

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S. DIXIT

**WRIT PETITION NO.7123 OF 2022(GM-RES)**

BETWEEN:

SRI. B. L. SHANKARAPPA,  
AGED ABOUT 70 YEARS,  
S/O LATE SRI. B M LAKSHMANAPPA,  
NO 226/2, 1<sup>ST</sup> FLOOR,  
4<sup>TH</sup> MAIN ROAD, 7<sup>TH</sup> CROSS,  
APMC YARD, YESHWANTHPURA,  
BENGALURU 560 022.

(SENIOR CITIZEN NOT CLAIMED)

...PETITIONER

(BY SRI.K.N.PHANINDRA, SENIOR COUNSEL A/W  
SRI.KIRAN B S, ADVOCATE)

AND:

1. FEDERATION OF KARNATAKA CHAMBERS  
OF COMMERCE AND INDUSTRY (FKCCI)  
FEDERATION HOUSE, K G ROAD,  
PB NO. 9996, BENGALURU 560 009.  
REP BY IS SECRETARY
2. REGISTRAR OF COMPANIES (ROC)  
BANGALORE(KARNATAKA )OFFICE  
E WING, 2<sup>ND</sup> FLOOR, KENDRIYA SADANA,  
KORAMANGALA, BENGALURU 560 034.  
REP BY ROC BANGALORE
3. MINISTRY OF CORPORATE AFFAIRS  
GOVERNMENT OF INDIA,  
A WING SHASTRI BHAWAN GARBADGE,

NO 14, DR. RAJENDRA PRASAD ROAD,  
NEW DELHI , DELHI 110 001.  
REP BY ITS SECRETARY.

4. DR PERIKAL M. SUNDAR,  
GOVERNMENT OF INDIA,  
S/O NOT KNOWN,  
AGED: ADULT  
SRI. RAKSHA, NO.10(OLD 1127),  
SERVICE ROAD,HAMPINAGAR,  
VIJANAGYA (NEAR ATTIGUPE METRO STATION),  
BENGALURU 560 014.
5. MR.M. K. RAMACHANDRA,  
ADULT, S/O NOT KNOWN,  
PASHANTH, NO 14/1,  
BULL TEMPLE ROAD,  
BASAVANAGUDI,  
BENGALURU 560 004.
6. MR. K. G. SUBBARAMA SHETTY,  
AGED: ADULT  
PRANAV, NO. 164,  
SOUTH CROSS ROAD,  
BASAVANAGUDI,  
BENGALURU 560 004.
7. MR. C. VALLIAPPA,  
AGED: ADULT,  
NO 434, 3<sup>RD</sup> CROSS  
13<sup>TH</sup> MAIN, 3<sup>RD</sup> BLOCK,  
KORAMANGALA,  
BENGALURU 560 034.
8. DR. M. K. PANDURANGA SHETTY,  
AGED:ADULT,  
SRIRANGA NO 14,  
BULL TEMPLE ROAD,  
OPP RMAKRISHNA SHRAM,  
BASAVANAGUDI ,  
BENGALURU 560 004.

9. DR. S. PHILIP LEWIS,  
AGED ADULT, S/O NOT KNOWN,  
NO 27, KASTRUBA ROAD CROSS,  
BENGALURU 560 001.
10. K. M. SRINIVASA MURTHY,  
AGED: ADULT, S/O NOT KNOWN,  
NO 5/25, 3<sup>RD</sup> CROSS, 10<sup>TH</sup> MAIN,  
NEAR ASHOKA PILLER, 1<sup>ST</sup> BLOCK,  
JAYANAGAR, BENGALURU 560 111.
11. MR. K.LAKSHMAN,  
AGED: ADULT, S/O NOT KNOWN,  
LAMBHADHARA, 346, 9<sup>TH</sup> MAIN,  
JP NAGAR, 4<sup>TH</sup> PHASE, DOLLARS COLONY,  
JAYANAGAR, BENGALURU - 560 078.
12. MR. D.R.SRIKANTIAH,  
AGED:ADULT, S/O NOT KNOWN,  
273/A, 37<sup>TH</sup> CROSS, 8<sup>TH</sup> BLOCK,  
JAYANAGAR, BENGALURU - 560 070.
13. MR. TALLAM VENKATESH,  
AGED:ADULT, S/O NOT KNOWN,  
'SUBHADRA', NO.93/8, SOUTH END ROAD,  
BASAVANAGUDI, BENGALURU - 560 004.
14. MR.K.RAMASWAMY,  
AGED:ADULT, S/O NOT KNOWN,  
NO.244/245, 3<sup>RD</sup> MAIN, MAHALAKSHMI,  
BENGALURU -- 560 086.
15. MR.B.S.ARUN KUMAR,  
AGED: ADULT, S/O NOT KNOWN,  
PRESIDENT, VASAVI VIDYANIKETHAN TRUST,  
#3, VANIVILAS ROAD, V V PURAM,  
BENGALURU - 560 004.  
ALSO AT: LAXMI NIVAS, NO.16,  
PAMPA MAHAKAVI ROAD,  
SHANKRAPURAM,  
BENGALURU - 560 004.

16. DR.MANANDI N SURESH,  
AGED:ADULT, S/O NOT KNOWN,  
NO.40/1, 29<sup>TH</sup> CROSS, 7<sup>TH</sup> BLOCK,  
JAYANAGAR, BENGALURU - 560 070.
17. MR.S.BABU,  
AGED:ADULT, S/O NOT KNOWN,  
NO.122E, 16<sup>TH</sup> MAIN, VIJAYANAGAR,  
BENGALURU - 560 040.
18. MR.R. C. PUROHIT,  
AGED:ADULT, S/O NOT KNOWN,  
NO. 841, HAL 3<sup>RD</sup> STAGE  
2<sup>ND</sup> MAIN, BENGALURU 560 075.
19. MR. D. MURALIDHAR,  
AGED:ADULT, S/O NOT KNOWN,  
DHUDDU VILLA, NO.116, 1<sup>ST</sup> CROSS,  
ULSOOR ROAD, BENGALURU 560 042.
20. DR. JACOB CRASTA,  
AGED:ADULT, S/O NOT KNOWN,  
NO 13-05, PLATINUM CITY,  
HMT MAIN ROAD,  
BENGALURU 560 022.
21. MR.N S SRINIVASA MURTHY,  
AGED:ADULT, S/O NOT KNOWN,  
MASTRURI, NO. 43, MIDDLE SCHOOL ROAD,  
VV PURAM, BENGALURU 560 004.
22. MR.J. R. BANGERA,  
AGED:ADULT, S/O NOT KNOWN,  
NO 418, SRINIKETAN, 1<sup>ST</sup> CROSS,  
BEML LAYOUT, 3<sup>RD</sup> STAGE, RR NAGAR,  
VV PURAM, BENGALURU 560 098.
23. MR.K .SHIVA SHAMUGAM,  
AGED:ADULT, S/O NOT KNOWN,  
NO. 244/245, 3<sup>RD</sup> MAIN,  
MAJHALAKSHMIPURAM LAYOUT,  
BENGALURU 560 086.

24. MR.R. SHIVAKUMAR,  
AGED:ADULT, S/O NOT KNOWN,  
NO 25, 9<sup>TH</sup> CROSS, KUAMRA PARK WEST,  
BENGALURU - 560 020.
25. MR. S. SAMPATHRAMAN,  
AGED:ADULT, S/O NOT KNOWN,  
VEDASRI, NEW NO. 7 (OLD NO. 275/B)  
37<sup>TH</sup> A CROSS, JAYANAGAR,  
BENGALURU - 560 070.
26. MR.TALLAM R. DWARAKANATH  
AGED:ADULT, S/O NOT KNOWN,  
NO. 334/51, TALLAM HOUSE,  
SURVEYOURU STREET, BASAVANAGUDI,  
BENGALURU 560 004.
27. MR. M. C. DINESH,  
AGED:ADULT, S/O NOT KNOWN,  
NO. 789, 17<sup>TH</sup> B MAIN,  
5<sup>TH</sup> BLOCK, RAJAJINAGAR,  
BENGALURU 560 010.
28. MR. K. RAVI,  
AGED:ADULT, S/O NOT KNOWN,  
NO 30/86, 20<sup>TH</sup> MAIN ROAD,  
II BLOCK, RAJAJINAGAR,  
BENGALURU 560 010.
29. MR. SUDHAKAR S SHETTY,  
AGED:ADULT, S/O NOT KNOWN,  
NO.580, SHARADHA NILAYA,  
2<sup>ND</sup> STAGE, 26<sup>TH</sup> MAIN ROAD,  
JP NAGAR, MYSURU 570 008.
30. MR. C. R. JANARDHANA,  
AGED:ADULT, S/O NOT KNOWN,  
NO.24, 2<sup>ND</sup> CROSS, C R LAYOUT, JP NAGAR,  
1<sup>ST</sup> PHASE, MYSURU 560 078

...RESPONDENTS

(BY SRI.K.G.RAGHAVAN, SENIOR COUNSEL A/W  
SMT.G KOMALA, ADVOCATE FOR R1;

SRI.M.N.KUMAR, CGC FOR R2 & R3;  
SRI.B.M.ARUN, ADVOCATE FOR R4;  
SRI.S.S.NAGANAND, SENIOR COUNSEL A/W  
SRI.S.G.PRASHANTH MURTHY, ADVOCATE FOR R5 TO R7,  
R9 TO R11, R13 TO R21, R23 TO R28 & R30;  
SRI.S.DINESH, ADVOCATE FOR R22 & R29;  
R8 & R12 ARE SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ORDERING RESPONDENT NO.1- FEDERATION TO AMEND ITS CHARCTER DOCUMENTS I.E., ANNEXURE-A TO ENSURE COMPLIANCE/CONFORMANCE WITH THE PROVISIONS OF THE COMPANIES ACT, 2013 AND RULES FRAMED THEREUNDER AND DIRECTING R-1 TO TABLE THE REPORT OF THE BYE-LAW COMMITTEE DATED 01-04-2021 (ANNEXURE-D) BEFORE THE GENERAL BODY FOR APPROVAL. DECLARING THE PRACTICE OF APPOINTING PAST PRESIDENTS AS DIRECTORS OF R-1 FEDERATION AS ILLEGAL UNDEMOCRATIC AND UNCONSITUTIONAL AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

### **ORDER**

Petitioner, an elected member of 1<sup>st</sup> Respondent – Federation of Karnataka Chambers of Commerce and Industry (hereafter 'FKCCI') is knocking at the doors of Writ Court grieving against the alleged mismanagement of and undemocratic practices perpetrated in the FKCCI.

In the Writ Petition, the prayers scripted are as under:

"A) **ORDERING** Respondent No.1- Federation to amend its Charter Documents

*i.e., Annexure-A to ensure compliance/conformance with the provisions of the Companies Act, 2013 and Rules framed thereunder;*

*B) **DIRECTING** Respondent No.1 to table the Report of the Bye-Law Committee dated 01-04-2021 (Annexure-D) before the General Body for approval;*

*C) **DECLARING** the practice of appointing past presidents as directors of Respondent No.1-Federation as illegal, undemocratic and unconstitutional;*

*D) **RESTRAINING** Respondent No.1-Federation from inducting Trusts as Members of the said respondent;*

*E) **ORDERING** the termination of illegal/ineligible members, including trusts such as Vasavi Vidyanikethan Trust, and its representatives in the said federation, which has resulted in the mismanagement of this institution which is discharging duties of a public nature."*

The argument made on behalf of the petitioner was founded mainly on the prayers at B, C & E above.

2. After service of notice, the Respondents entered appearance through their advocates and opposed the Writ Petition. The contesting Respondents have filed their Statements of Objections. Learned counsel appearing for the respondents resisted the petition contending that: the FKCCI not being an instrumentality

of 'State' under Article 12 of the Constitution of India and its actions/inactions not animated with public law elements, writ petition is misconceived; petitioner does not have a justiciable right and therefore, he cannot litigate; prayers of the kind cannot be granted in constitutional jurisdiction; petitioner is liable to be non-suited on the grounds of *suppresio veri*; even otherwise, he can work out alternate remedies availing under the 2013 Act. So contending, they seek dismissal of the writ petition.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines indulgence in the matter for the following reasons:

A. AS TO FKCCI BEING 'INSTRUMENTALITY OF STATE' UNDER ARTICLE 12 OF THE CONSTITUTION:

(i) FKCCI is a very old institution having been incorporated as a company on 3.12.1938. It is a 'limited company', answering the description u/s 8 of the 2013 Act. The Memorandum of Association vide Art.3



enumerates its objectives, primary of which is to promote & protect *inter alia* trade, commerce, service & manufacture. There are 3,000 'direct members' and about 2,50,000 'indirect members' drawn from all sectors of trade, commerce & industry, spread all over Karnataka State. It is a member of national bodies like FICCI, ASSOCHAM & OVERSEAS Enterprises. All this is not in dispute. However, petitioners contention that the FKCCI is an instrumentality of State under Article 12 of the Constitution in the light of *AJAY HASIA v. KHALID MUJIB SEHRAVARD*<sup>1</sup> and therefore, for the redressal of grievance of the kind, writ petition is maintainable, is bit difficult to countenance. Fact matrix of the said decision is miles away from the argued case of the petitioner.

(ii) Merely because the avowed objects of a private body linguistically partake the nature of certain functions which ordinarily governmental bodies do, it does not thereby become a limb or agency of the State. The indicia to become one are different and apparently

---

<sup>1</sup> (1981) 1 SCC 722

lacking in the formation, & functioning of FKCCI. A body is formed *inter alia* for promoting the public interest and therefore, it assumes the mantle of State u/a 12, is too farfetched an argument; it does not draw support or succor from contemporary *opinio juris*. When emphatically asked by Court, petitioner's counsel Mr. Phanindra fairly conceded that none of the High Courts in the country as yet has held that such Federations (i.e., counterparts of FKCCI) obtaining in other States, do fit into the expression '*other authorities*' employed in Article 12.

(iii) The FKCCI which represents over 2.5 lakh members drawn from sectors of trade, business & service has a *de facto* monopoly and it enjoys support & recognition by the State may be true. Similarly, it interfaces with foreign consulates such as the '*Royal Thai Consulate General*' or that it interacts with foreign governments on one-to-one basis, may also be true. Such things even tall private individuals may undertake.

However, in public law nothing turns out from all that to support petitioners version. It is relevant to quote from Dr. D.D. BASU's '*Shorter Constitution of India*<sup>2</sup> to justify repulsion of petitioner's contention:

*"...the Supreme Court in Pradeep Kumar Biswas, has held that the principles laid down in Ajay Hasia are not a rigid set of principles so that, if a body falls within any one of them it must a hypothesis, be considered to be a State within the meaning of Article 12. Rather, the question in each case will have to be considered on the basis of facts available as to whether the body is financially, functionally, administratively dominated, by or under the control of the Government. Such control must be particular to the body in question and must be pervasive...hence; a private educational institute does not become an instrumentality of the State because of the mere fact that it has received recognition or affiliation from the State."*

(iv) FKCCI enjoys a great reputation and has carved out a niche for itself, cannot be disputed; however, that *per se* is not much relevant. The professed objectives of FKCCI may have congruity with what our Constitution ordains. Its activities may also have a marked resemblance to what the State & its authorities

---

<sup>2</sup> D.D.Basu, '*Shorter Constitution of India*', 16<sup>th</sup> Edition, Vol.1 (2013)

in public law, are required to do. However, on that basis, if a body of individuals were to be treated as an instrumentality of State, that would strain the writ jurisprudence, as has been developed, *precedent by precedent*, over the decades. Some land & funds have been allotted to the FKCCI by the government in Bangalore & Dabaspeta, or that certain exemption & concessions under the provisions of Income Tax Act, 1961 are selectively made available, does not make the same to fall within the term '*other authorities*' employed in Article 12 of the Constitution.

(v) An association of persons incorporated or not, may undertake activities very much in public interest; say for example, it may profess to protect the sovereignty & integrity of nation; laudable it is, undoubtedly; however thereby, it does not become a '*State Agency*' for the purpose of Part III of the Constitution. Similarly, if an entity is formed with the sole object of giving effect to Part IV Directives that *per se*

does not take it to the precincts of Article 12, inasmuch as the public as such, is not entitled to demand for the implementation of professed objects of the said entity. What is to be seen is, whether the functions of such a body are pregnant with sufficient public law elements as to justify invocation of writ jurisdiction; in the case at hands, the answer to this question is a plain 'NO'. The ingenuity of arguments advanced at the Bar, cannot catapult a private entity like FKCCI into the ever expanding orbit of Article 12.

(vi) Intriguingly, the above view gains support from the following observations in *ZEE TELEFILMS LTD. vs. UNION OF INDIA*<sup>3</sup>:

*"...Craig in his treatise 'Administrative Law' at page 821 also made an interesting observation as regards future prospects, stating : 'If the scope of review is extended thus far then careful attention will have to be given to whether the procedural and substantive norms applied against traditional public bodies should also be applied against private bodies...If we were to follow Lord Woolf's suggestion then we would also have to consider whether substantive public law*

---

<sup>3</sup> (2005) 4 SCC 649

*should be applied to such bodies. Would we insist that sporting bodies with monopoly power, or large companies with similar power, take account of all relevant considerations before deciding upon a course of action? Would we demand that their actions be subject to a principle of proportionality, assuming that it becomes an accepted part of our substantive control? If there is an affirmative answer, then the change would be significant to say the very least. It would have ramifications for other subjects, such as company law, commercial law and contract. It would increase the courts' judicial review case load. It would involve difficult questions as to how such substantive public law principles fit with previously accepted doctrines of private law..."*

(vii) The offshoot argument of the petitioner that regardless of status of FKCCI as an instrumentality of the State, petitioner can invoke the writ jurisdiction in matters like this, at a first blush appears attractive. However, a deeper examination shows its hollowness. True it is that our Constitution Makers have widely phrased Articles 226 & 227 qua Article 32 so that the traditional shackles of *English Law of Writs* would not come in the way of doing justice. This court hastens to add that here again, relaxation of the rigor and not its

removal, is brought about. The law of writs has marched from '*status to function*'. Jurisdiction under these Articles extends to adjudging causes of action not necessarily founded on the violation of fundamental rights, is true. However, it is conditioned by another factor namely such causes should be predominantly animated with public law elements.; the Respondent need not be a '*State*' or its '*instrumentality*' for the purpose of subjecting its actions to judicial review if, public law elements galore in them. Conversely, writ remedy does not avail even against a State or its instrumentality, should its actions lack required amount of public law elements vide *LIFE INSURANCE COMPANY vs. ESCORTS LTD*<sup>4</sup>, as rightly contended by Sr. Advocates appearing for the contesting respondents.

B. AS TO CONTRACTUAL NATURE OF MEMBERSHIP QUA THE COMPANY:

(i) Petitioner happens to be one of the members of Managing Committee of FKCCI, since more than two

---

<sup>4</sup> (1986) 1 SCC 264

decades, is not in dispute; he gained entry to such membership by invoking the provisions of Memorandum of Association & Articles of Association, is also not in dispute. The FKCCI as already mentioned above, falls in section 8 of the 2013 Act which corresponds to Section 25 of the erstwhile Companies Act, 1956. The relation between a company of this kind and its members is essentially contractual in nature; since MOA/AOA have a binding effect on the company and its members, vide *NARESH CHANDRA SANYAL vs. CALCUTTA STOCK EXCHANGE ASSOCIATION LIMITED*<sup>5</sup>. Therefore, the grievance of the petitioner if any cannot have redressal at the hands of constitutional Courts.

(ii) Article 11 of AOA provides for composition of Managing Committee of FKCCI which comprises *inter alia* of 48 Members from various segments i.e., trade, business, industry, profession, services, etc. The consenting past Presidents also happen to be the members, subject to certain compliances. Voting rights

---

<sup>5</sup> (1971) 1 SCC 50



are given to the members vide Art.12.9 of AOA. Art. 13 defines the powers & functions of the Committee. Art. 12.1 prescribes the procedure for the Committee Meetings; If the petitioner seeks a structural change in the Management at the hands of this Court (assuming maintainability of the petition), he has to demonstrate a right inhering in him and a corresponding public duty resting on the shoulders of FKCCI, *ubi jus ibi remedium* being the baseline. However, despite vociferous submissions, the same remains unsubstantiated, to say the least.

C. DESIREABILITY OF HAVING PAST PRESIDENTS IN THE MANAGERIAL BODIES:

(i) One of the grievances of the petitioner is against the past Presidents being the *ex-officio* members of the Managing Committee, as provided under Art.11.1 (iii) of AOA. This provision has been there since sometime. Its baseline is not far to see. Obviously it intends to draw wisdom of the experienced and to employ it for the corporate objectives. It would be profitable to dwell a

little more upon the inclusion of Past Presidents in organizations like this. Conceptually, the practice of appointing past Presidents/Directors as *emeritus* can well be understood by adverting to what Professor Vijay Govindarajan of Dartmouth College's Tuck School of Business articulates<sup>6</sup>:

*"...Strategy for any organization is all about intelligently marrying timeless with timely. Every organization has timeless assets - its identity, core capabilities, etc. But times do change, and organizations need to adapt. Founders can keep reminding organizations about the "timeless" part; new management can do the "timely" part. This is a good arrangement."*

(ii) Such ideas are enacted even in the campus laws such as university legislations which provide for the appointment of 'Old Guards' as *professors emeritus* and their inclusion in the Senate/Syndicate. For instance, section 6.2 of the Visva Bharati Act, 1951 relating to Tagore's 'Santiniketana' provides for such arrangements. *Pari materia* provisions that are aimed at maximizing the utilization of 'human capital of age', i.e., accumulated

---

<sup>6</sup> S. Gunta, N. Ravichandra, 'Infosys: Transition at the top', Indian

wisdom, do obtain across the globe in some form or the other. After all, '*grey hair has to be respected*' as of necessity, if not because of virtue. For another instance, the Memorandum of Association of Karnataka Small Scale Industries Association (*kassia*) at Rule 10(a) reads:

*"The scrutiny committee shall consist of a past president as chairman, the vice president as co-chairman..."*

This Committee scrutinizes the application for membership. It hardly needs to be stated that this is not a solitary instance. Statutes as such, in so many words may not say this explicitly; however there is nothing in them that repels doing of gainful things like this. These things are internalized by making suitable provisions in the corporate policies. This is how the extant MOA/AOA appear to have been structured in the FKCCI.

(iii) The above having been said, it cannot be denied that there is some sense & logic in the submission made on behalf of the petitioner that the inclusion of too many Past Presidents may jeopardize the flow of fresh

blood into the Management Committee and that the FKCCI should not be rendered into a "gymkhana club like thing" wherein the scope for induction of new members becomes too much restrictive, the views of Past Presidents predominating the decision making process. It is desirable that there shall be no scope for grievance of the kind. However, it is for the wisdom of managerial section of the FKCCI to take a call on this. It was Lord Alfred Tennyson; a Victorian poet who penned the following stanza in a 1912 poem, 'Morte d'Arthur':

*"The old order changeth, yielding place to new,  
And God fulfils Himself in many ways,  
Lest one good custom should corrupt the world.  
Comfort thyself: what comfort is in me?"*

D. AS TO SUB-COMMITTEE RECOMMENDATIONS  
AND THEIR JUSTICIABILITY:

(i) Petitioner has structured his pleadings to ventilate his grievance *inter alia* banking upon the recommendations of a sub-committee. True it is, the President of FKCCI had appointed a sub-Committee i.e., Byelaw Committee to review the existing pattern of Articles/Byelaws and to recommend amendments for

bringing the same in alignment with the legal regime. Byelaw Committee after toiling had submitted its report dated 1.4.2021 recommending certain alterations to the bye-laws of FKCCI and to the structure of Managing Committee. Petitioner complains that the said report was not tabled before the Managing Committee or presented to the general body for consideration. However, what he ignores is that the very appointment of this Committee was not approved by the Managing Committee, as provided under AOA and therefore, the same came to be rescinded by the President on 12.04.2021 under Article 16.1(iii) of the AOA. This action is not put in challenge in the petition. Where the approval is a must as has been the position here, an action that renders the same *non est*, needs no deliberation. That being the position, the report/recommendation made by such a Committee pales into insignificance. No justiciable right or obligation can be founded on the basis of what the said Committee did.

(ii) Whether a report/recommendation submitted by an expert committee should be made use of or not, is left to the discretion of the Managing Committee and admittedly, petitioner happens to be one of its members. There is nothing in MOA/AOA/Byelaws that arguably prohibits doing this. The question whether court can compel the Management of the FKCCI to process such a recommendation, has to be answered in the negative. If the FKCCI were to an instrumentality of the State, considerations would have been different. The reply dated 11.03.2022 sent by the General Secretary of FKCCI to petitioner's Legal Notice dated 10.02.2022 mentions about Byelaw Committee not providing proper suggestions/improvements and not bringing any recommendations, even if factually incorrect, does not make much difference to the legal position.

(iii) There is yet another aspect of law: that once the recommendation of the Bye-law Committee is tabled, deliberated & accepted, that would not *proprio vigor*

bring about change in the structure of management of the FKCCI. The companies incorporated u/s 8 of the 2013 Act cannot amend or alter their Memorandum of Association and Articles of Association *sans* prior approval of Central Government. Section 14(1) provides that subject to the provisions of this Act and the conditions contained in the Memorandum, if any, a company may, by a special resolution, alter its Articles. The altered Articles are required to be filed with the Registrar of Companies u/s 14(2). The manner of passing a special resolution is provided u/s 114(2). Thus, the Act prescribes a specific procedure for amending the Articles of Association of a company u/s 14, in addition to other requirements u/s 8. Any grievance in respect of Articles of Association of FKCCI is remediable in the manner provided u/s 14 read with Section 114(2) of the Act. Section 100 permits any member of the company to request its Managing Committee to call for an Extraordinary General Meeting to consider grievances raised by him; if the Committee

does not agree, he himself can requisition a meeting of course, after complying with the requirement under this provision. If his request does not materialize, a member can also approach the National Company Law Tribunal (NCLT) for the redressal of his grievance. This is stated to have been done by a few past Presidents/office bearers, earlier. That being the position, petitioner could not have hastened to complain to the Writ Court, bypassing all these avenues.

E. AS TO APPOINTMENT OF OBSERVERS FROM OUTSIDE THE MEMBERSHIP:

(i)The grievance of petitioner against the appointment of "Observers" in the Election to the Managing Committee has absolutely no merit whatsoever. The past Presidents are being appointed as 'Observers' as provided under the Byelaws of FKCCI since decades; it is not that such a course is being undertaken only now with no sanctity therefor. The vehement contention of learned Sr. Adv. appearing for the petitioner that these Observers should be drawn from



outside so that there will be no scope for their lobbying for any particular section, again cannot be agreed to. Merely because the persons appointed as Observers too have a voting right and they may vote as well, is too feeble a ground for faltering their appointments. Even otherwise, outsourcing the Observers is not desirable, to say the least.

(ii) No precedent or practice in the FKCCI to the contra is pointed out nor any parallel is drawn from Federations of Chambers of Commerce in other States, to support contention that the observers should be drawn from outside. What prejudice would be occasioned if the insiders are appointed as observers of election process is also not forthcoming despite lengthy arguments of petitioner. Countenancing such a contention arguably amounts to casting aspersion on an indeterminate class of insiders from whom these observers may be drawn. Absolutely no material is placed on record to show that in the past any of the observers have acted partisanly and

marred free & fair elections, to the disadvantage of anyone, much less the petitioner. Who should be the observers, cannot be a matter of debate before the Writ Court.

(iii) Lastly, the submission made on behalf of the petitioner for termination of illegal/ineligible members including Trusts such as, 'Vasavi Vidyanikethan Trust', again cannot be subjected to judicial review. Who should be members and who should not be, are all matters of private policy as incorporated in the MOA/AOA/Byelaws and the decision making in matters like this is left to the Managing Committee of FKCCI, for the reasons already discussed *supra*. An argument to the contrary would render the Writ Court the Managing Body. That is not the object with which writ jurisdiction is constitutionally conferred on this Court.

In the above circumstances, this writ petition being thoroughly devoid of merits, is liable to be dismissed and accordingly it is costs having been made easy.

It hardly needs to be stated, the discussion and observations hereinabove made being confined to disposal of the Writ Petition shall not come in the way of petitioner seeking redressal of his grievance elsewhere in accordance with law, and all contentions in that regard are kept open.

This court places on record its appreciation for the able assistance and research rendered by its official Law Clerk cum Research Assistant, Mr. Faiz Afsar Sait.

**Sd/-  
JUDGE**

Snb/