

## **FACT OF THE CASE**

Mr. Prakash Paul birth Christian and a Roman catholic priest who graduated in law from the Bangalore University and he is a gold medalist {rank holder in Law} .He sought enrolment by an application which was filed before the Karnataka State Bar Council at Bangalore. On receipt of the application he was called upon to submit certain particulars and to furnish an affidavit stating that, presently he was not holding any post or rendering any service or doing any business or profession in any society or institution. He submitted the required documents from which it would be made out that he is working as Parish priest of Little Flower Church , Kolar, for which no remuneration was paid to him. He was called for a hearing by the Enrollment Committee, but he has not been permitted to participate in the enrollment held on 21.01.2017. Against the decision of Karnataka Bar Council Enrollment Committee, The aggrieved person Mr. Prakash Paul has preferred a Writ Petition before Hon'ble High Court of Karnataka, Bangalore. Argue the case on behalf of Petitioner or Respondent.



## **JURISDICTION**

Hon'ble High Court of Karnataka has the authority to try this case under Article 226 of the constitution. Hence, this Hon'ble High Court of Karnataka has the power to dispose this case.

**DATE:**  
**PLACE:**

**ADVOCATE FOR PETITIONER**

## **GROUND**

1. Whether an impugned action of the Bar Council Of Karnataka is violative of the provisions contained in Article 19(1)(g)?
2. Whether principles of natural justice is followed before passing an order by the enrollment committee , karnataka bar council?
3. Whether the afore said rule is violative of Article 14 and 21 of the constitution ?
4. Whether the state Bar Council of Karnataka suffers from the excessive delegation and hence is void and inoperative at law?

### ARGUMENTS FOR PETITIONER :

1. Whether an impugned action of the Bar Council Of Karnataka is violative of the provisions contained in Article 19(1)(g)?

Article 19(1)(g) guarantees that all citizens shall have the right “to any profession” or to carry any occupation , trade or business”. The said article would be unconstitutional and violative to Article 19(1)(g) of the constitution of India .But here the enrollment committee , state bar council has rejected Sri. Prakash Paul enrollment application on the basis that he is working as a Parish Priest in Little Flowers Church .But Sri.Prakash paul is eligible to be enrolled as an Advocate because he is qualified to be admitted as an advocate on state roll . Such persons has to be citizen of India, having completed the age of 21 years, obtained a degree in Law , etc., It is conceded position that all the Qualification are qualified to be admitted as advocate in state roll not working in any public sector. Hence the impugned action of State Bar Council enrollment Committee.

2. Whether principles of natural justice is followed before passing an order by the enrollment committee , Karnataka bar council?

All persons are equally entitled to be heard by the State Bar Council Enrollment Committee by hearing the matter on both sides. Both the parties should be given equal preference in hearing, hence the State Bar Council Enrollment Committee has not given equal preference to the petitioner and hence preffering this petition against the order passed by the State Bar Council Enrollment Committee , Bangalore. In The [Constitution](#) of India, nowhere the expression Natural Justice is used. However, golden thread of natural justice sagaciously passed through the body of Indian constitution. Preamble of the constitution includes the words, ‘Justice Social, Economic and political’ liberty of thought, belief, worship... And equality of status and of opportunity, which not only ensures fairness in social and economical activities of the people but also acts as shield to individuals liberty against the arbitrary action which is the base for principles of Natural Justice.

3. Whether the afore said rule is violative of Article 14 and 21 of the constitution?

Apart from preamble Art 14 ensures equality before law and equal protection of law to the citizen of India. Art 14 which strike at the root of arbitrariness and Art 21 guarantees right to life and liberty which is the fundamental provision to protect liberty and ensure life with dignity. Art 22 guarantees natural justice and provision of fair hearing to the person.. Furthermore Art 32, 226, and 136 provides constitutional remedies in cases violation of any of the fundamental rights including principles of natural justice. With this brief introduction author undertakes to analyze some of the important provision containing some elements of Principle of Natural Justice Constitutional Provisions relating to the 'Principles of Natural Justice'. Article 14: as we know that this Article guarantees equality before law and equal protection of law. It bars discrimination and prohibits both discriminatory laws and administrative action. Art 14 is now proving to be bulwark against any arbitrary or discriminatory state action. The horizons of equality as embodied in Art 14 have been expanding as a result of the judicial pronouncements and Art 14 has now come to have a highly activist magnitude. It laid down general preposition that all persons in similar circumstance shall be treated alike both in privileges and liabilities imposed.

**Art 14 manifests in the form of following propositions:**

- (i) A law conferring unguided and unrestricted power on an authority is bad for being arbitrary and discriminatory.
- (ii) Art. 14 illegalize discrimination in the actual exercise of any discretionary power.
- (iii) Art. 14 strikes at arbitrariness in administrative action and ensures fairness and equality of treatment.

In some cases, the Courts insisted, with a view to control arbitrary action on the part of the administration, that the person adversely affected by administrative action be given the right of being heard before the administrative body passes an order against him. It is believed that such a procedural safeguard may minimize the chance of the Administrative authority passing an arbitrary order. Thus, the Supreme Court has extracted from Art. 14 the principle that natural justice is an integral part of administrative process.

Art. 14 guarantee a right of hearing to the person adversely affected by an administrative order. In **Delhi Transport Corporation v. DTC Mazdoor Union**, SC held that “the audi alteram partem rule, in essence, enforce the equality clause in Art 14 and it is applicable not only to quasi-judicial bodies but also to administrative order adversely affecting the party in question unless the rule has been excluded by the Act in question.” Similarly in **Maneka Gandhi v. Union of India SC** opined that Art 14 is an authority for the proposition that the principles of natural justice are an integral part of the guarantee of equality assured by Art. 14 an order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice.

In **Cantonment Board, Dinapore v. Taramani** in this case the Commanding-in-chief of the cantonment board cancelled the board’s resolution after giving it a hearing but not to the respondent to whom the permission had been given. The Supreme Court ruled that Commanding-in-chief ought to have given a hearing to the respondent as well before cancelling the permission given by the board. The Court observed: audi alteram partem is a part of Art. 14 of the [Constitution](#)”. The real affected party in fact was the party being ultimately affected by cancellation of the Board’s resolution. Because of Art.14 “no order shall be passed at the back of a person, prejudicial in nature to him, when it entails civil consequences.” This is how Art 14 of the [Constitution](#) holds element of Natural justice into it.

### **The Constitution of India provides Fundamental Rights under Chapter III**

These rights are guaranteed by the constitution. One of these rights is provided under article 21 which reads as follows:-Article 21. Protection Of Life And Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.Though the phraseology of Article 21 starts with negative word but the word No has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. If an act of private

individual amounts to encroachment upon the personal liberty or deprivation of life of other person. Such violation would not fall under the parameters set for the Article 21. In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the ambit of Article 21. Article 21 of the Constitution deals with prevention of encroachment upon personal liberty or deprivation of life of a person.

#### 4. Whether the state Bar Council of Karnataka suffers from the excessive delegation and hence is void and inoperative at law?

under rule-making power of the State Bar Council condition for enrollment can be imposed. But in the guise of imposing such conditions, the impugned rule has travelled further and has laid down a disqualification for enrollment which is beyond the scope of [Section 24-A](#). It is true that in a way the enactment of this rule imposes a disqualification for enrollment. However once it is found that the rule falls within the parameters of rule-making power as entrusted by the legislature to the State Bar Councils as per [Section 24\(1\)\(e\)](#) read with [Section 28\(2\)\(d\)](#) it cannot be said that such disqualification could not be legitimately imposed by the State Bar Council. The Bar Council of India has no objection simultaneously practising law along with his practising any other profession along with his other practising. Also submitted that in foreign countries in some of the States such simultaneously practice is permitted. Professionals to the legal profession while they are not prepared to give up their other professions and on the contrary insist on simultaneously practising more than one professions. He fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter. [Section 24A](#) provides disqualification for enrolment as an advocate. Concededly none of the petitioners has any disqualifications mentioned in [Section 24A](#) of the Act of 1961. Disposal of application for admission as an advocate is provided under [Section 26](#) of the Act of 1961. The State Bar Council has to refer every application for admission as an advocate to its enrolment committee and subject to provisions of Sub-sections (2) and (3) such committee has to dispose of the application in the prescribed



manner. Where the enrolment committee of a State Bar Council may propose to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application. The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India in conformity with the opinion of the Bar Council of India. Where the enrolment committee of the State Bar Council may refuse any application for admission as an advocate on its roll, it would send intimation to all other State Bar Councils about such refusal. Sub-sections (1) to (4) of [Section 26](#) in so far as the same contains procedure as mentioned above read as follows:

**26. Disposal of applications for admission as an advocate.-**

(1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provisions of Sub-section (2) and (3), and to any direction that may be given in writing by the State Bar Council in this behalf, such committee shall dispose of the application in the prescribed manner:

(2) Where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a statement of the grounds in support of the refusal of the application.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under Sub-section (2) in conformity with the opinion of the Bar Council of India.

(4) Where the enrolment committee of a State Bar Council has refused any application for admission as an advocate on its roll, the State Bar Council shall, as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name, address and qualifications of the person whose application was refused on the grounds for the refusal.

5. A State Bar Council as per the provisions contained in [Section 28](#) of the Act of 1961 has been given power to make rules to carry out the purposes of Chapter III. Sub-section (2)(d) of [Section 28](#) reads as follows: (d) the conditions subject to which a person may be admitted as an advocate on any such roll;

But here Sri PrakashPaul is not in any profession . For every employment the employee will be paid salary or remuneration. But Mr. Prakash Paul is a priest and he is not paid any remuneration. So it is not said be a job or profession and Mr. Prakash Paul will be eligible for enrollment and hence the state Bar Council of Karnataka suffers from the excessive delegation and hence is void and inoperative at law.

## **PRAYER**

Wherefore , I most humbly pray that this Hon'ble Court be pleased to Pass an Order to set aside the impugned order passed by State Bar Council Enrollment Committee and to direct to them to give the opportunity for enrollment and such other relief prayed for in the interest of justice, equity and Conscience.

**DATE:**

**PLACE:**

**ADVOCATE FOR PETITIONER**

## **CASES REFERRED**

- 1. Cantonment Board, Dinapore v. Taramani**
- 2. Delhi Transport Corporation v. DTC Mazdoor Union,**
- 3. Maneka Gandhi v. Union of India**

## **BOOKS REFFERED**

1. The Constitutional Law of India - Dr.Pandey
2. The Constitutional Law Of India - D.D.Basu
3. Lectures on Administrative Law - C.K Takwani
4. Karnataka State Bar Councils Act ,1961

## **ABBREVIATIONS:**

- |            |   |                    |
|------------|---|--------------------|
| 1. A.I.R.  | - | All India Report   |
| 2. S.C.C   | - | Supreme Court Case |
| 3. Hon'ble | - | Honorable          |
| 4. S.C     | - | Supreme Court      |
| 5. A.P.    | - | Andhra Pradesh     |
| 6. V/s     | - | Versus             |
| 7. U/S     | - | Under Section      |
| 8. R/W     | - | Read With          |
| 9. Art     | - | Article            |