

HIGH COURT OF MADHYA PRADESH BENCH AT GWALIOR**BEFORE****HON'BLE SHRI JUSTICE ANAND PATHAK****&****HON'BLE SHRI RAJENDRA KUMAR VANI****ON 26th July, 2024****WRIT PETITION NO.14547 of 2020****RAM SAHAI CHIROLIYA****VS.****DISTRICT BAR ASSOCIATION, DATIA THOROUGH ITS SECRETARY****AND ANOTHER**

Appearances:-

Shri Gaurav Mishra – Advocate for the petitioner.

Shri D.P. Singh – Advocate for respondents No.1 – District Bar Association, Datia.

Shri Jitendra Sharma – Advocate for respondent No.2 – State Bar Council of Madhya Pradesh.

ORDER

1. Petitioner – Shri Ram Sahai Chiroliya, Shri Rajesh Kumar Saxena, present President, District Bar Association Datia and Shri Ram Naresh Dangi Secretary District Bar Association, Datia are present in person.

2. The present petition under Article 226 of the Constitution of India is filed by the petitioner seeking following reliefs:-

“(1) That, impugned order/letter dated 22/08/2020 (Annexure P-1) may kindly be quashed/ set aside and to restore the membership of the petitioner in the respondent Bar Association.

(2) That, any order and action passed in pursuance of the impugned order/letter may kindly be quashed/ set aside.

(3) That, any other suitable further writ, order or direction may kindly be passed in the interest of justice.”

3. In the present case, dispute is in respect of cancellation of membership of the petitioner from District Bar Association, Datia. He is enrolled at S.No. MP/1111/1989 by the State Bar Council of M.P. and is a practicing Advocate at District Datia. He was elected as President of the Executive Body of the District Bar Association Datia for the period 2017-2019. After his tenure is over, it appears that some amount of Bar Association was to be deposited which allegedly petitioner has not deposited therefore, on that pretext Executive Council issued a show cause notice dated 03-07-2020 (Annexure P-3) to the petitioner which was duly replied by the petitioner. Thereafter the impugned order dated 22-08-2020 (Annexure P-1) was passed by which membership of the petitioner was severed. Therefore, petitioner is before this Court.

4. Learned counsel appearing for the petitioner submits two fold submissions:-

(i) that petitioner is the member of the District Bar Association which is being recognized as Bar Association vide Section 2(b) of Madhya Pradesh Adhivakta Kalyan Nidhi Adhiniyam, 1982 (for brevity “Adhiniyam, 1982”) therefore, the District Bar Association has to comply the directions issued by the State Bar Council from time to time. Recognition by the State Bar Council means the acceptance of model byelaws which are being prepared and circulated by the State Bar Council amongst the Bar Council for compliance.

(ii) Section 16 of the Adhiniyam, 1982 deals in respect of recognition and registration of Bar Association. Decision of the Bar Council regarding recognition and registration of Bar Association is final. Model byelaws have been promulgated by the State Bar Council which is annexed as Annexure P-12 with the petition and clause 5 of the same deals in respect of removal from membership. That clause stipulates that unless removal is approved/ ratified by the State Bar Council, it cannot be carried out. That too, resolution of Executive Body is to be ratified in a meeting of the General Body of the Bar Association in which 50% members of the Bar shall be present and vote.

5. In the present case, neither approval from the State Bar Council is taken nor, it is being ratified by the General Body of the Bar Association in a meeting convened. Any ratification by circulation cannot be valid

convening of the General Body in the eyes of the mode byelaws.

6. *Per contra*, learned counsel for respondent No.1-District Bar Association opposed the prayer. According to him, present petitioner was the President of the Executive Body for the period 2017-2019 and during that period, funds to the tune of Rs.30,676/- was collected but only Rs.5,000/- were deposited and remaining amount and Receipt Pad were not deposited by the petitioner therefore, after giving show cause notice, such stern action has been taken against the petitioner to send a message to others. Although, learned counsel for respondent No.1 fairly submits that District Bar Association Datia is recognized by the M.P. State Bar Council and therefore, association and its office bearer have to comply the model byelaws, rules and regulation made in this regard however, he refers the fact that due to wrath of Covid-19 pandemic, meeting of General Body could not be convened and therefore, by circulation, approval of more than 50% members was obtained (while visiting individually) therefore, according to him, it was a validly convened General Body.

7. Learned counsel for respondent No.2-State Bar Council explained the fact situation. According to him, every Bar Association is required to be registered with the State Bar Council as per Section 16 of the Adhiniyam, 1982. Bar Association as defined in Section 2(b) contemplates that such Bar Association is duly recognized by the State Bar Council. Once Bar Association is registered with the State Bar

Council then it has to follow model byelaws of State Bar Council of M.P. which are placed as Annexure P-12. Therefore, for removal from membership, relevant clause 5 is required to be complied with.

8. At this stage, learned counsel for the petitioner informs this Court that vide impugned order dated 22-08-2020 (Annexure P-1) impugned action of Bar Association was stayed and petitioner is still holding membership. It is further submitted that during pendency of this petition, query was raised by the present President of the Bar Association from the State Bar Council about the fact situation and the State Bar Council vide letter dated 23rd September, 2022 (Annexure P-16) specifically mentioned that if termination of a member is not ratified by the General Body as well as by the State Bar Council then it is not appropriate and membership can be restored. Learned counsel further submits that petitioner never embezzled any public fund/ membership fund. He also refers the contents of the show-cause notice to demonstrate that amount mentioned in the said show-cause notice was Rs.4565/- only which he would deposit. However, in the welfare of members of the Bar Association petitioner is ready to hold a get-together including High Tea/ Ice-Cream party as the case may be to show his *bonafides* about his affiliation and affection with the Bar members.

9. Heard the learned counsel for the parties at length and perused the documents.

10. This is a case where an Advocate/ Members of the District Bar

Association and erstwhile President of the District Bar Association is fighting for his existence as the member of the District Bar Association, Datia. He remained President of the Executive Body during the period 2017-2019. After his term is over, he received a show-cause notice dated 03-07-2020 (Annexure P-3) in respect of certain allegations as contained into it and he was asked to return/deposit the money and the Receipt Pad which was lying with him pertaining to Bar Association. However, he did not adhere to the directions as contained in Annexure P-3 and result was the impugned order dated 22-08-2020 (Annexure P-1) by which membership of the petitioner was cancelled.

11. Petitioner is a member of the District Bar Association, Datia. The said Bar Association is recognized by the State Bar Council as per Section 16 of the Adhiniyam. Section 16 of the Adhiniyam, 1982 deals in respect of recognition and registration of the Bar Association. For ready reference, the same is reproduced as under:-

“16. Recognition and registration of Bar Association:-(1) An association of advocates, known by any name, functioning in any part of the State may, before a date to be notified by the Bar Council in this behalf, apply for recognition and registration, to the Bar Council in such form and on payment of such annual subscription, or other fees as the Bar Council may, from time to time, determine.
(2) Every such application shall be accompanied by the rules or byelaws of the association, names and addresses of the office-bearers of the

association and an up-to-date list of the members of the association showing the name, address, date of birth, age, date of enrolment and the ordinary place of practice of each member.

(3) The Bar Council may, after such enquiry as it deems necessary, recognise the association and issue a certificate of registration in such form as it may specify.

(4) The decision of the Bar Council regarding the recognition and registration of a Bar Association shall be final.”

12. Section 17 prescribes duties of Bar Association. The same is reproduced as under:-

“17. Duties of Bar Associations:- (1) Every Bar Association shall, on or before the 15th April every year, intimate to the bar Council a list of its members as on the 31st March of that year.

(2) Every Bar Association shall intimate to the Bar Council,-

(a) any change of the office bearers of the association within fifteen days from the date of such change;

(b) any change in the membership including admissions and re-admissions within thirty days from the date of such change;

(c) the death, retirement, cessation or suspension of practice of any of its member within thirty days from the date of the happening of the event or on receiving of the intimation thereof, whichever is later; and

(d) such other matters as may be required by the Bar Council, from time to time.”

13. Bar Association and Bar Council has also been defined in Section

2(b) and (c) of the Adhiniyam, 1982 respectively which read as under:-

“2.(b) “Bar Association” means an association of advocates recognised by the Bar Council under Section 16;

(c) “Bar Council” means the Bar Council of Madhya Pradesh constituted under Section 3 of the Advocates Act, 1961 (No.25 of 1961);”

14. On close scrutiny it appears that Adhiniyam,1982 is an Act to provide for the Constitution of a Welfare Fund for running various schemes for the social security and welfare of Advocates in the State of Madhya Pradesh and for matters connected therewith or incidental thereto. Therefore, the respective arguments are to be seen in that perspective only.

15. Be that as it may.

16. Once learned counsel for respondent No.1/ District Bar Association accepts that their Bar Association is guided by the model byelaws of the State Bar Council then before removing/ cancelling membership of the petitioner, the same has to be ratified by the General Body while convening meeting and not by circulation. Similarly, parent body State Bar Council could have been consulted before removing the membership of the petitioner. Same has not been done in the present case.

17. Resultantly, the impugned order/ intimation dated 22-08-2020 (Annexure P-1) is hereby set aside. However, liberty is granted to

respondent No.1 / District Bar Association, Datia to proceed in accordance with law if they have any allegation to substantiate against the petitioner and thereafter they will follow the procedure as prescribed in model byelaws by the State Bar Council, if advised so.

18. Before parting, as per undertaking of the petitioner himself being former Head of the Bar Association, Datia (during the period 2017-2019), it is the time to show magnanimity and to honour his commitment regarding convening High Tea/ Ice Cream party with intimation to all members of the District Bar Association, if he intends to do so.

19. Petition stands allowed and *disposed of* in above terms.

(ANAND PATHAK)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE