

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5368 OF 2025**

1. Shri. Abhijeet Appasaheb Bacche-Patil
Age: 38 Years, Occupation: Advocate
R/o.: Bacche Savarde, Tal. Panhala, Dist. - Kolhapur

2. Shrl. Harishchandra Sarjerao Tadakhe
Age: 50 years, occupation: Advocate
r/o.: Majgaon, Tal. Panhala, Dist – Kolhapur

3. Shri. Amrut Suresh Ranoji
Age: 41 Years, Occupation: Advocate,
R/o.: Home No. 1185, 'E' ward, 3rd lane
Rajarampuri, Dist. - Kolhapur

4. Shri. Balasaheb Dattatray Kandekar
Age: 51 Years, Occupation: Advocate
R/o.: Kumbhoj, Tal. Hatkanangale, Dist. - Kolhapur

...Petitioners

Versus

1. The Bar Council Of Maharashtra And Goa
Through Its Chairman
Having its Registered Officer at:
2nd Floor, High Court Extension Building,
Fort, Mumbai – 40032.

2. The Kolhapur District Bar Association, Kolhapur
Through its President
Having its Registered Office at:
Nyaysankul, Sankul, Kasba Bawada, Main Road,
Kolhapur, Dist. Kolhapur-416 006.

...Respondents

Adv. Abhishek Nandimath a/w Adv. Shardul Diwan and Adv. Advait Vajaratkar,
for the Petitioner.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 21 APRIL 2025

Oral Judgment (Per : G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India is filed
challenging the notice dated 01 April 2025 issued by the respondent no. 2

- Kolhapur District Bar Association, Kolhapur, whereby the members are informed that the dues payable by its members be cleared and only after such dues are cleared, the members would be considered eligible, to participate in the proposed elections. The notice also informs that those members who would make such payments after 1 April 2025, would not be eligible to participate and/or cast vote in the election.

2. The petitioner's contention is that such notice as issued by the respondent no. 2 – Kolhapur District Bar Association is arbitrary and illegal affecting their legal right to participate in the elections. The second prayer as made in the petition is for issuance of a writ of mandamus to direct the Kolhapur District Bar Association to allow its members whose dues are paid after 1 April 2025 and other similarly situated electors whose annual membership fees are due between 1 April 2025 and 31 December 2025, be allowed to cast their votes in the elections of the Kolhapur Bar Association. The substantive prayers as made in the writ petition need to be noted which read thus:-

- “b) This Hon ble High Court by issuing writ of certiorari or any other writ, order and/or direction in the nature of certiorari be pleased to quash and set aside impugned Notice dated 01.04.2025 passed by Kolhapur District Bar Association, Kolhapur / Respondent No. 2 [which is below 'Exhibit - D' of this Petition];
- c) This Hon'ble High Court by issuing writ of mandamus or any other writ, order and/ or direction in the nature of mandamus be pleased to direct the Kolhapur District Bar Association, Kolhapur / Respondent No. 2 to allow those members of Respondent No. 2, whose dues are payable after 01.04.2025 and other similarly situated Electors to cast their votes in upcoming annual elections, whose payments of annual

membership fees are due between 01.04.2025 and 31. 12. 2025;”

3. In considering such prayers for a writ to be issued under Article 226 of the Constitution of India against respondent no. 2, at the outset, we examine whether respondent no. 2 is a “State or its Instrumentality”, within the meaning of Article 12 of the Constitution of India. In such context, on a query being made in regard to the averments as made in the memo of the writ petition, our attention is drawn by the learned counsel for the petitioner to paragraph 5 of the petition which merely aver that because respondent no. 1 - Bar Council of Maharashtra and Goa exercises control over respondent no. 2 and that there are functions, objects and goals of respondent no. 2 which are aligned with the functions of Bar Council of Maharashtra and Goa, hence, respondent no.2 would be an instrumentality of a “State” within the meaning of Article 12 of the Constitution of India. Hence, it would be amenable to the writ jurisdiction of this Court. In support of such contention, reliance is placed on the decision of the Division bench of the Karnataka High Court (Dharwad Bench) in the case of **Shri Chandrakant S/o. Tammanna Majagi vs. Karnataka State Bar Council**¹ as also the decision of the Delhi High Court in the case of **PK Dash, Advocate vs. Bar Council of Delhi and Ors**²

4. We may, at the outset, observe that it is certainly not possible to draw any parity in regard to the statutory duties and obligations as

1. 2020 SCC OnLine Kar 5403

2. AIR 2016 DELHI 135

conferred by law on the Bar Council which is constituted under a statute with that of a bar association which is an association of persons. We have perused the said decisions, as relied on behalf of the petitioners, however, we are not persuaded to accept the petitioners' contention and to subscribe to the view as taken in the said decisions relied on behalf of the petitioners.

5. A Division Bench of this Court in the case of **Rajghor Ranjhan Jayantilal vs. Election scrutiny committee of B.B.A & Anr.**³ was considering a similar challenge in regard to the elections of the Bombay Bar Association, when the Court held that a writ petition on such cause was not maintainable as the Bombay Bar Association was not a State within the purview of Article 12 of the Constitution of India. It was observed that a bar association being an association of persons having its by-laws and rules, does not receive any aid/financial assistance from the government exchequer, nor would the government have any control or stake either in the establishment or in the management of the Bar Association. It was held that in the absence of there being any deep or pervasive State control in the management of the affairs, the Bar Association cannot be held to be a State within the meaning of Article 12 of the Constitution of India. In such context, the relevant observations as made by the Court are as follows:-

3. 2024 SCC OnLine Bom 1118

“5. At the outset, an objection is raised by Mr. Tally, the learned Counsel for Respondent No.1, to the maintainability of this Petition. He would submit that the prayers made by the petitioner are in relation to the elections, which have already been held, the results of which stand declared. It is submitted hence at such stage no relief can be granted to the Petitioner on a concluded election process. **The next objection of Mr. Tally and which is more fundamental is that the Petition is also not maintainable, for the reason that the Bombay Bar Association is not a ‘State’ within the meaning of Article 12 of the Constitution of India, as none of the essential requirements to hold this body to be a ‘State’ under Article 12 are present. It is hence Mr. Tally’s submission that the Petition needs to be dismissed.**

7. Having heard learned Counsel for the parties, we are not persuaded to accept the contentions, as urged on behalf of the Petitioner, that any relief can be granted to the Petitioner, by entertaining this Petition filed under Article 226 of the Constitution. This, firstly, for the reason that we cannot accept the Petitioner’s contention that the Bombay Bar Association is a ‘State’ under Article 12 of the Constitution of India. We are informed by Mr. Tally that the Bombay Bar Association is an Association of Persons (AOP), having its bye-laws and Rules. It does not receive any aid / financial assistance from the government to meet its expenditures, nor does the government have any other form of controlling stake either in the establishment or in the management or administration of the bar association. There is no deep or pervasive “State control” in the management of its affairs. Furthermore, the functions of the Bombay Bar Association do not relate/or are governmental functions. For all these reasons the Bombay Bar Association cannot be held to be a ‘State’ under Article 12 of the Constitution of India. Thus, on this ground alone, we cannot entertain this Petition. We may observe that the alternate remedy for the Petitioner, if at all, would be to file a Civil Suit for redressal of any election grievance which the Petitioner has.

8. Be that as it may, the issues which are raised in the Petition concern the elections of the Standing Committee of the bar association. Election itself is a creature of the statute. Such elections are held according to the Rules and Regulations. If the Petitioner has any grievance regarding the same, certainly the remedy for the Petitioner cannot be to invoke the writ jurisdiction of this Court.”

(Emphasis Added)

6. The view taken by this court in the case of Rajbhor Ranjhan Jayantilal (supra) was also followed in the case of **Dilip Shridhar Modgi vs. Thane District Courts Bar Association through its Secretary**⁴.

7. It is not the case that the petitioners are remediless, to assail any actions *inter se* between the members and the Bar Association which is by

4. WP No. 4206 of 2024.

approaching the appropriate Civil Court by filing a civil suit for redressal of its grievances. In fact the remedy lies in the precincts of the bar association, that is to approach the Civil Court and seek appropriate reliefs. We are thus quite certain that a writ petition under Article 226 of the Constitution of India for any relief on a dispute between the member and the bar association is not maintainable.

8. We may observe that the bar associations are either societies registered under the Societies Registration Act, 1860, or trusts, they are governed by their own bye-laws or rules. Certainly, there is no deep or pervasive control of the Government or even of the Bar Council on the bar associations. They are governed by a managing committee which is elected by its members. There is hence, neither any control nor any interference of the Government in the functions of the bar association, much less on their elections or day to day functioning. The managing committee looks after the welfare of its members. The Bar Associations, in the interest of its members, day-in and day-out issue circulars, notices, notifications, etc. If all such activities, actions and decisions of the bar association are to be held to be subject, to the judicial review of the High Court under Article 226 of the Constitution of India, by reaching to a conclusion that the bar association is a “State” within the meaning of Article 12 of the Constitution, in our opinion, this would certainly lead to a chaotic situation. The State of Maharashtra has 36 districts, each district

has number of talukas and each taluka is likely to have a bar association, which would be governed by their own rules and regulations. If we accept petitioner's contention that the petition be entertained, in such event "any dispute whatsoever" between the members and the bar associations, the High Court would be required to exercise its power of judicial review by entertaining writ petitions under Article 226 of the Constitution and adjudicate such disputes.

9. In our opinion, if we entertain writ petitions on such causes, things would not stop only at the bar associations formed by advocates, as the same logic would be required to be applied to associations of other professional bodies like the associations of Doctors, Chartered Accountant, Engineers to name a few, which also discharge duties towards its members and citizens. Thus, it is a proposition too wide that a writ petition under Article 226 of the Constitution, be held to be maintainable, in regard to any *inter se* dispute between the petitioner and respondent no. 2- Bar Association. We may also observe that invariably such dispute would also involve disputed questions of facts, which in any event cannot be gone into in any adjudication under Article 226 of the Constitution.

10. Further, there is another aspect which would dissuade us from not entertaining a writ petition between a member and the bar association, the reason being any decision of the bar association, with which some of its members may feel aggrieved, if is to be brought within the purview of

Article 226 of the Constitution of India, inviting interference of the High Court, it would not be a situation, conducive to the harmonious working of the bar associations and/or the intention with which any bar association is established and supposed to function, causing impediments, and a peril in the smooth functioning of the bar associations, or its managing committees. This would not only lead to a chaos but also a possible misuse of the discretionary and summary jurisdiction of this Court. The magnitude is just to be imagined.

11. Even otherwise, the relationship between the bar association and its members on anything to do with the functioning of the bar association is circumscribed/governed and controlled by the rules of the bar association, to which the members subscribe, when they accept the membership of the bar association. If this be so, merely for the reason that the advocates are governed by the Advocates Act, a relief in a writ petition under Article 226 of the Constitution cannot be granted against the bar association. In our opinion this would be a position too far fetched.

12. We are thus not inclined to entertain this writ petition. We however, keep open the remedy of the petitioners to approach the appropriate Civil Court for redressal of their grievance, if any.

13. Writ petition is accordingly dismissed. No costs.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]