

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (PIL) No. 54 of 2020**

Manmohan Kandwal and others .....Petitioners

Versus

State of Uttarakhand and others ..... Respondent.

**Present:**

Dr. K.H. Gupta, Advocate for the petitioners.

Mr. S.N. Babulkar, Advocate General assisted by Mr. H.M. Raturi, Deputy Advocate General and Mrs. Sangeeta Bhardwaj and Mr. Sushil Vashishtha, Brief Holders for the State of Uttarakhand / respondent No. 1.

Mr. Piyush Garg, Advocate for respondent No. 2.

Mr. B.S. Adhikari, Advocate for respondent No. 3.

Mr. Rakesh Thapliyal, Assistant Solicitor General for the Union of India / respondent No. 4.

**JUDGMENT**

**Coram: Hon'ble Manoj K. Tiwari, J.  
Hon'ble Sharad Kumar Sharma, J.**

**Dated: 28<sup>th</sup> April, 2020**

**Per Hon'ble Manoj K. Tiwari, J.**

Three lawyers enrolled with Bar Council of Uttarakhand have filed this writ petition in public interest, highlighting the financial problem faced by the lawyers and their registered clerks, due to the lockdown declared by the Central Government in view of Covid -19 pandemic.

2. Hearing of this Writ Petition (PIL) was convened through video conferencing.

3. Petitioners have contended that the Bar Council of India and State Bar Council owe a duty to protect the interest of lawyers, as they are collecting fee from lawyers at the time of their enrollment and

also thereafter. The petitioners have sought various reliefs in the writ petition, which are extracted below:-

- “(i) A writ order or direction in the nature of mandamus directing respondents to provide a subsistence allowance of Rs. 10,000/- or above to every advocate on the roll of Bar Council of Uttarakhand for the period of March- May, 2020 or any further period during which lockdown in the state of Uttarakhand remains effective.**
- (ii) A writ order or direction in the nature of mandamus directing respondents to provide a subsistence allowance of Rs. 5,000/- or above to every registered advocate clerk in the state of Uttarakhand for the period of March- May, 2020 or any further period during which lockdown in the state of Uttarakhand remains effective.**
- (iii) A writ order or direction in the nature of mandamus to provide free legal medical aid to be given to the advocates in the State of Uttarakhand who report themselves on suspicion of COVID-19.**
- (iv) A writ order or direction in the nature of mandamus directing the respondent no. 1 to ensure that all advocates living in tenanted premises are not charged rent from respective landlords for tenanted accommodation for the period of March- May, 2020 or any further period during which lockdown in the state of Uttarakhand remains effective.
- (v) A writ order or direction in the nature of mandamus directing respondent no. 1 and its agencies not to charge electricity and water charges from any advocate for the period March- May, 2020 or any further period during which lockdown in the state of Uttarakhand remains effective.
- (vi) A writ order or direction in the nature of mandamus directing respondent no. 1 to instruct all the schools in the state not to charge school fees for their wards for the period March- May, 2020 or any further period during which lockdown in the state of

Uttarakhand remains effective.

- (vii) A writ order or direction in the nature of mandamus directing respondent no. 1 to allow advocates to travel for attending remand case/ urgent case to district court or jail premises in the districts in the state of Uttarakhand.
- (viii) A writ order or direction in the nature of mandamus directing respondent no. 1 to exempt President and Secretary of the District Bar Associations and High Court Bar Associations from vehicular or other travel restrictions for meeting District and State authorities.
- (ix) **A writ order or direction in the nature of mandamus directing respondent no. 4 to frame guidelines for minimum standards of relief to be provided to all the affected advocates under Section 12 of Disaster Management Act, 2005.**
- (x) A writ order or direction in the nature of mandamus directing respondent no. 4 to pass orders under Section 13 to provide relief in loan repayment in the form of stoppage of accrual of interest as well as repayment installments for the period March- May, 2020 or any further period during which lockdown in the state of Uttarakhand remains effective.
- (xi) Any other suitable writ, order or direction which this Hon'ble court may deem fit and proper in the circumstances of the case.
- (xii) Further prays that the Hon'ble Court may direct the respondents to pay the cost of the litigation."

4. Learned counsel for the petitioners, however, made a statement on 20.04.2020 that he is not pressing relief clause No. (iv) to (viii) and (x). On his oral prayer, he was permitted to score off prayer No. (iv) to (viii) and (x) from the writ petition. In view of the

aforesaid, the writ petition was considered for relief Nos. (i) to (iii) and (ix) only.

5. So far as relief No. (iii) of the writ petition is concerned, namely, to provide free legal medical aid to the Advocates, who report themselves on suspicion of Covid-19, the same is covered by the order passed by Hon'ble Apex Court in Writ Petition (Civil) Diary No (s) 10816 of 2020 (Shashank Deo Sudhi Vs. Union of India and others), therefore, no further direction by this Court is warranted.

6. Learned counsel for Uttarakhand Bar Council had submitted that the Uttarakhand Government has not remitted the amount collected from sale of stamp duty to the advocates at the time of their enrolment with the State Bar Council to the Advocates Welfare Fund. He further submitted that Uttarakhand Government is under a statutory obligation to transfer an amount, equal to the amount collected by sale of stamp duty, to the fund created under Section 3 (1) of the U.P. Advocates Welfare Fund Act, 1974. Section 4 of the said Act, which is relevant is reproduced below:-

**“4. Transfer of certain monies to the fund—** As soon as may be after the commencement of this Act, an amount equivalent to the sums received by the State Bar Council on account of the deposits of Stamp duty on certificates of enrolment paid by Advocates, together with interest actually earned thereon, shall be paid by it to the credit of the Fund, and such credit to Fund shall discharge the State

Bar Council of the liability in respect thereof to the State Government.”

7. Section 4 of the said Act was amended by the Uttar Pradesh Advocates Welfare Fund (Amendment) Act, 1999. Section 4 of the Amendment Act is extracted below:-

**“4. Amendment of Section 4 –** Section 4 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:-

“(2)An amount equivalent to the stamp-duty deposited by Advocates for certificates of enrolment with the State Bar Council in a financial year shall be transferred by the State Government to the Fund as soon as may be after the end of that financial year and such transfer shall discharge the State Government of its liability in respect thereof, for that financial year.””

8. Section 9 of the aforesaid Act provides that every advocate who is member of the Scheme shall affix on the Vakalatnama accepted by him a Welfare Stamp and Section 10 of the said Act provides that the State Government shall cause to be printed Welfare Stamp for the purposes of the Act and at the close of every financial year, transfer the sale proceeds of the Welfare Stamps, after deducting the costs incurred in printing, sale and distribution thereof to the account of the Fund.

9. In view of the statement made by Mr. Piyush Garg that Uttarakhand Bar Council has made a formal request to the State Government to release the money collected under U.P. Advocates Welfare Fund Act, 1974, Mr. K.N. Joshi, learned Deputy Advocate General had assured this Court on 20.04.2020 that the State Government will consider the request made by Uttarakhand Bar Council and will take appropriate decision, in accordance with law, within 48 hours. On 20.04.2020, we had also requested learned Advocate General in his capacity as Chairman of the Welfare Fund created under Section 3 of the U.P. Advocates Welfare Fund Act, 1974 to take a call on the request made by Uttarakhand Bar Council for release of money for the welfare of needy Advocates.

10. Thereafter the matter was taken up on 23.04.2020, on which date learned counsel appearing for Uttarakhand Bar Council apprised the Court that Law Secretary-cum-LR, Government of Uttarakhand has made recommendation to the Finance Department, Government of Uttarakhand to disburse the amount collected under provisions of U.P. Advocates Welfare Fund Act, 1974. We, therefore, directed the Principal Secretary (Finance), Government of Uttarakhand to take decision on the recommendation made by Law Secretary-cum-LR and the matter was thereafter ordered to be listed on 28.04.2020.

11. Today, learned Advocate General submitted soft copy of the Government Order dated 27.04.2020 issued by Law Secretary-cum-

LR, Government of Uttarakhand. A perusal of the said Government Order indicates that a sum of Rs.39,25,000/- collected by the State Government by sale of stamp duty on certificates of enrolment was ordered to be transferred to the Uttarakhand Advocates Welfare Fund. The State Government further decided to transfer an amount equal to the amount collected by sale of stamp duty, in terms of Section 4(2) of the Act, in the bank account maintained in the name of “Uttarakhand Advocates Welfare Fund Committee”.

12. Uttarakhand Bar Council has filed its reply in which it has given details of the amount, which is available in various accounts. In this regard reference may be had to para 18 to 22 and 32 & 33:-

**“18.** That presently an amount of Rs. 1,52,30,406.98 is lying deposited in the Advocate Welfare Fund Committee account. It is further worthwhile to mention herein that at present almost 111 death claims are pending against the said fund having a liability of almost Rs. 45 lakhs.

**19.** That thus an amount of Rs. 1 crore already available in the said fund and an amount of Rs. 78,50,000/- liable to be transferred by the State Government can be utilized for the purpose of grant of immediate relief/solace to the needy advocates during the present nationwide lock down due to COVID 19 pandemic.

**20.** That further the account maintained in the name of All India Bar Council Advocate Welfare Committee is having a deposit of Rs. 1,30,35,446/- lying deposited with it. This amount is the 80% amount collected at the time of registration and maintained under Rule 40 (Part VI

Chapter II) of Bar Council of India Rules. As per proviso to Rule 40, the amount collected is to be deposited in fixed deposit and only the interest amount is to be utilized for the welfare of the advocates.

**21.** That as per Rule 41 sub-rule (3), the 80% amount collected by the Bar Council of India Advocate Welfare Fund Committee for the State under Rule 41(1) shall be utilized for the welfare of the advocates in respect of welfare schemes sponsored by the respective State Bar Council and this fund shall be administered by the Advocate Welfare Committee for the State.

**22.** That out of the aforesaid amount of Rs. 1,30,35,446/-, 20% amount for the financial year 2019-20 approximately Rs. 7 to 8 lakhs is required to be transferred to BCI as the same could not be transferred because of the lock down and the rest amount is the 80% amount available for the welfare of the Advocates registered with the State Bar Council.

**32.** That the State Bar Council has further been informed that the Bar Council of India has resolved to transfer an amount of 20% out of the total corpus of advocate welfare fund of Bar Council of India for the State Bar Council to the concerned State Bar Council. Presently approximately an amount of Rs. 1.22 crores is lying deposited in such account and thus roughly an amount of Rs. 24 lakh have been permitted to be transferred by the BCI for the welfare of the needy advocates in the present pandemic. Apart from that, roughly an amount of Rs. 6 lakh is available in the interest account of said amount.

**33.** That thus in total almost an amount of Rs. Two Crore Eight Lakh Fifty Thousand only i.e. Rs. 1 crore (trustee committee) + 78.5 lakhs (outstanding against State



Government) + 24 lakhs (20% amount permitted by BCI)+6 lakhs (interest in the welfare account under Rule 40) would be available presently for providing solace to the needy lawyers after receipt of the amount from the State Government under Section 4 of the Act.”

13. Bar Council of India has also filed its reply. Para nos. 6, 7 & 8 of the reply filed by Bar Council of India are extracted below:-

“6. That in terms of Rule 40 (para VI-Ch. II) of Bar Council of India Rules, it is pertinent to note that only a sum of Rs. 3,000/- is paid by an Advocate (as the life time subscription fee) since year 2016 as earlier it was Rs. 1000/- As provided in Rule 41(1) & (2), all amount so collected by the State Bar Council in accordance with Rule 40 shall be created in a separate fund called “Bar Council of India Advocates Welfare Fund” and shall be deposited in the bank. Then Bar Council of India Advocates Welfare Fund Committee for the State shall remit 20% share of that total amount to Bar Council of India at the end of every month. Then Bar Council of India shall deposit said 20% amount received in a separate fund known as “Bar Council of India Advocates Welfare Fund”, and this fund shall be managed by the Welfare Committee of the Bar Council of India. The Bar Council of India maintains a separate account for dealing with this amount of 20% distributes it among the Advocates in need. As per the scheme, only the interest generated from the corpus under this scheme is to be distributed.

7. That though, an Advocate is require to pay only a sum of Rs. 3,000/- under Rule 40 and Bar Council of India receives only 20% of that with restriction to utilize interest accrued only, but the bar Council of India under this

scheme pays upto Rs. 20,000/- to Rs. 25,000/- (depending upon the seriousness of the disease to Advocate requiring medical aid). The result is that the interest amount is found insufficient to cater the need. Therefore, Bar Council of India is going to enhance the subscription amount under this scheme from Rs. 3,000/- to Rs. 10,000/- after the Lockdown ends.

8. That to meet the recent crises arose from COVID-19, Bar Council of India has resolved by way of circulation that “the member of the bar Council of India who is the Chairman of Advocates Welfare Committee known as “Bar Council of India Advocate Welfare Fund Committee for the State” can disburse an amount upto 20% of such Fixed Deposit fund laying in such Bar Council of India Advocate Welfare Fund for the State Bar Council laying in respective State bar Council Accounts, after excluding 20% share of such fund which is to be deposited in account of Bar Council of India, New Delhi.

However, the maximum amount to be taken from the total amount of Fixed Deposit of such Bar Council Account should not exceed Rs. 15,00,000/- as of now in the first phase. If the member, Bar Council of India of that State deems it necessary and proper depending upon the financial position of this fund in his respective Bar Council, he may in case of need, disburse a maximum of Rs. 1 Crore.” Meaning thereby, BCI has decided to permit disbursement of maximum upto Rs. 45 lacs in the first instance and thereafter, if need be, maximum amount of Rs. 1 crore i.e. Rs. 55 lacs in the next phase from the Bar Council of India Advocates Welfare Fund which is located in respective State Bar Councils. The copy of the letter dated 18.04.2020 issued by the Secretary BCI to the Chairman Bar Council of India Advocates Welfare Fund

Committee for the State Bar Council is filed here as Annexure-2 to this application. ”

14. State Bar Council and Bar Council of India have been established under the Advocates Act, 1961. One of the functions of State Bar Council and Bar Council of India as set out in Section 6 and Section 7 of the Advocates Act, 1961 is to safeguard the rights, privileges and interests of advocates. For this purpose the Bar Councils can constitute one or more funds for the purpose of giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates. Section 15(2)(ga) of the Advocates Act empowers the Bar Councils to make Rules for the constitution of one or more funds for the purpose of giving financial assistance or giving legal aid or advice referred to in sub-section (2) of Section 6 and sub-section (2) of Section 7.

15. Rule 40 of the Bar Council of India Rules also provides for creation of a fund for the welfare of the Advocates out of the contribution made by them. Out of the fund so created, 80% has to be retained by the State Bar Council in a fixed deposit and remaining 20% has to be transferred to the Bar Council of India. Rule 41(3) of the said Rules provides that rest 80% of the total sum so collected shall be utilized for the welfare of advocates in respect of welfare schemes sponsored by the concerned State Bar Council and this fund shall be administered by the Advocates Welfare Committee for the State.

16. A conjoint reading of the reply filed by Uttarakhand Bar Council and Bar Council of India reveals that money is now available in various funds/ accounts maintained by the aforesaid statutory bodies.

17. Mr. Piyush Garg appearing on behalf of Uttarakhand Bar Council and Mr. S.N. Babulkar, Advocate General made a statement before this Court that all necessary steps shall be taken by them to ensure timely financial help to the lawyers worst affected by the lockdown.

18. Although the reliefs as claimed in prayer in (i), (ii) & (ix) of the writ petition cannot be granted as advocates and their clerks cannot be given special treatment during lockdown, however, this Court can certainly ask the (i) Uttarakhand Bar Council, (ii) Uttarakhand Advocates Welfare Fund Trustee Committee which administers the fund created under U.P. Advocates Welfare Fund Act, 1974 and (iii) Member of the Bar Council of India, who is *ex-officio* Chairman of Bar Council of India Advocates Welfare Fund Committee for State of Uttarakhand, to convene a meeting for finding a solution to the financial crises caused to young lawyers due to the lockdown.

19. We accordingly direct all concerned to hold a meeting under the Chairmanship of learned Advocate General, through video conferencing or otherwise, on or before 02.05.2020. In the said meeting, besides other aspects, criteria of eligibility for financial

assistance to the advocates, the amount to be paid to each of the needy advocates as financial assistance etc. shall be determined. The eligibility criteria determined in the said meeting may be in addition to the condition of eligibility set out in the application form, which has been brought on record as Annexure-5 to the reply filed by Uttarakhand Bar Council.

20. We hope and trust that the Uttarakhand Bar Council, Uttarakhand Advocates Welfare Fund Trustee Committee and Member of Bar Council of India, who is the Chairman of Bar Council of India Advocate Welfare Fund Committee for the State, will utilize the available resources rationally to ensure that aspirations of all the deserving advocates who are in need of financial help in these difficult times, are fulfilled and claim of no advocate who is in need of financial help, is ignored.

21. With the aforesaid observations, the Writ Petition (PIL) is closed.

**(Sharad Kumar Sharma, J.)**  
28.04.2020

**(Manoj K. Tiwari, J.)**  
28.04.2020