A ARCHANA GIRISH SABNIS

v.

BAR COUNCIL OF INDIAAND OTHERS

(Civil Appeal No.4232 of 2007)

B NOVEMBER 26, 2014

**[M. Y. EQBAL AND ABHAY MANOHAR SAPRE, JJ.]**

*Advocates – Enrolment as advocate – denial of – On the ground that the candidate was not eligible for enrolment as her qualification in Homeopathy medicines i.e. Licentiate of the Court of Examiners (LCEH) was not recognized by Bar Council of India – Propriety of – Held: From s. 13 and Schedule of the Homeopathy Central Council Act and regulation 4 of Homeopathic Regulations, 1989, it is evident that LCEH is not a bachelor degree – The candidate has not been able to show that LCEH is a degree or equivalent to degree verified by UGC with previous approval of Central Government – Bar Council of India is empowered to make rules u/ss. 7 and 49 of Advocates Act and has independent power to recognize any equivalent qualification to a graduate degree for the purpose of admission in course of graduate degree in law – Enrolment was rightly denied to her – Advocates Act, 1961 – ss. 7 and 49 – Bar Council of India Rules – University Grants Commission Act, 1956 – s. 22(3) – Homeopathy Central Council Act, 1973 – s. 13 and Second Schedule – Homeopathic (Postgraduate Degree Course) Regulations, 1989 – Regn. 4.*

*Words and Phrases – 'Degree' – Meaning of, in the context of s. 22(3) of University Grants Commission Act, 1956,*

**Dismissing the appeal, the Court**

**HELD: 1. A perusal of the provisions of Section 13 alongwith Second Schedule to Homeopathy Central Council Act, 1973, would show that medical qualifications granted by any University, Board or other**

institution which are included in the Schedule, shall be recognized as medical qualifications for the purpose of the Act and not for any other purposes. The Second Schedule mentioned various degree courses and diploma courses and other qualifications which are granted by various homoeopathy medical colleges and institutions. From perusal of the Schedule, it is evident that various States' homoeopathy colleges recognized degree course and diploma courses. From the Second Schedule it is evident that LCEH is not a bachelor degree but it is a qualification to practice in homeopathy medicine. [Para 21][720-D-G]

2. Perusal of Regulation 4 of Homeopathic (Postgraduate Degree Course) Regulations, 1989, makes it clear that for the purpose of admission to the M.D.(Hom.), the candidate must possess a degree in Bachelor of Homoeopathic Medicine and Surgery (BHMS) or equivalent qualification in Homoeopathy included in the Second Schedule to the Act, after completing a course of study of not less than 5 years and 6 months duration including one year compulsory internship. Admittedly, the appellant does not possess any degree in BHMS or equivalent qualification in as much as the LCEH qualification which the appellant possesses, is less than a 5 years' course without any compulsory internship. [Paras 23 and 24][721-D-G]

3. Sub-section 3 of Section 22 of University Grants Commission Act, 1956 defines the word 'degree' which means any such degree which is specified by the University Grants Commission in the official gazette with the approval of the Central Government. The appellant has not produced any such notification to show that the qualification of LCEH is a degree or equivalent to a degree duly notified by the Commission with

A **the previous approval of the Central Government. [Para 26][722-C-E]**

**4. The Bar Council of India Rules provide that for the purpose of joining the course in law for a degree, candidate must be a graduate of any University or must**
B **possess such academic qualifications which are considered equivalent to a graduate degree of a University, recognized by the Bar Council of India. Section 7 and Section 49 of Advocates Act, 1961 specifically empower the Bar Council of India to make**
C **rules prescribing a minimum qualification required for admission for the course of degree in law from any recognized University. The Bar Council has the independent power to recognize any equivalent qualification to a graduate degree for the purpose of**
D **admission in the course of graduate degree in law. [Paras 27 and 28][722-E-H]**

**5. The Bar Council of India is not bound to grant a license as claimed by the appellant. Pursuing law and practicing law are two different things. One can**
E **pursue law but for the purpose of obtaining license to practice, he or she must fulfill all the requirements and conditions prescribed by the Bar Council of India. [Para 31][726-C-D]**

F *Bar Council of India and Anr. v. Aparna Basu Mallick and Ors.* **(1994) 2 SCC 102 – relied on.**

**CASE LAW REFERENCE**

**(1994) 2 SCC 102 relied on. Para 30**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4232 of 2007.

From the Judgment and Order dated 10.04.2006 of the High Court of Judicature at Bombay in Writ Petition No. 6133 of 2002.

H

Braj K. Mishra, Vijay Kumar, Ms. Aparna Jha, Vishwajit Singh, Advs. for the Appellant. A

Ardhendumauli Kumar Prasad, Aviral Shukla, Ms. Pankhuri Bhardwaj, Amritesh Rai, Nirmal Ambastha, Ms. Priyanka Swami, Amit A. Pai, Santosh Paul, Arvind Gupta, Debopriya Pal, M. J. Paul, Advs. for the Respondents. B

The Judgment of the Court was delivered by

**M. Y. EQBAL, J.**

1. This appeal by special leave is directed against the judgment and order dated 10.4.2006 passed by the High Court of Judicature at Bombay whereby Writ Petition No.6133 of 2002 preferred by the appellant was dismissed. C

2. The case of the appellant in brief is that after completion of professional course i.e. Licentiate of the Court of Examiners in Homoeopathy medicines (LCEH), she took admission to LL.B. course conducted by University of Mumbai. It is submitted by the appellant that LCEH is considered as equivalent to graduation degree by the Central Council of Homoeopathy and such decision is even approved by the Government of India for equating the pay scales. D E

3. The University of Mumbai admitted the appellant to law course after satisfying itself as regards the equivalence of the professional qualification possessed by her. After completion of her LL.B. degree course, the appellant being desirous of practicing law surrendered her certificate of practicing homoeopathy, which was duly accepted by Maharashtra Council of Homoeopathy on 25.9.2001. F

4. In October, 2001, the appellant applied to Bar Council of Maharashtra and Goa for getting herself enrolled as Advocate and on knowing that her case has been referred to Bar Council of India for clarification as regards her eligibility to get enrolled with reference to her graduation qualification, the appellant made representation to the Bar Council of India. On 23.1.2002, the Bar Council of Maharashtra and Goa G H

A informed appellant that she cannot be considered for enrolment as an Advocate as her qualification LCEH is not recongnized by Bar Council of India.

5. Upon an application being moved by the appellant, Bar Council of India by letter dated 8.8.2002 reiterated that
B the professional course LCEH is not considered equivalent to degree course. Aggrieved by this, the appellant moved the High Court by way of writ petition praying for quashing of the communications issued by the respondent informing that she cannot seek enrolment as an Advocate since qualification of
C LCEH in Homoeopathy is not recognized as equivalent to graduation. It has been contended on behalf of the appellant that the Bar Council of Maharashtra or Bar Council of India have no jurisdiction or authorities to decide the question of equivalence of educational qualifications, and therefore, their
D orders are not valid. Bombay University having considered this as a degree equivalent to BHMS admitted the appellant for the three years LL.B. course and now she cannot be denied the enrolment on the ground of non-recognition of the degree of LCEH. It has also been pleaded that the appellant was not
E given an opportunity to put forward her case and hence the principles of natural justice were violated and consequently the whole action is of violation of Article 14 of the Constitution.

6. We have heard learned counsel for the parties. Mr. Braj K. Mishra, learned counsel for the appellant submitted
F that the Central Council of Homoeopathy came to be established under the provisions of Homoeopathy Central Council Act, 1973 and the main object of this statutory body inter alia was to bring uniformity in the academic courses all over India and also to bring uniformity in various nomenclatures
G for the courses in homeopathy conducted by various institutions. Central Council of Homoeopathy after considering various courses and nomenclatures for the courses in DMS, DHMS, LCEH, etc. decided to have one common nomenclature for graduation course in homoeopathy i.e.
H BHMS. Professional course of LCEH in homoeopathy

completed earlier by the appellant was considered as equivalent to graduation degree by the Central Council of Homoeopathy. It is further pleaded that the Bar Council of India does not even have a defined policy as regards the equivalent of educational qualification to the graduation degree and the Bar Council makes a decision on case to case basis and such procedure itself is unfair and arbitrary without any guidelines and in that case the decision of other professional body like Central Council of Homoeopathy and academic body like University of Mumbai should be decisive.

7. Learned counsel further contended that in the absence of the defined policy of the Bar Council of India as to which educational qualification can be treated as equivalent to graduation degree, there was no notice whatsoever to the appellant as regards the view taken or to be taken by Bar Council of India, and therefore, it was perfectly legal and reasonable for the appellant to assume that the decision taken by the Central Council of Homoeopathy and University of Mumbai and Government of India are legally correct. In the present case, the appellant did not get even an opportunity to persuade the Bar Council to see and examine the view point of the appellant. It is submitted by the appellant that after completion of her LL.B. course, she also completed LL.M with second rank in University of Mumbai and at present she is working as a Member, District Consumer Forum, Thane. Since the logical fall out of the decision of the Bar Council is virtually the reversal of the appellant's admission to the law course, interference of this Court has been sought by the appellant in the interest of justice.

8. Mr. Ardhendumauli Kumar Prasad, learned counsel appearing for the Bar Council of India submitted that under the provisions of Advocates Act and Rules framed thereunder, Bar Council of India is empowered to lay down standards of legal education and recognition of degrees in law for the purpose of admission as advocates. The qualification possessed by the appellant was at no point of time considered

A as equivalent to a graduate degree of a university by the Bar Council of India. Neither appellant nor the University made any enquiry with Bar Council of India about the eligibility of students holding the LCEH qualification for admission in the three year law course. The decision of Central Council of B Homoeopathy treating LCEH as equivalent to degree is not binding on the Bar Council of India. It has been contended that the decision of the Government to treat certain courses in Homeopathy as equivalent to degree was taken for determining the pay scales and avoiding any disparity in any scales of those C holding different qualifications in Homeopathy. This cannot be construed as a decision recognizing the said qualification for further studies in the same subject or in any other subject. Furthermore, by the impugned decision, the Bar Council of India is not withdrawing the LL.B. degree secured by the D appellant, but what is being denied to the appellant is the enrollment as an advocate.

9. Learned counsel submitted that letter of the appellant dated 20th March, 2002 was placed before the Legal Education Committee of the Bar Council of India at its meetings held on E 28th, 29th and 30th June, 2002 and the Legal Education Committee considered the same and made the following recommendations:-

> "Legal Education committee considered the letter received from Mrs. Archana Girish Sabnis requesting the F council to recognize L.C.E.H. degree awarded by Maharashtra Council of Homeopathy equivalent to graduation for admission in the three year Law Course. After consideration Committee is of the view that since Mrs. Archana Girish Sabnis has already been informed G that the L.C.E.H. Degree awarded by Maharashtra council of Homeopathy is not recognized as equivalent to graduation for admission in the three year law course by the Bar Council of India, the question of 'reconsideration does not arise."

H

10. The above recommendation was placed before the Bar Council of India at its meeting held on 30th June, 2002 and the Council accepted the said recommendation which was duly communicated to the appellant vide letter dated 08.08.2002.

11. It is submitted on behalf of the Council that since LL.B. is a professional course and the minimum qualification laid down by the Bar Council of India is graduation in any discipline or any other qualification recognized as equivalent thereto, the Bar Council did not find it appropriate to recognize the LCEH qualification as equivalent to graduation for the purpose of admission in the three-year law course and the fact that it is recognized as equivalent to graduation degree by any other authority has no relevance and it is not binding on the Bar Council of India. The Bar Council of India examines each case independently and arrives at its own conclusion without being influenced by decisions taken by other authorities in this regard.

12. In order to decide whether Bar Council of India was justified in refusing enrolment of the appellant as an advocate, we think it appropriate to refer relevant provisions of the Advocates Act and Rules framed by Bar council of India.

13. Section 7 of the Advocates Act, 1961 (in short, "the Act") lays down various functions of the Bar Council of India which includes *inter alia* to promote legal education and to lay down standard of such education in consultation with the Universities in India imparting such education and the State Bar Councils. The Bar Council of India shall also recognize 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.

14. Section 24 of the Act provides that a person shall be qualified to be admitted as an Advocate on a State roll if he fulfills the conditions mentioned in that Section, which reads as under:

A "24. Persons who may be admitted as advocates on a State roll.—

(1) Subject to the provisions of this 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
B following conditions,

namely:—

(a) he is a citizen of India:

Provided that subject to the other provisions contained
C in this Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practise law in that other country;

(b) he has completed the age of twenty-one years;
D

(c) he has obtained a degree in law—

(i) before the 12th day of March, 1967, from any University in the territory of India; or

(ii) before the 15th August, 1947, from any University in
E any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the 12th day of March, 1967, save as provided in sub-clause (iiia), after undergoing a three year course
F of study in law from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing
G from the academic year 1967-68 or any earlier academic year from any University in India which is recognised for the purposes of this Act by the Bar Council of India; or]

(iv) in any other case, from any University outside the
H territory of India, if the degree is recognised for the

purposes of this Act by the Bar Council of India or; he is barrister and is called to the Bar on or before the 31st day of December, 1976 4[or has passed the article clerks examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court; or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act;

******

(e) he fulfils such other conditions as may be specified in the rules made by the State Bar Council under this Chapter;

(f) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899 (2 of 1899), and an enrolment fee payable to the State Bar Council of six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council:

Provided that where such person is a member of the Schedule Castes or the Schedule Tribes and produces a certificate to that effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be one hundred rupees and to the Bar Council of

India, twenty-five rupees."

15. We may now reproduce sub-rule (1) of Rule 1 of Part IV of the Rules as it stood at all material times:

"1. (1) Save as provided in Section 24(1)(*c*)(*iii-a*) of the Act, a degree in law obtained from any University in the territory of India after the 12th day of March 1967 shall not be recognised for purposes of Section 24(1)(*c*)(*iii*) of the Act unless the following conditions are fulfilled:

A (*a*) That at the time of joining the course of instruction in law for a degree in law, he is a graduate of a University, or possesses such academic qualifications which are considered equivalent to a graduates' degree of a University by the Bar Council of India;

B (*b*) that the law degree has been obtained after undergoing a course of study in law for a minimum period of three years as provided in these rules;

(*c*) that the course of study in law has been by regular attendance at the requisite number of lectures, C tutorials and moot courts in a college recognised by a University."

(Emphasis given)

16. Section 49 envisages general power of the Bar D Council of India to make rules prescribing minimum qualification required for admission in the course of degree in law in any recognized university. For better appreciation, Section 49 is quoted hereinbelow:-

"49. General power of the Bar Council of India to make E rules.—

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

F (a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

G (ab) qualifications for membership of a Bar Council and the disqualifications for such membership;

(ac) the time within which and the manner in which effect may be given to the proviso to sub-section (2) of section (3);

H

(ad) the manner in which the name of any advocate may be prevented from being entered in more than one State roll;

(ae) the manner in which the seniority among advocates may be determined;

(af) the minimum qualifications required for admission to a course of degree in law in any recognised University;

(ag) the class or category of persons entitled to be enrolled as advocates;

(ah) the conditions subject to which an advocate shall have the right to practise and the circumstances under which a person shall be deemed to practise as an advocate in a court;

(b) the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another;

(c) the standard of professional conduct and etiquette to be observed by advocates;

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

(e) the foreign qualifications in law obtained by persons other than citizens of India which shall be recognised for the purpose of admission as an advocate under this Act;

(f) the procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee;

(g) the restrictions in the matter of practice to which senior advocates shall be subject;

(gg) the form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal;

(h) the fees which may be levied in respect of any matter under this Act;

(i) general principles for guidance of State Bar Councils and the manner in which directions issued or orders made by the Bar Council of India may be enforced;

(j) any other matter which may be prescribed:

Provided that no rules made with reference to clause (c) or clause (gg) shall have effect unless they have been approved by the Chief Justice of India:

Provided further that] no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.

(2) Notwithstanding anything contained in the first proviso to sub-section (1), any rules made with reference to clause (c) or clause (gg) of the said sub-section and in force immediately before commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), shall continue in force until altered or repealed or amended in accordance with the provisions of this Act."

17. Under Section 49A of the Act, Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules, including the class or category of persons entitled to be enrolled as advocates under this Act. If any provision of a rule made by a Bar Council is repugnant to any provision of a rule made by the Central Government under this section, then, the rule under this section, whether made before or after the rule made by the Bar Council, shall prevail and the rule made by the Bar Council shall, to the extent of the repugnancy, be void.

18. First of all we would like to examine as to whether the professional courses i.e. Licentiate of the Court of

Examiners in Homoeopathy Medicines (LCEH), which the petitioner obtained, is a degree or equivalent to a graduation degree by the Central Council of Homoeopathy.

19. The Homoeopathy Central Council Act was enacted in the year 1973 with the object to provide for constitution of Central Council of Homoeopathy and the maintenance of a Central Registrar of Homoeopathy. The main function of the Central Council of Homoeopathy would be to evolve a uniform standard of education in homoeopathy and the registration of practitioners of homoeopathy. Section 13 of the said Act is worth to be quoted hereinbelow:-

> **"13. Recognition of medical qualifications granted by certain medical institutions in India** – (1) The medical qualifications granted by any University, Board or other medical institution in India which are included in the Second Schedule shall be recognized medical qualification for the purposes of this Act.
>
> (2) Any University, Board or other medical institutions in India which grants a medical qualification not included in the Second Schedule may apply to the Central Government to have any such qualification recognized, and the Central Government, after consulting the Central council, may, by notification in the Official Gazette, amend the Second Schedule so as to include such qualification therein any such notification may also direct that an entry shall be made in the last column of the Second Schedule against such medical qualification only when granted after a specified date."

20. For better appreciation, Second Schedule of the Council Act, which recognized medical qualifications in Homoeopathy granted by the Universities, Board or Medical Institutions in India, and, so far as Maharashtra is concerned, is reproduced hereinbelow :-

A

## THE SECOND SCHEDULE

**(See section 13)**

## Recognised Medical Qualifications in Homoeopathy Granted by Universities, Boards or Medical Institutions in India

B

| Name of the University, Board or Medical Institution | Recognised Medical qualification | Abbreviation of registration | Remarks |
|---|---|---|---|
| 1 | 2 | 3 | 4 |
| C 11. The Court of Examiners of Homoeopathic and Biochemic Systems of Medicines, Bombay | Licentiate of the Court of Examiners in Homoeopathy Diploma in Homoeopathy and Biochemistry | L.C.E.H. | From December 1961 onwards. |
| D 11A. Vidarbha Board of Homoeopathic and biochemic Medicines, Nagpur. | Diploma in Homoeopathy and Biochemistry | D.H.B. | From October 1955 onwards |
| 11B. Court of Examiners in Homoeopathy and Biochemic Systems of Medicine, Bombay E | Diploma in Homoeopathy Medicine and Surgery | D.H.M.S. | From 1976 onwards |
| 11C. Pune University | Bachelor in Homoeopathic Medicine and Surgery | B.H.M.S. | From 1988 to 1990 |
| F 11D. Bombay University | Bachelor in Homoeopathic Medicine and Surgery | B.H.M.S. | From 1988 to 1990 |
| 11E. Court of Examiners of Homoeopathic and Biochemic Systems of Medicine, Bombay. G | Diploma in Homoeopathy Medicine and Surgery | D.H.M.S. (CCH Regulation onwards) | From 1987 |

H

| | | | |
|---|---|---|---|
| **11F.** Dr. Babasaheb Ambedkar Marathwada University, Aurangabad: | Bachelor in Homoeopathic Medicine and Surgery. | B.H.M.S. | From 1991 to 1995 |
| (a) Shri Bhagwan Homoeopathic Medical College, Aurangabad | Bachelor in Homoeopathic Medicine and Surgery. | B.H.M.S. | From 1991 to 1995 |
| (b) S.K. Homoeopathic Medical College, Beed. | Bachelor in Homoeopathic Medicine and Surgery. | B.H.M.S. | From 1991 to 1995 |
| **12.** Court of Examiners in Homoeopathy. | Fellow of the Court of Examiners in Homoeopathy. | F.C.E.H. | In May 1958 only. |
| **12A.** Maharashtra Council of Homoeopathy | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards. |
| (a) Homoeopathic Medical College, Khamgaon. | Diploma in Homoeopathic Medicine and Surgery. | D.H.M.S. | From Sept., 1988 onwards. |
| (b) Dakshin Kasari Muni Mishrilalji Homoeopathic Medical College, Aurangabad | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards. |
| (c) Shri Jamata Homoeopathic Medical College, Akola. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (d) T.S. Homoeopathic Medical College, Amravati. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (e) Homoeopathic Medical College, Akola. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (f) Rajrishi Chatrapati Sahu Homoeopathic Medical College, Islampur. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (g) P.C. Homoeopathic Medical College, Chandrapur. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |

| | | | |
|---|---|---|---|
| (h) Homoeopathic Medical College, Nagpur | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (i) Homoeopathic Medical College, Chandwad. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (j) Homoeopathic Medical College, Chandwad. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |
| (k) D.S. Homoeopathic Medical College, Pune. | Diploma in Homoeopathic Medicine and Surgery | D.H.M.S. | From Sept., 1988 onwards |

21. A bare perusal of the aforesaid provisions of Section 13 alongwith Second Schedule would show that medical qualifications granted by any University, Board or other institution which are included in the Schedule shall be recognized as medical qualifications for the purpose of the Act and not for any other purposes. The Second Schedule mentioned various degree courses and diploma courses and other qualifications which are granted by various homoeopathy medical colleges and institutions. From perusal of the Schedule, it is evident that various States' homoeopathy colleges recognized degree course and diploma courses. In the state of Maharashtra, the Court of Examiners of Homoeopathy (LCEH) and Biochemic System of Medicines (BSM) qualifications are conferred. In Maharashtra, the Bombay University and Pune University and other universities grant degree in Bachelor of Homoeopathic Medicine and Surgery (BHMS) also. From the Second Schedule it is evident that LCEH is not a bachelor degree but it is a qualification to practice in homeopathy medicine.

22. In exercise of power conferred by the Homoeopathic Central Council Act, 1973, the Central Council of Homoeopathy with the previous sanction of the Central Government made regulations called the Homoeopathic (Postgraduate Degree

Course) Regulations 1989. Regulation 4 lays the condition for admission in postgraduate course i.e., MD(Hom). Regulation 4 reads as under:-

"**Admission to Course**

4. (1) No candidate shall be admitted to M.D.(Hom.) course unless he possesses the degree of :-

(i) Bachelor of Homoeopathic Medicine and Surgery or equivalent qualification in Homoeopathy included in the Second Schedule to the Act, after undergoing a course of study of not less that five year and six months duration including one year compulsory internship; or

(ii) Bachelor of Homoeopathic Medicine and Surgery (Graded Degree) or equivalent qualification in Homoeopathy include in the Second Schedule to the Act, after undergoing a course of study of not less than two years' duration.

(2).... .... ...."

23. Perusal of the aforesaid Regulation makes it clear that for the purpose of admission to the M.D.(Hom.) the candidate must possess a degree in Bachelor of Homoeopathic Medicine and Surgery (BHMS) or equivalent qualification in Homoeopathy included in the Second Schedule to the Act after completing a course of study of not less than 5 years and 6 months duration including one year compulsory internship.

24. Admittedly, the appellant does not possess any degree in BHMS or equivalent qualification in as much as the LCEH qualification which the appellant possesses, is less than a 5 years' course without any compulsory internship. It is a qualification of Licenciate of the Court Examiners in Homoeopathy.

25. At this juncture, we would also like to refer the relevant provisions of University Grants Commission Act, 1956 which was enacted for the coordination and determination of

A standards in universities. Section 22 of the said Act provides that the right of conferring or granting a degree shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University. The term degree has
B been defined under this Section which is quoted hereinbelow:-

> "22. **Right to confer degrees** – (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an
C institution deemed to be a University under Section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees."

26. Sub-section 3 of Section 22 defines the word 'degree'
D which means any such degree which is specified by the University Grants Commission in the official gazette with the approval of the Central Government. Learned counsel appearing for the appellant has not produced before us any such notification to show that the qualification of LCEH is a
E degree or equivalent to a degree duly notified by the Commission with the previous approval of the Central Government.

27. The Bar Council of India Rules provide that for the purpose of joining the course in law for a degree, candidate
F must be a graduate of any University or must possess such academic qualifications which are considered equivalent to a graduate degree of a University recognized by the Bar Council of India. As noticed above, Section 7 and Section 49 specifically empower the Bar Council of India to make rules
G prescribing a minimum qualification required for admission for the course of degree in law from any recognized University.

28. In our view, the High Court has rightly held that Bar Council has the independent power to recognize any equivalent qualification to a graduate degree for the purpose of admission
H in the course of graduate degree in law.

29. It was submitted by the counsel for the respondent that to ascertain whether the qualification of LCEH is equivalent to a graduate degree, the University was bound to consult Bar Council of India and not the Homoeopathy Council. A

30. Learned counsel appearing for the parties drew our attention to a decision of this Court in the case of ***Bar Council of India and another vs. Aparna Basu Mallick and ors.***, (1994) 2 SCC 102. The factual background in which that decision was rendered was that the petitioner in that case after obtaining postgraduate degree undertook studies in LL.B. course of Calcutta University as a non-collegiate woman candidate under Regulation 35 of the Calcutta University. On successful completion of the course, she was conferred with the law degree in terms of Regulation 35 of the Calcutta University. Thereafter, she applied to the Bar Council of India for enrolment as an advocate. However, she was informed by the Bar Council of India that she was not entitled to be enrolled as she did not fulfill the condition contained in the Bar Council of India Rules framed under the provisions of the Advocates Act. She challenged the rejection of her application of enrolment before the High Court of Calcutta by way of writ petition on the ground that the same is illegal and invalid and the Rule 1(1)(c) of the Bar Council of India Rules ultra vires Articles 14 and 19(1)(g) of the Constitution of India. Learned Single Judge overruled all the contentions and discharged the rule nisi. Against the said decision, an appeal was preferred before the Division Bench of the Calcutta High Court. The Division Bench held that Rule 1(1)(c) did not lay down any standard of legal education but provided that the law degree obtained from any University in India shall not be recognized for the purpose of Section 24 of the Act unless the conditions specified therein were satisfied. The Division Bench allowed the appeal and against that order, the Bar Council of India moved this Court. This Court allowed the appeal and reversed the decision of the Division Bench of the Calcutta High Court B C D E F G H

A and restored the decision of the Single Judge dismissing the writ petition. This Court observed as under:

"**14.** Now under Section 7, one of the functions of the Bar Council of India is to recognise Universities whose degree in law shall be a qualification for enrolment as an B advocate and for that purpose to visit and inspect the Universities. This power of recognition of Universities is conferred where the degree of law of that University entitles the degreeholder for enrolment as an advocate. Under Section 24(1)(*c*)(*iii*) which is relevant for this C purpose, a person shall be qualified to be admitted as an advocate on a State roll if he fulfils the conditions of having undergone a three year course of study in law from any University in India which is recognised by the Bar Council of India. Sub-section (3) of Section 24 is an D exception clause to sub-section (1) as it begins with a non-obstante clause which entitles a person to be enrolled as an advocate under special rule made in that behalf. No such rule was relied upon as having been made under sub-section (3) of Section 24. Section E 49(1)(*d*) empowers the Bar Council of India to make rules which may prescribe the standards of legal education to be observed by Universities in India and the inspection of Universities for that purpose. If the acquisition of a degree in law is essential for being qualified to be F admitted as an advocate on a State roll, it is obvious that the Bar Council of India must have the authority to prescribe the standards of legal education to be observed by Universities in the country. On a conjoint reading of these provisions of the Act with Rule 1(1)(*c*) in G Part IV of the Rules which prescribe the standards for legal education and recognition of degrees in law as well as admission as advocates, it is difficult to understand how one can say that the said Rule is inconsistent with any of the provisions of the Act. What Rule 1(1)(*c*) requires H is that the course of study in law must be completed by

regular attendance at the requisite number of lectures, tutorials and moot courts in a college recognised by a University. As pointed out earlier, this Court in *Baldev Raj Sharma case [1989 Supp (2) SCC 91]* pointed out that there was a substantial difference between a course of studies pursued as a regular student and the course of studies pursued as a private candidate. The policy underlying the relevant provisions of the Rules is to lay emphasis on regular attendance of the law classes. It is, therefore, clear that a candidate desiring enrolment as an advocate must fulfil the conditions set out under the relevant clause of Section 24 read with Rule 1(1)(*c*) of the Rules. In the present case since both the candidates admittedly did not pursue any regular course of study at any college recognised by the University by attending the law classes, lectures, tutorials and moot courts, they cannot be said to have complied with the requirements for enrolment as an advocate. In that view of the matter we think that the view taken by the Calcutta High Court in *Aparna Basu Mallick* v. *Bar Council of India* [AIR 1983 Cal 461] is erroneous.

**16.** It was lastly submitted that so far as the Calcutta student was concerned, her case was governed by Regulation 35 which specifically permitted a woman candidate to appear as non-collegiate student. This Regulation underwent a change on the addition of the proviso by the Resolution of December 7, 1979 which required the University to inform the woman candidate in advance that she will not be eligible for enrolment as an advocate and the degree to be awarded shall bear an inscription to the effect that it was obtained as a non-collegiate student. Regulation 35 could not hold the field unless it was consistent with the provisions of the Act and the Rules. That is why the proviso was required to be added to the Regulation. But if the University had omitted to insert the proviso that would not have entitled

A a woman candidate for enrolment as an advocate on securing a degree as a non-collegiate. Unless the degree of law was secured consistently with the requirements of the provisions of the Act and the Rules, it would not serve as a qualification for enrolment. The proviso was added
B to Regulation 35 by way of extra caution. After the incorporation of Rule 1(1)(*c*) in its present form, Regulation 35 could not entitle a woman candidate to be enrolled as an advocate if she secured the degree as a non-collegiate."

C 31. We, therefore, after giving our anxious consideration in the matter, are of the definite opinion that the Bar Council of India is not bound to grant a license as claimed by the appellant. Pursuing law and practicing law are two different things. One can pursue law but for the purpose of obtaining license to
D practice, he or she must fulfill all the requirements and conditions prescribed by the Bar Council of India. We do not find any reason to differ with the view taken by the High Court.

32. In the facts of the case, we do not find any merit in the appeal, which is accordingly dismissed.
E

Kalpana K. Tripathy Appeal dismissed.