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"GAURAV KUMAR V. UNION OF INDIA: A CRITICAL EXAMINATION OF ENROLLMENT FEES, CONSTITUTIONAL RIGHTS, AND REGULATORY POWERS OF BAR COUNCILS"

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Introduction

In the case of Gaurav Kumar V. Union of India before the bench of the Chief Justice of India Dhananjaya Y. Chandrachud, Justice JB Pardiwala and Justice Manoj Misra of Supreme Court, the issue came to light from a petition filed by Gaurav Kumar, a law graduate who saw these additional enrolment charges as a financial barrier for the weaker section of society.¹ The petitioner filed a writ petition under Article 32 of the Indian Constitution directly approaching the Supreme Court to challenge that the SBCs were charging fees far exceeding the statutory limit set by Section 24(1)(f) of the Advocates Act, 1961², as the petitioner argued that the imposition of such fees disproportionately affected law graduates from economically weaker sections.

The case addresses the issue of enrollment fees charged by the various State Bar Council's at the time of admission of law graduates to the State Bar Council roll. The Judgement challenges the excessive fees levied by the SBC's, questioning whether the fees is in contravention to the section 24(1)(f) of the Advocates Act, 1961. The decision is significant as it highlights the boundaries of delegated legislation, constitutional rights under Article 14 and Article 19(1)(g), and the financial sustainability of professional bodies like the SBCs.³

Brief Background of the case

The Advocates Act, 1961 was enacted to consolidate and amend the law relating to legal practitioners and constitute a common Bar for the whole country. The Act established the SBC's and BCI giving them the responsibility to manage the admission of advocates to their

¹ Aastha Kaushik, Supreme Court Holds That Bar Councils Can't Demand More Fees Than Prescribed U/s. 24 Of Advocates Act, Judgment to Be Prospective, (July 30, 2024)

² Advocates Act, 1961, § 24(1)(f), No. 25, Acts of Parliament, 1961 (India)

³ A Young Advocates' Plight; Case Analysis Of Gaurav Kumar vs Union Of India, Naik Naik (Aug. 20, 2024)

rolls, preparation and maintenance of rolls, oversee their conduct and handle disciplinary matters, while also safeguarding the interests and privileges of advocates. The statute entitles the SBC's to provide legal aid to those in need, encourage and support changes in the legal system, hold discussions on legal topics, and publish journals and articles on important legal issues and also entitles the BCI to supervise the SBC's and shall impart legal education and setting standards for legal education in accordance with the universities whose degrees in law would be a qualification for enrolment as an advocate. Among these functions Section 24(1)(f) of the said Act prescribes a specific enrollment fee to be paid by candidates seeking admission to the Bar.

Section 24(1)(f) of the said Act stipulates that the enrollment fees should not exceed Rs. 750 for the candidates under general category and Rs. 125 for the candidates under SC/ST category. During time, the SBC's started charging various charges under different heads, such as library funds, administration fees, identity card fees, and welfare funds, etc. as enrolment fees from the law graduates. These charges started varying from state to state, with the cumulative enrolment fees ranging from ₹15,000 to ₹42,000 across different SBC's.

The petitioner filed a petition under Article 32 of the constitution of India challenging these additional enrolment charges as violating of the statutory provision of Section 24(1)(f) of the Advocates Act, 1961 and questioned whether these charges created a financial barrier for law graduates across India.

Issue of the case

The legal issues in the case were:

1. Legality of Additional Fees:

The first issue questioned whether State Bar Councils have the authority to charge fees that go beyond the limit specified in Section 24(1)(f) of the Advocates Act. This section defines the statutory enrolment fee for advocates, but some councils have been charging extra fees under various heads, raising the question of whether such charges are lawful. The courts needed to determine if these additional fees had any legal basis or if they exceeded the powers granted to the Bar Councils under the Act.⁴

2. Constitutional Validity of Miscellaneous Fees:

⁴ Challenging Exorbitant Enrollment Fees-SC Upholds Statutory Limits under Advocates Act: Gaurav Kumar v/s Union of India

Another significant issue was whether the additional fees imposed by the State Bar Councils violated fundamental rights guaranteed by the Constitution. Specifically, law graduates argued that these fees infringed on their right to equality under Article 14, as the fees could be seen as discriminatory, and their right to practice a profession under Article 19(1)(g), since the high cost of enrolling as an advocate could prevent them from starting their legal career. The case required a balance between the Bar Councils' need for funds and the protection of these constitutional rights.⁵

3. Authority of Bar Councils and Limits of Delegated Legislation:

This issue involved the scope of powers delegated to the Bar Councils under the Advocates Act. The question was whether Bar Councils, as statutory bodies, could impose fees beyond those explicitly provided for in the Act. The court had to examine whether such fee impositions were an overreach of delegated legislation, which must stay within the boundaries set by the primary law passed by Parliament.⁶

4. Balancing Financial Sustainability:

The final issue dealt with how Bar Councils could meet their financial needs without burdening newly enrolled advocates with excessive fees. Bar Councils argued that they needed the extra fees to sustain their operations and provide essential services like legal aid and professional development. However, this had to be weighed against the financial pressures on young lawyers, many of whom are just starting their careers and may find high enrolment fees a significant barrier to entry into the profession.⁷

Facts of the case

1.) Does the additional enrolment charges create a financial barrier for the law graduates and is in contravention to the substantive principle of equality under Article 14 of the Indian Constitution?

Yes, the court held that the additional enrolment charges were in contravention to statutory provision of section 24(1)(f) which states the enrolment fees of candidates under general category for ₹750 and for candidates under SC/ST category for ₹125. Thus,

⁵ Right to Profession, Dignity & Equality, drishtijudiciary

⁶ [Enrolment fees] Supreme Court issues notices to Union Government, Bar Council of India and State Bar Councils, SCC Times (Apr. 10, 2023)

⁷ <https://www.mondaq.com/india/court-procedure/1509188/a-young-advocates-plight-case-analysis-of-gaurav-kumar-vs-union-of-india>.

the enrolment fees charged by the SBC's are arbitrary in nature. Further the effect of charging such fees has resulted in creating barriers for individual who are from economically weaker sections of society to enter the legal profession.

The court highlighted that the enrolment fees are arbitrary in nature and are in violation of Article 14 by creating such financial obstacles for law graduates seeking to enter the legal profession through SBC's which are clearly more than the fees mentioned in the Section 24(1)(f) of the Advocates Act, 1961. Any additional charges must be voluntary and cannot be made mandatory. Also, the court held that the judgment shall have a prospective effect as the SBC's have been levying the enrolment fees for a considerable amount of time and as the amount was used for the functioning of the SBC.⁸

2.) Does the excessive enrolment fees charged by the SBC's violate Article 19(1)(g)?

The Court also addressed the Article 19(1)(g) challenge, holding that the fees imposed by the SBCs amounted to an unreasonable restriction on the right to practice law. By making enrollment contingent on the payment of high fees, the SBCs were limiting the freedom to practice any profession, which is guaranteed under Article 19(1)(g).

Here the court also made a note section 30 of Advocates Act, 1961 which grants advocates the right to practice in all courts. This right is governed by both section 30 of Advocates Act, 1961 and Article 19(1)(g) but at the same time is restricted by Article 19(6). Thus, the right of citizens to practice law can be regulated and is not absolute in nature. Further, the court observed that SBC's fees structures across India varied state to state. The court found no justification for these excessive enrolment charges. This policy of the SBC's was held to be in violation of Article 19(1)(g) as it led to the prevention of aspiring lawyers from entering in the legal profession.⁹

Judgement

The Supreme Court, led by Chief Justice Dr. D.Y. Chandrachud, held that the additional fees charged by the SBCs were ultra vires the Advocates Act. Further, any imposition of license or fees shall align with the legislative intent of the parent act and held it must remain in the boundaries of the parent legislation. In this case by referring to the rulings in *Mohammad Yasin v. Town Area Committee*, *R M Seshadri v. District Magistrate* (1954), *Agricultural Market Committee v. Shalimar Chemical Works Ltd.*, (1997), etc. held that the SBCs had no express

⁸ Anish Sinha, Case study: *Gaurav Kumar v. Union of India and connected cases.*, Legal Wires (Aug. 1, 2024)

⁹ Anish Sinha, Case study: *Gaurav Kumar v. Union of India and connected cases.*, Legal Wires (Aug. 1, 2024)

power to levy fees beyond what was prescribed in Section 24(1)(f).

Further, the court stated that Section 28 of the Advocates Act, State Bar Councils have the authority to frame rules regulating the enrollment and conduct of advocates, subject to the approval of the Bar Council of India. However, the rule-making power must align with the provisions of the parent legislation, and it cannot extend to areas where the statute itself has fixed limits on the enrollment fee in Section 24(1)(f). The Court held that while Section 28 allows SBCs to frame rules for the admission of advocates, this power does not extend to creating financial obligations beyond what Parliament has specified. The court criticized the Bar Council of India for failing to revise the enrollment fee structure in a timely manner to account for inflation. However, it noted that this did not justify the SBCs exceeding their statutory mandate.

The court also cited previous case law to support its reasoning:

O.N. Mohindroo v. Bar Council of Delhi, (1968)¹⁰: This Constitution Bench case established that the Advocates Act was enacted by Parliament to create a unified Bar across India. The Court reiterated that the power to regulate the legal profession is vested in Parliament and that delegated bodies like SBCs must adhere strictly to the legislative framework.

Bar Council of U.P. v. State of U.P., (1973): In this case, the Supreme Court held that the State Legislature could not impose taxes or fees that encroach on the exclusive domain of the Bar Councils. Similarly, in the present case, the Court held that SBCs could not levy fees beyond what is prescribed by Parliament.¹¹

Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997): This case established that a delegated authority, while empowered to make subsidiary rules, cannot extend the scope of the parent legislation. The Court applied this principle to the current case, holding that SBCs, as delegated authorities, could not impose financial obligations beyond the limits set by the Advocates Act.¹²

Consumer Online Foundation v. Union of India, (2011): This case addressed the limits of

¹⁰ O.N. Mohindroo v. Bar Council of Delhi, (1968) 2 SCR 709

¹¹ Bar Council of U.P. v. State of U.P., (1973) 1 SCC 261

¹² Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516

a public authority in levying fees without proper statutory backing. The Court reaffirmed that the power to levy fees must be expressly authorized by legislation, which was not the case with the SBCs charging fees beyond those stipulated in Section 24(1)(f).¹³

The Court agreed with the petitioner that the imposition of exorbitant fees created an indirect barrier for economically disadvantaged law graduates, thereby violating the substantive principle of equality as mentioned in Article 14 (Right to Equality). The Court held that by charging fees far beyond the statutory enrollment fee, SBCs were effectively denying equal access to the legal profession. Moreover, the Court found that these fees amounted to an unreasonable restriction on the right to practice any profession under Article 19(1)(g). By making enrollment contingent on the payment of exorbitant fees, SBCs were limiting the freedom of law graduates to practice law, which the Constitution guarantees as a fundamental right.

The Court urged Parliament to amend the statutory fees under Section 24(1)(f) to reflect contemporary economic realities while keeping access to the legal profession affordable. Until such legislative amendments are made, the Court imposed a cap on the enrollment fees that SBCs could charge, limiting them to the statutory fee of ₹750 for general candidates and ₹125 for SC/ST candidates, with minimal additional charges allowed under specific heads like welfare funds. This judgment reaffirms the principle that delegated authorities must operate within the boundaries set by their enabling legislation. It also emphasizes the importance of ensuring equal access to the legal profession and protecting the constitutional rights of economically disadvantaged law graduates.

¹³ Consumer Online Foundation v. Union of India, (2011) 5 SCC 360