

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 3245/2025
CM(M) No. 8716/2025

Reserved on: 11.08.2026
Pronounced on: 29.08.2026
Uploaded on: 31.08.2026

Whether the operative part or full
judgment is pronounced: **Full**

Advocate Abdul Basit Bhat, Aged 42 Years,
S/o Abdul Rahim Bhat, R/o Hardu-Handew,
Tehsil Barbugh Imam Sahib, District Shopian
Enrolment No. JK-271/2012 dated 01.11.2012
Member District Bar Association Shopian

..... Petitioner(s)

Through :- Petitioner in person.

Vs.

1. District Bar Association Shopian,
Through Chief Election Commissioner,
Advocate Tariq Ahmad Mir, S/o Abdul Majid Mir,
R/o Bongam Shopian
2. Member Election Commission,
Advocate Muzaffar Ahmad Dar,
S/o Abdul Salam Dar, R/o Losedanow Shopian
3. Member Election Commission,
Advocate Tanveer Ahmad Tak,
S/o Mohammad Shareef Tak, R/o Dairoo, Shopian
4. Member Election Commission,
Advocate Aquib Javaid Bandy,
S/o Javaid Ahmad Bandy, R/o Bandy-Mohalla,
Shopian
5. Member Election Commission,
Advocate Sumaya Khaliq,
D/o Abdul Khaliq Paul, R/o Keller, Shopian

.....Respondent(s)

Through :- Mr. Mohammad Mubashir Gato, Adv.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT

Prayer:

1. By way of the instant writ petition filed under Article 226 of the Constitution of India, the petitioner seeks quashment of the amended Constitution of the District Bar Association, Shopian, 2023 whereby the eligibility criteria for contesting the posts of President, Vice-President and Secretary have been enhanced from ten years to fifteen years for the posts of President and Vice-President, and from seven years to ten years for the post of Secretary. The petitioner also seeks quashment of Election Notification No. 01 dated 11.12.2025 issued on the basis of the amended Constitution.

Brief Facts:-

2. The petitioner is an Advocate enrolled with the Bar Council of Jammu & Kashmir and Ladakh vide Enrolment No. JK-271/2012 dated 01.11.2012 and claims to be a member of the District Bar Association, Shopian since the year 2012. According to the petitioner, the Constitution of the Association originally prescribed ten years' standing at the Bar for contesting the posts of President and Vice-President and seven years' standing for the post of Secretary.
3. The petitioner asserts that he had earlier contested the election for the post of President in the year 2022 and was otherwise eligible to contest future elections under the unamended Constitution. The subsequent elections were held in December 2023, at which Advocate Gowhar Hassan Wani was declared elected as President. It is the case of the petitioner that it

was only in October 2025 that he came to know that the Constitution had allegedly been amended in 2023 so as to enhance the eligibility criteria for the posts of President, Vice-President and Secretary.

4. According to the petitioner, he then immediately filed an application dated 17.10.2025, addressed to the then President of the association, wherein the amendment resolution, the notice of the General Body Meeting, the minutes thereof and voting particulars were sought, but none of the documents were furnished despite the office bearers being conscious of the illegality alleged.
5. The case of the petitioner is that the amendment was introduced without following any prescribed procedure, without convening a valid General Body Meeting and without obtaining approval of the members of the Association through a closed-door process. The petitioner has further called in question the enhancement as arbitrary, having no rational nexus with the functions of the office of President and alleges that the same was designed with the object of excluding him and similarly situated young advocates from contesting the elections of the Association.
6. The grievance of the petitioner was occasioned by the issuance of Election Notification No. 01 dated 11.12.2025, whereby elections were notified in accordance with the amended Constitution. Aggrieved by the same, the petitioner has approached this Court through the present writ petition.

Submissions on behalf of the petitioner:

7. The petitioner, a practising Advocate appearing in person, submitted that the impugned amendment is wholly illegal, arbitrary and unconstitutional. It was argued that the Constitution of the Association does not contain any provision

authorizing its amendment and, therefore, the respondents lacked the authority to alter the eligibility criteria prescribed therein.

8. It was further contended that no notice of any proposed amendment was ever circulated amongst the members, no General Body Meeting was convened for considering such amendment and no resolution approving the amendment was validly passed. Thus, according to the petitioner, the amendment is the outcome of a unilateral and closed-door exercise undertaken by a few office bearers of the Association.
9. Learned counsel submitted that despite requests made by the petitioner, the records pertaining to the amendment process were not furnished to him. It was argued that the absence of any contemporaneous record itself demonstrates that the amendment was never validly adopted.
10. It was next contended that enhancement of the eligibility criteria from ten years to fifteen years for the post of President and the corresponding enhancement in the eligibility criteria for the other posts has no rational basis and arbitrarily excludes younger advocates from participating in the democratic process of the Association. According to the petitioner, the impugned amendment violates Article 14 of the Constitution of India and is liable to be struck down.
11. It was also submitted that the Constitution of District Bar Association, Shopian contains Articles I to XX, wherein Article-III provides for functions of a public character such as representation of public opinion, public service and legal aid to the poor people in society. Thus, as per the aforesaid Article, the Association also performs public duties and therefore, is amenable to the writ jurisdiction of this Court.

12. Learned counsel further argued that the amendment is a colourable exercise of power, designed to exclude the petitioner and other similarly situated advocates from contesting the elections of the Association, favouring certain members and rendering the entire process *malafide* and *non-est* in law.

Submissions on behalf of the respondents:

13. *Per contra*, learned counsel appearing for the respondents raised a preliminary objection regarding the maintainability of the writ petition. It was submitted that the District Bar Association, Shopian is a voluntary association of advocates and is neither ‘State’ nor an instrumentality of the State within the meaning of Article 12 of the Constitution of India.
14. Learned counsel submitted that the affairs of the Association are governed by its own Constitution and Bye-laws and that matters relating to elections, qualifications for office bearers and internal administration are purely internal matters of the Association not amenable to the writ jurisdiction.
15. It was further argued that the petitioner has not approached this Court with clean hands and has suppressed material facts. According to the respondents, a General Body Meeting was duly convened in the year 2023 after notice had been circulated to all members through the official WhatsApp group of the Association. It was submitted that the proposed amendment was discussed and thereafter approved by majority resolution.
16. Learned counsel contended that the petitioner had full knowledge of the amendment and had participated in the affairs of the Association after its adoption. It was further submitted that elections held subsequent to the

amendment were conducted on the basis thereof and were never challenged by the petitioner. Accordingly, it was contended that the petitioner is estopped under law from questioning the amendment at this belated stage.

17. It was also submitted that no member possesses a vested right to contest elections except in accordance with the eligibility conditions prescribed by the governing rules of the Association. According to the respondents, the enhancement of the eligibility criteria was a policy decision taken by the General Body with a view to entrusting the affairs of the Association to members possessing sufficient professional experience and standing.
18. Learned counsel further submitted that the controversy raised by the petitioner involves disputed questions of fact regarding issuance of notice, conduct of the General Body Meeting, adoption of the resolution and participation of members. Such disputed issues, according to the respondents, cannot be adjudicated in proceedings under Article 226 of the Constitution and must be agitated before the competent civil forum.

Legal Analysis:-

19. Heard learned counsel for the parties and perused the material on record.
20. Upon consideration of the pleadings and the submissions advanced by the learned counsel for the parties, the question that arises for determination is:

Question: Whether the District Bar Association, Shopian, falls within the definition of “State” under Article 12 of the Constitution of India, or is otherwise amenable to the writ jurisdiction of this Court under Article 226 as discharging a public function?

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or is otherwise amenable to the writ jurisdiction of this Court under Article 226 as discharging a public function?

21. This Court is of the considered opinion that the preliminary objection regarding the maintainability of the writ petition strikes at the very root of the instant matter and, therefore, requires determination at the threshold before examining the merits of the case. The law is no longer *res integra* that where a preliminary objection relates to the very maintainability of a proceeding and the jurisdiction of the Court to entertain the same, such an issue must receive precedence over the examination of the merits of the controversy.
22. The entire edifice of the instant petition rests on the assertion that the respondent-Association performs public duties and is therefore amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner seeks to challenge the amendment allegedly carried out in the Constitution of the Association in the year 2023 whereby the eligibility criterion for contesting the post of President was enhanced from ten years' standing at the Bar to fifteen years' standing. The petitioner also seeks quashment of the election notification issued on the basis of the amended Constitution.
23. It is well settled that the ambit of Article 226 is wider than Article 32 and a writ may, in an appropriate case, issue not only against the State and its instrumentalities but also against any person or body performing a public duty or public function. However, the existence of a public duty remains the foundational requirement for issuance of a writ against a non-statutory body.

24. The objection raised by the respondents, however, goes to the essence of the matter. According to the respondents, the District Bar Association, Shopian is a voluntary association of advocates governed by its own Constitution and Bye-laws; it is neither a statutory body nor an authority falling within the definition of 'State' under Article 12 of the Constitution and, therefore, is not amenable to writ jurisdiction.
25. It would be apposite to refer to Article 12 of the Constitution of India, which reads as under:
- “12. Definition - In this Part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.”**
26. The expression “*other authorities*” occurring in Article 12 has been the subject matter of considerable judicial exposition. The question as to whether a particular body falls within the expression “*other authorities*” has to be determined having regard to the nature of its creation, the source of its powers and the character of the functions performed by it. The evolution of the law on this aspect may, therefore, usefully be noticed before examining whether the respondent-Association can be regarded as falling within the ambit of 'State' under Article 12.
27. In '**Rajasthan State Electricity Board v. Mohan Lal**', AIR 1967 SC 1857, the Hon'ble Supreme Court took the first significant step in construing "*other authorities*" liberally, holding that a body need not be engaged in sovereign functions to fall within Article 12, provided it is created by statute and invested with power to make binding rules and regulations. It was held as under:

“5. The meaning of the word "authority" given in Webster's Third New International Dictionary, which can be applicable, is "a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. " This dictionary meaning of the word "authority" is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression "other authorities" is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words "other authorities" are used in Art. 12 of the Constitution”

28. In ‘**Ajay Hasia v. Khalid Mujib Sehravardi**’, (1981) 1 SCC 722, the Hon’ble Apex Court stated how a body set up as a company, society, or otherwise does not matter; even a society can be "State" if it is really an arm of the Government. It was held as under:

"9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of government may now be culled out from the judgment in the International Airport Authority case®. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression "other authorities", it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise limitation. We may summarise the relevant tests gathered from the decision in the International Airport Authority case as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government. (SCC p. 507, para 14) (2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character. (SCC p. 508, para 15) (3) It may also be

a relevant factor... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15) (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15) (5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government. (SCC p. 509, para 16) (6) "Specifically" if a department of Government is transferred to of the corporation, it would be a strong factor supportive of this inference" of the corporation being an instrumentality or agency of Government. (SCC p. 510, para 18) If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of government, it would, as pointed out in the International Airport Authority case, be an 'authority' and, therefore, 'State' within the meaning of the expression in Article 12."

29. This was later on narrowed by the Constitution Bench of the Hon'ble Supreme Court in '**Pradeep Kumar Biswas v. Indian Institute of Chemical Biology**', (2002) 5 SCC 111, wherein the principles governing the determination of whether an entity can be regarded as an "authority" or an "instrumentality or agency" of the State under Article 12 of the Constitution were explained. The Court also clarified the distinction between the two concepts and the manner in which the relevant tests are to be applied. For facility of reference, the relevant paragraph is reproduced hereunder:

"98. We sum up our conclusions as under:-

1) Simply by holding a legal entity to be an instrumentality or agency of the State it does not necessarily become an authority within the meaning of 'other authorities' in Article 12. To be an authority, the entity should have been created by a statute or under a statute and functioning with liability and obligations to public. Further, the statute creating the entity should have vested that entity with power to make law or issue binding directions amounting to law within the

meaning of Article 13(2) governing its relationship with other people or the affairs of other people — their rights, duties, liabilities or other legal relations. If created under a statute, then there must exist some other statute conferring on the entity such powers. In either case, it should have been entrusted with such functions as are governmental or closely associated therewith by being of public importance or being fundamental to the life of the people and hence governmental. Such authority would be the State, for, one who enjoys the powers or privileges of the State must also be subjected to limitations and obligations of the State. It is this strong statutory flavour and clear indicia of power — constitutional or statutory, and its potential or capability to act to the detriment of fundamental rights of the people, which makes it an authority; though in a given case, depending on the facts and circumstances, an authority may also be found to be an instrumentality or agency of the State and to that extent they may overlap. Tests 1, 2 and 4 in *Ajay Hasia* enable determination of Governmental ownership or control. Tests 3, 5 and 6 are 'functional' tests. The propounder of the tests himself has used the words suggesting relevancy of those tests for finding out if an entity was instrumentality or agency of the State. Unfortunately thereafter the tests were considered relevant for testing if an authority is the State and this fallacy has occurred because of difference between 'instrumentality and agency' of the State and an 'authority' having been lost sight of sub-silently, unconsciously and un-deliberated. In our opinion, and keeping in view the meaning which 'authority' carries, the question whether an entity is an 'authority' cannot be answered by applying *Ajay Hasia* tests.

2) The tests laid down in *Ajay Hasia*'s case are relevant for the purpose of determining whether an entity is an instrumentality or agency of the State. Neither all the tests are required to be answered in positive nor a positive answer to one or two tests would suffice. It will depend upon a combination of one or more of the relevant factors depending upon the essentiality and overwhelming nature of such factors in identifying the real source of governing power, if need be by removing the mask or piercing the veil disguising the entity concerned. When an entity has an independent legal existence, before it is held to be the State, the person alleging it to be so must satisfy the Court of brooding presence of government or deep and pervasive

control of the government so as to hold it to be an instrumentality or agency of the State.”

30. Applying the aforesaid principles to the facts of the present case, it is evident that the respondent-Association owes neither its origin nor existence to any statute. It is not created under the Advocates Act, 1961 or any other enactment. It is governed by its own Constitution framed by its members. Its office bearers are elected by advocates who are members of the Association. It does not exercise any statutory powers nor does it discharge any governmental functions.
31. The distinction between the expression “*State*” under Article 12 and the wider expression “any person or authority” occurring in Article 226, however, cannot be lost sight of. A body need not necessarily fall within the ambit of Article 12 to be amenable to the writ jurisdiction under Article 226. What is required to be examined, in the case of a private body, is whether it discharges a public duty or performs a public function and whether the action complained of has a sufficient public-law element. Thus, the mere fact that the respondent-Association is not “*State*” within the meaning of Article 12 is not, by itself, determinative of the maintainability of the present petition. The real question is whether the particular function impugned in the present proceedings, namely, regulation of eligibility for election to the office-bearers of the Association, constitutes a public function or involves a public duty enforceable in writ jurisdiction.
32. In the present case, there is no material to suggest that the respondent-Association is a statutory body or that it owes its existence to any enactment. It is a voluntary association of advocates governed by its own

Constitution and Bye-laws, with its office-bearers elected by its members. It neither exercises statutory powers nor is there any material to demonstrate that the Government exercises any deep or pervasive control over its affairs. The Association, therefore, cannot be regarded as “State” or an instrumentality or agency of the State within the meaning of Article 12 of the Constitution.

33. The matter, however, does not end with the aforesaid finding. Since the present petition invokes Article 226, the further question is whether the particular function impugned herein involves the discharge of any public duty or public function so as to attract the writ jurisdiction of this Court. The mere fact that the members of the Association are advocates, or that the legal profession has an important role in the administration of justice, cannot by itself render every act or the decision of the Association a public function. The nature of the specific duty or function sought to be enforced must be examined.
34. In the present case, the challenge is directed against the amendment of the Constitution of the Association whereby the eligibility criteria for contesting the offices of President, Vice-President and Secretary have been altered. The impugned action thus relates exclusively to the internal governance of the Association and to the rights of its members in relation to its electoral process. Such a function is neither statutory in character nor shown to be a public duty owed by the Association to the public at large. The dispute, therefore, lacks the requisite public-law element necessary to invoke the extraordinary jurisdiction of this Court under Article 226.

35. Merely because the Association consists of advocates, or performs activities which may have an indirect bearing upon the legal profession, cannot transform its internal affairs into matters involving the discharge of public functions. The distinction between the professional significance of the members of an association and the legal character of the function performed by the association itself must be maintained. The impugned amendment concerns only the internal regulation of the Association and does not involve the discharge of any statutory or public duty.
36. In '**Anandi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani**', (1989) 2 SCC 691, the Hon'ble Supreme Court issued a writ of mandamus against a private trust running an educational institution, on the finding that the trust was discharging a public duty, it employed teachers under a statutorily regulated scheme and was substantially funded from public sources, and the impugned dismissal directly touched that public duty. What made that case a public-law matter was the inseparable link between the trust's action and a duty of public character, backed by public funding and statutory regulation. It was held as under:

"20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party."

37. Applying the facts before this Court, no such link exists: the Association runs no public institution, receives no public funds, and the act

complained of altering the eligibility criterion for its own President, and bears no resemblance to the kind of publicly-funded, statutorily-regulated duty that was at issue in *Andi Mukta*.

38. Recently, the Hon'ble Supreme Court, while dismissing **SLP (C) No. 18940/2026**, arising out of the judgment of the Delhi High Court in **LPA No. 368/2024**, decided on 16.01.2026, in '**Sangita Rai v. New Delhi Bar Association and others**', considered the maintainability of a writ petition against a Bar Association. The Delhi High Court, while examining the nature and functions of a Bar Association, held as under :

“15. In our opinion, even in respect of prayer 'B' made by the appellant in the writ petition, the petition was not maintainable for the reason that by the said prayer a direction was sought to the Bar Association, which is an Association of Lawyers registered under the Societies Registration Act, 1860 (hereinafter referred to as the 'Act, 1860') and the primary object of the Bar Association is to ensure welfare of its members and take necessary steps therefore. Thus, Bar Association is not a public body so as to be covered under Article 12 of the Constitution of India.

16. Bar Association is a body of private individual lawyers and in normal discharge of its functions, it does not perform any function which can be said to be a public function. It is a body registered under the Act, 1860; however, its affairs are governed by its Memorandum of Association, Constitution and Rules. The functions being generally discharged by Bar Associations, as observed above, are to protect the interest of the individual lawyers. It is in fact, a purely private entity and cannot in any manner or for any reason, whatsoever, be termed to be 'State' or its instrumentality or agency or authority.

17. In absence of any public functions being discharged by the Bar Association, and the Bar Association not being a 'State' or its instrumentality within the meaning of State in Article 12 of the Constitution of India, in our considered opinion, no Mandamus can be issued by the Court to Bar Association in exercise of our jurisdiction under Article 226 of the Constitution of India..”

39. Further, in ‘**Abhijeet Appasaheb Bachhe Patil v. Bar Council of Maharashtra and Goa**’, 2025 SCC OnLine Bom 1514, the Bombay High Court, while considering a challenge to the election of a Bar Association, held that a Bar Association, being governed by its own bye-laws and rules and lacking governmental or pervasive control, cannot be equated with a statutory Bar Council. The Court further held that an inter se dispute between a member and a Bar Association, involving its internal affairs and elections, is not amenable to writ jurisdiction under Article 226. It was held as under:

“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 503-WP-5368-2025 (C).doc 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. 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.”

40. In ‘Secretary, Alipore Bar Association v. Subir Sengupta’, 2024 SCC OnLine Cal 3597, the Hon’ble Calcutta High Court, while considering the maintainability of a writ petition challenging an election to a Bar Association, held that the Bar Association was neither “State” nor an authority or person discharging a public function within the meaning of Articles 12 and 226 of the Constitution. The Court accordingly held that the Bar Association was not amenable to writ jurisdiction and observed that an aggrieved party could pursue the appropriate remedy before the competent Civil Court. It was held as under:

“19. Regard being had to our discussion Supra we feel constrained to hold here that the Alipore Bar Association being not a state "other authority" or "agency or instrumentality" of the state within the meaning of Article 12 and "authority or person" discharging public function within the meaning of Article 226, writ against Alipore Bar Association that too in the matter of election to the Bar Association is not maintainable. In other words Alipore Bar Association is not amenable to the writ jurisdiction of this Court. We would like to clarify here that a Bar Association can be made party in a writ petition along with other statutory authority/authorities discharging statutory/sovereign function for the limited purpose that the order passed under writ jurisdiction shall be binding on that Bar

Association. If we follow the matter of the Bar Association as emphasis laid in different decisions by Hon'ble Supreme Court and different High Court as discussed supra, in the same corollary can we say that the employees association of different court including High Court are amenable to the writ jurisdiction of the High Court only because the members of such association are indispensable.

22. Having held that the writ petition under Article 226 against the Bar Association is not maintainable, saving the exception discussed supra, we do not propose to embark on discussion regarding merit of the case. The appeal is, therefore, allowed and the impugned order is set aside. The writ petition having held to be not maintainable all the orders passed in the writ petition and the interim order passed in this appeal become non-est in the eye of law. The election having been held as per schedule in the notice dated 27.02.2024, the result of the election be published by the Election Officer forthwith.

23. Any party aggrieved by result of the election or any party desirous of raising an "election dispute", if so advised, may move the common law forum i.e. the competent Civil Court for redressal of his/their grievance within the time limited by law.”

41. Similarly, in ‘**Adv. Sangeetha Lakshmana v. Registrar General**’, 2026 **SCC OnLine Ker 5508**, the Hon’ble Kerala High Court held that the Kerala High Court Advocates' Association was constituted for the benefit of its members and that, apart from matters concerning its members, it owed no public duty. More specifically, the Court also held that elections to the Association neither constitute a public function nor possess a public character and therefore cannot be challenged through a writ petition under Article 226. It was held as under:

“16. Apart from the above, in the instant case, the challenge raised is in connection with the elections to the Association. The elections to the Association neither falls within the ambit of a public function of a body nor does it have any public character. The permission granted by the Registrar General of the High Court to conduct the elections inside the High Court Auditorium cannot give the election a public

character or enable an aggrieved person to invoke the public law remedy. Election to the Kerala High Court Advocates' Association does not have a public character and cannot be brought within the purview of a public duty. The election to the Association cannot therefore be amenable to the writ jurisdiction of this Court.”

42. The aforementioned principle applies directly to the present case, even though the members of the District Bar Association, Shopian are advocates and their professional activities have a public dimension, the impugned amendment relates solely to their internal right to contest an Association office. It therefore cannot, merely on account of the professional status of its members, be elevated into a public function.
43. This Court has also carefully considered the authorities relied upon by the Petitioner, namely *Adv. E. Shanavas Khan v. Kollam Bar Association*, *Chandrakant S/o Tammanna Majagi v. Karnataka State Bar Council*, *P.K. Dash, Advocate v. Bar Council of Delhi*, *V. Madhesh v. Secretary, Bar Council of Tamil Nadu & Puducherry* and *Vandana Sharma v. Dwarka Court Bar Associates*. However, none of these decisions lays down an absolute proposition that every dispute relating to a Bar Association election is amenable to writ jurisdiction under Article 226. The maintainability in each case was contingent upon the particular facts and the existence of a public-law element in the impugned action. These authorities, therefore, cannot be understood as creating a blanket rule that all internal election disputes of Bar Associations are subject to writ jurisdiction. The present dispute must accordingly be examined on its own facts, particularly having regard to the nature of the Association, the impugned action, and whether any public duty or public-law element is involved.

44. Apart from the aforesaid legal impediment, this Court finds that the petition raises several disputed questions of fact. The petitioner alleges that no General Body Meeting was convened, no notice was issued and no valid resolution was passed. The respondents, on the other hand, assert that notice was circulated, a General Body Meeting was held, deliberations took place and the amendment was approved by majority vote. Determination of these rival assertions would necessarily require examination of evidence and scrutiny of records. Such an exercise cannot be undertaken in writ proceedings.
45. This Court is persuaded to hold that once the existence and validity of the alleged resolution itself becomes a seriously disputed factual issue, the matter is more appropriately left for adjudication before a competent civil forum. Such matters cannot ordinarily be adjudicated under Article 226.
46. The petitioner has also questioned the validity of the amendment on the ground that the Constitution did not contain any express provision empowering amendment. The respondents, on the contrary, contend that the amendment was carried by the General Body in exercise of its inherent authority to regulate the affairs of the Association. Determination of such rival claims would necessarily require examination of the Constitution of the Association, its practice, records of meetings and other evidentiary material. Such an exercise is beyond the limited scope of judicial review under Article 226.
47. There is yet another aspect of the matter which cannot be overlooked. The impugned amendment is stated to have been adopted in the year 2023 and has remained operative ever since. The respondents have specifically pleaded that subsequent elections of the Association were conducted on the

basis of the amended Constitution. It has further been pleaded that the petitioner was fully aware of the amendment and participated in the affairs of the Association without raising any objection to either the validity of the amendment or the procedure by which it was adopted.

48. The conduct of the petitioner assumes considerable significance in the facts of the present case. It is a settled principle that a person who, with knowledge of the relevant facts, permits a particular act to continue and acquiesces in its operation over a considerable period cannot ordinarily be permitted to question the same at a belated stage, merely because its consequences subsequently become inconvenient or unfavourable to him. The jurisdiction under Article 226 of the Constitution is founded upon principles of fairness, candour and diligence. A litigant who remains a silent spectator despite knowledge of the alleged illegality, acts as a fence sitter and approaches the Court only, when a subsequent event affects his personal interests cannot, as a matter of course, seek the discretionary relief of judicial review.
49. According to the petitioner, he became aware of the amendment only in the year 2025. On the other hand, learned counsel for the respondents contends that the amendment had already remained in operation for a considerable period and had governed the functioning of the Association, and that the present challenge was instituted only after the issuance of the election notification, when the amended eligibility criteria rendered the petitioner ineligible to contest for the post of President.
50. It is a settled principle that a person who has acquiesced in a procedure, participated in a process governed by a particular set of rules, or accepted the benefits flowing therefrom, cannot thereafter be permitted to

approve and reprobate by questioning the very foundation of such process. The doctrine of acquiescence is founded upon considerations of equity and good conscience and seeks to prevent a party from adopting inconsistent positions to the prejudice of others who have acted upon the existing state of affairs.

51. The Hon'ble Supreme Court in '**Union of India v. N. Murugesan**', (2022) 2 SCC 25, while considering the principles governing the doctrine of approve and reprobate, explained that a party cannot accept and reject the same transaction or take advantage of one part of an instrument while questioning the other. It was held as under:

“26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approve and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party.”

52. Likewise, in '**Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.**', (2013) 5 SCC 470, the Hon'ble Supreme Court held as under:

“15. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approve and reprobate”. Where one knowingly accepts

the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience.”

53. Applying the aforesaid principle to the facts of the present case, this Court finds that the petitioner permitted the amended Constitution to remain operative, allowed the affairs of the Association to be governed thereunder and did not raise any contemporaneous challenge to its validity. The challenge has been mounted only after issuance of the election notification and only because the amended eligibility criteria allegedly affect his eligibility to contest for the post of President. Such conduct bears the attributes of acquiescence and amounts to an attempt to approbate and reprobate at the same time, which the law does not countenance.
54. Thus, even assuming for the sake of argument that the present petition was otherwise maintainable, the unexplained delay in questioning the amendment, coupled with the petitioner's conduct in allowing the amended Constitution to operate for a substantial period, would constitute a significant impediment to the grant of any discretionary relief under Article 226 of the Constitution.

Conclusion:

55. The cumulative effect of the discussion above is that the mere fact that a Bar Association consists of advocates, or that its members assist in the administration of justice, does not render every act of the Association a public function. In the present case, the impugned amendment concerns the qualification required for contesting the office of President of the

District Bar Association, Shopian. The amendment operates exclusively within the framework of the Association and regulates the eligibility of its members to hold office; it neither derives from a statutory mandate nor affects any right of the general public, litigants, or non-members. The challenge is therefore directed against the internal management of the Association and does not disclose the requisite public-law element.

56. The jurisdiction under Article 226 is essentially a public law remedy. It is not intended to adjudicate every dispute arising between members of a private association and the association itself. Even where a body is not “State” within the meaning of Article 12, the exercise of writ jurisdiction would depend upon whether the particular action complained of involves the discharge of a public duty or bears a sufficient public-law character. In the present case, the prescription of eligibility conditions for holding office in the Association concerns a matter confined to its members and does not involve any duty owed to the public at large. Where the rights asserted arise solely from the Constitution and Bye-laws of an association and relate to its internal affairs, the remedy, if any, ordinarily lies before the competent Civil Court.

57. The foregoing discussion leads to the conclusion that the District Bar Association, Shopian is not amenable to the writ jurisdiction of this Court in respect of the dispute raised in the present petition. The controversy pertains to the internal affairs and electoral governance of a voluntary association and does not involve the discharge of any public duty or disclose the existence of a public-law element. The challenge to the eligibility conditions prescribed for holding office under the

Constitution of the Association, therefore, does not warrant interference in the exercise of jurisdiction under Article 226 of the Constitution.

58. Accordingly, the writ petition is dismissed as not maintainable, along with all connected applications, if any.

(Wasim Sadiq Nargal)
Judge

Jammu:
29.08.2026
Vijay

Whether order is speaking : *Yes*
Whether order is reportable: *Yes*