
(2013) 04 AHC CK 0278

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 61100 of 2011

Elder Committee Central Bar Association

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Advocates Act, 1961 — Section 15(2), 16, 17, 17(1), 3(a)(b)

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120B, 419, 420, 470, 471

Citation : (2013) 6 ADJ 90 : (2013) 6 ALJ 22 : (2013) 4 AWC 3887

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : A.P. Singh and Rakesh Pande, for the Appellant; M.D. Singh Shekhar, Rajiv Kumar Misra, Vinay Kumar Rai and Yashwant Varma, for the Respondent

Final Decision : Allowed

Judgement

1. The Central Bar Association, Azamgarh is a society registered under the Societies Registration Act with Registration No. 1194 dated 31.1.1997. The society has its own bye-laws, registered with the Registrar of Societies. By this writ petition the Elders Committee, Central Bar Association, Azamgarh through its Chairman Ved Prakash Rai, Advocate have prayed for quashing the order dated 14.10.2011 passed by the Vice-Chairman, [Bar Council of U.P.]¹ Correction as per Correction Application No. 144134 of 2013 dated 8.5.2013 entertaining a complaint of Shri Pyare Mohan Srivastava, Advocate-a Member of Central Bar Association, Azamgarh against the inclusion of allegedly ineligible persons as members of Elders Committee on allegations of misconduct against them on the ground that according to the model bylaws as framed by the Bar Council of Uttar Pradesh, they are not entitled to supervise and to take part in the elections and that their conduct is violative of Section 35 of the Advocate Act. The petitioners have also prayed for writ of mandamus commanding the respondents not to interfere in the peaceful holding of elections of Central Bar Association, Azamgarh fixed for 21.10.2011.

2. The Vice-Chairman, Bar Council of Uttar Pradesh has by his order dated [14.10.2011]¹ Correction as per Correction Application No. 144134 of 2013 dated 8.5.2013 has restrained the Elders Committee, Central Bar Association to take any steps towards holding elections of the office bearers of the Bar Association.

3. Shri Ram Niwas Singh appearing for the petitioner submits that the Central Bar Association, Azamgarh has adopted the model bylaws framed and recommended by the Bar Council of U.P. Allahabad, which are registered with the Asstt. Registrar, Chit, Fund and Societies, Azamgarh on 31.12.2009. The model bylaws provides for appointment of five senior-most members of the Bar Association to the Elders Committee for the purposes of taking over after the term of office bearers is over and for holding elections.

4. By a resolution of the Central Bar Association, Azamgarh dated 18.8.2011 and Elders Committee was constituted consisting of Shri Ved Prakash Rai as its Chairman and Shri Vijay Pratap Singh, Shri Krishna Bihari Asthana; Shri Mohd. Iliyas Khan, Shri Surya Nath Singh as members.

5. It is submitted that for the year 2010-11 since the term of the office bearers of the Executive Committee of the Central Bar Association, Azamgarh had come to an end on 23.8.2011, with the extended period of one month, the general house of the Association resolved on 30.9.2011 to hold fresh elections. The Elders Committee started functioning from 18.8.2011, declared the election schedule on 4.10.2011 for elections on the post of President, Senior Vice President, two Vice Presidents, one Secretary, three Joint Secretaries, one Treasurer and two members of the Executive Committee fixing the date of filing the nomination from 7th October, 2011 to 10th October, 2011; scrutiny on 12.10.2011; withdrawal on 14.10.2011; polling if necessary on 21.10.2011 from 11.00 a.m. to 3.00 p.m. and counting on 21.10.2011 from 4.00 p.m. upto end.

6. Shri Pyare Mohan Srivastava, the complainant arrayed as respondent No. 4 had also filed his nomination papers for the post of the President, which was found on scrutiny to be valid. He moved a complaint on 10.10.2011 questioning the nomination of Shri Addya Prasad Singh on the ground that he had not completed 25 years of practice to be eligible in accordance to the model bylaws and further that a criminal case is pending against him. He forwarded a copy of the complaint to Bar Council of U.P. In his complaint he alleged that according to the resolution and the directions of the Elders Committee it was mandatory for every candidate to make declaration of any conviction or pending criminal case. Shri Addya Prasad Singh filed a notarised affidavit declaring pendency of criminal case, which was stayed by the High Court in Criminal Case No. 7399 of 2008.

7. The Elders Committee by its order dated 12.10.2011 rejected the complaint of Shri Pyare Mohan Srivastava on the ground that Azamgarh Division was established in the year 1994 and according to bylaws of the Central Bar Association, Azamgarh, the length of practice for the office of the President is 15

years. Shri Addya Prasad Singh completed 15 years and so far as pendency of criminal case, the same was stayed by the High Court.

8. Shri Pyare Mohan Srivastava withdrew his nomination papers by presenting an application on 14.10.2011 before the Elders Committee, which was accepted on 14.10.2011, which was the last date of withdrawing the nomination papers.

9. Shri [P.R. Maurya]¹, Vice-Chairman, Bar Council of Uttar Pradesh took notice of the complaint of Shri Pyare Mohan Srivastava and by an ex parte order dated 14.10.2011, he has stayed the entire election process. The order was communicated to the Collector, Azamgarh through fax message dated 14.10.2011 of Shri Prem Nath Tyagi, Secretary of Bar Council, U.P. As soon as the Elders Committee came to know of the ex parte order dated 14.10.2011, an application was filed in the Bar Council, U.P. on 17.10.2011 to recall the ex-parte order as the Bar Council U.P. has no authority or jurisdiction to interfere in the election process of the Central Bar Association, which is a Society registered under the Societies Registration Act.

10. It is submitted by Shri Ram Niwas Singh that the Bar Council U.P. has no authority to interfere in the elections of the Bar Associations. The adoption of model bylaws and its registration, or any of the provisions in the legislation for welfare of Advocates do not authorise such interference and intrusion into the acts of the Bar Associations registered as Societies under the Societies Registration Act. The elections can be challenged either before the Prescribed Authority u/s 25 of the Societies Registration Act as amended in the State of U.P. or by filing a civil suit. Shri Pyare Mohan Srivastava has withdrawn his candidature for President of the Bar Association, after which he had no business to make a complaint and to interfere in the elections.

11. The writ petition was filed on 18.10.2011. On 20.10.2011 this Court passed the following order:

Hon"ble Yatindra Singh, J.

Hon"ble Dinesh Gupta, J.

The counsel for the petitioner submits that:

(i) The Elder Committee was elected on 18.8.2011. It has notified the election schedule on 4.10.2011. The elections are to be held on 21.10.2011 and all preparations have been made;

(ii) The Bar Council has passed an order on 14.10.2011 restraining the Elder Committee from taking any further proceeding in the matter without mentioning as to who will manage the affairs of the association in the meantime;

(iii) The Bar Council has no jurisdiction to pass such order. The election dispute can only be settled under Societies Registration Act.

Notice on behalf of respondents 1 and 2 have been accepted by Sri Pankaj Naqvi.

Sri Rajiv Kumar Misra and Sri M.D. Singh has filed caveat on behalf of respondent-4. List this case in the week commencing 14.11.2011 before the appropriate bench. It will not be treated as assigned to this bench. In the meantime, they may file counter-affidavit.

The Elder Committee may conduct the election of association on 21.10.2011. However, no counting will be done. The ballot papers will be kept in safe custody in the sealed condition. The Elder Committee will manage the affairs of the association till the next date of listing. However, apart from conducting the elections, it will not take any other policy decision.

The Bar Council may also take a decision on the basis of notice/order dated 14.10.2011 and place it before the Court on the next date. This order will be subject to the order of the Court.

Order Date: 20.10.2011

12. Shri Rajiv Kumar Mishra appears for Shri Pyare Mohan Srivastava, who had filed counter-affidavit and supplementary counter-affidavit stating that the Elders Committee was not constituted as per the provisions of Model Bylaws. The senior most members of the Association actively practicing in the Courts at Azamgarh were overlooked in constituting Elders Committee. According to him seniormost practicing members in the bar are Shri Krishna Bihari Asthana (Enrollment No. U.P. 8737/63 dated 24.2.1954); Shri Brijbhushan Srivastava (Enrollment No. U.P. 773/63 dated 8.3.1958); Sri Ved Prakash Rai (Enrollment No. U.P. 6915/62 dated 15.12.1962); Shri Vijay Pratap Singh (Enrollment No. U.P. 7995/63 dated 2.5.1963) and Shri Dudh Nath Ram (Enrollment No. U.P. 1084/64 dated 8.12.1964). It is submitted that the constitution of Elders Committee was illegal as it was against the model bylaws, which provides for the seniormost members to be appointed as members of the Elders Committee. The qualification of the office bearers of the Bar Association has been fixed by the Model Bylaws adopted by Central Bar Association. No amendment has been made in para 17 of the Model Bylaws nor any proviso was added. The qualification for the post of office bearers is as it is provided in the model bylaws. A proposal in this regard was not approved by the Bar Council U.P. as per Para 53 of the model bylaws. The eligibility for the post of President and Vice President was 25 years and 20 years respectively. The Elders Committee was doing favour to Shri Addya Prasad Singh and thus the Bar Council as apex body of the Advocates interfered in the matter. He has filed supplementary affidavit in which it is stated that applicability of model bylaws as approved by the Bar Council U.P. and the Bar Council of India was considered by this Court and taking note of disputes in the elections and favouritism the High Court had suggested model bylaws to be prepared and made compulsory for all Bar Association and directed Bar Council to inform all concerned. In pursuance thereof the Secretary, Bar Council of U.P. issued a letter to President, Secretaries of all the Bar Associations.

13. An impleadment application has been filed by Shri Indrashan Singh and three

others represented by Shri M.D. Singh Sekhar, Sr. Advocate assisted by Shri Vinay Kumar Rai.

14. In the affidavit of Shri Vindheyesh Kumar Yadav-applicant No. 3 it is stated that the writ petition has been filed by the Chairman, Elders Committee without the approval of the Elders Committee to approach the High Court. Shri Indrashan Singh, Advocate had filed objection against the nomination of Shri Addya Prasad Singh, which were arbitrarily rejected. Shri Addya Prasad Singh does not have requisite experience of practice to be eligible to contest the elections. A list of 74 members was handed over by the Outgoing committee on 1.10.2011, whereas it was falsely stated that only list of 72 members was provided. Two members were wrongly shown to be debarred by the Elders Committee on 7.10.2011. Shri Krishna Bihari Asthana, the senior-most member of the Bar was given certificate of training as legal practitioner on 6.1.1954. After the commencement of Advocates Act 1961, he was enrolled on 16.12.1963 as an Advocate. His seniority has to be counted from the date of his practice as pleader. Sri Aditya Prasad Singh, the respondent No. 5 was enrolled as an Advocate on 11.2.1995, but before his enrollment he illegally appeared in the Courts and conducted various cases by impersonation as an Advocate, which is a misconduct. A criminal case registered as Crime No. 409 of 2003 under Sections 419, 420, 470, 471 and 120B IPC, is pending against him.

15. Shri Yashwant Verma appears for the Bar Council, U.P. He submits that the Bar Council, U.P. has statutory responsibility of maintaining discipline and conduct amongst the Advocates, which includes the conduct of elections, which is inseparably connected with the conduct of Advocates. He submits that Sections 17(1) and 3(a)(b) and (e) read with Section 6 of the Advocates Act and Section 16 of the Central Advocates Welfare Funds Act, 2001, gives sufficient powers to the Bar Council, U.P. to supervise the conduct, and the activities of the associations of Advocates. If the elections are not held in accordance with law the Association can be de-affiliated. He submits that though there is no provision in the model bylaws, adopted by most of the Bar Associations in the State of U.P., to supervise and if necessary to issue directions to hold elections fairly and transparently, various provisions of the model bylaws provide for sufficient guidelines for maintaining conduct of the Advocates and under which this Court has found powers to interfere in the elections to maintain discipline and conduct. In Shiv Kumar Akela, Sri S.S. Rathore and Smt. Sadhna Upadhyaya Vs. The Registrar, Societies Firms and Chits and Others, , a Division Bench of this Court intervened interpreting the responsibility of the Bar Council of India to ensure that the Advocates do not act in unprofessional and unbecoming manner. The cordial relationship between Bar and Bench ensures respect for each other. The Advocates on their enrollment are lifted to a status having responsibility towards society. They are privileged to take part and to assist in performing state functions. The Bar Associations stand on higher pedestal as compared to other societies. In the circumstances the Bar Council has greater role to play, which includes maintaining discipline and to ensure observance of democratic process

in the elections. The High Court had thus issued writ of mandamus to the Bar Council, U.P. to consider to incorporate such conditions in model bylaws. The High Court also recommended that all money transactions be made through banks and made it obligatory obligation for all enrolled Advocates and the persons seeking enrollment as Advocate not to use the title if he takes up any profession or vocation and the U.P. Bar Council to ensure that the Bar Associations follow the conditions of affiliation scrupulously. A writ of mandamus was also issued to the Registrar General to place a copy of the judgment before the Chief Justice for consideration to modulate/formulate Rules-prescribing procedure and to give effect to Rule 3A of Chapter XXIV of Rules of Court of Allahabad High Court for preparing rolls of Advocates.

16. In Shiv Kumar Akela, Sri S.S. Rathore and Smt. Sadhna Upadhyaya Vs. The Registrar, Societies Firms and Chits and Others, , a Division Bench of this Court considered a question of interference by non-resident Advocates, who are not ordinarily practicing in the Allahabad High Court and were admitted to the membership of High Court Bar Association, in the affairs of the Bar Association. It was alleged that these non-resident members with no right to vote under the guise of Advocates ordinarily practicing in the High Court are clandestinely inducted as ordinary members in the High Court Bar Association by the prospective-candidate/s for raising the number of votes in their favour creating manipulative majority turning the entire election process into a hoax. The High Court Bar is taken to ransom by these Advocates, who vote for considerations of money, muscle and manipulation and allow undeserving persons to be elected office bearers of the Bar Association. Under the High Court Bar Association Rules, only advocates practicing in Allahabad High Court, are eligible to be enrolled as ordinary members. The petitioner had sought relief to protect the legitimate members of the Bar Association to practise and to take part in the elections for their representation.

17. It was stated on behalf of Bar Council of Uttar Pradesh in its response in Shiv Kumar Akela's case (supra) that some advocates get enrolled by unscrupulous means playing fraud with the U.P. Bar Council on the basis of forged certificates. There is no procedure under the Advocates Act to ascertain and revoke enrollment of non-practicing/non-professional advocates. The Rules in this regard are not adequate for carrying out any scrutiny. It was also stated that U.P. Bar Council desires that Bar Associations at all levels should act as "watch dog" of advocates practicing in the Courts/Tribunals and aspires to have a mechanism to eliminate "nonprofessional" Advocates from sneaking into Bar under disguise and pollute it. Such non-practicing advocate must be weeded out and eliminated from sharing privilege/s conferred under various welfare schemes initiated by U.P. Bar Council exclusively for Advocates in legal profession. The U.P. Bar Council informed the Court that it has framed Model Bye-Laws and made it compulsory for granting affiliation/recognition to any Bar Association in the State. The High Court Bar Association has also obtained affiliation from U.P. Bar Council and is under obligation to conduct its affairs as per Model Bye Laws. The U.P. Bar

Council suggested that the High Court should identify non-practicing/non-resident advocates to control/regulate its day-to-day functioning and to check entry of such non-professional in the Bar/Court.

18. In paragraph-25 of the judgment in Shiv Kumar Akela's case the High Court appreciated the endeavor of Bar Council of U.P. to prepare Model Bye-Laws but found that these Model Bye Laws were not adequate as these do not provide for membership fee to be paid by cheque or demand draft by the enrolled advocates and to provide proof of continuing in profession and declaration of not taking up other vocation/trade/business and to get its enrollment reviewed. The High Court expressed concern over the increasing number of advocates using facilities like chamber, car parking, toilet, canteen, lunch rooms and proposed to regulate entry into its premises to ensure that only bona fide and genuine Advocates regularly practising in the High Court should be allowed to enter the Court premises. The High Court suggested that to regulate the entry and to identify the advocates a roll of advocates should be maintained as prescribed under Chapter XXIV, Rule 3A of Allahabad High Court Rules.

19. In the long and reasoned judgment in Shiv Kumar Akela's case this Court found that the condition of various Bar Associations in the State is worst and deplorable. There is unchecked infiltration of nonresident advocates in the Bar which is largely responsible for the decline in the standards of legal profession. The unchecked entry and the absence of monitoring in allowing the non-resident advocates to practice has given rise to large scale malpractices in legal profession. The High Court gave several directions in exercise of its powers under Article 226 of Constitution of India for ensuring transparency in fairness in elections including directions to prepare separate list/register of category of advocates namely ordinary members and non-resident members; to maintain separate list/register of three categories of the members defined under Clause 4 of High Court Bar Association Rules; to exclude non-resident Advocates from exercising right to vote in the meetings and election meetings. The High Court proposed modification of the application form for seeking membership to the High Court Bar Association with certain declarations including a declaration that the member will maintain his office as advocate within the municipal limits of the city of Allahabad as in the case of Advocates on record in the Supreme Court. A writ of mandamus was also issued to the Bar Council of U.P. to incorporate in "Model-Bye-Laws", that all money transactions shall be only through Bank and make it a statutory obligation for enrolled advocates to give undertakings/declaration that they shall not use the word "advocate" against his name and will surrender the enrollment certificate when he ceases to be a legal practitioner or seek any other vocation. The High Court also mandated in its direction issued in Para 2(iii) that U.P. Bar Council ensures that High Court Bar Association's terms and conditions of affiliation are scrupulously followed. A writ of mandamus was also issued to the Registrar General, High Court to place a copy of the judgment before Hon'ble the Chief Justice for consideration to modulate/formulate Rules prescribing procedure and to give effect to Rule 3A of Chapter XXIV of Rules of

Court of Allahabad High Court; to prepare advocates rolls. The High Court also directed the Advocate General to place a copy of the judgment before the State Government to take the call of the situation and initiate such measures as may be warranted in the light of the observations made in the judgment.

20. We are informed that the Rules Committee has met and considered the judgment and that the Advocates rolls, which could not be prepared on account of some orders passed in other writ petitions, are now prepared and that almost all the practicing advocates' names, enrollment numbers, telephone numbers and addresses have been uploaded on the official website of the High Court: "www.allahabadhighcourt.in". Some defects have been pointed out in the applications, which are in the process of being removed and that the matter is being monitored by a learned Single Judge of this Court.

21. In this writ petition we are concerned with the question, as to whether the Bar Council of Uttar Pradesh as statutory body elected and constituted under the Advocates Act has any supervisory role to play and can issue any direction to the Bar Associations in the matters of its elections of its office bearers. It is submitted by learned counsel appearing for the petitioner that after preparing and recommending adoption of the Model-Bye Laws by the respective Bar Associations, which may be one or many in a particular district in subordinate Courts including the service Tribunals, Taxation offices and Tribunals, Revenue Courts, District Consumer Forums, Labour Courts and others, the conduct of elections do not fall within the domain of the powers and authority of the Bar Councils of the State. The Bar Associations are Societies registered under the Societies Registration Act and that in case of any irregularity in election, the procedure for redressal of grievances of individual members or the office bearers is with the Prescribed Authority u/s 25 of the Societies Registration Act as amended in the State of U.P. or by filing a civil suit. In exceptional cases the High Court may interfere in the elections, if some non-professionals or total strangers are trying to usurp the office and/are creating a situation which obstructs the administration of justice. The Bar Council does not have any role otherwise, in the elections of the Bar Association.

22. Paragraphs 88 and 89 of the judgment in Shiv Kumar Akela's case relevant for the purposes of deciding the issue in this writ petition are quoted as below:

88. Rule 3(c), Bar Council of Uttar Pradesh-Election Rules, 1992 (framed u/s 15(2) of the Advocates Act) reads:

3(c) "Bar Association" means a Bar Association registered under the Indian Societies Act, 1860 and also affiliated by the State Bar Council in accordance with the rules framed by State Bar Council for the purposes of these rules.

89. It shall not be out of context to refer to relevant rules of-"Bar Council of India Rules - Standards of Professional Conduct and Etiquette," (passed by Bar Council of India), which are extracted below:

Preamble

An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his nonprofessional capacity may still be improper for an advocate.

Section I - Duty to the Courts. An advocate, shall, during the presentation of his case and while otherwise acting before a Court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty: to submit his grievance to proper authorities.

2. An advocate shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. An advocate shall not influence the decision of a Court by any illegal or improper means, Private communications with a judge relating to a pending case are forbidden.

4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the advocates himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

Section IV-Duty to colleagues

36. An advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interviews not warranted by personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. His signboard or name-place should be of a reasonable size. The signboard or name-plate or stationery should not indicate that he is or has been President or Member of a Bar Council or of association or that he has been associated with any person or organisation or with any particular cause, or matter or that he specialises in any particular type of work or that he has been a Judge or an advocate General.

FORM UNDER RULE 40

Bar Council of....

...

Dear Sirs,

(1) I am enclosing herewith a Postal Order/Bank Draft/Cash for,...for being the payment under Rule 40. Chapter II, Part VI of the Rules of the Bar Council of India.

(2) I am enrolled as an Advocate on the Rolls of your State Bar Council.

(3) I am ordinary practising at...in the territory/State of....

(4) I am a member of the....Bar Association/not a member of any Bar Association.

(5) My present address is....Dated SIGNATURE

Place NAME IN BLOCK LETTERS ENROLMENT No. ...

Part-IX

General principles to be followed by State Bar Councils and Bar council of India, rules for Supervision and Control by the Bar Council of India.

Supervisions and control

17...

18...

19...

20...

21...

22...

23...

24(a) When the name of an advocate is removed from the rolls or an advocate is suspended from practice or otherwise punished, under an order of any Disciplinary Committee or an order of the Supreme, Court u/s 38, or when an intimation of voluntary suspension from practice is received from the advocate, the State Council in respect of a person in its roll and the Council in respect of a person whose name is not in any State Roll, shall furnish information thereof giving the name of the advocate, his roll number and date of enrolment, his address, nature of the punishment inflicted.

Rule 5(iii) of Supreme Court Rules 1966 lays down that no advocate shall be qualified to be registered as an advocate on record unless he has an office in Delhi within a radius of 16 Kms. from the Court house and Rule 11 of the said Rules further lays down that every advocate, on record, shall notify to the Registry the address of his office in Delhi and every change of such address. Rule 10 and 11 of Supreme Court Rules, 1966 are also relevant which reads:

10. No advocate other than an advocate-on-record shall appear and plead in any matter unless he is instructed by an advocate-on-record.

11. Every advocate-on-record shall notify to the Registrar the address of his office in Delhi and every change of such address, and any, notice, writ summons, or other document served on him or his clerk at the address so notified by him shall be deemed to have been properly served.

Bar Council of India has framed model schemes for welfare of Advocates. Grant of financial assistance to indigent practising advocates means Advocate who is actually in legal practice entitled for seeking benefits under said scheme.

Bar Council of India Rules prescribe scheme for library development. Rule 3(b) defines "Bar Association" which reads:

3(b) "Bar Association" means the Bar Association registered under the Societies Registration Act or so affiliated with the State Bar Council within whose jurisdiction the Bar Association is situated.

The application form for Bar Council Welfare Scheme, 1998 contains following certificate:

Certification by the Bar Association

where the applicant is a member

It is hereby certified that Shri/Ms./Mrs...son of/daughter of/wife of...is a member, of this Bar Association and his/her membership Number of the Bar Association at present is....

(underlined by us to lay emphasis)

23. In order to appreciate the contentions raised in this writ petition, it is useful to quote the provisions of Sections 6 and 17 of the Advocates Act, 1961 and Section 16 of the Advocates Welfare Funds Act, 2001:

Advocates Act, 1961

6. Functions of State Bar Councils.--(1) The functions of a State Bar Council shall be--

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of Section 7;

- (e) to promote and support law reform;
- (ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;
- (eee) to organise legal aid to the poor in the prescribed manner;
- (f) to manage and invest the funds of the Bar Council;
- (g) to provide for the election of its members;
- (gg) to visit and inspect universities in accordance with the directions given under clause (i) of sub-section (1) of Section 7;]
- (h) to perform all other functions conferred on it by or under this Act; (i) to do all other things necessary for discharging the aforesaid functions.

(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of-

- (a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;
- (b) giving legal aid or advice in accordance with the rules made in this behalf;
- (c) establishing law libraries.

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

17. State Bar Councils to maintain roll of advocates.--(1) Every State Bar Council, shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of--

- (a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926), immediately before the appointed day 1[including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time] express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council;
- (b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority, 2 [and,

subject to any rule that may be made by the Bar Council of India in this behalf, such seniority shall be determined] as follows:

(a) the seniority of an advocate referred to in clause (a) of sub-section (1) shall be determined in accordance with his date of enrolment under the Indian Bar Council Act, 1926 (38 of 1926);

(b) the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day shall, for the purposes of the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify;

[***]

(d) the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be;

(e) notwithstanding anything contained in clause (a), the seniority of an attorney enrolled whether before or after the commencement of the Advocates (Amendment) Act, 1980 as an advocate shall be determined in accordance with the date of his enrolment as an attorney.

(4) No person shall be enrolled as an advocate on the roll of more than one State Bar Council.

The Advocates Welfare Fund Act, 2001

16. Recognition by a State Bar Council of any association of advocates.--

(1) Any association of advocates known by any name which is registered as an association before the date of commencement of this Act may, before the date to be notified by a State Bar Council in this behalf, apply for recognition to the State Bar Council in such form as may be prescribed.

(2) Any association of advocates known by any name which is registered as an association on or after the date of commencement of this Act may, within three months from the date of its registration as an association, apply for recognition to the State Bar Council in such form as may be prescribed.

(3) Every application for recognition under sub-section (1) or sub-section (2) shall be accompanied by,-

(a) a copy of the rules or bye-laws of the association;

(b) names and addresses of office bearers of the association;

(c) a list of members of the association containing the name, address, age, enrolment number and date of enrolment with the State Bar Council and the ordinary place of practice of each member.

(4) The State Bar Council may, after such enquiry as it deems necessary,

recognize the association and issue a certificate of recognition in such form as may be prescribed.

(5) The decision of the State Bar Council on any matter regarding recognition of an association under sub-section (4) shall be final.

Explanation.--In this section," registered" means registered or deemed to be registered under the societies Registration Act, 1860 (21 of 1860) or any other law for the time being in force.

24. We do not find any provision in the Advocates Act, including Section 6, Sections 17(1), (3), (a), (b), and (c); Section 16 of the Advocates Welfare Fund Act, 2001, or even in the Bar Council of U.P. Election Rules, 1992 made u/s 15(2) of the Advocates Act, 1961 to supervise, monitor, regulate, or to intervene in the elections of any particular affiliated or non-affiliated Bar Associations on the ground that the Bye-Laws or the Model-Bye Laws framed by the Bar Council of Uttar Pradesh have been violated by any Bar Association. The Model-Bye Laws prepared by the Bar Council of U.P. have received approval of the High Court in Shiv Kumar Akela's case. The adoption of Model-Bye Laws by all Bar Associations is to avoid the entry of non-practicing and non-resident Advocates in the Bar Association and having prescribed a procedure in which the elections should be held regularly and in case the term of the office bearers expires, the Elders Committee to take over and run the Bar Association upto the time and for holding the elections, the Bar Council of Uttar Pradesh does not have any power or authority under any Statute, Rules, Regulations, Bye-laws, or any authority given by Court or judicial pronouncement to supervise and interfere in the elections of its office bearers or executive Committee. The Bar Council of Uttar Pradesh is a statutory body. It can exercise only those powers, which are vested in it by the Advocates Act or any other Acts and the Rules and Regulations framed thereunder. There is absolutely no power whatsoever, in the Bar Council of Uttar Pradesh or any of its office bearers or Secretary to direct any Bar Association to hold or not to hold elections or for that matter the appointment of Elders Committee; for fixing or finalising the electoral list; fixing the dates of elections or in issuing directions for holding elections. The Bar Council of Uttar Pradesh or its members and officers do not have any authority whatsoever to issue directions to any Bar Association either directly or to be communicated through the District Magistrate or District Judge to act in any manner in the conduct of elections of its office bearers or executive Committees. The Bar Council of Uttar Pradesh cannot make inroads into and curtail the rights of the Advocates to form an association which includes their rights to elect the members to its executive Committees. The Bar Council of Uttar Pradesh being a statutory body to regulate the enrollment, discipline and conduct of its members, to ensure the welfare of its members and for implementation of various welfare schemes, do not get any authority to supervise the elections and affairs of the Bar Associations, which are independent societies registered under the Societies Registration Act.

25. The members of the Bar Associations registered as societies under the Societies Registration Act have statutory remedies available to them before the Registrar of Societies, Prescribed Authority and finally in the civil Court for redressal of their grievances.

26. In the present case the dispute centers around the eligibility of members of the Elders Committee, who were appointed to look after and manage the Bar Association, until the elections and to supervise the elections. On the complaint of Shri Pyare Mohan Srivastava, a candidate for contesting the elections for the post of President, whose nomination was found to be valid and who has subsequently withdrawn from the contest, Shri R.P. Maurya, the then Vice-Chairman of the Bar Council of Uttar Pradesh took notice of the complaint and issued the impugned order restraining the Elders Committee, Central Bar Association, Azamgarh to take any further steps in the matter of holding elections. He assumed powers purportedly on the ground that the Elders Committee has not been constituted in accordance with the Model Bye Law and further that some members of the Elders Committee are not eligible to be appointed to the Committee. He purportedly assumed powers on a complaint on the eligibility of the members of the Elders Committee, and interfere in the elections for which he has no power at all.

27. In *Pratap Chandra Mehta Vs. State Bar Council of M.P. and Others*, , the Supreme Court considering the provisions of Advocates Act 1961, observed in paras 14 and 15 as follows:

14. The Parliament of India enacted the Advocates Act on 19th May, 1961 to amend and consolidate the laws relating to legal practitioners and to provide for the constitution of State Bar Councils and an All India Bar Council. The object of the Advocates Act is to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Though the Advocates Act relates to legal practitioners in its pith and substance, it is an enactment dealing with the qualifications, enrolment, right to practise and discipline of advocates. It is not only implicit but clear from the provisions of the Advocates Act that once an advocate is enrolled by any State Bar Council, he becomes entitled to practise in all Courts including the Supreme Court. Therefore, this is a legislation which deals with persons entitled to practise before the Supreme Court.

15. In the case of *O.N. Mohindroo Vs. The Bar Council of Delhi and Others*, , this Court held that:

10. The object of the Act is thus to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate the working of the profession and to prescribe rules of professional conduct and etiquette, and the power to punish those who commit breach of such rules. The power of punishment is entrusted to the disciplinary committees ensuring a trial of an advocate by his peers. Sections

35, 36 and 37 lay down the procedure for trying complaints, punishment and an appeal to the Bar Council of India from the orders passed by the State Bar Councils. As an additional remedy S. 38 provides a further appeal to the Supreme Court. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrollment, right to practise and discipline of the advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all Courts including the Supreme Court. As aforesaid, the Act creates one common Bar, all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts, the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore the Act must be held to fall within entries 77 and 78 of List I. As the power of legislation relating to those entitled to practise in the Supreme Court and the High Courts is carved out from the general power to legislate in relation to legal and other professions in entry 26 of List III, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under entries 77 and 78 of List I and partly under entry 26 of List III.

28. We may observe here that the Bar Council has powers u/s 21 of the Advocates Act to decide the question of seniority amongst the Advocates, who are enrolled with the Bar Council. If any representation is made on any dispute on the issue to determine the seniority, it is open to the Bar Council to decide it in accordance with the law. The Bar Council, however, does not have any authority on such a complaint to interfere in the elections of Bar Association and to stop the Elders Committee from taking steps for holding the elections.

29. We also take judicial notice of the fact that the Bar Council of Uttar Pradesh has been issuing several notices, press notes and has been giving calls in directing members of Bar Association for abstaining from work on various issues purportedly to protect the interest of its enrolled Advocates; and rising incidents of crime against enrolled Advocates. We take this opportunity to declare that Bar Council of India or Bar Council of Uttar Pradesh or for matter of any Bar Council, as statutory bodies under the Advocates Act for enrolling advocates, maintaining discipline and for regulating the conduct including punitive action relating to enrollment of an advocate; and in ensuring welfare of the advocates through various schemes, for affiliation of the Law Colleges and ensuring the standards of legal education in the Law Colleges do not have any power or authority to give any call to the Advocates to abstain from work or to resort to strike work which obstructs the administration, of justice, except in rarest of rare situation in which as opined by Hon"ble Supreme Court as a mark of protest where the independent of judiciary is at stake the Bar Council may, after giving reasonable notice to the head of judiciary, call for a peaceful protest without disturbing the work and functioning of Courts and Tribunals. In Pandurang Dattatraya Khandekar Vs. Bar Council of Maharashtra, Bombay and Others, ; Tahlil Ram Issardas Sadarangani and others Vs. Ramchand Issardas Sadarangani and

another, ; Common Cause A Registered Society v. Union of India, (1995) 3 SCC 19; In Re: Sanjiv Datta and Others, ; Indian Council of Legal Aid and Advice, etc. etc. Vs. Bar Council of India and another, ; K. John Koshy and Others Vs. Dr Tarakeshwar Prasad Shaw, ; Mahabir Prasad Singh Vs. M/s. Jacks Aviation Private Ltd., ; Ex-Capt. Harish Uppal Vs. Union of India (UOI) and Another, ; Common Cause, A Registered Society Vs. Union of India (UOI) and Others, and Common Cause "A" Registered Society, Etc. Vs. Union of India (UOI) and Others, Etc., , these principles have been firmly established. The Advocates are not obliged to attend and respond to any such illegal call. In fact the Bar Council of India or State Bar Councils must take notice of such calls given by Bar Associations and take action against the Advocates for misconduct, who take part in such protests either in abstaining from work or causing strikes disturbing the functioning of Courts. It is axiomatic that a disciplinary body itself gives a call for abstaining from work on issues which do not touch or are remotely connected with the independence of judiciary. In such cases the High Court had issued several directions and circulars to the Judicial Officers to ignore such illegal calls of abstaining from work or strike and have directed the Judicial Officers to perform their duties in accordance with the law. The writ petition is allowed. It is declared that Bar Council of Uttar Pradesh has no power or authority to interfere in the elections of the Bar Associations in any manner whatsoever. The order of Shri R.P. Maurya, Vice-Chairman, Bar Council of Uttar Pradesh dated 14.10.2011 is set aside. The elections of the Bar Association may and concluded in accordance with law.

1. Correction as per Correction Application No. 144134 of 2013 dated 8.5.2013.