

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1549 OF 2017

Devendra Nath Tripathi ...Petitioner
Versus
Union of India & Ors ...Respondents

Mr Devendra Nath Tripathi, Petitioner in person with DV Saroj.
Mr Yogendra Rajgor, for Respondent No. 1.

**CORAM: SUMAN SHYAM &
SHYAM C. CHANDAK, JJ.**

DATED: 21ST AUGUST 2025.

PC:-

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1. Heard Mr. Devendra Nath Tripathi, the Petitioner appearing in person in this writ petition. Also heard Mr Yogendra Rajgor, the learned counsel appearing for Respondent No.1. None has appeared for the remaining Respondents.

2. The Petitioner is a practicing Advocate. He was originally enrolled with the State Bar Council of Uttar Pradesh as an Advocate vide Enrollment No. 82 of 2003. After practicing there for some years, the Petitioner shifted his residence to Mumbai and started practicing law in Mumbai.

3. Accordingly, on 25th September 2013, the Petitioner had applied for transfer of his enrollment from Uttar Pradesh to Maharashtra under the Bar Council of Maharashtra and Goa i.e the Respondent No.1 herein, represented by its Secretary. According to the Writ Petitioner, as per the mandate of Section 18 of the Advocates Act 1961, transfer of enrollment is required to be done free of cost. Notwithstanding the same, for processing the transfer of enrollment of the Petitioner to the State Bar Council of Maharashtra and Goa, the Respondent No.1 had charged an amount of Rs. 15,405/- as transfer fees, the breakup whereof, is as hereunder:

- a) Rs. 1,900/- to Bar Council of UP;
- b) Rs. 11,490/- to Bar Council of Maharashtra & Goa;
- c) Rs. 2,015/- to Bar Council of India.

4. Mr. Tripathi has invited the attention of this court to the Reply dated 20th of April, 2015 submitted by the Respondent No.1 to his RTI Application submitted on the 20th of March, 2015 to submit that the transfer fee was charged from him in deference to Resolution No. 112 of 2010 adopted by the Bar Council of Maharashtra and Goa on 26th September 2010, permitting such realization of fee, which is completely illegal.

5. It is the further the case of the Petitioner that although the actual year of transfer of his enrollment from UP to Maharashtra was in 2014. yet, the Respondent No.1 has realized transfer fee from the Petitioner with retrospective effect from 2003, thus, compelling him to pay the fees for the period for 2003 to 2014 during which period he was not a member of Maharashtra and Goa Bar Council .

6. The Petitioner has, therefore, approached this Court by filing the instant Writ Petition with the following prayers.

“A] This Hon’ble Court be pleased to call for the Minutes of meeting dated September 26th 2010 & Resolutions passed by the Bar Council of India and the Bar Council of Maharashtra & Goa and after perusing the same restrain/stay/quash the following points from further operation of the same through Respondent No. 1 to 4, till the final disposal of this Petition, from further charging such transfer fee, process fee etc. in violation of section 18 of Advocates Act 1961 and Ar. 14 & 21:

- i. Charging Transfer Fee under Section 18;
- ii. Charging Transfer Fee with retrospective effect;
- iii. Erroneous calculation of fee;

B] This Hon’ble Court be pleased to direct the Respondents to refund the Transfer fee so charged by Transfer fee and Process fee with 18% interest and reasonable cost herein;

C] This Hon’ble Court be pleased to direct the Respondents to compensate the Petitioner with Rs. 1 lakh

for the harassment and mental torture in pursuing the legal remedy herein;

D] That pending the hearing and final disposal of the Writ Petition, this Hon'ble Court be pleased to pass such necessary and mandatory orders and directions restraining the Respondents herein from further exercising rights and powers under the Resolutions passed by the Bar Council of India and Bar Council of Maharashtra & Goa which would nullify the effect of Section 18 of the said Act:

E] Interim and ad-interim reliefs in terms of prayer (D) above be granted."

7. In support of the prayers made in the Writ Petition, the Petitioner has urged that the present case is covered by the Judgment of the Supreme Court of India rendered in the case of *Gaurav Kumar vs Union of India & Ors*,¹ whereby the Apex Court has held that fee not stipulated by the provisions of the statute cannot be realised by the State Bar Councils (SCBs) and the Bar Council of India (BCI).

8. The Petitioner is, however, fairly submitted that save and except the prayer at Sr. No. A he is not pressing the other reliefs prayed for in the Writ Petition.

9. Appearing for the Respondent No.1, Mr. Rajbhor, learned counsel submits that if the Petitioner's only grievance is on

¹ Writ Petition (C) No. 352 of 2023.

account of realisation of fee for transfer of his enrollment, in view of the decision of the Supreme Court in the case of *Gaurav Kumar vs Union of India* (Supra), he would not have any objection to the said prayer, provided any decision of the Court is given effect to prospectively.

10. Since the relief prayed for by the Petitioner is on the basis of Section 18 of the Act of 1961, it would be apposite to re-produce the said provision for ready reference :-

“18. Transfer of name from one State roll to another.—(1) Notwithstanding anything contained in section 17, any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that the name of such person shall, without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction:

Provided that where any such application for transfer is made by a person against whom any disciplinary proceeding is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made bona fide and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application.

(2) For the removal of doubts it is hereby declared that where on an application made by an advocate under sub-section (1), his name is transferred from the roll of one State Bar Council to that of another, he shall retain the same seniority in the latter roll to which he was entitled in the former roll.”

11. In this case we are only concerned with section 18(1) of the Act of 1961 which clearly mandates that transfer of enrollment from one State to the other is to be carried out on the direction of the BCI without payment of any fee. In the present case, the enrollment of the Petitioner has been transferred on his application but upon realizing the fee, as indicated here-in above. None has appeared on behalf of the BCI i.e. the Respondent No. 3 to clarify its stand in the matter.

12. Be that as it may, while dealing with an issue of similar nature the Hon’ble Supreme Court has held, in the case of ***Gaurav Kumar*** (Supra), that SBCs cannot charge enrollment fee beyond the mandate of section 24(1)(f) of the Act of 1961. In that case the core issue arising for decision of the Court was as to whether, enrollment fees charged by the SCBs in contravention of Section 24(1)(f) of the Advocates Act, 1961 was valid in law. The

observations made in paragraph 103 would be relevant for the purpose of this case and therefore, the same are being re-produced here-in-below :-

“103. As discussed in the above segments of this judgment, we are cognizant of the fact that the SBCs and the BCI depend entirely on the amount collected from candidates at the time of enrolment for performing their functions under the Advocates Act, including payment of salaries to their staff. According to the legislative scheme of the Advocates Act, the Bar Councils must only charge the amount stipulated under Section 24(1)(f) as an enrolment fee. Instead of devising ways and means to charge fees from enrolled advocates for rendering services, the SBCs and the BCI have been forcing young law graduates to cough up exorbitant amounts of money as a pre-condition for enrolment.”

13. In the present case, it appears that the amount was charged from the Petitioner in accordance with the Resolution No. 112 of 2010 adopted by the Bar Council of Maharashtra and Goa in its meeting held on 26th September 2010, whereby the State Bar Council was authorized to collect enrollment fee as per the ‘Schedule of Rates’ provided therein. However, the fact remains that realization of such fee for transfer of enrollment was not permissible under section 18(1) of the Act of 1961. As such, by applying the ratio laid down in the decision of *Gaurav Kumar*

(supra) to the facts of this case, the fee charged by the Respondent No. 1 for transfer of Petitioner's enrollment cannot be held to be valid in the eyes of law. Therefore, the same is declared to be illegal on the ground of the same being in contravention of the mandate of section 18(1) of the Act of 1961.

14. Having held as above, we are conscious of the fact that the Petitioner is not seeking refund nor is he seeking relief in terms of prayers B] to F] in the Writ Petition. Therefore, the Writ Petition stands allowed only in terms of relief A]. Consequently, it is clarified that our order will have prospective effect.

15. With the above observations, the Writ Petition stands allowed to extent indicated above.

16. There will be no order as to costs.

(SHYAM C. CHANDAK, J.)

(SUMAN SHYAM, J.)