

HIGH COURT OF GUJARAT**JALPA PRADEEPBHAI DESAI***Versus***BAR COUNCIL OF INDIA & 2 ORS****Date of Decision:** 16 June 2017**Citation:** 2017 LawSuit(Guj) 698**Hon'ble Judges:** [N V Anjaria](#)**Eq. Citations:** 2017 AIR(Guj) 134, 2017 142 SCL 526**Case Type:** Special Civil Application**Case No:** 19743 of 2015**Subject:** Civil, Constitution**Acts Referred:**[Constitution Of India Art 226](#)[Advocates Act, 1961 Sec 26\(3\), Sec 26, Sec 26\(2\).](#)[Bar Council Of India Rules, 1975 R 29, R 49](#)**Final Decision:** Application disposed**Advocates:** [Manan A Shah](#), [R C Jani](#)**Cases Cited in (+):** 1**Cases Referred in (+):** 2**N.V. Anjaria, J.**

[1] By filing the present petition under Article 226 of the Constitution, the petitioner has prayed to direct the respondents to act in accordance with the guidelines in respondent No.1-Bar Council of India's letter dated 21st September, 2013. It is further prayed to direct the respondents to issue permanent enrolment number to the petitioner in view of decision taken by respondent No.1 as per its aforementioned letter dated 21st September, 2013. Another prayer was made to direct respondent Nos.2 and 3 to grant temporary enrolment number to the petitioner.

1.1 As averred in the first paragraph of the petition, the challenge is directed against the action of respondent Nos.2 and 3 in not enrolling the petitioner as an

advocate despite the decision of respondent No.1-Bar Council of India reflected in Resolution dated 24th August, 2013 bearing Resolution No.191 of 2013. Shortly stated, the grievance in the petition is about non-granting of enrolment to the petitioner as an advocate to practice law by the respondents Bar Councils.

[2] The issue arises with reference to Rule 49 of Chapter-II Part-6 of the Bar Council of India Rules. In order to address and appreciate the controversy, the said Rule is usefully reproduced at the outset hereinbelow.

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practise, 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 practise as an advocate so long as he continues in such employment.

2.1 Below the Rule, the following further is stated by way of clarification.

* That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgement will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf their employers.

* That the Bar Council of India is of the view that if the said officer is a whole time employee drawing regular salary, he will no be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled.

[3] Adverting to the facts pleaded in the petition and available from the record of the petition, the petitioner herein having passed out five years integrated course of B.A., LL.B. from Maharaja Sayaji Rao University, Vadodara, got selected during her academic period in campus interview of Gujarat Industrial Development Corporation (hereinafter referred to as 'the Corporation') and she was given appointment as Legal Consultant also known as legal expert having been so selected. Copy of selection letter dated 19th March, 2012 which is on record, inter alia stated that as per the contract agreement executed between the Corporation and petitioner for taking services of the petitioner as legal expert, petitioner is required to join. It appears that while the petitioner was engaged as Legal Consultant or legal expert with the Corporation, she wanted to get

Sanad for practicing in law in the Bar Council of Gujarat-respondent No.2 herein. It further appears that petitioner was informed that she was required to be given undertaking on affidavit that she is not an employee of any establishment including the Corporation, which is a condition for getting enrolment as an advocate.

3.1 The petitioner applied for enrolment before the Bar Council of Gujarat on 19th June, 2012. As the Enrolment Committee noticed that the petitioner was associated with the Corporation as a legal expert rendering her services in that capacity from 16th June, 2012 and was getting amount of Rs.25,000/- per month, Bar Council of Gujarat decided to call for an opinion from Bar Council of India. Section 26 of the Advocates Act, 1961 deals with the disposal of applications for admission as an advocate and sub-section (2) thereof provides that where the Enrolment Committee of State Bar Council proposes to refuse any such application, it shall refer such application to Bar Council of India for its opinion. Sub-section (3) of Section 26 provides that the Enrolment Committee of State Bar Council shall dispose of any application referred to the Bar Council of India under sub-section (2) in conformity of the opinion of the Bar Council of India.

3.2 The Bar Council of India communicated to the Bar Council of Gujarat about Resolution No.191 of 2013, by addressing letter dated 21st September, 2013. The said law is reproduced hereinbelow which contains Resolution No.191 of 2013 as well as mentions about the report.

Sir,

The General House of the Council at the meeting held on 24th August, 2013 under Item No. 256/2013 has passed the following resolution regarding Enrolment matter of Ms. Jalpa P. Desai.

Resolution No. 191/2013

The report dated 23.8.2013 submitted by Hon'ble Shri Rameshcnahdra G. Shah, Member, Bar Council of India in regard to enrolment of Ms.Jalpa P. Desai be and is hereby accepted.

REPORT IN THE MATTER OF MS. JALPA P. DESAI

I have perused the record such as enrolment application of Ms. Jalpa P. Desai and letter No. BCG: 1509/2012 dated 8.10.12. On page-4 vide para-16 of the enrolment application it has been stated that she is presently in employment or service with Gujarat Industrial Development Corporation for one year contract basis as providing services as a Law Professional Legal Expert with a panel Advocate of

the Corporation on record. It is also noticed from the agreement made between Gujarat Industrial Development Corporation and Ms. Jalpa P. Desai that her services was hired for one year on the contract basis on the lump sum amount of Rs.25,000/- per month. It seems that she might be helping in the case matter to the Advocates on panel. Fact remains, but her service has been hired for one year on contract basis. It amount to rendering of services which is violation of Rule-49 of Chapter-II, Part-6 of the Rule of Bar Council of India.

In view of the above considering the provisions of the Advocates Act, if the applicant Ms. Jalpa P. Desai files undertaking on affidavit that she will not be employee of any establishment including Gujarat Industrial Development Corporation. Thereafter final enrolment certificate and certificate of practice can be granted by the State Bar Council subject to the other conditions fulfillment prescribe by the State Bar Council.

3.3 It was thus stated that provided the applicant files an undertaking and affidavit that she will not be the employee of the Corporation, the final enrolment certificate could be granted. It appears that affidavit and undertaking dated 07th November, 2013 was given by the petitioner as under.

AFFIDAVIT OF UNDERTAKING

I the undersign Jalpa Pradeepbhai Desai do here by state on solemn affirmation that on completion of my contract with GIDC, I shall not be the employee of any establishment including GIDC. This undertaking is being affirmed with refer to opting Sanad & permission to practice as an Advocate from Bar Council Of Gujarat, as its directed by Bar Council of India Vide its letter no. BCI: D: 4477/2013 (Council Mtg. 24.8.2013) dated 21/9/2013.

3.4 It is the case of the petitioner that despite the aforesaid undertaking and reminder letters to both respondent Nos.1 and 2, enrolment number was not provided to her and the respondents had turned their ears deaf. Letters were addressed by the aggrieved petitioner and further correspondence ensued between the petitioner and Bar Councils. As the request for granting enrolment number was not being considered, the petitioner filed the present petition with the prayers as aforesaid. As the issue appeared to be on hold pending with the respondent-Bar Council of India, in the orders passed by this Court during the pendency of the matter, respondent Nos.1-Bar Council of India was directed to expedite its decision. Pursuant to order dated 25th February, 2016 passed by the Court during the pendency of the petition requiring the respondents to complete the procedure at their end, respondents activated themselves.

3.5 On behalf of the first respondent-Bar Council of India, affidavit-in-reply dated 30th March, 2016 was filed stating inter alia that for completing the procedure regarding enrolment of the petitioner as per the directions of the Court, an urgent meeting meeting was called on 03rd March, 2016 after issuing notice to the petitioner to remain present on that date; petitioner expressed her inability to come to Delhi at such a short notice. It was further stated in the affidavit that therefore on 03rd March, 2016 Bar Council of India passed Resolution No.107 of 2016 resolving that Council was not in a position to inquire and investigate into the matter in absence of the applicant, therefore it was resolved to constitute a Committee headed by Honourable Mr.Justice R.C. Mankad, Retired Judge of High Court of Gujarat, and place a report before the Council.

3.6 The Committee headed by Honourable Mr.Justice R.C. Mankad (Retd.) and comprised of Shri D.K. Patel, Chairma, Enrolment Committee, Shri N.M. Anadkat, Member, Enrolment Committee and Shri N.D. Patel, Member, Enrolment Committee gave its report on 20th August, 2016. The Committee rejected the request of the applicant for enrolment, for the reasons stated therein. It reads as under, reproducing it in its entirety,

Committee has considered the resolution passed by the Bar Council of India resolution No. 191/2013 dated: 21/09/2013 as well as the letter dated: 30/03/2016 of BCI:D:1377 (Council-AT). Considering this letter the resolution passed by the Bar Council of India by its resolution no. 68/2016 in which it is resolved to constitute a Committee headed by a former Judge of Gujarat High Court namely Hon'ble Mr. Justice R.C. Mankad to enquire into the matter and place his report before this Council preferably within a period of one month from today. After that the Committee has called the applicant Ms. Jalpa P. Desai on following dates 04/06/2016, 02/04/2016, 14/08/2016, 17/08/2016 and 20/08/2016 for finalising the matter of Ms. Jalpa P. Desai. Today, i.e. on 20/08/2016 Ms. Jalpa P. Desai has submitted written arguments before the Committee. As per the resolution passed by the Bar Council of India bearing resolution no. 191/2013 there is a clear cut report that after considering all documents, I have perused the record such an enrolment application of Ms. Jalpa P. Desai and letter No. BCG:1509/2012 dated: 08.10.2012. On page-4 vide para-16 of the enrolment application it has been stated that she is presently in employment or service with Gujarat Industrial Development Corporation for one year contract basis as providing services as a Law Professional Legal Expert with a panel Advocate of the Corporation on record. It is also noticed from the agreement made between Gujarat Industrial Development Corporation and Ms. Jalpa P. Desai that her services was hired for one year on the contract basis on the lump sum amount of Rs.25,000/- per month. It seems that

she might be helping in the case matter to the Advocates on panel. Fact remains, but her service has been hired for one year on contract basis. It amounts to rendering of services which is violation of Rule-49 of Chapter-II, Part-6 of the Rule of Bar Council of India. This clear decision is made by the Bar Council of India. The Bar Council of India has also passed the resolution that in view of the above considering the provisions of the Advocates Act, if the applicant Ms. Jalpa P. Desai files undertaking on affidavit that she will not be employee of any establishment including Gujarat Industrial Development Corporation. Thereafter final enrolment certificate and certificate of practice can be granted by the State Bar Council subject to the other conditions fulfilment prescribe by the State Bar Council. Considering the above said resolution of Bar Council of India, it is clear that the contract of Ms. J. P. Desai, and GIDC is amount to rendering of services which is violation of Rule-49 of Chapter-II, Part-6 of the Rule of Bar Council of India.

As per the provisions of Sec.26(2) of the Advocates Act, 1961, Disposal of application for admission as an Advocate and in sub-section 3 of the Advocates Act, 1961, the enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under sub-section (2) in conformity with the opinion of the Bar Council of India.

Considering the resolution passed by the Bar Council of India, submissions made by Ms. Jalpa P. Desai and the relevant provisions of Sec. 26(2) of the Advocates Act, 1961, the Committee is of the view that the application of Ms. Jalpa P. Desai deserves to be rejected.

Therefore, considering all the facts and circumstances of the case, the resolution of Bar Council of India referred to above and the relevant provisions of the Advocates Act, 1961, the Committee rejects the enrolment application of Ms. Jalpa P. Desai. The applicant to be informed accordingly.

3.7 Rule was issued by this Court as per order dated 15th September, 2016 taking note of the aforesaid report. It further appears that the Court thereafter considered the question of interim relief as reflected in order dated 17th November, 2016. This Court by said order dated 17th November, 2016 granted interim relief to the petitioner in terms of paragraph 7(C) directing the respondent No.2-Bar Council of Gujarat to provide temporary enrolment number to the petitioner forthwith.

3.8 The aforementioned order dated 17th November, 2016 was taken by the Bar Council of Gujarat in Letters Patent Appeal No.1296 of 2016. In an event having significant bearing on the controversy, the Division Bench allowed the Letters Patent Appeal by its judgment dated 22nd December, 2016 and set aside the said

interim order dated 17th November, 2016 impugned before it after dealing the case on merits at that stage.

[4] Petitioner who appeared as party-in-person, was heard extensively. Since the petitioner was a party-in-person, she was allowed to submit written submissions, which she submitted at the end of the hearing after arguing the case. The written submissions were accompanied by the documents already forming part of the petition. They were also considered by the Court. Also heard learned advocate Mr. Manan Shah for respondent No.1 and learned advocate Mr. R.C. Jani for respondent No.2.

4.1 The party-in-person contended that she ought to have been allowed enrolment by the respondents as she was not in the employment of the Corporation. She assailed as erroneous the decision of the Bar Council of India and that of Committee constituted by it to deny her the enrolment in view of Rule 49 of the Rules. The decision was described as mala fide by the party-in-person. It was contended by party-in-person that Bar Council of India had no powers to constitute the committee which it constituted and the report was obtained. She also tried to raise a contention that report of the Committee appointed by Bar Council of India was titled as judgment rather than report.

4.2 The party-in-person next submitted that she was only Legal Consultant with the Corporation and her engagement could not be said to be debilitating for getting enrolled. She submitted with reference to the letters of the Corporation that even the Corporation termed her engagement as contractual only. She further submitted that she was never treated as an employee and was paying tax at source using form 16A which was for professional services and that in view of Section 194J of the Income-Tax Act, what was paid to her was was not the salary. The contentions raised by party-in-person were inclusive of all those contentions which were canvassed before the Letters Patent Bench and dealt with by the Division Bench while allowing the Division Application of respondent No.2-Bar Council of Gujarat.

4.3 On the other hand, learned advocates for the respondent Nos.1 and 2 supported the decision of applying Rule 49 and submitted that having regard to the nature of engagement of the petitioner with the Corporation and the conditions attendant to the engagement as legal assistant, it was not permissible to enroll the petitioner. They relied on the aspect that the Division Bench of this Court had considered the case of both the sides in the Letters Patent Appeal. According to their submissions, interim order granted by order dated 17th November, 2016 was in the nature of final relief and it was such interim order that was dealt with by the Letters Patent Bench and came to be set aside on merit consideration. Learned advocates relied on decision of the Apex Court in [Satish Kumar Sharma v Bar](#)

[Council of Himachal Pradesh](#), 2001 2 SCC 365 as also another decision in [Madhav M .Bhokarikar v Ganesh M. Bhokarikar \(dead\) through LRs](#), 2004 3 SCC 607 to highlight the compass of operation of Rule 49 and its applicability of the facts of the case.

4.4 The Bar Council of Gujarat contested the petition by filing affidavit, in which it inter alia pinpointed certain conditions being Nos.2, 7, 9 and 10 governing the contract of engagement as legal assistant between the petitioner and the Corporation.

In the affidavit, it was contended after reference to the said contention that the contract between the petitioner and the Corporation was in the nature of service contract and such employment of the petitioner with the Corporation was violative of requirement of Rule 49 of the Bar Council of India Rules.

4.5 It highlighted the following conditions from the contract between the petitioner and the Corporation.

Condition No.2: With a view to discharge the duties properly and efficiently, the second party agrees to visit/attend the office of the first party regularly as per the standard office hours in force.

Condition No.7: The second party also agrees to deposit an amount equal to one months remuneration or give appropriate security/bank guarantee for the same, which will be forfeited by the first party in case of premature termination of contract by the second party without completion of one year of service in the corporation. First party will be at liberty to terminate the contract with prior notice of 1 month. Condition No.9: If during the discharge of its assigned work, the second party has to visit any outstation place, the second party shall be entitled for appropriate travelling and daily allowances as are normally available to the employees of the first party.

Condition No.10 : The second party, with the consent of the first party may be excused from clause (2) of this agreement, entitled to avail leave for 12 days in his/her total tenure i.e. one per month.

[5] The issue required to be resolved was whether the engagement of the petitioner with the Corporation as Legal Consultant would violate the Rule or not. Exercising powers under sub-section (2) of Section 26 of the Advocates Act, 1961, respondent No.2-Bar Council of Gujarat solicited opinion of respondent No.1-Bar Council of India. Respondent No.1 adopted an objective procedure of appointing a Committee of Retired Judge of the High Court, obtained report. The final decision was taken on the basis of

such report to refuse the enrolment to the petitioner on the ground that it would be in contravention of Rule 49 of the Rules. Thus the expert committee went into the issue and answered it. At this stage contention of party-in-person about constitution of the committee may be dealt with, Bar Council of India had on the contrary required personal presence of the petitioner for giving opportunity to her for hearing.

As the party-in-person was not able to remain present, in the fairness, the committee was constituted headed by the Retired Honourable Judge of this Court to have a proper decision on the issue. No illegality was committed by the Bar Council of India in constituting the committee. It was rather just, fair and reasonable stand to have an objective view.

5.1 Looking at Rule 49 of the Bar Council Rules, it provides that an advocate shall not be a full-time salaried employee. The conditions attached to the contract of service of the petitioner with the Corporation are reflective of the nature of the employment. The employment envisages that services are required to be rendered during the standard hours of service as per condition No.2. Condition Nos.9 and 7 show that service as legal assistant rendered by the petitioner is a full-time job and attaches with it monthly payable amount of Rs.25,000/-. The petitioner joined the Corporation in the year 2012 and the contract has continued having been renewed on year-to-year basis till date. Apart the continuation of the petitioner as legal expert for such period, considering the aforesaid conditions, nature of employment and the kind of contract entered into between the petitioner and the Corporation requiring the petitioner to work as legal assistant or legal expert, make it evident that the same could well be comprehended within the phrase in Rule 49 a full-time salaried employee . It is the condition of the contract, the nature thereof and other attendant features of service which would determine whether the petitioner could be comprehended as full-time salaried employee with the Corporation or not. The mode of payment of TDS cannot determine the nature of employment for the purpose of Rule 29 of the Rules.

5.2 The Division Bench, while allowing the Letters Patent Appeal No.1296 of 2016 and vacating the interim relief and setting aside the interim order dated 17th November, 2016, having quoted Rule 49 in paragraph 9 of the judgment, adverted to discuss the conditions of the contract and the nature thereof and recorded its findings which are virtually enveloping the answers to the issues and enlightening as well.

They are reproduced as under.

11. As per condition no. 2, the 1st respondent agreed to visit/attend the office of the first party-Gujarat Industrial Development Corporation regularly as per the standard office hours in force. As per condition no. 7, the 1st respondent agreed to deposit an amount equal to one months remuneration which is agreed to be forfeited by the first party, that is, the Corporation in case of premature termination of contract by the 1st respondent-original petitioner. It is also not in dispute that she is paid fixed sum of Rs.25,000/- per month. If we consider the dictionary meaning of salary, it is nothing but fixed regular payment made by an employer to an employee in return of work. The term full time used in Rule 49 of the Rules is also to be considered as full-time office standard number of hours. When it is admitted that 1st respondent has to be in the office from 11.00 a.m. to 5.00 p.m which are standard hours of work, prima facie it is to be considered as full-time employment. Having regard to such terms of contract to render services by attending office for full-time, that is, from 11.00 a.m to 5.00 p.m and further having regard to fixed salary of Rs.25,000/- per month being given to the 1st respondent, prima facie we are of the view that the 1st respondent-petitioner is not entitled to grant of certificate of practice under the Advocates Act, 1961 in view of Rule 49 of the Bar Council of India Rules.

Learned single Judge, mainly on the ground that Bar Council of India has not taken any decision, has passed orders granting interim relief in terms of para 7(C) of the petition. It is also to be noticed that in para 7(C) of the petition, the petitioner sought direction to grant temporary enrollment number on the ground that she has cleared the Bar Council examination and she is entitled to practice. Under the scheme of the Advocates Act, 1961 and the rules framed thereunder there is no provision for grant of temporary certificate by the Bar Council for practising as an advocate. Even assuming that tax at source is deducted from the remuneration/fees payable to the 1st respondent-petitioner under the provisions of the Income Tax Act, 1961, but at the same time, the same by itself cannot be determinative factor when the claim of the 1st respondent is barred under Rule 49 of the Rules. In view of the conditions of the service contract of the 1st respondent with the Gujarat Industrial Development Corporation, we are convinced that the service of the 1st respondent is full-time employment and she is not entitled for grant of an temporary certificate as per the interim orders passed by the learned single Judge.

Further we also notice from the material placed on record that when the interim relief was sought on earlier occasion, the same was refused by the learned single Judge. In that view of the matter, we are also of the view that grant of such interim relief amounts to allowing the main petition filed by the 1st respondent.

12. For the aforesaid reasons, we find merits in this appeal. Accordingly, the Letters Patent Appeal is allowed by setting aside the order dated 17.11.2016 passed by the learned single Judge in Special Civil Application No. 19743 of 2015. However, we make it clear that the findings and observations recorded in this judgment are made for the purpose of disposal of this appeal and the Special Civil Application is to be disposed of on its own merits. Liberty is granted to 1st respondent-original petitioner to move the learned single Judge for expeditious disposal of the petition. Since the main appeal itself is allowed, the connected Civil Application does not survive and the same stands disposed of.

[6] Having independently examined the case of the petitioner and the rival contentions at this final stage and upon appreciating by going into the aspects of the merits threadbare, nothing could be propounded to persuade the Court to take a different view. From the totality of operation of the facts and considering the nature of the service contract of the petitioner with the Corporation, there is no gainsaying that the petitioner incurs debility in terms of Rule 49 as her employment could be characterised as a full-time salaried employment. As a result, refusal by the respondents to grant the petitioner enrolment and the certificate to practice law could be said to be eminently proper and legal.

[7] For the reasons aforesaid, petition is devoid of merits and prayers could not be considered. Petition stands dismissed. Rule is discharged.