

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

APPELLATE JURISDICTION

Competition Appeal (AT) No.09/2021

[Filed under Section 53-B of the Competition Act, 2002 arising out of the order dated 20.01.2021 passed by the Competition Commission of India in Case No.50 of 2020]

In the matter of :

**Thupili Raveendra Babu
S/o Thupili Venkata Subbaiah
R/o Flat No. 310, Greenwood Apartments,
House No. 10-12, Ballemvari Street,
Prasadampadu, Ramavarappadu Post,
Vijayawada (Rural Mandal), Krishna District,
Andhra Pradesh – 5221108.**

....Appellant

Vs.

- 1.The Competition Commission of India
Office : 9th Floor, Office Block-I,
Kidwai Nagar (East),
New Delhi – 110023.**
- 2. Bar Council of India
Office : 211, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110002.**
- 3. Mr. Manan Kumaar Mishra, Chairman
Office : 211, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110002.**
- 4. Mr. Satish Abarao Deshmukh, Vice Chairman, BCI
Office : 211, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110002.**
- 5. Mr. Srimanto Sen, Secretary, BCI
Office : 211, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110002.**
- 6. Mr. Debi Prasad Dhal,
Chairman, Foreign And Legal Education Affairs, BCI
Office : 211, Rouse Avenue Institutional Area,
Near Bal Bhawan,
New Delhi – 110002.**

....Respondents

Present:

For Appellant: Mr. Apurva Sharma, Advocate.

For Respondents: None.

J U D G E M E N T
(Virtual Mode)

M. Venugopal (J)

PREAMBLE

The Appellant/ Informant has preferred the instant Appeal before this Tribunal as an 'Affected' person being dissatisfied with the order dated 20.01.2021 passed by the First Respondent/ Competition Commission of India (CCI) in Case No.50 of 2020 in directing the information filed be closed forthwith against the Opposite Parties and not granting any reliefs.

2. The First Respondent/ Competition Commission of India (CCI) while passing the impugned order dated 20.01.2021 in Case No.50 of 2020 (filed by the Appellant/ Informant under Section 4 of the Competition Act, 2002 at paragraph 4 to 6, 10 to 14 had observed the following:

4. *"The informant states that he learnt about Clause 28 of Schedule III, Rule 11 to Part IV – Rules of Legal Education, 2008, a part of Bar Council of India Rules enacted under the Advocates Act, 1961 (hereinafter, 'Clause 28'), according to which the candidates belongings to General category who have attained the age of more than 30 years, are barred from pursuing legal education. The BCI has allegedly imposed maximum age restriction upon the new entrants to enter into the legal education and thus, created*

indirect barriers to the new entrants in the profession of legal service. The impugned Clause 28 has been incorporated by the BCI in contravention of Section 4 of the Act by 'misusing its dominant position'. By having done so, the BCI has also allegedly indulged in colourable exercise of power.

5. *The Informant has further alleged that the members of the BCI, by way of aforementioned Clause 28, conspired to reduce the competition to its electors and created indirect barriers in the profession of legal service. He has also alleged that the members of the BCI who are managing the affairs of the BCI are misusing the dominant position enjoyed by the BCI in controlling the legal education in India.*
6. *Based on the above, the Informant has prayed before the Commission to declare the impugned Clause 28 as illegal and void ab initio and impose maximum penalty on the BCI for the violation of Section 4 of the Act and indulging in colourable exercise of power.*
10. *The Commission notes that the Informant has alleged contravention of the provisions of Section 4 of the Act, primarily, against the BCI. However, in order to appreciate the facts in the matter, it is imperative to examine the status of the BCI as an enterprise within the contours of the provisions of Section 2(h) of the Act before proceeding further with regard to the allegations raised in the information.*

11. *Thus, the primary question which falls for consideration is that whether BIC is an 'enterprise' within the meaning of Section 2(h) of the Act. The term 'enterprise' has been defined under Section 2(h) of the Act, inter alia, as a person or a department of the Government, engaged in any activity relating to provisions of any kind of services.*
12. *In the present matter, the Commission notes that the BCI is a statutory body established under Section 4 of the Advocates Act, 1961. Section 7 of the said Act lays down the functions of the BCI which includes promotion of legal education in India and to lay down standards of such education in consultation with the Universities in India and the State Bar councils. Further, Section 49 of the Advocates Act, 1961 empowers the BCI to make rules for discharging its functions under the said Act such as prescribing qualifications and disqualifications for membership of a Bar Council, minimum qualification required for admission to a course of degree in law in any recognized university, prescribing the standards of legal education for the universities in India, etc. Thus, it is noted that the BCI appears to carry out functions which are regulatory in nature in respect of the legal profession.*
13. *It is noted that in Case No.39 of 2014, In re: Dilip Modwil and Insurance Regulatory and Development Authority (IRDA) (Now, IRDA is known as Insurance Regulatory and*

Development Authority of India (IRDA), decided on 12.09.2014, the Commission had the occasion to examine the status of IRDAI as an 'enterprise' under the Act. The Commission had observed that any entity can qualify within the definition of the term 'enterprise' if it is engaged in any activity which is relatable to the economic and commercial activities specified therein. It was further observed that regulatory functions discharged by a body are not per se amenable to the jurisdiction of the Commission.

14. *In the present matter, when the BCI appears to be discharging its regulatory functions, it cannot be said to be an 'enterprise' within the meaning of Section 2(h) of the Act and consequently, the allegation made in relation to discharge of such functions which appears to be non-economic in nature, may not merit an examination within the provisions of Section 4 of the Act."*

and finally was of the opinion that there existed no *prima facie* case under the provisions of Section 4 of the Act and directed the information filed to be closed forthwith against the Opposite Parties under Section 26(2) of the Act and rejected the reliefs as prayed for under Section 33 of the Act and rejected the same

3. Challenging the impugned order dated 20.01.2021 passed by the First Respondent/ Competition Commission of India in Case No.50 of 2020 (filed by the Appellant/ Informant) before this Tribunal, the Learned Counsel for the Appellant/ Informant submits that the Appellant who took voluntary

retirement after putting 29 years of service in the Government of India, to pursue his dream course of LLB in the legal education had appeared for the three year LLB entrance exam of 'APLAWCET' in Andhra Pradesh on 01.10.2020 and scored the state first rank in that examination.

4. According to the Learned Counsel for the Appellant, the Appellant had also applied to his employer Department, i.e. CPWD during November 2020 for Voluntary Retirement to pursue LLB and that the 'Appellant' came to know that Clause 28 of Schedule 3 of Part IV-Rules of Legal Education, 2018 (hereinafter Clause 28), in and by which, the general candidates, who had crossed 30 years of age were barred to pursue legal education.

5. The Learned Counsel for the Appellant contends that it is the primary duty of the First Respondent/ Competition Commission of India, statutory Body created under Section 18 of the Competition Act, 2002 to eliminate practices having adverse effect on competition, promote and sustain competition, protect the Consumers interests and ensure freedom of trade carried on by other participants, in markets in India.

6. It is represented on behalf of the Appellant that as per Section 19(1) of the Competition Act, 2002, the First Respondent/ Competition Commission of India is entrusted with the power to enquire *suo moto* into any alleged contravention of the provisions contained in sub-section (1) of Section 3 or sub-section (1) of Section 4 of the Act. However, the First Respondent/Competition Commission of India instead of taking necessary action on the Second Respondent/ 'Bar Council of India' as per the Competition Act, 2002, had turned down the application of the Appellant

stating that the Second Respondent/ 'Bar Council of India' is 'not an enterprise' in terms of Section 2(h) of the Competition Act, on a narrow interpretation.

7. The stand of the Appellant is that the First Respondent/ Competition Commission of India instead of equating the Second Respondent/ 'Bar Council of India' with 'ICAI', 'BCCI', 'AICF', 'VFI' etc., carrying out similar activities of regulating the professionals their respective fields, in the impugned order at paragraph 13 had equated the Second Respondent/ 'Bar Council of India' with IRDAI.

8. The Learned Counsel for the Appellant submits that as per the Advocates Act, 1961 as well as from the conduct of the Second Respondent/ 'Bar Council of India', it is an elected body of the 'Advocates'. Therefore, it is a person as per sub-section 2(I)(v) of the Act as well as under sub-section 2(I)(x) of the Act.

9. The Learned Counsel for the Appellant points out that as per Section 5 of the Advocates Act, 1961, the 'Bar Council' is a 'Body Corporate'.

Evaluation

10. At the outset, this Tribunal points out that the Appellant/ Informant before the First Respondent/ Competition Commission of India in Form 1 at Serial number 8 to 11, 14 and 15 had averred as under:

8	"Introduction/brief of the facts giving rise to filing of the information	1.Thupli Raveendra Babu (aged 52 years), the informant presently working as an Executive Engineer in CPWD under the ministry of Urban Development, Govt. of India. Since my childhood, I was having a dream of pursuing legal education. Due to financial constraints of my parents, I could not pursue legal
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		education as I dreamt of. After twenty-nine years of service in the Govt. of India, I have decided to apply for VRS to pursue legal education. Then I appeared for the three-year L.L.B. entrance examination in Andhra Pradesh(APLAWCET) on 01.10.2020 and scored the state first rank.
		Then, I have also applied to the department for voluntary retirement to pursue LLB. Later, I came know about the Clause No. 28 of the Rules of Legal Education, 2008 of the bar council of India according to which, the general candidates who have crossed 30 years of age are barred to pursue legal education.
9.	Jurisdiction of CCI (applicant(s) should satisfy before filing application whether the issue taken up is covered under the provisions of the Competition Act, 2002).	This act of the Bar Council of India (misusing its dominant position) imposing maximum age restrictions to enter into the legal education and hence into the legal service is creating indirect entry barrier to the new entrants into the profession of legal service. This Clause No. 28 is in contravention to the section 4 of the Competition Act, 2002.
10	Details of alleged contravention of the provisions of the Competition Act, 2002 (In the case of contravention of Section 3 of the Competition Act, 2002, all documents, affidavits and evidence, as the case may be, in support of the alleged contravention may be furnished; and/or in the case of contravention of Section 4 of the Competition Act, 2002, information relating to relevant market and all documents, affidavits and evidence, as the case may be, in support of alleged contravention may be furnished)	The Clause No. 28 of the Rules of Legal Education 2008 of the Bar Council of India is in contravention of the Section 4 of the Competition Act, 2002. (The Rules of Legal Education, 2008 of the Bar Council of India are attached herewith as Annexure-III).
11.	Detailed facts of the case	The Bar Council of India which is an elected body of the advocates in India is also regulating the legal practice as well as the legal education in India. It is enjoying the dominant position in controlling the legal education as well as the legal practice in India. The Bar Council of India, misusing its dominant position in controlling the legal education in India (through Clause No. 28 of the Rules of Legal Education, 2008 is creating indirect entry barriers to the new entrants into the profession of legal service by imposing maximum age restrictions to enter into the legal education. These rules were first notified in March, 2009. This action of the Bar Council of India is in violation of the Section 4 of the Competition Act, 2002 of India. (The detailed facts and the locus standi of the applicant are submitted in the Annexure-II attached herewith).
14.	Any other related fact in connection with the filing of information	The Bar Council of India is an elected body of the advocates. The members of the Bar Council of India have conspired to reduce the competition to its electors by creating these indirect entry barriers into the profession of legal service. The Bar Council of India has indulged in the colourable exercise of power.
15.	Interim relief sought for under Section 33 of the Competition Act, 2002, if any	Interim relief sought to suspend immediately the Clause No. 28 of the Rules of Legal Education, 2008 of the Bar Council of India.

	(For this purpose the informant shall explain that	
	(i)What irreparable loss is caused / likely to be caused to the informant; and	If these rules are in force without any restraint, the applicant Thupli Raveendra Babu (aged 52 years) the state first rank holder in Andhra Pradesh for the three-year LLB entrance(APLAWCET) will be deprived of this lawful right and childhood dream of pursuing legal education in India. In addition to that it will also deprive thousands of other aspirants their dream of pursuing legal education in India. Hence, it is prayed to suspend immediately the Clause No. 28 of the Rules of Legal Education 2008 of the Bar Council of India.
	(ii) How balance of convenience lies in this favour.	The balance of convenience explicitly lies in favour of the applicant. It is established prima facie that the Bar Council of India has blatantly violated the section 4 of the Competition Act, 2002. In case of denial of interim injunction, irreparable non-compensable loss would be caused to the applicant as well as to thousands of other legally eligible aspirants of legal education in India."

11. The Learned Counsel for the Appellant to lend support to his contention that the Second Respondent/ 'Bar Council of India' is an 'enterprise' cites the following decisions of the CLAT and the First Respondent/ Competition Commission of India.

I(i) In the matter of ***Malwa Industrial & Marketing Feti-Chem Cooperative Society Ltd. vs. the Competition Commission of India and Others (Appeal Case No.25/2015 and I.A. No.43/2015)*** vide order dated 30.04.2015, the Competition Appellate Tribunal in regard to the definition of the term 'enterprise' at para 11 and 11. had observed the following:

11. *"The aforesaid definition is very wide and takes within its fold a person or a department of the Government engaged in any activity relating to the production, storage,*

supply, distribution, acquisition or control articles or goods or the provision of services of any kind or, investment, or in the business of acquiring, holding, under-writing or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or a more of its unit or divisions or subsidiary. The exclusion part of the definition relates to any activity of the Government relatable to its sovereign functions and activities carried on by the departments of the Central Government dealing with Atomic Energy, Currency, Defence and Space.”

- (ii) In the aforesaid case order dated 30.04.2015 at paragraph 13, it is observed as under:

“13. Though the Commission briefly analyzed the definition of the term ‘enterprise’, it failed to give due weightage to the words ‘relating to the production, storage, supply, distribution, acquisition or control of any articles or goods appearing in Section 2(h) and was swayed by the fact that the Registrar had issued the disputed circulars in exercise of its statutory powers. In my view, even though the Registrar, Cooperative Societies, Punjab had issued circulars in the purported exercise of his powers under the Punjab Cooperative Societies Act 1961 and the Rules and Regulations framed thereunder, the fact remains that the same were definitely relating to the goods which could be purchased by Primarily Agricultural Societies from Respondent No. 6

only. Therefore, the Registrar would fall within the ambit of term 'enterprise as defined in Section 2(h) for the purpose of the Act and will be amenable to the jurisdiction of the Commission."

- (iii) In the matter of **Rajat Verma vs. Haryana Public Works (B&R) Department and Others (vide Appeal No.45 of 2015 vide order dated 16.02.2016**, the Competition Appellate Tribunal at paragraph 14 and 23 had observed as under:

"14. As is evident from the preamble, the main object of the new legislation was to provide for the establishment of a Commission, which could prevent practices having adverse effect on competition, promote and sustain competition in markets, protect the interests of consumers and ensure freedom of trade carried on by other participants in the markets in India. The provisions of the Act show that the main function of the Commission to curb anti-competitive activities and abuse of dominant position in the markets and also to regulate merger/ amalgamation of enterprises. This is the reason why the legislation does not make any distinction between the public sector or private sector or government departments when it comes to their interface with the market.

23. ...we hold that the Public Works Department, Government of Haryana falls within the definition of the term 'enterprise'

under Section 2(h). The same will be the position qua Public Works Departments of the other States as also the Central Public Works Department.”

- (iv) In the matter of **Prem Prakash, Proprietor of Venus Testing and Research Laboratory vs. the Principal Secretary, Madhya Pradesh Public Works Department and Anr. (vide Appeal No.51 of 2015)** on 17.02.2016, the Competition Appellate Tribunal at paragraph 7 and 8 it is observed as under:

“7. In Rajat Verma Vs. Haryana Public Works (B&R) Department and others [Appeal No. 45 of 2015] decided on 16.02.2016, this Tribunal considered the question whether Haryana Public Works Department falls within the definition of the term ‘enterprise’ under Section 2(h) of the Act and answered the same in affirmative by recording a detailed order and set aside a somewhat similar order passed by the Commission refusing to order an investigation into the allegations of abuse of dominance made by the appellant in that case.
8. By relying upon the order passed in Rajat Verma’s case, which shall be read as part of this order, we hold that the view taken by the Commission on the maintainability of the information filed by the appellant is legally unsustainable and the impugned order is liable to set aside.”

- (v) In the matter of **Wing. Cdr. (Retd.) Dr. Biswanath Prasad Singh, General Secretary, Veterans Forum for Transparency**

in Public Life vs. Director General of Health Services (DGHS)

and Others (vide Appeal No.63/2014) the Competition Appellate Tribunal, New Delhi in its order dated 01.03.2016 had observed:

“.....In view of the Commission, the activities being performed by DGHS cannot be covered in the definition of enterprise because it is not directly engaged in any economic and commercial activities. Its role is limited to control and regulation of the healthcare system in the country....

We, therefore, find that the Commission has taken a simplistic view of the activities of a Government department and has erred in appreciation of the scope of the definition of enterprise.”

II(vi) In the matter of ***Arun Anandagiri vs. The Institute of Chartered Accountants of India (OP) (Case No.93/2013)*** vide the order dated 28.02.2014, the Competition Commission of India at paragraphs 3 and 5 had observed the following:

“3. OP”s primary function is to regulate the profession of Chartered Accountants (“CAs”) in India and for this the CA Act empowers OP to approve academic courses, conduct examination of candidates for enrolment, prescribe qualifications, prescription on levy of fees,...

5. The first question which falls for consideration before the Commission is that whether OP is an ‘enterprise’ within the

meaning of Section 2(h) of the Act, and if it is so, whether it is rendering 'service' of any description in terms of Section 2(u) of the Act. The term 'enterprise' has been defined in Section 2(h) of the Act inter alia as a person or a department of the Government, engaged in any activity relating to provision of services, of any kind. In the present case, it can be seen that though OP exercises a regulatory function under the CA Act, it also carries out other commercial/economic activities like conducting professional courses including the CPE programs and publication of books relating to profession of CAs apart from conducting the examinations for CAs. These economic activities of OP can be differentiated from the regulatory activity of regulating the CA profession in terms of prescribing educational qualification, maintenance of status and standard of professional qualifications of members of institute, etc. OP, due to its non-regulatory activities, shall fall within the definition of 'enterprise' under the Act. It cannot be said that organizing of CPE seminars is a 'sovereign function' which qualifies for an exemption under the definition of 'enterprise' under Section 2(h) of the Act."

- (vii) In the matter of **Sh. Surinder Singh Barmi vs. Board for Control of Cricket in India alias BCCI** (Opposite Party, Case No.61/2010), the Competition Commission of India vide its order

dated 08.02.2013 at paragraph 8.28, 8.29 and 8.30 had observed the following:

“8.28 The activities of BCCI centre both on ‘custodian and ‘organiser’ role, as already detailed. In this broad based objective, BCCI is involved in selection of Team India to represent India in international events, to work for development of cricket by arranging training camps etc. as well as organizing the game. These activities fall under the custodian function of BCCI, however, the aspect of ‘organization’ brings in activities contributing to the revenues of BCCI such as grant of media rights, sale of tickets etc. The activities of ‘organising events’ are definitely economic activities as there is revenue dimension to the organizational activities of BCCI. The Grand Chamber of ECJ on the case against ELPA had also observed on the question of whether sports constitute economic activity:

“.....It should be borne in mind in this regard that any activity consisting in offering goods or services on a given market is an economic activity (see, in particular, Case C-35/96 Commission v Italy [1998] ECR I-3851, paragraph 36, and Joined Cases C-180/98 to C-184/98 Pavlov and Others [2000] ECR I-6451, paragraph 75). Provided that that condition is satisfied, the fact that an activity has a connection with sport does not hinder the application of the rules of the Treaty

(Case 36/74 Walrave and Koch [1974] ECR 1405, paragraph 4, and Case C-415/93 Bosman [1995] ECR I-4921, paragraph 73) including those governing competition law (see, to that effect, Case C-519/04 P Meca-Medina and Majcen v Commission [2006] ECR I-6991, paragraphs 22 and 28)...”[Source C-49/07, REFERENCE *ibid.*)]

Thus, it is conclusive that all Sports Associations are to be regarded as an enterprise in so far as their entrepreneurial conduct is concerned and treated at par with other business establishments.

8.29 In India also in a recent decision, **Delhi High Court held All India Chess Federation** (which performs similar functions as BCCI for the game of Chess) to be an enterprise for the purpose of the Act.

(Source: Hemant Sharma & Others Vs Union of India, Delhi High Court, WP(C) 5770/2011, date of decision 04/11/2011).

8.30 In line with the provisions of the Act, international jurisprudence, and Delhi High Court decision in case of Chess Federation, it is concluded that BCCI is an enterprise for the purpose of the Act, and therefore, within the jurisdiction of the Commission.”

- (viii) In the matter of **Pan India Infraprojects Private Limited vs. Board of Control for Cricket in India (BCCI)** (Case No.91 of

2013), the Competition Commission of India on 01.06.2018 had observed the following:

“26. The Commission notes that BCCI is the de facto regulator of cricket in India on account of the pyramid structure of sports governance and endorsement from ICC as the national body for cricket in India.”

- (ix) In the matter of **Hemant Sharma and others vs. All India Chess Federation (vide case No.79 of 2011)**, the Competition Commission of India through an order dated 12.07.2018 had observed the following:

“21 From the facts of the present case, the Commission notes that AICF is a society registered under the Tamil Nadu Societies Registration Act, 1975 and is thus a ‘person’, as defined in Section 2(l) of the Act. AICF is recognised as NSF for the sport of chess by the Government of India. AICF is also the only organisation from India to be recognised by and affiliated to FIDE, which is the International body governing the sport of chess. In terms of its Constitution and Bye laws, AICF has inter-alia been established to organise national and international championships. Organisation of chess events/ tournaments is, inter-alia, a revenue generating activity and falls within the ambit of services covered under Section 2(h) of the Act. Thus, the very fact that AICF has a mandate to undertake the economic activity

of organizing chess events tournaments under its Constitution, makes it an enterprise as per the Act.”

- (x) In the matter of ***Shravan Yadav and Others Vs. Volleyball Federation of India (VFI)***, the Competition Commission of India through its order dated 07.08.2019 (vide Case No.01 of 2019) had observed the following:

“8. VFI is an enterprise within the meaning of Section 2(h) of the Act, as it has the mandate to undertake the economic activity of organising national and international volleyball events.”

12. The grievances of the Appellant/ Informant before the First Respondent/ Competition Commission of India in Case No.50/2020 are that (i) the Second Respondent/ ‘Bar Council of India’ (an elected body of Advocates) and its members had conspired to reduce the competition to its electors by creating indirect entry barriers into the profession of legal service; (ii) That the Second Respondent/ ‘Bar Council of India’ is misusing its dominant position in controlling the legal education in India through Clause 28 of the Rules of Legal Education, 2008 and as such, the action of the Second Respondent/ ‘Bar Council of India’ is in breach of Section 4 ‘Abuse of dominant position’ of the Competition Act, 2002.

13. In the aforesaid background, the Appellant before the First Respondent/ Competition Commission of India had sought the relief of declaration that Clause 28 of the Rules of Legal Education, 2008 of the Second

Respondent/ 'Bar Council of India' has an illegal and *void ab initio* one. Further, the Appellant prayed for imposition of maximum possible penalty on the Second Respondent/ 'Bar Council of India' for willful contravention of Section 4 of the Competition Act, 2002.

14. In the instant case, before this 'Tribunal' the seminal point that arises for ruminantion is whether the Second Respondent/ 'Bar Council of India' comes within the ambit of 'enterprise' as per Section 2(h) of the Competition Act, 2002.

15. In this connection, it is worthwhile for this Tribunal to advert to Section 2(h) of the Competition Act, 2002, which runs as under:

"2(h) "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central

Government dealing with atomic energy, currency, defence and space.

Explanation- For the purposes of this clause,—

(a) "activity" includes profession or occupation;”

16. As a matter of fact, Section 7(1) of the Advocates Act, 1961 relates to ‘Functions of Bar Council of India’ (Statutory Body) and the relevant runs as under:

“(e) to promote and support law reform;

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

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

(ia) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(l) to perform all other functions conferred on it by or under this Act; (m) to do all other things necessary for discharging the aforesaid functions.

17. That apart, Section 49 of the Advocates Act, 1961 under the caption ‘General power of the Bar Council of India to make rules’ confers power on

the Bar Council of India to make rules for discharging its functions under this Act, and, prescribed certain rules thereunder touching among other things the aspect of:

“(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;

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

(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:

18. Undoubtedly, the definition of ‘enterprise’ is very wide and the definition does not only cover those institutions connected with activities pertaining to goods but also covers activities relating to provisions of ‘services’ of any kind, which gives a very broad connotation to the range of activities that can be covered in the definition of the ‘services’.

19. In order that any entity to come within the meaning of ‘enterprise’ as per Section 2(h) of the Competition Act, 2002 that it is or has been engaged in any ‘activity’ of the nature defined therein. Moreover, the activities

mentioned in the Section 2(h) 'enterprise' of the Competition Act, 2002 have to be 'Economic' and commercial in character. Also that the words employed in preceding the words 'any activity' reflect not only regularity and continuing of activities made mention of in the Section.

20. In view of the above, it is crystalline clear that the Second Respondent/ 'Bar Council of India'/ Statutory Body has its primordial role to perform its duties and hence, this 'Tribunal' without any haziness holds that the Second Respondent/ 'Bar Council of India' is not an 'enterprise' having any economic and commercial activity.

21. It is relevantly pointed out that the 'Bar Council of India' is concerned with a standards of the legal profession and equipping those who seek entry into such profession with the relevant knowledge and skills as per decision of the Hon'ble Supreme Court in the 'Bar Council of India' Vs. 'Board of Management', Dayanand College of Law (reported in 2007) 2 SCC page 202. As such, the 'Bar Council of India' is the exclusive Rule making Authority to set standards of legal education.

22. In the light of the foregoing(s), taking into account of the averments made by the Appellant/ Informant in Format No.1 (for filing information) in Case No.50 of 2020 on the file of the First Respondent/ Competition Commission of India are not of any economic and commercial/business activity and further that keeping in mind yet another fact that the Second Respondent/ 'Bar Council of India'/ Statutory Body, which is to perform its role as a Regulatory one, cannot be said by any stretch of imagination that the ingredients of Section 4 of the Competition Act, 2002 'abuse of dominant position' are attracted in the present case, with a view to consider the same,

as opined by this Tribunal. To put it succinctly, the view taken by the First Respondent/ Competition Commission of India in the impugned order dated 20.01.2021 in Case No.50 of 2020 stating that there existed no *prima facie* case as per Section 4 of the Competition Commission Act, 2002, not granting any interim relief as per Section 33 of the Act and ultimately rejecting the case are free from any legal flaws. Consequently, the 'Appeal' is devoid of merits.

Result

23. In fine, the Competition Appeal (AT) No.09 of 2021 is dismissed. No costs.

**[Justice M. Venugopal]
Member(J)**

**[Mr. V.P. Singh]
Member (Technical)**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

8th November, 2021

Shashi/Ash