



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1501 OF 2019

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**Smt. Nathibai Damodar Thackersey
Women's University Law School**

.. Petitioner

Versus

The State of Maharashtra & Ors.

.. Respondents

Dr. Milind Sathe, Senior Advocate (*Amicus Curiae*)
a/w Gaurav Shrivastav a/w Aditya Mhase - present.

Mr. Nitin Chaudhary a/w Siddeshvar Gaikwad, Disha
Vardhan i/by Mr. Sachin Chandan for petitioner.

Smt. Jyoti Chavan, Addl. Govt. Pleader for
respondent no.1.

Mr. Shekhar Jagtap for respondent no.2 – BCI.

Mr. Yogendra Rajgor a/w Meghna Gowalani for
respondent no.3.

**CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.**

RESERVED ON : 24th MARCH, 2025
PRONOUNCED ON : 2nd APRIL, 2025

JUDGMENT [PER : CHIEF JUSTICE]

1. Rule. Rule is made returnable forthwith. By consent of the parties, the matter is heard finally.

2. In this petition, the petitioner has assailed the validity of Rule 2(iv)(a), Rule 2(xii)(B) and the Proviso appended thereto, Rule 14, Rule 16(2), Rule 18(2), Rule 19(ii), Rule 19(iii) and Rule 26(a) of the Rules of Legal Education-2008 (**Rules of 2008**) on the ground that the same are void and *ultra vires* the power conferred under Section 49(1)(d) read with Section 7(1)(i) of the Advocates Act, 1961 (**Act of 1961**)

and therefore, same be struck down. In addition, the petitioner has challenged the validity of the impugned notices dated 28th August 2018 and 19th September 2018 issued by the Bar Council of India (**BCI**), *inter alia*; on the ground that the same is *ex-facie* arbitrary and illegal and is de hors Section 7(h) and (i) and Section 49(d) of the Act of 1961 and is violative of Articles 14 and 19(1)(g) of the Constitution of India

(I) FACTS:

3. The factual matrix, which is not in dispute, lies in a narrow compass. The petitioner, a law school, was established in the year 2006 by Smt. Nathibai Damodar Thackersey Women's University (**SNDT University**) and imparts legal education. The petitioner received an e-mail on 28th August 2018 from the BCI by which it was informed that in pursuance of the direction issued by the Chairman of BCI, a committee constituted by it would visit the institution/law school of the petitioner for the purpose of conducting inspection on 29th, 30th and 31st August 2018. The petitioner, by communication dated 29th August 2018 informed the BCI that it has no authority to visit and conduct inspection of law colleges under the provisions of the Act of 1961, as the same only provides for the inspection of the Universities and not the Law colleges. Thereafter, BCI issued a show-cause notice dated 19th September 2018 by which the petitioner was informed as to why the degree of the University, for the law courses, be not suspended and college who is refusing to get itself inspected be also suspended. Hence, this petition.

(II) SUBMISSIONS OF PETITIONER:

4. Learned Counsel for the petitioner submitted that the writ petition has been filed by the petitioner, a law school which is a separate and distinct entity from the SNTD. It is contended that the expression "College" and "University" are expressly defined under Section 12A(1)(b) and 12A(1)(h) read with Section 22(1) of the University Grants Commission Act, 1956 (**Act of 1956**) and College and University are different entities in law. It is contended that a degree is conferred by the University as per the provisions of the Maharashtra Public Universities Act, 2016 (**Act of 2016**) and not by the college. It is further contended that the SNTD University is controlled by the Act of 1956 which is a central governing body formed under the Act of Parliament for controlling the affairs of the Universities recognized by the Act of 1956. It is submitted that Section 7(1)(h) and (i) of the Act of 1956 confers the power on the BCI to visit and inspect the Universities and not the Colleges.

5. It is urged that the Rules of 2008 framed by the BCI are beyond the rule making power of the BCI under Section 7(1) (h) and (i) read with Section 49(1)(d) of the Act of 1961. It is contended that a subordinate legislation cannot supplant the substantive provisions of the Act. In support of the aforesaid submission reliance has been placed on the Supreme Court judgments in **UNION OF INDIA & OTHERS VS. S. SRINIVASAN¹** and **PETROLEUM AND NATURAL GAS REGULATORY BOARD VS. INDRAPRASTHA GAS LTD. & OTHERS.²**

¹ (2012) 7 SCC 683

² (2015) 9 SCC 209

6. It is argued that the SNTD University, through its authorities i.e. the Board of Studies, a primary academic body of the University, Management Council, Academic Council etc. are the controlling authorities in relation to the law courses offered by its law school. It is pointed out that the BCI itself has suggested the amendment to the Act of 1961 by which in Section 7(1)(i) an amendment has been proposed to recognize universities and institutions imparting legal education leading to a degree in law from which it is evident that the institutions imparting legal education were not covered within the meaning of Section 7(1)(i) of the Act of 1961. It is submitted that the members nominated by BCI in the committee constituted by it for inspection are not experts in the field. It is also contended that the impugned notice and show-cause notice are *per se* without jurisdiction, which are, therefore, liable to be quashed and set aside.

(III) SUBMISSION OF AMICUS:

7. Learned *Amicus* has submitted that the expression "University" and "College" has not been defined in the Act of 1961. It is submitted that on conjoint reading of Sections, 7, 24 and 49 of the Act of 1961, it is evident that one of the functions of the BCI is to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. It is urged that the BCI is also required to recognize the Universities whose degree in law shall be qualification for enrollment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect the Universities in accordance

with such directions as it may give. It is urged that the BCI has a major role in maintaining the standards of legal education and it is expressly authorised to inspect the Universities. It is contended that if a course is conducted by an institution like a college or centre for legal education which are affiliated to University, the inspection can be conducted to ensure that conditions on which Universities are recognized, are complied with by such institution. Therefore, the inspection of an institution which conducts the law course, is covered by the mandate of Section 7(1)(i) of the Act of 1961. It is urged that the rule making power of BCI, under the Act of 1961, cannot be given a restrictive meaning so as to restrain BCI to inspect law colleges established by the Universities as the same would be contrary to the provisions of Section 7(1)(h)(i)(l) and (m) of the Act of 1961. It is submitted that Section 49 of the Act of 1961 provides for power to frame rules in relation to minimum qualification required for admission to a degree course in law, class or category of persons entitled to be enrolled as advocates, standards of legal education to be observed in India and the inspection of the Universities for that purpose.

8. It is pointed out that Rules 2008 made under Section 49 of the Act of 1961 have been made to codify the standards of legal education and minimum qualification required for admission to a course. It is submitted that the challenge to the Rule making power is untenable on plain reading of Sections 7 and 49 of the Act of 1961. It is contended that it is open for the petitioner law college to reply to the show-cause notice issued by the BCI and/or to invite inspection and

show compliance with the Rules of 2008. It is urged that the present writ petition and challenge to the rules as well as the impugned notices are misconceived. In support of his submissions, reliance has been placed on decisions of Supreme Court in **BAR COUNCIL OF INDIA VS. BONNIE FOI LAW COLLEGE³** and **RASHTRASANT TUKDOJI MAHARAJ NAGPUR UNIVERSITY VS. STATE OF MAHARASHTRA⁴**.

9. Learned Additional Government Pleader has adopted the submissions made on behalf of the petitioner and has contended that in view of the Act of 2016, BCI has no power to inspect the petitioner law school. Learned Counsel for the BCI has adopted the submissions made by learned *Amicus* and has submitted that the BCI has power to issue notices which have been impugned in this petition.

(IV) CONSIDERATION:

10. We have considered the rival submissions made on both the sides and have perused the record. Before proceeding further, it is apposite to take note of relevant provisions of the Act of 1961, Rules of Legal Education- 2008 framed therein as well as the Maharashtra Public Universities Act, 2016.

(V) RELEVANT STATUTORY PROVISIONS:

11. The Parliament, in exercise of powers conferred under Entry 77 and 78 of List-I of VII Schedule to the Constitution of India, has enacted Advocates Act, 1961 which is an Act to amend and consolidate the law relating to legal practitioners and to provide for constitution of Bar Councils and an All India

³ (2023) 7 SCC 756

⁴ 2020 SCC OnLine Bom 2020

Bar. Section 7 of the Act of 1961 deals with the functions of the Bar Council of India. The relevant extract of Section 7(1) is extracted below for the facility of reference:

Section 7. Functions of Bar Council of India.

(1) The functions of the Bar Council of India shall be:

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

(l) to perform all other functions conferred on it by or under this Act;

(m) to do all other things necessary for discharging the aforesaid functions:

12. Section 49 of the Act of 1961 deals with general power of the Bar Council of India to make Rules. The relevant extract of Section 49(1)(d) reads as under:

Section 49: General Power of the Bar Council of India to make rules

(1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe-

(d) the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose;

Thus, on careful scrutiny of Sections 7 and 49 of the Act of 1961, it is evident that one of the functions of the Bar Council of India is to promote legal education and lay down standards of such education. Section 49 empowers the Bar Council of India to make rules for discharging of its function under the Act of 1961 and in particular with regard to the

subject matter of the clauses viz. (a) to (j) of section 49(1).

13. The Bar Council of India, in consultation with Universities and the State Bar Councils, has framed rules which are known as Rules of Legal Education-2008. Rule 2(iv) defines 'Centres of Legal Education' whereas Rule 2(xii)(B) defines 'inspection of University', which are extracted below for the facility of reference:

"Rule 2(iv) - Centres of Legal Education means;

(a) *All approved Departments of Law of Universities, Colleges of Law, Constituent Colleges under recognized Universities and affiliated Colleges or Schools of law of recognized Universities so approved.*

Provided that a Department or College or Institution conducting correspondence courses through distance education shall not be included.

(b) *National Law Universities constituted and established by statutes of the Union or States and mandated to start and run Law courses."*

"Rule 2(xii) - Inspection of the University means;
inspection by the Bar Council of India for recognizing its degree in law for the purpose of enrolment in the rolls of advocates and includes;

(A)

(B) *visiting places of the Centres of Legal Education including building housing classes, library of the Institution, halls of residence and all other places as may be required by the inspection team inspecting the University and its affiliated Centres of Legal Education where the courses of degrees in law are conducted or proposed to be conducted.*

Provided that as and when the Bar Council India communicates to the University for the purpose of inspection, the University shall also direct the concerned officer in charge of Inspection of Centre of Legal Education to instruct all persons concerned for facilitating the Inspection by the inspection team of the Bar Council of India.

Rule 2(xxii) defines 'Recognized University' whereas Rule 2(xxxii) defines 'University', which are extracted below:

2(xxii) 'Recognized University' means a University whose degree in law is recognized by the Bar Council of India under the Rules.

2(xxxii) 'University' means as defined under the University Grants Commission Act, 1956 including National Law Universities and other Universities established by Acts of Central or State and also institutions declared as Deemed to be University under Section 3 of the University Grants Commission Act."

14. Chapter III of the Rules-2008 provide for inspection, recognition and accreditation, whereunder Rule 14 provides for Centres for Legal Education not to impart education without approval of Bar Council of India, Rule 18 provides for inspection of a University and Rule 19 provides for type of inspection. Rule 14, 18 & 19 are extracted below for the facility of reference:

"14. Centres for Legal Education not to impart education without approval of Bar Council of India:

(1) No Centres of Legal Education shall admit any student and impart instruction in a course of study in law for enrolment as an advocate unless the recognition of the degree of the University or the affiliation of the Centres of Legal Education, as the case may be, has been approved by the Bar Council of India after inspection of the University or Centres of Legal Education institution concerned as the case may be.

(2) An existing Centre of Legal Education shall not be competent to impart instruction in a course of study in law for enrolment as an advocate if the continuance of its affiliation is disapproved or revoked by the Bar Council of India.

(3) Bar Council of India may suspend a Centre of Legal Education for such violation for a period of not more than two academic years which shall be notified."

"16. Conditions for a University to affiliate a Centre of Legal Education

(1)

(2) *After affiliation order is received from the University the Centres of Legal Education may only then apply for inspection by the Bar Council of India.*

"18. Inspection of a University

(1) *A University seeking recognition of its degree in law for the purpose of enrolment in the Bar, shall provide the inspecting committee of the Bar Council of India all necessary facilities to examine the syllabus of the course designed, teaching and learning process, evaluation system, infrastructure layout and other necessary conditions in general and shall ensure in particular that all University Departmental Centres, Faculty, Constituent and affiliated Centres of Legal Education proposing to offer law courses under either or both the streams, possess:*

(i) *Required infrastructural facilities outlined under the Bar Council of India Rules;*

(ii) *Required number of teaching faculties as prescribed by the Bar Council of India and the University Grants Commission;*

(iii) *Facilities for imparting practical legal education specified in the curriculum under the Rules and Legal Aid Clinic, Court Training and Moot Court exercises;*

(iv) *Adequate library, computer and technical facilities including on-line library facility and*

(v) *In case of a Centre of Legal Education sponsored by private initiative of a person there is a Capital Fund as required in the Schedule III by the Bar Council of India from time to time, deposited in the Bank Account in the name of the Centre of Legal Education concerned.*

(2) *For the above purpose the Inspection Committee of the Bar Council of India shall have power to call for and examine all relevant documents, enquire into all necessary information and physically visit and enquire at the location of the Department, Faculty, Constituent and affiliated Centres of Legal Education as the case may be.*

Provided that an application for a new proposal for affiliation and the related University inspection therefore by the Inspection Committee of the Bar Council of India, including the local enquiry at the site of the proposed College may be formally made directly by the authority of the proposed College (Faculty, University Department, Constituent or Centres of Legal Education as the case may be) in proper Form with required information and requisite fees provided that an advance copy of the application must be submitted to the University concerned, within the stipulated date as notified by the Bar Council of India."

"19. Types of Inspection

Inspection shall mean inspection by the Inspection Committee of the Bar Council of India as any one of the following:

*(i) **Initial inspection:** Initial inspection shall mean inspection of the University and inspection of the Bar Council of India for permitting a new Centre of Legal Education; Provided that if a Law University is established by an Act passed by the Central or any State Legislature to run Law courses as specified and mandated in the statute, such a University may commence and run courses in the stipulated streams before any Initial Inspection. However such a University would require regular inspection and the first inspection shall be conducted within the first year of commencement of the courses.*

*(ii) **Regular Inspection:** Regular Inspection means an inspection of a University including all or any of its affiliated Centre of Legal Education by the Bar Council of India conducted after the initial inspection at the end of temporary approval, excepting a Law University established by a Central or State Act, for granting a regular approval and thereafter at least once in every five years unless the University/Centre of Legal Education concerned has sought/inspected for accreditation.*

*(iii) **Surprise inspection:** Surprise inspection means inspection conducted by University/Bar Council of India anytime without giving notice to the Centre of Legal Education.*

*(iv) **Inspection for accreditation:** Inspection applied for by a Centre of Legal Education possessing approval for the purpose of accreditation and certification."*

"26. Approval: *The Bar Council of India on the recommendation of the Legal Education Committee shall instruct the Secretary to send a letter of approval of any one of the following type to the Head of the Institution as well as to the Registrar of the University:*

(a) Temporary approval: On the Initial inspection report or Regular Inspection report the Legal Education Committee may recommend a temporary approval for not more than a period of three years to a newly proposed institution in the event the institution has facilities enough to commence the teaching program on such conditions as the Legal Education Committee may prescribe."

15. The Maharashtra Public Universities Act, 2016 is an Act to provide for academic autonomy and excellence, adequate representation through democratic process, transformation, strengthening and regulating higher education and for matters connected therewith or incidental thereto. Section 2 of the Act defines the expressions 'affiliated college', 'recognized institution', 'university', 'university department' and 'university institution'. Section 117 of the Act of 2016 provides for inspection of colleges and recognized institutions and report. The relevant definitions of Section 2 and provision of Section 117 are extracted below for the facility of reference:

"Section 2 - Definitions.

In this Act, unless the context otherwise requires,-

(3) "affiliated college" means a college which has been granted affiliation by the university;

(46) "recognized institution" means an institution of higher learning, research or specialized studies, other than a college, and recognized to be so by the university;

(63) "university" means any of the public universities mentioned in the Schedule A and Schedule B;

(65) "university department" means a department established and maintained by the university as prescribed by the Statutes;

(67) *"university institution" means a centre, a school, or an institute established and maintained by the university as prescribed by the Statutes;"*

"Section 117 - Inspection of colleges and recognized institutions and report.

(1) *Every affiliated college and recognized institution shall furnish such reports, returns and other particulars as the university may require for enabling it to judge the academic standards and standards of academic administration of the college or recognized institution.*

(2) *The Pro-Vice-Chancellor shall cause every university department or institution, affiliated college or recognized institution to be inspected, at least once in every three years, by one or more committees appointed by him in that behalf which shall consist of the following members, namely :-*

- (a) *the Dean of the faculty concerned – Chairperson;*
- (b) *one expert, not connected with the university or with any affiliated college or recognized institution under its jurisdiction, nominated by the Academic Council;*
- (c) *one expert, to be nominated by the Management Council;*
- (d) *one expert, to be nominated by the Senate:*

Provided that, no member on such committee shall be connected with the management of college or institution concerned.

(3) *The committee shall submit its report to the Pro-Vice-Chancellor for his consideration and for further action as may be necessary."*

16. The University Grants Commission Act, 1956 (**Act of 1956**) is the general law dealing with Universities and provides for affiliation by the University of any college or institution. The Act also provides for inspection of affiliated colleges by the University to ensure that the standards and parameters on the basis of which college is affiliated are met on continuing basis. Thus, an affiliated college is required to be continuously monitored and inspected on an annual basis

by the University to ensure standards and parameters of education are complied with.

(VI) REASONS:

(A) SCOPE OF SECTIONS 7(1)(h), (i), (l) and (m):

17. From perusal of Sections 7(1)(h), (i), (l) and (m) of the Act of 1961, it is evident that the maintenance of standards of legal education is the paramount statutory duty of the BCI. The BCI is under an obligation to promote legal education and to lay down the standards of such education in consultation with the Universities in India imparting such education and to perform all other functions conferred and to do all other things necessary for discharge of aforesaid functions under the Act of 1961. A two Judge Bench of Supreme Court in **BAR COUNCIL OF INDIA VS. BOARD OF MANAGEMENT, DAYANAND COLLEGE OF LAW AND OTHERS**⁵ dealt with the question whether a person who did not possess a degree or post graduate degree prescribed by the rules made by the BCI could be appointed as Principal of a law college, as the University Statute did not provide the same. The Supreme Court, *inter alia*; held that though the BCI may not have been entrusted with the direct control of legal education, in the sense, in which the same is entrusted to University, yet the BCI retains adequate power to control course of studies in law and power of inspection. It was further held that as an apex professional body, the BCI is concerned with the standards of legal profession in the country and thus, concerned with the legal education in the country.

⁵ **2007(2) SCC 202**

18. A constitution bench of Supreme Court in **BONNIE FOI LAW COLLEGE (SUPRA)** dealt with scope and ambit of Section 7(1)(h) and (m) of the Act of 1961 and it was held that prominent role of the BCI, an Apex Body, is to provide for promotion of legal education and to lay down standards of such education in consultation with Universities in India and State Bar Councils. It was further held that clause Section 7(1)(m) is in the nature of a residuary clause having widest amplitude to all other things necessary to discharge of aforesaid functions.

(B) SCOPE OF RULE MAKING POWER OF BCI:

19. After having noticed the scope of Sections 7(1)(h), (i), (l) and (m), we may advert to scope of rule making power of the BCI under the Act of 1961. The Court would be justified in giving the provision a purposive construction to a general rule making power to perpetuate the object of the Act, while ensuring that the rules are framed within the field circumscribed by the parent Act [See : **PRATAP CHANDRA MEHTA VS. STATE BAR COUNCIL OF MADHYA PRADESH AND OTHERS⁶**]. The general principles to challenge of rule made in exercise of delegated power under the parent Act have been summarised recently by the Supreme Court in **NARESH CHANDRA AGARWAL VS. ICAI⁷** as follows:

"(a) The doctrine of ultra vires envisages that a Rule making body must function within the purview of the Rule making authority, conferred on it by the parent Act. As the body making Rules or Regulations has no inherent power of its own to make rules, but derives such power only from the statute, it must necessarily function within the purview of the statute.

⁶ **(2011) 9 SCC 573**

⁷ **(2024) SCC OnLine SC 114**

Delegated legislation should not travel beyond the purview of the parent Act.

(b) Ultra vires may arise in several ways; there may be simple excess of power over what is conferred by the parent Act; delegated legislation may be inconsistent with the provisions of the parent Act; there may be non-compliance with the procedural requirement as laid down in the parent Act. It is the function of the courts to keep all authorities within the confines of the law by supplying the doctrine of ultra vires.

(c) If a rule is challenged as being ultra vires, on the ground that it exceeds the power conferred by the parent Act, the Court must, firstly, determine and consider the source of power which is relatable to the rule. Secondly, it must determine the meaning of the subordinate legislation itself and finally, it must decide whether the subordinate legislation is consistent with and within the scope of the power delegated.

(d) Delegated rule-making power in statutes generally follows a standardized pattern. A broad section grants authority with phrases like 'to carry out the provisions' or 'to carry out the purposes.' Another sub-section specifies areas for delegation, often using language like 'without prejudice to the generality of the foregoing power.' In determining if the impugned rule is intra vires/ultra vires the scope of delegated power, Courts have applied the 'generality versus enumeration' principle.

(e) The "generality versus enumeration" principle lays down that, where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power, and do not in any way restrict the general power. In that sense, even if the impugned rule does not fall within the enumerated heads, that by itself will not determine if the rule is ultra vires/intra vires. It must be further examined if the impugned rule can be upheld by reference to the scope of the general power.

(f) The delegated power to legislate by making rules 'for carrying out the purposes of the Act' is a general delegation, without laying down any guidelines as such. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed satisfy the

Act of having been so framed as to fall within the scope of such general power confirmed.

(g) However, it must be remembered that such power delegated by an enactment does not enable the authority, by rules/regulations, to extend the scope or general operation of the enactment but is strictly ancillary. It will authorize the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. In that sense, the general power cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself.

(h) If the rule making power is not expressed in such a usual general form but are specifically enumerated, then it shall have to be seen if the rules made are protected by the limits prescribed by the parent Act."

20. In the backdrop of aforesaid enunciation of law by Supreme Court, we now advert to Section 49(1) of the Act of 1961. The said provision provides for that the BCI may make rules for discharge of its functions under the Act of 1961 and in particular such Rule may prescribe for matters mentioned in clauses (a) to (j) of Section 49(1). Section 49(1) confers particular powers without prejudice to generality of general power already conferred and therefore, particular powers are only illustrative of general power and do not in any way restrict the general power. The delegated power to legislate by making rules for purposes of the Act is a general delegation and therefore, it is permissible to find out the object of enactment and then to see whether the rules framed satisfied the Act of having so being framed within the scope of such general power. The power conferred on the BCI to frame rules has to be construed purposively in furtherance of the object of the Act viz. discharging its functions under the Act. From conjoint reading of Section 7(1)(h), (i), (l) and (m)

it is evident that BCI has been enjoined with duties to promote legal education and to lay down standards of such education in consultation with universities in India imparting such education and the State Bar Councils. The power of inspection is a necessary concomitant to maintain the standards of education, therefore, in case the rule making power of the BCI under section 49(d) of the Act of 1961 is given a restrictive meaning, the same would be contrary to the object and purpose of Section 7(1)(h)(i)(l) and (m) of the Act of 1961 which has been enacted with an object to empower the BCI to promote legal education and to lay down the standards of such education. The contention that Section 7(1)(h) and (i) and Section 49(1)(d) of the Act of 1961 do not indicate intention of the Parliament to confer power of inspection of a college on the BCI, is misconceived.

21. The challenge made in the petition to the Rules of 2008 being *ultra vires* the parent Act is without any basis, as under Section 49(1)(d) of the Act of 1961, the BCI has the general rule making power and has power to frame rules to discharge its functions under the Act, one of them being to promote legal education and to lay down standards of such education.

22. The Rules of 2008 provide for minimum standards which are to be followed by the Universities and Colleges offering law courses. The Rules provide for inspection of centres of legal education by a team of committee as appointed by the Bar Council. The petitioner law school cannot claim any immunity from inspection by the Bar Council.

23. It is a well settled legal proposition that a prior general law may be affected by a subsequent particular or a special

Act if subject matter of a particular Act prior to its enforcement was deemed governed by the general provisions of earlier Act. [See : **DAMJI VS. LIC**].⁸ In such a case operation of a particular Act may have the effect of curtailing the operation of the prior general Act. It is equally well settled legal proposition that general later law does not abrogate a special one by mere implication [See : **MAHARAJA PRATAP SINGH BAHADUR VS. THAKUR MANMOHAN DEY**]⁹. A three Judge Bench of Supreme Court in **R.S.RAGHUNATH VS. STATE OF KARNATAKA**¹⁰ held that general rules which were later in point of time would not disturb or alter the effect of earlier special rules. It was further held that later general rules will prevail only in instances where earlier special rules have been explicitly repealed. The law laid down in **R.S.RAGHUNATH (SUPRA)** is reiterated in **PHARMACY COUNCIL OF INDIA VS. DR. S.K. TOSHNIWAL EDUCATIONAL TRUSTS VIDARBHA INSTITUTE OF PHARMACY**¹¹

24. In the instant case, the Act of 1956 is a prior general Law whereas Act of 1961 and the Rules framed thereunder are later special law. Prior to enactment of Act of 1961, the inspection of law colleges/universities was being governed by the Act of 1956. Therefore, the operation of provisions of general Act i.e. Act of 1956 has to be curtailed in so far as it pertains to inspection of law colleges and universities.

25. Even otherwise the Act of 1961 and the Rules 2008 are special laws which govern the legal education in the country

⁸ **AIR 1966 SC 135**

⁹ **AIR 1966 SC 1931**

¹⁰ **AIR 1992 SC 81**

¹¹ **(2021) 10 SCC 657**

whereas, the Act of 2016 governs a general law dealing with the Universities in the State of Maharashtra. The Act of 2016 does not expressly repeal the provisions of the Act of 1961 and the question of inconsistency of provisions of the Act of 2016 with the Act of 1961 does not arise. Even assuming that there is an inconsistency between the provisions of the Act of 2016 and the Act of 1961, the provisions of the Act of 1961 will prevail as they have been enacted by the Parliament in exercise of powers under entry 76 and 77 of List-I of VII Schedule to the Constitution of India. Therefore, the Act of 1961 can safely be construed as an exception or qualification of general Act i.e. the Act of 2016.

(VII) CONCLUSION:

26. For the aforementioned reasons, we hold that Rule 2(iv) (a), Rule 2(xii)(B) and the Proviso appended thereto, Rule 14, Rule 16(2), Rule 18(2), Rule 19(ii), Rule 19(iii) and Rule 26(a) of the Rules of Legal Education-2008 are *intra vires* Section 49(1)(d) read with section 7(1)(i) of the Act of 1961. The impugned notices dated 2nd August 2018 and 19th September 2018 issued by the BCI cannot be termed as arbitrary or illegal or in violation of Article 14 and 19(1)(g) of the Constitution of India.

27. A Bench of this Court, while entertaining the writ petition, had passed an ad-interim order dated 26th October 2018 directing Bar Council of Maharashtra and Goa to accept the enrolment forms of the students passing out from the petitioner institution by ignoring the notice dated 28th August 2018 and show-cause notice dated 19th September 2018. In the interregnum, the students have passed out from the

petitioner law school and their enrolment forms have been accepted. It would, therefore, be open to the BCI to constitute a committee afresh, if so advised, to inspect the petitioner law school. Needless to state that necessary communication in this regard would be sent to the petitioner law school. After the inspection, it would be open to BCI to proceed with the matter in accordance with law.

28. Before parting, we place on record our appreciation for the able assistance offered by learned *Amicus Curiae* Dr.Milind Sathe.

29. Accordingly, the writ petition is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)