

KRISHNA S.DIXIT

20/09/2021

FURTHER ORDERS The challenge in this Writ Petition is by the "Advocates Association, Bengaluru", which is a society registered under the provisions of Karnataka Societies Act, 1960; it is to the Govt. Order dated 4.9.2021 at Annexure-J by which the Deputy Commissioner, Bengaluru Urban District, has been appointed as the Administrator to the petitioner-society, the tenure of the present Managing Committee having expired in January 2021 itself and election for constituting a new popular body having not been held till now, arguably on the ground of COVID Pandemic. 2. This court having heard both the sides and also the cross sections of the Association gathered a broad consensual view to the effect that election for constituting the new Managing Committee should be held before long and accordingly had on 6.9.2021 issued the following interim directions: " (i) The impugned order is kept in abeyance, and if anything is done pursuant thereto, the same shall be retraced forthwith, providing for the present Committee of Management to function as indicated above and subject to the riders stipulated supra. (ii) The present Managing Committee whose tenure has expired shall continue in the office by way of ad hoc arrangement; it shall not take up any act or project that has financial or policy implication; it shall not organize or associate with any public function/programme without the prior leave of this Court. (iii) In terms of its submission, the petitioner shall organize the conduct of election at the earliest and in any circumstance within an outer limit of three months and that it shall accomplish all works preparatory to election, on a war footing and further that the plan of action

in this regard shall be laid before this Court in writing after serving a copy thereof in advance on the other side and on the aforementioned advocates who graciously participated in the proceedings of the day; this shall be done on the next date of hearing without fail. (iv) The gracious submission of both the sides that nobody associated with the petitioner-society shall go for glare either through media or otherwise about its affairs, nor shall they highlight anything about the proceedings of the day and of the circumstances that led to issuance of the impugned order. Call this matter on 13.09.2021 for further hearing." 3. The matter was posted on 13.9.2021 and a few members of the Association had moved impleading applications; therefore, it was adjourned to this day; whether the Ex-President of the Managing Committee could represent the Association at all, is also a point; however, much need not be deliberated in this regard because of some developments that happily happened in the matter, which aspect is being adverted to, infra. 4. Learned Sr. Advocate Mr. Anant Mandagi appearing for the impleading applicants submitted that in no circumstance, the Committee whose popular mandate has admittedly expired, can continue in the office in a militant violation of democratic principles on which the Association is founded; in support of this, he drew the attention of the court to the Model Bye-laws suggested by the Bar Council of India which provide for holding of election by some ad hoc committee of members of the Bar; this court also glanced the provisions of the Advocates Act, 1961 and the Advocates' Welfare Fund Act, 2001, keeping in view the decision of the Apex Court in Babu Verghese Vs. Bar Council of Kerala,

(1999) 3 SCC 422 which apparently related to the matter of Kerala State Bar Council and not to the Bar Association, as such; true it is that, there are some observations in the said decision to the effect that once the tenure of the elected members has expired, the elected body becomes functus officio. 5. Other advocates namely Mr.N.P.Amruthesh, Mr. Bhakthavachala, Mr.H.C.Shivaram, Ms. Sheela Deepak and others appearing in person or for some of the impleading applicants, adopted the arguments of Mr.Mandagi. 6. Petitioner's learned counsel Mr.Ravishankar pointed out that the Model Bye-laws have not yet been adopted by the petitioner-Association; even otherwise, neither the '1961 Act' nor the '2001 Act' provide for penal consequences should an Association of the kind not adopt the same; the fundamental right to form association as guaranteed u/a 19(1)(c) of the Constitution of India also needs to be kept in view, while considering if automatic imposition of Model Bye-laws can be made; similarly, the provisions like the ones in Industrial Employment (Standing Orders) Act, 1946 which provide for automatic adoption of Standing Orders in the realm of labour law in certain circumstances, are conspicuously absent in both these Acts and also in the Karnataka Societies Registration Act, 1960. 7. Mr.Ravishankar also referred to a recent decision of this court in W.P.No.7498/2021 between Gundurao Desai Vs. State and others, disposed off on 7.9.2021 as to a condition which is impossible of performance has to be treated as void or complied; this was in the light of his submission that the COVID-19 pandemic had made the holding of election a near impossibility; this impossibility may be true, however that

would not in any circumstance extend the fixed tenure of the Managing Committee, which has expired long ago; impossibility for holding election is one thing and extension of tenure of Managing Committee when the rules do not provide for the same is another; therefore the decision is of poor assistance to the petitioner. 8. Some of the learned Advocates appearing for the parties and other counsel who participated in the hearing exhibited more passion than what the dispute of the kind would ordinarily admit; however, they appreciably cooled down after realizing in no time that they belong to a noble profession; even whilst holding views in variance with each other, all they exchanged pleasantries. 9. When the above contentions were being examined, learned Sr. Members of the Bar M/s A.S.Ponnanna, Vivek Reddy, K.N.Puttegowda & B.M.Arun, with leave of Court assisted in the proceedings by putting forth their views, un-influenced by those of the parties in the legal battle; the thrust of their submission was that the elections to the Association should be held in a post-haste manner; they rightly contend that the limited continuance of the expired Managing Committee should never be treated as a precedent for the future and that an argument to the contrary would have enormous abuse potential; the conduct of election should be free, fair & transparent; the present Managing Committee which has no mandate to continue beyond the fixed tenure should in all fairness keep away from the machinery of contemplated election process so that there will be no scope for any allegations. 10. M/s Mandagi & others also broadly agreed (of course with some reservation) that although it is legally ideal for the present-

tenure-expired-Committee gracefully exit from its office, yielding place to “the new in the making”, it may be desirable as of necessity to permit the said Committee to perform the bare minimum day to day activities as mentioned in the order dated 6.9.2021; this stand, virtually eased the way out for both the Bar & the Bench; the battling sections and also other members of the Association present in the jam-packed-court Hall too broadly cottoned with this view; consequently, the need for consideration of legal submissions made at the Bar, now pales into insignificance, to the extent of consensus. 11. At this stage, petitioner loudly read out his Memo dated 13.9.2021 filed in the court this day; it has the following text: "In terms of the submissions made before this Hon'ble court on 06-09-2021 and as per the directions of this Hon'ble court the Petitioner Sangha convened its Governing Council meeting on 8.09.2021. After the deliberations in meeting it is resolved to conduct the election to the Association either on 05-12-2021 or 19-12-2021. And 3 Returning officers are appointed to conduct the elections, headed by Senior Advocate Sri.K.N.Putte Gowda comprising of Advocates Sri.A.G.Shivanna and Sri.K.Diwakar. The modalities for conducting the elections are as mentioned a) 20-09-2021 is last date for payment of Arrears of Membership fee. b) 12-10-2021 is the date for publication of Provisional Voters list. c) 05-11-2021 date for publication of final Voters list. d) 05-12-2021 or 19-12-2021 is the date of election. e) In between the dates from 21-09-2021 to 11-10-2021 arrangements for providing Bio Metric ID Cards to eligible Members. In view of the fact that the Association is ready to conduct elections as specified above, this Hon'ble Court may be pleased

to permit the Association to carry on its day to day activities which are necessary in the given situation. Further permit the Association to perform its duties and responsibilities such as conducting of Workshops, Lectures, Vaccination, holding farewell and welcome functions to the Hon'ble Judges, who retires/newly appointed/ elevated or transferred etc., It is very much necessary to permit the Association to hold Inauguration function of newly built auditorium and Library at 'Vakeelara Bhavana' as scheduled." 12. The Memo dated 17.9.2021 filed in the court this day by Mr.N.P.Amruthesh-the intending respondent, reads as under: "The impleading applicant begs to submit as follows; 1. The Impleading Applicant filed the application for impleading himself as 5th Respondent in the above case, wherein the petitioner has not conducted the election within the time limit. Hence the respondent No.1 appointed 2nd respondent & 3rd respondent as the administrator. The above matter came up before this Hon'ble Court and this Hon'ble Court has directed to seek out the proper solutions for the forthcoming elections. 2. The Impleading Applicant submits that if this Hon'ble Court form the immediate ad-hock committee for the forthcoming election which will take up the whole process under the supervision of the following proposed members; a. 3 Senior Members of the K.S.B.C. b. 3 Senior Designated Advocates of High Court. c. 3 Committee Members of the Present AAB. d. 3 Practicing Advocates of AAB." 13. Views of both the sides on each other's Memo and the opinions of cross sections of the members of the Bar present were also ascertained by the Court by soliciting their views; since the matter touched the institution of judiciary of which the Bar is

an inseparable part, wider audience was given; all they permitted this court to do a kind of little mediation, if at all it is; even here, the Bar stood almost in unanimity that a High Power Committee comprising of tall & experienced members of the Association, be formed for conducting the election peaceably; accordingly, a "High Power Committee for Conducting Elections" (hereafter "High Power Committee") is agreed to be constituted with the following members as unanimously suggested at the Bar (one of the names i.e., Mr.K.Diwakar suggested by the petitioner's side, being objected to by the other, is left out): (i) Sri.N.S.Satyanarayana Gupta. (ii) Sri.G.Chandrashekar. (iii) Sri.K.N.Puttegowda. (iv) Sri.A.G.Shivanna. (v) Sri.Shivareddy. (vi) Sri.K.N.Phanindra (vii) Sri.Prashanth Chandra. This court is of a considered opinion that it is prudent to have one of the above members as the Chairman of the Committee; the absence of women lawyers and of SC/ST members of this Association in the above list being conspicuous, the Committee needs to be authorized to co-opt one such member from these segments, each in all fairness.

14. At this stage, petitioner's learned counsel Mr.Ravishankar submitted that his client is agreeable to constitute the above members only as the Returning Officers, formation of the committee for accomplishing the task, being not desirable; however, this court does not find any merit in the said submission; how such a course would affect the free & fair election, is not forthcoming, as rightly submitted by Mr.B.M.Arun and Mr.Vivek Reddy; the Committee has to have power to appoint from amongst its members or others, as the Returning Officers, in its discretion; barring dissenting voice of the

petitioner's side, there is a broad consensus evolved at the gathering of the learned members of the Bar, which supports this view; added, this matter would be kept pending and if need arises, the aggrieved may seek assistance of the court for redressal of their grievance; it should be open to the High Power Committee too, to address the grievances, if any. 15. It may be mentioned here that Mr.A.R.Shashi Kumar, a life member of the petitioner-Association aired his concern as to avoidable paper work and disfigurement of public places/properties in the election campaign; Mr.AAG mentioned about the caution to be taken by all the concerned with the election process in view of COVID-19 pandemic and also about the requirement of compliance with the lockdown restrictions or the like, if any; this is a significant matter to be kept in view; the members of the Bar being learned & responsible, will advert to all this. 16. As mentioned above, this court has already permitted the present Managing Committee, though its tenure has expired, to remain in office only by way of an ad hoc arrangement and nothing beyond that; there has been a long tradition of welcoming the new Judges to this Court and of holding farewell to the outgoing; therefore, consistent with this, the present Managing Committee needs to be permitted to organize such functions; similarly the said Committee has to be allowed to conduct workshop, lectures, training camps, vaccination camps & the like without giving any scope for allegations; petitioner's request for permission for organizing inaugural function of newly built auditorium and library at "Vakeelara Bhavana", does not merit consideration at this stage. 17. Lastly, this court needs to mention that



Smt. Sheela Deepak, a member of the petitioner-association passionately aired her grievance as to alleged threat to her life, limb & liberty; lawyers are to a civil society what soldiers are to the frontiers of the country; threat to lawyers in any form & anywhere, is a threat to the institution of judiciary, cannot be disputed; since Bar is an integral part of the institution, as the sages of law have ever said, the jurisdictional officials have to look into such grievances; cases of the kind are proliferating, is judicially noticeable; this is a cause for concern; the same having been pointed out to learned AAG

Mr. Subramanya, he assures of instructing the authorities concerned to be vigilant & responsive; however, the grievance of the lady advocate being personal in nature, does not have relevance to the debate in question; the observations herein made shall not be construed as casting aspersions on any members in whatever capacity associated with the petitioner-Association. In the above circumstances, I make the following: ORDER (A) The "High Power Committee" is hereby constituted comprising of aforementioned persons namely Mr. N.S. Satyanarayana Gupta and six others as its members;

Sri. N.S. Satyanarayana Gupta shall be the Chairman of the Committee which shall co-opt one lady advocate and one SC/ST advocate as its members forthwith; the Committee shall as far as possible function with consensus; however, in the case of any difference, it shall abide by the majority view. (B) The Committee shall at the earliest and in any circumstance on or before the 22nd of December, 2021 conduct the election freely & fairly and with transparency, for constituting a new Managing Committee of the "Advocates Association, Bengaluru"; the Committee

shall function as if it is “the State Election Commission” qua the petitioner-Association, and it shall have powers co-extensive with the requirement of accomplishing the ordained task. (C) The High Power Committee shall immediately take into its exclusive custody all election related paraphernalia including Digital Data & Smart Card Software from the concerned quarters; the present Managing Committee shall provide to the High Power Committee full co-operation & assistance by deploying adequate staff and necessary funds as are required for the conduct of elections and other related works. (D) The High Power Committee shall have all the powers for working out all the modalities as are required for conducting the elections on a war-footing and that such modalities shall include but are not limited to fixing the dates for: (i) the payment of arrears of Membership Fee or the like; (ii) making arrangements for providing Biometric Cards only to the eligible members; (iii) preparation, updation & publication of provisional Voters List; (iv) consideration of objections to provisional Voters List & publication of final Voters List; (v) conducting of poll, counting of votes and declaration of election results. (E) It is open to the High Power Committee to take all measures including the installation of CC Camera, mobile videography/photography, watch & ward and vigilance as are required for conducting a free & fair election. (F) The respondent-State Govt. is directed to deploy police & other personnel on the requisition of High Power Committee for holding elections consistent with requirement and that the deployed personnel shall not be withdrawn or otherwise meddled with, sans the written consent of the Chairman of the Committee

or of his nominee. (G) The present Managing Committee whose tenure has expired, shall with immediate effect in true spirit keep away from the functioning of the High Power Committee and the conduct of elections; all the staff and employees of the petitioner-Association shall be at the beck & call of the High Power Committee and they shall obey all its instructions as if they are on deputation to the Committee's service; the Committee may take any disciplinary action for disobedience; such action may amongst others, be dismissal from service, too. (H) The present Managing Committee is permitted to function as a limited ad hoc Committee and it may organize the programmes herein above mentioned subject to the limitations prescribed in the order dated 06.09.2021. (I) As far as possible, this court shall not be called to monitor the conduct of elections and to supervise the performance of related activities inasmuch as it is an indoor affair of the Bar Association which enjoys a great reputation and that any judicial intervention during the election process, is eminently undesirable. Call this matter for further hearing after four weeks or when the Memo is moved for posting, whichever is earlier.