Pune Bar Association vs. Union of India and Others

Constitutional validity of Section 63(4) of the Bharatiya Sakshya Adhiniyam, 2023 (BSA) read with its Schedule, which mandates a certificate disclosing hash value of electronic records (Part A) and a declaration by an expert (Part B) as a pre-condition fo

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CASE DESCRIPTION / SUMMARY

Background

Section 65B of the erstwhile Indian Evidence Act, 1872 governed admissibility of electronic records. The Bharatiya Sakshya Adhiniyam, 2023 (BSA) replaced it with Section 63(4), which introduced an enhanced certification requirement — Part A requiring disclosure of the hash value of the electronic/digital record, and Part B requiring a declaration signed by an expert. The Pune Bar Association filed this writ petition before the Supreme Court challenging Section 63(4) read with the Schedule as unconstitutional, contending it imposes an onerous and impossible obligation on ordinary litigants. The Madras High Court in R. v. B & Anr., 2024 SCC OnLine Mad 6084 had additionally held that the "expert" signing Part B must exclusively be an Examiner of Electronic Evidence notified under Section 79A of the Information Technology Act, 2000, which the petitioner contended made the provision even more unworkable as only a handful of such entities are notified by the government.

Crucial Facts

The petitioner contended that the requirement of disclosing the hash value of digital records in Part A and obtaining a declaration from a notified expert under Section 79A of the IT Act in Part B renders Section 63(4) manifestly arbitrary and unjust, making admissibility of electronic records illusory in practice for ordinary litigants. The Court examined the rationale behind the hash value requirement and the expert certification requirement. The Court also examined the interplay between Section 39(1) and Section 39(2) of the BSA — Section 39(1) dealing with opinions of persons with special skill in any field, and Section 39(2) specifically dealing with Examiners of Electronic Evidence under Section 79A of the IT Act. The Court noted that Section 39(2), unlike

Sections 63(4) and the erstwhile 65B, is not prefaced by a non-obstante clause, meaning Section 39(1) is not excluded from the domain of electronic records — thereby allowing courts to accept opinions of other suitably qualified persons as expert opinion even if not notified under Section 79A.

Court Observations (Verbatim — Crucial)

Para 4: "Hash value of an electronic data is synonymous with an electronic fingerprint and provides a sure way of identifying and verifying digital data. The necessity of incorporating the hash value of the electronic record in the certificate is thus to ensure its authenticity and integrity, and cannot be said to lack a rational nexus with the object of the Act. Similarly, certification by an expert in Part B provides an additional layer of authenticity to the secondary electronic evidence. For these reasons, we are of the considered view that the new provision has a clear and rational nexus with the object of the law and cannot be said to be either arbitrary or unreasonable so as to suffer from the vice of manifest arbitrariness."

Para 7: "If the two sub-sections are read harmoniously, it is possible to hold, in addition to entities notified as Examiner of Electronic Evidence under Section 79A, if the Court is satisfied, on the basis of unimpeachable material, that any other person has special skill and expertise in computer science and cyber forensics, opinion of such person may be held relevant as an expert with regard to electronic/digital record and such person may sign Part B of the Schedule as an expert."

"We are further fortified to make such observation as sub-section (2) of Section 39 (unlike 63(4) and erstwhile 65B) is not prefaced by a non-obstante clause so as to exclude the operation of sub-section (1) from the arena of electronic records."

"Under these circumstances, we hold that the finding of the High Court that Part B must be filled up by an expert notified under Section 79A of the IT Act shall not be treated as a binding precedent."

inclined to admit the matter and issue notice upon the Union of India, we refrain from giving any conclusive opinion on this issue and keep the question of law open."

Final Verdict

Writ petition disposed of without admission. Section 63(4) of BSA upheld as constitutionally valid — not manifestly arbitrary. The Madras HC finding that Part B must be signed exclusively by a Section 79A notified expert declared not a binding precedent. Question of law kept open. Petition dismissed at threshold — against the petitioner.

Cases Referred by Court

#	Case Name	Citation
1	R. v. B & Anr.	2024 SCC OnLine Mad 6084 (Madras HC) — finding declared not binding

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