

**IN THE HIGH COURT OF KARNATAKA, AT DHARWAD**

**DATED THIS THE 15<sup>TH</sup> DAY OF DECEMBER, 2025**

**R**

**BEFORE**

**THE HON'BLE MR. JUSTICE M.NAGAPRASANNA**

**WRIT PETITION NO. 107690 OF 2025(GM-RES)**

**BETWEEN:**

SHIVAPPA SADEPPA KIWADASANNAVAR  
AGE: 65 YEARS, OCC: PRESIDENT BAA,  
R/O: PLOT NO.95 GANGA NIVAS BUDA LAYOUT,  
RAMATHEERTH NAGAR BELAGAVI,  
DIST: 590016.

...PETITIONER

(BY SRI. V. M. SHEELVANT, ADVOCATE)

**AND:**

1. THE DEPUTY REGISTRAR OF  
CO-OPERATIVE SOCIETIES,  
JAKKERI HONDA BELAGAVI-590001.
2. THE KARNATAKA STATE BAR COUNCIL,  
OLD ELECTION COMMISSION BUILDING  
BANGALURU-560010  
BY ITS CHAIRMAN
3. THE BELAGAVI BAR ASSOCIATION (BBA)  
REPRESENTED BY ITS SECRETARY,  
DISTRICT COURT COMPLEX, BELAGAVI,  
DIST: BELAGAVI-590001.

4. KRISHNAPPA B. NAIK  
AGE:66 YEARS, OCCU: ADVOCATE  
AND KSBC MEMBER,  
R/O: PLOT NO.16, SECTOR NO.2,  
SHIVABASAVA NAGAR, BELAGAVI-590010.
5. VINAY BALASAHEB MANGALEKAR  
AGE:56 YEARS, ADVOCATE AND  
VICE PRESIDENT KSBC,  
R/O: PLOT NO.B-02, ROYAL PYRAMID
6. BASAVARAJ MALLAPPA MUGALI  
AGE: 42 YEARS,  
OCCU: IN-CHARGE PRESIDENT,  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
7. SHEETAL M RAMSHETTY  
AGE: 40 YEARS, OCCU: ADVOCATE AND  
VICE PRESIDENT BBA,  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
8. YALLAPPA KRISHNA DIVATE,  
AGE: 46 YEARS, OCCU: ADVOCATE AND  
GENERAL SECRETARY BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
9. VISHWANATH BASAVARAJ SULTANPURI,  
AGE: 32 YEARS, OCCU: ADVOCATE AND  
JOINT SECRETARY BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.

10. SUMITKUMAR S AGASAGI  
AGE: 32 YEARS, OCCU: ADVOCATE AND  
MANAGING COMMITTEE MEMBERS BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
11. IRANNA Y PUJER  
AGE: 31 YEARS, OCCU: ADVOCATE AND  
MANAGING COMMITTEE MEMBERS BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
12. VINAYAK KALLAPPA NINGANURE  
AGE: 30 YEARS, OCCU: ADVOCATE AND  
MANAGING COMMITTEE MEMBERS BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
13. SURESH KADAPPA NAGANURI,  
AGE: 36 YEARS, OCCU: ADVOCATE AND  
MANAGING COMMITTEE MEMBERS BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI, DIST: BELAGAVI-590001.
14. ANEEL SHANKARGOUDA PATIL  
AGE: 30 YEARS, OCCU: ADVOCATE AND  
MANAGING COMMITTEE MEMBERS BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX,  
SAMUDAYA BHAVAN,  
BELAGAVI,  
DIST: BELAGAVI-590001.
15. MISS ASHWINI VIJAY HAVALDAR

AGE: 29 YEARS, OCCU: ADVOCATE AND  
MANAGING COMMITTEE MEMBERS BBA  
R/O: BELAGAVI BAR ASSOCIATION,  
NEW COURT COMPLEX, SAMUDAYA BHAVAN,  
BELAGAVI,  
DIST: BELAGAVI-590001.

16. SUNIL S/O SHRISHAILAPPA SANIKOP  
AGE: 51 YEARS, OCCU: ADVOCATE  
R/O: CTS NO.7501, SECTOR NO.11,  
MAHANTESH NAGAR, BELAGAVI,  
DIST: BELAGAVI-590017.

...RESPONDENTS

(BY SRI. T. HANUMAREDDY, AGA FOR R1;  
SMT. NAINA R. NERLI, ADVOCATE FOR C/R3, R6, R8;  
SMT. ARCHANA MAGADUM, ADVOCATE FOR R2  
SRI. MAQBOOLAHAMED M. PATIL, ADV. FOR R10 TO R15)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT  
OR ORDER OR DIRECTION IN THE NATURE OF WRIT OF  
CERTIORARI TO QUASH THE IMPUGNED RESOLUTION PASSED IN  
THE SPECIAL GENERAL BODY MEETING OF RESPONDING NO.3 BAR  
ASSOCIATION DATED 20.09.2025 AS PER ANNEXURE-A AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED  
ON 04.12.2025 AND COMING ON FOR PRONOUNCEMENT, THIS  
DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner, the President of the Belagavi Bar Association ('the Association' for short) is at the doors of this Court calling in question resolution passed in the Special General Body meeting held on 20<sup>th</sup> September, 2025, through which, he is now dislodged from the post of President of the Association.

2. Heard Sri V.M. Sheelavant, learned counsel appearing for the petitioner, Sri T.Hanumareddy, learned Additional Government Advocate appearing for respondent No.1, Smt. Archana Magadum, learned counsel appearing for respondent No.2, Smt. Naina R. Nerli, learned counsel appearing for respondents R3, R6 and R8 and Sri. Maqboolahamed M. Patil, learned counsel appearing for respondent Nos.10 to 15.

3. *Shorn* of unnecessary details, facts in brief, germane, are as follows:-

3.1. The 3<sup>rd</sup> respondent/Association is registered under the provisions of the Karnataka Societies Registration Act, 1960 and is

governed by the Bye-laws duly approved by the Competent Authority. In terms of Bye-laws the Association has certain office bearers. The election to the office bearers takes place once in two years in terms of Bye-laws. Likewise, the elections have taken place and the present petitioner is elected as the President on 09-02-2024 for a period of two years. Belgaum Bar is 150 years old. Therefore, the general body meets and resolves to celebrate the 150<sup>th</sup> Anniversary of the Association by forming a Committee of 101 members. Respondent No.16, in the case at hand, submits a representation along with others on 26-11-2024, requesting to call for a general body to discuss 'no confidence' against the President of the Association – the petitioner. The allegation is that 3 persons were illegally practicing as Advocates in the Belgaum Bar without due qualification of law and without passing All India Bar examination. A practicing Advocate – Basavaraj submits a complaint to the management of the Association and a complaint is said to have been lodged by one Miss Soniya alleging several acts due to which a boycott of Court proceedings takes place on 25-11-2024 for which the President is said to have rendered his non-cooperation.

3.2. On 03-12-2024, about 617 members of the Association are said to have submitted a representation to the General Secretary of the Association reposing confidence in the President and the entire Committee of the Association. On the representation submitted, a meeting of the Managing Committee was convened on 4-12-2024 and it was unanimously decided not to call the General Body Meeting since there was no provision under the Bye-laws for moving a 'no-confidence' against Member. When things stood thus, the 16<sup>th</sup> respondent files a writ petition before this Court in W.P.No.107881 of 2024 seeking a direction by issuance of a writ in the nature of mandamus directing the Association to consider the representation submitted by the 16<sup>th</sup> respondent to call for a General Body Meeting. The coordinate bench, on 15-09-2025 allowed, the petition and directed holding of General Body Meeting for a particular purpose by issuance of a writ in the nature of mandamus. On the strength of the order passed by the coordinate Bench, a Special General Body Meeting was convened on 20-09-2025 at 1.30 p.m. and the result of the said meeting was discussion of a 'no confidence motion' and non-suiting of the petitioner. The

petitioner calls in question the said proceedings of the General Body Meeting and the resultant removal, in the subject petition.

**SUBMISSIONS:**

**PETITIONER:**

4. The learned counsel Sri V.M. Sheelavant appearing for the petitioner contends that neither the Karnataka Societies Registration Act nor the duly approved Bye-laws of the Association provide any sanction for convening of a General Body Meeting with the object of considering a motion of 'no confidence' against an elected office bearer. He would submit that the Coordinate Bench merely directed consideration of the representation and not holding of a 'no confidence' proceeding. The representation did contain calling for a meeting to consider 'no confidence motion'; that is taken advantage of by calling for a 'no confidence motion' contrary to law. In the light of there being no provision for calling of 'no confidence motion', the entire proceeding has vitiated. He would submit that what the Societies Registration Act envisages disqualification of a Member and consequently the President. He would submit that even otherwise about 510 people were present

as found in the attendance sheet of the day of proceedings, but 620 votes have been polled. The entire General Body Meeting on the said day is a fraud, is his submission.

**RESPONDENTS 3, 6 & 8:**

5. *Per contra*, the learned counsel representing the Association/respondent Nos.3, 6 and 8 would vehemently refute the submissions in contending that the coordinate Bench of this Court directed holding of General Body Meeting for the purpose of 'no confidence motion'. That order has become final. The petitioner was a party to the said proceedings. Therefore, he is bound by the order of the coordinate bench. Votes have been polled, and the writ petition challenging the process of a General Body Meeting in which the petitioner is ousted is not entertainable. She would submit that the petition be dismissed. All other counsels appearing for the respondents would toe the lines of the learned counsel appearing for the Association.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

**CONSIDERATION:**

**7. The narrative of events as set-forth in the preceding paragraphs is not in dispute, neither in fact nor in documentation. The Association dignified with a glorious history of 150 years,** functions under its Bye-laws through its elected office bearers, President, one General Secretary, two Vice Presidents, one Treasurer, one Joint Secretary and seven Managing Committee Members. Election to the office bearers of the Association takes place once in two years again in terms of the Bye-laws. The last of the elections was held on 09-02-2024. The petitioner who had been holding the office of President for the last 12 years, is once again elected on the said date as President. **Amidst the preparations for the monumental sesquicentennial celebrations and the formation of a 101 member committee, fissures appear to have emerged within the fraternity, ushering in the representation seeking a 'no confidence' discussion thereby, becoming the genesis of the present *lis*.** This comes about by submission of a representation,

since this forms the genesis, it is germane to notice the same. It reads as follows:

"From –  
Members of Belagavi Bar Association,  
Belagavi.

To  
The General Secretary,  
Belagavi Bar Association,  
Belagavi.

Subject: Request to call for General Body meeting to discuss  
NO CONFIDENCE MOTION against President of  
Belagavi Bar Association.

Respected Sir,

We the undersigned members of BBA request you as  
under:

It is within your knowledge that 3 persons by names –  
Miss Soniya Venkatesh Dhara, Miss Pratibha J.Kadam, and Mr.  
Zaid Afzal Nizami, Age: 31 years, resident of Veerabhadranagar,  
Belagavi are illegally practicing as Advocates at Belagavi Law  
Courts without having due qualification of law and passing AIBE  
examinations.

Sri Basavaraj, S/o Murugesh Jarali is a practicing  
Advocate and social worker has given written complaint to BBA  
management against these persons. In spite of this, our  
President has failed to take any action against these person.  
Instead, he has allowed them to become members of BBA  
without due meeting and resolution of BBA management  
committee.

**Further, said President has indirectly supported  
Miss. Soniya Venkatesh Dhara and given threat to  
Basavaraj Jarali Advocate to compromise the matter with  
Soniya or else she will lodge complaint against Basavaraj  
Jarali. This warning is given by the President mostly  
sitting at Market Police Station on 23-11-2024 at evening.**

**This mobile conversation has been recorded and already known to all the advocates.**

**Since Jarali advocate did not agree for compromise, said lady has lodged bogus complaint and police have high handedly and immediately lodged FIR against Basavaraj Jarali advocate without following due procedure and without proper inquiry.**

**Therefore, on Sunday 24<sup>th</sup> November, 2024, advocates have circulated the request intimation to members to boycott the Court proceedings on Monday 25<sup>th</sup> November 2024. However, President has not shown any response and failed to give cooperation. As he himself involved in lodging complaint against fellow advocate at the instigation of fake advocate, our president has kept himself absent on Monday. Later on he has posted his photos in whatapp showing that he is working in his field and doing agriculture. This is like popular proverb "Emperor Nero played the violin while Rome burned".**

**Therefore, it is requested to immediately call for Special General Body meeting to discuss and decide No Confidence Motion against President of BBA.**

Thanking you,

Belagavi,  
Date: 26-11-2024

Sd/- (B.M. JARALI)  
Members of Belagavi Bar Association"

(Emphasis added)

The representation was deliberated upon and it was resolved that there was no provision under the Bye-laws for holding a General Body Meeting. Therefore, it appears to have resolved to take some legal action against the complaint that was filed and the

reason for calling the General Body Meeting. The 16<sup>th</sup> respondent then files a writ petition in **W.P.No.107881 of 2024** seeking a direction by issuance of a writ in the nature of *mandamus* to consider the representation submitted by him quoted *supra*. The coordinate bench on 15-09-2025, disposed the matter, by the following order:

"2. The short grievance of the petitioner is that the representation which has been submitted by the petitioner for calling for a general body meeting in pursuance of the representation dated 26.11.2024 has not been considered, and the meeting has not been called for.

3. Sri.Mahantesh R.Patil, learned counsel for the petitioner, would submit that there is a direction which is required to be issued for a General Body Meeting of respondent No.3 to be held under the aegis of respondent No.1.

4. Sri.Sangram S. Kulkarni, learned counsel for respondents No.3, 4, 6, 7 and 12 would submit that though a requisition from a group of 455 persons including the petitioner was received on 26.11.2024, there was one more representation which has been received by respondent No.3 on 3.12.2024, signed by 617 members, in pursuance of which a Committee meeting of the Managing Committee was held on 4.12.2024 and it was decided that there is no requirement for holding a General Body Meeting and on that basis, he submits that a General Body Meeting was not held.

5. 6. 7. Insofar as adoption of the model bylaws, he submits that the model bylaws have already been adopted and as such, the representation dated 15.12.2023 in relation thereto having already been considered and accepted, no reliefs are required to be granted as per prayer (b).

6. Heard learned counsel for the parties. Perused papers.

**7. Model byelaw (24), (25) and (26) are reproduced hereunder for easy reference:**

**24. SPECIAL GENERAL BODY MEETING:-**

i. The Executive Committee may, at any time and shall within 10 days on requisition given as per Bye Law convene Special General Body Meeting of the Ordinary / Life Members of the Association, and, in case of emergency, the President or the Secretary may also convene such Special General Body Meeting.

ii. A Special General Body Meeting of the Ordinary/Life Members of the Association shall be convened by the President/Secretary on the requisition Members. Life of 1/5th Ordinary/Life Members.

iii. In respect of Bar Association having Membership of more than 1000 or more the Special General Body Meeting can be called on a requisition of 200 or more Members.

iv. If the Executive Committee fails to convene the Special General Body Meeting within the time specified under this Bye Law on the requisition, the Seniors Committee shall convene the Special General Body Meeting within a week to be presided over by the Members of the Senior Committee as may be decided.

**25. NOTICE OF MEETINGS:-** Notice of 7 clear days shall be given for holding Special General Body. In case of emergency relating to subject which cannot be postponed for 7 days, a special General Body Meeting may be called, in like manner but at such shorter notice as may be considered sufficient by the President / Secretary, which will not be in any case less than 24 hours.

**26. Notice of a meeting shall be given by fixing the notice along with the agenda on the notice boards of the Association.**

**8. A perusal of the model bylaws which has now admittedly been adopted by respondent No.3 would indicate that byelaw (24) relates to Special General Body Meeting.**

**9. A perusal of clause (iii) of byelaw (24) indicates that for a Bar Association having a membership of more than 1000, a Special General Body Meeting can be called on a requisition of 200 or more members. In the present case, the requisition submitted on 26.11.2024 is by 455 advocates, who are members of respondent No.3 -Bar Association, thereby satisfying the threshold criteria under the above provision.**

**10. It was, therefore, but required that within 7 (seven) days of the requisition being given, the Special General Body Meeting of the ordinary/life members of the Association was required to be convened.**

**11. In terms of byelaw (25), notice of 7 (seven) clear days is required to be given for holding a Special General Body Meeting, however in case of emergency relating to a subject which cannot be postponed for seven days, a Special General Body Meeting may be called in like manner, but at such a shorter notice as may be considered sufficient by the President/secretary which shall not be in any case less than 24 hours.**

**12. In the present case, respondent No.3- Bar Association is scheduled to celebrate its 150 years of existence in the month of October, 2025 which as tentatively been fixed on 4.10.2025, hence in my considered opinion, the same would constitute an emergency requiring the meeting to be held at a shorter notice, which in my opinion could be as less as three days from the date of notice being issued. Hence, respondent No.3 Association is permitted to issue a three days shorter notice for holding the Special General Body Meeting.**

**13. In terms of byelaw (26), notice of a meeting shall be given by affixing the notice along with the agenda on the notice board of the Association and**

**WhatsApp group of the Association. Hence, respondent No.3 Association is permitted to affix the notice along with the agenda on notice boards of the Association, as also circulate the same on the WhatsApp group of the Association which shall constitute due notice to all the members of respondent No.3-Association.**

**14. In view of the above, I pass the following:**

**ORDER**

- i. The writ petition is partly allowed.**
- ii. Respondent No.3 is directed to call for a General Body Meeting by giving a notice of not less than three days, which notice shall be affixed on the Notice Board of respondent No.3-Association and circulated on WhatsApp group of respondent No.3-Association.**
- iii. The meeting shall be conducted under the supervision of Sri.Vinay Manglekar and Sri.K.B.Nayak, who are present members of The Karnataka Bar Council.**
- iv. It is hoped and believed that all the advocates shall cooperate with each other to celebrate the milestone of 150 years of the existence of respondent No.3-Bar Association in a peaceful, cooperative, fraternising and joyous manner."**

The coordinate bench observes that Bye-law No.24 of the Model Bye-laws permits convening of Special General Body meeting. Therefore, the said General Body Meeting must be convened in consideration of the representation dated 26-11-2024.

8. The 16<sup>th</sup> respondent and others took advantage of the order. Notice is issued of the General Body Meeting on 20-09-2025. The Communications of the President and some of the Members of the Belagavi Bar Association not to hold Special General Body meeting read as follows:

"From:

Shri S.S.Kivadasannavar,  
President,  
The Belgaum Bar Association, Belagavi.

To:

- 1) Shri Basavaraj Mugali,  
(Vice-President, BBA) & Preside over the  
Special General Body Meeting  
20-09-2025.
- 2) Shri Vinay B.Mangalekar,  
Vice-Chairman, Karnataka State Bar  
Council, Bengaluru, Supervisor of the  
Special General Body meeting dt.20-09-2025.
- 3) Shri K.B. Naik,  
Member, Karnataka State Bar Council,  
Bengaluru, Supervisor of the Special General  
Body Meeting dated 20-09-2025.

Respected sir/s,

I the undersigned, Shri S.S. Kivadasannavar, President of the Belgaum Bar Association, Belagavi submit you the more information for your kind consideration regarding the Special General Body meeting as under:

**At the outset this meeting is not conducting as per the directions of the Hon'ble High Court of Karnataka, Dharwad Bench. The Hon'ble Court has given the direction to conduct the meeting under the supervision of you No.2 and 3 and all of sudden after taking objections from some members of the Belgaum Bar Association you No.1 and 3 have given any opportunity to hear either from me or from petitioner Shri S.S.Sanikop, who has filed the writ petition bearing W.P. No.107881 of 2024 and decided on dated 15-09-2025 and not given opportunity to any Senior Members to address the Special General Body Meeting i.e., Shri A.G.Kulkarni and Shri B.J. Gangai and various senior members. This act is totally not only against the provisions of bye-laws of the Belgaum Bar Association, Belagavi nor the provisions of Laws in existence and also such type of provision is not adopted by the State Bar Council of Karnataka regarding the impeachment of President of the Bar Association.**

**I am totally disagreed to your decision regarding the voting amongst the present members of the Special General Body Meeting for the no-confidence motion. Such type of provision neither in the Bar Council of Karnataka nor in the Belgaum Bar Association, Belagavi.**

So, I am humbly requesting to your goodselves No.1 to 3 to seek more clarification from the Hon'ble High Court of Karnataka Dharwad Bench for further details, till then kindly adjourned this Special General Body Meeting dated 20-09-2025 and till then the voting procedure may not be adopted.

Thanking you in anticipation.

Belagavi  
Date: 20-09-2025

Yours faithfully,  
Sd/-  
Shri S.S.Kivadasannavar,  
The Belgaum Bar Association, Belagavi.

(Emphasis added)

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From:

Members of Belagavi Bar Association,  
Belagavi Bar Association,  
Belagavi.

To

The Supervisors of the General Body Meeting,  
Belagavi.

Sub: Request not to call for voting regarding NO  
CONFIDENCE MOTION against the President of  
Belagavi Bar Association.

Respected Sir,

We the undersigned members of BBA request you as  
under:

With reference to the above subject the decision taken  
by the supervision committee in the General Body Meeting  
dated 20-09-2025 to go for voting regarding NO CONFIDENCE  
MOTION of the President of Belagavi Bar Association, we  
strongly oppose the same as the same will be against the  
dignity of the President as well as Belagavi Bar Association and  
the Nobel profession and the same will lose dignity of  
association in the society.

**Further the general body meeting, the directions  
of the Hon'ble High Court of Karnataka, Dharwad in  
W.P.No.107881 of 2024 (GM-RES) dated 15-09-2025 is  
not complied and the Hon'ble High court has stated in  
its order to conduct the general body meeting under the  
supervision of Shri Vinay Mangalekar and K.B. Naik to  
discuss on the requisition dated 26-11-2024 given by  
the 455 members regard NO CONFIDENCE MOTION as  
against the President of Belagavi Bar Association.**

**Therefore, the Hon'ble High Court of Karnataka  
has not directed for any kind of voting or  
disqualification of the elected President of Belagavi Bar  
Association.**

We the respected members are against the voting for no confidence motion against the President of Belagavi Bar Association as decided in the General Body Meeting dated 20-09-2025.

Yours faithfully,  
Members Belgaum Bar Association, Belagavi.”

(Emphasis added)

Voting is said to have been held and the result is the petitioner getting lesser votes or otherwise. The Association has preferred through the General Secretary objections projecting a threshold bar of maintainability of the petition. Therefore, in furtherance whereof, this Court is compelled to examine the following seminal issues that now arise for consideration:

- (i) Whether a writ petition would be maintainable against the General Body Meeting held of the Bar Association?**
- (ii) Can a 'no confidence motion' spring de hors the foundation under the Act or in the Bye-laws?**

**Issue No.(i):**

**Whether a writ petition would be maintainable against the General Body Meeting held of the Bar Association?**

9. To consider the said issue, it is necessary to travel through the Jurisprudence *qua* the maintainability of the petition against happenings in a Bar Association. A learned Single Judge of this Court in the case of **SRI KULKARNI G.B. v. KARNATAKA STATE BAR COUNCIL**<sup>1</sup> has held as follows:

"7. Admittedly, fourth Respondent-Hubballi Bar Association is only a Society registered under the provisions of KSR Act, 1960. This Society is neither substantially funded nor its affairs are managed by the Government of the State or any of its Officers nor there is any pervasive control by the State. Although, all its members being the Advocates function as the Officers of the Court, still their Association as such does not discharge any public function or public duty imposed by law or any instrument having force of law. Thus, the activities of this Society do not contain sufficient amount of public law element. Therefore, it is not an agency or instrumentality of the State which is liable to suffer judicial review of its action under Articles 226 and 227 of the Constitution of India.

8. To constitute an agency or an instrumentality of State within the meaning of Article 12, the Respondent against whom Writ is sought for should be the one which is financially, functionally and administratively dominated by or under the control of the Government and such control must be pervasive. The mere regulatory control whether under State or otherwise would not serve to make a body an instrumentality of the State. This view of law emerges from the ratio of the decision of the Apex Court in the Case of *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology* [(2002) 5 SCC 111.] at para 40.

9. During the initial period of Writ jurisdiction, the status of the Respondent against whom Writ was sought for was the decisive factor for invoking the jurisdiction under

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<sup>1</sup> 2018 SCC OnLine Kar 3756

Articles 226 and 227. The High Courts used to exercise Writ jurisdiction and scrutinize the acts of such Respondent, if it was an agency or instrumentality of the State. However, there has been a gradual shift from the status of Respondent to the nature of its function. In other words, even when the Respondent is an agency or an instrumentality of the State as defined under Article 12, still the Writ jurisdiction is not invocable if the act complained of does not contain sufficient amount of public law element.

**10.** The Apex Court in *L.I.C. of India v. Escorts Ltd.*, [(1986) 1 SCC 264: AIR 1986 SC 1370.] has held as under:

*"While it cannot be doubted that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Art. 226 or Art. 32 of the Constitution, Art. 14 cannot be construed as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. For example, if the action of the State is political or sovereign in character, the Court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field."*

**11.** The action in challenge is the Calendar of Events issued by the third Respondent-Returning Officer under the provisions of the bye-laws of the fourth Respondent-Association scheduling election to the Governing Council. Neither the bye-laws have been promulgated nor the Calendar of Events have been issued under the compulsion of an enactment or the rules made thereunder. Even otherwise also

they are bereft of any statutory force. The bye-laws of a Society being contractual in nature bind only its members.

**12.** Thus, viewed from any angle keeping the law declared by the Apex Court in the Cases mentioned above, the Respondent No. 3 Returning Officer or the Respondent No. 4 Bar Association cannot be treated as the Agency or the instrumentality of the State or other authorities under Article 12 of the Constitution of India; nor does the impugned Calendar of Events involve sufficient amount of public law which is a sine qua non for invoking the Writ jurisdiction of this Court."

The coordinate bench holds that a writ against elections of Governing Council of the Bar Association cannot be entertained, as it is not a State under Article 12 of the Constitution. The issue was whether the calendar of events issued by the Hubballi Bar Association could be quashed. This was tossed before the Division Bench along with several appeals. The Division Bench takes a different view in a judgment reported in **CHANDRAKANT v. KARNATAKA STATE BAR COUNCIL**<sup>2</sup>. The issue was elections to the Belagavi Bar Association. The Division Bench holds as follows:

**"32.** In all the above noted cases, the point of maintainability of the writ petition as against a Bar Association has been specifically contended and the Courts have consistently held that the Bar Association is amenable to the writ jurisdiction and that a writ under Article 226 of the Constitution of India is maintainable against the Bar Association, more so when the issue involved is the sanctity of

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<sup>2</sup> **2020 SCC OnLine Kar 5403**

the elections. We are in complete agreement with the views expressed by the various High Courts.

**33.** At this stage, it is necessary to look into the provisions of the bye laws of the Bar Association more particularly the objects of the Association which is contained in bye law No. 3 and reads as under:

*"3. The objects of the Association are:*

- (a) To organize and unify lawyers with a view to build up strong and independent Bar, capable of maintaining high standards and traditions associate with the legal profession.*
- (b) To promote fellow feelings among all persons who practice legal profession, pleaders and Advocates.*
- (c) To take steps for the physical, social, intellectual advancement of its members.*
- (d) To encourage legal learning and research and to organize and establish law library.*
- (e) To protect and promote the interest of the Junior Section of the Bar.*
- (f) To publish or to assist the publication of treatise, text books or pamphlets or periodicals or journals etc., on subjects of law.*
- (g) To examine and offer suggestions to appropriate authorities on legislation or proposed legislation and formation or amendment of rules of procedure and to offer suggestions on all other matters relating to legal profession.*
- (h) To establish and manage or assist in the management of Canteens, Co-operative Societies, Legal Aid Centres, Benevolent or Welfare Funds and the Conduct of Sports, Entertainments etc., for the benefit of its members.*
- (i) To do everything incidental to or necessary for the achievement of all or any of the objects either singly or in collaboration with other Law Institutions or Associations having the same or similar objects."*

**34.** A reading of clause (a) of bye law 3 would demonstrate that one of the obligations cast upon itself is to build up strong and independent bar capable of maintaining high standards and traditions associated with the legal

profession. The 3<sup>rd</sup> respondent by this obligation has promised to discharge a duty of a public character. Reading of clause (d) is also an obligation of a public character. So also clauses (f), (g) and (h) which can by no stretch of imagination, be described as obligations of a private character. That apart, the other relevant provisions are bye laws 17, 18 and 26 which read as under:

*"17. Management:*

- (a) The management and control of all the affairs of the Association shall be vested in a Governing Body called the Council consisting of the following members:—*
- (b) President, Two Vice Presidents and two Secretaries one Hon. General Secretary and a Joint Secretary and 6 members.*

*The above members of the Council shall be elected at the Annual General Meeting of the association at the Annual General Meeting of the association to be held ordinarily in the month of June and they shall hold office till their successors are elected.*

- (c) In the case of any vacancy by death, resignation or absence for consecutive three meetings of the Council another member may be co-opted, in his place by the Council. In case of difference of opinion co-optation shall be as per majority.*

*18. The Council at its first meeting or otherwise shall be entitled to co-opt to the Council from amongst the members not exceeding three members to its Council. Provided that a member so co-opted shall be one who has not contested as a candidate at the immediately preceding election and had been defeated.*

*26. the President, if present, shall preside over meeting of the Council. In the event of his absence, one of the Vice Presidents shall preside. In case, neither the President nor any of the Vice Presidents, is present, the members present shall elect one of their members to be the Chairman of the meeting."*

**35. Though initially arguments were addressed on the merits of the writ petition, subsequently it has been**

restricted to the issue of maintainability of the writ petition, as the learned Single Judge has not entered upon and adjudicated the writ petition on merits.

36. The observations of the Hon'ble Apex Court and the various High Courts in the long line of rulings narrated supra, obviates any detail discussion with regard to the maintainability of a writ petition against the Bar Association invoking the provisions of Article 226 of the Constitution of India. That apart, as detailed supra, some of the obligation, the 3<sup>rd</sup> respondent has cast upon itself, bears a public character. The Advocates are not mere arbiters but officers of the court who assist the Court in the running of the justice delivery system and it is such officers of the court who constitute the 3<sup>rd</sup> respondent Society. That the constituents of the 3<sup>rd</sup> respondent Society are answerable to the Court and to the 1<sup>st</sup> respondent with regard to their conduct in the discharge of their professional duties. Both the 1<sup>st</sup> respondent and the Court can by no stretch of imagination be described as private entities. That apart, if the objects of the 3<sup>rd</sup> respondent Society are juxtaposed with the observations of the Hon'ble Apex Court in *Dwaraka Nath's Case* and SCBA case, it is apparent that the 3<sup>rd</sup> respondent discharges obligations of a public character. Hence, the writ petition invoking the provisions of Article 226 of the Constitution of India praying for a relief as against the 3<sup>rd</sup> respondent is required to be held as maintainable. It is not the case of the 3<sup>rd</sup> respondent that it is not similarly situated as the Bar Associations as detailed in the long line of rulings. Further, admittedly the 3<sup>rd</sup> respondent is in receipt of grants and is housed in the court premises and under the all-pervasive control of the 1<sup>st</sup> respondent.

37. We have perused the order of the learned Single Judge in Writ Petition No. 148178/2020 upon which reliance is placed. The learned Single Judge has held that the Bar Association does not answer the definition of the term "State". We have no quarrel with the same. But the learned Single Judge has failed to appreciate the scope and ambit of Article 226 of

**the Constitution of India which has been reproduced supra in the various decisions, wherein the reference is not merely to the "authorities", but also to "persons". In that light of the matter, the conclusion by the learned Single Judge that the writ petition is liable to be rejected warrants interference. The learned Single Judge has failed to consider the scope and ambit of Article 226 of the Constitution of India which clearly empowers the High Court to issue prerogative writs even to private entities. When and in which case such prerogative writs can be issued depends on the facts and circumstances of each case. The instant case involving co-option of defeated candidate to an elected post of President of the Association is a circumstance which is not only flagrantly contrary to the bye laws and to democratic principles and is a situation, that warrants consideration by the High Court. In our considered opinion, the action complained off shocks the judicial conscience of this Court. Hence, the writ petition invoking the provisions of Article 226 of the Constitution of India in our considered opinion is maintainable. Accordingly, the points for determination are answered in favour of the appellant."**

(Emphasis supplied)

**The Division Bench emphatically holds that while a Bar Association may not be a State within the strict contours of Article 12, it nonetheless discharges obligations rooted in the public law domain, as its members constitute officers of the Court, custodians of justice and bring in discipline and dignity to the legal profession. The Bench holds that the functioning of the Bar Association is neither cloistered nor**

**purely private, rather it bears the imprimatur of public character. Thus, where actions of a Bar Association are alleged to undermine democratic norms, procedural fairness or the rights of its members in their professional capacity, this Court's writ jurisdiction is unquestionably enlivened. To deny such right would be to permit arbitrariness to intrude into a space where integrity and independence must form the basis of their existence.** The Division Bench holds that the learned single Judge has failed to appreciate the scope and ambit of Article 226 of the Constitution of India which would become applicable not only to other Authorities but to other persons. Therefore, the said order of the learned Single Judge challenged therein was overturned by holding that the writ petition was maintainable and the Bar Association was amenable to the writ jurisdiction. Wherefore, the threshold objection raised by the respondents stands repelled. Invoking the jurisdiction under Article 226 of the Constitution of India against actions of the Association that bear distinctly public law element is maintainable. The issue is thus answered in favour of the petitioner, holding the petition to be maintainable and entertainable.

**Issue No.(ii):****Can a 'no confidence motion' spring de hors the foundation under the Act or in the bye-laws?**

10. To consider the said issue of whether in the absence of a Bye-law or provision under the Societies Registration Act, a 'no confidence motion' could have been held or otherwise. It is an admitted fact that the Societies Registration Act does not contain such a provision. Whether Bye-laws would empower holding of a 'no confidence motion' is to be noticed to which Bye-law Nos.26 and 27 are necessary to be considered. They read as follows:

**"26. SPECIAL GENERAL BODY MEETING:**

i. The Executive Committee may, at any time and shall within 7 days on requisition given as per Bye-law convene Special General Body Meeting of the Ordinary/Life Members of the Association, and, in case of emergency, the President or the Secretary may also convene such Special General Body Meeting.

ii. A Special General Body Meeting of the Members of the Association shall be convened by the President/Secretary on the requisition of 1/5<sup>th</sup> of eligible Members of the Association.

iii. In respect of Bar Association having Membership of more than 1000 or more the Special General Body Meeting can be called on a requisition of 200 or more members.

iv. If the Executive Committee fails to convene the Special General Body Meeting within the time specified under this Bye-law on the requisition, the Senior Committee members shall convene the Special General Body Meeting within a week to be presided over by the Members of the Senior Committee Members as may be decided.

**27. NOTICE OF MEETINGS:**

Notice of 7 clear days shall be given for holding Special General Body. In case of emergency relating to subject which cannot be postponed for 7 days, a Special General Body Meeting may be called, in like manner but at such shorter notice as may be considered sufficient by the President/Secretary, which will not be in any case less than 24 hours."

Bye-law Nos.26 and 27 deal with Special General Body Meeting for any purpose and the notice of meeting to be given for such Special General Body Meeting. The petitioner's grievance rests upon the unassailable fact that neither the Act nor the Bye-laws of the Association envisage or authorize initiation of 'no confidence motion' against any office bearer much less the President. As observed hereinabove, Bye-law Nos.26 and 27 are silent conspicuously and unequivocally upon any mechanism of removal of an elected representative through a vote on no confidence.

11. It is therefore, the 16<sup>th</sup> respondent approaches this Court seeking consideration of the representation. The representation is quoted hereinabove and the order passed by the coordinate bench is also quoted hereinabove. The representation was to hold a 'no confidence motion' against the President. The order of the coordinate bench was directing consideration of the representation and holding of a Special General Body Meeting as well. But, the representation was not only for the purpose of holding a 'no confidence motion', neither the order of the Court. It was for the purpose of celebration of 150<sup>th</sup> anniversary of the Association. But, what is held is a 'no confidence motion' and the result of 'no confidence motion' is the challenge to the impugned action of removal of the President of the Association. Therefore, the act has now taken place de hors the provision under the Act. Therefore, proceedings of the Association has now undertaken de hors the provision under the Bye-laws.

12. In justification, respondents 3, 6 and 8 have through their written submissions placed heavy reliance upon the judgment of the Apex Court in the case of **VIPULBHAI M. CHAUDHARY V.**

**GUJARAT COOPERATIVE MILK MARKETING FEDERATION**

**LIMITED**<sup>3</sup>. Therefore, it becomes necessary to consider what the Apex Court holds in the said judgment. The Apex Court has held as follows:

**"20.** If a person has been selected to an office through democratic process, and when that person loses the confidence of the representatives who selected him, those representatives should necessarily have a democratic right to remove such an office-bearer in whom they do not have confidence, in case those institutions are viewed under the Constitution/statutes as democratic institutions.

**21.** In *Bhanumati case* [(2010) 12 SCC 1] , at para 67, this Court elaborated on this principle : (SCC p. 20)

"67. Any head of a democratic institution must be prepared to face the test of confidence. Neither the democratically elected Prime Minister of the country nor the Chief Minister of a State is immune from such a test of confidence under the Rules of Procedure framed under Articles 118 and 208 of the Constitution. Both the Prime Minister of India and Chief Ministers of several States heading the Council of Ministers at the Centre and in several States respectively have to adhere to the principles of collective responsibilities to their respective houses in accordance with Articles 75(3) and 164(2) of the Constitution."

**22.** In *Pratap Chandra Mehta case* [(2011) 9 SCC 573] , at para 45, the principle has been discussed as follows : (SCC pp. 600-01)

"45. In the instant case, the election process as contemplated under the relevant laws is that the members of a State Bar Council are elected by the

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<sup>3</sup> (2015) 8 SCC 1

electorate of advocates on the rolls of the State Bar Council from amongst the electorate itself. The elected members then elect a Chairman, a Vice-Chairman and the Treasurer of the State Bar Council as well as constitute various committees for carrying out different purposes under the provisions of the Advocates Act. In other words, the body which elects the Chairman or Vice-Chairman of a State Bar Council always consists of members elected to that Council. The democratic principles would require that a person who attains the position of a Chairman or Vice-Chairman, as the case may be, could be removed by the same electorate or smaller body which elected them to that position by taking recourse to a 'no-confidence motion' and in accordance with the Rules. The body that elects a person to such a position would and ought to have the right to oust him/her from that post, in the event the majority members of the body do not support the said person at that time. Even if, for the sake of argument, it is taken that this may not be generally true, the provisions of Rule 122-A of the M.P. Rules make it clear, beyond doubt, that a 'no-confidence motion' can be brought against the elected Chairman provided the conditions stated in the said Rules are satisfied."

**23.** In *Usha Bharti case* [(2014) 7 SCC 663] also, this Court eloquently held at para 53 as follows : (SCC p. 693)

"53. In our opinion, the provision for removing an elected representative such as Panchayat Adhyaksha is of fundamental importance to ensure the democratic functioning of the Institution as well as to ensure the transparency and accountability in the functions performed by the elected representatives."

**24.** No doubt, in the cases referred to above, the respective Acts contained a provision regarding no confidence. What about a situation where there is no express provision regarding no confidence? Once the cooperative society is conferred a constitutional status, it should rise to the constitutional aspirations as a democratic institution. So, it is for the respective legislative bodies to ensure that there is democratic functioning. When the Constitution is eloquent, the

laws made thereunder cannot be silent. If the statute is silent or imprecise on the requirements under the Constitution, it is for the court to read the constitutional mandate into the provisions concerned and declare it accordingly. Article 243-ZT has given a period of one year to frame/reframe the statutes in consonance with Part IX-B and thereafter i.e. with effect from 12-1-2013, those provisions which are inconsistent with Part IX-B, cease to operate.

**25.** Silence in the Constitution and abeyance as well has been dealt extensively by Michael Foley in his celebrated work *The Silence of Constitutions*. To quote from the Preface:

“Abeyances refer to those constitutional gaps which remain vacuous for positive and constructive purposes. They are not, in any sense, truces between two or more defined positions, but rather a set of implicit agreements to collude in keeping fundamental questions of political authority in a state of irresolution. Abeyances are, in effect, compulsive hedges against the possibility of that which is unresolved being exploited and given meanings almost guaranteed to generate profound division and disillusionment. Abeyances are important, therefore, because of their capacity to deter the formation of conflicting positions in just those areas where the potential for conflict is most acute. So central are these abeyances, together with the social temperament required to sustain them, that when they become the subject of heightened interest and subsequent conflict, they are not merely accompanied by an intense constitutional crisis, they are themselves the essence of that crisis.”

In Part II, Chapter Four, the author has also dealt with the constitutional gaps and the arts of prerogative. To the extent relevant, it reads as follows (p. 82):

“Gaps in a constitution should not be seen as simply empty space. They amount to a substantial plenum of strategic content and meaning vital to the preservation of a constitution. Such interstices accommodate the abeyances within which the sleeping giants of potentially acute political conflict are

communally maintained in slumber. Despite the absence of any documentary or material form, these abeyances are real, and are an integral part of any constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a constitution as its more tangible and codified components.”

...  
**51.** The cooperative society registered under the Central or the State Act is bound to function as a democratic institution and conduct its affairs based on democratic principles. Democratic functioning on democratic principles is to be reflected in the respective Acts or Rules or bye-laws both on the principle and procedure. If not, it is for the court to read the democratic principles into the Act or Rules or bye-laws. If a procedure is prescribed in any Act or Rule or bye-law regarding election of an office-bearer by the board, as defined under Article 243-ZH(b) of the Constitution of India, and for removal thereof, by way of a motion of no-confidence, the same procedure has to be followed. In case there is no express provision under the Act or Rules or bye-laws for removal of an office-bearer, such office-bearer is liable to be removed in the event of loss of confidence by following the same procedure by which he was elected to office.

**52.** Now that this Court has declared the law regarding the democratic set-up of a cooperative society and that it is permissible to remove an elected office-bearer through motion of no-confidence, and since in many States, the relevant statutes have not carried out the required statutory changes in terms of the constitutional mandate, we feel it just and necessary to lay down certain guidelines. However, we make it clear that these guidelines are open to be appropriately modified and given statutory shape by the competent legislature/authority:”

The Apex Court in the afore-quoted judgment holds that conduct of election inherently has within it the power of calling a ‘no confidence motion’. Democratic functioning or democratic

principles must contain the power to remove the office bearers of a particular Board by way of a 'no confidence motion' in the same procedure that an election takes place.

13. Long before the judgment of the Apex Court, learned Single Judge of this Court in the case of **VIDYACHARAN SHUKLA VS. B.S.ADITYAN<sup>4</sup>**, has held as follows:

".... ....

**30.** In the same strain the further argument put forward more parenthetically is on the basis of the requirement of Rule 9(2) which permits an office bearer to seek office for a further term of four years subject to being returned by a  $\frac{2}{3}$  majority of the members present during voting. On the basis of this Rule it is contended that a person voted into office for a second time on the basis of  $\frac{2}{3}$  majority cannot be removed by passing a vote of no confidence motion by a simple majority. It is pointed out from the totality of the constitutional framework of the Association no modality has been laid down to cover the case of voting a person elected for a second time, out of office by expressing want of confidence in him. In other words, the argument is there being nothing in the Constitution providing for an exigency like the one under advertence, we had reached a blind end in any view of the matter because for one thing the Regulations did not lay down any prescribed modality in that whether it could be done only by  $\frac{2}{3}$  majority which was a minimum requirement or by a simple majority. The argument is that if a person had to be elected by  $\frac{2}{3}$  majority he cannot be made to shed that office unless a  $\frac{2}{3}$  percentage of persons constituting the majority had again expressed their displeasure and voted against him. In those circumstances, it is said that groping as we are in the dark in the absence of precise modalities and yard-sticks, it would be much safer to infer that

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<sup>4</sup> **1988 SCC OnLine Kar 364**

the Constitution did, not merely not specifically authorise voting a person out of office by expressing no confidence in him, even impliedly did not sanction adoption of such a technique. It seems to me the argument as, aforesaid, merely blows out of proportion a very small hump that can be tided over easily. **It is trite law that if there is authority to exercise power that authority may be either explicit or implicit but if what is missing is the procedure regulating the mode of exercise of power or authority, it is for the source of that power or source of that authority to determine as to how best it should exercise such power or authority. The mere absence of specific modality laying down a discernable pattern for the exercise of that power cannot lead, as urged herein, to a total denudation of the power itself. There cannot be any argument suggesting that merely because the pattern of voting during a no confidence motion not being stipulated in the Constitution was an indication of the absence of the right to move a vote of no confidence. It seems to me that the leap forward to this conclusion tries to cover a great leeway in between and must, therefore, necessarily find itself grounded as an argument without substance.**

**31. If the General Assembly has the power to elect a person into office and chooses for its own reasons to remove him from office and for that purpose a Meeting is convened, then as to how the business of removing that person from office and what are the modalities to be adopted in that behalf are all matters essentially for that Meeting to decide. It certainly has the power to adopt any particular method and cannot be denied of that power to choose whatever mode it likes.** In a different context the High Court of England in the case of *Bradlaugh v. Gossett* [1983-1984 QBD Vol 12.] held that in matters relating to internal management touching the procedure of the House of Commons the Court had no power to interfere. That was a case in which one Bradlaugh had been returned to the Parliament from a constituency in Northampton. After his election Bradlaugh reported to the House and asked the Speaker to swear him in as he was entitled by law to take the oath of office. The Speaker did not administer oath to Bradlaugh although law enjoined on him that duty and instead by a Resolution of the House of Commons, the Sargent of the House was directed to

exclude Bradlaugh from the House until he undertook not to disturb the proceedings of the House. After Bradlaugh ascertained from the Sargent himself as to whether he had been enjoined to prevent him entry into the House for the purpose of taking his seat, if necessary by force, the Sargent having affirmed his intention of doing so till he was otherwise instructed by the Speaker, Bradlaugh took the matter to Court seeking a declaration that the Resolution of the House preventing him from taking his seat was null and void and inter alia seeking an injunction restraining the Sargent at Arms from preventing him by force from entering the House and taking the oath as a Member. The Court then held that whatever is done within the walls of the Parliament is not liable for examination elsewhere and the House had exclusive jurisdiction to decide or regulate the course of its own proceedings. It is in this context Lord Justice Stephen made the classical statement "where there is no legal remedy, there is no legal wrong". I have only referred to this decision to point out that in these internal matters, touching the regulation of business etc., the body conducting the business is supreme and there is no question of any ultravires action, because it was doing something not provided for by its own Constitution. It would certainly be a different thing if under its Constitution, the I.O.A. had been expressly debarred from passing a vote of no confidence or the Constitution had specifically provided for the manner and mode of moving a vote of no confidence and had provided for modalities for its exercise. The Constitution has not provided for any of these things and, therefore, there is no basis for inferring any excessive exercise of authority or power. Thus the question of vires of the action does not arise at all. It is clearly a matter of internal organisation and is out of bounds so far as this Court is concerned as pointed out a century ago by the Queen's Bench in *Bradlaugh's case* [1983-1984 QBD Vol 12.] referred to supra. Having in this manner considered all the arguments against implying power to remove an office bearer from office in between general elections, it has not been possible for me to find either specifically or impliedly any bar for the exercise of such power by the General Assembly under the Constitution of the I.O.A.

....      ....      ....

**38. It should be noted that the power of moving a no confidence motion against an office bearer need not always be explicit but may be implicit in the very nature of the organization in question. If the axiomatic principle or basic tenets of democracy should be the guiding factor in ascertaining the limits of that power, then, call it amotion or call it the power of expressing no confidence, existence of such power must certainly be treated as quite essential for good governance and administration. Hence the I.O.A. although it is a non-statutory body, certainly needed it. There is little reason to deny in law the democratic principle of removing from office the holder thereof by expressing want of confidence in him when he has forfeited such confidence. In the larger sense it seems to me the power of amotion is more inferior both in nature and amplitude to the power of removal of the holder of an office by expression of a vote of no confidence in him. In any view of the matter if removal of a holder of an office either by means of amotion or by expressing want of confidence in him is considered as a bulwark of safety against authoritarian Rule and despotism then it seems to me that I should without more and any hesitation accept even may be the veiled existence of such power in any organization be it a statutory Corporation or non-statutory Corporation or a friendly association or body like the I.O.A. registered under the Societies Registration Act, to remove a person holding office. This power or method of frowning through ballot upon persons in office, who display a tendency towards dictatorial disposition, is, an instrument that is beneficent in character and, therefore, cannot be denied to the I.O.A. either on the ground that it does not have the veneer of a Corporation or on the ground that specific absence of power means a total embargo on the exercise of that power. To me it means neither.**

(Emphasis supplied)

14. Later, a Division Bench of this Court considering the entire spectrum of law in the case of **BASRUR RAJEEV SHETTY v. INDIAN RED CROSS SOCIETY**<sup>5</sup>, has held as follows:

“... ..

17. It could be argued that the power to appoint a Chairman would carry with it the power to remove inasmuch as motion for ‘no-confidence’ may be treated as a necessary adjunct and an essential requisite of good administration and therefore, it could be implied or treated as incidental to or inherent in a body, such as the Red Cross Society. Thus, a body conferred with the power to elect a Chairman has a power to remove him from the office by a ‘no-confidence motion’ is the argument of the respondents.

18. **However, it is necessary to have certain safeguards while resorting to such a procedure. For instance, a ‘no-confidence motion’ cannot be permitted immediately after assumption of office of a Chairman as he/she must be given some time to function depending upon the term of office or otherwise it would become an arbitrary exercise of power of ‘no-confidence’. Further, such a motion cannot be moved by a single member of the Committee as in the instant case, but by at-least one-third of the elected members of the Committee. In this regard, it can also be stated that the resolution for ‘no-confidence’ could be passed by a motion of atleast two-thirds of the total number of elected members present at a meeting specially convened for the purpose. Also, if a motion for ‘no-confidence’ is once defeated, then a fresh motion cannot be introduced within one year thereafter. These safeguards are essential since the consequence of passing of the ‘no-confidence motion’ is serious. This is because, the Chairman or the office bearer shall be deemed to have vacated his office forthwith, if a resolution expressing**

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<sup>5</sup> W.A.No.532 of 2021 c/w W.A.No. 536 of 2021, disposed on 17.06.2021

want of confidence in him is passed as another Chairman is elected in his place.

... ..

20. In our view, atleast the following safeguards must be implemented before a 'no-confidence motion' can be taken up against the Chairman or other office bearer of the Society by an amendment made to the Rules. Otherwise, the process of holding a meeting to express 'no-confidence' against an office bearer of the Society would become an arbitrary exercise of power and possibly in violation of Article 14 of the Constitution, which is impermissible.

21. The following safeguards, in our view, would remove the vice of arbitrariness:

- (i) A 'no-confidence motion' against the Chairman or other office bearer of the Society may be moved only after one year of his assumption of office.
- (ii) In case, the motion of 'no-confidence' is defeated, a fresh motion shall not be introduced within one year thereafter.
- (iii) No motion of 'no-confidence' shall be moved unless there is a request from not less than one-third of the elected members of the society concerned.
- (iv) The Chairman or the other office members of the Society shall be deemed to have vacated office forthwith if a resolution expressing want of confidence in him is passed by a majority of twothirds of the total number of elected members present in the meeting specially convened for the purpose.

The procedure for 'no-confidence motion' shall be as under:

- (a) A written notice hereinafter called 'a no-confidence notice', with intention to take up or move 'no-confidence motion', signed by not less than one-third of members of the District Branch of the Society along with a copy of the proposed motion shall be delivered in-person to the District Branch Secretary of the society.
- (b) The Secretary of the District Branch Society shall send a communication of the same to the President (the Deputy Commissioner of the District or the District Magistrate) within seven days of the receipt of notice of 'no-confidence motion'.
- (c) The President, through the Secretary of the Society, shall give notice of not less than seven clear days of such meeting to all members of the Society.
- (d) The notice shall clearly state the place, date, time and agenda of the meeting.
- (e) The service of notice may be effected to the members of the society in any of the following manner, namely-
  - (1) by giving or tendering it to such person;  
or
  - (2) by sending it to their address through registered post.
- (f) The President shall preside over the meeting of the District Society called to consider 'no-confidence motion' and conduct all further proceedings in that behalf.
- (g) The quorum for such meeting shall be fifty percent of the members of the Committee. All the members attending the meeting shall sign in the book kept for the purpose before commencement of the meeting. If within one hour after the time fixed for the meeting, the quorum is not formed, the meeting shall stand

cancelled and the notice issued as per Clause (c) shall stand cancelled.

- (h) A meeting of the Committee convened for the purpose of considering a no-confidence motion under Clauses (c) and (d) above shall not, for any reason be adjourned, unless there is an exceptional reason to do so.
- (i) As soon as the meeting commences, the President shall read out to the members of the Committee, the motion for consideration for which the meeting has been convened and shall put it to vote without any debate.
- (j) The votes shall be taken by secret ballot and the members of the Committee shall record their votes in the ballot papers supplied to them.
- (k) If the motion is carried, with the support of not less than two-thirds of the elected members present in the meeting, the President shall declare the result and draw up the proceedings accordingly and sign and handover a copy of the proceedings to the Secretary of the Society and communicate the same to the Chairman of the State Managing Committee.
- (l) Immediately after the motion is carried as per Clause (k) above, the office-bearer or bearers as the case may be, shall not discharge any function and shall be deemed to have vacated his or her or their office forthwith.
- (m) The President shall take action for the election of the office-bearer or office-bearers from amongst the members of the District Managing Committee. The person/persons so elected shall hold office, for the remaining period of the term of his or her or their predecessor/predecessors as the case may be.

22. It may be, as narrated by learned counsel for the respondents that there are grave and serious allegations against the appellant herein. We do not wish to express our opinion on the same as the enquiry is still on, but de hors that fact, we find that in the absence of there being any specific provision under the Rules in the form of safeguards for initiating a 'no-confidence motion' against a Chairman, he/she cannot be removed on the basis of a procedure which was invented as a 'no-confidence motion' as in the instant case.

23. Therefore, we hold that the said meeting held on 12/11/2020 and the Resolution passed therein was not in accordance with law, and therefore for that reason, we quash the resolutions pertaining to the removal of the appellant as Chairman of the District Society and also as the primary member of the Society."

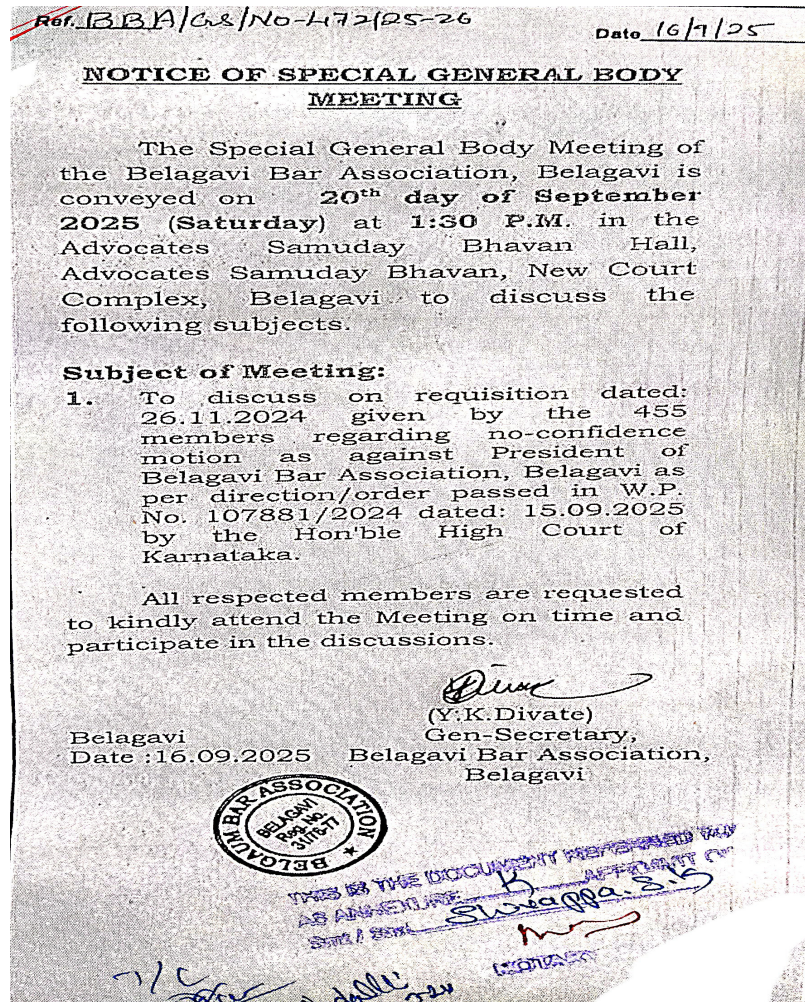
(Emphasis supplied)

The Division Bench holds that when there is no provision to hold a 'no confidence motion' the act of holding 'no confidence' should follow certain principles to remove the vice of arbitrariness in holding the said 'no confidence motion'. The safeguards are the 'no confidence motion' against the Chairman or other office bearers should be moved after assumption of Office and 1/3<sup>rd</sup> of the elected members of the Society must sign. The procedure stipulates a written notice termed as 'no confidence' notice. When intention to take up or move 'no confidence motion' signed by not less than 1/3<sup>rd</sup> members along with a copy of the proposed motion should be

delivered in person to the District Branch Secretary of the Society. The Secretary within 7 days of receipt of 'no confidence motion' should send the communication to the President, the President should give not less than 7 days' notice of such meeting to all members. The notice shall clearly state the place, date and time and agenda of the meeting. The President shall preside over the meeting of the District Society called for considering a 'no confidence motion' and several other procedures that are stipulated by the Division Bench.

15. On a coalesce of the judgments quoted hereinabove of the Apex Court, the coordinate Bench and the Division Bench what would unmistakably emerge is, a 'no confidence motion' can spring de hors the power under the Bye-laws. But, it cannot mean that it is a procedure free exercise. The Division Bench has laid down as many as 15 postulates of how a 'no confidence motion' should be held in the teeth of there being no stipulated procedure under law. If the conduct of 'no confidence motion' in the case at hand is considered on the bedrock of the elucidation of law by the Division Bench what would unmistakably emerge is, unsustainability of the

motion itself. The entire motion rests on the direction of the coordinate bench which only directed consideration of representation. Consideration of representation would never mean consideration de hors procedure. All *que* is taken from the judgment of the coordinate bench quoted *supra* and the following notice is issued:



The notice was issued on 16-09-2025 seeking for a General Body Meeting on 20<sup>th</sup> September, 2025, which was 4 days later and to discuss 'no confidence' against the President in terms of a representation. The subject of meeting is only direction of the coordinate bench quoted *supra*. Therefore, there is on the face of it, violation of the procedure as enunciated by the Division Bench in the afore-quoted judgment. Therefore, if not on the issue of whether a 'no confidence motion' can be held de hors the provision under the Act or the Bye-laws, the entire procedure gets vitiated on account of no procedure followed by the Association before calling for a 'no confidence motion'. In that light, I deem it appropriate to answer the issue in the following manner:

16. It is not that 'no confidence motion' can never be held against the President or Office bearers who falter or loose confidence during the tenure. Therefore, the power to hold a 'no confidence' inheres in the conduct of election itself. But, the procedure for holding a 'no confidence' must be followed. In the absence of procedure, the procedure stipulated by the Division

Bench must be following in letter and spirit. In the light of it not being followed even to its semblance, the process of 'no confidence' against the petitioner stands vitiated.

**SUMMARY OF FINDINGS:**

- (i) Writ Petition under Article 226 of the Constitution of India, against the proceedings of the General Body of an Advocates' Association, is entertainable.
- (ii) In the absence of a specific provision under the Act or the Rules, a motion for 'no confidence' can spring as held by the Apex Court in **VIPULBHAI M. CHAUDHARY** *supra* and the coordinate benches of this Court, which unequivocally hold that holding of a 'no confidence' is inherent in the words "*conduct of an election*". But, procedure as stipulated by the Division Bench in **INDIAN RED CROSS SOCIETY** *supra* must be followed in letter and spirit. The proceedings nowhere indicate following of tenets of the Division Bench even to its semblance.

17. For the aforesaid reasons, the following:

**ORDER**

- (i) Writ Petition is ***allowed.***
- (ii) The resolution dated 20-09-2025 passed in the Special General Body Meeting of the 3<sup>rd</sup> respondent/Bar Association stands quashed.
- (iii) All consequential actions are also set at naught.

**SD/-  
(M.NAGAPRASANNA)  
JUDGE**

Bkp