

**(2018) 04 KAR CK 0015**

**In the Karnataka High Court**

**Case No : Writ Petition Nos.102744-102747 of 2018**

**Sri Kulkarni G.B and Ors @APPELLANT@Hash The Karnataka State Bar Council and Ors**

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**Date of Decision : 12-04-2018**

**Acts Referred:**

Constitution of India, 1950 — Article 12, 32, 226, 227  
Provisions of Karnataka Societies Registration Act, 1960  
Provisions of Advocates Act, 1961

**Citation : (2018) 04 KAR CK 0015**

**Hon'ble Judges : KRISHNA S.DIXIT, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

1. The Petitioners who happened to be the members of fourth Respondent - Bar Association, Hubballi have presented this Writ Petition for a Writ of

Certiorari quashing the Calendar of Events dated 21.02.2018 issued by the Returning Officer at Annexure-F to the Writ Petition whereby the elections

to the Governing Council of their Society / Bar Association has been scheduled.

2. The Petitioners have also sought for a Writ of Mandamus to the Respondent Nos.1 to 4 to conduct the elections to the Governing Council of their

Society i.e. the fourth Respondent " Bar Association in accordance with the approved bye-laws dated 11.01.2007 a copy of which is at Annexure-

A to the Writ Petition.

3. The learned counsel for the Petitioners Sri Mrutyunjaya Tata Bangi submits that the fourth Respondent is an association registered under the

provisions of Karnataka Societies Registration Act, 1960 and its affairs of management are governed by the bye-laws ; though it is a private society all

its members being the Advocates discharge the functions involving public duty

and therefore, it falls within the definition of State given under Article 12 of the Constitution of India and more particularly in the light of the decision of the Apex Court in R.D.Shetty's Case reported in AIR 79 SC 1628.

4. The learned counsel Sri Bangi also submits that the bye-laws of the fourth Respondent "Association have been duly registered with the second

Respondent District Registrar of Societies on 11.01.2007 and that the same have been in force and further, these bye-laws having been so registered

have some force of law under the provisions of the KSR Act. He also tells that the violation of these entail some penal consequences.

5. Sri Bangi further submits that the first Respondent namely the Karnataka State Bar Council a statutory body constituted under the provisions of

Advocates Act, 1961 has promulgated model bye-laws for adoption by all the Bar Associations in the State ; the said model bye-laws have not yet

been adopted by the fourth Respondent-Association and despite non adoption the same are being acted upon and enforced for conducting the elections

in question dis-regarding Petitioners and others representation dated 04.04.2018. He contends that all this is illegal warranting indulgence of this

Court in its Writ jurisdiction.

6. I have heard the learned counsel for the Petitioner and also the learned AGA Sri Ravi Hosamani appearing for the second Respondent opposing the

Writ Petition. I have also perused the contents of the Writ Petition and the documents that accompany the same at Annexures - A to F.

7. Admittedly, fourth Respondent "Hubballi Bar Association is only a Society registered under the provisions of KSR Act, 1960. This Society is

neither substantially funded nor its affairs are managed by the Government of the State or any of its Officers nor there is any pervasive control by the

State. Although, all its members being the Advocates function as the Officers of the Court, still their Association as such does not discharge any public

function or public duty imposed by law or any instrument having force of law. Thus, the activities of this Society do not contain sufficient amount of

public law element. Therefore, it is not an agency or instrumentality of the State which is liable to suffer judicial review of its action under Articles 226

and 227 of the Constitution of India.

8. To constitute an agency or an instrumentality of State within the meaning of

Article 12, the Respondent against whom Writ is sought for should be the one which is financially, functionally and administratively dominated by or under the control of the Government and such control must be pervasive. The mere regulatory control whether under State or otherwise would not serve to make a body an instrumentality of the State. This view of law emerges from the ratio of the decision of the Apex Court in the Case of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology reported in 2002 5 SCC 111 at para 40.

9. During the initial period of Writ jurisdiction, the status of the Respondent against whom Writ was sought for was the decisive factor for invoking the jurisdiction under Articles 226 and 227. The High Courts used to exercise Writ jurisdiction and scrutinize the acts of such Respondent, if it was an agency or instrumentality of the State. However, there has been a gradual shift from the status of Respondent to the nature of its function. In other words, even when the Respondent is an agency or an instrumentality of the State as defined under Article 12, still the Writ jurisdiction is not invocable if the act complained of does not contain sufficient amount of public law element.

10. The Apex Court in L.I.C of India Vs. Escorts Ltd., reported in AIR 1986 SC 1370 has held as under:

“While it cannot be doubted that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Art. 226 or Art. 32 of the Constitution, Art. 14 cannot be construed as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. For example, if the action of the State is political or sovereign in character, the Court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field.”

11. The action in challenge is the Calendar of Events issued by the third

Respondent Returning Officer under the provisions of the bye-laws of the fourth Respondent-Association scheduling election to the Governing Council. Neither the bye-laws have been promulgated nor the Calendar of Events have been issued under the compulsion of an enactment or the rules made thereunder. Even otherwise also they are bereft of any statutory force. The bye-laws of a Society being contractual in nature bind only its members.

12. Thus, viewed from any angle keeping the law declared by the Apex Court in the Cases mentioned above, the Respondent No.3 Returning Officer or the Respondent No.4 Bar Association cannot be treated as the Agency or the instrumentality of the State or other authorities under Article 12 of the Constitution of India; nor does the impugned Calendar of Events involve sufficient amount of public law which is a sine qua non for invoking the Writ jurisdiction of this Court.

Therefore, these Writ Petitions fail and accordingly the same stand dismissed.