

(2015) 02 AHC CK 0013

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4508 of 2015

Ram Nath Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Advocates Act, 1961 — Section 16(2)
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Constitution of India, 1950 — Article 226

Citation : (2015) 3 ADJ 92 : (2015) 2 ALJ 524 : (2015) 110 ALR 137 : (2015) 2 UPLBEC 1320

Hon'ble Judges : Manoj Kumar Gupta, J.; Dinesh Maheshwari, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—The petitioner, an Advocate practising at Ghaziabad and having taken the membership of the Bar Association, Ghaziabad (Civil Courts) [respondent No. 3 - hereinafter referred to as "the Association"/"the Bar Association"], seeks issuance of a writ in the nature of certiorari for quashing the impugned order dated 3rd December 2014 whereby, he has been debarred from the membership of the Association for a period of one year; and also seeks issuance of writ in the nature of mandamus directing the Association to accept his membership fees and permit him to contest the elections of the year 2015 for the post of President of the Association.

2. Put in a nut-shell, the submissions of the petitioner in this writ petition are that the respondent No. 3 Association is registered under the Societies Registration Act, 1860 ["the Act of 1860"], and is affiliated to the Bar Council of U.P. [respondent No. 2] and as such, is amenable to the writ jurisdiction. It is also submitted that the respondent No. 3 Association is registered with its bye-laws, which are in consonance with the model bye-laws framed by the Bar Council of U.P. and if any Governing Body or the Committee of the Association deviates from the bye-laws, this Court could interfere in the writ jurisdiction. As

regards the background aspects leading to the impugned order dated 3rd December 2014, the petitioner submits that in a meeting of a Committee known as "High Court Bench Staphana Sangharsh Samiti Western U.P.", he wanted to put forward his views, but was prevented from doing so; and when being pushed off, he caught hold of the President of the Society, so as to be saved from tumbling. According to the petitioner, immediately thereafter, the impugned order dated 3rd December 2014 was passed in a hurried manner without extending him any opportunity of hearing and was thrown in his Chamber. The petitioner submits that the act and actions on part of the respondent No. 3 Association are clearly violative of the principles of natural justice. The petitioner further states the grievance that despite request, he has not been supplied with the copy of bye-laws of the Society and the copy of proposal whereunder the impugned order came to be issued.

3. It is borne out that earlier, the petitioner filed a writ petition bearing No. 2572 of 2015, which was considered on 21st February 2015, but was dismissed with liberty to the petitioner to file afresh with a copy of the Rules/Regulations of the Bar Association who had expelled him. In the present petition, of course, the petitioner has filed a copy of the registration certificate of respondent No. 3 and also a copy of its bye-laws.

4. After having preliminarily heard the learned counsel for the petitioner, we had expressed reservations in entertaining this matter in the writ jurisdiction, particularly when the petitioner has been debarred from the membership of the Bar Association that stands registered as a Society under the Act of 1860; and when it involves enquiry into certain basic facts that cannot be adequately undertaken in the writ jurisdiction. In response, the learned counsel for the petitioner has referred to a Division Bench decision of this Court in the case of *Ajay Pratap Singh Vs. Oudh Bar Association, High Court and Others*, and submitted that therein, maintainability of an action for issuance of writ under Article 226 of the Constitution of India against a Bar Association has been upheld by this Court and, thus, the petitioner has rightly invoked the writ jurisdiction for his grievance. The learned counsel has also referred to the decision of the Hon'ble Supreme Court in the case of *Supreme Court Bar Association and Others Vs. B.D. Kaushik*, and a Larger Bench decision of this Court in the case of *Democratic Bar Association, Allahabad and others Vs. High Court of Judicature at Allahabad* and another, in support of his contentions. The learned counsel submitted that for the arbitrary act and illegal action of the respondent No. 3, where an order debarring the petitioner from membership has been passed without any opportunity of hearing and the order had been thrown in his Chamber in an indecent manner, the matter calls for interference by this Court. The learned counsel also contended that the petitioner has never acted against the dignity and decorum of the Bar; and his right to continue as member of the Bar Association cannot be taken away in such an arbitrary manner.

5. Having given thoughtful consideration to the submissions made, we do not

feel persuaded to entertain this matter in the writ jurisdiction.

6. So far as the decision in the case of Democratic Bar Association, Allahabad (supra) is concerned, it is but clear that the same has no relevance or applicability to the present case. In the said case, this Court has considered a joint writ petition filed by the Democratic Bar Association, Allahabad as also two Advocates practicing in the High Court in their challenge to the legality of the Rules dated 2nd February 2000 by which, the Rules known as Designation of Senior Advocates Rules, 1999 had been amended. The validity of the amended Rules was questioned on the ground that they were not in consonance of Section 16(2) of the Advocates Act, 1961. The preliminary objection therein was on the locus standi of the petitioners, which was rejected by this Court while holding that on the subject matter of the petition, Advocates practising in the Court could not be termed as busy bodies or intermeddlers and they had vital interest in the subject matter. It was also observed that even if right of the Association to maintain the petition was questioned, the petitioner Nos. 2 and 3, the Advocates practising in the Court were entitled to maintain the writ petition. The observations in S.P. Gupta Vs. President of India and Others, were also referred. Maintaining of an action by the Bar Association or its members against any particular Rule/Scheme with reference to the statutory rights under the Advocates Act, 1961 as also the rights guaranteed by the Constitution of India is entirely different a matter. The said decision has no applicability to the present case.

7. Before taking up the decision of a Division Bench of this Court in Ajay Pratap Singh's case (supra), which has been strongly relied upon by the learned counsel for the petitioner, it appears appropriate to refer to the decision of the Hon'ble Supreme Court in the case of B.D. Kaushik (supra), which too has been relied upon by the learned counsel and which has also been referred in Ajay Pratap Singh's case (supra).

8. In B.D. Kaushik's case, the Hon'ble Supreme Court has considered the appeals preferred against the orders passed by the Civil Judge, Delhi, on the application filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure in a Civil Suit bearing No. 101 of 2003, whereby the appellants were restrained from implementing the resolution dated 18th February 2003 amending Rule 18 of Rules and Regulations of Supreme Court Bar Association. The said Association is also a Society registered under the Act of 1860 and, hence, a civil suit was filed on the grievance relating to its Rules and Regulations. We are not dilating further as regards consideration of the matter on its merits by the Hon'ble Supreme Court in B.D. Kaushik's case. The point noticeable for the purpose of the present petition is that in B.D. Kaushik's case, the question of maintainability of an action for issuance of a writ in the matter of membership of a Society like the Bar Association did not arise for consideration nor the Hon'ble Supreme Court appears to have ruled thereupon.

9. We may now refer to the decision in Ajay Pratap Singh's case (supra), which

has been strongly relied upon by the learned counsel for the petitioner. In Ajay Pratap Singh's case, a Division Bench of this Court had considered two writ petitions bearing No. 11041 of 2013 and 11140 of 2013. In the first writ petition, the petitioner, a practicing Advocate and member of Oudh Bar Association contended that the functioning of the Governing Council of the said Association had gone irregular, particularly as regards enrollment of members and, therefore, sought indulgence of this Court to direct the Elders Committee of the Association to take over charge of the Governing Council and to make a fresh list of genuine members and for other ancillary reliefs. The subject matter of the said first writ petition and the scope of enquiry in the said writ petition, as set-out in the opening paragraphs of the order of this Court, could be noticed for ready reference as under:--

"1. Petitioner before us, Shri Ajay Pratap Singh, Advocate is one of the learned members of the Oudh Bar Association, High Court, Lucknow hereinafter referred to as "The Association", who has sought indulgence of this Court for a direction in the nature of mandamus commanding the Elders Committee of the Association to take over the charge from the present Governing Council and make a fresh list of members who are practicing in this Hon"ble Court and are not in arrears of subscription before notifying the general election. A further direction in the nature of mandamus has been sought commanding the Elders Committee of the Association to make an inquiry in the matter of deposit of the subscription of the members and take appropriate action, if any member is found guilty of depositing the subscriptions of others.

2. The petitioner has also inter alia, prayed for a relief as this Court deems fit and proper under the facts and circumstances of the case. So far as the first part of the relief is concerned, the same has become infructuous as the term of the earlier Governing Council has already come to an end and the Elders Committee has taken over the charge from the outgoing Governing Council of the Association. In view of this, we are only concerned with the remaining part of the reliefs, which have been prayed by the petitioner."

10. In the other writ petition bearing No. 11140 of 2013, the petitioner sought issuance of a direction that the benefit of Oudh Bar Association's Members And Their Families (Help In Distress), Scheme 2013, be also extended to the other members of the said Bar Association, without there being any age limit and for modification of the proviso attached to Paragraph 4 of the said Scheme. The subject matter of the said writ petition, as set-out in the said order, could also be taken note of as under:--

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

4 of the aforesaid scheme." 11. In those cases, a preliminary objection was raised to the effect that while exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India, this Court will not interfere in the internal management and affairs of the Society. The decision in B.D. Kaushik's case (supra) was also referred before the Court but the argument that therein, the Hon''ble Court had passed the order only while exercising powers of appeal was not accepted by the Division Bench of this Court with the observations that the order passed by the Hon''ble Supreme Court of India is the law of the land, irrespective whether the order has been passed in exercise of the powers of the appeal or otherwise. The entire of the observations in Ajay Pratap Singh's case, which indicate that the Hon''ble Division Bench did not accept such a preliminary objection, are found in the following paragraphs:--

"8. A preliminary objection has been raised on behalf of the opposite parties as well as interveners who have been permitted by us to address the Court that the present writ petition being against the Society, is not maintainable and this Hon''ble Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India cannot interfere in the internal management and affairs of the Society. In view of the preliminary objection raised by some of the opposite parties and interveners with regard to the maintainability of the writ petition, we propose to decide this issue first. It is not disputed that the Association is a society registered under the Societies Registration Act with its bye-laws which are in consonance with the model bye-laws framed by the Bar Council of Uttar Pradesh. If, the Governing Council or any Committee constituted under the bye-laws, deviates from the bye-laws or functions contrary to the bye-laws, this Court can certainly interfere and pass appropriate direction. The Oudh Bar Association is a Court-Annexed Bar Association which is recognized by the High Court Allahabad. The very nature of such a Bar Association necessarily means and implies that it is an Association representing the members regularly practicing in the Court and the responsibility of proper conduct by its members lies with the Court. There are bye-laws of the Association, which have been framed to govern the body of the Society. Generally, the Courts do not interfere in the internal affairs of Association, but the Society which is in the form of Association of the Advocates, has been created as a fundamental right guaranteed under Article 19 of the Constitution of India. It is pertinent to mention that in a dispute of identical nature the Hon''ble Supreme Court of India has interfered in the affairs of the Supreme Court Bar Association which came up before the Hon''ble Court in the form of Civil Appeal and the Hon''ble Supreme Court while deciding the appeals issued certain directions with regard to the internal affairs and management of the Supreme Court Bar Association.

9. The opposite parties Nos. 1, 2 and 3 and the intervener Shri Ramesh Pandey have argued that the decision rendered in Supreme Court Bar Association and Others Vs. B.D. Kaushik, is not applicable and is not attracted to the facts of the present case because the Hon''ble Supreme Court passed the orders and issued certain directions while exercising power of appeal, while the matter before this

Court is in the form of writ petition, and the Court has to act strictly within the ambit of Article 226 of the Constitution of the India. We find no force in the aforesaid submission because the order passed by the Hon''ble Supreme Court of India, is the law of the land, irrespective of the fact as to whether the order has been passed while exercising power of appeal or otherwise. The observations made in the judgment and orders by the Supreme Court of India are obiter-dicta and are binding on all the Courts in India."

12. The proposition that the law declared by the Supreme Court is binding on all Courts is neither of any doubt nor could be of any. However, this remains trite that a decision is considered to be the authority on the issue or point that has been considered and pronounced upon. As noticed, the issue of maintainability of an action for issuance of a writ against a society like the Bar Association was not involved in B.D. Kaushik's case. Rather, the said matter was of an appeal arising out of an injunction order passed in a civil suit.

13. From the passage as extracted hereinabove, it appears that the Hon''ble Division Bench dealing with the said writ petition in Ajay Pratap Singh's case was not inclined to accept the preliminarily objection as regards maintainability of the writ petition, particularly looking to the peculiar facts and circumstances of the case, where the Court even observed that it was unfortunate that the dispute with regard to the elections of the said Association had come up before it in the form of petition in view of the allegations that the functioning of the Governing Council of Association had gone irregular, as regards enrollment of the members, where the genuineness of membership of several of the members was being questioned. The Court proceeded to issue several directions to the Elders Committee for preparing proper list and directed the Elders Committee constituted by it by the order dated 30th January 2014 to take several steps as directed and indicated for the purpose of holding of the elections of Association. The subject matter of the said writ petition had itself acquired different proportions and perspective and, in the singular facts and circumstances of that case, the directions were issued by the Court for the purpose of ensuring proper elections. However, we find it difficult to accept that for the order so passed in Ajay Pratap Singh's case and the observations made therein, the Division Bench has laid down an inflexible Rule of universal application that in every matter related with the Bar Association, a writ petition would be maintainable or that the Bar Association is amenable to the writ jurisdiction for all purposes. The fact that the Hon''ble Division Bench did not consider itself laying down such a principle could well be noticed from the very fact that the other petition simultaneously considered in the said order, involving the matter related with Help in Distress Scheme of the Association was not entertained in the writ jurisdiction; and the said petitioner was relegated to the remedy before the appropriate forum. Such observations and directions, as occurring in the concluding passage of the order could be noticed as under:--

"The second writ petition has been filed by the petitioner/Moti Chand Yadav with

the prayer to direct the opposite parties to modify the proviso appended to Rule 4 of the scheme, is not maintainable, in view of the fact that the power to amend any Rule or Bye-laws, is with the Association itself and this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot direct the Association to amend or modify any rule. However, it is always open for new Governing Council and the General House to suitably modify or amend any of the rules in consonance with the bye-laws of the Association and relevant Rules in the interest of Members of the Association.

In the result, Writ Petition No. 11140 (MB) of 2013 is disposed of with the directions to the petitioner to approach the appropriate forum."

14. In view of what has been noticed hereinabove, we are clearly of the view that the Bar Association like the respondent No. 3 can not be said to be amenable to writ jurisdiction for all purposes and even in Ajay Pratap Singh's case, this Court has not laid down an inflexible principle of universal application. In our view, the matter like the present one, where the Bar Association has taken the decision to debar or expel any of its member (the petitioner) is the one fundamentally concerning the management and internal affairs of the Bar Association and such a matter, for its very nature, cannot be examined in the writ jurisdiction.

15. In the present case, according to the observations made in the impugned order dated 3rd December 2014, the respondent Bar Association was of the view that conduct of the petitioner had not been in conformity with the dignity of the Bar. The petitioner seeks to suggest that the happenings had been of a different nature and else, he did not act contrary to the dignity and decorum of the Bar nor misbehaved with anyone. These questions directly relate to such basic factual aspects, which cannot be determined in the writ jurisdiction. Even the questions of the alleged want of opportunity of hearing or violation of principles of natural justice could, again, be determined only with reference to the nature of the act imputed, expediency of a particular decision, and the scheme of the bye-laws governing the matter. Thus, the case involves such enquiry into basic questions of fact that cannot be made in the writ proceedings, which are dealt with and decided only on affidavits. For this reason, we are of the view that the dispute of the present nature i.e., as regards debarring/expelling an individual member of the Bar Association could only be examined in appropriate regular proceedings and not in the writ jurisdiction.

16. For the reasons foregoing, we decline to interfere in this matter in the writ jurisdiction and this writ petition stands dismissed.

17. However, it is left open for the petitioner to take recourse to the appropriate regular remedies, of course, in accordance with law while making it clear that we have not dealt with the merits of the case either way.