REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.95 OF 2018

Ashwini Kumar Upadhyay ...Petitioner

Versus

Union of India & Anr. ...Respondents

J U D G M E N T

A.M. Khanwilkar, J.

1. By this writ petition filed under Article 32 of the Constitution of India as a Public Interest Litigation, the petitioner prays for issue of a writ of mandamus or direction to debar the legislators from practising as an Advocate (during the period when they are Members of Parliament or of State Assembly/Council) in the spirit of Part-VI of the Bar Council of India Rules (for short, '**the Rules'**) or, in the alternative, declare that Rule 49 of the Rules is arbitrary and

ultra-vires the Constitution and to permit all public servants to practise as an advocate. During the pendency of this writ petition, multiple interlocutory applications have been filed by different protagonists supporting the relief claimed in the present writ petition.

2. According to the petitioner, the elected people's representatives take a constitutional oath to serve the people and are supposed to work full-time for public causes. They also draw their salary from the consolidated fund. Being public servants, they cannot be permitted to practise as an advocate. For, if they are allowed to practice law they would charge fees from their private clients and, at the same time, continue to draw salary from the public exchequer, which will be nothing short of professional misconduct. It is urged that many legislators are actively practising as advocates before different courts. In the process, they end up in misusing their position as Members of Parliament/Members of the Legislative Assembly/Members of Legislative Council (for short, "**MP/MLA/MLC**"), as is perceived by the public.

Further, they invariably make regular appearances on television and give interviews to media, which also entails in advertisement. It is urged that legal profession is a noble full-time profession. Resultantly, the legislators cannot be allowed to ride two full-time engagements – as an elected representative and as an Advocate. If they do so, they would end up becoming casual towards one of the two engagements and in a given situation be guilty of conflict of interest amounting to professional misconduct. The petitioner has given multiple instances to buttress the point of conflict of interest.

3. It is thus urged that allowing legislators to practice law will have the potential of permitting them to indulge in conflict of interest amounting to professional misconduct since they may appear in matters, in their capacity as advocates, challenging the wisdom of Parliament/State Legislature. It is possible that they may have participated in the deliberation when the Bill to pass the stated law was introduced in the Parliament/State Legislature. They may

either take the same position before the court or even a completely opposite stand in their role as an Advocate. In either case, it would be a serious issue of conflict of interest.

4. Reliance has been placed on Rule 49 of the Rules in particular to contend that there is an express restriction on advocates to take up other employment. It is also urged that being an elected people's representative, by the very nature of his/her duty as a law maker and legislator, it is a full-time engagement, coupled with the fact that the emoluments paid to them is under The Salary, Allowances and Pension of Members of Parliament Act, 1954 (for short, '**the 1954 Act**'). Similarly, allowances are paid as per the rules framed for different heads under the 1954 Act (e.g. Travelling and Daily Allowances Rules, 1957; Housing and Telephone Facilities Rules, 1956; Medical Facilities Rules, 1959; Allowances for Journeys Abroad Rules, 1960; Constituency Allowance Rules, 1986; Advance for the Purchase of Conveyances Rules, 1986; and Office Expenses Allowance Rules, 1986). Considering the obligation towards the constituency

represented by them, the elected people's representatives are obliged to work full-time for the public cause and for which reason it would be neither feasible nor practicable for them to perform to the best of their ability as advocates, who are required to give wholehearted and full-time attention to their profession. Resultantly, legislators cannot be allowed to practise as advocates during the relevant period.

5. To buttress the aforementioned arguments, reliance is placed on the decisions of this Court in ***M. Karunanidhi Vs. Union of India and Anr.***[1]***, Dr. Haniraj L. Chulani Vs. Bar Council of Maharashtra & Goa***[2]***, Sushma Suri Vs. Govt. of National Capital Territory of Delhi & Anr.***[3]***, Satish Kumar Sharma Vs. Bar Council of H.P.***[4] *and* ***Madhav M. Bhokarikar Vs. Ganesh M. Bhokarikar (Dead) through LRs.***[5]

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[1] (1979) 3 SCC 431
[2] (1996) 3 SCC 342
[3] (1999) 1 SCC 330
[4] (2001) 2 SCC 365
[5] (2004) 3 SCC 607

6. The petition is opposed on the argument that the substantive relief claimed by the petitioner, in effect, is to call upon this Court to impose restrictions on a distinct class of persons *sans* a law made in that behalf to practise before the court as advocates whilst they represent their constituency as elected people's representatives in the Parliament/Legislative Assembly. It is urged that there can be no relationship of an employee and employer between the MP/MLA/MLC and the Government as such, merely because they receive salary, allowances and pension in terms of the provisions of the 1954 Act as applicable to the Members of Parliament or similar enactment applicable to the Members of Legislative Assembly/Council. The nomenclature of salary for the amount received by the legislators from the consolidated fund *per se* does not create a relationship of employer and employee between the Government and the elected people's representative. Further, being an elected people's representative, the person is not engaged in trade, business or profession much less being a full-time salaried employee of the Government. So understood, the provision

regarding restriction on other employment, as articulated in the present form, has no application.

7. In other words, as of now, there is no express prohibition either under the provisions of the Advocates Act, 1961 or the Rules framed thereunder, including by the Bar Council of India such as in Part VI, Chapter II of the said Rules governing restrictions on advocates, in particular Section VII thereof titled as 'Section on other Employments'. The Bar Council of India has filed its response to this writ petition and has placed on record minutes of the meeting of its General Council held on 31st March, 2018 bearing item No.1420 of 2018. The Bar Council had appointed a Sub-Committee to examine the question raised in the present writ petition. The Sub-Committee was of the considered opinion that legislators could not be prohibited from practising law. The said recommendation was eventually accepted by the General Council of the Bar Council of India in its meeting convened on 31st March, 2018.

8. We have heard Mr. Shekhar Naphade, learned senior counsel for the petitioner, Mr. K.K. Venugopal, learned Attorney General for India, Mr. Arvind Verma, Mr. S.R. Singh, Mr. V. Shekhar and Mr. Sukumar Pattajoshi, learned senior counsel, Mr. S.N. Bhatt, Mr. Sanjai Kumar Pathak, Dr. Dinesh Rattan Bhardwaj, Mr. Om Prakash Ajit Singh Parihar and Mr. M.A. Chinnasamy learned counsel for the parties.

9. The core issue is: whether legislators can be debarred from practising as advocates during the period when they continue to be the Members of Parliament or the State Assembly/Council? We are not concerned with any other issue including the issue as to whether, by virtue of such practice, the concerned elected people's representative may incur disqualification to continue to be a member of the concerned House on the ground of office of profit or any other ground resulting in his/her disqualification provided by the Constitution or any law made by the Parliament/State Legislature in that regard.

10. It is indisputable that the Bar Council of India is bestowed with the function and duty to regulate enrollments of advocates and the terms and conditions of professional conduct of advocates. The conditions to be fulfilled for continuing as advocates, however, must be reasonable restrictions. The right to practise any profession in that sense is not an absolute right. At the same time, the restriction must be expressly stated either in the Advocates Act, 1961 or the Rules framed thereunder. Chapter IV of the said Act deals with the right to practise as an advocate. Section 49 of the said Act empowers the Bar Council of India to make Rules for discharging its functions under the Act on matters specified in sub-section (1) (a) to 1(j) therein. The Bar Council has already framed Rules regarding restrictions on other employment, in exercise of powers under Sections 16 (3) and 49(1)(g) of the said Act. Section VII in Part VI of the said Rules deals with the said subject, which reads thus:

> "**Section VII- Section on other Employments**
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> 47. An advocate shall not personally engage in any business; but he may be a sleeping partner in a firm

doing business provided that in the opinion of the appropriate State Bar Council, the nature of the business is not inconsistent with the dignity of the profession.

48. An advocate may be Director or Chairman of the Board of Directors of a Company with or without any ordinarily sitting free, provided none of his duties are of an executive character. An advocate shall not be a Managing Director or a Secretary of any Company.

49. An advocate shall not be a full-time salaried employee of any person, government, firm, corporation or concern, so long as he continues to practice, and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears and shall thereupon cease to practice as an advocate so long as he continues in such employment.

[***] [6]

50. An advocate who has inherited, or succeeded by survivorship to a family business may continue it, but may not personally participate in the management thereof. He may continue to hold a share with others in any business which has descended to him by survivorship or inheritance or by will, provided he does not personally participate in the management thereof.

51. An advocate may review Parliamentary Bills for a remuneration, edit legal text books at a salary, do press-vetting for newspapers, coach pupils for legal examination, set and examine question papers; and subject to the rules against advertising and full-time employment, engage in broadcasting, journalism,

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[6] Paras 2 and 3 deleted by the Bar Council of India, Resolution No.65/2001, dated 22nd June, 2001, which read as:

"Nothing in this rule shall apply to a Law Officer of the Central Government of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28 (2) (d) read with Section 24 (1) (e) of the Act despite his being a full time salaried employee.

Law Officer for the purpose of these Rules means a person who is so designated by the terms of his appointment and who, by the said terms, if required to act and/or plead in Courts on behalf of his employer."

> lecturing and teaching subjects, both legal and non-legal.
> 52. Nothing in these rules shall prevent an advocate from accepting after obtaining the consent of the State Bar Council, part-time employment provided that in the opinion of the State Bar Council, the nature of the employment does not conflict with his professional work and is not inconsistent with the dignity of the profession. This rule shall be subject to such directives if any as may be issued by the Bar Council of India from time to time."

11. For considering the issue articulated in paragraph 9 hereinabove, the efficacy of Rule 49 may be of some import and that rule alone has been pressed into service by the petitioner and interventionists. For, Rule 47 deals with a situation where the advocate is engaged in business, Rule 48 is attracted when the advocate is a Director or Chairman of the company, Rule 50 becomes applicable when the advocate inherits family business, Rule 51 becomes applicable when the advocate is engaged in other specified activities, Rule 52 is applicable when an advocate accepts part time employment. None of this is applicable to an elected people's representative. The closest provision is Rule 49, namely, when an advocate becomes a full-time salaried

employee of any person, government, firm, corporation or concern.

12. Rule 49 came up for consideration before a three-Judge Bench of this Court in ***Satish Kumar Sharma*** (supra). In that case, the appellant after obtaining L.L.B. degree came to be appointed as Assistant (Legal) in H.P. State Electricity Board, which post was later redesignated as "Law Officer Grade II". Further, the Board permitted the appellant to act as an advocate on its behalf. The appellant was also enrolled by the Bar Council as an advocate and was issued a certificate in that behalf, in furtherance of which he represented the Board when necessary. The appellant after some time was posted as "Under-Secretary (Legal)-cum-Law Officer" on promotion whereupon the Bar Council moved into action for cancellation of his enrollment. In Paragraph 10 of the said decision, while considering the challenge, observed thus:

> "10**.** The profession of law is called a noble profession. It does not remain noble merely by calling it as such, unless there is a continued, corresponding and expected performance of a noble

> profession. Its nobility has to be preserved, protected and promoted. An institution cannot survive on its name or on its past glory alone. The glory and greatness of an institution depends on its continued and meaningful performance with grace and dignity. The profession of law being noble and an honourable one, it has to continue its meaningful, useful and purposeful performance inspired by and keeping in view the high and rich traditions consistent with its grace, dignity, utility and prestige. Hence the provisions of the Act and the Rules made thereunder inter alia aimed to achieve the same ought to be given effect to in their true letter and spirit to maintain clean and efficient Bar in the country to serve the cause of justice which again is a noble one."

In paragraphs 19 to 21, the Court went on to examine the facts of the case under consideration and concluded thus:

> "19**.** It is an admitted position that no rules were framed by the respondent entitling a Law Officer appointed as a full-time salaried employee coming within the meaning of para 3 of Rule 49 to enrol as an advocate. Such an enrolment has to come from the rules made under Section 28(2)(*d*) read with Section 24(1)(*e*) of the Act. Hence it necessarily follows that if there is no rule in this regard, there is no entitlement. In the absence of express or positive rule, the appellant could not fit in the exception and the bar contained in the first paragraph of Rule 49, was clearly attracted as rightly held by the High Court. .....
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> In short and substance we find that the appellant was/is a full-time salaried employee and his work was not mainly or exclusively to act or plead in court. Further, there may be various challenges in courts of law assailing or relating to the decisions/actions taken by the appellant himself such as challenge to issue of statutory regulation, notification or order; construction of statutory regulation, statutory orders and notifications, the

institution/withdrawal of any prosecution or other legal/quasi-legal proceedings etc. In a given situation the appellant may be amenable to disciplinary jurisdiction of his employer and/or to the disciplinary jurisdiction of the Bar Council. There could be conflict of duties and interests. In such an event, the appellant would be in an embarrassing position to plead and conduct a case in a court of law. Moreover, mere occasional appearances in some courts on behalf of the Board even if they be, in our opinion, could not bring the appellant within the meaning of "Law Officer" in terms of para 3 of Rule 49. The decision in *Sushma Suri* v. *Govt. of National Capital Territory of Delhi* in our view, does not advance the case of the appellant. That was a case where meaning of expression "from the Bar" in relation to appointment as District Judge requiring not less than seven years' standing as an advocate or a pleader came up for consideration. The word "advocate" in Article 233(2) was held to include a Law Officer of the Central or State Government, public corporation or a body corporate *who is enrolled as an advocate under exception to Rule 49 of Bar Council of India Rules and is practising before courts for his employee*. Para 10 of the said judgment reads: (SCC pp. 336-37)

> "*10*. **Under Rule 49 of the Bar Council of India Rules, an advocate shall not be a full-time employee of any person, Government, firm, corporation or concern and on taking up such employment, shall intimate such fact to the Bar Council concerned and shall cease to practise as long as he is in such employment. However, an exception is made in such cases of Law Officers of the Government and corporate bodies despite his being a full-time salaried employee if such Law Officer is required to act or plead in court on behalf of others. It is**

> **only to those who fall into other categories of employment that the bar under Rule 49 would apply.** An advocate employed by the Government or a body corporate as its Law Officer even on terms of payment of salary would not cease to be an advocate in terms of Rule 49 if the condition is that such advocate is required to act or plead in courts on behalf of the employer. **The test, therefore, is not whether such person is engaged on terms of salary or by payment of remuneration, but whether he is engaged to act or plead on its behalf in a court of law as an advocate. In that event the terms of engagement will not matter at all.** What is of essence is as to what such Law Officer engaged by the Government does — whether he acts or pleads in court on behalf of his employer or otherwise? *If he is not acting or pleading on behalf of his employer, then he ceases to be an advocate. If the terms of engagement are such that he does not have to act or plead, but does other kinds of work, then he becomes a mere employee of the Government or the body corporate. Therefore, the Bar Council of India has understood the expression 'advocate' as one who is actually practising before courts which expression would include even those who are Law Officers appointed as such by the Government or body corporate.*"

20. **As stated in the above para the test indicated is whether a person is engaged to act or plead in a court of law as an advocate and not whether such**

> **person is engaged on terms of salary or payment by remuneration. The essence is as to what such Law Officer engaged by the Government does.**
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> 21. In the present case, on facts narrated above, relating to his employment as well as in the absence of rule made by the respondent entitling a Law Officer to enrol as an advocate despite being a full-time salaried employee, the appellant was not entitled to enrolment as an advocate. Hence, the appellant cannot take benefit of the aforementioned judgment."
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> (emphasis supplied)

13. This Court had also referred to a previous three-Judge Bench judgment in ***Dr. Haniraj L. Chulani*** (supra), wherein Rule 1(1) framed by the State Bar Council of Maharashtra and Goa restricting a person qualified to be enrolled as an advocate from so being enrolled when he was already pursuing another full-time profession i.e. medical profession came up for consideration. The validity of the said provision was challenged on the ground that it suffered from the vice of excessive delegation of legislative power and was also violative of Article 19 (1) (g) of the Constitution of India and not falling under the exemption granted by sub Article (6) thereof. The validity of the said Rule was assailed also on the ground of being violative of Articles 14 and 21 of the

Constitution. While considering the said challenge, the Court took note of the fact that the State Bar Councils are competent to lay down, by virtue of the Rules, conditions or restrictions which would be germane to the high and exacting standards of advocacy expected of new entrants into the fold of the profession. Implicit in the conferment of such rule-making power are the guidelines laid down by the legislature itself that the conditions must be commensurate with the fructification of the very purpose of the act of putting the profession of advocates on a sound footing so that a new entrant can well justify his/her role in being admitted to the fold of the noble profession to which he/she seeks admission. In paragraph 20, the Court considered the question of whether a person carrying on another profession can validly be denied enrollment as an advocate by the State Bar Council. While considering that question, the Court observed thus:

> "20. ..... In our view looking to the nature of the legal profession to which we have made detailed reference earlier the State Bar Council would be justified in framing such a rule prohibiting the entry of a professional who insists on carrying on other

profession simultaneously with the legal profession. **As we have seen earlier legal profession requires full-time attention and would not countenance an advocate riding two horses or more at a time. He has to be a full-time advocate or not at all**.....

It is obvious that even though medical profession also may be a dignified profession a person cannot insist that he will be a practising doctor as well as a practising advocate simultaneously. Such an insistence on his part itself would create an awkward situation not only for him but for his own clients as well as patients. It is easy to visualise that a practising surgeon like the appellant may be required to attend emergency operation even beyond court hours either in the morning or in the evening. **On the other hand the dictates of his legal profession may require him to study the cases for being argued the next day in the court. Under these circumstances his attention would be divided**. He would naturally be in a dilemma as to whether to attend to his patient on the operation table in the evening or to attend to his legal profession and work for preparing cases for the next day and to take instructions from his clients for efficient conduct of the cases next day in the court. If he is an original side advocate he may be required to spend his evenings and even late nights for making witnesses ready for examination in the court next day. Under these circumstances as a practising advocate if he gives attention to his clients in his chamber after court hours and if he is also required to attend an emergency operation at that very time, it would be very difficult for him to choose whether to leave his clients and go to attend his patient in the operation theatre or to refuse to attend to his patients. If he selects the first alternative his clients would clamour, his preparation as advocate would suffer and naturally it would reflect upon his performance in the court next day. If on the other hand he chooses to cater to the needs of his clients and his legal work, his patients may suffer and may in given contingency even stand to lose their lives without the aid of his expert hand as a surgeon. **Thus he would be torn between two conflicting loyalties, loyalty to his clients on the one hand**

and loyalty to his patients on the other. In a way he will instead of having the best of both the worlds, have the worst of both the worlds. Such a person aspiring to have simultaneous enrolment both as a lawyer and as a medical practitioner will thus be like 'trishanku' of yore who will neither be in heaven nor on earth. **It is axiomatic that an advocate has to burn the midnight oil for preparing his cases for being argued in the court next day. Advocates face examination every day when they appear in courts. It is not as if that after court hours an advocate has not to put in hard work on his study table in his chamber with or without the presence of his clients who may be available for consultation. To put forward his best performance as an advocate he is required to give whole-hearted and full-time attention to his profession. Any flinching from such unstinted attention to his legal profession would certainly have an impact on his professional ability and expertise.** If he is permitted to simultaneously practise as a doctor then the requirement of his full-time attention to the legal profession is bound to be adversely affected. Consequently however equally dignified may be the profession of a doctor he cannot simultaneously be permitted to practise law which is a full-time occupation. **It is for ensuring the full-time attention of legal practitioners towards their profession and with a view to bringing out their best so that they can fulfil their role as an officer of the court and can give their best in the administration of justice, that the impugned rule has been enacted by the State Legislature.** It, therefore, cannot be said that it is in any way arbitrary or that it imposes an unreasonable restriction on the new entrant to the profession who is told not to practise simultaneously any other profession and if he does so to deny to him entry to the legal profession. It is true as submitted by the learned Senior Counsel for the appellant that the rule of Central Bar Council does not countenance an advocate simultaneously carrying on any business and it does not expressly frown upon any simultaneous profession. But these are general rules of professional conduct. **So far as regulating**

> **enrolment to the profession is concerned it is the task entrusted solely to the State Bar Councils by the legislature as seen earlier while considering the scheme of the Act. While carrying on that task if the entry to the profession is restricted by the State Bar Council by enacting the impugned rule for not allowing any other professional to enter the Bar when he does not want to give up the other profession but wants to carry on the same simultaneously with legal practice, it cannot be said that the Bar Council has by enacting such a rule imposed any unreasonable restriction on the fundamental right of the prospective practitioner who wants to enter the legal profession**."
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> (emphasis supplied)

Having said thus, in paragraph 21 the Court observed as follows:

> "21.....In our view the impugned rule does not impose any unreasonable restriction on the right of the professional carrying on any other avocation and insisting on continuing to carry on such profession, while it prohibits entry of such a person to the legal profession. If the contention of the learned Senior Counsel for the appellant is countenanced and any person professing any other profession is permitted to join the legal profession having obtained the Degree of Law and having fulfilled the other requirements of Section 24, then even chartered accountants, engineers and architects would also legitimately say that during court hours they will practise law and they will simultaneously carry on their other profession beyond court hours. If such simultaneous practices of professionals who want to carry on more than one profession at a time are permitted, the unflinching devotion expected by the legal profession from its members is bound to be adversely affected. If the peers being chosen representatives of the legal profession constituting

> the State Bar Council, in their wisdom, had thought it fit not to permit such entries of dual practitioners to the legal profession it cannot be said that they have done anything unreasonable or have framed an arbitrary or unreasonable rule."

14. The elucidation by the three-Judge Bench of this Court referred to above is irrefutable. The question, however, is whether the restriction imposed by the Bar Council of India under the Rules as framed, encompasses the elected people's representatives or legislators. As aforesaid, the closest rule framed by the Bar Council of India is Rule 49. However, Rule 49 applies where an advocate is a full-time salaried employee of any person, government, firm, corporation or concern. Indubitably, legislators cannot be styled or characterized as full-time salaried employees as such, much less of the specified entities. For, there is no relationship of employer and employee. The status of legislators (MPs/MLAs/MLCs) is of a member of the House (Parliament/State Assembly). The mere fact that they draw salary under the 1954 Act or different allowances under the relevant Rules framed under the said Act does not result in creation of a relationship of employer and employee between

the Government and the legislators, despite the description of payment received by them in the name of salary. Indeed, the legislators are deemed to be public servants, but their status is *sui generis* and certainly not one of a full-time salaried employee of any person, government, firm, corporation or concern as such. Even the expansive definition of term "person" in the General Clauses Act will be of no avail. The term "Employment" may be an expansive expression but considering the Constitutional scheme, the legislators being elected people's representatives occupy a seat in the Parliament/Legislative Assembly or Council as its members but are not in the employment of or for that matter full-time salaried employees as such. They occupy a special position so long as the House is not dissolved. The fact that disciplinary or privilege action can be initiated against them by the Speaker of the House does not mean that they can be treated as full-time salaried employees. Similarly, the participation of the legislators in the House for the conduct of its business, by no standards can be considered as service rendered to an employer. One ceases to be a legislator, only

when the House is dissolved or if he/she resigns or vacates the seat upon incurring disqualification to continue to be a legislator. By no standards, therefore, Rule 49 as a whole can be invoked and applied to the legislators. Resultantly, it is not necessary to dilate on the question as to whether the nature of duty of the legislators is such that it entails into a full-time engagement and that the person concerned will not be in a position to pay full attention towards the legal profession. That is a matter for the Bar Council to consider.

15. There is no other express provision in the Act of 1961 or the Rules framed thereunder to even remotely suggest that any restriction has been imposed on the elected people's representatives, namely, MPs/MLAs/MLCs to continue to practise as advocates. In absence of an express restriction in that behalf, it is not open for this Court to debar the elected people's representatives from practising during the period when they are MPs/MLAs/MLCs. It is also not possible to strike down Rule 49 on the ground that the stated class of persons is excluded from its sweep, not being a case of

discrimination between equals or unequals being treated equally. As expounded in the case of ***Dr. Haniraj L. Chulani*** (supra), it is for the Bar Council of India to frame Rules to impose restrictions as may be found appropriate. As of today, no rule has been framed to restrict the elected people's representatives from practising as advocates. On the other hand, an unambiguous stand is taken by the Bar Council that being legislators *per se* is not a disqualification to practice law.

16. Our attention was invited to the judgment of the Constitution Bench in ***M. Karunanidhi*** (supra). In that case, the Court was called upon to examine the purport of Section 21(12) of the Indian Penal Code wherein the expression "public servant" has been defined to denote a person falling under any of the descriptions specified therein. Clause (12) of Section 21 postulates that every person in the service or "pay of the Government" or remunerated by fees or commission for the performance of any public duty by the Government. The question before the

Constitution Bench was whether the Chief Minister or a Minister is deemed to be a public servant in any sense of the term. The Court noted that even though the Chief Minister may not *stricto sensu* be in the service of the Government which undoubtedly signifies the relationship of master and servant where the employer employs employee on the basis of salary or remuneration; but then the Court went on to observe that so far as the second limb of Section 21(12) of IPC is concerned it predicates "in the pay of the Government". That was of much wider amplitude so as to include within its ambit even public servant who may not be a regular employee receiving salary from his master. The Court then proceeded to consider the constitutional scheme whereunder the Chief Minister is "appointed" by the Governor and the duties to be performed by him in that capacity are defined. As the Court arrived at the conclusion that the Governor "appoints" the Chief Minister and is also paid a salary according to the statute made by the Legislature, from the Government funds it went on to conclude that the Chief Minister becomes a person "in the

pay of the Government" so as to fall squarely within clause (12) of Section 21 of IPC.

17. In the present case, however, we are dealing with the expression "a full-time salaried employee" of specified entities as is explicated in Rule 49 and more so with the issue of debarring an advocate from practicing law whilst he/she is a legislator during the relevant period. As regards the legislators (MP/MLA/MLC) they occupy a unique position. They are not appointed but are elected by the electors from respective territorial constituencies. The fact that they have to take oath administered by the President/Governor before they take their seat in the House, does not mean that they are appointed by the President/Governor as such unlike in the case of the Prime Minister/Chief Minister and Ministers in the Council of Ministers. Article 99 postulates that every member of either House of Parliament, before taking the seat shall make and subscribe before the President, or some person appointed in that behalf by him, an oath and affirmation according to the

form set out for the purpose in the Third Schedule. The form of oath does not suggest that the member is appointed by the President as such. Further, the legislators vacate his/her seat only in situations specified in Article 101 of the Constitution. Article 102 of the Constitution provides for disqualification for being chosen and for being a member of either House of Parliament. As regards the legislators, Article 105 provides for their powers and privileges. In the case of Prime Minister and the Ministers, the Constitution of India expressly provides for their duties as predicated in Article 78. Suffice it to observe that the exposition in the case of ***M. Karunanidhi*** (supra), will be of no avail while considering the purport of Rule 49, which is attracted when the advocate is a full-time salaried employee of any person, firm, government, corporation or concern. The fact that the legislators draw salary and allowances from the consolidated fund in terms of Article 106 of the Constitution and the law made by the Parliament in that regard, it does not follow that a relationship of a full-time salaried employee(s) of the Government or otherwise is created. The legislators receive

payment in the form of salary, and allowances or pension from the consolidated fund is not enough to debar them from practising as advocates, *sans* being a full-time salaried employee of the specified entities. They continue to remain only as member(s) of the House representing the territorial constituencies from where they have been elected until the House is dissolved or if he/she resigns including vacates the seat for having incurred disqualification as may be prescribed by law.

18. The argument then proceeds on the principle of constitutional morality, affirmative equality and institutional integrity. During arguments, emphasis was placed on the dictum of this Court in ***Manoj Narula Vs. Union of India***[7]***,*** ***Government of NCT of Delhi Vs. Union of India and Ors***[8] and ***Krishnamoorthy Vs. Shivakumar & Ors.***[9] This argument, in effect, is to assert that the legislators who are practising as advocates are *per se* guilty of professional

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[7] (2014) 9 SCC 1
[8] Judgment delivered on 4th July, 2018 in Civil Appeal No.2357 of 2017; (2018) 8 SCALE 72
[9] (2015) 3 SCC 467

misconduct including conflict of interest. This is a sweeping comment. For, whether it is a case of conflict of interest or professional misconduct would depend on the facts of each case. That fact will have to be pleaded and proved before the Competent Authority. There can be no presumption in that regard, merely on account of the status of being a legislator. The standards of professional conduct and etiquette have been delineated in the Rules framed by the Bar Council Chapter II in Part VI dealing with the rules governing Advocates, framed under Section 49(1)(c) of the Act read with the proviso thereto. The relevant portion thereof reads thus:-

> "CHAPTER II
>
> **STANDARDS OF PROFESSIONAL CONDUCT AND ETIQUETTE**
>
> [Rules under Section 49(1)(c) of the Act read with the Proviso thereto]
>
> **Preamble**
>
> An Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an Advocate. Without prejudice to the generality of the

foregoing obligation, an Advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned.

SECTION I - DUTY TO THE COURT

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SECTION II - DUTY TO THE CLIENT

11. An Advocate is bound to accept any brief in the Courts or Tribunals or before any other authority in or before which he professes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

12. An Advocate shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

13. An Advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an Advocate if he can retire without jeopardising his client's interests.

14. An Advocate shall at the commencement of his engagement and during the continuance thereof make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement.

15. It shall be the duty of an Advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

16. An Advocate appearing for the prosecution in a criminal trial shall so conduct the prosecution that it does not lead to conviction of the innocent. The suppression of material capable of establishing the innocence of the accused shall be scrupulously avoided.

17. An Advocate shall not directly or indirectly, commit a breach of the obligations imposed by Sec. 126 of the Indian Evidence Act.

18. An Advocate shall not at any time, be a party to fomenting of litigation.

19. An Advocate shall not act on the instructions of any person other than his client or his authorised agent.

20. An Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceed thereof.

21. An Advocate shall not buy or traffic in or stipulate for or agree to receive any share or interest in any actionable claim. Nothing in this Rule shall apply to stock, shares and debentures or Government securities, or to any instruments, which are, for the time being, by law or custom negotiable, or to any mercantile document of title to goods.

22. An Advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way

professionally engaged. This prohibition, however, does not prevent an Advocate from bidding for or purchasing for his client any property, which his client may, himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.

22A. An advocate shall not directly or indirectly bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his own name or in any other name for his own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he is in any way professionally engaged.

23. An Advocate shall not adjust fee payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an Advocate.

24. An Advocate shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

25. An Advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on account of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceedings, no Advocate shall, except with the consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client the fact of such receipt must be intimated to the client as early as possible.

28. After the termination of the proceeding the Advocate shall be at liberty to appropriate towards the settled fee due to him any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the Advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the proceeding for which he had been engaged, the fee payable under the rules of the Court, in force for the time being, of by then settled and the balance, if any, shall be refunded to the client.

30. A copy of the client's account shall be furnished to him on demand provided the necessary copying charge is paid.

31. An Advocate shall not enter into arrangements whereby funds in his hands are converted into loans.

32. An Advocate shall not lend money to his client for the purpose of any action or legal proceedings in which he is engaged by such client.

Explanation:- An Advocate shall not be held guilty for a breach of this rule, if in the course a pending suit or proceeding, and without any arrangement with the client in respect of the same, the Advocate feels compelled by reason of the rule of the Court to make a payment to the Court on account of the client for the progress of the suit of proceeding.

33. An Advocate who has, at any time, advised in connection with the institution of a suit, appeal or other matter or has drawn pleadings, or acted for a party shall not act, appear or plead for the opposite party.

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Resultantly, the case of professional misconduct will have to be pleaded and proved on case to case basis.

19. Thus, merely because the advocate concerned is an elected people's representative, it does not follow that he/she has indulged in professional misconduct. Similarly, the conferment of power on the legislators (MPs) to move an impeachment motion against the judge(s) of the Constitutional Courts does not *per se* result in conflict of interest or a case of impacting constitutional morality or for that matter institutional integrity. In the context of the relief claimed in the main petition, we do not wish to dilate on the other arguments that India needs dedicated and full-time legislators, who will sincerely attend Parliament on all working days when called upon to do so. For, the limited question considered by us is whether legislators are and can be prohibited from practising as advocates during the relevant period. That can be answered on the basis of the extant statutory provisions governing the conduct of advocates. As observed in ***Kalpana Mehta Vs. Union of***

India*[10]*, the Court cannot usurp the functions assigned to the legislature. In other words, *sans* any express restriction imposed by the Bar Council of India regarding the legislators to appear as an advocate, the relief as claimed by the petitioner cannot be countenanced.

20. To sum up, we hold that the provisions of the Act of 1961 and the Rules framed thereunder, do not place any restrictions on the legislators to practise as advocates during the relevant period. The closest rule framed by the Bar Council of India is Rule 49 which, however, has no application to the elected people's representatives as they do not fall in the category of full-time salaried employee of any person, firm, government, corporation or concern. As there is no express provision to prohibit or restrict the legislators from practising as advocates during the relevant period, the question of granting relief, as prayed, to debar them from practising as advocates cannot be countenanced. Even the alternative relief to declare Rule 49 as unconstitutional, does

[10] (2018) 7 SCC 1

not commend to us. As of now, the Bar Council of India has made its stand explicitly clear that no such prohibition can be placed on the legislators. As a result, the reliefs claimed in this writ petition are devoid of merit.

21. Accordingly, this writ petition is dismissed with no order as to costs and as a consequence thereof, the interlocutory applications are also disposed of.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Dr. D.Y. Chandrachud)

New Delhi;
September 25, 2018.