recognised under the Act and thus entitling him to seek enrolment. In any case, the perceived threat and apprehension, even if it were assumed to be genuine, well founded and germane, would not detract from the right of the petitioner to pursue his claim for enrolment if otherwise permissible under the statute as it stands today.

75. BCI has clearly committed a manifest illegality in taking the position that the judgment of the Supreme Court in *Balaji* had answered the question which stood raised. The aforesaid view as taken is clearly misconceived for the following reasons. *Balaji* was a decision which was dealing with the question whether foreign law firms / lawyers could claim a right to practice in India. *Balaji* was not a decision which was even remotely concerned with the right of a foreign national who holds a degree duly recognised under the Act to seek enrolment. The solitary issue which formed subject matter of consideration of the Supreme Court was of foreign law firms or lawyers establishing offices of practice in India and their claimed right to appear before Indian courts. *Balaji* was clearly not dealing with the question of a foreign national holding a degree recognised under Section 24 seeking enrolment on a State Bar Roll.

76. It may also be observed while parting that BCI has, in any case,

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recently published rules for registration and regulation of foreign lawyers and law firms in India. The directions as farmed in *Balaji*, thus stand fulfilled consequent to the formulation of the **Bar Council of India Rules for Registration and Regulation of Foreign Lawyers or Foreign Law Firms of India, 2022.**

77. Mr. Sood had also sought to draw sustenance from the right conferred on Overseas Citizens of India pursing the legal profession. Reliance was placed on the notification dated 05 January 2009 and the same is reproduced hereinbelow: -

"MINISTRY OF OVERSEAS INDIAN AFFAIRS

NOTIFICATION

New Delhi, the 5th January, 2009

> **S. O. 36(E).-** In exercise of the powers conferred by sub-section (1) of Section 7B of the Citizenship Act, 1955 (57 of 1955), and in continuation of the notifications of the Government of India in the Ministry of Home Affairs number S.O. 542(E), dated the 11th April, 2005 and in the Ministry of Overseas Affairs S.O. 12(E), dated the 6th January, 2007, the Central Government hereby specifies the following rights to which the persons registered as the overseas citizen of India under Section 7A of the said Act, shall be entitled, namely:-
>
> **(a) parity with non-resident Indian in respect of, -**
>
> (i) entry fees to be charged for visiting the national monuments, historical sites and museums in India;
> (ii) pursuing the following professions in India, in pursuance of the provisions contained in the relevant Acts, namely:-
>
> (i) doctors, dentists, nurses and pharmacists;
> (ii) advocates;
> (iii) architects;
> (iv) chartered accountants;
>
> (b) to appear for the All India Pre-Medical Test or such other tests to make them eligible for admission in pursuance of the provisions contained in the relevant Acts.

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D.N. SRIVASTAVA, Jt. Secy."

78. It becomes to note that as per Section 7A of the Citizenship Act, 1955, apart from foreign nationals who would fall within the ambit of clauses a(i), a(ii) and a(iii), it also includes a child/grandchild/great grandchild of those persons. The categories who may fall within Section 7A(a)(iv) or for that matter clauses (b), (c) and (d) of Section 7A are also recognised as being eligible to pursue the legal profession in India subject of course to they being eligible under the Act. The aforesaid categories of individuals too would in essence be foreign nationals. The ship thus clearly appears to have sailed far away from the shores where the BCI stood and examined the questions which Jung had raised.

79. Accordingly, and for all the aforesaid reasons, the instant writ petition is allowed. The impugned order dated 23 July 2020 is quashed and set aside. The BCI is directed to process the petitioner's application for enrolment forthwith in accordance with law.

YASHWANT VARMA, J.

MAY 30, 2023
SU/*bh*