

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 30TH DAY OF NOVEMBER 2016/9TH AGRAHAYANA, 1938

WP(C).No. 26831 of 2015 (D)

PETITIONER :

**T. KOSHY,
S/O.C.G.THOMAS,AGED 64 YEARS, ADVOCATE,
LAWYERS ASSOCIATES, KALYAN CHAMBERS,
CHITTOOR ROAD, ERNAKULAM SOUTH, COCHIN-682 016,
RESIDING AT 11-B CHARUVIL, PRIYADARSHINI NAGAR,
THEVARA P.O., ERNAKULAM DISTRICT, PIN-682 013.**

**BY ADVS.SRI.M.M.MONAYE
SRI.M.PAUL VARGHESE**

RESPONDENT(S):

- 1. THE BAR COUNCIL OF KERALA,
HIGH COURT BUILDINGS, ERNAKULAM,
KOCHI-682 031, REPRESENTED BY ITS SECRETARY.**
- 2. THE BAR COUNCIL OF INDIA,
21 ROUSE AVENUE INSTITUTIONAL AREA,
NEW DELHI-110 002, REPRESENTED BY ITS SECRETARY.**
- 3. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO
MINISTRY OF LAW AND JUSTICE, SHASTRI BHAVAN,
NEW DELHI-110 001.**

**R1 BY SRI.P.RAVINDRAN,SENIOR ADVOCATE
SRI.GRASHIOUS KURIAKOSE,SENIOR ADVOCATE
ADV. SRI.T.T.RAKESH
R2 BY SRI.RAJIT, SC, BAR COUNCIL OF INDIA
R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-11-2016, ALONG WITH WPC.NO.25420 OF 2013 AND CONNECTED
CASES,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE APPLICATION FORMAT UPLOADED ON 8.4.2015 ON THE WEBSITE OF THE BAR COUNCIL OF KERALA.
- EXT.P2. TRUE COPY OF THE LETTER DATED 30/3/2015 SHOWING THE AMENDMENT MADE IN THE RULE 2 (A)
- EXT.P3. TRUE COPY OF THE RELEVANT PORTION OF THE BAR COUNCIL OF KERALA RULES 1979, SHOWING THE RULE 2(A) BEFORE ITS AMENDMENT.
- EXT.P4. TRUE COPY OF THE LETTER DATED 24/4/2015 SHOWING THE APPROVAL GIVEN BY THE 2ND RESPONDENT
- EXT.P5. TRUE COPY OF THE STRUCTURE PUBLISHED ON THE WEBSITE OF THE BAR COUNCIL OF MAHARASHTRA AND GOA
- EXT.P6. TRUE COPY OF THE FEE STRUCTURE ISSUED BY THE SECRETARY, BAR COUNCIL OF KARNATAKA FOR THE ENROLMENT IN MAY 2015.
- EXT.P7. CLIPPING FROM THE MATHRUBHUMI DAILY DATED 15 JULY 2015
- EXT.P8. CLIPPING FROM THE MALAYALA MANORAMA DAILY DATED 20TH JULY, 2015.
- EXT.P9. TRUE COPY OF THE GENERAL ASSEMBLY RESOLUTION 46/91
- EXT.P10. TRUE COPY OF THE PAPER AS PER PUBLISHED ON THE WEB SITE.

RESPONDENT(S)' EXHIBITS

- EXT.R1(A). TRUE COPY OF THE COMMUNICATION ADDRESSED TO THE BAR COUNCIL OF INDIA DATED 27/8/14.
- EXT.R1(B). TRUE COPY OF THE COMMUNICATION RECEIVED FROM BAR COUNCIL OF INDIA DATED 12/12/14
- EXT.R1(C). TRUE COPY OF THE COMMUNICATION RECEIVED FROM BAR COUNCIL OF INDIA DATED 19/11/2012
- EXT.R1(D). TRUE COPY OF THE APPLICATION FOR ENROLLMENT TO THE BAR COUNCIL OF PUNJAB & HARYANA

WP(C).No. 26831 of 2015 (D)

- EXT.R1(E). TRUE COPY OF THE DETAILS OF FEE FOR ENROLLMENT TO BAR COUNCIL OF MADHYAPRADESH
- EXT.R1(F). TRUE COPY OF THE ENROLLMENT FEE TO BAR COUNCIL OF JHARKHAND.
- EXT.R1(G). TRUE COPY OF THE ENROLLMENT FEE TO BAR COUNCIL OF DELHI
- EXT.R1(H). TRUE COPY OF THE STATEMENT SHOWING BREAKUP OF THE AMOUNT RECEIVED EXPENSES INCURRED BY THE BAR COUNCIL OF KERALA.

/TRUE COPY/

P.S.TO JUDGE

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ALEXANDER THOMAS, J.

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W.P.(C).Nos.26831/2015, 28221/2016,
25420/2013, 3542/2016, 5592/2016,
7529/2016, 9261/2016, 9699/2016,
16942/2016, 18743/2016, 19927/2016,
21374/2016, 28222/2016, 28223/2016,
27894/2016, 29629/2016 & 32188/2016

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Dated this the 30th day of November, 2016

J U D G M E N T

All these Writ Petitions (Civil) have been filed by persons who are applicants, who have sought enrolment as Advocates with the respondent Bar Council of Kerala, as per the provisions of the Advocates Act, 1961 and the challenge raised by them is against the impugned stipulation made by the respondent State Bar Council that they should pay special fee for such enrolment process, over and above the statutory enrolment fee of Rs.750/- as fixed in Sec.24(1)(f) of the Advocates Act. Vast majority of the petitioners herein had acquired their LLB degree from various law colleges concerned and they had obtained employment either under the Government or under public sector institutions and had retired from service and had thereafter sought fresh enrolment as Advocates as per the provisions of the Advocates Act,

1961 and the Rules framed thereunder. However, the petitioners in W.P.(C).Nos.5592/2016, 9699/2016 and 26831/2015 had undergone LLB course only after their retirement from service and after acquiring the LLB degree had sought fresh enrolment as Advocates on the rolls of the respondent State Bar Council.

2. The pleadings in W.P.(C).No.25740/2013 are not clear as to the dates of retirement of those persons. But it is stated that they had acquired LLB degree in 2012 and had thereafter sought enrolment. But it is not very clear whether those petitioners had acquired the LLB degree during the time of their employment or whether they had prosecuted studies after their retirement.

3. Ext.P-3 fee structure produced in W.P.(C).No.28221/2016 lays down the fee structure for the special fee impugned in that Writ Petition as well as W.P.(C).Nos.28222, 28223, 27894, 32188, 19927 and 29629 of 2016. Clause 7 thereof deals with special fee, which reads as follows:

"7. Special Fee

- a. Candidates seeking Enrolment after five years and below 10 years from the date of passing the LLB Degree - Rs.10,000/-
- b. Candidates seeking Enrolment after 10 years from the date of passing the LLB Degree -Rs.20,000/-

W.P.(C).No.26831/2015, etc.

- c. Candidates those who had retired from service seeking Enrolment after attaining the age of Superannuation whose last drawn monthly gross salary is upto Rs.60,000/- -Rs.15,000/-
- d. Candidates those who had retired from service seeking Enrolment after attaining the age of Superannuation whose last drawn monthly gross salary above Rs.60,000/- -Rs.40,000/-
- e. Those who had undergone law Degree after retirement from service - Rs.15,000/-
- f. Those who had voluntary retired from service/ employment in India or abroad - -Rs.15,000/-

The petitioners in those Writ Petitions essentially challenge clause 7(d), whereby the respondent State Council has demanded them to pay special fee of Rs. 40,000/-. Ext.P-5 produced in W.P.(C).No.9261/2016 is the fee structure which is the impugned special fee as relatable to that Writ Petition as well as in W.P.(C).Nos.7529, 3542, 21374, 16942, 5592 and 9699 of 2016. Clause 7 of Ext.P-5 in W.P.(C).No.9261/2016, which deals with the special fee, that is impugned in that Writ Petition, reads as follows:

"7. Special Fee

- a. Candidates seeking Enrolment after five years and below 10 years from the date of passing the LLB Degree - Rs.20,000/-
- b. Candidates seeking Enrolment after ten years from the date of passing the LLB Degree or after retirement -Rs.25,000/-
- c. Candidates those who had retired from service seeking Enrolment after attaining the age of Superannuation" -Rs.40,000/-

As per Clause 7(c) of the abovesaid fee structure, the respondent State Council had demanded that they should pay an amount of Rs.40,000/- as special fee for seeking enrolment. Out of the aforesaid 17 Writ Petitions, it appears that 14 petitioners had approached this Court by filing the instant Writ Petitions and had got interim orders from this Court directing that the respondent State Bar Council should permit them to take part in the enrolment process, if they are otherwise eligible, and in case they paid all the fees other than the said impugned special fee coming to Rs.40,000/-. It appears that the petitioners in all those 14 Writ Petitions have already thus secured enrolment as Advocates on the rolls of the respondent State Council on the strength of the interim orders.

4. The petitioners in W.P.(C).Nos.26831/2015, 18743/2016 and 25420/2013 could not secure any interim orders as against the impugned stipulation of the special fee and they had secured enrolment by paying the demanded impugned special fee and now they seek refund of the said special fee on the ground that the collection of the impugned special fee for enrolment is ultra vires and unauthorised, etc.

5. In W.P.(C).No.26831/2015 the petitioner had sought enrolment in May 2015 and Ext.P-2 in that Writ Petition deals with the

fee structure and clause 9 thereof deals with special fee, which reads as follows:

"9. Special Fee

- (a). Candidates seeking Enrolment after five years from the date of passing the LLB Degree - Rs.15,000/-
- (b). Candidates seeking Enrolment after ten years from the date of passing the LLB Degree or after retirement -Rs.20,000/-
- (c). Candidates those who had retired from service seeking Enrolment after attaining the age of Superannuation" -Rs.35,000/-

6. The petitioner in W.P.(C).No.26831/2015 impugns the demand for the special fee of Rs.35,000/- that was mentioned in Clause 9(c) thereof. The special fee impugned as per the fee structure produced in W.P.(C).No.18743/2016 is the same as in the above referred W.P.(C).No.28221/2016 and he challenges clause 7(d) thereof, whereby the impugned special fee amount of Rs.40,000/- was demanded from him. The sole petitioner in W.P.(C).No. 25420/2013 had sought enrolment in 2012 and he impugned the special fee as demanded in the fee structure as per Clause 8(c) to the fee structure produced as Ext.P-1 in that Writ Petition. Clause 8 of Ext.P-1 in W.P.(C).No.25420/2013 reads as follows:

"8). SPECIAL FEE

- a). Candidates seeking Enrolment after five years and below 10 years from the date of passing the LLB Degree - Rs.10,000/-

W.P.(C).No.26831/2015, etc.

- b). Candidates seeking Enrolment after ten years from the date of passing the LLB Degree or after retirement from voluntary Service/employment in India or abroad, etc. -Rs.15,000/-
- c). Candidates those who had retired from service seeking Enrolment after attaining the age of Superannuation. -Rs.25,000/-

7. Various contentions are urged by the petitioners that the impugned special fee demanded for enrolment is ultra vires, illegal, arbitrary and discriminatory, etc. The main contention urged by the petitioners is that the Parliament has specifically mandated in Sec.24(1)(f) of the Advocates Act, 1961, that the enrolment fee payable by the candidates seeking enrolment as Advocates as per the provisions of that Act, can be only Rs.750/- (consisting Rs.600/- payable to the State Bar Council and Rs.150/- to the Bar Council of India), with the further rider as per the proviso to Sec.24(1)(f) that in the case of SC/ST candidates, the enrolment fee payable to the Bar Council of India is only Rs. 125/- (Rs.100/- payable to the State Bar Council and Rs. 25/- payable to the BCI). On this basis, it is contended that since the plenary law occupies the field by mandating a fixed amount that can be demanded as enrolment fee, neither the Bar Council of India nor the State Bar Council will have any jurisdiction to prescribe any fee for enrolment as it would be ultra vires as any rule or prescription made in that regard would be ultra vires the provisions contained in Sec. 24(1)(f) of the Act.

Further it is contended that even if it is assumed for argument sake that the impugned special fee is something other than for enrolment, still the exclusive power to prescribe fee payable in respect of any matters under the Advocates Act, 1961, is exclusively assigned to the Bar Council of India as per Sec.49(1)(h) of the Act and that therefore the State Bar Council is totally denuded of their powers to frame any rule in the matter of prescription of fee, as in the instant case. It is contended that the rule, if any, framed by the respondent State Bar Council, purportedly authorising collection of any fee as may be decided by them from time to time is ultra vires the provisions of the Act as the power in that regard in the matter of prescription of fee is exclusively assigned to the Bar Council of India. It is also contended that such a rule framed by the State Bar Council, which authorises collection of special fee, is ultra vires the Act and therefore such a rule, even if it is approved by the BCI as per Sec. 28(3) of the Act, is of no consequence, as the respondent State Bar Council has no power to frame any such rules authorizing any such collection. It is also contended that the differentiation that is sought to be made as per the various impugned processes mentioned hereinabove will not satisfy the test of reasonable classification and that it is unreasonable and discriminatory and therefore is unconstitutional, in

any view of the matter. It is also contended that the collection of the impugned fee is excessive and disproportionate and that it is also violative of the fundamental right to practise the profession as an Advocate, as guaranteed in Art.19(1)(g) of the Constitution of India.

8. The respondent State Bar Council has filed a counter affidavit dated 27.1.2016 in W.P.(C).No.26831/2015 and had filed memos in all the other cases adopting the said counter affidavit in those cases as well. Accordingly, W.P.(C).No.26831/2015 is taken as the lead case. It is averred in para 4 of the counter affidavit that the respondent Bar Council of Kerala is the regulatory body and is entrusted with the task of discharging various statutory functions under the Advocates Act, 1961 and Sec.6 of the Act requires the State Bar Council to discharge various functions and duties enumerated thereunder and that the Act does not envisage any financial assistance to the State Bar Council either from the State Government or from the Central Government. That for discharging the various duties, it is bound to collect money from candidates seeking to get enrolled as Advocates on the roll of the State Council and that the provisions of the Advocates Act and the Rules framed thereunder enable this and that any amount collected by the State Bar Council is strictly in accordance with the Act and the Rules

and the amounts thus collected are not intended for any profit making, etc. It is also stated in para 5 thereof that enrolment to the roll of the State Bar Council is done online. It is further pointed out that right to practise as an Advocate is a statutory right and therefore the petitioners cannot insist that they should be permitted to get themselves enrolled without satisfying the requirements of the law laid down in that regard. More crucially it is averred in para 7 thereof of Sec.24 of the Advocates Act lays down conditions subject to which a person can be admitted as an Advocate on the State roll and Sec.24(1)(e) mandates that a person, who fulfills such other conditions as may be specified in the rule made by the State Bar Council alone is entitled to be admitted to the State roll and that this provision makes it clear that the right to admission on the State roll is subject to fulfillment of such conditions as may be specified in the rule made by the State Bar Council. Further that Sec.28(2)(d) enables the State Bar Council to prescribe conditions subject to which a person may be admitted as an Advocate on the State roll and that a combined reading of Sec.24(1)(e) and Sec.28(2)(d) would make it clear that the State Council is bestowed with the power to frame rules statutorily imposing conditions, which are to be fulfilled by a candidate who seeks enrolment on the State roll. Further it is contended that

Sec.24(1)(f) stipulates that the amount to be collected as fee is only with regard to the enrolment fee and that the said provision or for that matter, no other provisions in the Act interdict the State Bar Council to bring in any rule providing for payment of fee to the State Bar Council other than as enrolment fee and that Sec.28(3) requires the approval of the BCI for the rules, so framed and that the amendment introduced by the State Council in that regard has obtained the approval of the BCI and that therefore the impugned rule is valid, etc.

9. It is further averred in para 8 of the counter affidavit that the State Bar Council at its meeting held on 20.7.2014 had resolved to amend Rule 2(a) of Chapter V of the Bar Council of Kerala Rules relating to collection of fees from the candidates at the time of enrolment and Rule 2(a) was introduced to the following effect:

“An application in form No.2 hereto annexed together with the receipt of payment of the application fee and other fees which the council may decide from time to time.”

That the said proceedings of the Bar Council regarding the amendment were forwarded to the BCI as per Anx.R-1(a) letter dated 27.8.2014 for their approval. Thereafter the BCI considered the said proposal Ext.R-1 (a), in the meeting of the General Council held on 16.10.2014 and had decided to approve the said amendment proposed therein and thereafter

the BCI had sent Ext.R-1(b) letter dated 12.12.2014 conveying their approval to the amendment of Rule 2(a) as made out by the Bar Council of Kerala. Further it is admitted that as early as in the year 2011, the Bar Council of Kerala had decided to introduce special fee for enrolment with effect from 1.8.2011 and the said decision too was approved by the BCI as per the resolution dated 18.11.2012 as conveyed in Ext.R-1(c) letter dated 19.10.2012. It is further averred in para 9 of the counter affidavit that the State Council has no scheme to generate funds for its sustenance and there are no grants or other assistance from any Government or other agency and the State Council has a staff strength of 18 and the employees of the State Bar Council have the same scale of pay applicable to State Government servants in the corresponding periods, thereby every time when pay revision is effected, consequential pay revision is to be carried out for the State Bar Council staff concerned also. That the respondent State Bar Council has a lot of regulatory duties assigned to it for the welfare of the lawyer community, which has to carry out various activities intended for the overall improvements of the legal education as well as legal profession, which involves huge financial liability and funds have to be generated by the respondent Bar Council for that purpose and that the main

source of the income of the respondent State Council is the amount received from candidates seeking to enrol as Advocate in the State roll. That the Bar Council has no intention to make profit nor is capable of doing so. Further it is stated that the impugned differentiation made out in the fee structure is based on reasonable and intelligible classification. That young persons seeking to enrol after stepping out of the law college cannot be mulcted with the huge fee for enrolment as Advocates and therefore they are required to pay a nominal fee, whereas persons, who have secured employment and after getting handsome retirement benefits and thereafter seek enrolment, have been required to pay a special fee and such persons after superannuation seek to join the legal profession after getting the benefits of a permanent employment like pension, provident fund gratuity etc., constitute a class in themselves and they are financially in a much better position and that therefore the differentiation made in that regard for the imposition of the impugned fee, is based on reasonable classification and there is no question of hostile discrimination in that process or violation of equality. Further that no differentiation is sought to be made on the basis of age, and differentiation is made on the basis of various other considerations including the degree of financial burden that the candidate may suffer.

10. It is also pointed out in para 12 of the counter affidavit, that almost all the State Bar Councils in the country collect amounts under various heads on the basis of rules applicable to them for which reliance is placed in Exts.R-1(d), (e), (f) & (g) produced therein. Ext.R-1 (d) is the fee structure for Punjab & Haryana Bar Council. Ext.R-1(e) is the fee structure of Madhya Pradesh State Bar Council and Ext.R-1(f) is the one for Jharkand State Bar Council and Ext.R-1(g) is the fee structure for Bar Council of Delhi, etc.

11. It is further reiterated in para 14 of the counter affidavit that the main source of the income of the respondent State Bar Council is the amount collected as fee from the candidates at the time of enrolment under various heads, which constitute 75% of the total income of the Council. Out of the fee so collected, 20% is transferred to the BCI, 20% to the Advocates' Welfare Fund and 10% of the net annual income has to be transferred every year to the Chairman's Relief Fund and further a minimum of 10% rise in the expenditure is expected in every year. Ext.R-1(h) is the break up of the amounts received under various heads by the respondent Bar Council of Kerala, wherein the amount under the sub heading, "OTHER FEE COLLECTED" comes to Rs. 25,00,000/-.

12. Heard Sri.M.M.Monaye, Sri.B.Krishnan, Sri.Abraham K.John, Sri.K.M.Firoz, Sri.P.M.Manoj, Sri.Jomy George, Sri.K.Babu Rajan, Sri.T.K.Sasindran, and Sri.K.Vasudevan, who have appeared as Advocates for the various writ petitioners herein, Sri.P.Ravindran, learned Senior Counsel instructed by Sri.Sreedhar Ravindran, learned counsel appearing for the respondent State Bar Council, Sri.Rajit, learned counsel appearing for the respondent Bar Council of India and Sri.N.Nagaresh, learned Assistant Solicitor General appearing for the Central Government.

13. On request of this Court, Sri. Saigi Jacob Palatty, learned Senior Government Pleader had assisted this Court for collating the factual details in these various petitions and had also assisted this Court for placing certain reported judgments.

14. It has been clearly held by the Apex Court in Sreenivasa General Traders & ors. v. State of Andhra Pradesh & ors. reported in (1983) 4 SCC 353 para 32 that a levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service, etc. It was

emphatically held by the Apex Court in the case Delhi Race Club Ltd. V. Union of India reported in (2012) 8 SCC 680 that even if the fee charged as licence fee does not bar any arithmetical equivalence with the cost of rendering service but that it is necessary that there should be a reasonable relationship between the levy of fees and services rendered and such fees demanded as licence fees should not be excessive.

15. The Advocates Act, 1961, enacted by the Parliament was brought into force on 19.5.1961 and the main objective of the Act was to amend and consolidate the laws relating to legal practitioners and to provide the constitution of the Bar Council of India and the State Bar Councils. The Act sought to constitute a common Bar for the whole country and to provide machinery for its regulatory functioning. The Apex Court has held in various rulings that as the Advocates Act relating to legal practitioners, the said Act in its pith and substance is an enactment dealing with qualifications, enrolment, right to practice and discipline of Advocates and that once an advocate is enrolled by a State Bar Council, he is entitled to practice in the various courts including Supreme Court of India and therefore this is the legislation which traces its legislative competence in respect of matters covered by Entries 77 and 78 of List I (Union List) inasmuch as it deals with entitlement and

rights of persons to practice before various courts and the Supreme Court. The legal position in this regard was settled with clarity by the Apex Court by a Constitution Bench (5 Judges) of the Apex Court in the celebrated case O.N.Mohindroo v. The Bar Council of Delhi & Ors. reported in AIR 1968 SC 888 wherein it was held in para 10 thereof as follows:

“10. In this view, the right of appeal to this Court under Section 38 of the Act creates a jurisdiction and power in relation to a matter falling under Entries 77 and 78 of the Union List and the Act would, therefore, fall under clause 1 and not clause 2 of Article 138. The argument that Section 38 falls under Article 138(2) and is invalid on account of its having been enacted without a special agreement with the State Government is, therefore, without merit.”

The said position laid down in O.N.Mohindroo v. The Bar Council of Delhi & Ors. reported in AIR 1968 SC 888 was reiterated by a 3 Judge Bench of the Apex Court in the case The Bar Council of Uttar Pradesh v. The State of U.P. & anr. reported in (1973) 1 SCC 261 = AIR 1973 SC 231, wherein it was held in para 11 thereof as follows:

'11. Now Entries 77 and 78 in List I in the Seventh Schedule to the Constitution are as follows:

“77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation (including vacations) of the High Courts except provisions as to officers and servants of High Court; persons entitled to practise before High Courts.”

Entry 91 relates to rates of stamp duty in respect of certain instruments which do not cover an instrument or a document with which we are concerned, namely, certificate of enrolment issued under Section 22 of the Act. Entry 96 in the same List relates to fees in respect of any of the matters in the List but not including the fee taken in any court. Entry 63 in List II relates to rates of stamp duty in respect of documents other

than those specified in List I i.e. Entry 91. In the same List Entry 66 relates to fees in respect of any of the matters in that List but not including fee taken in any court. The following Entries in List III may be reproduced.

“26. Legal, medical and other professions”

* * *

“44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of Stamp duty.”

There is no dispute that the Act was enacted under Entries 77 and 78 in List I. It is equally clear that the words *“persons entitled to practise”* would include determining or prescribing the qualifications and conditions that a person should possess and satisfy before becoming entitled to practise as an advocate before the Supreme Court or the High Courts. So far as persons entitled to practise before these courts are concerned “the power to legislate in regard to them is carved out from the general power relating to the provision in Entry 26 in List III and is made the exclusive field for Parliament”. In other words the power to legislate in regard to persons entitled to practise before the Supreme Court and the High Courts is altogether excluded from Entry 26 in List III. (See *O.N. Mohindroo v. Bar Council of Delhi.*) From the entries the following scheme with regard to persons entitled to practise will appear to emerge: (1) The Parliament has the exclusive power under Entry 77 and Entry 78 in List I to prescribe, inter alia, the qualifications and conditions on the fulfilment of which persons would be entitled to practise before the Supreme Court or the High Courts. Any fee which may be payable by such persons before they can claim to be entitled to practise would fall under Entry 96 of that List; (2) Entry 44 of List III enables legislation with regard to its levy but the rates of the stamp duty can be prescribed by the Parliament only with regard to instruments falling within Entry 96 of List I and by the State Legislature under Entry 63 of List II.”

The said decision of the Constitution Bench as laid down in *O.N.Mohindroo’s case (supra)* reported in AIR 1968 SC 888 has been followed in various subsequent judgments as in *The Bar Council of Uttar Pradesh v. The State of U.P. & anr.* reported in (1973) 1 SCC 261, *H.S. Srinivasa Raghavachar and others v. State of Karnataka*, reported in (1987) 2 SCC 692, *Jamshed N. Guzdar v. State of Maharashtra* reported in (2005) 2 SCC 591, *Bar Council of India v. Board of Management, Dayanand*

College of Law, reported in (2007) 2 SCC 202, Mahesh Chandra Gupta v. Union of India reported in (2009) 8 SCC 273 and C. Venkatachalam v. Ajitkumar C. Shah reported in (2011) 9 SCC 707 (para 19) and Yogendra Kumar Jaiswal v. State of Bihar reported in (2016) 3 SCC 183. Dealing with the statement, objects and reasons for enacting the Advocates Act, the Apex Court in C.Venkatachalam v. Ajitkumar C. Shah reported in (2011) 9 SCC 707 in para 19 thereof has placed reliance on the earlier judgment in O.N.Mohindroo's case (supra) wherein it was held that the object of the Act is to constitute one common Bar for the whole country and for its regulated functioning. Sec.2(1)(a) of the Act defines Advocate as, "advocate" means an advocate entered in any roll under the provisions of the Advocates Act, "Bar Council" means a Bar Council constituted under the Advocates Act and "Bar Council of India" (BCI) means Bar Council constituted under Sec.4 for the territories to which this Act extends and "State Bar Council" means a Bar Council constituted under Sec.3 of the Advocates Act. The expression "prescribed" means prescribed by the Rules made under the Act. The functions of the State Bar Council and the Bar Council of India are dealt with in Sec.6 & 7 of the Act. The functions of the Bar Council of India are of a wider range than that of the State Bar Council and the Bar Council of India

inter alia has to lay down the procedure to be followed in disciplinary committee and safeguard the interest of the Advocates.

16. Chapter III of the Act deals with “admission and enrolment of advocates” and the said Chapter includes Secs.16 to 28. Sec.24 envisages about the 'persons who may be admitted as advocates on a State roll'. Sec.24 (1) provides that subject to the provisions of the Act and the rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the conditions mentioned in clauses (a) to (f) thereof. Requirements regarding citizenship is laid down in clause (a) of Sec.24(1) and regarding the minimum age requirement and acquisition of law degree are dealt within clauses (b) and (c), etc. Clause (e) of Sec.24(1) provides that subject to the provisions of the Act and the Rules made thereunder a person shall be qualified to be admitted as an advocate in the State roll if he fulfills such other conditions made by the State Bar Council under that Chapter. Very crucially, it is provided in clause (f) thereof that the entitlement of a person who is otherwise qualified to be admitted as an advocate in the State roll is also qualified with a condition that the said person has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (Act 2 of 1899) and an enrolment fee payable

to the State Bar Council of Rs.600/- and to the Bar Council of India and amount of Rs.150/- (for SC/ST candidates enrolment fee payable is Rs.150/- comprising of Rs.125/- payable to the State Council and Rs.25/- payable to the Bar Council of India) thus totaling to Rs.750/-. The amount by way of enrolment as now provided in clause (f) of Sec.24(1) are those pursuant to the amendment carried out as per Central Act 70 of 1993. Prior to the said amendment carried out with effect from 26.12.1993, the original enactment as it contained at the time of its enactment in 1961, provided in Sec.24(1)(f) that the enrolment fee payable to State Bar Council was Rs.250/- and that to the Bar Council of India was Rs.125/-. It is consequent to the amendment as was effected with effect from 26.12.1993 as per Act 70 of 1993 that the enrolment fee now stands enhanced to Rs.750/- as mentioned above. Sec.28(1) empowers the State Bar Councils to make rules to carryout the purposes of Chapter III of the Act. Sec.28 reads as follows:

"Sec. 28 Power to make rules

- (1) A State Bar Council may make rules' to carry out the purposes of this Chapter.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for-
 - (a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section 20 ;
 - (b) (Omitted).
 - (c) the form in which an application shall be made to the Bar Council

for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;

(d) the conditions subject to which a person may be admitted as an advocate on any such roll;

(e) the instalments in which the enrolment fee may be paid.

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India.”

No doubt, Sec.28(2)(d) empowers the respective State Bar Councils to frame Rules so as to prescribe conditions subject to which a person may be admitted as an advocate in a State roll. Sub clause (e) thereof empowers the State Bar Councils to prescribe rules regarding the installments in which the enrolment fee may be paid. A plain reading of Sec.24(1) and Sec.28(2)(d) of the Act makes it clear that matters as covered by “such other conditions as may be specified in the rules made by the State Bar Council under this Chapter” as appearing in clause (e) of Sec.24(1) can only be those conditions relating to pre-enrolment matters other than conditions envisaged in clauses (a), (b), (c) and (f) of Sec.24(1). It is only the field covered by Sec.24(1)(e) that is covered by prescribing rules as envisaged in Sec.28(2)(d) of the Act. The said field covered by Sec.24(1)(e) is limited and bounded and it can only relate to conditions relating to valid pre-enrolment matters other than those conditions envisaged clearly in sub clauses (a), (b) and (c) of Sec.24(1).

Incidentally, Sec.24(1)(d) has been omitted as per amendment Act (Sec.18 of amendment Act 60 of 1973) with effect from 31.1.1974. It is quite clear to appreciate that under the guise of rule making power in respect of the field covered by Sec.24(1)(e) and Sec.28(2)(d), the State Bar Council will not have the competence to frame any rule in respect of conditions stipulated in sub clauses (a), (b) and (c) of Sec.24(1) which deals with citizenship, minimum age, minimum law degree therein, etc. If the power to make rules as per Sec.28(2) if so invoked, it would amount to plain and utter violation of the plenary provisions of law as contained in sub clauses (a), (b), (c) and (f) of Sec.24(1) and such purported subordinate legislation would be nothing short of being ultra vires and beyond the scope of rule making powers going by the well known elementary principles regulating the power of subordinate legislation. Therefore, since, the Parliament has consistently enunciated its clear objective and policy by engrafting a specific provision under Sec.24(1)(f) for enrolment fee chargeable shall be limited to Rs.750/- as stated above, subject to demand of any valid stamp duty that may be chargeable under the provisions of the Indian Stamp Act, 1989, neither the Bar Council of India by resort to its rule making power under Sec.49 (1) nor the State Bar Council by virtue of its rule making powers under

Sec.28(2) of the Act can have the competence and jurisdiction to frame any rule prescribed for enrolment fee which is at variance with the one already engrafted by the Parliament in Sec.24(1)(f). Such a rule as may be made by the State Bar Council which is ultra vires Sec.24(1)(f) of the Act, cannot be made valid merely on account of the so called approval granted thereto by the Bar Council of India by purported resort to the provisions contained in Sec.28(3). The authority for that proposition is not required as it is too elementary but it is to be noted that it has been so held clearly by the Apex Court as early as in the year 1980 in the celebrated ruling in Bar Council of Delhi & ors. v. Surjeet Singh & ors. reported in (1980) 4 SCC 211 = AIR 1980 SC 1612 = 1980 KHC 747. Dealing with such a situation, the Apex Court had held that the impugned rule framed by the Bar Council of Delhi was found to be ultra vires. Their Lordships of the Supreme Court held that merely because of the Bar council of India happened to grant its approval to the said impugned rule framed by the Bar Council of Delhi by purporting to the provisions referred in Sec.15(2)(3) of the Act, will not invalidate such ultra vires rule as the impugned rule was essentially beyond the rule making capacity of the State Bar Council. Their Lordships of the Apex Court in para 8 thereof has clearly held that any rule made by the State

Bar Council under Sec.15(2) by purportedly resorting to Sec.15(1) of the Act [which forms part of Chapter II and which is almost analogous in its procedure to Sec.28(2) of the Act which is contained in Chapter III] cannot have any effect unless it is approved by Bar Council of India as per Sec.15(3) but the approval of the Bar Council of India can make the rule made by the State Bar Council valid and effective only if the Rule made is within the competence of the State Bar Council, otherwise not. That mere approval by the Bar council of India to a rule ultra vires the State Bar Council cannot make the rule valid and nor has it the effect of a rule made by the Bar Council of India. That making a rule by the Bar Council of India and giving approval to a rule made by the State Bar Council are two distinct and different things and one cannot take the place of the other. Accordingly, inspite of approval granted by the Bar Council of India to the rule impugned therein, the Apex court had held that the impugned rule framed by the Bar Council of Delhi was ultra vires as it was beyond the rule making powers of the State Bar Councils and had accordingly struck down the impugned action. The above said view was reiterated by the Apex Court in the judgment dated 13.10.2011 arising out of Civil Appeal in S.L.P(C).Nos.18386-18387 of 2007 [arising out of the impugned judgment dated 13.12.2006 of the

W.P.(C).No.26831/2015, etc.

Division Bench of the High Court of Bombay and Goa in W.P.(C). No.903/2004 and 1781/2004 reported in 2007 (109) Bom LR 17] in the case Manubhai Paragji Vashi & ors. v. Bar Council of Maharashtra & Goa. It was found that impugned Rule 6(h) framed by the State Council was a mere verbatim of reproduction of Rule 2(h) of the Bar Council of India Rules and it was found that the subject matter of the Rules vests exclusive within the rule making power of the Bar Council of India. It was also found that the subject matter of the impugned Rule 32(g) which provided that a vote cast by an Advocate is rendered invalid if he has indicated in the ballot paper less than ten preferences, would be in violation of the right conferred on an advocate as per Rule 1 of Chapter I Part III of the Bar Council of India Rules which conferred a right of the Advocate whose name is on the electoral roll of the State Bar Council to vote in an election, etc. Hence it was found by the Apex Court that the impugned rules were beyond the rule making powers of the State Bar Council and that it fall within the exclusive zone of the rule making power of the Bar Council of India and that therefore even though the impugned rules framed by the Bar Council of Maharashtra & Goa had secured approval of Bar Council of India will not have the effect of making the ultra vires rules valid as held by the Apex Court in Bar

Council of Delhi & ors. v. Surjeet Singh & ors reported in (1980) 4 SCC 211. Accordingly, the Apex Court declared that the impugned rules framed by the State Bar Council are ultra vires. In the instant case, the nature of the ultra vires action done by the State Bar Council is on a more grave and serious level inasmuch as the impugned provisions made by the State Bar Council is in direct conflict with the provisions engrafted in Sec.24(1)(f) of the Act which deals with the enrolment fee payable by an advocate. The learned Senior Council, who had argued on behalf of the State Bar Council had a specific contention that the impugned special fee stipulated by the State Bar Council was a fee other than enrolment fee as envisaged in Sec.24(1)(f) and therefore, there is no question of conflict with Sec.24(1)(f). Whereas the contention raised by the petitioners is that the impugned special fee for enrolment as notified in the impugned fee structure is nothing but a fee for enrolment over and above the fee prescribed by the Parliament in Sec.24(1)(f) and therefore, the said impugned provision is plainly and wholly ultra vires and illegal. To resolve the rival pleas in this regard, it is to be examined whether the impugned special fee is a fee other than for enrolment as envisaged in Sec.24(1)(f) or whether the impugned special fee in its pith and substance is a fee prescribed over and above the fee fixed by the

Parliament in Sec.24(1)(f). The Parliament in its wisdom while enacting the Advocates Act, 1961, has consciously enunciated its legislative policy by clearly stipulating and mandating that enrolment fee payable by a person seeking enrolment as an advocate in a State roll as Advocate shall be only the amount fixed therein in the original provision as engrafted in Sec.24(1)(f) in the Advocates Act, 1961. There was no provision even in respect of payable stamp duty under Indian Stamp Act, etc. It appears that though a provision was made for stamp duty payable on enrolment as per the provisions contained in the predecessor Act (Bar Council of India Act, 1926, as per Sec.8(2)(b) thereof) a provision for stamp duty was omitted in original provision engrafted in Sec.24(1)(f) of the Advocates Act, as it stood at the time of its coming into force in 1961. Thereafter some State legislatures have made provisions for imposing stamp duty for enrolment and the said imposition of stamp duty by the State legislature of Uttar Pradesh was challenged which led to the judgment of the Apex Court in the celebrated case in Bar Council of Uttar Pradesh v. State of Uttar Pradesh reported in (1973) 1 SCC 261 = AIR 1973 SC 231. It was contended by the affected advocates that legislative competence to frame an Act like Advocates Act, 1961, is related to the Entries 77 & 78 of the Union List

as already found by the Apex Court in O.L.Mohindroo's case (supra) reported in AIR 1968 SC 888 and therefore the competence to levy any fee in respect of the subject matter covered by the Union List is exclusively assignable to the Parliament as Entry 96 in the same list relating to imposition of fee and as the Parliament has made the provision only for collection and enrolment fee as per Sec.24(1)(f), the imposition of the stamp duty of the State legislatures was beyond their legislative competence, etc. However, the Apex Court, in the case Bar Council of Uttar Pradesh's case (supra) had held that the legislative competence to levy stamp duty is traceable to Entry 63 of List II (State List) and that therefore, the State legislatures are competent to make provisions for charging stamp duty, etc. However, their Lordships of the Apex Court observed in the final paragraph of that judgment that since the objective of the Advocates Act is to integrate a common Bar throughout the country and to achieve uniformity, it is for the States to restrain from levying any stamp duty on the certificate of enrolment or for the Parliament so as to do away derogatory features and so as to achieve the objective of attaining a common bar in material aspects. The said judgment of the Apex Court in Bar Council of Uttar Pradesh v. State of U.P and anr. was rendered on 1.12.1972 in C.A.No.897/1971. It

is thereafter that the Parliament had made an amendment to Sec.24(1) (f) as per Sec.18 of Act 60 of 1973 with effect from 31.1.1974 whereby it was provided in Sec.24(1)(f) that the persons who seek enrolment as advocate should also pay stamp duty if any chargeable under Indian Stamp Act, 1892, apart from enrolment fee already stipulated. On this basis, it is contended by the petitioners that Parliament by exercising its plenary legislative powers under Union List has consciously entered the field and has mandated that the only stamp duty as prescribed under Indian Stamp Act and enrolment fee of Rs.750/- alone can be charged from persons seeking enrolment and any provision made by virtue of rule making powers for making intrudes into the provision would be ultra vires and incompetent. This contention is fully acceptable so long as the impugned special fee is one for enrolment and if the contention raised by the respondent State Bar Council that it has nothing to do with the enrolment is overruled by this Court. So essentially this Court has to find out whether the impugned special fee is the one which is for enrolment and is inextricably interconnected and interwoven with the process of enrolment and if that be so, it is totally beyond the rule making power of the State Bar Council to make any provision in that regard as it would amount to blatant violation of the mandate by the

Parliament in Sec.24(1)(f) of the Act.

17. To resolve the above said issue, it is pertinent to refer to some of the documents which are relied on by none other than the respondent Bar Council of Kerala. Prior to the purported amendment of Rule 2(a) as per Exts.R-1(a) & R-1(b), the respondent State Bar Council themselves have admitted that they were demanding and collecting special fee for enrolment and that the said action was ratified and approved by the Bar Council of India as per Ext.R-1(c). It is averred in the counter affidavit that earlier prior to the formulation of amended Rule 2(a) as per Ext.R-1(a) the Bar Council of Kerala had passed resolution No.83/11 resolving to introduce clause "(a) special fee for enrolment" with effect from 1.8.2011 and it is this resolution which is referred to in the subject matter of Ext.R-1(c) letter of the Bar Council of India. As per the said resolution No.83/11 passed by the State Bar Council of Kerala, they had requested the approval of the Bar Council of India in regard to the decision and resolution to introduce a special fee for enrolment with effect from 1.8.2011 and had sought for approval of the Bar Council of India. After considering the said request, the Bar Council of India in the meeting held on 18.11.2012 granted approval for the said resolution of the Bar Council of Kerala and the said

approval was conveyed as per Ext.R-1(c) letter dated 19.11.2012. Proceedings in Ext.R-1(c) dated 19.11.2012 may be quoted for easy reference.

“BAR COUNCIL OF INDIA
(Statutory Body Constituted under the Advocates Act, 1961)

xxx

xxx

xxx

Sub: Resolution No.83/2011 passed by State Bar Council of Kerala in regard to introducing a special fee for enrolment w.e.f. 1.8.2011.

Sir,

The Bar Council of India at its meeting held on 18.11.2012 considered your letter dated 17.11.2012 received through fax, forwarding Resolution No.83/2011 passed by your State Bar Council for introducing a special fee for enrolment w.e.f. 1.8.2012. After consideration, the Council approved the above resolution under Item No.218/2012.

This is for information and appropriate action.

Yours sincerely,

sd/-

(J.R.Sharma)

Secretary.”

Therefore, it is the admitted case of State Bar Council and the Bar Council of India that what was sought by the resolution dated 1.8.2011 of the State Bar Council is to introduce “special fee for enrolment” with effect from 1.8.2011 and the said request for special fee was approved by the Bar Council of India. It was this action to collect special fee for enrolment that was sought to be justified by purported exercise of an

amended provision in the Rule which was made in Ext.R-1(a). Clause (a) of Rule 2 of Chapter V of the Bar Council of Kerala Rules was amended so as to incorporate ominous clause. Rule 2(a) of Chapter V of the Bar Council of Kerala Rules as it stood before Exts.R-1(a) and (b) provided as follows:

“Rule 2. Every person applying for enrolment under section 24 of the Act as an Advocate on the roll shall file with the Secretary, the following;

(a) An application in form No.2 hereto annexed together with the receipt for payment of the prescribed fees of Rs.250/- to the credit of the Bar Council of Kerala in the Central Bank of India, Ernakulam Branch or the State Bank of India, Trivandrum, Ernakulam or Calicut Branches. If the payment is made in any other branch of the said Banks, the necessary transmission fee shall also be paid.

Provided that where the applicant is one belonging to the Scheduled Caste/Scheduled Tribe the enrolment fee payable by him shall be Rs.125/- provided further that he produced a certificate from the Tahsildar showing that he is a member of a Schedule Caste or Schedule Tribe.”

After the purported amendment as per Exts.R-1(a) & (b), the provision contained in Rule 2 after amendment effected reads as follows:

“Rule 2. Every person applying for enrolment under section 24 of the Act as an Advocate on the roll shall file with the Secretary, the following;

(a) An application in form No.2 hereto annexed together with the receipt for payment of the application fee and other fees which the council may decide from time to time.

Provided that where the applicant is one belonging to the Scheduled Caste/Scheduled Tribe the enrolment fee payable by him shall be Rs.125/- provided further that he produced a certificate from the Tahsildar showing that he is a member of a Schedule Caste or Schedule Tribe.”

In the purported exercise of the powers conferred by the amended Rule 2(a), the impugned fee structure has been issued by the Bar Council of

Kerala from time to time. The aforequoted provisions in the impugned fee structure produced in various Writ Petitions says that differential fee structure depending upon the number of years after the acquisition of LLB or retirement, etc., are demanded as against “candidates seeking enrolment after 5 years, 10 years or after retirement as the case may be”. Therefore, the impugned special fee that has been collected pursuant to the impugned fee structure in these cases subsequent to Exts.R-1(a) and (b) amendment and even prior thereto as per Ext.R-1(c) is only in respect of special fee for enrolment that is the fee that has been demanded from candidates seeking enrolment which is in addition and over and above the fee for enrolment stipulated by the parliament in Sec.24(1)(f). Further in Ext.R-1(h) document produced by none other than the Bar Council of Kerala, they have admitted that special fee collected as per the impugned provision presumably for that year concerned comes about to Rs. 25 Lakhs and it is clearly described as “special fee for enrolment”. Therefore, this Court has no hesitation to hold that the impugned special fee has been demanded from the petitioners is nothing but a special fee for enrolment over and above the enrolment fee fixed by the Parliament as per Sec.24(1)(f). Apart from plainly taking the stand that the impugned special fee has nothing to do with

the enrolment, the respondent State Bar Council has not been able to cogently and precisely and clearly appraise this Court as to the exact essence and substance of special fee and how it has nothing to do with the enrolment fee. On the other hand the consistent stand of the State Bar Council as admitted by them, which is discernible from the documents produced and relied on by them as mentioned above would clearly show that in substance and essence the impugned special fee is nothing but a special fee for enrolment demanded over and above the amount demanded in Sec.24(1)(f).

18. In this regard it is to be noted that various other amounts have also been demanded in the impugned fee structure. For instance, Ext.P-3 of W.P.(C).No.28221/2016 would disclose that even though the enrolment fee under the Advocates Act is only Rs.750/-, the application form fee is Rs.2,000/-, Registration fee is Rs.2,500/-, enrolment Fee is Rs.600/-, enrolment Certificate fee is Rs.800/-, fee for identity card is Rs.100/-, enrolment application process and verification fee for candidates who qualified from University outside Kerala State is fixed at Rs.2,500/-, Bar Council Welfare Fund amount is Rs.3,000/- and late fee has also been mentioned therein. Therefore, it is not discernible as to for what purpose the said fee is demanded. So the only reasonable

conclusion is that the impugned special fee is only for enrolment purpose.

19. Therefore, the said impugned provision that purportedly authorizes the collection of special fee from those candidates who seek enrolment which are impugned in these writ proceedings would certainly be flagrant and blatant violation of the provisions contained in Sec.24(1)(f) of the Advocates Act and clearly and totally beyond the rule making power of either the State Bar Councils or that of the Bar Council of India. In this connection it is also relevant to note that Sec.49(1)(h) specifically assigns the power to prescribe the fee in relation to any matter under the Advocates Act exclusively to the Bar Council of India and Part VIII of Bar Council of India Rules framed under Sec.49(1)(h) of the Act, is captioned as "fee leviable under the Act" and those are clearly laid down under Sec.49(1)(h) of the Act. Further it is also mandated therein that the State Bar Council may levy fee not exceeding the limits prescribed therein in any of the following matters. None of the entries in those rules authorise the State Bar Councils to collect a fee as in the one covered by the impugned special fee. Therefore, it is only to be held that the impugned special fee is ultra vires and unauthorised in any view of the matter.

20. In this connection, it is relevant to note that the Apex Court has already held categorically in O.N.Mohindroos' case, reported in AIR 1968 AIR SC 888 (Constitution Bench decision) as well as in Bar Council of U.P.'s case reported in 1973 (1) SCC 261 that the legislative competence to frame the law as in the Advocates Act, 1961 is relatable to Entries 77 & 78 of the Union List and that therefore the legislative competence to frame law for levying fee is also traceable to Entry 96, to levy fee in respect of fee covered by such an enactment, is also exclusively traceable to Entry 96 of the Union List, etc. It is in this background that it is to be appreciated that the Parliament has specifically enacted the provisions contained in Sec.49(1)(h) of the Advocates Act, 1961, which specifically assigns the power to prescribe fee in relation to any matter under the Act, exclusively to the Bar Council of India. In accordance with this mandate, the Bar Council of India has already framed rules and Part-VIII thereof has been framed as per that provision and is captioned as "fee leviable under the Act" and it is further clearly stipulated therein that those are rules framed under Sec.49(1)(h) of the Act and it is also specifically mandated under Part-VIII of the said rule that the State Bar Council may levy fee not exceeding the limits prescribed therein in any of the matters

enumerated thereunder. The entries on the Part-A have been recently amended as per BCI resolution/notification dated 02.02.2013, amending the entries and the said amended provision has been published in the Gazette of India dated 28.03.2013 [which has been produced as Ext.P-6 in connected W.P.(C) No.27369/2014, which relates to resumption fee matters] and as at present there are 23 entries therein with a further provision enhancing the resumption fee, etc. None of the entries in the amended provision of Part-VIII of the BCI Rules or that contained in the pre-amended version, have any provision which even remotely or incidentally authorises the State Bar Council to collect the fee as the one covered by the impugned special fee for enrolment. It may be noted that even the BCI had no jurisdiction to make any provisions for collecting any special fee or additional fee for enrolment as it has already been fixed by the Parliament under Sec.49 (1)(h). Therefore, it is only to be held that the impugned special fee for enrolment is ultra vires and unauthorised in any view of the matter. Consequently, it is only to be held that the impugned amendment made to Rule-2(a) of Chapter-V of the Bar Council of Kerala Rules to the extent it purports to the limited extent to which it authorises or purports to authorise the State Bar Council of Kerala to collect any

special fee for enrolment as in the instant case, is also clearly ultra vires and illegal. All the petitioners herein challenged only the said special fee for enrolment and they do not challenge the other fee aspects which are covered in the impugned fee structure notifications and therefore a declaration as in the present case alone would suffice in the interest of justice, in view of the confined factual issues raised in this case.

21. Sri.P.Ravindran, learned Senior Counsel, appearing for the respondent State Bar Council had also raised a contention that the differentiation in the fee structure, as noted hereinabove, would fully satisfy the best of principal classification, in view of the judgments of the Apex Court as in *S.Seshachalam & Ors. Vs. Chairman Bar Council of Tamil Nadu & Ors.* reported in 2014 (6) 16 SCC 72, *Shivananjundappa & Ors. Vs. State of Karnataka* reported in AIR 1992 SC 231 = 1993 suppl. (1) SCC 607 = 1993 KHC 634, etc. In this regard, the learned Senior Counsel would also argue that as held by the Apex Court rulings as in *Srinivasa General Traders & Ors. Vs. State of Andhra Pradesh & Ors.* reported in 1983 (4) SCC 353, paras 31 and 32 that though the distinction between tax and fee lie primarily in the fact that a tax is levied as part of a common burden whereas the fee is for payment of a specific benefit or privilege although special advantage is secondary to

the primary objective of regulation of public interest, but that there is no generic difference between a tax and a fee as both are compulsory exactions of money by public authorities and compulsion lies in the hand as payment is enforceable by law against a person inspite of his unwillingness or want of concern, etc. In this regard, it is contended that the impugned special fee is thus a license fee as understood in various rulings of the Apex Court as in Sreenivasa General Traders' case reported in 1983 (4) SCC 353, Delhi Rouse Club Ltd. Vs. Union of India reported in 2012 (8) SCC 680, etc., and that the legal principles laid down by the Apex Court in Shivnanjundappa's case reported in AIR 1992 SCC 231 to the effect that there could be differential treatment for both imposition of tax based on income resources and capabilities of persons who are amenable to the taxation, would also apply with equal vigour in imposition of a fee including a license fee. Accordingly, it is contended that the Apex Court in S.Seshachalam's case reported in 2014 (16) SCC 72 held that the differentiation made between young lawyers who seek enrolment immediately after their law graduation and between other persons who had sought employment and thereafter obtained retiral benefits, who later seek fresh enrolment in the Bar, is a case of reasonable classification, etc., and detailed submissions in that

regard were made by both sides. The petitioners would contend that what was considered in Seshachalam's case (supra) was the vires of the proviso to Sec.16 Explanation (ii)(5) of the Tamil Nadu Advocates Welfare Fund Act, 1987 as well as Sec.1(3) of the Bihar State Advocates Welfare Fund Act, 1983 to the extent it had excluded persons who had retired from service after obtaining retiral benefits from the employers, from the purview of the benefit of those legislations like the Advocates Welfare Fund and that the consideration which weigh in making such a differentiation as the one involved in Seshachalam's case for the purpose of exclusion from Advocates Welfare Fund benefits, cannot apply in the case of fresh enrolment of lawyers, etc. As this Court has already conclusively found that the imposition of the special fee is ultra vires and is without any lawful authority, it is not really necessary to get into the nitty-gritty of the rival arguments posed in this regard as to whether the impugned differentiation made out in the impugned fee structure notifications would satisfy the test of reasonable classifications. Prima facie this Court is of the view that if the differentiation is made solely on the basis of the consideration regarding the retirement of those affected persons and their obtaining retiral benefits, the argument posed by the learned Senior Counsel appearing for the State Bar Council would be

appealing. However, a glance at various impugned fee structure notifications produced in this case would make it clear that there does not appear to be a uniform and clear basis for the differentiation made out in the impugned fee structure notifications. For instance, in Clause 7 of Ext.P-3 produced in W.P.(C).No.28221/2016, sub clauses (a) and (b) thereof makes a differentiation solely with reference to whether the candidate who is seeking enrolment after 5 years is making an application for enrolment within 10 years after acquisition of the LLB Degree or after 10 years from the acquisition of the LLB Degree. Those aspects do not appear to have any direct and reasonable nexus with the aspect as to whether the said candidates covered by sub-clauses (a) and (b) of Clause 7 are retired from service or not. Whereas sub-clauses (c) and (d) appear to be a differentiation on the basis as to whether the candidate who is seeking enrolment had retired from service after superannuation and as to whether his/her last drawn monthly gross salary is upto Rs.60,000/- (Rupees Sixty thousand only) or whether it is above Rs.60,000/- (Rupees Sixty thousand only). Whereas sub-clause (c) thereof speaks about those who had undergone law degree after retiring from service, wherein it is fixed at Rs.15,000/- (Rupees Fifteen thousand only) and sub-clause (f) thereof stipulates that those who had

voluntarily retired from service or employment in India or abroad will have to pay special fee for enrolment of Rs.15,000/- (Rupees Fifteen thousand only). So also a perusal of Clause 7 of Ext.P-5 produced in W.P.(C).No.9261/2016 would show that sub-clause (a) envisages the cases of candidates seeking enrolment after 5 years from the date of acquisition of the LLB Degree, which is fixed at Rs.20,000/- (Rupees Twenty thousand only) and sub-clause (b) thereof speaks about candidates seeking enrolment after 10 years from the date of passing of the LLB or after retirement from voluntary service/employment in India or abroad, it is fixed at Rs.25,000/- (Rupees Twenty five thousand only) and sub-clause (c) thereof speaks about candidates retired from service seeking enrolment after attaining the age of superannuation wherein it is fixed at Rs.40,000/- (Rupees Forty thousand only). Clause 9 of Ext.P-2(5) produced in W.P.(C) No.26831/2015 envisages situations of sub-clause (a) wherein it covers candidates seeking enrolment after 5 years from the date of passing of the LLB in which it is fixed at Rs.15,000/- (Rupees Fifteen thousand only) and sub-clause (b) thereof speaks about candidates seeking enrolment after 10 years from the date of passing of the LLB or after retirement from voluntary service/employment, etc., wherein it is fixed at Rs.20,000/- (Rupees Twenty thousand only) and

sub-clause (c) thereof speaks about candidates who had retired from service seeking enrolment after superannuation age wherein it is fixed at Rs.35,000/-. Clause 8 of Ext.P-1 produced in W.P.(C). No.25420/2013 covers situations of sub-clause (a) thereof wherein it envisages candidates seeking enrolment after 5 years from the date of passing of the LLB Degree wherein it is fixed at Rs.10,000/- (Rupees Ten thousand only) and sub-clause (b) thereof speaks about candidates seeking enrolment after 10 years from the date of passing of LLB Degree or after retirement from voluntary service wherein it was fixed at Rs.15,000/- (Rupees Fifteen thousand only) and sub-clause (c) speaks about candidates who had retired from service seeking enrolment after superannuation of age whereby, it is fixed at Rs.25,000/- (Rupees Twenty five thousand only). Though some of the differentiations made in these respective clauses are in relation to retired personnel, some of the other clauses therein speaks about a differentiation as to whether a candidate concerned is seeking enrolment after 5 years or whether it is after 10 years from the date of acquisition of LLB. Therefore, the basis for the differentiation made in each of these impugned fee structure notifications produced in these writ petitions does not appears to be on consistent and precise criteria basis but appears to be on various

varying parameters which need not by themselves have any inextricable nexus with retirement from services. In the light of these aspects, this Court is of the prima facie view that the very basis of the classification sought to be made out in each of the impugned fee structure notifications appears to be quite hazy and confusing and not based on any uniform and consistent basis for differentiation. However, no final opinion is found necessary in respect of these issues, as this Court had already taken the view that the very collection of the impugned special fee is in violation of the provisions contained in Sec.24(1)(f) of the Act and is therefore, ultra vires. Moreover Sec.24, 28(ii)(a) of the Act makes it clear that the only rule that can be framed by the State Bar Council in the matter of enrolment fee is limited to stipulating the installments within which the enrolment fee could be remitted by the candidate.

22. Few of the cases, viz., W.P.(C) No.19927/2016 and W.P.(C) No.26831/2015 also raises certain contentions regarding the imposition of late fee which has been stipulated by the respondent State Bar Council for entertaining applications submitted beyond the prescribed dead line. As per Clause 5 of Ext.P-2 produced in W.P.(C) No.26839/2015, the late fee prescribed for entertaining delay in the enrolment applications submitted from 15 to 30 days before the date of

actual enrolment is Rs.2,000/- (Rupees Two thousand only) whereas it is Rs.3,000/- (Rupees Three thousand only) for such applications submitted from 3 to 14 days before the date of enrolment and Rs.5,000/- (Rupees Five thousand only) if it is submitted one day before the date of enrolment. Whereas as per Clause 8 of Ext.P-3 produced in W.P.(C) No.19927/2016, dealing with late fee, it is stipulated therein that for condoning delay of 10 days, the late fee is Rs.2,000/- (Rupees Two thousand only) and delay condonation for more than 10 days, the late fee is Rs.5,000/- (Rupees Five thousand only), etc. The learned counsel for the petitioners would contend that the exclusive authority to prescribe fee that are leviable in respect of any matters under the Act has been exclusively assigned to Bar Council of India as per Sec.49(1) (h) of the Act and that therefore the stipulation of late fee by the State Bar Council is also ultra vires and unauthorised. It is also contended that the said power conferred on the Bar Council of India as per Sec.49(1)(h) cannot be delegated by the Bar Council of India to the State Bar Council. The learned Senior Counsel appearing for the respondent State Bar Council had also made submissions that the said levy and collection of late fee is perfectly within the authority of the respondent Bar Council. In this regard, it is to be noted that Rule 3 of Chapter V of the Bar

Council of Kerala Rules provides that "unless the Bar Council otherwise resolves, every person intending to apply for admission as an advocate shall give one month's notice in writing to the Secretary stating such intention in Form No.7 provided that the enrolment committee may relax this requirement in appropriate case". Such a prescription would certainly come within the scope and ambit of "other conditions to be fulfilled by a candidate seeking enrolment" as envisaged in Sec.24(1)(b) read with Sec.28 (2)(d) under Chapter 3 of the Act. It has been held by the Apex Court in the case Indian Council of legal Aid & Advice & Ors. Vs. Bar Council of India & Anr. reported in 1995 (1) SCC 732, para 11 that the candidate seeking enrolment must fulfill other conditions specified in the Rules made by the State Bar Council and that it is within the exclusive zone of State Bar Council and that pre-enrolment matters would fall within the jurisdiction of the State Bar Council as per Sec.24(1)(b) read with Sec.28(2)(b) of the Act, whereas post enrolment matters would come within the zone of the Bar Council of India in terms of Sec.49(1) (ah) of the Act, etc. Therefore, it is only to be held that Rule 3 of Chapter V of the Bar Council of Kerala Rules would eminently fall within the jurisdiction of the State Bar Council in terms of Sec.24(1)(b) read with Sec.28(2)(b) of the Act. Thus, going by the mandate of Rule 3, the person seeking enrolment

should give at least one month's notice in writing to the Secretary, prior to the proposed notified day of enrolment. It was well within the jurisdiction of State Bar Council to take a very hard and rigid stand that no application submitted beyond the said dead-line, would be entertained at any cost. Instead of that the State Bar Council has taken a flexible and fair stand that the requirements for giving one month's notice would be relaxed in appropriate cases. Instead of deciding individual cases on a case to case basis which might be susceptible to subjective and varying considerations, the State Bar Council in their wisdom have chosen to prescribe that late fee should be paid for condonation of delay, as stipulated in the impugned notifications. Though the terminology employed is "late fee", this Court should not go merely by the word "fee" employed in the notification but should look into the essence and substance of the requirement regarding delay condonation. It has been held by the Apex Court in Srinivasa General Trader's case reported in 1983(4) SCC 353, paras 31 and 32 that both tax and fee are compulsory exactions of money by public authorities and compulsion is in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of concern. In the instant case, there is no compulsion that the applicant should necessarily pay

the so called late fee for delay condonation. There is always an option for a candidate who could not submit the application within the prescribed dead-line, not to seek delay condonation and to await for the next opportunity for enrolment. In case the candidate seeks delay condonation, then only he/she is required to pay the amount stipulated in the notification for delay condonation. Therefore, such a requirement to pay a fixed amount for condonation of delay, cannot be construed as compulsory exaction of money by a public authority in as much as there is no compulsion or coercion in that process and it is fully upto the volition of the candidate concerned not to seek for delay condonation. The applicants' right to seek enrolment is not denied by this condition. Therefore in essence and substance, the amount required to be paid is not a "fee" as understood in law, even though the terminology employed in the notification is "late fee". The requirement to pay the amount for delay condonation has been made by the respondent State Bar Council in order to ensure that an objective and transparent criteria is followed in all cases instead of adhoc and subjective measures to be taken resort to while dealing with individual cases for delay condonation. Therefore such an objective parameter would also certainly come within the permissible scope and ambit of "other conditions" which are to be fulfilled by a candidate

seeking enrolment as prescribed by law, as occurring in Secs.24(1)(e) read with Sec.28(2)(b) of the Act. In this view of the matter this Court is of the considered view that the stipulation for payment of the so-called 'late fee', is fully within the vires and competence of the respondent State Bar Council and they cannot be found fault with for imposing such a requirement. If a low amount is fixed for condonation of delay, this would give rise to a sense of laxity for candidates seeking enrolment if they get the assurance that the delay could be condoned even without payment of any cost or by a normally low amount and the stipulation of time deadline for submission of enrolment application would not be viewed seriously by the candidates. For all these reasons, the respondent State Bar Council is fully justified for taking resort to such prescriptions. No arguments have been placed by the candidates by the way of petitioners that the amounts so stipulated is rather excessive, etc. Going by an overall consideration of various aspects of the matter, this Court is also of the view that the said amount so fixed by the State Bar Council cannot be said to be too excessive or high. In view of these aspects, the said contentions raised on behalf of the petitioners will stand overruled.

23. Yet another contention was also raised by the petitioners' counsel that the amended rule [as referred to in Exts.R-4(a) and R-4(b)]

has not yet been published in any manner by the respondent State Bar Council and that therefore the said rule cannot be enforced. In this connection, it is to be noted that neither Sec.15 nor Sec.28 stipulate that the rules so competently framed by the State Bar Council should be published in any manner. However Sec.15(3) and 28(3) mandate that no rules so framed thereunder shall have effect unless they have been approved by the Bar Council of India. However, it is to be noted that Rule 22(a) under Part-IX of the BCI Rules provides that the State Council shall give due publicity to the Rules. Therefore, it could appear that even though there are no specific provisions in the Act as to the publication of the rules to be framed by the State Bar Council and the manner of such publication, it is mandated that such rules shall have effect only if they have been approved by the Bar Council of India and the said approving authority (BCI), has consciously made a statutory provision to include Rule 22(a) of Part IX of the BCI rules that the State Bar Council shall give due publicity to the rules and that therefore the said provision can be seen as a statutory condition attached by the rule approving authority (BCI) in respect of the approval of the rules so granted by them. However it is to be noted that the Apex Court in the case B.K.Srinivasan Vs. State of Karnataka reported in 1987(1)SCC 658,

while pointing out the importance of the subordinate legislations, has held as follows in para 15 thereof:

15. unlike parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect, must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It will then take effect from the date of such publication or promulgation. Where the parent statute prescribes the mode of publication or promulgation that mode must be followed. Where the parent statute is silent, but the subordinate legislation itself prescribes the manner of publication, such a mode of publication may be sufficient, if reasonable. If the subordinate legislation does not prescribe the mode of publication or if the subordinate legislation prescribes a plainly unreasonable mode of publication, it will take effect only when it is published through the customarily recognised official channel, namely, the Official Gazette or some other reasonable mode of publication. There may be subordinate legislation which is concerned with a few individuals or is confined to small local areas. In such cases publication or promulgation by other means may be sufficient."

The said judgment of the Apex Court in B.K.Srinivasan's case (supra) has been subsequently followed in many cases as in D.B. Raju Vs. H.J.Kantharaj & Ors. reported 1990 (4) SCC 178, M/s. Pankaj Jain Agencies Vs. Union of India reported in 1994 (2) SCC 198, I.T.C. Bhadrachalam Paperboards & Anr. Vs. Mandal Revenue Officer, A.P. & Ors. reported in 1996 (6) SCC 634, Collector of Central Excise Vs. New Tobacco Co. & Ors. reported in 1998 (8) SCC 250, Orissa State (Prevention & Control of Pollution) Board Vs. Orient Paper Mills & Anr. reported in 2003 (10) SCC 421, Bharat Sanchar Nigam Limited & Anr. Vs.

W.P.(C).No.26831/2015, etc.

BPL Mobile Cellular Limited & Ors. in 2008 (13) SCC 597, Rajendra Agricultural University. Vs. Ashok Kumar Prasad & Ors. reported in 2010 (1) SCC 730, K.T.Planatation Private Limited & Anr. Vs. State of Karnataka reported in 2011 (9) SCC 1, Gulf Goans Hotels Company Limited & Anr. Vs. Union of India and Ors. 2014 (10) SCC 673, Supreme Court Advocates-On-Record Association Vs. Union of India 2016 (5) SCC (1).

23.1 However, it is to be noted that in the context of the enforceability of rules framed by State Bar Councils under Sec.15 of the Advocates Act, 1961, the Apex Court in the case Pratap Chandra Mehta Vs. State Bar Council Madhya Pradesh & Ors. reported in 2011 (9) SCC 573, had dealt with the case wherein it is clearly held in para 82 thereof that the language employed in Sec.15(3) of the Advocates Act and the factual aspect noted therein that the amended rules of the Madhya Pradesh State Bar Council had received the approval of the BCI, the said State Bar Council Rules could not be invalidated for want of publication of the notification, as it is not the requirement in terms of Sec.15 (3) of the Advocates Act and that such non-publication would be a curable irregularity. On verification, it has been brought to the notice of this Court that even till yesterday, the said amended rules as per Exts.R-1(a) and R-1(b) in this case have not been published in the

official website of the respondent Bar Council of Kerala. However, in view of the specific ruling of the Apex Court in Pratap Chandra Mehta's case reported in 2011 (9) SCC 573, para 82, it cannot be held that the impugned rules are liable for invalidation on the ground that the said rules have not been published in any manner so far, as at best it is only a curable irregularity. So there is no necessity to further get into the issue regarding the enforceability of the rule due to non publication, etc.

23.2 But in this context, it is relevant to note that it has been brought to the notice of this Court that the Bar Council of India authorities are consistently publishing the various amendments to their rules in the Gazette of India and in this regard Ext.P-6 (Gazette of India notification on 28.03.2013), produced in W.P.(C).No.27369/2014, to the testimonial of the fact that Bar Council of India have published even the amendment of their rules in the official Gazette of India. True that the non-publication of the rule is only curable irregularity and such non-publication need not automatically result in invalidation of the Rule. However it is to be noted that Rule 22 (a) of the Part IX of BCI rules specifically mandate that the State Bar Councils are obliged to give due publicity to their rules. This can only be construed as a statutory condition imposed by the Bar Council of India while granting the

statutory approval to the rules as envisaged in Rule 5(a) of the State Bar Council Rules as envisaged in Sec.15(3) and 28(3) of the Advocates Act. It may be that the Advocates Act does not make any provision for publication of rules but in view of the larger principles laid down by the Apex Court in the decision in B.K.Srinivasan Vs. State of Karnataka reported in 1987 (1) SCC 658, para 15, a statutory functionary like the respondent Bar Council of Kerala should be a model for upholding the basic norms of rule of law. It is to be borne in mind that they are the Apex regulatory body of legal professionals in the State of Kerala. The members of the legal profession are the high priests for upholding the rule of law. Therefore, the Apex statutory regulatory body of legal professionals in the state should also be in the forefront for upholding rule of law. It has not been seriously disputed by the respondent State Bar Council regarding the submission made by various advocates appearing for the writ petitioners herein that the present amended rule has not been published even in the official website maintained by the Bar Council of Kerala. This state of affairs should not be viewed lightly by the State Bar Council authorities, concerned. Without due publication of the rules, it will give rise to various confusions as regards the enforceability of the rules and even about the

very existence of the rules and as to what exactly was the original text of the rules as it was framed under rule by the authorities concerned. Therefore, in the light of the clear principles laid down by the Apex Court in B.K.Srinivasan's case (supra) reported in 1987 (1) SCC 658 para 15 and in the light of the provisions contained under Rule 22(a) under Chapter IX of the Bar Council of India Rules, the respondent State Bar Council has an obligation to ensure that the rules are published atleast in adherence to the rudimentary principles of rule of law. This Court would only venture to suggest to the respondent Bar Council of Kerala to consider whether they should consider the publication of their rules and its various amendments made from time to time not only in their official website but also in the official Gazette of the State of Kerala. In case, the respondent State Bar Council authorities decides to opt for publication of their rules and its amendments in the Gazette of Kerala, then the Chief Secretary to Govt. of Kerala should ensure that necessary steps should be taken for publishing those rules and its amendments in the official Gazette of the State of Kerala without much delay on the presentation of such rules for publication. It is brought to notice that the elected committee of the State Bar Council have demitted office and that a special committee

under the chairmanship of the learned Advocate General is now looking after the management of the State Bar Council. This Court would request that without waiting for assumption of charge by a future elected committee, the present special committee may look into these aspects and may take an appropriate decision regarding the necessity of publication of the rules and its various amendments framed by them, in the Gazette of Kerala. If such a decision is taken, then the rules that may be framed, could be forwarded to the State Government authorities concerned for publication in the Gazette of Kerala and the State authorities should ensure its publication in the State Gazette. Copies of the Rules and its various amendments issued from time to time should also be published not only in the official website of the State Bar Council but should also be circulated with wide publicity to all the recognised Bar Associations functioning in the State requesting so as to give adequate publicity to those rules.

24. In the result, the upshot of the above discussion is that the impugned imposition of special fee is ultra vires and unauthorised. It has been pointed out that except in three cases, all the other petitioners could secure interim orders from this Court to secure enrolment without payment of the impugned special fee. But that the petitioners

W.P.(C).No.26831/2015, etc.

in W.P.(C) No.26830/2015, W.P.(C).No.18743/2016 and W.P.(C). No.25420/2013 have already paid impugned special fee and they would seek refund of the fee. It is ordered that the enrolment secured by the petitioners cannot be disturbed merely on the ground that they have not paid the impugned special fee and their enrolment granted to them pursuant to the interim orders passed by this Court should be treated as regular and proper for all purposes, if they have otherwise fulfilled all the other eligibility conditions. In case, any of the petitioners have paid the impugned special fee, then it would be open to them to make a request for refund by making an appropriate application before the Secretary of the Bar Council of Kerala along with a certified copy of this judgment upon which the details of such payments should be verified and such impugned special fee, so collected should be refunded to such petitioners, within one month from the date of receipt of their application for refund. It is also made clear that if the refund is not made within the said time limit, then the said amount will carry interest @ 10% p.a. from the expiry of the said one month period upto the date of actual payment. It is made clear that though several amounts have been demanded as fee in the impugned fee structure notifications, all the petitioners have confined their challenge only to

the imposition of the special fee for enrolment.

25. Before parting with these cases, this Court would place its deep appreciation for the effective arguments and assistance rendered by all the Advocates appearing in these matters, and a special reference in that regard should be made to Sri.P.Raveendran, learned Senior Counsel appearing for the respondent State Bar Council and Sri.M.M. Monayi, learned Advocate. This Court would also place its deep appreciation for the assistance rendered ably by Sri.Saigi Jacob Palatty, learned Senior Government Pleader who volunteered to assist this Court for collating the factual aspects dealt with in each of these writ petitions and had also assisted this Court in citing several authorities in these matters. The Registry will forward a copy of this judgment to the Chief Secretary to Government of Kerala for information regarding the aspects of publication of rules.

With these observations and directions, the aforecaptioned writ petition (Civil) will stand finally disposed of.

ALEXANDER THOMAS,
Judge.