

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 16-06-2023

ORDERS PRONOUNCED ON 22-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.22460 of 2012

And

MP No.2 of 2012 and WMP Nos.16543 and 16547 of 2023

Elephant G.Rajendran

... Petitioner

Vs.

1.The Registrar-General,
High Court of Madras,
High Court,
Chennai-104.

2.The Secretary,
Madras Bar Association,
High Court,
Chennai-104

[R-2 impleaded vide order of Court
dated 21.08.2012 made in MP No.1 of

2012 in WP No.22460 of 2012]

3.A.Mohandoss

[R-3 impleaded vide order of Court
dated 16.06.2023 made in WMP No.
17204 of 2023 in WP No.22460 of 2012]

4.S.Mahaveer Shivaji

[R-4 impleaded vide order of Court
dated 16.06.2023 made in WMP No.
17372 of 2023 in WP No.22460 of 2012]

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to consider and pass order on the petitioner's petition dated 13.07.2012 including taking suitable action.

For Petitioner	: Mr.Elephant G.Rajendran [Party-in-Person]
For Respondent-1	: Mr.Karthik Ranganathan
For Respondent-2	: Mr.M.S.Krishnan, Senior Counsel for Mr.V.R.Kamalanathan.
For Respondent-3	: Mr.A.Mohandoss [Party-in-Person]
For Respondent-4	: Mr.S.Mahaveer Shivaji [Party-in-Person].

ORDER

The lis on hand has been instituted on account of an unfortunate incident occurred in the premises of the second respondent-Madras Bar Association inside the High Court Buildings. The writ petition was instituted in the year 2012. The petitioner is a Senior Advocate practising law for the past about 44 years continuously. The petitioner-in-person, at the first instance, submitted that he has taken sincere and continuous efforts to list the writ petition for final hearing and now after a lapse of 11 years, he could bring the matter and therefore, this Court may hear and dispose of the writ petition.

2. The writ petition was heard initially on 26.04.2023 and thereafter, on 12.06.2023 and finally it was heard on 16.06.2023 and all the parties to the lis have made their respective submissions.

3. The issues raised between the parties are directly relating to the Judicial Institution and the Justice Delivery System. Thus, this Court thought fit to consider the related issues carefully in the interest of the

Judicial Institution, Justice Delivery System and in the interest of public. This Court thought fit that the relief sought for by the petitioner is to be considered in the perspective of the issues raised and if necessary by moulding the relief under Article 226 of the Constitution of India.

PETITIONER'S CASE:

4. The petitioner states that his son Mr.R.Neil Rashan was a practising Advocate in the High Court of Madras and was a Junior in the office of the petitioner. The petitioner has filed the present writ petition in his capacity not only as father, but also on behalf of the Junior Advocate, who is the victim of the incident which occurred inside the Bar Association premises. Unfortunately during the pendency of the writ petition, the petitioner lost his son in a road accident.

5. The learned Senior Advocate, Mr.P.H.Pandian, against whom the serious allegations are raised by the petitioner, is also no more. In this context, at the first instance, the learned President of the second respondent-Bar Association made a submission that the writ petition is to be closed, since the victim and the learned Senior Advocate, connected with

the unfortunate incident, which is regrettable, are no more. However, this Court formed an opinion that social issues never die with the persons. Death of persons cannot put an end to serious social issues raised in the present writ petition directly relating to the affairs in the Justice Delivery System. Merely closing the writ petition cannot be a way out, but the issues raised between the parties are to be addressed in the interest of the judiciary.

6. The unfortunate incident occurred inside the premises of the Madras Bar Association has been narrated by the deceased victim Mr.R.Neil Roshan in his supporting affidavit filed along with the present writ petition as under:

“2. I submit I am practising in this Hon'ble High Court since 2006. I have completed MBA and after passing MBA I joined L.L.B. and enrolled myself in July 2006 with Bar Council of Tamil Nadu. I am doing my profession under Elephant G.Rajendran as Junior.

3. On 06.01.2012 around 11:30 AM I was near Madras Bar Association room. Being sick and feeling weak I felt an urge to drink water. So I rushed to the water filter kept in the Hall of the MBA. When I was filling water in tumbler,

Senior Advocate Mr.P.H.Pandian came to me and forcefully snatched tumbler from my hand shouting “You do not drink water here go out”. I shocked and left the MBA with broken heart and tears.

4. About this incident my father Elephant G.Rajendran filed complaint against Mr.P.H.Pandian on the same day. I here by submit that what are all steps taken by Mr.Elephant G. Rajendran are true and correct. Therefore, I am filing this supporting affidavit in this above writ petition and state what i have stated above are all true and nothing but true.”

7. The petitioner in person strenuously contended that instead of initiating action against the learned Senior Counsel Mr.P.H.Pandian, the BAR Association supported him by stating that no such incident occurred. The approach and conduct of Madras Bar Association was not up to the mark. They have not even regretted for the incident, but defended the Senior Member of the Bar Association in a warranted manner. The petitioner thereafter was fighting continuously in respect of the happenings inside the Madras Bar Association and he has taken several steps and given

complaints even to the Registrar General, who in turn has not given any fruitful solution to the petitioner and also to the other practising Lawyers, who all are deprived of the facilities, Membership etc., in the Madras Bar Association.

8. The petitioner-in-person states that the facilities provided in the Madras Bar Association cannot be kept for the exclusive use of their Members, since the Madras Bar Association is functioning within the High Security Zone of the Madras High Court Buildings, availing the benefit of free electricity and other infrastructural facilities at the cost of public. When the Madras Bar Association is enjoying the public money for their functioning. Such facilities provided at the Public cost cannot be denied to other practising Lawyers in the Madras High Court and the said action of the Madras Bar Association is not only discriminatory, but also depriving the Lawyers from utilising public facilities.

9. The Registrar-General, High Court of Madras, is duty bound to ensure that free electricity, free Halls and other infrastructural facilities provided to the Madras Bar Association, cannot be restricted to its Members

alone, since the Bar Association premises is situated within the High Security Zone of the Madras High Court.

10. It is contended that the Madras Bar Association is in occupation of the two big Antique Halls, measuring approximately about 9,000 sq.ft and by compromising the Court Buildings, such facilities are provided to the Madras Bar Association. Two big Court Halls can be accommodated in the Bar Association. Therefore, the High Court ought to have shifted the Bar Association to the Non Security Zone and utilise the said area for the purpose of Court Halls, as the High Court is suffering for want of Court Halls and small Sections are converted as Court Halls. There is no reason for accommodating the Madras Bar Association in the High Security Zone of the Madras High Court Buildings, except the fact that the Members could influence the High Court Administration.

11. Certain other serious allegations are raised by the petitioner-in-person regarding admission of Members, preventing practising Lawyers of the Madras High Court from entering into the premises even for drinking water and to utilise the rest room etc., and also exclusive car

parking provided to the Members of the Madras Bar Association in the High Court premises etc. This Court is not inclined to elaborate all such complaints made by the petitioner-in-person, since the said facts are not denied on behalf of the Members of the Bar Association and it is a fact, known to the High Court Administration and the Lawyers practising in the High Court premises.

12. The petitioner-in-person has stated that the issues raised in the writ petition are one of legal, public and judicial importance. Since the matter relates to the behaviour of the Senior Advocate concerned in having refused to provide the elementary human necessity for drinking water in the Madras Bar Association situated with the Security Zone of High Court and regarding admission of practising Lawyers as Members and the consequential irrelevant restrictions imposed for such admissions.

13. The petitioner-in-person filed a Miscellaneous Petition seeking the relief of direction against the respondents not to allow them to conduct any birthday parties celebration, lunch at home parties and conduct any tea party and lunch in the Madras Bar Association. In the affidavit filed

in support of the Miscellaneous Petition, the petitioner has further elaborated the present situation prevailing in the Madras Bar Association.

14. The petitioner has narrated certain untoward incidents that occurred in Court premises across the country and insisted that security within the High Court premises cannot be compromised and the security of the High Court of Madras has been now handed over to the Central Industrial Security Force (CISF). The High Court Building complex has been declared as 'High Security Zone'.

15. The Madras Bar Association consisted of Members of British Barristers, who came to India to pursue their career in Law. It was only after 1951, the Association started admitting Indian Advocates as Members of the Association. Since 1951 till this day, a small group of Lawyers happened to be the Senior Advocates from upper echelons of the society and are controlling the affairs of the Madras Bar Association. All along the Madras Bar Association remained as an unregistered Association and only after raising the dispute, recently the Madras Bar Association has been registered as a Society under the Tamil Nadu Societies Registration

Act.

16. The petitioner-in-person has stated that in the matter of admitting Members, there are no settled, transparent and democratic norms and guidelines that are being followed by the Madras Bar Association because of their clout with those in the administration. Even if complaints are filed either they neglect it or put it under cold storage. The Madras Bar Association is the only Association, which is allowed to continue its operations within the High Security Zone of the Madras High Court, which would speak volumes about its influence in the Administration. Moreover, the other Associations of the Bar Members such as Madras High Court Advocates' Association which is the largest Association in the South East Asia, the High Court Women Lawyer's Association are functioning only outside the Security Zone.

17. It is well known that there are about 400 to 500 members in the Madras Bar Association. Apart from holding regular meetings, birthday parties and at home lunch are the regular picture in the Madras Bar Association. Food for the aforesaid meetings are brought through outside

caterers in their vehicles and the employees of the caterers are also allowed to serve food in the Association. Moreover, the respective clients of the Lawyers practising in Madras Bar Association after gaining entry through passes meant for clients regularly visits those Lawyers in the Bar Association. These activities have posed threat to the High Court, since the Bar Association is very close to the Chambers of the Hon'ble Judges located in the first floor of the main building within the Security Zone.

18. The petitioner has narrated certain sequence of events as under:-

In the wake of blast in front of the Delhi High Court, a resolution was passed at the meeting of the High Court's administrative committee chaired by the then Chief Justice M.Y.IQBAL stating that the entry of outsiders and their vehicles into the Court premises would be strictly regulated.

19. In January 2009, a new security system was introduced for the High Court after taking into account aspects concerning identification of gates, access control measures, provision of armed guards, anti-sabotage checks, issue of photo identity cards and arrangements for fire protection

and parking of vehicles. The meeting also resolved that security arrangements would be taken care of by the local police. However in October 2015 Central Industrial Security Force cover was ordered and being extended every year.

20. The Division Bench of this Hon'ble court consisting of the then Chief Justice A. P.Sahi and Justice Subramaniam Prasad took up a suo moto Writ Petition on the basis of a letter by Deputy Commissioner of Police, High Court Security to the Registrar General, and requested the security committee of the High Court to take up the matter urgently along with its suggestions and report the matter back for taking appropriate action on the judicial side and posted the matter for hearing on March 3, 2020. However because of the Corono Virus Pandemic, the matter was not heard in detail.

21. The need of the hour is to crystallize the security arrangements in the security zone of the High Court. While the Government Pleaders Office, Public Prosecutors office which were functioning within the High security zone of the High Court were shifted to the new building near the Advocates Canteen, and near Aavin booth. Only the Madras Bar Associ-

ation is allowed to continue without any justifiable cause or reason risking the security ring and posing danger to the security of the Hon'ble Judges.

22. It is also well known that admission to membership of the Madras Bar Association is not in accordance with any established and transparent regulation but is shrouded in mystery. The applications for membership in the Madras Bar Association are not considered in accordance with the merits of the individual applicant. A group of advocates with vested interest are controlling the admission process in the Bar Association by admitting only those advocates who are either their juniors or belong to their respective caste. There is an ugly practice of admitting members belonging to the upper caste or sometimes backward classes. If the entire total membership of the Bar Association is scrutinized, it will be clear that less than 5 to 7 advocates would belong to the Scheduled Caste and Scheduled Tribe community are presently members of the said Association. In this context it will be relevant to mention that more than 400 applications for admission into the Bar Association is pending consideration for the past over 15 to 20 years. The advocates concerned have not been informed of the reason for not admitting them in the Bar Association. However other advocates who

use their clout to the so called admission committee of the Bar Association even though their applications were filed recently have been admitted in the Bar Association as members. In this connection, an enclosed copy of the orders pronounced by Enrollment Committee of the Bar council of Tamil Nadu dated 24.05.2019 in TNECR No.12 of 2019, M.Arumugam Rahim Ismail and others Vs. President, Secretary, G.T. Bar Association. In the said order the enrollment committee of the Bar Council of Tamil Nadu after referring to the provisions of the advocates Act 1961, Tamil Nadu Advocates Welfare Fund Act 1987 issued the following directions to the Madras Bar Association:-

“Since the Madras Bar Association appears to have already passed a resolution for implementing one bar one vote, the exercise of preparing the voters list can be undertaken by the present set of office bearers of MBA itself. But, they shall submit the electoral roll to the Committee appointed herein, so that the Committee can verify whether persons whose names are found in the electoral roll of MBA, also happen to be in the electoral rolls of other Associations. Once this is checked up by the Committee appointed herein and if the Committee find that the electoral roll of the MBA

contains only the names of persons who have exercised the option to vote only in MBA and not in other Associations, the Committee appointed herein may leave the choice of conducting elections to the MBA itself. This facility is given to MBA since they have, out of their own volition, have come forward to amend the bye-laws and conduct the elections on the basis of the principle of one bar one vote"

23. Similarly in yet another order passed by the enrollment committee of the Bar Council of Tamil Nadu in TNECR No. 17 of 2019 dated 04.07.2019, and in **N.G.R. Prasad and two others vs. Madras Bar Association**, in para 16 of the order it has been stated that the Madras Bar Association has forgotten its statutory obligation to submit the list of members as on 31st March annually under Section 14 of the Tamil Nadu Advocates Welfare Fund Act, 1987 and that after a gap of 27 years the list was furnished only on 04.07.2019, and that as per the list provided by the office bearers there are about 658 members verified and approved by the Bar Council of Tamil Nadu. By an interim order passed in the said proceeding the Enrollment Committee of the Bar Council of Tamil Nadu made it clear

in para 2 of the interim order that 25 members were admitted without any basic norms while 300 applications were pending. In para 24 of the order it was recorded as hereunder:-

“We are surprised to note that without even any guideline and without even following any rule of law 25 advocates among few hundreds were chosen and they were admitted as members of the Madras Bar Association.”

24. In para 27 of the said order, it was recorded as hereunder:-

“We are not against the admission of any new member to the Association. But we make it clear that no Bar Association however oldest and superior it may be cannot arbitrarily ignore the application for Membership of any advocate and choose another without following any uniform rule of law and without assigning any reasons as the Bar Associations are given a status and place by the Court concerned and it is functioning in the court premises.”

25. In para 30 of the order the Enrollment Committee of the Bar Council of Tamil Nadu as also referred to the petition filed by

Mohandass, Scheduled Tribe Community Advocate, that his application filed for membership of the Bar Association is pending from the year 2010 and it is more than 11 years since the said application was filed and till date the Bar Association has not taken any decision regarding this application for admission. Obviously since Mr.A.Mohandoss is a Scheduled Tribe Community advocate the Bar Association is sitting on his application for the past 11 years. In para 43 to 47 of the said order the Bar Council has recorded as hereunder:

“43. The Bar Association can neither fix any restriction for the admission of membership or prohibit totally the membership as it is already held by us in the earlier para of the order that the membership is the right of an advocate and not the privilege of an association.

44. It is unfortunate to note that a request made by an advocate, called Thiru.Mohandoss even in 2010 is kept idle and its whereabouts are not known when advocates completed the law course only a year or 2 before were added as member of the Madras Bar Association. It is not known as to how many applications submitted by

the advocates are kept idle or thrown into the dust-bin like this.

45.????When the oldest and reputed Bar Association of a Chartered High Court chooses to behave like this which Association can be expected to follow the rule of law is the question made us to think loudly. The reputed associations are bound to prove their reputation by following uniform rule of law not only to its members but to all. The Bar Association are meant to give place for juniors and train them in the field of law for the strongest and independent Judiciary.

46. ???We are told by Thiru.Mohandoss that one advocate, son of Elephant Rajendran was put to humiliation when he attempted to drink a cup of water from the water equipment set up by the Madras Bar Association in its premises. He died a week thereafter and there is a litigation also pending in the Hon'ble High Court of Madras.

47. We are really shocked to hear such news from Thiru.Mohandoss Advocate and really it created a doubt in our mind as to whether we are completely relieved from the clutches of British Rule or not? God for the followers of religion and Nemesis for others alone has to teach a lesson to

all concerned. Anyhow our endeavour is not to criticize anyone or come down on the arbitrary pick and choose of 25 new members as it is for the newly elected body and the right minded members of the Bar including the Learned Senior most Senior Advocates to decide or not to decide. We feel that we are too small to teach them all.”

26. The petitioner has annexed hereto copies of the proceedings of the Enrolment Committee of the Bar Council of Tamil Nadu In TNECR No. 13 of 2019 dated 24.05.2019, TNECR No.17 of 2019 dated 04.07.2019 and also the letter dated 01.07.2019 sent by Mr.A.Mohandoss advocate to the President of the Madras Bar Association requesting him to consider his application dated 09.03.2010 for membership in MBA pending for nearly 11 years.

27. On 23.12.2019 Advocate Mr.A.Mohandoss has also sent a representation to the Chief Secretary, Govt. of Tamil Nadu pointing out that he is an advocate of 27 years of standing at the Bar and that because he belong to the Scheduled Tribe community in spite of the fact that the application was filed by him for membership in the Bar Association as early as

09.03.2010 till date the Bar Association has not considered his application for admission to the Bar Association obviously because he happened to be a member of the Schedule Tribe community.

28. In the said circumstances he wrote a letter to the National Commission for Scheduled Tribe on 23.12.2019 requesting them to intervene under Article 338 (a) of the constitution of India requesting the Scheduled Tribe commission to investigate the matter. Copy of the said representation to the National Commission for Scheduled Tribe was also forwarded to the Chief Secretary, Govt. of Tamil Nadu by letter dated 23.12.2019 the National Commission For Scheduled Tribe forwarded the representation to the Chief Secretary Government of Tamil Nadu. However the Chief Secretary Government of Tami Nadu has also put the matter under cold storage and sitting over it for the past over 2 years. It is submitted that in the case of **All India Indian Overseas Bank, SC-ST Employees Welfare Association vs. Union of India [(1996) 6 SCC 8606]**, the Hon'ble Supreme Court has ruled that such power of investigation are available with the National Commission for Scheduled Caste and Scheduled Tribe. True copy of

the said representation sent to the Chief Secretary to Government of Tamil Nadu by Mr.A.Mohandoss dated 23.12.2019.

29. The aforesaid case of Mr.A.Mohandoss is only a tip of the iceberg since there are so many other advocates who have been denied admission to the Bar Association on extraneous grounds and because the said association is functioning like a club. It is therefore a million dollar question as to whether such association can continue to get the facilities and privileges from the Hon'ble High Court and that too conducting its activities within the security zone of the Hon'ble High Court.

30. Moreover the main building of the High Court Madras was built during the British days and it is considered to be a heritage monument. The Ancient Monuments and Archaeological Science and Remains Act 1958 (Act No. 24 of 1958) provides that if somebody decimates, evacuate, harms, changes, damages, endangers or abuses a sacred land mark he will be culpable with detainment which may reach out to a quarter of a year or with fine Which may stretch out to Rs.5000/- or with both. The object of the said Act is that the heritage monuments must be restored to their original condi-

tion. It is to restore the original heritage value of such monuments that the said Act was enacted. The Bar Association overlooking the above statutory mandate has decimated change and damage the structure of the High Court main Building by installing various machineries and also conduct the at home lunch parties, birthday parties, etc., within the premises. Under the scheme of the said Act, the conservation of heritage structure is mandatory. All other advocates associations, Govt. Pleader office, Public Prosecutor's office and also the chambers of advocates are located outside the security zone of the main buildings which is meant only for the Hon'ble Judges chambers and Court Halls. Even the court offices are functioning only in the new buildings. Even though the Madras High Court Advocates Association which is functioning within the old building area, however the same is outside the high security zone. In the Rippon Buildings and Madras Central Station which are also like our High Court the work on restoration has already started.

31. On 30.4.2023, a shocking incident took place inside the Madras High Court premises which has been reported in the Times of India Chennai Edition dated 1.5.2023 under the caption "Two Ganja Peddlers run

into HC to escape 3 assailants". Further enquiries made in the High Court premises made it clear that the said incident reported in the Times of India is true and correct. Three assailants tried to murder two persons by name Yav-arai (27) and Santhose (24) after they left the court from the NDPS Court. While they were having tea in a tea shop near the High Court 150th year me-morial Arch three hooligans who came in an autorickshaw ran towards car-rying weapons. The two persons in order to escape from the hooligans at-tack ran into the CISF security complex who saved them and drew the as-sailants. The aforesaid incident has taken place within 200 yards from the present Madras Bar Association premises. It is therefore a million dollar question as to what would happen if the said case was heard by the High Court and not by NDPS Court. The functioning of the Bar Association with-in the security zone of the Madras High Court is posing a great security threat and danger to the life of not only the Hon'ble Judges of the High Court but the advocates and litigants. True copy of the news item appeared on 30.4.2023 in Times of India.

32. The MBA occupies two big halls. These two halls can be converted into Court halls, which is necessary in view of the increasing number of Hon'ble Judges.

33. More than 650 applications are pending for membership from 2012 to till date. During the last 10 years the syndicate senior advocates of the MBA admitted as members of the MBA only those advocates who are relative, and junior of the Senior Advocates. It is not fair and just. A direction may be given to the second Respondent MBA to file detailed report from 2012, as to (i). How may applications are pending, (ii). How many are the Junior or son of the Senior Advocates, who were appointed before this Hon'ble Court. It would expose the real colour of the 2nd Respondent Madras Bar Association.

34. Narrating the entire sequence as elaborated in the aforementioned paragraphs, the petitioner-in-person submitted that serious actions are to be initiated in the interest of the Judicial Institution and the Justice Delivery System.

REPLY BY THE FIRST RESPONDENT:

35. The first respondent-Registrar General filed two counter affidavits on 27th August 2012 and the another on 11th October 2012. The Registrar General has stated that the first respondent is not aware of the facts averred with reference to the incident occurred within the premises of the Madras Bar Association. The High Court on its administrative side allocated premises wherever available at free of rent, electricity consumption charges etc., on requests made by Associations/Societies comprising Lawyers/ Advocate Clerks as its Members. Such Associations/Societies have specific objections and are governed by their own Bye-Laws, Rules and Regulations and are thus self-governing in their Administration and Management of its activities, infrastructure, funds etc. They have evolved their own in-house mechanism for dealing with their Members. That being so, it is not within the role of the High Court to interfere or intrude into the internal affairs of the Association/Societies in a controlling or supervisory manner.

36. The High Court is obligated to intervene as a larger supervisory and Controlling Authority of the High Court premises as a whole and only in situations of misuse of the premises allocated for use of Association/Society by its Members or to prevent the use of the premises for any unlawful purpose affecting peace and harmony amongst the Members at large in derogation of the grant of beneficial enjoyment in favour of the Association/Society.

37. The learned counsel appearing on behalf of the High Court brought to the notice of this Court that the complaint given by the petitioner is referred to the Hon'ble Building Committee at the instance of the Hon'ble Chief Justice for consideration. However, it is not within the domain of this Court, since it is an administrative process, which has been undertaken by the High Court Administration. It is for the High Court Administration to take decisions on the Administrative Side in the interest of Justice Delivery System.

COUNTER BY THE MBA-SECOND RESPONDENT:

38. The second respondent / Madras Bar Association filed two counter affidavits i.e., one in the writ petition and subsequently in the miscellaneous petition filed by the writ petitioner.

39. The learned Senior Counsel appearing on behalf of the second respondent Mr.M.V.Krishnan, fairly made a submission that the unfortunate incident occurred in the year 2012 was regrettable. Though the Madras Bar Association has not admitted the incident, on account of efflux of time, several changes took place and presently, the Madras Bar Association is keeping two separate water cans at the entrance of the Madras Bar Association for the usage of the practising Lawyers and other persons visiting the Court premises. The serious allegations raised by the petitioner deserve no merit consideration in view of the fact that the Madras Bar Association gaining high reputation on account of the fact that several legal luminaries and stalwarts contributed for the development of Law. The Members are maintaining utmost decorum and discipline in the Association

and the admission of Members is restricted in accordance with the Bye-Laws of the Association. Two existing Members of the Association have to propose a person to become a member of the Madras Bar Association and such person must comply with the other conditions stipulated by the Association. The procedure for admission has been streamlined through its Bye-Laws and therefore, the contentions of the petitioner are incorrect.

40. Regarding the issue of High Security Zone raised by the petitioner, the contentions are frivolous, as the Madras Bar Association is functioning within the High Court premises for several decades and they are maintaining utmost discipline and therefore, the complaint in this regard need not be taken into consideration.

41. The learned Senior Counsel Mr.Rajagopalan, who in addition represented the case of the Madras Bar Association, has contended that the allegations set out by the petitioner are incorrect. The petitioner has twisted the allegations in order to create dis-reputation on the Madras Bar Association and in the counter, the Madras Bar Association has stated that no such incident took place as alleged by the petitioner and the petitioner

has exaggerated the incident. No member of the Madras Bar Association would behave in such a manner, so as to cause any inconvenience to any other practising Lawyers inside the High Court premises. Therefore, the issues raised are not fully correct and more so, the Madras Bar Association underwent many changes and developments and now they are serving in the interest of larger public by providing various services and through donations to the public.

42. The second respondent has stated that the incident as narrated by the petitioner and supporting affidavit filed by the son of the petitioner are not fully correct. The small incident has been unnecessarily exemplified by the petitioner with some ulterior motive and therefore, the writ petition is to be rejected.

43. The counter affidavit filed by the second respondent with reference to the alleged incident states that portable and protected drinking water has been made available in the respondent-Association for its Members at the cost of the Members. Water charges are collected along with the subscription every year from the Members and the said amount is

used for purchasing water and supplying the same to its members. It would, thus, be seen that even the Members of the Association, who all are given the benefit of protected and portable water are paying for the same.

44. It is stated that the claim made by the petitioner seeking Mandamus directing the Registrar-General to take action against the Members of the Madras Bar Association is without substance. The first respondent-Registrar General does not exercise supervisory control over the Members of the Madras Bar Association.

45. The learned Senior Counsels made a submission that the petitioner has filed the present writ petition in the nature of the Public Interest Litigation (PIL) and therefore, the present writ petition is to be rejected. The learned Senior Counsel has referred to the other counter affidavit filed by the second respondent by stating that the issues raised in the form of Public Interest Litigation and therefore, the writ petition is to be heard by the Hon'ble Division Bench of this Court. It is contended that they have given a letter to the Registry.

46. This Court expressed its concern that the writ petition was instituted in the year 2012 and pending for more than 10 years and throughout no such ground has been taken by the second respondent and the case had been listed on multiple occasions before this Court and argued fully by the petitioner and on the last day of final hearing, the second respondent raised such contentions.

47. The respective learned Senior Counsels obtaining instructions from the President of the Madras Bar Association made a submission that they have withdrawn the letter given to the Registry.

48. The second respondent-Madras Bar Association had now installed drinking water facilities at its entrance of both Eastern and Western corridors, which can be accessed by all Members of the Bar and others. Further, water is dispensed at the Madras Bar Association car parking area through water cans procured by the Bar Association. The second respondent-Association in the year 2014 had sponsored the installation of the Reverse Osmosis Drinking Water Plant at the first floor of

the Annex Building of the Madras High Court, which became immeasurably useful to the staffs, advocates and litigants. The drinking water facilities were installed at various required locations by the High Court with an easy access to everyone, including Court Officers, Court Staffs, Advocates, litigants and the general public.

49. The learned Senior Counsels appearing on behalf of the respondents made a submission that the relief sought for in the interim petitions cannot traverse beyond the scope of the relief sought for in the main writ petition. Therefore, the issue regarding High Security Zone of Madras High Court and other reliefs sought for by the petitioner are to be rejected. Members of the second respondent-Association can have their gatherings within the High Court premises and such gatherings cannot be injuncted, so long as gatherings are not illegal. No complaint or any security breach has ever been made or raised against the Members or the service providers of the second respondent-Association by CISF at any point of time and the same could amply demonstrate the discipline of the members of the second respondent-Association in compliance with the security mandates and protocols maintained by the CISF. The Bar Association in all

Chartered High Courts, including the Hon'ble Supreme Court are situated in the Court premises. A prayer to evict the second respondent from the High Court premises will run counter to the allotment of the premises by the Full Court in the Nineteenth Century soon after the completion of the High Court building.

50. With re-constitution of the second respondent-Association as registered Association in the year 2019, admission to Members of the second respondent-Association is governed by the fair and transparent manner and exhaustive admission procedure enumerated under the prevalent Bye-Laws of the Association adopted by the General Body of the second respondent-Association. The affairs of the second respondent-Association are being conducted strictly in line with the mandates enumerated under the governing Statute viz., the Tamil Nadu Societies Registration Act, 1975 and in strict conformity with the prevalent Bye-Laws adopted by the General Body of the Association. The General Body of the Association has autonomy in so far as having its procedure for admission of Members including categorisation of members, cap on the number of new members admitted, prescription of eligibility for admission under various

category and the admission of members is governed by detailed and exhaustive admission process. This autonomy of the General Body of the second respondent-Association has crystallised into prevalent Bye-Laws and the same stands in conformity with existing governing Statute viz., The Tamil Nadu Societies Registration Act, 1975.

51. The counter affidavit filed by the second respondent elaborately states about Yeoman Services done by the Madras Bar Association. They have contributed COVID Relief Fund, MBA COVID Health Desk, Junior Welfare Fund, COVID Victim Advocate's Children Education (Adoption) Scheme, Uttarkhand Relief Fund, Jammu and Kashmir Flood Relief, Chennai Flood Relief, Kerala Flood Relief, Gaja Cyclone, Sri Lankan Economic Crisis, Donation - Educational Fees, Donation - Medical Claims, Moot Court Competition, Art of Advocacy, Blood Donation Camp, medical Check Up Camp, Seminars etc. By elaborating the services rendered by the Bar Association, they prayed that the writ petition is to be rejected.

52. The second respondent-Bar Association relied on the following judgments:-

In the case of **State of Orissa vs. Madan Gopal Rungta [1951 SCC 1024]**, the Supreme Court considered that Article 226 cannot be used for the purpose of giving interim relief sought only and final relief on the application as the High Court is purported to do so.

53. In the case of **Elder Committee Central Bar Association, Azamgarh vs. State of Uttar Pradesh and Others [(2013) 6 All LJ 22]**, the Court held the relief outside the scope of the relief as it was understood is not entertainable.

54. In the case of **Ritona Consultancy Pvt Ltd and Others vs. Lohia Jute Press and Others [(2001) 3 SCC 68]**, paragraph 5 has been referred to, which reads as under:-

“5. In these circumstances, no useful purpose will be served in keeping these proceedings in this Court pending and the orders

made by the High Court as modified by this Court shall be effective until further orders are made by the High Court either on the trial side or in the LPA side. In respect of those reliefs sought for in different applications, either pending or not effectively disposed of by allowing or rejecting or in any similar manner or fresh or new aspects, it is open to the parties to seek for further directions in the High Court. The High Court shall decide on such applications bearing in mind the salutary principle that an interlocutory order is made by way of aid to the proper adjudication of the claims and disputes arising in and not made beyond the scope of the suit or against the parties who are not before it. That neither excessive conservatism nor traditional technical approach nor overzealous activist approach is conducive to advancement of justice.”

55. In the case of **Sree Jain Swetambar Terapanthi Vid (S) vs. Phundan Singh and Others [(1999) 2 SCC 377]**, wherein the Supreme Court in paragraphs 18 and 19 held as under:-

“18. From the above discussion, the principle that emerges is that where the High

Court has granted some relief by way of social justice or on equitable grounds without violating the rights of other parties, though in law such relief was not permissible, the Supreme Court would not interfere in its discretionary jurisdiction under Article 136 if the order under appeal advances the cause of justice and if it is just and equitable so to do.

19. We may observe that in an adversarial litigation the relief has to be granted to the parties based on their pleadings. No relief should be granted in interlocutory proceedings beyond the scope of the suit. It may be noted that the present suit out of which the appeal has arisen was filed by the appellant-Society for declaration and injunction. The suits filed by the contesting Respondents 2, 4 to 6, challenging their expulsion from the Society, were dismissed except the suit of Respondent 4, which is pending. No material is placed before us to show that any relief is granted to him in that suit. No legal proceeding has been filed by any of the contesting respondents either under the Societies Registration Act or any other law applicable to the Society for appropriate relief in respect of the

management of the Society and the schools run by it. Though we share the concern of the High Court that the rival groups are fighting with each other and 60 cases are pending in various courts, in these circumstances of the case, in our view, ousting the Managing Committee from the management of the Society and the schools run by it and appointing Joint Administrators would neither be legal nor just and proper. The principle laid down in the aforementioned cases will, therefore, be inapplicable. For these reasons, we are not inclined to continue administration of the Society/Trust by the Joint Administrators pending disposal of the appeal by the High Court.”

56. In the case of **Union of India and Others vs. Modiluft Ltd** [(2003) 6 SCC 65], the Apex Court in paragraph 16 held as under:-

“16. Nextly, we notice that the High Court has granted a relief by way of an interim order which we think it could not have done at the interim stage for more than one reason. The writ petition in question was filed challenging an order made by the Government in revision. The subject-

matter of the said petition pertains to the liability of the respondent to pay the tax. In the said writ petition, the respondent has sought an additional prayer by way of a direction to the respondent to grant an NOC to relaunch its airline operations. We do not want to say at this stage that such joinder of two separate causes of actions could be maintained in a writ petition like the one that is filed before the High Court by the respondent. It should be noticed that the authorities empowered to permit relaunching of the airline's operations were not before the Court which we are told is the Department of Civil Aviation. Be that as it may, since the relief as termed in the writ petition being a final relief, we think the same could not have been granted by the High Court at an interlocutory stage. But the learned counsel for the respondent contends that the said prayer is only an incidental prayer because the Civil Aviation Authorities have refused to grant necessary permission to relaunch the airline's operations to the respondent only because the Customs Department which is a respondent before the High Court, has refused to give an NOC, therefore in effect what is sought for before the High Court is only a direction to the

Customs Authorities to issue an NOC which in turn may be used by the respondent to obtain the required permission from the competent authorities to relaunch its airline operations. Be that as it may, even accepting the argument of the respondent, it is to be noticed that even an NOC from the Customs Authorities can be directed to be issued by the High Court only after it comes to the conclusion that the amount as determined by it has been paid by the respondent and not by an interim order, otherwise it would amount to the granting of a final relief in favour of the respondent who has suffered adverse orders from the authorities below, even before the writ petition is finally decided, and in the event of the ultimate dismissal of the writ petition the respondent would gain an undue advantage in spite of its default and might even give rise to other questions in equity including rights of the third party.”

57. In the case of **Bar Association Lahar, Dist. Bhind vs. State Bar Council of M.P and another [(2018) 4 MP LJ 387]**, wherein the Madhya Pradesh High Court in paragraphs-10 to 13 observed as under:-

“10. Chapter III of the Act provides

admission and enrolment of advocates with the State Bar Council. Section 17 of the Act says that it shall be the duties of the State Bar Council to maintain roll of advocates. The eligibility to be enrolled as an advocate of state roll is prescribed under Section 24. Disqualification for enrolment is provided under Section 24-A of the Act.

11. From a bare reading of the various provisions of the Act it is graphically clear that there is no provision either under the Act or under the Advocates Welfare Fund Act, 1982 [hereinafter referred to as 'the Act 1982'] to interfere with the elections conducted by the Bar Associations. The said Act 1982 requires recognition of Bar Association for the purpose of admitting the Members of the Bar Association for grant of welfare fund to them. The provision of the Act 1982 empowers the Bar Council to give such directions, as are necessary for carrying out the purpose of Act. Object of the said Act is to constitute a welfare fund for benefit of the advocates, cessation of practice, and for matters connected therewith or incidental thereto. The only purpose of the said Act is to provide succour to advocates who cease to practice or advocates

who suffer from any disability or who die. The said Act nowhere confers the power to the State Bar Council to have control or to supervise the election affairs of a Bar Association.

12. A similar issue has been considered by a Co-ordinate Bench of this Court in [R.N. Tiwari vs. State Bar Council of M.P. and others](#), AIR 1995 MP 137 wherein it is held that the Bar Council has no authority or power or jurisdiction to stay the election process or to interfere with the election affairs of a Bar Association. In the case of [Vinifred Bose vs. The Bar Council of Tamil Nadu and Puducherry](#), (W.P. No.5010 of 2015, decided on 11-6-2015), after considering various provisions of the [Advocates Act, 1961](#) it was held that if the Bar Council takes upon itself the role of supervision and overseeing the elections to each of the Associations, the Bar Council may lose focus on the functions statutorily entrusted to them.

13. In view of consideration of the statutory provisions of the Act and the [Advocates Welfare Fund Act](#), we do not find any provision conferring the power on the State Bar Council to interfere with the election process or with the election of a

Bar Association.”

58. In the case of R.Muthukrishnan vs. Registrar General, High Court of Judicature at Madras [(2019) 16 SCC 407], wherein the Apex Court in paragraphs 19 to 24 held as follows:-

“19. Role of the Bar in the legal system is significant. The Bar is supposed to be the spokesperson for the judiciary as Judges do not speak. People listen to the great lawyers and people are inspired by their thoughts. They are remembered and quoted with reverence. It is the duty of the Bar to protect honest Judges and not to ruin their reputation and at the same time to ensure that corrupt Judges are not spared. However, lawyers cannot go to the streets or go on strike except when democracy itself is in danger and the entire judicial system is at stake. In order to improve the system, they have to take recourse to the legally available methods by lodging complaint against corrupt Judges to the appropriate administrative authorities and not to level such allegation in the public. Corruption is intolerable in the judiciary.

20. The Bar is an integral part of the

judicial administration. In order to ensure that judiciary remains an effective tool, it is absolutely necessary that the Bar and the Bench maintain dignity and decorum of each other. The mutual reverence is absolutely necessary. The Judges are to be respected by the Bar, they have in turn equally to respect the Bar, observance of mutual dignity, decorum of both is necessary and above all they have to maintain self-respect too.

21. It is the joint responsibility of the Bar and the Bench to ensure that equal justice is imparted to all and that nobody is deprived of justice due to economic reasons or social backwardness. The judgment rendered by a Judge is based upon the dint of hard work and quality of the arguments that are advanced before him by the lawyers. There is no room for arrogance either for a lawyer or for a Judge.

22. There is a fine balance between the Bar and the Bench that has to be maintained as the independence of the Judges and judiciary is supreme. The independence of the Bar is on equal footing, it cannot be ignored and compromised and if lawyers have the fear of the judiciary or from elsewhere, that is not conducive to the

effectiveness of the judiciary itself, that would be self-destructive.

23. Independent Bar and independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of constitutional values, mutual reverence and self-respect are absolutely necessary. The Bar and Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the rule of law and its dignity. Equal and even-handed justice is the hallmark of the judicial system. The protection of the basic structure of the Constitution and of rights is possible by the firmness of the Bar and the Bench and by proper discharge of their duties and responsibilities. We cannot live in a jungle raj.

24. The Bar is the mother of the judiciary and consists of great jurists. The Bar has produced great Judges, they have adorned the judiciary and rendered the real justice, which is essential for the society.”

59. In the case of **Chennai Kanchi Tiruvellore District Film Distributors Association vs. Chinthamani S.Murugesan [2001 (3) CTC 349]**, wherein the Division Bench of this Court in paragraph-10 observed as under:-

“10. As regards the alleged violation of the principles of natural justice, the Court, if satisfied that there has been broad fairness must refrain from interfering with the action taken by the voluntary association of which the plaintiff chose to become a member of his own volition. Natural justice in the conduct of such associations would not have the same degree of rigour, as those principles would have in matters which are required to be adjudicated upon before Courts and Tribunals. In this case, the charges against the plaintiff were made known. The list contains several charges, to most of which, the plaintiff did not feel the need to ask for any further documentation. He had been put on notice that there had been complaints, for which he merely asked for the copy of the complaints. Even if that charges were to be ignored on the ground that the

documents had not been made available, nevertheless, the other charges have not been found to be vague even by the learned trial Judge. If the Executive Committee felt persuaded to take action against the plaintiff on the basis of what was before it in the form of the charges made known to him and the reply received from him, it cannot be faulted on the ground that it should have proceeded to hold an enquiry as if it were an adjudicatory forum. We are satisfied that in this case broad fairness has been observed. A voluntary association is entitled to carry on its affairs in accordance with its own rules. A person becoming member of such a body contracts to be bound by those rules and by the actions taken by those in whom power is vested under the Rules.”

60. In the case of **T.P.Daver vs. Lodge Victoria No.363, S.C.Belgaum []**, wherein the Supreme Court in paragraph-8 held as follows:-

“8. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion,

he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as explained in the decisions cited supra.”

61. As far the judgments relied on by the second respondent-Madras Bar Association are concerned, some of the cases are relating to civil disputes, which cannot be taken into consideration for the purpose of deciding the scope of the power of Judicial Review conferred under Article 226 of the Constitution of India and in respect of other judgments, where the Court has made certain observations regarding the functions of the Bar Association and the election related matters, may not have any direct applications with reference to the facts and situations aroused in the present

litigation, which is to be considered independently in the interest of justice.

AVERMENTS MADE BY MR.A.MOHANDOSS, LAWYER:

62. Mr.A.Mohandoss, a practising lawyer of the Madras High Court, who was enrolled in the year 1993 filed an impleading petition on the ground that he being a practising lawyer denied membership in the second respondent-Madras Bar Association and he was discriminated on the ground that he belongs to the Schedule Tribe Community. Mr.Mohandoss appearing in person has stated that regarding the pending application before the Bar Association, he has given complaint before the National SC/ST Commission, the Chief Secretary, Government of Tamil Nadu and to the Hon'ble Chief Justice of Madras High Court and to the Registrar General of Madras High Court and Chairman, Bar Council of Tamil Nadu. He states that he had filed an application for membership before the Madras Bar Association on 09.03.2010. However, he has not been given the benefit of membership without any valid reason.

63. Mr.Mohandoss has stated that the Enrolment Committee of the Bar Council of Tamil Nadu consisting of Mr.R.Singaravelan Senior Advocate and Mr.M.Chandrasekaran, Advocate conducted proceedings in T.N.E.C.R.No.17 of 2019 on the basis of the petition filed by Mr.N.G.R.Prasad, Senior Advocate, Mr.Pitty Parthasarathy and Mr.Mohan Ranganathan against the Madras Bar Association represented by its Secretary. Mr.Mohandoss also participated in the said enquiry on 04.07.2019 conducted by the Enrolment Committee of the Bar Council of Tamil Nadu. By its proceedings dated 04.07.2019, the Bar Council of Tamil Nadu in paragraph 47 of the order as recorded hereunder:-

“We are really shocked to hear such news from Thiru.Mohandoss, Advocate and really it created a doubt in our mind as to whether we are completely relieved from the clutches of British Rule or not? God for the followers of religion and Nemesis for others alone has to teach a lesson to all concerned. Any how our endeavour is not to criticize anyone or come down on the arbitrary pick and choose of 25 new members as it is for the newly elected body and the right minded members

of the Bar including the Learned Senior most Senior Advocates to decide or not to decide. We feel that we are too small to teach them all.”

64. Mr.Mohandoss has stated that 23 new members were admitted by Senior Advocate Vijay Narayanan when he was the President of the Madras Bar Association even while he was the Advocate General of Tamil Nadu. He has also come to know that one day prior to demitting the office Thiru Vijay Narayanan anti-dated the order in the said 23 new applications and admitted the said 23 members arbitrarily without following any guideline and overlooking the merits and claims of the pending 600 applications. In paragraphs 47 and 48 of the proceedings of the Enrolment Committee of the Bar Council of Tamil Nadu, the said fact has been mentioned stating that the 25 new members were notified in the Notice Board on 30.04.2019 whereas their admission were recorded on 26.04.2019 by back dating the order of admission so as to facilitate the said new members to participate in the election held on 29.04.2019. He states that this is only a tip of the iceberg since there are so many illegalities and irregularities committed by not only by the said Vijaya Narayanan, Senior Advocate but also others. True copy of the proceeding of the Enrolment

Committee of the Bar Council of Tamil Nadu dated 04.07.2019 in T.N.E.C.R.No.17 of 2019.

65. Mr.Mohandoss has stated that he has filed the miscellaneous petition supporting the case of the writ petitioner and prayed for a direction to the second respondent to admit him as a member of Madras Bar Association.

AVERMENTS MADE BY MR.S.MAHAVEER SHIVAJI, LAWYER:

66. Mr.S.Mahaveer Shivaji, Advocate appearing in person also filed an impleading petition and states that he is practising as an Advocate in the Madras High Court. He went on 11.06.2019 to the Madras Bar Association in person and met the President and Office bearers and made a request to issue membership form, but they refused to issue the form. Even on 13.06.2023 after hearing of the present writ petition, he met the Secretary and made a request to issue membership form, but it was denied to him in an arbitrary manner, which infringed the fundamental right under Article 19(1) (c) of the Constitution. The behaviour of the staff members are also

violative of Article 19(1) (b) to have free access and move freely in the High Court premises. The right to have dignity within the premises of the Hon'ble High Court under the guise of High Court is infringed. Therefore, the second respondent is violating the Equality Clause and causing discrimination amongst the advocates.

67. Mr.S.Mahaveer Shivaji, Lawyer in person has emphatically stated that the practice prevailing for admission of membership and the conduct of the Association within the High Court premises are discriminatory and violative of the Equality Clause enunciated under the Constitution. He raised a concern by stating that the Bar Association is functioning as a secret society in many dimensions by enjoying the Court premises that too within the high security zone and how the Registrar General and Administrative Committee allowed this Association within the zone of CISF and why not other Associations. He questioned by stating that any exemption has been obtained by the second respondent, if so, it is discriminatory and liable to be withdrawn immediately.

68. Mr.Mahaveer Shivaji in person has further stated in his affidavit that the process of selection of judges is influenced by this Association alone and others were kept under discriminatory position and further it is not only a mere association, it is turned into a great centre of many lobbyist and liaison works for various quarters and certain things cannot be openly expressed. He has stated that if necessary, the same shall be provided with sealed cover.

69. Mr.Mahaveer Shivaji has raised certain serious allegations affecting the administration of the justice delivery system on account of certain happenings in the High Court premises. He has stated that though by virtue of the order passed by the State Bar Council an undertaking was given by the office bearers of the Bar Association to issue membership form for him, it is kept pending for 4 years and till today the form was not issued to him, which is unjustifiable and unreasonable. It is the choice of an advocate where or which association he/she wants to become a member and such things shall not be decided by the Association that too within the campus of temple of justice by violating the fountained elements of the

fundamental rights as guaranteed by the Constitution of India under Article 13, 14, 15, 19 and 21 and other statutory rights as a member of an association. He made a prayer to issue a direction to the second respondent to issue membership with immediate effect to make the petitioner as member of Madras Bar Association.

DISCUSSIONS:

70. Refusal to provide drinking water to a non-member-Lawyer in Madras Bar Association resulted in a complaint. Importance of fundamental to access water has been dealt with by the Constitutional Courts. Right to access to drinking water is a fundamental right. Therefore, practicing Lawyers inside the Court premises cannot be deprived of a right to access to drinking water merely on the ground that they are the members of a particular Bar Association occupying the High Security Zone in High Court buildings.

71. Though the infringement of the right caused to the deceased son to access water inside the Madras Bar Association cannot be neglected,

the incidents are broadly denied. The second respondent is unable to specifically rebut the contentions raised in the complaint as well as the supporting affidavit filed by the deceased Lawyer, who is none other than the son of the writ petitioner.

**MAINTAINABILITY OF A WRIT PETITION AND THE POWER OF
THE HIGH COURT TO ISSUE DIRECTIONS REGARDING
FUNCTIONING OF THE BAR ASSOCIATION:**

72. The role and status of Lawyers is accounted as vital in deciding that the Nation's administration was to be governed by the Rule of Law. The Lawyers were considered as intellectuals amongst the elites of the country and social activists among the down trodden. The role of Lawyers in framing the Constitution needs no special mention. In a profession of such a vivid history, it is regretful to say the least, to witness the instances of the nature of the present kind. Lawyers are the Officers of the Court in the Administration of Justice. The Bench as well as the Bar have to avoid unwarranted situations and trivial issues that hamper the cause of justice and are in no one's interest. An advocate should be dignified in his dealings

to the Court, to his fellow Lawyers and to the litigants. **An advocate has a duty to enlighten and encourage the juniors in the profession. He should faithfully abide by the standards of the professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules. As a Rule, an advocate being a member of the legal profession has a social duty to the people a beacon of light by his conduct and actions** rather than being adamant for an unwarranted and uncalled for issue.

73. The poor, uneducated and the exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectful profession.

74. In the matter of allotment of chambers to the practising Advocates, the Hon'ble Supreme Court laid down the rules in the case of **Vinay Balanchadra Joshi vs. Registrar General** in the Supreme Court of India reported in (1998) 7 SCC 461 and **Gopal Jha vs. The Hon'ble Supreme Court of India** reported (2019) 3 SCC 161. When the Hon'ble Supreme Court of Indian even regulated the allotment of chambers, this

Court has got powers to issue directions to regulate the formation, election and functioning of Bar Association as they are sometimes directionless by electing non-practising Advocates, advocates with tainted backgrounds and inexperienced lawyers, which would ultimately affect the Justice Delivery System.

75. The Hon'ble Apex Court in **B.D. Kaushik's case (cited supra)**, wherein in paragraph No.28, it has been held as follows:

"28. There is no manner of doubt that court-annexed Bar Associations constitute a separate class different from other lawyers' associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognised by the court concerned. Court- annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and the Bar are like two wheels of a chariot and one cannot function without the other. The court-annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The

very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practising in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practising in the court, parking place and canteen besides several other amenities. In the functions organised by the court-annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration."

76. In view of the above decisions, the High Court is empowered to issue directions regarding the functioning of the Bar Associations.

BAR ASSOCIATION BUILDING IS TO BE TREATED AS PART AND PARCEL OF THE COURT BUILDINGS / COURT COMPLEX :

77. An Advocate is an Officer of the Court. The nature of the duties discharged by an Advocate is in the nature of a public duty. The accommodation/ Building for an Association must be construed and treated as part and parcel of the building of the Court or the Court Complex, and it cannot be treated differently from the building required for housing of Courts. There cannot be an effective working of Judicial System or functioning of Administration of Justice in a democratic polity, unless the Lawyers and the Judges work in the system as complementary for each other. They are the two limbs of the system or can be compared to the two wheels of a Chariot of Justice. A Lawyer spends or is expected to spend, most of his time whenever he is free either in the Association or in the Library attached to the Association, once he goes to the Court. There is a constitutional obligation on the part of the State to provide buildings and other facilities to the Advocates' Association. The State has a constitutional obligation to provide building for Advocates' Association. Thus the power must be treated as an integral part and parcel of Administration of Justice.

78. In the case of **P.K.Dash, Advocate and Others vs. Bar Council of Delhi and Others [(2016) 230 DLT 325 (DB)]**, wherein the Hon'ble Division Bench of the Delhi High Court, in paragraphs 7 and 16, observed as under:-

“7. “.....The nature of the Bar Associations is such that it represents members regularly practicing in the court and is responsible for proper conduct of its members in the court, and for ensuring proper assistance to the court. In consideration, the court provides space for office of the Association, library and other facilities like chambers at concessional rates, parking place and canteen etc., besides other amenities for Bar members regularly practicing in the court. It is therefore the duty of this Court to ensure that the resources actually benefit the intended beneficiaries.”

“15.....Members of the Bar constitute an integral part of the justice delivery system. Consequently, a Bar Association whether registered or not, comes within the ambit of the concerned Court and would always be subject to

judicial scrutiny. Court-annexed Bar Associations constitute a separate class different from other lawyers' associations and are an integral part of the machinery for administration of justice. The court-annexed Bar Associations start their name with the concerned court; their nature implies that it is an association representing members regularly practicing in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court.”

FUNCTIONS OF BAR ASSOCIATION IS OF PUBLIC NATURE :

79. In the case of **Shiv Kumar Akela and Others vs. Registrar, Societies Firms and Chits and Others [(2005 All LJ 2845)]**, wherein in paragraph-10, the Allahabad High Court held as under:-

“10. Very object of providing “Bar Association” at all level of the Courts/with affiliation/recognition extended by State Bar Council, regulating members of legal profession under Advocates' Act, 1961 and Rules framed thereunder, initiation of various statutory Welfare

*Schemes under control of Uttar Pradesh Bar Council and State of Uttar Pradesh to arrange for “library” for the use by its members to save and promote intend of legal profession and its members, to promote high professional tone, standard and conduct amongst members of legal profession, to promote and develop legal science, to watch legislation for the purpose of assisting in the progress of sound legislation and to print “cause list,” leave one in no doubt that it has to perform a very onerous duty to ensure healthy functioning of the “apparatus” meant for “justice delivery-system,” namely the Courts. **Court has provided accommodation to the High Court Bar Association and Advocate Association. Court provides various other facilities-with no charges. Court holds “references” on the request of High Court Bar Association-which are Court proceedings. All this ultimately concerns the welfare of the “public” and “BAR” is nothing but a “public functionary”. It also shows that concept of “Bar” Association itself has “emerged from the solemn object to ensure proper and smooth functioning of the Courts so that “justice” may be dispensed with to the***

public at large, which is possible only when “BAR” maintains a minimum desired standard both from the point of view of professional ethics and professional proficiency. “BAR” in England in its formative period considered of “Clergy” which was supposed to do public service. Our “Gown” owes its origin to the ‘Gown’ of a clergyman”

80. In the case of **Udit Chandra vs. State of Uttar Pradesh [(2012) ALL LJ 191]**, the very same issue i.e., whether for the mere reason that the Bar Association performs public duty, does it falls under the meaning of State under Article 12 of the Constitution was discussed. The Court held that though it is absolutely correct to hold that the functions of the Bar Association is public in nature, the same does not bring it under the definition of State, wherein the Allahabad High Court held as under:-

“...Thirdly, so far as question of public duty, if any, is concerned, it has been held that no private body is debarred from discharging public duty, if not prohibited by law, but by such action the body would not be made an instrumentality of the State.

Bar Council frames its own rules, regulations and guidelines and instead of supplying it to the individual Advocates, it supplies the same to the respective Bar Associations to make similar rules, regulations, guidelines, etc. to maintain uniformity, which are being followed by the respective Bar Associations.”

“When the actions of the Board (Bar Association to be read herein) are not actions as an authorised representative of the State, it cannot be said that the Board is discharging State functions. In the absence of any authorisation if a private body chooses to discharge any functions or duties which amount to public duties or State functions which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. Unfortunately, the Division Bench in deciding the case of Shiv Kumar Akela (supra) considered the minority view of judgement of the Supreme Court in Zee Telefilms Ltd. (supra) instead of taking into account the majority view. In a latest judgement of the Supreme Court reported in (2011) 6 SCC 617 (A.C. Muthiah vs. Board of Control for Cricket in India) though

there is a conflict of opinion in connection with the merit of the case between the Judges of the Bench but so far as the question of meaning of 'State' or 'other authorities under the State' is concerned, the Bench has uniformly decided that the associations, societies and clubs being bodies discharging public functions cannot be treated to be 'State' following the ratio of Zee Telefilms Ltd. (supra)."

DISCRIMINATION BETWEEN ADVOCATES :

81. In the case of **S. Seshachalam vs. Bar Council of Tamil Nadu [(2014) 16 SCC 7]**, wherein the Hon'ble Supreme Court of India, in paragraphs-21, 22 and 24, held as under:-

"21. Article 14 of the Constitution of India states that:

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 14 forbids class legislation but it does not forbid reasonable classification. The classification, however, must not be “arbitrary, artificial or evasive” but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply. Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.”

“22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving

specific ends. But classification must not be “arbitrary, artificial or evasive”. It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation. Classification to be reasonable must fulfil the following two conditions: firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.”

*“24. Recently, in the case of **Dr.Subramanian Swamy vs. CBI [(2014) 8 SCC 682]**, this Court considered the process of classification and what should be regarded as a*

class for purposes of legislation held in paras 58 and 70 as under:

“58. The Constitution permits the State to determine, by the process of classification, what should be regarded as a class for purposes of legislation and in relation to law enacted on a particular subject. There is bound to be some degree of inequality when there is segregation of one class from the other. However, such segregation must be rational and not artificial or evasive. In other words, the classification must not only be based on some qualities or characteristics, which are to be found in all persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. Differentia which is the basis of classification must be sound and must have reasonable relation to the object of the legislation. If the object itself is discriminatory, then explanation that classification is reasonable having rational relation to the object sought to be achieved is immaterial.

70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory.”

82. Discrimination on the basis of Caste, Community is unconstitutional. Discrimination based on economic status of the Lawyers are also unconstitutional and in violation of the principles of social justice. Lawyers belong to Homogeneous Class. They create a class by themselves. Thus forming any class within the class of Lawyers is undoubtedly unconstitutional. When the Bar Associations enjoy privileges at the public cost and utilising the public infrastructural facilities, free electricity etc., a practicing Lawyer in the High Court premises cannot be deprived of his right of membership in any Association of his choice. All Lawyers

Associations are provided with some facilities at the public cost. Therefore, they are performing public duties and responsibilities and they have got further duties towards the Lawyers more particularly. Creating an Elite Community within the Lawyers Group may fall under the Fundamental Right of 'Right to Association'. However, such Associations can be constituted outside the premises of the High Court Buildings, without enjoying the public premises or tax payer's money. Within the premises of the Public Institution such discriminations are impermissible and would cause not only heart-breaking issues but violative of fundamental right of the citizen of our Great Nation. Therefore, creating a separate class of Lawyers at the cost of public by utilising public premises, at no circumstances, be allowed and a Lawyer once entering into the High Court premises must have access to an Association of his choice to become a member or to utilise the infrastructural facilities provided at the cost of the public in public buildings.

83. Creating class within the class of Lawyers cannot be construed as intelligible differentia. It is an improper discrimination by conferring particular privileges upon a class of Lawyers, which is arbitrary

and not falling within the classification of reasonable distinction.

84. In **S.Seshachalam case**, cited supra, the Supreme Court has clearly held that class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.”

85. There is no rationale in preventing membership to a practicing Lawyer in the Court premises, unless he is disqualified otherwise.

86. In the context of substantial discrimination, it is relevant to look into the Bye-Laws of the Madras Bar Association. Chapter II of the Bye-Laws provides Membership, Rights and Duties of Members. The eligibility for membership is as under:-

“11. ELIGIBILITY FOR MEMBERSHIP:-

1. Full Member:-

i) A designated Senior Advocate or an Advocate on the rolls of the Bar Council of Tamil Nadu and Puducherry who has completed 15 years of active practice at the Bar is eligible for admission as a Full Member of the Association.

ii) An Associate Member who has completed 15 years of practice at the bar is entitled to become a Full Member subject to payment of the applicable admission fees and subscription.

2. Associate Member:-

i) An Advocate enrolled on the rolls of the Bar Council of Tamil Nadu and Puducherry who has completed more than 2 years but less than 15 years of practice at the Bar and is regularly associated with a Full Member for a minimum period of two years and who has passed the All India Bar Examination or such other requirement that may be prescribed by the Bar Council of India from time to time so as to practice law is eligible to be admitted as an Associate Member of the Association.

3. Outstation Member:

i) An Advocate who is eligible to be

admitted as a Full Member who is not ordinarily residing within Chennai, Kanchipuram and Trivallur Districts of Tamil Nadu is eligible to be admitted as an outstation Member of the Association.

12. ADMISSION OF MEMBERS:-(1) An Advocate who satisfies the eligibility criteria of any of the above categories of membership may be admitted as such member at the discretion of the Committee.

(2) The Committee shall not be entitled to admit more than 10 Full Members and 15 Associate Members during its tenure of two years. However, admission of designated Senior Advocates as Full Members, as well as conversion of Associate Members to Full Members shall not be included in the above ceiling of 10 Full Members.

13. PROCEDURE FOR ADMISSION OF FULL MEMBER:-

(1) An Advocate who satisfies the eligibility criteria for Full Membership, in order to be admitted as a Full Member, shall be proposed by a Full Member and seconded by another Full Member.

(2) The proposer and seconder ought to have completed five years as Full Members in the Association and should have not proposed or seconded any Advocate for Full/Associate Membership in the preceding five years prior to the date of such proposal, irrespective of the fact that such proposal has been accepted or not by the Committee.

(3) An Associate Member shall be admitted as a Full Member on his/her completion of 15 years of practice at the Bar, subject to payment of applicable admission fee and subscription.

14. PROCEDURE FOR ADMISSION OF ASSOCIATE MEMBER:-

(1) An Advocate who satisfies the eligibility criteria for Associate Membership, in order to be admitted as an Associate Member, shall be proposed by a Full Member and seconded by another Full Member.

(2) The proposer and seconder ought to have completed five years as Full Members in the Association. The Full member shall not be entitled to propose or second any Associate Member till such time the Associate Member previously proposed/seconded has become a Full Member by

efflux of time.

**15. PROCEDURE FOR ADMISSION OF
OUTSTATION MEMBER:-**

An Advocate in order to be admitted as an outstation Member shall be proposed by a Full Member and Seconded by another Full Member. However, the proposer and seconder ought to have completed five years as Full Members in the Association.

16. INTERVIEW PANEL:-(1) *The proposed candidate for admission to any of the categories of membership except designated Senior Advocates, shall be subject to a personal interview by an interview panel appointed by the Committee.*

(2) The interview panel shall consist of at least five members of the Committee, including the President and three other designated Senior Advocates appointed by the Committee. The President of the Association shall be the head of the interview panel.

(3) The decision of the interview panel shall be majority of votes of the members of the interview panel. In the event of there being a tie, the President shall have an additional casting

vote.”

87. Cursory reading of the stringent conditions prescribed for membership, this Court has no hesitation in forming a clear opinion that admissions are strictly restricted and it would be very difficult for an ordinary Lawyer to get membership in Madras Bar Association. Therefore, doubt arises whether it is intended only to create Elite Society of Lawyers. If so, the same cannot be created at the cost of the public. The Lawyers are entitled to form an Association, which is their fundamental right. When such Associations are formulated inside the Court premises/public buildings and enjoying the public facilities at the cost of the public, then they are bound to admit the Lawyers, who all are willing to become the members of Bar Association. The conditions as narrated above would reveal that it is very difficult to become a member of the Madras Bar Association. There are certain allegations that sons and daughters of the dignitaries are admitted as members on extraneous considerations.

88. In the context of the membership, it is relevant to consider Rule 6 of the Bar Council of India Certificate and Place of Practice

(verification) Rules 2015 as it deals with the right and liability of an Advocate to be a member of the Bar Association, which is reproduced here:-

“6. Advocate to be a member of the Bar Association where he/she normally practices law

6.1 An advocate, after having obtained a Certificate of Enrollment under section 22 of the Advocates Act, 1961, is required to get himself registered as a member of the Bar Association where he ordinarily practices law or intends to practice law. And if any Advocate does not intend to be a member of any Bar Association duly recognized by concerned State Bar Council, then he shall be required to intimate the same to the State Bar Council and he shall have to explain as to how shall he be getting the benefits of any welfare scheme floated by the State Bar Council or the Local Bar Association. The decision of State Bar Council shall be final in this regard.

6.2 In case an advocate leaves one Bar Association and joins another by reason of change of place of practice or by reason of change of field of law, he/she shall intimate such change with all the relevant particulars to the

State Bar Council, of which he is a member. Such fact of leaving as well as of joining shall be independently intimated to the aforesaid said Bar Council within a period of one month.

6.3 Bar Associations to apply to the respective Bar Council within whose jurisdiction they are located, for being recognized under these rules. Recognition shall be accorded to such a Bar Association only which falls within the definition of Bar Association as defined in these rules. 12 Bar Council of India Certificate and Place of Practice.”

89. The above Rule makes obligatory on the part of the Lawyer immediately after their enrollment as Advocate to become a member of the Bar Association and informed the same to the Bar Council, so as to enable them to get benefits of any Welfare Schemes flooded by the State Bar Council or the Local Bar Association.

90. Section 6(1)(dd) of the Advocates' Act, 1961 contemplates as follows:-

“6(1) The functions of the State Bar

Council shall be a (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the Welfare Schemes referred to in Clause (a) of Sub-Section (2) of this Section Clause (a) of Sub-Section (2) of Section 7.”

Thus one of the functions of the State Bar Council is to promote the Bar Association for the purpose of effective implementation of the Welfare Schemes.

91. Tamil Nadu Advocates' Welfare Funds Act, 1987 deals with the right of membership of an Association and the Association's duty to the State Bar Council under Sections 13, 14 and 14-A, which reads as under:-

“13. Recognition and registration by Bar Council of any association of Advocates.

(1) (a) Any association of advocates, known by any name, functioning in any part of the State may, before a date to be notified, or before such extended date as may be notified, by the Bar Council in this behalf, apply for recognition and registration to the Bar Council, in such form as may be prescribed.]

(b) Any association of advocates constituted after the date of publication of the Tamil Nadu Advocates Welfare Fund (Amendment) Act, 1990 (Tamil Nadu Act 20 of 1990), in the Tamil Nadu Government Gazette, may, apply for recognition and registration to the Bar Council in such form as may be prescribed].

(2) Every application for [recognition and registration] shall be accompanied by the rules or bye-laws of the association, names and addresses of the office bearers of the association and an up to date list of the members of the association knowing the name, address, age, date of enrolment and the ordinary place of practice of each member.

(3) The Bar Council may, after such enquiry, as it deems necessary, [recognise the association and issue a certificate of registration] in such form as may be prescribed.

(4) The decision of the Bar Council under sub-section (3) shall be final.

14. Duties of Bar Associations and Advocates Associations. - (1) Every Bar Association and Advocates Association shall, on or before the 15th April of every year, furnish to

the Bar Council a list of its members as on the 31st March of that year.

(2) Every Bar Association and Advocates Association shall inform the Bar Council of-

(a) any change in the membership including admissions and re-admissions within thirty days of such change;

(b) the death or other cessation of practice or voluntary suspension of practice of any of its members within thirty days from the date of occurrence thereof; and

(c) such other matters as may be required by the Bar Council, from time to time.

(3) Every Advocates Association and every Bar Association shall carry out the directions given by the Bar Council or the Trustee Committee, as the case may be.”

(with effect from 01.01.1993)

14-A. Cancellation of recognition and registration of Advocates Association and Bar Association. -

Where the Advocates Association or the Bar Association fails to discharge any of the duties imposed under section 14, or fails to carry out the direction given under section 9-A, the Bar

Council may, for reasons to be recorded, by order, cancel the recognition and registration of such Association.

Provided that no order canceling the recognition and registration of any Advocates Association or Bar Association shall be passed unless the Advocates Association or the Bar Association has been given a reasonable opportunity of being heard.”

(with effect from 01.01.1991).”

92. In view of the various provisions of the Advocates' Act and other enactments relating to the Welfare Schemes for the Lawyers, **the choice of membership of an Association is not of the Association, but of the individual Advocate.**

93. Therefore, any Association denying membership to any practicing Lawyer enrolled in the Bar Council concern amounts to discrimination and such Association of Lawyers are not entitled to enjoy the benefits of public premises or infrastructural facilities at free of cost or otherwise. Membership of the Association occupying and enjoying the

public premises has to be governed by the Uniform Rule of Law and the **Bye-Laws of the Association cannot put “any unreasonable or arbitrary restrictions on that”**.

94. In the context of the Bye-Laws of the second respondent-Madras Bar Association, it would be very difficult for an ordinary Lawyer to become a member of the Bar Association.

95. The procedure for admission of Full Member under Clause 13 stipulates that “an Advocate, who satisfies the eligibility criteria for Full Membership, in order to be admitted as a Full member, shall be proposed by a Full Member and seconded by another Full Member. Further condition indicates that “the proposer and seconder ought to have completed five years as Full Members in the Association and should have not proposed or seconded any Advocate for Full Associate Membership in the preceding five years prior to the date of such proposal, irrespective of the fact that such proposal has been accepted or not by the Committee”.

96. Cursory reading of the above conditions would reveal that it is very difficult for a Lawyer to become a member of the Madras Bar Association. Qualified members alone can propose the name of the Lawyer to become member. Therefore, choice is provided to the existing members. The existing members will have their own choice in selecting the members. Such allocation would undoubtedly cause not only discrimination but lead to constitution of an Elite Community of Lawyers within the Lawyers community. Such constitution of Elite Community of Lawyers at no circumstances be allowed at the cost of the public, more-so in the public premises.

97. Now the writ petitioner though raised the ground of practicing untouchability in the Madras Bar Association, the said allegation cannot be considered in the perspective of Caste discrimination. It is to be construed in the perspective of class discrimination, which is also to be construed as untouchability, if it is practiced on the ground of economic status, dignitaries or non availability of proposer or second proposer as per Bye-Laws of the Madras Bar Association.

98. The detraction from a man's reputation is an injury to his personality and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right. A Lawyer, per se, enjoy social status by virtue of his capacity as a Lawyer. Such reputation, which the Lawyer gains in the Society is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for the posterity. Personal rights of a human being include the right of reputation. **A good reputation is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property and as such, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution of India.**

BROAD MEANING OF UNTOUCHABILITY:

99. Going beyond the specific Caste-based practice, 'untouchability' includes all practices of social ostracism and exclusion that have their bases in ritual ideas of purity/pollution and

hierarchy/subordination.

100. While the communities constituting ‘Untouchables’ had been specifically enumerated in the Government of India Act of 1935, the Predecessor of the Indian Constitution, the Constitution itself, as Dr.Ambedkar pointed out, had elected not to operate at that level of specificity. Indeed, an amendment moved by Naziruddin Ahmed to restrict the scope of the Article to untouchability only on account of ‘Religion or Caste’ was specifically rejected by Dr.Ambedkar and negated by the Assembly when it went to vote. Further more, even though Mr.K.M.Munshi pointed to the fact that the word untouchability was contained “making it clear that the intention was to ‘deal with it in the sense in which it is normally understood, many members called for providing a clearer definition of the term on the grounds of vagueness, and in fact, Mr.K.T.Shah specifically ‘warned’ that it might even be extended to cover women, who at various times had been treated in the manner of untouchables by the society.

101. Specifically, while some of the members of the Assembly

undoubtedly understood untouchability in its narrow, concrete sense, they did not do so to the exclusion of its broader sense. Meanwhile, other members expressly linked the provision to Article 15(2), and repeatedly argued that the understanding of Article 17 included the right of everyone to enjoy ‘equal social conditions’, ‘equal rights’, ‘social equality’, the abolition of ‘social inequity, social stigma and social disabilities’ and as a remedial clause for ‘those who have been left behind in social and economic matters’. It therefore seems clear that between both the supporters and the opponents of Article 17 as it stood, there was agreement on the breadth of its meaning. Thus the constitution of our Great Nation is a transformative Constitution. It is not only a charter for political independence from colonial rule, but also a document that aspires to overcome the social hierarchies that have driven Indian Society.

102. Transformative ambition of the Constitution is exhibited, in particular, through its horizontal rights provisions: Articles 15(2), 17, and 23, which directly target exploitative practices at the level of individuals and communities, and not the State. To give effect to the Constitution’s transformative purpose, therefore, a Court

should read these Clauses broadly.

103. A broad reading of Article 17 means that not only the caste-based practice of untouchability falls within the ambit of the constitutional prohibition, but practices that bear a family resemblance to “untouchability” are captured as well. This requires the Court to ask whether a particular practice, like untouchability, is a practice of social subordination, exclusion, and segregation, based upon an idea that certain personal characteristics (whether caste, or gender, or menstruation) can justify relegating individuals to an inferior position in society.

104. This requires the Court to ask whether a particular practice, like untouchability, is a practice of social subordination, exclusion, and segregation, based upon an idea that certain personal characteristics can justify relegating individuals to an inferior position in society.

105. The struggle for independence was not only against the

foreign rule of British but it was against the social evils such as untouchability prevailing from centuries. After independence when great leaders of freedom struggle agreed to make our own Constitution regarding the abolition of social evils and upliftment of down-trodden castes and social groups etc.

106. The existing social inequalities or imbalances are to be removed and social order readjusted through rule of law, lest the force of violent cult gain ugly triumph. Judges are summoned to the duty of shaping the progress of the law to consolidate society and grant access to the Dalits and Tribes to public means or places dedicated to public use or places of amenities open to public etc.

107. The presence and consciousness and the restraining external force by Judicial Review ensures stability and progress of the Society. Judiciary does not forsake the ideals enshrined in the Constitution, but make them meaningful and make the people realise and enjoy the rights. The Judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs, make meaningful the right to

life and give effect to the Constitution and the Will of the Legislature. Common sense is always served in the Court's ceaseless striving as a voice of reason to maintain the blend of change and continuity of order, which is sine quo non with the stability in the process of change in a parliamentary democracy. In interpreting the Act, the judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act.

108. In the context of the legal principles and propositions elaborately considered in the aforementioned paragraphs and considering the Bye-Laws of the Madras Bar Association, this Court has no hesitation in forming an opinion that an ordinary practicing Lawyer in the Madras High Court premises cannot become a member of the Bar Association at his choice. The proposer and the first member of the Bar Association and the seconder recommended the name of a Lawyer to become a member. Such a situation, no doubt, amounts to free access of Lawyers to become members of the Association is denied. A Lawyer enrolled and intending to practice Law with great ambitions cannot be deprived of securing membership in any of the Bar Association of his choice. The Madras High Court

Advocates' Association, Women Lawyers Association and the Madras Bar Association are functioning within the High Court premises. Out of which Madras Bar Association alone is permitted to function within the High Security Zone in the High Court buildings.

109. The High Court Administration is empowered to control, monitor and regulate the affairs of the Bar Association inside the High Court premises. The High Court is empowered to issue directions regarding functioning of the Bar Association, since Bar Associations are integral part of Justice Delivery System and performing the functions of public nature, Bar Association itself is a public functionary. Therefore, the High Court Administration is expected to ensure equal treatment for all Bar Associations, who all are controlled by the High Court Administration. There cannot be any discrimination nor any Association can be allowed to discriminate the Lawyers. When constituting an Association of Lawyers is a fundamental rights ensured, the High Court Administration is duty bound to ensure that no discrimination is caused amongst the Lawyers, who belong to Homogeneous Class.

110. Regarding conduct of functions, celebrations, arranging lunch etc., the concerned Bar Associations have to obtain necessary permission from the Registrar-General, High Court of Madras in order to maintain safety and security inside the High Security Zone and also within the Court premises.

111. When the High Court Administration granted space for Bar Associations by providing free electricity and other facilities at the cost of public, such Associations cannot be allowed to restrain the practicing Lawyers from utilising such public facilities and in the event of allowing such Bar Associations to have Monopoly, the same is to be construed as unfair practice, unconstitutional and denial of basic rights to the other practicing Lawyers.

112. The High Court has got ample powers to control functions and affairs of the Bar Associations within the Court premises. The security being sensitive issue inside the Court premises, it is for the High Court

Administration to regulate the same, more specifically, by the Hon'ble The Chief Justice. Right to access cannot be denied to any Lawyer in Court premises unless it is restricted by the High Court in the interest of Judicial Administration. In all other places, access to Lawyers, who all are the officers of the Court, at no circumstances be denied nor they be restrained from utilising the public facilities provided within the High Court premises. The exclusive usage of public premises at no circumstances be encouraged by the High Court Administration only for few Lawyers, who belong to a particular Association. If at all they prefers to enjoy an exclusive right then they are at liberty to do so outside the public premises and certainly not inside the public premises.

113. Though an incident occurred to a practicing Lawyer, who is none other than the son of the writ petitioner, several other incidents are also cited before this Court by the petitioner as well as by the other lawyers, who filed impleading petitions. The unfortunate incident ignited for filing the present writ petition is one aspect of the matter and the High Court taking cognizance of the other issues are also of paramount importance in protecting the Administration of Justice and to thrive hard for efficient

administration in all respects in the right perspective of the Constitution of our Great Nation.

114. Preachings, advices or suggestions never provide confidence in the minds of the young Lawyers. It is the system in which equality, non-discrimination and transparency must prevail. The real confidence and faith on the judiciary undoubtedly is of paramount important for molding the lawyers for a vibrant judiciary. Honesty and integrity is the hallmark for the upliftment of Lawyers and such Lawyers alone would do justice to the cause of the litigants.

115. The Lawyers being homogeneous clause, further creating divisions on any criteria including economic status or otherwise will result in losing faith and ordinary Lawyers will get frustrated and there is a possibility of young and talented Lawyers leaving the profession. It is the primary duty of the Judicial Institutions to provide conducive atmosphere to all the practicing Lawyers enabling them to have utmost trust on the Judicial System.

116. Social issues or social evils 'never die with the persons' and such issues are to be addressed and redressed in the interest of our future Nation. Courts are not expected to leave such issues casually by holding it unnecessary, as it will affect the future lawyers, who all are backbone for the developments of our Justice Delivery System. We cannot leave a bad precedent to future generation Lawyers. Judges are duty bound to ensure that no discrimination in any form is practiced and impartial system prevail for creating trust and comfort in the mind of the Lawyers and litigants in the process of Justice Delivery System.

117. The power of Judicial Review under Article 226 of the Constitution of India is to be exercised in such circumstances to protect the constitutional rights of the citizen and while doing so, moulding of the relief is inevitable. Moulding the relief being an integral part under Article 226 of the Constitution of India, the High Court is bound to go to any extent to prevent discrimination or unconstitutionality.

118. The facts, circumstances and the legal principles as discussed in the aforementioned paragraphs, warrant the following directions from the hands of this Court:-

(1) The second respondent / Madras Bar Association is directed to pay a some of Rs.5,00,000/- [Rupees Five Lakhs Only] to the petitioner towards compensation for the untoward incident happened in the Madras Bar Association premises on 06.01.2012, since the second respondent is vicariously liable for the conduct of its own members.

(2) The second respondent / Madras Bar Association is directed to admit the respondents 3 and 4 as members of the Madras Bar Association within a period of one (1) week from the date of receipt of a copy of this order.

(3) The Madras Bar Association / second respondent is directed to distribute applications for membership to all the interested practising lawyers in the High Court of Madras and admit them as

members without discriminating any lawyer on the basis of caste, gender, religion, economic status, personal affiliations with Senior Advocates or dignitaries and political affiliations without reference to the draconian Bye-Laws regarding eligibility criteria to become the member of the Madras Bar Association or by amending the Bye-Laws suitably. In the event of failure on the part of the second respondent, the Madras High Court Administration and the Bar Council of Tamil Nadu are bound to initiate all appropriate actions in the manner known to law.

(4) The Bar Associations functioning in the High Court premises are directed to obtain prior permission from the first respondent / Registrar General, Madras High Court for conducting / holding celebrations, functions, birthday parties, lunch parties etc., in the interest of safety and security in the High Court Premises.

(5) Shifting of Madras Bar Association / second respondent from “High Security Zone” to any other place in the High Court premises is within the exclusive domain of the High Court administration. It is for the Registrar General, Madras High Court to initiate appropriate actions by placing all the facts before the Hon'ble

The Chief Justice of Madras High Court.

119. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

22-06-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Jeni/Svn

To

- 1.The Registrar-General,
High Court of Madras,
High Court,
Chennai-104.
- 2.The Secretary,
Madras Bar Association,
High Court,
Chennai-104

S.M.SUBRAMANIAM, J.

Jeni/Svn

WP 22460 of 2012

22-06-2023