

JAMSHED ANSARI

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v.

HIGH COURT OF JUDICATURE AT ALLAHABAD AND ORS.

(Civil Appeal No. 6120 of 2016)

AUGUST 26, 2016

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[A.K. SIKRI AND N.V. RAMANA, JJ.]

Allahabad High Court Rules, 1952 – rr. 3 and 3A – Rules prescribing that Advocate not on rolls of Advocate in the High Court or Bar Council of the State, obligated to file an appointment along with a local Advocate on the Roll of such State Bar Council and is ordinarily practicing in that Court – Constitutional validity of – Held: Right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power – Hence, courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an Advocate – Thus, rr. 3 and 3A are valid, legal and do not violate the right of the advocate under Article 19(1)(g) – High Court is duly empowered to make Rules and rr. 3 and 4 are not ultra vires s. 30 – Restriction stipulated in the Rules is reasonable and in public interest – Advocates Act, 1961 – ss. 30, 34.

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Dismissing the appeal, the Court

HELD: 1.1 Rules 3 and 3A of the Allahabad High Court Rules, 1952 are regulatory provisions and do not impose a prohibition on practice of law. These Rules prescribe that an Advocate who is not on rolls of Advocate in the High Court is obligated to file an appointment along with a local Advocate. There is no absolute bar to appear. In fact, with the leave of the Court, an Advocate is still permitted to appear even without a local Advocate. In essence, an Advocate who is not on the roll of Advocates in the High Court can appear along with a local Advocate. Alternatively, even without fulfilling this requirement, an Advocate who is not on the rolls of Advocates in the High Court can move an application before the Court seeking leave to appear without even a local Advocate and in appropriate cases, such a permission can be granted. [Para 12] [120-F-H]

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- A **1.2 The whole object of the Rules in question is furtherance of the administration of justice and to ensure that the advocates who can be easily located or accountable to the Courts are allowed to practice before the Court. Therefore, the Rules provide that the name of such advocates whose names are not on the roll of the Advocates in the High Court should appear with a local**
- B **Advocate of the High Court. The easy identification of the person who appears before the Court when he is the enrolled advocate of another Bar Council or is not on the rolls of Advocates of the High Court is to ensure his presence whenever the cases are listed and to minimise the cases being dismissed for default which**
- C **may result in serious consequences to the litigants and multiplicity and inordinate delay in proceedings whether it be a criminal case or civil dispute is the objective of Rule 3 or 3A of the Rules. That objective is achieved when he is permitted to appear along with the local Advocate of the High Court.[Para 15] [122-F-H; 123-A]**
- D **1.3 In applying the test of reasonableness the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The court must take into account the following aspects: nature of the right infringed; underlying purpose of the restriction imposed; evils sought to be remedied by the law, its**
- E **extent and urgency; how far the restriction is or is not proportionate to the evil; and prevailing conditions at the time. The impugned Rules passed the said test of reasonableness. The respondents have given appropriate justification and rationale behind the Rules viz. to fix accountability on the advocates**
- F **practicing before the High Court. Such Rules are also aimed at helping in regulating the functioning of the Court. It is important for the orderly functioning of the Allahabad High Court that Rolls are maintained in Order to effect service of notices and copies of pleadings and ensure regular procedural compliances. The same**
- G **will not be possible if proper records of Advocates practicing in the High Court are not maintained in the High Court. The administration of justice will suffer if no person is held accountable for non-compliance of office reports etc. There may be occasions when Advocates may be called upon by the Court in pending matters and the dispensation of justice will suffer if there is no**
- H **record of Advocates who do not generally practice in the High**

Court, may not attend matters in which they may have filed their vakalatnama before the High Court. It is imperative for the smooth and effective functioning of the court that the court is able to fix responsibility on Advocates, which is not possible if Roll of Advocates is not maintained in the High Court. Moreover, an advocate is permitted to file *vakalatnama* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the Court. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence, courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an Advocate. Thus, the Rules in question amount to reasonable restrictions which are imposed in public interest. [Para 16] [123-B-H; 124-A-B]

1.4 A perusal of Clause 7 of Letters Patent of Allahabad High Court shows that the High Court of Judicature for the North-Western provinces (now known as Allahabad High Court) was empowered to “approve, admit and enroll advocates” and to authorize them “to appear, to plead or to act, or to plead and act” for the suitors in accordance with the rules and directions. That apart, Section 34 of the Act empowers the High Court to make Rules laying down the conditions subject to which an Advocate shall be permitted to practice in the High Court and courts subordinate thereto. Section 30 of the Act which confers a right to practice has been expressly made “subject to the provisions of this Act”. Therefore, Section 30 is also subject to Section 34. The Act does not confer any absolute right to practice. The right can be regulated by the High Courts by prescribing conditions. [Paras 17-19] [124-H; 125-A-B, F; 126-A]

1.5 The High Court is duly empowered to make rules and the Rule 3 and Rule 4 are not *ultra vires* Section 30 of the Act. It is more so when power under Section 34 of the Act is given to the High Courts, which are Constitutional Courts. The restriction stipulated in the impugned Rules is reasonable and in public interest. The disciplinary jurisdiction conferred on the Bar Councils under Section 36 of the Act for misconduct committed by the advocates stand on a different footing than the powers

- A conferred on the High Courts to frame rules to practice before the High Court or subordinate Courts. It may be the intention of the Parliament to confer the jurisdiction on the lawyers' body like Bar Councils regarding misconduct by advocates to maintain the independence of the Bar. However, again keeping in mind the administration of justice and regulating the Court proceedings and right to practice and right to appear before the high Courts and Subordinate Courts, power is conferred on the High Courts, to frame rules. If High Court keeping in mind, several relevant factors like the purity in a administration of justice, the interest of the litigant public and easy availability of the advocate to assist the court for proper adjudication of the dispute pending before it or expeditious disposal of such proceedings or for any other valid or good reasons which High Court considered just and proper frames such rules, there is no fault in Rule 3 or Rule 3A of the Rules. The Rules 3 and 3A are perfectly valid, legal and do not violate the right of the appellant under Article 19(1)(g) of the Constitution of India. [Paras 20-21, 26] [126-B-F; 129-E-F]

- E *N.K. Bajpai v. Union of India* (2012) 4 SCC 653; 2012 (2) SCR 433; *Bar Council of India v. High Court of Kerala* (2004) 6 SCC 311; 2004 (1) Suppl. SCR 649; *Pravin C. Shah v. K.A. Mohd. Ali & Anr.* (2001) 8 SCC 650; 2001 (3) Suppl. SCR 675; *Prayag Das v. Civil Judge, Bulandshahr* AIR 1974 All. 133; *R.K. Anand & Anr. v. Registrar, Delhi High Court and Anr.* (2009) 8 SCC 106; 2009 (11) SCR 1026; *Ex-Capt. Harish Uppal v. Union of India & Anr.* (2003) 2 SCC 45; 2002 (5) Suppl. SCR 186; *Shashi Kant Upadhyay, Advocate v. High Court of Judicature at Allahabad* Writ C. No. 65298 of 2014 decided on 26.03.2015; *Anju Mishra and Ors. v. The High Court of Judicature at Patna and Ors.* Civil Writ Jurisdiction Case Nos.10185 and 19862 of 2010 decided on 17.07.2015 – referred to.

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Case Law Reference

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| 2012 (2) SCR 433 | referred to | Para 22 |
| 2004 (1) Suppl. SCR 649 | referred to | Para 22 |
| 2001 (3) Suppl. SCR 675 | referred to | Para 24 |
| H AIR 1974 All. 133 | referred to | Para 24 |

2009 (11) SCR 1026 referred to Para 25 A
2002 (5) Suppl. SCR 186 referred to Para 25

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6120 of 2016.

From the Judgment and Order dated 28.04.2015 of the High Court of Judicature, at Allahabad in Civil Misc. Writ Petition-C No. 68308 of 2014. B

P. Vishwanathan Shetty, Sr. Adv. (A.C.), Mahesh Thakur, Adv. for the Appellant.

Rakesh Dwivedi, Sr. Adv., Anjani Kumar Mishra, Ardhendumauli Kumar Prasad, Ms. Preetika Dwivedi, Ms. Aporva Garg, Advs. for the Respondents. C

Jamshed Ansari, Petitioner-in-person

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The appellant has challenged the judgment dated 28.04.2015 passed by the High Court of Judicature at Allahabad whereby writ petition filed by the appellant has been dismissed. In the said writ petition, the appellant had challenged the Constitutional validity of the provisions of Rule 3 and Rule 3A of Chapter XXIV of the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules'). The short order of the High Court repelling the said challenge states that a similar challenge had already been rejected by the same Court in *Shashi Kant Upadhyay, Advocate v. High Court of Judicature at Allahabad* (Writ – C. No. 65298 of 2014) decided on 26.03.2015. D
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2. Appellant's challenge to the aforesaid Rules is mainly on the ground that these Rules put an unreasonable restriction on his right to practice as an Advocate and are also *ultra vires* the provisions of Section 30 of the Advocates Act, 1961 (hereinafter referred to as the 'Act'). The High Court of Allahabad has framed the Rules in question which came into force on 15.09.1952. Chapter XXIV thereof relates to "Rules Framed under Section 34(1) read with Section 16(2) of the Advocates Act, 1961". As we are concerned with the validity of Rule 3 and Rule 3A of the said Chapter, the same are reproduced below: F
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"3. Advocate who is not on the Roll of Advocates : An advocate who is not on the Roll of Advocate or the Bar Council H

A of the State in which the Court is situated, shall not appear, act or plead in such Court, unless he files an appointment along with an advocate who is on the Roll of such State Bar Council and who is ordinarily practicing in such Court.

B In cases in which a party is represented by more than one advocate, it shall be necessary for all of them to file a joint appointment or for each of them to file a separate one.

C **3-A.** (i) Unless the Court grants leave, an Advocate who is not on the Roll of Advocates in the High Court at Allahabad or Lucknow shall not be allowed to appear, act or plead in the High Court at Allahabad or Lucknow as the case might be unless he files appointment along with an Advocate who is on such roll for Allahabad Cases at Allahabad and for Lucknow Cases at Lucknow.

D (ii) The High Court shall prepare a Roll of Advocates in Parts 'A' and 'B' of those who ordinarily practice in the High Court, Part 'A' for Allahabad and Part 'B' for Lucknow.

E (iii) The Roll of Advocates shall bear in regard to each advocate entered, his full name, father's name, passport size coloured photograph, enrolment number, date of enrolment, complete postal address both of residence and office which shall be in the municipal limits of the city of Allahabad or Lucknow as the case might be.

(iv) The Rolls shall be prepared and revised periodically in the manner and under the authority as may be prescribed by the Chief Justice.

F (v) This Rule 3-A shall come into force after notification by the Chief Justice that both the Rolls for Allahabad and Lucknow in Parts 'A' and 'B' are complete.

G 3. It is clear that as per Rule 3, an Advocate who is not on the Roll of Advocate or the Bar Council of the State is not allowed to appear, act or plead in the said Court unless he files an appointment along with the advocate who is on the Roll of such State Bar Council and is ordinarily practicing in that Court. The impact of this Rule is that for appearance in Allahabad High Court, an Advocate who is registered with the Bar Council of the State of Uttar Pradesh is allowed to appear, act or plead in the said Court only when he files his Vakalatnama along with an

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Advocate who is enrolled with Bar Council of Uttar Pradesh and is ordinarily practicing in the Allahabad High Court (hereinafter referred to as the 'local Advocate'). Roll of Advocate is to be prepared by the High Court in terms of Rule 3-A(ii), both for Allahabad (which is the main seat of the High Court) and Lucknow (which is the Bench of the Allahabad High Court). Rule 3A puts a further rider for appearance of an Advocate in the High Court at Allahabad or Lucknow inasmuch as an Advocate who is not on the Roll of Advocates for Allahabad cases at Allahabad and for Lucknow cases at Lucknow is allowed to appear, act or plead at Allahabad or Lucknow, as the case may be, unless appearance is put in along with a local Advocate. Notwithstanding the above, he can still be allowed to appear after obtaining the leave of the Court.

4. Appellant, as an Advocate, had filed a writ petition in the High Court at Allahabad but the Registry of the High Court refused to accept his petition as the appellant is not enrolled with the Bar Council of U.P. and he had not fulfilled the requirement of the aforesaid Rules by filing appointment along with a local Advocate. Accordingly, he engaged a local Advocate for Allahabad cases at Allahabad. At the same time, he filed the writ petition in question challenging the validity of the Rules which has been dismissed by the impugned judgment, as pointed out above.

5. It is the contention of the appellant, who appeared in person, that the right to practice of advocates in any Court in India has been recognized and granted by Section 30 of the Act and right to practice is also a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. He submitted that the impugned Rules are made by the High Court in exercise of powers under Section 34 of the Act which provision confers the power on the High Court to only lay down conditions subject to which an Advocate shall be permitted to practice in the High Court and the Courts subordinate thereto, but it does not empower the High Court to frame the Rules laying down prohibition from appearance and the Rules in question amount to prohibition or unreasonable restrictions. It is further argued that as per the provisions of Article 22 of the Constitution of India read with Section 303 of the Code of Criminal Procedure, citizens of this country are given a right to defend themselves by legal practitioner/pleader of their choice. According to him, the impugned Rules have the effect of denying this choice to the citizens as well.

A In support of aforesaid submissions, the appellant has referred to the judgment of the High Court of Patna in the case of *Anju Mishra and Ors. v. The High Court of Judicature at Patna and Ors.* rendered on 17.07.2015 in Civil Writ Jurisdiction Case Nos.10185 and 19862 of 2010 and connected matters by the Full Bench of the Patna High Court. He submitted that the said High Court has declared similar Rules enacted by the High Court of Patna as unconstitutional and *ultra vires* Section 30 of the Act.

6. This appeal is contested by the respondents/High Court of Allahabad. Bar Council of India was allowed to intervene in the matter. It has also supported the respondents and taken the position that the Rules in question are valid and does not suffer from the vice of unconstitutionality. This Court had also appointed Mr. P. Vishwanathan Shetty, Senior Advocate as the Amicus Curiae who has filed the written submissions, wherein he has stated that after examining the legal position, according to him, the Rules in question are valid and proper.

D 7. Mr. Rakesh Dwivedi, Senior Advocate, who appeared on behalf of the respondent/High Court submitted that Rules have been made under Article 225 of the Constitution of India and Section 34 of the Act. He argued that no doubt Article 19(1)(g) of the Constitution of India gives a fundamental right to practice any profession or to carry on any occupation, trade or business, nevertheless, that right is subject to the limitations contained under Article 19(6) of the Constitution of India which empowers the State to make any law imposing reasonable restrictions on the exercise of such rights in the interest of general public. He submitted that right to practice law or right to appear, act or plead in a court of law is not an absolute right but is subject to reasonable restrictions and the Rules in question requiring Advocates to be enrolled with the State Bar Council and the role of the High Court is nothing but a reasonable restriction on the right to practice. Mr. Dwivedi argued that the rationale behind the Rule is to fix accountability on the Advocates practicing before the High Court. The Rules also help in regulating the functioning of the Court. The strength of the Bar in the State is enormous and a large number of law graduate pass out every year in the State of U.P. and enter active legal practice. It is important for the orderly functioning of the Allahabad High Court that Rolls are maintained in Order to effect service of notices and copies of pleadings and ensure regular procedural compliances. The same will not be possible if proper

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records of Advocates practicing in the High Court are not maintained in the High Court. He also argued that Rule 3 and Rule 3A of the Rules are merely regulatory provisions and there is no absolute restriction or prohibition on the right to practice. Any person who is not on the Roll of Advocates maintained by the High Court, may still appear, act and plead by filing appointment of a local Advocate or he may take leave of the court to appear, even though he may not be on the Roll of the High Court. These provisions are in the interest of the general public, especially the litigants before the High Court and also for the administration of Justice in the State. Mr. Dwivedi further submitted that right to practice conferred under Section 30 of the Act is subject to rule making power of the High Court under Section 34 of the Act and while making Rules, High Court has a right and duty to regulate the conduct of its own proceedings. Therefore, the impugned Rules are not *ultra vires* Section 30 of the Act. Learned Senior Counsel also pointed out the Full Bench judgment of Patna High Court relied upon by the appellant had already been recalled by the said High Court in the review petition that was filed seeking review of the judgment and, therefore, no sustenance can be taken from the said judgment. Mr. Dwivedi also referred to certain judgments of this Court to support his submission that Rules in question were only in the nature of regulatory provisions.

8. Almost on the same lines, written submissions are filed by the learned Amicus Curiae and the oral arguments were advanced by the learned counsel appearing for the Bar Council of India.

9. We have given due consideration to the respective submissions.

10. Article 19 of the Constitution of India guarantees certain freedoms to the citizens of this country which includes right to practice any profession, or to carry on any occupation, trade or business. It, therefore, naturally follows that right to practice law, which is a profession, is a fundamental right that is conferred upon all citizens of this country. Therefore, it can be said that the appellant has right to appear in any Court in India which would include right to appear and argue the matters even in High Court of Allahabad.

11. The respondents, however, contend that right of the appellant to appear in the High Court of Allahabad has not been taken away by the impugned Rules. As per them, these Rules are only regulatory in nature and the main purpose is to impose reasonable restrictions in the

A interest of general public. On this basis, the attempt of the respondents is to save the aforesaid Rules by invoking clause (6) of Article 19. Article 19(6) is worded as under:

B “Article 19(6) : Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

C (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

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The appellant, on the other hand, has submitted that the Rules do not amount to reasonable restrictions but are in the nature of prohibition inasmuch as a lawyer who is not enrolled with U.P. Bar Council or on the rolls of Allahabad High Court is not allowed to appear in the said Court.

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12. In the first instance, therefore, it needs to be determined as to whether the Rules in question are in the nature of restrictions or they are prohibitory in nature. Our answer to this question is that Rules 3 and 3A of the Rules are regulatory provisions and do not impose a prohibition on practice of law. These Rules prescribe that an Advocate who is not on rolls of Advocate in the High Court is obligated to file an appointment along with a local Advocate. There is no absolute bar to appear. In fact, with the leave of the Court, an Advocate is still permitted to appear even without a local Advocate. In essence, an Advocate who is not on the roll of Advocates in the High Court can appear along with a local Advocate. Alternatively, even without fulfilling this requirement, an Advocate who is not on the rolls of Advocates in the High Court can move an application before the Court seeking leave to appear without even a local Advocate and in appropriate cases, such a permission can be granted.

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13. In *N.K. Bajpai v. Union of India*¹, this Court made it clear that right to practice can be regulated and is not an absolute right which is free from restriction or without any limitation. Following observations from the said judgment are pertinent and relevant for the present case:

“24. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practise and an advocate alone is the person who can practise before the courts, tribunals, authorities and persons. But this right is statutorily regulated by two conditions – one, that a person’s name should be on the State rolls and second, that he should be permitted by the law for the time being in force, to practise before any authority or person. Where the advocate has a right to appear before an authority or a person, that right can be denied by a law that may be framed by the competent legislature.

25. Thus, the right to practise is not an absolute right which is free from restrictions and is without any limitation. There are persons like Mukhtars and others, who were earlier entitled to practise before the courts, but the Advocates Act itself took away the right to practise which was available to them prior to its coming into force. Thus, the Advocates Act placed a complete prohibition upon the right to practise of those persons who were not advocates enrolled with the State Bar Council. Therefore, the right to practise, which is not only a statutory right under the provisions of the Advocates Act but would also be a fundamental right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions.

26. An argument could be raised that a person who has obtained a degree of law is entitled to practise anywhere in India, his right, as enshrined in the Constitution and under the Advocates Act cannot be restricted or regulated and also that it is not necessary for him to enrol himself on any of the State rolls. This argument would be fallacious in the face of the provisions of the Advocates Act as well as the restrictions contemplated in Article 19(6) of the Constitution. The legislature is entitled to make a law relating to the professional or technical qualifications necessary for carrying on of that profession.

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59. As already noticed by us above, the right to practise law is a

¹ (2012) 4 SCC 653

A statutory right. The statutory right itself is restricted one. It is controlled by the provisions of the Advocates Act, 1961 as well as the Rules framed by the Bar Council under that Act. A statutory right cannot be placed at a higher pedestal to a fundamental right. Even a fundamental right is subject to restriction and control. At the cost of repetition, we may notice that it is not possible to imagine a right without restriction and control in the present society. When the appellants were enrolled as advocates as well as when they started practising as advocates, their right was subject to the limitations under any applicable Act or under the Constitutional limitations, as the case may be”.

C 14. At this juncture, we may also take note of the rationale behind the impugned Rules which would not only be an answer to the question which we are addressing at the moment, namely, the Rules are in the nature of regulations/restrictions and not prohibition, it will even answer related aspect as well viz. the restrictions are reasonable in nature as they are in public interest.

D 15. The administration of justice is a sacrosanct function of the judicial institutions or the persons entrusted with that onerous responsibility and principle of judicial review has now been declared as a part of the basic structure of the Constitution. Therefore, if anything has the effect of impairing or hampering the quality of administration of justice either due to lack of knowledge or proper qualification on the part of the persons involved in the process of justice dispensation or they being not properly certified by the Bar Council as provided under the Act and the Rules made there under, it will surely affect the administration of justice and thereby affecting the rights of litigants who are before the Courts seeking justice. The whole object of the Rules in question is furtherance of the administration of justice and to ensure that the advocates who can be easily located or accountable to the Courts are allowed to practice before the Court. Therefore, the Rules provide that the name of such advocates whose names are not on the roll of the Advocates in the High Court should appear with a local Advocate of the High Court. The easy identification of the person who appears before the Court when he is the enrolled advocate of another Bar Council or is not on the rolls of Advocates of the High Court is to ensure his presence whenever the cases are listed and to minimise the cases being dismissed for default which may result in serious consequences to the litigants and multiplicity and inordinate delay in proceedings whether it be a criminal case or civil

dispute is the objective of Rule 3 or 3A of the Rules. That objective is achieved when he is permitted to appear along with the local Advocate of the High Court. A

16. In applying the test of reasonableness (which is the most crucial consideration), the broad criterion is whether the law strikes a proper balance between social control on the one hand and the rights of the individual on the other hand. The court must take into account the following aspects:- B

- (a) nature of the right infringed;
- (b) underlying purpose of the restriction imposed;
- (c) evils sought to be remedied by the law, its extent and urgency; C
- (d) how far the restriction is or is not proportionate to the evil; and
- (e) prevailing conditions at the time. D

The impugned Rules passed the aforesaid test of reasonableness. The respondents have given appropriate justification and rationale behind the Rules viz. to fix accountability on the advocates practicing before the High Court. Such Rules are also aimed at helping in regulating the functioning of the Court. It is important for the orderly functioning of the Allahabad High Court that Rolls are maintained in Order to effect service of notices and copies of pleadings and ensure regular procedural compliances. The same will not be possible if proper records of Advocates practicing in the High Court are not maintained in the High Court. The administration of justice will suffer if no person is held accountable for non-compliance of office reports etc. There may be occasions when Advocates may be called upon by the Court in pending matters and the dispensation of justice will suffer if there is no record of Advocates who do not generally practice in the High Court, may not attend matters in which they may have filed their vakalatnama before the High Court. It is imperative for the smooth and effective functioning of the court that the court is able to fix responsibility on Advocates, which is not possible if Roll of Advocates is not maintained in the High Court. Moreover, an advocate is permitted to file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the Court. But the right to H

- A appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an Advocate.

- B We, thus, conclude that the Rules in question amount to reasonable restrictions which are imposed in public interest.

- C 17. No doubt, the Indian Advocates Act, 1961 confers statutory right to practice under Section 30 which is brought into force only from 15.06.2011. However, this right is subject to the rule making power of the High Court under Section 34 of the Act. Article 225 of the Constitution of India also confers jurisdiction and powers in the High Court to make rules of Court subject to law made by appropriate Legislature and states that such a power of the High Court to make rules of Court shall be the same as immediately before the commencement of the Constitution. Before this provision in the Constitution, similar provision existed in the form of Section 223 of the Government of India Act, 1935 and before that, it was Section 106 of the Government of India Act, 1915 which vested power in the High Court to make rules for regulating the practice of the Court as was vested by Letters Patent. It is a known fact that the Allahabad High Court was constituted under a letters patent issued by her majesty on 17.03.1866.

- E Clause 7 of Letters Patent of Allahabad High Court is extracted below:

The Civil Court Manual Vol. 31 Pg.4

- F **“7. Powers of High Court in admitting Advocates, Vakils and Attorneys-**

- G And we do hereby authorize and empower the said High Court of Judicature for the North-Western Provinces to approve, admit and enroll such and so many Advocates, Vakils and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakils and Attorneys shall be and are hereby authorized to appear for the suitors, of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine and subject to such rules and directions.”

- H A perusal of Clause 7 shows that the High Court of Judicature for the

North-Western provinces (now known as Allahabad High Court) was empowered to “approve, admit and enroll advocates” and to authorize them “to appear, to plead or to act, or to plead and act” for the suitors in accordance with the rules and directions. This power of the High Court continues by virtue of Section 223 of the Government of India Act, 1935 and Article 225 of the Constitution of India. A

18. That apart, Section 34 of the Act empowers the High Court to make Rules laying down the conditions subject to which an Advocate shall be permitted to practice in the High Court and courts subordinate thereto. It reads as under: B

“34. Power of High Courts to make rules.—

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto. C

[(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary’s advocate upon all proceedings in the High Court or in any Court subordinate thereto.] D

[(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articulated clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.] E

19. Section 30 of the Act which confers a right to practice has been expressly made “subject to the provisions of this Act”. We reproduce Section 30 of the Act hereinbelow: F

“30. Right of advocates to practise.—Subject to provisions of this Act, every advocate whose name is entered in the [State roll] shall be entitled as of right to practise throughout the territories to which this Act extends,—

- (i) in all courts including the Supreme Court; G
- (ii) before any tribunal or person legally authorised to take evidence; and
- (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.” H

A Therefore, Section 30 is also subject to Section 34. The Act does not confer any absolute right to practice. The right can be regulated by the High Courts by prescribing conditions.

B 20. From the above discussion, it becomes clear that High Court is duly empowered to make rules and Rules in question are not *ultra vires* Section 30 of the Act. It is more so when power under Section 34 of the Act is given to the High Courts, which are Constitutional Courts.

C 21. We have already pointed out above that the restriction stipulated in the impugned Rules is reasonable and in public interest. It would be necessary to clarify at this stage that the disciplinary jurisdiction conferred on the Bar Councils under Section 36 of the Act for misconduct committed by the advocates stand on a different footing than the powers conferred on the High Courts to frame rules to practice before the High Court or subordinate Courts. It may be the intention of the Parliament to confer the jurisdiction on the lawyers' body like Bar Councils regarding misconduct by advocates to maintain the independence of the Bar.

D However, again keeping in mind the administration of justice and regulating the Court proceedings and right to practice and right to appear before the high Courts and Subordinate Courts, power is conferred on the High Courts, to frame rules. If High Court keeping in mind, several relevant factors like the purity in a administration of justice, the interest

E of the litigant public and easy availability of the advocate to assist the court for proper adjudication of the dispute pending before it or expeditious disposal of such proceedings or for any other valid or good reasons which High Court considered just and proper frames such rules, we find no fault in Rule 3 or Rule 3A of the Rules.

F 22. The aforesaid conclusion of ours flow from the dicta laid down by this Court in the various judgments and we would like to refer to some of these cases. In the case of *Bar Council of India v. High Court of Kerala*² wherein para 38, this Court held as follows:

G "38. Holding that the right of appearance in courts is still within the control and jurisdiction of courts, this Court noticed: (SCC pp. 72-73, para 34)

"34. ... Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in court can only be within the domain of courts. Thus Article 145 of the Constitution

H ² (2004) 6 SCC 311

of India gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Courts power to frame rules including rules regarding condition on which a person (including an advocate) can practise in the Supreme Court and/or in the High Court and courts subordinate thereto. Many courts have framed rules in this behalf. Such a rule would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, courts may now have to consider framing specific rules debarring advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the courts. Such a rule if framed would not have anything to do with the disciplinary jurisdiction of the Bar Councils. It would be concerning the dignity and orderly functioning of the courts. The right of the advocate to practise envelops a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators, etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file *vakalat* on behalf of a client even though his appearance inside the court is not permitted. Conduct in court is a matter concerning the court and hence the Bar Council cannot claim that what should happen inside the court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must and does have major supervisory and controlling power. Hence courts cannot be and are not divested of control or supervision of conduct in court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of court or has behaved unprofessionally and in an unbecoming manner will not have the right to continue to appear and plead and conduct cases in courts. The Bar Councils cannot overrule such a regulation concerning the orderly conduct of court proceedings. On the contrary, it will be their duty to see that such a rule is strictly abided by. Courts of

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- A law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the court. Proceedings inside the courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of contempt of court or of unbecoming or unprofessional conduct, standing in the court would erode the dignity of the court and even corrode its majesty besides impairing the confidence of the public in the efficacy of the institution of the courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar Council to frame rules laying down conditions subject to which an advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the court including inter alia rules as to persons practising before this Court. Similarly Section 34 of the Advocates Act empowers High Courts to frame rules, inter alia to lay down conditions on which an advocate shall be permitted to practise in courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an advocate to appear in a court. An advocate appears in a court subject to such conditions as are laid down by the court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a court. Even if Section 30 were to be brought into force control of proceedings in court will always remain with the court. Thus even then the right to appear in court will be subject to complying with conditions laid down by courts just as practice outside courts would be subject to conditions laid down by the Bar Council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other.”
- H 23 We have already referred to the judgment in the case of *N.K.*

Bajpai wherein it was held that right to practice as an Advocate is not an absolute right and it was only a statutory right which is controlled by the provisions of the Act. A

24. The principle that the High Court has right to regulate the conduct of its own proceedings can also be found in *Pravin C. Shah v. K.A. Mohd. Ali & Anr.*³. In that case, it was held that the High Court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate. The High Court has power to formulate rules for regulating proceedings inside the court. Such power should not be confused with the right to practice law. The court has supervisory power over the right of an Advocate to appear and conduct cases in the court. This court also cited with approval the judgment of the Allahabad High Court in the case of *Prayag Das v. Civil Judge, Bulandshahr*⁴, wherein the High Court held that the High Court has power to regulate the appearance of Advocates in courts. The High Court further held that the right to practice in the right to appear in courts are not synonymous. Under Section 34 of the Act, the High Court has power to make rules for regulating proceedings inside the court. B C D

25. Same sentiments are echoed in *R.K. Anand & Anr. v. Registrar, Delhi High Court and Anr.*⁵ and *Ex-Capt. Harish Uppal v. Union of India & Anr.*⁶. E

26. We, thus, are of the opinion that Rules 3 and 3A of the Allahabad High Court Rules, 1952 and perfectly valid, legal and do not violate the right of the appellant under Article 19(1)(g) of the Constitution of India. The appeal, therefore, fails and is hereby dismissed. There shall, however, be no order as to cost. F

Nidhi Jain

Appeal dismissed.

³ (2001) 8 SCC 650

⁴ AIR 1974 All. 133

⁵ (2009) 8 SCC 106

⁶ (2003) 2 SCC 45