

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No. 24053 OF 2022 (GM-RES)

BETWEEN:

KARNATAKA STATE LEVEL
ADVOCATES' CLERKS' ASSOCIATION (R),
HAVING ITS OFFICE AT
HIGH COURT BUILDING,
BENGALURU – 560 001.
REPRESENTED BY ITS PRESIDENT
SRI D.SHIVANNA
S/O LATE KENCHA MAYIGOWDA
AGED ABOUT 67 YEARS

... PETITIONER

(BY SRI MURTHY D.NAIK, SENIOR ADVOCATE A/W.,
SRI MAHENDRA G, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA,
BY ITS SECRETARY,
DEPARTMENT OF LAW,
VIDHANA SOUDHA,
DR. AMBEDKAR VEEDHI,
BENGALURU – 560 001.

- 2 . KARNATAKA STATE BAR COUNCIL,
HAVING ITS OFFICE AT
OLD KGID BUILDINGS,
DR. B.R.AMBEDKAR VEEDHI
BENGALURU – 560 001.
REPRESENTED BY ITS SECRETARY.

- 3 . KARNATAKA ADVOCATES REGISTERED
CLERKS WELFARE FUND COMMITTEE,
DEPARTMENT OF LAW,
VIDHANA SOUDHA
DR. AMBEDKAR VEEDHI,
BENGALURU – 560 001.
REPRESENTED BY ITS SECRETARY

... RESPONDENTS

(BY SRI B.V.KRISHNA, AGA FOR R-1;
SRI G.NATARAJ, ADVOCATE FOR R-2;
R-3 SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS TO THE RESPONDENTS TO FORMULATE A MECHANISM TO GENERATE FUNDS AND MAKE THE KARNATAKA REGISTERED CLERKS WELFARE FUND WORKABLE IN TERMS OF REPRESENTATION DATED 19.04.22, VIDE ANNEXURE-E AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.03.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is the Karnataka State Level Advocates' Clerks' Association (hereinafter referred to as 'the Association' for short). The Association is knocking at the doors of this Court seeking a direction by issuance of a writ in the nature of *mandamus* directing the respondents to formulate a Scheme to generate funds and make the Karnataka Registered Clerks Welfare Fund workable on consideration of their representation and have further sought a direction to implement the findings in Writ Petition No.20740 of 2005, all of which point formulation of a Scheme for the welfare of the members of the Association.

2. Shorn of unnecessary details, the facts in brief germane, are as follows:-

The petitioner is an Association of Clerks' of Advocates' at the State level and is registered under the Karnataka Societies Registration Act, 1960. The members of the Association comprise of number of clerks working in the offices of the Advocates', Law Firms and also claim that they are working as freelancers to assist the Advocates in filing cases before Courts and getting the matters

before the Bench. The State had not formulated any Scheme to protect the interests of the members of the Association, which led the Association to knock at the doors of this Court in Writ Petition No.20740 of 2005. A learned single Judge disposed of the petition by his order dated 16-04-2008, noticing the statutory frame work and also similar funds had been notified by several other State Governments and, therefore, directed the Government to formulate the Rules, notify the same and constitute a fund. Since 2008, the matter has been lingering at the doors of the State Government for implementation of the order.

3. On the onset of Covid-19 and closure of Courts, the Advocates' Clerks were badly hit and due to which, certain representations came to be generated to the Karnataka State Advocates' Association, Karnataka State Bar Council and also by filing a writ petition in Writ Petition No.6745 of 2020 before this Court as a public interest petition. This Court gave certain directions for immediate redressal of the grievance of the members of the Association. The Writ Petition was later disposed of by an order dated 15.03.2022 on the submission that the grievance of the

petitioners therein would not survive for consideration any further, as it was put forth during the Covid and Covid having subsided, work of the members of the Association coming back to normalcy, the petition was disposed of.

4. Again the Association preferred a contempt petition in C.C.C.No.841 of 2022 alleging that the order passed by the learned single Judge in Writ Petition No.20740 of 2005 was not complied with and on production of compliance affidavit, the Court disposed of the petition. After disposal of the contempt petition, the present petition is preferred again on the ground that the Scheme has not been formulated for the welfare of Clerks in workable terms and sought for consideration of their representation submitted on 19.04.2022. This Court in terms of its order dated 27-01-2023 directed the parties to the *lis* – the representatives of the petitioner - Association, State Bar Council and the representatives of the State to have a dialogue and place on record the deliberations that have taken place with regard to creation of fund or generation of the fund and utilization of fund. The deliberations are produced by

the counsel representing the Karnataka State Bar Council. The matter was then heard and reserved for its order.

5. Heard Sri Murthy D.Naik, learned senior counsel appearing for the petitioner, Sri B.V.Krishna, learned Additional Government appearing for respondent No.1 and Sri G. Nataraj, learned counsel appearing for respondent No.2.

6. The learned senior counsel representing the petitioner/ Association would reiterate what had been contended in the writ petition filed in the year 2005 alleging, that the fund is not yet created by the State or the State Bar Council in terms of Section 27 of the Karnataka Advocates Welfare Fund Act, 1983. He would submit that if suitable directions are not issued, Advocates' Clerks lives would be put to jeopardy as those are the Clerks who are working under the Advocates and those Advocates are members of the Advocates' Association. The Clerks are engaged by the Advocates and there is no service conditions codified for the Clerks. He would seek a *mandamus* for resolution of the grievance of the petitioner/Association. He would take this Court through similar

Schemes having been formulated by several High Courts and State Governments working in tandem in those States and seeks similar directions for implementation of the Scheme.

7. On the other hand, the learned Additional Government Advocate for the State and the learned counsel representing the Karnataka State Bar Council would in unison submit that the 3rd respondent/Karnataka Advocates Registered Clerks Welfare Fund Committee would bring about some solution to the grievance of the petitioner/Association, if reasonable time is granted by working in tandem. Those submissions are placed on record.

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

9. The afore-narrated facts lie in a narrow compass. The members of the petitioner/Association being engaged by the Advocates as their clerks is not in dispute and the Association being registered in terms of the Karnataka Societies Registration Act is a

matter of record. The entire issue now revolves round the Karnataka Advocates' Welfare Fund Act, 1983 ('the Act' for short). Therefore, Sections 3 and 27 of the Act are germane to be noticed. Section 3 of the Act reads as follows:

"3. Advocates' Welfare Fund—(1) The State Government shall constitute a fund called the Karnataka Advocates' Welfare Fund for the payment of retirement and other benefits to the advocates and their dependents, in the State.

(2) There shall be credited to the Fund,—

*(a) * * **

(b) any contribution made by the Bar Council;

(c) any voluntary donation or contribution made to the Fund by the Bar Council of India, any bar association, any other association or institution, any advocate or any other person;

(d) any grant made by the State Government to the Fund;

(e) the amounts set apart from the Legal Benefit Fund constituted under Section 76-A of the Karnataka Court Fees and Suits Valuation Act, 1958 (Karnataka Act 16 of 1958), for providing social security measures for the legal profession;

(f) any sum borrowed under Section 10;

(g) all sums received from the Life Insurance Corporation of India on the

death of an advocate under the group insurance policy;

- (h) any profit or dividend received from the Life Insurance Corporation of India in respect of policies of Group Insurance of the members of the Fund;**
- (i) any interest or dividend or other return on any investment made of any part of the Fund;
- (j) all sums collected by way of sale of welfare fund stamps under Section 22;
- (k) amounts collected under Section 15 by way of admission fee and any other fee including late fee under Section 23-A and penalty or contribution if any.

(3) The sums specified in sub-section (2), shall be paid to, or collected by, such agencies, at such intervals and in such manner, and the accounts of the Fund shall be maintained and operated in such manner, as may be prescribed."

(Emphasis supplied)

Section 3 mandates that the State Government shall constitute a fund called the Karnataka Advocates' Welfare Fund for payment of retirement and other benefits to the Advocates and their dependents in the State. Section 27 of the Act reads as follows:

"27. Registered Clerks Welfare Fund—(1) Subject to such rules as may be prescribed by it, the State Government shall constitute a fund called the Karnataka Registered Clerks' Welfare Fund for payment

of retirement benefits to the registered clerks in the State.

(2) There shall be credited to the Fund, –

- (a) any grant that may be made by the State Government; and*
- (b) any donation or contribution made to the Fund by the Bar Council of India, Bar Council, any Bar Association, any association or authority, institution, any advocate or any other person.*

(3) The State Government shall constitute a committee for the administration of the Fund.

(4) The State Government may make rules to provide for all matters relating to the Fund including its membership and administration and the conditions subject to which payment from the Fund shall be made."

(Emphasis supplied)

Section 27 of the Act mandates that subject to such Rules as may be prescribed by the State Government, the State Government shall constitute a fund called the Karnataka Registered Clerks' Welfare Fund for payment of retirement benefits to the registered clerks in the State. The State Government is to make Rules with regard to the matters relating to the fund including its membership, administration and the conditions subject to which payment from the Fund shall be made. Sub-section (2) of Section 27 speaks of

credit to the fund. The credit to the fund would be from any grant that may be made by the State Government, any donation or contribution made to the fund by the Bar Council of India, Bar Council of the State, any Bar Association, any Association or Authority, Institution or any other person. Sub-section (3) of Section 27 mandates that the State Government shall constitute a Committee for administration of the Fund. This is the mandate of the statute. The Advocates' Welfare Fund created under Section 3 of the Act is to be utilized for several exigencies - medical relief and financial hardship as obtaining under Sections 16A and 16B of the Act, are the two among others. Therefore, the Advocates' Clerks are also recognized under the statute for creation and management of the fund, so that, at the time when they cease to be the Clerks, they would not be left in the lurch and they would get some fund for all the years of work that they have performed, on a case to case basis.

10. On the aforesaid statutory frame work and alleging that no steps are taken for creation of fund or protection of interests of Clerks of Advocates', the Association has knocked at the doors of

this Court in Writ Petition No.20740 of 2005. This Court on 16-04-2008, disposed of the petition by the following order:

"7. A perusal of Sub-section (1) to Section 27 would indicate that the word "shall" has been employed which indicates that there is an obligation on the State Government to constitute a Fund called the "Karnataka Registered Clerks Welfare Fund". Insofar as the amount to be credited to the fund, the details are contained in Sub-section (2), wherein sub-clause (a) states that the grant is to be made by the State Government and sub-clause (b) states that the donation or contribution to the Fund to be made by different bodies which includes the Bar Council, Bar Association and also the Advocates or any other person. This would indicate that when the State Government constitutes the Welfare Fund and notifies the same, at the first instance, what is required to be provided is the grant to be made by the Government. The question of any person including the Bar Council donating or contributing to the said Fund would arise only after such a Fund is constituted and notified, since no person would come forward to donate or contribute to a fund which is not yet in existence and therefore, at this juncture, it would not be appropriate for the State Government to insist on the Bar Council to indicate the manner in which it would fund the scheme that is to be formulated. That apart, even insofar as the mobilization of the amounts to constitute the Fund, it is for the State Government to formulate the Rules in the manner the funds are to be mobilized by the Bar Council and pursuant thereto, the Bar Council will proceed in accordance with the Rules to be notified by the Government.

8. While stating so, what requires to be also noticed is that similar funds have been notified by the State Government of Andhra Pradesh, State Government of Kerala and also the State Government of Tamil Nadu. The copies of the Rules framed by the respective Governments would indicate the manner in which the funds are to be mobilized and as such, it would be open for the State Government to adopt such methods as indicated in the said Rules. One of the

manners indicated therein is for providing the Bar Council with the Clerks Welfare Fund Stamps, which would be affixed to the vakalathnama that would be filed by the Advocates in the manner what is being done in the case of Advocates Welfare Fund and this is an aspect which is to be considered by the State Government and such method of distribution of the Welfare Fund Stamps is to be assigned to the Bar Council by the State Government. Therefore, when such models of the Welfare Fund Rules formulated by the other Governments are available which indicate the manner in which the State Government could mobilize the funds for constituting such a Welfare Fund, the State Government cannot wriggle out of its responsibility by merely stating that the Bar Council has not responded positively with regard to the mobilization of the amounts to constitute the Fund. That apart, even the Draft Rules as well as the Rules framed by the other State Governments would also indicate with regard to the Group Insurance and other policies which could be floated by the Fund for the benefit of the members of such Fund which are all aspects regarding which the Rules will have to be provided by the Government, Therefore, once the Government formulates the Rules, notifies the same and constitutes the Fund for the initial starting of the Fund, the grant as indicated in Section 27 (2)(a) is provided by the Government and the manner of mobilization would thereafter be provided under the Rules.

9. One other aspect which also requires to be noticed as rightly pointed by the learned counsel for the petitioner is that Section 28 of the Act itself makes it clear that the Bar Council with the previous approval of the State Government. Could formulate the Rules in respect of all other provisions of the Act, but insofar as Section 27, it is the exclusive domain of the State Government to formulate and notify the Rules and as such, the State Government would have to formulate the Rules and notify the same.

10. As already noticed, the stand taken by the first respondent from the inception of this petition till today when the affidavit was filed before this court, the State Government has indicated that the Fund requires to be notified as indicated in the Act, but the modalities are being formulated. Further, as noticed above, since sufficient time has elapsed and since the State Government has taken steps to formulate the Rules and has made some progress, all that requires to be ordered in this petition is to direct the first respondent to complete the formalities within a time frame by formulating the Rules in consultation or otherwise with the Bar Council and notify the same.

11. While fixing the time frame, this Court apart from noticing that this petition has been pending before this Court from the year 2005, also notices that vide order dated 28.11.2006 this Court had remarked that lapse of 21 years is a long period. Therefore, keeping all these aspects in view, the appropriate timeframe that could be granted in the matter is the outer limit of six months from today.

12. Accordingly, the petition is disposed of with a direction to the first respondent to constitute a fund called the "Karnataka Registered Clerk's Welfare Fund" as contemplated under Section 27 of the Karnataka Advocates Welfare Fund Act, 1983 and notify the Rules as expeditiously as possible, but not later than six months from today. No order as to costs".

(Emphasis supplied)

The learned single Judge notices that sub-section (1) of Section 27 indicates that there is an obligation on the State Government to constitute the fund as the word used is "shall". Sub-section (2) was also considered as to how the fund is to be

filled and operated. Several years pass by and the orders were not implemented, the petitioner/Association also did not seek its implementation thereafter. The order remained on paper.

11. On the onset of the pandemic – COVID - 19, the members of the petitioner/ Association were left in the lurch as they did not have any income due to closure of Courts or hearing being done only through video conference. This led the petitioner/Association to file a public interest petition in Writ Petition No.6745 of 2020 and this Court on 23-12-2020 has passed the following order:

"Perhaps with the passage of time, only two issues survive for consideration in this petition. The first issue is of the implementation of the judgment and order dated 16th April 2008 in Writ Petition No.20740 of 2005 as well as implementation of the Karnataka Registered Clerks' Welfare Fund Rules, 2009 (for short, "the said Rules of 2009"). The Bar Council has earmarked a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) for the benefit of the Advocates Clerks. Perhaps with the improvement in the State as regards Covid-19 situation, the Clerks may not need immediate monetary help.

It is necessary in the interest of all the stakeholders that the said Rules of 2009 are scrupulously implemented so that the Advocates Clerks or their families will be benefited. Therefore, it will be appropriate that the Bar Council takes a decision of transferring the sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the fund created by the said Rules of

2009. *If the said decision is taken, the welfare fund can start discharging its duties effectively. We grant time of one month to the Bar Council to take appropriate decision in terms of this order.*

List the petition under the caption of 'Orders' on 28th January 2021."

(Emphasis supplied)

The Division Bench observed that the first issue was with regard to implementation of judgment dated 16-04-2008 in the afore-quoted petition. The Bar Council has earmarked a sum of ₹10/- lakhs for the benefit of Advocates' Clerks in terms of the Rules called the Karnataka Registered Clerks' Welfare Fund Rules, 2009. The Division Bench directed that it would be appropriate for the Bar Council to transfer the fund of ₹10/- lakhs to the fund created under the Rules aforesaid, so that, the Welfare Fund can start discharging its duties effectively. Later, the Division Bench on 03.03.2022, has observed as follows:

"Learned Senior counsel for the petitioner fairly submits that there is no provision in to law to enable the petitioner to seek a writ of mandamus to the State Government to create a corpus of Rs.5 Crores. It is fairly submitted by him that no provision in law enables the petitioner's Association to claim a sum of Rs.20,000/- per month per registered member of the association from the State Government. The interim relief sought for in the petition is with regard to implementation of the order dated 16.04.2008 passed in

W.P.No.20740/2005. Needless to state that in case, such a direction has not been complied with, it is open for the petitioner to initiate proceeding for contempt against the concerned person.

At this stage, learned counsel for State Bar Council submits that the Council shall transfer a sum of Rs.10 Lakhs to the Advocates Clerk's Welfare Fund on or before next date of hearing.

List on 15.03.2022."

(Emphasis supplied)

The Division Bench recorded the submission of the learned senior counsel representing the petitioner that the petitioner/ Association cannot seek a *mandamus* to create a corpus of ₹5/- crores or seek ₹20,000/- per month per registered member of the Association from the State Government. With regard to the allegation that the earlier order was not complied with, the Division Bench reserved liberty to initiate contempt proceedings against the concerned. It was further directed that the Bar Council shall transfer ₹10/- lakhs to the Advocates' Clerks' Welfare Fund before the next date of hearing. Recording that the fund had been transferred, the petition came to be disposed of on 15-03-2022 by the following order:

"1. *Learned Additional Government Advocate submits that the State Government has deposited a further sum of Rs. One Crore in favour of the State Bar Council.*

2. *In view of the aforesaid submission, learned Counsel for the State Bar Council submits that out of the aforesaid amount, a sum of Rs.10 lakhs has been deposited in the account of the Karnataka State Level Advocates Clerks Association (R).*

3. *In view of the aforesaid submissions, learned Senior Counsel for the petitioners submits that the grievance of the petitioners does not survive for adjudication. However, the issue with regard to the modalities for the working out the welfare fund is kept open.*

With the aforesaid liberty, petition is disposed of."

Taking cue from the earlier order reserving liberty to the Association to initiate contempt, the petitioner/Association after the disposal of the petition on 15-03-2022, gave a representation to respondents 1, 2 and 3 herein and also filed a contempt petition in C.C.No.841 of 2022. Before the Division Bench dealing with contempt case, a compliance affidavit by the Government was filed from which the Court noticed few interesting facts having emerged in the affidavit, which were, that the State Government has framed Rules in the year 2009; pro-forma applications are also part of the Rules; the delay in formation of the Rules was unintentional and

held that the contempt was misconceived. The contempt was disposed of by an order dated 03-11-2022, which reads as follows:

"2. It may not be out of place to state here that the said writ petition was filed at the instance of the complainant/ petitioner - Karnataka State Level Advocates' Clerks' Association (Regd.) and the same was disposed of with a direction to the State of Karnataka through its Secretary, Department of Law to constitute a fund called the "Karnataka Registered Clerks' Welfare Fund" (for short, "the Fund") as contemplated under Section 27 of the Karnataka Advocates Welfare Fund Act, 1983 and notify the Rules as expeditiously as possible, but not later than six months from the date of the order.

3. In the compliance affidavit filed by the Under Secretary to Government, Law Department, few interesting facts have emerged. The State Government has framed the Karnataka Clerks' Welfare Fund Rules, 2009 (for short, 'the Rules'), vide its notification dated 18.07.2009. Proforma applications are also a part of the Rules, It is true that the Rules are framed beyond the stipulated period prescribed by the learned Single Judge, But, the delay in framing the Rules was due to certain administrative and procedural formalities and the delay caused is purely unintentional,

4. Another direction of the Division Bench of this Court was in relation to arrangement of funds. It is stated in the compliance affidavit that vide Government Order dated 09.12.2009 a sum of Rs. 10 lakh was sanctioned to the Fund through the Karnataka Bar Council, Bengaluru subject to certain terms and conditions. There is also a statement in the compliance affidavit that the Finance Department, vide its opinion dated 20.08.2020 has opined that out of the amount of Rs.5 crores granted by the Government to the Karnataka State Bar Council, the Bar Council may use a part of the grant to assist the affected clerks. The said opinion is annexed to the compliance affidavit as Document No.5. The compliance affidavit also refers to sanction of Rs.5 crore on 04.09.2021 as COVID Package-2 to the advocates of the State as well as the registered advocate's clerks. Out of

which, Rs.10 lakh was ordered to be given to the affected advocate's clerks. A copy of the said document is annexed to the compliance affidavit as Document No.11.

5. It appears that the present contempt petition is filed only on a misconceived notion and the respondent/accused was justified in making a statement in the compliance affidavit that it was surprising for the respondents to know that in spite of compliance of the order of this Court, a contempt petition is filed in this Court. Now as the order of this Court is duly complied with by the accused, in its true letter and spirit, the grievance in the contempt petition no more survives and the contempt petition deserves to be dropped."

The contempt proceeding was dropped holding that the order of the learned single Judge had been complied with in its true letter and spirit. While disposing off the contempt petition, the compliance affidavit of the Finance Department was recorded, wherein the Finance Department had opined that an amount of ₹5/- crores is granted by the Government to the Karnataka State Bar Council and the Bar Council may use a part of the grant to assist the affected clerks. The compliance affidavit also referred to sanction of ₹5/- crores on 04-09-2021 as Covid package to the Advocates of the State as well as registered Advocates' Clerks. Out of the above, ₹10/- lakhs was ordered to be given to the affected Advocates' Clerks. When the compliance was placed on record, it was for the

ad hoc purpose when the Advocates' clerks suffered during Covid-19. It was a Covid package that was transferred to the Bar Council to help the Advocates and their Clerks. Therefore, the petitioner after disposal of the aforesaid contempt petition filed the present petition on 29.11.2022.

12. As observed hereinabove this Court has directed a dialogue between the parties to the *lis* - petitioner and respondents 1 and 2. The deliberations are also placed before this Court. The deliberations dated 03-02-2023 read as follows:

"As directed by the Hon'ble High court of Karnataka vide Order dated 27th January, 2023 in WP 24053/2022, a meeting was convened by the Karnataka State Bar Council, Karnataka Registered Clerks Association and Law Secretary, Government of Karnataka.

The subject matter of the Writ Petition was deliberated in detail in the light of Sec. 27 of Karnataka Advocates Welfare Fund Act, 1983 read with Karnataka Registered Clerks Welfare Fund Rules, 2009.

That, as per the directions of the Hon'ble High Court of Karnataka in W.P No. 20740/2005 vide Order dated 16.4.2008, the State Government has framed Karnataka Registered Clerks Welfare Fund Rules which is duly notified in Gazette on 30 July, 2009 vide Notification No. LAW 208 LCL 2005 (p), Bangalore, Dated 18 July, 2009. Subsequently, vide Govt. Order No. LAW 208 LCL 2005, Dated 09-12-2009, one-time sanction of Rs. 10.00 lakhs was sanctioned to Karnataka Advocates Clerks Welfare Fund through Bar

Council. However, for the various reasons subsequent steps were not taken. Thereafter during Covid 19, the State Government has released Rs. 10 lacs each during 2020-2021 and 2021-2022. The said amount is taken as a fund created by the State Government under Sec. 27 (1) of the Karnataka Advocates Welfare Fund Act and the said amount has been deposited in Karnataka Bank Ltd in S.B. A/c No. 1172500102728401 in the bank account created as Karnataka Registered Clerks Welfare Fund under the Karnataka Registered Clerks Welfare Fund Rules, 2009.

Now with regard to giving implementation of Karnataka Registered Clerks Fund being framed under Rules:

a. IT IS RESOLVED to invite applications from every Registered Clerk in the State to apply for admission as a Member to the Fund as per Rules.

b. IT IS ALSO RESOLVED to request the State Government, Designated Senior Advocates, Members of the Karnataka State Bar Council and Advocates Fraternity to make generous contributions to the Fund.”

(Emphasis added)

It is noted in the deliberations that one time sanction of ₹10/- lakhs was made to the Karnataka Advocates' Clerks' Welfare Fund through the Bar Council. However, for various reasons subsequent steps were not taken. The amount of ₹10/- lakhs has been deposited in the Bank account created in 3rd respondent's fund under the Karnataka Registered Clerks Welfare Fund Rules, 2009.

13. With regard to implementation, the resolution is to invite applications from every registered clerk in the State to apply for admission as a member of the Fund in terms of the Rules and seek generous contributions to the fund. The Rules framed under sub-section (4) of Section 27 of the Act *i.e.*, Karnataka Registered Clerks Welfare Fund Rules, 2009 ('the Rules for short) bringing about a solution to various problems that the Advocates' Clerks would face. This is only for those Advocates' Clerks who become member of the Fund under Rule 5. Rule 6 deals with payment from the fund on cessation of service as a registered Clerk or on death of the member or on re-admission. Group Life Insurance for members and other benefits is also envisaged. Removal from membership on misrepresentation and fraud is found in Rule 8. Therefore, it is a comprehensive Rule that is in place right from the year 2009. What is necessary for the respondents is to bring the life into the Rules.

14. It now becomes germane to notice that several other High Courts have not only created the fund but generating revenue into the fund by different methods. To make the fund workable, several other States have put in place the method of generation of fund

and its utilization in identical Rules i.e., the Advocates' Welfare Fund Rules framed under the Advocates' Welfare Fund Act. The States are, Tamil Nadu which has formulated the Tamil Nadu Advocates' Clerks' Welfare Fund Act, 1999; the Telangana Advocates' Clerks' Welfare Fund Act and the Rules framed thereunder; the Andhra Pradesh Advocates' Clerks' Welfare Fund Act, 2001 and the Rules framed thereunder; the Kerala Advocates' Clerks' Welfare Fund Act and the Rules framed thereunder; the Jharkhand Advocates' Clerks' Welfare Fund Act, 2018 and the Rules framed thereunder. All these States have evolved generation of fund into the welfare fund for its disbursement to the needy in terms of the Rules so that no Advocates' Clerk is left in the lurch. Therefore, the fund which is created in terms of the Rules should be given life by directing registration of members to the welfare fund i.e., the Advocates' Clerks and adoption of a method, as are adopted by other States, which are now working in full vigour. The fund into the welfare fund could be in terms of sub-section (2) of Section 27 of the Act by various methods, which the deliberations also recognize and evolve as quoted *supra*. Therefore, it is necessary to direct respondents 1 and 2 in unison to act without

any loss of time and generate security of life to the Advocates' clerks.

15. It is trite that though the Clerks are not in employment of the Court, but their utility in functioning of the Court office is by now well established and well recognized. The service rendered by the Advocates' clerks is not a service to an individual, but to the system, being attached to the Advocates. Therefore, the Advocates' Clerks play a significant role in the justice delivery system and if they are playing a significant role in the justice delivery system, the system cannot leave them in the lurch, in any eventuality that may ensue in the life of those registered Advocates' Clerks. Since the issue is within the domain of the State Legislature and the Act and the Rules regulate the conditions of their service, no direction of a particular kind to generate funds can be issued except a direction to bring life into the Act and the Rules *qua* Section 27 of the Act and the Rules, 2009 *supra*.

16. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) A *mandamus* issues to respondents 1 and 2 to consider the representation of the petitioners dated 19-04-2022 in the light of the observations made in the course of the order.
- (iii) The respondents shall formulate a Scheme or a methodology for the welfare of the Members of the Association in tune with the law.
- (iv) The aforesaid steps be taken without any loss of time and at any rate within 6 months from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

nvj
CT:SS