
(2009) 04 KAR CK 0121
In the Karnataka High Court
Case No : Writ Petition No. 1952 of 2009

K.N. Subbareddy, Advocate

APPELLANT

Vs

Advocates Association and Karnataka State Bar Council

RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (a), 19 (1) (c)

Citation : (2009) ILR (Kar) 1697

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : A.R. Lokesh, for the Appellant; H.P. Leeladhar, for the Respondent

Judgement

N. Kumar, J.—This Writ Petition is filed seeking several directions from the Court for proper conduct of elections to the Advocates' Association of Bangalore. Notice was ordered to the Association. The Association was represented by a counsel. In fact, on coming to know of the said Writ Petition, Advocates in large number were present in Court at the time of hearing of the Writ Petition and made several submissions for proper conduct of the elections.

2. After hearing the learned members of the Bar, this Court appointed Sri. Nanjunda Reddy, senior Counsel and Sri N.S. Prasad, Advocate, as returning officers., to take appropriate steps to conduct the elections on 22.03.2009. A Committee to monitor the elections and to resolve any dispute which may arise in the conduct of elections, was constituted by appointing Sri. B.V. Acharya, the former Chairman of the Bar Council of Karnataka and former Advocate General, as its Chairman. Directions were issued to finalise the voters list, conduct elections by using Electronic Voting Machine except to the post of councillors of City Unit of the Advocates Association toad for videographing entire process of polling. In fact, the Returning Officers suggested a Model Code of Conduct which was agreed by all the Advocate and the Code of Conduct was also adopted. Accordingly, everything was well set for conducting the elections on 22.03.2009.

3. On the date of election, there was trouble. The Monitoring Committee took a decision to cancel the polling held on 22.03.2009. Thereafter, the Chairman of the Monitoring Committee filed a report before this Court which reads as under:

Report

It is submitted on behalf of the Monitoring Committee as follows:

1. That as per schedule the polling commenced at 10AM on 22-3-2009 in the City Civil Court premises. During the course of polling, following complaints were received by the committee:

(a) A Ballot paper book pertaining to the Governing Council of the City Unit has been unauthorisedly removed and was later recovered.

(b) There were irregularities in relation to voting in the City Unit, in as much as, Ballot papers were unauthorisedly handed over to third persons for marking;

(c) That in spite of specific instructions to the contrary, the candidates/their Agents went on canvassing in the Polling area;

(d) Un-authorised persons who were not Advocates had entered the premises leading to malpractices.

(e) There were also some complaints of impersonations.

(f) There was disturbance at the place of issue of Ballot papers to the City Unit Issuance Area by way of throwing away the tables used by the Polling Officers for issuing the identifications slips.

2. Though polling went on in a normal way till about 12 Noon, thereafter, there were reports of disturbances outside the polling area, vitiating the peaceful atmosphere. There was also commotion both inside and outside the polling area with the candidates and their supporters entering the polling area. All the appeals and attempts by the Monitoring Committee including suspension of polling for a short duration, did not bring about the desired result i.e., normalcy for peaceful polling. In the meanwhile, the behaviour of the Section of people just at the entry point of polling area became unruly.

3. Since the main complaint pertains to the ballot papers, pertaining to City, a suggestion to cancel only election to the Governing Council of the City unit was not acceptable to all concerned.

In the circumstances, the Monitoring Committee after detailed discussions with all concerned, came to the conclusion that there was no alternative, but to cancel the elections held on 22-3-2009.

Sd/- (B.V. Acharya) Bangalore Chairman Dated: 23-3-2009 Monitoring Committee

4. When the case was taken up for consideration on 23.03.2009, the learned

Advocates who were very much agitated about what transpired on 22.03.2009 were present in good numbers in the Court. They made submissions giving their experience of what happened on 22.03.2009.

5. In order to appreciate the controversy in a proper perspective and to ensure a free and fair elections, the Court suggested to the members to place their views in writing, pointing out the deficiencies and their suggestions, so that appropriate orders could be passed for conducting the fair election, in the mean while, upset over the incident which transpired on 22.03.2009, the President of the Association, Sri. D.L. Jagadish, submitted his resignation, a copy of which is placed on record. Thereafter, Advocates have filed their written submissions before the Court. Some of them have filed applications for impleading them in the proceedings. All of them were heard. Learned Senior Counsel Sri. Jayakumar S. Patil, Sri. K. Subba Rao, Sri. S.P. Shankar, Sri. S. Shekar Shetty, made their submissions. About 36 Advocates also made their submissions. Two lady members of the Bar were also heard.

6. The material on record, the Press Reports, submissions made at the Bar and the report submitted by the Chairman of the Monitoring Committee discloses the following facts.

7. The Press Reports show that the elections to the Association was fought more bitterly than election to the Legislative Assembly of the State. Honey and liquor has flown beyond ones imagination during the days prior to poll date. Parties were arranged in Hotels, Choultries, Palace Grounds and other places where Advocates were entertained with liquor, presents and food. It also shows that silver coins of Gods and Goddesses and other valuable presents were distributed to the Advocates. Even law books were distributed. On the election date, it is reported in the News Paper with the photographs showing snatching of ballot papers, throwing away the table used by the Returning Officers and such other violent acts. The candidates had brought students and other outsiders who have nothing to do with the Association, who were wearing T-Shirts, Caps and carrying placards and some of them possessed fabricated identity cards of the Association on the basis of which they wanted to cast the vote, in fact, some of them have cast their votes. It was total lawlessness at the election scene.

8. None of the Advocates who submitted their arguments before the Court disputed these news items published in the Media. On the contrary, their grievance was that all those information published is true and thus it has ruined the reputation of the members of the Association. In fact, a fervent appeal was made to the Court to use its authority to put down such malpractice, ugly incidents and rowdian in its order to maintain the dignity and fair name of the profession, the Association and its members.

9. What is surprising is that the persons, who were contesting for the post of President of the Association are not novice to the election. Sri. Y. Sadeshiva Reddy, Sri. H.C. Shivaramu, the contestants to the presidentship election were

former Chairman of the Bar Council of Karnataka. Sri. K.N. Subba Reddy, the petitioner in this writ petition and a candidate for the president post, was a President of the Advocates Association for several terms earlier and a sitting member of the Bar Council of Karnataka. Sri K.H. Putte Gowda was the Secretary of the Advocates Association in the past. They are all acknowledged leaders of the Bar. It is stated that, it is they who indulged in such malpractices, violated, the code of conduct and the orders passed by this Court. They want to occupy the coveted posts the President of the Advocates Association, which is said to be the biggest Advocates' Association in Asia. Probably, that explains the reason why things went out of control on the election date, because of the "no holds barred" attitude. They cannot escape the blame. In their anxiety to occupy the said coveted post, they seem to have forgotten their profession and its nobleness. The fair name of the century old association is dented. The Advocates Association of Bangalore is known for conducting its affairs in a very peaceful manner. Probably 23.03.09 would go down in the history of the association as the blackest day, as such a thing has never happened in the past and the polling never stopped in the election earlier.

10. In fact this incident came as a shock to the legal fraternity even before they could recover from the shock of what transpired in the Madras High Court. The violent incident inside the Madras High Court let loose by some misguided Advocates tarnished the fair name of the Madras High Court and its Bar. Police had to enter the High Court premises to restore the law and order. In the process innocent and respected advocates were hurt and the report suggests that a Hon'ble Judge was also assaulted. The Apex Court had to intervene and a retired Judge of the Supreme Court had to be appointed to enquire into the ugly incident before peace could be restored in the High Court premises.

11. Therefore it seems this unruly behavior on the part of some of the members of the Bar is slowly becoming universal in nature. Their tribe is increasing which is a dangerous trend. There are a few black sheeps in every profession, may be in every walk of life. But few as they are, they tarnish, by their machinations, the fair name of the age old institutions. The reason for this fall in standards may be two fold. Firstly, the quality of legal education imparted in the country and secondly, the entrant to the legal profession is not educated about the professional conduct and etiquette to be practiced at the Bar. This is a matter which requires to be looked into immediately by persons who are in charge of the legal education and who are at the helm of the affairs of the Bar in the country, before things go out of control.

12. In this context, it has become necessary to remind these misguided lawyers and the new entrants to the profession about the greatness and nobility of this legal profession of which they are a part.

13. The preamble of the chapter on Standards of professional conduct and Etiquette prescribed by the Bar Council of India reads as under:

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 member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate.

It will be useful to quote what Sharaswood said of legal profession:

A lawyer, without the most sterling integrity, may shine for a while with meteoric splendour; but his light will soon go out in blackness of darkness. It is not in every man's power to rise to eminence by distinguished abilities. It is not in every man's power, with few exceptions, to attain respectability, competence and usefulness. The temptations, which beset a young man in the outset of his professional life, especially if he is in absolute dependence upon business for his subsistence, are very great. The strictest principles of integrity and honor are his only safety. Let him begin by swerving from truth or fairness, in small particulars, he will find his character gone-whispered away, before he knows it. Such a one may not indeed be irrecoverably lost; but it will be years before he will be able to regain a firm foothold. There is no profession in which moral character is so soon fixed as in that of the law; there is none in which it is subjected to severer scrutiny by the public. It is well it is so. The things we hold dearest on earth, our fortunes, reputations, domestic peace, the future of the dearest to us, nay, our liberty and life itself, we confide to the integrity of our legal counsellors and advocates. Their character must be not only without a stain, but without suspicion. From the very commencement of a lawyer's career, let him cultivate above all things, truth, simplicity and candor. They are cardinal virtues of a lawyer. Let him always seek to have a clear understanding of his object; be sure it is honest and right and then march directly to it. The covert, indirect and insidious way of doing anything, is always the wrong way. It gradually hardens the moral faculties, renders obtuse the perception of right and wrong in human actions, weighs everything in the balance of worldly policy, and ends most generally, in the practical adoption of the vile maxim, that the end sanctifies the means.

14. The Apex Court in the case of J.S. Jadhav Vs. Mustafa Haji Mohamed Yusuf and others, said as under:

Advocacy is not a craft, but a calling; a profession wherein devotion to duty constitutes the hallmark. Sincerity of performance and the earnestness of endeavour are the two wings that will bear aloft the advocate to the tower of success. Given these virtues other qualifications will follow of their own account. This is the reason why legal profession is regarded to be a noble one. But it cannot be allowed to become a sorriest of trades.

15. In *M. Veerabhar Rao v. Tek Chand* AIR 996 SC 28, the Supreme Court said:

Legal profession is monopolistic in character and this monopoly itself inheres certain high tradition which its members are expected to upkeep and uphold.

Members of the profession claimed that they are the leaders of thought and society.

16. In the case of Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, the role of the numbers of the Bar has been stated as under:

The Bar is not a private guild, like that of barbers, butchers and candlestick makers" but, by bold contrast, a public institution committed to prove justice and pm bono publico service. The grant of a monopoly licence to practice Jaw is based on three assumptions: (1) There is a socially useful function for the lawyer to perform. (2) The lawyer is a professional person who will perform that function, and (3) His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of Justice.

"The Practice of law is a Public Utility". The lawyer, the Public and Professional Responsibility by F. Raymond Marks et al - Chicago American Bar Foundation, 1972, p. 288-289). A glance at the functions of the Bar Council, and it will be apparent that a rainbow of public utility duties, including legal aid to the poor, is easel on these bodies in the national hope that the members of this monopoly will serve befitting an honourable order. If pathological cases of members misbehaviour occur, the reputation and credibility of the Bar suffer a mayhem and who, but the Bar sensitive to this potential disrepute and. few Hack sheep bring about.

17. In V.C. Rangadurai Vs. D. Gopalan and Others, , the Supreme Court said:

Law is a noble profession, true; but it is also an elitist profession. Its ethics, in practice, (not in theory, though) leave much to be desired, if viewed as a profession for the people. When the Constitution under Article 19 enables professional expertise to enjoy a privilege and the Advocates Act confers a monopoly, the goal is not assured income but commitment to the people-the common people whose hunger, privation and hamstrung human rights need the advocacy of the profession to change the existing order into a Human tomorrow. This desideratum gives the due to the direction of the penance of a deviant geared to correction Serve the people five and expiate your sin, is the hint.

Law's nobility as a profession lasts only so tongs as the members maintain their commitment to integrity and service to the community. Indeed, the monopoly conferred on the legal profession by Parliament is coupled with a responsibility toward the people, especially the poor Viewed from this angle, every delinquent who deceives his common client deserves to be pawned upon. This approach makes it a reproach to reduce the punishment, as pleaded by learned Counsel for this appellatant.

18. Law is a noble profession. Law's nobility as a profession lasts so long at the members maintain their commitment to integrity and service to the community.

The practice of law is a public utility. The central function that the legal profession must perform is nothing less than the administration of justice. Legal profession is monopolistic in character and this monopoly itself inheres certain high tractions which its members are expected to upkeep part uphold. The legal profession is an essential and integral part of the judicial system and lawyers may figuratively be described as priests in the temple of justice. They assist the court in dispensing justice and it can hardly be disputed that without their help, it would be well highly impossible for the Courts to administer justice. The advocates are equal partners with the judges in the administration of justice. The great functions of a lawyer in upholding the law and the constitution have been exercised in all countries, at all times.

19. A new entrant to the legal profession, who wants to soar out like an aircraft, should remember that within hours, the aircraft has to come down. On the contrary, before a sky-scraper is built, more time is spent beneath the ground laying the foundation, than in constructing the building. The deeper the foundation, the taller the building. It is for all to see. Therefore, he should resist the temptation of flying high overnight. Those, who overcome this temptation are the real leaders of the bar. Tomorrow is yours. Even after centuries, things have not changed. In spite of the over crowding of the Bar there is always room at the top. To reach the top there are no short cut methods. Truth, simplicity, candor and hard work are the only path. They are the cardinal virtues of a lawyer. The earning of a lawyer may be a measure of success in the profession but not respectability. However, the money earned is also equally important. A great lawyer will not do mean thing for money. He esteems his office as counselor as higher than political place or scholastic distinction. A truly great lawyer is one of the highest product of civilization. He is the master of science of human experience. He loves justice, law and peace. He believes and practices that honesty is the best policy. A lawyer who is not honest can never command respect either from the members of the Bar, the Bench or the Public. Therefore, one of the great Presidents of United States of America Mr. Abraham Lincoln was compelled to remark as under.

Receive to be honest at all events; and if in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation rather than one in the chasing of which you do, in advance, consent to be knave.

20. Therefore, it is no wonder, that, lawyers through

the ages in all countries have enjoyed esteem and respect as pillars of justice, as preservers of the weak and poor against oppressors and litigants, as upholders of the freedom and liberty of human beings and as a sword for the guilty and a shield for the innocent. These are the high expectations of what is described as a noble profession. Its members must set an example of conduct worthy of emulation.

21. Ballot is the instrument by which the voter expresses his choice among candidates in an election. Vote is his choice or preference, as expressed by the ballot. The right to vote for the candidate of one's choice is the preference, of democratic polity. Casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting rights mark the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted. Freedom of voting & distinct from right to vote is thus a species of freedom of expression. Vote is not a commodity available for sale nor the voter. Sale and purchase of vote amounts to corruption, a crime. It is unbecoming of an advocate to trade in votes. It reflects his character and conduct. Spending huge amounts do not speak good of the candidates who are contesting the election nor the advocates who are the beneficiaries of such extravagance. They forfeit their right to be members of the noble profession. They will be looked down by the society. It will damage the reputation of the Bar, it may cast its cloud on the legal system. The candidates who want to be the leaders of the Bar are setting dangerous trends which may engulf them in future. They are doing a great disservice to the new entrants of the bar and may be unknowingly ruining their bright future. The new entrants to the profession who have become members of this noble profession should come out of the atmosphere prevailing in the college campus. They must try to adopt to the requirements of the professional conduct. They must know in the legal profession old are preferred than young. It is not without any reason. To get over the stumbling block, they have to work overtime, Great sacrifices are expected of them. Childish and rowdy behavior, irresponsible acts are frowned upon. First they should discipline themselves, conduct themselves like professionals and above all like Gentle men to command respect from the public or the litigants. They should know that they are the officers of the Court, and their behavior inside and outside the court will have an impact on the Judicial administration in the Country. Their character must not only be without a stain, but without suspicion. They should desist from becoming prey to the vile maxim that the "end sanctifies the means". On the contrary they should believe and practice in the maxim that "means justifies the end".

22. The Bangalore Bar is greatly shaken by the happening on 22.03.2009. It appears, all of them irrespective of their standing at the Bar, are unanimous in their opinion that, time has come for taking strong measures by way of electoral reforms to set tight the working of the Association. They are conscious that public are watching the affairs of the Association. They are also aware that what transpired on 22.03.2009 did not happen overnight. There is no point in blaming the candidates for such a sordid state. These cancerous tendencies crept into the Association since early 1990s. To-day a situation has reached that without indulging in such malpractices, one cannot win an election to the Association. It is in this atmosphere, which is a gift of the past, the candidates in the present election are finding it difficult to desist from such malpractices. They are caught in the web of a vicious circle. They are also helpless. They also want electoral

reforms. It is heartening to note that none of the candidates not the Advocates who made their submissions before the Court orally or in writing ever pointed an accusing finger towards the decision of the Monitoring Committee to cancel the election. On the contrary, all of them were unanimous in their opinion that the decision to cancel the election was just and proper and the Monitoring Committee had no option except to cancel the election. It was a right decision. Therefore, what is needed, is on immediate overhauling of electoral process whereby elections are free from evil influence of all vitiating factors. It goes without saying that money power and muscle power go together to vitiate the electoral process and it is their combined effect which is sullying the purity of electoral contests and affecting free and fair elections. To control the ill effect, of money power and muscle power the election system should be overhauled and drastically changed. It is in this background, it is not necessary to set out in detail what transpired on 22.3.2009, who is responsible for such a state of affairs, as it would serve no purpose, the need of the hour is how to prevent the recurrence of such instances and what requires to be done, as all are aware of the malady afflicting the Association. The learned members of the Bar in their submissions rightly concentrated on this aspect.

23. Instead of setting out what each member of the Bar argued, as there was lot of overlapping in their submissions, their submissions are summarized as under:

(a) The re-polling is to be conducted Unit wise separately. The polling for Mayo Hall Unit and the High Court Unit could be done at the High Court. The polling for Magistrate Court could be done in Magistrate Court Complex and the polling of the Advocates from City Unit could be done at the Bangalore City Civil Court Complex. In the alternative, if the polling are to be conducted only at one place, i.e., Bangalore City Civil Court Complex, four separate entrances are to be provided for the Advocates belonging to each Unit. Separate queue is to be arranged for lady Advocates of this Bar as well as Senior Citizens.

(b) Elections should be conducted according to some, on a working day and according to some, on a holiday.

(c) Except the Advocate voters, no one should be permitted to enter the Election area.

(d) The campaigning for the election should end 48 hours before the date of poll. No agents of the candidates should be permitted to enter the election area. On the contrary, the Advocates who are contesting for the membership of the Governing Council from the City Unit made a frequent appeal that as there are 83 candidates contesting, the Advocates would find it very difficult to vote to a person of their choice. As there is difficulty in recognizing them, it was submitted that they should be permitted to canvass at the place of polling even on the polling date.

(e) Having regard to the number of voters, it was suggested that for 500 voters, one booth is to be setup.

(f) The identity of the voters have to be ascertained before allowing them to enter the election area by looking into not only the Advocates' Association identity cards but also the identity card issued by the Bar Council of Karnataka.

(g) There are large number of identity cards in circulation which are fabricated, which has given raise to impersonation, which is to be prevented at any cost. It was suggested to recall all the identity cards issued by the Association and in place, to issue Smart Cards, which alone should be the basis for permitting the voters to enter the election area as well as casting the vote.

(h) The Advocates who are members of various Associations coming from near by Taluks and District Head Quarters, whose names also are included in the electoral role should be prevented from casting the vote, which is one of the causes for disturbances on the date of Filing, i.e., 22.03.2009.

(i) The entry to the election area, the identity of the voters, issue of ballot papers, marking the ballot paper and casting the vote in the ballot box and the voter leaving the polling station should be arranged in a more professional manner. The absence of which was one of the causes for the trouble on the election date.

(j) The officials of the Advocate Association, the employees of the Advocates Association, employees of the court and the Advocates should not be employed in the election work. The election staff is to be secured or hired from the Department of Co-operation or Department of Labour or any other Governmental Department who have the requisite expertise in conducting elections which would put an end to many of the malpractice noticed on the polling date.

(k) Having regard to the magnitude of the responsibility, the Returning Officers who are now appointed are not exposed to the problems faced on the polling date. A committee of Advocates, who have in the past conducted the elections, who can shoulder the responsibility of conducting a free and fair election in association could be appointed, in addition to the Returning Officers appointed for the said purpose along with the Monitoring Committee.

(l) Trouble on the date of election was on account of the outsiders, i.e., who are not Advocates but supporters of the candidates entering into the election area, snatching the ballot papers, tampering with the electronic machines and creating unruly behaviour. Many of them got into the election area by showing the identity cards, which were not issued by the Association. The best way to prevent this malpractice is to issue a Smart Card with Bio Metric and Bar Code features, which would prevent such impersonation or proxy voting.

(m) Some of them were anxious, that elections be conducted immediately by insisting on production of identity card issued by the Bar Council of India or the identity card issued by the Election Commission of India or the identity card issued by the Nyaya Mitra Bank or by showing any other authentic document with which the identity card issued by the Association could be compared and

only genuine members are permitted to vote.

(n) They wanted the entire polling to be videographed

(o) The term of the elected members has already expired. The president of the Association has tendered his resignation, other office members' term came to an end with the expiry of two years period from the date of assumption of charge, which is over. Even if the Governing Council members are deemed to continue as members till the new Governing Council is elected and takes charge, the persons who are seeking re-election should be kept away from the affairs of the Association as well as in any way participating in the conduct of election.

(p) There was also a demand for appointment of an administrator and conduct of elections with police protection and under the supervision of Revenue Officials who are experienced in the field.

(q) The photographs of the candidates to be printed on the ballot papers and affixed on the Electronic Voting Machine.

24. From the aforesaid submissions two factors ultimately emerge which needs immediate attention for proper conduct of the elections. Firstly, without proper identification cards, the election should not be conducted. Secondly, proper arrangements were required to be made for conducting the polling.

25. In so far as proper arrangements are concerned, it was suggested that there are Advocate members in the Association who in the past have conducted elections successfully and their assistance should be taken for conducting the elections. The members unanimously suggested the names of such persons. Accordingly, an Expert Committee of such members of the Bar, who have past experience was constituted as under:

1. Sri. N.S. Sathyanarayana Gupta - Chairman
2. Sri. M.S. Mandanna
3. Sri. N. Jaiprakash Rao
4. Sri. A.G. Shivanna
5. Sri. H. Kantharaj
6. Sri. S.N. Ashwathanarayana
7. Sri. G.R. Chandrashekariah
8. Sri. S.N. Prashanth Chandra. - Convenor

26. There was a vociferous demand from the members of the Bar that the employees of the Advocates Association, Courts and Advocates should be kept out of election work and the entire work is to be entrusted to an outside agency such as the officials of the Department of Cooperation or Labour or any such other Governmental Department. Therefore, if elections had to be conducted

before the vacation, their assistance is necessary. Therefore, the learned Government advocate was requested to find out the availability of such staff. The Expert Committee was of the view that they need about 200 officials to conduct the elections. The learned Government Advocate Sled a memo with the letter from the Co-operative Department, stating that the Government Officials are now involved in the election work for the Lok Sabha and therefore, they will not be able to assist in conducting the elections to the Advocates Association before the Lok Sabha elections. Therefore, there was no option except to have the election after the Lok Sabha elections. But by that time the summer vacation commences. Therefore, the election could not be held before the reopening of the Courts i.e., before summer vacation. In those circumstances it was urged that, it is a good opportunity to have the Smart Cards with Bio Metric and Bar Code features which would exclude all bogus cards, so that the main cause for malpractice in the elections could be avoided. It is suggested, a finger print of the Advocate can be taken, Ms photograph could be taken, all the particulars such as Bar Council Registration No., name of the Advocate, his father's name, age and address could be furnished in the said card. The whole thing be computerised so that the question of issuing of the bogus cards or tampering with the cards is not possible. On the polling day, once the finger is pressed, the full particulars of the advocate with the photo would come on the screen so that all the irregularities which are noticed in the election held on 22.03.09 could be completely ruled out. That would prevent bogus vote, impersonation and the election would be fair. Therefore, the Expert Committee was asked to find out the feasibility of introducing these Smart Cards. After negotiations with the concerned, they submitted that it is possible to issue Smart Cards with Bio Metric and Bar Codes features. The agency requires about 10 days time to make necessary preparations such as, software and hardware and thereafter about 40 days time to issue the cards between 10,000 to 13,000 members. Each Card would cost around Rs. 50-00 per member. Under these circumstances, virtually, it was the unanimous opinion of the members of the Bar that the elections could be held after the summer vacation and after issue of smart cards to the members of the Bar.

27. It was also suggested that in order to see that the malpractice is not repeated, the affidavits of the candidates should be secured with an undertaking that they will not indulge in any such malpractice and will not violate the code of conduct, it is to be said to the credit of the candidates, who were present in court, that all of them voluntarily agreed to the said proposal and they have undertaken to file the affidavits in token of their commitment for free and fair election. Therefore, the affidavit to be filed by the candidates is also made part of this order.

28. It was also suggested that while issuing the Smart Cards, all the particulars of the Advocates have to be taken, compared with the particulars available in the registers of the Association and then compare it with the identity card issued by the Bar Council and if it is not available, then it should be compared with the

original certificate of enrolment end only after ensuring that he is the member of the Association, the Card is to be issued.

29. It was submitted that the names of some of the members of the Association finds place in more than one Unit. Some of the Advocates who are enrolled as members of the Association are also members of the Associations in the Districts of Kolar, Tumkur, Ramanagoram and Mandya and other places. Therefore a declaration should be taken from such Advocates that they would be voting only at the election of the Advocates Association, Bangalore and they shall not vote or contest for the Sections of the other Associations and they will be voting or contesting the elections from a particular Unit of the Advocates Association. Accordingly, an application form containing the particulars mentioned in the earlier para and a declaration to the above effect is also annexed to this order.

30. Here it is necessary to remind the Advocates, who are also members of the other Associations that, every Advocate has a right to become member of an Advocates Association, where he is ordinarily practicing. It is a very valuable right. This right emanates from the fundamental right to form association guaranteed to every citizen of this country under Article 19(1)(c) of the Constitution of India. This right should not be bartered away for money, liquor or other extraneous considerations at the time of elections, at the instance of the candidates by becoming members of the Association to which they do not belong only for the purpose of casting vote. The said act would be a blot on their professional career and haunts them through out their life. If candidates hire the Advocates to become members of the Association just to vote in the election, such candidates even if they are ejected, will not be regarded as the leaders of the Bar. They would belike ornamental flowers. They will never be able to command respect from the Bar. By such acts, they will be known as polluters of the stream of fair election. The candidates and the Advocates who are enrolled by such candidates should remember that "what is moral is what you feel good after and what is immoral is what you feel bad after." Please desist from such pernicious practices, lest you have to repent for it tomorrow and through out your life. (sic) is human. Those Advocates who have been misled may still retrace their step by getting their names removed from the Register, of the Association and/or may not obtain the Smart Card or go to the polling booth.

31. In order to prevent recurrence of these malpractice's in future, it is advisable for the newly constituted committee and the members of the Bar to have introspection and after the elections to take remedial measures on a permanent basis in the interest of the legal profession, the association and the members. In this regard the by-laws of the association requires to be amended. Having heard the Learned members of the Bar at length with due respect to their submissions and their thinking, to give effect to their words, I deem it proper to suggest the following amendments to the By-laws, instead of issuing any directions in this regard as it is purely their internal matter. After appropriately drafting the Clauses giving effect to the intention behind, these amendments, the same could

be placed before the General Body, immediately after assuming charge by the newly elected body, for its consideration and for appropriate action. That would meet the ends of justice.

Proposed Amendment to Bylaws

(1) The term of Office of the elected representatives is now 2 years. A provision is to be made in the bye laws making the said term coming to an end after the expiry of the said 2 years period so that they shall cease to hold office thereafter, whether a new body is elected or not by then.

(2) If the elections to the Association are not conducted within the said 2 years period, the members of the outgoing Governing Council shall be disqualified from contesting in the ensuing election.

(3) The term of the office shall be restricted to two terms.

(4) A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside the statute, there is no right to elect, no right to be elected, and no right to dispute an election. Therefore, if right to vote and right to contest the election is bestowed on only members of the association who are members for a period of 5 years from the date of becoming member of the association, all these malpractices could be wiped out in one stroke. The same could be made prospective so that the present members cannot have any grievance, whatsoever.

(5) A particular date shall be fixed as the last date for finalising the electoral roll for each unit constituency, preferably three months before election or 31st December of the previous year, as the criteria for eligibility to vote in the election.

(6) Having regard to the ever increasing members of the Association the polling could be arranged in their respective units.

(7) Provisions could be made for the use of Smart Cards with Bio metric/Bar code features, video graphing, installation of cameras, Electronic voting machine or adoption of such other modern devices for conducting free and fair election.

32. In the light of what is stated above, for proper, free and fair conduct of election, the following directions are issued:

Smart Card with Bio Metric/Bar Code ? Features

1. The Expert committee shall take steps to issue Smart Cards with Bio Metric/Bar Code features to the members of the Advocates Association at the earliest, which alone shall be the authentic identity card for the purpose of casting vote in the elections, henceforth.

2. The Expert Committee shall make all arrangements for instance of the Cards at all the four Units of the Association and the Cards shall be issued to members under their supervision. The decision of the Expert Committee in case of any

dispute shall be final. The Association shall year all help and cooperation to the Expert Committee in issuing the Cards.

3. The Expert Committee shall fix the time table for issue of Cards, preferably in the month of May and June 2009.

4. Every Advocate shall pay Rs. 50-00 for such Smart Card.

5. The members whose name appears in the electoral roll prepared in pursuance of the orders passed by this Court earlier, on his filling up the prescribed form enclosed to this order and paying Rs. 50-00 and subject to satisfying other conditions set out in this order, only would be entitled to the identity cards/Smart Cards. However, the names of 430 members whose application form not approved but included in the voters list will also be entitled to the identity cards for this election.

6. The Association shall bear the expenses over and above the said cost.

7. The Association shall collect the said cost of the Smart Cards from members.

8. The Association shall pay the amount required to be paid to the agency identified by the Committee, which is entrusted with the task of issue of Cards.

9. The Association shall make available the Registers of Membership, Voters list and such other records, staff support and extend all facilities required for the preparation of the Smart cards to the Expert Committee.

10. After the issue of Smart Cards, the software and hardware used in the preparation of Smart Cards shall become the properties of the Association.

Re: Repoll

(1) The polling shall be held on 12th July, 2009 between 10 A.M. to 3 P.M.

(2) The polling booths shall be located at the Bangalore City Civil Court Complex, for all the four units, i.e., City Unit, High Court Unit, Magistrate Court Unit and Mayo Hall Unit, as was the practice all these years.

(3) The entire Bangalore City Civil Court Complex premises with its surrounding vacant area shall be cordoned off on the Election Polling day, and barricaded and no one shall be allowed inside the area, without producing Smart cards issued by the Advocates Association of Bangalore, in the month of May/June 2009.

(4) The polling booths for the aforesaid four units shall be located in such a manner that members will have separate entry in to their respective blocks. The sign boards guiding them to their respective blocks shall be prominently displayed.

(5) There shall be a separate entry point and exit point.

(6) All the candidates after casting their votes shall leave the polling area as well as the cordoned off area immediately and co-operate in peaceful polling.

(7) There shall not be any display of posters, huge handbills, placards, T-shirts, hats, buntings, stickers, etc., and distribution of any type of gifts or incentives at the place of the Election area, to induce the (sic) or publicizing the candidature.

(8) No agent of any candidate shall be allowed in the election area including the polling booth.

(9) The canvassing for the election shall come to an end 48 hours before the Election Day i.e., before 5 P.M. on 10th July, 2009.

(10) No Advocate shall be allowed to cast his vote in the election on the basis of the identity cards issued by the Advocates Association, Bangalore, earlier, or Bar Council of Karnataka. The only card permitted is the Smart card issued by the Advocates Association of Bangalore, in the month of May and June, 2009.

(11) The marking of the vote in the ballot for the City Unit governing Council shall be by "Swastic Symbol" and no sketch pen or ink mark shall be allowed. In respect of all other votes, it is by operating the button of the electronic voting machine.

(12) No employee of the Advocates Association, Bangalore or Court Officials, or Advocates shall be utilised/employed for Election Duty either at the polling booths or at the place of issuing of ballot papers or in identifying the voter at the entrance.

(13) the entire staff employed for the election work shall be drawn from some Governmental Department, well versed in conducting the election at the discretion of the committee.

(14) All the candidates shall file an affidavit in the prescribed form (sic) to this order duly sworn to and file the same before the Association with due acknowledgement, which in turn is to be handed over by the Association to the Returning Officers on or before 30th of May, 2009, in token of their expression, co-operation for and commitment to conduct of free and fair election. The same shall be duly notified on the notice board of the Association by the Returning Officer as and when they receive the affidavit, to inform the voters that the direction of this Court is duly complied with by the candidates. If the affidavits are not filed, the same also shall be duly notified in the notice board.

(15) Any violation of the code of conduct shall attract disqualification and the Expert Committee is empowered to take such necessary action as they deem fit.

(16) All the candidates are directed to furnish stamp size latest photographs 20 (twenty) in numbers to affix the same, both on the electronic voting machines as against their names as against as in the ballot papers for the City Unit Governing Council, on or before 30th of May, 2009.

(17) The Expert Committee members shall take note of the views expressed by the members of the bar as set out at Paragraphs (23) and try to adopt the same as far as possible in the conduct of elections in the absence of specific directions

issued in this order.

(18) The Expert Committee Members are at liberty to approach such authorities as well as police for assistance, as they deem fit for the smooth and peaceful conduct of the Elections. The Learned Government Advocates shall extend their full co-operation to the Members of the Expert committee in this regard. The police authorities and other Governmental agencies are directed to extend all assistance to the members of the Expert Committee for peaceful conduct of election to the Advocates' Association, Bangalore.

(19) From now onwards till the completion of the poll and the announcement of the results all disputes arising in the course of the election process, shall be decided by the Expert Committee and their decision is final and is subject to challenge only after the announcement of the results.

(20) All the contesting candidates, the Members of Advocates Association, the voters and the persons in charge of the association shall extend their full cooperation to the committee and the Returning Officers in conducting the free and fair elections to the Advocates Association and they shall not give room for any complaints and spoil the fair name of the association and its members.

(21) This Court has passed orders from time to time in the course of the hearing of this writ petition on 30-1-2009, 5-2-2009, 21-2-2009, 13-3-2009, 03.04.2009, 08.04.2009 and 20.04.2009. Any of those orders would become part of this order to be looked into for the purpose of guidance or clarification, if needed.

Role of the Persons Incharge of the Elections:

1. The Returning Officers shall continue the election process as per the calendar of events issued earlier and hold a fresh poll on 12.07.09.

2. The Expert Committee shall be responsible for the issue of fresh identity cards, making arrangements on the election day for proper voting, such as getting the entire area barricaded, installation of proper mechanism for screening the voters, location of polling booths, issue of ballots, securing the staff required for conducting the elections entertaining and deciding disputes pertaining to Sections. They are also responsible to enforce the Code of Conduct and decide the question of violation of the Code of Conduct and disqualification.

3. The Monitoring Committee shall be in overall supervision of the entire election process.

4. The Monitoring Committee, the Expert Committee and the Returning Officers shall act as a Single Legal Entity in UNISON and conduct the election to the Association.

33. Before I part, I may usefully quote Harry R. Blythe (cited in 31 Ones Bag, 334.):

Great God - the hour has come when we must dear the legal fields from poison and from fear; We must remould our standards build them higher, And dear the air as though by cleansing fire, weed out the damning traitors to the law. Restore her to her ancient plow of awe.