BAR COUNCIL OF INDIA

v.

HIGH COURT OF KERALA

APRIL 27, 2004

[V.N. KHARE, CJ., BRIJESH KUMAR AND S.B. SINHA, JJ.]

Constitution of India, 1950 :

Articles 14 and 19(1)(a)—Rule 11 of Rules framed by High Court of Kerala—Forbidding a lawyer from appearing, acting or pleading in any court till he got himself purged of contempt of court by an order of the appropriate court—Held, is not unconstitutional—The provision is not violative of principles of natural justice nor is **ultra vires** *Article 14—Contempt of Court—Rules framed by High Court of Kerala—r. 11—Advocates Act, 1961—ss.30 and 34(1)—Code of Criminal Procedure, 1973—ss. 345 and 346.*

Articles 19(1)(a) and 32—Bar Council of India—Challenging Rule 11 of the Rules framed by High Court of Kerala—Held, Bar Council of India is not a citizen—It has no such fundamental right—It cannot be permitted to raise the question of validity of the rule on the touchstone of Article 19(1)(a).

Rules were framed by the High Court of Kerala in exercise of its power under s.34(1) of the Advocates Act, 1961. Constitutional validity of Rule 11 of the said Rules, forbidding a lawyer from appearing, acting or pleading in any court till he got himself purged of the contempt by an order of appropriate court was challenged by the Bar Council of India in the writ petition before the Supreme Court, on the grounds that Rule 11 was violative of Articles 14 and 19(1)(g) of the Constitution of India as also of s.34(1) of the Advocates Act, since it impinged upon and usurped the powers of adjudication and punishment conferred on the Bar Council under the Act and that the Rule was violative of principles of natural justice.

Dismissing the writ petition, the Court

HELD: 1.1. Rule 11 of the Rules framed by the High Court of Kerala in exercise of its powers under s.34(1) of the Advocates Act, 1961 is not

A **unconstitutional.**

Pravin C. Shah **v.** *K.A. Mohd. Ali and Anr.,* **[2001] 8 SCC 650 = [2001] Supp. 3 SCR 675, relied on. [667-E]**

1.2. Inherent power of the Court to punish a person for committing
B **contempt of the court is universally recognised. The law of contempt is governed by the statutes including Contempt of Courts Act, 1971, Indian Penal Code and Code of Criminal Procedure, 1973 but the powers of the superior Courts are engrafted in the Constitution by reason of Articles 129 and 215 thereof providing that the Supreme Court and the High Courts being Courts**
C **of records, shall have all the powers of such a court including the power to punish for contempt of itself. Apart from constitutional and statutory provisions, the inherent power of the court in that behalf is recognised. [654-C-D]**

R.L. Kapur **v.** *State of Madras,* **[1972] 1 SCC 651 and** *Kapildeo Prasad*
D *Sah and Ors.* **v.** *State of Bihar and Ors.,* **[1999] 7 SCC 569, relied on.**

Parashuram Detaram Shamdasani **v.** *R.* **(1945) AC 264, referred to.**

'The Law of Contempt' by Borrie and Lowe, page 22 and Oswald's Contempt of Court, 3rd edition, pages 8-9, **referred to.**

E **2. Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings. A person does not have a fundamental right to practise in any court. Such a right is conferred upon him under the provisions of the Advocates Act which necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Advocates Act, 1961 which**
F **entitles an advocate to practice, has not yet been brought into force. Section 30 uses the expression "subject to", which would include s.34 thereof. Section 34 empowers the High Court to make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto. [659-G-H; 660-A; 658-F]**

G *Ex-Capt. Harish Uppal* **v.** *Union of India and Anr.,* **[2003] 2 SCC 45, followed.**

Ashok Leyland Ltd. **v.** *State of Tamil Nadu and Anr.,* **(2004) 1 SCALE 224, relied on.**

H *Supreme Court Bar Association* **v.** *Union of India and Anr.,* **[1998] 4**

SCC 409 and *Vinay Chandra Mishra, Re,* [1995] 2 SCC 584, referred to. A

3.1. Principle of natural justice cannot be stretched too far. Its application may be subject to the provisions of a statute or statutory rule. If a law which is otherwise valid, provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution inasmuch as only because another opportunity of hearing to a person, where a penalty is B provided for as a logical consequence thereof, has not been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognized by the Legislature. The courts do not have any role to play in such a matter. [665-D-F]

3.2. Rule 11 of the Rules is legislative in character. As validity of the C said rule has been upheld, it cannot be said that the same by itself, having not provided for a further opportunity of hearing the contemnor, would attract the wrath of Article 14 of the Constitution. Furthermore, the contemnor could also get an opportunity of hearing while purging his conduct. Rule 11, therefore, is not *ultra vires* Article 14 of the Constitution. [665-F-G; 667-D] D

Mohinder Singh Gill and anr. v. *The Chief Election Commissioner, New Delhi and Ors.,* AIR (1978) SC 851; *N.K. Prasada* v. *Government of India and Ors.,* [2004] 6 SCC 299 *Marda Chemicals Ltd. etc. etc.* v. *Union of India and Ors. etc. etc.,* (2004) 4 Scale 338; *Canara Bank and Ors.* v. *Debasis Das and Ors.,* [2003] 4 SCC 557 and *Union of India and Anr.* v. *Tulsiram Patel,* E [1985] 3 SCC 398, referred to.

4.1. When a person is punished by the superior court, the right of freedom of speech conferred upon a citizen under Article 19(1)(a) of Constitution cannot stand as a bar as the power of this Court under the Article 129 and that of the High Courts under Article 215 are independent and not F subject to Article 19(1)(a); particularly when Clause (2) thereof excludes the operation thereof. [657-E]

Dr. D.C. Saxena v. *Hon'ble the Chief Justice of India,* [1996] 5 SCC 216, relied on. G

4.2. Bar Council of India is not a citizen entitling it to raise the question of validity of the Rules on the touchstone of Article 19(1)(a) of the Constitution. It has no such fundamental right. No person aggrieved who is a citizen of India, is before the Court. The contention that Rule 11 of the Rules is violative of Article 19(1)(g) of Constitution, is thus, misplaced. The Bar Council cannot H

A **be permitted to raise the contention. [665-B-C]**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 52 of 2004.

(Under Article 32 of the Constitution of India)

B V.R. Reddy, Sanjeev Sachdeva and Ms. Priya Mehra Puri for the Petitioner.

T.L.V. Iyer, Vipin Nair, P.B. Suresh and Nikilesh R. for the Respondents.

Ms. B. Sunita Rao for the intervenor.

C The Judgment of the Court was delivered by

S.B. SINHA, J.

INTRODUCTION:

D Constitutionality of Rule 11 of the Rules Framed by the High Court of Kerala forbidding a lawyer from appearing, acting or pleading in any court till he got himself purged of the contempt by an order of the appropriate court, is in question in this writ petition.

BACKGROUND FACT:

E The Bar Council of India is a statutory body constituted under the Advocates Act, 1961 ("the Act"). In terms of Section 34(1) of the Act, the High Court of Kerala framed rules; Rule 11 whereof reads as under:

> "No advocate who has been found guilty of contempt of court, shall
> F be permitted to appeal, act or plead in any court unless he has purged himself of the contempt."

Contending that the said provision is violative of Articles 14 and 19(1)(g) of the Constitution of India as also Section 34(1) of the Advocates Act on the ground that it seriously impinges upon and usurps the powers of
G adjudication and punishment conferred on the Bar Councils under the Act as also the principles of natural justice as application thereof is automatic, this writ petition has been filed by the Petitioner.

It is not in dispute that the validity of the said rule came up for consideration before a Bench of this Court in *Pravin C. Shah* v. *K.A. Mohd.*
H *Ali and Anr.*, [2001] 8 SCC 650 and therein it was upheld. The question

jurs to have also been deliberated upon before a Constitution Bench of this Court in *Ex-Capt. Harish Uppal* v. *Union of India and Anr.*, [2003] 2 SCC 45.

SUBMISSIONS:

Despite the said decisions Mr. V.R. Reddy, learned senior counsel appearing on behalf of the writ petitioner, would urge, relying on or on the basis of the decision of this Court in *Supreme Court Bar Association* v. *Union of India and Anr.*, [1998] 4 SCC 409, that as in terms of the provisions of the Advocate Act, the Bar Council of India is entitled to punish an Advocate counsel for commission of misconduct — whether professional or otherwise — in terms of Section 35 thereof; Rule 11 framed by the High Court of Kerala cannot be sustained. The learned counsel would strenuously contend that no prohibition can be imposed on a lawyer to practise following and consequent upon a decision of a court holding him guilty of commission of contempt. No time limit for debarment of an advocate having been prescribed under Rule 11 of the Rules, Mr. Reddy would submit that the same is *ultra vires* Article 14 of the Constitution of India. The learned counsels would argue that in applying the provisions of Rule 11, the principles of natural justice is violated as no other or further opportunity of hearing is to be given therefor and in that view of the matter too the impugned judgment cannot be sustained.

Mr. T.L.V. Iyer, learned senior counsel, appearing on behalf of the High Court of Kerala, on the other hand, would argue that the decision of the Constitution Bench itself in *Supreme Court Bar Association* (supra) is sufficient to uphold the validity of Rule 11 as therein the right of the courts to regulate the conduct of advocates within the court and to prescribe the conditions subject to which they can practise before it has been preserved which is not subservient to the disciplinary jurisdiction of the Bar Council.

The learned counsel would submit that the dicta laid down by the Constitution Bench has been referred to with approval in *Harish Uppal* (supra) and in that view of the matter too the right of the High Court to frame such a rule, must be held to have been upheld.

Mr. Iyer would further urge that an advocate can start pleading and practising in court as soon as he purges himself of contempt in relation whereto he must demonstrate that a real and genuine remorse had been infused in him about his conduct as a first step; whereafter, he may seek

A pardon from the court concerned.

CONTEMPT JURISDICTION OF THE COURT:

Law of contempt both as regards its interpretation and application, had posed complex questions before the Court. 'No branch of law possibly has
B been more misconstrued or misutilized within the contempt jurisdiction'; observed Lord Denning. The contempt jurisdiction originates from the Ecclesiastical Courts which goes back to the middle ages while ethics and law were treated to be at par.

Inherent power of the Court to punish a person for committing contempt
C of the court is universally recognised. The law of contempt is governed by the Statutes including Contempt of Courts Act, 1971 or other statutory laws relating thereto as, for example, Indian Penal Code and Code of Criminal Procedure but the powers of the superior courts are engrafted in the Constitution by reason of Articles 129 and 215 thereof providing that the
D Supreme Court and the High Court being a court of records, shall have all the powers of such a court including the power to punish for contempt of itself. Apart from constitutional and statutory provisions, the inherent power of the court in that behalf is recognised. (See *R.I. Kapur* v. *State of Madras,* [1972] 1 SCC 651).

E The country is governed by rule of law. Disobedience of the court's order has, thus, been held to strike at the very root of the said concept having regard to the system upon which our government is based. (See *Kapildeo Prasad Sah and Ors* v. *State of Bihar and Ors.,* [1999] 7 SCC 569).

An advocate is allowed considerable freedom in conducting his case.
F In the interest of the client, he even can cast reflections upon the character, conduct or credit of parties or witnesses with impunity, provided such comments are relevant to the issue before the court and the same is not defamatory in character. So long as the conduct of the advocate does not amount to insult to the court, he may not be held up for contempt.

G Summary power of punishing for contempt is used sparingly and only in serious cases. Such a power which a court must of necessity possess but its usefulness depends upon the wisdom and restraint with which it is exercised. It is not used to suppress methods of advocacy. (See *Parashuram Detaram Shamdasani* v. *R.* [1945] AC 264 at 270).

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In *Shamdasanj's* case (supra) Lord Goddard, CJ., suggested other ways in which an advocate could commit contempt. He said: A

> "If in the course of a case a person persists in a line of conduct or use of language in spite of a ruling of the presiding judge, he may very properly be adjudged guilty of contempt of court, but then the offence is the disregard of the ruling and setting the court at defiance. So, also, if a litigant or advocate threatened or attempted violence on his opponent, or conceivably if he used language so outrageous and provocative as to be likely to lead to a brawl in court, the offence could be said to have been committed." B

In 'The Law of Contempt' by Borrie and Lowe, at page 22, it is stated: C

> "Any advocate is likely to be punished for contempt if he personally insults the court and, as we have seen, insulting the court includes not only insults made to the judge, but also insults made to a jury. However, as has been stated already, a distinction must be made between addressing the court and addressing opposing counsel or litigant, for, as Lord Goddard, CJ., said in *Parashuram Detaram Shamdasani* v. *R.* : D

> "It must be rare indeed for words used in the course of argument, however irrelevant, to amount to a contempt when they relate to an opponent, whether counsel or litigant." E

> Just as an advocate will not be justified in using abusive language neither will he be able to use blasphemous language. Thus in *R.* v. *Davison* a litigant conducting his own case repeatedly used blasphemous language and for this conduct he was held guilty of contempt, even after allowances had been made for the fact that he was a layman. As Bayley, J. said : F

> "The question is shortly this, whether, for the future, decency and decorum shall or shall not be preserved in Courts of Justice; or whether, under colour of defending himself against any particular charge, a defendant is at liberty to introduce new, mischievous, and irrelevant matter upon the trial. I agree that a defendant, in all cases, should have every facility allowed him in his address to the jury, provided he confines himself within those rules which decency and decorum require. In every case, the subject of the discussion before the jury is to be considered, and a judge is bound to see that the G H

A arguments which are adduced, are such as are consistent with decency and decorum, and not foreign to the matter on which the jury have to decide."

In the said treatise, it has furthermore been noticed:

B "Lord Goddard, CJ.'s last suggestion of barristers using threatening or abusive behaviour, or using provocative language, have already been discussed and need no further explanation, but as regards his first suggestion, that complete disregard of a Judge's ruling can amount to contempt, two cases may be cited to illustrate this type of contempt. The first is a recent Australian case, *Lloyd* v. *Biggin Lloyd,* a barrister,
C wanted a magistrate to rule whether or not certain evidence was admissible but the magistrate refused, stating that the question was not for him to decide. Lloyd then said: "But your Worship must determine ..." He was interrupted by the magistrate saying: "Carry on with your case."

D The discourse continued thus:

Lloyd: "your Worship, with great respect, I wish your Worship to determine whether your Worship proposes to rule..."

Magistrate: "Carry on with your cross-examination."

E

Lloyd: "I cannot carry on with any cross-examination unless your Worship informs me whether this..."

Magistrate: "I have and enough of your impertinence. I have put up with it for two days. You're..."

F Lloyd: "Would your Worship just hear me?

Magistrate: "You're fined 5 for contempt of court. If you do anything more I will commit you."

Lloyd: "Your Worship, if you would just hear..."

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Magistrate: "You're committed. Constable, remove that man and place him in the watchtower for three hours."

The second case, *Watt* v. *Ligertwood,* shows that such defiance of a judge's ruling need not be solely confined to the use of words.
H In this case, contrary to the express orders of the court, and despite

a warning that such conduct would amount to contempt, an advocate removed a material document from the court and proceeded to destroy it by throwing it on a fire. For this "gross and unjustifiable contempt" the advocate was immediately imprisoned.

An advocate will be expected to conduct his case honestly, and deliberate deception of the court can amount to contempt."

In Oswald's Contempt of Court, 3rd edition, at pages 8-9, the law is stated in the following terms:

"It is now the undoubted right of a Superior Court to commit for contempt. The usual criminal process to punish contempts was found to be cumbrous and slow, and therefore the Courts at an uncertain date assumed jurisdiction themselves to punish the offence summarily, the brevi manu, so that cases might be fairly heard, and the administration of justice not interfered with. A Court of Justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community."

When a person is punished by the superior court, the right of freedom of speech conferred upon a citizen under Article 19(1)(a) of Constitution of India cannot stand as a bar as the power of this Court under the Article 129 and that of the High Court under Article 215 are independent and not subject to Article 19(1)(a); particularly when clause (2) thereof excludes the operation thereof. (See *Dr. D.C. Saxena* v. *Hon'ble the Chief Justice of India,* [1996] 5 SCC 216).

An advocate does not enjoy absolute privilege when acting in the course of his professional duties. The dignity of the court is required to be maintained in all situations. However, far-reaching implications the case may have but a lawyer is not justified in making personal attack upon the complainant or witnesses on matters not borne out by the record nor in using language which is abusive or obscene or in making vulgar gestures in court. An advocate in no circumstances is expected to descend to the level of appearing to support his view in a vulgar brawl.

Our view is only illustrative in nature to show that the courts ordinarily exercise its power of contempt with due care and caution and not mechanically

A and whimsically. The power of contempt is not exercised only because it is lawful to do so but when it becomes imperative to uphold the rule of law.

ADVOCATES ACT:

The said Act was enacted to amend and consolidate the law relating to
B legal practitioners and to provide for the constitution of Bar Council and All India Bar. An 'advocate' has been defined to mean a person entered in any roll under the provisions of said Act. The expression 'prescribed' has been defined in Section 2(j) to mean prescribed by the rules made therein. Section 19 of the Act empowers the Bar Councils to make rolls to carry out the
C purposes of Chapter II. Section 30 of the Act reads as under:

> " 30. *Right of advocates to practise.* - Subject to provisions of this Act, every advocate whose name is entered in the State roll, shall be entitled as of right to practise throughout the territories to which this Act extends, ---
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> D
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> (i) in all courts including the Supreme Court;
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> (ii) before any tribunal or person legally authorised to take evidence; and
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> (iii) before any other authority or person before whom such
> E advocate is by or under any law for the time being in force entitled to practise."

This provision has not yet been brought into force.

Section 34 of the Act empowers the High Court to make rules laying
F down the conditions subject to which an advocate shall be permitted to practise in the High Courts and the courts subordinate thereto. Section 35 provides for conduct of advocates; sub-section (1) whereof is as under:

> "35. *Punishment of advocates for misconduct.*—(1) where on receipt of a complaint or otherwise a State Bar Council has reason to believe
> G that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

Section 36 provides for the disciplinary powers of Bar Council of India.

H An appeal lies to the Bar Council of India against a decision made under

Section 35 whereas an appeal lies to this Court against an order made by the Bar Council of India.

CODE OF CRIMINAL PROCEDURE:

Section 345 of the Code of Criminal Procedure provides for when an offence as is described under Sections 175, 178, 179 and 180 or 228 of the Indian Penal Code, is committed in the view or in the presence of any civil, criminal or revenue court before rising of the court may detain the offender in custody and take cognizance of the offence and after giving the offender a reasonable opportunity of showing cause why he should not be punished to a fine of Rs. 200 or imprisonment in default for one month.

Section 346 provides for the procedure where the Court is of the opinion that the offender should be imprisoned otherwise than in default of payment of fine or that a fine exceeding two hundred rupees should be imposed on him or such court is for any reason of opinion that the case should not be disposed of under Section 345. Such court after recording the facts constituting the offence and the statement of the accused may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such person before such Magistrate or if sufficient security is not given, shall forward such person in custody to such Magistrate.

Section 345 of the Code of Criminal Procedure deals with five classes of contempt, namely, (i) Intentional omission to produce a document by a person legally bound to do so; (ii) refusal to take oath when duly required to take one; (iii) refusal to answer questions by one legally bound to state the truth; (iv) refusal to sign a statement made to a public servant when legally required to do so; and (v) intentional insult or interruption to a public servant at any stage of a judicial proceeding.

An advocate practising in the Court can also be punished under the aforementioned provisions.

DISTINCTION BETWEEN CONTEMPT OF COURT AND MISCONDUCT BY AN ADVOCATE:

Punishment for commission of contempt and punishment for misconduct, professional or other misconduct, stand on different footings. A person does not have a fundamental right to practise in any court. Such a right is conferred

A upon him under the provisions of the Advocates Act which necessarily would mean that the conditions laid down therein would be applicable in relation thereto. Section 30 of the Act uses the expressions "subject to" which would include Section 34 of the Act.

In *Ashok Leyland Ltd.* v. *State of Tamil Nadu and Anr.*, (2004) 1 SCALE
B 224 this Court noticed:

> "Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes.

This Court further noticed the dictionary meaning of "subject to" stating:

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> "Furthermore, the expression 'subject to' must be given effect to.
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> In Black's Law Dictionary, Fifth Edition at page 1278, the expression "Subject to" has been defined as under:
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> D "Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided, answerable for. *Homan* v. *Employers Reinsurance Corp..*, 345 Mo. 650, 136 S.W. 2d 289, 302"

CASE LAWS:

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A Constitution Bench of this Court in *Supreme Court Bar Association* (supra) no doubt overruled its earlier decision in *Vinay Chandra Mishra, Re* [1995] 2 SCC 584 so as to hold that this Court in exercise of its jurisdiction under Article 142 of the Constitution of India is only empowered to proceed *suo motu* against an advocate for his misconduct and send for the records
F and pass an appropriate order against the advocate concerned.

But it is one thing to say that the Court can take *suo motu* cognizance of professional or other misconduct and direct the Bar Council of India to proceed against the advocate but it is another thing to say that it may not allow an advocate to practise in his court unless he purges himself of contempt.

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Although in a case of professional misconduct, this Court cannot punish an advocate in exercise of its jurisdiction under Article 129 of the Constitution of India which can be imposed on a finding of professional misconduct recorded in the manner prescribed under the Advocates Act and the rules framed thereunder but as has been noticed in the *Supreme Court Bar*
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Association (supra); professional misconduct of the advocate concerned is not a matter directly in issue in the matter of contempt case. A

In *Supreme Court Bar Association* (supra), however, this Court held:

> "57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct vests exclusively in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts." B C

The constitution Bench, however, in no uncertain terms observed: D

> "80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals." E F

The Constitution Bench of this Court in *Harish Uppal* (supra) noticed the aforementioned observations, stating:

> "25...Thus a Constitution Bench of this Court has held that the Bar Councils are expected to rise to the occasion as they are responsible to uphold the dignity of Courts and majesty of law and to prevent interference in administration of justice. In our view it is the duty of Bar Councils to ensure that there is no unprofessional and/or unbecoming conduct." G H

A Holding that the right of appearance in courts is still within the control and jurisdiction of courts, this Court noticed:

> "34... Section 30 of the Advocates Act has not been brought into force and rightly so. Control of conduct in Court can only be within the domain of Courts. Thus, Article 145 of the Constitution of India
> B gives to the Supreme Court and Section 34 of the Advocates Act gives to the High Court power to frame rules including rules regarding condition on which a person (including an Advocate) can practise in the Supreme Court and/or in the High court and Courts subordinate thereto. Many Courts have framed rules in this behalf. Such a rule
> C would be valid and binding on all. Let the Bar take note that unless self-restraint is exercised, Courts may now have to consider framing specific rules debarring Advocates, guilty of contempt and/or unprofessional or unbecoming conduct, from appearing before the court. Such a rule, if framed, would not have anything to do with the disciplinary jurisdiction of Bar Councils. It would be concerning the
> D Courts. The right of the advocate to practise envelopes a lot of acts to be performed by him in discharge of his professional duties. Apart from appearing in the Courts he can be consulted by his clients, he can give his legal opinion whenever sought for, he can draft instruments, pleadings, affidavits or any other documents, he can
> E participate in any conference involving legal discussions, he can work in any office or firm as a legal officer, he can appear for clients before an arbitrator or arbitrators etc. Such a rule would have nothing to do with all the acts done by an advocate during his practice. He may even file Vakalat on behalf of client even though his appearance inside the Court is not permitted. Conduct in Court is a matter
> F concerning the Court and hence the Bar Council cannot claim that what should happen inside the Court could also be regulated by them in exercise of their disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the Court may be a specie. But the right to appear and conduct
> G cases in the Court is a matter on which the Court must and does have major supervisory and controlling power. Hence Courts cannot be and are not divested of control of supervision of conduct in Court merely because it may involve the right of an advocate. A rule can stipulate that a person who has committed contempt of Court or has behaved unprofessionally and in an unbecoming manner, will not have the right
> H to continue to appear and plead and conduct cases in Courts. The Bar

Councils cannot overrule such a regulation concerning the orderly conduct of Court proceedings. On the contrary it will be their duty to see that such a rule is strictly abided by. Courts of law are structured in such a design as to evoke respect and reverence to the majesty of law and justice. The machinery for dispensation of justice according to law is operated by the Court. Proceedings inside the Courts are always expected to be held in a dignified and orderly manner. The very sight of an advocate, who is guilty of Contempt of Court or of unbecoming or unprofessional conduct, standing in the Court would erode the dignity of the Court and even corrode the majesty besides impairing the confidence of the public in the efficacy of the institution of the Courts. The power to frame such rules should not be confused with the right to practise law. While the Bar Council can exercise control over the latter, the Courts are in control of the former. This distinction is clearly brought out by the difference in language in Section 49 of the Advocates Act on the one hand and Article 145 of the Constitution of India and Section 34(1) of the Advocates Act on the other. Section 49 merely empowers the Bar council to frame rules laying down conditions subject to which an Advocate shall have a right to practise i.e. do all the other acts set out above. However, Article 145 of the Constitution of India empowers the Supreme Court to make rules for regulating this practice and procedure of the Court including *inter alia* rules as to persons practising before this Court. Similarly, Section 34 of the Advocates Act empowers High Courts to frame rules, *inter alia* to lay down conditions on which an Advocate shall be permitted to practise in Courts. Article 145 of the Constitution of India and Section 34 of the Advocates Act clearly show that there is no absolute right to an Advocate to appear in a Court. An Advocate appears in a Court subject to such conditions as are laid down by the Court. It must be remembered that Section 30 has not been brought into force and this also shows that there is no absolute right to appear in a Court. Even if Section 30 were to be brought into force control of proceedings in Court will always remain with the Court. Thus, even then the right to appear in Court will be subject to complying with conditions laid down by Courts just as practice outside courts would be subject to conditions laid down by Bar council of India. There is thus no conflict or clash between other provisions of the Advocates Act on the one hand and Section 34 or Article 145 of the Constitution of India on the other."

A This Court is bound by the aforementioned decisions.

The question came up directly for consideration in *Pravin C. Shah* (supra). Thomas, J. speaking for the Bench *inter alia* observed that Rule 11 does not bind the disciplinary committee or any other organ of the Bar Council. It is in no way involved. It, however, may have a duty to inform a B delinquent advocate of the Bar under Rule 11.

'Rule 11 concerns dignity and the orderly functioning of the courts', the court held and further observed:

> "16...Conduct in court is a matter concerning the court and hence the C Bar Council cannot claim that what should happen inside the court could also be regulated by the Bar Council in exercise of its disciplinary powers. The right to practise, no doubt, is the genus of which the right to appear and conduct cases in the court may be a specie. But the right to appear and conduct cases in the court is a matter on which the court must have the major supervisory power. D
>
> Hence the court cannot be divested of the control or supervision of the court merely because it may involve the right of an advocate."

Pointing out the difference between maintenance of dignity of court and corroding the majesty of it as also impairing the confidence of the public in E the efficacy of the court *vis-a-vis* the professional misconduct of the lawyers, the Court held that Rule 11 is a self-operating provision. Addressing the question as to how a contemnor can purge himself of contempt, this Court held that obeying the orders of the court or undergoing the penalty imposed by it may not be necessarily sufficient to complete purging of the contemnor of the contempt, particularly, when the contemnor is convicted of criminal F contempt, it was observed that there must be something more to be done to get oneself purged of the criminal contempt. As regard tendering of apology, it was opined:

> "31. Thus a mere statement made by a contemnor before court that he apologises, is hardly enough to amount to purging himself of the G contempt. The court must be satisfied of the genuineness of the apology. If the court is so satisfied and on its basis accepts the apology as genuine, the court has to make an order holding that the contemnor has purged himself of the contempt. Till such an order is passed by the court, the delinquent advocate would continue to be H under the spell of the interdict contained in Rule 11 of the Rules."

The said decision governs the field. We do not see any reason to depart form the views taken therein.

ARTICLE 19(1)(g):

Bar Council of India is not a citizen entitling it to raise the question of validity of the Rules on the touchstone of Article 19(1)(a) of the Constitution. It has no such fundamental right. No person aggrieved who is a citizen of India is before us. The contention of Mr. Reddy that Rule 11 of the Rules is violative of Article 19(1)(g) of Constitution of India is, thus, misplaced. We cannot permit the Bar Council to raise the said contention.

NATURAL JUSTICE:

Principle of natural justice is required to be observed by a court or Tribunal before a decision is rendered involving civil consequences. It may only in certain situation be read into Article 14 of the Constitution of India, when an order is made in violation of the rules of natural justice. Principle of natural justice, however, cannot be stretched too far. Its application may be subject to the provisions of a statute or statutory rule.

Before a contemnor is punished for contempt, the court is bound to give an opportunity of hearing to him. Even such an opportunity of hearing is necessary in a proceeding under Section 345 of the code of Criminal Procedure. But if a law which is otherwise valid, provides for the consequences of such a finding, the same by itself would not be violative of Article 14 of the Constitution of India inasmuch as only because another opportunity of hearing to a person, where a penalty is provided for as a logical consequence thereof, has been provided for. Even under the penal laws some offences carry minimum sentence. The gravity of such offences, thus, is recognized by the Legislature. The courts do not have any role to play in such a matter.

Rule 11 framed by the Kerala High Court is legislative in character. As validity of the said rule has been upheld, it cannot be said that the same by itself, having not provided for a further opportunity of hearing the contemnor, would attract the wrath of Article 14 of the Constitution of India.

In *Mohinder Singh Gill and Anr.* v. *The Chief Election Commissioner, New Delhi and Ors.*, AIR (1978) SC 851, this Court observed:

"43. Indeed, natural justice is a pervasive facet of secular law where

A a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of Authority. It is the hone of healthy government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam — and
B of Kautilya's Arthasastra — the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other
C extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

In *N.K. Prasada* v. *Government of India and Ors.,* Civil Appeal No. 3137 of [1999] disposed of on 12th April, 2004, this Court observed:

D

"The principles of natural justice, it is well-settled, cannot be put into a strait-jacket formula. Its application will depend upon the facts and circumstances of each case. It is also well-settled that if a party after having proper notice chose not to appear, he at later stage cannot be permitted to say that he had not been given a fair opportunity of
E hearing. The question had been considered by a Bench of this Court in *Sohan Lal Gupta (Deed) through LRs. and Ors.* v. *Asha Devi Gupta (Smt.) and Ors.,* [2003] 7 SCC 492 of which two of us (V.N. Khare, CJI., and Sinha, J.) are parties wherein upon noticing a large number of decisions it was held:

F

> "29. The principles of natural justice, it is trite, cannot be put in a strait-jacket formula. In a given case the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby..."

G

> The principles of natural justice, it is well-settled, must not be stretched too far."

(*See also Marda Chemicals Ltd. etc. etc.* v. *Union of India and Ors., etc. etc.,* [2004] 4 Scale 338 and *Canara Bank and Ors.* v. *Debasis Das and Ors.,* [2003] 4 SCC 557.)

H

In *Union of India and Anr.* v. *Tulsiram Patel,* [1985] 3 SCC 398 whereupon reliance has been placed by Mr. Reddy, this Court held: A

> "97. Though the two rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory B rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait-jacket. They are not immutable but flexible. These rules can be adapted and modified by statutes and C statutory rules and also by the constitution of the Tribunal which has to decide a particular matter and the rules by which such Tribunal is governed..."

The ratio of the said decisions, therefore, does not support the proposition canvassed by Mr. Reddy. D

Furthermore, the contemnor could also get an opportunity of hearing while purging his conduct. Rule 11 of the Rules, therefore, is not also *ultra vires* Article 14 of the Constitution.

CONCLUSION: E

We, therefore, are of the opinion that Rule 11 of the Rules famed by Kerala High Court is not unconstitutional. There is no merit in this writ petition which is accordingly dismissed. There shall be no order as to costs.

R.P. F

Petition dismissed.