IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2023

PRONOUNCED ON : 06.11.2023

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Writ Appeal Nos.1354, 1739, 1741 and 2014 of 2023

W.A.No.1354 of 2023:

The Secretary,
Madras Bar Association,
High Court,
Chennai 600 104. ... Appellant

vs.

1. Elephant G. Rajendran
   Advocate,
   No.27, Srinivasa Reddy Street,
   Chennai 600 017.

2. The Registrar General,
   High Court of Madras,
   Chennai 600 104.

3. A.Mohandoss,
   Advocate,
   No.13/2, Khan Street,
   Choolaimedu,
   Chennai 600 094.

4. S.Mahaveer Shivaji,
Advocate,
No.7C, Shankar Complex,
Kalaimagal Nagar,
Ekkatuthangal,
Chennai 600 032. ... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 22.06.2023 made in W.P.No.22460 of 2012.

For Appellant : Mr.G.Masilamani, Senior Counsel
for Mr.P.Srinivas

For 1st Respondent : Mr.Elephant G. Rajendran

For 2nd Respondent : Mr.Karthik Ranganathan,
Standing Counsel

For 3rd Respondent : Mr.R.Sankarasubbu
for Mr.A.Mohandoss

For 4th Respondent : Mr.S.Mahaveer Shivaji

W.A.No.1739 of 2023:

The Secretary,
Madras Bar Association,
High Court,
Chennai 600 104. ... Appellant

vs.

1. A.Mohandoss,
Advocate,
No.13/2, Khan Street,
Choolaimedu,
Chennai 600 094.

2. Elephant G. Rajendran
   Advocate,
   No.27, Srinivasa Reddy Street,
   Chennai 600 017.

3. The Registrar General,
   High Court of Madras,
   Chennai 600 104. ... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 16.06.2023 made in W.M.P.No.17204 of 2023 in W.P.No.22460 of 2012.

For Appellant : Mr.V.Prakash, Senior Counsel
for Mr.P.Srinivas

For 1st Respondent : Mr.R.Sankarasubbu
for Mr.A.Mohandoss

For 2nd Respondent : Mr.Elephant G. Rajendran

For 3rd Respondent : Mr.Karthik Ranganathan,
Standing Counsel

W.A.No.1741 of 2023 :

The Secretary,
Madras Bar Association,
High Court,
Chennai 600 104. ... Appellant

vs.

1. S.Mahaveer Shivaji,
   Advocate,
   No.7C, Shankar Complex,
   Kalaimagal Nagar, Ekkatuthangal,
   Chennai 600 032.

2. Elephant G. Rajendran
   Advocate,
   No.27, Srinivasa Reddy Street,
   T.Nagar, Chennai 600 017.

3. The Registrar General,
   High Court of Madras,
   Chennai 600 104. ... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 16.06.2023 made in W.M.P.No.17372 of 2023 in W.P.No.22460 of 2012.

For Appellant : Mr.E.Om Prakash, Senior Counsel for Mr.P.Srinivas

For 1st Respondent : Mr.S.Mahaveer Shivaji

For 2nd Respondent : Mr.Elephant G. Rajendran

For 3rd Respondent : Mr.Karthik Ranganathan, Standing Counsel

W.A.No.2014 of 2023:

Vijay Narayan ... Appellant

vs.

1. Elephant G. Rajendran
   Advocate,
   No.27, Srinivasa Reddy Street,
   T.Nagar, Chennai 600 017.

2. The Registrar General,
   High Court of Madras,

Chennai 600 104.

3. The Secretary,
Madras Bar Association,
High Court,
Chennai 600 104.

4. A.Mohandoss,
Advocate,
No.13/2, Khan Street,
Choolaimedu,
Chennai 600 094.

5. S.Mahaveer Shivaji,
Advocate,
No.7C, Shankar Complex,
Kalaimagal Nagar,
Ekkatuthangal,
Chennai 600 032. ... Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 22.06.2023 made in W.P.No.22460 of 2012.

For Appellant : Mr.P.S.Raman, Senior Counsel
for Mr.K.Gowthamkumar

For 1st Respondent : Mr.Elephant G. Rajendran

For 2nd Respondent : Mr.Karthik Ranganathan,
Standing Counsel

For 3rd Respondent : Mr.P.Srinivas

For 4th Respondent : Mr.R.Sankarasubbu
for Mr.A.Mohandoss

For 5th Respondent : Mr.S.Mahaveer Shivaji

* * * * *

COMMON JUDGMENT

S.VAIDYANATHAN,J.

Challenging the order dated 22.06.2023 passed by the learned Single Judge in W.P.No.22460 of 2012, the Madras Bar Association has filed Writ Appeal No.1354 of 2023 and Mr.Vijay Narayan, learned Senior Advocate, has filed Writ Appeal No.2014 of 2023. The Madras Bar Association has filed W.A.No.1739 of 2023 challenging the order dated 16.06.2023 passed in W.M.P.No.17204 of 2023, impleading Mr.A.Mohandoss, Advocate, as a party Respondent in the said Writ Petition and W.A.No.1741 of 2023 challenging the order dated 16.06.2023 passed in W.M.P.No.17372 of 2023, impleading Mr.S.Mahaveer Shivaji, Advocate, as a party Respondent in the said Writ Petition.

2. As the issue involved in all the Writ Appeals is one and the same, cases are taken up for disposal by a common judgment.

3. The above batch of Writ Appeals was argued at length by the learned counsel on either side, consuming much of the Court's time.

4. The cause of action to the *lis* pertains to an incident alleged to have taken place on 06.01.2012. In the Affidavit filed in W.P.No.22460 of 2012, the Writ Petitioner viz. Mr.Elephant G.Rajendran has stated that on 06.01.2012, around 11.30 a.m., his son, Mr.R.Neil Rashan, who is a

practising Advocate in the Madras High Court, in an urge to get his thirst quenched, rushed to the water filter kept in the hall of the Madras Bar Association and that, when he was filling water in a tumbler, Mr.P.H.Pandian, learned Senior Advocate, came to him and forcefully snatched the tumbler from his son's hand and yelled at him that he should not drink water there and asked him to get out. It is further averred that being shocked at the behaviour of the said Senior Advocate, Mr.Neil Rashan left the place with humiliation. On the same day, i.e. on 06.01.2012, the Writ Petitioner had filed a complaint to the Secretary of the Madras Bar Association (MBA) and that he received a reply dated 12.01.2012 from the Association, denying the alleged incident and also stating that a non-member of their Association should not enter and use the facilities of their Association. Subsequently, on 18.01.2012, the Writ Petitioner sent another Petition to the Madras Bar Association, requesting to take action against the said Senior Advocate. In response, the then Secretary of the said Association had replied that suitable action would be initiated against the said member after the Association election. As no action was taken against the said member, the Writ Petitioner issued a notice to the Madras Bar Association on 24.06.2012, to which, there was no reply from the latter.

5. It is further stated by the Writ Petitioner in his Affidavit that, he had already sent a Petition on 13.07.2012 to the Registrar General of this Court to withdraw the Senior Advocate designation of Mr.P.H.Pandian. As no reply was forthcoming from the Registrar General, he filed a Writ Petition in W.P.No.22460 of 2012 seeking a direction to the Respondent/Registrar General of this Court, *to consider and pass orders on his Petition dated 13.07.2012 and to take suitable action within a time frame.*

6. When the said Writ Petition was taken up for admission, the learned Single Judge directed the Respondent/Registrar General of this Court to file an Affidavit stating the location and extent of facilities of drinking water and toilet provided for the Advocates, Court staff and visiting litigants within the precincts of the High Court campus. Accordingly, an Affidavit dated 27.08.2012 was filed by the then Registrar General of this Court.

7. The Madras Bar Association, which was impleaded as a party Respondent to the said Writ Petition, in the counter Affidavit filed on 28.08.2012, has stated that the allegations made by the Writ Petitioner are incorrect and do not reflect the correct facts. It is further stated therein that *potable and protected drinking water has been made available to the*

members of their Association and that water charges are collected along with subscription every year from the members and the said amount is used for purchase and supply of water to their members. It is also stated therein that *the Respondent/Registrar General of this Court does not exercise supervisory control over the members of the Association and that the designation of 'Senior Advocate' is conferred by the High Court and the Advocates who are designated as Senior Advocates find their names in a separate roll maintained by the Bar Council under Section 2 of the Advocates Act.*

8. The Writ Petitioner, Mr.Elephant G.Rajendran, is a practising Advocate of this Court. In W.P.No.22460 of 2012, he has appeared as party-in-person. It is stated that during the pendency of the Writ Petition, the Writ Petitioner lost his son Mr.R.Neil Rashan, in a road accident. Also, Mr.P.H.Pandian, learned Senior Advocate, against whom the Writ Petitioner has levelled serious allegations, is no more. When the Writ Petition was taken up for final hearing, practising Advocates, Mr.A.Mohandoss and Mr.S.Mahaveer Shivaji filed Miscellaneous Petitions in W.M.P.No.17204 of 2023 and W.M.P.No.17372 of 2023, respectively, in W.P.No.22460 of 2012 seeking impleadment as parties to the Writ Petition and vide order dated 16.06.2023 in the said

Miscellaneous Petitions, they were impleaded as Respondents 3 and 4, respectively.

9. The Writ Petitioner had also filed two Miscellaneous Petitions, one in W.M.P.No.16543 of 2023 seeking to *evict/shift the MBA from the High Security Zone of Madras High Court* and another, in W.M.P.No.16547 of 2023 seeking *a direction to the Registrar General, High Court, Madras and the Madras Bar Association not to conduct birthday celebrations and tea parties within the Association, pending the Writ Petition.*

10. The learned Single Judge has passed a detailed order, disposing of the Writ Petition in W.P.No.22460 of 2012 on 22.06.2023, with the following directions:

> "118. ...
>
> (1) The second respondent / Madras Bar Association is directed to pay a sum of Rs.5,00,000/- [Rupees Five Lakhs Only] to the petitioner towards compensation for the untoward incident happened in the Madras Bar Association premises on 06.01.2012, since the second respondent is vicariously liable for the conduct of its own members.
>
> (2) The second respondent / Madras Bar Association is directed to admit the respondents 3

and 4 as members of the Madras Bar Association within a period of one (1) week from the date of receipt of a copy of this order.

(3) The Madras Bar Association / second respondent is directed to distribute applications for membership to all the interested practising lawyers in the High Court of Madras and admit them as members without discriminating any lawyer on the basis of caste, gender, religion, economic status, personal affiliations with Senior Advocates or dignitaries and political affiliations without reference to the draconian by-laws regarding eligibility criteria to become the member of the Madras Bar Association or by amending the by-laws suitably. In the event of failure on the part of the second respondent, the Madras High Court Administration and the Bar Council of Tamil Nadu are bound to initiate all appropriate actions in the manner known to law.

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

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

11. Mr.G.Masilamani, learned Senior Counsel appearing for the Appellant/Madras Bar Association in W.A.No.1354 of 2023 argued at length. He submitted that the Writ Petitioner allegedly seeks to espouse the cause of the public and no personal relief was sought therein, as is evident from paragraphs 4 and 18 of the Affidavit filed by him in the Writ Petition, which read as under:

"4. ... I am filing this Writ Petition not as a father and son, but filing as an Advocate and Junior Advocate.

18. ... I submit that I am filing this for vindicating not only my son's valuable professional rights **but also the interest of the entire professional legal community as well as in the interest of society and the public.**"

11(a) Thus, according to the learned Senior Counsel, when the Writ Petitioner was espousing a public cause, in respect of the alleged ill-treatment meted out to his son by Late Mr.P.H.Pandian, he cannot maintain the *lis* as an adversarial litigation and the same is one in public interest. Therefore, when the Rules to regulate the Public Interest Litigations filed under Article 226 of the Constitution of India, mandate certain compliances, the Writ Petition is not maintainable for want of compliance of the same.

11(b) It is his contention that the learned Single Judge failed to note that the Writ Petitioner had sought the relief of mandamus to dispose of his representation dated 13.07.2012 made to the Registrar General of the Madras High Court and not against the Madras Bar Association. Thereby, the learned Single Judge erred in issuing directions and passing adverse orders against the Madras Bar Association beyond the scope of the relief sought in the Writ Petition. It is also his contention that the learned Single Judge erred in *not granting a reasonable opportunity* to the Registrar General to file counter in the interim Applications in W.M.P.No.16543 of 2023 and W.M.P.No.16547 of 2023 filed by the Writ Petitioner. He went on to contend that the learned Single Judge erred in allowing the Writ

Petitioner to totally change the nature and scope of the Writ Petition under the guise of the abovesaid interim applications that contain issues and reliefs beyond the scope of the relief sought in the Writ Petition.

11(c) Learned Senior Counsel also contended that the impugned order dated 22.06.2023 passed by the learned Single Judge suffers from jurisdictional error on account of infraction of Rule 17(1)(i) and (v) of the Madras High Court Writ Rules, 2021, which came into force w.e.f. 08.09.2021.

11(d) As regards the issue of process of membership, it is the contention of the learned Senior Counsel that the learned Single Judge erred in *suo motu* taking up the issue of by-laws of the Madras Bar Association and making unjust comments on the by-laws of the Association as 'draconian', more particularly, when the same have not been put to challenge by any of the parties or by any member of the Appellant Association.

11(e) He also contended that the learned Single Judge failed to note that the prayer in the Writ Petition was to take action against an individual member of the Madras Bar Association, who is alleged to have ill-treated the son of the Writ Petitioner. When the Writ Petitioner did not seek any compensation from the Madras Bar Association, the learned Single Judge

has *suo motu* granted a huge amount as compensation to the Writ Petitioner to be paid by the Appellant/Association, with regard to the said facts, as if the Madras Bar Association is vicariously liable for the alleged incident.

11(f) Learned Senior Counsel vehemently argued that the learned Single Judge erred in not appreciating the fact that the Writ Petitioner has not sought any relief in the Writ Petition in his favour and that he has not pleaded any statutory duty against the Registrar General of this Court to seek disposal of his representation, without first proving the facts which are disputed. He went on to contend that the Writ Petitioner had erred in enlarging the scope of the Writ Petition in 2023, eleven years after its filing, that too, after the death of the person against whom the allegation was made.

11(g) To substantiate his stand, Mr.G.Masilamani, learned Senior Counsel appearing for the Madras Bar Association in W.A.No.1354 of 2023, has relied on the following decisions:

(i) **State of Punjab vs. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770**

> "65. The court is "not to yield to spasmodic sentiments, to vague and unregulated benevolence". The court "is to exercise discretion informed by tradition, methodised by analogy, disciplined by system". This

Court in State of Rajasthan v. Prakash Chandobserved as under: (SCC pp. 38-39, para 58)

> "58. ... Judicial authoritarianism is what the proceedings in the instant case smack of It cannot be permitted under any guise. Judges must be circumspect and self-disciplined in the discharge of their judicial functions.... It needs no emphasis to say that all actions of a Judge must be judicious in character. Erosion of credibility of the judiciary, in the public mind, for whatever reasons, is the greatest threat to the independence of the judiciary. Eternal vigilance by the Judges to guard against any such latent internal danger is, therefore, necessary, lest we 'suffer from self-inflicted mortal wounds'. We must remember that the Constitution does not give unlimited powers to anyone including the Judge of all levels. The societal perception of Judges as being detached and impartial referees is the greatest strength of the judiciary and every member of the judiciary must ensure that this perception does not receive a setback consciously or unconsciously Authenticity of the judicial process rests on public confidence and public confidence rests on legitimacy of judicial process Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices It is most unfortunate that the order under appeal founders on this touchstone and is wholly unsustainable."

66. This Court in State of UP. v. Neeraj Chaubey, (2010) 10 SCC 320, had taken note of various judgments of this Court including State of Maharashtra v. Narayan Shamrao Puranik, Inder Mani v Matheshwari Prasad, Prakash Chand R. Rathinam v. State and Jasbir Singh v.

State of Punjab and came to the conclusion that the Chief Justice is the master of roster The Chief Justice has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in sub- section (3) of Section 51 of the States Reorganisation Act, 1956, but inheres in him in the very nature of things. The Chief Justice enjoys a special status and he alone can assign work to a Judge sitting alone and to the Judges sitting in a Division Bench or a Full Bench He has jurisdiction to decide which case will be heard by which Bench.

69. It has rightly been pointed out by the Full Bench of the Allahabad High Court in Sanjay Kumar Srivastava v. Chief Justice, 1996 ALL WC 644, that if the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they would like to hear and decide, the machinery of the court could have collapsed and judicial functioning of the court could have ceased by generation of internal strife on account of hankering for a particular C jurisdiction or a particular case.

106. The order impugned has rightly been challenged to be a nullity at least on three grounds, namely, judicial bias, want of jurisdiction by virtue of application of the provisions of Section 362 CrPC coupled with the principles of constructive res judicata; and the Bench had not been assigned the roster to entertain the petitions under Section 482 CrPC The entire judicial process appears to have been drowned to achieve a motivated result which we are unable to approve of.

115. The error in the impugned orders of the High Court transgresses judicious discretion. The process adopted by the High Court led to greater injustice than securing the ends of justice The path charted by the High Court inevitably reflects a biased approach. It was a misplaced sympathy for a cause that can be termed as being inconsistent to the legal framework. Law is an endless process of testing and re-testing as said by

Justice Cardozo in his conclusion of the Judicial Process, ending in a constant rejection of the dross and retention of whatever is pure and sound. The multi-dimensional defective legal process adopted by the court below cannot be justified on any rational legal principle. The High Court was swayed away by the considerations that are legally impermissible and unsustainable."

(ii) **Campaign For Judicial Accountability and Reforms vs. Union of India, (2018) 1 SCC 196**

"3. It is submitted by Mr PS. Narasimha, learned Additional Solicitor General, Mr RS Suri. MrAjit Kumar Sinha, Mr R.P. Bhatt, Mr Ashok Bhan, learned Senior Counsel. Mr Gaurav Bhatia and Mr Gopal Singh, learned counsel, along with other counsel that as per the judgment rendered by the three-Judge Bench in State of Rajasthan v. Prakash Chand, the Chief Justice of the High Court is the Master of the Roster and there is no justification not to treat the Chief Justice of India, who is the Chief Justice of the Apex Court. to have the same power If the same principles are not followed, the institution cannot function. Our attention has also been drawn to Order 6 Rule 2 of the Supreme Court Rules, 2013, which reads as follows:

> "2. Where in the course of the hearing of any cause, appeal or other proceeding, the Bench considers that the matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Justice, who shall thereupon constitute such a Bench for the hearing of it."

4. In Prakash Chand, the Court stated thus: (SCC pp. 39-40, para 59)

"59. From the preceding discussion the following broad conclusions emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment.

(1) That the administrative control of the High Court vests in the Chief Justice alone: On the judicial side, however, he is only the first amongst the equals. (2) That the Chief Justice is the Master of the Roster. He alone has the prerogative to constitute Benches of the court and allocate cases to the Benches so constituted

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the Bench themselves and one or both the Judges constituting such Bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice."

7. The aforesaid position though stated as regards the High Court, we are absolutely certain that the said principle is applicable to the Supreme Court. We are disposed to think so. Unless such a position is clearly stated, there will be utter confusion. Be it noted, this has been also the convention of this Court, and the convention has been so because of the law. We have to make it clear without any kind of hesitation that the convention is followed because of the principles of

law and because of judicial discipline and decorum. Once the Chief Justice is stated to be the Master of the Roster, he alone has the prerogative to constitute Benches. Needless to say, neither a two-Judge Bench nor a three-Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief Justice of India as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible."

(iii) **The High Court of Judicature at Madras vs. A.Venkatesan, MANU/TN/3058/2021**

"7. The learned counsel appearing for the appellant-Registrar General submitted that the directions issued by the learned single Judge pertains to public interest, which has to be considered only by the Division Bench handling the Public Interest Litigation (PIL). Therefore, without placing the case before the Honourable Chief Justice for passing appropriate orders to place it before the Bench dealing with Public Interest Litigation, the directions issued by the learned single Judge would jeopardize the roaster allocation. It is further submitted that issuing such directions would tend to interfere with the administration of the Registry of this Court, besides being contrary to the administrative instructions and prevailing procedure and practice. The learned counsel for the appellant relied on the judgment of the Honourable Supreme Court in the case of State of U.P and others vs. NeerajChaubey and others) in Special Leave to Appeal (Civil) Nos 26922-26923 of 2010 and CC 14694 to 14695 of 2010 dated

16.09.2010, wherein in para Nos. 9 and 10, it was observed as follows:-

> "9. The High Court had taken note of various judgments of this Court including State of Maharashtra vs. Narayan MANU/SC/0044/1982: AIR 1982 SC 1198; Inder Mani v Matheswari Prasad MANU/SC/1286/1996: (1996) 6 SCC 587; State of Rajasthan vs. Prakash Chand and others MANU/SC/0807/1998 (1998) 1 SCC 1; R. Rathinam vs. State by DSP District Crime Branch, Madural District, Madural and another MANU/SC/0071/2000 (2000) 2 SCC 391 and Jasbir Singh: vs. State of Punjab MANU/SC/4529/2006 (2006) 8 SCC 294 and various judgments of High Courts and came to the conclusion that the Chief Justice is the master of roster. The Chief Justice has full power, authority and jurisdiction in the matter of allocation of business of the High Court which flows not only from the provisions contained in sub-section (3) of Section 51 of the States Re- organisation Act, 1956, but inheres in him in the very nature of things. The Chief Justice enjoys a special status and he alone can assign work to a Judge sitting alone and to the Judges sitting in the Division Bench or Full Bench. He has jurisdiction to decide which case will be heard by which Bench. If the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial work of the court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case.

The Court held that a Judge or a Bench of Judges can assume jurisdiction in a case pending in the High Court only if the case is allotted to him or them by the Chief Justice Strict adherence of this procedure is essential for maintaining judicial discipline and proper functioning of the Court. No departure from this procedure is permissible.

10. In case an application is filed and the Bench comes to the conclusion that it involves some issues relating to public interest, the Bench may not entertain it as a Public Interest Litigation but the court has its option to convert it into a Public Interest Litigation and ask the Registry to place it before a Bench which has jurisdiction to entertain the PIL as per the Rules, guidelines or by the roster fixed by the Chief Justice but the Bench cannot convert itself into a PIL and proceed with the matter itself."

8. "...

54. We reiterate the aforesaid proposition of law and hold that the single Judge or the Division Bench or a Larger Bench of this Court has got the right to deal with public interest and secure the public interest without converting the petition into PIL However, it shall depend on the facts and circumstances of each case.

55. But there is one rider Stretch given to a petition of private dispute to secure public interest must be within the jurisdiction conferred by Hon'ble Chief Justice in terms of the roster. Since the jurisdiction relating to detention by State (in the present case) based on the order passed by the Chief Judicial

Magistrate sending the detenu to Protective Home, has been conferred by Hon'ble Chief Justice to the Division Bench, power could not have been exercised by the learned single Judge However, the learned single Judge could have passed order to secure public interest with regard to private detention."

11. The object with which the learned single Judge issued the direction to the Registry to circulate the copy of the order to all the Motor Accident Claims Tribunal in the State of Tamil Nadu and Puducherry is to make aware of the dictum, which will be useful to the Tribunals in dealing with such type of cases. At the same time, if the Court feels that it is a matter of importance where a direction is required to be issued to the subordinate judiciary or executive, then the matter has to be placed before the Honourable Chief Justice of this Court for being placed before the appropriate Division Bench dealing with Public Interest Litigations. The directions issued by the learned single Judge straight away to the appellant/Registrar General of this Court is against the administrative procedure of the Courts. Such an administrative procedure is being followed to streamline and/or to adopt a uniform procedure whenever such directions are issued in the Judicial side of this Court. Even if a suomotu proceeding is initiated on any subject, such matter has to be directed to be placed before the Honourable Chief Justice for passing appropriate orders to place the matter before the appropriate Division Bench dealing with Public Interest Litigation. The existing procedure, if scrupulously followed, would enhance and streamline the administrative efficacy. Moreover, while dealing with the correctness or otherwise of an order impugned before the Court, the Courts are not expected to Legislate or issue any

Administrative Direction, with which the Court is not connected with in the "lis", in exercise of the power under Article 226 of the Constitution of India. Further, we make it clear that the Courts should not involve itself in Rule making process. It can point out the mistake and vacuum in the Rules and may give such directions which will subserve the ends of justice in a particular case. However, it cannot take up the task of rule making body."

(iv) **Suo Motu W.P.No 8022 of 2011, The Chief Election Commissioner, The Election Commission of India, New Delhi, 2011 (6) CTC 129**

"1. By order dated 23rd March, 2011, a Bench of this Court took suomotu cognizance of the news item published in the newspaper, namely. "The Hindu" dated 23rd March, 2011, wherein certain statements made by the Hon'ble Chief Minister of Tamil Nadu alleging excessive restrictions imposed by the Election Commission. The Bench, therefore, formulated certain issues for consideration and directed the Registry to register it as Writ Petition and again place it before that Bench on 28th March, 2011 Today, as per the direction of the Hon'ble Chief Justice, the matter has been placed before this Bench (presided over by the Chief Justice).

2. Before going into the merits of the case, we would like to express our view with regard to the power of the Hon'ble Judges in initiating Writ proceeding suomotu. There is no dispute that initiation of Writ proceeding suomotu, in public interest, is within the competence of every Hon'ble Judge of this Court, which is the integral part of the Constitutional scheme But, such power is required to be exercised and regulated in accordance with the

Rules made by the High Court and the norms set keeping in view the administrative instructions issued and roster of sitting prepared by the Chief Justice While exercising suomotu power of exercising public interest litigation, self-restraint and judicious exercise is expected to be borne in mind. It would be appreciated that as and when any matter of public importance is sought to be brought to the notice of the Court, a reference may be made to the Chief Justice for initiation of action. After such reference is made by any Hon'ble Judge to the Chief Justice for initiation of action, the Chief Justice will examine the matter according to the guidelines formulated by the Supreme Court and after the matter is examined, the same can be placed before the appropriate Bench in accordance with the directive issued in that regard by the Chief Justice for further necessary action. While exercising power of initiating suomotu Writ proceeding in public interest. great care and caution should be taken by the Hon'ble Judge, keeping in mind the directions and observations made by the Supreme Court in a catena of decisions. It would not be proper that as and when any news item is published in the newspaper, the Court will take notice of such news item and treat the same as Writ Petition suomotu in public interest without referring the matter to the Chief Justice."

(v) **K.P.M.Aboo Bucker vs. K.Kunhamoo, AIR 1958 MAD 287**

"... where no relief could be granted to the appellant against the respondent in the main suit itself, it is not permissible to grant any interim relief, to be operative till the disposal of the suit. Even were it only a question of discretion, I should hold that in such a case the Court should exercise

its discretion against the grant of interim injunction. I would go further and hold that the Court has no jurisdiction to grant by way of interim relief what could never be granted in the main suit itself. ..."

(vi) **State of Orissa Vs. Madan Gopal Rungta, 1951 SCC Online SC 63**

"14. On behalf of the appellant it was urged that the Court had no jurisdiction to pass such orders under article 226 under the circumstances of the case. This is not a case where the Court before finally disposing of a petition under article 226 gave directions in the nature of interim relief for the purpose of maintaining the status quo. The question which we have to determine is whether direction in the nature of interim relief only could be granted under article 226, when the Court expressly stated that it refrained from determining the rights of the parties on which a writ of mandamus or directions of a like nature could be issued.

15. In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to convent the provisions of section 80 of the Civil Procedure Code,and in your opinion that is not with in the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a

decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ mandamus or any other direction of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not for the purpose of facilitating the institution of such suit, issue directions in the natures of temporary injunctions, under article 226 of the Constitution. In our opinion, the language of article does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld."

(vii) **Ritona Consultancy Pvt. Ltd. vs. Lohia Jute Press, (2001) 3 SCC 68**

"5. In these circumstances, no useful purpose will be served in keeping these proceedings in this Court pending and the orders made by the High Court as modified by this Court shall be effective until further orders are made by the High Court either on the trial side or in the LPA side. In respect of those reliefs sought for in different applications, either pending or not effectively disposed of by allowing or rejecting or in any similar manner or fresh or new aspects, it is open to the parties to seek for further directions in the High Court. The High Court shall decide on such applications bearing in mind the salutary principle that an interlocutory order is made by way of aid to the proper adjudication of the claims and disputes arising in and not made beyond the scope of the suit or against the parties who are not before it. That neither excessive conservatism or traditional

technical approach nor over-zealous activist approach is conducive to advancement of justice."

(viii) **Union of India vs. Modiluft Ltd, 2003 (6) SCC 65**

"16. Nextly, we notice that the High Court has granted a relief by way of an interim order which we think it could not have done at the interim stage for more than one reason. The writ petition in question was filed challenging an order made by the Government in revision. The subject matter of the said petition pertains to the liability of the respondent to pay the tax. In the said writ petition, the respondent has sought an additional prayer by way of a direction to the respondent to grant a NOC to re-launch its airline operations. We do not want to say at this state that such joinder of two separate causes of actions could be maintained in a writ petition like the one tat is filed before the High Court by the respondent. It should be noticed that the authorities empowered to permit re-launching of the airline's operations were not before the Court which we are told is the Department of Civil Aviation. Be that as it may, since the relief as termed in the writ petition being a final relief, we think the same could not have been granted by the High Court at an interlocutory stage. But the learned counsel for the respondent contends that the said prayer is only an incidental prayer because the Civil Aviation authorities have refused to grant necessary permission to re-launch the airline's operations to the respondent only because the customs department which is a respondent before the High Court, has refused to give NOC therefore in effect what is sought for before the High Court is only a direction to the customs authorities to issue a NOC which in turn may be used by the respondent to obtain the required permission from the competent authorities to re-launch their airline operations. Be that as it

may, even accepting the argument of respondent, it is to be noticed that even a NOC from the customs authorities can be directed to be issue by the High Court only after it comes to the conclusion that the amount as determined by it has been paid by the respondent and not by an interim order otherwise it would amount to the granting of a final relief in favour of the respondent who has suffered adverse orders from the authorities below, even before the writ petition is finally decided, and in the event of the ultimate dismissal of the writ petition the respondent would gain an undue advantage inspite of its default and might even give rise to other questions in equity including rights of the third party."

(ix) **Sree Jain Swetambar Terapanthi VID (S) vs. Phundan Singh, (1999) 2 SCC 377**

"18. From the above discussion, the principle that emerges is that where the High Court has granted some relief by way of social justice or on equitable grounds without violating the rights of other parties, though in law such relief was not permissible, the Supreme Court would not interferon its discretionary jurisdiction under Article 136 if the order under appeal advances the cause of justice and if it is just an equitable so to do.

19. We may observe that in an adversarial litigation the relief has to be granted to the parties based on their pleadings. No relief should be granted in interlocutory proceedings beyond the scope of the suit. It may be noted that the present suit out of which the appeal has arisen was filed by the appellant-society for declaration and injunction, the suits filed by the contesting Respondents 2, 4 to 6, challenging their expulsion from the society, were

dismissed except the suit of Respondent No. 4, which is pending. No material is placed before us to show that any relief is granted to him in that suit. No legal proceedings has been filed by any of the contesting respondents either under the Societies Registration Act or any other law applicable to the Society for appropriate relief in respect of the management of the society and the schools run by it. Though we share the concern of the Hi h Court that the rival groups are fighting with each other and 60 cases are pending in various courts, in these circumstances of the case, in our view, ousting the Managing Committee from the management of the society and the schools run by it and appointing the joint administrators would neither be legal nor just and proper. The principle laid down in the afore-mentioned cases will, therefore, be inapplicable. For these reasons, we are not inclined to continue administration of society/trust by the joint administrators pending disposal of the appeal by the High Court."

(x) **Supreme Court Bar Association vs. B.D.Kaushik, 2011 (13) SCC 774**

"27. The Supreme Court Bar Association, as the name suggests, is a society primarily meant to promote the welfare of the advocates generally practising in the Supreme Court. The name i.e. the Supreme Court Bar Association was formally registered under the Societies Registration Act, 1860 only on 25-8-1999. One of the prime objectives of SCBA is to establish and maintain adequate library for the use of the members and to provide other facilities and convenience of the members. Thus, the formation of SCBA is in the nature of aid to the Advocates Act, 1961 and other relevant statutes including Article 145 of the

Constitution.

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

29. Enrolment of advocates not practising regularly in the court is inconsistent with the main aim and object of association. ...

35. It has been rightly pointed out by the learned Counsel for the Appellant that restrictions placed on right of voting can hardly be regarded as altering or amending Aims and Objects of SCBA. The Aims and Objects of SCBA have been enumerated in earlier part of this judgment. The basic principle underlying the amendment of Rule 18 is that those advocates who are not practicing regularly in this Court cannot be permitted to take over the affairs of the SCBA nor on ransom. One of the Aims and Objects of the SCBA is to promote and protect the privileges, interest and prestige of the Association whereas another objective is to promote and maintain high standards of profession among members of the Bar. To achieve these objectives Rule 18 is amended. It is wrong to hold that limitations/restrictions on the exercise of right to vote and contest the elections amount to altering and/or amending and/ or changing Aims and Objects of the SCBA and this could not have been done

without the consent of Registrar as provided in Societies Registration Act, 1860.

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

49. The right to form an association is recognized as a Fundamental Right under Article 19(1)(c) of the Constitution. The provision in the SCBA Rules for prescribing eligibility to vote at only one of the associations, i.e., **"One Bar One Vote"** is a prescription which is in furtherance of the right to form association and be able to manage the affairs of the association by those who regularly practice in the courts of which the association is formed and of which the members are regular practitioners. It will not be out of place to mention that a person having become ineligible to vote because of having voted at another association election does not (a) lose the membership of the association nor (b) is in any way hampered or restricted in the use of other facilities, which the association provides to its members such as library, canteen, telecommunication, car parking, etc. Having regard to the aims and objects as set out in the Memorandum of Association, it is evident that one of the primary objectives of formation of the association was to have a Body of Advocates who

are attached to and practicing in the Supreme Court of India.

50. In Damyanti Naranga v. The Union of India, (1971) 1 SCC 678, this Court has authoritatively laid down that the right to form an association necessarily implies that persons forming the association have also the right to continue to be associated with only those whom they voluntarily admit in the association.

51. In Zoroastrian Cooperative Housing Society Ltd. and Ors. v. District Registrar, Cooperative Societies (Urban) and Ors. MANU/SC/0290/2005 : (2005) 5 SCC 632, in the context of Fundamental Right to form an association excluding others and the right of the Members of the association to keep others out, it has been held in para 17 at page 651 as under: -

> "17. ... Section 24 of the Act, no doubt, speaks of open membership, but Section 24(1) makes it clear that open membership is the membership of a person duly qualified therefore under the provisions of the Act, the Rules and the by-laws of the Society. In other words, Section 24(1) does not contemplate an open membership dehorns the by-laws of the society. Nor do we find anything in the Act which precludes a society from prescribing a qualification for membership based on a belief, a persuasion or a religion for that matter. Section 30(2) of the Act even places restrictions on the right of a member to transfer his right. In fact, the individual right of the member, Respondent 2, has got submerged in the collective right of the Society. In State of U.P. v. C.O.D.

Chheoki Employees' Coop. Society Ltd. MANU/SC/0332/1997 : (1997) 3 SCC 681, this Court after referring to Daman Singh v. State of Punjab MANU/SC/0392/1985 : (1985) 2 SCC 670, held in para 16 that: (SCC p. 691)

"16. Thus, it is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a cooperative society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and by-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the by-laws as he has his right under the Act, rules and the by-laws and is subject to its operation. The stream cannot rise higher than the source."

52. In matters of internal management of an association, the courts normally do not interfere, leaving it open to the association and its members to frame a particular bye-law, rule or Regulation which may provide for eligibility and or qualification for the membership and/or providing for limitations/restrictions on the exercise of any right by and as a member of the said association. It is well settled legal proposition that once a person becomes a member of the association, such a person looses his

individuality qua the association and he has no individual rights except those given to him by the rules and Regulations and/or by-laws of the association."

(xi) **Bar Association, LAHAR Dist. Bhind vs. State Bar Council of M.P, 2018 (4) MPLJ 387**

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

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

(xii) **Elder Committee Central Bar Assn, Azamgarh vs. State of UP, 2013 SCC Online All. 13730**

> "21. In this writ petition we are concerned with the question, as to whether the Bar Council of Uttar Pradesh as statutory body elected and constituted under the Advocates Act has any supervisory role to play and can issue any direction to the Bar Associations in the matters of its elections of its office bearers. It is submitted by learned counsel appearing for the petitioner that after preparing and recommending adoption of the Model-Bye Laws by the respective Bar Associations, which may be one or many in a particular district in subordinate courts including the service Tribunals, Taxation offices and Tribunals, Revenue Courts, District Consumer Forums, Labour Courts and others, the conduct of elections do not fall within the domain of the powers and authority of the Bar Councils of the State. ...
>
> 25. The members of the Bar Associations registered as societies under the Societies Registration Act have statutory remedies available to them before the Registrar of Societies, Prescribed Authority and finally in the Civil Court for redressal of their grievances.
>
> 28. ... The Bar Council, however, does not have any authority on such a complaint to interfere in the elections of Bar Association and to stop the Elders Committee from taking steps for holding the elections. ..."

(xiii) **R.Muthukrishnan vs. Registrar General, High Court, Madras, 2019 (16) SCC 407**

"33. The legislature has reposed faith in the autonomy of the Bar while enacting the Advocates Act and it provides for autonomous Bar Councils at the State and Central level. The ethical standard of the legal profession and legal education has been assigned to the Bar Council. It has to maintain the dignity of the legal profession and independence of the Bar. The disciplinary control has been assigned to the Disciplinary Committees of the Bar Councils of various States and the Bar Council of India and an appeal lies to this Court under Section 38 of the Act."

(xiv) **Om Prakash Chautala vs. Kanwar Bhan, 2014 (5) SCC 417**

"21. Another facet gaining significance and deserves to be adverted to, when caustic observations are made which are not necessary as an integral part of adjudication and it affects the person's reputation - a cherished right under Article 21 of the Constitution. In Umesh Kumar v. State of Andhra Pradesh and Anr. MANU/SC/0904/2013 : (2013) 10 SCC 591 this Court has observed:

"18. ... Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is

subject to the right of reputation of others."

22. In Kiran Bedi v. Committee of Inquiry and Anr. MANU/SC/0512/1989 : (1989) 1 SCC 494 this Court reproduced the following observations from the decision in D.F. Marion v. Davis 217 Ala 16: 114 So 357: 55 ALR 171 (1927):

"25. ...'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property."

23. In Vishwanath Agrawal v. Sarla Vishwanath Agrawal MANU/SC/0513/2012 : (2012) 7 SCC 288, although in a different context, while dealing with the aspect of reputation, this Court has observed that: (SCC p.307, para 55)

"55. ... reputation is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

(xv) **Director General of Income Tax (INV) vs. T.S.Kumaraswamy, 2019 SCC Online Mad 5453**

"39. The legal principle that can be culled out from the above decisions is that unwarranted comments and remarks were not called for and what was important to bear in mind was as to whether the

three cardinal tests laid down by the Hon'ble Supreme Court in the decision in the case of *Mohammed Naim* had been complied with. One of those three tests is as to whether the party, whose conduct is in question is before the court or has an opportunity of explaining or defending himself. In the instant case, neither the officer of the Department nor its Senior Standing Counsel had an opportunity of explaining or defending themselves. Therefore, the first test laid down in the decision in the case of *Mohammed Naim* has not been fulfilled in the instant case."

(xvi) **Tamil Nadu Dr. Ambedkar Law University vs. Dr. D. Sankar, 2019 SCC Online Mad 10829**

"41. The Hon'ble Supreme Court in *State of Uttar Pradesh* v. *Subhash Chandra Jaiswal*, (2017) 5 SCC 163, cited with approval the following three earlier judgments of the Supreme Court, indicating the parameters for deciding the lis. ...

(iii)In *Census Commr.* v. *R. Krishnamurthy*, (2015) 2 SCC 796, the three-Judge Bench observed as follows:

"*1.* ... No adjudicator or a Judge can conceive the idea that the sky is the limit or for that matter there is no barrier or fetters in one's individual perception, for judicial vision should not be allowed to be imprisoned and have the potentiality to cover celestial zones. Be it ingeminated, refrain and restrain are the essential virtues in the arena of adjudication because they guard as sentinel so that virtuousness is constantly sustained.

50. The scope of the writ petition in W.P. No. 25998/2015 is very limited. The writ court is

> concerned only with the legality and correctness of the proceedings impugned in the writ petition. ...
>
> 52. We deem it fit and proper to extract the following observation made by the Hon'ble Supreme Court in *Om Prakash Chautala*, indicating the role of a Judge in the justice dispensation system and the need to confine within the legal parameters.
>
> "20. Thus, a Judge should abandon his passion. He must constantly remind himself that he has a singular master "duty to truth" and such truth is to be arrived at within the legal parameters. No heroism, no rhetorics."

12. Mr.V.Prakash, learned Senior Counsel appearing for the Appellant/Madras Bar Association in W.A.No.1739 of 2023 contended that the learned Single Judge, before allowing the impleading Petition in W.M.P.No.17204 of 2023, ought to have seen that the said impleading Petition was filed by Mr.A.Mohandoss on 14.06.2023, and the same was numbered and posted for hearing for the first time on 16.06.2023. However, no time for filing counter was granted to the Appellant/Madras Bar Association and the impleading Petition was allowed on the very same day, i.e. 16.06.2023 and the same constitutes serious infraction of natural justice.

12(a) According to the learned Senior Counsel, the learned Single Judge has failed to appreciate that the Affidavit filed in support of

W.M.P.No.17204 of 2023 contains serious allegations against a senior member of the Appellant Association, viz. Mr.Vijay Narayan, who was the erstwhile President of the Appellant Association and a former first Law Officer of the State and in consideration of the same, the learned Single Judge ought to have granted an opportunity to the Appellant Association to answer the said allegations.

12(b) Learned Senior Counsel went on to contend that the learned Single Judge erred in not appreciating the fact that the Affidavit filed by Mr.A.Mohandoss, in support of the impleading Petition in W.M.P.No.17204 of 2023, contains two other prayers, as well, viz.

> "1. Allow the prayer in W.P.No.22460 of 2012 as well as W.M.P.Nos.16543 of 2023 and 16547 of 2023 in the above W.P.No.22460 of 2012;
>
> 2. Direct the 2nd Respondent to admit me as a member of the Madras Bar Association forthwith"

12(c) With reference to the above, learned Senior Counsel pointed out that the first prayer in W.M.P.No.17204 of 2023 is not precise and the Affidavit in the said Miscellaneous Petition is completely bereft of details as to how Mr.A.Mohandoss is really aggrieved and he has failed to

establish as to how he is a proper and necessary party to the cause projected in the above Writ Petition as well as in the Miscellaneous Petitions in W.M.P.Nos.16543 and 16547 of 2023 filed by the Writ Petitioner. It is further submitted by the learned Senior Counsel that the second prayer concerning the membership of Mr.A.Mohandoss in the Appellant Association has no nexus whatsoever with the relief sought in the Writ Petition and in the abovesaid connected Miscellaneous Petitions.

12(d) Learned Senior Counsel further contended that Mr.A.Mohandoss ought not to have complained about the Appellant/Madras Bar Association with respect to deliberate non-consideration of his membership Application, which was alleged to have been made way back on 09.03.2010. In this regard, learned Senior counsel submitted that the Appellant Association got reconstituted in the year 2019 as a 'registered body' under the Tamil Nadu Societies Registration Act, 1975 and that the Appellant Association and its internal affairs, including admission of members, are governed by the by-laws framed and approved by the General Body of the Association. He went on to state that, following the reconstitution of the Appellant Association, admission process of members was carried out as per the by-laws and that the admission process began with invitation of membership applications

during the window period commencing 29.03.2019 till 12.04.2019 (extended deadline) and that Mr.A.Mohandoss never made any application during the aforesaid period and under such circumstances, there cannot be any obligation on the part of the Appellant Association to consider the membership application of Mr.A.Mohandoss, as it stands lapsed with reconstitution and adoption of new by-laws by the Appellant Association and that Mr.A.Mohandoss cannot have any grievance over the lapsed application.

12(e) Learned Senior Counsel also submitted that Mr.A.Mohandoss could not have placed reliance upon the proceedings of the Bar Council of Tamil Nadu in TNECR No.17 of 2019, dated 04.07.2019, in support of his impleading Application vide W.M.P.No.17204 of 2023, when the *Ad hoc* Administrative Committee of the Bar Council of Tamilnadu and Puducherry, by its proceedings dated 11.07.2019 and 12.07.2019, had directed that the order dated 04.07.2019 be handed over to the Secretary, Bar Council of Tamil Nadu and Puducherry on 12.07.2019 and kept in a sealed cover, as the Enrolment Committee lost its jurisdiction to decide the issue in view of declaration of results to the Bar Council of Tamil Nadu and Puducherry. Thus, according to the learned Senior Counsel, it is blatantly clear that the order dated 04.07.2019 passed by the Enrolment

Committee, was never acted upon and was directed to be placed in cold storage by the proceedings of the *Ad hoc* Administrative Committee of the Bar Council of Tamil Nadu and Puducherry.

13. Mr.E.Om Prakash, learned Senior Counsel appearing for the Appellant/Madras Bar Association in W.A.No.1741 of 2023 argued that the learned Single Judge erred in allowing the impleading Petition filed by Mr.S.Mahaveer Shivaji in W.M.P.No.17372 of 2023 vide order dated 16.06.2023, without adducing any reason and therefore, the impugned order suffers from lack of legal reasons and findings. He vehemently contended that the learned Single Judge had failed to see that the cause projected by Mr.S.Mahaveer Shivaji in the Affidavit filed in support of W.M.P.No.17372 of 2023, viz. grievance over the administration of the Appellant Association and deliberate failure to issue Membership application are completely distinct and constitute a separate cause of action, which has no nexus whatsoever with the cause projected by and the relief sought by the Writ Petitioner in the Writ Petition as well as in the Miscellaneous Petitions in W.M.P.Nos.16543 and 16547 of 2023.

13(a) In support of his submissions, Mr.E.Omprakash, learned Senior Counsel appearing for the Appellant in W.A.No.1741 of 2023, has

relied on the following decisions:

(i) **A.K. Kraipak v. Union of India, (1969) 2 SCC 262**

> "20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice."

(ii) **Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405**

> "2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless words:
>
> At the bottom of all tributes paid to democracy is the little man, walking into a little booth. with a little pencil, making a little cross on a

little bit of paper amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point-

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob muscle methods, or subtle perversion of discretion by men 'dressed in little, brief authority'. For 'be you ever so high, the law is above you'.

3. The moral may be stated with telling terseness in the words of William Pitt: Where laws end. tyranny begins.

...

43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of Authority. It is the hone healthy government, recognised from earliest times and not a mystic testament of Judge- made law. Indeed, from the legendary days of Adam and of Kautilya's Arthasastra the rule of law has had this stamp of natural justice which makes it social justice.

45. ... The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. (p. 468) (SCC p. 272, para 20)

The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable

to administrative inquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi- judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry As observed by this Court in Suresh Koshy George v. The University of Kerala[1] the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. (p. 469) (SCC pp. 272-3. para 20).

48. Once we understand the soul of the rule as fairplay in action and it is so we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation nothing more but nothing less. The 'exceptions' to the rules of natural

justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text-book excerpts and ratios from rulings can be heaped, but they all converge to the same point that audi alteram partem is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation."

(iii) **S.N. Mukherjee vs. Union of India, (1990) 4 SCC 594**

"35. The decisions of this Court referred to above indicate that with regard to the requirement to record reasons the approach of this Court is more in line with that of the American courts. An important consideration which has weighed with the court for holding that an administrative authority exercising quasi-judicial functions must record the reasons for its decision, is that such a decision is subject to the appellate jurisdiction of this Court under Article 136 of the Constitution as well as the supervisory jurisdiction of the High Courts under Article 227 of the Constitution and that the reasons, if recorded, would enable this Court or the High Courts to effectively exercise the appellate or supervisory power. But this is not the sole consideration. The other considerations which have also weighed with the Court in taking this view are that the requirement of recording reasons would (1) guarantee consideration by the authority; (ii) introduce clarity in the decisions; and (iii) minimise chances of arbitrariness in decision-making. In this regard a distinction has been drawn between ordinary courts of law and tribunals and authorities exercising judicial functions on the ground that a Judge is trained to look at things objectively uninfluenced by considerations of

policy or expediency whereas an executive officer generally looks at things from the standpoint of policy and expediency.

37. ... In Siemens Engineering Co. case this Court has taken the same view when it observed that "the rule requiring reasons to be given in support of an order is, like the principles of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process". This decision proceeds on the basis that the two well known principles of natural justice, namely (i) that no man should be a judge in his own cause, and (i) that no person should be judged without a hearing, are not exhaustive and that in addition to these two principles there may be rules which seek to ensure fairness in the process of decision-making and can be regarded as part of the principles of natural justice. ..."

(iv) **Shamnsaheb M. Multtani vs. State of Karnataka, (2001) 2 SCC 577**

"24. One of the cardinal principles of natural justice is that no man should be condemned without being heard, (audi alteram partem). But the law reports are replete with instances of courts hesitating to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalising an individual, the court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice."

(v) **Aureliano Fernandes vs. State of Goa, 2023 SCC OnLine**

SC 621

"34. Principles of natural justice that are reflected in Article 311, are not an empty Incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.

41. The significant role played by procedural fairness in the backdrop of internalising the principles of natural justice into the Constitution cannot be overstated. This aspect has been highlighted by a Division Bench of this Court of which one of us, [Hima Kohli, J], was a member, in Madhyamam Broadcasting Limited v. Union of India. ...

46. In Swadeshi Cotton Mills v. Union of India, in his dissenting judgment, Justice O. Chinnappa Reddy, had made the following pertinent observations:-

> "106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Dr. Bina pani, A.K. Kraipak, Mohinder Singh Gil, Maneka Gandhi They are now I considered so fundamental as to be "implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice

> will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. ...”

14. Mr.P.S.Raman, learned Senior Counsel appearing for the Appellant/Mr.Vijay Narayan in W.A.No.2014 of 2023 contended that the learned Single Judge ought not to have recorded the submissions as set out in paragraph 64 of the impugned order, without issuing notice to the Appellant/Mr.Vijay Narayan, when it is well settled by a number of judgments that a Court cannot record any allegation against a party without impleading them in the proceedings. He strenuously contended that the remarks passed by the learned Single Judge in paragraph 64 of the impugned order are highly vituperative and that, the entirety of paragraph 64 of the impugned order should be expunged from the record. Learned Senior Counsel further contended that the learned Single Judge has recorded no other statement by Mr.A.Mohandoss and has directed the Secretary, Madras Bar Association to admit Mr.A.Mohandoss as a member of the said Association, which leads to an inference as if the learned Single Judge has accepted the submissions of Mr.A.Mohandoss

and has found fault with the then President of the said Association viz. Mr.Vijay Narayan and the Madras Bar Association, as regards admission of members. According to the learned Senior Counsel, the learned Single Judge should not have come to such a conclusion without notice to the Appellant/Mr.Vijay Narayan and without hearing him on the claims of Mr.A.Mohandoss.

14(a) Mr.P.S.Raman, learned Senior Counsel, in support of his submissions, relied on a judgment of the Apex Court in the case of **Dr.Dilip Kumar Deka vs. State of Assam, (1996) 6 SCC 234**, the relevant portion of which, is extracted hereunder:

> "7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of nature justice. ..."

14(b) Learned Senior Counsel further relied on the following decisions:

(i) **State of U.P vs. Mohammad Naim, AIR 1964 SC 703**

"10. The second point for consideration is this, has the High Court inherent power to expunge remarks made by itself or by a lower court or otherwise to secure the ends of justice? There was at one time some conflict of judicial opinion on this question. The position as to case-law now seems to be that except for a somewhat restricted view taken by the Bombay High Court, the other High Courts have taken the view that though the jurisdiction is of an exceptional nature and is to be exercised in most exceptional cases only, it is undoubtedly open to the High Court to expunge remarks from a judgment in order to secure the ends of justice and prevent abuse of the process of the Court (see Emperor v. Ch. Mohd. Hussan; State v. Chhotey Lals; Lalit Kumar v. S.S. Bose; S. Lal Singh v. State Ramsagar Singh v. Chandrika Singh; and In re Ramaswam. The view taken in the Bombay High Court is that the High Court has no jurisdiction to expunge passages from the judgment of an inferior court which has not been brought before it in regular appeal or revision; but an application under Section 561-A CrPC is maintainable and in a proper case the High Court has inherent jurisdiction, even though no appeal or revision is preferred to it, to correct judicially the observations made by pointing out that they were not justified, or were without foundation, or were wholly wrong or improper (see State v. Nilkanth Shripad Bhave). In State of U.P. v. J.N. Begga, this Court made an order expunging certain remarks made against the State Government by a learned Judge of the High Court of Allahabad. The order was made in an appeal brought to this Court from the appellate judgment and order of the Allahabad High Court. In State of U.P. v. Ibrar Hussain this Court observed that it was not

necessary to make certain remarks which the High Court made in its judgment. Here again the observation was made in an appeal from the judgment and order of the High Court: We think that the view taken in the High Courts other than the High Court of Bombay is correct and the High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only. In fairness to learned counsel for the appellant we may state here that he has submitted before us that the State Government will be satisfied if we either expunge the remarks or hold them to be wholly unwarranted on the facts of the case. He has submitted that the real purpose of the appeal is to remove the stigma which has been put on the police force of the entire State by those remarks the truth of which it had no opportunity to challenge."

(ii) **Dr.Raghubir Saran v. State of Bihar, AIR 1964 SC 1**

"7. From the aforesaid discussion, the following principles emerge : (1) A judgment of a criminal court is final; it can be set aside or modified only in the manner prescribed by law. (2) Every Judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour. (3) There is a correlative and self-imposed duty in a Judge not to make irrelevant remarks or observations without any foundation, especially in the case of witnesses or parties not before him, affecting their character or reputation. (4) An

appellate court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.

28. When the question arises before the High Court in any specific case whether to resort to such undefined power it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that it's expunction will not affect the reasons for the judgement or order"

(iii) **Alok Kumar Roy v. Dr. S.N. Sarma, AIR 1968 SC 453**

"7. The next question is whether Dutta, J. could act as a Judge of the High Court at Sibsagar when Gauhati is the seat of the High Court under the notification issued under Article 10 of the Assam High Court Order, 1948. We do not think it necessary to decide this question in the present appeal. We shall assume that Dutta, J. could not pass orders as a Judge of the High Court anywhere else except at Gauhati, which is the seat of the High Court. Even assuming that, all that can be said is that the presentation of the writ petition before Dutta, J. at Sibsagar was irregular. As we have said already he was still a Judge of the High Court while holding a Commission of Enquiry at Sibsagar, and if he received the petition at Sibsagar, all that can be said is that the petition was irregularly presented there when it should have been presented at Gauhati But assuming that the presentation of the petition at

Sibsagar was irregular, the fact remains that the petition was sent to Gauhati later and was dealt with there. We do not see why the petition should have been dismissed because the presentation was irregular. There is in our opinion no difficulty in holding that the petition was represented when it was sent to Gauhati and was dealt with there in the High Court. The presentation should have been taken in such circumstances to have been made at Gauhati when the petition reached Gauhati and the petition should have been dealt with as such. Of course, if the presentation of the petition at Sibsagar was irregular, the order passed by Dutta, J. would also be irregular. But when the petition came to the High Court thereafter, the irregularity in presentation must be held to have been cured. It was open to the High Court to consider whether the irregular order of stay should be regularised. ...

8. We therefore allow the appeal and set aside the order of the High Court dismissing the writ petition and send it back to the High Court with the direction that the High Court should reconsider whether the petition should be admitted, taking it as represented on the day it reached Gauhati, and if so, it should be set down for hearing in due course. In the circumstances we make no order as to costs."

(iv) **Debabrata Chakravarty v. M.K. Das, 1989 SCC OnLine Cal 190**

"2. What was doubled was the power of this Court do so when the proceeding in which it was made was not brought before it by way of regular appeal or revision or in the exercise of some other statutory jurisdiction. But the two decisions of the Supreme Court in (1) Raghubir Saran, AIR 1964

SC 1 and in (2) Mohammad Naim, AIR 1964 SC 703 must now be taken to have settled the question beyond the pale of any controversy and have held that this Court can do so in the exercise of its inherent powers even independently of any appeal or revision presented to it. True, both the Supreme Court decisions related to criminal matters and the power of the High Court to expunge remarks from the judgments or orders of the Courts below, independently of any appeal or revision pending before it, was recognised and traced with reference to section 561A of the preceding Code of Criminal Procedure of 1898, now replaced, almost totidem verbis, by section 482 of the present Code of Criminal Procedure of 1973 But there can be no manner of doubt that the same would be the position in civil matters as well because, as is well settled, neither section 561A of the old Code of Criminal Procedure did, nor section 482 of the present Code or section 151 of the Code of Civil Procedure does, confer any particular power, but only saves all the gamut of powers inherently possessed by this Court to make such orders as may be necessary to secure the ends of justice or prevent the abuse of curial process. And, therefore, if, as ruled by the Supreme Court in Raghubir Saran (Supra) and in Mohammad Naim (Supra), this Court can in a fit case expunge remarks or observations from the Judgment or order of the subordinate Courts in criminal matters independently of any appeal or revision therefrom pending before it in the exercise of inherent powers saved by section 561A of she old and section 482 of the new Code of Criminal Procedure, this Court can obviously do the same in civil matters also in exercise of such inherent powers saved by section 151 of the Code of Civil Procedure It may be noted that the aforesaid two decisions of the Supreme Court have been referred

to and relied on by a recent two-Judges Bench of the Supreme Court in (3) Niranjan Patnaik, (1986) 2 SCC 569.

4. The Chief Judge, Small Causes Court, while hearing an appeal as the Appellate Authority under the Payment of Wages Act, thought that the Advocate for the Appellant, who is the petitioner here, behaved with such arrogance and insubordination and caused such annoyance, insult and interruption as to amount to an offence under section 228 of the Penal Code. The Chief Judge recorded these facts not only in the order-sheet on that day, being No 10 dated 30.7.88, but also described in considerable details in the judgment itself delivered on 6.8.88 as to how and in what manner and with what postures and gesticulation the Advocate conducted himself. In the Order No. 10 dated 30.7 88, the Judge directed the Advocate "to leave the Court and not to appear again" and in the judgment also delivered on 6.6.88, the Judge recorded that the Advocate "was immediately asked to leave that Court room. And not to appear in my Court in future as there are decent lawyers galore". The Chief Judge also directed that a copy of his judgment was to be forwarded to the appellant, the Controller of Telcom Stores, Calcutta."

(v) **A.M. Mathur v. Pramod Kumar Gupta, (1990) 2 SCC 533**

"12. It is true that the judges are flesh and blood mortals with individual personalities and with normal human traits. Still what remains essential in judging, Justice Felix Frankfurter said:

"First and foremost, humility and an understanding of the range of the problems and (one's) own inadequacy in dealing with them,

disinterestedness and allegiance to nothing except the effort to find (that) pass through precedent, through policy, through history, through (one's) own gifts of insights to the best judgment that a poor fallible creature can arrive at in that most difficult of all tasks, the adjudication between man and man, between man and state, through reason called law."

14. The Judge's Bench is a seat of power. Not only do judges have power to make binding decision, their decisions legitimate the use of power by other officials. The judges have the absolute and unchallenge- able control of the court domain. But they cannot misuse their authority by intemperate comments, undignified banter or scathing criticism of counsel, parties or witnesses. We concede that the court has the inherent power to act freely upon its own conviction on any matter coming before it for adjudication, but it is a general principle of the highest importance to the proper administration of justice that derogatory remarks ought not to be made against persons or authorities whose conduct comes into consideration unless it is absolutely necessary for the decision of the case to animadvert on their conduct. [See (1) R.K. Lakshman v. A.K. Srinivasan, (ii) Niranjan Patnaik v. Sashibhusan Kar]."

(vi) **Abani Kanta Ray Vs. State of Orissa, 1995 Supp. (4) SCC 169**

"14. ... Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be constant theme of our judges. This quality in decision-making is as much necessary for judges to restrain in this regard as to protect the independence

of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary. ...”

(vii) **In the matter of: 'K', A Judicial Officer, In re, (2001) 3 SCC 54**

“17. The remarks made in a judicial order of the High Court against a member of subordinate judiciary even if expunged would not completely restitute and restore the harmed Judge from the loss of dignity and honour suffered by him. In Judges by David Pannick (Oxford University Press Publication, 1987) a wholesome practise finds a mention suggesting an appropriate course to be followed in such situations:

"Lord Hailsham explained that in a number of cases, although I seldom told the complainant that I had done so, I showed the complaint to the Judge concerned. I thought it good for him both to see what was being said about him from the other side of the court, and how perhaps a lapse of manners or a momentary impatience could undermine confidence in his decision."

18. Though the learned author observes that such a private discussion, uncommunicated to the complainant, would be unlikely to remove his sense of grievance, the resolution is to be found in the same book elsewhere in the following passage (though in a different context):

“Lord Bridge gave a similar explanation in 1984: If one Judge in a thousand acts dishonestly within his jurisdiction to the detriment of a party before him, it is less harmful to the health of society to leave that party without a remedy than that nine

hundred-and-ninety-nine honest Judges should be harassed by vexatious litigation alleging malice in the exercise of their proper jurisdiction."

19. Reverting back to the case at hand, may be that the learned Metropolitan Magistrate in initiating contempt proceedings and taking cognizance of substantive offences under the Indian Penal Code against the officials of Public Works Department was not properly advised or was at the worst indulging in a misadventure and therefore to the extent of quashing of the proceedings by the High Court we may not find fault and certainly no one has come up to this Court complaining against the merits of that part of the order of the High Court by which criminal proceedings have been quashed. Nevertheless, the ill-advised move or misadventure of the learned Metropolitan Magistrate was neither a misconduct nor an outcome of malice. Though she acted in a way which did not meet the approval of the High Court, the facts and the circumstances of the case point out that her only desire was to make her courtroom functional Probably she felt aggrieved, rather agitated, by the apathy of the Public Works Department people who were taking things too easy, unmindful of the practical difficulties faced by the Presiding Judge occupying the courtroom and discharging judicial functions. The fact remains that the observations were made by the High Court without affording the Metropolitan Magistrate an opportunity of explaining or defending herself. The remarks were not necessary for the decision of the case by the High Court as an integral part thereof. Animadverting on the conduct of the learned Metropolitan Magistrate was not a necessity for the exercise by the High Court of inherent power or the power of superintendence to quash the proceedings initiated by the learned Metropolitan Magistrate. Expunging of the remarks,

as we propose to do, will not affect the reasons for the judgment of the High Court. On the other hand, the remarks have a potential to prejudice the career of the appellant.

20. We must place on record the very fair stand taken by Shri Sanjay Kaul, the learned Senior Counsel for the High Court, who told us that he was instructed by the High Court to appear in deference to the notice issued by this Court and to offer such assistance as might be needed and any verdict which this Court may deliver shall be acceptable to it, the High Court neither opposes nor supports the appellant's prayer, its stand is neutral."

(viii) **Anjani K. Verma v. State of Bihar, (2004) 11 SCC 188**

"6. In view of the aforesaid factual position, ordinarily, we would have remanded the case to the High Court for fresh decision of petition under Section 482 of the Code of Criminal Procedure. But, having regard to the long pendency of the matter and having perused the material placed before us, we have no doubt that on the present facts and circumstances, there was no justification for passing the strictures against the appellant. In this view, we expunge the strictures passed against the appellant in para 20 of the judgment dated 7-2-1998 rendered in Sessions Trial No.364 of 1995 by the Sessions Judge, Dhanbad."

(ix) **K.G. Shanti v. United India Insurance Co. Ltd., (2021) 5 SCC 511**

"5. We are in agreement with the learned counsel for the appellant that the appellant cannot be condemned unheard. We must notice at the threshold that the language used is extremely strong

and the court should be circumspect in using such language while penning down its order qua judicial officers. We really cannot appreciate the use of this language, whatever may have been the conduct of the appellant.

(x) **Neeraj Garg v. Sarita Rani, (2021) 9 SCC 92**

"14. The proposition of law laid down by S.K. Das, J. on behalf of the four-Judge Bench in Mohd. Naim on recording of adverse remarks has been approved in a catena of decisions since 1964. It was also cited by the Supreme Court of Sri Lanka in A.N. Perera v. D.L.H. Perera where Abdul Kadir, J. speaking for the Bench approved of the tests laid down by this Court and concluded that the Judge's comments against the petitioner in that case were thoroughly unwarranted under each of those tests.

15. While it is of fundamental importance in the realm of administration of justice to allow the Judges to discharge their functions freely and fearlessly and without interference by anyone, it is equally important for the Judges to be exercising restraint and avoid unnecessary remarks on the conduct of the counsel which may have no bearing on the adjudication of the dispute before the court.

16. Having perused the offending comments recorded in the High Court judgments, we feel that those could have been avoided as they were unnecessary for deciding the disputes. Moreover, they appear to be based on the personal perception of the learned Judge. It is also apparent that the learned Judge did not, before recording the adverse comments, give any opportunity to the appellant to put forth his explanation. The remarks so recorded have cast aspersion on the professional integrity of the appellant. Such condemnation of the counsel,

without giving him an opportunity of being heard would be a negation of the principles of audi alteram partem. The requisite degree of restraint and sobriety expected in such situations is also found to be missing in the offending comments."

(xi) **Union of India vs. Bharat Fritz Werner Ltd., 2022 SCC OnLine SC 195**

"5. ... The High Court was not deciding a Public Interest Litigation. The High Court did not even decide the writ petition on merits. On the contrary, in the earlier paragraph, it was observed that it had not gone into the merits of the writ petitioner's claim or the respondent's defence. In such circumstances, such general observations should have been avoided by the High Court and the High Court ought to have restricted itself to the controversy between the parties before it. Even otherwise, on the basis of a solitary case, general observations could not have been made by the High Court that the Indian bidders are being discriminated against. We advise the High Courts not to make general observations which are not warranted in the case. The High Courts shall refrain from making sweeping observations which are beyond the contours of the controversy and/or issues before them."

15. Mr.Elephant G.Rajendran, learned counsel, who is the contesting Respondent in all the Writ Appeals, in response to the submissions put forth by the learned Senior Counsel appearing for the Appellants, submitted the following:

15(a) According to Mr.Rajendran, the issue in the Writ Petition is not in relation to any public wrong or injury and that, it is not a Public Interest Litigation. In reply to the contention of the learned Senior Counsel for the Appellant/Madras Bar Association that the Writ Petition ought to have been heard only by a Division Bench in terms of Rule 17(1)(v) of the Madras High Court Writ Rules, 2021 (in short 'Writ Rules'), Mr.Rajendran submitted that the prayer in the Writ Petition is not against the High Court, but, only a request made to the Registrar General of the High Court to pass orders on the petition made by the Writ Petitioner praying to take action against the Madras Bar Association and that, such a prayer, in substance, is only against the Madras Bar Association and cannot be construed as a prayer against the High Court and as such, posting of the Writ Petition before a Division Bench does not arise.

15(b) Mr.Rajendran, learned counsel, pointed out that in the year 2015, Central Industrial Security Force (CISF) took over the security arrangements in the Madras High Court premises and that, pursuant to the declaration of the High Security Zone, the Office of the Public Prosecutor and the Office of the Government Pleader, which were functioning within the High Security zone were shifted; however, the Madras Bar

Association, which is housed in the first floor of the main building, surrounded by the chambers of the Hon'ble Judges, both in the first and second floors, was not shifted and that, it is in gross violation of the High Security arrangements mandated for the Hon'ble Judges. He added that birthday lunch and lunch at-home are often hosted in the Bar Association premises by engaging outside caterers and staff, posing considerable risk to the High Security System of the Madras High Court and that they are using the Association premises as party Hall.

15(c) He went on to contend that the then Registrar General of the Madras High Court, as per the stand taken by him in the counter affidavit filed in October 2012, is bound to interfere when the Bar Association misuses the premises, thereby affecting the peace and harmony which includes possible risk of high security of the Hon'ble Judges of the Madras High Court. According to Mr.Rajendran, learned counsel, only because of the subsequent events which have a direct bearing on the relief sought in the Writ Petition, he had filed W.M.P.No.16543 of 2023 seeking eviction of the Madras Bar Association from the High Security Zone of the Madras High Court and W.M.P.No.16547 of 2023 seeking a direction to the Madras Bar Association not to conduct any birthday party celebration, lunch at-home party or tea-party in the premises of the Madras Bar

Association. In this regard, he drew the attention of this Court to the decision of the Hon'ble Supreme Court in the case of State of **Uttarpradesh vs. Mahindra and Mahindra Ltd.,** reported in **2011 (13) SCC 77**, relevant paragraph of which, is extracted hereunder:

> "12. ... Even otherwise Courts can always take notice of the subsequent events and developments that had taken place subsequent to the filing of the Writ Petition or filing of Special Leave Petition and it is also within the jurisdiction of this Court to pass consequential orders to give effect to the remedies available to the parties."

15(d) Apart from the above contentions, Mr.Rajendran, learned counsel, pointed out that the Madras Bar Association has committed the following punishable offences:

> (a) Practice of Untouchability and discrimination among equal Advocates;
>
> (b) misappropriation and cheating by collecting car parking rent and swallowing illegal collection of lakhs of rupees;
>
> (c) Encroaching N.S.C. Bose Road belonging to Chennai Corporation, for the purpose of car parking and collecting rent from the members for the same;
>
> (d) preventing other Women Advocates from using the Toilet belonging to the Madras

High Court;

15(e) As regards the contention of the Appellant/Madras Bar Association that they were not given sufficient opportunity to file counter in the Writ Petition, Mr.Rajendran, learned counsel, submitted that he filed two Miscellaneous Petitions in W.M.P.Nos.16543 and 16547 of 2023 on 06.06.2023 after serving the Madras Bar Association on the same day. However, on 12.06.2023 upon the request of the Madras Bar Association for filing additional counter for rebutting the allegations made by the Writ Petitioner, the learned Single Judge granted time till 16.06.2023. Hence, according to Mr.Rajendran, learned counsel, the Madras Bar Association was granted sufficient opportunity to file counter and on 16.06.2023, they filed a common counter affidavit running to 21 pages and advanced arguments before the learned Single Judge on the basis of the same and hence, the allegation of denial of reasonable opportunity to the Madras Bar Association to file counter, is absolutely false and incorrect.

15(f) Mr.Rajendran, learned counsel pointed out that the submission of the learned Senior Counsel appearing for Madras Bar Association that, 25 meritorious candidates were selected for admission in their Association in April 2019 is also unsustainable, inasmuch as the term

'meritorious candidate' has not been explained even in the new by-laws and there are no guidelines for describing the candidates as meritorious. He further submitted that Mr.Vijay Narayan, learned Senior Counsel, has not furnished the guidelines incorporated in the by-laws of the year 2019 or the guidelines formulated by the Admission Committee or the methodology adopted by him for identifying 'meritorious candidates'.

15(g) Further, Mr.Rajendran, learned counsel, objected to the unethical practice of the Madras Bar Association in admitting members who belong only to upper caste and that there are only 5 to 7 Advocates belonging to the Scheduled Caste and Scheduled Tribe community in their Association. He also pointed out that more than 400 applications for membership are pending in the Madras Bar Association for the past 15 to 20 years.

15(h) Thus, according to Mr.Rajendran, discrimination of Lawyers for admission into the Madras Bar Association on the basis of caste and community is unconstitutional and that discrimination based on economic status of lawyers is also unconstitutional and in violation of the principles of social justice. According to him, lawyers belong to homogeneous class and that any discrimination within the class of lawyers is undoubtedly

unconstitutional.

15(i) Learned counsel also contended that the Madras Bar Association enjoys the privileges at public cost by utilising the public infrastructural facilities, free electricity and that, a practising lawyer in the High Court premises cannot be deprived of his right of membership in any Association. He went on to contend that the Madras Bar Association has not produced the licence to run the Association in the High Security Zone of the Madras High Court and that the said concession granted by the High Court, cannot be a reason to restrict the membership.

15(j) Learned counsel went on to state that though he has not pleaded for grant of compensation in the Writ Petition, according to him, the compensation of Rs.5 lakhs granted by the learned Single Judge is very low and that it has to be enhanced to Rs.50 lakhs.

15(k) In support of his contentions, Mr.Rajendran, learned counsel, relied on the following decisions:

(i) **Shiv Kumar Akela vs. The Registrar, Societies Firms & Chits Allahabad, CDJ 2005 All HC 077**

> "10. Very object of providing Bar Association' at all level of the Courts/with affiliation/recognition extended by State Bar Council, regulating members of legal profession under Advocates' Act, 1961 and Rules framed

thereunder, initiation of various statutory Welfare Schemes under control of U.P. Bar Council and State of U.P, to arrange for 'library' for the use by its members to save and promote intend of legal profession and its members, to promote high professional tone, standard and conduct amongst members of legal profession, to promote and develop legal science, to watch legislation for the purpose of assisting in the progress of sound legislation and to print 'Cause List', leave one in no doubt that it has to perform a very onerous duty to ensure healthy functioning of the 'Apparatus' meant for justice delivery system', namely the Courts. Court has provided accommodation to the High Court Bar Association and Advocate Association. Court provides various other facilities- with no charges. Court holds References on the request of High Court Bar Association- which are Court proceedings. All this ultimately concerns the welfare of the Public' and 'BAR is nothing but a Public functionary. It also shows that concept of 'Bar' Association itself has emerged from the solemn object to ensure proper and smooth functioning of the Courts so that justice' may be dispensed with to the public at large, which is possible only when 'BAR' maintains a minimum desired standard both from the point of view of professional ethics and professional proficiency, 'BAR' in England in its formative period considered of Clergy which was supposed to do public service. Our 'Gown' owes its origin to the 'Gown' of a clergymen.”

(ii) **Udit Chandra vs. State of U.P, CDJ 2012 All HC 817**

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

the body would not be made an instrumentality of the State. Bar Council frames its own rules, regulations and guidelines and instead of supplying it to the individual Advocates, it supplies the same to the respective Bar Associations to make similar rules, regulations, guidelines, etc. to maintain uniformity, which are being followed by the respective Bar Associations.

6. ...When the actions of the Board (Bar Association to be read herein) are not actions as an authorised representative of the State, it cannot be said that the Board is discharging State functions. In the absence of any authorisation if a private body chooses to discharge any functions or duties which amount to public duties or State functions which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State. Unfortunately, the Division Bench in deciding the case of Shiv Kumar Akela (supra) considered the minority view of judgment of the Supreme Court in Zee Telefilms Ltd. (supra) instead of taking into account the majority view. In a latest judgment of the Supreme Court reported in 2011 (6) SCC 617 (A.C. Muthiah Vs Board of Control for Cricket in India and another) though there is a conflict of opinion in connection with the merit of the case between the Judges of the Bench but so far as the question of meaning of "State" or "other authorities under the State' is concerned, the Bench has uniformly decided that the associations, societies and clubs being bodies discharging public functions cannot be treated to be "State' following the ratio of Zee Telefilms Ltd (supra).”

(iii) **S.Seshachalam vs. The Chairman, Bar Council of Tamil**

Nadu, CDJ 2014 SC 1035

"21. Article 14 applies where equals are treated differently without any reasonable basis. But where equals and unequals are treated differently, Article 14 does not apply, Class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons arbitrarily selected from a large number of persons all of whom stand in the same relation to the privilege granted and between those on whom the privilege is conferred whom and the persons not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege.

22. While Article 14 forbids class legislation, it does not forbid reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive" It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

Classification to be reasonable must fulfil the following two conditions:-

Firstly, the classification must be founded on the intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group. Secondly, the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are two distinct things. What is necessary is that there must be nexus

between the basis of classification and the object of the Act. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

70. Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any racional basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory. Every public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14."

(iv) **P.K.Dash , Advocate vs. Bar Council at Delhi, CDJ 2016 DHC 593**

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

ensure that the resources actually benefit the intended beneficiaries.

14. ... Members of the Bar constitute an integral part of the justice delivery system. Consequently, a Bar Association whether registered or not, comes within the ambit of the concerned Court and would always be subject to judicial scrutiny. Court-annexed Bar Associations constitute a separate class different from other lawyers'associations and are an integral part of the machinery for administration of justice. The court-annexed Bar Associations start their name with the concerned court; their nature implies that it is an association representing members regularly practicing in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court."

(v) **Shangrila Food Products Ltd. vs. Life Insurance Corporation of India, (1996) 5 SCC 54**

"11. It is well settled that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognisance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. ..."

(vi) **Ramesh Chandra Sankla vs. Vikram Cement, (2008) 14 SCC 58**

"90. Now, it is well settled that jurisdiction of

the High Courts under Articles 226 and 227 is discretionary and equitable. Before more than half a century, the High Court of Allahabad in the leading case of Jodhey v. State observed: (AIR p. 792, para 10)

> "10. There are no limits, fetters or restrictions placed on this power of superintendence in this clause and the purpose of this article seems to be to make the High Court the custodian of all justice within the territorial limits of its jurisdiction and to arm it with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the bodies mentioned therein." (emphasis supplied)

91. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised ex debito justitiae i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must "advance the ends of justice and uproot injustice."

(vii) **State of Rajasthan vs. Hindustan Sugar Mills Ltd., (1988) 3 SCC 449**

> "4. **...** The High court was exercising high prerogative jurisdiction under Art 226 and could have moulded the relief in a just and fair manner as required by the demands of the situation."

(viii) **B.R.Ramabhadriah vs. Secretary, Food and Agriculture Department, Andhra Pradesh, (1981) 3 SCC 528**

> "5. ...The Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. ..."

(ix) **Kelvin Jute Company Ltd. Workers Provident Fund vs. Krishna Kumar Agarwala, (2016) 14 SCC 326**

> **"**89. Relying upon the decision in Charanjit Lal Chowdhury v. Union of India14 and B.R. Ramabhadriah v. Food and Agriculture Deptt. 15, it was contended on behalf of the respondent-writ petitioner that the Court can enforce public statutory duty and in appropriate cases it can mould the relief to suit the purpose or exigencies of a particular case. It seems to be the settled position of law that the Court can undoubtedly take note of the changed circumstances and suitably mould the relief in order to meet the demand of justice. This view finds support in the decision in Ramchandra Sha v. Sachindra Kumar Mukhopadhya."

(x) **Pasupuleti Venkateswarlu vs. The Motor & General Traders, (1975) 1 SCC 770**

> "4. ... If a fact, arising after the lis has

come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed. ...”

(xi) **Dr.Subramanian Swamy vs. Central Bureau of Investigation, CDJ 2014 SC 400**

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

public servant against whom there is reasonable suspicion of commission of crime or there are allegations of an offence under the PC Act, 1988 has to be treated equally and similarly under the law. Any distinction made between them on the basis of their status or position in service for the purposes of inquiry/investigation is nothing but an artificial one and offends Article 14."

(xii) **S.P.Gupta vs. Union of India, 1981 (Supp) SCC 87**

"Yet again, whenever there is a public wrong or public injury caused by an act or omission of the state or public authority which is contrary to the constitution or the law, any member of the public acting bonafide and having sufficient interest can maintain an action for redressal of such public wrong or public injury."

(xiii) **State of Uttar Pradesh vs. Dinesh Singh Chauhan, (2016) 9 SCC 749**

"19. ... The High Court thus moulded the relief on the basis of the settled legal position. That approach is unexceptionable, except that it may be necessary to mould the relief further as would be indicated hereinafter."

(xiv) **Public Service Tribunal Bar Association vs. Uttar Pradesh, (2003) 4 SCC 104**

"39. ... If the order of dismissal, removal, termination and compulsory retirement is set aside then an employee can be compensated by moulding the relief appropriately in terms of arrears of salary, promotions which may have become due or otherwise compensating him in some other way. ..."

(xv) **Naseem Bano vs. State of Uttar Pradesh, (1993) Supp 4 SCC 46**

> "9. ... Since no dispute was raised on behalf of respondents 1 to 4 in their reply to the averments made by the appellant in the writ petition that 40 per cent of the total number of posts had not been filled by promotion, inasmuch as the said averments had not been controverted, the High Court should have proceeded on the basis that the said averments had been admitted by respondents."

(xvi) **Isham Singh Vs. State Cane Service Authority, 2018 AHC 148508**

> "4. This writ petition is pending for the last 15 years and respondents have not chosen to file counter affidavit. In view of the fact that the averments of writ petition are not controverted by filing reply, the facts stated by petitioner in writ petition sworn on affidavit have to be accepted as correct. It therefore stand admitted that no oral inquiry was conducted at all by fixing date, time and place for adducing evidence to prove charge."

16. Mr.S.Mahaveer Shivaji, learned counsel appearing as a party Respondent in W.A.Nos.1354, 1741 and 2014 of 2023, mainly contended that since the relief sought in the Writ Petition is against the Madras Bar

Association, W.M.P.No.17372 of 2023 in W.P.No.22460 of 2012 is maintainable and a larger relief can be granted in the said Miscellaneous Petition. He submitted that, the relief sought in the Writ Petition is only against the Madras Bar Association and not against the Registrar General of this Court. According to the learned counsel, Rule 17 of the Writ Rules is vague and it does not pertain to the Madras Bar Association.

16(a) Learned counsel pointed out that the order dated 04.07.2019 passed by the Bar Council Enrolment Committee in TNERC No.17 of 2019, was directed to be kept in a sealed cover. According to him, the Madras Bar Association is inside the premises of the Madras High Court and every Advocate has the right to access the same and entry cannot be restricted on the ground that an Advocate is a non-member. In this regard, he submitted that the Madras Bar Association was formed during the British era and all the members of the Madras Bar Association are visiting Madras High Court Advocates Association (MHAA) and nobody in MHAA is questioning them.

16(b) It is further stated by Mr.Mahaveer Shivaji that he had sent a representation to the Madras Bar Association seeking issuance of an Application form for membership, but, he has not received any reply to the said request. Hence, he had filed a Miscellaneous Petition in

W.M.P.No.17372 of 2023, in which, he had also sought a direction to the Appellant Association *to issue membership form with immediate effect and make him a member of their Association*. However, later, he came to know that there is no separate Application form issued by the Madras Bar Association for membership and an Advocate, who is a member of the said Association has to recommend an Advocate for membership into the said Association vide separate letter and the same will be sent to the Governing Body for approval. He added that Bar Council is a statutory body which came into effect by virtue of the Advocates Act and that Bar Association is a body as per the Advocates Act and that all the Bar Associations in the State have to be recognized by the Bar Council of Tamil Nadu and Puducherry.

17. Mr.R.Sankarasubbu, learned counsel appearing on behalf of Mr.A.Mohandoss, learned counsel, appearing as party Respondent in W.A.Nos.1354, 1739 and 2014 of 2023, stated that in the representation dated 13.07.2012 addressed to the Registrar General, the Writ Petitioner has clearly stated that, by endorsing and supporting Mr.P.H.Pandian, former member of the Executive Committee, the other Committee members of the Bar Association are also liable to be punished. Therefore, according to Mr.Sankarasubbu, learned counsel, the issue raised by the

Writ Petitioner is not between two Advocates, but, between an Advocate, who is a non-member of the Appellant Association and the Committee members of the Appellant Association and hence, the issue survives despite the demise of Mr.P.H.Pandian and Mr.R.Neil Rashan.

17(a) Mr.R.Sankarasubbu, learned counsel, went on to state that pursuant to the permission granted by the learned Single Judge on 12.06.2023, Mr.A.Mohandoss filed an Application seeking to implead him as a party to the Writ Petition in W.P.No.22460 of 2012, wherein, he had averred about his Application dated 09.03.2010 pending before the Madras Bar Association and his representation dated 01.07.2019 sent to the President of the Madras Bar Association and also about his representation dated 23.08.2019 addressed to the National Commission for Scheduled Tribes, with copies marked to various other Authorities.

17(b) In support of his contentions, Mr.R.Sankarasubbu, learned counsel, relied on the following decisions:

(i) **State of Karnataka vs. Appa Balu Ingale, 1994 SCC (Cri) 1762**

> 11. Article 17 of the Constitution of India, in Part III, a Fundamental Right, made an epoch-making declaration that "untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in

accordance with law. In exercise of the power in second part of Article 17 and Article 35(a)(ii), the Untouchability (Offences) Act, 1955 was passed, which was renamed in 1976 as "Protection of Civil Rights Act", for short 'the Act'. Abolition of untouchability in itself is complete and its effect is all-pervading applicable to State actions as well as acts of omission by individuals, institutions, or juristic body of persons. Despite its abolition it is being practised with impunity more in breach. More than 75 per cent of the cases under the Act are ending in acquittal at all levels. Apathy and lack of proper perspective even by the courts in tackling the knotty problem is obvious. For the first time after 42 years since the Constitution came into force this first case has come up to this Court to consider the problem. The Act is not a penal law simpliciter but bears behind it monstrous untouchability relentlessly practised for centuries dehumanising the Dalits, Constitution's animation to have it eradicated and to assimilate 1/5th of Nation's population in the mainstream of national life. Therefore, I feel that it d would be imperative to broach the problem not merely from the perspectives of criminal jurisprudence, but more also from sociological and constitutional angulations. While respectfully agreeing with my learned brother Kuldip Singh, J. on his reasoning, conclusions and conviction, it is expedient, therefore, to have the case considered from the above backdrop and address ourselves to the questions that arose for decision.

13. According to him untouchability is an indirect form of slavery and only an extension of caste system. Caste system and untouchability stand together and will fall together. The idea of hoping to eradicate untouchability without destroying caste system is an utter futility. The problem for the Dalits is discrimination of high order next to the problem

of recovering their manhood. In every nook and corner of the country, the Dalits face handicaps, suffer discrimination and are meted out injustice as a daily routine.

16. Poverty and penury made the Dalits dependants and they became vulnerable to oppression. The slightest attempt to assert equality or its perceived exercise receives the ire of the dominant sections of the society and the Dalits would become the object of atrocities and oppression. The lack of resources made the Dalits vulnerable to economic and social boycott. Their abject poverty and dependence on the upper classes in rural India for livelihood stands as a constant constraint to their exercising their rights social, legal or constitutional, though guaranteed. Thus they have neither money, capacity, influence nor means to vindicate their rights except occasional collective action which would be defused or frittered away by pressures through diverse forms. Consequently most of the Dalits are continuing to languish under the yoke of the practice of untouchability. The State has the duty to protect them and render social justice to them.

36. The thrust of Article 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish a new ideal for society-equality to the Dalits, on a par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the mainstream of national life."

(ii) **Suo Motu Writ Petition (Criminal) No.2/2021, 30.07.2021, In RE. (Safeguarding Courts and Protecting Judges (Death of**

Additional Sessions Judge, Dhanbad)

> " ... It has been brought to the notice of this court that similar incidents are happening across the country. Taking into consideration the duty and obligation of the state to create an environment and accord full protection to the judicial officers as well as the legal fraternity so that they can perform their duties fearlessly , we deem it appropriater to take up this matter suo motto. Aas there is an urgent need for wider consideration and consequentialdetailed explanation(s) by all concerned, we will consider the desirability of issuing notice to all other states and union territories on the next date of hearing."

(iii) **Mss Wakf Board College vs. Haji M. Mohammed Ali Jinnah, (2005) 4 MLJ 262**

> "7. On the other hand, Mr. Vijay Narayanan, learned Senior Counsel, submitted that first of all this objection was not raised before the learned Single Judge and the College subjected to the jurisdiction of this Court. Secondly, considering the constitution of the Governing Body, Executive Committee, etc. and the control of the State Government over the aforesaid college, the writ petitions are maintainable. He further submitted that even with the availability of alternative remedy, this Court has jurisdiction to consider the grievance of the writ petitioners. Regarding merits, he supported the order of the learned Single Judge.
>
> 13. Coming to the alternative remedy, though Wakf Tribunal is the appropriate authority, considering the relief prayed for by the writ petitioners and of the fact that, as rightly pointed by Mr. Vijay Narayan, learned Senior Counsel for the writ petitioners, the said objection relating to

jurisdiction has not been raised before the learned Single Judge, we are of the view that merely because alternative remedy is available, the appellant College is not permitted to raise this objection at this stage. In other words, as rightly pointed out, having subjected to the jurisdiction of the learned Single Judge and participated in the proceedings, without raising such objection, the contention relating to existence of alternative remedy is liable to be rejected."

(iv) **Pradyuman District Vs Union of India, Writ Petition (Crl.) No. 99/2015, dated 11.08.2023**

"10. Since safety and security of stakeholders in the judicial process, is non- negotiable, we deem it appropriate considering the aforesaid suggestions and having regard to the concerns and their larger ramifications which have been highlighted above, to lay down the following guidelines in the interest of justice in furtherance of the previous orders of this Court referred to above:

Security Measures:

(a) There ought to be a security plan in place, in line with the recommendations herein, to be prepared by the High Courts in consultation with the Principal Secretaries, Home Departments of each State Government and the Director Generals of Police of the States/Union Territories or the Commissioners of Police wherever a court complex is within the jurisdiction of a Police Commissionerate, as the case may be, which should be timely implemented at the state & district levels covering District Headquarters and other courts in outlying areas as well."

(v) **R.Muthukrishnan vs. Registrar General, High Court of Judicature at Madras, (2019) 16 SCC 407**

> "40. There have to be clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment. In this regard, the following observation has been made by the IBA Task Force:
>
> 4.2.2.2. Clear and transparent rules on admission to the Bar, disciplinary proceedings and disbarment. Clear and transparent rules on admission, disciplinary proceedings and disbarment refers to rules that are comprehensible and accessible, so that those who are subject to the rules are able to easily access them, understand their meaning and appreciate the implications of violating them. The existence of comprehensible, clear and transparent rules on admission to the Bar ensures that those seeking admission are well-informed of the requirements and are assessed on the basis of objective criteria that apply equally to all candidates. Clear and transparent rules reduce the risk of arbitrary disciplinary proceedings and disbarment and also guarantee that lawyers are held accountable and responsible for their actions. Lawyers, those represent and the general public should have access to efficient, fair and functions mechanisms that allow for the resolution of disputes between the profession and public, an imposition of disciplinary measures (where appropriate) and an effect appeals system. This ensures that the rights of all parties are protected in accord with the rule of law."

(vi) **Sunil Batra vs. Delhi Administration, 1980 AIR 1579**

> "... We have earlier noticed that this valuable writ is capable of multiple uses as developed in the

American Jurisdiction. Such is the view expressed by many legal writers. In Harvard Civil Rights and Civil Liberties Law Review, the view has been expressed that beyond the conventional blinkers, courts have been to examine the manner in which an inmate is held or treated during the currency of his sentence. Similar is the thinking expressed by other writers, R. J. Sherpa in "The Law of Habeas Corpus" (1976) Edn. Juvenal, Satires in 72 Yale Law Journal 506 (1963). In American Jurisprudence there is a pregnant observation:

> The writ is not and never has been a static, narrow formalistic remedy. Its scope has grown to achieve its purpose-the protection of individuals against erosion of the right to be free from wrongful restraints on their liberty."

(vii) **M. Mathimurugan vs. The Hindu Religious Charitable Endowment Department, W.P.(MD) No.14985 of 2022, dated 19.04.2023**

> "Seventy five years after the country has secured Independence from the Colonial Rule and after constituent assembly had been given to its country men a sovereign, socialist, secular democratic republic, securing to its citizens, Justice, social economic and political; Liberty of thought, expression, belief, faith and worship. Equality of status and opportunity to all and fraternity assuring the dignity of an individual and the unity and integrity of this nation, instances as set out in the case on hand should make each of us hang our heads in shame.".

18. Heard the elaborate arguments advanced by the learned counsel on either side and perused the documents available on record. Though very many decisions have been relied upon by the learned counsel on either side in respect of their respective contentions, this Court is not going into all the said decisions, as the pivotal issue that arises for consideration in the case on hand is the maintainability of the Writ Petition before the Single Bench.

19. On account of the alleged incident said to have taken place on 06.01.2012, the Writ Petitioner has sought a direction to the Registrar General of this Court to consider and pass orders on his representation dated 13.07.2012. However, the entire episode is disputed and, therefore, admittedly, the issue in the Writ Petition revolves around a disputed question of fact and hence, the High Court, under Article 226 of the Constitution of India, cannot go into such disputed question of fact. Further, on the face of record, the *lis* appears to be private in nature, but, a lengthy order has been passed in the Writ Petition on the premise that it is a Public Interest Litigation.

20. At the beginning of arguments, we questioned the Writ Petitioner as to whether the Writ Petition in W.P.No.22460 of 2012 can be taken up for hearing before a Division Bench by setting aside the order of

the learned Single Judge on the ground that the Division Bench alone has powers to grant relief as against the Registrar General of this Court, more so, in the light of Rule 17 of the Writ Rules. Though, initially, the Writ Petitioner submitted that the Writ Petition against the Registrar General is maintainable, later, he submitted that the learned Single Judge is vested with powers to take up the Writ Petition in question for hearing and render a detailed finding.

21. However, without accepting the contention of the Writ Petitioner that the Writ Petition against the Registrar General is maintainable, in our view, the Writ Petition ought to have been transmitted to be placed before the Hon'ble Chief Justice, as it involves a question pertaining to the administrative decision with regard to listing.

Rule 17 of the Writ Rules:

22. At the risk of repetition, we would like to emphasize that in terms of Rule 17(1)(v) of the Writ Rules, when the relief sought in the Writ Petition is against the Registrar General of this Court, the matter has to be heard by a Division Bench to which the case is assigned by the Hon'ble Chief Justice. However, both parties have agreed to argue this matter before this Bench, in view of the fact that the matter has been specially ordered by the Hon'ble Chief Justice to be heard by this Bench

and in view of the direction given by the learned Single Judge to the Registrar General of this Court, more particularly, paragraph 118(5) of the impugned order, concession cannot be given to anyone contrary to the Rules, stating that Division Bench matters can be heard by a Single Bench.

23. For the sake of clarity, the relevant portion of Rule 17 of the Writ Rules, is extracted hereunder:

> "17. Posting of Writ Petitions:
>
> (1) The following categories of Writ Petitions shall be posted before a Division Bench:
>
> (i) Public Interest Litigation
>
> (ii) Habeas Corpus Petitions
>
> (iii) Petitions challenging the vires of Acts, Rules or Regulations
>
> (iv) Petitions relating to Judicial Service and service of court employees including High Court employees.
>
> (v) Petitions against the High Court
>
> (vi) Petitions arising from the orders of Central Administrative Tribunal, Debts Recovery Tribunal, Debts Recovery Tribunal, Debts Recovery Appellate Tribunal, National Company Law Tribunal, National Company Law Appellate Tribunal, Securities Appellate Tribunal and proceedings under the Securitisation and

Reconstruction of Financial Assets and Security Interest Enforcement Act, Prevention of Money Laundering Act.

(vii) Any petition against any action taken or order passed by the Speaker of the Legislative Assembly or against the Speaker of the Legislative Assembly.

Provided that a Division Bench before whom a Petition is posted for hearing may at any time refer it for hearing and determination by a Larger Bench having regard to the importance or complexity of the case.

24. When, even according to the Writ Petitioner, there is a public cause, the Writ Petition should have been heard only as a Public Interest Litigation. According to Mr.Rajendran, learned counsel, the Writ Petition is not in public interest and the relief is not against Mr.P.H.Pandian and it is only against the Madras Bar Association. It is his stand that even if a member is dead, relief against Madras Bar Association can be proceeded with.

25. A specific plea has been taken by the Madras Bar Association that the Writ Petition ought to have been heard only by a Division Bench, ***as any Writ Petition directed against the High Court is highly***

significant in nature in view of Rule 17(1)(v) of the Writ Rules, which mandates hearing of such Petitions by the Division Bench alone. Even though Mr.Rajendran, learned counsel, has addressed arguments that the learned counsel on either side have conceded to give up the said plea, it is to be pointed out that it is not within the concedement of the counsel to leave aside the plea, but, it is a legal issue which requires to be deliberated by this Court, so as to issue a direction to the Registrar General, who is a statutory authority. Therefore, if it is a Public Interest Litigation, the learned Single Judge has no jurisdiction to take up the matter, in the light of Rule 17(1)(v) of the Writ Rules, as per which, the matter has to be heard and decided only by the Division Bench and if it is not a Public Interest Litigation, then, the directions given by the learned Single Judge in the Writ Petition, cannot hold good.

26. Further, to the contention of the Appellant Association that the Writ Petition ought to have been heard by a Division Bench in terms of Rule 17(1)(v) of the Writ Rules, we are of the view that the said Rules, which came into effect in the year 2021 are procedural in nature and it will apply to all pending cases. However, as the nature of relief sought in the case on hand, being allegedly in public interest, necessarily, it ought to have been heard only by a Division Bench.

Maintainability of the Writ Petition:

27. It is clear that the contesting Respondents in the Writ Appeals have addressed arguments before the learned Single Judge, to suit their convenience. Though this Bench pointed out that in terms of Rule 17(1)(v) of the Writ Rules, only the Division Bench is entitled to take up the Writ Petition falling within the ambit of Public Interest Litigation, now, the contesting Respondents have addressed arguments that the learned Single Judge is empowered to pass orders in the Writ Petition by moulding the relief. As the order of the learned Single Judge is challenged by way of Writ Appeals, we cannot treat the issue partly as a Public Interest Litigation and partly as a Private Interest Litigation. Further, the contesting Respondents cannot blow hot and cold over the same matter, on the one hand contending that it is not a Public Interest Litigation and on the other hand, taking a stand that the learned Single Judge can mould the relief.

28. According to Mr.Rajendran, learned counsel, no relief has been sought against the Registrar General and that the relief is only against the Madras Bar Association. If that is the case, the Madras Bar Association, being an autonomous body with its own by-laws, the remedy available to the Writ Petitioner is to approach the Civil Court or any other

forum and there is no statutory duty or public duty involved in this case for invoking the extraordinary jurisdiction of this Court. Also, it cannot be lost sight of that the by-laws of the Appellant Association have not been challenged by the contesting Respondents.

29. We are of the view that unless the order of the learned Single Judge is set aside, the matter cannot be transmitted to the Division Bench, as a Writ Petition seeking a relief against the Registrar General of this Court, can be heard only by a Division Bench and not by a Single Judge.

30. Mr.S.Mahaveer Shivaji, learned counsel, who is one of the Respondents in W.A.Nos.1354, 1741 and 2014 of 2023, submitted that since the matter has been posted before this Division Bench, the entire issue can be decided by this Bench on merits. However, such a contention cannot be entertained at the fag end of the proceedings and showing any such leniency would only result in setting a wrong precedent.

Relief sought against Registrar General in the Writ Petition:

31. It was contended by Mr.Rajendran, learned counsel, that the relief sought in the Writ Petition is only for disposal of his representation. However, it is to be pointed out that when the relief is sought against the Registrar General, in case of non-compliance of any direction issued,

contempt proceedings alone can be initiated against him. In the case on hand, the Writ Petitioner has sought relief only against the Registrar General and hence, the said Petition should have been heard only by a Division Bench and therefore, maintaining the said Writ Petition before the learned Single Judge is wholly impermissible and the learned Single Judge ought not to have entertained the said Petition when there was a specific plea in the counter affidavit of the Madras Bar Association to the effect that the Writ Petition is not maintainable. Hence, on this sole ground, the order of the learned Single Judge is liable to be set aside.

Ordering of Impleading Petitions alone:

32. Learned Single Judge has ordered W.M.P.Nos.17204 and 17372 of 2023, seeking impleadment of Mr.A.Mohandoss and Mr.S.Mahaveer Shivaji, respectively, as party Respondents to the Writ Petition, but the remaining Applications have not been ordered.

33. Though according to the Writ Petitioner, the issue on hand is a Private Interest Litigation as conceded by him, the Court cannot pass orders under Article 226 of the Constitution of India. If it is a Public Interest Litigation, the Court is empowered to pass orders depending upon the facts and circumstances that prevail. In such an event, the Writ Petitioner must have pleaded that the matter has to be heard by a Division

Bench and ought not to have addressed arguments before the learned Single Judge. Having addressed arguments before the learned Single Judge and obtained an order, now, in the Writ Appeals, contending that the Court is empowered to mould the relief, cannot be accepted.

Vacating the interim stay and Appeal by the Registrar General:

34. In the present Writ Appeals, entire arguments of the contesting Respondents mainly appear to be that the Madras Bar Association should be sent out from the premises of the Madras High Court. It is contended by the contesting Respondents that when there is no Writ Appeal filed by the Registrar General questioning paragraph 118(5) of the impugned order, the order of interim stay of the impugned order, granted by the Division Bench (comprising Hon'ble Mr. Justice S.S.Sundar and Hon'ble Mr. Justice K.Rajasekar) on 03.07.2023 needs to be vacated. It is also the contention of the contesting Respondents that the Registrar General has not preferred any Appeal against the order of the learned Single Judge and whenever a direction is issued by the Court, it is the duty of the Registrar General to adhere to it. Admittedly, in the impugned order, there is no binding direction against the Registrar General of this Court. Further, when the Writ Petition had been heard by a Court which had no jurisdiction to hear the case, any finding rendered by

the said Court is void and therefore, any consequential direction to the Registrar General would not have the force of law. But, in the order impugned, it has been left to the wisdom of the Registrar General to place the matter before the Hon'ble Chief Justice. We are of the view that such an observation is void and hence, there is no need for him to file an Appeal.

Multiple prayers in a single W.M.P. and numbering of the same:

35. It is to be noted that Mr.A.Mohandoss, learned counsel, has sought multiple prayers in W.M.P.No.17204 of 2023 in W.P.No.22460 of 2012 and it is not known as to how the said W.M.P. was numbered, when it is common knowledge that in one Miscellaneous Petition, only one prayer can be sought. When Mr.A.Mohandoss, learned counsel was posed a pointed question in this regard, instead of answering the said question directly, he gave an indirect reply saying that even the Madras Bar Association had threatened the Registry to number the Writ Appeals filed by them.

36. Countering the above stand of Mr.A.Mohandoss and without admitting the said allegation levelled by him, the Madras Bar Association, to bring to light the real colour of one of the impleading Petitioners, brought to the notice of this Court, certain decisions rendered by this

Court in C.R.P.(PD) Nos.708 &709 of 2017, dated 07.03.2017 and C.R.P.(PD) No.716 & 717 of 2021, dated 20.04.2021, in which, certain remarks have been passed against him. However, considering the fact that the said decisions are in no way connected with the present case, this Court is not delving into the same. But, the findings therein would speak volumes about the individual.

37. Further, it is found that the contention of Mr.A.Mohandoss as regards the threat made by the Madras Bar Association for numbering the Appeals, is not correct, inasmuch as, when enquired, the staff concerned of the Registry stated in unequivocal terms that they were never threatened by the Madras Bar Association.

38. To the pointed question of this Court to Mr.A.Mohandoss in respect of seeking multiple prayers in a single Miscellaneous Petition, it is his duty to enlighten the Court as to how his impleading Petition is maintainable, instead of alleging that the Writ Appeals filed by the Madras Bar Association were numbered by the Registry under threat and coercion, without anything more. In other words, he has to stand on his own strength and not on the weakness of the other side. If such is the stand of the learned counsel, then, this Court would have to draw an adverse inference against the said individual to come to a conclusion that the

Registry was subjected to a similar treatment at the hands of the present counsel for numbering a single W.M.P. containing many a prayer.

Bar Council's communication dated 12.07.2017:

39. According to Mr.R.Sankarasubbu, learned counsel, all the members participated in the meeting of the Enrolment Committee and the decision dated 04.07.2019 is binding and copies of the proceedings have been forwarded to all the participants. Mr.S.Mahaveer Shivaji, learned counsel, referred to the order of the Bar Council of Tamil Nadu and Puducherry, dated 04.07.2019 in TNECR No.17 of 2019, reiterating the arguments of learned counsel, Mr.R.Sankarasubbu and Mr.Elephant G.Rajendran. It is seen that the *Ad hoc* Committee of the Bar Council, by its proceedings dated 11.07.2019 and 12.07.2019, had directed that the order dated 04.07.2019 handed over to the Secretary, Bar Council of Tamil Nadu and Puducherry on 12.07.2019, be kept in a sealed cover. However, in view of declaration of results of elections to the Bar Council of Tamil Nadu and Puducherry, the Enrolment Committee lost its jurisdiction to decide the issue, as it was disbanded by then. In any event, the *Ad hoc* Committee's decision dated 12.07.2009 may not be applicable to the facts of this case. Therefore, this Court is not inclined to deliberate any further on this issue.

Shifting of MBA from the High Security Zone:

40. To the strenuous contention of Mr.Rajendran, learned counsel, that the Madras Bar Association is a trespasser by continuing to function in the High Security Zone of the Madras High Court premises in the light of the direction of the learned Single Judge in paragraph 118(5) of the impugned order passed in the Writ Petition, we are of the view that the Bench cannot take a call on this aspect, as Madras Bar Association is an autonomous body, which has been granted the space on the basis of an administrative decision and if at all, any decision is taken, it can only be on the Administrative Side and not otherwise. Insofar as arranging at-home lunch and conducting birthday parties, for which, food caterers are allowed to enter the High Security Zone of the Madras High Court and the food brought by them in huge utensils are taken inside the Association premises without being subjected to frisking, as alleged, even this aspect could be decided only on the Administrative Side, as, once the Association is granted permission to occupy by an administrative decision, placing of any fetters on such occupation can only be by means of an administrative decision and there could be no judicial intervention so long as violation of legal provisions is not pointed out.

Car parking and encroachment on NSC Bose Road:

41. It was contended by Mr.Rajendran, learned counsel, that Madras Bar Association has encroached N.S.C. Bose Road and is collecting car parking charges from its members. However, the said contention is beyond the scope of the Writ Petition and further, the said issue could be deliberated by the Division Bench, if the case is taken up for hearing as a Public Interest Litigation, and not otherwise.

Communal Issue:

42. One issue that was addressed by Mr.Rajendran, Mr.A.Mohandoss and Mr.S.Mahaveer Shivaji, in unison, is the alleged practice of 'casteism' by the Madras Bar Association. The Writ Petitioner invited a composite order which made us hear the matter at length and whenever we expressed that the contesting Respondents in the Writ Appeals should confine their arguments to the subject matter in issue, they started dragging communal issue as part of their arguments and emphasized on Article 17 of the Constitution of India.

43. Mr.R.Sankarasubbu, learned counsel, submitted that membership to Mr.A.Mohandoss, learned counsel, in Madras Bar Association, was denied, as he belongs to Scheduled Tribe community. He further submitted that the Application filed by Mr.Mohandoss has not been considered for more than 12 years and that there is discrimination

and arbitrariness and the same is not acceptable. According to the contesting Respondents, there is discrimination on the basis of caste in the selection of members to the Madras Bar Association and that only 5 to 7 members of the Madras Bar Association belong to Scheduled Caste and Scheduled Tribe community.

44. When it is the specific case of Mr.A.Mohandoss, that he was denied membership, nothing prevented him from agitating the issue at the earliest point of time before the appropriate forum by filing necessary Petition. However, in the impleading Petition, Mr.A.Mohandoss cannot canvass for any relief which is beyond the scope of the main Petition. The impleading Petitioner cannot be allowed to enter through the back door, when he has not even knocked on the front door.

45. It was stated that Mr.Vijay Narayan, learned Senior Counsel, has admitted members just before his term came to an end. However, it is not the case of the Writ Petitioner that it was not in consonance with the by-laws. When no legal infraction is pointed out, merely because the impleading Petitioner or persons similarly placed have not been granted membership, it cannot be held that the membership granted by Mr.Vijay Narayan, is errorneous and discriminatory. Therefore, the contention of the contesting Respondents that there is violation of Article 17, is far-

fetched.

46. Discrimination does not flow from denial of membership. Merely because Madras Bar Association is permitted to occupy a place inside the Madras High Court, it does not mean that the affairs of the Association can be controlled by the High Court, including grant or denial of membership, as it is an autonomous body and it has its own by-laws and any contravention in the application of by-laws has to be agitated in accordance with law. That apart, there is no finding by the learned Single Judge as to whether the incident alleged by the Writ Petitioner has taken place or not, considering the fact that the alleged victim and the alleged aggressor are no more and such an incident itself is disputed.

47. The allegation of the Writ Petitioner that there is discrimination on the basis of caste in the Madras Bar Association is far-fetched. Admittedly, Mr.Neil Rashan was not a member of the Madras Bar Association. Entitlement to enter into the Association and enjoy the benefits would flow only to the members and not all persons can make a grievance and seek redressal of the grievance, when the entity is an autonomous one, but merely granted a public space.

48. Lawyers' community, by itself, forms a separate class and it is open to any Association to decide about the membership of the specific

Association, and if membership has been arbitrarily denied, the said person can question the same before the appropriate forum. In the case on hand, there is no such relief claimed by filing a separate Petition.

49. The incident of Mahatma Gandhi quoted by Mr.V.Prakash, learned Senior Counsel, was tried to be projected by the contesting Respondents in a different manner. When Mahatma Gandhi was travelling in a train in South Africa, he was entitled to travel in First class, because he had a valid ticket. He was thrown out of the train on being termed as 'black'. Admittedly, that was a case of discrimination. That is not the case here at all. As already stated, Lawyers form a separate community. If they categorize themselves as belonging to Forward/Backward/Scheduled Caste/Scheduled Tribe community, it only amounts to degrading their status rather than posing themselves that they are equal to everyone. Lawyers, as a whole, belong to a separate homogenous group called 'Gentlemen'. However, it is unfortunate that the said homogeneous community is trying to use this Court to create a casteist atmosphere which is highly deprecated.

Plea of the contesting Respondents to become members of MBA:

50. When it is the contention of Mr.A.Mohandoss, learned counsel that Madras Bar Association is a very bad Association, this Court

is at a loss to comprehend the reason for his applying for membership in the said Association. The letter sent by Mr.A.Mohandoss is clear that it cannot be treated as a request, but could only be construed as a threat that in case of non-consideration of his request for membership, a complaint will be lodged to the National Commission for Scheduled Tribe. This Court cannot be a party to such threats and also cannot succumb to such threats by granting any relief to which the impleading Petitioner is legally not entitled to.

51. On the contrary, according to Mr.Mahaveer Shivaji, the Madras Bar Association is a good Association and he wants to become a member, so that, he can utilize the Library for the purpose of educating himself and to enlighten the Court when matters are heard.

52. In the aforesaid scenario, this Court can only sympathize with the impleading Petitioners who are contradicting themselves on the status of the Bar Association. This Court does not want to intervene in the membership process of the Appellant Association so long as no violation of by-law is claimed and if there is any violation, it is open to the aggrieved party to go before the appropriate forum to seek redressal and the Court could consider the same after deciding the maintainability of the

Writ Petition.

53. As already stated, the impleaded Respondents viz. Mr.A.Mohandoss and Mr.S.Mahaveer Shivaji, cannot seek a larger relief against the co-respondent viz. the Madras Bar Association, than what has been sought by the Writ Petitioner in the Writ Petition. If at all, they have any grievance, they should file separate Writ Petitions claiming such relief. However, by means of the abovesaid observation, we hasten to add that no liberty is granted to the impleaded Respondents to file a fresh Writ Petition.

Grant of compensation:

54. As regards compensation of Rs.5,00,000/- ordered by the learned Single Judge payable by the Madras Bar Association to the Writ Petitioner, when the dispute itself is beyond the adjudication of the Writ Court, the learned Single Judge has gone beyond the scope of the Writ Petition and moulded and granted reliefs, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, which cannot be sustained.

Remarks against Mr.Vijay Narayan:

55. As regards the observations made by the learned Single Judge against Mr.Vijay Narayan, learned Senior Advocate, in paragraph 64 of

the impugned order, we are of the view that in the absence of any credible material, the observations of the learned Single Judge cannot be sustained, more so, without hearing the aggrieved party. It is on that score, the order under challenge, in the Writ Appeal filed by Mr.Vijay Narayan in W.A.No.2014 of 2023, has to be interfered with.

MBA Directory:

56. As regards the submission of Mr.A.Mohandoss, learned counsel, that the names of Hon'ble Sitting Judges of the Madras High Court, who were earlier members of the Madras Bar Association are printed in the Members' Directory, we feel that this Court cannot traverse beyond the scope of the Writ Petition, and therefore, this aspect does not require any adjudication.

W.M.Ps. filed at the eleventh hour:

57. As regards the Vacate Stay Petition and other Miscellaneous Petitions filed in the present Writ Appeals at the eleventh hour, since we have comprehensively heard all the parties, who were impleaded by the learned Single Judge, we are of the view that there is no necessity to entertain the said Miscellaneous Petitions, in view of this detailed judgment.

Disputed question of fact in the Writ Petition and grant of relief:

58. The Writ Petitioner has levelled allegations against Mr.P.H.Pandian, learned Senior Advocate, who is no more now. Even assuming that Mr.P.H.Pandian is alive, this Court would not have granted the relief sought by the Writ Petitioner, more so, without impleading and hearing Mr.P.H.Pandian, and therefore, the present Writ Petition is not maintainable for non-joinder of necessary and proper parties.

59. The cause of action alleged by Mr.Rajendran and other impleaded Respondents viz. Mr.A.Mohandoss and Mr.Mahaveer Shivaji, by no stretch of imagination, can be treated to be one and the same. According to Mr.Rajendran, learned counsel, death of a person cannot be stated as a reason for not granting the relief sought in the Writ Petition.

60. The Writ Petition was filed in the year 2012. In 2023, two Writ Miscellaneous Petitions have been filed, in which, larger relief has been sought. No doubt, by filing a Miscellaneous Petition and amending the prayer in the Writ Petition, relief can be sought. But, the relief sought in the Miscellaneous Petitions cannot be granted, when it is wider than the relief sought in the Writ Petition. Even assuming for the sake of argument that the relief sought in the Writ Petition is granted, the Registrar General cannot execute an order against a dead person. That apart, the Writ Miscellaneous Petitions seeking impleadment alone were ordered and it is

contended that no opportunity of hearing was granted to the Madras Bar Association to file counter in the other Miscellaneous Petitions. Further, it is to be pointed out that even otherwise, any error committed by a member cannot be fastened against the Association, more so, when the said member is no more.

61. This Court has dealt with all the contentions raised on behalf of the contesting Respondents and rendered findings. However, before parting with the case, necessarily, a few material concerns, in the form of facts and findings, which have been recorded in the order impugned, need to be adverted to, as the said findings so recorded, have a bearing on judicial time, which, this Court has expended at the behest of the parties.

62. The Writ Petition was filed by Mr.Rajendran, for a prayer that a mandamus be issued to consider and pass orders on his representation submitted before the Registrar General. What is relevant to point out here is the fact that the issue, which was sought to be canvassed by the Writ Petitioner was not the humiliation faced by him, but a humiliation faced by his son viz. Late Mr.Neil Rashan. However, it is pertinent to point out that on the date when the alleged occurrence is said to have taken place, the person who suffered humiliation was very much alive and was not only a major, but a legal practitioner as well. Therefore, the said

individual would have been very well aware of his rights as assured under the Constitution. But, for reasons best known, the said individual has not thought it fit to give any representation, but the representation has been given by his father, Mr.Elephant G.Rajendran, in the capacity of his senior. This Court is at a loss to understand as to how such representation could be filed. Further, the version which has been canvassed in the representation of the Writ Petitioner is alleged to have been portrayed by his son/junior, which is clearly a piece of hearsay version, and it cannot form the basis of any representation, even though Mr.R.Neil Rashan has filed a supporting Affidavit. In the absence of any specific averment either in the affidavit filed in support of the Writ Petition or in the supporting Affidavit, which prevented Mr.R.Neil Rashan from filing a Writ Petition in his individual capacity, the Writ Petition filed by Mr.Rajendran should not have been entertained. Further, a mandamus of this nature could be sought only by the aggrieved party, barring cases of encroachment in which, Petitions could be filed by third parties, particularly, before a Division Bench. In the case on hand, the litigation being in private interest, it could not be entertained under the garb of public interest, even be it an Advocate, acting on behalf of his junior, as only the aggrieved party has to ventilate his grievance only as a private litigation and not as a

Public Interest Litigation. Even otherwise, if any public interest is involved in a litigation, it has to be agitated only before a Division Bench and a single Judge cannot entertain such a Petition. However, the aforesaid crucial facts have not been considered in the Writ Petition. The Courts have to be guided only by the nature and admissibility of litigation and not by any other extraneous factor. Hence, the Writ Petition itself is not maintainable, having not been filed by the alleged victim.

63. In view of the foregoing discussion, we are inclined to set aside the impugned order passed by the learned Single Judge in its entirety, by pointing out that the Writ Petition could have been taken up only by a Division Bench and also on the further ground that the alleged victim and the alleged aggressor are no more.

64. Accordingly, the order dated 22.06.2023 passed by the learned Single Judge in W.P. No.22460 of 2012 is set aside and as a sequel, **all the Writ Appeals stand allowed.** No costs. Consequently, connected C.M.P.Nos.13244, 16455, 17091, 20061 and 21084 of 2023 are closed. Further, connected C.M.P.SR.Nos.115276 to 115281 of 2023, which were filed by the Writ Petitioner at the eleventh hour, are also closed.

(S.V.N.,J.) (K.R.S.,J.)
06.11.2023

Index : Yes/No
Speaking Order : Yes/No

(aeb)

To:
The Registrar General,
High Court of Madras,
Chennai 600 104.