

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2014

[PETITION UNDER ARTICLE 32 READ WITH 14, 16, 19
AND 21 OF THE CONSTITUTION OF INDIA FOR
ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS]

IN THE MATTER OF:

Supreme Court Bar Association & Anr. ... Petitioners

VERSUS

The Supreme Court of India ... Respondent

WITH

[I.A. NO. OF 2014]

AN APPLICATION FOR EX-PARTE AD-INTERIM STAY

PAPER BOOKS

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ADVOCATE FOR THE PETITIONERS:
GP CAPT KARAN SINGH BHATI

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SYNOPSIS

This petition is to postpone the enforcement of The Supreme Court Rules, 2013 by Respondent, which is being made applicable with effect from 19th August, 2014. By means of these Rules, certain amendments have been inserted and substituted in the existing Supreme Court Rules, 1966, which are impinging the fundamental rights of the members of the petitioner association, to practice Law as an advocate before this Hon'ble Court, as well as litigants who approach the highest court in the country, *inter-alia* in view of rights guaranteed under Article 14, 19 (1) (g) and 32 of the Constitution of India, seriously jeopardizing the interests of equal Access to Justice and Rule of Law and also prejudicial and detrimental to the interests and Administration of Justice. It imposes unreasonable restrictions on the rights of the citizens to approach this Hon'ble court which is a fundamental right. No laws can be made or should be made by any legislature or any authority without proper consultation. Even parliament makes laws after due consultation with elected representatives and after giving opportunity to public at large and particularly affected parties.

The new Rules will substantially change the situation existing for several decades, since 1966, and will have wide ramifications for the administration of justice, in which members of the bar are equal stakeholders, as officers of the Court.

The draft rules ought to have been sent to the Bar to make their suggestions, comments and views, within reasonable time. After considering those views the draft rules ought to have been suitably revised, modified or changed and thereafter it could have sent to Hon'ble President of India for approval under Article 145 of the Constitution of India. However, copies of Supreme Court Rules-2013 were sent to the President and Hony. Secretary of SCBA only on 22nd July, 2014, after the notification dated 27th May, 2014 had been published. The bar was not consulted even on date from which the rule should be brought in force.

It is submitted that for the purpose of Article 145, when the rules are framed, the Supreme Court must include both Bar practicing in Supreme Court and the Supreme Court Bench, since large number of amendments made directly affect the members of the bar as well as litigants. It is also contrary to the normal comity between the

Bench and Bar. Order IV of these Rules, also recognizes the SCBA as elected representatives of the Bar.

Inherent in Article 145 is effective and meaningful consultation with the members of the Supreme Court Bar Association before sending the rules to Hon'ble President of India for his approval. The discussion & correspondence with the members of the Bar & the Hon'ble Supreme Court during last two decades as well as in the course of hearing certain matters does not & cannot be a substitute for the effective & meaningful consultation of the Bar. Bar should have been provided tentative views of bench in the form of draft rules.

Any legislation made by the Parliament or State Legislatures also gives an opportunity to citizens to convey their views on the bills either through their elected representatives or through media or direct communication. The Supreme Court Bar Association has always acted in the best interests of the Administration of Justice and litigants.

Large number of judgments delivered by this Hon'ble Court have highlighted the importance of following principles of natural justice and fair play. It is submitted that the natural justice includes giving an opportunity of

being heard to the persons affected. The views of the Hon'ble Judges are important, but equally important are the views of the members of the Bar. There are many situations which the members of the bar may be able to point out, which may be appreciated by the court, this happens on daily basis in court rooms. In fact, if on the judicial side, Judges cannot and do not take any decision, without assistance of the Bar, it is more important that while exercising the legislative powers, the Bar be consulted by the Hon'ble Supreme Court especially where it relates to Supreme Court Rules, implementation thereof is done to substantial extent by the members of the Bar practicing in Supreme Court.

When consulted, it will be possible for the members of the bar to give reasons to Hon'ble the Chief Justice of India and Hon'ble Judges of Supreme Court to review, modify or completely change certain provisions of the Rules. There has been no consultation, much less effective consultation.

It is submitted that due to lack of effective and meaningful consultation with the members of the Bar, serious errors have crept into the new rules, which will not only impinge and violate the fundamental rights of the members of the petitioner association and

litigants but will affect the administration of justice. For example, the following three provisions: (i) Explanation (b) and (c) of Order IV Rule 10, (ii) Third Schedule and (iii) Form at Serial No. 30 of Fourth Schedule ought not have been included without proper consultation with the bar. Some of the serious errors are enumerated herewith for the sake of convenience:

- a) The Supreme Court Rules-2013 has for the first time specified in Explanation (b) and (c) of Order IV Rule 10, certain acts as misconduct, which would be practically impossible for the members of the Bar to follow, even in exercise of their professional duties with all sincerity and diligence, exposing them to adverse and disciplinary action. any and every error or mistake or omission can't b treated as misconduct.
- b) The SCBA has a serious objection to substantial raising of Court fees as notified under Third Schedule to the rules, as it seriously jeopardizes the administration of justice, which the state is constitutionally mandated to ensure to its citizens. The levy of exorbitant court fees imposes financial burden on litigants and operates as a barrier for them approaching the judicial system for redressal

of their grievances. This is an established impediment to the exercise of the fundamental rights of access to justice. It adversely impacts the constitutional obligation for providing and ensuring a system for securing a just social order and promoting justice.

- c) There is grave anomaly in the note in Form No. 30 in Fourth Schedule of the rules with regard to Appearance slip, which permits the court master to record appearance in the record of proceedings of only one assisting counsel along with the arguing counsel, having grave adverse repercussions for the lawyers.
- d) The restriction imposed on junior Advocates with less than one year's practice, under Order IV Rule 1, is unfair. It also does not conform to the Advocates Act, 1961.
- e) Section 29 and 30 of the Advocates Act, 1961, which have been notified w.e.f. 15th June, 2011, should have been taken into account while incorporating any amendments in Order IV of the Supreme Court Rules.

It is submitted that the rules are notified to come into effect from 19.08.2014 and in the facts and circumstances of the instant case, it is just & proper that this Hon'ble Court be pleased to extend the time for coming into force of Supreme Court Rules-2013, until the Hon'ble Supreme Court has an opportunity to consider the comprehensive suggestions of the members of the Bar and the enforcement of the new rules may be postponed.

The Administration of Justice and equal Access to Justice is the basic structure of the Constitution. It is the duty of the State and its organs to build and promote the functioning of efficient and proper Administration of Justice and not to place unfair, unjust and unreasonable fetters on the litigants and lawyers, especially in the Highest Court which is the ultimate guardian for protecting the rights of citizens. This has been so understood, implemented and interpreted by this Hon'ble court since its inception. Therefore, due consultation is necessary.

The petitioners have no other effective and efficacious remedy for the protection of their precious fundamental rights, guaranteed under Part-III of the Constitution of

India, and therefore, the present Writ Petition is being preferred before this Hon'ble Court.

It is respectfully submitted that rules made by Hon'ble Supreme Court of India under Article 145 of the Constitution of India are amenable to the Writ Jurisdiction of this Hon'ble Court. In this connection Petitioners rely on Judgment of this Hon'ble Court in, *Prem Chand Garg v. Excise Commr.*, (1963 Supp (1) SCR 885: AIR 1963 SC 996, where this Hon'ble Court examined the validity of Rule 12 in Order XXXV, made by this Court in exercise of its powers under Article 145 of the Constitution, in a Writ Petition under Article 32. The impugned Rule, which was struck down by majority judgement of the Constitution Bench of this Hon'ble Court, provided that the Court may in the proceedings to which the said Order applies, impose such terms as to costs and as to the giving of security as it thinks fit, including petition under Article 32. In para 15 of the judgement, this Hon'ble Court specifically held that:

“After all, rules framed under Article 145 are in exercise of the delegated power of legislation, and the said power cannot be exercised so as to affect the fundamental rights. If the wide words used in Article 142 cannot justify an order of security in an

Article 32 petition, it follows that a rule made under Article 145 cannot authorise the making of such an order."

LIST OF DATES

The Supreme Court Bar Association is an association of lawyers annexed with the Supreme Court of India and is a body registered under Societies Registration Act 1860. The regular practitioners in the Supreme Court of India are the members of this Association and they are subject to all conditions of bye-laws of the Supreme Court Bar Association.

The aims and objects of the Supreme Court Bar Association are very wide it is not only for the interest of practicing Advocates in the Supreme Court but also interpreting various law enforced in this country. The main object of Supreme Court Bar Association and its members are to protect the interests of litigants who are knocking the doors of the Supreme Court for redressal of their grievances.

1950 In order to regulate the Practice and Procedure to be followed in Supreme Court of India, The Supreme Court Rules, 1950 were made for the first time by the Supreme Court in exercise of its powers under Article 145 of the Constitution of India.

15.01.1966 The Supreme Court Rules, 1966, were made and brought into force by the Supreme Court in exercise of its powers under Article 145 of the Constitution of India, replacing Supreme Court Rules, 1950.

22.07.2014 A note was received by the President and Hony. Secretary of SCBA from the Ld. Registrar Mr. Subhash Malik, along with a copy of the Supreme Court Rules-2013, stating as under:

“A copy of the notification regarding Supreme Court Rules, 2013, is enclosed herewith. These Rules shall come into force w.e.f. 19th August, 2014.”

24.07.2014 The Executive Committee of the Supreme Court Bar Association held an emergent meeting on 24th July, 2014, and unanimously passed the following resolution:

"1. The Executive Committee is saddened that Supreme Court Rules-2013 have been made without inviting any suggestions or even views whatsoever either from the members of the Supreme Court Bar Association or even with the 21 elected representatives of the Supreme Court bar Association. In fact, for the purpose of Article 145, when the rules are framed, the Supreme Court must include both Bar practicing in Supreme Court and the Supreme Court Bench since large number of amendments made directly affect the members of the bar as well as litigants. It is also contrary to the normal comity between the Bench and Bar. Order

IV of these Rules, also recognizes the SCBA as elected representatives of the Bar.

2. The new Rules will substantially change the situation existing for several decades and will have wide ramifications for the administration of justice, in which members of the bar are equal stakeholders, as officers of the Court.
3. Any legislation made by the Parliament or State Legislatures also gives an opportunity to citizens to convey their views on the bills either through their elected representatives or through media or direct communication. The Supreme Court Bar Association has always acted in the best interests of the Administration of Justice and litigants. It is very surprising that copies of Supreme Court Rules-2013 have been sent to the office bearers, the President and Hony. Secretary of

SC`BA on 22nd July, 2014, much after the notification dated 27th May, 2014 has been published.

4. The Supreme Court Bar Association unanimously resolves that a communication may be sent to Hon`ble the Chief Justice of India that the date for coming into force of these rules i.e. 19th August, 2014, may be postponed till the proper consultation is done with the members of the Supreme Court Bar Association.
5. Inherent in Article 145 is effective and appropriate consultation with the members of the Supreme Court Bar Association before sending the rules to Hon`ble President of India for his assent.
6. Large number of judgments delivered by the Supreme Court have highlighted the importance of following principles of natural

justice and fair play. It is submitted that the natural justice includes giving an opportunity of being heard to the persons affected. The views of the Hon'ble Judges are important, but equally important are the views of the members of the Bar. There are many situations which the members of the bar may be able to point out, which may be considered relevant by Hon'ble Judges. In fact, if on the judicial side, Judges cannot and do not take any decision, without assistance of the Bar, it is more important that while exercising the legislative powers, the Bar be consulted by the Hon'ble Supreme Court especially where it relates to Supreme Court Rules, implementation thereof is done to substantial extent by the members of the Bar practicing in Supreme Court. When consulted, it will be possible for the members of the bar to give reasons to Hon'ble the Chief

Justice of India and Hon'ble Judges of Supreme Court to review, modify or completely change certain provisions of the Rules.

7. The Executive Committee requests the President of the SCBA to send a letter to Hon'ble the Chief Justice of India conveying this resolution and to request Hon'ble the Chief Justice of India that Bar may be given an opportunity to discuss with Hon'ble Judges or Committee of Hon'ble Judges this entire issue.
8. The Executive Committee also resolves to circulate these rules to Hon'ble members and seek their views on the changes made in the rules and give them 10 days time to make their representations to the Executive Committee. Immediately after the expiry of two weeks, the Executive Committee will meet, discuss and deliberate on the suggestions received. The Members

of the Executive Committee are also requested to give their suggestions within 10 days i.e. upto 5th August, 2014."

25.07.2014 President of the Petitioner association wrote to Hon'ble the Chief Justice of India on 25.07.2014, conveying the resolution of the SCBA along with a request to provide an opportunity to the members of the Executive Committee of SCBA to interact with the Hon'ble Judges on this issue. It was also requested that in the meanwhile, the implementation of the Supreme Court Rules-2013 should be postponed.

05.08.2014 Hon'ble the Chief Justice of India invited the President, the Vice President and Hony. Secretary of Supreme Court Bar Association for a meeting on 5th August, 2014, to find out the views of the Supreme Court Bar Association on the Supreme Court Rules-2013, pursuant to which two circulars dated 06.08.2014

were published by SCBA for information of its members.

11.08.2014 &
12.08.2014

The Executive Committee of SCBA had two emergent meetings on 11th and 12th August 2014, wherein the comprehensive representation of SCBA was finalized, containing the grievances with reasons and suggestions on the New Supreme Court Rules-2013. It was also resolved to file the present Writ Petition before this Hon'ble Court.

13.08.2014

The Representation dated 13.08.2014 was sent to Hon'ble the Chief Justice of India. It may be pertinent to mention here that for the sake of convenience, the representation is divided in two parts, Part-I containing grievances and suggestions to the specific amended rules, which are being amended/altered for the first time in the 2013 Rules and Part-II on the specific rules which existed in the 1966 Rules but ought to be amended in the 2013 Rules. SCBA also

again reiterated its request that while our representation is being considered by the Rule making Committee of the Hon'ble Court, the implementation of the Supreme Court Rules-2013, may kindly postponed.

The rules are notified to come into effect from 19.08.2014 and in the facts and circumstances of the instant case, it is just & proper that this Hon'ble Court be pleased to extend the time for coming into force of Supreme Court Rules-2013, until the Hon'ble Supreme Court has an opportunity to consider the comprehensive suggestions of the members of the Bar.

13.08.2014 Hence the present Writ Petition before this Hon'ble Court.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2014

IN THE MATTER OF:

1. Supreme Court Bar Association,
Through its Hony. Secretary,
1, Tilak Marg, Supreme Court of India
New Delhi -110001
2. Hony. Secretary,
Supreme Court Bar Association,
Registered Body under Societies
Registration Act, 1860,
Having its office at 1, Tilak Marg,
Supreme Court Premises,
New Delhi -110001 ... Petitioners

VERSUS

The Supreme Court of India,
Through its Secretary General,
Supreme Court of India,
New Delhi -110001 ... Respondent

**PETITION UNDER ARTICLE 32 READ WITH 14,
16, 19 AND 21 OF THE CONSTITUTION OF INDIA
FOR ISSUANCE OF A WRIT IN THE NATURE OF
MANDAMUS**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHEWETH:

1. This petition is arising out of enforcement of new Rules by Respondent being made applicable with effect from 19th August, 2014. By means of this Rule certain amendments have been inserted and substituted which are impinging the fundamental rights of the members of the petitioner association, to practice Law as an advocate before this Hon'ble Court, as well as litigants who approach the highest court in the country, *inter-alia* in view of rights guaranteed under Article 14, 19 (1) (g) and 32 of the Constitution of India, seriously jeopardizing the interests of equal Access to Justice and Rule of Law and also prejudicial and detrimental to the interests and Administration of Justice.
2. The Supreme Court Bar Association is an association of lawyers annexed with the Supreme Court of India and is a body registered under Societies Registration Act 1860. The regular practitioners in the Supreme Court of India are the members of this Association and they are subject to all conditions of bye-laws of the Supreme Court Bar Association.
3. The aims and objects of the Supreme Court Bar Association are very wide it is not only for the

interest of practicing Advocates in the Supreme Court but also interpreting various law enforced in this country. The main object of Supreme Court Bar Association and its members are to protect the interests of litigants who are knocking the doors of the Supreme Court for redressal of their grievances.

4. That the Petitioners state that it has not filed any similar petition before this Hon'ble Court or any of the Court seeking similar relief, except the present Writ Petition.

5. That the Petitioners have no other effective and efficacious remedy for the protection of their precious fundamental rights, guaranteed under Part-III of the Constitution of India, and therefore, the present Writ Petition is being preferred before this Hon'ble Court.

6. **FACTS OF THE CASE ARE AS FOLLOWS:**

i). In order to regulate the Practice and Procedure to be followed in Supreme Court of India, The Supreme Court Rules, 1950 were made for the first time by the Supreme Court in exercise of its powers under Article 145 of the Constitution of India.

- ii). The Supreme Court Rules, 1966, were made and brought into force by the Supreme Court in exercise of its powers under Article 145 of the Constitution of India, replacing Supreme Court Rules, 1950.
- iii). A note dated 22.07.2014 was received by the President and Hony. Secretary of SCBA from the Ld. Registrar Mr. Subhash Malik, along with a copy of the Supreme Court Rules-2013, stating as under:

“A copy of the notification regarding Supreme Court Rules, 2013, is enclosed herewith. These Rules shall come into force w.e.f. 19th August, 2014.”

- iv). The Executive Committee of the Supreme Court Bar Association held an emergent meeting on 24th July, 2014, and unanimously passed the following resolution:

"1. The Executive Committee is saddened that Supreme Court Rules-2013 have been made without inviting any suggestions or even

views whatsoever either from the members of the Supreme Court Bar Association or even with the 21 elected representatives of the Supreme Court bar Association. In fact, for the purpose of Article 145, when the rules are framed, the Supreme Court must include both Bar practicing in Supreme Court and the Supreme Court Bench since large number of amendments made directly affect the members of the bar as well as litigants. It is also contrary to the normal comity between the Bench and Bar. Order IV of these Rules, also recognizes the SCBA as elected representatives of the Bar.

2. The new Rules will substantially change the situation existing for several decades and will have wide ramifications for the administration of justice, in which members of the

bar are equal stakeholders, as officers of the Court.

3. Any legislation made by the Parliament or State Legislatures also gives an opportunity to citizens to convey their views on the bills either through their elected representatives or through media or direct communication. The Supreme Court Bar Association has always acted in the best interests of the Administration of Justice and litigants. It is very surprising that copies of Supreme Court Rules-2013 have been sent to the office bearers, the President and Hony. Secretary of SCBA on 22nd July, 2014, much after the notification dated 27th May, 2014 has been published.

4. The Supreme Court Bar Association unanimously resolves that a communication may be sent to Hon'ble the Chief Justice of India that the date for coming into force of

these rules i.e. 19th August, 2014, may be postponed till the proper consultation is done with the members of the Supreme Court Bar Association.

5. Inherent in Article 145 is effective and appropriate consultation with the members of the Supreme Court Bar Association before sending the rules to Hon'ble President of India for his assent.

6. Large number of judgments delivered by the Supreme Court have highlighted the importance of following principles of natural justice and fair play. It is submitted that the natural justice includes giving an opportunity of being heard to the persons affected. The views of the Hon'ble Judges are important, but equally important are the views of the members of the Bar. There are many situations which the members of the bar may be able to

point out, which may be considered relevant by Hon'ble Judges. In fact, if on the judicial side, Judges cannot and do not take any decision, without assistance of the Bar, it is more important that while exercising the legislative powers, the Bar be consulted by the Hon'ble Supreme Court especially where it relates to Supreme Court Rules, implementation thereof is done to substantial extent by the members of the Bar practicing in Supreme Court. When consulted, it will be possible for the members of the bar to give reasons to Hon'ble the Chief Justice of India and Hon'ble Judges of Supreme Court to review, modify or completely change certain provisions of the Rules.

7. The Executive Committee requests the President of the SCBA to send a letter to Hon'ble the Chief Justice of India conveying this resolution and

to request Hon'ble the Chief Justice of India that Bar may be given an opportunity to discuss with Hon'ble Judges or Committee of Hon'ble Judges this entire issue.

8. The Executive Committee also resolves to circulate these rules to Hon'ble members and seek their views on the changes made in the rules and give them 10 days time to make their representations to the Executive Committee. Immediately after the expiry of two weeks, the Executive Committee will meet, discuss and deliberate on the suggestions received. The Members of the Executive Committee are also requested to give their suggestions within 10 days i.e. upto 5th August, 2014."

v). President of the Petitioner association wrote to Hon'ble the Chief Justice of India on 25.07.2014, conveying the resolution of the SCBA along with a request to provide an

opportunity to the members of the Executive Committee of SCBA to interact with the Hon'ble Judges on this issue. It was also requested that in the meanwhile, the implementation of the Supreme Court Rules-2013 should be postponed. True typed copy of the Letter dated 25.07.2014 written by the President, SCBA to Hon'ble Chief Justice of India alongwith true typed copy of the Note of the learned Registrar, Supreme Court of India dated 22.07.2014 and true typed copy of the Resolution dated 24.07.2014 issued by the SCBA are annexed herewith and marked as **ANNEXURE P-1 (COLLY)** [Pages

- vi). Hon'ble the Chief Justice of India invited the President, the Vice President and Hony. Secretary of Supreme Court Bar Association for a meeting on 5th August, 2014, to find out the views of the Supreme Court Bar Association on the Supreme Court Rules-2013, pursuant to which two circulars dated 06.08.2014 were published by SCBA for information of its members. True typed copy of the two Circulars both dated 06.08.2014

published by SCBA for information of its members are annexed herewith and marked as

ANNEXURE P-2 (COLLY) [Pages

- vii). The Executive Committee of SCBA had two emergent meetings on 11th and 12th August 2014, wherein the comprehensive representation of SCBA was finalized, containing the grievances with reasons and suggestions on the New Supreme Court Rules-2013. It was also resolved to file the present Writ Petition before this Hon'ble Court.
- viii). The Representation dated 13.08.2014 was sent to Hon'ble the Chief Justice of India. It may be pertinent to mention here that for the sake of convenience, the representation is divided in two parts, Part-I containing grievances and suggestions to the specific amended rules, which are being amended/altered for the first time in the 2013 Rules and Part-II on the specific rules which existed in the 1966 Rules but ought to be amended in the 2013 Rules. SCBA also again reiterated its request that while our representation is being considered by the Rule making Committee of the Hon'ble

Court, the implementation of the Supreme Court Rules-2013, may kindly postponed. True typed copy of the Representation dated 13.08.2014 submitted by the SCBA before the Hon'ble Chief Justice of India is annexed herewith and marked as **ANNEXURE P-3**
[Pages

ix). The rules are notified to come into effect from 19.08.2014 and in the facts and circumstances of the instant case, it is just & proper that this Hon'ble Court be pleased to extend the time for coming into force of Supreme Court Rules-2013, until the Hon'ble Supreme Court has an opportunity to consider the comprehensive suggestions of the members of the Bar.

x). Hence the present Writ Petition before this Hon'ble Court.

7. That the Writ Petition is filed before this Hon'ble Court on the following:

GROUND

A) It is respectfully submitted that this petition is to postpone the enforcement of The Supreme

Court Rules, 2013 by Respondent, which is being made applicable with effect from 19th August, 2014. By means of these Rules, certain amendments have been inserted and substituted in the existing Supreme Court Rules, 1966, which are impinging the fundamental rights of the members of the petitioner association, to practice Law as an advocate before this Hon'ble Court, as well as litigants who approach the highest court in the country, *inter-alia* in view of rights guaranteed under Article 14, 19 (1) (g) and 32 of the Constitution of India, seriously jeopardizing the interests of equal Access to Justice and Rule of Law and also prejudicial and detrimental to the interests and Administration of Justice. It imposes unreasonable restrictions on the rights of the citizens to approach this Hon'ble court which is a fundamental right. No laws can be made or should be made by any legislature or any authority without proper consultation. Even parliament makes laws after due consultation with elected representatives and after giving

opportunity to public at large and particularly affected parties.

- B) It is respectfully submitted that the new Rules will substantially change the situation existing for several decades, since 1966, and will have wide ramifications for the administration of justice, in which members of the bar are equal stakeholders, as officers of the Court.
- C) It is respectfully submitted that the draft rules ought to have been sent to the Bar to make their suggestions, comments and views, within reasonable time. After considering those views the draft rules ought to have been suitably revised, modified or changed and thereafter it could have sent to Hon'ble President of India for approval under Article 145 of the Constitution of India. However, copies of Supreme Court Rules-2013 were sent to the President and Hony. Secretary of SCBA only on 22nd July, 2014, after the notification dated 27th May, 2014 had been published. The bar was not consulted even on date from which the rule should be brought in force.

D) It is respectfully submitted that for the purpose of Article 145, when the rules are framed, the Supreme Court must include both Bar practicing in Supreme Court and the Supreme Court Bench, since large number of amendments made directly affect the members of the bar as well as litigants. It is also contrary to the normal comity between the Bench and Bar. Order IV of these Rules, also recognizes the SCBA as elected representatives of the Bar.

E) It is respectfully submitted that inherent in Article 145 is effective and meaningful consultation with the members of the Supreme Court Bar Association before sending the rules to Hon'ble President of India for his approval. The discussion & correspondence with the members of the Bar & the Hon'ble Supreme Court during last two decades as well as in the course of hearing certain matters does not & cannot be a substitute for the effective & meaningful consultation of the Bar. Bar should have been provided tentative views of bench in the form of draft rules.

F) It is respectfully submitted that any legislation made by the Parliament or State Legislatures also gives an opportunity to citizens to convey their views on the bills either through their elected representatives or through media or direct communication. The Supreme Court Bar Association has always acted in the best interests of the Administration of Justice and litigants.

G) It is respectfully submitted that large number of judgments delivered by this Hon'ble Court have highlighted the importance of following principles of natural justice and fair play. It is submitted that the natural justice includes giving an opportunity of being heard to the persons affected. The views of the Hon'ble Judges are important, but equally important are the views of the members of the Bar. There are many situations which the members of the bar may be able to point out, which may be appreciated by the court, this happens on daily basis in court rooms. In fact, if on the judicial side, Judges cannot and do not take any decision, without assistance of the Bar, it

is more important that while exercising the legislative powers, the Bar be consulted by the Hon'ble Supreme Court especially where it relates to Supreme Court Rules, implementation thereof is done to substantial extent by the members of the Bar practicing in Supreme Court. When consulted, it will be possible for the members of the bar to give reasons to Hon'ble the Chief Justice of India and Hon'ble Judges of Supreme Court to review, modify or completely change certain provisions of the Rules. There has been no consultation, much less effective consultation.

- H) It is respectfully submitted that due to lack of effective and meaningful consultation with the members of the Bar, serious errors have crept into the new rules, which will not only impinge and violate the fundamental rights of the members of the petitioner association and litigants but will affect the administration of justice. For example, the following three provisions: (i) Explanation (b) and (c) of Order IV Rule 10, (ii) Third Schedule and (iii) Form at Serial No. 30 of Fourth Schedule ought not

have been included without proper consultation with the bar. Some of the serious errors are enumerated herewith for the sake of convenience:

- a) The Supreme Court Rules-2013 has for the first time specified in Explanation (b) and (c) of Order IV Rule 10, certain acts as misconduct, which would be practically impossible for the members of the Bar to follow, even in exercise of their professional duties with all sincerity and diligence, exposing them to adverse and disciplinary action. any and every error or mistake or omission can't be treated as misconduct.
- b) The SCBA has a serious objection to substantial raising of Court fees as notified under Third Schedule to the rules, as it seriously jeopardizes the administration of justice, which the state is constitutionally mandated to ensure to its citizens. The levy of exorbitant court fees imposes financial burden on litigants and operates as a barrier for them

approaching the judicial system for redressal of their grievances. This is an established impediment to the exercise of the fundamental rights of access to justice. It adversely impacts the constitutional obligation for providing and ensuring a system for securing a just social order and promoting justice.

- c) There is grave anomaly in the note in Form No. 30 in Fourth Schedule of the rules with regard to Appearance slip, which permits the court master to record appearance in the record of proceedings of only one assisting counsel along with the arguing counsel, having grave adverse repercussions for the lawyers.
- d) The restriction imposed on junior Advocates with less than one year's practice, under Order IV Rule 1, is unfair. It also does not conform to the Advocates Act, 1961.
- e) Section 29 and 30 of the Advocates Act, 1961, which have been notified w.e.f. 15th

June, 2011, should have been taken into account while incorporating any amendments in Order IV of the Supreme Court Rules.

I) It is respectfully submitted that the rules are notified to come into effect from 19.08.2014 and in the facts and circumstances of the instant case, it is just & proper that this Hon'ble Court be pleased to extend the time for coming into force of Supreme Court Rules-2013, until the Hon'ble Supreme Court has an opportunity to consider the comprehensive suggestions of the members of the Bar and the enforcement of the new rules may be postponed.

J) It is respectfully submitted that the Administration of Justice and equal Access to Justice is the basic structure of the Constitution. It is the duty of the State and its organs to build and promote the functioning of efficient and proper Administration of Justice and not to place unfair, unjust and unreasonable fetters on the litigants and lawyers, especially in the Highest Court which

is the ultimate guardian for protecting the rights of citizens. This has been so understood, implemented and interpreted by this Hon'ble court since its inception. Therefore, due consultation is necessary.

K) It is respectfully submitted that the petitioners have no other effective and efficacious remedy for the protection of their precious fundamental rights, guaranteed under Part-III of the Constitution of India, and therefore, the present Writ Petition is being preferred before this Hon'ble Court.

L) It is respectfully submitted that rules made by Hon'ble Supreme Court of India under Article 145 of the Constitution of India are amenable to the Writ Jurisdiction of this Hon'ble Court. In this connection Petitioners rely on Judgment of this Hon'ble Court in, *Prem Chand Garg v. Excise Commr.*, (1963 Supp (1) SCR 885: AIR 1963 SC 996, where this Hon'ble Court examined the validity of Rule 12 in Order XXXV, made by this Court in exercise of its powers under Article 145 of the Constitution, in a Writ Petition under Article

32. The impugned Rule, which was struck down by majority judgement of the Constitution Bench of this Hon'ble Court, provided that the Court may in the proceedings to which the said Order applies, impose such terms as to costs and as to the giving of security as it thinks fit, including petition under Article 32. In para 15 of the judgement, this Hon'ble Court specifically held that:

“After all, rules framed under Article 145 are in exercise of the delegated power of legislation, and the said power cannot be exercised so as to affect the fundamental rights. If the wide words used in Article 142 cannot justify an order of security in an Article 32 petition, it follows that a rule made under Article 145 cannot authorise the making of such an order.”

PRAYER

It is therefore, prayed that in the interest of the justice and for the reasons stated hereinabove, this Hon'ble Court may graciously be pleased to:

- a). issue a writ of mandamus commanding and directing the Respondent to have an effective and meaningful consultation with the Petitioner Association on The Supreme Court Rules, 2013 and to consider and decide its representation dated 13.08.2014 (Annexure P-3);
- b). issue a writ of mandamus commanding and directing the Respondent to suspend the coming into force of The Supreme Court Rules, 2013, till the matter is comprehensively considered and decided by this Hon'ble Court or by any Committee constituted by Hon'ble the Chief Justice of India, in the interest of Justice; and/or
- c). pass such other Order(s) in favour of the Petitioner, as this Hon'ble Court may deem fit and proper in the interest of Justice.

AND FOR THIS ACT OF KINDNESS PETITIONERS, AS IN DUTY BOUND, SHALL EVER PRAY.

DRAWN & FILED BY:

DRAWN ON: 13.08.2014
FILED ON: 13.08.2014

[GP CAPT KARAN SINGH BHATI]
ADVOCATE FOR THE PETITIONERS

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION
WRIT PETITION (CIVIL) NO. OF 2014

IN THE MATTER OF:

Supreme Court Bar Association & Anr. ... Petitioners

VERSUS

The Supreme Court of India ... Respondent

AFFIDAVIT

I, Aishwarya Bhati, Secretary, Supreme Court Bar Association, Registered Body under Societies Registration Act, 1860, Having its office at 1, Tilak Marg, Supreme Court Premises, New Delhi -110001, do hereby solemnly affirm and declare as under:

1. That I am the Petitioner No.2/Secretary of Petitioner Association in the above mentioned matter and as such I am well conversant with the facts and circumstances of the case and hence I am competent to swear this present affidavit on my behalf and also on behalf of Petitioner No.1.
2. That the accompanying Writ Petition containing Pages from ____ to ____, List of Dates from ____ to ____ & I.As., which have been drafted as per our instruction by our counsel and I have been read over the contents thereof and I understood the same.
3. That the Annexures enclosed with the Writ Petition are true and correct copies of their respective originals.
4. That the contents of the Writ Petition are true and correct to the best of my knowledge and belief, no part of it is false and no material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at New Delhi on this the 13th day of August, 2014 that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief, no part of it is false and no material has been concealed therefrom.

DEPONENT

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION

I.A. NO. OF 2014

IN

WRIT PETITION (CIVIL) NO. OF 2014

IN THE MATTER OF:

Supreme Court Bar Association & Anr. ... Petitioners

VERSUS

The Supreme Court of India ... Respondent

AN APPLICATION FOR EX-PARTE AD-INTERIM STAY

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

- 1) That present is an Application for ex-parte ad-interim stay filed in the above petition which is arising out of enforcement of new Rules by Respondent being made applicable with effect from 19th August, 2014. By means of this Rule certain amendments have been inserted and substituted which are impinging the fundamental rights of the members of the petitioner association, to practice Law as an advocate before this Hon'ble Court, as

well as litigants who approach the highest court in the country, *inter-alia* in view of rights guaranteed under Article 14, 19 (1) (g) and 32 of the Constitution of India, seriously jeopardizing the interests of equal Access to Justice and Rule of Law and also prejudicial and detrimental to the interests and Administration of Justice.

- 2) That the balance of convenience is in favor of the Petitioners.
- 3) That the facts stated in the SLP may be read as a part and parcel of this application and the same are not repeated herein for the sake of brevity.
- 4) It is however reiterated that the new Rules will substantially change the situation existing for several decades, since 1966, and will have wide ramifications for the administration of justice, in which members of the bar are equal stakeholders, as officers of the Court.
- 5) It is respectfully submitted that the draft rules ought to have been sent to the Bar to make their suggestions, comments and views, within reasonable time. After considering those views the draft rules ought to have been suitably revised,

modified or changed and thereafter it could have sent to Hon'ble President of India for approval under Article 145 of the Constitution of India. However, copies of Supreme Court Rules-2013 were sent to the President and Hony. Secretary of SCBA only on 22nd July, 2014, after the notification dated 27th May, 2014 had been published. The bar was not consulted even on date from which the rule should be brought in force.

- 6) It is respectfully submitted that for the purpose of Article 145, when the rules are framed, the Supreme Court must include both Bar practicing in Supreme Court and the Supreme Court Bench, since large number of amendments made directly affect the members of the bar as well as litigants. It is also contrary to the normal comity between the Bench and Bar. Order IV of these Rules, also recognizes the SCBA as elected representatives of the Bar.
- 7) Therefore, it would be in the interest of justice that this Hon'ble Court may be pleased to stay the enforcement of The Supreme Court Rules, 2013 till the outcome of the present Writ Petition before this Hon'ble Court.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (a) pass an ex-parte ad-interim order staying the enforcement of The Supreme Court Rules, 2013 till the outcome of the present Writ Petition before this Hon'ble Court; and/or
- (b) pass such other order/order(s) as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS PETITIONERS, AS IN DUTY BOUND, SHALL EVER PRAY.

DRAWN & FILED BY:

DRAWN ON: 13.08.2014
FILED ON: 13.08.2014

[GP CAPT KARAN SINGH BHATI]
ADVOCATE FOR THE PETITIONERS

ANNEXURE P-1(COLLY)

25th July 2014

Hon'ble Mr. Justice R. M. Lodha
Chief Justice of India
5, Krishna Menon Marg
New Delhi

Respected Chief Justice,

1. On 22nd July, 2014, a note from Mr. Subhash Malik, Registrar stating as under is received by the Office Bearers of the Supreme Court Bar Association. I am enclosing herewith a copy of the note received.

“A copy of the notification regarding Supreme Court Rules, 2013, is enclosed herewith.

These Rules shall come into force w.e.f 19th August, 2014.”

2. The Executive Committee of the Supreme Court Bar Association held an emergent meeting on 24th July, 2014, and unanimously passed the resolution, which is enclosed herewith.
3. I, on behalf of the Supreme Court Bar Association request Your Lordship to kindly give an opportunity to the members of the Executive Committee to

interact with Your Lordship or with any Committee of Hon'ble Judges. We have invited suggestions from the Hon'ble members of the SCBA within two weeks, which will be considered by the Executive Committee and we would like to meet Your Lordship immediately thereafter on a convenient date.

4. In the meanwhile, since the power to notify the date which includes re-notification date, rests with Your Lordship. Your Lordship may kindly postpone the implementation of the Supreme Court Rules-2013, till Your Lordship have an opportunity to interact with the Executive Committee of the Supreme Court Bar Association.

With Best Personal Regards,

Yours sincerely,

Pravin H. Parekh

Encl: 1. Copy of note received from Registry.

2. Copy of Resolution of EC Meeting dated
24.07.2014

ANNEXURE P-1(COLLY)

A copy of the notification regarding Supreme Court Rules, 2013 is enclosed herewith.

These Rules shall come into force w.e.f. 19th August, 2014.

Sd/-21.7.2014

(Subhash Malik)

Registrar (J-III)

Shri P.H. Parekh,
President, SCBA.

//True Typed Copy//