

Supreme Court Bar Association & Ors vs B.D. Kaushik on 26 September, 2011

Equivalent citations: 2011 AIR SCW 5804, 2011 (13) SCC 774, AIR 2011 SC (CIVIL) 2481, (2011) 2 CLR 871 (SC), (2011) 8 MAD LJ 719, (2012) 1 ANDHLD 14, (2011) 11 SCALE 72, (2012) 2 ALL WC 1556, 2012 (2) SCC (CRI) 878, 2011 (4) KLT SN 71 (SC), 2012 (117) AIC (SOC) 6 (SC)

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Bench: H.L. Gokhale, J.M. Panchal

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3401 OF 2003

Supreme Court Bar Association

and others

... Appellants

Versus

B.D. Kaushik

... Respondent

WITH

CIVIL APPEAL NO. 3402 OF 2003

Supreme Court Bar Association

... Appellant

Versus

A.K. Manchanda

... Respondent

J U D G M E N T

J.M. Panchal, J.

Since common issues for determination are involved in Civil Appeal No. 3401 of 2003 and Civil Appeal No. 3402 of 2003, this Court proposes to dispose them of by this common judgment.

2. Civil Appeal No. 3401 of 2003 is filed by three appellants, i.e., (1) Supreme Court Bar Association (Registered), through its Honorary Secretary Mr. Ashok Arora, (2) Shri Ashok Arora, Honorary Secretary of Supreme Court Bar Association and (3) Ms. Sunita B. Rao, Coordinator, Implementation Committee, Supreme Court Bar Association (for short "SCBA"), Tilak Marg, New Delhi. It is directed against interim order dated April 5, 2003, passed by learned Civil Judge, Delhi below application filed under Order 39 Rules 1 and 2 read with Section 151 of Civil Procedure Code (CPC) filed in Civil Suit No. 101 of 2003. Civil Appeal No. 3402 of 2003 is filed by Supreme Court Bar Association through its Honorary Secretary against interim order dated April 5, 2003, passed by the learned Civil Judge below application filed under Order 39 Rules 1 and 2 read with Section 151, CPC, filed in Civil Suit No. 101 of 2003. By the common order, the appellants are restrained from implementing the resolution dated February 18, 2003 amending Rule 18 of the Rules and Regulations of SCBA till the final disposal of both the suits.

3. The respondent in Civil Appeal No. 3401 of 2003 is Shri B.D. Kaushik whereas the respondent in Civil Appeal No. 3402 of 2003 is Shri A.K. Manchanda.

Both the respondents are the advocates practicing in Delhi. They are members of SCBA, Delhi High Court Bar Association, Delhi Bar Association, Tis Hazari Courts, Delhi, etc. The appellant No. 1, i.e., Supreme Court Bar Association is a Society registered on August 25, 1999 under the Societies Registration Act, 1860 and its Registration No. is 35478 of 1999. The Registered Office of the Association is in Supreme Court premises at New Delhi. The provisions of the Societies Registration Act, 1860 empower a society to frame Memorandum of Association and Rules and Regulations. In exercise of those powers the Association has framed Memorandum of Association of the SCBA as also the Rules and Regulations. The aims and objectives of the Association are specified in Clause 3 of the Memorandum of Association, which are as under: -

"3. AIMS AND OBJECTIVES: The Aims and Objectives of the association are:

i) To promote upholding of rule of law;

ii) To encourage profession of law in India;

iii) To promote and protect the privileges, interest and prestige of the association and to promote union and cooperation among the advocates practicing in the court and other associations and advocates;

iv) To promote and maintain high standards of profession among members of the Bar;

v) To establish and maintain an adequate

library for the use of the members and to provide other facilities and convenience to the members;

vi) To watch the state of law, progress of legislation and administration of justice and to take such steps as may be necessary for their progress and reform;

vii) To express opinion on proposed legislation and other matters of interest and to make representation in respect thereof;

viii) To take necessary steps to prevent and remedy any abuse of law or mal-

administration of justice;

ix) To make representation from time to time to the authorities on matters affecting the Bar;

x) To acquire and safeguard the rights and privileges necessary or convenient for the purpose of the association;

xi) To arrange for raising funds for legal aid and to do everything including applying of funds that may be necessary to that end;

xii) To promote and participate in All India Lawyers' Association and activities connected therewith;

xiii) To adopt all such matters as might be necessary or incidental to the carrying out of the aforesaid objects;

xiv) To take measures including founding and applying of funds for aid to deserving members of the association and its employees;

xv) To conduct and hold seminars, symposia, conference on issues and topics of interest to the legal profession and to disseminate information in this behalf; and xvi) To promote the welfare of the members of the association."

The Rules and Regulations framed by the Association are known as Rules and Regulations of Supreme Court Bar Association. Rule 3 of the Rules and Regulations defines certain phrases. Rule 3(i) defines 'Association' to mean the Supreme Court Bar Association. There are four classes of Members as specified in Rule 4.

They are (i) Resident Members, (ii) Non-resident Members, (iii) Associate Members, and (iv) Non-Active Members. As per Rule 3(ii) 'Associate Member' means an association of advocates practicing in a High Court or Judicial Commissioner's Court and enrolled as such a Member. Rule 3(iv) defines the term 'Committee' to mean Executive Committee of the Bar Association whereas Rule 3(v) defines the word 'Court' to mean the Supreme Court of India. The term 'Member' is defined in Rule 3(vi) to mean a member of Association. Sub-

rule (vi)(a) of Rule 3, which was inserted by resolution of Special General Body Meeting dated September 9, 2010 retrospectively with effect from September 14, 2009, defines 'Temporary Member' to mean a member other than a member within the meaning of Rule 3(vi).

'Non-Active Member' is defined in Rule 3(viii) to mean a Member whose name is kept on the list of Members notwithstanding he has accepted an office of profit disentitling him to practice. The phrase 'Resident Member' is defined in Rule 3(ix) to mean a member residing and practicing as an advocate in Delhi or its suburbs. Rule 5 of the Rules and Regulations deals with fees, admission and subscription.

Rule 5(v)(a) provides that in terms of Rule 5 an applicant found to be suitable to be made a member of the Association, will be made a member, initially on temporary basis for a period of two years. It further provides that a person so made a member on temporary basis will be identified as temporary member and such temporary member will be entitled to avail the facilities of the Association such as library and canteen etc., but he will not have a right to participate in general meetings as prescribed in Rule 21 or to contest and vote at the elections as provided in Rule 18 and to be issued a Library Card.

Explanation appended to Rule 5(v)(b) makes it clear that 'suitable' means a person applying must fulfill all the criteria listed in the Rules and Regulations of the Association, viz., Rule 5(v) and also satisfy the requirements prescribed in the prescribed form. As per Rule 5(v)(c) at the end of two years period from the date of approval of temporary membership by the Executive Committee, if such temporary member pays SCBA dues without any default during such period and produces the proof of either of the following of requirements before the Executive Committee, his name would be considered for being made a regular Member of the Association - (i) appearance in Supreme Court as lead counsel in at least five matters in each year of the two years period, or (ii) appearance in Supreme Court as a junior advocate appearing with any senior advocate/advocate-on record in at least twenty matters in each year of the two years period,

(iii) only such of the temporary members on satisfying the above requirements at the end of two years period would be made a member of the Association with an entitlement to all the privileges of the Association including the right to contest and vote and Library Card etc., else, he/she shall continue to remain a temporary member till such time he/she fulfills these conditions.

4. A requisition dated January 10, 2003 signed by 343 Members was received in the Office of the SCBA on January 23, 2003. By the said requisition an amendment was sought in Rule 18 regarding the eligibility of the members to contest and vote at an election. It was proposed that the member, who exercises his right to vote in any High Court or District Court, Advocates'/Bar Association, shall not be eligible to contest for any post of the SCBA or to cast his vote at the elections. It was further proposed that every member before casting his vote shall in a prescribed form give a declaration that he is not voting in any other election of advocates in the High Court/District Court Bar Association. It was also proposed that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of SCBA for a period of three years. The requisition dated January 10, 2003 was considered in the Executive Committee meeting held on February 1, 2003 and it was decided to hold a special General Body Meeting on February 18, 2003 to consider the requisition. Rule 22 of the Rules and Regulations of SCBA provides that the Executive Committee may call a General Body Meeting on seven days' notice to the members whereas Rule 23 stipulates the manner in which notice of meeting has to be given to a member.

Accordingly notices for the aforesaid General Body Meeting were issued by the SCBA on February 6, 2003. The notices were sent to the members along with the cause list. The notice was also displayed on the notice board of the Office of the SCBA situated at Supreme Court premises. The notices were also sent to different Bar Associations at Delhi including the Delhi Bar Association. On February 18, 2003 the General Body Meeting was convened wherein more than 278 Members had participated. Mr. Ved Sharma and Mr. Rajiv Khosla, Office Bearers/Members of the District/Delhi Bar Association had participated and had spoken against the resolution in the General Body Meeting. After due deliberations and discussion, the resolution proposing amendment in Rule 18 of the Rules was put to vote. It was passed by majority of 85% of the members present and voting. Thereafter, a meeting of the Executive Committee was convened on March 3, 2003. In the said meeting it was resolved to hold election of the Office Bearers/Executive Members for the next session and for the constitution of Election Committee. It was further resolved to hold election on April 25, 2003. An election Committee of three members of the SCBA was constituted for the purposes of conducting election. Further in the said meeting a requisition signed by 237 Members of SCBA to recall resolution dated February 18, 2003 was considered and dealt with. It was decided to defer the consideration of the said resolution in view of the fact that elections were declared.

Moreover, in the meeting of the Executive Committee held on March 10, 2003 it was resolved to constitute an Implementation Committee to implement the resolution "One Bar One Vote", which was adopted in the General Body Meeting dated February 18, 2003. The notices of the election and about formation of the Implementation Committee were sent to the Members of the Bar Association on March 11, 2003 again along with the cause list and conveyed also by displaying the same on the notice board of the SCBA. On March 13, 2003, meeting of the Implementation Committee was held

and the declaration form was finalized and programme for implementation was also decided.

The notices regarding declaration form were again issued on March 25, 2003. Meanwhile, Mr. B.D. Kaushik, who is one of the members of the SCBA as well as a member of the High Court Bar Association, Delhi Bar Association, Tis Hazari Courts, filed Suit No. 100 of 2003 in the Court of Shri Sanjeev Jain, Commercial Civil Judge, Delhi, challenging validity of resolution dated February 18, 2003. He has sought a decree declaring that Resolution dated February 18, 2003, passed by the General Body Meeting of SCBA inserting Rule 18-III, is illegal and ineffective. He had also prayed for a decree of perpetual injunction restraining the SCBA and its Office Bearers from implementing the Resolution dated February 18, 2003 in the elections of SCBA, which were proposed to be held on April 25, 2003. Further, the prayer to restrain the SCBA and its election officers from debarring any of the members of the SCBA, who had already paid their subscription from casting their votes in the ensuing elections was also sought. Mr. A.K. Manchanda, another member of the SCBA, filed suit No. 101 of 2003 in the Court of Shri Sanjeev Jain, Commercial Civil Judge, Delhi, seeking the reliefs which were sought by Mr. B.D. Kaushik in his suit No. 100 of 2003.

5. Mr. B.D. Kaushik and Mr. A.K. Manchanda, the plaintiffs in Suit Nos. 100 of 2003 and 101 of 2003 respectively, filed applications under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure to restrain the defendants, who are appellants herein, from implementing the Resolution dated February 18, 2003 till the final disposal of the suits. Both the applications were taken up together for hearing by the learned Judge. The learned Judge disposed of those applications seeking temporary injunction by common order dated April 5, 2003.

By the said common order the applications filed by the plaintiffs under Order 39 Rules 1 and 2 were allowed and the appellants were restrained from implementing the Resolution dated February 18, 2003 amending Rule 18 of the Rules and Regulations of the SCBA till the final disposal of the suits. As the injunction granted by the learned Judge had far reaching repercussions, the appellants straightway approached this Court by filing Special Leave Petition No. D-7644 of 2003 against order dated April 5, 2003 in Suit No. 100 of 2003, passed by the learned Civil Judge, Delhi. The SCBA also filed Special leave Petition No. D-7645 of 2003 against order dated April 5, 2003 in Suit No. 101 of 2003. The matters were placed before this Court in mentioning list on April 10, 2003. This Court had heard the then learned Attorney General and other learned senior advocates practicing in this Court. The matters were taken on Board and straightway leave was granted. Pending proceedings, stay of the common order passed by the trial court was also granted. It was made clear that if any elections were held, the same shall be subject to the result of these appeals. It was also clarified that the order shall be effective notwithstanding any other order made by any court or authority in any other proceedings filed or yet to be filed. On leave being granted Special Leave Petition No. D-7644 of 2003 is numbered as Civil Appeal No. 3401 of 2003 whereas Special Leave Petition No. D-7645 of 2003 is numbered as Civil Appeal No. 3402 of 2003.

6. This Court had appointed Mr. Ranjit Kumar, learned senior counsel practicing in this Court, as Amicus Curie to assist the Court in the matters. This Court has also requested learned Attorney General Mr. Goolam Vahanvati to express his views in the matters and to assist the Court. Accordingly, this Court has heard learned Attorney General as well as learned senior counsel Mr.

Ranjit Kumar. The Court has also heard Mr. Rajesh Aggarwal, who has appeared on behalf of the appellants as well as Mr. Dinesh Kumar Garg, learned advocate who appeared on behalf of the original plaintiffs. This being a matter, which affects the learned advocates practicing in this Court, the Court has also heard learned senior counsel Mr. P.P. Rao, former President of SCBA, Mr. Pravin Parekh, present President of SCBA and Mr. Sushil Kumar Jain, President of Association of Advocates-on-Record.

The Court has considered the Memorandum of Association of SCBA as well as Rules and Regulations of SCBA.

7. It is not disputed by any of the learned advocates appearing in the matters that after stay of common order dated April 5, 2003, passed in of 2003 was granted by this Court on April 10, 2003, elections of the office bearers of the SCBA have taken place and Rule 18 of the Rules and Regulations, as was amended by the Resolution dated February 18, 2003, has been implemented.

8. Article 145 (1)(a) of the Constitution empowers the Supreme Court to make Rules for regulating generally the practice and procedure of the Court including Rules as to the persons practicing before the Court. In exercise of this constitutional power, the Supreme Court has framed Rules called Supreme Court Rules, 1966.

Rule 2(1)(b) provides that an advocate-on-record to be the only person to "act" as well as to "plead"

before this Court. The other two categories of persons, namely, "senior advocate" and "non-

advocate-on-record" can only plead, but cannot act on behalf of the client. Their appearances/pleadings in a case before this Court cannot be without an advocate-on-record and without his instructions. Order IV of the Supreme Court Rules, 1966 deals with "advocates". Rule 1 states that subject to the provisions of the Rules only those advocates whose names are entered on the roll of any State Bar Council, maintained under the Advocates Act, 1961, shall be entitled to appear and plead before the Court. As per Rule 2(b) certain restrictions have been placed on senior advocate who is recognized as such under Rule 2(a), mentioning inter-alia that he cannot file a vakalatnama or act in any court or tribunal in India or accept instructions to draw pleadings or affidavits, etc. Explanation (iii) appended to the Order IV defines "junior" to mean an advocate other than a senior advocate. Rule 6(a) provides that an advocate-on-record shall, on his filing a memorandum of appearance on behalf of a party accompanied by a vakalatnama duly executed by the party, is entitled to act as well as to plead for the party in the matter and to conduct and to prosecute before the Court all proceedings that may be taken in respect of the said matter.

Clause (b) of Rule 6 mentions that no advocate other than an advocate-on-record shall be entitled to file an appearance or act for a party in the court. Rule 10 of the Rules provides that no advocate other than an advocate-on-record shall appear and plead in any matter unless he is instructed by an advocate-on-record, whereas Rule 12 enables an advocate-on-record or a firm of advocates to employ one or more clerks to attend the registry for presenting or receiving any papers on behalf of the said advocate or firm of advocates. Rule 12(2) mandates that notice of every application for the

registration of a clerk shall be given to the Secretary, SCBA, who shall be entitled to bring to the notice of the Registrar within seven days of the receipt of the notice any facts, which, in his opinion, may have a bearing on the suitability of the clerk to be registered.

Rule 13(1) requires the Registrar to publish list of persons proved to his satisfaction by evidence of general repute or otherwise, habitually to act as touts to be known as list of touts. Explanation

(b) appended to Rule 13(1) mentions that the passing of a resolution by the SCBA or by High Court Bar Association declaring any person to be tout shall be evidence of general repute of such person for the purpose of this Rule.

9. The Advocates Act, 1961 provides for the creation of different State Bar Councils, whose one or the main function is to admit advocates on its rolls and to promote the growth of Bar Associations for the purpose of effective implementation of the welfare schemes. It further enables the Bar Councils to make their own rules. Section 17 of the Advocates Act provides that every State Bar Council shall prepare and maintain roll of advocates. Section 17(4) further states that no person shall be enrolled as an advocate on the roll of more than one State Bar Council. Section 49 of the Advocates Act, 1961 empowers the Bar Council of India to make rules. In exercise of the said power Bar Council of India has framed Rules. Chapter III of Bar Council Rules provides that every advocate shall be under an obligation to ensure that his name appears on the roll of the State Bar Council in whose jurisdiction he ordinarily practices and if that advocate does not apply for transfer of his name to the roll of State Bar Council within whose jurisdiction he ordinarily practices within six months of the start of such practice, it shall be deemed that he is guilty of professional misconduct. Section 34 of the Advocates Act, 1961 also empowers the High Courts to make Rules regarding the advocate practicing in the High Court and courts subordinate thereto.

10. The learned counsel, appearing in the matters, pointed out to the Court that problem of bogus voting in the election of office bearers of SCBA started since the year 1978. According to the learned counsel, in the year 1978, 101 Members contested election for the post of Members of Executive Committee. The grievance made by the learned counsel was that those advocates, who were not regularly practicing in this Court, were enrolled as Members of the SCBA only to vote at the election of office bearers of the SCBA.

According to the learned counsel, the advocates, who have been enrolled as Members of the SCBA are practicing either at Kanpur or at Gurgaon and other courts situated in India, but they never practice in this Court regularly nor are even able to recognize the Hon'ble Judges of this Court.

The learned counsel emphasized that those advocates, who are not practicing in this Court and are enrolled as members of the SCBA, have outnumbered the actual practitioners in this Court and do not permit the actual practitioners to be office bearers of the SCBA. Thus the learned advocates appearing in the matters have called upon this Court to consider the problem posed in the appeals in the light of facts mentioned by them.

11. The Supreme Court Bar Association, as the name suggests, is a society primarily meant to promote the welfare of the advocates generally practicing in the Supreme Court. The name, i.e., the Supreme Court Bar Association was formally registered under the Societies Registration Act, 1860 only on August 25, 1999. One of the prime objectives of the SCBA is to establish and maintain adequate library for the use of the members and to provide other facilities and convenience of the members. Thus, the formation of the SCBA is in the nature of aid to the Advocates Act, 1961 and other relevant statutes including Article 145 of the Constitution.

12. 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 recognized by the concerned court. Court annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and 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 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 practicing 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 practicing in the court, parking place, canteen besides several other amenities. In the functions organized 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.

13. Enrolment of advocates not practicing regularly in the court is inconsistent with the main aim and object of the Association. No court can provide chambers or other facilities for such outside advocates, who are not regular practitioners. Neither the Association nor the court can deal with them effectively if they commit any wrong. There are sufficient indications in the Memorandum of Association and the Rules and Regulations of SCBA, which indicate that the Association mainly tries to promote and protect the privileges, interest and prestige of the Association and to promote union and cooperation among the advocates practicing in the court and other associations of advocates.

This is quite evident if one refers to sub-clause

(iii) of clause (3) of the Aims and Objectives of the Association. It is significant to note that the signatories of the Memorandum of Association, namely, Members of the Executive Committee, whose names are mentioned, are all regular practitioners, who got the Association registered under the Societies Registration Act, 1860. Mr. P.P. Rao, learned senior counsel has given all credit for registration of Association to Shri K.K. Venugopal, one of the senior-most counsel of this Court.

14. Rule 6 of the Rules and Regulations of the SCBA mentions the duties of Members. It inter alia provides that (i) a member shall endeavour to provide full assistance to the court and competent

representation to a client, (iii) a member shall not knowingly (a) make a false statement of material fact or of law to the court,

(b) shall not seek to influence the court or Judges or officers of the court in any matter by means prohibited by law or by false representation on behalf of his client nor shall such member communicate with such persons ex-parte or engage in conduct intending to bring disrepute to the functioning of the court. Rule 6(iii)(c) provides that a member of the Association shall participate in serving those persons/groups of persons who are unable to pay all or portion of reasonable fees or who are unable to obtain representation by counsel. Clause (c) of Rule 6(iii) inter alia states that a member may discharge his duty to serve those persons who are unable to pay all or portions of reasonable fees by providing professional services at no fees or at a substantially reduced fee. A member of the Association has to charge reasonable fees from his client which has to be determined on the basis of the time and labour spent over the matter and is not entitled to charge a contingent fee. Thus duties of members contemplate that the members should be regular practitioners in the Supreme Court.

15. As noticed earlier, no person can be enrolled as an advocate on the roll of more than one State Bar Council. A citizen of India is entitled to cast his vote at an election of Legislative Assembly or an election of M.P. only in the constituency where his name appears as a voter in the voting list and he cannot claim right to vote at another place where he may be residing because of his occupation, service, etc. Thus "one person one vote" is recognized statutorily since long. Viewed in the light of these facts, the concept of voting introduced by amendment of Rule 18 of the Rules and Regulations of the SCBA cannot be regarded as illegal or unconstitutional. It is well settled by catena of reported decisions of this Court that the right to vote is not an absolute right. Right to vote or to contest election is neither a Fundamental Right nor a common law right, but it is purely a statutory right governed by statute/ rules/regulations. The right to contest an election and to vote can always be restricted or abridged, if statute/ rules or regulations prescribe so. Voting right restrictions also existed in Rule 18 and 18A before Rule 18 was amended.

By amendment a further restriction is imposed by the Resolution adopted in the General Body Meeting.

16. The argument that by the said amendment of Rule 18 the Aims and Objects of the SCBA are amended without prior approval of the Registrar of Societies and, therefore, the same is illegal, cannot be accepted. The impugned order makes it more than clear that this ground has heavily weighed with the learned Judge in granting the injunction. The substance and purpose of the amendment made in Rule 18 of the Rules and Regulations of the SCBA cannot be lost sight of. It does not affect any of the aims and objectives of the SCBA. On the contrary, it promotes and protects privileges, interest and prestige of the SCBA. There is no manner of doubt that the amended Rule 18 promotes union and cooperation among the advocates practicing in this Court and this is one of the prime aims and objectives of forming the SCBA. The SCBA exists for the purpose of promoting the interest of the Supreme Court of India as well as that of advocates regularly practicing in the Court and not of the advocates, who are not regularly practicing in the Court.

17. It has been rightly pointed out by the learned counsel for the appellant that restrictions placed on right of voting can hardly be regarded as altering or amending Aims and Objects of SCBA.

The Aims and Objects of SCBA have been enumerated in earlier part of this judgment. The basic principle underlying the amendment of Rule 18 is that those advocates who are not practicing regularly in this Court cannot be permitted to take over the affairs of the SCBA nor on ransom.

One of the Aims and Objects of the SCBA is to promote and protect the privileges, interest and prestige of the Association whereas another objective is to promote and maintain high standards of profession among members of the Bar. To achieve these objectives Rule 18 is amended. It is wrong to hold that limitations/restrictions on the exercise of right to vote and contest the elections amount to altering and/or amending and/ or changing Aims and Objects of the SCBA and this could not have been done without the consent of Registrar as provided in Societies Registration Act, 1860.

18. Section 12 of the Societies Registration Act, 1860 invests a society with the power to frame rules/regulations to govern the body of any society under the Act, which has been established for any particular purpose or purposes. In built in it is the authority to alter or abridge such power. If such a wide power is conferred including power to alter, amend or abridge the purpose itself, it could never be successfully contended that the power to amend, vary or rescind the rules does not exist in such society.

19. As noticed earlier 'Associate Member' means an association of advocates practicing in a High Court or Judicial Commissioners' Court and enrolled as such a member. As an association of advocates cannot practice in a High Court or Judicial Commissioners' Court, it is obvious that an associate member is a member of association of advocates practicing in a High Court and enrolled as such a Member. The intention, therefore, is obvious that it is only an advocate, who is practicing in a High Court or in a court of Judicial Commissioner and enrolled as a member, who is entitled to the status of an 'Associate Member' for the purpose of the Rules and Regulations of the SCBA. When it comes to the question of voting or contesting for an election, Rule 18(1)(iv) declares that non-active members and associate members shall not have right to vote. It is, therefore, clear that the SCBA is constituted primarily for those advocates who are regularly practicing in the Supreme Court.

Other advocates can become non-resident senior members, non-resident members, associate members and non-active members, but they will not be eligible to vote much less to contest the election. Thus, the amendment in Rule 18 is wholly consistent with the aims and objectives of the SCBA.

20. This Court further finds that in the application filed by the respondents/plaintiffs in each suit under Order 39 Rules 1 and 2 read with Section 151 CPC, injunction against the appellants to restrain them from implementing resolution dated February 18, 2003 amending Rule 18 of the Rules and Regulations of SCBA till the final disposal of the suits, was claimed. A bare perusal of the plaint of Civil Suit No. 100 of 2003 indicates that the respondent has claimed following reliefs in the plaint: -

"a. A decree of declaration declaring that the resolution dated 18.2.2003 passed by the alleged General Body Meeting of Supreme Court Bar Association amending Rule 18-III is illegal and ineffective;

b. pass a decree of perpetual injunction Association and its office bearers from implementing the resolution dated 18.2.2003 in the ensuing elections of Supreme Court Bar Association proposed to be held on 25.4.2003; c. This Hon'ble Court may also be pleased association, its election officer(s) from debarring any of the members of Supreme Court Bar Association who have already paid their subscription from casting their vote in the ensuing elections.

d. Any other proper and further order which this Hon'ble Court deems fit may kindly be passed in favour of the plaintiff and against the defendants."

Thus, the learned Judge has decreed the suit partially by granting injunction without adjudicating rival claims of the parties. This Court in catena of reported decisions has laid down the principle that interim relief, which has tendency to allow the final relief claimed in the proceedings, should not be granted lightly. No special circumstances have been mentioned in the two impugned orders which would justify decreeing the suits at interim stage. The relief granted by the learned Judge at the interim stage was not warranted by the facts of the case at all. Therefore, the impugned orders are also liable to be set aside on this ground.

21. Further, Order 39 Rule 1 deals with cases in which temporary injunction may be granted and inter alia provides that where in any suit it is proved by affidavit or otherwise - (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree,

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may, by order, grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit until the disposal of the suit or until further orders.

Order 39 Rule 2 deals with injunction to restrain repetition or continuance of breach and inter alia provides that in any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

As is well-known Section 151 deals with saving of inherent powers of the Court and provides that nothing in Civil Procedure Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

22. It hardly needs to be emphasized that in any Body governed by democratic principles, no member has a right to claim an injunction so as to stall the formation of the Governing Body of the Association. No such right exists in election matters since exercise of a right conferred by a rule is always subject to the qualifications prescribed and limitations imposed thereunder.

The contention of the respondents that the amendment to Rule whereunder the right to be eligible to contest for any post for the Association or the eligibility to cast the vote at the election, takes away the right completely, is misconceived since by the amendment the right is not taken away but is preserved subject to certain restrictions on its exercise and this could always be done.

23. It is important to notice that what the impugned Rule does is that it only declares the eligibility of a member to contest and vote and does not take away ipso facto the right to vote. The impugned Rule only prescribes the eligibility or makes a person ineligible in the circumstances stated therein which is the nature of a reasonable restriction as the right to vote is neither a common law right nor Fundamental Right but a statutory right prescribed by the statute as has been held in several reported decisions of this Court. What is necessary to be noticed here is that the impugned clause in the Rule is not the only clause prescribing ineligibility to vote as there are other eligibility conditions or ineligibility restrictions within Rule 18, which may also make a person ineligible to vote. The challenge, therefore, to this ineligibility of filing a declaration not to vote at the elections to any other Bar Association is erroneous in law. If a person is the member of several associations of advocates and wants to participate in the affairs of different associations of which he/she is a member, he/she may not be in a position to be really involved in the affairs of all associations of which he/she is the member. A person who is a member of more than one association would form a different class than the person who is a member of only one association of lawyers, particularly, the association of the Court in which he/she regularly practices. Though an advocate can be member of several associations, the right to form an association or be a member of an association does not necessarily include the right to vote at every such association's General Body Meeting or election meetings and the rules of the association can circumscribe the voting rights of members of such association by prescribing eligibility and ineligibility. It is an admitted position that SCBA today has temporary members who do not have a right to vote. Similarly, non-active members and associate members do not have a right to vote.

Thus, these are all reasonable restrictions which have been prescribed and are not open to challenge as there is no Fundamental Right to vote. After all a Bar Association in a court is formed for the purpose of seeing that all lawyers practicing normally and regularly in that court work under one umbrella and be in a position to interact with the Judges or officials of that court for any grievance through their elected body because individual lawyers are not supposed nor it is proper for them to interact with the Judges so as to preserve and secure the independence of judiciary.

24. The argument of the respondents was that the right to vote available to a member has been infringed or curtailed but this argument does not appear to be correct for the simple reason that though the Rule is couched in a negative language, it preserves the right of a Member to either contest or to cast his vote in the election subject to his exercising an option to vote only in the SCBA and not in any High Court/District Court Bar Association.

This is amply clear from the amended provision whereunder every member before casting his vote, is required, in the prescribed form, to give a declaration that he has not voted in any other election of any advocates in the High Court/District Court Bar Association. The restriction on the right to vote of a member is provided with an avowed object of better welfare and convenience of those advocates, who are regularly practicing in this Court and who are directly concerned with day-to-day affairs of the Supreme Court.

Such restriction in fact subserves Article 145 of the Constitution and other statutory provisions relating to advocates. As right to vote is not an absolute right recognized in common law and is always subject to the statute/Rules creating such rights, it is equally well settled that the exercise of such right could always be subject to the provisions of the Statute/Rules creating it. Under the circumstances, the contention advanced by the respondents that their right to vote was either curtailed or abridged should not have been lightly accepted by the learned Judge.

25. The right to form an association is recognized as a Fundamental Right under Article 19(1)(c) of the Constitution. The provision in the SCBA Rules for prescribing eligibility to vote at only one of the associations, i.e., "One Bar One Vote" is a prescription which is in furtherance of the right to form association and be able to manage the affairs of the association by those who regularly practice in the courts of which the association is formed and of which the members are regular practitioners. It will not be out of place to mention that a person having become ineligible to vote because of having voted at another association election does not (a) lose the membership of the association nor (b) is in any way hampered or restricted in the use of other facilities, which the association provides to its members such as library, canteen, telecommunication, car parking, etc. Having regard to the aims and objects as set out in the Memorandum of Association, it is evident that one of the primary objectives of formation of the association was to have a Body of Advocates who are attached to and practicing in the Supreme Court of India. In *Smt. Damyanti Naranga vs. The Union of India and others* (1971) 1 SCC 678, this Court has authoritatively laid down that the right to form an association necessarily implies that persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association. In *Zoroastrian Cooperative Housing Society Ltd. and others vs. District Registrar, Cooperative Societies (Urban) and others* (2005) 5 SCC 632, in the context of Fundamental Right to form an association excluding others and the right of the Members of the association to keep others out, it has been held in para 17 at page 651 as under: -

"Section 24 of the Act, no doubt, speaks of open membership, but Section 24(1) makes it clear that open membership is the membership of a person duly qualified therefore under the provisions of the Act, the Rules and the bye-laws of the Society. In other words, Section 24(1) does not contemplate an open membership dehorns the

bye-laws of the society. Nor do we find anything in the Act which precludes a society from prescribing a qualification for membership based on a belief, a persuasion or a religion for that matter. Section 30(2) of the Act even places restrictions on the right of a member to transfer his right. In fact, the individual right of the member, Respondent 2, has got submerged in the collective right of the Society. In *State of U.P. v. C.O.D. Chheoki Employees' Coop. Society Ltd.* (1997) 3 SCC 681, this Court after referring to *Daman Singh vs. State of Punjab* (1985) 2 SCC 670, held in para 16 that: (SCC p. 691) "16. Thus, it is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a cooperative society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-

laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and the bye-laws and is subject to its operation. The stream cannot rise higher than the source."

26. In matters of internal management of an association, the courts normally do not interfere, leaving it open to the association and its members to frame a particular bye-law, rule or regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said association.

It is well settled legal proposition that once a person becomes a member of the association, such a person loses his individuality qua the association and he has no individual rights except those given to him by the rules and regulations and/or bye-laws of the association.

27. It should have been noticed by the learned Judge that the plaintiffs/respondents claimed injunction on the basis that the right to contest and vote in the election of the SCBA had been adversely affected and, therefore, they invoked the provisions of Order 39 Rules 1 and 2 read with Section 151 CPC. The amended Rule 18 has not taken away right to vote completely but has put restrictions to promote and protect the privileges, interest and prestige of the SCBA.

Rule 18 was also amended to promote and maintain high standards of profession amongst Members of the Bar. Having regard to the objects of amendment of Rule 18, this Court is of the opinion that the learned Judge should not have granted the injunction as claimed by the plaintiffs/respondents for mere asking.

28. Originally enacted Rule 18 provided for eligibility of members to contest and vote at/in the elections. An important provision is contained in Rule 18(II)(4) to the effect that non-active

members and associate members shall not have the right to vote. In light of the above provisions of the Rules, more particularly, Rule 5(1)(v), the eligibility of every advocate entitled to practice law for being a member of the Supreme Court Bar Association is subject to the provisions of the said Rules. In other words, an absolute right as is sought to be asserted by the plaintiffs/respondents is controlled by conditions, qualifications, disqualifications and restrictions imposed by the said Rules.

29. The power to amend Rules is specifically conferred under Rule 39 whereunder it is provided that the Rules and the bye-laws of the Association shall be subject to such conditions and/or modifications, as may from time to time, by resolution passed by at least 2/3rd of the Members present and voting at the General Body Meeting. Therefore, any part of the Rules could always be amended. As noticed earlier, SCBA being a Society registered under the Societies Registration Act, is governed by its Memorandum of Association. The said Association is entitled to have its own Rules and Regulations. In fact, it is contemplated in the Act that a Committee of management can be constituted to manage the affairs of the Society as specified in the Rules and Regulations. The Memorandum of Association is a contract amongst the members of the Society, which though required to be registered under the Statute, does not acquire any statutory character.

These are rules which govern internal control and management of the Society. The authority to frame, amend, vary and rescind such rules, undoubtedly, vests in the General Body of the Members of the Society. The power to amend the rules is implicit in the power to frame rules.

30. Yet, another ground of attack in the suits filed by the respondents is with reference to notice of meetings and the manner of holding of meetings including Special General Meeting. The record produced by the SCBA before this Court indicates that the meeting in which the amendment was carried out in Rule 18 was held in accordance with Rule 22 because it was a Special General Meeting. The holding of meetings including Special General Meeting is governed by Rules 21, 22 and 23, which read as under: -

"21. MEETINGS The Annual General Meeting of the Association shall ordinarily be held not later than 15th day of May every year. Not less than 15 days notice shall be given to the members of the Annual General Meeting. The following shall along with other business that may be required to be transacted, be included in the agenda of the Annual General Meeting.

- a) Auditor's Report on the Account and Balance Sheet of Budget estimate;
- b) Report of the Secretary on the activities of the terms which will include report of the work of committee other than the Executive Committee;
- c) The election of the officers of the Association and Members of Executive Committee or other committees and appointment of Auditors;
- d) The approval of the revenue account and the balance sheet of the affairs of the Association as on 31st March of the previous year duly passed.

22. SPECIAL GENERAL MEETING The Committee may call a General Meeting on 7 days notice to the Members provided that a Special General Meeting may be called on a shorter notice.

Provided that the Secretary may call an emergent General Meeting on any day by affixing a notice to that effect on the notice board of the Association and circulating the same to the Members as can be conveniently informed.

The Committee shall call a General Meeting or a Special General Meeting upon the requisition given in writing by at least 150 Members of the Association in respect of any matter. The requisition specified the matter or question to be laid before the meeting and shall be addressed to the Secretary. The meeting shall be called not later than 2 weeks after the receipt of such requisition. The quorum at the Annual General Meeting or a General Meeting or a Special General Meeting shall be 50 Members. In absence of such quorum the meeting shall stand adjourned to such a date and time as the Chairman may appoint and for such adjourn meeting no quorum will be necessary.

23. NOTICE OF MEETING

1. The notice of the Annual General Meeting or any of the Special Meeting shall be given by: -

(a) Circulating the notice, to such members as can conveniently be informed in that way;

(b) Sending out such notices by post

addressed to every non-resident and associate member and to every resident member who may have required the Secretary to send the notice in this way and has registered his address in the office of the Association;

The notice of the meeting other than the Annual General Meeting shall be given by:

(a) Affixing the notice on the notice board of the Association;

(b) Circulating the notice to such members as may be conveniently informed in that way."

As can be seen from the bare reading of these Rules, notice by post has to go to non-resident members and to resident members only if request in writing is made to the Secretary that notices should be sent to him by post at his registered address, otherwise, notice by affixation on notice board and by circulating the notice, normally done with cause list is sufficient notice. The record does not indicate at all that any of the plaintiffs/respondents had given any notice to the Secretary of SCBA that he should be informed individually by a notice in writing of holding of any meeting by

sending it at his registered address. There is weighty reason as to why notice by affixation on the notice board and by circulating the notice with cause list should be regarded as sufficient notice. This is obviously so because advocate members normally practicing in this Court would be made aware by these methods of notice. Thus the ground of improper holding of the meeting or lack of service of notice upon the plaintiffs/respondents are devoid of merits and could not have been taken into consideration while granting injunction claimed by them.

31. On page 2 of the paper book the learned trial judge has mentioned details of the plaint and has categorically stated as under: -

"It is disclosed in the plaint that members of defendant No. 1 are scattered in various parts of the country including Delhi and majority of them do not visit the SCBA office on regular basis."

In para 3 of the plaint it is averred as under: -

"Since all the members including the plaintiff do not visit the Supreme Court and office of the defendant No. 1 Association on regular basis, they do not have an occasion to acquaint themselves about all the notices Association on its notice boards in the Supreme Court building."

Further, at page 19 of the paper book a finding has been arrived at by the trial court as under: -

"Most of the members do not ordinarily practice in the Supreme Court of India and are members of other association."

In the light of above pleadings, it is quite clear that the plaintiffs/respondents who were seeking to challenge the impugned Rule which prescribed an eligibility clause to enable them to vote, have candidly admitted that they are not regular practitioners of the Supreme Court nor do they attend the Supreme Court on regular basis nor are aware of the circulars circulated by the SCBA or pasted on the information board of the SCBA. This is something which has been totally overlooked by the trial court in arriving at a conclusion in favour of the plaintiffs/respondents without examining the true and correct import of Rule 23 of the Rules, which prescribes the method of giving notice of the meeting. There is no manner of doubt that the trial court has committed an error in coming to the conclusion that in any case individual notice was required to be given when the rule does not warrant giving of any such individual notice.

32. The three reasons indicated by the learned Judge in the impugned orders for grant of injunction are not sustainable at all and, therefore, the impugned orders will have to be set aside.

33. Further, the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by way of granting injunction. The argument advanced by the

appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process. This Court has no doubt at all that the injunction granted by the learned Judge has propensity to intervene and interfere with election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 CPC the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of the SCBA would have been required to prepare a new voters list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters list in the light of the amended Rule 18 would have been of no consequence. Thus the injunction claimed by the plaintiffs/respondents which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge.

34. The impugned order is also liable to be set aside on yet another ground. Though the suits were not filed in a representative capacity, the injunction is granted by the court restraining the appellants from implementing the resolution dated February 18, 2003 in respect of all advocates and not in respect of two advocates only who have filed Civil Suit Nos. 100 of 2003 and 101 of 2003 respectively. A perusal of the plaint in the two suits makes it more than clear that suits are not filed in a representative capacity. In the plaint, individual rights to vote at the election of the Executive Committee of SCBA is claimed. Even if extremely good case was made out by the plaintiffs/respondents of the two suits, the relief could have been confined only to the two plaintiffs/respondents and a relief granting blanket injunction restraining the appellants from implementing the Resolution dated February 18, 2003 amending Rule 18 of the Rules and Regulations of SCBA till the final disposal of the suits could not have been granted.

35. For all these reasons impugned common order is liable to be set aside and is hereby set aside.

36. Mr. K.K.Venugopal, an august and well-known senior lawyer, who is regularly practicing in this Court since years and was also former President of SCBA at least for three years and who was also Chairman, Interim Board of Management in 2010 when the Executive Committee of the SCBA had dissolved itself and appointed the Interim Board of Management, submitted that the statements of aims and objectives of the SCBA, among others, includes the objective, viz., "to promote and protect the privileges, interest and prestige of the association and to promote union and cooperation among the advocates practicing in the court and other association and advocates".

According to the learned counsel, the phrase "to promote union and cooperation among the advocates practicing in the court and other association and advocate" is to promote union and cooperation among the advocates practicing in the Supreme Court, on the one hand, and other advocates or associations of advocates, on the other, which itself indicates that SCBA exists for the advocates practicing "in the court", i.e., Supreme Court of India. The learned counsel explained that SCBA exists for the benefit of the advocates in the Supreme Court of India and SCBA owes a fiduciary duty to such advocates and members of the SCBA for protecting their privileges, interests and prestige. The learned counsel asserted that the SCBA is, therefore, entitled to seek the protection of the Court by invoking Article 142 of the Constitution to ensure that the members

practicing in the Supreme Court are not rendered incapable of enjoying, to the full, the privileges and benefits in the Supreme Court of India, which has provided infrastructure and facilities in the nature of libraries, car parking, chambers, canteens, lounges, etc. The learned counsel pointed out that the factual situation, which has been placed before the Court, would establish that today the membership of the SCBA has risen to an mind-

boggling figure of around 10,000, of which only around 2,000 members are regularly practicing in this Court. Informing the Court the learned counsel mentioned that historically, with the advocates regularly practicing in the Supreme Court being inducted as members of the SCBA, the facilities made available by this Court to the members were sufficient for their use, but certain unhealthy practices and vices started creeping in to the system of elections to the various posts/offices of the SCBA by reason of the fact that the office of the President of SCBA carried a vast prestige and status, not merely among lawyers but also among Governments and the political class. It was also stated by the learned counsel that being an office bearer of a member of the Executive Committee of the SCBA also carried great importance and prestige. According to the learned counsel, the main vice that crept into the system, for the last decade or so was that aspiring office bearers started buying the application forms for membership, in bulk, and paying the membership fee for lawyers from the various places like Meerut, Rohtak, Saharanpur, Ghaziabad and even as far away a place as Chandigarh. The learned counsel Shri Venugopal claimed as Chairman of the Interim Board of Management that one came across as many as 100 subscription forms, paid with consecutive bank draft numbers, as disclosed by the bank statements obtained by the Interim Board of Management, which showed that a single sponsor had paid vast sums of money for each of these forms and memberships, the membership fee being Rs.5,150/- for advocates with ten years standing and Rs.3,650/- for advocates with less than ten years standing. It was emphasized by the learned counsel that practices like these have resulted in the present strength of the SCBA being around 10,000 and it is a well known fact among the members of the Bar regularly practicing in the Supreme Court of India that persons inducted into the SCBA through such means, numbering about 8,000, are seen in the Supreme Court premises only on the day of SCBA elections for casting their votes, otherwise, these persons have no interest whatsoever either in the functioning of the SCBA or the well being of its members or the functioning of the Supreme Court of India, as a Court. The learned counsel has produced minutes of the meeting of the Interim Board of Management dated March 22, 2010 along with his written submissions for perusal of the Court. The learned senior counsel lamented that all these would disclose the disgraceful condition to which SCBA has been reduced on account of machinations and malpractices of certain members of the SCBA, who are aspiring for offices in the Executive Committee of the SCBA. The learned counsel has also appended copies of Allotment of Lawyers' Chambers Rules as amended up to November 30, 2007 as well as letter dated August 10, 2004 inter alia prescribing eligibility to apply for allotment of chambers along with his written submissions.

The learned counsel has pointed out that the SCBA is facing a crises today, because of the induction of the vast number of members who do not practice regularly in the Supreme Court of India and, therefore, have no interest whatsoever in the function of the Apex Court or in the reputation, prestige and well being of the SCBA whereas, on the other hand, the sole objective of such persons is to ensure that their respective sponsor(s), who paid their subscription and entrance fee, would be

elected to one of the posts of the SCBA, including the post of SCBA President. The learned counsel has expressed apprehension that the day may not be far off when the entire set of office bearers of the SCBA may be persons with no regular practice in the Supreme Court of India and who may have their regular practice in other courts in Delhi or even in the adjoining towns or even in a city as far away from Delhi as Chandigarh. The learned counsel argued that the SCBA has to shoulder great responsibility in regard to the effective functioning of the Supreme Court itself, the dispensation of justice and to represent the regular practicing members of the Bar from time to time. According to the learned counsel the present situation, which virtually renders the regularly practicing members strangers in their own court can only be remedied if this Court were to step in, to exercise its vast powers under Article 142 of the Constitution, to ensure that the functioning of the Court itself is not affected by reason of the huge influx, into the SCBA, of advocates who have no interest in the functioning of the Supreme Court, its Bar or its association.

The learned counsel asserted that the circumstances prevailing are such that it is imperative for the well being of the institution, as well as Apex Court of the country itself, and its regularly practicing members to ensure that it is only the regularly practicing members who will be eligible to cast votes at the SCBA elections. For this purpose the learned counsel has suggested that it is essential that the right to vote in the SCBA elections is restricted to the categories of persons enumerated in the Interim Board of Management circular dated March 22, 2010, the relevant portion whereof has been extracted in the written submissions.

Mr. P.P.Rao, learned celebrated senior counsel regularly practicing in this Court since long and who is also former President of SCBA, has emphasized that the very name of Bar Association, viz., SCBA necessarily means and 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.

The learned counsel has, in his written submissions, mentioned that SCBA needs to be salvaged from the deluge of overwhelming numbers of outside advocates practicing not only in the NCTR but even all other States in North India who had been enrolled by short-

sighted candidates with an eye on their election to the SCBA. The learned counsel has asserted that unless this Court comes to the rescue of SCBA, the association will cease to be a court annexed Bar Association and words "Supreme Court" will have to be dropped and substituted by the words "North India". Emphasizing that the character of the SCBA should not be allowed to be diluted in any circumstances, the learned counsel has asserted that this is a fit case for exercise of powers under Article 142 of the Constitution. The learned counsel Mr. P.P. Rao has suggested that to identify regular practitioners the criteria adopted by this Court for allotment of chambers in *Vinay Balchandra Joshi vs. Registrar General of Supreme Court of India* (1998) 7 SCC 461 at pages 465-467 para 7, may be adopted or in the alternative criteria mentioned in the circular dated March 22, 2010 issued by the Interim Board of Management of the SCBA consisting of M/s.

K.K. Venugopal, Chairman, Mr. P.P. Rao, Vice Chairman and Mr. P.H. Parekh, Member - Executive and Convener may be considered for acceptance mutatis mutandis.

Mr. Ranjit Kumar, a distinguished attorney of this Court, who is appointed as amicus curie in this matter to assist the Court, Mr. Sushil Kumar Jain, learned President, Supreme Court Advocates-on-Record Association, Mr. D.K.Garg, learned Counsel for the respondent and who was also in past President of Supreme Court Advocates-on-Record Association, pointed out to this Court the difficulties being faced by regular members of the SCBA because of enlistment of large number non-regular advocates as members of SCBA, who according to them, now constitute a majority as a result of which the SCBA has not been able to take any decision which would be in the interest of the Bar.

The learned Counsel have stated in their written submissions filed, to supplement their oral arguments, that there are more than ten thousand members of SCBA out of which only two thousand advocates are regular members who actually practice in this Court and eight thousand non-regular members have taken over the affairs of the SCBA in such a manner that it is almost impossible for the regular members to transact any business in the general or special meetings of SCBA. The learned Counsel emphasized that yearly subscription for members of SCBA for many decades remained fixed at a paltry amount of Rs. 500/- and every time when a proposal was made to increase the subscription the same was rejected by the General Body dominated by these non-regular members and that only recently with great difficulty the subscription has been revised to Rs. 1500/- by secret ballot held within high security area of Supreme Court namely Library 1, but now there is a demand to reduce it again to Rs. 500/-.

The learned Counsel pointed out that if the subscription for members of SCBA is again revised and reduced to Rs.500/-, it will be a boon not only for such non-regular members but also a boon for the candidates contesting elections who will have to shell out less, for enrolling those advocates who are not practicing regularly in this Court, to secure their votes and get elected. It was emphasized that the enhanced subscription is in the interest of association as it would not only improve financial position of SCBA but also help to keep at bay those members who are not regularly practicing in this Court. The learned Counsel argued that this Court provides to the members of SCBA, who are regularly practicing in this Court, several facilities/benefits such as bar rooms, libraries, canteens, parking place, clinics, rest rooms etc., and as SCBA is intrinsically and inextricably connected with the working of the Supreme Court, this Court should give appropriate directions for effective implementation of "One Bar One Vote" concept introduced by the amended rule in exercise of its powers under Articles 136, 142 and 145(1) (a) of the Constitution to relieve the SCBA of the number of maladies which have now come to be associated with it and to improve the working of the institution as a whole. What was stressed by all the learned Counsel was that it is not in the interest of SCBA that advocates who do not practice in this Court regularly, vote for or get elected to the Executive Committee of SCBA, but in past, several members who were themselves not regularly practicing in the Supreme Court had contested elections for different posts of Executive Committee of SCBA though they were already members of the Executive Committees of other Court annexed Bar Associations and had come out successful on the strength of votes of such non-regular members who are to be seen in the Court compound only on the date of elections. The learned Counsel mentioned that persons so elected do not participate in the functioning of SCBA since they are not affected by the working or non-

working of the SCBA which has affected the functioning of SCBA as a facilitator in the administration of justice and therefore in order to maintain purity and dignity of the profession this Court has not only power but duty to give directions under Article 136 and Article 142 particularly when request is made by the learned amicus curie, SCBA represented by its Honorary Secretary, President of Supreme Court Advocates-on-

Record Association and other high-ranking lawyers like Shri K.K.Venugopal, Shri P.P.Rao etc., who are regularly practicing only in this Court. Mr. D.K.Garg, the learned Counsel who represents respondent Mr. B.D.Kaushik in C.A. No. 3401 of 2003, frankly pointed out to this Court as an officer of the Court that in spite of other effective alternative remedies available to the appellant SCBA against the interim order dated April 5, 2003 passed by the learned Civil Judge, Delhi, this Court had not only entertained Special Leave Petition filed by SCBA, but also granted stay because this Court wanted to regulate, reform and improve the functioning of SCBA and to prevent the misuse of various facilities provided by this Court to the regular members of SCBA so that the members of the SCBA render best assistance to this Court in dispensation of justice. It was also submitted that SLP was entertained and operation of the impugned interim order was stayed by this Court to prevent the interference of the outside members in day-to-day functioning of SCBA and therefore this Court should give directions/frame guidelines to regulate, reform and improve the functioning of SCBA. The learned Counsel pointed out that it is no secret that yearly membership subscription fee of almost all these non-regular members is paid by candidates contesting election for the various posts of the Executive Committee of SCBA and the records of SCBA show that hundreds of bank drafts were issued by the same branch of the same bank in favour of SCBA for the same amount towards subscription of SCBA for such non-regular members and that some interested persons who seek votes of these non-regular members in the elections had paid the subscription. This last argument of Mr. D.K.Garg was endorsed by one and all learned advocates who are appearing in the matter. Thus, the learned advocates have urged this Court to give guidelines/directions for effective implementation of amended rule which projects the principle of "One Bar One Vote".

37. This Court has considered the request made by the learned Counsel appearing in the matter to give appropriate directions/guidelines for effective implementation of "One Bar One Vote"

principle enunciated by the amended rule. It is a matter of common knowledge that this Court has provided four huge libraries, three canteens, two lounges, several rooms to be used as consultation rooms where learned advocates regularly practicing in this Court can consult with their clients, arbitration rooms, advocate's chambers, huge parking places, free use of electricity supply etc., to the members of the SCBA. It is not in dispute that there are about ten thousand members of SCBA at present though the actual number of advocates/practitioners, who are regularly practicing in this Court is not more than two thousand five hundred out of which there are about nine hundred Advocates-on-Record. It is an accepted fact that on the eve of annual elections of the Executive Committee of SCBA, nearly more than three thousand voters turn up from all over India to come to the premises of this Court, who are made to vote by the advocates seeking elections for various posts. Further, enlistment of large number of non- regular members as members of the SCBA have created

problems in allotment of chambers for this Court and it has been found that large number of non-regular members of SCBA eats up the quota of regular members who genuinely need the chambers. It was pointed by Shri Sushil Kumar Jain, the learned President of Supreme Court Advocates-on-Record Association that many of the non-regular members who are allotted chambers are not even residing in or around Delhi. The Supreme Court Advocates-on-Record are advocates primarily practicing in the Supreme Court and are directly affected by the functioning of SCBA primary object of which is to look after the interest of advocates actually practicing in the Supreme Court. There is no manner of doubt that Advocates-on-Record form an important constituent of the SCBA. All members of the Supreme Court Advocates-on-Record Association are also members of the SCBA and because of malpractices committed by the candidates who contest the elections a large number of advocates who are not regular practitioners in the Supreme Court have become members of SCBA and claim a right, not only to vote and elect the office bearers of the Association but also seek to be elected as office bearers themselves on the strength and support of such non-regular members. Because such non-regular members have become members of SCBA, they claim facilities which are being extended to members of SCBA, who are regularly practicing in this Court. Because of such claims, clashes, had taken place in the past. It has been pointed out by Mr. Sushil Kumar Jain, learned President of Supreme Court Advocates-on-Record Association that by merely becoming members of the SCBA some advocates deem themselves to be advocates of the Supreme Court and fleece litigants on that basis. According to Shri Sushil Kumar Jain such advocates call themselves as Supreme Court Advocates and write/mention such a status on their letter heads, visiting cards, name plates, etc. misleading the litigants. As rightly pointed out by the learned counsel Mr. P.P. Rao, enrolment of advocates not practicing regularly in the Supreme Court is inconsistent with the main aim and object of the SCBA, no court can provide chambers or other facilities for such outside advocates, who are not regular practitioners. Neither the SCBA nor the court can deal with them effectively if they commit any wrong. The power of this Court to make certain rules, regulations and give directions to fill up the vacuum till such time appropriate steps in order to cover the gap are taken, is recognized and upheld in several reported decisions of this Court. In Vineet Narain Vs. Union of India (1998) 1 SCC 226 this Court has observed as under in Paragraph 51 of the reported decision:-

"In exercise of the powers of this Court under Article 32 read with Article 142, guidelines and directions have been issued in a large number of cases and a brief reference to a few of them is sufficient. In Erach Sam Kanga Etc. Vs, Union of India, (Writ Petition No. 2632 of 1978 decided on 20th March, 1979) the Constitution Bench laid down certain guidelines relating to Emigration Act. In Lakshmi Kant Pandey Vs. Union of India (1984) 2 SCC 244, (in re: Foreign Adoption), guidelines for adoption of minor children by foreigners were laid down. Similarly in State of West Bengal and Ors. Etc. Vs. Sampat Lal and Ors. Etc., (1985) 1 SCC 317, K. Veeraswami Vs. Union of India and Others, (1991) 3 SCC 655, Union Carbide Corporation and

Others Vs. Union of India and others, (1991) 4 SCC 584, Delhi Judicial Service Association Etc. Vs. State of Gujarat and others Etc. (Nadiad Case), (1991) 4 SCC 406, Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd. and Another, (1996) 4 SCC 622 and Dinesh Trivedi, M.P. and Others Vs. Union of India and others [1997] 4 SCC 306, guidelines were laid down having the effect of law, requiring rigid compliance. In Supreme Court Advocates-on-Record Association and Others Vs. Union of India (IInd Judges case), (1993) 4 SCC 441, a Nine-Judge Bench laid down guidelines and norms for the appointment and transfer of Judges which are being rigidly followed in the matter of appointments of High Court and Supreme Court Judges and transfer of High Court Judges. More recently in Vishakha and Others Vs. State of Rajasthan and others, (1997) 6 SCC 241, elaborate guidelines have been laid down for observance in work places relating to sexual harassment of working women."

Moreover, this Court, has framed Supreme Court Rules, 1966 in exercise of powers under Article 145(1)(a) of the Constitution regulating amongst other things advocates who are entitled to practice in this Court. Further, necessary directions/guidelines can always be issued when facilities and privileges are conferred on the members of the SCBA. Thus not only power to give necessary guidelines/directions is available under Articles 136, 142, 145(1)(a) of the Constitution but such power can also be exercised as "Grantor" of the benefits and privileges which are enjoyed by the members of the SCBA to restore its dignity. Having regard to the over all conditions prevailing in SCBA, this Court proposes to give appropriate directions for implementation of the amended rule which projects the principle of "One Bar One Vote".

38. Having given thoughtful consideration to the suggestions made by the learned counsel appearing in the matter, this Court is of the opinion that to identify regular practitioners the criteria adopted by this Court for allotment of chambers, as explained in Vinay Balchandra Joshi Vs. Registrar General of Supreme Court of India (1998) 7 SCC 461 at pages 465-467 para 7, should be directed to be adopted by SCBA from time to time. Shri K.K. Venugopal, the learned senior counsel has annexed a copy of Allotment of Lawyers' Chambers Rules, as amended up to November 30, 2007, with his written submissions, wherein detailed procedure for allotment of chambers and conditions precedent to be satisfied before a chamber is allotted, are laid down. Under the circumstances this Court directs under Article 136 of the Constitution read with Article 142 of the Constitution that criteria adopted by this Court for allotment of chambers, as mentioned in Allotment of Lawyers' Chambers Rules, and as explained in Vinay Balchandra Joshi (supra) shall be adopted by the SCBA and its office bearers to identify regular practitioners in this Court. To identify regular practitioners in this Court, it would be open to the office bearers of SCBA or a small committee, which may be appointed by the SCBA consisting of three senior advocates, to collect information about those members who had contested election in any of the Court annexed Bar Association, viz., High Court Bar Association, District Court Bar Association, Taluka Bar Association, Tribunal Bar Association and Quasi-judicial Bar Associations like BIFR, AIFR, CAT, etc. from 2005 to 2010. If such an information is sought by the office bearers of SCBA or the Committee appointed by it, the same shall be supplied invariably and without fail by the Court annexed Bar Associations mentioned earlier. The committee of SCBA to be appointed is hereby

directed to prepare a list of regular members practicing in this Court and another separate list of members not regularly practicing in this Court and third list of temporary members of the SCBA.

These lists are directed to be put up on the SCBA website and also on the SCBA notice board. A letter is directed to be sent by the SCBA to each member of SCBA informing him about his status of membership on or before February 28, 2012.

The aggrieved member would be entitled to make a representation within 15 days from the date of receipt of letter from the S.C.B.A. to the Committee, which is to be appointed by the SCBA to identify regular practitioners stating in writing, whether personal hearing before the Committee is required or not. If such a request is made the concerned member shall be heard by the Committee. The representation/s shall be considered and the decision would be rendered thereon by the aforesaid Committee on or before April 30, 2012. The decision of that Committee shall be communicated to the member concerned but the decision shall be final, conclusive and binding on the member of the SCBA. Thereafter, final list of regular practitioners of this Court shall be displayed by S.C.B.A. After preparation of the final list of the regular practitioners, each member shall give a written intimation to the S.C.B.A. whether he is a member of another Court annexed Bar. It shall be mandatory for a member, whose name is included in the said list, to give a permanent declaration that he would vote only in the SCBA and would not vote in any of the elections of any High Court Bar Association or District Bar Association or Taluka Bar Association or Tribunal Bar Association or Quasi-judicial Bar Associations like BIFR, AIFR, CAT, etc. A copy of this declaration shall be put up/displayed on the website of the SCBA as well as on the notice board of the SCBA. The information about having filed such a declaration shall be sent to all the Bar Associations where the said advocate is a member.

Once such a declaration has been given, it will be valid till it is revoked and once it is revoked a member shall forfeit his right to vote or contest any election to any post to be conducted by the SCBA, for a period of three years from the date of revocation.

39. The members of the SCBA, whose names do not figure in the final list of regular practitioners, shall not be entitled to either vote at an election of the office bearers of the SCBA or to contest any of the posts for which elections would be held by the S.C.B.A.

40. This Court suggests that to ensure strict compliance with the directions issued by this judgment, an Implementation Committee consisting of three learned senior advocates may be constituted. The SCBA has suggested that Mr. K.K. Venugopal, learned senior advocate, Mr. P.P. Rao, learned senior advocate and Mr. Ranjit Kumar, learned senior advocate, practicing in this Court be appointed as members of the said Implementation Committee. This Court recommends that the names of three learned senior counsel mentioned above be considered by the SCBA for being appointed as members of the said Committee subject to their consent and convenience.

41. In view of the findings that the amendment made in Rule 18 is legal and valid and that no right of the advocates, who have filed the suits, is infringed or is violated, this Court directs the trial court to take up the two suits immediately for hearing and to dismiss/ dispose of the two suits pending on its file in the light of the observations made by this Court in this judgment.

42. Subject to above mentioned directions, the two appeals stand disposed of.

.....J. (J.M. PANCHAL)J. (H.L. GOKHALE) New Delhi;

September 26, 2011.