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Rev.Appln No. 167 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Review Application No. 167 of 2021

and

WMP.No.27334 of 2021

and

WMP.No.27830 of 2021 in Rev.AplW.SR.No.109735 of 2021

WMP.No.28296 of 2021 in Rev.AplW.SR.No.112310 of 2021

WMP.No.29088 of 2021 in Rev.AplW.SR.No.114156 of 2021

WMP.No.29947 of 2021 in Rev.AplW.SR.No.114756 of 2021

WMP.No.76 of 2022 in Rev.AplW.SR.No.113947 of 2021

WMP.No.1190 of 2022 in Rev.AplW.SR.No.2660 of 2022

K. Sathyabal

.. Review Applicant

Versus

1. The Chairman & Members
Election Committee
M.H.A.A., Chennai - 600 104

2. The Secretary
Bar Council of Tamilnad and Pondicherry
Chennai - 600 104

3. The Manager
Madras High Court Advocates Association
High Court, Chennai - 600 104

.. Respondents



Rev.Appln No. 167 of 2021

Review Application filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure to review the Order of this court dated 19.08.2021 passed in W.P. No. 18847 of 2019.

For Review applicant : Mr. K. Sathyabal, P-in-P

For petitioner in WMPs : Mr.N.Jyothi for Mr.G.Mohanakrishnan, P-in-P
in WMP.No.27830 of 2021

Mr.G.Murugendran for WMP.No.28296/2021

Mr.P.V.S.Giridhar for WMP.No.29088 of 2021

Mr.V.Jai Bharath for WMP.No.29947 of 2021

Mr.R.Dinesh Kumar for WMP.No.76/2022

Mr.R.Krishna Kumar P-in-P
for WMP.No.1190 of 2022

For Respondents : Dr. A.E. Chelliah, senior counsel for R1
Mr.C.K.Chendrasekhar for R2

ORDER

R. MAHADEVAN, J.

This Review application is filed by the writ petitioner, seeking to review the order dated 19.08.2021 passed by this Court in WP No. 18847 of 2019.

2. The facts apropos are that the review applicant / petitioner preferred the aforesaid writ petition seeking a direction to the second respondent to take necessary steps for free and fair election in the Madras High Court



Rev.Appln No. 167 of 2021

Advocates Association (hereinafter referred to as the 'MHAA') by considering his representation dated 25.06.2019.

3. It was stated by the petitioner in the writ petition that the bye-laws of the MHAA were amended with effect from 06.03.2010, as per which, the elected body shall have a duration of two years from the date of election and after expiry of the period, fresh election has to be conducted and new office bearers have to be elected. According to the bye-laws, the election to elect new office bearers for the MHAA was scheduled to be conducted on 26.11.2016. Immediately, the petitioner raised objection by submitting a representation stating that those, who did not pay the membership fee continuously for two years, are deemed to have been disqualified as Members of the MHAA and they should not be permitted to contest the election. Despite the said objection, election was conducted and new office bearers, such as President, Secretary and Members were declared as elected by the then Election Committee.

4. The petitioner further averred that as per the bye-laws, the duration of the office bearers elected in the year 2016 headed by the President Mr. G. Mohanakrishnan, was only 2 years and thereafter, they were ceased to be the office bearers of the MHAA i.e., from 26.11.2018 onwards. In other words, after 26.11.2018, the elected office bearers, elected during the year 2016, can no longer hold the office of the President, Secretary or Member as the case may be.



Consequently, they have no right to take any administrative decision or deal with the funds of the MHAA. However, from November 2018 to April 2019, the President and office bearers withdrew Rs.60 lakhs from the account of the MHAA and utilised the same to largely propagate their names and/or achievements made by them during their stint and to elect them once again in the next election, thereby misappropriating the MHAA funds. Such act of the erstwhile office bearers of the MHAA, is nothing but a clear case of malpractice.

5. The petitioner also stated that as per the bye-laws of the MHAA, a General Body meeting has to be convened and audited accounts have to be placed before the general body for approval. Further, by convening such general body meeting, a Teller Committee ought to have been appointed and the entire administration of the MHAA be handed over to them. But, the same were not done by the erstwhile elected body. In fact, even after expiry of the term, the erstwhile President acted as an elected President until April 2019. On March 9, 2019, they convened executive committee meeting and appointed a five member election committee, without any authority, which is *void ab initio*. While so, the so-called unauthorised election committee issued a notification dated 27.03.2019 for conducting an election. According to the petitioner, the committee has no legal sanctity and authority to conduct the election. However,



Rev.Appln No. 167 of 2021

the committee extended the last date for payment of arrears of subscription from 10.06.2019 to 24.06.2019 and without the supervision of the committee, arrears of subscription was collected by the office of the MHAA which led to bulk subscription payments made by few members. Even on 24.06.2019, the collection of arrears went beyond 6.00 pm when many individuals paid arrears of fee. When this was questioned by the petitioner, it was rejected and the committee continued to collect lump sum payment of arrears.

6. The grievance expressed by the petitioner in the writ petition was that election to elect a new body has to be conducted in a transparent manner. It is in this context, the petitioner submitted a representation dated 25.06.2019 *inter alia* demanding conduct of election by strictly implementing the one bar one vote norm as well as other requirements. Finding no response on the same, he filed the aforesaid writ petition before this court.

7. When the writ petition was taken up for hearing, on behalf of the first respondent, Dr. A.E. Chelliah, learned senior counsel submitted that he was appointed as Chairman of Election Committee and after his appointment, he meticulously verified all the records and prepared voters list. Finding that nearly 1000 voters' names were erroneously included, he took steps to eliminate them. Thereafter, the voters list was finalised and the election notification was issued.

Therefore, according to the learned senior counsel, at the instance of the



petitioner, the election process need not be stalled. It was also stated that if there is any specific instance of non-resident member or a name of the person who is not practising before the Madras High Court or a non-practitioner, finds place in the voters list, as a Chairman, he will take appropriate action to rectify the same. Therefore, the learned senior counsel prayed for dismissal of the writ petition.

8. After hearing the rival submissions, by the order dated 19.08.2021, which is sought to be reviewed herein, this Court disposed of WP No. 18847 of 2019 filed by the petitioner. The observations made in the said order would run thus:

"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 bylaws 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 bylaws. 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 bylaws 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 "kattapanchayat" and other unwanted activities bringing disrepute to the profession as well as to the advocates'



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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 above board. Past glory has to be restored and moreover, the Madras High Court Advocates' Association, which is called "MHAA 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, nonpracticing 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 lose the election in the present scenario. In any event, in an endeavour 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 election. Unless the qualifications are fixed, nobody by enrolling before the Bar Council would enter into the election process and therefore, the following qualification 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 past 5 years.

2.VICE - PRESIDENT:

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



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(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 endeavour 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 bylaws 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*



Rev.Appln No. 167 of 2021

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.”

The aforesaid order dated 19.08.2021 passed in the writ petition is sought to be reviewed in this application, at the instance of the petitioner.

9. The Review Applicant / petitioner as party in person, submitted that there are errors apparent on the face of the order and hence, the same warrants a review. It is his further contention that the relief sought in the writ petition was only for a mandamus, directing the respondents to dispose of his representation. However, while passing the order, the Division Bench has made certain observations, which were never argued by the petitioner at all. In effect, such observations tend to take away the powers of the general body of the association as well as affect the policy decisions and bye-laws of the MHAA. The petitioner further submitted that the bye-laws were actually recommended during the year 2010 and the same were approved by this Court; and as per the directions of this Court, the bye-laws were placed before the General Body



meeting of the MHAA, discussed and debated before the same being accepted;

and thus, the MHAA is governed by the bye laws approved by its general body.

Adding further, the petitioner stated that the bye-laws clearly describe the person who can become a member, qualification and disqualification of the member, how a member can get his voting right, the manner in which the election has to be conducted etc. However, by superseding the clauses contained in the bye laws of the MHAA, the Division Bench has made certain observations which are required to be reviewed. If the existing bye-laws of the MHAA are required to be amended, the General Body of the MHAA alone is competent to do so and the Division Bench ought not to have issued the directions as contained in para Nos. 20 and 22 of the order under review. Thus, according to the petitioner, the order dated 19.08.2021 in effect, taking away the prerogative right of the members of the association, cannot be allowed to stand, as the observations made by the Division Bench of this Court would affect the credibility and sanctity of the MHAA and therefore, the review application will have to be allowed.

10. On the other hand, Dr. A.E. Chelliah, learned senior counsel for the first respondent submitted that the Review applicant has no intention to improve the standards and improvement of the affairs of the MHAA. In fact, taking note of the need and necessity to set certain parameters to be followed, the Division



Rev.Appln No. 167 of 2021

Bench of this Court, had framed those guidelines in the matter of conduct of election to the MHAA and it does not warrant a review by this Court.

Continuing further, the learned senior counsel submitted that the bye-laws of the MHAA have not been scrupulously followed and therefore, the Division Bench of this Court had issued guidelines while disposing of the writ petition filed by the Review Applicant. The learned senior counsel also pointed out that with respect to certain incidents that had taken place within the premises of this Court on 19.02.2009, a retired Judge of the Supreme Court was appointed as a One Man Commission, which submitted a report on 04.03.2009, as per which, it is high time that the bye-laws of the MHAA deserves a re-look which would pave way for a conducive atmosphere to prevail within the campus of this Court and thus, a review of the order dated 19.08.2021 is not warranted.

11. Pending the review application, WMP Nos. 27830, 28296, 29088 and 29947 of 2021, 76 and 1190 of 2022 were filed by some third parties, who are members of the Bar Council of Tamil Nadu and Puducherry, seeking leave to sue in this Review Application.

12. In all these miscellaneous petitions, it is stated in unison that the Division Bench of this Court, while disposing of the WP No. 18847 of 2019 filed by one of the members of the MHAA, has travelled beyond the scope of



Rev.Appln No. 167 of 2021

the writ petition and issued certain directions overriding and/or superseding the bye laws of the MHAA. According to the petitioners therein, the members of the MHAA are making huge contribution for the justice delivery system. It is further stated that the elections to the MHAA are conducted periodically in a peaceful manner under the supervision of this court as per the bye-laws framed by the MHAA. It is also stated that the bye-laws of the MHAA have been adopted by its office bearers in the meeting conducted during the year 2010 and if any amendment is to be made with respect to the conduct of election, term of office of the office bearers etc., the MHAA has to call the general body meeting and it is for the general body to decide the amendments, if any, as proposed. While so, the Division Bench of this Court, while disposing of the writ petition *simplicitor* filed for a Writ of Mandamus to consider the representation dated 25.06.2019, has fixed the terms and conditions for convening the election, the qualification criteria for contesting the post of President, Secretary etc. Thus, according to the petitioners in the miscellaneous petitions, a judicial review is not warranted when the MHAA is governed by the bye-laws framed in the year 2010 and the guidelines issued by the Division Bench of this Court, with respect to the qualification and/or eligibility criteria of the candidates who desire to contest the candidates are totally beyond the scope of the adjudication of the writ petition.

13. We have heard the learned counsel appearing for all the parties and

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perused the materials placed before us. At the outset, it is important to state that the order under review has been passed by a different Bench and as such, this Bench will have the natural limitation of what exactly were the proceedings before that Division Bench which passed the order under review and also as to what passed in the mind of the said Bench. We are therefore, proceeding on the basis of the pleadings and other papers placed on record in order to gather the reasons on the basis of which the order under review has been passed.

14. Now, the very first question that arises for determination is, whether a review is either warranted or necessary in the facts and circumstances of the case. It is seen from the records that the writ petition culminating in the order under review, was filed seeking a writ of Mandamus directing the Secretary, Bar Council of Tamil Nadu and Pondicherry (the second respondent herein) to dispose of the representation of the petitioner dated 25.06.2019. In his representation, the petitioner had highlighted certain issues and anomalies in the functioning of the Madras High Court Advocates Association (MHAA). In this regard, he had also made certain demands, which are as follows:

- i. One bar one vote has to be implemented strictly.
- ii. Those who have given Certificate of practice to the Bar council of Tamilnad and Pondicherry alone should be considered for voting.

iii. After the last day for paying subscription (24.06.2019 at 6.00 pm)
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the valid voters list of voters (to be prepared by the committee) should be sent to Bar Council of Tamilnad and Pondicherry for cross verification whether all these voters have submitted one bar one vote option and the certificate of practice.

iv. The Bar Council of Tamilnad and Pondicherry has to verify the list sent by the MHAA election committee and prepare a separate voters list after verifying "the one vote one bar option given in the year 2016" and compare it with the list of Advocates who have given the Certificate of Practice. The advocate members who have not given the above two should not be included in the voters list.

v. The committee should seek the Bar Council of Tamilnad and Pondicherry to prepare a proper valid voters list in the above said lines to have a fair and free transparent election.

vi. The election has to be conducted only on the basis of valid voters list prepared and given by the Bar Council of Tamilnad and Pondicherry. Till then the election may be postponed.

vii. The law college students should be prevented from campaigning for the Election.

viii. Advocated with ID card issued by the Bar Council of Tamilnad and Pondicherry should only be allowed inside the court campus.

ix. Except the advocates With valid ID all other people including students should be sent out of the campus for which necessary protection may



be obtained by the committee from the court registry.

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x. A thorough and detailed investigation has to be conducted as to why and without the physical supervision of election committee collection arrears was permitted and how it has been permitted to make lump sum payment after 6pm' on the last day 24.06.2019. All the payment made after 6.00 pm should not be considered while preparing the voters list.

xi. A thorough investigation has to be conducted whether actual payment was made and it should be verified based on the date of deposit in the account' of MHAA.

It was further stated in the said representation that unless all the above said defects and anomalies are rectified, the election should not be conducted. If these were satisfied, a General body has to be called and with the approval of the general body, a fresh notification may be issued and the election may be conducted on that basis. Stating so, the petitioner had requested the Bar Council of Tamilnadu and Puducherry to take necessary steps for free and fair election in the MHAA.

15. It is therefore seen that the representation covers a wide range of issues on eligibility to vote, the fulfilment of the 'one bar one vote' principle, the submission of the certificate of practice, etc. and also highlights certain other irregularities relating to the payment of subscription by the members of the



Rev.Appln No. 167 of 2021

MHAA. The circumstances in which the representation came to be submitted by the petitioner have already been narrated in the previous paragraphs, and it is in this context and in the larger backdrop of the various submissions made by the other members of the Bar highlighting several issues in respect of those who would be eligible to vote at the elections for the MHAA, that the order under review came to be passed. While it has now been argued that the order under review travels well past the issues raised for consideration in the writ petition, this Court not being aware of the submissions made orally before the Hon'ble Bench which passed the order, would not like to make any remark on the same. As stated earlier, this Court will have to be guided by the pleadings and materials placed on record as well as the other documents that are germane to the issue. Upon perusal of the pleadings, it cannot be said that this Court has travelled beyond the pleadings and that, the most important of them being the bye-laws of the MHAA. The intention of the petitioner, then was to streamline the MHAA more particularly the election. It is one thing to say that such contentions were not raised and another to say that the relief granted is not what was sought for. To grant or reject or to mould the relief sought is within the plenary powers of this Court under Article 226 of the Constitution of India more so when the public interest is involved. The contentions raised in the affidavit would reveal that though as a member, the petitioner had a grievance against the



mode of functioning of the MHAA, yet, larger interest was all along evident from the pleadings and the documents. This Court under Article 226 of the Constitution of India, while passing the order as it deems fit in the facts and circumstances of the case, is not only empowered to make certain observations, but also issue appropriate directions. In this connection, it will be useful to refer to the judgment of the Hon'ble Apex Court in ***Rupa Ashok Hurra v. Ashok Hurra***, [(2002) 4 SCC 388 : 2002 SCC OnLine SC 433 at page 412], wherein, it was held as follows:

“41. At one time adherence to the principle of stare decisis was so rigidly followed in the courts governed by the English jurisprudence that departing from an earlier precedent was considered heresy. With the declaration of the practice statement by the House of Lords, the highest court in England was enabled to depart from a previous decision when it appeared right to do so. The next step forward by the highest court to do justice was to review its judgment inter partes to correct injustice. So far as this Court is concerned, we have already pointed out above that it has been conferred the power to review its own judgments under Article 137 of the Constitution. The role of the judiciary to merely interpret and declare the law was the concept of a bygone age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years there is a discernible shift in the approach of the final courts in favour of rendering justice on the facts presented before them, without abrogating but bypassing the principle of finality of the judgment. In Union of India v. Raghbir Singh [(1989) 2 SCC 754] Pathak, C.J. speaking for the Constitution Bench aptly observed : (SCC pp. 766-67, para 10)

“10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that ‘the life of the law has not been logic it has been experience’



(*Oliver Wendell Holmes : The Common Law*, p. 5), and again when he declared in another study (*Oliver Wendell Holmes : Common Carriers and the Common Law*, (1943) 9 Curr LT 387, 388) that ‘the law is forever adopting new principles from life at one end’, and ‘sloughing off’ old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined (*Julius Stone : Legal Systems & Lawyers Reasoning*, pp. 58-59).

16. Every judgment, unless abridged by the facts of a peculiar case warranting no decision on merits, delivered by a court, is to comprise of the facts of the case, contentions of the parties, issues to be decided, deliberations, reasons and ultimately the findings. The principle laid down in the judgment, is called the “ratio” and the observation of the court on a legal issue though arising in the case, but unrelated to the decision of the case is “obiter”. While the “ratio” is binding, an “obiter” has a persuasive value. The only embargo is that the observations and directions will have to be related to the issue raised before the court. In the present case, the observations or the directions are undoubtedly connected with the issue raised before this court. At this juncture, it is relevant to refer to the following judgments:

i. The Hon’ble Apex Court *in Krishena Kumar v. Union of India*, [(1990) 4 SCC 207 : 1991 SCC (L&S) 112] while dealing with the doctrine of *stare decisis*, held as follows:

<https://www.mhc.tn.gov.in/judis> “20. In other words, the enunciation of the reason or principle upon which a



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question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th edn., Vol. 26, para 573)

“The concrete decision alone is binding between the parties to it but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which when it is clear it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi.”

ii. In ***Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC***

638 : 2002 SCC OnLine SC 375, a distinction was drawn between an obiter

and the ratio by the Hon'ble Apex Court, which held as follows:

“7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an



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observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision.

.....

10. The next case relied upon is the case of State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] Hon'ble Justice Sahai in his concurring judgment held that a decision which is not expressed and is not founded on reasons, nor is proceeded on consideration of issue, cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141. The learned Judge further observed that any declaration or conclusion arrived at without application of mind or proceeded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent."

iii. The Hon'ble Apex Court in the judgment in ***State of Andhra Pradesh v. AP State Wakf Board and others [2022 SCC Online SC 159]***, reiterating the scope of judgment, ratio decidendi and obiter dictum, held as follows:

"The observation made by this Court in respect of invocation of the jurisdiction of the writ court is clearly obiter as that was not the question arising for consideration. A three judge Bench of this Court in Director of Settlements, A.P. v. M.R. Apparao held that "A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight." Thus, a judgment is a binding precedent on the question which arises for consideration and not otherwise."

17. This court earlier was not called upon to adjudicate the correctness



of any order or his individual dispute. The petitioner wanted his representation to be disposed at the hands of the second respondent, a public authority, performing a public duty. In the process, this Court was well within its rights to consider whether such “Mandamus” could be issued and for that purpose, venture into the correctness of the contentions of parties. Even though we have our own doubts as to whether the 2nd respondent can go into the mismanagement and election irregularities, despite being the appropriate authority insofar as the grant of recognition and state welfare fund is concerned, as the MHAA would come within the jurisdiction of the Registrar of Societies, we decide to leave it open as we are at this stage concerned only with the review. In this context, it will be appropriate to refer to the judgment of Division Bench of this Court in ***W.P No 9752 of 2015 dated 19.06.2015 in Madras High Court Advocates Association v. The Secretary, Bar Council of Tamil Nadu and Puducherry and another***, wherein, while considering the grant of recognition to a second association, the scope of recognition by the Bar Council was considered and held as under:

“71. The situation on hand can be compared only to the appointment of a licensed stamp vendor. By granting recognition to an association of advocates, the Bar Council does nothing more than appointing a licensed vendor to sell Advocates' Welfare Fund Stamps. Under the Tamil Nadu Stamp Rules and under the [Indian Stamp Act](#), one licensed stamp vendor is not entitled to oppose the appointment of any person as a licensed vendor, except on any of the 2 grounds specified in Rule 25 (iv) (a). The determination of the number of licensed stamp vendors and the determination of the geographical limits in which they shall operate, are all administrative matters left to the



discretion of the Chief Controlling Revenue Authority under the *Indian Stamp Act* and the Tamil Nadu Stamp Rules.”

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18. At this juncture, it will be useful to refer to the judgement of the Hon'ble Apex Court in *Director of Settlements, A.P. v. M.R. Apparao [(2002) 4 SCC 638 : 2002 SCC OnLine SC 375 at page 658]*, in which, it was held as under:

“17.Coming to the third question, which is more important from the point of consideration of the High Court's power for issuance of mandamus, it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is,therefore essentially,a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression “for any other purpose”. The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self-imposed limitations. The expression “for any other purpose” in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right,which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority,could be enforced by issuance of a writ of mandamus. “Mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date



Rev.Appln No. 167 of 2021

of the petition (Kalyan Singh v. State of U.P. [AIR 1962 SC 1183]).The duty that may be joined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.”

19. The petitioner having invoked the inherent jurisdiction of this Court under Article 226 of the Constitution, cannot question the authority of the court to issue directions. Now, continuing on the subject of observations, discussed in paras 15 and 16 above, the Division Bench of this Court, while disposing the writ petition, had not laid down any ratio. The findings in the course of the order, are observations having only the force of an obiter. Therefore, the observations, not having the force of a ratio, in the opinion of this court, would not warrant interference by deletion of the directions at its entirety but rather the qualifications are to be treated as suggestions to be considered at the time of amendment of the bye-laws in future, also taking into account the most important disciplines of democracy in election, viz-a-viz transparency and fairness.

20. Before proceeding further to delve into the rival contentions, it is appropriate to decide on the maintainability of the review petition. The authority to review a judgment or order pronounced stems primarily from Section 114 and Order XLVII Rule of Civil Procedure Code which lay down the circumstances or the grounds on which a review petition is maintainable. The law on the subject is no longer *res integra*, as evident from the following decisions:



i. The Hon'ble Apex Court in the judgment in ***Ram Sahu (Dead)***

Through LRs and Others v. Vinod Kumar Rawat and others [2020 SCC

online SC 896] while dealing with the scope of review, taking note of the several earlier judgments, held as under:

“25. While considering the aforesaid question, the scope and ambit of the Court's power under Section 114 read with Order 47 Rule 1 CPC is required to be considered and for that few decisions of this Court are required to be referred to.

26. In the case of Haridas Das v. Usha Rani Banik (Smt.), (2006) 4 SCC 78 while considering the scope and ambit of Section 114 CPC read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:

“14. In Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170 it was held that:

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in AribamTuleshwar Sharma v. AribamPishak Sharma, (1979) 4 SCC 389speaking through Chinnappa Reddy, J. has made the following pertinent observations:

‘It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be



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Rev.Appln No. 167 of 2021

confused with appellate power which may enable an appellate court to correct 20 all manner of errors committed by the subordinate court.’’

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

16. In AribamTuleshwar Sharma v. AribamPishak Sharma, (1979) 4 SCC 389 : AIR 1979 SC 1047, this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order 47 Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the Judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under : (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate 21 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.’’

17. The judgment in Aribam case has been followed in Meera Bhanja. In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long-drawn process of reasoning. The following observations in connection with an error apparent on the face of the record in Satyanarayan Laxminarayan Hegde v. MillikarjunBhavanappaTirumale, AIR 1960 SC 137 were



also noted:

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

18. It is also pertinent to mention the observations of this Court in *Parsion Devi v. Sumitri Devi*, (1997) 8 SCC 715. Relying upon the judgments in *Aribam* and *Meera Bhanja* it was observed as under:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be ‘reheard and corrected’. A review petition, it must be remembered has a limited purpose and cannot be allowed to be ‘an appeal in disguise’.”

27. In the case of *Lily Thomas v. Union of India*, (2000) 6 SC 224, it is observed and held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power.

28. It is further observed in the said decision that the words “any other sufficient reason” appearing in Order 47 Rule 1 CPC must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in *Chhajju Ram v. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius*, AIR 1954 SC 526.

29. In the case of *Inderchand Jain v. Motilal*, (2009) 14 SCC 663 in paragraphs 7 to 11 it is observed and held as under:

7. Section 114 of the Code of Civil Procedure (for short “the Code”) provides for a substantive power of review by a civil court and consequently by the appellate courts. The words “subject as aforesaid” occurring in Section 114 of the Code mean subject to such conditions and limitations as may be prescribed as appearing in Section 113 thereof and for the said purpose, the procedural conditions contained in Order 47 of the Code must be taken into



consideration. Section 114 of the Code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47 of the Code; Rule 1 whereof reads as under:

“17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

‘1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the court which passed the decree or made the order.’”

8. An application for review would lie inter alia when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. In Rajendra Kumar v. Rambai this Court held : (SCC p. 514, para 6)

“6. The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.”

9. The power of review can also be exercised by the court in the event discovery of new and important matter or evidence takes place which despite exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. An application for review would also lie if the order has been passed on account of some mistake. Furthermore, an application for review shall also lie for any other sufficient reason.

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule



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Rev.Appln No. 167 of 2021

that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguise. In Lily Thomas v. Union of India this Court held : (SCC p. 251, para 56)

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.”

30. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. In the case of Patel Narshi Thakershi v. Pradyuman singhji Arjunsinghji, (1971) 3 SCC 844, this Court has held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise.

31. What can be said to be an error apparent on the face of the proceedings has been dealt with and considered by this Court in the case of T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. It is held that such an error is an error which is a patent error and not a mere wrong decision. In the case of Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233, it is observed as under:

“It is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.”

32. In the case of Parsion Devi v. Sumitri Devi, (Supra) in paragraph 7 to 9 it is observed and held as under:

7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In Thungabhadra Industries Ltd. v. Govt. of A.P., AIR 1964 SC 1372 this Court opined:

“What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an ‘error apparent on the face of the



record'). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an 'error apparent on the face of the record', for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. Again, in *Meera Bhanja v. Nirmala Kumari Choudhury*, (1995) 1 SCC 170 while quoting with approval a passage from *AribamTuleshwar Sharma v. AribamPishak Sharma* (supra) this Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

33. In the case of *State of West Bengal v. Kamal Sengupta*, (2008) 8 SCC 612, this Court had an occasion to consider what can be said to be "mistake or error apparent on the face of record". In para 22 to 35 it is observed and held as under:

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the



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court/tribunal concerned cannot sit in appeal over its judgment/decision.

23. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22(3)(f) of the Act have been interpreted and limitations on the power of the civil court/tribunal to review its judgment/decision have been identified.

24. In *Rajah Kotagiri Venkata Subbamma Rao v. Rajah Vellanki Venkatrama Rao* (1899-1900) 27 IA 197 the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed : (IA p.205)

“... Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in *Roy Meghraj v. Beejoy Gobind Burrall*, ILR (1875) 1 Cal 197. In the opinion of Their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorise the review of a decree which was right when it was made on the ground of the happening of some subsequent event.”

(emphasis added)

25. In *Hari Sankar Pal v. Anath Nath Mitter*, 1949 FCR 36 a five-Judge Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position 28 was similar to that of the successful appellant, held: (FCR p. 48)

“That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order 47 Rule 1, Civil Procedure Code.”

26. In *Moran Mar Basselios Catholicos v. Mar Poulouse Athanasius* (supra) this Court interpreted the provisions contained in the Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed:

<https://www.mhc.tn.gov.in/judis> “32. ... Under the provisions in the Travancore Code of Civil



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Rev.Appln No. 167 of 2021

Procedure which is similar in terms to Order 47 Rule 1 of our Code of Civil Procedure, 1908, the court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein.

It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason.

It has been held by the Judicial Committee that the words 'any other sufficient reason' must mean 'a reason sufficient on grounds, least analogous to those specified in the rule'."

27. *In Thungabhadra Industries Ltd. v. Govt. of A.P. (supra) it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.*

28. *In Parsion Devi v. Sumitri Devi (Supra) it was held as under : (SCC p. 716)*

"Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be 'an appeal in disguise'."

29. *In Haridas Das v. Usha Rani Banik, (supra) this Court made a reference to the Explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held:*

"13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it 'may make such order thereon as it thinks fit'. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient



reason'. The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection."

30. In *AribamTuleshwar Sharma v. AribamPishak Sharma* (Supra) this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in *Shivdeo Singh v. State of Punjab* (Supra) and observed : (*AribamTuleshwar case* (Supra), SCC p. 390, para 3)

"3. ... It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* (Supra), there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

31. In *K. Ajit Babu v. Union of India*, (1997) 6 SCC 473, it was held that even though Order 47 Rule 1 is strictly not applicable to the tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in *Gopabandhu Biswal v. Krishna Chandra Mohanty*, (1998) 4 SCC 447). In that case it was held that the power of review granted to the tribunals is similar to the power



of a civil court under Order 47 Rule 1.

32. In *Ajit Kumar Rath v. State of Orissa*, (1999) 9 SCC 596, this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a civil court and held : (SCC p. 608, paras 30-31)

“30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression ‘any other sufficient reason’ used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the Rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

33. In *State of Haryana v. M.P. Mohla*, (2007) 1 SCC 457 this Court held as under : (SCC pp. 465-66, para 27)

“27. A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review.”

34. In *Gopal Singh v. State Cadre Forest Officers' Assn.*, (2007) 9 SCC 369 this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below : (SCC p. 387, para 40)

“40. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review



its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Sinha, J.) that the Tribunal has travelled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.”

35. The principles which can be culled out from the abovenoted judgments are:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.

(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.”



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discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power nor can an appellate power can be exercised in the guise of power of review.”

ii. The Hon’ble Apex Court reiterating the above view in a recent judgment in ***S.Madhusudan Reddy v. V.Narayana Reddy and others [2022***

SCC Online SC 1034], held as under:

“30. In Ram Sahu (Dead) Through LRs v. Vinod Kumar Rawat, citing previous decisions and expounding on the scope and ambit of Section 114 read with Order XLVII Rule 1, this Court has observed that Section 114 CPC does not lay any conditions precedent for exercising the power of review; and nor does the Section prohibit the Court from exercising its power to review a decision. However, an order can be reviewed by the Court only on the grounds prescribed in Order XLVII Rule 1 CPC. The said power cannot be exercised as an inherent power and nor can appellate power be exercised in the guise of exercising the power of review.

31. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when



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the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule” (Refer :Chajju Ram v. Neki Ram and Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius).”

21. Juxtaposing the ratio in the above judgments to the facts of the present case, we are of the opinion that there is an error apparent on the face of the impugned order under review. A perusal of the Bye-laws of the MHAA would make it clear that it prescribes the qualifications of those entitled to contest for the various positions of the Governing Body of the MHAA as well as those who are eligible to vote at the elections of the MHAA. It is well known that the authority and the administration of an Association vests in its General body, which elects its Governing Body, and all the office bearers as well as the members of an Association must act strictly in accordance with the bye-laws framed for the same. In this regard, it may also be appropriate to state that even if the suggestions are made by this Court, considering the fact that the members of the Bar play an important role in the administration of justice, and further that the proper management and administration of a major Bar Association would go a long way in ensuring proper administration of justice by the courts, such suggestions would have to be necessarily incorporated in the bye-laws by



amendment. Without an amendment to the bye-laws of an Association, any major change affecting the rights of the members, would be unknown to law.

22. Under the bye-laws of the MHAA, the following provision has been made with respect to who shall be a member of the Association and on their voting rights:

“7.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. o

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.

e. Every application for Membership in the Association (other than Honorary Membership) shall be made in the form maintained by the Association for this purpose and shall be signed by the Applicant, enclosing a photo of the Applicant. Any Advocate, desiring to be a member shall be recommended by two members.

f. The power to admit members to the Association shall vest solely in the Council.”

23. Similarly, the qualifications of members eligible to contest for an



election to the Governing Body of the MHAA consisting of the President, Vice

President, Secretary, Treasurer and the Librarian and 11 Executive Committee

members, have also been spelt out in the bye-laws, which reads as under:

“12. ELIGIBILITY TO CONTEST ELECTIONS:

a. Any member of the Association who has completed 12 years of continuous membership of the Association and is entitled to vote, shall to be eligible to contest for the post of the President.

b. Any member of the Association who has completed 10 years of Continuous membership of the Association and is entitled to vote, shall be eligible to contest for the post of the Vice President

c. Any member of the Association who has completed 8 years of continuous membership of the Association and is entitled to vote, shall be eligible to contest for the post of the Secretary.

d. Any member of the Association, who has completed 7 years of continuous membership of the Association and is entitled to vote, shall be eligible to contest for the post of the Treasurer and/or Librarian.

e. Any member of the Association who has completed 3 years of continuous membership of the Association and is entitled to vote, shall be eligible to contest for the post of the Executive Committee Member.

f. No person shall be entitled to hold the same post in the Association, whether as Office Bearer or as a Committee Member, for more than 2 consecutive terms.”

24. Having said this, the order under review proceeds on the basis that the qualifications of those entitled to contest the elections of the MHAA have not been mentioned in the bye-laws. A reading of paragraph no.22 of the order under review would show that it proceeds on the premise that since the bye-laws of the MHAA do not spell out these details, this Court must prescribe such qualifications taking into consideration the welfare of the Association. However,



since the Bye-laws have clearly spelt out the qualifications of the members of the MHAA entitled to contest in the elections, such findings that no qualifications are fixed for contesting the election as mentioned in paragraph no.22 of the order under review will have to be necessarily reviewed. Similarly, when the bye-laws of the MHAA are very clear on the aspect that only resident members are entitled to vote in the elections, while also defining the term 'resident members' and 'non-resident members' and their respective rights and privileges, there is no need to pass further direction. In respect of certain practical issues like those practicing in the Madras High Court while residing outside the city of Chennai, and being considered 'non-resident members' and the consequential effect on their voting rights, we are of the opinion that in the light of the specific by-law that non-resident members are not entitled to vote, the said issue will have to be raised by the General Body and if need be the bye-laws of the MHAA will have to be amended accordingly if the General Body so desires. In view of the fact that we have already held that the qualifications fixed by the Division Bench in the order under review are to be treated as suggestions and not directions, we refrain from setting aside the same, as the same will have no force until the same is incorporated into the bye-laws of the MHAA.

25. In this context and taking further the same line of thinking, the writ

<https://www.mhc.tn.gov.in/judis> petitioner who is now putting forth the claim that it was not open to this Court



Rev.Appln No. 167 of 2021

to pass directions in exercise of its writ jurisdiction in respect of the matters of the Association where the bye-laws reign supreme and when the Societies Registration Act provides for appropriate remedy, it is also appropriate for us to nudge the petitioner to introspect as to whether a writ petition itself should have been filed in the first place in respect of all such issues which could well have been agitated after the elections are conducted, by the General Body. The representation of the writ petitioner was submitted on 25.06.2019 and the writ petition came to be filed on 26.06.2019 with the clear apprehension that the representation would not be considered, and an urgency that in the view of the writ petitioner could not brook the delay of even one day. The issues raised in the representation of the writ petitioner including the 'one bar one vote' principle as well as that on submission of the 'certificate of practice', as also ensuring that only those members who had paid their subscription are entitled to vote, are all general issues which have to be taken care of at every election and addressed by making amendment to the bye-laws. Also, when it is a matter of fact and record that the committee appointed by the erstwhile office bearers was the very same committee which has been appointed by the High Court in WP No. 18839 of 2019, and there was no doubt as to their integrity well as independence, the elections could have been conducted under their supervision.

As such, the petitioner should not have in the first place rushed this Court and



sought for an emergent disposal of his representation as a condition precedent to proceed with the election to the MHAA, which again has stalled the election.

26. In this connection, the observations of the Supreme Court in ***Supreme Court Bar Association and Ors. v. B.D. Kaushik and Ors., [(2011) 13 SCC 774]***, are very much relevant and are extracted for reference:

“22. It hardly needs to be emphasized that in any Body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the Governing Body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder. The contention of the Respondents that the amendment to Rule whereunder the right to be eligible to contest for any post for the Association or the eligibility to cast the vote at the election, takes away the right completely, is misconceived since by the amendment the right is not taken away but is preserved subject to certain restrictions on its exercise and this could always be done.

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



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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.

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.

This is amply clear from the amended provision whereunder every member before casting his vote, is required, in the prescribed form, to give a declaration that he has not voted in any other election of any advocates in the High Court/District Court Bar Association. The restriction on the right to vote of a member is provided with an avowed object of better welfare and convenience of those advocates, who are regularly practicing in this Court and who are directly concerned with day-to-day affairs of the Supreme Court. Such restriction in fact sub serves Article 145 of the Constitution and other statutory provisions relating to advocates. As right to vote is not an absolute right recognized in common law and is always subject to the statute/Rules creating such rights, it is equally well settled that the exercise of such right could always be subject to the provisions of the Statute/Rules creating it. Under the circumstances, the contention advanced by the Respondents that their right to vote was either curtailed or abridged should not have been lightly accepted by the learned Judge.

25. The right to form an association is recognized as a Fundamental Right under Article 19(1)(c) of the Constitution. The provision in the SCBA Rules for prescribing eligibility to vote at only one of the associations, i.e., "One Bar One Vote" is a prescription which is in furtherance of the right to form association and be able to manage the affairs of the association by those who regularly practice in the courts of which the association is formed and of which the members are regular practitioners. It will not be out of place to mention that a person having become ineligible to vote because of having voted at another association election does not (a) lose the membership of the association nor (b) is in any way hampered or



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restricted in the use of other facilities, which the association provides to its members such as library, canteen, telecommunication, car parking, etc. Having regard to the aims and objects as set out in the Memorandum of Association, it is evident that one of the primary objectives of formation of the association was to have a Body of Advocates who are attached to and practicing in the Supreme Court of India. In Smt. Damyanti Naranga v. The Union of India and Ors. MANU/SC/0726/1971 : (1971) 1 SCC 678, this Court has authoritatively laid down that the right to form an association necessarily implies that persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. In Zoroastrian Cooperative Housing Society Ltd. and Ors. v. District Registrar, Cooperative Societies (Urban) and Ors. MANU/SC/0290/2005 : (2005) 5 SCC 632, in the context of Fundamental Right to form an association excluding others and the right of the Members of the association to keep others out, it has been held in para 17 at page 651 as under:

Section 24 of the Act, no doubt, speaks of open membership, but Section 24(1) makes it clear that open membership is the membership of a person duly qualified therefore under the provisions of the Act, the Rules and the bylaws of the Society. In other words, Section 24(1) does not contemplate an open membership dehorn the bylaws of the society. Nor do we find anything in the Act which precludes a society from prescribing a qualification for membership based on a belief, a persuasion or a religion for that matter. Section 30(2) of the Act even places restrictions on the right of a member to transfer his right. In fact, the individual right of the member, Respondent 2, has got submerged in the collective right of the Society. In State of U.P. v. C.O.D. Chheoki Employees' Coop. Society Ltd. MANU/SC/0332/1997 : (1997) 3 SCC 681, this Court after referring to Daman Singh v. State of Punjab MANU/SC/0392/1985 : (1985) 2 SCC 670, held in para 16 that: (SCC p. 691)

16. Thus, it is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a cooperative society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bylaws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bylaws as he has his right under the Act, rules and the bylaws and is subject to its operation. The stream cannot rise higher than the source.



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26. *In matters of internal management of an association, the courts normally do not interfere, leaving it open to the association and its members to frame a particular bye-law, rule or Regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said association.*

It is well settled legal proposition that once a person becomes a member of the association, such a person loses his individuality qua the association and he has no individual rights except those given to him by the rules and Regulations and/or bylaws of the association.

27. *It should have been noticed by the learned Judge that the Plaintiffs/Respondents claimed injunction on the basis that the right to contest and vote in the election of the SCBA had been adversely affected and, therefore, they invoked the provisions of Order 39 Rules 1 and 2 read with Section 151 Code of Civil Procedure. The amended Rule 18 has not taken away right to vote completely but has put restrictions to promote and protect the privileges, interest and prestige of the SCBA. Rule 18 was also amended to promote and maintain high standards of profession amongst Members of the Bar. Having regard to the objects of amendment of Rule 18, this Court is of the opinion that the learned Judge should not have granted the injunction as claimed by the Plaintiffs/Respondents for mere asking.*

28. *Originally enacted Rule 18 provided for eligibility of members to contest and vote at/in the elections. An important provision is contained in Rule 18(II)(4) to the effect that non-active members and associate members shall not have the right to vote. In light of the above provisions of the Rules, more particularly, Rule 5(1)(v), the eligibility of every advocate entitled to practice law for being a member of the Supreme Court Bar Association is subject to the provisions of the said Rules. In other words, an absolute right as is sought to be asserted by the Plaintiffs/Respondents is controlled by conditions, qualifications, disqualifications and restrictions imposed by the said Rules.*

29. *The power to amend Rules is specifically conferred under Rule 39 whereunder it is provided that the Rules and the bylaws of the Association shall be subject to such conditions and/or modifications, as may from time to time, by resolution passed by at least 2/3rd of the Members present and voting at the General Body Meeting. Therefore, any part of the Rules could always be amended. As noticed earlier, SCBA being a Society registered under the Societies Registration Act, is governed by its Memorandum of Association. The said Association is entitled to have its own Rules and Regulations. In fact, it is contemplated in the Act that a Committee of management can be constituted to manage the affairs of the Society as specified in the Rules and Regulations. The Memorandum of Association is a contract amongst the members of the Society, which*



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though required to be registered under the Statute, does not acquire any statutory character. These are rules which govern internal control and management of the Society. The authority to frame, amend, vary and rescind such rules, undoubtedly, vests in the General Body of the Members of the Society. The power to amend the rules is implicit in the power to frame rules.”

27. At this juncture, it is also pertinent to emphasize the significant role of advocates in the administration of justice and in upholding the majesty of the institution of the judiciary. Advocates play a major role in dispensation of justice. They are primarily officers of the court though they espouse the cause of their client. The advocate profession is one of the few professions to be known as “noble profession” primarily because of the part played by them in the administration of justice. With the knowledge one acquires and professes during the practice of the profession, raises his stature in the society and opens several opportunities in his life. A common man still reveres advocates to be ethical, honest and knowledgeable. The commitment, integrity and service to the society, with financial viability apart, form the important traits. The members of Legal fraternity, which enjoins a monopoly over the field are expected to be role model not only in adherence to law but also in carrying themselves in the society. In ***O.P. Sharma and Ors. v. High Court of Punjab and Haryana, [(2011) 6 SCC 86]***, it was observed by the Supreme court as follows:

“12. The role and status of lawyers at the beginning of Sovereign and Democratic India is accounted as extremely vital in deciding that the Nation's administration was to be governed by the Rule of Law. They were considered intellectuals amongst the elites of the country and social activists



amongst the downtrodden. These include the names of galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the Court in the administration of justice."

28. In ***R. Muthukrishnan v. The Registrar General of the High Court of Judicature at Madras, [(2019) 16 SCC 407]***, it was held by the supreme court as under:

"21. Independent Bar and independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. Bar and Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the Rule of law and its dignity. Equal and even-handed justice is the hallmark of the judicial system. The protection of the basic structure of the Constitution and of rights is possible by the firmness of Bar and Bench and by proper discharge of their duties and responsibilities. We cannot live in a jungle raj.

22. Bar is the mother of judiciary and consists of great jurists. The Bar has produced great Judges, they have adorned the judiciary and rendered the real justice, which is essential for the society.

23. The role of Lawyer is indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court to his own client, to the opposite side, and to maintain the respect of opposite party counsel also. What may be proper to others in the society, may be improper for him to do as he belongs to a respected intellectual class of the society and a member of the noble profession, the expectation from him is higher. Advocates are treated with respect in society. People repose immense faith in the judiciary and judicial system and the first person who deals with them is a lawyer. Litigants repose faith in a lawyer and share with them privileged information. They put their signatures wherever asked by a Lawyer. An advocate is supposed to protect their rights and to ensure that untainted justice delivered to his cause."

29. In ***T.A. Kathiru Kunju v. Jacob Mathai and Ors. [(2017) 5 SCC***



755], it was observed by the supreme court as follows:

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“On a careful reading of the aforesaid passage, it is quite clear that concept of "gross negligence" cannot be construed in a narrow or a restricted sense. It is because honesty of an Advocate is extremely significant. The conduct of an Advocate has to be worthy so that he can be called as a member of the noble fraternity of lawyers. It is his obligation to look after the interest of the litigant when is entrusted with the responsible task in trust. An Advocate has to bear in mind that the profession of law is a noble one. In this regard, we may fruitfully refer to what has been stated in Sanjiv Datta Dy. Secy. Ministry of Information & Broadcasting, In Re. MANU/SC/0697/1995 : (1995) 3 SCC 619:

The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible.”

30. In **Mahipal Singh Rana v. State of Uttar Pradesh**, [(2016) 8 SCC

335], it was held by the supreme court as follows:

“32. In Bar Council of Maharashtra v. M.V. Dabholkar MANU/SC/0670/1975 : (1976) 2 SCC 291 following observations have been made about the vital role of the lawyer in administration of justice.

15. Now to the legal issue bearing on canons of professional conduct. The Rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins. If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and



the public is unbreakable. And the vital role of the lawyer depends upon (his probity and professional life style. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice-social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid Rules but felt by the collective conscience of the practitioners as right:

It must be a conscience alive to the proprieties and the improprieties incident to the discharge of a sacred public trust. It must be a conscience governed by the rejection of self-interest and selfish ambition. It must be a conscience propelled by a consuming desire to play a leading role in the fair and impartial administration of justice. to the end that public confidence may be kept undiminished at all times in the belief that we shall always seek truth and justice in the preservation of the Rule of law. It must be a conscience, not shaped by rigid Rules of doubtful validity, but answerable only to a moral code which would drive irresponsible judges from the profession. Without such a conscience, there should be no judge. and, we may add, no lawyer.

Such is the high standard set for professional conduct as expounded by courts in this country and elsewhere.”

31. Further, in the 131st Report on the Role of the Legal Profession in the Administration of Justice, the Law Commission has delved in detail on the indispensable part played by the Bar in the administration and delivery of justice. The 266th Law Commission Report on the Regulation of the Legal Profession also shed light on the same. The Bar is undoubtedly the backbone of the judicial system and the supporting pillar of the Bench without which the delivery of justice is but a chimerical theory that cannot translate into fruition. In this regard, the observation of the Supreme Court in ***Supreme Court Bar***

Association and Ors. vs. B.D. Kaushik and Ors. [(2011) 13 SCC 774], on the



role of advocates are reiterated and also the importance of the proper regulation of Court annexed Bar Associations are further underscored. The relevant passage of the same is extracted for fruitful reference:

“12. There is no manner of doubt that court annexed Bar Associations constitute a separate class different from other lawyers associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognized by the concerned court. Court annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and Bar are like two wheels of a chariot and one cannot function without the other. The court annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and 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 thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practicing in the court, parking place, canteen besides several other amenities. In the functions organized by the court annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice-versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration.”

32. While dealing with the validity of amendment to the bye-laws of the Association, the Apex Court in ***Sudha vs. President, Adv. Assn. and Ors.*** [(22.10.2010 - SC) : MANU/SC/1138/2010], on the honour and dignity of the legal profession, held as follows:

“17. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its Hon'ble Members. Although, the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, the honour as a professional has to be



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maintained by its Members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilized society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The different Associations of the Members of the Bar are being formed to show the strength of lawyers in case of necessity. The lawyers while exercising vote in an election of office bearers of the Association must conduct himself in an exemplary manner. Those who are concerned about high standard of the profession are supposed to take appropriate action to see that the election takes place peacefully and in an organized manner. Many a times it is noticed that those who are not lawyers get entry into the Association room by putting on merely black coat as at the time of election the feelings are running high. Such elements take undue advantage of the situation and bring a bad name to the Association of the Advocates. Therefore, to deter such elements the amendments have been carried out in the bylaws. Those amendments carried out in the bylaws of the Association can hardly be regarded as against the legal fraternity in general and as against Junior Members of the Bar in particular. In every society or association some code of conduct has to be laid down as to in which manner the voting should be done and who would be competent to vote. The Association of Advocates are expected to rise to the occasion as they; are responsible to uphold the dignity of Courts and majesty of law and to prevent interference in administration of justice. It is the duty of the Associations to ensure that there is no unprofessional and/or unbecoming conduct by the Advocates at the time of election of the office bearers of the Association. This being their duty it was necessary to amend the bylaws of the Association. The amendment prescribing that a Member of the Association having practice of less than two years would not be entitled to vote or that a member of the Association who has not put in three years of practice would not be entitled to contest the election are reasonable and are meant for enhancing status and image of members of the Bar. These restrictions have been brought to uphold the dignity of Courts and majesty of law and to ensure that there is no unprofessional and/or unbecoming conduct.”

33. In this regard, reference may also be had to ***Layne v Attorney***

General of Grenada [(18.03.2019 - UKPC) : MANU/UKPC/0014/2019], in

<https://www.mhc.trn.gov.jm/judicial> which, the Judicial Committee of the Privy Council observed as follows:



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“44. The existence and scope of the public confidence requirement may vary according to the profession under consideration. In the case of admission to the Bar, it is relevant because, as the judge put it, attorneys are the guardians of fundamental freedoms. Attorneys play an important role in the modern democratic state in upholding the rule of law. All persons are equal under the law, and, so long as the rule of law is observed, every person will have his rights protected by the law, including his important rights to security of the person, and the established order cannot be overthrown by force. The rule of law and the constitution are mutually reinforcing. In any society, the rule of law represents a fundamental value. And there must be no gap between the theory and the reality of the rule of law. This is achieved in no small part by the work of an independent Bar, who will fight fearlessly before the courts for the rights of even the most unpopular persons.

45. It follows that the work of an attorney is not a purely private matter between him and his client, because an attorney must help maintain the law and owes duties to the court before which he may following admission appear. Nor is the attorney’s admission to the Bar a purely domestic matter between the responsible Bar Association and the applicant.”

34. In one of the Universal Human Rights Instruments adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba on 7th September, 1990, the ‘Basic Principles on the Role of Lawyers’ have been set out, which read as under:

"Preamble

.....

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest,

The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having



the formal status of lawyers.”

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Freedom of Expression and Association

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional Association of Lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their



clients in accordance with the law and recognized professional standards and ethics.”

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35. Also, the International Bar Association in its report on the independence of the legal profession identifies the threats to the legal profession and suggests measures to support and strengthen the profession. While all of its suggestions naturally involve the bar associations, it fixes the responsibility on the bar associations to overcome the public’s negative perception of the legal profession by restoring trust, profession’s image and fostering communication. Further, it emphasizes on the adequate resourcing of bar associations to equip the lawyers with adequate skills and also to carry out the responsibility towards the public by taking up cases of public interest, acting as watchdogs of human rights, etc. *[International Bar Association, Independence of the Legal Profession - Threats to the Bastion of a Free and Democratic Society: A Report by the IBA’s Presidential Task Force on the Independence of the Legal Profession (Sept, 2016)]*.

36. Needless to say, the association with all its members from the legal fraternity, which has produced doyens and legal luminaries, leaders and philanthropists, is expected to be much more responsible in its conduct and should endeavour to shape the young advocates towards the path of service and instil confidence in the minds public on the judiciary as a whole. The object of



becoming an office bearer is to serve the fraternity and not to utilize it for personal benefit and upliftment. Though there is a moral obligation on the part of every member to set right the anomalies in the bye-laws which makes way for the posts to operate as power centres creating power syndrome, rather than to create a process for affirmative change in the functioning of the association, the hands of the law are tied, unless intention to serve overpowers the quest for power, the prevailing sorry state of affairs would continue.

37. It is apropos to quote Bentham at page 60 in his book, *Theory of Legislation*, Chapter XII:

“Morality in general is the art of directing the actions of men in such a way as to produce the greatest possible sum of good. Legislation ought to have precisely the same object. But although these two arts, or rather sciences, have the same end, they differ greatly in extent. All actions, whether public or private, fall under the jurisdiction of morals. It is a guide which leads the individual, as it were, by the hand through all the details of his life, all his relations with his fellows. Legislation cannot do this; and, if it could, it ought not to exercise a continual interference and dictation over the conduct of men. Morality commands each individual to do all that is advantageous to the community, his own personal advantage included. But there are many acts useful to the community which legislation ought not to command. There are also many injurious actions which it ought not to forbid, although morality does so. In a word legislation has the same centre with morals, but it has not the same circumference.”

38. In the light of the above discussion, we are of the considered opinion that the conduct of the election is the need of the hour, which has been delayed unnecessarily for nearly four years. The election obviously has to be conducted with the existing bye-laws in a transparent and fair manner. The



necessity to conduct the election has been emphasized by the petitioner at every stage, even during the course of hearing the review petition. The learned counsel for the second respondent also expressed that the Bar Council of Tamil Nadu and Puducherry shall render their cooperation to the MHAA for early conduct of election.

39. Therefore, this review application is hereby disposed of, with the following observations and directions:

i. This Court approves the suggestions given by the Counsel for Bar Council of Tamil Nadu and Puducherry, as agreed by all the other parties to the proceedings, for constitution of the Teller committee, with the following names, to conduct the election of the MHAA:

1. Mr. M.K. Kabir — Senior Advocate
2. Mr. C.T. Mohan — Advocate
3. Mr. V. Srikanth — Advocate
4. Ms. S. Devika—Advocate
5. Mr. S. Shivashanmugam — Advocate
6. Mr. C.K. Chandrasekhar — Advocate
7. Mr. C. Raja Kumar — Secretary

ii. The Teller committee shall conduct election at the earliest by following the existing Bye-laws of the MHAA scrupulously in accordance with the rules and regulations applicable thereon to the conduct of elections,

iii. The verification of the electoral role, payment of subscription and



Rev.Appln No. 167 of 2021

eligibility of the list of members to vote, shall be made within a period of four weeks from the date of receipt of a copy of this order, if not already verified and the publication of the list of eligible members shall be completed within four weeks thereafter, followed by election notification, date of nomination, etc. However, the election shall be completed within a period of 90 days i.e., on or before 12.01.2023 and the result be declared accordingly.

iv. The committee shall ensure the conduct of free and fair election to the MHAA keeping in mind the above observations made in this order.

v. The principle of 'one Bar one vote' is to be followed strictly.

vi. The suggestions made by the Bench in the order under review may be considered by the general body of the MHAA at the time of amendment of the Bye-laws of the MHAA, if any, in future.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Post the matter on 13.01.2023 'for reporting compliance'.

(R.M.D., J) (M.S.Q., J)

14.10.2022

rsh

Index: Yes/ No

Internet : Yes/ No

To

1. The Chairman & Members

Election Committee

M.H.A.A., Chennai - 600 104

2. The Secretary

<https://www.mhc.tn.gov.in/>



Rev.Appln No. 167 of 2021

Bar Council of Tamilnad and Pondicherry
Chennai - 600 104

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3. The Manager
Madras High Court Advocates Association
High Court, Chennai - 600 104



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Rev.Appln No. 167 of 2021

R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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Review Application No. 167 of 2021

14.10.2022