
(2002) 02 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6349 of 2001

Radhelal Gupta

APPELLANT

Vs

State Bar Council of M.P. and Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Advocates Act, 1961 — Section 3, 5, 8, 8A
Madhya Pradesh Re-organisation Act, 2000 — Section 74, 85

Citation : AIR 2002 MP 98 : (2002) ILR (MP) 484 : (2002) 2 MPHT 10

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : N.C. Jain and P.S. Nair, for the Appellant; Rajendra Tiwari and R.S. Jha, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—The pivotal issue that arises for consideration in this writ petition preferred by a learned member of the Bar whether the members of the State Bar Council of Madhya Pradesh are entitled to continue even after expiry of their term, as envisaged under the Advocates Act, 1961 (hereinafter referred to as "the Act"). The said issue being cardinal and dominant, I shall only confine to the aforesaid issue as the learned counsel appearing for the petitioner as well as the learned counsel for the respondents confined to the said facet, the singular and significant case.

2. The facts which have been brought on record need not be dilated upon in detail, as the facts which are essential and necessitous for disposal of this writ petition have been conceded to by Mr. N.C. Jain, learned senior counsel appearing for the petitioner and Mr. Rajendra Tiwari, learned senior counsel for the State Bar Council of Madhya Pradesh as well as for the Bar Council of India. None of the other respondents disputed the factual "expose". It is undisputed that the election was held in the month of September, 1995 and the results were declared on 24-11-1995 and the necessary notification as mandated under the

Act came into existence on that day. It is irrefragably conceded that the term of the members of the State Bar Council came to cessation on 23-11-2000. In the meantime, as the facts have been adumbrated, the Madhya Pradesh State Reorganisation Act, 2000 (Act No. 20 of 2000) [for brevity "the Reorganisation Act"] came into force with effect from 1-11-2000. It is incontrovertible, whatever may be the reasons, the State Bar Council did not hold its election after the expiration of the term on 23-11-2000.

3. At this juncture, it is apposite to state here many a document has been brought on record alleging malice and malafide, as if the members of the Bar Council of the State of Madhya Pradesh have nurtured the attitude founded on the bedrock of serendipity but Mr. Jain, learned senior counsel abdicated the censorious allegations and propitiated legalistic province, possibly being well advised, that assault on that account does not warrant deliberation by this Court and assayed the problem from the permissible spectrum. Quite apart from the above, the documents which have also been brought on record being correspondences made by the Bar Council of India, are also not being referred to as this Court is obligated, as submitted by the learned counsel for the parties, to interpret certain provisions of the Reorganisation Act and the Act, and the effect and impact of certain provisions enshrined under the two Acts.

4. With the aforesaid factual backdrop, I proceed to note down the contentions of the learned counsel for the parties. Mr. N.C. Jain and Mr. P.S. Nair, learned senior counsel for the petitioner have proposed as under :--

(a) Section 8 of the Act stipulates term of office of members of State Bar Council and Section 8A of the Act deals with constitution of Special Committee in the absence of election and, therefore, no member has a right to continue after expiry of the term and the power of the Bar Council has to vest with the Special Committee, as envisaged under the aforesaid Act.

(b) If Section 24 of the Reorganisation Act is read in proper perspective, an independent Council, namely, Chhattisgarh Bar Council came into existence from the appointed day and there being a deemed Corporation, it must be given due weightment for the purpose of carrying it on to the ultimate logical end in its conceptual eventuality, as the same postulates a deemed fiction which has to be carried to a coherent conclusion.

(c) There is no provision in the Reorganisation Act which expressly provides extension of the term of the members of the Bar Council and, therefore, the members cannot continue after the expiry of the period and an obligation is cast on the Bar Council of India to act in accordance with the provision engrafted u/s 8A of the Act.

(d) The term "Bar Council" as it is understood in the backdrop of Section 5 of the Act, would not in its ambit and sweep include its members as a whole but have a different status, and therefore, an attempt to equate the members of the Bar Council as a whole to be the Bar Council, an independent legal entity, is a legal

misnomer and not to be countenanced in law.

(e) There is enormous distinction between a body corporate and its members and, therefore, any attempt to mingle the two in one compartment conceiving them as insegregable and inseparable is to whittle down the basic normative feature of law.

(f) The duties to be performed by the Bar Council are sacrosanct and the lawyers who belong to the noble profession expect selulous and conscientious action from the body and, therefore, continuance of the members after expiry of the term is unsupportable.

5. In support of the aforesaid submission Mr. Jain, learned senior counsel has commended me to the decisions rendered in the cases of The Board of Trustees, Ayurvedic and Unani Tibia College, Delhi Vs. The State of Delhi and Another, ; State Trading Corporation of India Ltd. v. The Commercial Tax Officer and Ors., AIR 1963 SC 1811 and Babu Verghese and Others Vs. Bar Council of Kerala and Others, .

6. Mr. Rajendra Tiwari, learned senior counsel appearing for the State Bar Council of Madhya Pradesh as well as for Bar Council of India has given immense emphasis on the provisions of the Reorganisation Act and combated the contentions raised by the learned senior counsel for the petitioner in the following manner:--

(i) Section 24 of the Reorganisation Act is an enabling provision enabling an advocate to confer his option but by such conferment State Bar Council of Chhattisgarh is not ipso facto created inasmuch as for such a constitution an election is necessary.

(ii) The provisions engrafted under Sections 53 to 58 deal with various aspects and if the said sections are read conjointly and harmoniously with Section 74 there remains no scintilla of doubt that the Bar Council of the State of Madhya Pradesh, which is the existing State as per the definition of Section 3(e), would remain in vogue to exercise jurisdiction in both the successor states as defined in the dictionary clause.

(iii) The factum of State Reorganisation is a serious matter and, therefore, Articles 3 and 4 of the Constitution of India are to be kept in view before any interpretation is made and the provisions being transitory in nature are to be given due weightage and should be strictly construed.

(iv) If the language of Sections 74 and 85 of the Reorganisation Act are read in a cohesive manner there is no room to entertain a doubt that the provisions of this Act will have overriding effect over the Act or any other law in force and, therefore, the term of the members which has been provided under the Act would stand extended.

(v) The term "Bar Council" has been defined u/s 3 of the Act and it provides the

manner of composition and when the term "body" is used in Section 74 of the Reorganisation Act the said term in its expanse will include the Bar Council as a composite whole keeping in view the factum of composition and act as a propulsion ushering in concept of extended term or otherwise an anomalous situation would be created which is inconceivable.

(vi) If Sections 8A, 9 and other provisions of the Act are read in a purposive manner it becomes quite luminous that the members of the Bar Council are the "do force" of the Bar Council.

(vii) The use of non-obstante clause has to be given due effect keeping in view the language employed u/s 74 as well as u/s 85 of the Reorganisation Act and there is no escape from the proposition that the Bar Council would continue for a period of two years and along with it, it shall carry longevity of its members and the concept of extinction by efflux of time is ostracized."

7. To appreciate the rival submissions raised at the Bar, it is apposite to refer to certain provisions of the Reorganisation Act. Section 2(e) deals with "existing State of Madhya Pradesh". It reads as under :--

"Existing State of Madhya Pradesh means the State of Madhya Pradesh as existing immediately before the appointed day."

Section 2(j) of the Reorganisation Act provides as under:--

"Successor State, in relation to the existing State of Madhya Pradesh means the State of Madhya Pradesh or Chhattisgarh."

8. Though Mr. Tiwari, learned senior counsel has referred to Sections 53 to 58 of the Reorganisation Act, they need not reproduced as they relate to provision of certain incorporation, which for our purpose, are not of any assistance. Chapter III of the Reorganisation Act deals with provision of service. Section 74 is the key section on which both the parties rest and base their contentions and hence, the same is necessary to be reproduced as a whole. It reads as under :--

"74. Jurisdiction of the Commissions, Authorities and Tribunals.-- (1) Notwithstanding anything contained in any law for the time being in force, every Commission, Authority, Tribunal, University, Board or any other constituted under a Central Act, State Act or Provincial Act and having jurisdiction over the existing State of Madhya Pradesh shall on and from the appointed day continue to function in the successor State of Madhya Pradesh and also exercise jurisdiction as existed before the appointed day over the State of Chhattisgarh for a maximum period of two years from the appointed day or till such period as is decided by mutual agreement between the successor States--

(i) to continue such body as a joint body for the successor States; or

(ii) to abolish it, on the expiry of that period, for either of the successor States; or

(iii) to constitute a separate Commission, Authority, Tribunal, University, Board or

any other body, as the case may be, for the State of Chhattisgarh, whichever is earlier,

(2) No suit or other legal proceeding shall be instituted, in case such body is abolished under the Clause (ii) of Sub-section (1), by any employee of such body against the termination of his appointment or for the enforcement of any service conditions or for securing absorption in alternative public employment against the Central Government or any of the successor States.

(3) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court or Tribunal or contract or agreement, any Chairman or member of any body abolished under Clause (ii) of Sub-section (1) shall not be entitled to any compensation for the unexpired period of his tenure.

(4) Notwithstanding anything contained in this section or any law for the time being in force, the Central Government shall, in accordance with any mutual agreement between the successor States or if there is no such agreement, after consultation with the Governments of the successor States, issue directions for the resolution of any matter relating to any body referred to in Sub-section (1) and falling within the jurisdiction of any of the successor States within any period referred to in Sub-section (1)."

9. It is submitted by Mr. Tiwari that by virtue of the aforesaid provision the Bar Council being a body constituted under a Central Act would continue to function in the successor State of Madhya Pradesh and also exercise jurisdiction as existed before the appointed day over the State of Chhattisgarh for a maximum period of two years from the appointed date or till such period as is decided by mutual agreement by the successor State whichever is earlier. It is not disputed at the Bar that there has been no mutual agreement between the successor States. Hence, I need not have to advert to Clauses (i) to (iii) occurring in Sub-section (1) of Section 74 of the Reorganisation Act. I will be failing in my duty if I do not mention the submission of Mr. Jain, learned senior counsel, to the effect that the term "body" as has been used in this Section would not in its distinctive sense include the Bar Council, if it is scanned on the base of Section 24 of the Reorganisation Act. However, as already submitted by Mr. Jain, the Bar Council is to exercise jurisdiction for a period of two years or till the said period is determined on mutual agreement between the successor States but that does not extend the term of the members. Mr. P.S. Nair, learned senior counsel for the petitioner, tried to make a distinction between the term "function" and exercise of jurisdiction. On the contrary, as has been indicated hereinbefore, Mr. Rajendra Tiwari, learned senior counsel submitted that the Bar Council is a body as has been defined in the Act and the body is to continue for a period of two years and the body would include its members in conceptual quintessence. Mr. R.S. Jha, learned counsel supported the stand of the petitioner.

10. Before I proceed further, it is apposite to refer to Section 85 of the

Reorganisation Act. It reads as under :--

"Effect of provisions of the Act inconsistent with other laws.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law."

The aforesaid provision is an emphasis on the overriding effect of this Act. It also finds place in Section 74 of the Reorganisation Act. Therefore, the spinal issue is whether the language employed u/s 74 of the Act extends the period of the members of the State Bar Council of Madhya Pradesh. I must in all fairness say, Mr. N.C. Jain and Mr. Rajendra Tiwari, learned senior counsel for the parties desire that this Court should advert to the aforesaid issue alone that being the heart of the matter, which requires determination in this case.

11. Section 74 of the Reorganisation Act uses the term "body". This Court proceeds with the presumption that even if the term "body" encapsulcs and engulfs the Bar Council whether the term of the member is extendable. In this context I may profitably refer to Section 5 of the Act. It reads as under:--

"5. Bar Council to be body corporate.-- Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immovable, and to contract and may be the name by which it is known sue and be sued."

12. Mr. Jain, learned senior counsel commended me to the decision rendered in the case of Board of Trustees, Ayurvedic and Unani Tibia College, Delhi (supra). The Constitution Bench in Paragraph 9 while dealing with the concept of corporation held as under :--

"9. The first and foremost question is whether the old Board was a corporation in the legal sense of that word. What is a Corporation ? Corporation may be divided into two main classes, namely, corporations aggregate and corporations sole. We are not concerned in the present case with corporation sole. "A corporation aggregate has been defined as a collection of individuals united into one body under at special denomination having perpetual succession under an artificial form and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence." (Halsbury's Laws of England, 3rd Edn. Vol. 9, page 4). A Corporation aggregate has therefore only one capacity, namely, its corporate capacity. A corporation aggregate may be a trading corporation or a non-trading corporation. The usual examples of a trading corporation are (1) charter companies, (2) companies incorporated by Special Acts of Parliament, (3) Companies registered under the Companies Act etc. Non-trading corporations are illustrated by (1)

Municipal Corporations, (2) District Boards, (3) benevolent institutions, (4) Universities etc. An essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors are one. In law the individual corporators, or members of which it is composed are something wholly different from the corporation itself; for a corporation is a legal persona just as much as an individual. Thus, it has been held that a name is essential to a corporation; that a corporation aggregate can, as a general rule, only act or express its Will by deed under its common seal; that at the present day in England a corporation is created by one or other of two methods, namely, by Royal Charter of incorporation from the Crown or by the authority of Parliament that is to say, by or by virtue of statute. There is authority of long standing for saying that the essence of a corporation consists in (1) lawful authority of incorporation, (2) the persons to be incorporated, (3) a name by which the persons are incorporated, (4) a place, and (5) words sufficient in law to show incorporation. No particular words are necessary for the creation of a corporation; any expression showing an intention to incorporate will be sufficient."

In the case of State Trading Corporation of India (supra) 9 Judges Bench of the Apex Court in Paragraph 29 held as under:--

"29. We are dealing here with an incorporated company. The nature of the personality of an incorporated company which arises from a fiction of law, must be clearly understood before we proceed to determine whether the word "citizen" used in the Constitution generally or in Article 19 specially, covers an incorporated company. Unlike an unincorporated company, which has no separate existence and which the law does not distinguish from its members, an incorporated company has a separate existence and the law recognises it as a legal person separate and distinct from its members. This new legal personality emerges from the moment of incorporation and from that date the persons subscribing to the memorandum of association and other persons joining as members are regarded as a body corporate or a corporation aggregate and the new person begins to function as an entity. But the members who form the incorporated company do not pool their status of their personality. If all of them are citizens of India the company does not become a citizen of India any more than if all are married the company would be a married person. The personality of the members has little to do with the persona of the incorporated company. The persona that comes into being is not the aggregate of the persona either in law or in metaphor. The corporation really has no physical existence; it is a mere "abstraction of law" as Lord Selborne described it in *G.E. Rly. Co. v. Turner*, (1872) 8 Ch A 149 or as Lord Macnaghten said in the well known case of *Salomon v. Salomon and Co. Ltd.* 1897 AC 22 , it is "at law a different person altogether from the subscribers to the memorandum of association." This distinction is brought home if one remembers that a company cannot commit crimes like perjury, bigamy or capital murder. This persona ficta being a creature of a fiction, is protected by natural limitations as pointed out by Palmer in his

Company Law (20th Edn.) p. 130 and which were tersely summed up by counsel in *R. v. City of London* (1632) 8SV Tr. 1087 when he asked "Can you hang its common seal?" It is true that sometimes the law permits the corporate veil to be lifted, but of that later."

13. It is well settled in law that a body corporate has a different connotation and meaning in law. The body corporate is not merely a body of persons. Section 5 of the Act stipulates that a Bar Council is a body corporate and hence, the statute confers on it a distinctive legal status. In this context I may profitably refer to the Halsbury's Laws of England 4th Edition Volume IX wherein in Paragraph 1201 the term "Corporation" has been described as under:--

"1201. Corporation and unincorporation associations corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of corporation sole) which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. There are many associations and bodies of persons that are not corporation. Some of these, such as registered friendly societies, may be quasi-corporations, as they have some of the usual attributes of corporations, such as the possession of a name in which they may sue or be sued, and the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions. Partnerships are not usually regarded as quasi-corporations, although if carrying on business in England or Wales, they may sue and be sued in the firm name. Subject to the exceptions mentioned above, unincorporated associations cannot sue or be sued in their own name nor (unless their purposes are charitable) can property be held for their purposes otherwise than by virtue of a contract between the members for time being. The Crown has power by letters patent to grant to any company or body of persons associated together for any trading or other purposes, although not incorporated, any privileges which, according to the rules of common law, it would be competent the Crown to grant to any such company or body of persons in and by any charter or incorporation. Such letters patent may provide that actions by or against the company or body of persons shall be carried on in the name of one or two officers to be appointed for that purpose and may limit the individual liability of the members."

In Paragraph 1202 in the said volume there has been a classification of "Corporation" into two classes, namely, "Corporation aggregate" and "Corporation sole". "Corporation aggregate" has been explained in Paragraph 1204 which is as under:--

"1204. Meaning of Corporation aggregate.-- A Corporation aggregate has been defined as a collection of individuals united into one body under a special domination, having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respect as an individual, particularly of taking and granting property, of contracting obligations

and of suing and being sued, of enjoying privileges and immunities in common and exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence."

In Paragraph 1205 there has been further explanation of "Corporation aggregate" which I may usefully reproduce:

"1205. Composition and capacity.-- A Corporation aggregate may be either a mere body, composed of constituent parts no one of which differs essentially from another or it may be a body with a head or other distinct member, the existence of which is essential to the vitality, so to speak, of the body as a whole. A Corporation aggregate has only one capacity, namely its corporate capacity; so that a conveyance to a corporation aggregate can only be to it in its corporate capacity."

In Paragraph 1206 "Corporation sole" has been explained. It reads as under :--

"1206. Definition, capacity and presumption of due appointment.-- A Corporation sole is a body politic having perpetual succession, constituted in a single person who in right of some office or function a capacity to take, purchase, hold and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alienate) real property, and now, it would seem also to take and hold personal property, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous; that is, there may be and often are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy, or on one in existence in whom the corporation resides and is visibly represented.

Unlike a Corporation aggregate, a Corporation sole has a double capacity namely, its corporate capacity and its natural or individual capacity; so that a conveyance to a corporation sole may be in either capacity.

A Corporation sole appears now to be capable of taking personality in succession. The occupant of a corporation sole is presumed to have been duly in possession of his office until the contrary is proved."

14. On a fair scrutiny of the aforesaid paragraphs it is plain as day that in the characteristics of Corporation concept of its continuity and distinct entity are inhered. In Paragraph 1209 of the said Volume it has been explained that the corporation is a distinct juristic entity. It is worthwhile to reproduce the same.

"1209. Corporation a distinct entity.--The nature of a corporation may be shown by contrasting it, as a legal conception, with the individuals in which it resides. In law the individual corporators, or members, or which it is composed are something wholly different from the corporation itself; for a corporation is a legal person just as much as an individual. If a man trusts a corporation, he trusts that legal person, and must look to its assets for payment; he can only call upon individual members to contribute if the Act or charter creating the corporation

has so provided. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation, and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess but a nominal interest in its property, or hold their interest in trust for him. Notice to an individual who happens to be a member of a corporation aggregate but has no authority to receive notices is not equivalent to notice to the corporate body; and where an action is maintainable by and in the name of a corporation, it cannot be maintained by individual members of the corporation. After the dissolution of a corporation the members, in their natural capacities, can neither recover debts which are due to the late corporation nor be charged with debts contracted by it."

In Paragraph 1211 it has been stipulated that name is essential to a "Corporation" and in the case of a Corporation created by grant of charge or by Special Act the name must be either expressed in the grant or the Act or implied from the nature of it.

15. In this context I may refer with profit to a decision rendered by the Constitution Bench of the Apex Court rendered in the case of Daman Singh and Others Vs. State of Punjab and Others, , wherein their Lordships after referring to the case of Board of Trustees, Ayurvedic and Unani Tibia College, Delhi (supra) and scanning Section 30 of the Punjab Co-operative Societies Act, 1961 held as under :--

"6. We have already extracted Section 30 of the Punjab Act which confers on every registered co-operative society the status of a body corporate having perpetual succession and a common seal, with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. There cannot, therefore, be the slightest doubt that a co-operative society is a corporation as commonly understood. Does the scheme of the Constitution make any difference ? We apprehend not."

Their Lordships further proceeded to State thus -

"According to Mr. Ramasmurthi the Statement of Objects and Reasons and the report of Joint Select Committee show that initially it was proposed to give protection to legislation pertaining to amalgamation of companies only but later it was thought fit to extend the protection to statutory corporations also and therefore, the expression "corporation" was substituted in the Act in the place expression "Companies" which had been mentioned in the Bill. There is no substance in this submission. It was obviously thought by the Parliament that the protection should not be confined to companies only but should extend to all corporations which would naturally include Statutory Corporations. The more generic expression "corporation" was used so that all companies statutory corporations and the like may be brought in. There is no indication that

notwithstanding the use of the generic expression "corporation" the expression was intended to excluded corporations other than companies and statutory corporations. Parliament apparently chose the broader expression not with a view to limit the protection of the legislation relating to amalgamation to any class of corporation pertaining to amalgamation of all classes of corporations."

16. In the said decision their Lordships have also laid down that the registration of a co-operative society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted.

17. The arguments canvassed by Mr. Tiwari, learned senior counsel has to be tested on the anvil of the aforesaid enunciation of law. Submission of Mr. Tiwari is that Section 3(2) of the Act deals with composition of the State Bar Council and it has its own signification. For the sake of completeness the same is reproduced hereunder:--

"3 *** ***(1) *** ***(2) A State Bar Council shall consist of the following members, namely :--

(a) in the case of the State Bar Council of Delhi, the Additional Solicitor General of India, ex-officio, (in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate General of each of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura, ex-officio; in the case of the State Bar Council of Punjab and Haryana, the Advocate General of each of the States of Punjab and Haryana ex-officio) and in the case of any other State Bar Council, the Advocate General of the State ex-officio;

(b) in the case of State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of a State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council :

Provided that as nearly as possible one-half of such elected members shall, subject to any rules that may be made by the Bar Council of India be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in relation to such person, there shall be included any period during which the person has been an advocate enrolled under the Indian Bar Councils Act, 1926.

(3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.

(3-A) Every person holding office as Chairman or as Vice-Chairman of any State

Bar Council immediately before the Commencement, of the Advocates (Amendment) Act, 1977, shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be :

Provided that every such person shall continue to carry on the duties of his office until the Chairman or Vice-Chairman, as the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977, assumes charge of the office."

Proponement of Mr. Tiwari is that there cannot be a Bar Council without Chairman, Vice-Chairman and the requisite members, as has been provided in the Act. The aforesaid submission, in my humble view, looks quite attractive, but on a deeper scrutiny it loses its elan vital. This is so, because the learned counsel would like this Court to construe the Bar Council to be a group of individuals who constitute the whole. It can be unhesitatingly stated that an individual member who is a part of the body corporate stands distinctively qua the body corporate for the simple reason, the corporation is a legal person just as much as an individual. The members who constitute the Council which is a body corporate lose their individual entity and a whole comes into being which is called the Bar Council. By no stretch of imagination it can be said that the members, if I allow myself to put it figuratively, "Prana" of the Bar Council as the body corporate has a separate legal status and the perceptual shift as projected by Mr. Tiwari is unacceptable. Therefore, I am of the considered view, the interpretation given by Mr. Tiwari that the Bar Council would mean members, Chairman, Vice-Chairman, as has been provided u/s 3 of the Act, is not acceptable because such an acceptance of the term would tantamount to a hazardous interpretation of the provision which the Court is not inclined to.

18. Now, I shall proceed to deal with the aspect, whether the non-obstante clause extends the term of the members in spite of the tenure fixed in the Act. Submission of Mr. Tiwari is that in view of the non-obstante clause incorporated in Section 74 read with Section 85 of the Reorganisation Act, the term gets extended. The learned senior counsel has referred to certain decisions which have been referred to above.

19. In the case of A.G. Varadarajulu and Another Vs. The State of Tamilnadu and Others, , two Judges Bench of the Apex Court in Paragraph 16 held as under;--

"16. It is well settled that while dealing with a non-obstante clause under which the legislature wants to give overriding effect to a section, the Court must try to find out the extend to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , Patanjali Shashtri, J., observed : "The enacting part of a statute must, where it is clear, be taken to control the non-obstante clause where both cannot be read harmoniously". In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and

Others Vs. Union of India and Another, Hidayatullah, C.J., observed that the non-obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not."

20. In this context I may profitably refer to the decision rendered in the case of A.P. State Financial Corporation Vs. Official Liquidator, , wherein the Apex Court held that power u/s 29 of the Act of 1951 can be exercised subject to the said provisions of the Companies Act.

21. In the case of Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and Ors., JT 2001 (2) SC 639, wherein two Judges Bench dealing with the impact and effect of non-obstante clause came to hold if there is non-obstante clause the same must prevail.

22. In the case of Union of India (UOI) and Another Vs. G.M. Kokil and Others, , in Paragraph 7 the Apex Court held as under :--

"7. Counsel for the appellants urged that the respondents, though employed in the factory of the Press, were not "workers" within the meaning of Section 2(1) of the Factories Act and therefore, were not entitled to the benefit of Section 59 of that Act read with Section 70 of the Bombay Shops and Establishments Act, 1948. On the plain language of Section 70 of the Bombay Shops and Establishments Act this contention has to fail. We are concerned not with either of the provisos but with the main provision of Section 70 which consists of two parts; the first part states that if there be a factory the shops and establishments Act will not apply and the second part states that to such a factory "the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in or in connection with a factory". Clearly, the underlined portion (the non-obstante clause and the phrase "all persons employed") has the effect of enlarging the scope of Factories Act by making it applicable to all persons employed in such factory irrespective of whether employed as workers or otherwise. Therefore, although the respondents have not been "workers" within the meaning of Section 2(1) they will get the benefit of Section 59."

23. I may profitably refer to the decision rendered in the case of R.S. Raghunath Vs. State of Karnataka and another, , wherein the Apex Court while interpreting the concept of non-obstante clause came to hold as under:--

"There should be a clear inconsistency between the two enactments before giving an overriding effect to the non-obstante clause but when the scope of the provisions of an earlier enactment is clear the same cannot be cut down by

resort to non-obstante clause."

In this context I may also refer to the decision rendered in the case of Shri Vishin N. Kanchandani and Another Vs. Vidya Lachmandas Khanchandani and Another, , wherein their Lordships held as under :--

"There is no doubt that by non-obstante clause the Legislature devices means which are usually applied to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other statute. In other words such a clause is used to avoid the operation and effect of all contrary provisions. The phrase is equivalent to showing that the Act shall be no impediment to measure intended. To attract the applicability of the phrase, the whole of the section, the scheme of the Act and the objects and reasons for which such an enactment is made to be kept in mind." (quoted from the placitum)

24. Now, the moot question that falls for consideration is whether the non-obstante clause extends the period or not. The purpose of overriding effect by incorporation of the aforesaid non-obstante clause has to be scrutinised. On an X-ray of the provision it becomes quite perceptible that the said power has been conferred on every Commission, Authority, Tribunal, University or Board or any other body constituted under the Central Act or Provincial Act or having jurisdiction with the existing State, to exercise jurisdiction for a period of two years from the appointed date. If an interpretation is given that while body has been given power to exercise jurisdiction it would mean that the members shall constitute the body will also be there in the body, in my considered view, will lead to an interpretation penetrating into the realm of absurdity. The Court of Law is required to interpret a provision so that non-ridiculous effect is avoided.

25. In this context, I may profitably refer to the decision rendered in the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, , wherein their Lordships of the Apex Court observed that an attempt has to be made to eschew an interpretation that leads to ridiculousness or absurdity. In the case of Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd., , the Apex Court gave emphasis on the aspect that an interpretation has to be made so that objects of the Act is not defeated. If the aforesaid concepts are kept in view for the purpose of understanding the provision, I am of the considered opinion the term of the members does not stand extended because of the language employed u/s 74 of the Reorganisation Act. Section 74 of the Reorganisation Act by no stretch of imagination, can be construed to lay down that the term of a member of any body or a Presiding Officer of any Tribunal gets extended. At this juncture I may proceed to give example by referring to the provision of the Consumer Protection Act, 1986. Section 16 of the Act deals with composition of the State Commission. It provides each Commission shall constitute that a person who has been Judge of the High Court appointed "by the State Government to be the President. Two other members are to be appointed and their qualification has been prescribed. Sub-section (3) of the aforesaid

provision stipulates every member of the State Commission shall hold office for a term of five years or upto the age of 67 years and shall not be eligible for reappointment. The thrust of the matter is whether because the State Commission is to continue to exercise jurisdiction in respect of both the States does it by applicability of the principles of corollarity include that same members would compose the State Commission. To elucidate, if the members and the president became 67 years of the age after the cut off date of one month can it be stated by logical analysis that he would be allowed to continue for a period of two years by virtue of non-obstante clause incorporated under Sections 74 and 85 of the Reorganisation Act. In my considered opinion would lead to ridiculous or absurdity, which the law does not countenance. Mr. Tiwari, learned senior counsel would like to put it in a different way. According to him if non-obstante clause is not given full effect that would amount to curtailment of the provision and the same is not permissible in law. Though proposition propounded by Mr. Tiwari has its validity in the realm of different law but while appreciating in this context (because no provision has to be read out of context) it is absolutely lumine sent that the existing members of no Commission or Tribunal are to be allowed to continue, as there is extension because of the non-obstante clause and the provision has the override effect. If such an interpretation is given, it would take one to an arena of absurdity which is to be avoided. I may, at this juncture, venture to say the non-obstante clause only confers the power with regard to extension of jurisdiction in respect of the area. I may hasten to add when the territorial jurisdiction is extended there is also extension of the term of the Tribunal, body or university, but that cannot be extended to the persons who constitute the Tribunal or the body, because by such extension an absurd situation comes into existence which could not have been conceived by the Legislature. In my humble view, that cannot be the intendment of the Legislature. Hence, I do not find any substance in this contention of Mr. Tiwari, learned senior counsel and the same is accordingly repelled.

26. Now I shall proceed whether by such incorporation the Bar Council becomes non-functional or the stage of inertia is created. As has been indicated hereinbefore, it was submitted by Mr. Tiwari that there is a sea of difference between Bar Council and Special Committee which has been provided u/s 8A of the Act. It is urged by him Section 74 of the Reorganisation Act uses the word "Bar Council" and, therefore, no other term can be substituted. I have already held the Bar Council stands in a different footing and has a distinctive legal status and, therefore, it cannot be said that the members who constitute the Bar Council are to be treated as one to be functional, as required u/s 74 of the Reorganisation Act. I may deal with this aspect for the sake of completeness inasmuch as in my considered opinion the non-obstante clause even if given full effect does not extend the term of existing members in spite of the expiry of the term. Section 8A of the Act provides for constitution of a Special Committee in the absence of election. Section 8 of the Act is necessary to be reproduced. It reads as under :--

"8. Term of office of members of State Bar Council.-- The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in Section 54) shall be five years from the date of publication of the result of his election :

Provided that where a State Bar Council fails to provide for the election of its members before the expiry of the said term, the Bar Council of India may, by order, for reasons to be recorded in writing, extend the said term for a period not exceeding six months."

27. On a perusal of the aforesaid provision there is no trace of doubt that the term is for five years and it can be extended by another six months in writing by the Bar Council of India. Section 8A deals with constitution of Special Committee in absence of election. The said provision reads as under:--

"8-A. Constitution of Special Committee in the absence of election.-- (1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term as the case may be, referred to in Section 8, the Bar Council of India shall on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of--

(i) the ex-officio member of the State Bar Council referred to in Clause (a) of Sub-section (2) of Section 3 to be the Chairman :

Provided that where there are more than one ex-officio members, the senior most amongst them shall be the Chairman; and

(ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

(2) On the constitution of the Special Committee and until the State Bar Council is constituted-

(a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee;

(b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special Committee.

(c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the Special Committee.

(3) The Special Committee constituted under Sub-section (1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold elections to the State Bar Council within a period of six months from the date of its constitution under Sub-section (1), and where for any reasons the Special

Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period."

28. On taking a close up of the aforesaid provision it rings as bell that Special Committee shall discharge the functions of the State Bar Council till the Bar Council is constituted under this Act. In addition to that there are other protective provisions u/s 8A of the Act. Thus, there is a inbuilt mechanism provided under the Act to carry out the work of the Bar Council when the elected body ceases to exist by operation of law. In view of this the apprehension expressed by Mr. Tiwari, that a state of inertia would creep in does not stand to reason. I may hasten to add that law does not countenance any kind of vacuum or void and the Act keeping in view the contingency has made the provisions. If Section 8A is read in consonance with Section 5, it becomes plain as noon day that the Bar Council continues to function and carry out the duties and there is no room for any kind of vacuum. Mr. Tiwari has taken me through certain provision to show disciplinary proceedings against the members stand transferred to the Special Committee and, therefore, it cannot be given the status of the Bar Council. Such facet of argument is neither here nor there. As has been indicated hereinbefore the Bar Council is a different juristic entity and in addition to that, apart from that the statute provides how the Bar Council would function in absence of the elected members. Section 74 of the Reorganisation Act uses the term "body" and even if the term body is allowed to include the Bar Council, the Act provides under what circumstances the Bar Council would function. Section 74 of the Reorganisation Act does not deal with the function of the Bar Council or the term of the Bar Council, but only stipulates that Bar Council shall exercise jurisdiction in respect of the areas over the State of Chhattisgarh for a fixed term. If the concept of Bar Council is understood in proper perspective, it remains functional. To put it differently, a situation does not emerge where there is any entropy or atrophy. Hence, claim putforth by the respondents that the period automatically stands extended is de hors logic and substance.

29. Another facet of argument of Mr. Tiwari is that Articles 3 and 4 of the Constitution are to be kept in view while interpreting the provisions. I have noted the aforesaid submission as the learned senior counsel referred to the said Articles. But when the Reorganisation Act has been enacted and the provisions contained therein, as far as they relate to the present case, have been interpreted, there is no necessity to deal with the aforesaid provisions of the Constitution.

30. The next limb of argument of Mr. Tiwari is that Section 74 of the Reorganisation Act is absolutely unambiguous and clear and, therefore, it is the bounden duty of this Court to give effect to the said provision under all circumstances. I have already scanned the said provision and dealt with the impact and effect of the same as far as the term of members of the Bar Council

is concerned. In this context I may profitably refer to the decision rendered in the case of Brij Gopal Denga and Ors. v. State of Madhya Pradesh and Anr., 1978 MPLJ 70, wherein G.P. Singh, J. (as his Lordship then was) held as under:--

"It is no doubt true that when the language is express and no alternative construction is open, the Court must give effect to the language irrespective of its consequences. But as well as said by Lord Reid, "such cases are rare because the English language is a flexible instrument" : [Ballrooms v. Zennith Investments]. The Courts are, therefore, not readily prepared to concede as plain language which involves absurdity or practical inconvenience.: [Maxwell, 11th edition, p. 6] The real role that is played by the consideration of consequences in the process of construction is correctly appreciated by Max Radin as follows :--

"It is true that the consideration of the consequences of a decision has at all times been a controlling factor in the judicial process. Those Courts who declare vigorously that they are completely indifferent to the consequences of what they decide, and would decide as they do though the heaven fell, merely mean that they do not really believe that the consequences will be seriously harmful. If they meant what they said, and acted on it, they would be taking a long step towards the destruction of our judicial system."

31. I have referred to the aforesaid decision only to indicate that the interpretation of a provision has to be purposive and the Courts of law do not accede to give an interpretation which involves absurdity. The interpretation given by Mr. Tiwari is that Section 74 of the Reorganisation Act as far as it relates to extension of the period of the members of the Bar Council, if accepted would not only be hazardous but would also amount to destruction of spirit of law enshrined therein.

32. Now to the necessary directions. In view of the aforesaid premises certain directions are to be given. They are as under:--

(a) The members and office bearers of the State Bar Council who are continuing presently, shall cease to continue.

(b) The State Bar Council, as it has not constituted the Special Committee, as envisaged u/s 8A of the Act, shall constitute a Committee as provided therein within a period of two weeks from the date of production of this order. It will be open to the petitioner to produce this order before the Bar Council of India.

(c) After the Special Committee is constituted it shall proceed to hold elections as mandated in law, within the period prescribed therein.

33. Before I part with the case, I am obligated to refer to the decision of the Apex Court rendered in the case of Babu Verghese and Others Vs. Bar Council of Kerala and Others, . I am only referring to the same to highlight that the Apex Court laid immense emphasis on the principle that matter a thing if it is to be done in a particular manner has to be done in that manner. Keeping in view the aforesaid, the Apex Court came to hold as under :--

"32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, and again in Deep Chand Vs. The State of Rajasthan, . These cases were considered by a Three Judges Bench of this Court in State of Uttar Pradesh Vs. Singhara Singh and Others, and the rule laid down in Nazir Ahmad's case (supra) was again upheld. The rule has since been applied to the exercise of jurisdiction by Courts and has also been recognised as a salutary principle of administrative law.

37. Learned counsel for the respondents in their written submissions have referred to Dictionary meaning of the word "confirm" or "confirmation" in support of their argument that it has as the effect of validating the earlier Act. We appreciate their effort and add to their research the maxim. "Confirmation omnes supplet defectm, licet id quod actum est ah initio non valuit" (confirmation supplies all defects, though that which had been done was not valid at the beginning). But, as pointed out above, it was not a case of "confirmation" as no "action" under Rule 6 was taken. Since the term of the Keraia Bar Council had expired on 27th January, 1997 and they had ceased to be members with effect from that date, their term could not be legally revived with retrospective effect by BCI on 8th February, 1997 when it adopted the resolution for extension of the term by six months. The Keraia Bar Council has ceased to have any jurisdiction and could not hold fresh election which could be held only by the Special Committee appointed by the BCI. 39. In the instant case, it was the question of jurisdiction to hold elections which was agitated in the writ petition. Fresh elections could have been held by the Keraia Bar Council only before the expiry of its term. Otherwise, the jurisdiction to hold elections passes on the Special Committee appointed by the BCI in terms of the provisions contained in Section 8A which are imperative in character. Since the Keraia Bar Council had ceased to have any jurisdiction on the expiry of its term and the so called extension of its term has been held by us to be wholly illegal, the election held by the Keraia Bar Council were farcical in character and on that basis the respondents cannot claim themselves to be the duly elected members of the Council."

34. I may repeat at the cost of repetition, I have referred to the decision as the Apex Court has given emphasis on the manner in which the election is to be held and the issue of jurisdiction goes to the very root of the matter even do not rectify the mistake if they have created the dent in the election process.

35. The end being near, I must express my unreserved and uninhibited appreciation for the able assistance rendered by Mr. N.C. Jain, learned senior counsel, Mr. P.S. Nair, learned senior counsel and Mr. Rajendra Tiwari, learned senior counsel. They have extended their fullest co-operation to put the controversy to rest. I may further proceed to state though the litigation related to the lawyers' community at large, the petitioner as well as all the respondents in a most noble manner expositied a conscious attitude to put the lis to rest. Hence, I also do express my humble appreciation for all the members who have co-operated in adjudication of this proceeding.

36. Resultantly, the writ petition is allowed and the directions as enumerated above are to be carried out. However, in the peculiar facts-arid circumstances of the case, there shall be no order as to costs.