

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

THE HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI  
AND  
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

**SPECIAL APPEAL NO. 70 OF 2023**

**5<sup>TH</sup> APRIL, 2023**

Between:

Pachhuwadoon Bar Association,  
Vikas Nagar, District Dehradun ..... Appellant

and

Sandeep Kumar Bartwal & others ..... Respondents

**AND**

**SPECIAL APPEAL NO. 71 OF 2023**

Between:

Pachhuwadoon Bar Association,  
Vikas Nagar, District Dehradun ..... Appellant

and

Amit Kumar Chauhan & others ..... Respondents

|                               |   |                                                                                                          |
|-------------------------------|---|----------------------------------------------------------------------------------------------------------|
| Counsel for the appellant     | : | Mr. Neeraj Garg, learned counsel                                                                         |
| Counsel for the respondent(s) | : | Mr. Vikas Bahuguna, learned counsel for respondent No. 1 in SPA No. 70 of 2023                           |
|                               | : | Mr. Siddhartha Sah, learned counsel for respondent No. 1 in SPA No. 71 of 2023                           |
|                               | : | Mr. Naitik Bhatt, <i>proxy</i> counsel on brief of Mr. Piyush Garg, learned counsel for respondent No. 2 |
|                               | : | Mr. B.S. Parihar, learned Standing Counsel for State of Uttarakhand / respondent No. 3                   |

**The Court made the following:**

**JUDGMENT: (per Hon'ble The Chief Justice Sri Vipin Sanghi)**

Issue notice.

Counsel for the respondents appear and accept notice.

2) The present special appeals are directed against the common order passed by the learned Single Judge, in Writ Petition (M/S) No. 2507 of 2022, Writ Petition (M/S) No. 2043 of 2022, and Writ Petition (M/S) No. 284 of 2023. The two appeals before us have arisen out of WPMS No. 2507 of 2022, and WPMS No. 284 of 2023.

3) The impugned order reads as follows :-

*“Mr. Ravi Babulkar, Mr. Vikas Bahuguna, & Mr. Siddhartha Sah, Advocates for the petitioners.*

*Mr. Piyush Garg, learned counsel for respondent no. 1.*

*Ms. Manisha Bhandari, learned counsel for respondent no. 2.*

*Mr. Narayan Dutt, learned Brief Holder for the State of Uttarakhand.*

*Since common questions of fact and law are involved in these petitions, therefore, these petitions are clubbed together and decided by this common*

*judgment. However, for the sake of brevity, facts of WPMS No. 2507 of 2022 are being considered.*

*By means of this writ petition, petitioner has sought the following relief:-*

- (i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 01.09.2022 passed by respondent no. 1 (contained as Annexure no. 1 to this writ petition)*
- (ii) (ii) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.09.2022 passed by respondent no. 2 (contained as Annexure no. 3 to this writ petition)*
- (iii) (iii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents not to take any coercive measure against the petitioner.*

*Petitioner held Office of President, Pachhuwadoon Bar Association for three years i.e. 2018-19, 2019-20 & 2020-21. He has challenged an order passed by Chairman, Uttarakhand Bar Council, on various grounds.*

*Learned counsel for the parties are unanimous that the dispute can be resolved if the matter is relegated to the Chairman, Uttarakhand Bar Council.*

*In such view of the matter, without going into the merits, writ petitions are disposed of by permitting petitioners to approach Chairman, Uttarakhand Bar Council by making application for revocation of impugned order(s), within three days from today. If such application is made within stipulated time, Chairman, Uttarakhand Bar Council is requested to reconsider the issue and pass appropriate order, as per law, within ten days from the date of filing such application(s).*

*Till decision in the matter by the Chairman, election process shall not be notified by the concerned Bar Association.”*

4) A perusal of the impugned order gives the impression that the same is an order passed by consent. However, on a little deeper scrutiny, what emerges is, that the action of the three parties concerned before us, namely, the appellant-Bar Association; the two respondents – writ petitioners, who are the ex-President Shri Sandeep Kumar Bartwal, and ex-Honorary Secretary Shri Amit Kumar Chauhan of the appellant-Bar Association; the Chairman, Bar Council of Uttarakhand, and the Bar Council, itself, have completely misdirected their respective actions leading to taking of decisions, and passing of orders, which are either without jurisdiction, or in violation of the principles of natural justice. A complete hochpoch has been created due to the actions of all the parties, and our endeavour is to untangle the same.

5) It appears that the tenure of the Executive Committee of the appellant-Bar Association came to an end in the year 2022, and a resolution was passed by the Bar Association on 12.04.2022 to extend the tenure of the Executive Committee by one year. The two writ

petitioners are the ex-President and the ex-Honorary Secretary of the same Bar Association. The ex-President of the Bar Association being aggrieved by the delay in conduct of the elections for constitution of the fresh Executive Committee, approached the Uttarakhand Bar Council, making a grievance with regard to the elections not being conducted by the Executive Committee in office.

6) First and foremost, in our view, this approach of the ex-President, for seeking relief in that regard was completely misplaced, as it is not for the Bar Council to intermeddle into the affairs of the Bar Association. The ex-President had a remedy available to him under the civil law, or under the Societies Registration Act, 1860 (as amended by Uttarakhand Act No. 04 of 2019).

7) Upon the ex-President approaching the Bar Council, the appellant-Bar Association responded by making allegations of misappropriation of funds by the ex-President and the ex-Secretary. In the light of the said allegations, the Bar Council constituted two member committee to look into the allegations made by the appellant-Bar Association. The two member committee gave its report after calling upon the ex-President to

furnish his explanation. The said report is dated 07.07.2022.

8) The conclusion drawn by the said committee reads as under :-

निष्कर्ष

समस्त दस्तावेजों व बयानों का अवलोकन करने के पश्चात प्रथम आरोप के सम्बन्ध में जाँच समिति ने जाँच के दौरान यह पाया है कि शिकायतकर्ता व पूर्व कार्यकारिणी ने 2020-21 में संस्था के खर्च हेतु जो बिल-बाउचर वर्तमान कार्यकारिणी को सौंपे थे वास्तव में उनमें से कुछ बिल बाउचर पर संस्था का या विक्रेता का नाम अंकित नहीं है और न ही उन पर कोई धनराशि अंकित की गयी है, जिनका भुगतान भी नगद रूप से दर्शाया गया है, इसके अतिरिक्त माननीय विधायक श्री मुन्ना सिंह चौहान जी को जो 50,000/-रु० का भुगतान संस्था के खाते से दिया गया है तथा खाते से मु० 3,00,000/-रु० अधिवक्ता रणवीर वालिया को उधार के तौर पर उसकी पत्नी के इलाज हेतु दिये गये और जिनकी वापसी का प्रयास भी शिकायतकर्ता द्वारा नहीं किया गया। जहाँ तक एक द्वितीय आरोप का प्रश्न है उसके सम्बन्ध में जाँच समिति ने जाँच में पाया कि शिकायतकर्ता ने 2020-21 के वार्षिक चुनाव कार्यकारिणी समिति की बैठक दिनांकित 30-03-2020 के द्वारा स्थगित कर दिये थे और जब शिकायतकर्ता से उसका उत्तर मांगा गया तो शिकायतकर्ता ने कथन किया कि मेरे कार्यकाल में संस्था का 2020-21 का वार्षिक चुनाव कोविड-19 का लाकडाउन होने के कारण बार कौंसिल आफ उत्तराखण्ड के द्वारा बढ़ाया गया था, जिसका उल्लेख शिकायतकर्ता ने न तो कार्यकारिणी की बैठक दिनांकित 30-03-2020 में पारित प्रस्ताव में किया और न ही कोई प्रमाण शिकायतकर्ता ने जाँच समिति के समक्ष ही प्रस्तुत किया है जबकि पछवाढून बार एसोशिएसन के सदस्यों ने आमसभा दिनांक 12-04-2022 में प्रस्ताव पारित करके वर्तमान कार्यकारिणी का कार्यकाल वर्ष 2022-23 को 1 वर्ष के लिए बढ़ा दिया था जिसकी पुष्टि हेतु जाँच समिति के समक्ष विपक्षी द्वारा दाखिल की गयी सदन की वीडियोग्राफी का अवलोकन किया गया और पाया कि सदन में वर्तमान कार्यकारिणी का कार्यकाल बढ़ाने हेतु श्री अनिल शर्मा (पूर्व अध्यक्ष पछवाढून बार एसोशिएसन विकासनगर), श्री विजयपाल चौधरी (पूर्व अध्यक्ष पछवाढून बार एसोशिएसन विकासनगर), श्री सुरेन्द्र मित्तल (पूर्व अध्यक्ष बार कौंसिल आफ उत्तराखण्ड), श्री

गुरमेल सिंह राठौर वरिष्ठ अधिवक्ता, श्री राजेश वर्मा पूर्व सह-सचिव तथा कई अन्य अधिवक्ताओं ने वर्तमान कार्यकारिणी का कार्यकाल बढ़ाने का समर्थन किया गया है, इसके अतिरिक्त जॉच समिति ने जॉच के दौरान यह भी पाया है कि वर्तमान कार्यकारिणी ने 2021-22 का वार्षिक लेखा-जोखा भी सदन के समक्ष नहीं रखा है। उक्त सभी बिन्दुओं पर बार कौंसिल द्वारा निर्णय लिया जाना न्यायसंगत होगा।

*महोदय जॉच समिति की जॉच आख्या सेवा में प्रेषित है।”*

9) We are informed - and there is no dispute in this regard, that the ex-Secretary was not put to any notice by the Bar Council, or the two member committee, which examined the complaint made by the appellant-Bar Association against the ex-President and the ex-Secretary. After the two member committee made the aforesaid report, the Chairman Bar Council passed an order on 01.09.2022, on the basis of the report prepared by the two member committee, and issued the following directions :-

*”पछवादन बार एसोसिएशन विकासनगर द्वारा सर्वसम्मति से सदन की बैठक दिनांक 12.04.2022 में लिए गए निर्णय की पुष्टि की जाती है जिसके फलस्वरूप पछवादन बार एसोसिएशन विकासनगर की वर्तमान कार्यकारिणी का कार्यकाल वर्ष 2022-23 के लिए बढ़ा हुआ माना जाएगा। पूर्व कार्यकारिणी द्वारा की गयी वित्तीय अनियमितताओं के सम्बन्ध में वर्तमान कार्यकारिणी आम सभा बुला कर धन की वसूली करने के सम्बन्ध में ठोस कार्यवाही करने की अधिकारी है तथा अनियमितताओं के सम्बन्ध में चिट् फण्ड सोसायटी देहरादून को भी अवगत कराना सुनिश्चित करे।*

*इस निर्णय की एक-एक प्रति शिकायतकर्ता व पछवादन बार एसोसिएशन विकासनगर के अध्यक्ष को प्रदान की जावे तथा एक प्रति श्री राजेन्द्र रावत एडवोकेट जिनके द्वारा दिनांक 02.08.2022 को एक प्रार्थना पत्र बार काउंसिल को प्रेषित किया गया था, को भी प्रेषित की जावे।”*

10) Once again, we find that the Chairman Bar Council exceeded his jurisdiction, inasmuch as, he had no authority to intermeddle into the affairs of the appellant-Bar Association, and to declare that its term has legally been extended by one year. Rather than proceeding to take disciplinary action under Section 35 of the Advocates Act, 1961, the Chairman Bar Council passed the aforesaid order.

11) Thereafter, the appellant-Bar Association passed a resolution in its General House, expelling the ex-President and the ex-Secretary from the membership of the Society, unless they deposited the amounts of Rs.38,91,000/- of the appellant Association.

12) It was the aforesaid actions of the Bar Council, and the appellant-Bar Association, which drove the ex-President and the ex-Secretary to file their respective two writ petitions, wherein the impugned order has been passed. Even before the learned Single Judge, the parties proceeded to consent to the Chairman Bar Council, passing appropriate orders on matters over which he had no jurisdiction. The Chairman Bar Council has now passed an order, which has been tendered in Court. The operative part of which reads as follows :-

### आदेश

“ बार कौंसिल द्वारा पारित आदेश दिनांक 01.09.2022 तथा बार एसोसिएशन द्वारा पारित आदेश दिनांक 14.09.2022 बिना किसी पूर्व सुनवाई का अवसर प्रदान किए हुए पारित किया गया है तथा नैसर्गिक न्याय के सिद्धान्त के उल्लंघन में है इसलिए उपरोक्त दोनों आदेश निरस्त किये जाते हैं तथा पछवावून बार एसोसिएशन को निर्देशित किया जाता है कि आज से 20 दिन के अन्दर बार कौंसिल को पूर्व सूचित कर, पछवावून बार एसोसिएशन विकास नगर कि एक आम सभा नियमानुसार पूर्व सुचना के उपरान्त बुलाये तथा जिस सम्बन्ध में श्री बर्तवाल तथा श्री चौहान को मीटिंग का एजेन्डे यथासमय व्यक्तिगत रूप से उपलब्ध कराये। क्योंकि श्री बर्तवाल एवं श्री चौहान का यह भी कथन है कि श्री मनोज कुमार शर्मा उनसे व्यक्तिगत रंजिश रखते हैं तथा वर्तमान में अध्यक्ष होने के नाते बार एसोसिएशन कि आम सभा प्रभावित करते हैं इसलिये इस सम्बन्ध में बिना कोई राय व्यक्त करते हुए तथा बिना किसी पक्ष पर दोषारोपण करते हुए न्याय कि दृष्टि से यह भी निर्देशित किया जाता है कि उपरोक्त बार एसोसिएशन कि होने वाली आम सभा में बार कौंसिल ऑफ उत्तराखण्ड के दो सदस्य श्री मेहरमान सिंह कोरंगा सदस्य सचिव एवं श्री अनील कुमार पन्डित सदस्य बार कौंसिल ऑफ उत्तराखण्ड बतौर प्रेक्षक प्रतिभाग करेंगे। जिनके देख-रेख में ही उपरोक्त बार एसोसिएशन की आम सभा कि जायेगी। आम सभा कि एक प्रोफेशनल फोटोग्राफर से विडीयों ग्राफी करायी जायेगी तथा आम सभा के मिनट ऑफ मीटिंग प्रेक्षक कि देखरेख में ही लिखे जायेंगे जो कि उनके द्वारा काउन्टर साइन किये जायेगे। बार एसोसिएशन के आम सभा का प्रस्ताव जो भी पारित होगा बार कौंसिल के समक्ष यथाशीघ्र प्रस्तुत किया जायेगी तथा चैयरमैन बार कौंसिल के अनुमोदन के उपरान्त ही लागू माना जायेगा। आदेश दिनांकित 01.09.2022 तथा 14.09.2022 निरस्त कर दिये गये हैं, इसलिये श्री बर्तवाल तथा श्री चौहान आम सभा के सदस्य माने जायेंगे तथा उन्हें होने वाली आम सभा में प्रतिभाग करने का पूर्ण अधिकार भी होगा। यदि उपरोक्त आम सभा में बार एसोसिएशन के चुनाव सम्बन्धित कोई निर्णय लिया जाता है तथा श्री बर्तवाल एवं श्री चौहान के विरुद्ध कोई आदेश पारित नहीं किया जाता है तो उन दोनों को शुल्क जमा करने हेतु आवश्यक समय भी प्रदान किया जाये। आम सभा के प्रस्ताव के चैयरमैन बार कौंसिल के अनुमोदन के उपरान्त पछवावून बार एसोसिएशन के चुनाव घोषित किये जाये। उपरोक्त आदेश की प्रति पक्षकारण को तथा श्री मेहरमान सिंह कोरंगा सदस्य सचिव एवं श्री अनिल पन्डित सदस्य, बार कौंसिल ऑफ उत्तराखण्ड को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित की जाये।”

13) The reason why we are inclined to interfere in these appeals is, that the Bar Council and its Chairman, seem to be completely ignorant and oblivious of their jurisdiction and authority vested by the Advocates Act, 1961, and they are acting and passing orders, as if they have absolute and unbridled authority to deal with issues concerning the management of a Bar Association in the State of Uttarakhand.

14) Section 6 of the Advocates Act lays down the functions of the State Bar Council. The same reads as follows:

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

- (a) to admit persons as advocates on its roll;*
- (b) to prepare and maintain such roll;*
- (c) to entertain and determine cases of misconduct against advocates on its roll;*
- (d) to safeguard the rights, privileges and interests of advocates on its roll;*
- (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7;*
- (e) to promote and support law reform;*
- (ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest;*

*(eee) to organise legal aid to the poor in the prescribed manner;*

*(f) to manage and invest the funds of the Bar Council;*

*(g) to provide for the election of its members;*

*(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;*

*(h) to perform all other functions conferred on it by or under this Act;*

*(i) to do all other things necessary for discharging the aforesaid functions.*

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

*(a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;*

*(b) giving legal aid or advice in accordance with the rules made in this behalf;*

*(c) establishing law libraries.*

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

15) The powers of the Chairman of the Uttarakhand Bar Council have been set out in Chapter III of the Bar Council of Uttarakhand Rules, which read as follows :-

***"Powers and Duties of Chairman and Vice-Chairman Rules Framed Under Section 15(2)(g)***

**Powers of the Chairman -**

1. (a) *Save as otherwise provided in these rules, the Chairman shall exercise general supervision and control over the affairs of the Bar Council.*  
 (b) *He shall preside over the meetings of the Bar Council and its Executive Committee.*  
 (c) *He shall have the authority to call the meetings of the Bar Council.*  
 (d) *He shall have the power to order that an emergent and extraordinary meeting of the Bar Council be convened for the consideration of a matter that he may deem urgent or for which a requisition has been received by him.*
2. *The Chairman while presiding over a meeting shall, decide all points of order raised in the meeting and shall be responsible for maintaining decorum and order in the meeting.*
3. *The Chairman shall have power to sanction expenditure up to Rs 5000/- outside the budgeted amount, in case of emergency. However, the same shall be reported to the Bar Council in its next meeting for approval.*
4. *The Chairman or Vice-Chairman shall sign the cheques along with Secretary.*
5. *The Chairman may assign in writing to the Vice-Chairman such of his duties and functions as he may deem fit and proper.*
6. *Whenever immediate action is necessary to safeguard the rights, privileges and interests of the advocates, the Chairman shall take immediate action in the matter.*
7. *The Chairman shall take suitable steps for implementation of the decisions of the Bar Council and shall apprise the Bar Council of the action taken by him at the next meeting."*

16) It is pointed out before us that, when the Chairman passed the order dated 01.09.2022, and when he has passed the latest order dated 03.04.2023, the Chairman Bar Council has acted on his own, and these

are not the resolutions of the Bar Council. So far as the order dated 03.04.2023 is concerned, it is argued that the same has been passed by the Chairman in pursuance of the impugned order, and, therefore, the Chairman Bar Council was authorized to pass the same.

17) The appellant-Bar Association is a society registered under the Societies Registration Act (as application to the state of Uttarakhand). Any dispute *inter se* between the members of the said Society, or between the Society and any of its members can validly be raised before the Registrar constituted under the Societies Registration Act, or any civil court. The appellant-Bar Association passed the resolution expelling the ex-President and the ex-Secretary on the basis of the order passed by the Chairman Bar Council, which itself was founded upon the report prepared by the two member committee (which did not put the ex-Secretary to any notice). The Bar Association did not issue any show cause notice to the ex-President or the ex-Secretary; did not call for the explanation and; did not place the same before the General House for its consideration before passing the resolution dated 14.09.2022. Therefore, in relation to the said resolution, the ex-President and the ex-Secretary would have a

cause of action, and they may approach the Registrar, or the civil court to seek appropriate remedy. If that course of action were to be adopted, the same would further entangle the appellant-Bar Association in legal disputes, and that itself may have a bearing on the constitution of the new Managing Committee, which is due for reconstitution, since the extended tenure of the current Managing Committee has already come to an end.

18) In the aforesaid light, we declare that the Bar Council of Uttarakhand, and the Chairman of the Bar Council of Uttarakhand, have no jurisdiction to intermeddle in the matters relating to the management of the Bar Associations, in the State of Uttarakhand, and it is for the Bar Associations and its members to have their rights and obligations determined, either before the Registrar under the Societies Registration Act (as applicable to the State of Uttarakhand), or before a civil court. At the same time, conduct of any Advocate registered with the State Bar Council, which tantamounts to misconduct, can be examined by the Bar Council, and if after conducting a fair enquiry, after due notice to the concerned member, the conduct of such member is found to be objectionable and calls for

disciplinary action, the Bar Council should itself take the disciplinary action under Section 35 of the Advocates Act.

19) In the light of the aforesaid, with a view to resolve the impasse, which is presently created, and which is not in the interest of the members of the appellant-Bar Association, as they are entitled to be managed by a new Managing Committee, which is democratically elected, the resolution dated 14.09.2022 passed by the appellant-Bar Association qua the ex-President and the ex-Secretary is, hereby quashed, since it is, *ex facie*, in violation of the principles of natural justice. The appellant-Bar Association is free to take action against the ex-President and the ex-Secretary after complying with the principles of natural justice, and giving adequate opportunity to respond to the show cause notice that may be issued to them making specific allegations. Once the responses are received, the appellant-Bar Association shall take the matter to the General Body before whom the fate of the ex-President and the ex-Secretary may be determined. This process should be completed by the appellant-Bar Association within the next two months. The appellant-Bar Association shall notify the elections after a decision is

taken with regard to the membership of the ex-President and the ex-Secretary, soon thereafter.

20) The concerned District Judge / Additional District Judge shall supervise the General Body meeting.

21) The appeals stand disposed of in the aforesaid terms.

**VIPIN SANGHI, C.J.**

**ALOK KUMAR VERMA, J.**

Dt: 5<sup>th</sup> APRIL, 2023  
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