

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Reserved on: 21.08.2015
Pronounced on: 31.05.2016**

+ W.P. (C) 8106/2010, CM APPL.2237/2013

PK DASH, ADVOCATE & ORS. Petitioners

versus

BAR COUNCIL OF DELHI & ORS. Respondents

W.P. (C) 6851/2012, CM APPL.17852, 17853/2012

NARESH KUMAR Petitioner

versus

BAR COUNCIL OF DELHI AND ORS Respondents

W.P.(C) 7549/2012

SATYANAND Petitioner

versus

BAR COUNCIL OF DELHI AND ORS Respondents

W.P.(C) 2689/2014

ANIL KUMAR SINGAL Petitioner

versus

BAR COUNCIL OF INDIA AND ORS Respondents

Appearance: Mr. Satyanand, petitioner in person in
W.P.(C)7549/2012.

Mr. Anil Kumar Singal, petitioner in person in
W.P.(C)2689/2014.

Mr. Sacchin Puri with Mr. Apoorv Tripathi and Ms.
Hrishika Pandit, Advs for DHCBA.

Mr. Rajiv Khosla, Advocate/President, DHCBA.

Mr. Abhijat, Advocate/Hony. Secretary, DHCBA.

Mr. I.S. Saroha, Advocate/President, Rohini Court
Bar Association.

Mr. Vinod Sharma, Advocate/President, Saket
Court Bar Association.

Mr. Preet Pal Singh with Ms. Priyam Mehta, Advs.
for BCI.

Mr. Chetan Lokur, for Mr. Viraj R. Datar, Adv. for
DHC.

Mr. Divya Darshan Sharma, Adv/Hony. Secretary,
Delhi Bar Association.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

MR. JUSTICE S. RAVINDRA BHAT

% “[The advocate] *has a duty to the court which is paramount. It is a mistake to suppose that he is the mouthpiece of his client to say what he wants: or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously mis-state [sic] the facts. He must not knowingly conceal the truth...He must produce all the relevant authorities, even those that are against him. He must see that his client discloses, if ordered, the*

relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client, if they conflict with his duty to the court. The code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline.”

(Lord Denning)¹

1. It is the duty owed by the Bar to the Courts, which is in issue in this common judgment which disposes of four writ petitions that call for a decision of public importance involving the functioning of courts and their orderly conduct. Briefly, all the petitions have a common theme, i.e. that the principle of one Advocate one vote in one Bar, should be introduced for all Bar Associations, irrespective of the multitude of memberships of an advocate in Delhi; secondly the petitioners seek directions for the introduction of the concept of one person one chamber, one court complex only, in the city of Delhi.

2. In WP (C)8106/2010 (described by the Petitioner's name, i.e. as “Dash”) the claim is that rules governing allotment of Chambers in various court complexes should be amended to restrict eligibility to one chamber in the entire territory of Delhi, for advocates, regardless of the number of bar associations they are members of (i.e. hereafter called “*one advocate, one chamber*” principle); the second claim is that each advocate should be allowed only one voting right in regard to a bar association of which he is member, regardless of the number of such associations he chooses to belong to (hereafter referred to as

¹ *Rondel v Worsley* 1966 (3) WLR 950

the “*one advocate, one vote*” principle) and that directions should be issued to mandate that within the city of Delhi, all Bar Associations should hold elections not later than on expiration of two years’ term. In WP 6851/2012 (hereafter “Naresh Kumar”) too the claim is for a direction to introduce the “one advocate one vote” concept in the bar associations so as to ensure that in any given year, an advocate can vote only once in one bar association, regardless of her or his multiple bar association memberships. In WP(C)7549/2012 (hereafter “Satyanand”) the claim is for directions to *inter alia*, ensure that only genuine practitioners are members of the bar associations attached to various courts in the city of Delhi, to safeguard that chambers are allotted to genuine practicing advocates and that the transfer of allotted chambers, is prohibited and discontinued. In WP 2689/2014 (hereafter “Anil Sehgal”) the claim is that the Bar Council of Delhi should ensure the introduction of the principle of "One Bar, One Vote" throughout all the Bar Associations in Delhi.

3. It is argued by the Petitioners that Section 6 (1) (d) of the Advocates Act, 1961 (hereafter “the Act”) provides that the State Bar Councils are to safeguard the rights, privileges and interest of advocates on its rolls. Section 6 (1) (i), enables the State Bar Councils to perform all other necessary functions for discharging functions provided therein. The petitioners urge that there is an immense need to frame definite rules, policies and guidelines involving the issues of allotment of chambers, tenure of Bar Associations, and the procedure for conducting free and fair elections of the Bar Associations on the

principle of “One Bar One Vote”. The Petitioners submit that the issue “One Bar One Vote” is squarely covered by the judgment of the Supreme Court of India, in *Supreme Court Bar Association v. B.D. Kaushik*² which held that court-annexed Bar Associations are different from other societies registered under the Societies Registration Act, 1860. It is submitted that even in Parliamentary and State Assembly elections, a citizen of India is entitled to cast his vote at an election of Legislative Assembly or an election of MP only in the constituency where his name appears as a voter in the voting list and she cannot claim a right to vote at another place where he or she may be residing because of her or his occupation, service, etc. Thus “One Bar, One Vote” is recognized statutorily for a long time. Therefore, in public interest and the interests of ensuring smooth functioning of courts, it should be mandated through directions.

4. The Petitioners submit that the Supreme Court held that the “One Bar One Vote” principle or rule is a statutorily recognized principle and it is the duty of the Bar Council to uphold that principle in the spirit of the provisions prescribed under Section 6 (1) (d) of the Act. It is stated that the said decision was re-affirmed in the *Supreme Court Bar Association & Ors. v. B.D. Kaushik*³ (hereafter “*Kaushik-II*”). It is submitted that an advocate functions as a representative of the legal profession and has a solemn duty to assist the Court in ensuring that there is expeditious and smooth administration of justice. In the larger interests of the judicial system and the orderly discharge

²(2011) 13 SCC 774

³(2012) 6 SCC 152

of court functioning, submit counsel for the petitioners, the one advocate one vote principle is essential. Highlighting that at present there are more than a dozen Bar associations, including the Delhi High Court Bar Association, the Supreme Court Bar Association, the CAT Bar Association, and Bar associations for each Court Complex (Delhi Bar Association for Tis Hazari Court complex, New Delhi Bar Association for the Patiala Courts complex, Karkardooma Bar Association, Rohini Bar Association, Dwarka Bar Association, Saket Bar Association, Sales Tax Bar Association, etc) court functioning is impeded and at times paralyzed due to elections held in one or other court complex on different dates. It is submitted that under the existing system, an advocate is free to contest for any position in the executive committee or for any post as office bearer of *any* association. This results in an individual who need not necessarily practice in one court successfully getting elected for the association attached to it. This practice, leads to unrepresentative election results because such individuals have no sense of belonging and would not hesitate to undermine the functioning of the courts whose Bar Associations elect them. Besides, their role as representatives of a Bar Association would be severely undermined if they also represent other Bar Associations. In the event of conflicting positions of such Bar Associations, the loyalty of such members elected in more than one Bar Association would be suspect.

5. It is next urged, on the issue of one chamber, one advocate, one complex that at present, chambers are allotted without any

accountability. As a result, there are a large number of lawyers who, despite waiting for substantial period of time, have not been allotted any chambers, whereas, many lawyers who have more than one chamber, are also able to secure allotments and rent the chambers to others. It is only Advocates who practice should be eligible for allotment in the Advocates chamber blocks annexed thereto. With the recent sharp increase in the number of advocates, there has been an indiscriminate enrollment of advocates in multiple court annexed bar associations. In a majority of these cases, these lawyers do not actually practice in Courts at all. Reliance is placed on a judgment of this Court in the case of *Nivedita Sharma v. Delhi High Court Bar Association & Ors.* [CS (OS) No. 2883 of 2011, order dated 23.11.2011].

6. It is argued that the functioning of court annexed bar associations has a direct impact on the functioning of the court and also on the administration of justice. Court-annexed Bar Associations constitute a separate class different from other lawyers' associations like the All India Advocates' Association, Bar Association of India, Law Asia, etc. and are always recognized by the concerned Courts. Such Bar Associations function as part of the machinery for administration of justice. Counsel urge that the Bench and the Bar are two wheels of a chariot and one cannot function without the other. The nature of the Bar Associations is such that it represents members *regularly practicing in the court and is responsible for proper conduct of its members in the court, and for ensuring proper assistance to the*

court. In consideration, the court provides space for office of the Association, library and other facilities like chambers at concessional rates, parking place and canteen etc., besides other amenities for Bar members regularly practicing in the court. It is therefore the duty of this Court to ensure that the resources actually benefit the intended beneficiaries.

7. The Petitioners argue that the lack of any definite one advocate one vote norm to regulate bar association elections will lead to a situation where all office bearers of any given Bar Association may be those not primarily practicing in the concerned Court, and comprise of those regularly practicing elsewhere, perhaps in adjoining towns or from far away cities like Chandigarh, Meerut etc. This would render such Bar officials utterly unrepresentative; besides they would have no appreciation or desire for ensuring reform and progress of their constituents and the litigants whose primary needs are to be serviced.

8. The result of the dominance of non-regularly practicing advocates in the affairs of any given bar association renders it impossible to pass any rules/resolutions with respect to the issues raised by way of the present proceedings. Article 226 of the Constitution of India, submit the petitioners, empower High Courts in cases, which involve a public element like the present case, to issue directions even to private bodies, exercising a public function. It is the nature of the functions and duties being performed by the said body that is determinative of the jurisdiction under Article 226.

9. It is submitted that there can be no gainsaying that the management and administration of a court annexed bar association includes the discharge of a duty/function of a public nature. Proper and smooth functioning of a bar association has a direct and intrinsic bearing on the proper and effective functioning of the Court to which it is annexed. Thus, court annexed bar associations perform functions of a public nature and are thereby amenable to the jurisdiction of the court under Article 226, in the present set of facts.

10. It is submitted that in the *Kaushik-I* decision, the Supreme Court, *suo motu*, prescribed guidelines to identify advocates regularly practicing before the Supreme Court. In fact, this Court as well as all other District courts in Delhi should follow the principle of allotting chambers only to regularly practicing advocates as also the principle of 'one advocate one chamber'. It is submitted that in the *Kaushik-II* judgment, the Supreme Court commended application of 'one bar one vote' principle. The Court held that one who exercises the right to vote in more than a single Bar association, forms a different class than a person who is a member of one Bar association, particularly, if such bar association is annexed to the Court where she or he regularly practices. Even the Bar Council of India has approved the rule of 'one bar one vote'. The said Resolution has been placed on record of this Court. Counsel submit that the said rule has been also directed to be applied for the State of Rajasthan, by the High Court of that state, in

*Poonam Bhandari v High Court of Rajasthan*⁴

11. It is argued by some petitioners that despite the rules of the Rohini Bar Association providing for the principle of ‘one bar one vote’, they are not followed. It is urged that during the course of arguments all present, including the office bearers of the various Bar Associations, agreed that curtailing the rights of a member is acceptable to them in the case of allotment of chambers. It was acceptable to all that only one chamber should be available to one person and the right of such person to obtain a second chamber in other bar association (s)/court complexes would stand automatically curtailed. It is submitted that the rule of one bar one vote is on the same footing as that of ‘one advocate one chamber.

12. It is crucial – submit learned counsel - that the ‘One Bar One Vote’ rule can only be successful if it is implemented and applied to all bar associations and not to a solitary association. Counsel emphasize that Bar Associations have a tendency to refuse to provide a complete voters lists in order to frustrate transparency and accountability. The same is evident from the various orders passed in the present writ petitions, particularly, orders dated 01.11.2011 and 12.12.2012.

13. There are two contradictory views espoused by members of the Delhi High Court Bar Association. The one advocated by its Secretary and members of the executive, excluding the President, support the

⁴ Judgment dated 26-11-2014 in DB (Civil) PIL (WP) No. 18688/2013

Petitioners to highlight the influence of non-practicing/ irregularly practicing advocates on the election process and mis-utilization of chambers whereby the non-practicing advocates succeed in securing chambers and rent them out to others. It is emphasized that the indiscriminate admission of Advocates who do not have the High Court as their principal Court of practice, the affairs of the Court annexed bar associations increasingly vest with non-stake holders. Such membership is acquired only to cast votes in favour of their sponsors whenever they are candidates in the electoral fray.

14. Reference is made to the orders dated 19.05.2011, 01.11.2011, 21.08.2012 and 12.12.2012, where issues involved in the present writ petitions were identified and certain directions were issued to the various parties. It is stated that the Delhi High Court Bar Association is part of Delhi High Court. For that matter, any Bar Association annexed to a Court will be a part of that Court. Such Bar Associations have a duty to assist the Courts to which they are annexed, in dispensation of justice. Members of the Bar constitute an integral part of the justice delivery system. Consequently, a Bar Association whether registered or not, comes within the ambit of the concerned Court and would always be subject to judicial scrutiny. Court-annexed Bar Associations constitute a separate class different from other lawyers' associations and are an integral part of the machinery for administration of justice. The court-annexed Bar Associations start their name with the concerned court; their nature implies that it is an association representing members regularly practicing in the court and

responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration, the court provides space for office of the Association, library and other facilities like chambers at concessional rates for members regularly practicing in the court, parking place and canteen, etc., besides other amenities. It is urged that under the Master Plan (MPD 2021) specific provisions have been made that chambers are part of the Court and for the purpose of Development Controls, (page 82 of the Master Plan in the chapter “Government Offices”). The FAR granted to such development includes lawyers’ chambers, canteen, library and other ancillary services.

15. It is argued that no Court can provide chambers and other facilities to an advocate who is not regularly practicing in that court; neither the Association nor the court can deal with such outsiders if they commit any wrong. These factors were considered in *Kaushik-I*. Even for the purpose for conferring the designation of Senior Advocate, the number of judgments in cases in which the counsel was present was considered to see whether the counsel was regularly practicing before this Court. Thus the contribution to the cause of justice by a regularly practicing advocate is established.

16. The Delhi High Court Bar Association states that it bears responsibility in assisting the Court in the dispensation of justice and has a premier position amongst the High Courts of the country. This has been possible because of the assistance rendered by members of the Bar who regularly practiced and practice before it. Unless

restrictions are placed on the right to vote – restricting it only for members who regularly practice before the Delhi High Court, it will virtually render the regularly practicing active members strangers in their own court. This Court can only remedy this by exercising its extraordinary jurisdiction under Article 226 of the Constitution of India, vesting the right to vote only in members who regularly practice before it. It is highlighted that membership of a Bar association annexed to the court is a criteria adopted by this Court and by every other court for allotment of chambers. The Supreme Court considered this in *Vinay Balachander Joshi v. Registrar General, Supreme Court of India*⁵ which is the *rationale* for regulating the Bar Association's activities. It is submitted in this regard that the language of Article 226 does not make a distinction between public law and private law. The jurisdiction of Article 226 can be exercised by this Court even against a body of persons, which is not statutory, or is not incorporated, to protect the rights and interests of an individual or the society or a class of people. In the present case it affects the rights and privileges of regularly practicing lawyers who are officers of this Court and thereby creates an impediment in the justice delivery system. Reliance is placed on the judgments of the Supreme Court that under Article 226 of the Constitution of India, in cases, which involve a public element like the present case, writ/orders can be issued/passed against a private body, exercising a public function. It is the nature of the functions and duties being performed by the said body that is determinative of

⁵ [(1998) 7 SCC 461]

the jurisdiction under Article 226⁶. It has been held by the Supreme Court in *Binny Ltd. & Anr. V. V. Sadasivan & Anr.*⁷, that ‘a public function may be one where the body seeks to achieve a collective benefit for the public or for a section of the public and is accepted by the public or the section of the public as having authority to do so’.

17. It is argued that an advocate functions as a representative of the legal profession. It is an advocate’s solemn duty to assist the Court in ensuring that there is expeditious and smooth administration of justice. The Petitioners submit that the duty performed by an advocate is of a public nature⁸. There is no gainsaying that the management and administration of a court annexed bar association includes the discharge of a duty/ function of a public nature. It is also submitted,

⁶*Andi Mukta Smarak Trust & Anr. v. V.R. Rudani & Anr.* ((1989) 2 SCC 691 (Para 17, 20 and 22); *Zee Telefilms & Anr. v. Union of India & Ors.* (Constitution bench) (2005) 4 SCC 645 (Para 31-33), *BCCI v. Cricket Association of Bihar & Ors.*, (2015) 3 SCC 251

⁷ (2005) 6 SCC 657. (Para 10-12, 29, 32)

⁸Reliance is placed on *Vinod Kumar Bharadwaj v. State of MP & Ors.*, (AIR 2013 MP 145) and *Punjab and Haryana High Court Bar Association & Anr. v. Union of India & Ors.*, 2007 SCC OnLine P&H 632 (Para 10); and *Advocates Association, Bangalore v. The Chief Minister, Govt. of Karnataka*, (AIR 1997 Kant 18) (Para 22, 27-28, 31)

by relying on three decisions of the Allahabad High Court⁹ that a court annexed bar association (in those cases the Uttar Pradesh High Court Bar Association) may be amenable to writ jurisdiction under Article 226 of the Constitution of India, in light of the fact that the proper and smooth functioning of the bar association has a direct and intrinsic bearing on the proper and effective functioning of the Court to which it is annexed and also in light of the difficulties being faced by the Uttar Pradesh High Court Bar Association.

18. Reliance is placed on an order dated 11.12.2013¹⁰, the Supreme Court directed that the principle of '*one bar one vote*' will be applicable to the elections of the Delhi High Court Bar Association (for the year 2013). It was also directed that a committee be formed for scrutinizing the list of voters and that further, the committee should seek declaration from each member as to whether the member had voted in any other elections and further mandated that all bar associations would provide details in a time bound manner with respect to the members which had voted in their elections. There was no issue involved in the said appeal (s) with respect to implementation of the concept of the one vote one bar, nor was the said rule included

⁹*Ajay Pratap Singh v. Oudh Bar Association & Ors.*, MANU/UP/0330/2014 (para 10-12); and *Sunita Sharma v. Dy. Registrar, Chits and Funds Society*, AIR 2014 All 141. (para 20, 22-25, 28)

¹⁰*Rajiv Khosla v. Delhi High Court Bar Association & Ors* (C.A No.10987-90 of 2013) with *Delhi Bar Association & Ors. v. Delhi High Court Bar Association & Ors.*; *Delhi High Court Bar Association & Ors. V. Rajiv Khosla*; and *Delhi High Court Bar Association & Ors. v. Delhi Bar Association & Ors.*

in either the original or the amended constitution/rules of the Delhi High Court Bar Association. The said rule was imposed *suo motu* by the Supreme Court for the benefit of the Delhi High Court Bar Association. It is highlighted that the Delhi High Court Bar Association, by resolution dated 28.03.2001, under the category of Any Other Item No.5, observed that as various advocates, who are not registered with the Delhi Bar Council are filing *Vakalatnama*, causing serious prejudice to administration of justice, therefore, outside advocates must seek assistance of a local advocate, who is enrolled with Delhi Bar Council and is preferably member of the Delhi High Court Bar Association. The Bar Council of India's decision (through its General Council), by resolution No.169 of 2015, approving the rule of 'one bar one vote', stating it to be good for the institutions and associations is pressed into service.

19. It is stated that two Bar Associations in Delhi already provide for the rule of 'one bar one vote' but do not follow the same. The Constitution of the Rohini Court Bar Association and Saket Court Bar Association provides for One Bar One Vote but the implementation of the same has not been possible till date. During the course of arguments, all present, including the office bearers of the various Bar Associations were *ad-idem* that curtailing the rights of a Member of a Bar Association is acceptable to them vis-à-vis allotment of chambers. It was acceptable to all that only one chamber should be available to one person and the right of such person to obtain a second chamber in other bar associations(s)/ court complexes would stand automatically

curtailed. It is submitted that the rule of one bar one vote is on the same footing as that of 'one advocate one chamber'. A bare perusal of Annexure 1 makes it evident that all bar associations follow the rule of 'one person one chamber'. A departure cannot be made for voting rights. It is submitted that in the Delhi High Court Bar Association presently 13,829 advocates are enrolled as members, of which not more than 2000 advocates regularly appear and practice before this Court. Other court annexed bar associations in Delhi face the same problem. As a result, such members exercise a greater control and have a greater say in the affairs and management of the said court annexed bar associations' than regularly practicing advocates, thereby making it impossible for such bar associations' to pass any rule/ resolution so as to reduce the participation of such advocates. In fact, the need of the hour is to not only implement and enforce the 'one bar one vote' principle, following the law laid down by the Supreme Court as also approved the Bar Council of India by a recent Resolution, but to evolve guidelines for determining '*regularly practicing advocates*'. The rule of 'One Bar One Vote' can only be successful if it is implemented with respect to all bar associations and not only the Delhi High Court Bar Associations.

20. It is argued that citizens have a Fundamental Right to form and continue an Association; a citizen has no right to insist on becoming member of an association. Other common conditions, with which the association was formed, must be fulfilled, before a person can be considered for membership of an association. The continued

allegiance to the common purpose, interest and welfare is also mandatory to continue the membership of an association. A person who has no common interest or common purpose with which the ‘*Association*’ was formed has no right to insist on becoming a member of such an association; or continue to be a member of such an association. Reliance is placed on the Supreme Court decision in *A.P. Dairy Development Corporation Vs B. Narasimha Reddy*¹¹ which explained the right as follows:

*“26. Therefore, the freedom Guaranteed under Article 19(1)(c) is not restricted merely to the formation of the association, but to the **effective functioning of the association so as enable it to achieve the lawful objectives.**”*

Consequently, the effective functioning of DHCBA and other court annexed Bar Associations pre-suppose that the Courts mandate effective mechanisms ensuring democratic representation of their members.

21. It is submitted that other Bar Associations have a tendency to refuse to provide voters lists in order to frustrate the rule as was done during the 2014 elections of the Delhi High Court Bar Association, wherein, notwithstanding orders of the Supreme Court, there was refusal to cooperate and provide names of persons who had voted in their respective elections. In fact, it is verily believed that a large number of voters cast their votes irrespective of the fact that they had voted in the year 2013 in different bar elections and only a small

¹¹(2012) 9 SCC 289

number of voters furnished genuine declarations. The same is also true as regards the various orders passed in the present writ petitions, particularly, orders dated 01.11.2011 and 12.12.2012. In light of the aforementioned submissions, it is submitted that this Court, in exercise of the extraordinary powers conferred upon it under Article 226 of the Constitution of India, should issue detailed guidelines/ evolve criteria for identifying advocates who can be said to be '*regularly practicing*' in a court for the purpose of having the right to vote in the elections of the Bar Association annexed to such Court. While considering such guidelines, due regard may be given to the appearances of an advocate in the said Court. The said guidelines should be accompanied by the implementation and enforcement of the principle of 'one bar one vote' in this Court as also in all District Courts in the State of Delhi.

The opposing view: the Position of the District Courts Bar Associations and of the President, DHCBA

22. In opposition to the arguments of the petitioners and that of the Secretary and members of the executive committee of the DHCBA, the Bar Associations of District Courts complexes and the President of DHCBA, Mr. Rajiv Khosla urge that the one advocate one vote principle cannot be imposed by this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India. It is submitted that the Bar Associations are not statutory bodies, but merely represent the interests of their members, i.e., lawyers. They do not possess any regulatory control or power over the functioning of enrolled lawyers, nor can discipline them for misconduct. Their

function is to merely highlight and espouse causes concerning Advocates and channelize their grievances with the Courts and act as facilitators to ensure that common goals of the lawyer community as one of professionals is achieved. If any body is to decide upon the applicability or otherwise of the principle of one man one vote, argue these Bar Associations, it is the General Body of members of each association which can achieve that end, through accepted means, such as moving a resolution amending their constitution and Bye-laws.

23. It is submitted that neither the Bar Council of any State nor the Bar Council of India have any powers to interfere in the affairs of the Bar Associations and cannot command them to amend its constitution without having a General Body meeting which is in contravention of *Kaushik-II*. It is submitted that the issues have already been taken up before several benches of this Court and some related matters have even reached the Supreme Court whereby it was found mandatory to seek approval of General House for bringing any amendment in the manner prescribed under Rule 33 of the constitution of DHCBA.

24. It is argued by the respondent Bar Associations that the Supreme Court while disposing of SLP No.37266/2013 had never stated that the rule of One Vote One Bar had to be adopted for future elections of DHCBA. The only condition which the Supreme Court imposed was in respect of the particular elections held during that period and it was a solution suggested by the Supreme Court which stated that the issue in dispute shall be decided on merits by the concerned court. Highlighting that interference by any Bar Council in

the affairs of DHCBA cannot be countenanced; reliance is placed on the judgment of a Single Judge in WP(C) 6756/2013. In this regard it is further submitted that the Bar Council being a statutory Body is governed by the rules and regulations and there is nothing in the rules to suggest that the Bar Council can pass any direction with regard to curtailing the voting rights of the members of any Bar Association in violation of the constitution of such Bar Association.

25. It is submitted that number of judgments have held that anyone who is not a party to any legal proceedings cannot be allowed to participate in the proceedings without permission of the court unless impleaded as a party. Since no such permission whatsoever was granted by this Court to BCI or even sought by it, the Bar Council nor anyone else can place any document on record. Even otherwise the BCI is not empowered to pass such resolution and the Bar Associations are under no obligation to accept the same.

26. Mr. Khosla highlighted that that the One Bar One Vote principle considered by *Kaushik-II* was made only by the General House in consonance with the constitution of Supreme Court Bar Association and it was only thereafter, the Supreme Court with the suggestion of Bar Association made certain directions resulting in the mechanism for implementation of the said amendments. It is urged that even otherwise the present petition pertaining to One Bar One Vote has nothing to do with the elections of Delhi High Court Bar Association, as DHBCA cannot be equated with any District Court Bar Association. The Delhi High Court is a peculiar High Court,

which has Original Jurisdiction, and all lawyers practicing in Delhi have to approach the High Court for filing their matters. Moreover the High Court being situated at a central place, is within easy access to all the Advocates working in different courts. The availability of chambers in High Court is very small and the waiting period to get a chamber in High Court is 25 years and more, compelling the lawyers to take chambers at other District Courts. Therefore, the concept of ONE VOTE ONE BAR cannot be made applicable to DHCBA.

27. The respondent Associations argue that this Court should desist from issuing the directions sought in these writ petitions, as the important issue is in respect of interference of the court in the autonomous functioning of Bar Associations affecting their independence. It is submitted that interference by imposing any rule or principle on the assumption that it would achieve greater democracy or give voice to a section of the Bar who are “regular” practitioners, would set a wrong precedent. Here, it is argued that the right to practice before the High Court is assured by law to all members who enroll with the Bar Council. The Delhi Bar Council is a State level statutory entity. If all its members are equal as practitioners before this Court, it cannot discriminate in favour of those who “regularly” practice before it, and those who do not do so. The direction sought by the petitioner is nothing but one favoring those who “regularly” practice before particular courts. Stripping voting rights from “non-regularly” practicing lawyers would be both discriminatory and an interference without a legal framework. It is submitted that the use of

parking sites, canteen and other public facilities are intrinsic to the Court as a public service provider; they cannot be denied to Advocates who appear before it. There is no such law that mandates the one man one vote rule; consequently a court-imposed rule would be untenable.

28. As regards the other issue i.e. strict implementation of the policy of providing “one chamber one advocate” to the lawyers practicing in various District Courts in Delhi to ensure that the other lawyers in the waiting list may not be deprived of their right to get chambers in the court complex, it is stated that the chamber allotments in various District courts have been made in terms of policies framed by this Court on the Administrative side. These policies are enforced by the respective Chamber Allotment Committees of all District Courts in Delhi and consequently, the allotment of chambers in various courts situated in different parts of Delhi so much so, the said principle was followed by this Court while deciding various writ petitions being filed by aggrieved advocates in respect of allotment of chamber. The said issue has also been dealt by this Court by orders dated 01.04.2011, 01.11.2011 and 12.12.2011 whereby directions were given to District Judges to place on their respective websites, the complete information with regard to chamber allotments with timely updating. Therefore, the said issue does not require any further adjudication.

Analysis and conclusions:

29. The respondent Bar Association’s opposition to a Court

mandated 'one advocate one vote' regime principally is rooted on the argument that it is not for courts, but members of each association to decide whether to adopt such a rule or not. The right to form an association, so goes the submission, fundamentally clothes the members and none else, with the right to decide upon matters touching its affairs. The petitioners, quite naturally, oppose this, by focusing on the Court's role as regulator of issues central to administration of justice; they also highlight that left untouched, the objective of permitting court-annexed Bar Associations to be bodies representing practitioners of a given court is defeated as rank "outsiders" having no practice or stake will occupy all positions of decision making, and bar genuine practitioners in those courts. Similar arguments are made with respect to the one-man one chamber issue – though the division of opinion is less sharp.

30. The two opposing arguments – i.e. votaries or proponents of the 'one man one vote' rule, and those who resist it, thus focuses on the right to association (perhaps stemming from the right to form associations, under Article 19(1)(c) of the Constitution (hereafter called "the association right") the attending autonomy to conduct affairs of such institutions on the one hand, and the Court's compelling interest in regulating it, on the other hand. It is worthwhile noticing that in *Kaushik-I* as well as *Kaushik-II* the powers of the Court to deal with this question was not in issue. Furthermore, the Supreme Court exercised its powers under Article 142 of the Constitution of India.

31. As various submissions with regard to the issues noticed earlier were advanced, it would be useful to decide upon the following:

- (a) Power and jurisdiction of the Court under Article 226 of the Constitution of India;
- (b) The extent of the association right and the Court's jurisdiction to mandate a regime of one man one vote.

Point No. (a)

32. As far as the first question, i.e. maintainability of these proceedings under Article 226 of the Constitution are concerned, the law is now settled that what is determinative is not merely the nature of the organization, but the function it performs, that is the subject matter of controversy. This was summarized by the Constitution Bench of the Supreme Court in *Zee Telefilms v Union of India*¹². The Court held- even while rejecting the contention that the Board of Control for Cricket in India (BCCI) was not "State" within the meaning of the expression under Article 12, that:

"Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226."

In the judgment reported as *Federal Bank v Sagar Thomas*¹³ it was held that:

¹²2005 (4) SCC 649

¹³2003 (10) SCC 733

"From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."

Likewise, in *Binny V. Sadasivan*¹⁴ the Supreme Court held as follows:

"Thus, it can be seen that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced."

The question, which this Court has to address, is whether, in the light of the above principles enunciated by the Supreme Court, can the present proceedings be maintained validly against the respondent Bar

¹⁴2005 (6) SCC 657

Associations. They assert that such proceedings cannot be maintained, because they are purely private bodies, voluntarily formed with their own Constitutions. They also assert that in exercise of the power under Article 226, this Court cannot mandate them to include stipulations for introducing the one Bar one vote principle.

33. At the heart of the issue lies the question: do any of the issues in controversy involve a public element. As this Court perceives it, there can be no two opinions on this: the answer has to be an unequivocal affirmative. An Advocate (who is the unit for whom all respondents avowedly stand, as representative bodies) engaged in law practice, before Courts in India, occupies a crucial and important position. She or he has the exclusive privilege, *by law*, to appear and represent others in cases and causes tried and decided by courts. This privilege is conditioned by provisions of the Advocates Act; it is also subject to continued good conduct- any lapse or actionable misconduct is liable to disciplinary action, the manner of whose proceedings and the nature of penalties that can be imposed, are again expressly stipulated by law- either under the Advocates Act, or under Regulations framed thereunder. Statutory appeals are provided against penalties imposed and the right to ultimately appeal to the Supreme Court is also assured. Every Advocate is duty bound to follow the code of conduct¹⁵ formulated by the Bar Council of India. These standards - especially

¹⁵*Standards of Professional Conduct and Etiquette* - framed under Rules and Section 49 (1) (c) of the Act read with the Proviso thereto of the Advocates Act.

the Preamble, vividly summarize what is required and expected of an Advocate at all times:

"An advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of others equally imperative though not specifically mentioned."

34. The professional activities of every Advocate - qualifications recognized, requirement of being enrolled, conditions for continuous enrolment, obligation to follow a prescribed code of conduct, comport herself with dignity and also assist the Court, duty to represent clients, accountability for action and lapses duties of *statutory authorities*, such as the Bar Council of India and State Bar Councils, maintenance of rolls, disciplinary proceedings and the manner of their conduct, are regulated by law. All this is to one end: provide a service to the client, in an orderly and regulated manner, professional assistance of an individual trained in the discipline of the law to secure the timely and efficient resolution of a dispute before the Court.

35. The status of an Advocate as an "officer of the court",- owing a duty beyond her brief, to uphold the law and at all times act in fairness towards the Court, her colleagues and her client, without using sharp tactics or illegitimate means has been emphasized repeatedly in several decisions. The Supreme Court in *Lalit Mohan Das v Advocate General* explained this¹⁶:

"..a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute..."

The Supreme Court described the Advocate's status as *"the exalted position conferred...under the judicial system prevalent in the country"* (*R.D. Saxena v Balram Sharma*¹⁷).

36. Given this position of Advocates in Courts in India, and the importance of their role in judicial decision making, their conduct in respect of matters not regulated by law may appear, on the façade, beyond the pale of what may be described as "public functions". Yet, that is not the case. Bar Associations- like the respondents, apart from the statutory bodies such as Bar Councils, also occupy a pivotal role in Court administration and functioning. This can be gathered from the fact that Court procedure is framed after consultation with such Bar Associations, important policy and administrative decisions such as rules to allot chambers, use of common spaces, allotment of commercial spaces, their identification (all meant for the use of the

¹⁶AIR 1957 SC 250

¹⁷2000 (7) SCC 264

litigant public and members of the Bar) earmarking of parking lots, policies and rules for designation of senior counsel under the Advocates Act, are taken, more often than not, with the consultation and inputs from these Bar Associations, in view of their representative nature. Any dispute within such association invariably has repercussions in court functioning. Conflicts with members of the public, interface with the local administration and police authorities routinely - for security of court, court precincts, chambers, etc. need active participation by Bar Associations. Often, individual grievances of members of the Bar in court premises require intervention and deft handling on the part these Associations, in the absence of which Court proceedings would be disrupted. Above all, elections of Bar Associations quite often lead to large-scale requests for adjournments, and litigants have to pay the price. Intervention through court policies requiring discipline in canvassing for votes and what is permissible in the form of leaflets and pamphlets, use of speakers, etc, by the Bar Associations, if left unregulated would also seriously undermine court functioning. These show that Bar Associations' activities have a predominantly public character, and can, in many instances, affect court functioning. As a result, it is held that the nature of relief sought in these proceedings is intrinsically connected with public functioning of the court and affect them. Consequently the present proceedings are maintainable under Article 226 of the Constitution of India.

Point (b)

37. As noticed previously, though it is not articulated with

precision, the respondent associations that oppose introduction of the ‘one man one vote’ rule do so on the basis of the association right. The assertion here is that it is only for members of each association to decide whether or not to introduce such a rule; the second argument is that the distinction between regular practitioners and non-regular practitioners is artificial, given that both categories have same voting rights and right to appear before each court; lastly it is urged that the Supreme Court’s formulation in the *Kaushik* series of judgments was contextual because the SCBA had resolved to introduce such a rule and the Court exercised its powers under Article 142.

38. The association right is one of the freedoms guaranteed by the Constitution of India [Article 19(1)(c)]. It has been described as the right of every citizen to “..(c) to form associations or unions”. Yet, this right is not absolute, or incapable of regulation – it is subject to “reasonable restrictions” which the State (a compendious term, incorporating the Central and State legislatures, Executive authorities and agencies under their control, by reason of Article 12) can impose, in the “interests of.....”. The Supreme Court has held [*Damyanti Naranga v. Union of India & Ors.*]¹⁸ that this right clothes an association and its members the right to refuse membership to those not acceptable to the existing body of members. Within its sphere of activity, an association has the right of internal management. Nevertheless, the association right does not render the institution immune from takeover of management by the State or executive

¹⁸AIR 1971 SC 961

agencies, if its functioning is deleterious to the interests of its members or the general public (*The Board of Trustees, Ayurvedic And Unani Tibia College, Delhi v. The State of Delhi and Another*, AIR 1962 SC 458; *S.P. Mittal v. UOI and Ors.* AIR 1983 SC 1 and *Daman Singh and Ors. v. State of Punjab and Ors* AIR 1985 SC 973). The existence then of the association right *ipso facto* is no guarantee that if the functioning of the institution is not conducive to its objects, it would nevertheless be left alone. This right does not carry with it the right to recognition (*Raghubar Dayal Jai Prakash v. Union of India*¹⁹). The expression “form” means not only establishing an association at the stage of its formation, but also to continue with the association: this was held in *V.G. Row v The State of Madras*²⁰, in the following words:-

"The word "form" therefore, must refer not only to the initial commencement of the association, but also to the continuance of the association as such."

39. The Supreme Court in *State of Madras v V.G. Row*²¹ did not depart from this view. In a significant later judgment, i.e. *All India Bank Association Vs. National Industries Tribunal*²² it was held that even a very liberal interpretation of the said constitutional provision cannot lead to the conclusion that the fundamental right to form unions carries with it a concomitant guarantee that the trade unions so formed shall be enabled to carry, effective collective bargaining or

¹⁹ AIR 1950 SC 263

²⁰ AIR 1951 Madras 147

²¹ AIR 1952 SC 196

²² AIR 1962 SC 17

shall achieve the purpose for which they were brought into existence.

The court held:

“In our opinion, the right guaranteed under sub-clause (c) of clause (1) of Article 19 extends to the formation of an association and insofar as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose of its creation, they are subject to such laws as might be framed and the validity of such laws is to be tested by reference to the criteria to be found in clause (4) of Article 19 of the Constitution”.

*T.K. Rangarajan Vs State of Tamil Nadu*²³ was a decision where the Supreme Court held that the right to form an association does not carry with it the right to strike work. The earlier decision of the Supreme Court- in *Damayanti Naranga v Union of India*²⁴ [1971] 3 SCR 840 was in the context of a take-over of a registered society by the State after which a new body was constituted, with the old membership intact, but a few others added. The Court held this to be beyond State's power:

“The result of this change in composition is that the members, who voluntarily formed the Association, are now compelled to act in that Association with other members who have imposed as members by the Act and in whose admission to membership they had no say. Such alteration in the composition of the Association itself clearly interferes with the right to continue to function as members of the Association which was voluntarily formed by the original founders. The right to form an association, in our opinion, necessarily implies that the persons forming the Association have also the right to continue to be

²³ AIR 2003 SC 3032

²⁴ [1971] 3 SCR 840

associated with only those whom they voluntarily admit in the Association. Any law, by which members are introduced in the voluntary Association without any opinion being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form an association".

40. In *Daman Singh v. State of Punjab*²⁵ 1985 (2) SCC 670 (SCC at p.681), the Constitution Bench had held that the creation, the constitution and the management of the society is a creature of the statute. They are controlled by the statute and therefore, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right to freedom to form association. The validity of Section 13 (8) of the particular statute, which enabled the amalgamation of various co-operative societies, was upheld. The Court held that once a person becomes a member of a Cooperative Society, she loses her individuality vis-à-vis the society and she has no independent rights except those given by the statute and the byelaws. She must act and speak through the society or rather; the society alone can act and speak for her vis-à-vis rights or duties of the society as a body.

41. Rule 18 of the Supreme Court Bar Association enlists the modalities of the electoral process to the SCBA. Clause III particularly, restricts the right of participation in the process (participation encompassing both the right to vote as well as the right to contest for a position) to only those members who have *not* exercised their right to vote in any High Court or District Court's Bar

²⁵1985 (2) SCC 670

Association election. In other words, a member of the SCBA, along with other conditions, must have desisted from participating in the electoral process of any other Bar Association attached to any other court. The Rule essentially mandates that a member of the SCBA must elect either between being part of the electoral process of the SCBA or any other Court; she or he is not permitted to exercise both rights simultaneously. The Rule reads as under:

“III “A member who exercises his right to vote in any year in any High Court or District Court Advocate’s/Bar Association election shall not be eligible to contest for any post of the Association or to cast his vote at the election. Every member before casting his vote shall in the prescribed form give a ‘Declaration’ that he is not voting in any other election of any High Court/District Court Bar Association. Provided, however, that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of this Association for a period of three years.

The SCBA shall prepare a list of Voters based on the declaration made by the members. Only such members whose names are included in the final voters list shall be entitled to vote, contest, propose and second any candidate in SCBA Election.”

The framing of a norm of non-participation in any other Bar Association election as a condition precedent for the eligibility to vote or contest for a post in the SCBA, the rule was upheld in the face of a challenge made before the Supreme Court in *Kaushik-I*. The Court, while refusing to interfere with the Rule stated that:

“23. It is important to notice that what the impugned Rule does

is that it only declares the eligibility of a member to contest and vote and does not take away ipso facto the right to vote. The impugned Rule only prescribes the eligibility or makes a person ineligible in the circumstances stated therein which is the nature of a reasonable restriction as the right to vote is neither a common law right nor Fundamental Right but a statutory right prescribed by the statute as has been held in several reported decisions of this Court. What is necessary to be noticed here is that the impugned clause in the Rule is not the only clause prescribing ineligibility to vote as there are other eligibility conditions or ineligibility restrictions within Rule 18, which may also make a person ineligible to vote. The challenge, therefore, to this ineligibility of filing a declaration not to vote at the elections to any other Bar Association is erroneous in law. If a person is the member of several associations of advocates and wants to participate in the affairs of different associations of which he/she is a member, he/she may not be in a position to be really involved in the affairs of all associations of which he/she is the member. A person who is a member of more than one association would form a different class than the person who is a member of only one association of lawyers, particularly, the association of the Court in which he/she regularly practices. Though an advocate can be member of several associations, the right to form an association or be a member of an association does not necessarily include the right to vote at every such association's General Body Meeting or election meetings and the rules of the association can circumscribe the voting rights of members of such association by prescribing eligibility and ineligibility. It is an admitted position that SCBA today has temporary members who do not have a right to vote. Similarly, non-active members and associate members do not have a right to vote.

Thus, these are all reasonable restrictions which have been prescribed and are not open to challenge as there is no Fundamental Right to vote. After all a Bar Association in a court is formed for the purpose of seeing that all lawyers practicing normally and regularly in that court work under one umbrella and be in a position to interact with the Judges or officials of that court for any grievance through their elected body because individual lawyers are not supposed nor it is proper for them to interact with the Judges so as to preserve and secure the independence of judiciary.”

42. Clearly therefore, there is sound *rationale* to regulate - rather to impose restrictions that impinge on the Advocate's association right or for that matter, the right to vote. That being said, the right to vote in a society is neither a fundamental nor a constitutional right. Its regulation cannot therefore in any event be tested in the same manner reserved for fundamental rights, which enjoy an exalted position within the conspectus of rights, citizens of this country are entitled to. There is yet another point which counters the respondent's argument. The rule itself, much like the SCBA rule does not cease to or render meaningless any volition on part of the Advocate. It merely mandates that a choice out to be made about the right to vote, if one member is also member of another association. The other membership rights are left untouched. *All that the rule or one man one vote principle imposes, if one may say so, is a duty upon the Advocate to choose, to decide for herself or himself, which association she would rather be a voting member of.* It confers the responsibility of evaluating where her or his allegiance lies or which association he or she must invest in.

The Supreme Court emphasized this:

“24. The argument of the respondents was that the right to vote available to a member has been infringed or curtailed but this argument does not appear to be correct for the simple reason that though the Rule is couched in a negative language, it preserves the right of a Member to either contest or to cast his vote in the election subject to his exercising an option to vote only in the SCBA and not in any High Court/District Court Bar Association.”

43. The right to association is not uni-dimensional. It cannot be viewed solely from the perspective of the individual seeking membership of an association. The association itself has the right to restrict or contour its membership. There is nothing unreasonable in an association set up for a particular purpose, admitting, or conferring full benefits of its membership only upon those who fulfill to the extent required by it, the conditions required. As recounted earlier, the right to association encapsulates the right to continuance of the association. The *A.P. Dairy Development Corporation Federation case* (supra) emphasized that; at the same time, the Court held that *“there cannot be any objection to statutory interference with their composition or functioning merely on the ground of contravention of individual's right of freedom of association by statutory functionaries.”* The regulation of the association's functioning through law was held not to extend to the benefit of life offices and life membership in *Periyar Self-Respect Propaganda Institution v. State of Tamil Nadu*²⁶. In *Toguru Sudhakar*

²⁶AIR 1988 Mad 27

*Reddy and Anr v State of AP*²⁷ the Supreme Court held that the power of the Government to nominate women to the co-operative societies under Section 31 of the A. P. Co-operative Societies Act was valid; this provision was construed to be in furtherance to Article 15 (3) of the Constitution of India. Consequently it is held that the respondents' submission that the introduction of the one man one vote rule would impair the internal autonomy of the Bar Associations in Delhi, is without merit.

44. This Court has already dealt with its jurisdiction under Article 226 of the Constitution to entertain petitions in respect of bodies involved in public functions, and to issue directions to them. A subsidiary though important question that needs to be addressed, in the light of the respondent associations' contention is that in view of specific provisions in their Constitutions/Bye-laws prescribing the manner of amendment whether the Court can issue directions and incorporate such conditions. Here, it is important to notice that the *rationale* for introducing the one man one vote rule are powerful: it ensures orderliness in court proceedings, avoids loss of time (where adjournments on the part of practitioners in given courts are sought, merely to enable them to canvass in for and cast votes in elections in the concerned court (to which the association is annexed) *and other courts as well*) and eliminates conflicting or divided loyalties of members of multiple Bar Associations, who might be holding executive positions in more than one Bar Association. Most

²⁷AIR 1994 SC 544

importantly, lawyers practicing in a given court are ensured that their voices are heard and their grievances are highlighted from one of their regular practitioners, who have a stake in its welfare.

45. The Court's role in regulating court time and also mandating rules of conduct for Advocates in not only conduct of proceedings, but generally in matters connected with Court functioning can be found in Section 34 of the Advocates Act²⁸; it is also part of the High Court's inherent power to regulate procedure and its affairs, or matters connected therewith, as a Court of Record (Article 215 of the Constitution). The amplitude of power under Article 215 is emphasized only by the clarification that it *includes* the power to punish for contempt: i.e., the High Court “*shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.*” Coupled with these, and the power of superintendence over the courts subordinate to it, by virtue of Article 227 of the Constitution of India, the self-regulatory nature of its

²⁸**34. Power of High Courts to make rules.—**

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.

functions is reinforced. Therefore, as regards activities of bodies and associations which are intrinsically connected with the discharge of a court's administrative and judicial responsibilities, the absence of any enacted law is not a factor restricting the use of such power. As mentioned earlier, in regard to chamber allotment, rules for allotment, participation in decisions connected with some of the court's administration, Bar Associations play a significant role. These are in effect recognized Bar Associations. This being the case, the insistence of the court that such associations should follow standard norms to ensure orderliness and efficiency are as inherent to its functioning as the power of a Presiding Officer of a court to regulate the conduct of the proceedings on a day to day basis. Therefore, the submission that this court lacks power to frame a rule, or mandate the framing of such rules, is devoid of merit. This Court is fortified in its conclusions in this regard, by two decisions of the Supreme Court.

46. In *Charu Khanna v Union of India & Others*²⁹ what was directly in issue was an association right; the concerned association i.e a trade union had not provided for membership of women. This resulted in the latter's demand that the restrictive conditions were discriminatory. The Court held that the association could not deny membership, and observed that:

“A clause in the bye-laws of a trade union, which calls itself an Association, which is accepted by the statutory authority, cannot play foul of Article 21.”

²⁹2015 (1) SCC 192

It was also held that:

“The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity.”

The Court was conscious of the fact that the association was a private body, but held that not enabling membership to female workers, was opposed to Article 51 and the Directive Principles of State Policy which Courts were duty bound to give effect to.

47. In *University of Kerala vs Council, Principals, Colleges Kerala and others*,³⁰ interim measures for holding elections were directed in respect of elections to student bodies in Universities. In *University of Kerala v Council, Principals, Colleges Kerala & Ors* (2011) 14 SCC 357 the Court noted the compulsions which resulted in issuance of directions to ensure fairness and orderliness in student Union elections in Universities as *"mob-muscle methods which have deleterious effects on various elections including conduct of free and fair elections to the students' unions."* The Court intervened to introduce *"value based"* principles and mechanisms and justified it saying as follows:

"This Court, therefore, on the basis of important public law principles, intervened in the judgment rendered by Kerala High Court where the main controversy in a students' body election was whether the form of elections should be Parliamentary or

³⁰ 2006 (8) SCC 304

Presidential.

We thought that such a right cannot be possibly stifled by a Court order. Thus, we are trying to strike a balance and in doing so, we have followed the concept of reasonable restrictions, which is a part of our Constitutional doctrine."

The measures accepted and mandated by the Court included: time for holding elections; age restrictions for candidates (30 years); attendance criteria for student candidates; and the introduction of spending limits in student union elections. These too were in the context of association rights, where the Court introduced restrictions in the larger interests of regulation of student bodies activities, though the association's rules, by laws and constitution did not contain those' conditions; nor were they introduced by amendment, but were rather, inserted by Court's judgment. Lastly, in *Bhandara District Co-op Bank Ltd. v State of Maharashtra* 1993 Supp (3) SCC 259 upheld regulations – of course embedded in law – that imposed tenure restrictions in co-operative societies. The Court observed that such provisions are meant to prevent a few “*from monopolising the affairs of a society by exercising control thereon indefinitely for a long period.*”

48. In the light of the above discussion, it is held that the Court's power does extend to directing the amendments to the rules and include the one-man one vote rule.

49. The next issue is the respondents' submission that introducing the one-man one vote rule would result in discrimination between

members. They argue that since all members are enrolled with the same Bar Council and are by law entitled to practice as Advocates in any court, the one vote one value principle which in effect ensures parity of all membership rights, is destroyed by the one Bar one vote rule. This argument is, in the opinion of the Court, fallacious. If the objective of every court annexed or court adjunct Bar Association is to ensure the welfare of the legal practitioners who regularly practice before such courts or fora, all that the one bar one vote rule seeks to achieve is a commitment by each of its members that if they wish to vote in one of the associations of which they are members, they should choose which one. This rule would ensure that those with no commitment to Courts and Bar Associations where they do not practice law, ordinarily, do not vote and defeat or diminish the value of votes of genuine practitioners; it also ensures that those with some connection with a Court and none else are elected as office bearers of that association. The one bar one vote principle in essence restores a balance in the voting rights of members of every Bar Association, who have hitherto been victims of indiscriminate “surge membership” gerrymandering like election practices in the past. By this, every member of each Court annexed Bar Association is subjected to a uniform standard, i.e., that those having a stake and choosing to vote and standing in their elections only (and no other association) have a say - either as elector or as an Office Bearer. The reasonableness of such stipulations has been upheld in *Kaushik I*. It is held that the absence of a one-man one vote rule in the respondent associations’ does not in any manner constrain this Court, in exercise of its powers,

to frame such standards, which are to be applicable to Bar Associations, who seek facilities and access to resources in various forms, from Courts. This Court would indicate, later, the appropriate regulations, which would bind all Bar Associations in Delhi, in this regard, till such time statutory rules are framed in exercise of the powers conferred under Section 34 of the Advocates Act.

50. The next issue is the one advocate one chamber, principle in the city of Delhi. Here too, the logic of what has been discussed earlier applies with equal, if not greater vigor. Chambers are constructed on public lands; the court buildings even chambers allotted to lawyers are constructed with public funds. Such chambers are *allotted*, to individual members of the Bar Association comprising of lawyers practicing in the concerned courts. Such being the case, there is no *entitlement per se* in any law to such allotment; the rules governing such allotment are to be transparent, fair and reasonable: the requirements of Article 14.

51. The evolution and enforcement of a rule, which compels an advocate to allotment of only one chamber in any one-court complex in the entire NCT of Delhi, is eminently reasonable. Such a rule at once ensures that chambers are not monopolized only on the basis of seniority and by a few. The choice of allotment in only one complex is an imperative for many reasons. Firstly, chambers are built or allowed on public resources. In the case of the Tis Hazari Complex, the land is public land. In other court complexes, chamber blocks have been built

at public expense. The insistence that an individual chose whether he should have one chamber in one complex or the other is aimed at ensuring that such scarce resources, meant to be used by the maximum number of lawyers, is in fact available to all. If such a regulatory condition were not to be insisted, any given lawyer can conceivably seek and obtain allotment of several chambers- in fact one in each court complex. This would not be in public interest; it would certainly undermine the growth of the Bar and act to the total detriment of new and younger generation of lawyers. Therefore, this Court holds that such a rule is salutary and directs that it should be incorporated forthwith in all the rules, which prescribe conditions of eligibility of advocates for allotment of chambers in various court complexes.

Conclusions and Directions

52. In the light of the above findings and conclusions, the following directions are issued:

(a) The following rule, incorporating the one-bar, one vote principle shall stand incorporated forthwith in relation to every Bar Association in Delhi (including the Delhi High Court Bar Association, the Delhi Bar Association, the New Delhi Bar Association, the Rohini, Shahdara, Saket and Dwarka Courts Bar Association and all other Court/Tribunals attached Bar Associations):

“A member who exercises her or his right to vote in any year in the High Court or a District Court Advocate’s/Bar Association election shall not be eligible to contest for any post - either as

member of the executive or of an office Bearer of any other Association or to cast her or his vote at the election. Every member before casting his vote shall in the prescribed form furnish a 'Declaration' that she/he has not voted and is not voting in any other election of the Supreme Court Bar Association, Delhi High Court Bar Associations, any other District Court Bar Association, and has not done so in the past one year. Provided, however, that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of the Association for a period of three years.

Based on the declaration of members, the Bar Association shall prepare, a list of voters. Only the members whose names are included as the final voters- after excluding those who had voted in elections of any other Bar Association in that year or the previous year, shall be entitled to vote, contest, propose and second any candidate in the Bar Association Election."

Explanation (1) The term "any other Bar Association" means any Bar Association of which the voting or contesting member is a member of other than the one in which she or he is seeking to cast his or her vote, and/or contest for any elective post.

Explanation (2) "office bearer" "member of executive committee" and "elective post" mean any position to which if the member is elected, would entail exercising decision making powers either in the capacity as holder of the post, (such as President, Secretary etc.) or as part of a collective body by whatever name called (such as executive committee, governing committee or council, etc.).

Explanation (3) "Declaration" means a declaration in the following form:

I....(State name, and full description, i.e., parentage, age, particulars of Bar Council enrolment, and membership of the

Bar Association of the Court complex where chamber allotment is sought) do hereby solemnly declare and affirm that I have not voted for and/or am not contesting for any elective post, in any other Bar Association of which I am also a member in the last one year and that I will not do so in any election during this year in such Bar Association. In case this declaration is detected to be false, my right to vote shall remain suspended for three years after such declaration is detected to be false.”

The above condition shall be deemed to be incorporated in the conditions of eligibility applicable for voting as well as candidature for the post of member of any executive body (by whatever name called) and every office bearer of each association (President, Vice President, General or Honorary Secretary, Assistant, Joint Secretary, Treasurer, Asst. Treasurer, or any other office bearer of each association by whatever other name called) immediately and shall be given effect to in every election to each Bar Association hereafter. This condition shall remain in force and bind all Bar Associations as condition for their recognition.

(b) The following rule shall stand incorporated in the rules applicable for allotment of Chambers to Advocates in all Delhi Court complexes (whose courts are subject to the administrative control of the Delhi High Court):

“No Advocate who has been allotted a chamber in any other Court complex, or has constructed or owns any chamber in the Tis Hazari or New Delhi Court complex, or has applied for any chamber in any of the said other court complex shall be eligible for allotment of a chamber. Each applicant shall also furnish a declaration that she or he has not applied for any, or has not

been allotted any chamber in any other Court complex. Any false declaration shall entail cancellation of chamber allotment, or removal of the name from list of eligible applicants.

All Advocates, whose names have been included in existing lists of otherwise eligible candidates/applicants and who await allotment, too, shall furnish a declaration within 60 days failing which their names shall not be considered for any allotment. In case the declaration furnished is false, their names shall be struck off the list of eligible applicants.

Explanation: the expression “any other Court complex” shall mean that if the applicant/Advocate is allotted a chamber in one complex-e.g. the Saket Court complex, she or he shall be ineligible to apply for allotment of chamber in the Delhi High Court Lawyers chambers or any other District Court complexes (Karkardooma, Tis Hazari, New Delhi Courts, Rohini, Dwarka, etc and any other Court complex to be constructed with lawyers chambers, hereafter).

Form of Declaration:

I....(State name, and full description, i.e parentage, age, particulars of Bar Council enrolment, and membership of the Bar Association of the Court complex where chamber allotment is sought) do hereby solemnly declare and affirm that I am not allottee of any chamber in any Court complex other than the one in which I hereby seek; I also affirm and declare that I shall not apply for allotment of any chamber in any Court complex.”

The above conditions shall be deemed to have been incorporated with immediate effect. The concerned District Judge of each Court complex and the Registrar concerned of the Delhi High Court are hereby directed to ensure that the above conditions are suitably incorporated in the Chamber Allotment Rules, within two weeks. Till then, the

above conditions are applicable and would govern all allotments of chambers.

53. All the writ petitions are allowed in the above terms. There shall be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

MAY 31, 2016

**SIDDHARTH MRIDUL
(JUDGE)**

