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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.P. No. 18847 of 2019

&

W.M.P. Nos. 18201, 18203 & 20143 of 2019

K. Sathyabal

...Petitioner

Vs.

1. The Chairman & Members,
Election Committee,
M.H.A.A., Chennai - 600 104.
2. The Secretary,
Bar Council of Tamilnadu and
Pondicherry,
Chennai - 104.
3. The Manager,
Madras High Court Advocates
Association,
High Court, Chennai - 104.

... Respondents

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Mandamus directing the 2nd
respondent to consider and pass orders on the representation
dated 25.06.2019 given by the petitioner immediately.

For Petitioner : Mr.K. Sathyabal
Party in Person

For Respondents: Dr.A.E. Chellaiah
Senior Counsel for R1

Mr.J.Pothiraj for R2

Mr.P.V.S.Giridhar for R3



O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

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This matter is heard through 'video conferencing'.

2. This writ petition has been filed by one of the members of Madras High Court Advocates' Association seeking a Writ of Mandamus directing the 2nd respondent to consider and pass orders on the representation of the petitioner dated 25.06.2019.

3. Heard Mr. K.Sathyabal, learned counsel appearing as party in person, Mr.J. Pothiraj, learned counsel appearing for the 2nd respondent, Mr.P.V.S. Giridhar, learned counsel appearing for the 3rd respondent, Dr.A.E.Chellaiah, Chairman, Election Committee, Ms.B.S.Ajeetha, Mr.T.Kalaimani and Mr.Arivazhagan.

4. The matter relates to conduct of elections to the Madras High Court Advocates' Association.

5. The main contention of the petitioner is that the tenure of the erstwhile office bearers who took charge on 26.11.2016 came to an end on 26.11.2018. After the end of the tenure, the office bearers do not have any power to do any act with regard to the association, especially, for appointment of a Committee for conducting the elections. Secondly, he would contend that one bar one vote norm should be followed as per the Division Bench judgment. Thirdly, certificate of practice of the members has to be verified to know as to whether a particular member is practising mainly in Madras High Court or not. Fourthly, he would submit that there is confusion with regard to the membership as to whether the members are resident members or non-resident members and without ascertaining whether a member is a resident member or a non-resident member, as per clause No.9 of bye-laws, elections cannot be conducted.

6. Ms.B.S. Ajeetha and Mr.T.Kalaimani would also canvass the very same point stating that classification of resident members and non-resident members has not taken place and certificate of practice has not been given by the Bar Council of Tamil Nadu. In such circumstances, it is not possible to verify as to whether a member, who has been declared as a voter is really practising before Madras High Court and whether he would come under the definition of resident member. Urging all these points, the learned counsel would ask for postponing the election till the issues raised by them are decided.

7. On the other hand, Dr.A.E. Chellaiah, Chairman, Election Committee would submit that they took earnest efforts and meticulously verified all the records and prepared the



voters list. In the process, approximately 1000 members have already been eliminated. According to him, every record has been verified meticulously and thereafter only, the voters list has been finalized and in fact, the election notification has been issued and filing of nominations have also begun. Therefore, the election process cannot be stalled. Further, he would assure that if there is any specific instance of a non-resident member or a person, who is not practising before the Madras High Court or a non-practitioner finding place in the voters list and if it is brought to the notice of the Committee, definitely, necessary action will be taken to rectify the same.

8. Mr.P.V.S. Giridhar, learned counsel appearing for the Madras High Court Advocates' Association would submit that the association already appointed the very same Committee appointed by the Division Bench of this Court and therefore, there cannot be any objection by any of the members regarding the appointment of the said Committee. The points raised by the petitioner and other counsel now are not supported by any pleading and all of a sudden, by posting the matter before this Court, a new case is sought to be introduced. If they want to urge all these points, they are at liberty to file a W.M.P. and it would be appropriately contested by the respondents, he would submit. The learned counsel would also rely upon the judgment of the Honourable Supreme Court in Supreme Court Bar Association and Others V. B.D. Kaushik reported in 2011 13 SCC 774. He would draw the attention of this Court to paragraph Nos. 60 & 61 of the said judgment to contend that once the election process is set in motion, the same cannot be stalled and the election process has to be completed as per the schedule.

"60. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process.

61. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 CPC the Court could not have



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ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of the SCBA would have been required to prepare a new voters list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the plaintiffs/respondents which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge."

9. In reply to the above submissions, Mr.Sathyabal wanted to make it clear that either he or the other counsel, who are sailing with him, are not asking for deferring the election but they want the election to be conducted as per law, only after verification of the records.

10. Mr.Arivazhagan, learned counsel would raise a point that there are many advocates who are residing outside the City of Chennai, but still they may be practising in Madras High Court and therefore, their voting rights should not be curtailed.

11. It is a fact that the erstwhile office bearers were appointed for the period from 26.11.2016 to 26.11.2018 and thereafter, they cannot function as office bearers. However, the same office bearers have appointed a committee on 08.01.2019. No doubt, the Committee is headed by a very Senior Advocate Dr.A.E.Chellaiah and the members are all respected members of the bar and there is no problem with the Committee. However, the office bearers who ceased to be office bearers as on 26.11.2018 did not have the power to appoint the Committee on 08.01.2019. It is not as if the Committee appointed by the erstwhile office bearers has been appointed according to their whims and fancies. The very same Committee was appointed by the Division Bench of this Court in W.P. NO. 13389 of 2015. It is the said Committee which conducted the last election successfully without any problem and they are going to conduct the present election also. Though the Committee does not have the power, the very same Committee had been appointed by the Division Bench of this Court and their appointment cannot be found fault with because of the members of the Committee and not because of the fact that the Committee has been appointed by the erstwhile office bearers. The members of the Committee command such great respect and because of that, even in the absence of the power of the erstwhile office bearers, this Court approves the appointment of the Committee.



12. The Division Bench of this Court already held that "one bar one vote" has to be adhered to and in the order dated 18.04.2016 in W.P. No. 13389 of 2015, in paragraph No.15, the Division Bench directed the election to be conducted on the basis of one bar one vote. Paragraph Nos.13 &15 of the said order are usefully extracted as follows:

"13. In other words, we are of the considered view that the bye-laws of all existing Bar Associations and Advocate Associations shall be taken to have been suitably amended after the issue of the 2015 Rules. Today, these Rules shall be read as part and parcel of the bye-laws of the Association. As a consequence, all elections to all Associations shall take place hereafter only in accordance with one bar one vote principle, which has now gained statutory recognition in the form of 2015 Rules.

...

15. Though it is true that the present set of office bearers of MHAA and the Law Association have continued by virtue of the orders passed by this Court, without taking any steps for the past six months to amend the bye-laws, we do not think that the appointment of an Ad hoc Committee in the place of the present set of office bearers is necessary. If a General Body has to be convened and a resolution for the amendment of the bye-laws has to be passed, then the present set of office bearers may have to be replaced by an Ad hoc Committee. But, we have chosen to read that one bar one vote principle into the bye-laws of all the Associations by virtue of the statutory prescription. Therefore, the only role to be performed by any Committee is to prepare an electoral roll in tune with Bar Council of India's prescriptions and conduct the elections as per one bar one vote principle."

Therefore, the principle of "one bar one vote" has to be followed in this election as well as in future also.

13. This is pursuant to the orders passed by the Honourable Supreme Court in Supreme Court Bar Association and Others V. B.D. Kaushik reported in 2011 13 SCC 774.



14. With regard to the contention of Mr.T.Kalaimani, Ms.B.S. Ajeetha and Mr.Sathyabal that resident members alone have to be allowed to vote, to understand the difference between 'resident' and 'non-resident' members, it is appropriate to extract clause 9(a) to (d) of the bye-laws of the Madras High Court Advocates' Association which speaks about members:

"9. Members:

The Association shall consist of the following classes of members.

a. Resident Members: Members who have completed two years at the Bar and who are residing or carrying on their profession within the limits of the Corporation of Chennai. However, Advocates who have not completed two years may be admitted as Associate Members, with right to use the library, without any voting power, on payment of such fee as may be prescribed by the Association from time to time.

b. Non-resident Members: Members who are residing or carrying on their profession outside the limits of Corporation of Chennai.

c. Honorary Members: Distinguished Jurists or Eminent Judges who are invited by the Association to become Members.

d. Voting Right: Only Resident Members will be entitled to vote in the Annual and Extra Ordinary General meetings of the Association and in the Election..... "

A perusal of the above would reveal that 'resident members' are members who have completed two years in the Bar and who are residing or carrying on their profession within the limits of Corporation of Chennai. Non-resident members are those who are residing and carrying on their profession outside the limits of Corporation of Chennai. As far as voting rights are concerned, it has been specifically stated in clause 9(d) that only resident members will be entitled to vote in the Annual and Extraordinary General Body Meetings of the Association as well as in the election. When that is so, it would not be proper to conduct the election without determining as to who are resident members and who are non-resident members. As on date, the said classification has not been done. Therefore, in the voters list, the resident members have to be identified.

15. As rightly pointed out by Mr. Arivazhagan, there may be advocates residing outside the City of Chennai, but practising in Madras High Court. In this regard, it is appropriate to get



assistance from Bar Council of Tamil Nadu for issuance of Certificate of Practice. The Certificate of Practice would reveal that in which Court, a particular member is practising irrespective of his place of residence. If a member has filed vakalath before Madras High Court, it goes without saying that dehors his residing outside the City of Chennai, still he can be considered as a resident member and even a person, who is residing within Chennai, is not able to prove that he is practising before the Madras High court by filing vakalath, still he cannot be considered as a resident member. Therefore, the Bar Council of Tamil Nadu is directed to give certificate of practice in respect of the members to the Election Committee.

16. Mr.J. Pothiraj, learned counsel for Bar Council of Tamil Nadu and Puducherry would submit that certificate of practice has not been issued and it will take at least two weeks time to issue certificate of practice.

17. Therefore, within three weeks from the date of receipt of a copy of this order, the Bar Council of Tamil Nadu is directed to issue certificate of practice to the Election Committee and thereafter, the Election Committee shall scrutinize and determine the status of the members as resident or non-resident and prepare the voters list.

18. As far as the contention made by Mr.P.V.S. Giridhar, learned counsel for the 3rd respondent that once the election process is set in motion, it cannot be stalled is concerned, every rule has got an exception. The issue with regard to whether a member is a resident or a non-resident member goes to the root of the matter and since the said classification has not been done so far, it will vitiate the very proceedings itself. The election needs to be conducted in conformity with the bye-laws by determining the status of members i.e, whether they are 'resident' or 'non-resident' and without doing so, it is not possible to conduct the election as per bye-laws. In such circumstances, this Court has got every power to postpone the election so that any deficiency or lacuna in the election process can be rectified.

19. It has been already made clear by Mr. Sathyabal, Ms.B.S. Ajeetha and Mr. T. Kalaimani that they are not trying to postpone the election or stall the election and it is their endeavour to see that the election process is conducted according to the bye-laws and as per law.

20. That apart, this Court has noticed many persons, who have not even entered this campus are trying to become members of the Association and office bearers of the Association. Using their post as office bearers, it is learnt that they indulge in 'katta panchayat' and other unwanted activities bringing



disrepute to the profession as well as to the advocates' associations. That has to be stopped and only to ensure that such excesses do not occur, these measures have become necessary. The advocates are fighting for the rights of common man and their conduct should be aboveboard. Past glory has to be restored and moreover, the Madras High Court Advocates' Association, which is called 'Maha Association' and which is the biggest association in the country should have persons with integrity, competence and legal knowledge as its office bearers. The office bearers should have maturity to handle issues in case of any difficulty faced by the members of the Association.

21. Though the writ petition has been filed seeking a writ of mandamus to consider the representation of the petitioner dated 25.06.2019, the matter was argued at length by all the parties regarding the membership based on Certificate of Practice and determining the status of members as resident or non-resident and therefore, this Court is inclined to go into the issues in detail, right from qualification to conduct of election as per law and also better administration of the association.

22. Since there is no qualification fixed for contesting the election to the post of office bearers, non-practising advocates and advocates who do not have even completed one year in the Bar are contesting the elections and surprisingly, they are also getting elected. Those candidates who do not have sufficient practice in the Bar and the maturity to handle the situation in case of any delicate situation, many problems are created not only affecting the Bar but also damaging the image of judiciary especially High Court. Those who are contesting should have minimum experience and they should be regular practitioners before the High Court as they are going to contest the association named after Madras High Court which has got its legacy from the year 1862. Many stalwarts and legal brains were occupying those posts. Though such kind of people, even if contest in the election, they would certainly loose the election in the present scenario. In any event, in an endeavor to restore the glory of the association and also in the interest of this Court, as the association is functioning within the premises of the Madras High Court, it is appropriate to fix qualifications and other standards for contesting the elections. Unless the qualifications are fixed, anybody by enrolling before the Bar Council would enter into the election process and therefore, the following qualifications are fixed:

1. PRESIDENT:

(a).Senior Counsel/Advocate who has got regular practice atleast for a period of 25 years.

(b).They should have argued atleast 50 contested cases before the High Court each year and 250 cases for the



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past 5 years.

2. VICE - PRESIDENT:

(a). Advocate who has got regular practice atleast for a period of 20 years.

(b). They should have argued atleast 30 contested cases before the High Court each year and 150 cases for the past 5 years.

3. SECRETARY:

(a). Advocate who has got regular practice atleast for a period of 20 years.

(b). They should have argued atleast 30 contested cases before the High Court each year and 150 cases for the past 5 years.

4. TREASURER:

(a). Advocate who has got regular practice atleast for a period of 15 years.

(b). They should have argued atleast 25 contested cases before the High Court each year and 125 cases for the past 5 years.

5. LIBRARIAN:

(a). Advocate who has got regular practice atleast for a period of 15 years.

(b). They should have argued atleast 25 contested cases before the High Court each year and 125 cases for the past 5 years.

6. SENIOR EX. COMMITTEE MEMBERS:

(a). Advocate who has got regular practice atleast for a period of 10 years.

(b). They should have argued atleast 15 contested cases before the High Court each year and 75 cases for the past 5 years.

7. JUNIOR EX. COMMITTEE MEMBERS:

(a). Advocate who has got regular practice atleast for a period of 5 years.

(b). They should have argued atleast 5 contested cases before the High Court each year and 25 cases for the past 5 years.

Though fixing of qualification and other issues are the matters of internal management of the Association, this Court fixes the above qualifications under Article 226 of the Constitution of India as the Court has got control over the entire campus and anything happens within the campus will badly reflect upon the judiciary. In an endeavor to do complete justice and to streamline the association of advocates which is one of the stakeholder of the justice delivery system and since its role is very important, the above qualifications are necessary.

23. Only in the interest of justice, this order has been passed. Moreover, this Court only intends to see that the election process is conducted as per the bye-laws and by



stalling the election, this Court is not making any aspersions against the Committee. It is only to see that the voters list is properly prepared and the election process is completed according to law within 16 weeks from the date of receipt of a copy of this order.

24. As far as grievance with regard to non-conducting of General Body Meeting every year is concerned, after the election, when the new office bearers take charge, it is their bounden duty to conduct General Body Meeting every year or Extraordinary General Body Meeting at the request of the members of the Association. Accounts have to be submitted for auditing properly and the annual returns have to be submitted before the authorities under the Societies Registration Act.

25. With regard to misdeeds said to have been committed by ex-office bearers, as stated by Mr.Sathyabal in his representation, the Bar Council of Tamil Nadu as well as the authorities under the Societies Registration Act can deal with it in accordance with law.

26. When the office bearers are experienced and senior members, the other members can be guided properly. Hence, this Court has given the above directions.

27. The writ petition is disposed of with the above observations. Connected W.M.Ps are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nv

To

1. The Chairman & Members,
Election Committee,
M.H.A.A., Chennai - 600 104.
2. The Secretary,
Bar Council of Tamilnadu and
Pondicherry,
Chennai - 104.



3. The Manager,
Madras High Court Advocates
Association,
High Court, Chennai - 104.

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+1cc to M/s.J.Pothiraj, Advocate Sr.41616

W.P. No. 18847 of 2019

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