

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3331 of 2024
Reserved on: 29.04.2024
Decided on: 16.05.2024.

Abhimanyu RathorPetitioner.

Versus

The Registrar General, HP High Court and others
.....Respondents.

Coram:

The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?

For the petitioner: Petitioner in person.

For the respondents: None.

M.S. Ramachandra Rao, Chief Justice

In this Writ petition, the petitioner who is an Advocate practicing in the High Court of Himachal Pradesh has challenged a notice dt. 02.03.2024 (Annexure P-4) and notice dt. 10.04.2024 (Annexure P-18) issued to him by the Himachal Pradesh High Court Bar Association whose office bearers are impleaded as respondents nos. 2 to 4 and 6 to 7.

2. In Annexure P-4, the Association had issued a show-cause notice through its Secretary (4th respondent) alleging that petitioner

was allegedly unnecessarily interfering in the working of the Bar Association and that he had entered into an altercation with the workers engaged by the said Association who were carrying out the work of expansion of the Bar Room. This notice is said to have been issued as per the Resolution passed in the meeting of the Executing Committee of the Bar Association dt. 29.02.2024.

3. Annexure P-18 notice was issued by the three members said to be constituting a Disciplinary Committee of the HP High Court Bar Association asking the petitioner to appear before it on 19.04.2024 at 01.30 p.m.

4. After the filing of the Writ petition on 18.04.2024 a proceeding dt. 25.04.2024, was issued by the HP High Court Bar Association cancelling the petitioner's membership from the said Association stating that he had acted against the said Association.

5. This Court inquired from the petitioner as to how the Writ petition was maintainable against the office bearers of an unregistered Society even if it is the HP High Court Bar Association. The counsel for the petitioner placed reliance on the decision of the Supreme Court in ***Supreme Court Bar Association and others vs. B.D. Kaushik and others***¹, and another decision also titled ***Supreme Court Bar Association and others vs. B.D.***

¹(2011) 13 SCC 774

*Kaushik and others*² and the decision of the Delhi High Court in *PK Dash, Advocate and others vs. Bar Council of Delhi and others*³.

6. In the first two cases, the Supreme Court Bar Association was a party and in the case before the Delhi High Court, the issue concerned the Bar Associations in the Courts at Delhi.

7. The Supreme Court Bar Association was a society admittedly registered under the Society Registration Act, 1860.

8. In the two decisions pertaining to the said Associations, the Association had brought in an amendment to its Rules mandating that every member, before casting its vote, was required in the prescribed form to give a declaration that he has not voted in any other election of any Advocate or in the High Court or in the District Bar Association. This provision was under challenge in the *Supreme Court Bar Association and others case* (1 supra).

9. There are certain observations at para 28 thereof to the effect that a Court-annexed Bar Association would constitute a separate class different from the other lawyer's associations as they are always recognized by the Court concerned; that the Court annexed Bar Associations function as a part of the machinery for

²(2012) 6 SCC 152

³W.P. © 8106/2010

administration of justice; that the Bench and the Bar are like two wheels of a chariot and one cannot function without the other. It was noticed that the Court annexed Bar Associations start with the name of the Court as part of the name of the Bar Association concerned; that the very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practicing in the Court and responsible for proper conduct of its members in the Court and for ensuring proper assistance to the Court; and in consideration thereof, the court provides space for office of the associations, library and all necessary facilities like chambers at concessional rates for members regularly practicing in the court, parking place and canteen besides several other amenities. It was observed that in the functions organized by the Court annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and *vice versa*. There is regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the Court and are shown due consideration.

10. The Supreme Court went on to say that enrollment of advocates not practicing regularly in the court is inconsistent with

the main aim and object of the Association. It held that no court can provide chambers or other facilities for such outside advocates, who are not regular practitioners. Neither the Association nor the court can deal with them effectively if they commit any wrong and that the Association mainly tries to promote and protect the privileges, interest and prestige of the Association and to promote union and cooperation among the advocates practicing in the Court and other associations of advocates.

11. These observations are undoubtedly true even with regard to HP High Court Bar Association, but since it is an unregistered body unlike the Supreme Court Bar Association, it is difficult to hold that a Writ petition would lie against its office bearers in their personal capacity.

12. In the ***Supreme Court Bar Association and others vs. B.D. Kaushik and others (2 Supra)***, the Supreme Court was considering an allegation of violation of one of its orders regarding conduct of a General Body meeting contrary to an order passed by it previously and it appears to be an off-shoot of the previous order passed in 2011. There is not much discussion in this judgment which would be relevant for consideration by us in this case.

13. ***PK Dash, Advocate and others vs. Bar Council of Delhi and others*** also related to the same issue i.e. whether the principle of casting of one vote in one Bar should be introduced for all the Bar Associations irrespective of multitude of memberships of an Advocate in Delhi or not.

14. Even in this case there are certain observations of a similar nature to what was mentioned in the Supreme Court order. An issue was also framed in this case as to the maintainability of the Writ petition against the Bar Association and it was answered in the affirmative.

15. But the question which requires consideration in the instant case is “*whether disciplinary action initiated by an unregistered Bar Association against one of its members could be subject matter for consideration by this High Court under Article 226 of the Constitution of India?*” and

16. “*Is there any public element involved for this Court to exercise of jurisdiction under Article 226 of the Constitution of India against the office bearers or members of the HP High Court Bar Association?*”

17. The answer to both these questions has to be negative, in our opinion, since there is no public law element in this case.

Disciplinary action against a member of the High Court Bar Association as per the norms/bye-laws of the said Association is in the realm of private law.

18. In ***St. Mary's Education Society and another vs. Rajendra Prasad Bhargva and others***⁴ the Supreme Court considered the question “*whether a Writ petition under Article 226 of the Constitution of India is maintainable against a private unaided minority institution which was also a society?*” and “*whether a service dispute in the private realm involving such institution and its employee can be adjudicated in a Writ petition filed under Article 226 of the Constitution of India?*”. It also considered the question “*whether all the decisions of such body even if it is performing a public duty are amendable to writ jurisdiction or only those decision which have public element therein which can be judicially reviewed under the writ jurisdiction?*”

19. In that case the appellant was a society registered under the Madhya Pradesh Society Registrikaran Adhiniyam 1973 and was running a school in which respondent was an employee. Certain disciplinary action has been taken against its employee and his services were terminated. This was challenged in a Writ petition before the High Court by the respondent.

⁴(2023) 4 SCC 498

20. A learned Single Judge of the High Court held that the Writ petition was not maintainable, but a Division Bench of the High Court set aside his order and held that the Writ petition was maintainable under Article 226 of the constitution of India.

21. The Supreme Court held that that the Writ petition under Article 226 of the Constitution of India against the private Educational institution would be maintainable only if the public law element is involved; and if there is no public law element involved, no writ petition lies. It held that though a writ petition can be maintained against the private individual discharging public duties and /or public functions, the same should not be entertained if their enforcement is sought to be secured under the realm of private law; that it would not be safe to say that the moment a private institution is amenable to the writ jurisdiction, every dispute concerning the said private institution is amenable to writ jurisdiction; that it largely depends upon the nature of the dispute and the enforcement of right by an individual against such institution; and a right which purely originates from a private law cannot be enforced taking aid of writ jurisdiction irrespective of the fact that such institution is discharging public duty and/ or public functions.

22. It held that the scope of the mandamus is basically limited to an enforcement of the public duty and therefore, it is the duty of the court to find out that the nature of the duty comes within the periphery of public duty, and there must be public law element in any action.

23. It relied on its previous decision in ***Ramakrishna Mission and another vs. Kago Kunya and others***⁵ where the Writ petition was held not maintainable against the appellant Mission even though it was found running a Hospital, thus discharging public function/public duty. It held as under:

“32. Before an organization can be held to discharge a public function, the function must be of a character that is closely related to functions which are performed by the State in its sovereign capacity. There is nothing on record to indicate that the hospital performs functions which are akin to those solely performed by State authorities. Medical services are provided by private as well as State entities. The character of the organization as a public authority is dependent on the circumstances of the case. In setting up the hospital, the Mission cannot be construed as having assumed a public function. The hospital has no monopoly status conferred or mandated by law. That it was the first in the State to provide service of a particular dispensation does not make it an ‘authority’ within the meaning of [Article 226](#). State governments provide concessional terms to a variety of organisations in order to attract them to set up establishments

⁵(2019) 16 SCC 303,

within the territorial jurisdiction of the State. The State may encourage them as an adjunct of its social policy or the imperatives of economic development. The mere fact that land had been provided on a concessional basis to the hospital would not by itself result in the conclusion that the hospital performs a public function. In the present case, the absence of state control in the management of the hospital has a significant bearing on our coming to the conclusion that the hospital does not come within the ambit of a public authority.

33. xxxxx xxxxxx

34. *Thus, contracts of a purely private nature would not be subject to writ jurisdiction merely by reason of the fact that they are structured by statutory provisions. The only exception to this principle arises in a situation where the contract of service is governed or regulated by a statutory provision. Hence, for instance, in [K K Saksena](#) (supra) this Court held that when an employee is a workman governed by the [Industrial Disputes Act, 1947](#), it constitutes an exception to the general principle that a contract of personal service is not capable of being specifically enforced or performed. It is of relevance to note that the Act was enacted to provide for the regulation and registration of clinical establishments with a view to prescribe minimum standards of facilities and services. [The Act](#), inter alia, stipulates conditions to be satisfied by clinical establishments for registration. However, the Act does not govern contracts of service entered into by the Hospital with respect to its employees. These fall within the ambit of purely private contracts, against which writ jurisdiction cannot lie. The sanctity of this distinction must be preserved.”*

24. Having regard to the said ratio and having regard to our conclusion that there is no public law element involved in the dispute between a member of the HP High Court Bar Association such as the petitioner and the said Association, and since the said Association is unregistered society, merely because its members are Advocates who appear in the High Court and assist in the administration of justice, it cannot be said that the writ petition against its office bearers in their personal capacity is maintainable.

25. In this view of the matter, we dismiss the Writ petition granting liberty to the petitioner to avail any other remedy available to him at law.

26. We also record that we have not dealt with the question whether the petitioner had committed any act against the interest of the Bar Association and whether his expulsion from the Association was validly done or not, and the said issues are left upon to be considered by the appropriate Forum. No costs.

(M.S. Ramachandra Rao)
Chief Justice

(Jyotsna Rewal Dua)
Judge

May 16, 2024.
(cm Thakur)