Pratap Chandra Mehta vs State Bar Council Of M.P.& Ors on 9 August, 2011

Equivalent citations: 2011 AIR SCW 4817, 2011 (9) SCC 573, 2012 (1) AIR JHAR R 253, AIR 2011 SC (CIVIL) 2045, (2012) 3 ALL WC 2296, (2011) 5 CAL HN 248, (2011) 8 MAD LJ 1079, (2011) 8 SCALE 506, 2011 BOMCRSUP 882

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Bench: B.S. Chauhan, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6482 OF 2011

(Arising out of SLP (CIVIL) No. 15722 of 2011)

Pratap Chandra Mehta ... Appellant

Versus

State Bar Council of M.P. & Ors. ... Respondents

With

CIVIL APPEAL NO.6483 OF 2011

(Arising out of SLP (CIVIL) No. 16088 of 2011)

Rameshwar Neekhra ... Appellant

Versus

State Bar Council of M.P. & Ors. ... Respondents

J U D G M E N T

Swatanter Kumar J.

1. Leave granted.

2. From the very simple facts of these cases, the following substantial questions of law and public importance arise for consideration of this Court:

> (1) Whether the provisions of Rules 121 and 122-A of the State Bar Council of Madhya Pradesh Rules (for short, the `M.P. Rules') are ultra vires Section 15 of the Advocates Act, 1961 (for short, `the Advocates Act'), inter alia for the reason that there is no nexus between the rule making power of the State Bar Councils and the powers provided under Section 15(1) or 15(2)(c) of the Advocates Act? Was the delegation of legislative power under Section 15 of the Advocates Act excessive, inasmuch as it does not provide any guidelines for removal of office-bearers of the State Bar Councils? (2) Whether despite the absence of the enabling provisions in the principal statute, namely, the Advocates Act, empowering subordinate State Bar Councils to enact provisions for removal of the office bearers of the State Bar Councils by `no confidence motions', such power could be read into the general clause of Section 15(1) of the Advocates Act?
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> (3) Whether Rules 121 and 122-A of the M.P. Rules are invalid for want of prior approval from the Bar Council of India?

3. The necessary facts are that the Parliament enacted the Advocates Act on 19th May, 1961. Section 15 of the Advocates Act empowers the State Bar Councils to frame Rules to carry out the powers conferred upon the State Bar Councils under Sections 15(1), 15(2), 28(1) and 28(2) read with Chapter II and other provisions of the Advocates Act. The State Bar Council of Madhya Pradesh (for short `the State Bar Council'), with the approval of the Bar Council of India, made and published the M.P. Rules in 1962. These M.P. Rules came to be amended on 27th April, 1975.

4. Section 15 of the Advocates Act provides that the State Bar Councils can frame/amend the Rules with prior approval of the Bar Council of India. Section 15(2)(a) of the Advocates Act read with Part III and IX of the Bar Council of India Rules (for short, `the Rules') contemplates that election to the State Bar Council shall be held. In furtherance to this legislative mandate, the election to the State Bar Council were held in the year 2008 and Mr. Rameshwar Neekhra was elected as Member and then Chairman of the State Bar Council by its members on 31st August, 2008. After the expiry of 2= years, fresh elections were held on 12th February, 2011 and the said Mr. Neekhra was again elected as member, and then the Chairman of the State Bar Council by its members. He is stated to have secured 21 votes, out of a total 25 votes of the Members of the State Bar Council. Mr. Adarsh Muni

Trivedi was elected as Vice-Chairman of the State Bar Council.

5. At the very threshold of the 15th Meeting of the General Body of the State Bar Council held on 27th March, 2011 at Jabalpur, a number of Members submitted two requisitions: one stated that due to lack of confidence in the Chairman and Vice- Chairman, a `no confidence motion' should be issued; and the second requisition stated that, since the election of the Committees for the second term was not as per the constitution, re-election for the Committees may be conducted. They requested the State Bar Council to call a special meeting to consider these requisitions. It is also recorded in these Minutes that the Chairman and Vice-Chairman had offered their resignation, subject to withdrawal of the requisition of `no confidence motion'. There was a long discussion, whereafter it was resolved that the agenda of the special meeting was to be circulated on the same day i.e. 27th March, 2011 by registered post. Copy of the resolution passed and the requisition motion of `no confidence', would be circulated to all Hon'ble Members of the State Bar Council i.e. who were present and those who were not present. These Minutes, annexed as `P-10' (colly) to the petition, read as under:

> "Before the start of the meeting Hon'ble Members S/s Vinod Kumar Bhardwaj, Kuldeep Bhargava, Ghanshyam Singh, Prem Singh Bhadouria, Shivendra Upadhyay, Champa Lal Yadav, Dinesh Narayan Pathak, Khalid Noor Fakhruddin, Mrigendra Singh Baghel, Jai Prakash Mishra, Prabal Pratap Singh Solanki, Ku. Rashmi Ritu Jain and B.K. Upadhyay submitted two requisition motion of no confidence. In one of the requisition motion of no confidence they have stated that they have no confidence in Chairman, Vice- Chairman and Treasurer therefore, they are moving no confidence motion against them. In the second requisition motion they have requested that since the election of the Committees for the second term were not as per the constitution therefore and even otherwise they want re-election for the Committees. For both the requisition motion they have requested to call a special meeting and consider their vote of no confidence against Chairman, Vice-
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> Chairman and Treasurer. For another requisition motion they have requested to call a special meeting and consider their proposal. When the meeting was started both the requisition motion were placed before the Hon'ble Chairman. Shri Ganga Prasad Tiwari, Hon'ble Treasurer, Shri Rameshwar Neekhra, Hon'ble Chairman and Shri A.M. Trivedi, Hon'ble Vice- Chairman stated that they offer their resignation subject to withdrawal of requisition of no confidence motion. There had been long discussion and members S/s Vinod Kumar Bhardwaj, Prem Singh Badhouria, Champa Lal Yadav, Pratap Mehta, Vijay Kumar Choudhary, Ghanshyam Singh, Z.A. Khan, Kuldeep Bhargava, Khalid Noor Fakhruddin, Rajesh Pandey Mrigendra Singh Bhagel, Prabal Pratap Singh Solanki expressed their views. There had been divergent views in respect of withdrawal of no confidence motion as well as conditional resignation offered by Hon'ble Chairman, Vice-Chairman and Treasurer. As such it is resolved to hold a special meeting on 16th April, 2011 at Jabalpur from 12.30P.M. onwards in term of Rule 122(A) & (B) of State Bar Council of Madhya Pradesh Rules. It is resolved that agenda of the meeting be circulated today itself by registered post

> and copy of the resolution passed along with requisition motion of no confidence be circulated to all Hon'ble Members of the Council who are present and to them also who are not present today."

6. It appears from the record that in terms of the above minutes of the 15th Meeting of the General Body of the State Bar Council held on 27th March, 2011, the notices of the 16th Meeting were also issued and circulated. The 16th Meeting of the General Body of the State Bar Council was decided to be held on 16th April, 2011 in the Meeting dated 27th March, 2011 itself.

7. After issuing the notice in accordance with the M.P. Rules, a meeting of the State Bar Council was held on 16th April, 2011. At this meeting, the `no confidence motion' was moved by 13 members of the State Bar Council, in terms of Rule 122-A of the M.P. Rules, against both the Chairman and the Vice- Chairman. The parties to the present appeals are at some variance as to the manner, knowledge and the decision with which the meeting was closed. The respondents herein have contended that in this meeting, there was actual discussion of the `no confidence motion' moved by some of the members of the State Bar Council, which was a part of the formal agenda notice issued by the Secretary of the State Bar Council. In the Minutes placed on record as Annexure R-16/6, it has been stated that item No.2 of the agenda, which was to consider the requisitioning of `no confidence motion', was actually considered and the question arose as to whether Shri Rameshwar Neekhra, the Chairman could still preside over the meeting. There was some discussion on that issue, whereafter the Chairman along with the Secretary is stated to have left the meeting on 16th April 2011. The Advocate General had then presided over the meeting, and the `no confidence motion' is stated to have been passed by majority of the members. It will be useful to refer to the Minutes of the Meeting, held on 16th April, 2011 on this issue, which are as follows:

> "Twelve of the Members have quit away the meeting on the ground that by virtue of Rule 15 of Chapter V no matter can be decided and reconsidered for a period of three months unless the Council by 2/3 of majority of the Members present shall permit. The affect of this rule is also required to be considered by the Hon'ble High Court and all these issues are open before the Hon'ble High Court.
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> So far as the presiding over of the meeting is concerned, Rule 14 of Chapter V says that in the absence of any provision the matter is to be decided by the majority. That being so the majority of the Members present have decided to consider the No Confidence Motion hence this meeting is now being presided over by Advocate General to whom the majority has decide to preside.
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> Before the start of the Meeting Hon'ble Member Shri Prabal Pratap Singh Solanki has asked Shri Rameshwar Neekhra, Chairman to kindly decide that the Members are ready to participate in the No Confidence Motion but at that time Hon'ble Chairman quit the Meeting Hall along with his followers and also took away the Secretary saying that we are not going to participate in the No Confidence Motion.

> At this Juncture Shri Vinod Kumar Bhardwaj, Hon'ble Member State Bar Council of Madhya Pradesh requested Shri R.D. Jain, Hon'ble Advocate General and Ex Official Member who remained present from the very beginning of the meeting and has watched all the proceedings & discussions which took place by the Hon'ble Members Shri Bhardwaj requested the Hon'ble Advocate General Shri R.D. Jain to preside over the meeting which was seconded by all the members present as following:
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> 1. S/Shri Vinod Kumar Bhardwaj, (2) Kuldeep Bhargava (3) Jai Prakash Mishra (4) Shivendra Upadhyay (5) Ms. Rashmi Ritu Jain (6) Dinesh Narayan Pathak (7) Prem Singh Bhadouria (8) Champa Lal Yadav (9) Ghanshyam Singh (10) Mrigendra Singh Baghel (11) Prabal Pratap Singh Solanki (12) Khalid Noor Fakhruddin (13) Shri Ghanshyam Singh, Hon'ble Members.

Shri R.D. Jain, Hon'ble Adovate General and Ex Officio Member stated that the meeting need not be adjourned and the Hon'ble Advocate General also read out the part of the order of Hon'ble High Court in WP No. 6372/11.

Item No. 2 Resolution No. 258/GB/2011 The Item No. 2 of the agenda was read over.

The members are asked to give their vote for or against by raising their hands.

Since the majority of the Members of the Council have supported the motion by raising hands it stands passed under Rule 122(A).

The following Members are present in the house as per below:

> S/Shri (1) Vinod Kumar Bhardwaj (2) Jai Prakash Mishra (3) Shivendra Upadhyay (4) Ms. Rashmi Ritu Jain (5) Kuldeep Bhargava (6) Dinesh Narayan Pathak (7) Prem Singh Bhadouria (8) Champa Lal Yadav (9) Ghanshyam Singh (10) Mrigendra Singh Baghel (11) Khalid Noor Fakhruddin (12) Prabal Pratap Singh Solanki (13) Bal Krishna Upadhyay have supported the motion and hence the motion stands passed by a majority of all the members present and the voting under Rule 122-A."

8. We may notice that two sets of minutes recorded differently for the same meeting have also been placed on record as Annexure P-10 (colly) and R-16/4 respectively. It needs to be noticed that one set of minutes is only signed by the Secretary of the State Bar Council while the other is signed by the Secretary as well as by other members who passed the Resolution.

9. In the Minutes of the meeting dated 16th April, 2011, it had been specifically recorded that the Resolution is not to be given effect to in view of the orders passed by the Madhya Pradesh High Court on 15th April, 2011 in Writ Petition No. 6372 of 2011. However, the copy of the proceeding was to be communicated to the Registrar General of the High Court of Madhya Pradesh. This Resolution had been signed by the members present.

10. One Pratap Chandra Mehta had filed this above- mentioned Writ Petition No. 6372 of 2011, challenging the vires of Rules 121 and 122-A of the M.P. Rules. These Rules related to the term of, and procedure for passing a `no confidence motion' against the Chairman, Vice-Chairman and the Treasurer etc. As already noticed, the Court had directed that the meeting of the State Bar Council could be held on 16th April, 2011, but the Resolution, if passed, would not be given effect to, till further orders. The matter was ordered to be listed for hearing on 25th April, 2011. In the meanwhile, another writ petition was also filed being Writ Petition No. 6628 of 2011 and the High Court in its final judgment observed that, in both the petitions same relief, on virtually the same grounds, had been claimed. The High Court had framed two basic points for decision:

> Whether Rule 122-A, as framed under Section 15 of the
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> 1.

Advocates Act was, ultra vires; and Whether the second Resolution, dated 16th April, 2011 was

2. invalid?

11. Vide its detailed judgment dated 20th May, 2011, the High Court decided both the issues against the petitioners and dismissed the writ petitions while vacating the interim order. The High Court held as under:

> "22. On point (E) of para 16 above, it was urged from the petitioner's side that if Section 15(1) of the Act is taken to be the source of power for framing Rules prescribing the tenure for an elected chairman, and prescribing curtailment such tenure through a no-confidence motion, then such delegation to subordinate legislation must be struck down as it confers wholly unguided and thus unfettered powers upon the delegate subordinate legislative Authority. In reply it could not be shown that there is any express guidance or that any policy guidance can be deciphered from all or any of the provisions of the Act or from the scheme of the Act, regarding what tenure, if any, should be permitted, and if so under what circumstances and by what process, subject to what restrictions.
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> 23. A totally misplaced reliance was placed upon the case of V. Sudheer v. Bar Council of India [(1993) 3 SCC 176] which merely says that the State Bar Council under Section 24(1)(e) of the Act could have prescribed pre-enrolment training, but the Bar Council of India could not do so under Section 49 of the Act. `Hukam Chand v. Union of India [(1972) 2 SCC 601] was also unnecessarily cited. It deals with power to frame a rule with retrospective effect and has no relevance here. Two decision of the Supreme Court in the case of `Vasanlal Maganbhai vs. State of Bombay [AIR 1961 4(para) and in the case of `Agricultural Market Committee vs. Shalimar Chemical Works' reported in [(1997) 5 SCC 516 (para 26) were cited from the petitioners side, both laying down the same principle, which needs to be discussed. The relevant part of the latter (1997) decision reads "The principle which therefore emerges out is that

the essential legislative function consists of the determination of the legislative policy and the legislature cannot abdicate essential legislative function in favour of another.

Power to make subsidiary legislation may be entrusted by the legislature to another body of its choice but the legislature should before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates".

However, the words of the Supreme Court immediately following the above quoted words bring out the implication. They read "The effect of these principles is that the delegate.....cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making rules, legislate on the field covered by the Act.....". We do not find the rule in question to be widening or constricting the scope of either the Act or any policy laid down under the Act. Nor is the Rule in question legislating upon any field covered by the Act. To the same effect is cited the case of `Addl. District Magistrate Vs. Sir Ra,' (2005) 5 SCC 451 (para 16).

27. This brings us to the last point raised by the petitioners. The decisions of the Delhi and Kerala High Court reported respectively in AIR 1975 Del 200 `Bar Council of Delhi Vs. Bar Council of Kerala Vs.....' were read out before us. It was pointed out that in the Delhi case common law was used to justify an implied power of removal of the elected Chairman on the ground that the statute had not changed the common law. The correctness of the law laid down in that decision was assailed by placing reliance on AIR 1954 SC 210 `Jagan Nath Vs. Jaswant Singh', (1982) 1 SCC 691 `Jyoti Basu Vs. Debi Ghoshal', (1984)1SCC 91 `Arun Kumar Bose Vs. Mohd. Furkan Ansari ` and (1992) 4 SCC 80 `Mohan Lal Tripathi Vs. District Magistrate'.

And it was argued that concepts familiar to common law and equity must remain strangers to Election Law unless statutorily embodied. In respect of the Kerala High Court decision it was argued that the Court fell in error in reading the power of removal as `incidental'. It is not necessary to go into these arguments because as stated above the Rule regarding removal is not justified under Section 15(2) but under Section 15(1) of the Act, which is of wide amplitude and there is no reason to restrict the scope of Rule making power under Section 15(1) so as to exclude (i) prescription of tenure, or (ii) removal on a vote of no-confidence from the ambit of the Rule making power conferred by that provision.

28. Before moving on to the next issue, we may refer to a decision cited by the Respondent no.6 (of W.P. No. 6628). In this interesting decision by a Full Bench of Gujarat High Court in the case of `N.B. Posia Vs. Director' reported in AIR 2002 Guj 348 (PB) (relevant paragraphs are 46 and 66 of that law report) it has been held that though there was no provision in the Act or statutory Rules for removal of an elected Chairman of the Committee, yet (i) the words "ceasing to hold office for any reason" include the removal by a no-confidence motion and (ii) if a holder of an office if

> elected by a simple majority, he can be removed (through no-confidence motion) by a simple majority (even in absence of a statutory provision for such removal). With utmost respect to the said decision, we find ourselves totally unable to subscribe to either of the two propositions therein."

12. It is the legality and correctness of the above reasoning that has been questioned before us in the present appeals. We have already noticed that the questions which arise for consideration in the present cases are of some public importance and are matters which are likely to arise repeatedly in the conduct of affairs of the State Bar Councils. Before we proceed to discuss the legal aspects of the propositions involved in the present cases, it will be more appropriate for the Court to notice the scheme of the Advocates Act and the relevant provisions of the laws and rules.

13. The Parliament of India enacted the Advocates Act on 19th May, 1961 to amend and consolidate the laws relating to legal practitioners and to provide for the constitution of State Bar Councils and an All India Bar Council. The object of the Advocates Act is to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Though the Advocates Act relates to legal practitioners in its pith and substance, it is an enactment dealing with the qualifications, enrolment, right to practise and discipline of advocates. It is not only implicit but clear from the provisions of the Advocates Act that once an advocate is enrolled by any State Bar Council, he becomes entitled to practise in all courts including the Supreme Court. Therefore, this is a legislation which deals with persons entitled to practise before the Supreme Court. In the case of O.N. Mohindroo vs. Bar Council of Delhi & Ors. [AIR 1968 SC 888] this Court held that:

> "(10) The object of the Act is thus to constitute one common Bar for the whole country and to provide machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to regulate the working of the profession and to prescribe rules of professional conduct and etiquette, and the power to punish those who commit breach of such rules. The power of punishment is entrusted to the disciplinary committees ensuring a trial of an advocate by his peers. Section 35, 36 and 37 lay down the procedure for trying complaints, punishment and an appeal to the Bar Council of India from the orders passed by the State Bar Councils. As an additional remedy S. 38 provides a further appeal to the Supreme Court. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrollment, right to practise and discipline of the advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all courts including the Supreme Court. As aforesaid, the Act creates one common Bar, all its members being of one class, namely, advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts, the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore the Act must be held to fall within entries 77 and 78 of List I. As the power of legislation relating to those entitled to practise in the Supreme Court and the High Courts is carved out from the general power to legislate

in relation to legal and other professions in entry 26 of List III, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under entries 77 and 78 of List I and partly under entry 26 of List III."

14. If one looks into the statement of objects and reasons for enacting the Advocates Act, it becomes clear that the Act seeks to implement the recommendations of the All India Bar Committee, made in the year 1953, after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration, and particularly, the recommendations relating to the Bar and to legal education. It was, therefore, conceptualized to legislate a law which will govern the State Councils and the All India Bar Councils in different specified fields. The main features of the Advocates Act were, the integration of the Bar into a single class of legal practitioners known as advocates; the establishment of a common roll of advocates, having a right to practise in any part of the country and in any court, including the Supreme Court; the prescription of uniform qualifications for the admission of persons to become advocates; the division of advocates into senior advocates and other advocates based on merit; and the creation of autonomous Bar Councils, one for the whole of India, i.e, the establishment of an All India Bar Council and one for each State. We may examine some of the relevant provisions of the Advocates Act.

15. Section 2(a) of the Advocates Act defines an `advocate' to mean an advocate entered in any roll under the provisions of the Advocates Act.

`Bar Council' means a Bar Council constituted under the Advocates Act.

On the other hand, the `Bar Council of India' means the Bar Council constituted under Section 4 for the territories to which the Advocates Act extends.

The `State Bar Council' means a Bar Council constituted under Section 3 of the Advocates Act.

The expression `prescribed for the purposes of this Act' means prescribed by the rules made under the Advocates Act.

16. The constitution of State Bar Council is provided under Section 3 of the Advocates Act and as would be evident, this Section has been subjected to numerous amendments made from time to time. The constitution of the State Bar Council has been spelt out in Section 3(2); and Section 3(3) of the Advocates Act which provides that there shall be a Chairman and a Vice- Chairman of each State Bar Council, elected by the members, in such manner as may be prescribed. The Advocates Act, inter alia, imposes certain restrictions and the deeming provisions in terms of Sub-sections (3) and (3A) of Section 3 of the Advocates Act, that every person holding office as Chairman or as Vice-Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977, shall, on such commencement, cease to hold office as the Chairman or Vice-Chairman, as the case may be, but, would continue to carry on the duties of his office until the persons elected as Chairman or Vice-Chairman, as the case may be, in accordance with the provisions of the Advocates Act, assume charge.

17. Section 3(4) of the Advocates Act requires that an advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as a member of the State Bar Council, unless he possesses such qualifications or satisfies such conditions as are prescribed in this behalf.

18. All elections to the State Bar Council are to be held in accordance with the provisions of the Act. Similarly, under Section 4 of the Advocates Act, Bar Council of India shall consist of the persons stated under the Advocates Act. The provisions of the Advocates Act dealing with State Bar Councils under Section 3, are substantially similar to the provisions with respect to the Bar Council of India, under Section 4 of the Advocates Act. Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property and to sue and be sued in its own name.

19. The functions of the State Bar Council and the Bar Council of India are prescribed under Sections 6 and 7 of the Advocates Act. Besides admitting persons as advocates on its rolls [Section 6(a)] and maintaining such rolls [Section 6(b)], it is for the State Bar Councils to provide for the elections of its members [Sections 6(g)] and to perform all other functions conferred on it by or under this Act [Section 6(h)]. Section 6(i) of the Advocates Act allows the State Bar Councils to do all other things necessary for discharging their functions.

20. Functions of the Bar Council of India are of a wider spectrum than that of the State Bar Council. Bar Council of India has to lay down standards of professional conduct and etiquette for the advocates, the procedure to be followed in Disciplinary Committees and to safeguard the rights, privileges and interest of advocates.

21. The Bar Council of India may, under Section 7(k) of the Advocates Act, provide for the election of its members. This provision is identical to Section 6(g) of the Advocates Act. Similarly, Sections 6(h) and 6(i) are equivalent to Sections 7(l) and 7(m) of the Advocates Act.

22. The election to the Bar Councils is for a specified tenure, which is stated under Section 8 of the Advocates Act. The term of the office of an elected member of a State Bar Council, other than an elected member thereof referred to in Section 54, shall be for five years from the date of publication of the results. The Bar Council of India has been vested with the power of extending this period, for reasons to be recorded, and only in the event of the State Bar Council failing to provide for the election of its members before the expiry of its terms. This power is also regulated by an upper limitation of 6 months in such grant of extension.

23. Section 14 of the Advocates Act mandates that no election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote at the elections, if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

24. Section 15 of the Advocates Act is one of the most relevant provisions, which needs to be examined by this Court, as according to the contention raised by the appellants, Rule 122-A is ultra vires Section 15 of the Advocates Act. Section 15 of the Advocates Act gives power to the Bar Council

to make rules to carry out the purposes of `this Chapter'. `This Chapter' means Chapter II of the Advocates Act. Inter alia, this Chapter deals with constitution, election and functions of the Bar Councils. It will be useful to refer to the relevant parts of the provisions of Section 15 of Chapter II of the Advocates Act, which are as under:

> "15. Power to make rules,- (1) A Bar Council may make rules to carry out the purposes of this chapter.
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> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for--

a. (Note:- Subs. by Act 60 of 1973, sec.12) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot , the preparation and revision of electoral rolls and the manner in which the results of elections shall be published];

b. xxx xxx c. (Note:- Clause (c) ins. by Act 38 of 1977, sec. 5) the manner of election of the Chairman and the Vice-Chairman of the Bar council];

d. xxx xxx

e. xxx xxx

f. the filling of casual vacancies in the Bar Council ;

g. the power and duties of the Chairman and the Vice- Chairman of the bar Council ;

(ga) . xxx xxx

(gb) . xxx xxx

h. xxx xxx

i. the constitution and functions of any committee of the Bar council and the term of office of members of any such committee;

(3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India."

25. Chapter III of the Advocates Act deals with `Admission and Enrolment of Advocates'.

Section 28 of the Advocates Act empowers the State Bar Councils to make rules to carry out the purposes of this Chapter, i.e., Chapter III.

26. Section 49 of the Advocates Act appears under Chapter VI, i.e., `Miscellaneous' and empowers the Bar Council of India to make rules for discharging its functions under this Act and besides providing for specific powers, the Bar Council of India may prescribe rules under the residuary provisions of Section 49(1)(j) of the Advocates Act, whereby the Council is empowered to make rules in regard to any other matter which may be prescribed. However, the rules framed would not come into force or take effect unless they have been approved by the Chief Justice of India and if the rules relate to Section 49(1)(e) of the Advocates Act they will not take effect unless they have been approved by the Central Government. Under Section 49A of the Advocates Act, the Central Government is vested with the general power of making rules and these rules could be framed for the whole of India or for all or any of the Bar councils. In the event of conflicts between the rules framed by the Central Government and the Bar Councils, the rules framed by the Central Government shall have precedence in terms of Section 49A(4) of the Advocates Act. We need not elaborate upon other provisions of the Advocates Act at this stage.

27. Now let us notice the relevant provisions in the Bar Council of India Rules (in short, the `Rules') which were enacted in exercise of its rule making powers under the Advocates Act. This power of the Bar Council of India originates from clauses

(c), (d), (e), (f) and (g) of Sub-section (2) of Section 15 read with Sections 4 and 10B of the Advocates Act.

28. Chapter I of Part II of the Rules deals with the matters relating to the Bar Council of India and particularly to the election of members of the Council. The election of the members of the Bar Council of India has to be conducted in terms of Rules 1 to 10 of the Rules. Rule 11 of the Rules makes it mandatory that a member of the Bar Council of India, who is elected as Chairman or Vice-Chairman or member of any Committee of the Council, shall cease to hold office as such Chairman or Vice- Chairman or member of Committee, on the expiry of his term as a member of the Bar Council of India. A restriction is further sought to be placed upon the right of the person to resign. A member can resign from the membership of the Bar Council of India only on the grounds which are genuine and not for the purposes of sharing of terms fixed by the statute. Under Rule 12(2) of the Rules, the Chairman or the Vice-Chairman shall hold the office for a period of two years or until his term of office as member of the Bar Council of India ceases whichever is earlier. The election for the post of Chairman and Vice-Chairman has to be held at the meeting of the Bar Council of India and in accordance with the procedure prescribed under Rule 12 of the Rules. The Chairman and the Vice-Chairman perform the functions of exercising general control and supervision over the affairs of the Bar Council of India, save as otherwise provided in these Rules and subject to the resolutions of the Bar Council of India. Rule 22 of the Rules has significant bearing on the discussion in the present cases. This Rule relates to `no confidence motion' against the Chairman, the Vice-Chairman, or any other office bearer, and its consequences. The Rule 22 reads as under:

> "On a motion of "No confidence" being passed by Bar Council of India by a Resolution passed by majority of not less than 3/4th of the Members present and voting and such majority passing "No Confidence Motion" is more than 2/3rd of the

> total number of Members constituting the Bar Council for the time being, the Chairman or Vice-Chairman or any other office bearer against whom the motion is passed shall cease to hold office forthwith.
>
> Notwithstanding anything contained in the Act or the Rules made thereon, the Chairman or Vice-Chairman shall not preside over the meeting in which motion of "No Confidence" is discussed against him and such meeting shall be convened on a notice of at least one month. The Chairman or the Vice-Chairman shall have the right to vote, speak or take part in the proceeding of the meeting."

29. The Committees excluding the Disciplinary Committees are to be constituted by the Bar Council of India under Chapter II. The framers of the Rules have taken a precaution that the decisions of the Bar Council of India should not be changed without reason and in violation of the relevant provisions. Rule 9 of Chapter II of the Rules provides that the decision on any matter shall be by majority and, in the case of equality of votes, the Chairman of the meeting shall have a second or a casting vote. Rule 10 of the Rules puts a restriction on change of decisions. According to this Rule, no matter once decided, shall be re-considered for a period of 3 months unless the Bar Council of India by a two-third majority of the members present so permits. Under Rule 12 of the same Chapter, in the absence of the Chairman or the Vice-Chairman member at any meeting, a member chosen by the members of the Council shall preside at the meeting.

30. We have noticed these Rules to make a comparative study of the relevant M.P. Rules, to examine their impact in correct perspective. In exercise of the powers conferred by Sections 15(1), 15(2), 28(1) and 28(2), read with Chapter II and other provisions of the Advocates Act, the State Bar Council, with the approval of the Bar Council of India as required under Sections 15(3) and 28(3) of the Advocates Act, has framed the M.P. Rules. The M.P. Rules deal with different facets of functioning of the State Bar Council. It is not necessary for us to deal with all the aspects of the rules governing the functioning of the State Bar Council. The State Bar Council shall elect the members of each Committee in its Meeting as per Rule 1 of Chapter VI. In terms of Rule 3 of the same Chapter, the election to the Committee shall be conducted by the Chairman of the State Bar Council and in case the Chairman of the State Bar Council is a candidate for being elected as a member of any Committee, the State Bar Council, before proceeding with the elections to such Committee, shall appoint any one of its members who is not a candidate for election to such committee, to conduct the election to the said Committee and to declare the results under his signature.

31. Under Chapter XVI, Rule 110 of the M.P. Rules, it is obligatory on the part of the Chairman of the State Bar Council to call a meeting, which he shall preside over, when he receives a requisition for doing so, signed by not less than 3 members of the State Bar Council. The Chairman has to exercise general control and supervision over all the matters of the State Bar Council.

32. The State Bar Council consists of 26 elected members and the Advocate General of the State. Rule 118 is the first rule that falls under Chapter XVIII and it requires that a State Bar Council shall elect a Chairman and a Vice-Chairman from amongst its members for two years. Rule 118 of the M.P. Rules came to be amended and, as per the amended Rule, the State Bar Council has to elect a

Chairman and a Vice-Chairman from amongst its members for 2= years vide Resolution No. 631 of 1998.

33. Rule 122-A of the M.P. Rules was amended by the State Bar Council sometime in the year 1975 and vide its Resolution dated 27th April, 1975, the amendments and newly added rules were sent for approval of the Bar Council of India. Again in its Resolution dated 9th March, 1980, the State Bar Council had recorded that to these amendments/newly added Rules, approval of the Bar Council of India had been obtained. It needs to be noticed that all the members of the State Bar Council had attended the meeting and were signatory to this Resolution. However, Rule 121, which was amended vide Resolution No. 631 of 1998 dated 24th January, 1998 is also stated to have received approval from the Bar Council of India. However, no notification in that regard is stated to have been issued as yet. There is some controversy whether Rule 121 under the same Chapter was amended and whether it attained the approval of the Bar Council of India. This question is not very material for us to examine inasmuch as under both Rules 118 and 121, the period of term of the elected Chairman and the Vice-Chairman is stated to be two years or till they cease to be members whichever is earlier. Besides the above facts, Section 15(3) of the Advocates Act requires that the rules framed by the State Bar Council should be approved by the Bar Council of India. It nowhere requires issuance of any notification which, in some cases, can be a part of legislative provisions. In view of the above factual matrix, it has to be held that this controversy does not require any further consideration by the Court.

34. The provisions with which we are primarily concerned in the present case are contained in Chapter XVIII of the M.P. Rules. They read as under:

> "118. The Bar Council shall elect a Chairman and a Vice-Chairman from amongst its members for two years.
>
> 119. Any candidate for the office of Chairman or Vice-Chairman shall be proposed by one member and seconded by another member.
>
> 120. The election of Chairman or Vice- Chairman unless unanimously agreed upon by all the members present at the meeting, shall be by show of the hands. In case of the tie, the election shall be decided by drawing of lots.
>
> 121. The Chairman, the Vice-Chairman and the Treasurer of the Council, shall hold office for a period of two years or till they cease to be members whichever is earlier. 122-A The Chairman, Vice-Chairman or the Treasurer of the Council could be removed by a vote of no confidence passed by majority of the members, present and voting in a meeting of the Council especially called for the purpose, provided that at least 7 members of the Council have signed the requisition for holding such a special meeting, and such meeting shall be called within a period of 21 days from the date of receipt of the requisition by the secretary. 122-B That the Bar Council by a resolution may reconstitute any of its committee elected earlier by it, provided that the requisition for the purpose signed by at least 7 members of the Council is received by

> the Secretary, and such a special meeting shall be called within 21 days from the date of receipt of the requisition by the Secretary."

35. Rule 122-A of the above Rules deals with the removal of the Chairman, Vice-Chairman or the Treasurer of the State Bar Council by moving a `no confidence motion'. Existence of such a provision is not exceptional, but is a common provision in any electoral system. Our parliamentary system is the most significant example of a democratic process, where the `no confidence motion' under Article 75(3) of the Constitution is an integral part of the process of election. Similarly, under Rule 22 of the Rules, a provision has been made for moving a `no confidence motion' and where such motion is passed by a majority of not less than three-fourth of the members, present and voting, and such majority passing the `no confidence motion' is more than two-third of the total number of members constituting the State Bar Council for the time being, it results in the removal of the Chairman, Vice-Chairman or any other office bearer. Upon passing of such a resolution, the person shall cease to hold the office forthwith. Every democratic process is based upon the freedom to elect and freedom to remove, in accordance with law. Rule 122-A of the M.P. Rules contemplates moving of a `no confidence motion' and upon such motion being passed by majority of the members, present and voting, the office bearer against whom such a motion is moved shall be liable to be removed from such office. For successful application of Rule 122-A, the law requires the following minimal conditions to be satisfied:

> 1. At least 7 members have signed the requisition calling for a meeting of the Council;
>
> 2. Such meeting shall be called within 21 days from the date of receipt of requisition by the Secretary.
>
> 3. Such `no confidence motion' has to be passed by a majority of the members present and voting, in the meeting of the Council, especially called for this purpose.

36. Once the above conditions are satisfied `no confidence motion' can be passed and upon passing of such motion, the person is liable to be removed from the office which he held in the State Bar Council prior to the holding of such meeting. The spirit behind this provision is that where a person is elected by following a process of election to the post of an office in the State Bar Council, he could be removed by following the prescribed procedure in accordance with the Rules.

37. This Court in the case of Mohan Lal Tripathi v. District Magistrate [(1992) 4 SCC 80], examined the validity of a `no confidence motion' passed by the Board on 28th March, 1990 under Section 87-A of the U.P. Municipalities Act against the President who was directly elected by the electorate under Section 43(2) of the Act. The basic argument raised was that he was sought to be removed or recalled by the other elected members, which was a smaller and different body than the one that had elected him and, thus, was violative of the democratic mandate. While rejecting this argument, the Court held as under:

> "2. Democracy is a concept, a political philosophy, an ideal practised by many nations culturally advanced and politically mature by resorting to governance by

> representatives of the people elected directly or indirectly. But electing representatives to govern is neither a `fundamental right' nor a `common law right' but a special right created by the statutes, or a `political right' or `privilege' and not a `natural', `absolute' or `vested right'. `Concepts familiar to common law and equity must remain strangers to Election Law unless statutorily embodied.' Right to remove an elected representative, too, must stem out of the statute as `in the absence of a constitutional restriction it is within the power of a legislature to enact a law for the recall of officers'. Its existence or validity can be decided on the provision of the Act and not, as a matter of policy. In the American Political Dictionary the right of recall is defined as, `a provision enabling voters to remove an elected official from office before his or her term expired'. American Jurisprudence explains it thus, `Recall is a procedure by which an elected officer may be removed at any time during his term or after a specified time by vote of the people at an election called for such purpose by a specified number of citizens'. It was urged that `recall gives dissatisfied electors the right to propose between elections that their representatives be removed and replaced by another more in accordance with popular will' therefore the appellant could have been recalled by the same body, namely, the people who elected him. Urged Shri Sunil Gupta, learned counsel, that since, `A referendum involves a decision by the electorate without the intermediary of representatives and, therefore, exhibits form of direct democracy' the removal of the appellant by a vote of no-confidence by the Board which did not elect him was subversive of basic concept of democracy. Academically the submission appeared attractive but applied as a matter of law it appears to have little merit. None of the political theorists, on whom reliance was placed, have gone to suggest that an elected representative can be recalled, only, by the persons or body that elected him. Recall expresses the idea that a "public officer is indeed a `servant of the people' and can therefore be dismissed by them".

In modern political set up direct popular check by recall of elected representative has been universally acknowledged in any civilised system. Efficacy of such a device can hardly admit of any doubt. But how it should be initiated, what should be the procedure, who should exercise it within ambit of constitutionally permissible limits falls in the domain of legislative power.

`Under a constitutional provision authorizing municipalities of a certain population to frame a charter for their own government consistent with and subject to the Constitution and laws of the State, and a statutory provision that in certain municipalities the Mayor and members of the municipal council shall be elected at the time, in the manner, and for the term prescribed in the charter, a municipal corporation has authority to enact a recall provision'. Therefore, the validity or otherwise of a no-confidence motion for removal of a President, would have to be examined on applicability of statutory provision and not on political philosophy. The Municipality Act provides in detail the provisions for election of President, his qualification, resignation, removal etc. Constitutional validity of these provisions was not challenged, and rightly, as they do not militate, either, against the concept of democracy or the method of electing or removing the representatives. The recall of an elected representative therefore, so long it is in accordance with law cannot be assailed on abstract notions of democracy.

7. Value of `historical evolution' of a provision or `reference to what preceded the enactment' as an external aid to understand and appreciate the meaning of a provision, its ambit or expanse has been judicially recognised and textually recommended. But this aid to construe any provision which is `extremely hazardous' should be resorted to, only, if any doubt arises about the scope of the section or it is found to be `sufficiently difficult and ambiguous to justify the construction of its evaluation in the statute book as a proper and logical course and secondly the object of the instant enquiry' should be `to ascertain the true meaning of that part of the section which remains as it was and which there is no ground for thinking the substitution of a new proviso was intended to alter'. But `considerations stemming from legislative history must not, however, override the plain words of a statute'.

Neither Section 47-A nor 87-A on plain reading suffer from such defect as may necessitate ascertaining their intent and purpose from the earlier sections as they stood. That shall be clear when relevant part of the sections are extracted. But even otherwise there appears no merit in the submission and for that purpose it appears appropriate to narrate, in brief, the history of these sections. When Act 2 of 1916 was enacted it provided for election of Chairman of the Board by a special resolution passed by the members under Section 43(1) of the Act. Sub-section (2) provided for ex-officio nomination by the Government of the Chairman in some municipalities. Section 48 empowered the Government to remove a Chairman after hearing and giving reasons. It did not contain any provision for removal of a Chairman by a vote of no-confidence.

Ten years later Act 2 of 1926 brought about a very significant change in the Act by introducing Section 47-A and conferring power of removal of Chairman, other than ex-officio, by the members of the Board by expressing a vote of no-confidence against him. Section 48, too, was amended and a Chairman who failed to resign after a vote of no-confidence was liable to be removed, by the State Government. Thus it was as far back as 1926 that removal of the Chairman by elected representative found its way in the Act. In 1933 by Act No. 9 another important Section 87-A was added providing for tabling of no-confidence motion against the Chairman. In 1942 Section 47-A was omitted as the provision for resigning by the Chairman was provided for in Section 87-A itself. And hearing of the Chairman by State Government under Section 48 before removal in consequence of vote of no-confidence was deleted. Act 7 of 1949 introduced major changes in Sections 43 and 47-A, of the Act. Section 43 was substituted altogether and, it for the first time, provided for election of the Chairman simultaneously with members of the Board by the electorate directly. Section 47-A which had been omitted by Act 13 of 1942 was reintroduced and a Chairman against whom a vote of no-confidence was passed was required to resign. In the alternative he was permitted to recommend to State Government that the Board itself may be dissolved. And if the State Government agreed with the President then it was the Board which was to go. The intention apparently was to keep a check on the power of Board, too, while taking action against the Chairman as if it was found that exercise of power by the Board was arbitrary and President was being removed for extraneous reasons then the Government could interfere and direct dissolution of the Board itself. Both the sections were amended once again in 1955 and by Act 1 the election of Chairman, known now as President, by the members of the Board was reintroduced, as, `The experience of the working of the Boards since their constitution at the last general elections has generally been one of continuing conflict between Presidents elected by the popular vote on the one hand and the members on the

other. This has greatly prejudiced the normal working of the Boards'. Section 47-A of the Act was substituted completely and it is in this shape that the section stands today.

Section 43(1) was amended, once again, by Act 47 of 1976 and election of President by electorate was revived. In 1982 another change was made in this section by Act 17 and election of President by the members of Board was confined to municipalities other than a city declared as such under Section 3 having a population of less than one lakh inhabitants. Sub-section (2) provided for election of President of Board of such a City Municipality by the electorate directly.

From 1982 onwards, therefore, the direct election of President by the electorate is confined to smaller Municipalities.

10. Even the strained construction of the proviso does not result in coming to the conclusion that there was a legislative omission of not providing for removal, by vote of no-confidence of a President elected by the electors. Merely because the proviso to Section 47-A prevents a Board from holding election of the President in those cases where he had made representation to the Government to supersede the Board, it cannot be stretched to mean that sub-

section (a) of Section 47-A cannot apply to a President elected under Section 43(2). The proviso is intended as check to prevent the Board from taking any step which may render the representation made by the President infructuous as if the Government accepts the representation then it is the Board under sub-section (3) which stands dissolved and not the President. That situation may not arise in election of a President under Section 43(2) as election of President by electors cannot take place immediately, therefore, there is no danger involved, of putting at naught the representation made by the President to State Government, as is in the case of Section 43(1). The proviso cannot be so construed as to nullify the operation of Section 47 2DA to a President elected by electorate. A proviso or an exception is incapable of controlling the operation of principal clause. Result of such construction would lead to absurdity as if Section 47-A is held not to apply to President elected under Section 43(2) he will not be liable to resign even though a vote of no-confidence has been passed against him under Section 87-A and it has been communicated to him. Merely because the proviso cannot apply to one of the situations that may arise cannot be reason to hold that Section 47-A(1)(a) did not apply to President elected by the electorate. `If the language of the enacted part of the statute does not contain provision which are said to occur on it, you cannot derive those provisions by implication from a proviso'. Proviso could be used for adopting a construction as suggested either when there was some doubt about the scope of the section or there would have been at least some reasonable doubt about accepting one or the other construction as became necessary in Jennings v. Kelly on which reliance was placed by the learned counsel for appellant.

38. `Election' is an expression of wide connotation which embraces the whole procedure of election and is not confined to final result thereof. Rejection or acceptance of nomination paper is included in this term. This Court, in the case of N.P. Ponnuswami v. returning Officer, Namakkal Constituency [AIR (39) 1952 SC 64] held that the word `election' has been used in Part XV of the Constitution in a broad sense, that is to say, to connote the entire procedure to be followed to return a candidate to the legislature and even the expression `conduct of elections' in Article 324

specifically points to this wide meaning and the meaning which can be read consistently into other provisions occurring in the Constitution. In this case, the election process as contemplated under the relevant laws is that the members of a State Bar Council are elected by the electorate of advocates on the rolls of the State Bar Council from amongst the electorate itself. The elected members then elect a Chairman, a Vice- Chairman and the Treasurer of the State Bar Council as well as constitute various committees for carrying out different purposes under the provisions of the Advocates Act.

39. In other words, the body which elects the Chairman or Vice-Chairman of a State Bar Council always consists of members elected to that Council. The democratic principles would require that a person who attains the position of a Chairman or Vice-Chairman, as the case may be, could be removed by the same electorate or smaller body which elected them to that position by taking recourse to a `no confidence motion' and in accordance with the Rules. The body that elects a person to such a position would and ought to have the right to oust him/her from that post, in the event the majority members of the body do not support the said person at that time. Even if, for the sake of argument, it is taken that this may not be generally true, the provisions of Rule 122-A of the M.P. Rules make it clear, beyond doubt, that a `no confidence motion' can be brought against the elected Chairman provided the conditions stated in the said Rules are satisfied. As already noticed, the thrust of the challenge to the vires of Rule 122-A is primarily that Section 15 of the Advocates Act does not contemplate the framing of such a Rule by the State Bar Councils. Rule 122-A is stated to be ultra vires Section 15 of the Advocates Act and, it is argued, that the introduction of such provision suffers from the vice of excessive delegation. Section 15 of the Advocates Act empowers the State Bar Councils to frame Rules to carry out the purposes of this Chapter. `This Chapter' obviously means Chapter II of the Act. Let us examine what Chapter II contains. Section 3 requires the constitution of the State Bar Councils. Section 3(3) contemplates that there shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the State Bar Council in such manner as may be prescribed. As already noticed above, another important provision is Section 6 of the Act, which details the functions to be performed by the State Bar Councils. Inter alia, the functions to be performed by the State Bar Councils include, under Sections 6(1)(d), to safeguard the rights, privileges and interests of the advocates on its roll. Under Section 6(1)(g), the function of the Bar Council is to provide for the election of its members and under Sections 6(1)(h) and 6(1)(i), the State Bar Council has to perform all other functions conferred on it by or under this Act and to do all other things necessary for discharging the aforesaid functions. In our view, Sections 6(1)(h) and 6(1)(i) have to be read and interpreted conjointly. We see no reason why the expression `manner of election of its members' in Section 6(1)(g) should be given a restricted meaning, particularly in light of Sections 6(1)(h) and 6(1)(i). The responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act is of a very wide connotation and scope. No purpose would be achieved by giving it a restricted meaning or by a strict interpretation. The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and perfectly and to do all things necessary for discharging its functions under the Act. The term of office of the members of the State Bar Council is also prescribed under Chapter II, which shall be five years from the date of publication of the result of the election. On failure to provide for election, the Bar Council of India has to constitute a special committee to do so instead. Section 15(2) then provides that without prejudice to the generality of the foregoing powers, rules

may be framed to provide for the preparation of electoral rolls and the manner in which the result shall be published. In terms of Section 15(2)(c), the manner of the election of the Chairman and the Vice-Chairman of the Bar Council and appointment of authorities which would decide any electoral disputes is provided. The expression `manner of election of the Chairman' again is an expression which needs to be construed in its wide connotation. The rules so framed by the State Bar Council shall become effective only when approved by the Bar Council of India in terms of Section 15(3) of the Advocates Act.

40. The power of the State Bar Council to frame rules under Section 15 of the Advocates Act as a delegate of the Bar Council of India has to be construed along with the other provisions of the Advocates Act, keeping in mind the object sought to be achieved by this Act. In this regard, greater emphasis is to be attached to the statutory provisions and to the other purposes stated by the legislature under the provisions of Chapter II of the Advocates Act. This is an Act which has been enacted with the object of preparing a common roll of advocates, integrating the profession into one single class of legal practitioners, providing uniformity in classification and creating autonomous Bar Councils in each State and one for the whole of India. The functioning of the State Bar Council is to be carried out by an elected body of members and by the office-bearers who have, in turn, been elected by these elected members of the said Council. The legislative intent derived with the above stated objects of the Act should be achieved and there should be complete and free democratic functioning in the State and All India Bar Councils. The power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable. The functions to be performed by the Bar Councils and the manner in which these functions are to be performed suggest that democratic standards both in the election process and in performance of all its functions and standards of professional conduct which need to be adhered to. In other words, the interpretation furthering the object and purposes of the Act has to be preferred in comparison to an interpretation which would frustrate the same and endanger the democratic principles guiding the governance and conduct of the State Bar Councils. The provisions of the Advocates Act are a source of power for the State Bar Council to frame rules and it will not be in consonance with the principles of law to give that power a strict interpretation, unless restricted in scope by specific language. This is particularly so when the provisions delegating such power are of generic nature, such as Section 15(1) of the Act, which requires the Bar Councils to frame rules to `carry out the purposes of this Chapter' and Section 15(2), which further uses generic terms and expressly states that the Bar Council is empowered to frame rules `in particular and without prejudice to the generality of the foregoing powers'. If one reads the provisions of clauses (a), (c), (g), (h) and (i) of Sub-section (2) of Section 15 of the Act, then, it is clear that framing of rules thereunder would guide and control the conduct or business of the State Bar Councils and ensure maintenance of the standards of democratic governance in the said Councils. Since the office bearers like the Chairman and the Vice-Chairman are elected by a representative body i.e. by the advocates who are the elected members of the Council, on the basis of the confidence bestowed by the advocates/electorate in the elected members, there seems to be no reason why that very elected body cannot move a `no confidence motion' against such office bearers, particularly, when the rules so permit.

41. The Bar Council of India, as already noticed, has also framed rules and permitted moving of `no confidence motion' against its Chairman/Vice-Chairman subject to compliance of the conditions

stated therein. Similarly, Rule 122-A of the M.P. Rules contemplates the removal of a Chairman/Vice-Chairman by a motion of no confidence, passed by a specific majority of the members and subject to satisfaction of the conditions stated therein. This provision, thus, can neither be termed as vesting arbitrary powers in the elected body, nor can it be said to be suffering from the vice of excessive delegation. The power delegated to the elected body is within the framework of the principal Act, i.e., Section 15, read with the other provisions, of the Advocates Act. In terms of Rule 120 of the M.P. Rules, a person can be elected as Chairman/Vice-Chairman only by majority and in case there is a tie, the election shall be decided by drawing of lots. Under Rule 118 of the M.P. Rules a Chairman/Vice-Chairman has to be elected from amongst its members for two years. In other words, the term of office of the Chairman/Vice-Chairman is controlled by the fact that he has to be elected to that particular office. The removal contemplated under Rule 122-A is not founded on a disciplinary action but is merely a `no confidence motion'. It is only the loss of confidence simpliciter i.e. the majority of the members considering, in their wisdom, that the elected Chairman/Vice-Chairman should not be permitted to continue to hold that office, which is the very basis for such removal. One must remember that Rules 118 to 122-B all come within Chapter XVIII of the M.P. Rules and, as such, have to be examined collectively. But for this Chapter, it cannot be even anticipated as to who and how the office of the Chairman/Vice-Chairman of the State Bar Council shall be appointed.

42. Now, let us examine some judgments to substantiate what we have aforestated. In the case of General Officer Commanding-in-Chief v. Subhash Chandra Yadav [(1988) 2 SCC 351], this Court stated the principle that the rules framed under the provisions of a statute form part of the statute, i.e., the rules have statutory force. But a rule can have the effect of a statutory provision provided it satisfies two conditions: (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the statutory authority framing the rule.

43. In the case of Kunj Behari Lal Butail v. State of H.P. [(2000) 3 SCC 40], this Court noticed that it is very common for the legislature to provide general rule making power to carry out the purposes of the Act. When such a power is given, it may be permissible to find out the object of the enactment and then see if the rules framed thereunder satisfy this test of functionality. This test will determine if the rule falls foul of such general power conferred on the delegatee. If the rule making power is expressed in usual general form, then it has to be seen if the rules made are protected by the limits prescribed by the parent Act. Still in the case of Global Energy Ltd. v. Central Electricity Regulatory Commission [(2009) 15 SCC 570], this Court was concerned with the validity of clauses (b) and (f) of Regulation 6- A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant of Trading Licence and other Related Matters) Regulations, 2004 and dealing with this aspect, the Court expressed the view that in some cases guidelines could be assumed, by necessary implication, as already laid down and, while relying upon the case of Kunj Behari Lal Butail (supra), the Court held as under:

> "26. We may, in this connection refer to a decision of this Court in Kunj Behari Lal Butail v. State of H.P.1 wherein a three- Judge Bench of this Court held as under:

> (SCC p. 47, para 14) "14. We are also of the opinion that a delegated power to legislate by making rules `for carrying out the purposes of the Act' is a general delegation without laying down any guidelines; it cannot be so exercised as to bring into existence substantive rights or obligations or disabilities not contemplated by the provisions of the Act itself."

27. The power of the regulation-making authority, thus, must be interpreted keeping in view the provisions of the Act.

The Act is silent as regards conditions for grant of licence. It does not lay down any pre-qualifications therefor. Provisions for imposition of general conditions of licence or conditions laying down the pre-

qualifications therefor and/or the conditions/qualifications for grant or revocation of licence, in absence of such a clear provision may be held to be laying down guidelines by necessary implication providing for conditions/qualifications for grant of licence also."

44. The above enunciated principles clearly show that the language of the statute has to be examined before giving a provision an extensive meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court. In the present case, the minimum guidelines of secrecy and fairness in election have been provided in Part IX of the Rules, which have been framed in exercise of the supervisory powers under Sections 49(1)(a), 49(1)(i) and 49(1)(j) of the Advocates Act. Further, clause (5) of this Part even extends to the State Bar Councils the power to independently resolve all election disputes through tribunals constituted for this purpose. Therefore, the powers delegated have an in-built element of guidance that the Chairman/Vice-Chairman will be appointed and regulated by the majority members of the State Bar Council. Their conduct, and the conduct of the State Bar Council as a whole, is to be maintained in consonance with democratic principles and keeping the high professional standards of advocates in mind. Thus, it is not a power which falls beyond the purview and scope of Section 15 of the Advocates Act read in conjunction with other provisions, particularly Chapter II and also keeping in view the object of the Act.

45. Purposive construction, to a large extent, would help to resolve the controversy raised in the present case. The purpose of the Advocates Act is the democratic and harmonious functioning of the State Bar Councils, to achieve the object and purposes of the Act. We are unable to see how the provisions of Rule 122-A fall foul of the ambit and scope of Section 15 of the Advocates Act and, for that matter, any other provisions of that Act. On the contrary, they are in line with the scheme of the parent Act.

46. Having dealt with the primary aspect of this case, now we would consider the contention that the recall of the Chairman/Vice-Chairman, by a smaller and distinct body of members of the State Bar Council, does not fall within the purview of the authority of the delegatee Council, under Section 15(2)(c) of the Advocates Act, i.e. to legislate on `the manner of election'. Even on this ground, according to the appellants, the provisions of Rule 122-A are unsustainable. We find no merit in this contention as well as it has no substance. The election to the post of Chairman/Vice-Chairman of the State Bar Council is not by the larger body, i.e., the advocates enrolled on the rolls of the State Bar Council, but is by a distinct body, i.e. elected members of the State Bar Council. Once they elect the Chairman/Vice-Chairman of the State Bar Council as per the scheme of Rules 118 to 123, then all actions taken by such body would have to be accepted by all concerned as correct, if they are within the domain of the rules governing such body. We do not consider it necessary to deliberate on this issue in any greater detail. Suffice it to refer to the judgment of this Court in the case of Mohan Lal Tripathi (supra), where the Court was concerned with an elected candidate, who, in terms of the statute, was elected by a larger electorate and was recalled by smaller representative body rather than by the electorate itself. Similar arguments were raised that the recall was violative of the spirit and purpose of the election and was arbitrary, irrational and violative of the democratic norms. These arguments were rejected by the Court, after detailed deliberation and examining the fields of democratic norms. We have already referred in paragraph 37 of this judgment, the relevant parts of the said discussion.

47. Similarly, in the case of Ram Beti v. District Panchyat Raj Adhikari [(1998) 1 SCC 680], the Court was dealing with a situation where a Pradhan of the Panchayat was removed by the Gram Panchayat, a smaller body, instead of removal by the Gram Sabha which had elected him. They questioned the validity of Section 14 of the U.P. Panchayati Raj, Act, 1947. The Court, while rejecting the contentions, as are even being raised before us in the present case, held as under:

> "6.... It is no doubt true that under Section 11(1) of the Act provision is made for holding of two general meetings of the Gram Sabha in each year as well as for requisitioning of a meeting by one-fifth of the members. But the legislature, in its wisdom, thought it proper that the matter of removal of a Pradhan, instead of being considered at the meeting of the Gram Sabha, should be considered by the members of the Gram Panchayat. The considerations which weighed with this Court for upholding the validity of sub- section (2) of Section 87-A of the U.P. Municipalities Act, 1916 relating to the removal of the President of a Municipal Board in Mohan Lal Tripathi are, in our opinion, also applicable to the removal of the Pradhan of the Gram Sabha. Although under Section 14 of the Act the power of removal of a Pradhan is conferred on the members of the Gram Panchayat, which is a smaller body than the Gram Sabha, but the members of the Gram Pancyhayat, having been elected by the members of the Gram Sabha, represent the same electorate which has elected the Pradhan. The removal of a Pradhan by two-third members of the Gram Sabha through their representatives. Just as the Municipal Board is visualized as a body entrusted with the responsibility to keep a watch on the President, whether elected by it or by the electorate, so also the Gram Panchayat is visualized as a body entrusted with the responsibility to keep a watch on the Pradhan who is not elected by it and is

> elected by the members of the Gram Sabha. An arbitrary functioning of a Pradhan is disregard of the statute or his acting contrary to the interests of the electorate could be known to the members of the Gram Panchayat only and, in the circumstances, it is but proper that the members of the Gram Panchayat are empowered to take action for removal of the Pradhan, if necessary. It is no doubt true that in Section 11 of the Act provision is made for holding two general meetings of the Gram Sabha in each year and for requisitioning of a meeting of the Gram Sabha by one-fifth of its members. But, at the same time, we cannot lose sight of the fact that the number of members of the Gram Sabha is also fairly large. It would range from one thousand to more than three thousand. Elections to public offices even at village level give rise to sharp polarization of the electorate on caste or communal basis. The possibility of disturbance of law and order in a meeting of the Gram Sabha called for considering a motion for removal of the Pradhan cannot be excluded. Moreover, there cannot also be due deliberation of a serious matter as no- confidence motion by a very large body of persons. While amending Section 14 of the Act so as to confer the power to remove the Pradhan of a Gram Sabha on the members of the Gram Panchayat the legislature must have taken into consideration the prevailing social environment. Moreover, by way of safeguard against any arbitrary exercise of the power of removal it is necessary that the motion must be passed by a majority of two- thirds of the members present and voting.
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> 7. For the reasons aforementioned we are unable to hold that Section 14 of the Act, insofar as it empowers the members of the Gram Panchayat to remove the Pradhan of a Gram Sabha by moving a motion of no confidence, is unconstitutional and void being violative of the concept of democracy or is arbitrary and unreasonable so as to be hit by Article 14 of the Constitution."

48. For the reasons aforestated, as well as the reasons recorded in the above reproduced judgments, which, with respect, we adopt, we have no hesitation in rejecting this contention of the appellants.

49. The next argument that was raised on behalf of the appellants is that, in view of Rule 15 of Chapter V of the M.P. Rules, the State Bar Council is debarred from re-considering the same matter for a period of three months, and as such, the decision passing `no confidence motion' is vitiated because of the limitation contained in the said Rule. Rule 15 of Chapter V reads as under:

> "No matter once decided shall be reconsidered for a period of three months unless the Council by a two-third majority of the members present, so permits."

50. Though the language of the above Rule clearly shows that no matter once decided shall be reconsidered for a period of three months but clearly makes an exception that wherever 2/3rd majority of the members present of the State Bar Council permits, this bar will not operate. In other words, there is no absolute bar and the Rule makes out an exception when the matters could be reconsidered. But that is not the situation in the present case. The first pre-requisite under this rule is that matter should be `once decided', and then alone, the bar of re- consideration would operate;

that too depending on the facts and circumstances of a given case. `Once decided' obviously means the matter should be concluded or finally decided in contradistinction of being `kept pending' or `deferred'. Therefore, we must now examine, whether the matter in relation to `no confidence motion' had been finally decided at any point of time before the date on which the `no confidence motion' is stated to have been passed. This also we are proceeding to consider on the assumption that the matter related to `no confidence motion', for the sake of arguments, would be covered under Rule 15 of the M.P. Rules.

51. After issuance of a notice in accordance with the M.P. Rules, admittedly, the 15th Meeting of the General Body of the State Bar Council was held on 27th March, 2011 at Jabalpur, during which two requisitions were made: one, relating to a `no confidence motion' against the Chairman/Vice-Chairman, and second, that there should be re-election of the Committees. In the minutes, it was also stated that the Chairman/Vice- Chairman had offered their resignation subject to withdrawal of `no confidence motion'. There were discussions on this matter and it was resolved that the agenda of the meeting would be circulated on the same day itself, by post, to all the members of the State Bar Council, whether present at the meeting or not and the next meeting would be held on 16th April, 2011 at Jabalpur. These notices were issued and as decided the meeting was held on 16th April, 2011. During the course of the meeting on 16th April 2011, some of the members left the meeting, the Advocate General of Madhya Pradesh presided over the continuation of the meeting and the `no confidence motion' was passed on the same day. Of course, there is some dispute with regard to the recording of the minutes of this meeting. We have already reproduced the minutes which were recorded by the respective parties. We are not very inclined to rely upon the minutes produced by the appellants, inasmuch as they are not signed by all the members present and voting. Even if, for the sake of arguments, we take that the minutes produced by the appellants are correct, then it must follow that both the meetings took place on 16th April, 2011. However, it is obvious from the record that in the 15th meeting of the General Body held on 27th March, 2011, no final decision had been taken and it was decided to circulate the minutes and other papers of the meeting to all members.

52. Another ancillary argument to the above is that by virtue of the bar under Rule 15 of the M.P. Rules, the Chairman and Vice-Chairman were elected to their respective posts in February 2011 and, as such, the election itself was a `decision' which was incapable of being reconsidered and revised in the meetings of March and April, 2011. According to the appellants, the limitation contained in Rule 15 of the M.P. Rules shall vitiate the decision of passing a `no confidence motion'. This argument is also misconceived in law and on the facts of the present case. Election is not a `decision' as contemplated under Rule 15 of the M.P. Rules. It is not a matter on which the State Bar Council decides, as firstly, this matter falls within the discretion of individual advocates on the rolls of the State Bar Council to elect the representative members of the said Councils, and secondly it falls within the discretion of such elected representatives to elect a person as Chairman/Vice-Chairman. It is not a `decision' which relates to the matters as contemplated under the M.P. Rules. Passing of a `no confidence motion' in law, therefore, cannot be termed as reconsideration of the decision taken.

53. Once the Council is constituted in terms of the Act and the Rules framed thereunder, then it has to take decisions in the role of a Council in relation to various matters, including rejecting or passing

a `no confidence motion'. This is even clear from the case of Ram Beti (supra) wherein it was held that the smaller representative body is better equipped to make a recall decision and it has more information in its hands, to make such a recall decision. The decision is, therefore, substantially different in character from the election decision. A statutory bar may exist in this respect, in some cases, but in its absence, the Court cannot infer or imply a time bar on challenging the results of election as a feature of common law or general democratic principles.

54. Thus, the bar contemplated under Rule 15 of the M.P. Rules does not operate, on merits, when applied to the facts of the present case. Thus, we have no hesitation in rejecting this contention, raised by the appellants.

55. It is also the contention of the appellants that the group supporting the Chairman/Vice-Chairman of the State Bar Council, in the meeting dated 16th April, 2011, had raised the issue that `no confidence motion' and reconstitution of the committee could not be considered in view of the bar contained in Rule 15 of the M.P. Rules, in the form of `a point of order' against the requisition asked for by the other group. Firstly, we have already rejected the contention of the appellants that the matters were discussed and concluded, either through the February 2011 elections or in the 15th Meeting of the Council dated 27th March, 2011, as, according to the minutes, the meeting had only been deferred for issuance of appropriate agenda and requisition notice to all the members present or not present. Treating it as a valid point of order, the Chairman had accepted the same and then he along with some members, had walked out of the meeting.

56. As indicated above, the meeting then was presided over by the Advocate General, Madhya Pradesh, whereafter the `no confidence motion' was passed. We are unable to accept the approach adopted by the Chairman/Vice-Chairman as, on the peculiar facts and circumstances of this case, it ex facie was untenable and without any basis. It was the duty of the Chairman/Vice-Chairman to face the `no confidence motion', as they were elected office bearers and if they had lost the confidence of majority group which elected them to this post and a `no confidence motion' had been moved against them in terms of Rule 122-A, they were expected to face the consequences thereof. This, alone, would have served the ends of democratic governance and proper functioning of the State Bar Council. Therefore, in our considered view, even on this issue, the appellants cannot succeed.

57. Then it is contended that removal from an office is punitive. It being punitive, there has to be a just cause and adherence to the principles of natural justice by granting hearing before the removal from office is given effect to. To clarify, it is submitted that removal from an elected office, even in face of a valid rule, would have to meet these twin requirements of just cause and hearing, before a person can be removed from office. On the other hand, the learned counsel appearing for the respondents, while relying upon the judgment of the Delhi High Court in the case of Bar Council of Delhi v. Bar Council of India [AIR 1975 Del 200], contended that by application of the General Clauses Act, 1897 even in absence of any specific provision, the right of persons to elect a Chairman/Vice-Chairman would include the right to undo the same by moving a `no confidence motion'.

58. It needs to be noticed at the very threshold of consideration of this submission that `no confidence motion' cannot be equated in law to removal relatable to a disciplinary action or as a censure. It is stricto senso not removal from office, but a removal resulting from loss of confidence. It is relatable to no confidence and is not removal relatable to the conduct or improper behaviour of the elected person. Even the concept of `term' under the Rules, is referable to and is controlled by a super-imposed limitation of no confidence. This tenure cannot be compared to a statutory tenure as is commonly understood in the service jurisprudence. The distinction between removal by way of `no confidence motion' and removal as a result of disciplinary action or censure is quite well accepted in law. They are incapable of being inter-changed in their application and must essentially operate in separate fields. The Court has always prioritized harmonious functioning of the State Bar Council. In the case of Afjal Imam v. State of Bihar and others, [JT 2011 (5) 19], the recall of a Mayor and the re-election of a different Mayor in his place has been held to implicitly shorten the term of the appointees of the previous Mayor, if such is in the interest of smooth functioning of the body.

59. Noticing this distinction, a Bench of this Court in the case of Babubhai Muljibhai Patel v. Nandlal Khodidas Barot [(1974) 2 SCC 706], while dealing with the question whether grounds for removal must necessarily be specified when passing a motion of no confidence, noticed the difference between `no confidence motion' and a censure motion and described the same as follows:

> "19.....It does not, however, follow therefrom that the ground must also be specified when a motion of no confidence is actually passed against a President. It is pertinent in this context to observe that there is a difference between a motion of no confidence and a censure motion. While it is necessary in the case of a censure motion to set out the ground or charge on which it is based, a motion of no confidence need not set out a ground or charge. A vote of censure presupposes that the persons censured have been guilty of some impropriety or lapse by act or omission and it is because of that lapse or impropriety that they are being censured. It may, therefore, become necessary to specify the impropriety or lapse while moving a vote of censure. No such consideration arises when a motion of no confidence is moved. Although a ground may be mentioned when passing a motion of no confidence, the existence of a ground is not a prerequisite of a motion of no confidence. There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no-confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members. We may in the above context refer to page 591 of Practise and Procedure of Parliament, Second Ed. by Kaul and Shakdher wherein it is observed as under:
>
> "A no-confidence motion in the Council of Ministers is distinct from a censure motion. Whereas, a censure motion must set out the grounds or charge on which it is based and is moved for the specific purpose of censuring the Government for certain policies and actions, a motion of no confidence need not set out any grounds on which it is based. Even when grounds are mentioned in the notice and read out in the House, they do not form part of the no- confidence motion."

60. Still, in another case, titled B.P. Singhal v. Union of India & Anr. [JT 2010 (5) SC 640], the Court, while dealing with the doctrine of pleasure in relation to the term of the office of the Governor, for a tenure of 5 years, noticed that Article 156(1) of the Constitution dispenses with the need to assign reasons or the need to give notice in the event of removal. But the need to act fairly and reasonably still cannot be dispensed with. Exception was carved out against acting in a manner which is arbitrary, capricious or unreasonable. In face of the above enunciated principles, we are of the considered view that the concept of just cause and right of hearing, the features of common law, are not applicable to the elected offices where a person is so elected by majority in accordance with statutory rules. It would also have hardly any application to moving of a `no confidence motion' in so far as these are controlled by specific provisions and are not arbitrary or unreasonable. There is nothing in Rule 122-A of the M.P. Rules that requires adherence to these two concepts when a motion of no confidence is moved against a sitting Chairman/Vice-Chairman. Of course, it does not imply that the action can be arbitrary or capricious and absolutely contrary to the spirit of the Rule. There is no dispute in the facts of the present case that majority of the members had passed the `no confidence motion' in the 16th Meeting of the State Bar Council on 16th April, 2011. We are not able to accept the view taken by the High Court of Delhi in the case of Bar Council of Delhi (supra) in saying that solely with the aid of General Clauses Act, the power to elect would deem to include power to remove by a motion of no confidence, particularly, with reference to the facts and circumstances of this case. The power to requisition a `no confidence motion' and pass the same, in terms of Rule 122-A of the M.P. Rules, is clear from the bare reading of the Rule, as relatable to loss of faith and confidence by the elected body in the elected office bearer. We have already discussed in some detail and concluded that Rule 122-A of the M.P. Rules is not ultra vires the provisions of the Advocates Act, including Section 15. When the law so permits, there is no right for that office bearer to stay in office after the passing of the `no confidence motion' and, in the facts and circumstances of the present case, it is clearly established that the appellants had lost the confidence of the majority of the elected members and thus the Resolution dated 16th April, 2011 cannot be faulted with.

61. Before concluding the judgment we would proceed to record our conclusions and answer the three questions posed at the outset of the judgment as follows:

> Answers to:
>
> Question We hold that the provisions of Rules 121 and 122-A (in particular) of the M.P. Rules are not ultra vires of the provisions, including the provisions of Section 15, of the Advocates Act. These rules also do not suffer from the vice of excessive delegation.
>
> In view of our answer to Question No. 1, there is no need for us to specifically answer this question.
>
> In view of the language of Section 15(3) of the Advocates Act and the factual matrix afore-noticed by us, it is clear that the amended rules of the M.P. Rules had received the approval of the Bar Council of India, particularly Rule 122-A. The Rules would

not be invalidated for want of issuance of any notification, as it is not the requirement in terms of Section 15(3) of the Advocates Act and in any case would be a curable irregularity at best.

For the reasons afore-stated, we dismiss these appeals.

.....J. [Dr. B.S. Chauhan] .....J. [Swatanter Kumar] New Delhi;

August 9, 2011