

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

* * *

WRIT PETITION No. 9805 OF 2026

Between:

Samaiah P, S/o. Late Chinnaiah, Aged about 41 years, Occu: Advocate, R/o. H.No. 8-12, Bellal Village, Bodhan Mandal, Nizamabad District.

Petitioner

VERSUS

1. The District Registrar, Nizamabad District, Nizamabad.
2. The Election Officer, Bodhan Bar Association Elections 2026-27, Bodhan Court, Nizamabad District.
3. Sri Wajeed Hussain, S/o. Abid Hussain, Aged about 51 years, Occu: Advocate, R/o. H.No. 3-4-114, Renjal Base, Opp. Osmania Masjid, Bodhan Town & Mandal, Nizamabad District.

Respondents

ORDER PRONOUNCED ON: 24.06.2026

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : Yes

N. TUKARAMJI, J

*** THE HON'BLE SRI JUSTICE N. TUKARAMJI****+ WRIT PETITION No. 9805 OF 2026****% 24.06.2026****# Between:**

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Respondents

! Counsel for the petitioners : Mr. D. Jagadishwar Rao, learned counsel for the petitioner.

^Counsel for respondents : Ms. Mallareddygari Harthika, learned counsel for respondent No.2;

Mr. G.Dinesh Patil, learned counsel for respondent No.3.

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? Cases referred

Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 1;

V Radha Krishan Industries v. State of Himachal Pradesh,(2021) 6 SCC 771.

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

WRIT PETITION No. 9805 OF 2026

DATE: 24.06.2026

Between :

Samaiah P

... Petitioner

AND

The District Registrar, Nizamabad District, Nizamabad, and
two others.

... Respondents.

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a declaration that the action of respondent No. 2, the Election Officer, in invalidating one vote cast in favour of the petitioner and in directing that the office of General Secretary be shared between the petitioner and the 3rd respondent for a period of six months each, is illegal, arbitrary, unjustified, and violative of Article 21 of the Constitution of India, and consequently seeking a declaration that the petitioner has been duly elected as the General Secretary of the Bodhan Bar Association for the year 2026-2027.

2. Heard Mr. D. Jagadishwar Rao, learned counsel for the petitioner, Ms. Mallareddygari Harthika, learned counsel for respondent No. 2 and Mr. G. Dinesh Patil, learned counsel for respondent No.3.

3.1. Briefly stated, the relevant facts are that the petitioner is a practicing Advocate at Bodhan and a member of the Bodhan Bar Association, which is governed by duly approved Bye-laws. Elections to the Bodhan Bar Association for the year 2026-2027 were conducted under the supervision of respondent No.2. The petitioner and respondent No.3 contested for the post of General Secretary. Out of 120 members, 108 members exercised their franchise.

3.2. During the counting process, one ballot cast in favour of the petitioner, bearing a tick mark (✓), was rejected by respondent No.2 on the ground that it did not contain the prescribed Swastik mark. Consequently, both the petitioner and respondent No.3 were shown to have secured 53 votes each. Respondent No.2 thereafter declared that the office of General Secretary would be shared by the petitioner and respondent No.3 for a period of six months each. The petitioner challenges the rejection of the disputed ballot and the conclusions drawn by the election officer/Respondent No.2.

4. Learned counsel for the petitioner submits that the rejection of the disputed vote cast in favour of the petitioner is arbitrary and unsustainable, as the intention of the voter was clear and no rule, bye-law, or election instruction mandated the exclusive use of a “Swastik” mark or prohibited marking the ballot with a tick mark. It is contended that the invalidation of the vote materially affected the election result, since inclusion of the said vote would have resulted in the petitioner securing 54 votes and being declared elected as General Secretary for the year 2026-27. It is further submitted that the 2nd respondent acted without jurisdiction in directing a rotational tenure of six months each between the petitioner and the 3rd respondent, such an arrangement being unknown to the governing bye-laws and election law. The petitioner also assails the rejection of his representation dated 28.03.2026 as mechanical, non-speaking, and violative of the principles of natural justice, contending that the impugned actions disclose non-application of mind and warrant interference by this Court.

5.1. Learned counsel for Respondent Nos. 3 and 2 would submit that, prior to the commencement of polling, specific instructions were issued by the Election Officer informing all members that voting should be exercised only by affixing the prescribed Swastik mark and that any other form of marking would render the ballot invalid. Such instructions, it is asserted, were duly communicated by displaying them on the notice board and by

circulating them electronically to all members. It is, therefore, contended that the ballot cast in favour of the petitioner, bearing only a tick mark (✓), was rightly rejected in accordance with the prescribed voting instructions, which were uniformly applied to all voters without discrimination. Upon counting the valid votes, both the petitioner and respondent No.3 secured 53 votes each, resulting in a tie.

5.2. In view of the deadlock, both candidates orally consented to an arrangement whereby the office of General Secretary would be shared by them for six months each and that, acting upon such consensus, respondent No.2 declared the election result on 26.03.2026. It is contended that the petitioner initially accepted the said arrangement and only thereafter, sought to challenge the election process by filing the present writ petition while suppressing material facts relating to the issuance of voting instructions and his alleged consent to the sharing arrangement. According to the respondents, the impugned action of respondent No.2 does not suffer from any arbitrariness or illegality, as the election process was conducted strictly in accordance with the applicable Bye-laws and the prescribed procedure. The petitioner, having voluntarily consented to the arrangement for sharing the tenure and having initially accepted the same, is estopped from questioning it.

5.3. The respondents further contend that the petitioner has an efficacious alternative remedy under Article 25 of the Model Bye-laws of the Bar Council of Telangana for resolution of election disputes and that, therefore, invocation of the extraordinary writ jurisdiction is misconceived. It is also urged that the Bodhan Bar Association is a private body and that the Election Officer is not a statutory authority amenable to writ jurisdiction. On these grounds, the respondents seek dismissal of the writ petition and confirmation of the election result declared by respondent No.2.

6. I have carefully considered the submissions and perused the material on record.

7.1. At the outset, the preliminary objection regarding availability of an alternative remedy deserves consideration.

7.2. It is now well settled that the existence of an alternative remedy does not constitute an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution of India. In *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*, (1998) 8 SCC 1, the Supreme Court authoritatively held that notwithstanding the availability of an alternative remedy, a writ petition would be maintainable where, the writ petition seeks enforcement of fundamental rights; there is violation of principles of natural justice; the impugned proceedings are wholly without jurisdiction;

or the vires of a statute is under challenge. The aforesaid principles have been reiterated and explained in *Radha Krishan Industries v. State of Himachal Pradesh*, (2021) 6 SCC 771, wherein the Supreme Court observed that the rule of alternative remedy is a rule of self-imposed restraint and not one affecting the constitutional jurisdiction of the High Court.

7.3. In the instant case, the challenge is directed against the rejection of a vote admittedly cast in favour of the petitioner and against the decision of the Election Officer directing sharing of tenure between two contesting candidates, without demonstrating any source of authority under the bye-laws. The controversy, thus, raises questions relating to jurisdictional error, arbitrariness, and violation of principles governing a fair electoral process. Consequently, this Court is of the considered opinion that the writ petition cannot be dismissed solely on the ground of availability of an alternative remedy under Article 25 of the Model Bye-laws.

8.1. The principal question that falls for consideration is whether the rejection of the disputed ballot paper was legally sustainable.

8.2. The sole reason assigned by respondent No.2 for invalidating the ballot is that the voter had put a tick mark (✓) in favour of the petitioner instead of affixing the prescribed Swastik symbol. Significantly, neither

the bye-laws governing the affairs of the Bodhan Bar Association nor the ballot paper placed before this Court contain any stipulation declaring that use of any mark other than the Swastik symbol would automatically invalidate the ballot. A note printed beneath the names of candidates for the Executive Committee merely states: "*Vote only up to seven candidates; if more than seven votes are cast with Swastik symbol, the ballot paper shall be treated as invalid.*" The said note merely prescribes the maximum number of votes that may be exercised and does not expressly mandate that only ballots bearing a Swastik impression would be treated as valid. Although the respondents contend that separate instructions were displayed on the notice board and circulated electronically requiring exclusive use of the Swastik mark, no contemporaneous material, circular, resolution, notification or documentary evidence has been produced in support of such assertion.

8.3. Election jurisprudence recognizes that while certainty and uniformity in the voting process are desirable, equal importance must be attached to preservation of the franchise and ascertainment of the intention of the voter. Unless the governing rules expressly declare a ballot invalid for non-compliance with a prescribed mode of marking, a ballot which clearly and unmistakably reflects the voter's intention ought not to be rejected on purely technical grounds.

8.4. In the present case, the tick mark (✓) placed against the petitioner's name unequivocally manifests the intention of the voter to cast his vote in favour of the petitioner. There is no allegation that the ballot contained any identifying feature compromising secrecy, nor is there any suggestion that the ballot was ambiguous, mutilated, or susceptible to multiple interpretations. Rejection of such a ballot solely on the ground that the voter employed a tick mark instead of a Swastik mark amounts to elevating procedural formality over substantive democratic choice and results in disenfranchisement of a member of the Association without authority of law. This Court is, therefore, of the considered opinion that the rejection of the disputed ballot was arbitrary, unreasonable, unsupported by any provision of the bye-laws and violative of the mandate of fairness embodied in Article 14 of the Constitution of India.

9.1. The next issue concerns the decision of respondent No.2 directing that the office of General Secretary be shared between the petitioner and respondent No.3 for six months each.

9.2. Neither respondent No.2 nor respondent No.3 has been able to point out any provision contained in the bye-laws authorizing the Election Officer to devise a rotational arrangement for holding an elected office in the event of a tie.

9.3. The office of General Secretary is an elective office carrying a definite tenure prescribed under the bye-laws. The Election Officer is merely entrusted with the conduct and supervision of elections and possesses only such powers as are expressly conferred by the governing rules. An authority exercising administrative or quasi-judicial functions cannot assume powers not vested in it, nor can it supplement, amend or rewrite the bye-laws under the guise of resolving an electoral deadlock. The power to conduct elections cannot, by necessary implication, be extended to include the power to divide an elected tenure between rival candidates. Such an arrangement is alien to democratic principles governing representative institutions and is clearly *ultra vires* the powers of the Election Officer.

10.1 The respondents have contended that both candidates orally consented to the arrangement. The petitioner has categorically denied having granted such consent. Except for a bald assertion, no contemporaneous record, undertaking, resolution, or written consent evidencing acceptance by the petitioner has been placed before the Court. Even assuming that some form of consent had been given, such consent cannot validate an act which is otherwise dehors the bye-laws. It is a settled principle that there can be no estoppel against statute or law. A person cannot, by consent, acquiescence or waiver, confer jurisdiction upon an authority which otherwise lacks such jurisdiction.

10.2. It is also pertinent to notice that the petitioner's representation requesting reconsideration of the rejected ballot was disposed of merely stating that the results had already been declared. The order rejecting the representation does not indicate any application of mind to the objections raised and therefore bears the characteristics of a non-speaking order. Had the disputed ballot been counted, the petitioner would have secured 54 votes as against 53 votes polled by respondent No.3 and would consequently have been declared elected. It is, therefore, evident that rejection of the disputed ballot has materially affected the outcome of the election.

11. For all the aforesaid reasons, this Court holds that the action of respondent No.2 in rejecting the disputed ballot paper and directing sharing of the tenure of the office of General Secretary between the petitioner and respondent No.3 is arbitrary, unreasonable, without jurisdiction, contrary to the governing bye-laws and violative of Article 14 of the Constitution of India.

12. Accordingly, the writ petition is allowed. The action of respondent No.2 in invalidating the disputed ballot cast in favour of the petitioner and in directing a rotational tenure of six months each between the petitioner and respondent No.3 as General Secretary is declared illegal, arbitrary and without jurisdiction. The disputed ballot marked with a tick (✓) is held

to be a valid vote, with the consequence that the petitioner is deemed to have secured 54 valid votes as against 53 secured by respondent No.3 and is declared duly elected as General Secretary of the Bodhan Bar Association for the year 2026-27. The respondents are directed to give effect to this declaration forthwith.

13. There shall be no order as to costs, and pending miscellaneous applications, if any, shall stand closed.

N.TUKARAMJI, J

Date: 24.06.2026

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