

ADVOCATES RIGHT TO TAKE UP LAW TEACHING

The Advocates Right to take up Law Teaching Rules, 1979

[Rules made by the Bar Council of India under Section 49A of the Advocates Act, 1961]

“3. Right of practicing advocates to take up law teaching.- (1) Notwithstanding anything to the contrary contained in any rule under this Act, an advocate may, while practising, take up teaching of law in any educational institution which is affiliated to a University within the meaning of the University Grants Commission Act, 1956 (3 of 1956), so long as the hours during which he is so engaged in the teaching of law do not exceed three hours a day.”

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Anees Ahmed v. University of Delhi

AIR 2002 Del 440

CW. 3412/97 : This writ petition was filed by the petitioners by way of public interest litigation for a direction to respondent No. 1/Delhi University to take disciplinary action against all Full Time Law Teachers of the Delhi University, who were practicing in the courts and also praying for a direction to prohibit all Full Time Law Teachers of the Faculty of Law of the University of Delhi from carrying on legal practice/profession and also from appearing in the courts of law any manner. The petitioner had also sought for a direction to the Delhi State Bar Council, respondent No. 3 to cancel the enrolment/licence to practice given to Full Time Law Teachers. The petitioner No. 1 was an Advocate practicing in the High Court of Delhi and had filed the writ petition as he was interested in the advancement of legal education in India. The petitioner No. 2, at the time of filing of the writ petition, was a Law Graduate, who passed out and obtained Degree of law at the relevant time when the writ petition was being filed.

C.W. 3519/97 : This writ petition was filed by the petitioner, who was a Professor of Law the Faculty of Law, of the University of Delhi. The petitioner was initially appointed as a Lecturer in Law and posted at Law Centre-II of the Faculty of Law of the University of Delhi in August, 1971. Thereafter the petitioner got his promotion and in due course of time, became a Professor in Law in the Faculty of Law of the University of Delhi. The petitioner filed the present petition challenging the order passed by the Bar Council of India on 9-8-1997 cancelling and removing the name of the petitioner from the roll of Advocates of the Bar Council with a further direction

that it would be open to the petitioner to make a fresh application for enrolment as an Advocate on his ceasing to be in employment.

The common question that arose for consideration was whether a faculty member in the Faculty of Law, University of Delhi could subsequently enroll himself as an advocate and appear in a court of law and simultaneously carry on the duties of a full-time faculty member of the Faculty of Law, University of Delhi.

The private respondents in the writ petition filed by way of public interest litigation were all full time faculty members of the University of Delhi, who employed as full time faculty members in the University of Delhi and subsequently got themselves enrolled as Advocates with Delhi State Bar Council.

DR. MUKUNDAKAM SHARMA, J. - 7. The petitioners No. 1 in the writ petition filed by way of public interest litigation, appeared in person and during the course of his arguments referred to various statutes and ordinances of the University of Delhi as also the provisions of The Advocates Act, 1961 and the rules framed by the Bar Council of India and in the light thereof submitted that the aforesaid provisions prohibit Full Time Law Teachers from practicing in the law courts and, therefore, the Full Time Law Teachers, who are taking up law practice in law courts subsequently, after enrolling themselves as advocate are liable to be prohibited/restrained from pursuing the aforesaid two avocations simultaneously. He submitted that in view of the fact that most of the full time law teachers are also practicing as advocates, the students community pursuing the law course in the University of Delhi has been neglecting their obligation to their students and number of complaints to their students and number of complaints on that count have been lodged. In support of his contention, the petitioner No. 1 relied upon the report submitted by a committee comprising of Prof. Andre Beteille of Delhi School of Economics and Prof.. K.R. Sharma of the Faculty of Law, University of Delhi. He also relied upon various decisions of the Supreme Court of India in support of his contention and also to the Keynotes address in American Bar association Meeting in August, 2000 by John Sexton of the new York Universities Law School.

8. The Bar Council of India was also represented by their counsel at the time of arguments, who had drawn our attention to the various provisions of the Advocates Act, 1961 read with rules framed by the Bar Council of Delhi, particularly to Rule 103 of the Rules as also the rules framed by the Central Government called Advocates (Right to take up Law Teaching) Rules, 1979, hereinafter referred to in short the 1979 Rules. Referring to the said provisions, it was submitted by the counsel that under rule 103 of the Rules framed by the State Bar Council any person, who is either in part time or full time service cannot be enrolled as an Advocate, whereas a part-time teacher of law could be admitted as an Advocate under the proviso to the aforesaid rule 103 of the Delhi Bar Council Rules. He further submitted that Full Time Law Teachers could not have been enrolled as Advocates as provided for under rule 103 of the Delhi

Bar Council Rules and that the 1979 Rule is a rule that operates post-enrolment and has no application to a person, who is not an Advocate. He also referred to the provisions of Rules 49 of Chapter - II (Standards of Professional Conduct and Etiquette). Section VII (Restrictions on other employment) of the Bar Council of India rules laying down that an Advocate shall not be a full time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council, on whose roll his name appears and shall thereupon cease to practice as an Advocate so long as he continues in such employment.

9. He also referred to Resolution No. 108 of 1996, which was passed by the Bar Council of India giving stress to the need of improving the standards of legal education in India. The said resolution states that the Bar Council of India disapproves the practice of enrolling full time salaried teachers in law, who were not enrolled as advocates at the time of their whole time appointment as teachers by misinterpreting the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 viz. Advocates (Right to take up Law Teaching) Rules, 1979 and direct all the Star Bar Councils to take immediate steps to initiate removal proceedings under the provisions of the Advocates Act and the Rules framed thereunder against such full time salaried law teachers, who have been enrolled as advocates. He submitted that Theban on legal practice by Full Time Law Teachers has salutary objective to achieve, namely, to maintain high standards of legal standards. He further submitted that so far the right of the practicing Advocates to take up the law teaching is concerned, the same is a right, which has been conferred on the practicing Advocates to take up teaching of law under the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 and , therefore, the members of the Bar would have a right to take up teaching of law. He also submitted that the Full Time Teachers of Law were never entitled to be enrolled as Advocates and were wrongly enrolled by the Bar Council of Delhi by misinterpreting the Rules made by the Central Government under S. 49-A of the Advocates Act, 1961 and as such the Bar Council of India has initiated action against such persons, who have been wrongly enrolled as advocates.

10. He also relied upon various statutes and ordinances of the University of Delhi and, particularly referred to Clause 5 of Ordinance XI, which provides that a teacher shall devote his/her whole time to the service of the University and shall not, without the permission of the University, engage directly or indirectly, in any trade or business whatsoever, or in any private tuition or other work to which and emolument or honorarium is attached.

11. Counsel appearing for the University of Delhi also relied upon various ordinances and statutes of the University of Delhi, in support of his contention that the service conditions of Full Time Teachers of the University of Delhi incorporated in the contract of service, are statutory in nature and that they are binding on the teachers and that a Full Time Teacher of the University of Delhi is required to devote his/her time only to teaching and research in the University and that a Full time Teacher can not undertake any other professional activity such as practicing law as an Advocate, without the express permission of the University authorities and that the University has not granted any permission to Full Time Teachers either in the Faculty of Law or any other

Faculty to practice as a Lawyer and only Sh. N.S. Bawa was granted a very limited permission to appear in the case of riot victims of 1984. Counsel reiterated the stand taken in the counter affidavit filed by University of Delhi that no Full Time Teacher of the University of Delhi, be it a teacher in the Law Faculty or any other Faculty of the University, is entitled to practice as a Lawyer so long as he is a Full time Teacher in the University.

12. In support of his contention, he referred to various clauses of the University ordinances and the resolutions of the University as also of the University Grants Commission, Referring to the same he submitted that it is imperative that the Full time Teachers devote their time and energy to teach the students in the Faculty of Law and to do research and publication and that the said teachers are not simultaneously entitled to also practice law, as a lawyer.

40. The Petitioner Nos. 1 and 2 were students in the Law Faculty of the Delhi University. During their tenure as students they had first hand knowledge about the manner and mode in which legal education is imparted in the Delhi University. After being enrolled as Advocates the petitioner No.1 filed the present petition in the Court with the intention for betterment and advancement of legal education in Delhi. The other two writ petitions are directed against the impugned orders passed by the Bar Council of India removing two of the full time Law teachers from the roll of Advocates. The teachers from the roll of Advocates. The aforesaid orders are also challenged before this Court on the ground that the Bar Council of India has no such jurisdiction.

41. In view of the aforesaid position, the issues that are raised in the Public Interest Litigation shall have to be dealt with and decided even in order to answer the issues raised by Shri Vats and Shri Srivastav in their writ petitions. Besides if a writ petition is filed by a person driven by public interest and such a writ petitioner comes with clean heart, clean mind and clean objectives and is filed bona fide for the purpose of only serving a public interest, such a petition cannot be dismissed. This was what was held by the Supreme Court in the decision in ***K. R. Srinivas v. R. M. Premchand*** [(1994) 6 SCC 620], wherein the Supreme Court held that the writ petitioner who comes to the Court for relief in public interest petition must come not only with clean hands, like any other writ petitioner but must further come with a clean heart, clean mind and clean objective.

42. In a Public Interest Litigation the Court in order to check and prevent misuse of the remedy ought to examine the motive, if any, of the petitioner and ask itself the question, "Is there anything more than what meets the eyes"? That was exactly what was laid down by the Supreme Court in ***Sachidanand Pandey v. State of West Bengal*** [AIR 1987 SC 1109].

43. The motive for filing a Public Interest writ petition must be examined by the Court with care and caution. In case the High Court finds the filing of the Public Interest Litigation to be motivated by self interest of the petitioner for wreaking vengeance it will not entertain the same. In ***Dr. Ambedkar Basti Vikassabha v. Delhi Vidyut Board*** [AIR 2001 Del. 223] it was held by the Division Bench of this Court that the Court has to be satisfied about, (a) the correctness of the credentials of the applicant; (b) the prime facie correctness of nature of information given by

him; (c) the information being not vague and indefinite. It was also held by this Court that the Court has to strike balance between two conflicting interest namely, (i) no body should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitioner seeking to assail, for oblique motives, justifiable executive actions.

44. The allegations of the full time Law teachers against the petitioners are based on surmises and conjecture. The petitioner No. 1, who has filed the present public interest litigation is an Advocate of this Court and is a responsible officer of the Court. No clear evidence is led by the Respondents - Full time Law teachers to prove and establish that filing of the writ petition is in any manner motivated or instigated by the aforesaid two Professors of the Law Faculty of Delhi, who according to the said respondents were inimical towards them. The cause which is sought to be espoused through the present writ petition is of public importance. The same is also required to be looked into as the Bar Council of India which is the primary body for maintaining discipline amongst the enrolled Advocates has also proceeded to take action against some of the full time Law teachers and against the rest it is dependent on the outcome of these petitions. Therefore, in our considered opinion this writ petition cannot be dismissed on the ground of maintainability. This writ petition filed under the category of Public Interest Litigation by the writ petitioner, who is an Officer of the Court is maintainable and the issues raised being important and having wide ramifications are required to be dealt with and answered.

45. Having held thus, we may now proceed to examine the issues that arise for consideration on merits of the case. Reference is made to the provision of Section 2 (1) (a) of the Advocates Act, 1961 which defines the term “advocate” meaning an Advocate entered in any roll under the provisions of the said Act. Rule 103 of the Rules framed by the Bar Council of Delhi has been extracted above. In the aforesaid rule it is provided that any person either in part-time or full time employment cannot be enrolled as an advocate but under the proviso is provided that a part-time teacher of Law could be admitted as an advocate. Therefore, under the aforesaid provision a part-time Law teacher could be enrolled as an advocate but no such privilege or benefit is available to a full time Law teacher.

46. Strong reliance was placed by the respondent-Full time Law teachers on the provisions of Advocates rights to take up Law Teaching Rules, 1979 (“the 1979 Rules”). The said provisions are also extracted hereinabove. A bare reading of the said Rules indicate that the said rule uses the terminology “advocates” and deals with the right of practicing advocate to take up law teaching. By virtue of the aforesaid provision an advocate is empowered to take up law teaching provided the same does not exceed three hours a day. Therefore, the said rules clearly establish that the same are applicable and come into operation post enrollment and have no application to a person prior to his enrollment as an advocate. It was sought to be contended by all the law teachers that a person can combine law teaching and law practice simultaneously provided law teaching does not exceed three hours a day. It was submitted by them that after adaptation of the aforesaid rules, a lawyer could take up full time law teaching in regular scale of pay and, therefore, the converse is also possible and, therefore, a Law teacher could also be enrolled as an

Advocate. However, on proper reading of the said provision would make it crystal clear that such an interpretation is not only fallacious but also absurd. It is settled law that an interpretation which leads to absurdity should always be avoided.

47. It is also settled law that when the provisions of a statute is plain, clear and unambiguous, no word could be added to such a plain wordings of the statute nor it is permissible to add words into it which are not there. In this connection reference may be made to the decision of the Supreme Court in *Union of India v. Deoki Nandan Aggarwal* [AIR 1992 SC 96] wherein it is held as follows at page 101:

“It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the Legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the Legislature the Court could not go its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be.”

51. When in the context of the aforesaid decisions the wordings used in the Notification issued by the Central Government is read it would make it explicit that under the said notification a right is given to practicing advocate to take up law teaching but no such parallel right is given to teachers of law to be enrolled as advocates. The wordings used in the aforesaid provisions is plain and unambiguous and requires no addition of words to the said statute. The intention of the legislature is also clear and apparent and, therefore, the Court would not proceed to reframe the legislation by giving a meaning which the respondent teachers seek to give.

52. It is true that the course of law particularly the LL.B. course being a professional course, there is a necessity of association of and guidance of the Advocates to the law students so as to enable such students to gain practical experience and to acquire Court craft and professional skills. But at the same time the obligation of the teaching faculty to the students cannot be ignored. There are several facts of teaching namely, delivering lectures, taking tutorials and seminars. Over and above the teaching Faculty also has an obligation of doing research which includes one's own research as well as supervision of research required to be done by the students. Besides there are other responsibilities to be discharged by a teacher like, administrative responsibilities etc. In order to give an exposure to the students undergoing the law course to acquire some practical experience, permission is granted to lawyers practicing in the Courts to undertake such law teaching provided such teaching does not take up more than three hours a day.

53. It was argued by the law teachers that they are in fact not required to teach for more than three hours in a day and that they are, therefore, eligible to practice in the Courts and to retain their membership of the Bar Council. When the statute does not by itself permit such a situation and when Rule 103 has specifically prohibited full time law teachers from enrolling as advocate,

no such permission could be granted to a full time law teacher to be enrolled as an advocate. The aforesaid interpretation is also in consonance with Statutes, Ordinance and the Resolutions adopted by the Delhi University and the University Grants Commission. Since both Rule 103 of the Delhi State Bar Council Rules and Rule 3 of the Rules framed by the Central Government operate in two distinct and different fields and relate to different set of persons, there is no repugnancy as sought to be submitted by the full time law teachers and, therefore, the said contention is rejected. It is also worthwhile to mention at this stage that the validity of the 1979 Rules is not under challenge before us. Therefore, we are to decide this matter proceeding on the basis that the said Rules are valid and are applicable to the set of persons who are specifically mentioned in the said Rules. No deviation or addition is permissible to the clean and the plain intention and meaning. Therefore, we also hold that reliance by the full time law teachers on the said Rules to advance their cause is misplaced.

54. The service conditions of full time teachers of the Delhi University are incorporated in the Contract of Service and, therefore, they are statutory in nature and they are binding on the teachers. Reference is already made to Clause 5 of the Ordinance which provides that a full time teacher of the Delhi University is required to devote his time only to teaching and research in the University and, therefore, a full time teacher cannot undertake any other professional activity, such as practicing law as an advocate. The University which is arrayed as one of the respondents in the present cases has specifically stated in the counter affidavit filed by it that the University has not granted any permission to full time teachers either in the Law Faculty or in any other Faculty to practice as a Lawyer and that one Mr. N. S. Bawa was granted a very limited permission to appear in the case of Riot Victims of 1984. The averments in the Public Interest writ petition disclose that request made by the members of the Law Faculty of Delhi that in legal aid cases teachers of the Law Faculty may be permitted to appear in Court was considered by the Executive Council of the Delhi University and it was rejected by the Executive Council, which is the final administrative Body of the University. The same position was again reiterated by the University in a communication to all the teachers dated 3-11-1995. It is, therefore, the specific stand of the Delhi University that no full time teacher of the Delhi be he or she is in the Law Faculty or in any other Faculty of the University is not entitled to practice as a lawyer as long as he is a full time teacher in the University. If such a privilege is granted to the law teacher to be enrolled as an advocate, there could be no reasonable ground to deny the same privilege to other Faculty Members of other departments of the University. The aforesaid stand of the Delhi University is found to be valid and reasonable. Under the 1979 Rules and Advocate is permitted to take up law teaching based on the number of hours of teaching being undertaken. The Committee constituted by the University upon enquiry has held that the obligation of a teacher, though somewhat diffuse but is extensive in nature which include not only class from teaching but also research and administration. It was held that such obligations even though cannot be put down to departmental time table the same, however, exists and such time should be included and read into their daily routine. The directions of the University Grants Commission are based on the aforesaid analogy when it conveyed the decision that in order to promote quality education

full time law teachers would not be permitted to enroll as members of the Bar entitling them to full time practice in law. Even the permission granted to such teacher to appear and represent in social action/public interest litigation is in the nature of legal aid and social activity and not as a lawyer.

55. In our considered opinion, the same would not by itself empower or enable a full time teacher of the Delhi University to practice as a Lawyer. Even in a case where enrolment is granted by the Bar Council and thereafter the advocate seeks to take up law teaching, the same could be permitted only within the parameter of the 1979 Rules read with the University Statutes and Ordinance.

56. The University Grants Commission also by its letter dated 7-12-1995 informed the Registrar of the Delhi University that full time law teachers in University Departments and affiliated Law Colleges would not be permitted to enroll as members of the Bar entitling them to be a full time lawyer but they should be allowed and permitted to appear in Courts for social action or public interest litigation matters as well as legal aid/public interest litigation connected therewith. The aforesaid permission is restricted and limited to the aforesaid extent only and was allowed to give impetus to the concept of legal aid and making the students of law also aware of the aforesaid concept. The Report of the Committee which was adopted by the Executive Council of the Delhi University on 19-4-1998, the extract of which is quoted hereinbefore would also support the same position.

57. In that view of the matter we hold that the interpretation sought to be given by the respondent-Faculty Members to Rule 103 and to the 1979 Rules cannot be accepted. We also hold that the said teachers are bound by the provisions of Rule 103 of the Bar Council of Delhi Rules and the Rules of 1979 are neither applicable to their cases nor they can seek assistance from the said Rules unless the rules framed by the Competent Authority allow the privilege specifically. No such privilege could be claimed by way of implication or on the basis of surmises or conjectures. Therefore, no such right or privilege could be claimed by the full time law teachers of the Delhi University which is not permitted under the rules.

58. Reference could also be made to Rule 49 of Chapter II, (Standards of Professional Conduct and Etiquette) Section VII (Restrictions on other employments) of the Bar Council of India Rules which provides that an advocate shall not be a full time salaried employee of any person, government, firm corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

59. We are also of the considered opinion that the Resolution adopted by the Bar Council of India in 1996 under Resolution No. 108 correctly lays down the law and the practice and we hold that no objection could be taken as against the said Resolution. The said decision is in consonance with the observations of the Supreme Court in the decision of *Dr. Haniraj L.*

Chulani. Therefore, if the interpretation sought to be given by the full time law teachers are accepted the same would not only run counter to the statutory legal position but the same would also be contrary to the law of the land.

60. In terms of the said Resolution the Bar Council of India has proceeded to take suo motu action and has directed all the State Bar Councils to take necessary steps to implement the aforesaid Resolution. The Bar Council of India proceeded to take suo motu action initiating removal proceedings against such full time salaried teachers of law who were subsequently enrolled as advocates by an erroneous interpretation of 1979 Rules. It was held by the Bar Council of India that full time law teachers were enrolled as advocates by misinterpreting the rules made by the Central Government under Section 49A of the Advocates Act, 1961. By adopting the aforesaid Resolution No. 108 of 1996 the Bar Council of India has tried to rectify the mistake by removing the names of such persons who are full time salaried law teachers and who were enrolled as Advocates overlooking the specific provisions of Rule 103 of Bar Council of Delhi Rules and by misinterpreting the provisions of the 1979 Rules.

61. It was contended that no such power could be exercised by the Bar Council of India and that also after expiry of about 20 years from the date of enrolment. Counsel appearing for the Bar Council of India, however, submitted that such a power could be exercised by the Bar Council of India under the provisions of Section 48A of the Advocates Act, 1961.

62. In the foregoing discussions it is held that no full time law teacher drawing regular salary from the University could enroll himself as an advocate. Such full time teachers were allowed to take enrolment by the State Bar Council misinterpreting the provisions of the 1979 Rules. The said full time law teachers were not eligible to be enrolled as an advocate and, therefore, enrolment itself was clearly contrary to Rule 103 of the Rules. When such persons who suffered a bar at the threshold are given enrolment in violation of and contrary to rules, they cannot take up a plea of estoppel. In this connection reference may be made to the decision of the Supreme Court in **Satish Kumar Sharma v. Bar Council of Himachal Pradesh** [AIR 2001 SC 509], wherein it was held as follows at page 517, of AIR:-

“The contention that the respondent could not have cancelled enrolment of the appellant almost after a decade and half and that the respondent was estopped from doing so on the principle of promissory estoppel, did not impress us for the simple reason that the appellant suffered threshold bar and was not eligible to be enrolled as an Advocate and his enrolment itself as clearly contrary to Rule 49 of the Rules in the light of the facts stated above. Hence neither the principles of equity nor promissory estoppel will come to the aid of the appellant.”

63. It is also a settled law that there cannot be any estoppel as against statute to defeat the provisions of law. That is exactly what was laid down by the Supreme Court in **Indira Bai v. Nand Kishore** [AIR 1991 SC 1055] wherein it was held as follows:-

“There can be no estoppel against statute. Equity, usually, follows law. Therefore that which is statutorily illegal and void cannot be enforced by resorting to the rule of estoppel.”

64. As the full time law teachers suffered a threshold bar to get themselves enrolled as advocates the enrolment given to them by the State Bar Council was per se void and illegal and contrary to Rule 103 of the State Bar Council Rules and, therefore, the Bar Council of India acted within its jurisdiction in canceling such enrolment which was done in violation of the extent rules.

65. A power of revision is vested in the Bar Council of India which is a power of general superintendence over the powers exercised by the State Bar Council. As and when the Bar Council of India is of the opinion that a particular action is taken by such a State Bar Council without any proper sanction of law the same can always be corrected and rectified by exercising the powers of Revision by the Bar Council. A similar plea raised by the aggrieved person in the case of Satish Kumar Sharma (supra) was rejected by the Supreme Court holding that such a contention that the respondent could not have cancelled enrolment after a decade and half is not acceptable, Section 26 of the Advocates Act may not be strictly applicable to the facts of the present cases but if such action could be taken by the Bar Council of India in exercise of its other statutory powers the same would be held to be valid.

66. In terms of the aforesaid observations and directions all the writ petitions stand disposed of holding that the full time law teachers of the Law Faculty of the Delhi University could not have enrolled themselves as advocates and, therefore, enrolment given to the said teachers by the State Bar Council was per se void and illegal and any action taken by the Bar Council of India to rectify the said mistake in exercise of its powers cannot be said to be bad or illegal. We also hold that a part time teacher of law could be enrolled as an advocate and also that an advocate after being enrolled could take up part time law teaching. We find no fetter put to the aforesaid position. Interim order stands vacated.

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