

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 18th November, 2020

+ **FAO (OS) 53/2020**

ASHOK ARORA **Appellant**

Through : Mr. Arun Batta, Ms. Neha Kumari
and Mr. Abdul Wahid, Advocates
along with appellant in person.

Versus

**SUPREME COURT BAR ASSOCIATION
(REGD.) & ANR.** **Respondents**

Through : Mr. Arvind K. Nigam, Senior
Advocate with Mr. Parminder
Singh, Advocate for R-1/SCBA.
Mr. Preet Pal Singh, Advocate for
R-2/BCI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

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[VIA VIDEO CONFERENCING]

ASHA MENON, J.

1. This appeal has been filed by the plaintiff before the learned Single Judge and directed against the order dated 6th October, 2020 dismissing the application under Order XXXIX Rules 1 & 2 CPC filed by him in his suit seeking declaration and injunction.

2. The facts as are relevant for the disposal of the appeal may be stated. The respondent no.1/Supreme Court Bar Association

(SCBA) is a Society duly registered under the Societies Registration Act 1860, governed by its Regulations and Bye-laws. It has an Executive Committee comprising of a President, Secretary, Treasurer and other office-bearers and members who are all elected by the lawyers who are practicing in the Supreme Court of India and are its members. The appellant was elected to the post of Secretary in the elections held in December, 2019.

3. It is the case of the appellant that the President Sh. Dushyant Dave conducted the affairs of the respondent no.1/SCBA in a manner that was found unsatisfactory by the members and 400 of them wrote to the appellant as Secretary, on 19th March, 2020 asking him to requisition a Special GBM. The appellant informed the Executive Committee of the requisition on 21st March, 2020 on the WhatsApp Group. He then took steps to call such an emergent GBM on 6th May, 2020 based on the requisition of the 400 members. However, on 8th May, 2020, the President convened a meeting of the Executive Committee in which two Resolutions were passed against the appellant suspending him from the post of Secretary of the respondent no.1/SCBA and authorizing the Joint Secretary to discharge the functions of the Secretary. Further a Committee of three retired Judges was also constituted by the President to look into all issues concerning the appellant.

4. These Resolutions were impugned by the appellant by filing the suit seeking:

a) a declaration to the effect that the Resolution dated 8th May, 2020 passed by the Executive Committee of the respondent no.1/SBCA whereby he was suspended was void *ab initio* and quash the same;

b) a permanent injunction restraining the respondent no.1/SBCA and its employees etc from interfering in his functioning and performance of duties as its Secretary;

c) a declaration that the three members Committee was illegally constituted;

d) directions for the full implementation of the Resolution of the respondent no.2/BCI dated 10th May, 2020 by the respondent no.1/SBCA in letter and spirit.

By way of the application under Order XXXIX Rules 1& 2 CPC, the appellant sought interim stay of the operation of the Resolution dated 8th May, 2020.

5. After considering the submissions of all the parties, the learned Single Judge declined to grant such interim injunction holding *inter alia* that as the appellant had not made out a prima facie case, as he had relied on Rule 35 of the Supreme Court Bar Association Rules, whereas the case fell under Rule 14. Accordingly, the application was dismissed, leading to the filing of the present appeal.

6. We have heard the appellant in person, Sh. Preet Pal Singh, Advocate for the respondent no.2/BCI and Sh. Arvind K. Nigam Senior Advocate for the respondent no.1/SCBA. Though, all submissions made before the learned Single Judge were agitated before us by both sides, since this is an appeal, the appellant was also required to show how the conclusions drawn in the impugned orders were incorrect. The appellant has not pointed out to the fallacies in the impugned order.

7. It would be useful to reproduce Rule 14 and Rule 35 of the SCBA Rules for ready reference hereinbelow:

“14. OFFICE BEARERS

PRESIDENT (1): The President of the Association and in his absence the Vice-President shall preside at all meetings of the Association and of the Executive Committee or other committees. In the absence of the President or the Vice-President the members present shall elect one of them to preside over a meeting. (2) If any question arises with respect to any matter not provided for in the rules or in the bye-laws made by the Executive Committee, such question shall, subject to the provisions of these rules, be decided by the President whose decision shall be binding unless the General Body of the members in a subsequent meeting otherwise decides.”

“35. COMPLAINTS

Regarding Members: (i) On the receipt of a written complaint from any person as to unprofessional or improper conduct on the part of any Member, the Secretary shall place it before the President, and if the President of opinion that it merits consideration, the

Secretary shall call a meeting of the Committee as expeditiously as possible.

(ii) The Committee or the Sub-Committee constituted by it generally for the purpose of this rule or especially for any particular case will hold an inquiry into the complaint. If on consideration of its own findings or of the Report of Sub-Committee, the Committee is satisfied that there is a prima facie case against the Member complained against it shall direct that the Complaint together with the report of the Committee or Sub-Committee be placed before a General Meeting of the Association. Provided always that where a prima facie case is made out against the Member complained the Committee or Sub-Committee shall give such Member reasonable opportunity of being heard in person.

(iii) The Association may by a resolution passed at such meeting expel or suspend for a specific period the Member complained against, if in its opinion he is guilty of dishonorable conduct. Such Resolution shall be voted up by ballot and shall be considered to be passed if supported by not less than 2/3rd of the Members present and voting at such meeting. Provided always that before such resolution is passed the member concerned shall be given reasonable opportunity of being heard in person before the ballot by the General Meeting.

(iv) A copy of resolution shall, if the General Meeting so decides be forwarded to the Secretary of the All India Bar Council or the Bar Council where such Member may be enrolled.”

8. It is the contention of the appellant that Rule 35 alone deals with suspension of membership and recourse to Rule 14 by the President was misplaced as only the General Body can suspend

membership and not just one office bearer. Since the President had claimed immunity from suspension, having been elected to that post, by the same logic the appellant could not be removed from the office to which he had been elected. It was submitted by the appellant that under Rule 22, the Secretary alone was empowered to call a Special General Body Meeting and the Agenda No.1 questioning the appellant's authority in this regard was itself faulty. Moreover, the meeting of the Executive Committee was conducted by interested persons as the complainants, Vice President and President (though neither of them voted) had become prosecutor, witnesses and judge. Thus, the entire proceedings were conducted against all principles of natural justice and vitiated by vindictiveness, particularly when the appellant had adjourned the requisitioned meeting called by him *sine die*. Ultimately, according to the appellant, the question was whether his democratic rights could be taken away in such a manner.

9. The learned counsel for the respondent no.2/BCI supported the appellant and also contended that the BCI had the power to pass a Resolution as it had on 10th May, 2020 on the request of the appellant, directing the respondent no.1/SBCA to convene a GBM to resolve all issues. However, we are not concerned about the powers of the respondent no.2/BCI to intervene in the internal matters of a Bar Association as the interim relief claimed by the appellant in his application under Order XXXIX Rules 1&2 was limited to a stay on the Resolution of the respondent no.1/SBCA

dated 8th May, 2020, and so do not intend to touch upon this question.

10. Sh. Nigam Senior Counsel has submitted that the conclusions drawn by the learned Single Judge in the impugned orders do not call for any interference as the President under Rule 14 of the SCBA Rules was the repository of all residuary powers and could take a decision on any matter not provided under the Rules such as the suspension of an elected member of the Executive Committee and such powers had been exercised on previous occasions as well. Hence the appeal be dismissed.

11. There is no gainsaying that the Rules and Regulations have been framed by the respondent no.1/SBCA being a Society registered under the Societies Registration Act, 1860 which are binding on all members. Among other objectives and aims, Clause 3 of the Memorandum of Association lists the following too:

“(iii) 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 and advocates;”

12. The present litigation and the stated reasons for its initiation seem to be completely contrary to these stated objectives of the respondent no.1/SBCA of which the appellant was, until his suspension, the elected Secretary. Before proceeding to hear the appeal on merits, we did suggest that the matter be amicably resolved but did not succeed and we record our disappointment.

Posts in the Executive Committee of the respondent no.1/SBCA are filled by election. In other words, ordinary members repose faith in their representatives elected to the various offices/posts and expect them to discharge their duties in their best interests and their welfare. Though being an office-bearer of a prestigious association such as the respondent no.1/SBCA is in itself a privilege, the power that attaches to it can be an equally powerful attraction for members to contest an election. But that power or position cannot be equated to personal power and position as seems to be the norm across all Bar Associations. Intolerance of dissenting opinions, coercive and divisive action to hold on to power is becoming too commonplace for comfort. The clear springs of the Bar alone can feed the river that is the judiciary. Anything that sullies the source will defile in entirety. We sincerely hope that all concerned rise to the challenge and the slide arrested.

13. The vesting of the residual powers in the President of the respondent no.1/SBCA only reflects that when the Rules were framed, the word of the President, being a Senior and well respected person, was expected to be sufficient to resolve issues decisively which were not provided for explicitly in the Rules. Regrettably, it is not so anymore. This is however, not to reflect on anyone, least of all the appellant before us, for whom we have high regard and whose contribution to legal practice cannot be belittled.

14. Now, as reiterated by the Supreme Court in *SCBA & Ors. vs. B.D. Kaushik*, (2011) 13 SCC 774 in matters of internal

management of an association, the courts normally do not interfere, leaving it open to them to frame particular Rules and Bye-Laws governing eligibility for membership and providing for limitations and restrictions on the exercise of any right by its members. Once a person becomes a member, he cannot claim individual rights except those given to him by the Rules and Bye-Laws. Action taken in accordance with such Rules and Bye-Laws cannot form ground for grievance.

15. In the present case, the plea taken by the appellant appears to be two fold, viz. adoption of the wrong procedure under Rule 14 instead of under Rule 35, in accordance with which the Secretary and not the President could convene the meeting; and violation of principles of natural justice. A reading of Rule 35 shows that, as rightly pointed out by Sh. Nigam Senior Counsel and as held by the learned Single Judge, it relates to suspension of the primary membership of the respondent no.1/SBCA. Here the appellant has been suspended from that post of Secretary but his primary membership has not been suspended. The issue is covered by Rule 14 and not Rule 35. The appellant had fully participated in the meeting held on 8th May, 2020 and was also able to make his points. Thereafter by majority votes, the Resolutions were passed. Further, the decision was not taken only by the seven members who sought the urgent meeting. Also, the complaints of the appellant were also heard and the President decided to constitute a Committee of three retired judges to resolve matters. Precedents cited by the learned

Senior Counsel are sufficient to establish the powers of the President to convene such meetings and suspend the Secretary.

16. In short, the learned Single Judge rightly concluded that the appellant has disclosed no prima facie case in his favour. The affairs of the respondent no.1/SBCA cannot be allowed to be stalled only because of differences between the appellant and the rest of the office bearers. Therefore, the balance of convenience tilts in favour of the respondent no.1/SBCA. Considering the fact that the term of the present office bearers including that of the Secretary is coming to a close on 12th December 2020, no irreparable harm is found to be a consequence of a refusal of the injunction sought.

17. The appeal is accordingly dismissed.



**ASHA MENON
(JUDGE)**

**RAJIV SAHAI ENDLAW
(JUDGE)**

NOVEMBER 18, 2020

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