

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2350 OF 2022**

Madhukar A Patil

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

**Mr Rajiv Patil, Senior Advocate, i/b Vrushali Maindad, for the
Petitioner.**

Mr MM Pable, AGP, for Respondent No. 1-State.

**Mr Shekhar Jagtap, with Reha, Sairuchita Chowdhary & Mayuresh
Ingale, for Respondent No. 2.**

Mr Makarand Bakore, for Respondent No. 3.

Mr Sandesh Deshpande, for Respondent No. 4.

Mr Shriram Kulkarni, with Sujay P, for Respondent No. 5.

**Mr Suhas Oak, with Vinod Utekar & Sagar Joshi, for Respondent No.
6.**

Mr Kisan D Sukre, for Respondent No. 7.

Mr Raviraj P, for Respondent No. 8.

Mr Ganesh Sovani, for Respondent No. 10.

Mr Mandar Limaye, for the Intervenor.

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**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.
DATED: 3rd March 2022**

PC:-

1. The Petitioner is a member of the Thane District Court Bar Association. In this Petition, he seeks the following reliefs:

“a. This Hon’ble Court be pleased to issue a writ of Mandamus or any other writ, Order, rule or directions and thereby direct the BCMG to frame rules regarding disqualification of Consecutive Candidature of existing elected office bearers of Bar Associations.

b. This Hon’ble Court be pleased to issue a writ of Mandamus or any order, rule or direction in the nature of Mandamus thereby directing the Thane District Courts Bar Association to restrict the Respondent No. 6 to 10 and those persons currently bearing offices or being committee members from contesting the TDCBA election 2022.

c. That, this Hon’ble Court be pleased to quash and set aside the order dated 22.02.2022 passed by Ld. Election Commissioner, Thane District Courts Bar Association thereby rejecting instant Petitioner’s application marked as **Exhibit-D.**”

2. All these reliefs are clearly directed towards the same objective, viz., to issue a writ of mandamus to the Bar Council of Maharashtra and Goa to force a change in the rules, byelaws or constitution of Respondent No. 4, the Thane District Courts Bar Association. This is registered as a public charitable trust under the Maharashtra Public Trusts Act, 1950.

3. The specific challenge is to the order at Exhibit-D from page 88. This is dated 22nd February 2022 and is an order by Advocate Munir Ahmed, the nominated Election Commissioner or Officer for the Thane District Courts Bar Association election scheduled this weekend. The order is, in our considered view, careful, elaborate and extremely well-reasoned. It considers all the material placed before the Learned Election Officer by the Petitioner.

4. Essentially, the entire case before the Election Commissioner/Officer is based on a decision of a Division Bench of the Madras Court in Writ Petition No. 1571 of 2019, which apparently holds that no person can stand for election or contest for a consecutive second term but at best can contest at alternate elections. These directions were stayed by the Supreme Court in SLP Civil Nos. 11300 of 2021 by an order of 7th January 2022.

5. There are two threshold issues with this Petition. First, as the prayers extracted above show, the entire thrust of the Petition is a plea for a mandamus. It is now well settled that for a mandamus to issue, there must be a demonstration of a legal right that vests in the petitioner and a corresponding legal duty and obligation in the respondent, which or who must be amenable to the writ jurisdiction of a court under Article 226 or 277 of the Constitution of India. The Petitioner must seek an enforcement of the legal right by demanding the performance of that legal duty. This is what we call ‘a demand for justice’. Once it is refused, the Petitioner can seek a writ of mandamus. In *Mani Subrat Jain & Ors v State of Harayana & Ors*¹ the Supreme Court held:

“... It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something...”

1 (1977) 1 SCC 486.

6. In *Union of India v SB Vohra*,² the Supreme Court said:

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King’s Bench (now Queen’s Bench) directing performance of a public legal duty.

13. **A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”**

(Emphasis added)

7. In *Saraswati Industrial Syndicate Ltd v Union of India*,³ the Supreme Court said:

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. **Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well.**

(Emphasis added)

2 (2004) 2 SCC 150.

3 (1974) 2 SCC 630.

8. The Supreme Court reaffirmed these principles in *DN Jeevaraj v Chief Secretary, Government of Karnataka & Ors.*⁴

9. But if there is no demonstrated legal right in the first place nor a corresponding legal duty, simply making a demand is of no consequence. The Petitioner is unable to demonstrate that in the Petitioner, or in every member of any Bar Association, there vests or inheres a right to demand from the Bar Council a duty to compel a change in Bar Association's constitution, rules or bylaws. It is also not shown how the Bar Council of Maharashtra and Goa, undoubtedly an instrumentality of the State within the meaning of Article 12, has the power to require a Bar Association to frame a particular rule or to change its constitution. Membership of any association is usually voluntary. Every member has a right to canvass with fellow members for such changes in either administration or constitution as he thinks appropriate. But that amendment to the rules, bylaws or constitution has to follow a defined procedure. That procedure may be defined by the bylaws, rules or constitution themselves, or, as in this case, by a governing statute such as the Maharashtra Public Trust Act. It is not possible for any Petitioner to simply *assume* that there vests in the Bar Council of Maharashtra and Goa such a power to direct Bar Associations to make changes to their Association's constitution, rules and bylaws at the instance of one member. If, therefore, there is no such duty on the part of the Bar Council of Maharashtra and Goa, nor is it shown that the Bar Council has such power, then obviously no writ will issue to the Bar Council.

4 (2016) 2 SCC 653.

10. If the alternate submission is that a writ must issue to Thane District Courts Bar Association itself, then there is a second problem namely, that the Thane District Courts Bar Association is not a instrumentality of the State amenable to the writ jurisdiction of this Court.

11. Mr Patil, learned Senior Advocate for the Petitioner, endeavours to make some submissions about some alleged interference of Election Officer, some changes made to the nomination forms and so on. But none of those submissions have any connection or nexus at all to the relief sought. No purpose is achieved by examining those at this stage. We do not approve of this approach of bringing a petition on one ground and then, by amendment, enlarging the scope and canvas of the petition by amendment. Just because the form of the proceeding is a writ petition, with greater latitude and flexibility, does not mean that no principle analogous to Order XVII of the Code of Civil Procedure, 1908 regarding amendments will ever apply. If the amendment attempts to entirely change the character and nature of the petition, and does so only to avoid a rejection or dismissal on the grounds on which the petition was instituted, then such an application for amendment should not be entertained.

12. It is also not as if in regard to the elections, the Petitioner does not have an alternate remedy under the statute itself, i.e., the Public Trusts Act.

13. One other submission that we heard was that a particular person whose name features in the voters list is a member of a Taluka Bar Association, but is only a affiliate member of the Thane District Courts Bar Association. The submission was that as an affiliate member (or as an office bearer of an affiliate member) such a person cannot be on the 4th Respondent Bar Association's Voters list. This is the problem with making allegations of fact without proper verification. For, we are equally resolutely informed that the gentleman in question is in fact a life member of the 4th Respondent Association itself and features on the voters list in that capacity and not because he is or happens also to be an office bearer of a Taluka Bar Association.

14. The final submission is that the principal of 'One Bar, One Vote' enunciated in *Gulabchand Shivram Gawand & Ors v The Thane District Courts Bar Association*⁵ should be applied. We are unable to see the relevance of this in the context of what is being sought in the present Petition. This decision does not say anything at all about a member offering himself for a election or contesting an election for successive terms. There is absolutely no connection between the 'One Bar, One Vote' principle and the relief the Petitioner seeks before us today.

15. In our view, the Petition is entirely without substance. The well-reasoned order of the Election Officer/Commissioner at Exhibit-D demands no interference.

5 2019 (2) Bom CR 405

16. The Petition is rejected. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)