

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

W.A. No.996 OF 2021 (GM-KSR)

IN

W.P. No.16350 OF 2021 (GM-KSR)

BETWEEN:

THE ADVOCATES ASSOCIATION
BENGALURU (R)
REP. BY ITS PRESIDENT
SRI A P RANGANATH
HAVING ITS OFFICE AT
CITY CIVIL COURT COMPLEX
BENGALURU-560009.

... APPELLANT

(BY MR. D.R. RAVISHANKAR, ADV.,)

AND:

1. THE STATE OF KARNATAKA
REP. BY THE PRINCIPAL SECRETARY
DEPARTMENT OF CO-OPERATION
VIKASA SOUDHA, BENGALURU-560001.
2. THE SPECIAL OFFICER AND
GOVERNMENT NOMINATED JOINT SECRETARY
DEPARTMENT OF CO-OPERATIVE
BENGALURU-560001.
3. THE DEPUTY COMMISSIONER
ADMINISTRATOR

BENGALURU URBAN DISTRICT
BENGALURU-560001.

4. THE DEPUTY SECRETARY-3
DEPARTMENT OF CO-OPERATIVE
M.S. BUILDING, BENGALURU-560001.

... RESPONDENTS

(BY MR. JEEVAN J. NEERALAGI, AGA A/W
MR. ANANT MANDAGI, SR. COUNSEL
MR. VIVEK SUBBA REDDY, SR. COUNSEL
MR. H.C. SHIVARAMU, ADV.,
MR. M.P. AMRUTESH, ADV.,
MR. B.M. ARUN, ADV.,)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, PRAYING TO, SET ASIDE THE ORDERS OF THE ASSOCIATION IN TAKING DECISIONS HAVING FINANCIAL IMPLICATIONS IN SO FAR AS IT RELATES TO THE HOLDING OF THE FUNCTIONS AS PERMITTED BY THE SINGLE JUDGE IN ITS ORDERS DATED 20.09.2021 AND ALSO TO SET ASIDE THE OBSERVATIONS / DIRECTIONS VESTING THE POWERS FROM THE STAGE OF FIXING THE DATE OF PAYMENT OF ARREARS UPTO THE STATE OF PUBLICATION OF THE FINAL VOTERS LIST AS VESTED WITH THE COMMITTEE.

THIS W.A. COMING ON FOR ORDERS, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This intra court appeal takes an exception to order dated 20.09.2021 passed by learned Single Judge in a writ petition preferred by the appellant insofar as it pertains to directions contained in para

14 and para 17(H) of the said order. In order to appreciate the appellant's grievance, relevant facts need mention, which are stated infra.

2. The appellant is a Society registered under the provisions of the Societies Registration Act and is the biggest Association of the Advocates in South Eastern Asia having approximately 20,000 Advocates as its members. The governing council of the appellant inter alia consists of the President, the General Secretary and the Treasurer besides other elected members. The appellant is governed by the bye-laws of the Association, which are known as The Advocates Association Bengaluru Bye-Laws (hereinafter referred to as 'the Bye-Laws' for short). Clause 24 of the aforesaid Bye-laws provides that term of the governing council so elected at a general election shall cease by the end of three years from

the date of election. The elections to the governing council and the office bearers of the Association was held on 23.01.2018. The term of the office bearers expired on 22.01.2021.

3. However, in view of Standard Operating Procedure (SOP) issued by this court, the Advocates were not permitted to appear in person. The Association, in its meeting held on 09.04.2021 decided to hold the elections on 05.09.2021. However, it is the case of the appellant that State Government by an order dated 19.06.2021 postponed the elections of registered Societies / Associations for next six months from 26.04.2021, therefore, the elections to the governing council of the Society could not be held.

4. One Sri.S.P.Shashidhar, Advocate filed a complaint on 22.06.2021 to the Special Officer and

Government nominated Joint Secretary, Department of Cooperative. On the basis of the aforesaid complaint, a show cause notice dated 21.04.2021 was issued and thereafter, a final notice was issued on 24.06.2021. The appellant submitted a reply to the same on 03.07.2021. However, by an order dated 04.09.2021, an Administrator was appointed. The aforesaid order was challenged by the appellant in a writ petition viz., W.P.No.16350/2021.

5. Learned Single Judge after hearing both sides as well as several counsels representing cross sections of the Association who had filed impleading applications and in view of broad consensual view to the effect that elections to the governing council should be held before long and by an order dated 06.09.2021 stayed the order of appointment of Administrator and permitted Managing Committee to

continue in office by adhoc arrangement.

6. Thereafter, learned Single Judge on 20.09.2021 after hearing learned counsel for the parties as well as impleading applicants and after ascertaining opinions of cross sections of the members of the bar by soliciting their views, inter alia held that present managing committee shall continue as an adhoc arrangement and High Power Committee constituted by the court shall supervise the work of holding elections to ensure free and fair elections. In the aforesaid factual background, this appeal has been filed.

7. Learned counsel for the appellant at the outset has confined his challenge to the order dated 20.09.2021 passed by learned Single Judge with regard to directions contained in para 14 as well as para 17(H) of the order, on the following grounds:

(i) The appellant is permitted to function as a limited Adhoc committee and has also been permitted to organize welcome and farewell functions of Judges of this Court, therefore, the office bearers of the Association ought to have been granted the liberty to take a decision with regard to expenditure in holding such functions.

(ii) The high Power Committee constituted by the learned Single Judge could not have been assigned the duty of preparation of voter's list and Returning Officers appointed by the Governing Council should have been entrusted the work of preparation of voter's list for conducting the elections.

It is therefore, argued that direction to the High Power Committee to prepare the voter's list is

contrary to the Bye-Laws of the appellant. It is also pointed out that expenses for holding the functions are normally made from the contributions made by the members of the Association and the office bearers of the Association will maintain an account with regard to expenses incurred for holding functions as permitted by learned Single Judge and shall get the accounts audited. It is therefore, urged that the order passed by learned Single Judge be suitably modified.

3. On the other hand, learned Mr. Anant Mandgi, learned Senior counsel appearing for impleading applicants submitted that tenure of the elected committee has already expired on 22.01.2021 and therefore, the elected committee is a time expired committee and cannot be permitted to handle the funds of the members of the

Association. It is also urged that in order to ensure free and fair election, the process of election has to be undertaken by the Committee. It is contended that the office bearers of the committee whose term has expired cannot insist on preparation and publication of voter's list and in all fairness, should have accepted the order passed by the learned Single Judge. It is submitted that though the term has expired in the month of January 2021, yet till today, even draft voter's list was not published.

9. Mr.N.P.Amrutesh, learned counsel who is one of the member's of the High Power Committee submitted that the President of the Association has no authority to file the appeal as he has not been authorized by the Association to file the appeal. It is also urged that till today, despite directions by the learned Single Judge, the charge has not been

handed over to the High Power Committee by the office bearers of the Association, whose term has expired.

10. Mr.Vivek Subba Reddy, learned Senior counsel submitted that there is a possibility of tampering the Digital Data of the members of the Association and in order to ensure free and fair election, the High Power Committee should deal with the process of election. It is urged that office bearers of the Association have no right to continue in office. Learned Senior counsel has also referred to decision of the learned Single Judge in **'K.N.SUBBAREDDY VS. ADVOCATES ASSOCIATION REPRESENTED BY SECRETARY OF THE ASSOCIATION AND OTHERS', ILR 2009 KAR 1697 .**

11. Mr.H.C.Shivaramu and Mr.B.M.Arun, learned counsel for the impleading applicants have supported the order passed by the learned Single Judge and have submitted that since, the order dated 20.09.2021 has been passed by the learned Single Judge with the consent of the parties, therefore, this appeal is not maintainable. Mr.Shashikant, learned counsel has submitted that he has filed another appeal against the order passed by the learned Single Judge, which has not been registered as yet. It is further submitted that the office bearers of the Association has no right to continue in the office as they have completed their tenure.

12. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, we

may deal with the issue pertaining to maintainability of the appeal. From perusal of para 14 of the order, it is evident that the office bearers of the Association had submitted that the work of preparation of voter's list should be assigned to the Returning Officers viz., Sri.K.N.Puttegowda, Senior Advocate, Sri.A.G.Shivanna and Sri.K.Diwakar, Advocates were appointed to conduct the elections of the Society in the meeting of the governing council held on 08.09.2021. However, the aforesaid contention has been rejected in para 14 of the order dated 20.09.2021. From perusal of para 16 of the order, the appellant has been permitted to welcome new Judges and for holding farewell to the outgoing Judges and are also been allowed to conduct workshops, lectures, training camps and vaccination camps, however, the office bearers of the Association have not been given any authority to

take a decision with regard to expenses in holding such functions. It is evident that the aforesaid directions are not based on the consent of the parties, therefore, the appeal preferred by the appellant is maintainable.

13. At this stage, it is relevant to take note of the order dated 06.09.2020 and 20.09.2021, relevant extract of the order, which read as under:

5. It needs to be stated that regardless of their views in variance with each other, both the sides conducted themselves very tall & reasonable and amiable to each other befitting the dignity of the Bar which is an integral part of Judiciary.

In the above circumstances and consistent with the observed consensus, I make the following interim order:

(i) The impugned order is kept in

abeyance, and if anything is done pursuant thereto, the same shall be retraced forthwith, providing for the present Committee of Management to function as indicated above and subject to the riders stipulated supra.

(ii) The present Managing Committee whose tenure has expired shall continue in the office by way of ad hoc arrangement; it shall not take up any act or project that has financial or policy implication; it shall not organize or associate with any public function/programme without the prior leave of this Court.

(iii) In terms of its submission, the petitioner shall organize the conduct of election at the earliest and in any circumstance within an outer limit of three months and that it shall accomplish all works preparatory to election, on a war footing and further that the plan of action in this regard shall be laid before this Court in writing after serving a copy thereof in advance on the other side and

on the aforementioned advocates who graciously participated in the proceedings of the day; this shall be done on the next date of hearing without fail.

(iv) The gracious submission of both the sides that nobody associated with the petitioner-society shall go for glare either through media or otherwise about its affairs, nor shall they highlight anything about the proceedings of the day and of the circumstances that led to issuance of the impugned order.

13. Views of both the sides on each other's Memo and the opinions of cross sections of the members of the Bar present were also ascertained by the Court by soliciting their views; since the matter touched the institution of judiciary of which the Bar is an inseparable part, wider audience was given; all they permitted this court to do a kind of little mediation, if at all it is; even here, the Bar stood almost in unanimity that a High Power Committee comprising of tall & experienced members

of the Association, be formed for conducting the election peaceably; accordingly, a High Power Committee for Conducting Elections (hereafter High Power Committee) is agreed to be constituted with the following members as unanimously suggested at the Bar (one of the names i.e., Mr.K.Diwakar suggested by the petitioner's side, being objected to by the other, is left out):

- (i) Sri.N.S.Satyanarayana Gupta.*
- (ii) Sri.G.Chandrashekar.*
- (iii) Sri.K.N.Puttegowda.*
- (iv) Sri.A.G.Shivanna.*
- (v) Sri.Shivareddy.*
- (vi) Sri.K.N.Phanindra*
- (vii) Sri.Prashanth Chandra.*

This court is of a considered opinion that it is prudent to have one of the above members as the Chairman of the Committee; the absence of women lawyers and of SC/ST members of this Association in the above list being conspicuous, the Committee needs to be

authorized to co-opt one such member from these segments, each in all fairness.

14. At this stage, petitioner's learned counsel Mr.Ravishankar submitted that his client is agreeable to constitute the above members only as the Returning Officers, formation of the committee for accomplishing the task, being not desirable; however, this court does not find any merit in the said submission; how such a course would affect the free & fair election, is not forthcoming, as rightly submitted by Mr.B.M.Arun and Mr.Vivek Reddy; the Committee has to have power to appoint from amongst its members or others, as the Returning Officers, in its discretion; barring dissenting voice of the petitioner's side, there is a broad consensus evolved at the gathering of the learned members of the Bar, which supports this view; added, this matter would be kept pending and if need arises, the aggrieved may seek assistance of the

court for redressal of their grievance; it should be open to the High Power Committee too, to address the grievances, if any.

15. It may be mentioned here that Mr.A.R.Shashi Kumar, a life member of the petitioner-Association aired his concern as to avoidable paper work and disfigurement of public places/properties in the election campaign; Mr.AAG mentioned about the caution to be taken by all the concerned with the election process in view of COVID-19 pandemic and also about the requirement of compliance with the lockdown restrictions or the like, if any; this is a significant matter to be kept in view; the members of the Bar being learned & responsible, will advert to all this.

16. As mentioned above, this court has already permitted the present Managing Committee, though its tenure

has expired, to remain in office only by way of an ad hoc arrangement and nothing beyond that; there has been a long tradition of welcoming the new Judges to this Court and of holding farewell to the outgoing; therefore, consistent with this, the present Managing Committee needs to be permitted to organize such functions; similarly the said Committee has to be allowed to conduct workshop, lectures, training camps, vaccination camps & the like without giving any scope for allegations; petitioner's request for permission for organizing inaugural function of newly built auditorium and library at Vakeelara Bhavana , does not merit consideration at this stage.

17. Lastly, this court needs to mention that Smt.Sheela Deepak, a member of the petitioner-association passionately aired her grievance as to alleged threat to her life, limb & liberty;

lawyers are to a civil society what soldiers are to the frontiers of the country; threat to lawyers in any form & anywhere, is a threat to the institution of judiciary, cannot be disputed; since Bar is an integral part of the institution, as the sages of law have ever said, the jurisdictional officials have to look into such grievances; cases of the kind are proliferating, is judicially noticeable; this is a cause for concern; the same having been pointed out to learned AAG Mr.Subramanya, he assures of instructing the authorities concerned to be vigilant & responsive; however, the grievance of the lady advocate being personal in nature, does not have relevance to the debate in question; the observations herein made shall not be construed as casting aspersions on any members in whatever capacity associated with the petitioner-Association.

In the above circumstances, I make the following:

ORDER

(A) The High Power Committee is hereby constituted comprising of aforementioned persons namely Mr.N.S.Satyanarayana Gupta and six others as its members; Sri.N.S.Satyanarayana Gupta shall be the Chairman of the Committee which shall co-opt one lady advocate and one SC/ST advocate as its members forthwith; the Committee shall as far as possible function with consensus; however, in the case of any difference, it shall abide by the majority view.

(B) The Committee shall at the earliest and in any circumstance on or before the 22nd of December, 2021 conduct the election freely & fairly and with transparency, for constituting a new Managing Committee of the Advocates Association, Bengaluru ; the Committee shall function as if it is "the State Election Commission" qua the petitioner-Association, and it shall have powers co-extensive with the requirement of

accomplishing the ordained task.

(C) The High Power Committee shall immediately take into its exclusive custody all election related paraphernalia including Digital Data & Smart Card Software from the concerned quarters; the present Managing Committee shall provide to the High Power Committee full co-operation & assistance by deploying adequate staff and necessary funds as are required for the conduct of elections and other related works.

(D) The High Power Committee shall have all the powers for working out all the modalities as are required for conducting the elections on a war-footing and that such modalities shall include but are not limited to fixing the dates for:

(i) the payment of arrears of Membership Fee or the like; (ii) making arrangements for providing Biometric Cards only to the eligible members;

(iii) preparation, updation & publication of

provisional Voters List;

(iv) consideration of objections to provisional Voters List & publication of final Voters List;

(v) conducting of poll, counting of votes and declaration of election results.

(E) It is open to the High Power Committee to take all measures including the installation of CC Camera, mobile videography/photography, watch & ward and vigilance as are required for conducting a free & fair election.

(F) The respondent-State Govt. is directed to deploy police & other personnel on the requisition of High Power Committee for holding elections consistent with requirement and that the deployed personnel shall not be withdrawn or otherwise meddled with, sans the written consent of the Chairman of the Committee

or of his nominee.

(G) The present Managing Committee whose tenure has expired, shall with immediate effect in true spirit keep away from the functioning of the High Power Committee and the conduct of elections; all the staff and employees of the petitioner-Association shall be at the beck & call of the High Power Committee and they shall obey all its instructions as if they are on deputation to the Committee's service; the Committee may take any disciplinary action for disobedience; such action may amongst others, be dismissal from service, too.

(H) The present Managing Committee is permitted to function as a limited ad hoc Committee and it may organize the programmes herein above mentioned subject to the limitations prescribed in the order dated 06.09.2021.

(I) As far as possible, this court shall not

be called to monitor the conduct of elections and to supervise the performance of related activities inasmuch as it is an indoor affair of the Bar Association which enjoys a great reputation and that any judicial intervention during the election process, is eminently undesirable.

14. The learned Single Judge by order dated 06.09.2021 has kept the order of appointment of an Administrator in abeyance and has permitted the Managing Committee of the Society to continue in office by way of Adhoc arrangement. However, it has been directed that the Managing Committee shall not take up any act or project that have financial implication. The aforesaid direction has been modified in para 16 of the order dated 20.09.2021, which is again reproduced below for the facility of ready reference:

16. As mentioned above, this court has already permitted the present Managing Committee, though its tenure has expired, to remain in office only by way of an ad hoc arrangement and nothing beyond that; there has been a long tradition of welcoming the new Judges to this Court and of holding farewell to the outgoing; therefore, consistent with this, the present Managing Committee needs to be permitted to organize such functions; similarly the said Committee has to be allowed to conduct workshop, lectures, training camps, vaccination camps & the like without giving any scope for allegations; petitioner's request for permission for organizing inaugural function of newly built auditorium and library at Vakeelara Bhavana , does not merit consideration at this stage.

15. Bearing in mind the statement made on behalf of learned counsel for the appellant that

expenses for welcome and farewell functions of Judges are conducted mainly from the contributions made by the members of the Association and the fund of the Association is not utilized, we are inclined to permit that the existing Managing Committee shall have the liberty to receive contribution from its members for holding such functions and to incur expenditure. However, the Committee shall keep the accounts in respect of contributions received by it from the members and the expenses incurred by the Committee for holding such elections, which shall be audited. The Committee in addition shall be at liberty to expend any amount from the funds of the Association with the concurrence of High Power Committee.

16. Admittedly, the term of the committee has expired on 22.01.2021, however, on account of

prevalent pandemic, the elections of the managing committee of the Association could not be held. The order dated 26.04.2021 and 19.06.2021 issued by the State Government pertains to postponement of election of Societies registered under the Karnataka Cooperative Societies Act, 1959. The office bearers of the Managing committee of the appellant as well as learned counsel for the impleading applicants have agreed that the elections of the Managing Committee has to be held at the earliest. The Governing Council in its meeting held on 08.09.2021 has resolved to conduct the elections to the Association either on 05.12.2021 or 19.12.2021 and three Returning Officers were appointed to conduct the elections headed by Sri.K.N.Puttegowda, Senior Advocate, Sri.A.G.Shivanna and Sri.K.Diwakar, Advocates. The learned Single Judge in the order dated 20.09.2021 has recorded that a broad

consensus was evolved at the gathering of the learned members of the bar which supports the appointment of a High Power Committee except the office bearers of the Managing committee of the appellant. In view of the aforesaid broad consensus, learned Single Judge has constituted the High Power Committee, which comprises following Advocates:

(i) Sri.N.S.Satyanarayana Gupta.

(ii) Sri.G.Chandrashekar.

(iii) Sri.K.N.Puttegowda.

(iv) Sri.A.G.Shivanna.

(v) Sri.Shivareddy.

(vi) Sri.K.N.Phanindra, Senior Advocate

(vii) Sri.Prasharith Chandra.

17. It is pertinent to note that two of the Returning Officers appointed by the Governing Council of the Committee in its meeting held on 08.09.2021 viz., Mr.K.N.Puttegowda and Mr.A.G.Shivanna Advocates are members of the High Power Committee. The aforesaid committee

has been assigned the task of holding free and fair elections to the Managing Committee of the Association. The tenure of the office bearers of the Managing committee of the Association has come to an end on 22.01.2021. There is no provision in the Bye-Laws to extend the term of the Managing Committee of the appellant. Thus, the office bearers of the Managing Committee of the Association do not have a legally enforceable right to insist that Returning Officers are appointed by the Governing Council of the Association alone have the authority to prepare the voter's list specially when the decision to appoint Returning Officers was taken on 08.09.2021 after appointment of the Administrator. The process of fresh elections could have been commenced by the elected members of the managing committee of the Association before expiry of its term. In the absence of any legal right

and in view of candid submission made by learned counsel for the appellant that the election should be held at the earliest, we are not inclined to interfere with the directions contained in para 17(H) of the order passed by the learned Single Judge insofar as it pertains to holding of elections by High Power Committee. The said order has been passed by taking into account the broad consensus referred to by the learned Single Judge and with a view to ensure free and fair election.

Before parting, this court places on record the able assistance rendered by learned counsels appearing in the matter and have conducted themselves in the manner befitting the dignity of the bar, which is an integral part of the Association.

To the aforesaid extent, the order passed by learned Single Judge dated 20.09.2021 is modified.

In the result, the appeal is disposed of in the manner indicated above.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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