

KRISHNA S.DIXIT

26/10/2021

ORDERS ON I.A. Nos.15 & 16 of 2021. A brief narration of the facts that led to filing of these two applications is pertinent. Petitioner-Bar Association has filed this writ petition; it challenges the Government Order dated 04.09.2021 whereby an Administrator was appointed to manage the affairs of the Association; an interim order of stay came be granted; subsequently this Court after giving a wider audience to the Bar handed an interim order on 20.09.2021 constituted a High Power Committee (hereafter 'HPC') comprising of very tall members of the Bar for conducting the elections on or before 22.12.2021; petitioner's challenge to this order in Writ Appeal is stated to have been negated by the Division Bench of this Court, with marginal modification; be that as it may. 2. The HPC expeditiously held meetings on the 7th, 8th & 13th days of October, 2021 and discussed the matter for undertaking certain essential works preparatory to the contemplated election; one of them relates to the preparation of Provisional Voters List followed by the Final Voters List; it encountered some difficulty in its endeavor to accomplish the holding of election within the period prescribed by this Court, in view of Bye Law Nos.33(d) to 33(f) of the Memorandum & Bye Laws of the Association; these provisions prescribe certain time lines for the preparation of Electoral Rolls, which if adhered to would render the holding of election within the prescribed period almost impossible; the Committee also expresses some apprehension as to voting rights of certain members who happen to be members of other similar Bar Associations, as well; in the said circumstances these two

applications are moved seeking clarifications/directions at the hands of this Court. 3. I have heard learned Sr. Advocate Mr. Uday Holla graciously representing the HPC and Mr. D.R.Ravi Shankar appearing for the petitioner-Association; I have also heard M/s. B.M.Arun, N.P.Amruthesh, Pavan Chandra Shetty & H.C.Shivaramu; I have perused the case papers, the Bye Laws & the rulings cited at the Bar; I am of a considered view that the HPC is more than justified in moving the subject applications, for the following reasons: (a) The subject Bye Laws prescribe a timeline for the preparation of Electoral Rolls which are essential for conducting the election; if this prescription is to be literally observed, it is not possible to conduct the elections on or before 22.12.2021, as fixed by this Court vide order dated 20.09.2021 and as affirmed by the Division Bench in the Writ Appeal preferred by the petitioner-Association; as a norm, the elected representatives cannot continue in the office beyond their prescribed tenure, which expired in January 2021; however, the regular elections could not be conducted because of COVID-19 Pandemic and the associated restrictions; this happened in several Bar Associations in the country. (b) The present Managing Committee whose tenure has long expired, has been continued in the office by way of ad hoc arrangement because of an extraordinary situation that arose from COVID-19 Pandemic; this is not permitted in the Bye Laws that operate in normal situations, is true; the rigor of the Bye Laws needs to be relaxed for the very same reason so that the elections can be conducted within the period prescribed by this Court and affirmed by the Division Bench; an extraordinary situation warrants

an extraordinary measure, as of necessity; therefore, relaxation sought for by the HPC to the relevant provisions of the Bye Laws needs to be and is accorded; in fact, there is a broad consensus at the Bar in this regard. (c) There has been broadly a kind of unanimity between the parties that the elections need to be conducted on or before 22.12.2021, a date fixed by this Court after eliciting the views of cross sections of the Bar; as already mentioned above, the order fixing the date having been substantially affirmed in Writ Appeal has merged into the Division Bench judgment; therefore consistent with the intended accomplishment of the election within the fixed period, the subject Bye Laws would yield to a purposive construction and consequently, the prescription of timelines of actions thereunder shall be treated as directory and as admitting variation in the discretion of the HPC in the special circumstances; in fact, this was an inarticulate premise of the order dated 20.09.2021 of this Court and of its affirmation in Writ Appeal too; a view in variance cannot be sustained without violating the said orders and the premise on which they are built; it hardly needs to be stated that the HPC is clothed with the powers of the Election Commission to conduct election within the prescribed period and such powers would include as of necessity the power to relax the rigors of timelines. (d) The Bye Laws of the Association provide for the membership subject to certain conditions prescribed therein being complied with; arguably dual membership, i.e., an advocate being a member in more than one Bar Association is not absolutely barred, although it is restricted and regulated; the right to vote being a corollary of the membership, cannot be

taken away except on the grounds mentioned in Bye Law 35, subject to all just exceptions; in other words such a valuable right cannot be denied only on the ground that an advocate has secured membership to some other Bar Association as well; there is no much scope for an argument to the contrary; (e) The Bye Laws of the Association provide for membership subject to certain conditions prescribed therein being complied with; arguably dual membership, ie., an advocate being a member in more than one Bar Association is not absolutely barred, although it is restricted and regulated; the right to vote being a corollary of the membership, cannot be taken away except on the grounds mentioned in Bye Law 35, subject to all just exceptions; in other words such a valuable right cannot be denied only on the ground that an advocate has secured membership to some other Bar Association as well; there is no scope for an argument to the contrary. (f) The above having been said, it needs to be mentioned that this Court too shares the view that it is high time to restrict the voting rights only to the practitioners of law in Bengaluru Courts or to the advocates ordinarily residing within the jurisdictional limits of Bruhat Bengaluru Maha Palike & Bengaluru Development Authority; however, this is a policy matter which now cannot be debated before the Court in a case of the kind, more particularly because of the embargo enacted in Bye Law 10(8); this provision arguably interdicts amendment inter alia to the provisions of membership and allied matters after the cut off period, as rightly contended by Mr. D.R.Ravishankar. (g) Mr. Uday Holla, learned Sr. Advocate is more than justified in contending that if the issue

of dual membership associated with voting rights is taken up for consideration, the High Power Committee would not be able to accomplish the holding of elections within the period prescribed by this Court; he is also right in telling that the said matter touches the policy and therefore the HPC has no mandate even otherwise to treat it; the Apex Court in K.SHANTARAJ & ANOTHER vs. M.L.NAGARAJ & OTHERS, (1997) 6 SCC 37 has faltered the action of the administrator in enrolling new members to the Society in contravention of the extant Bye Laws there; it is observed therein that the administrator has only power to organize election process inter alia in accordance with the Bye Laws of the Society; these observations support the stand taken by the HPC in the subject applications. With the above observations, these applications are disposed off, placing on record a deep appreciation for the Members of the HPC for sparing their valuable time for the cause of the Bar Association. Call this matter for further hearing on 26.11.2021.