R

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30TH DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE G.NARENDAR

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT APPEAL NO.100141/2020 (GM-RES)

BETWEEN:

SHRI CHANDRAKANT
S/O. TAMMANNA MAJAGI,
AGE: 49 YEARS,
OCC. ADVOCATE AND VICE PRESIDENT OF
BELAGAVI BAR ASSOCIATION,
BELAGAVI, R/O. PLOT NO.1011,
CTS NO.5646, SECTOR NO.VI,
M.M.EXTENSION, SHRINAGAR,
BELAGAVI 590017.

...APPELLANT

(BY SRI.MADANMOHAN M. KHANNUR, ADV.)

AND:

1. KARNATAKA STATE BAR COUNCIL,
OLD ELECTION COMMISSION BUILDING,
BENGALURU 560010,
REP. BY ITS CHAIRMAN.

2. KARNATAKA STATE BAR COUNCIL,
OLD ELECTION COMMISSION BUILDING,
BENGALURU 560010.

3. BELAGAVI BAR ASSOCIATION BELAGAVI,
DISTRICT COURT COMPOUND,
BELAGAVI 590002,
REP. BY ITS GENERAL SECRETARY.

4. DINESH M. PATIL,
AGE: MAJOR,
OCC. ADVOCATE AND CLAIMING
PRESIDENT (APPELLANT IS DISPUTING HIM AS
PRESIDENT) BELAGAVI BAR ASSOCIATION
BELAGAVI, DISTRICT COURT COMPOUND,
BELAGAVI 590002,
REP. BY ITS GENERAL SECRETARY.

...RESPONDENTS

(BY SRI.K.L.PATIL, ADV. FOR R1 AND R2,
SRI.S.M.CHANDRASHEKHAR, SR. ADV. FOR
SRI.RAJASHEKHAR BURJI FOR R3,
SRI.SANJAY S. KATAGERI, ADV. FOR R4)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE HIGH COURTS ACT, 1961 PRYAING THIS HON'BLE COURT TO SET ASIDE THE ORDER DATED 17.11.2020 IN WRIT PETITION NO.148178 OF 2020 (GM-RES) PASSED BY THE LEARNED SINGLE JUDGE OF THIS HON'BLE COURT AND ALLOW THE WRIT PETITION AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING, THIS DAY, G.NARENDAR J., DELIVERED THE FOLLOWING:

JUDGMENT

Heard the learned counsel for the appellant and the learned Senior Counsel Sri.S.M.Chandrashekar alongwith Sri.Rajashekhar Burji for the 3rd respondent,

Sri.Sanjay S. Katageri for 4th respondent and Sri.K.L.Patil for respondent Nos.1 and 2.

2. It is relevant to note that respondent Nos.1 and 2 are one and the same.

3. The intra Court appeal is directed against the order dated 17.11.2020 passed by the learned Single Judge whereby the learned Single Judge was pleased to dismiss the Writ Petition No.148178/2020 on the short ground of maintainability and without going into the merits of the writ petition. In view of the short point involved, the Writ Appeal is taken up for disposal with the consent of the counsels. It is pertinent to note that no arguments are advanced either by the counsel for the respondent Nos.1 and 2 or respondent No.4 on merits of the case.

BRIEF FACTS:

4. The 3rd respondent Association is a Society registered under the Societies Registration Act on 12.02.2009. That the appellant/petitioner is a

practicing Advocate and Member of the 3rd respondent Association. That in the elections conducted to the various posts of the Managing Committee, as provided under bye law 17, the appellant/petitioner came to be elected as the Vice President of the Managing Committee for the period 2019-2020 to 2020-21. The list of the candidates and the notes secured by them is issued by the Returning Officer and is produced as Annexure – C to the writ petition. That the name of the appellant/petitioner is found at Sl. No.3.

5. That in the elections held on 01.08.2019, one late Sri.A.G.Mulawadmath was declared successful in the elections held to the post of President of the 3rd respondent Association and in the process, he defeated the 4th respondent, who unsuccessfully contested against the said late Sri.A.G.Mulawadmath to the said post. That the said late Sri.A.G.Mulawadmath passed away on 09.08.2020. In the light of the sudden demise of the President, the Managing Committee, in the meeting held on 11.08.2020 resolved to authorize the

appellant/petitioner to operate the bank accounts and discharge other official work attached to the office of the President.

6. That certain members of the Managing Committee made a request to the 3rd respondent Association and the 3rd respondent Association called a meeting on 25.09.2020 to fill the vacant post of President by co-option. That the meeting was scheduled at 10:30 a.m. on 03.10.2020 and contrary to its own bye laws. That despite the petitioner not calling for the meeting, a meeting notice was published in the absence of the appellant/petitioner, who was deputed by the Managing Committee to meet the Chairman of the Karnataka Administrative Tribunal to plead for restarting the functioning of the Tribunal at Belagavi. That the appellant/petitioner upon return circulated a letter dated 28.09.2020, thereby withdrawing the notice dated 25.09.2020. That on 30.09.2020 the appellant/petitioner addressed a letter to the 1st respondent, State Bar Council, seeking its guidance

with regard to the illegal attempts been made to co-opt a non-elected member to an elected post that too to the post of President, contrary to the mandate of the bye law 17(b), which clearly states, that the holders of the office of President, two Vice Presidents and two Secretaries, one Hon. General Secretary and a Joint Secretary and six members "shall be elected". That despite opposition and objections, a meeting was held on 03.10.2020 at 10:30 a.m. and subsequently adjourned and reconvened at 01:30 p.m. and resolution was passed co-opting the 4th respondent to the post of President.

7. In the above background, the writ petition came to be moved and the learned Single Judge was pleased to grant an interim order restraining the 4th respondent. Thereafter, the 3rd respondent Bar Association filed statement of objections and raised a preliminary objection regarding the maintainability of the Writ Petition, in the light of the fact that the 3rd respondent Association is a Society and a private entity

and a writ petition is not maintainable. That the activities of the 3rd respondent do not border on or contain a public law element and hence, a judicial review of the resolution in exercise of the powers vested in the High Court in Article 226 of the Constitution of India is impermissible. That the 3rd respondent is neither funded by the State Government or under the control and supervision of the State.

8. The same came to be resisted by the appellant/petitioner, who has placed reliance on a catena of judgments of the Hon'ble Apex Court and various High Courts. Reliance was also placed on the object of the association.

9. The learned Single Judge after placing reliance on the orders of a Co-ordinate Bench rendered in Writ Appeal No.399/2020 and other connected Writ Appeals disposed of on 24.10.2020 proceeded to hold that invocation of Article 226 of the Constitution of India is limited only to enforce public duty and in the

absence of the public law element, exercise of jurisdiction under Article 226 of the Constitution of India is impermissible to enforce purely private contracts.

10. In para 15, it proceeded to hold that the association does not discharge any public function nor is any public duty imposed by law or by any instrument having the force of law. Further, placing reliance on the order of the learned Single Judge rendered in W.P. Nos.102744-102747/2018 proceeded to hold that the matter stands covered by the pronouncement in the above order disposing of the Writ Petitions noted supra by order dated 12.04.2018. A copy of which is placed before us. It is apparent that the learned Single Judge has deemed it appropriate to conclude so in the light of the law laid down by the Hon'ble Apex Court in the case of ***L.I.C. of India vs. Escorts Ltd.,*** reported in ***AIR 1976 SC 1370,*** wherein the Hon'ble Apex Court was pleased to hold as under:

"While it cannot be doubted that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Art. 226 or Art. 32 of the Constitution, Art.14 cannot be construed as a charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. For example, if the action of the State is political or sovereign in character, the Court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligations or obligations arising out of the tort, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field."

(emphasis by this Court)

11. Further placing reliance on the ruling of the Hon'ble Apex Court rendered in ***S.Kasi vs. State through the Inspector of Police, Samaynallur Police Station, Madurai District in Criminal Appeal No.452/2020 dated 19.06.2020***, held that, in view of the law declared by the Hon'ble Apex Court, the learned Single Judge is bound by the pronouncement of the Co-ordinate Bench rendered in Writ Petition Nos.102744-102747/2018. Further, learned Single Judge has attempted to distinguish the applicability of the SCBA ruling to the facts of the instant case on the premise that it arose out of a civil suit. The learned Single Judge has also sought to distinguish the applicability of the order of the Division Bench headed by the Hon'ble Chief Justice rendered in Writ Petition No.4095/2020 which came to be disposed of 17.03.2020. The learned Single Judge proceeded to hold that the writ petition is not maintainable and accordingly, the writ petition came to be dismissed.

12. We have heard the learned counsel for the appellant and the learned Senior counsel and the counsels on behalf of the official respondents.

13. The point that falls for determination for the disposal of the appeal is:

> *"1. Whether a writ petition under Article 226 is maintainable against a private entity?*
>
> *2. Whether the Bar Association is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution of India?"*

14. Both the points are taken up together for consideration and determination as common facts and points of law are involved.

15. The points for consideration formulated above are no more *res integra* as the Hon'ble Apex Court has in a catena of rulings consistently held that the central theme that requires to be looked into and ascertained is, as to whether the entity would answer

the definition of "other authority" within the meaning of Article 12 and the term "any person or authority" under Article 226 of the Constitution of India and thereby render it amenable to writ jurisdiction i.e., whether the said authority performs a public duty or discharges an obligation of a public character or the impugned order/proceeding is an affront to the rule of law. In our considered opinion, the answer to the above points for consideration is not far to seek. The Hon'ble Apex Court in the case of ***Supreme Court Bar Association and others vs. B.D.Kaushik*** reported in ***(2011) 13 SCC 774*** has succinctly enunciated the concept, character and the role of the Bar Association and its unique position vis a vis other entities registered under the Societies Registration Act. The discussion on the subject as contained in para 27 to 29 are as under:

> *"27. The Supreme Court Bar Association, as the name suggests, is a society primarily meant to promote the welfare of the advocates generally practicing in the Supreme Court. The name, i.e., the*

Supreme Court Bar Association was formally registered under the Societies Registration Act, 1860 only on 25.08.1999. One of the prime objectives of the 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 the 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 recognized 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 Bar are like two wheels of a chariot and one cannot function without the other. The court annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis

Hazari District Court Bar Association, etc. 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. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practicing in the court, parking place, canteen besides several other amenities. 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 thus 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.

29. Enrolment of advocates not practicing regularly in the court is inconsistent with the main aim and object of the association. 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. There are sufficient indications in the Memorandum of Association and the Rules and Regulations of SCBA, which indicate 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. This is quite evident if one refers to sub-clause (iii) of clause (3) of the Aims and Objectives of the Association. It is significant to note that the signatories of the Memorandum of Association, namely, Members of the Executive Committee, whose names are mentioned, are all regular practitioners, who got the Association registered under the Societies Registration Act, 1860. Mr. P.P. Rao, learned Senior Counsel has given all credit for registration of Association to Shri K.K. Venugopal, one of the senior-most counsel of this Court."

(emphasis by this Court)

16. Notwithstanding the categorical and unimpeached finding rendered by the Hon'ble Apex Court, this Court endeavours to trace the observations of the Hon'ble Apex Court in cases involving private entities discharging duties with public character and where the Hon'ble Apex Court has been pleased to hold that writ petition would be maintainable against such a private entity.

17. One of the earliest in the line of such cases is the ruling rendered by the Hon'ble Apex Court in the case of ***Dwarka Nath, vs. Income Tax Officer, Special Circle, D Ward, Kanpur and another*** reported in ***AIR 1966 SC 81,*** while dealing with the objection regarding the maintainability of a writ petition against an administrative order of the Commissioner of Income Tax was pleased to hold in paragraph 4 as under:

> *"4. We shall first take the preliminary objection, for if we maintain it, no other*

question will arise for consideration. Article 226 of the Constitution reads :

> *"... every High Court shall have power, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."*

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened

by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels. This interpretation has been accepted by this Court in T. C. Basappa v. Nagappa, 1955 -1

SCR 250: and Irani v. State of Madras (AIR 1961 SC 1731).

(emphasis by this Court)

18. The Hon'ble Apex Court in ***Andi Mukta Sadguru Shree Mukta Jeevandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others*** reported in ***(1989) 2 SCC 691,*** while dealing with the issue of writ against a private body was pleased to observe and hold in paragraphs 14, 15, 16, 17, 20 and 22 as under:

> *14. But here the facts are quite different and, therefore, we need not go thus far. There is no plea for specific performance of contractual service. The respondents are not seeking a declaration that they be continued in service. They are not asking for mandamus to put them back into the college. They are claiming only the terminal benefits and arrears of salary payable to them. The question is whether the trust can be compelled to pay by a writ of mandamus?*
>
> *15. If the rights are purely of a private character no mandamus can issue. If the*

management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to Mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants--trust was managing the affiliated college to which public money is paid as Government aid. Public money paid as Government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like Government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. (See--The Evolving Indian Administration Law by M.P. Jain [1983] p. 266). So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a

private character. It has superadded protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

16. The Law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission "to review the existing remedies for the judicial control of administrative acts and omission with a view to evolving a simpler and more effective procedure." The Law Commission made their report in March 1976 (Law Commission Report No.73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of to Supreme Court Act, 1981. It combined all the former remedies into one proceeding called

Judicial Review. Lord Denning explains the scope of this "judicial review":

> *At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.*
>
> *The Statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to 'have regard to' it. So the previous law as to who are--and who are not--public authorities, is not absolutely binding. Nor is the previous*

law as to the matters in respect of which relief may be granted. This means that the judges can develop the public law as they think best. That they have done and are doing." (See--The Closing Chapter--by Rt. Hon Lord Denning p.122).

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean every body which is created by statute--and whose powers and duties are defined by statue. So Government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ 'in the nature of mandamus'. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Art. 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "Any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development

of this law, Professor De Smith states: "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative 'Act 4th Ed. p. 540). We share this view. The judicial control over the fast expanding maze of bodies effecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

(emphasis by this Court)

19. In ***Unni Krishnan J.P. and others vs. State of Andhra Pradesh and others*** reported in ***(1993) 1 SCC 645,*** the Hon'ble Apex Court was pleased

to observe in paragraphs 77, 78 and 79 which are as under:

> *77. As a sequel to this, an important question arises: what is the nature of functions discharged by these institutions? They discharge a public duty. If a student desires to acquire a degree, for example, in medicine, he will have to route through a medical college. These medical colleges are the instruments to attain the qualification. If, therefore, what is discharged by the educational institution, is a public duty, that requires, duty and act fairly. In such a case, it will be subject to Article 14.*
>
> *78. Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Samarak Trust v. VR. Rudani, [1989] 2 SCC 691 is an interesting case where a writ of mandamus was issued to a private college. In paragraph 12 at page 697 it was held:*
>
> > *"12. The essense of the attack on the maintainability of the writ petition under Article 226 may now be examined. It is argued that the*

management of the college being a trust registered under the Bomaby Public Trust Act is not amenable to the writ jurisdiction of the High Court. The contention in other words, is that the trust is a private institution against which no writ of mandamus can be issued. In support of the contention, the counsel relied upon two decisions of this Court: (a) Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, [1976] 2 SCC 58 and (b) Deepak Kumar Biswas v. Director of Public Instructions, [1987] 2 SCC 252. In the first of the two cases, the respondent-institution was a Degree College managed by a registered co-operative society. A suit was filed against the college by the dismissed principal for reinstatement. It was contended that the Executive Committee of the college which was registered under the Co-operative Societies Act and affiliated to the Agra University (and subsequently to Meerut University) was a statutory body. The importance of this contention lies in the fact that in such a case,

reinstatement could be ordered if the dismissal is in violation of statutory obligation. But this Court refused to accept the contention. It was observed that the management of the college was not a statutory body since not created by or under a statute. It was emphasised that an institution which adopts certain statutory provisions will not become a statutory body and the dismissed employee cannot enforce a contract of personal service against a non-statutory body."

At paragraphs 15 to 20 it was held:

"15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the

affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

16. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord Chancellor) in pursuance of Section 3(1)(e) of the Law Commission Act, 1965, requested the Law Commission 'to review the existing remedies for the judicial control of administrative acts and omissions with a view to evolving a simpler and more effective procedure'. The Law Commission made their report in March 1976 (Law Commission Report No.73). It was implemented by Rules of Court (Order 53) in 1977 and given statutory force in 1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding called Judicial Review. Lord Denning explains the scope of this judicial review:

"At one stroke the courts could grant whatever relief was appropriate. Not only certiorari and mandamus, but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a writ. No formal pleadings. The evidence was given by affidavit. As a rule no cross-examination, no discovery, and so forth. But there were important safeguards. In particular, in order to qualify, the applicant had to get the leave of a judge.

The statute is phrased in flexible terms. It gives scope for development. It uses the words "having regard to". Those words are very indefinite. The result is that the courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are – and who are not – public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This

means that the judges can develop the public law as they think best. That they have done and are doing.

17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The 'public authority' for them mean every body which is created by statute – and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all 'public authorities'. But there is no such limitation for our High Courts to issue the writ in the nature of mandamus. Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to 'any person or authority'. It can be issued 'for the enforcement of any of the fundamental rights and for any other purpose'.

18. Article 226 reads:

'226. Power of High Courts to issue certain writs - (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases, any government within those territories directions, orders and writs, including writs in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari, or any of the,. for the enforcement of any of the rights conferred by Part III and for any other purpose.

19. The scope of this article has been explained by Subba Rao, J., In Dwarkanath v. ITO, [1965] 3 SCR 536:

'This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for

which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.'

20. The term 'authority' used in Article 226, the context must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied."

79. The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article 226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle it has to be held that these educational institutions discharge public duties. Irrespective of the educational institutions receiving aid it should be held that it is a public duty. The absence of aid does not detract from the nature of duty."

(emphasis by this Court)

20. Thereafter, in the case of ***LIC of India and another vs. Consumer Education and Research Centre and others*** reported in ***(1995) 5 SCC 482,*** while dealing with the issue of maintainability of the writ petition challenging the restricted application of a particular policy to a class of persons, the Hon'ble Apex Court was pleased to observe in paragraphs 27, 23, 29 and 49 as under:

"27. In the sphere of contractual relations the State, its instrumentality, public

authorities or those whose acts bear insignia of public element, action to public duty or obligation are enjoined to act in a manner i.e. fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or arbitrary in its decision. Duty to act fairly is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty or obligation must be informed by reason and guided by the public interest."

23. Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State its instrumentality, public authority or person whose acts have

the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. The Administrative Law by Wade, 5th Ed. at p.513 in Chapter 16, Part IV dealing with remedies and liabilities, stated thus:-

> *"Until a short time ago anomalies used to be caused by the fact that the remedies employed in Administrative Law belong to two different families. There is the family of ordinary private law remedies such as damages, injunction and declaration and there is a special family of public law remedies particularly Certiorari, Prohibition and Mandamus, collectively known as prerogative remedies. Within each family, the various remedies can be sought separately or together or in the*

alternative. But each family had its own distinct procedure".

At page 514 it was elaborated that "this difficulty was removed in 1977 by the provision of a comprehensive, 'application for judicial review', under which remedies in both facilities became interchangeable." At page 573 with the heading "Application for Judicial Review" in Chapter 17, it is stated thus:-

> *"All the remedies mentioned are then made interchangeable by being made available `as an alternative or in addition' to any of them. In addition, the Court may award damages, if they are claimed at the outset and if they could have been awarded in an ordinary action."*

The distinction between private law and public law remedy is now settled by this Court in LIC v. Escorts Ltd., (1986) 1 SCC 264 by a

Constitution Bench thus: (SCC p.344, para 102)

> *"If the action of the State is related to contractual obligations or obligations arising out of the tort, the Court may not ordinarily examine unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. This is impossible to draw the line with precession and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private*

law character of the action and a host of other relevant circumstances."

29. In Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71 at p. 76 in para 8, this Court held that

"the mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process".

In Sterling Computers Ltd. v. M & N Publications Ltd.,(1993)1 SCC 445 at page 464 para 28, it was held that even in commercial contracts where there is a

public element, it is necessary that relevant considerations are taken into account and the irrelevant consideration discarded. In Union of India v. Graphic Industries Co., (1994)5 SCC 398, this Court held that even in contractual matters public authorities have to act fairly; and if they fail to do so approach under Article 226 would always be permissible because that would amount to violation of Article 14 of the Constitution. The ratio in General Assurance Society Ltd. v. Chandumull Jain, 1966(3) SCR 500, relied on by the appellants that tests laid therein to construe the terms of insurance contracts bears no relevance to determine the constitutional conscience of the appellant in fixing the terms and conditions in Table 58 and of their justness and fairness on the touch stone of public element. The arms of the High Court are not shackled with technical rules or of procedure. The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law

element or public character are amendable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the appellants bears public character with an imprint of public interest element in their offers regarding terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we

have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid in Table 58 term policy and the party need not be relegated to a civil action.

49. The authorities or a private persons or industry are bound by the directives contained in part IV, Part III and the Preamble of the Constitution. It would thus be clear that the right to carry on trade is subject to the directives containing the Constitution the Universal Declaration of Human Rights, European Convention of Social, Economic and Cultural rights and the Convention on Right to development for socio-economic justice. Social security is a facet of socio-economic justice to the people and a means to livelihood."

21. The Hon'ble Apex Court in ***Federal Bank Ltd., vs. Sagar Thomas and others*** reported in ***(2003) 10 SCC 733,*** while dealing with the issue of maintainability of the writ petition against a company incorporated under the Companies Act and not being a Government Company under Section 617 observed in paragraphs 18 and 31 as under:

"18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) an Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

31. The other case which has been heavily relied upon is Andi Mukta (1898) 2 SCC 691. It is no doubt held that a Mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the Ordinances, casting certain obligations which it owed to that petitioner. But it is not the case

here. Our attention has been drawn by the learned counsel for the appellant to paragraphs 12, 13 and 21 of the decision (Andi Mukta) to indicate that even according to this case no writ would lie against the private body except where it has some obligation to discharge which is statutory or of public character."

(emphasis by this Court)

22. The Hon'ble Apex Court in the case of ***Binny Ltd., and another vs. V.Sadasivan and others*** reported ***2005 SCC (L&S) 881*** have been pleased to observe in paragraphs 9, 10 and 11 as under:

"9. The superior Court's supervisory jurisdiction of judicial review is invoked by an aggrieved party in myriad cases. High Courts in India are empowered under Article 226 of the Constitution to exercise judicial review to correct administrative decisions and under this jurisdiction High Court can issue to any person or authority, any direction or order or writs for enforcement of any of the rights conferred by Part III or for any other purpose. The jurisdiction conferred on the High Court under Article 226 is very wide. However, it is

an accepted principle that this is a public law remedy and it is available against a body or person performing public law function. Before considering the scope and ambit of public law remedy in the light of certain English decisions, it is worthwhile to remember the words of Subha Rao J. expressed in relation to the powers conferred on the High Court under Article 226 of the Constitution in Dwarkanath Vs. Income Tax Officer 1965 (3) SCR 536 at pages 540- 541:

> *"This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an*

analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution of India with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself."

10. The Writ of Mandamus lies to secure the performance of a public or a statutory duty. The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities. Originally, the writ of mandamus was merely an administrative order from the sovereign to

subordinates. In England, in early times, it was made generally available through the Court of King's Bench, when the Central Government had little administrative machinery of its own. Early decisions show that there was free use of the writ for the enforcement of public duties of all kinds, for instance against inferior tribunals which refused to exercise their jurisdiction or against municipal corporation which did not duly hold elections, meetings, and so forth. In modern times, the mandamus is used to enforce statutory duties of public authorities. The courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction had always been drawn between the public duties enforceable by mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. In the Administrative Law (Ninth

Edition) by Sir William Wade and Christopher Forsyth, (Oxford University Press) at page 621, the following opinion is expressed:

> *"A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus, which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies. This difference is brought out by the relief granted in cases of ultra vires. If for example a minister or a licensing authority acts contrary to the principles of natural justice, certiorari and mandamus are standard remedies. But if a trade union disciplinary committee acts in the same way, these remedies are inapplicable: the rights of its members depend upon their contract*

of membership, and are to be protected by declaration and injunction, which accordingly are the remedies employed in such cases."

11. Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come

within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

> *"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or*

economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including rule making, adjudication (and other forms of dispute resolution); inspection; and licensing.

Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in

reality also perform some types of public function. As Sir John Donaldson, M.R. urged, it is important for the courts to 'recognise the realities of executive power' and not allow 'their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted'. Non-governmental bodies such as these are just as capable of abusing their powers as is government."

(emphasis by this Court)

23. The Hon'ble Apex Court in the case of ***Union of India and others v. Tantia Construction Private Limited*** reported in ***(2011) 5 SCC 697,*** while dealing with the issue as to whether availability of alternate remedy in the form of arbitral clause would bar a writ remedy was pleased to observe and hold in paragraphs 33 and 34 as under:

"33. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the

invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.

34. We endorse the view of the High Court that notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the Writ Petition and also on its merits."

24. The Hon'ble Apex Court in ***K.K.Saksena vs. International Commission on Irrigation and Drainage and others*** reported in ***(2015) 4 SCC 670,*** while dealing with issue of interpretation of the term "authority" used in Article 226 of the Constitution of India, was pleased to observe in paragraphs 32, 33, 34 and 37 as under:

> *32. If the authority/body can be treated as "State" within the meaning of Article 12 of the Constitution of India, indubitably writ petition under Article 226 would be maintainable against such an authority/body for enforcement of fundamental and other rights. Article 12 appears in Part III of the Constitution, which pertains to "Fundamental Rights". Therefore, the definition contained in Article 12 is for the purpose of application of the provisions contained in Part III. Article 226 of the Constitution, which deals with powers of High Courts to issue certain writs, inter alia, stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in*

appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III and for any other purpose.

33. In this context, when we scan through the provisions of Article 12 of the Constitution, as per the definition contained therein, the "State" includes the Government and Parliament of India and the Government and Legislature of each State as well as "all local or other authorities within the territory of India or under the control of the Government of India". It is in this context the question as to which body would qualify as "other authority" has come up for consideration before this Court ever since, and the test/principles which are to be applied for ascertaining as to whether a particular body can be treated as "other authority" or not have already been noted above. If such an authority violates the fundamental right or other legal rights of any person or citizen (as the case may be), writ petition can be filed under Article 226 of the Constitution invoking the extraordinary jurisdiction of the High Court and seeking appropriate direction, order or writ. However, under Article 226 of

the Constitution, the power of the High Court is not limited to the Government or authority which qualifies to be a "State" under Article 12. Power is extended to issue directions, orders or writs "to any person or authority". Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also "for any other purpose". Thus, power of the High Court takes within its sweep more "authorities" than stipulated in Article 12 and the subject matter which can be dealt with under this Article is also wider in scope.

34. In this context, the first question which arises is as to what meaning is to be assigned to the expression "any person or authority". By catena of judgments rendered by this Court, it now stands well grounded that the term "authority" used in Article 226 has to receive wider meaning than the same very term used in Article 12 of the Constitution. This was so held in Shri Anadi Mukta Sadguru (1989) 2 SCC 691. In that case, dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained

to payment of certain employment related benefits like basic pay, etc. Matter was referred to the Chancellor of the Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award. Teachers filed the writ petition seeking mandamus and direction to the trust to pay them their dues of salary, allowances, provident fund and gratuity in accordance therewith. It is in this context an issue arose as to whether the writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private trust running an educational institution. The High Court held that the writ petition was maintainable and said view was upheld by this Court in the aforesaid judgment.

37. Further, the Court explained in para 20 in Anadi Mukta Sadguru case that

the term "authority" used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 31, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term "authority" appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226."

(emphasis by this Court)

25. That apart, the learned counsel has relied on long list of rulings rendered by the Division Benches of various High Courts namely Madhya Pradesh High Court, Allahabad High Court, Delhi High Court, Madras High Court, the Uttarakhand High Court and the order of the learned Single Judge of the Kerala High Court.

26. The Madhya Pradesh High Court in ***Amol Shrivastava and another vs. Bar council of India and others in Writ Petition No.22635/2017 (PIL)*** has observed in paragraphs 25 to 31 as under:

> *"25. In respect of maintainability of writ petition under Article 226 of the Constitution is concerned, the law is now almost settled that what is determinative is not merely the nature of organization, but the function it performs, that is the subject matter of controversy. This was summarized by the Constitution Bench of the Supreme Court in the Zee Telefilms & Anr. V/s. Union of India & Ors. (Constitution Bench), reported as 2005 (4) SCC 649, the Apex Court held that even while rejecting the contention that the Board of Control For Cricket in India (BCCI) was not "State" within the meaning of expression under Article 12, that :*
>
> > *"Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under*

the Constitution, by way of a writ petition under Article 226."

26. In the judgment reported as Federal Bank V/s. Sagar Thomas reported as 2003 (10) SCC 733 it was held that:

"From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function."

27. Likewise, in Binny V/s. Sadashivan (supra) the Supreme Court held as follows:

"Thus, it can be seen that a writ of mandamus or the remedy under Article

226 is pre-eminently a public law remedy and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights of the public or to compel the public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties. This writ is admirably equipped to serve as a judicial control over administrative actions. This writ could also be issued against any private body or person, specially in view of the words used in Article 226 of the Constitution. However, the scope of mandamus is limited to enforcement of public duty. The scope of mandamus is determined by the nature of the duty to be enforced, rather than the identity of the authority against whom it is sought. If the private body is discharging a public function and the denial of any right is in connection with the public duty imposed on such body, the public law remedy can be enforced."

28. The question, which this Court has to address, is whether, in the light of the above principles enunciated by the Apex Court, can the present proceedings be maintained validly against the respondent No.3 - Bar Association. They assert that such proceedings cannot be maintained, because they are purely private bodies, voluntarily formed with their own Constitutions. They also assert that in exercise of the power under Article 226, this Court cannot mandate them to include stipulations for introducing the one Bar one vote principle.

29. An Advocate engaged in law practice, before Courts in India, occupies a crucial and important position. She or he has the exclusive privilege, by law, to appear and represent others in cases and causes tried and decided by courts. This privilege is conditioned by provisions of the Advocates Act; it is also subject to continued good conduct- any lapse or actionable misconduct is liable to disciplinary action, the manner of whose proceedings and the nature of penalties that can be imposed, are again expressly stipulated by law- either under the

Advocates Act, or under Regulations framed thereunder. Statutory appeals are provided against penalties imposed and the right to ultimately appeal to the Supreme Court is also assured. Every Advocate is duty bound to follow the code of conduct formulated by the Bar Council of India. These standards - especially Standards of Professional Conduct and Etiquette - framed under Rules and Section 49 (1) (c) of the Act read with the Proviso thereto of the Advocates Act formulated by the Bar Council of India. The professional activities of every Advocate - qualifications recognized, requirement of being enrolled, conditions for continuous enrolment, obligation to follow a prescribed code of conduct, comport herself with dignity and also assist the Court, duty to represent clients, accountability for action and lapses duties of statutory authorities, such as the Bar Council of India and State Bar Councils, maintenance of rolls, disciplinary proceedings and the manner of their conduct, are regulated by law. All this is to one end: provide a service to the client, in an orderly and regulated manner, professional assistance of an individual trained in the

discipline of the law to secure the timely and efficient of resolution of a dispute before the Court. Owing a duty beyond her brief, to uphold the law and at all times act in fairness towards the Court, her colleagues and her client, without using sharp tactics or illegitimate means has been emphasized repeatedly in several decisions.

30. The Supreme Court in Lalit Mohan Das V/s. Advocate General reported as AIR 1957 SC 250 explained that a member of the Bar is an officer of the Court and owes a duty to the Court in which, he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. Their conduct in respect of matters not regulated by law may appear, on the façade, beyond the pale of what may be described as "public functions". Yet, that is not the case. Bar Association like the respondent No.3, apart from the statutory bodies such as Bar Council, also occupy a pivotal role in Court administration and functioning. This can be gathered from the fact that Court procedure is framed after consultation with such Bar Associations,

important policy and administrative decisions such as rules to allot chambers, use of common spaces, allotment of commercial spaces, their identification, earmarking of parking lots, policies and rules for designation of senior counsel under the Advocates Act, 1961, are taken, more often than not, with the consultation and inputs from these Bar Associations, in view of their representative nature.

31. Considering the role of Advocates and its importance in administration of justice privilege given by the High Court to them and their duty towards preservation of justice delivery system etc. Bar is an integral constituent of administration of justice, as such, it is required to function with the object to achieve proper method dispensation of the justice to the public and preserve judicial decorum etc. The High court Bar Association, Indore is one of the largest Association of the Advocates. They have been provided by the Registry of the High Court, a huge space both for locating their library and conducting meetings. It is only in recognition of the fact that they are discharging public duties that

they have been allotted such a space. High Court Bar Association, Indore is a recognized by the Registry of this Court. They are amenable to the writ jurisdiction of this Court. Therefore, we hold that the writ petition is maintainable."

(emphasis by this Court)

27. The Allahabad High Court in ***Shiv Kumar Akela and others vs. Registrar Societies Firms and Chits reported in 2005 All.L.J. 2845*** was pleased to observe in paragraphs 9 to 11, 19, 30 and 31 as under:

"9. High Court Bar Association is also affiliated and recognised by U.P. Bar Council, Allahabad. It is, thus under supervision and control of 'Bar Council of U.P.' a 'statutory body' under Advocates Act. This is clear from 'Certificate of Affiliation' brought on record by U.P. Bar Council.

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.

11. Apex Court in the case of Rajendra Sail v. Madhya Pradesh High Court Bar Association and Ors., AIR 2005 Supreme Court 2473(Para 32) as noted-

> *"32. ...The confidence of people in the institution of judiciary is necessary to be preserved at any cost. That is its main asset. Loss of confidence in institution of judiciary would be end of Rule of law. Therefore, any act which has such tendency deserves to be firmly curbed. For rule of law and orderly society, a free responsible press and independent judiciary are both indispensable. Both have to be, therefore, protected."*

19. Second objection regarding maintainability of the Writ Petition on this

ground that High Court Bar Association being registered under Societies Registration Act is not amenable to writ jurisdiction under Article 226, Constitution of India, it will suffice to mention that at this stage writ petition does lie and is maintainable against respondent Nos. 1, 5, 6, 1, 8 & 9. Curiously, none of the respondents except respondent No. 2, 3, & 4 have raised objection regarding maintainability of the writ Petition.

30. Advocate is an officer of the Court. He is an indispensable constituent of the 'justice delivery system'. He enjoys special status by virtue of his being enrolled as Advocate. He enjoys privileged position in Court (as well as in public). In High Court he is provided place to sit in Court premises. High Court has given large accommodation in the High Court Building to High Court Bar Association for chambers, canteen etc. High Court holds references/ condolences on the request made by the High Court Bar Association, and these proceedings are Court proceedings.

31. There is no dispute or doubt that Writ Petition lies against Respondent No.

I/Registrar, Societies Registration who is responsible for proper functioning of a 'Society' (registered under Societies Registration Act) including High Court Bar Association. Similarly, Writ Petition lie against Respondent Nos. 5,6,7, 8 & 9."

(emphasis by this Court)

28. The Kerala High Court in ***Adv.E.Shanavas Khan vs. The Kollam Bar Association in Writ Petition No.89/2020*** was pleased to observe in paragraph 10 as under:

"Though it is contended that by the insertion of a provision for sale of welfare stamps through outlets set up by the Bar Council for the said purpose as well, the public duty of Bar Associations to supply welfare fund stamps stands terminated, I am of the clear view that the primary responsibility cast on the Bar Associations in the State to supply welfare stamps to their members renders them amenable to writ jurisdiction. I hold that the respondent association which is performing a public duty and a statutory function is amenable to the writ jurisdiction of this Court."

29. The Delhi High Court in the case of ***P.K.Dash, Advocate vs. Bar Council of Delhi*** reported in ***AIR 2016 Delhi 135*** was pleased to observe in paragraph 36 as under:

> *"36. Given this position of Advocates in Courts in India, and the importance of their role in judicial decision making, their conduct in respect of matters not regulated by law may appear, on the facade, beyond the pale of what may be described as "public functions". Yet, that is not the case. Bar Associations- like the respondents, apart from the statutory bodies such as Bar Councils, also occupy a pivotal role in Court administration and functioning. This can be gathered from the fact that Court procedure is framed after consultation with such Bar Associations, important policy and administrative decisions such as rules to allot chambers, use of common spaces, allotment of commercial spaces, their identification (all meant for the use of the litigant public and members of the Bar) earmarking of parking lots, policies and rules for designation of senior counsel under the Advocates Act, are*

taken, more often than not, with the consultation and inputs from these Bar Associations, in view of their representative nature. Any dispute within such association invariably has repercussions in court functioning. Conflicts with members of the public, interface with the local administration and police authorities routinely - for security of court, court precincts, chambers, etc. need active participation by Bar Associations. Often, individual grievances of members of the Bar in court premises require intervention and deft handling on the part these Associations, in the absence of which Court proceedings would be disrupted. Above all, elections of Bar Associations quite often lead to large-scale requests for adjournments, and litigants have to pay the price. Intervention through court policies requiring discipline in canvassing for votes and what is permissible in the form of leaflets and pamphlets, use of speakers, etc, by the Bar Associations, if left unregulated would also seriously undermine court functioning. These show that Bar Associations' activities have a pre-dominantly public character, and can, in many instances, affect court functioning. As a result, it is held

that the nature of relief sought in these proceedings is intrinsically connected with public functioning of the court and affect them. Consequently the present proceedings are maintainable under Article 226 of the Constitution of India.

30. The Madras High Court in the case of ***K.Elango and others vs. Secretary, Bar Council of Tamil Nadu, Madras High Court and others*** reported in ***(2015) 6 CTS 90***, was pleased to observe as under:

> *"36. In any case, the Madras High Court Advocates' Association cannot raise the issue of maintainability of the Writ Petition, in view of the fact that they have already suffered an Order from a Division Bench of this Court in Dr. G. Krishnamurthy v. The President, Madras High Court Advocates' Association, 2001 MHC 1272. The prayer in the Writ Petition filed by Dr. G. Krishnamurthy was to direct the Respondents therein to regulate the functioning of the Association in a befitting manner. The Writ Petition was opposed by MHAA on the ground that a Writ will not lie. Overruling the objections raised by MHAA, a Division Bench*

of this Court held in Paragraphs 9 & 10 of the said decision as follows:

> *"9. We have heard the parties on both sides and perused the respective pleadings, Counter and reply to the Counter. So far as the maintainability of the Writ Petition is concerned, generally, no Writ lies against a Society. The Madras High Court Advocates' Association is a Society, which has been permitted by the High Court to function within the campus of the High Court. A reference can be made to the decision in Praga Tools Corporation v. C.A. Immanuel, AIR 1969 SC 1306, wherein it was held that a Mandamus can issue, for instance, to an official of a Society to compel him to carry out the terms of the Statute under or by which the Society is constituted or governed, and also to Companies or Corporations to carry out duties placed on them by Statutes authorising their undertakings. A Mandamus would also lie against a Company constituted by a Statute for the purpose of fulfilling Public*

responsibilities. Thereafter, a Division Bench of this Court in Madras Labour Union, rep. by its President v. Binny Ltd., 1995 (1) CTC 73, after referring to the entire case law and text books on Administrative Law has set out several propositions, viz. a Writ will issue against a private body to protect the fundamental rights, in extraordinary circumstances if the monstrosity of the situation warrants it, and against a Private body, if there is no equally convenient remedy and if there is Public duty. A Full Bench of this Court in M. Thanikachalam & others v. Mathurathagam Agricultural Producers Coop. Marketing Society. 2000 (4) CTC 556, after referring to the entire case-law on the subject held, 'what is necessary to be seen is, if the Order passed is without jurisdiction, or before passing any Order, it is required to hear the affected party, as per the Statute, but not followed, meaning thereby, if the Principles of Natural Justice are not followed, or if there is any flagrant violation of law, or if situations warrant,

due to the prevailing of a monstrous situation, a Writ Petition can be'. So, as the facts culled out, the Association, which has been established to uphold the noble tradition of the Legal profession, is being misused as has been set out earlier. The argument of Mr. R. Karuppan that the Petitioner does not command good reputation and is facing some Complaints in the Bar Council is not sufficient to throw out the Writ Petition when he is a practising Lawyer of this Court as Mr. R. Karuppan himself. Even assuming that he has no locus standi, what is to be seen is that once the matter has come to the Notice of the Court and the issue involved is shocking and touching the conscience of the Court, the Court can issue direction in an appropriate case against an interloper or busy body also. But, at the same time, it has to be seen that the PIL should not be used for one's personal gain or publicity or political motivation.

10. In the administration of justice, the Bar plays a vital role. Without the cooperation of the Bar, the Bench cannot function smoothly and effectively. A look at the records available before us, shows that the Members of the Association are fighting with each other and that a cold war persists between a group of Members and the group of the President. The Advocates, who are raising their voice for maintaining the rule of law, are being deprived of their right to vindicate their grievance. Except stating that such a state of things is an unfortunate one, we desist ourselves from saying anything more."

31. The High Court of Uttarakhand at Nainital in ***Amrish Kumar Agrawal vs. Bar Council of Uttarakhand another in Special Appeal No.960/2018*** was pleased to observe as under:

11. Article 226 of the Constitution empowers the High Court to issue writs, directions or orders for the enforcement of any of the rights conferred by Part III and "for any

other purpose". It is essentially a power conferred upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental, or ordinary legal rights which may come within the expression "for any other purpose". The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive. (Director of Settlements : A.P. v. MOR. Apparao : (2002) 4 SCC 638). The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court for "any other purpose". (Whirlpool Corpn. Vs. Registrar of Trade Marks: (1998) 8 SCC 1). The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates, and so can affect any person – even a private individual – and be available for any (other) purpose – even one for which another remedy may exist. (Rohats Industries Ltd., vs. Rohtas Industries Staff Union: (1976) 2 SCC 82).

14. Yet another reason why we must reject the submission of Mr. Shakti Singh, learned counsel appearing for second respondent-writ petitioner, that a writ petition would not lie is that an advocate, an officer of the Court, discharges public law functions of providing access to justice to needy litigants. He has also the responsibility of ensuring that administration of justice is carried on unhindered. The Bar Association is a collective of advocates, and has certain statutory obligations which it is required to discharge under the Advocates Welfare Fund Act, 2001 (for short the 2001 Act). The central function that the legal profession must perform is nothing less than the administration of justice. (The Practice of Law is a Public Utility' - 'The Lawyer, The Public and Professional Responsibility' by F. Raymond Marks et al – Chicago American Bar Foundation, 1972, p. 288-89). The role of a Lawyer is indispensable in the system of delivery of justice. (R. Muthukrishnan v. Registrar General of the High Court of Judicature at Madras : AIR 2019 SC 849). Lawyers owe a duty not only to the legal system, but also to society. (Oudh Bar

Association v. State of Uttar Pradesh : Order of the Supreme Court in Civil Appeal No. 6710 of 2019 dated 26.08.2019). An advocate's duty is as important as that of a Judge, and they play a vital role in the preservation of the justice system. (O.P. Sharma and others v. High Court of Punjab and Haryana : (2011) 6 SCC 86). Since the duty of a lawyer is to assist the Court, in the administration of justice, the practice of law has a public utility flavor. (Sri Jayendra Saraswathy Swamigal (II), T.N. v. State of T.N. : (2005) 8 SCC 771 and Indian Council of Legal Aid and Advice v. Bar Council of India and another : (1995) 1 SCC 732). The practice of law is thus a public utility of great implications. (Bar Council of Maharashtra v. M.V. Dabholkar and others : (1976) 2 SCC 291; Ishwar Shandilya v. State of Uttarakhand and others (Order in Writ Petition (PIL) No.31 of 2016 dated 25.09.2019)). Since the practice of law has a public utility flavor, and the Bar Associations discharge a public duty under the 2001 Act, abuse of authority by the Bar Associations, while discharging their statutory duties, would also justify this Court exercising its

jurisdiction, under Article 226 of the Constitution of India, to interfere."

32. In all the above noted cases, the point of maintainability of the writ petition as against a Bar Association has been specifically contended and the Courts have consistently held that the Bar Association is amenable to the writ jurisdiction and that a writ under Article 226 of the Constitution of India is maintainable against the Bar Association, more so when the issue involved is the sanctity of the elections. We are in complete agreement with the views expressed by the various High Courts.

33. At this stage, it is necessary to look into the provisions of the bye laws of the Bar Association more particularly the objects of the Association which is contained in bye law No.3 and reads as under:

"3. The objects of the Association are:

(a) To organize and unify lawyers with a view to build up strong and independent Bar, capable of maintaining high

standards and traditions associate with the legal profession.

(b) To promote fellow feelings among all persons who practice legal profession, pleaders and Advocates.

(c) To take steps for the physical, social, intellectual advancement of its members.

(d) To encourage legal learning and research and to organize and establish law library.

(e) To protect and promote the interest of the Junior Section of the Bar.

(f) To publish or to assist the publication of treatise, text books or pamphlets or periodicals or journals etc., on subjects of law.

(g) To examine and offer suggestions to appropriate authorities on legislation or proposed legislation and formation or amendment of rules of procedure and to offer suggestions on all other matters relating to legal profession.

(h) To establish and manage or assist in the management of Canteens, Co-operative Societies, Legal Aid Centres, Benevolent or Welfare Funds and the Conduct of Sports, Entertainments etc., for the benefit of its members.

(i) To do everything incidental to or necessary for the achievement of all or any of the objects either singly or in collaboration with other Law Institutions or Associations having the same or similar objects."

34. A reading of clause (a) of bye law 3 would demonstrate that one of the obligations cast upon itself is to build up strong and independent bar capable of maintaining high standards and traditions associated with the legal profession. The 3rd respondent by this obligation has promised to discharge a duty of a public character. Reading of clause (d) is also an obligation of a public character. So also clauses (f), (g) and (h) which can by no stretch of imagination, be described as obligations of a private character. That apart, the other

relevant provisions are bye laws 17, 18 and 26 which read as under:

> *"17. Management:*
>
> *(a) The management and control of all the affairs of the Association shall be vested in a Governing Body called the Council consisting of the following members:-*
>
> *(b) President, Two Vide Presidents and two Secretaries one Hon. General Secretary and a Joint Secretary and 6 members.*
>
> *The above members of the Council shall be elected at the Annual General Meeting of the association at the Annual General Meeting of the association to the held ordinarily in the month of June and they shall hold office till their successors are elected.*
>
> *(c) In the case of any vacancy by death, resignation or absence for consecutive three meetings of the Council another member may be co-opted, in his place by the Council. In case of difference of opinion co-option shall be as per majority.*
>
> *18. The Council at its first meeting or otherwise shall be entitled to co-opt to the Council from amongst the members not*

exceeding three members to its Council. Provided that a member so co-opted shall be one who has not contested as a candidate at the immediately preceding election and had been defeated.

26. the President, if present, shall preside over meeting of the Council. In the event of his absence, one of the Vice Presidents shall preside. In case, neither the President nor any of the Vice Presidents, is present, the members present shall elect one of their members to be the Chairman of the meeting."

35. Though initially arguments were addressed on the merits of the writ petition, subsequently it has been restricted to the issue of maintainability of the writ petition, as the learned Single Judge has not entered upon and adjudicated the writ petition on merits.

36. The observations of the Hon'ble Apex Court and the various High Courts in the long line of rulings narrated supra, obviates any detail discussion with regard to the maintainability of a writ petition against the Bar Association invoking the provisions of Article

226 of the Constitution of India. That apart, as detailed supra, some of the obligation, the 3rd respondent has cast upon itself, bears a public character. The Advocates are not mere arbiters but officers of the court who assist the Court in the running of the justice delivery system and it is such officers of the court who constitute the 3rd respondent Society. That the constituents of the 3rd respondent Society are answerable to the Court and to the 1st respondent with regard to their conduct in the discharge of their professional duties. Both the 1st respondent and the Court can by no stretch of imagination be described as private entities. That apart, if the objects of the 3rd respondent Society are juxtaposed with the observations of the Hon'ble Apex Court in Dwaraka Nath's Case and SCBA case, it is apparent that the 3rd respondent discharges obligations of a public character. Hence, the writ petition invoking the provisions of Article 226 of the Constitution of India praying for a relief as against the 3rd respondent is required to be held as maintainable. It

is not the case of the 3rd respondent that it is not similarly situated as the Bar Associations as detailed in the long line of rulings. Further, admittedly the 3rd respondent is in receipt of grants and is housed in the court premises and under the all pervasive control of the 1st respondent.

37. We have perused the order of the learned Single Judge in Writ Petition No.148178/2020 upon which reliance is placed. The learned Single Judge has held that the Bar Association does not answer the definition of the term "State". We have no quarrel with the same. But the learned Single Judge has failed to appreciate the scope and ambit of Article 226 of the Constitution of India which has been reproduced supra in the various decisions, wherein the reference is not merely to the "authorities", but also to "persons". In that light of the matter, the conclusion by the learned Single Judge that the writ petition is liable to be rejected warrants interference. The learned Single Judge has failed to consider the scope and ambit of Article 226 of

the Constitution of India which clearly empowers the High Court to issue prerogative writs even to private entities. When and in which case such prerogative writs can be issued depends on the facts and circumstances of each case. The instant case involving co-option of defeated candidate to an elected post of President of the Association is a circumstance which is not only flagrantly contrary to the bye laws and to democratic principles and is a situation, that warrants consideration by the High Court. In our considered opinion, the action complained off shocks the judicial conscience of this Court. Hence, the writ petition invoking the provisions of Article 226 of the Constitution of India in our considered opinion is maintainable. Accordingly, the points for determination are answered in favour of the appellant.

38. Apart from the above, it is also seen that the learned Single Judge has grossly erred in rejecting the writ petition *in toto*. The writ petition's prayer reads as under:

(a) Issue a writ of mandamus directing the respondent No.1 to consider the letter dated 30.09.2020 vide Annexure – G in the interest of justice and equity.

(b) Issue a writ of certiorari, quashing the entire proceedings dated 03.10.2020 vide Annexure – J initiated by the 3rd respondent in the interest of justice and equity and continue the petitioner to work as per resolution No.2 dated 11.08.2020 vide Annexure – D, in the interest of justice and equity.

(c) Pass any other order or direction as this Hon'ble Court deems just and proper under the facts and circumstances of the case including award of cost in the interest of justice and equity."

39. The first prayer was against the 1st respondent which is a statutory authority, whereby the petitioner had sought for the issuance of a writ of mandamus to consider his representation. The learned Single Judge has not reasoned as to why the said prayer

requires to be rejected. On this short ground also, the appeal requires to be allowed.

40. Lastly it is required by this Court to consider as to whether the 4th respondent is required to be permitted to enjoy the benefits of the resolution co-opting him to the post of President. In our considered opinion, the action *prima facie* appears to be contrary to the very spirit of the preamble. Democracy has been recognized as one of the basic features of the constitution and the Act complained of by the petitioner *prima facie* appears to be going against the very grain of democracy. It is submitted at the Bar that initially there was an interim order restraining the 4th respondent from officiating in the post of President.

41. In the light of the submission by the learned Senior counsel to reserve the consideration of the writ petition on merits to the learned Single Judge and this Court having upheld the maintainability of the writ petition, it would be a travesty of justice to permit the

4th respondent to continue in the post of the President pending consideration of the interim relief afresh. Hence, the following order:

ORDER

(i) The Writ Appeal is allowed.

(ii) It is held that the writ petition against the 3rd respondent Bar Association. a Society registered under the Societies Registration Act, is maintainable.

(iii) The Writ Petition is remitted back to the learned Single Judge for consideration of the Writ Petition on merits excluding the point of maintainability but including the prayer for interim relief.

(iv) It is ordered that pending consideration of the interim relief, the 4th respondent be restrained from officiating or discharging duties of the

President of the 3rd respondent Belagavi Bar Association.

Ordered accordingly.

There shall be no order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

Rsh