

(2014) 02 AHC CK 0203

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) Nos. 11041 and 11140 of 2013

Ajay Pratap Singh

APPELLANT

Vs

Oudh Bar Association, High Court and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Advocates Act, 1961 — Section 16(2)
Constitution of India, 1950 — Article 19, 226

Citation : (2014) 3 ADJ 394 : (2014) 103 ALR 424 : (2014) 2 ESC 834 : (2014) 123 RD 161

Hon'ble Judges : Rajiv Sharma, J;Mahendra Dayal, J

Bench : Division Bench

Advocate : Manish Kumar, Advocate for the Respondent

Judgement

1. Petitioner before us, Shri Ajay Pratap Singh, Advocate is one of the learned members of the Oudh Bar Association, High Court, Lucknow hereinafter referred to as "The Association", who has sought indulgence of this Court for a direction in the nature of mandamus commanding the Elders Committee of the Association to take over the charge from the present Governing Council and make a fresh list of members who are practicing in this Hon'ble Court and are not in arrears of subscription before notifying the general election. A further direction in the nature of mandamus has been sought commanding the Elders Committee of the Association to make an inquiry in the matter of deposit of the subscription of the members and take appropriate action, if any member is found guilty of depositing the subscriptions of others. The petitioner has also inter alia, prayed for a relief as this Court deems fit and proper under the facts and circumstances of the case. So far as the first part of the relief is concerned, the same has become infructuous as the term of the earlier Governing Council has already come to an end and the Elders Committee has taken over the charge from the outgoing Governing Council of the Association. In view of this, we are only concerned with the remaining part of the reliefs, which have been prayed by the petitioner.

2. Another writ petition being Writ Petition No. 11140 (MB) of 2013 has been filed by the petitioner, namely, Moti Chand Yadav for a direction commanding the opposite parties to extend the benefit of Oudh Bar Association's Members And Their Families (Help in Distress), Scheme 2013 to every member of the Bar Association without there being any age limit. A further direction has been sought commanding the opposite parties to modify the proviso attached to para 4 of the aforesaid scheme.

3. The submission of the petitioner is that the aforesaid Scheme was launched in the year 2013 for the benefit of its member and a Coordinate Bench of this Hon'ble Court vide its judgment and order dated 6.11.2013 passed in Writ Petition No. 10322 (MB) of 2013, has directed the Registry of this Court, to ensure that while making endorsement of petitions, an endorsement should be made with regard to affixation of Rs. 100/- stamp, which is issued by the Oudh Bar Association. As per the scheme, this contribution of Rs. 100/- collected by way of selling tickets, is deposited in an account and in case of death of a member, his nominee gets Rs. 4 lacs as financial assistance. However, a criteria has been fixed in Rule 4 that full financial assistance will not be available to those members who become member of the Oudh Bar Association on or after the commencement of the scheme after attaining the age of 60 years or after retirement from Central Government Service/State Government Service/Corporation/Public/Private Establishment/Undertaking or any other service. They will be entitled to get only 25% of the death benefit under the scheme.

4. The submission on behalf of the petitioner is that in old age, specially after the age of 60 years, an Advocate needs more security in life and sometimes needs treatment for which financial assistance is required. Since the proviso of Rule 4 referred to above is not available to the Advocates, who have crossed the age of 60 years, it is unjust and unfair. There is also no pensionary benefit to any Advocate, hence the aforesaid scheme be extended to all Advocates irrespective of their age.

5. We have heard Shri S.M. Royekwar, Advocate on behalf of the petitioner, Shri A.M. Tripathi the General Secretary of the outgoing Governing Council who has been impleaded as opposite party No. 1, Shri H.G.S. Parihar, learned Senior Advocate, the outgoing President of the Association, Dr. L.P. Mishra, appearing for Elders' Committee, Shri Sudeep Seth, Advocate, Shri Vishal Dixit for respondent No. 3 and Shri Brij Raj Singh, Shri Dev Prakash Mishra, Shri Sheikh Mohammed Ali, Shri Ramesh Pandey, Shri Adarsh Mehrotra, Shri S.N. Srivastava, Shri Ranvijay Singh, Shri Deepanshu Dass, Shri Arun Kumar Tiwari, Shri Satish Chandra Jaiswal and Shri R.C. Saxena who have been permitted by us to address the Court as interveners, under Chapter XXII Rule 5A of the Allahabad High Court Rules, 1952 in Writ Petition No. 11041 (MB) of 2013.

6. Before entering into the merits of the case, we think it proper to bring out brief history of the Oudh Bar Association, Lucknow.

7. The Oudh Bar Association was established in the year 1901 and it was registered under the Societies Registration Act, 1860, inter alia with the objects to safeguard and promote the interest of legal profession in general and the members of the Association in particular; to promote a high professional tones, standard and conduct amongst the member of the legal profession and to check unprofessional practices; and to do all such acts or take such steps as might be necessary for the well being of the Association or for the fulfillment of these objects. The registration of Association is still continuing. Shri H.S. Jackson was the first Secretary and Shri Jagat Narayan Mulla was the first Joint Secretary of the Association. Later on, the posts of President and Vice President were created in the year 1926 and Shri H.S. Jackson became the first President and Shri A.P. Sen became the first Vice President. Prior to 1925, there was a Court of Judicial Commissioner and the Oudh Bar Association was established to create an Association of Lawyers practicing in the Court of Judicial Commissioner. It was in the year 1925 that the Court of Judicial Commissioner was replaced by the Chief Court of Oudh. In the year 1948, Lucknow Bench was created by Amalgamation Order, 1948 and since then the Association has been actively playing its role as a body of the Lawyers practicing in the High Court. The Oudh Bar Association has, thus, a glorious past of its own with several eminent lawyers. It is very unfortunate that the dispute with regard to the forthcoming election of the Association has come up before us in the form of the present writ petition.

8. The main contention of the petitioner is that the functioning of the Governing Council of the Association has become irregular during the past several years and several Advocates who are not regularly practicing in the High Court have been enrolled as members of the Association and they would be exercising their right to vote in the forthcoming election. Some of the members are such who come to the Court only to cast their vote on the date of election, otherwise they are involved in other activities. The past Presidents and General Secretaries of the Association have inducted a large number of such Advocates who are actually not regularly practicing in the Hon'ble High Court and have been inducted members, only to cast their vote so that a particular member desirous of becoming a President, Vice President or General Secretary of the Association, may be elected. It is also a contention on behalf of the petitioner that it has also becoming a regular practice that such members who are desirous of becoming President and General Secretary, pay the subscription of such ordinary members who never come to the Court for practice and come to the Court only during the course of election.

9. In the backdrop of the above facts, the petitioner has sought indulgence of this Hon'ble Court to direct the Elders Committee to prepare a fresh list of such members, who are actually/regularly practicing in the Hon'ble High Court and appear before the Court regularly and also pay their subscription out of their own pocket. The petitioner has also sought a direction to the Elders Committee to make an inquiry in the matter of depositing the subscription of the members of the Association and take appropriate action, if any member is found guilty of

depositing the subscription of others.

10. A preliminary objection has been raised on behalf of the opposite parties as well as interveners who have been permitted by us to address the Court that the present writ petition being against the Society, is not maintainable and this Hon''ble Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India cannot interfere in the internal management and affairs of the Society. In view of the preliminary objection raised by some of the opposite parties and interveners with regard to the maintainability of the writ petition, we propose to decide this issue first.

11. It is not disputed that the Association is a society registered under the Societies Registration Act with its bye-laws which are in consonance with the model bye-laws framed by the Bar Council of Uttar Pradesh. If, the Governing Council or any Committee constituted under the bye-laws, deviates from the bye-laws or functions contrary to the bye-laws, this Court can certainly interfere and pass appropriate direction. The Oudh Bar Association is a Court-Annexed Bar Association which is recognized by the High Court Allahabad. The very nature of such a Bar Association necessarily means and implies that it is an Association representing the members regularly practicing in the Court and the responsibility of proper conduct by its members lies with the Court. There are bye-laws of the Association, which have been framed to govern the body of the Society. Generally, the Courts do not interfere in the internal affairs of Association, but the Society which is in the form of Association of the Advocates, has been created as a fundamental right guaranteed under Article 19 of the Constitution of India. It is pertinent to mention that in a dispute of identical nature the Hon''ble Supreme Court of India has interfered in the affairs of the Supreme Court Bar Association which came up before the Hon''ble Court in the form of Civil Appeal and the Hon''ble Supreme Court while deciding the appeals issued certain directions with regard to the internal affairs and management of the Supreme Court Bar Association.

12. The opposite parties Nos. 1, 2 and 3 and the intervener Shri Ramesh Pandey have argued that the decision in Supreme Court Supreme Court Bar Association and Others Vs. B.D. Kaushik, , is not applicable and is not attracted to the facts of the present case because the Hon''ble Supreme Court passed the orders and issued certain directions while exercising power of appeal, while the matter before this Court is in the form of writ petition, and the Court has to act strictly within the ambit of Article 226 of the Constitution of the India. We find no force in the aforesaid submission because the order passed by the Hon''ble Supreme Court of India, is the law of the land, irrespective of the fact as to whether the order has been passed while exercising power of appeal or otherwise. The observations made in the judgment and orders by the Supreme Court of India are obiter-dicta and are binding on all the Courts in India.

13. Another preliminary objection has been raised on behalf of the opposite parties with regard to the locus of the petitioner to file this writ petition. It has

been argued on behalf of the opposite parties that the petitioner Ajay Pratap Singh, although a member of this Association, is also an office bearer of the CAT Bar Association and as per the model bye-laws and the bye-laws of the Association, any Advocate who is a member of several Associations can cast his vote only in one Association. Since the petitioner is the Vice President of the CAT Bar Association, he cannot exercise his right of vote in the Oudh Bar Association and for this reason he has no locus to file present writ petition.

14. In reply to the aforesaid preliminary objections, it has been submitted on behalf of the petitioner that the petitioner was the Vice President of the CAT Bar Association in the year 2011 and his term as Vice President has already ended on 23.1.2012 after completion of one year. An affidavit to the same effect has also been filed by the petitioner himself and in para 6 of the affidavit it has been stated on oath that he would be going to exercise his right of vote only in the election of Oudh Bar Association and will not cast vote in any other Association. In view of the above, the preliminary objection with regard to the locus of the petitioner, has no force and is rejected.

15. The first question which arises for consideration by us is as to whether the members of the Association inducted by the past Governing Council are validly inducted members or not. The submission on behalf of the petitioner is that most of the newly inducted members have been made members contrary to the provisions of the bye-laws of the Association insofar as for becoming a member of the Association an Advocate must be Oudh on the roll of Advocates and must be actively and regularly practicing in this Hon'ble Court. Advocates who are on the roll of Advocates may be inducted as members only, if they are actively and regularly practicing in the High Court and not otherwise. In the recent years, some Advocates who although were on the roll of Advocates but have not been regularly practicing in the High Court, have also been inducted as members of the Association by the Governing Council only with a view to get their votes to be elected as office bearer of the Association. Not only this some Advocates have been paying the subscription of others only to gain their favour at the time of election. This practice should be immediately stopped to maintain the decency and dignity of the Association.

16. Before considering and making any observation with regard to the aforesaid submission, we would like to examine the bye-laws of the Association with regard to types of members as well as the procedure for their induction.

17. On examining the Bye-laws of Oudh Bar Association, it reflects that there are four classes of members and Rule 4 deals with the classes of Membership. The first category of members is Honorary Members, who are admitted by the Association on account of distinguished achievement or service to the cause of law or the legal provision. The second category of members is Life Members who are regularly practicing in the Court and pay certain amount to be fixed by the General Body to increase the income of the Association by way of interest equivalent to the membership fee payable by the ordinary member. The third

category of the members is Non-Resident Members, who although an Advocate, but do not regularly practice in the Court and have been admitted by the Executive Committee as a non-resident member. The fourth and the last category of the members is Ordinary Members who being an Advocate on the rolls of Advocates are regularly practicing in the Court and have been inducted by the Governing Council after due procedure prescribed under Rule 8 as ordinary members. The dispute in this writ petition is only with regard to the induction of the ordinary members. Rule 6 of the bye-laws provides the procedure for admission of members.

18. Rule 6A provides that any person enrolled as an Advocate with the Bar Council of Uttar Pradesh wishing to become an ordinary member may apply in writing to the Secretary of the Association for admission by an application signed by him and bear the signatures of at least two members of the Association as proposer and seconder having at least five years of membership of the Association. Rule 13 provides that such person shall be entitled to become ordinary member of only one Association where he is actively and regularly practicing. However, he can become Non-Resident or Honorary Member of the Association. Rule 6D casts a duty upon the Secretary of the Association to prepare a roll of Advocates regularly practicing in that Court duly approved by the Executive Committee, who alone would be entitled to be the ordinary members of that Association. It is the duty of the Secretary to finalize the roll of the Advocates and place it before the Executive Committee after displaying the same on the notice board for ten days and inviting objections. In case more than 20 members object on any member being included in the roll of Advocates, the same be placed for consideration before general body.

19. On careful reading of Rule 6 of the Bye-laws, it is borne out that Rule 6 provides the eligibility criteria and the preparation of roll of Advocates. It also implies that to become a member of the Association an Advocate must be on the roll of Advocates prepared by the Secretary of the Association. Once the Advocate comes on the roll of Advocates, he becomes eligible to become the member of the Association. It also needs mention here that to be on the roll of Advocates, a person who is enrolled with the Bar Council of Uttar Pradesh must be regularly practicing in that Court, but in order to become a member of the Association he has to be an active and regularly practicing Advocate as provided under Rules 4D and 6B of the bye-laws.

20. Rule 7 of the bye-laws of the Association provides for constitution of the Elders Committee. It provides that there shall be an Elders Committee of the Association consisting of five designated senior most Advocates of the Association actively practicing in the Hon"ble Court by virtue of their seniority. Rule 7 (B) enjoins that the senior most member of the Elders Committee will be its Chairman.

21. At this juncture, it would be useful to refer Section 16(2) of the Advocates Act, 1961, which deals with the Senior and other Advocates and is relevant in the

present context.

16 (2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, [standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.

22. The members of the Elders Committee are neither elected nor they have any fixed term. They become member of the Elders Committee by virtue of their seniority. The powers and functions of the Elders Committee have not been specifically defined in the bye-laws, but their role in the functioning of the Association has been mentioned at several places in the bye-laws.

23. During the course of arguments an important question arose for our consideration, which is with regard to the manner of induction of an ordinary member in the Association.

Rule 4 defines the ordinary members as under:

Being an Advocate on the Rolls of the concerned Court regularly practicing in that Court and who has been admitted by the Governing Council under rule 8 as ordinary or is such a member under these rules.

24. Rule 6B deals with the criteria of becoming an ordinary member of the Association. It provides that any person who is enrolled as an Advocate with the Bar Council of Uttar Pradesh and roll of Advocates as well as the said roll of Bar Council will be eligible to become an ordinary member of the Association. Although the manner of induction of an ordinary member is not directly an issue in the present writ petition, but in order to interpret the bye-laws of the Association and also to remove any future controversy which may arise before the Association, we would like to analyze and clarify the bye-laws by way of interpretation. The interveners namely Shri Adarsh Mehrotra, Advocate, Shri Vishal Dixit, Advocate and Shri A.M. Tripathi, Advocates have laid much emphasis on Rule 6(d)(e) and (f) which are reproduced as under:

(d) The Secretary of the Bar Association shall prepare the Roll of Advocates regularly practicing in that Court duly approved by the Executive Committee, who alone will be entitled to be the ordinary member of that Association.

(e) The Secretary shall finalize the Roll of Advocates and place it before the Executive Committee after displaying the same on the notice board for ten days and inviting objections.

(f) In case more than twenty members object on any name included in the Roll of Advocates the same be placed for consideration before the General Body and its decision shall be final.

25. Their submission is that an Advocate can be inducted as a member of the Association only by the Executive Committee and the Elders Committee has no role unless anyone files objection against the induction of such member.

According to them the final authority for induction of a member is the Executive Committee before whom the Secretary of the Association places the applications of Advocates desirous of becoming members of the Association. In this context, reading of Rule 8 is very important because Rule 8 refers to the order passed on the application which has been given by an Advocate for becoming an ordinary member of the Association. Rule 8 on reproduction would read as under:

The Secretary of the Association shall place the application on the notice Board for 10 days inviting objections of other ordinary/life members of the Association and shall place the application as well as the objections, if received any, before the Elders Committee who will approve or reject the application form in the light of provision in the rule. Once application for memberships having been rejected. He shall not be entitled to apply again for the membership for a period of 2 years from the date of rejection of the application.

Provided that when an ordinary members which is become a nonresident member or vice versa, it shall not be necessary for his application to be proposed or seconded or for its being placed on the Notice Board.

26. A careful reading of Rule 8 makes the entire picture clear as to the manner in which an Advocate applying for becoming an ordinary member would be inducted. The interveners named here-in-above have argued that the application for membership is to be placed before the Elders Committee only, if there is any objection against his induction as member, but in case there is no objection after 10 days notice, then the Elders Committee has no role to play and it is only the Executive Committee of the Association which is empowered to induct a member. Rule 8 casts a duty upon the Secretary of the Association to place the application of an Advocate desirous of becoming a member before the Elders Committee as well as the objections, if received any, before the Elders Committee and it is the Elders Committee, which is empowered to either approve or reject the application form in the light of relevant provisions. It is not in dispute that such practice has not been followed in the recent past.

27. As far as preparation of roll of Advocates by the High Court is concerned, it would be useful to reproduce Rule 3-A occurring in Part VI of the Allahabad High Court Rules, 1952, which deals with the Legal Practitioners:

[3-A (i) Unless the Court grants leave, an advocate who is not on the roll of advocates in the High Court at Allahabad or Lucknow shall not be allowed to appear, act or plead in the High Court at Allahabad or Lucknow as the case might be unless he files appointment alongwith an advocate who is on such roll for Allahabad cases at Allahabad and for Lucknow cases at Lucknow.

(ii) The High Court shall prepare a roll of advocates in Parts "A" and "B" of those who ordinarily practice in the High Court, Part "A" for Allahabad and Part "B" for Lucknow.

(iii) The roll of advocates shall bear in regard to each advocate entered, his full

name, father's name, passport size coloured photograph, enrollment number, date of enrollment, complete postal address both of residence and office which shall be in the Municipal limits of the City of Allahabad or Lucknow as the case might be.

(iv) The rolls shall be prepared and revised periodically in the manner and under the authority as may be prescribed by the Chief Justice.

(v) This Rule 3-A shall come into force after notification by the Chief Justice that both the rolls for Allahabad and Lucknow Parts "A and 13" are complete.]

28. A perusal of the aforesaid rules makes it abundantly clear that it has no concern with the induction of Advocates as Members of Oudh Bar Association.

29. We would like to point out that the present bye-laws came into force on 6th November, 2006. Prior to these bye-laws there was a provision of Black Bowling, but after the new Rule came into force in the year 2006, the procedure became different, and it was provided that any ordinary or life member of the Association may file objection against the induction of an Advocate as ordinary member within 10 days of the displaying of his name on the notice board. The controversy is as to whether all the applications are to be placed before the Elders Committee for approval irrespective of the fact that any objection has been received or not or the application form will be placed before the Elders Committee only in case the objections are received. The words "as well as the objections, if received any", clearly signifies that every application for becoming an ordinary member has to be placed before the Elders Committee whether any objection has been received or not and it is the Elders Committee, who is authorized to approve or reject the application form. It is not that, the application will be placed before the Elders Committee only if the objections are received. Now another important question arises for our consideration as to what would be the fate of those members, who have been inducted in the recent past without following the aforesaid procedure or whose applications have not been placed before the Elders Committee for approval. During the course of hearing, we have noticed apprehension in the minds of various members as to what would be their fate in future, if their induction as ordinary member is found contrary to the bye-laws, by the Court.

30. There is an argument on behalf of the parties as well as the interveners who have been permitted by us to address the Court that since the members on the electoral roll prepared in the year 2012 have already exercised their right to vote without any objection by the Elders Committee or any other Senior Advocate, the irregularity if any in induction of such ordinary members, stood cured.

31. The submission is that in these circumstances the doctrine of de facto will apply. The doctrine of de facto was introduced in the law as a matter of policy and necessity to protect the interest of the Committee and the individual, whether those interested were involved in the official acts of persons exercising the duties of an office without being lawful officers. The de facto doctrine has

also received judicial recognition in several pronouncements. We are unable to accept this argument inasmuch as the doctrine of de facto has no application in the present case for the reason that induction of members has not been made in accordance with bye-laws and there can be no estoppel against the statute. Thus, we hold that the induction of such members who were inducted after coming into force of the present bye-laws without approval of Elders Committee, are irregular. However, such irregularity can be cured by subsequent approval by the Elders Committee. We leave it open for the Elders Committee to take decision on this issue. However, in order to avoid any future controversy, we direct that after taking over the charge by the new Governing Council after election, strict procedure for inducting an Advocate as an ordinary member of the Association, shall be followed. Apart from this, after the previous election some more ordinary members have become eligible to exercise their right to vote after expiry of two years from the date of their membership. The names of such members may also be included in the electoral roll of the forthcoming election, if they are otherwise eligible and inducted as per amended provisions of the bye-laws of Oudh Bar Association.

32. Now the question arises as to who will constitute the electoral roll to exercise his right to vote in the forthcoming election of the Association.

33. Learned counsel who appears on behalf of the petitioner has submitted that a new electoral roll has to be prepared before the notification of election because it has to be examined as to how many ordinary members are regularly and actively practicing in this Hon"ble Court. According to him there is a condition precedent in Rule 6(b) that an ordinary member should be actively and regularly practicing in the Court. In case it is found that he is not active and regular in the practice then he should not be put on the electoral roll and should not be allowed to cast his vote.

34. Such an exercise, if permitted or directed would amount to the scrutiny of all the members inducted after 2006, whether ordinary or otherwise, which is not permissible under the bye-laws. Moreover, the condition of being an active and regular practitioner is only necessary for being inducted as ordinary member of the Association and not otherwise. There is no procedure in the bye-laws that while preparing the electoral roll a scrutiny has to be done as to whether an Advocate who is an ordinary member of the Association, is actively and regularly practicing or not, but Rule 9 of the bye-laws carves out an exception and provides that any person who has been admitted as ordinary member by the Executive Committee shall from the date of admission be entitled to all the privileges of membership, but he shall have no right of vote at the meetings of the association until he has paid admission fee in full and has further continued as such for two years. Further there is another Rule, i.e. Rule 50 provides for expulsion of a member. According to Rule 50, the ordinary member may be expelled from the Association only by way of resolution adopted by a majority of not less than 2/3 by the ordinary members only on the grounds of professional

misconduct or conviction of an offence involving moral turpitude or gross misconduct unbecoming of member of the Bar. There is no other provision for depriving an ordinary member to cast his vote except that he is not in arrears of subscription as provided under the bye-laws.

35. Thus, we hold that all the ordinary members who are entitled to cast their vote in accordance with the bye-laws of the Association cannot be deprived otherwise. However, it would be necessary to prepare an electoral roll as to who are the valid members eligible to exercise their right to vote, before notifying the date of election.

36. Learned counsel for the petitioner has suggested various ways and means to curb the malpractices prevailing in the Association as well as prayed for issuing directions in the light of the Judgment of the Hon''ble the Supreme Court in the case of Supreme Court Bar Association v. B.D. Kaushik (supra), so that only valid and genuine members may cast their vote to elect their representative. There is a serious opposition by the interveners to these suggestions. Their argument is that in the Hon''ble Supreme Court of India there is a procedure to electronic entry, in which the entry and exit of every person entering the precincts of Hon''ble Supreme Court is recorded in the computer device, but here there is no such procedure and as such it is not possible to identify as to whether any member is regularly coming to the Court or not. With regard to being a regular and active practitioner, the Hon''ble Supreme Court has directed that regular and active practitioner may be identified by examining the record as to how many cases they filed during the past years or have subscribed to the cause list or who have been paying regular subscription in the recent past. It is not in dispute that the procedure of Advocates on record is not in the Hon''ble High Court and as such it would very difficult to identify as to in how many cases a particular member has filed Vakalatnama during the preceding one year or two years. It is also possible that an Advocate has been an ordinary member of the Association, but he practices under the supervision of his senior and has not been able to file any case independently. In this situation, such member should not be deprived of his right of voting. It may also be possible that he may not have been able to come to the Court for a considerable period of time on account of some disability or otherwise. In that case also it should not be concluded that he is not a regular or active practitioner. With regard to subscription of cause list, the submission is that since the cause list is now available on Internet and most of the members have now their own personal computers and internet facility and they check the cause list on computers daily in their office, hence the subscription of cause list cannot be made a criteria for deciding as to whether he is a regular practitioner or not.

37. Having minutely gone through the bye-laws and various circumstances and after having carefully analyzing the submissions made on behalf of the parties, we are of the view that the condition of being an active and regular practitioner, is only for becoming an ordinary member of the Association. Once an Advocate

becomes ordinary member of the Association, he is entitled to exercise his right to vote after the expiry of two years from the date of his induction provided he continued in practice and has paid the subscription in accordance with the bye-laws and is otherwise a valid member.

38. Thus, we dispose of the Writ Petition No. 11041(MB)/2013 with the following directions:

(a) The Elders Committee shall prepare and display on notice board the electoral roll by 10th March, 2014 indicating names of valid members who are eligible to exercise their right of vote. For this purpose the Elders Committee will make scrutiny of the members and in case induction of any member after coming into force of the present bye-laws is found to be contrary to the bye-laws, he shall not be included in the electoral roll unless the irregularity in his induction as a member is cured. It will also be taken care of by the Elders Committee that members whose names appear in the electoral roll, have cleared their dues in accordance with the bye-laws of the Association.

(b) It will be open for the Elders Committee to examine the induction of ordinary members after 2006 and in case their induction is found contrary to the bye-laws, the irregularity in their induction may be cured at the discretion of the Elders Committee.

(c) For the aforesaid exercise the Elders Committee may take the assistance of other Senior Advocates of Lucknow Bench which the Committee thinks proper and necessary. We hope and trust that other Senior Advocates will render their valuable assistance, if need be.

(d) Vide order dated 30.1.2014, a Division Bench of this Court constituted Elders Committee of the Oudh Bar Association. As number of Advocates, during the course of arguments, raised serious objection about the constitution of Elders Committee, we deem it proper to provide that the Elders Committee shall be constituted strictly in accordance with Rule 7 of the Bye-Laws. In the event, any Senior Advocate is not available, for any reason, then, the next Senior Advocate, on the basis of its seniority as Senior Advocate, will be the member of Elders" Committee.

(e) After the preparation and publication of electoral roll, the election shall be conducted strictly in accordance with the bye-laws of the Association and the entire process of election should be completed by 31.3.2014.

(f) The new governing council of the Association shall ensure strict compliance of the rules of bye-laws specially in the matter of induction of ordinary members.

39. The second writ petition has been filed by the petitioner/Moti Chand Yadav with the prayer to direct the opposite parties to modify the proviso appended to Rule 4 of the scheme, is not maintainable, in view of the fact that the power to amend any Rule or Bye-laws, is with the Association itself and this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot direct

the Association to amend or modify any rule. However, it is always open for new Governing Council and the General House to suitably modify or amend any of the rules in consonance with the bye-laws of the Association and relevant Rules in the interest of Members of the Association. In the result, Writ Petition No. 11140 (MB) of 2013 is disposed of with the directions to the petitioner to approach the appropriate forum.