

IN THE HIGH COURT OF KARNATAKA, BENGALURU

THE HON' BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.1771/2015 (GM-RES) DATED : 20-09-2019

THE ADVOCATES' ASSOCIATION, NELAMANGA VS.  
KARNATAKA STATE BAR COUNCIL REPRESENTED BY  
ITS SECRETARY AND ANOTHER

ORDER

This is an unfortunate litigation, where the members of the Advocate Association who should act like social reformers for the welfare of litigant public have divided themselves into two associations and are fighting for their ego/ selfishness.

2. Petitioner - Advocates' Association, Nelamangala, Registration No.54/86-87, KSBC R.R.No. 35/87 filed the present writ petition for a writ of certiorari to quash the impugned resolution BCM Res. No.52/10 dated 12-13/06/2010 passed by the first respondent-Karnataka State Bar Council dated 16.06.2010, vide Annexure-T. It is the case of the petitioner that after the establishment of Munsiff Court at Nelamangala in the year 1981, the Senior Advocates

and Advocates practicing at Nelamangala formed Advocates' Association and registered the same on 24.02.1987 in accordance with the provisions of the Karnataka Societies Registration Act, in the office of the Registrar of Societies, Bengaluru Rural, Bengaluru. On 07.06.1987, the Karnataka State Bar Council-first respondent, accorded recognition and issued Certification under the provisions of Section 13 of the Karnataka Advocates Welfare Fund Act, 1983. Since then, the petitioner-Association has been functioning by receiving all the communications sent by the High Court of Karnataka and State Bar Council, for conducting various function.

3. When things stood thus, some of the members of the second respondent-Nelamangala Advocates Association (R), by filing false affidavits to the effect that there is no Advocates Association in Nelamangala, got registered the second respondent-Association before the Deputy Registrar of Societies, Bengaluru Rural District, Bengaluru. The petitioner-Advocates Association filed objections before the 1<sup>st</sup> respondent-Karnataka Bar Counsel for recognition of the second respondent- Advocates Association contending that the petitioner -

Association is duly registered and certificates are issued bearing No.54/1986-87 and 35 of 1987 dated 07.06.1987. The office bearers and members of the petitioner-Association were under the impression that the first respondent would not consider the request of the second respondent. But, considering the application filed by the office bearers of the second respondent for grant of recognition, the first respondent, without conducting any enquiry as contemplated under sub Section (3) of Section 13 of the Karnataka Advocates Welfare Fund Act,1983, behind the back of the petitioner, without intimation or communication to the petitioner, passed a resolution and recognized the second respondent-Association and issued Certificate of Recognition, dated 16.06.2010, ignoring the earlier registration and recognition of the petitioner-Association. Subsequently, on 08.12.2014, members of the petitioner Association came to know about grant of recognition to the second respondent. Therefore, the petitioner is before this Court for the relief sought for.

4. The first respondent has not filed statement of objections to the allegations made in the writ petition.

5. The second respondent-Nelamangala Advocates Association(R) filed statement of objections to the writ petition and contended that the petitioner has suppressed

the material facts and has not come to the Court with clean hands and therefore, the writ petition is liable to be dismissed for suppression of material facts. It is contended that the writ petition is liable to be dismissed for delay in approaching the Court, since the writ petition is filed in the year 2015 challenging the Order passed by the 1<sup>st</sup> respondent in the year 2010, without giving sufficient reasons for the delay. It is further contended that there are disputed questions of facts involved in the present writ petition and therefore, such disputed questions of facts cannot be gone into in the writ proceedings.

6. It is further contended that the averments made in paragraph 4 of the writ petition is partly correct and the allegation that some young members of the second respondent-Association pressurized the office bears of the petitioner Association to pass resolution on trivial reasons against the Presiding Officers, Police Officers and other Executive Officers for their ulterior motives and personal causes, are completely false and incorrect. It is further contended that one Mr.R.Kempaiah is the President of the Petitioner-Association, he was the Treasurer and member of

Magadi Association and till today, he continues to be the member of Magadi Association. Apart from the President, most of the members of the petitioner Association are the members of Bengaluru and Magadi Bar Associations. It is further contended that Annexures-J and K, letters dated 23.08.2006 and 07.10.2014, does not refer to Petitioner Association, on the other hand, they refer to the President, Bar Association, Nelamangala. But the petitioner Association is now trying to interpret the said documents as the one corresponded in its name. As per the letter vide Annexure-M issued by the first respondent, the petitioner-Association has not conducted election for its Board since twelve years. The said fact clearly demonstrates that the petitioner Association is not in existence. As per Annexure-N, one Sri K.Keshavmurthy is nominated as President of the petitioner Association. The said K. Keshavmurthy is the member of the Bengaluru Bar Association. It is further contended that the petitioner Association has created documents showing that the petitioner has conducted election during the years 2010-2011 and 2011-2012 and therefore, sought for dismissal of the writ petition.

7. Having heard the learned counsel for the parties, it is not the case of the first respondent that the petitioner Association did not file objections dated 28.10.2009 with regard to recognition of the second respondent-Association and the petitioner Association does not at all existing. The

allegations made in the writ petition are not at all contravened by the 1<sup>st</sup> respondent. Learned counsel for the first respondent is not in a position to say in the presence of the Officer of the Bar Council, whether till today the petitioner Association is existing or not. The main contention of the petitioner-Association is that, when an application came to be filed by the second respondent before the first respondent on *08.10.2009* for recognition, the petitioner filed objection on *28.10.2009*. Without considering the objections, the first respondent proceeded to recognize the second respondent Association by the impugned resolution BCM Res. No.52/10 dated *12-13.06.2010*, without following the procedure as contemplated under the provisions of Section 13(3) of the Karnataka Advocates Welfare Fund Act, 1983. Though the learned counsel for the first respondent produced the original register maintained by the Karnataka State Bar Council, it does not depict that before recognition of second respondent Association, whether the 1<sup>st</sup> respondent Bar Council has complied the provisions of Section 13(3) of the Karnataka Advocates Welfare Fund Act, 1983.

8. A careful perusal of the Section 13 of the Karnataka Advocates Welfare Fund Act, 1983 clearly depicts that, all associations of advocates known by any name functioning in

any court centre may, before a date to be notified by the Bar Council in this behalf, apply to the Bar Council in such form as may be prescribed for recognition and registration. Every application for recognition and registration shall be accompanied by the rules or bye-laws of the association made by adopting model by-laws circulated by the Bar Council, and registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) , names and addresses of the office bearers of the association and with an upto date list of the members of the association showing the name, address, age, date of enrolment and the ordinary place of practice of each member. Sub Section (3) of Section 13 depicts that the Bar Council may, after such enquiry as it deems necessary, recognize the bar association and issue a certificate of registration in such form as may be prescribed. Sub Section (4) of Section 13 stipulates that the decision of the Bar Council regarding recognition and registration of the Bar Association shall be final.

9. In view of the aforesaid mandate of the provisions of Section 13(3) of the Karnataka Advocates' Welfare Fund Act, 1983, it is incumbent on the part of the respondent No.1 to consider the application of the second respondent dated 08.10.2009 for recognition after following the procedure as contemplated under law. Though the petitioner filed

objections dated 28.10.2009, in the impugned resolution, there is no whisper about consideration of the said objections.

10. It is very curious that impugned resolution BCM Res. No.52/10 dated 12/13.06.2010, the subject was only to consider the recognition of the Bar Association of Manvi, Nippani, Sullia, Bantwal, Aurad, Athani, Ankola and Tumakuru. Nelamangala Advocates Association (second respondent) was not at all the subject matter of the said resolution. But, in the second paragraph of the resolution, it is stated that, "It is further resolved to recognize the Nelamangala Advocates Association constituted under the Presidentship of Shri Manjunatha to which Registration Certificate dated 17.09.2009 issued by the Registrar of Societies". Before recognition, the Bar Council has not considered the objections filed by the petitioner and even in the absence of subject in the meeting, how the first respondent passed the impugned resolution is not forthcoming.

11. The learned counsel for the second respondent tried to argue and persuade the Court that the petitioner Association is not existing as per Resolution No.100/14 dated 13.07.2014, the application of the petitioner Association dated



10.07.2014 came to be rejected by the first respondent. But, a perusal of the original register of resolutions in Book No.12, Page No.190, Resolution No.100/14 it is only stated as under:

Res.No.100/14: The application filed by a body of the Advocates to form a parallel Association is hereby unanimously REJECTED. However, the learned members of the Bar Council viz., Sri C.R.Gopalaswamy, Sri Muniyappa and Sri Malleshaiah, members are requested to resolve the dispute whatever existed”.

12. The said resolution cited by the learned counsel for the respondent No.2 cannot be considered in this case as the second respondent is not before this Court. The Petitioner is before this Court only challenging the recognition given to second respondent and hence, this Court cannot elaborate the scope of writ petition and it is not the case of the Bar Council that the petitioner Association does not exist and application filed is already rejected. In the absence of the same, the contention of the second respondent cannot be accepted.

13. The learned counsel for the second respondent

contended with vehemence that some of the members of the petitioner's association are members of Magadi and Bengaluru Advocates Association. Whether the petitioner Association is existing or not has to be considered by the first respondent taking into consideration the objection filed by the petitioner. The matter requires reconsideration by the Bar Council, afresh.

14. Section 3 of the Advocates Act, 1961 stipulates State Bar Councils. Section 6 of the Act, stipulates the Functions of State Bar Council, which reads as under:

6. Functions of State Bar Councils: (1) The functions of a State Bar Council shall be-

- (a) to admit persons as advocates on its roll;
- (b) to prepare and maintain such roll;
- (c) to entertain and determine cases of misconduct against advocates on its roll;
- (d) to safeguard the rights, privileges and interests of advocates on its roll;
- (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section

clause (a) of sub- section (2) of section 7;

(e) to promote and support law reform; (ee) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and paper of legal interest;

(eee) to organize legalaid to the poor in the prescribed manner;

(f) to manage and invest the funds ofthe Bar Council;

(g) to provide for the election of its members;

(gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section

(1) of section 7;

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions.

(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of-

(a) giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

(c) establishing law libraries.

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

15. The provisions of Section 11 of the Karnataka Advocates' Welfare Fund Act, 1983 envisages the Powers and Duties of the Secretary and Section 13 envisages Recognition and Registration of Bar Associations. In view of the provisions of Advocates Act, 1961, Bar Council of India Rules and the Karnataka Advocates' Welfare Fund Act, 1983, it is the duty of the Bar Council to act like a "mother" to all the Advocates' Associations in the State of Karnataka and ensure proper discipline is maintained by the Advocates in order to provide

justice to the poor litigants who come to the Court with great expectations treating the Court as “Temple of Justice” and it is also the duty of the Bar Council to ensure proper utilization of the funds granted by the State Government from time to time for the welfare of the members of the Advocates Associations in Karnataka and to maintain transparency even in printing of welfare stamps and its sale in order to uphold the dignity and majesty of the Karnataka State Bar Council. All the Associations in the State should maintain cordiality between the members of the Bar and it is the duty and responsibility of the first respondent to take action against erring Advocate Associations and its members, in accordance with the Advocates Act, 1961. While granting the recognition to the second respondent, the respondent No.1/Bar Council ought to have considered the objections filed by the petitioner and verified the rules and regulations and the provisions of the Act as contemplated. The same has not been done in the present case on hand.

16. The object of the Advocates Act is to constitute one common Bar for the whole country and to provide a machinery for its regulated functioning. Since the Act sets up one Bar, autonomous in its character, the Bar Councils set up thereunder have been entrusted with the power to

regulate the working of the profession and to prescribe rules of professional conduct and etiquette and the power to punish those, who commit breach of such rules. The power of punishment is entrusted to the disciplinary committees ensuring a trial of an advocate by his peers. Sections 35, 36 and 37 lay down the procedure for trying complaints, punishment and an appeal to the Bar Council of India from the orders passed by the State Bar Councils. As an additional remedy Section 38 provides a further appeal to the Supreme Court. Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrolment, right to practice and discipline of the advocates. It is relevant to state at this stage that there has been a mushroom growth of Associations lead by several persons/advocates who wanted to be identified as heroic and that such mushroom growth will create enmity among advocates and ultimately lead to internal fight and thereby they will not concentrate on the judicial practice to uphold the dignity and reputation of the noble profession. Ultimately, the profession is guided by considerations "public good", that is to say, that the Court should be assured of efficient and willing assistance from the Bar. It is only to be hoped that this forward step is a precursor of further improvements in the relations between the different sections of the Bar so that they may grow into a unified bar with all the best traditions which it has inherited from the past and which it is its duty to uphold in the years to come to the lasting credit of the legal profession and to the lasting benefit of all concerned with law and

litigation.

17. It is also the duty of the Bar Council to ensure that the members of one Association are not the members of any other Association. It is prohibited under the provisions of the Societies Registration Act. It should ensure that the members maintain some discipline. If the members do not maintain discipline, what can be expected from them to render the legal service to the needy litigants? Therefore, the Bar Council has to ensure proper administration of all the Advocate Associations and function of the Advocates to serve the litigant public.

18. In view of the aforesaid reasons, Writ Petition is *allowed*. The impugned resolution passed by the 1<sup>st</sup> respondent-Bar Council recognizing the second respondent is hereby quashed and the matter is remanded to the first respondent-Bar Council for reconsideration afresh after considering the objections, and after hearing the petitioner and second respondent pass appropriate Orders strictly in accordance with law. This Court hopes and trusts that the Bar Council would act like a 'mother' to both the Associations and try to resolve the dispute and ensure that one Bar Association should continue, in the interest of

the learned members of Bar Association and General Public at  
Nelamangala.

Ordered accordingly.