

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.4.2015

Pronounced on: 19.6.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

and

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.9752 of 2015 and M.P.Nos.1 to 4 of 2015

Madras High Court Advocates Association
High Court Building
Chennai 600 104

rep. by its General Secretary Arivazhagan. ... Petitioner

Vs.

1. The Secretary
Bar Council of Tamil Nadu
High Court Campus
Chennai 600 104.

2. The Secretary
Tamil Nadu Advocates Association
Chennai 600 104.

... Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records of the first respondent pertaining to the impugned Resolution No.44/2015 dated 08.3.2015 and quash the same and consequently, forbearing the first respondent from granting any recognition to the second respondent in future.

For Petitioner : Mr.P.S.Raman, S.C.
For Mr.K.Satyabal
For Respondent-1 : Mr.P.Wilson, S.C.
For Mr.S.Y.Masood
For Respondent-2 : Mr.K.Subramanian, S.C.
For Mr.T.P.Senthil Kumar
For Proposed : Mr.Elephant G.Rajendran
Parties : Mr.R.Balasubramanian
Parties-in-Person

O R D E R

V.RAMASUBRAMANIAN J.

The fight in this litigation is between two bodies of lawyers. The petitioner undoubtedly has a century old existence and has been

allotted premises within the court complex. It has a huge collection of books and runs a reference library. The 2nd Respondent is a registered society and has members, who are lawyers practising before various courts in Tamil Nadu and also before this court. The 2nd Respondent society applied to the 1st Respondent - Bar Council for the grant of recognition and registration under Section 13 of the Tamil Nadu Advocates Welfare Fund Act, 1987. Though its application was earlier rejected twice, it has now been granted recognition by a Resolution bearing No.44/2015 dated 8.3.2015 and that has become the subject matter of challenge in this writ petition.

2. We have heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner, Mr.P.Wilson, learned Senior Counsel, assisted by Mr.S.Y.Masood, learned counsel for the first respondent, Mr.K.Subramaniam, learned Senior Counsel appearing for the second respondent and Mr.R.Balasubramanian and Mr.Elephant G.Rajendran, petitioners seeking to implead themselves as parties in the writ petition.

BACKGROUND FACTS:-

3. The brief facts leading to the filing of the writ petition are as follows :

(a) The 2nd Respondent Association was formed in the year 2007. It got itself registered as a society under the Tamil Nadu Societies Registration Act, 1975. Its Registration Number is 98/2008 Chennai North.

(b) The 2nd Respondent gave an application to the 1st Respondent-Bar Council of Tamil Nadu (hereinafter referred to as the State Bar Council) for the grant of recognition and registration under Section 13 of the Tamil Nadu Advocates' Welfare Fund Act, 1987. On receipt of the application, the 1st Respondent constituted a three member committee by a proceeding dated 3.8.2010 to visit the Association and to give a report. The said Sub-Committee of the Bar Council gave a report dated 16.8.2010. In that report, they had observed as follows :

"This provisions of the Bye-Laws of this Association very clearly reveal that during the course of time this Association will be a National-level association and it will have its ramifications throughout India and in such an event the Bar Council of Tamil Nadu, for that matter any State Bar Council in India and the Bar Council of India cannot have any kind of control over this association and this association will become a separate and independent entity. As we stated already, this Association will be functioning parallel to the State Bar Councils and the Bar Council of India and its members may not at all be governed by the Advocates Act of 1961. Therefore, we are of the view that this

Association cannot be recognized and registered. Therefore in view of the above observation, we are of the considered and unanimous opinion that the Bar Council of Tamil Nadu cannot recognize and register this Association."

(c) The matter was then placed in a meeting of the State Bar Council on 31.10.2010. After some deliberations, the State Bar Council rejected the request of the 2nd Respondent vide Resolution No.326/2010. Thereafter, the 2nd Respondent sent a letter dated 12.1.2012 and sought for a reconsideration of the decision taken by the 1st Respondent. When the matter came up for hearing in the meeting of the State Bar Council on 22.1.2012, the President of the 2nd Respondent Society and who is also member of the State Bar Council (in turn elected as the member of the Bar Council of India) informed the Council that he will advice his association to withdraw the request for reconsideration. Accordingly the matter was given up.

(d) It transpires that the 2nd Respondent Society thereafter filed a revision petition before the Bar Council of India against the report given by the Three Member Committee dated 16.8.2010 as well as the resolution of the State Bar Council dated 31.10.2010. It is not clear as to how any revision will lie to the Bar Council of India, especially when the action taken by the State Bar Council was not referable to any provision of the Advocates Act, 1961 or to the provisions of the Advocates Welfare Fund Act, 2001 (Central Act 45/2001). Under section 38 of the Central Advocates Welfare Fund Act, 2001, the Tamil Nadu Advocates' Welfare Fund Act made by Tamil Nadu Legislature was saved and it was made clear that the provisions of the Central Act will not apply to States, in which, any enactment specified in Schedule II are applicable. In Serial No.7 under Schedule II, the name of the Tamil Nadu Advocates Welfare Fund Act, 1987 has been specified. Therefore, since the provisions of the Central Act will not apply in respect of any power exercised under the State Act, there is no scope for the Bar Council of India to interfere with any decision of the State Bar Council in regard to matters covered by the State Welfare Fund Act. Further, Section 48-A providing for revisional power to the Bar Council of India over the decisions of the State Bar Council is not available to the 2nd Respondent as can be seen from Section 48-A(1) of the Advocates Act, which reads as follows

"48-A. Power of revision

(1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit."

It is not clear as to where from the Bar Council of India derived its power to review the order passed by the 1st Respondent-State Bar Council, especially when the power of revision given to it clearly states that the said power is available only to any proceedings taken under the Advocates Act, 1961.

(e) Notwithstanding the lack of any power, the Bar Council of India allowed the Revision Application (Miscellaneous Petition No.5/2012) vide its proceeding dated 28.9.2012. In that order, it not only recognized the 2nd Respondent Society but also curiously set aside the Three Member Committee report dated 16.8.2010 and the resolution of the State Bar Council dated 31.10.2010. Further, a direction purporting to be under Section 48-B of the Advocates Act was also issued to the State Bar Council to register and recognize the 2nd Respondent Association under Section 13 of the Tamil Nadu Advocates Welfare Fund Act, 1987.

(f) The State Bar Council filed a review petition before the Bar Council of India on 21.1.2013 questioning not only the authority of the Bar Council of India in usurping the power of the State Bar Council exercised under a State enactment, but also the wisdom of issuing a direction under Section 48-B of the Advocates Act to carry out the order of the Bar Council of India. It is not clear as to the outcome of the said review petition. But, it is suffice to state that the Bar Council of India does not have any power under the Statute. In any event, these proceedings need not cloud us in deciding the matter.

(g) The 2nd Respondent Society once again made an application dated 15.12.2012 to the 1st Respondent seeking recognition under Section 13 of the State Welfare Fund Act. The State Bar Council once again appointed a Sub-Committee consisting of three of its members to give a report on the request made by the 2nd Respondent. The said Committee gave a report dated 21.6.2013 and in the operative portion, it gave its recommendations as follows :

"Considering the submissions made by the members of the Association and the change of circumstances like increase of members of Advocates on roll of Bar Council, inviting of Tamil Nadu Advocates Association by courts of Law, for discussions, functions etc along with other recognized Associations at Chennai, its participation for the cause of the advocates etc., we are of the opinion that the Tamilnadu Advocates Association, Chennai may be recognized as Advocates Association as mentioned under Section 13 of Tamilnadu Advocates Welfare Fund Act, 1987 with a condition to receive the welfare fund stamps from State bar Council and disburse

the same only at Chennai."

(h) It appears that the 1st Respondent also gave notices to the Petitioner Association as well as the Madras Bar Association for eliciting their views on the question of grant of recognition to the 2nd Respondent. While the Petitioner Association opposed the said request vide its letter dated 3.7.2013, the other Association did not send any protest letter. The matter was once again placed before the State Bar Council in its meeting held on 6.7.2013. In that meeting, a secret ballot was held. In that ballot, 13 members opposed the grant of recognition and 10 members voted for grant of recognition. Therefore, a resolution was passed rejecting the request of the 2nd Respondent.

(i) The 2nd Respondent sent another letter dated 26.2.2015 to the 1st Respondent requesting them to reconsider their decision on the question of grant of recognition. On coming to know of the said letter, the Petitioner Association sent a letter dated 7.3.2015 voluntarily opposing any reconsideration. The matter was once again placed before the State Bar Council at its meeting held on 8.3.2015. The State Bar Council by a Resolution No.44/2015 passed the following resolution :

"After due deliberation and by majority and after taking into consideration of all the relevant circumstances and also the statement made by the Inspection Committee, it is resolved to recognize the Tamil Nadu Advocates Association in Madras High Court under Section 13 of the Tamil Nadu Advocates Welfare Fund Act 1987."

In the minutes of the meeting, it was recorded as follows :

"Most of the Members expressed that the Council has power to reconsider its resolution as per the provisions contained in Rule 34 of Bar Council of Tamil Nadu Rules. Further, most of the Members have relied on the report filed by the Committee consisting (1) Mr.K.Veluchamy, (2) Mr.E.T.Rajendran and (3) Mr.R.Arunachalam. Most of the Members stated that the main objection raised by the Members in the earlier meeting i.e. if the recognition is granted to this association, it will function statewide has been now properly explained and the Tamil Nadu Advocates Association has accepted to sell stamps in Madras High Court only.

Since the application filed by the Tamil Nadu Advocates Association satisfies the requirements contained in Sec.13 (1) and (2) of

Tamil Nadu Advocates Welfare Fund Act and the Council also constituted the Committee to make such enquiry as contemplated under Sub-Sec.3 of Sec.13 of the Act. Further, the provisions contained Sec. 6(1) (dd) of Advocates Act defines the functions of the State Bar Council as follows :

(dd) to promote the growth of Bar Associations for the purpose 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".

In the report filed by the Committee, it was specifically stated that the Tamil Nadu Advocates Association can be recognized with the condition to receive the welfare stamps and disburse the same only at Chennai. Since the association by his letter dated 26.02.2015 requested to grant the recognition to function in the Madras High Court,, the Council feels that the recognition can be granted to Tamil Nadu Advocates Association in Madras High Court."

It is this decision of the State Bar Council, which has given rise to the present writ petition.

4. At this stage, we are constrained to bring on record what happened before the filing of the present writ petition. Before filing the writ petition, the petitioner association staged a demonstration, laid a siege on the office of the State Bar Council and also went on a boycott of courts on 20.3.2015, though the Court did not have any role to play in the matter of grant of recognition. In utter violation of judicial orders passed by this court, the petitioner association also organized a rally inside the court campus. As a measure of retaliation, the second respondent organized a counter rally within the court premises, shouting slogans. All this happened right under our nose and We simply chose to follow the path shown by our noble predecessors. After the petitioner realized that extra legal methods could not get them the desired result, the petitioner association has chosen recourse to a legal remedy by filing the above writ petition.

5. Before proceeding further, we must bring on record one more fact namely that in this complex, in which, the Principal Bench of the High Court is situated (postal pin code: Chennai 600 104), the following associations have been granted recognition under Section 13 of the Welfare Fund Act :

Sl. No.	Name of Association	Recognition No.	Date
1.	Law Association	27	03.02.1991
2.	Madras High Court Advocates Association (Writ Petitioner)	37	06.04.1991
3.	Madras Bar Association	70	03.08.1991
4.	Women Lawyers Association	81	10.11.1991
5.	Special Court Advocates Association, Chennai	215	20.10.2008
6.	Tamil Nadu Advocates Association (*)	246	08.03.2015

(*) - Challenged in this W.P.

6. The grant of recognition to the Special Court Advocates Association, Chennai is actually shrouded in mystery. It is an association, which was started only in the year 2008. In its application to the State Bar Council, it had claimed that it had 123 members. Some of the members of that association are also admittedly the members of the petitioner association and the petitioner did not object to the grant of recognition to that association.

LEGISLATIVE HISTORY AND SCHEME OF THE ACT

7. Since the impugned resolution was passed under Section 13 of the Tamil Nadu Advocates Welfare Fund Act, 1987 (Tamil Nadu Act 49 of 1987), it is necessary to refer to the legislative history and its interplay with other similar enactments made in this regard. The State Welfare Fund Act was enacted with a view "to provide for the constitution of a welfare fund for the benefit of advocates on cessation of practice and for matters connected therewith or incidental thereto in the State of Tamil Nadu." For the purpose of granting recognition and registration to any association of advocates, the State Bar Council (1st Respondent) has been given power under Section 13 of the Welfare Fund Act, which reads as follows :

"Section 13: Recognition and Registration by Bar Council of any association of advocates

1(a). Any associations of advocates known by any name, functioning in any part of the state may, before a date to be notified or before such extended date as may be notified by the Bar Council in such form as may be presented.

(b) Any association of advocates constituted after the date of publication of the Tamil Nadu Advocates Welfare Fund (Amendment) Act, 1990 in the Tamil Nadu Government Gazette may, apply for

recognition and registration to the Bar Council in such form as may be prescribed."

2. Every application for recognition and registration shall be accompanied by the rules or by -laws of the association names and addresses of the office bearers of the association and an uptodate list of members of the association showing the name, address, age, date of enrolment and the ordinary place of practice of such member.

(3) The Bar Council may after such enquiry, as it deems necessary, recognize the association and issue a certificate of registration in such form as may be prescribed.

(4) The decision of the Bar Council under sub-section 3 shall be final."

8. The terms "Advocates Association" and 'Bar Association" have been defined under Sub-Sections (b) and (c) of Section 2 respectively as follows:

"2(b): "Advocates Association" means an association of advocates recognized and registered by the Bar Council under Section 13.

2(c): "Bar Association" means an association of advocates recognized and registered by Bar Council under Section 13."

The Petitioner Association has already been recognized by the 1st Respondent Bar Council in terms of Section 13 of the Welfare Fund Act. Any Advocates Association, which is interested in getting recognition from the State Bar Council, will have to make an application in Form No.1 and follow the procedure prescribed under Rule 3 of the Tamil Nadu Advocates Welfare Fund Rules, 1989. Rule 3 (2) of the said Rule reads as follows :

"Every application in form No.1 shall be accompanied by an authenticated copy of the rules and /or bye-laws of the Association, an updated list of the members of the Association, showing their names, address, age, date of birth, date of enrolment, the roll number in the state roll maintained by the Bar Council under S.17 of the Advocates Act, 1961 (Central Act 25 of 1961), the place where the member ordinarily practices, the period of suspension if any,

and such application shall be duly signed by the President and secretary of the Association."

9. Thereafter, the State Bar Council, after making such enquiry as it deems necessary, may recognize the advocates association. Under Rule 3(4) of the Rules, more than one Bar association in a court centre can be recognized for special reasons to be recorded in writing.

10. The State Welfare Fund Act also provides for cancellation of recognition and registration of an advocates' association under Section 14-A of the Welfare Fund Act, which reads as follows :

"Sec. 14-A Cancellation of recognition and registration of Advocates Associations and Bar Association:

Where the Advocates Association or the Bar Association fails to discharge any of the duties imposed under section 14, or fails to carry out the direction given under section 9-A, the Bar Council may for reason to be recorded by order Cancel the recognition and registration of such Association.

Provided that no order cancelling the recognition and registration of any Advocate Association or Bar Association shall be passed unless the Advocates Association or the Bar Association has been given a reasonable opportunity of being heard."

11. Upon recognition being granted by the State Bar Council under the State Welfare Fund Act, the duties to be discharged by that advocates' association are set out in Section 14, which reads as follows :

"Section 14: Duties of Bar Associations and Advocates Associations:

1. Every Bar Association and Advocates Associations shall on or before the 16th April of every year furnish to the Bar Council a list of its members as on the 31st March of the Year.

2 . Every Bar Association and Advocates Associations shall inform the Bar Council of
(a) any change in the membership including admissions and re-admissions within thirty days of such change;

(b) the death or other cessation of practice of voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof and

(c) such other matters as may be required by the Bar Council from time to time.

3. Every Advocates Association and every Bar Association shall carry out the directions given by the Bar Council or the Trustee Committee as the case may be."

12. Apart from the above duties, Section 22 gives another list of duties of a recognized and registered advocates' association. The relevant provisions are set out below :

"Section 22: Printing and distribution of Advocates welfare fund stamps by Bar Council

(1) & (2) xxxxxx

(3) The Bar Council shall control the distribution and sale of the Stamps through the Bar associations and Advocates.

(4) The Bar Council, the Bar Associations and Advocates Associations shall keep proper accounts of the Stamps in such form and in such manner as may be prescribed.

(5) The Bar Associations and Advocates Associations shall purchase the stamp from the Bar Council after paying in the value thereof less ten percent of such value towards incidental expenses."

13. An advocate, who wants to become a member of the Tamil Nadu Advocates' Welfare Fund, created under Section 3 of the Welfare Fund Act, has to be a practising advocate in any court and he has to be member of a recognised Advocates Association or Bar Association. Only by fulfilling this condition, he can apply to the Trust Committee for admission as a member of the fund under Section 15(1), which reads as follows :

"Section 15: Membership in the Fund

(1) Every advocate practising in any court in the state and being a member of a Bar Association or an Advocates Association may apply to the Trustee Committee for admission as a Member the Fund in such form as may be prescribed."

14. A perusal of the above provisions of the Welfare Fund Act will clearly show that the State Enactment is a complete Code by itself in the matter of grant of recognition to an association of advocates by the State Bar Council, the duties to be performed by

such association upon its recognition and the withdrawal of recognition granted to such association. Therefore, in the light of these, it has to be seen whether or not the grant of recognition to the 2nd Respondent can be challenged by the Petitioner association ?

DIFFERENT TYPES OF RECOGNITION

15. Before venturing to answer the above question, it is also necessary to note that even under the provisions of the Advocates Act, 1961, there are provisions for the grant of recognition to an association of advocates by the State Bar Council. The Advocates Act was enacted "to amend and consolidate the law relating to legal practitioners and to provide for constitution of State Bar Councils and an All-India Bar Council." (see : Narendra Singh vs Chhotey Singh And Anr, 1983 (4) SCC 131)

16. The object of the Advocates Act is to constitute one common Bar for the whole country and to provide a machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate the working of the profession and to prescribe rules of professional conduct and etiquette and the power to punish those, who commit breach of such rules. (see O. N. Mohindroo vs The Bar Council Of Delhi & Ors, AIR 1968 SC 888)

17. Though the Advocates Act entrusted the Bar Councils with several duties, they focused predominantly on enrolment of advocates and taking of disciplinary action against them in case of any complaint of misconduct. After the advent of the 1961 Act, the 1970s saw an influx of large number of lawyers entering into the profession. Such an inflow naturally brought with it, new demands from the lawyers including a demand for the establishment of a welfare fund and for payment of compensation in case of death, as they did not have any scheme for insurance.

18. Therefore, the Parliament, which had its quota of lawyers, amended the Advocates Act, 1961, by Act 60 of 1973 with effect from 31.7.1974. By this amendment, Sub-Section (2) of Section 6 was substituted with 2 new clauses. Clause (a) of Sub-Section (2) of Section 6, provided for the constitution of one or more funds, by the State Bar Councils for the purpose of giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates.

19. But, section 6(2)(a) was nowhere near the demand of the legal fraternity. Therefore, the State Bar Councils took up the matter with the respective State Governments. The first State to make a law providing for welfare fund for the advocates was the State of U.P., which enacted the Uttar Pradesh Advocates Welfare Fund Act of 1974. Following this, the States of Kerala (1980), Maharashtra (1981), Madhya Pradesh (1982) and Bihar (1983) also enacted State

Laws in this regard. After persistent demands by the Tamil Nadu Bar Council and the presentation of a model draft by the State Bar Council to them, the State of Tamil Nadu came up with the 1987 Welfare Fund Act.

20. The Bar Council of India, which was facing pressure from the legal fraternity from all over the country, also made a cry for legislative measures and on its recommendation, the Parliament amended the Advocates Act by Amendment Act 70 of 1993. By the said Amendment Act, Section 6(1) was amended so as to include a provision under Clause (dd), for promoting the growth of Bar Associations for the effective implementation of welfare schemes for lawyers. In other words, the functions of the State Bar Councils already enlisted under Section 6(1) were increased by this amendment, so as to include one more function namely that of promoting the growth of Bar Associations for the effective implementation of welfare schemes for lawyers. The amendment made to Section 6(1) by Act 70 of 1993 is as follows :

"6: Functions of State Bar Councils -

(1) The functions of a State Bar Council shall be-

(a) to (d) omitted

(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."

21. Thereafter, the Bar Council of India framed rules under its rule making power and introduced Rule 29 under Chapter X in its rules under the caption 'Practice Fund'. But, it was only in the year 2001 that the Parliament enacted the Advocates Welfare Fund Act, 2001 (Central Act 45/2001). The statement of objects and reasons for enacting the law was as follows :

"Social security in the form of financial assistance to junior lawyers and welfare schemes for indigent or disabled advocates, has long been a matter of concern for a legal fraternity. Clause (a) of sub-section (2) of section 6 and clause(a) of sub-section(2) of section 7 of the Advocates Act, 1961, confer powers upon the State bar Councils as well as the bar Council of India, inter alia, to constitute through their rules one or more funds for the purpose of "giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates". Sub-section (3) of section 6 and sub-section(3) of section 7 of the Advocates Act, 1961, further provide that a State Bar Council as well as the Bar Council of India may receive grants,

donations, gifts, or benefactions for the said purpose which shall be credited to the appropriate fund or funds constituted under sub-section(2) of the said sections. Welfare schemes have accordingly been introduced in some States. Most of the States have enacted legislations on the subject. However, there is neither any uniformity nor the said provisions are considered adequate."

22. Thus, we find that a body of lawyers operating in a court centre may enjoy two types of recognition, one by the State Bar Council under the State Welfare Fund Act and the other under Section 16 of the Advocates Welfare Fund Act, 2001, where there is no local legislation, but the Central Act applies. There is also a third type of recognition, by the appropriate court conferring certain facilities on an association of lawyers. This third type of recognition has no statutory sanction and is largely left to the discretion of the Presiding Judge of the court centre where the association functions.

23. The third type of recognition assumes significance in the light of the fact that the associations recognized by the Presiding Judge of the court centre, are granted certain facilities such as office space, electricity connection, wash room, etc. But, the very grant of facilities to a body of lawyers has also led to litigation in several court centres. In one such instance, there was a dispute with reference to allotment of facilities like providing halls and it came up for adjudication before the Supreme Court. In the said case, the Supreme Court made the following observation and expressed its desire for unity among lawyers in the following words:-

"We have been chiefly guided by considerations of 'public good', that is to say, that the Court should be assured of efficient and willing assistance from the Bar. It is only to be hoped that this forward step is a precursor of further improvements in the relations between the different sections of the Bar so that they may grow into a unified bar with all the best traditions which it has inherited from the past and which it is its duty to uphold in the years to come to the lasting credit of the legal profession and to the lasting benefit of all concerned with law and litigation." (see : Prabitra Kumar Bannerji vs The State Of West Bengal reported in AIR 1964 SC 593)

24. Ultimately, in the matter of grant of facilities including the allotment of chambers to advocates, it is the Judge presiding over the court in question, who will have power to decide the issue.

While rejecting the twin argument (i) that an advocate-on-record can exercise his Fundamental Right to practise the profession of law effectively, only if he is provided with a chamber within the Supreme Court premises and (ii) that therefore, to make a chamber available to him is an integral part of his guaranteed Fundamental Right, the Supreme Court observed in *Vinay Balalchandra Joshi vs Registrar General, Supreme Court of India and Anr.* {1998 (7) SCC 461} as follows:

"We see no substance in this contention. Even if we proceed on the basis that to practise as an advocate is a fundamental right, no right to be allotted a chamber within the Court premises follows from it. A legal practitioner/an advocate can carry on his legal profession without a chamber. It is not necessary that he should have a chamber within the Court premises. That, which merely facilitates the exercise of the fundamental right cannot be regarded as an integral part of that fundamental right. Far from being a fundamental right it does not even have the status of a right. No law confers such a right on a member of a legal profession nor such a facility has been accepted as a right even otherwise.

As it is not a matter of right or legal obligation of the Court to provide the facility of a chamber to an advocate it would really be a matter of discretion of the Principal Judge of the Court to decide to whom and to what extent that facility should be extended, when the same is available; and, his only obligation would be to act in fair and just manner and not arbitrarily. It may be proper for him to frame rules, appoint a committee and fix guidelines for the purpose of allotment of chambers; but, the obligation is no higher than to act in a reasonable manner. It would be for him to decide when, to whom, to what extent and on what terms and conditions he should allot chambers."

25. But, past experience shows that the third type of recognition, namely the one granted by the Presiding Judge, has led to several unreasonable demands, such as the inscription of the names of the Office bearers of an Association in any plaque installed at the time of inauguration of new buildings, etc. Even the construction and allotment of lawyers' chambers, has added their own quota of woes to the Presiding Officers in several court centres, with some of the members of the noble profession not even paying the electricity charges.

QUESTION TO BE DECIDED & GROUNDS OF ATTACK

26. Keeping in mind all the above, if we come back to the case on hand, it is seen that the only issue to be considered here is the nature of power exercised by the State Bar Council under the State Welfare Fund Act and whether the impugned resolution is liable for interference on any ground?

27. The impugned resolution of the State Bar Council dated 8.3.2015 is challenged by the petitioner on the following grounds:-

(1) Under Section 13(4) of Tamil Nadu Advocates Welfare Fund Act, 1987, any decision taken by the Bar Council under Sub-Section (3) is final and hence, after the rejection of the application of the second respondent for recognition twice, (first on 31.10.2010 and then on 6.7.2013), there was no scope for a review of the said decision.

(2) No power of review is conferred upon the State Bar Council either under Section 13 or under any other provisions of the Tamil Nadu Advocates' Welfare Fund Act, 1987. Since no statutory creature can have a power of review, without the same being conferred by Statute, the exercise of such a non available power by the State Bar Council makes the impugned resolution is illegal.

(3) Under Rule 3(4) of the Tamil Nadu Advocates Welfare Fund Rules, 1989, the State Bar Council can recognize more than one Bar Association at a court centre, only for special reasons to be recorded in writing. No special reasons have been recorded by the State Bar Council in this case and hence, the impugned resolution is contrary to the Rules.

(4) The impugned resolution is also vitiated by a breach of the principles of natural justice. The Chairman of the first respondent (State Bar Council) was one of the Founding Members of the second respondent Association. The President of the second respondent is also an Elected Member of the Bar Council of Tamil Nadu and happens to be the Co-Chairman of the Bar Council of India. The Chairman of the State Bar Council as well as the President of the second respondent Association did not recuse themselves, when the resolution for the grant of recognition was moved before the State Bar Council. Hence, the fundamental principles of natural justice namely that no man can be a Judge in his own cause, stood violated.

(5) As per the decision of the Rules Committee of the Bar Council taken on 6.3.2010, a newly started association should have a membership of at least 50% of the total number of enrolled members of the Bar, practicing in that court centre. Even according to the statistics furnished by the second respondent, they did not fulfil this essential precondition for recognition. The State Bar Council did not apply its mind to this important requirement.

(6) The impugned resolution is also contrary to a decision taken by the Rules Committee in its meeting held on 6.3.2010. As per Clause 12 of Resolution No.2 of 2010 passed in the said meeting, a member, who has come out of an association due to any dispute or controversy, cannot start a new association. If they do start a new association, the first respondent should refer the matter to the Committee for the settlement of the dispute. This resolution of the Rules Committee was not implemented before the impugned resolution was passed.

(7) The impugned resolution is vitiated by malice in law as well as on facts, in as much as the State Bar Council rejected a similar application filed by an association of lawyers practising before the Debts Recovery Tribunals. It was done on the same day, on which, the impugned resolution was passed.

PRELIMINARY OBJECTIONS OF THE RESPONDENTS

28. Before we proceed to answer the contentions raised on behalf of the Petitioner, it is necessary to deal with two preliminary objections raised by the respondents with regard to the maintainability of the writ petition. They are :

(a) that the petitioner has no locus standi to question the correctness of the impugned resolution; and

(b) that the decision taken by the first respondent is merely administrative in nature and that therefore, no one can be taken to be aggrieved by the said decision so as to enable them to challenge the same.

29. Thus the preliminary objections of the respondents revolve around

- (1) the locus of the petitioner and
- (2) the nature of the decision under challenge.

30. According to the respondents, the petitioner cannot be taken to be a person aggrieved, by the impugned resolution. Consequently, the petitioner does not have the locus standi, according to the respondents, to challenge the impugned resolution.

31. It is true that the scheme of the Act does not make the question of recognition of an association by the Bar Council, as an area of dispute or an issue of contest between two associations. The recognition of an association is contemplated by the Act only to be a matter between the association applying for recognition and the Bar Council. If an application for recognition made by an association is rejected by the Bar Council, the association suffering such an order, would certainly be an aggrieved person and would be entitled to challenge the decision of the Bar Council.

32. It is an admitted position that the Act does not contemplate the issue of recognition and registration as an issue between an existing association and an association that applies for recognition.

33. As a matter of fact, a careful look at the provisions of the Act would show that in the entire Act, there is only one provision for appeal. That provision is in Section 21, which provides for appeal to the Bar Council as against the decision of the Trust Committee. The Trust Committee is vested with the powers to adjudicate any claim from any member of the fund to the benefit of the fund. Since such a power conferred upon the Trust Committee is something that may adversely affect the interest of a member of the fund, the Act provides for the remedy of appeal under Section 21 against the decision of the Trust Committee to the Bar Council.

34. Apart from Section 21 of the Welfare Fund Act, there is no other provision in the Act, which provides for a remedy of appeal or revision. On the contrary, Section 13(3) speaks about the decision of the Bar Council to recognize an association. The decision taken under Sub-Section (3) is declared by Sub-Section (4) to be final.

35. Arguments were advanced on both sides as to whether the expression "decision" appearing in Sub-Section (4) would correlate to a decision to grant recognition or whether it would include both a decision to grant and the decision to reject. But, we do not think that the expression "decision" appearing in Section 13(4) could be given a restrictive meaning. The power to grant recognition would automatically include a power to refuse. Section 13(3) uses the expression "the Bar Council may". Therefore, it means that the Bar Council is empowered to take a decision not to grant recognition.

36. Irrespective of the nature of the decision taken by the Bar Council under Section 13(3), such a decision is declared to be final by Sub-Section (4). Once a decision is declared by a statute to be final, such a decision cannot be set at naught, except through a judgment of a court of law. The declaration in a statute that a decision of a statutory authority is final, is merely an indication that the Act does not provide for a remedy of appeal or revision against such a decision. It does not mean that a person aggrieved by the decision is left even without a legal remedy. To put it differently, the absence of a statutory remedy is not an indication that even a legal remedy is unavailable.

37. But, the question on hand is as to whether any association of advocates can be taken to be aggrieved by the decision of the Bar Council to grant recognition to some other association or not. Strictly speaking, the Act does not contemplate the situation where the Bar Council is obliged to take into account the views of the other recognized associations operating in that area which are already in existence, before considering the application for the grant of recognition to a newly formed association. But, nevertheless Section 13(3) uses the expression "after such enquiry". The nature of

the enquiry to be conducted by Bar Council under Section 13(3) would include only an enquiry into the provisions of bye-laws of the association seeking recognition, the objects for which the association was formed, the list of members of the association and various other aspects.

38. Under the State Welfare Fund Act, more particularly under Rule 3(4), the State Bar Council can grant recognition to more than one Bar Association in a court centre for special reasons to be recorded in writing. Neither the Act nor the rules anywhere contemplates the hearing of other recognized associations or individuals before the grant of recognition. In fact in the very same court centre for which the 2nd Respondent got recognition there are more than five associations including the petitioner herein.

39. The enquiry contemplated by section 13(3) does not also involve the exercise of finding out whether any such association enjoys majority following or not. Moreover, the grant of recognition does not confer any benefit upon the association, except the obligation (i) to vend advocate welfare stamps, (ii) to keep a true account and (iii) to file applications, seeking for release of welfare fund either for an indigent member or for the family of a deceased lawyer. Since the recognition of an Association by the State Bar Council does not confer any benefit upon such association, it follows as a corollary that it would also not result in any detriment to any other association. If the recognition granted to one association does not result in any detriment to any other association, then that other association cannot be stated to be aggrieved.

40. The grant of recognition to an association of lawyers cannot be compared to the recognition of a trade union in an industry by the employer. A trade union, immediately upon recognition, enjoys certain rights and facilities such as a monopoly right to make collective bargaining. Therefore, the grant of recognition to a trade union assumes greater significance and hence in such cases, the scramble to prove majority, with a view to gain recognition is understandable and acceptable.

41. But in so far as the grant of recognition to an association of lawyers is concerned, it has no such importance. They do not have (not supposed to have) any power of bargaining and the grant of recognition does not confer any benefit other than selling stamps to its members. Therefore by the very nature of the power conferred under Section 13 it cannot be said that an already recognized association can have a say in the matter of conferring recognition to some other body of lawyers functioning in the same centre. In essence, internecine quarrels among bodies of lawyers can not come within the consideration of the State Bar Council. Therefore to maintain the writ petition under Article 226 against the impugned order, the Petitioner Association must prove that it is an "

aggrieved person "and it has locus standi to maintain the writ petition.

42. In *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed* [(1976) 1 SCC 671], the Supreme Court considered the scope of the expression "person aggrieved" and held (para 34 of the report) that a person invoking the jurisdiction of this Court under Article 226, should have either a personal or individual right in the subject matter of the application. However, the rigidity of the Rule is relaxed in so far as writs of Habeas Corpus and Quo Warranto are concerned. In para 37 of the report, the Supreme Court categorised persons, who come up before Courts, into three types namely: (a) person aggrieved (b) stranger and (c) busybody or meddlesome interloper. Thereafter it was laid down in paragraphs 37 to 39 as follows:-

"37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this order zone may not be "persons aggrieved".

39. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individual? "

43. Again in *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra* [(2013) 4 SCC 465], the Supreme Court pointed out that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court that he falls within the category of aggrieved person. Only a person, who has suffered or suffers from a legal injury can come to court. The Court nevertheless pointed out that if a person satisfies the court that he has a legal right to enforce the performance of a statutory duty by a public authority, the court will issue a writ. But, the existence of a right to seek enforcement was held by the Supreme Court to be a condition precedent for invoking the writ jurisdiction. In para 9 of the report, the Supreme Court pointed out that it is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. Having held so, the Supreme Court went on to define the expression "legal right", in para 10 as follows:-

"10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury;

a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R.Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387 and State of Rajasthan v. Union of India [(1977) 3 SCC 592])"

44. Ultimately, the Court held in para 17 as follows:-

"17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others."

45. In Vinoy Kumar vs. State of U.P. {2001 (4) SCC 734}, the Supreme court dealt with the scope of locus standi of a person to maintain a writ petition for issuance of writs other than Habeas Corpus and quo warranto as follows:

"Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas- corpus or quo warranto or filed in public interest"

46. If it is seen in the context of the law laid down by the Supreme court, it can be safely concluded that the Petitioner Association is not a person aggrieved by the impugned order and none of their legal rights were either denied or taken away. The petitioner could not show what detriment they have suffered on account of the grant of recognition to the second respondent. Therefore, the objections raised by the respondents are well founded. Once the petitioner lacks locus standi it is unnecessary to decide the other objections as to the nature of the power exercised under the State Welfare Act by the 1st Respondent.

47. However, we do not wish to dismiss the W.P. on this technical ground. We will nevertheless go into the contentions raised on behalf of the Petitioner.

CONTENTIONS 1 & 2 (FINALITY TO DECISION AND POWER OF REVIEW)

48. The first and second contentions revolve around the power of the State Bar Council to review its earlier decision. Admittedly the Bar Council rejected the application of the second respondent for recognition twice and those decisions have attained finality in view of Section 13 (4) of the Act. Therefore, the first contention of the petitioner is that the issue can not be reopened again and again. The second contention is that the statute does not confer a power of review upon the Bar Council. A statutory creature, does not have a suo moto power of review de hors the Act. Therefore, the petitioner contends that the impugned resolution passed in exercise of a power not conferred upon the Bar Council by law, cannot be sustained.

49. In support of the above contentions, Mr. P. S. Raman, Learned Senior Counsel for the petitioner relies upon the decision of the Supreme Court in *Kalabharati Advertising v. Hemant Vimalnath Narichania* [(2010) 9 SCC 437], wherein it was held as follows:

"12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide *Patel Chunibhai Dajibha v. Narayanarao Khanderao Jambekar* (AIR 1965 SC 1457) and *Harbhajan Singh v. Karam Singh* (AIR 1966 SC 641))

13. ".....the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction."

50. Similar views were expressed in *Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd.* [(2005) 13 SCC 777], when a question arose as to whether a Tribunal had jurisdiction to recall its earlier award. The Supreme Court pointed out in that case the difference between a procedural review and a review on merits. While a court or a quasi judicial authority will not have the power to review its order on merits, unless such a power is conferred by law, a procedural review stands on a different footing. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a

date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. Therefore, it is contended that the Bar Council was in error in reviewing its earlier decision on merits, without any such power being conferred upon it by the Statute.

51. But the petitioner cannot press into service, the ratio laid down in the above decisions. The decision in Kalabharati arose out of an order passed by the Municipal Corporation of Greater Mumbai reviewing and withdrawing an earlier order approving the erection of certain hoardings. The Supreme Court held that original order of the Municipal Corporation of Greater Mumbai granting permission for the erection of hoardings, was a quasi-judicial order and that therefore, a review of that order was not possible unless the statute or the Rules permitted such a review. In paragraphs 12 to 14 of the said decision, the Supreme Court elicited the well settled law to the effect that in the absence of any statutory provision providing for review, an application for review was not permissible. Similarly, the decision in Kapra Mazdoor arose out of an order of the Industrial Tribunal under the Industrial Disputes Act, 1947. The decision in Kalabharati concerned a quasi judicial order and the decision in Kapra Mazdoor concerned an order of a quasi judicial Tribunal.

52. Therefore, to see if the ratio in those cases apply to the case on hand, we must first see whether the resolution of the Bar Council can be said to be a judicial or quasi-judicial order or not. If the impugned resolution of the Bar Council is either judicial or quasi-judicial, then the Bar Council could not have entertained an application for review from the second respondent. But if the impugned resolution is neither judicial nor quasi-judicial, but only administrative in nature, then review was possible. Therefore, let us now see what distinguishes an administrative action from a judicial or quasi-judicial action and as to whether the impugned resolution was administrative or quasi-judicial.

53. The impugned decision of the Bar Council is certainly not judicial in nature. Therefore, we shall confine our discussion only to the question whether it falls under the category of an administrative order or a quasi-judicial order.

54. The expression "quasi" is always prefix to a noun, to mean that it signifies something that does not exactly comply with the definition of the noun, although it shares its quality and falls philosophically under the same head. The word quasi itself is derived from Latin Rules to mean "similar to but not exactly".

55. Normally, the expression "quasi-judicial" is applied to the action or decision of public bodies, which are obliged statutorily to investigate facts, hold hearings, weigh evidence and

draw conclusions therefrom. An element of discretion, exercised on an objective basis also forms part of such a decision. Therefore, to constitute a quasi-judicial order, the authority passing the order should be under an obligation to hear the parties, to make an enquiry, to weigh the evidence and base its conclusion therefrom.

56. It is pointed out by the learned authors Stason and Cooper in their treatise "Cases and other materials on Administrative Tribunals" that one of the greatest difficulties of properly classifying a particular function of an administrative agency is that most frequently, a single function has three aspects. It may be partly Legislative, partly Judicial and partly Administrative.

57. In *Indian National Congress v. Institute of Social Welfare* [2002 5 SCC 685], a question arose before the Supreme Court as to whether the Election Commission of India has power under Section 29A of the Representation of the Peoples Act, 1951 to de-register or cancel the registration of a political party on the ground that it had called for hartal by force, intimidation or coercion. Incidental to this main question, another question relating to the nature of the function discharged by the Election Commission under Section 29A was also taken up for consideration by the Supreme Court. The contention of one of the parties before the Supreme Court was that the function performed by the Election Commission under Section 29A was merely administrative in nature and that it was not quasi-judicial. While considering the said question, the Supreme Court took note of the following:-

(1) The opinion rendered by Atkin, L.J., in *R v. Electricity Commissioners* to the effect that when a body of persons has legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, such body of persons is a quasi-judicial body and the decision rendered by them is a quasi-judicial decision.

(2) The opinion rendered by The Kings Bench in *Cooper v. Wilson* (1937) 2 KB 309 to the effect that to be a quasi-judicial decision, there must be two or more contending parties and an outside authority to decide the disputes.

(3) The ratio laid down in *Province of Bombay v. Kushaldas S. Advani* (AIR 1950 SC 222) to the effect that if a statute empowers an authority to decide disputes between two rivals and to determine the respective rights of the contesting parties, the decision of the authority in such a dispute is a quasi-judicial decision and that even in cases where there are no two parties, a decision that will prejudicially affected the subject, may be a quasi-judicial decision.

58. Eventually, in para 24 of the said decision, the Supreme Court elicited the legal principles that would go to make the act of a statutory authority as a quasi-judicial act, in the following

words:-

"Where a statutory authority empowered under a statute to do any act which would prejudicially affect the subject although there is no lis or two contending parties and the contest is between the authority and the subject and the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial."

59. In para 27 of the said decision, the Supreme Court highlighted the distinguishing features between an administrative act and a quasi-judicial act as follows:-

"27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority"

60. In *A.K.Kraipak v. Union of India* [AIR 1970 SC 150], the Constitution Bench of the Supreme Court pointed out that the dividing line between an administrative power and a quasi-judicial power is quite thin and that it was being gradually obliterated. In para 13 of its decision, the Constitution Bench pointed out as to how the powers are to be identified:-

" For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised."

61. The Court went on to point out that what was considered as an administrative power some years ago came to be considered as quasi-judicial power later. But nevertheless the Court was not concerned with the question as to how such an order would become amenable to challenge.

62. In *Shankarlal Aggarwal vs. Shankarlal Poddar* [1964 (1) SCR 717], the question that arose before the Supreme Court was as to whether the order of the Company Judge confirming the sale was merely an administrative or judicial. While holding that it was not an administrative but a judicial order, the Supreme Court observed that it is not possible to formulate a definition which would satisfactorily distinguish between an administrative and a judicial order. The Court also held that an administrative order should be one which is directed to the regulation or supervision of matters, as

distinguished from an order which decides the rights of parties or confers or refuses to confer rights to property. One of the tests would be whether the matter which involves the exercise of discretion is left for the decision of the authority. If the discretion has to be exercised on an objective, as distinguished from a purely subjective consideration, it would be a judicial decision.

63. More importantly the Court pointed out something that would be useful for the case on hand and it is as follows:-

"It has sometimes been said that the essence of a judicial proceeding or of a judicial order is that there should be two parties and a lis between them which is the subject of adjudication, as a result of that order or a decision on an issue between a proposal and an opposition. No doubt it would not be possible to describe an order passed deciding a lis before the authority that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial."

The above test laid down in Shankarlal Aggarwal was followed by the majority in SBP and Co. v. Patel Engineering [2005 (8) SCC 618].

64. Therefore, it follows from the above, that to be a quasi judicial order, it should satisfy one or more of the following criteria:

(1) There must be a lis between two parties that falls for adjudication before an authority.

(2) Even in the absence of a lis between two parties, an order passed by an authority may qualify as a quasi judicial order if the decision taken by such authority adjudicates upon the right of a party to something.

(3) There must be an obligation cast upon the authority, while dealing with a lis between two parties or while dealing with the right of a single party, to act judicially. In other words, the authority conferred with the power to pass the order should be obliged to make an investigation into the facts, hold hearings, weigh evidence and draw conclusions therefrom.

(4) It is actually the nature of the function discharged by the authority that determines whether the decision taken was administrative or quasi judicial.

(5) The fact that the Statute under which the order is passed, makes an order final, is not determinative of the nature of the order.

65. If the above tests are applied to the case in hand, it will be seen that the Bar Council does not decide a lis between two associations of Advocates while processing an application for recognition. Though the Bar Council, in view of the express language of Section 13(3) is obliged to conduct an enquiry and take a decision with regard to the right of applicant for recognition, the decision taken in favour of the applicant cannot be said to have the effect of taking away the rights of any other body of persons.

66. The power exercised under Section 13(3) is very peculiar in nature. While a decision taken by the Bar Council not to grant recognition may affect the rights of the applicant seeking recognition, the grant of recognition does not take away the rights of any other association.

67. How a decision of the Bar council not to grant recognition would affect the rights of the members of the applicant association, was demonstrated by this court in The Gobichettipalayam Association Vs. Bar Council of Tamil Nadu [2012 (4) LW 674]. The said case arose out of the rejection of an application for recognition made by a splinter group of the Gobichettipalayam Bar. The Gobichettipalayam Bar Association, which was the only recognized association in that court centre, had a membership of less than about 100 Advocates. When the association started boycotting courts for a cause that had nothing to do with the courts or the legal fraternity, a group of lawyers attempted to bring some sanity. The attempt was in vain and hence the splinter group of 15 advocates started attending courts. Immediately, the association (which was the only recognised association) expelled them. Therefore, the expelled members formed a new outfit and sought recognition. The application for recognition was rejected by the Bar Council by a resolution dated 17.7.2010. When the new association challenged the order of rejection, the challenge was sustained by this Court. It was pointed out in the said decision that the Tamil Nadu Advocate Welfare Fund Act, 1987 defined an advocate to mean not merely an advocate, who came within the definition of the expression under the Advocates Act, 1961, but also a person, who satisfies the additional requirement of being a member of a recognised Bar Association or an Advocate Association. Therefore, the refusal to grant recognition was found to affect the rights of a few individuals to practise law. However, it must be noted that an order refusing to grant recognition would stand on a different footing from an order granting recognition.

68. The case on hand can be compared to the grant of a licence to a Stamp Vendor, to vend stamps. Section 74 of the Indian Stamp Act empowers the State Government to make rules regulating the supply and sale of stamps and stamped papers and also the appointment of persons by whom alone such sale is to be conducted. In exercise of the power conferred by the said provision, the State of Tamil Nadu has issued a set of Rules known as Tamil Nadu Stamp Rules, 1960. Rule 25 of the said Rules speaks about the appointment of licensed stamp vendors. It

can be seen from sub-rules (i) to (v) of Rule 25 of the Tamil Nadu Stamp Rules that the Chief Controlling Revenue Authority can create posts of licensed vendors for the sale of stamps. After the creation of the posts, the authority should fix the places where the licensed vendors are to sell stamps. Rule 25(i)(b) mandates that the places earmarked for licensed vendors, should be clearly specified and should be of strictly limited extent, such as building or compound. It shall not be such as to interfere with any of the existing Licensed Vendors. Rule 25(i) (c) states that the number of non-official Licensed Vendors in each District shall ordinarily be at least one for every 10,000 of the population. However, the authority should take into account the public convenience and the commission earned by the existing licensed vendors, while creating new posts.

69. Rule 25(ii) stipulates that the District Registrars can make appointment of licensed vendors in the newly created posts as well as in the existing posts which are vacant either temporarily or permanently. The District Registrars are also empowered to grant leave to the licensed vendors for a period not exceeding three months at a time. There are provisions obliging the appointing authority to follow an order of preference. The licensed vendors appointed under these Rules are obliged to maintain certain records and they are also obliged to sell only such nature, category and denomination of stamps and within such geographical limits as are indicated in their licenses.

70. There is a specific provision in Rule 25(iv) of the Tamil Nadu Stamp Rules for challenging the appointment of a person as a licensed stamp vendor. The Rule indicates only two grounds on which the appointment of a person as a licensed stamp vendor can be challenged. The grounds are: (1) that the person selected for appointment is clearly unsuitable or (2) that the claim of a person who is obviously superior to the one selected, has been overlooked. Rule 25(iv) does not permit a challenge to the appointment of a person as a licensed stamp vendor, by an existing stamp vendor on any ground other than the above two grounds.

71. The situation on hand can be compared only to the appointment of a licensed stamp vendor. By granting recognition to an association of advocates, the Bar Council does nothing more than appointing a licensed vendor to sell Advocates' Welfare Fund Stamps. Under the Tamil Nadu Stamp Rules and under the Indian Stamp Act, one licensed stamp vendor is not entitled to oppose the appointment of any person as a licensed vendor, except on any of the 2 grounds specified in Rule 25 (iv) (a). The determination of the number of licensed stamp vendors and the determination of the geographical limits in which they shall operate, are all administrative matters left to the discretion of the Chief Controlling Revenue Authority under the Indian Stamp Act and the Tamil Nadu Stamp Rules. Same is the case with respect to the grant of recognition by the Bar Council to the second respondent, which does not confer any benefit upon the second

respondent other than being licensed to sell Advocates' Welfare Fund Stamps. Hence, it is clear that the order passed by the Bar Council granting recognition is only administrative in nature, in so far as another licensed stamp vendor such as the petitioner association is concerned. Once this is clear, there is no difficulty in concluding that the first and second contentions which revolve around the power of review cannot be sustained.

72. We can look at the issue from another angle also. The Tamilnadu Advocates Welfare Fund Act does not stipulate that if an association's application is once rejected, there is no other scope either for a second application or for seeking reconsideration of the decision made. It is conceded by Mr.P.S.Raman, learned Senior Counsel for the petitioner that if the second respondent had filed a fresh application under section 13 (1), in Form 1, these 2 objections could not have been raised. In other words, the power of the Bar Council to consider a fresh application from the second respondent is not doubted. Therefore, it is clear that the power of the Bar Council to grant recognition is not curtailed by any provision in the Act, but the power is a dynamic one.

73. The power of the Bar Council to grant recognition is a dynamic one both in terms of the provisions of the Statute and as a matter of necessity. Today, the courts functioning in various places in a town or city get relocated very often in an integrated complex put up for the purpose. Similarly, there are also cases where the courts functioning in a unified complex get relocated at different places. Therefore, disintegration and integration of existing associations and the birth of new associations have become a necessity of time.

74. There are also other situations, which lead to the birth of new associations. One such instance was in Gobichettypalayam Bar Association case.

75. We cannot lose sight of the fact that by the very nature of the profession that they carry on, no two members of the fraternity can agree upon the same thing in the same way. It is a profession of intellectuals (expected to be) where conflict of opinions is the rule and consensus is the exception. Therefore, it is inevitable that one group of persons or the other, break away from a recognised association on ideological basis (if there was any). In such circumstances, the power conferred upon the Bar Council to recognize more than one association in a court centre has to be construed as a dynamic one, as otherwise there will be no scope for dissent. It is only in a society where dissent is welcome that a thesis newly formulated, would acquire the character of a synthesis, after being processed through a variety of objections and hypothesis.

76. So far, the Bar Council has not come up with any rule prohibiting lawyers from becoming members of more than one

association either in a court centre or otherwise. From the list of members furnished before us, it is seen that several persons practising in this Court are members of more than one association. It may be true that most of them do not participate in any extraordinary general body meetings and such meetings are hijacked by non members brought specifically for the purpose. But, it is nevertheless a matter of fact that there is no restriction with regard to the membership of an advocate to only one association. Hence, we hold on contention Nos.1 and 2 that the power of the Bar Council is a dynamic one and that the same is not curtailed by the rules of procedure. So long as there is no prohibition for the very same association to apply for recognition more than once, the first contention of the petitioner cannot hold water. The finality conferred by Section 13(4) of the Act to a decision of the Bar Council, is not a finality that is attached to a scrambled egg or the buttered milk.

77. As we have indicated earlier, Clause (dd) was inserted in Section 6(1) under Amendment Act 70 of 1993 to include as one of the functions of a State Bar Council, the promotion of the growth of bar associations for the purpose of effective implementation of the welfare schemes. A residuary power is also conferred under Clause (i) of Section 6(1) upon the State Bar Council to do all other things necessary for discharging the functions enumerated in the other clauses of the same Sub-Section. Therefore, the general principle that no statutory creature can have a power of review, unless conferred by statute, has no application to cases of this nature. Hence, the second contention is also liable to be rejected.

CONTENTION-3

78. The third contention of the petitioner is that by virtue of Rule 3(4) of the Tamil Nadu Advocates Welfare Fund Rules, 1989, the Bar Council can recognize more than one bar association at a court centre only for special reasons to be recorded in writing. According to the petitioner, no such special reason was recorded in this case and hence, the impugned order is contrary to law.

79. But, we have seen in the narration of facts that the impugned resolution was preceded by the minutes of the meeting that considered the report of a Three Member committee. As per the list furnished by the first respondent - Bar Council, there are actually 47 court centres in the State of Tamil Nadu, in which, more than one association has been recognized under Section 13. The total number of associations recognized and registered by the State Bar Council under Section 13 of the Act, are 246. As a matter of fact, the Madurai Bench of this Court was inaugurated only in the year 2004. Within a span of about ten years, five associations have come up and all of them have been recognized by the Bar Council. The petitioner has not even chosen to examine whether any special reasons were recorded for the grant of recognition to other associations including the Special Court Advocates Association which has only 123 members. Moreover, the decision of the Bar Council is not justiciable especially at the

instance of a person, who cannot be taken to be aggrieved and whose rights are in no way affected. Therefore, the third contention does not have any legal force.

CONTENTION-4

80. The fourth contention is that the impugned resolution was violative of the principles of natural justice. The contention in this regard is that the Chairman of the first respondent was a Founding Member of the second respondent and that the President of the second respondent is also an elected Member of the Bar Council of Tamil Nadu. He also happens to be the Co-Chairman of the Bar Council of India. According to the petitioner, both of them did not recuse themselves, when the impugned resolution came to be considered by the Bar Council. This, according to the petitioner, is violative of the principle that no man can be a judge in his own cause.

81. But, the above contention is validly met by the first respondent in paragraph 20 of the counter affidavit by pointing out that the Chairman of the Bar Council as well as the President of the second respondent were present on both the earlier occasions, when the application of the second respondent was rejected. In the meeting held on 8.3.2015, 23 out of 25 members are stated to have voted in favour of the resolution and only one member has voted against. Therefore, if the participation of these two persons did not colour the vision of the Bar Council on two earlier occasions, it is not possible to think that their vision was coloured in the instant case.

82. The principle that no man can be a judge in his own cause is a principle that stems out of the principle of bias. In cases where a statutory body is empowered to take a quasi judicial decision in a matter affecting the rights of two contesting parties, the question of bias would assume significance. But, in a matter where the statutory body was merely exercising a function with regard to the grant of recognition, that does not confer any benefit upon one to the detriment of another, and in a case where no rights of anyone else is taken away, the question of bias does not arise. Hence, the fourth contention is also liable to be rejected.

CONTENTION-5

83. The 5th contention of the petitioner is that as per the decision of the Rules Committee of the Bar Council, taken on 6.3.2010, a newly started association should have a membership of at least 50% of the total number of enrolled members in the Court Centre. The petitioner contends that even as per the statistics furnished by the second respondent, they did not fulfil this essential pre-condition for recognition.

84. But, we are not impressed with the said contention. Section 13 of the Act which empowers the Bar Council to recognize and

register a Bar Association or Advocates Association does not contain a stipulation that the association should have has its members, at least 50% of the total population of advocates practising in the Court Centre. Even Rule 3(4) which enables the Bar Council to recognize more than one Bar Association at a Court Centre for special reasons to be recorded in writing, does not contain such a prescription. Therefore, the decision taken by the Rules Committee of the Bar Council, cannot over reach the prescription contained in the Act and the Rules. It is seen from the records that the Special Court Advocates' Association had a membership of only 123 advocates in the Court Centre namely High Court. Yet they were granted recognition and no one raised a little finger. Therefore, the 5th contention of the petitioner is also rejected.

CONTENTION-6

85. The 6th contention of the petitioner is that as per Clause 12 of the resolution bearing No.2 of 2010 passed by the Rules Committee in a meeting held on 6.3.2010, a person who had gone out of an association due to any controversy or dispute, cannot start a new association. If any such person starts a new association after coming out of the recognized association, the Bar Council is obliged as per the said resolution of the Rules Committee to refer the dispute for amicable settlement to a Committee. The petitioner contends that this procedure was also not followed by the first respondent before passing the impugned resolution.

86. But, as pointed out earlier, neither the Act nor the Rules stipulate any such procedure as formulated by the Rules Committee. As a matter of fact, many associations have sprung up all over the State, only from out of what was one association originally. Hence, the decision of the Rules Committee which travels beyond the prescription contained in the Act and the Rules, cannot have any effect. Therefore, the 6th contention is also rejected.

CONTENTION-7

87. The 7th and last contention of the petitioner is that the Bar Council rejected a petition for recognition filed by an association of lawyers practising before the Debts Recovery Tribunals and that therefore, the treatment meted out to the second respondent, was extraordinary and special. Therefore, the petitioner contends that the decision is vitiated by malice.

88. But, we do not think that the rejection of the petition filed by another association, by itself can be a ground for holding that the Bar Council acted with malice. The association whose petition for recognition was rejected, is not before us and probably if the resolution is challenged by that association, the real reasons for rejection of their petition may come up for judicial scrutiny. As we have pointed out earlier, the request of the second respondent for

recognition, is pending for the past five years and there has been a lot of deliberations with the reports of two sub committees. The petition of the second respondent for recognition also stood rejected twice on the earlier occasions. Therefore, we do not think that the impugned resolution can be said to be tainted by malice either in law or on facts. Hence, the 7th contention is also rejected.

89. Therefore, in fine, all the grounds on which the petitioner has come up with a challenge to the impugned resolution are liable to be rejected. As a consequence, the writ petition is liable to be dismissed. But before we do so, we are obliged to take up two miscellaneous petitions, filed by two lawyers, seeking to implead themselves as parties to the writ petition.

90. M.P.No.3 of 2015, is a petition for impleadment filed by an advocate by name R.Balasubramanian. In the affidavit filed by him in support of his petition for impleadment, he has stated that there has been a mushroom growth of associations floated by several persons who wanted to be identified as heroic and that such mushroom growth will create enmity among the advocates. According to the impleading petitioner, if this tend is allowed, several associations would be started on lines of caste and communities and that the reputation of the noble profession will take a beating. The impleading petitioner has prayed in para 7 of his affidavit that it is just and necessary either to amalgamate or to affiliate all the associations existing within the Madras High Court Campus, with the petitioner association which has got a history of 125 years.

91. But, we do not think that the impleading petitioner has any locus to implead in the present writ petition. It is admitted by him in para 8 of the affidavit in support of the impleading petition that he is one of the members of the petitioner association. Therefore, if he supports the cause of the petitioner association, he cannot get impleaded in his own name, as the association, of which he is a part, has already taken up the cause. Moreover, this is not a writ petition where the impleading petitioner can seek an amalgamation of all the associations existing in the High Court Campus. Within the High Court Campus, there are 5 recognized associations other than the second respondent association. Apart from these recognized associations there are also other unrecognized associations, some of which functioning actually on casteist or communal basis. Without impleading all those associations as parties to the writ petition, the impleading petitioner is seeking a much larger relief than the writ petitioner themselves have sought. This is impermissible.

92. Moreover, the cry of the impleading petitioner for unity among the lawyers is something that baffles us. Past experience shows that whenever there was a wrong cause, all the associations of advocates stood united. Whenever there was a right cause, not a single association, recognized or unrecognized, ever raised their

voice together. As a matter of fact, the impleading petitioner who claims to be practising in this Court from 1987 onwards, must be aware of the fact that elections to these associations are primarily fought on casteist or communal basis. This Court has monitored, on the judicial side, even the elections to the Bar Council, and the elections to the petitioner association many times in the past, on account of allegations of malpractices. We do not know what steps the impleading petitioner attempted to take, on all those occasions to uphold the dignity and reputation of this noble profession. Without attempting to stem the rot in the past nearly three decades, the impleading petitioner has now come up with a plea for unity without realising that all the associations have always stood united whenever illegal and unjustified boycotts were announced. Therefore, we are least impressed with the plea made by the impleading petitioner. Hence, M.P.No.3 of 2015 is dismissed.

93. M.P.No.4 of 2015 is a similar petition for impleadment filed by a lawyer by name Elephant G.Rajendran. He seeks to implead himself on the ground that there has been a mushroom growth of associations and that a few individuals floated associations for personal benefits. But we do not think that the petitioner can complain about the mushroom growth of several associations. Mr.Elephant G.Rajendran himself had floated an association by name Madras High Court Practising Advocates' Association. Merely because his association did not seek recognition, he cannot contend that the grant of recognition to more than one association is bad in law.

94. Interestingly, in the course of arguments Mr.Elephant G.Rajendran produced a copy of First Information Report filed against the office bearers of second respondent association with respect to some dispute. This led to acrimony in court, with several members on both sides accusing each other of being involved in criminal cases. Since the question relating to the involvement of an office bearer of an association in a criminal case is beyond the scope of the writ petition, we did not allow the case, to become one of pot calling the kettle black. Therefore, M.P.No.4 of 2015 is also liable to be rejected.

95. Apart from the two impleading petitions, a few other advocates like Mr.Kasi Ramalingam also made submissions. The focus of these advocates was on two things namely (a) that the Bar should stand united and (b) that the floating of new associations and the recognition of such associations, create new power centres. The message that these Advocates sought to convey, through their submissions, was that the office-bearership of any association, brings along with it, an impression as though these office bearers call the shots in courts.

96. But, unfortunately these are issues which cannot be addressed in a litigation of this sort. Even if there is only one association, the evil that these Advocates seek to get rid of, cannot

be got rid of. On the contrary, the persons who get elected to such an all-powerful (single) association will create more havoc than these Advocates seek to get rid of. In a democratic polity, checks and balances play a crucial role. As a matter of fact, gone are the days when stalwarts of the profession had the support of the majority of the members and they were elected as the leaders of the Bar. The members listened to their voices. But today the situation is that in every association, a miniscule minority commands what the leaders should do. Therefore, right thinking individuals stay away. Unless this issue is addressed, there can be no redemption.

97. On the plea for unity, we have already pointed out, and it is common knowledge, that all the associations always stood united whenever there was a wrong cause. Interestingly, when the very same petitioner association filed a writ petition challenging the recommendation of 9 persons made by the Collegium of Judges of this Court in February 2015, the counsel on record for the petitioner association brought only the President of the second respondent association as the senior to argue the said writ petition. Therefore, we cannot overlook the fact that there is an underlying unity among these associations, on all issues which tend to bring down the reputation of this institution. We will not be surprised if the petitioner and the second respondent join hands very soon on some issue, despite this fight and dehors the result of this litigation. Therefore, these advocates should actually attempt to clean up the respective associations from within, before seeking to bring about unity.

98. Moreover, the real apprehension of the petitioner appears to be that once the second respondent is recognised by the Bar Council, they will automatically get recognition from the Registry of this court. This fear, more than anything else, such as the recognition granted by the Bar Council, has actually led the petitioner to come up with the above writ petition. But there is no basis for such an apprehension. The Registry of this court is not bound by any recognition granted by the Bar Council to any association, merely to enable them to sell welfare fund stamps.

99. Therefore in fine, we find no ground to interfere with the impugned resolution of the Bar Council. Hence the writ petition is dismissed. However, there will be no order as to costs. Consequently, M.P.Nos. 1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

kpl/RS/gr.

To

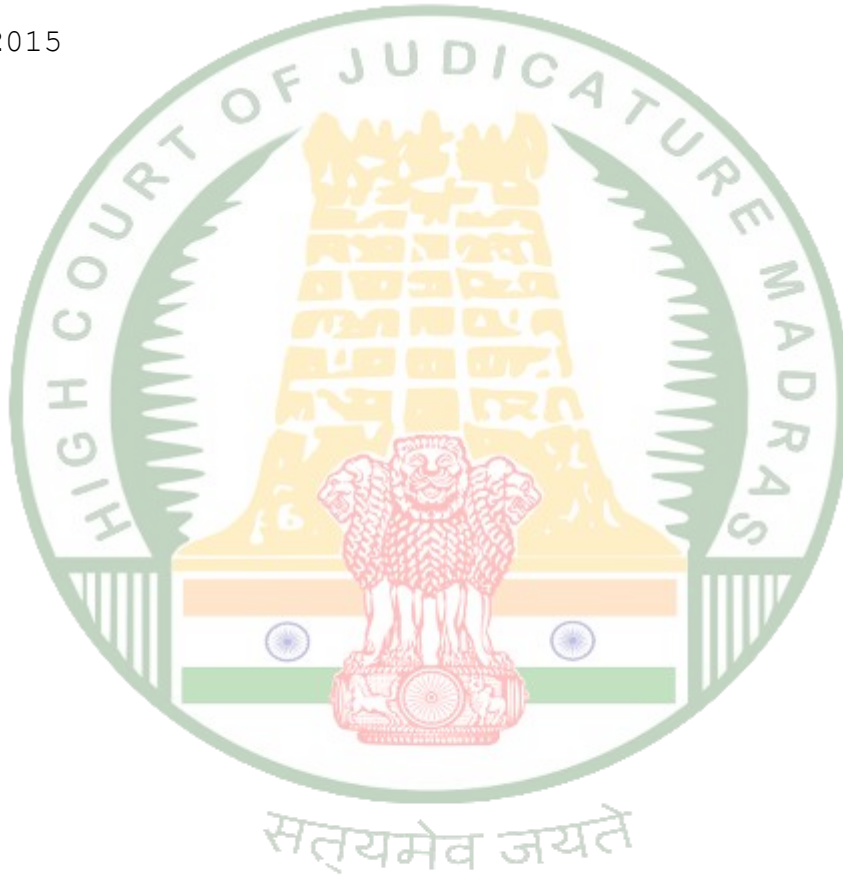
1.The Secretary , Bar Council of Tamil Nadu,
High Court Campus, Madras 104.

2.The Secretary, Tamil Nadu Advocates Association, Chennai -104.

3 cc to Mr.T.P.Senthil Kumar , Advocate Sr.No.30273

W.P.No.9752 of 2015.

scd(co)
pmk.19.6.2015



WEB COPY