

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO.1 OF 2012

IN

CIVIL APPEAL NOS.3401 OF 2003

Supreme Court Bar Association & Ors. ... Appellants

Vs.

B.D. Kaushik

... Respondent

WITH

I.A. NO.1 OF 2012 IN CIVIL APPEAL NO.3402
OF 2003

AND

CONT. PET. (C) NO.45 OF 2012 IN C.A.
Nos.3401 & 3402 OF 2003

J U D G M E N T

ALTAMAS KABIR, J.

1. I.A. No.1 of 2012 has been filed by the Supreme Court Advocate-on-Record Association (SCAORA) in Civil Appeal Nos.3401 and 3402 of 2003, which were disposed of on 26th September, 2011, and form the genesis of the events leading to the filing of the said application. It has been a painful experience for us to have had to hear this matter as it involves two sections of the Supreme Court Bar Association whose unbecoming posturing has cast dark shadows on the functioning of the Bar Association even in the eyes of the general public and the litigants who throng the Supreme Court each day for their cases.

2. While Civil Appeal No.3401 of 2003 was filed by three Appellants, namely, (i) Supreme Court Bar Association (Regd.) through its Honorary Secretary, Mr. Ashok Arora; (ii) Mr. Ashok Arora in his capacity as the Honorary Secretary of the Supreme Court Bar Association; and (iii) Ms. Sunita B. Rao,

Coordinator, Implementation Committee, Supreme Court Bar Association, (hereinafter referred to as "SCBA"), on the other hand, Civil Appeal No.3402 of 2003 has been filed by the Supreme Court Bar Association through its Honorary Secretary. Both the Appeals are directed against the interim order dated 5th April, 2003, passed by the learned Civil Judge on an application filed under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, filed in Civil Suit Nos.100 and 101 of 2003. By the common order, the Appellants were restrained from implementing the Resolution dated February 18, 2003, amending Rule 18 of the Rules and Regulations of SCBA till the final disposal of both the suits. While Shri B.D. Kaushik is the sole Respondent in Civil Appeal No.3401 of 2003, Shri A.K. Manchanda is the sole Respondent in Civil Appeal No.3402 of 2003. Both the Respondents are Advocates who are practising in Delhi and are Members of the SCBA, the Delhi Bar

Association and the Bar Association of the Tis Hazari Courts, Delhi.

3. The Supreme Court Bar Association is a Society registered under the Societies Registration Act, 1860, on 25th August, 1999, under Registration No.35478 of 1999. In keeping with the provisions of the Societies Registration Act, 1860, the SCBA has framed its Memorandum of Association and Rules and Regulations, Rule 4 whereof divides the Members into four separate classes, namely, :-

- (i) Resident Members;
- (ii) Non-Resident Members;
- (iii) Associate Members; and
- (iv) Non-Active Members.

Rule 5(v)(a) provides that in terms of Rule 5, an Applicant found to be suitable to be made a Member of the Association would be made Member initially on temporary basis for a period of two years. It also provides that a person who is made

such a Member, would be identified as a temporary Member who would be entitled to avail the facilities of the Association, such as library and canteen, but would not have a right to participate in general meetings, as prescribed in Rule 21 or to contest and vote at the elections, as provided in Rule 18.

4. On 23rd January, 2003, the Office of the SCBA received a requisition dated 10th January, 2003, signed by 343 Members seeking an amendment to Rule 18 regarding the eligibility of the Members to contest and vote at an election. It was proposed that the Member, who exercised his right to vote in any High Court or District Court Advocates/Bar Association, would not be eligible to contest for any post of the SCBA or to cast his vote at the elections. The said requisition dated 10th January, 2003, was considered in the meeting of the Executive Committee of the SCBA on 1st February,

2003 and a decision was taken to hold a Special General Body Meeting on 18th February, 2003, to consider the requisition. It appears that notice for the said General Body Meeting was issued by the SCBA on 6th February, 2003, and copies of the same were sent to the Members along with the cause list. The notice was also displayed on the Notice Board of the office of the SCBA situated in the Supreme Court premises. The notices were also sent to different Bar Associations at Delhi, including the Delhi Bar Association. On 18th February, 2003, the General Body Meeting was convened in which 278 Members participated. Some of the Members of the Association had spoken against the requisition, but when the Resolution proposing the amendment in Rule 18 of the Rules was put to vote, it was passed by a majority of 85% of the Members present and voting. Subsequently, at a meeting of the Executive Committee convened on 3rd March, 2003, a Resolution was adopted to hold election of the Office Bearers

for the next session and for the constitution of the Election Committee on 25th April, 2003. An Election Committee of three Members of the SCBA was constituted for the purpose of conducting the election. In the said meeting, a requisition signed by 237 Members of the SCBA to recall the Resolution dated 18th February, 2003, was taken up for consideration, but deferred on account of the fact that the elections had been declared. Moreover, in the meeting of the Executive Committee held on 10th March, 2003, it was resolved to constitute an Implementation Committee to implement the Resolution of "One Bar One Vote", which was adopted in the General Body Meeting of 18th February, 2003.

5. The apparent differences, which have surfaced between the two groups of Members within the SCBA, resulted in Mr. B.D. Kaushik filing Suit No.100 of 2003 in the Court of Shri Sanjeev Jain, Commercial

Civil Judge, Delhi, challenging the validity of the Resolution adopted by the Executive Committee of the SCBA on 18th February, 2003. While seeking a decree for a declaration that the Resolution dated 18th February, 2003, was illegal and ineffective, the Plaintiff also prayed for a decree of perpetual injunction to restrain the SCBA and the Office Bearers from implementing the said Resolution dated 18th February, 2003, in the elections of the SCBA which were proposed to be held on 25th April, 2003. A further prayer was made to restrain the SCBA from debarring any of the Members of the SCBA who had already paid their subscription from casting their votes in the elections which were scheduled to be held on 25th April, 2003. A similar Suit No.101 of 2003 was filed before the same learned Judge by Shri A.K. Manchanda, seeking the same relief as had been sought by Mr. B.D. Kaushik in his Suit No.100 of 2003.

6. As indicated hereinbefore, applications were filed by the Plaintiffs in both the suits under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure to restrain the Defendants, who are the Appellants in the two civil appeals, from implementing the Resolution dated 18th February, 2003, till the final disposal of the suits. By a common order dated 5th April, 2003, the learned Judge allowed the two applications filed for injunction and restrained the Appellants herein from implementing the Resolution dated 18th February, 2003, amending Rule 18 of the Rules and Regulations of the SCBA, till the final disposal of the suits.

7. The Supreme Court Bar Association through its Honorary Secretary thereupon filed the two Civil Appeal Nos.3401 and 3402 of 2003 against the said common order dated 5th April, 2003, passed by the learned Civil Judge, Delhi. Both the matters were

placed before the Court in the mentioning list of 10th April, 2003, when the matters were taken on Board and leave was granted. Pending the proceedings, the common order passed by the Trial Court was also stayed. It was also made clear that if any elections were held, the same would be subject to the result of the Appeals. Thereafter, this Court appointed Mr. Ranjit Kumar, learned Senior Advocate, as Amicus Curiae to assist the Court in the two matters. In addition, the Court also requested the learned Attorney General to assist the Court. Accordingly, the Appeals were taken up for hearing in the presence of the Amicus Curiae, the learned Attorney General, Mr. Rajesh Aggarwal, who appeared on behalf of the Appellants and Mr. Dinesh Kumar Garg, learned Advocate, who appeared on behalf of the original plaintiffs. Since the matter involved the learned Advocates practising in the Supreme Court, the Court also heard senior counsel Mr. P.P. Rao, the former

President of the SCBA, Mr. Pravin Parekh, the present President of the SCBA and Mr. Sushil Kumar Jain, the President of SCAORA. The Court also considered the Memorandum of Association of SCBA as well as its Rules and Regulations.

8. During the hearing, one of the more important issues that surfaced was the escalating number of Members of the SCBA to about 10,000 Members, of whom only around 2,000 Members were said to be regularly practising in the Supreme Court. The manner in which the membership was infiltrated was also brought to the notice of the Court and a definite and deliberate allegation was made that out of the 10,000 Members of the SCBA, not more than 2,000 Members were seen to attend the Supreme Court regularly and the remaining 8,000 Members are seen in the Supreme Court premises only on the day of the SCBA elections. It was alleged that apart from the above, these 8,000 floating members had no

interest whatsoever in the functioning of the SCBA or the well-being of its Members, or even the functioning of the Supreme Court of India as a Court.

9. Mr. P.P. Rao, learned Senior Counsel, and a past President of the SCBA, with a lot of experience behind him, asserted that in view of the overwhelming number of advocates admitted to the membership of the SCBA, it was necessary to identify the advocates who actually practised in the Supreme Court in keeping with the criteria adopted by this Court for allotment of chambers in Vinay Balchandra Joshi Vs. Registrar General of Supreme Court of India [(1998) 7 SCC 461]. Mr. Rao submitted that the said criteria could be adopted in identifying the regular practitioners in the Supreme Court. In the judgment dated 26th September, 2011, the Hon'ble Judges had recorded that the learned advocates who had appeared in the

matter had urged the Court to give guidelines/directions for effective implementation of the amended rule which projects the principle of "One Bar One Vote". Accepting the submissions for the need to identify the members of the SCBA who regularly practised in the Supreme Court, and also taking note of Mr. Rao's suggestions, the Court directed that the criteria adopted by this Court for allotment of chambers, as explained in Vinay Balchandra Joshi's case (supra), should be adopted by the SCBA in this case also. The Court also observed that to identify regular practitioners in the Supreme Court, it would be open to the Office Bearers of the SCBA or a small Committee appointed by the SCBA, consisting of three senior advocates, to collect information about those members who had contested elections in any of the Court-annexed Bar Associations, such as, the High Court Bar Association, District Court Bar Association, Taluka Bar Association, etc., from 2005 to 2010. The

Committee of the SCBA to be appointed was, *inter alia*, directed as follows :

"The Committee of SCBA to be appointed is hereby directed to prepare a list of regular members practising in the Supreme Court and another separate list of members not regularly practising in the Supreme Court and third list of temporary members of the SCBA. The lists were directed to be put up on the SCBA website and also on the SCBA notice board. The committee was also directed to send a letter to each member of the SCBA informing him about his status of membership on or before 28th February, 2012. An aggrieved member would be entitled to make a representation within 15 days from the date of receipt of the letter from the SCBA to the Committee, which is to be appointed by the SCBA."

10. It was subsequently mentioned in the judgment that once a declaration had been made by the Committee, it would be valid till it was revoked and once it was revoked, the Member would forfeit

his right to vote or contest any election to any post to be conducted by the SCBA, for a period of three years from the date of revocation. It was also categorically indicated that the Members of the SCBA, whose names did not figure in the final list of regular practitioners, would not be entitled to either vote at an election of the Office Bearers of the SCBA or to contest any of the posts for which elections would be held by the SCBA. On the suggestion of the SCBA, the Hon'ble Judges recommended the names of Mr. K.K. Venugopal, Mr. P.P. Rao, and Mr. Ranjit Kumar, learned Senior Advocates, practising in the Supreme Court, for constituting the Implementation Committee, subject to their consent and convenience.

11. As it appears from the materials disclosed before us, the three aforesaid senior members of the Bar, whose names had been suggested, were ultimately appointed by the SCBA to be the members

of the Implementation Committee to implement the directions given by the Hon'ble Judges in Civil Appeal Nos.3401 and 3402 of 2003.

12. For the purpose of implementing the directions of this Court contained in the judgment dated 26th September, 2011, the Implementation Committee issued a Questionnaire to all the Members of the SCBA. Furthermore, in order to identify the regular practitioners of the Court, the Implementation Committee adopted certain criteria vide its Resolution dated 11th January, 2012, and the Members who fulfilled the said criteria were to be treated as regular practitioners of this Court, along with the 754 Members to whom Chambers had already been allotted or whose names were already included in the approved Waiting List for allotment of Chambers. The Resolution adopted by the Implementation Committee in its meeting held on 11th January, 2012, is reproduced hereinbelow :-

"RESOLUTION"

1. The Implementation Committee of the Supreme Court Bar Association, in its meeting held on 11.01.2012 at 1:10 p.m. has resolved as follows:
2. In view of the directions of the Supreme Court of India, in its judgment in SCBA Vs. B.D. Kaushik, to the effect that "the Committee of the SCBA to be appointed is hereby directed to prepare a list of regular members practising in this Court.....", the following categories of members of SCBA, in addition to the list of members already approved by the Implementation Committee, are entitled to vote at, and contest, the election of the office bearers of the SCBA as 'regular members practising in this Court':
 - (i) All Advocates on Record who have filed cases during the calendar year 2011.
 - (ii) All Senior Advocates designated as Senior Advocates by the Supreme Court of India, who are resident in Delhi and attending the Supreme Court of India.
 - (iii) All members who subscribed to any of the cause lists of the Supreme Court of India during the calendar year 2011.

(iv) All members who have been members of the SCBA for the last 25 years, commencing 01.01.1986, and have been paying subscription to the SCBA regularly, in each one of the 25 years.

3. The list of such members who are eligible to vote and contest elections will be put up on the SCBA notice board for the information of all members and will also be circulated in the usual manner including circulation with the daily cause list. Copies of this list will also be available at the reception desk in Library I.

4. The persons whose names figure in this list need not reply to the questionnaire issued earlier.

Sd/-
K.K. VENUGOPAL

Sd/-
P.P. RAO

Sd/-
RANJIT KUMAR"

13. Thereafter, pursuant to a request made by some of the Members of the SCBA to the Implementation Committee, the said Committee by its Resolution dated 15th January, 2012, included two other categories of Members who were to be treated as regular Members of the SCBA, namely :-

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- (i) All Members of the SCBA, who have attended the Supreme Court of India on at least 90 days in the Calendar Year 2011, as established from the database showing the use of Proximity Cards maintained by the Registry of the Supreme Court of India; and
- (ii) All Live Members of the SCBA, other than temporary Members, as on 31.12.2011.

14. While the aforesaid exercise was being undertaken by the Implementation Committee, on 12th January, 2012, about 240 Members of the SCBA requested the convening of a General Body Meeting of the SCBA. As the Executive Committee of the SCBA had at its meeting held on 6th January, 2012, already decided to call such Meeting on 16th January, 2012, a Circular in this regard was issued informing the Members that the Meeting would be held on 16th January, 2012. It is alleged that on

16th January, 2012, apart from the regular practitioners, a large number of persons who were not even members of the SCBA, assembled at the venue of the meeting and obstructed Shri P.H. Parekh, the elected President of the SCBA, from conducting the meeting.

15. In view of the aforesaid circumstances, Mrs. B. Sunita Rao, learned Advocate and the Secretary of the Applicant Association, filed an application for directions, setting out in detail the events of the General Body Meeting convened on 16th January, 2012, to consider the implementation of the recommendations of the Implementation Committee. In the said background, the Applicant prayed that in furtherance of the judgment dated 26th September, 2011, only those Members of the SCBA, whose names would be identified and declared by the Implementation Committee, consisting of Shri K.K. Venugopal, Shri P.P. Rao and Shri Ranjit Kumar,

Senior Advocates, would be entitled to participate in the elections and/or General Body Meeting of the SCBA or to vote either in the election or in the General Body Meeting or to sign any requisition. Among the other prayers was a prayer for a direction that the meeting held on 16th January, 2012, and the decisions purportedly taken therein, were null and void. A direction was also sought that the Implementation Committee comprised of Shri K.K. Venugopal, Shri P.P. Rao and Shri Ranjit Kumar, Senior Advocates, and no other person, should be allowed to complete the task of implementing the judgment dated 26th September, 2011.

16. The said two applications were taken up for consideration and extensive submissions were made, both in support of and against the reliefs sought for therein.

17. Appearing on behalf of the Appellant Association, Mr. Ashok Desai, learned Senior Advocate, submitted that the events which occurred on 16th January, 2012, at the Requisition Meeting convened at the instance of some of the members of the SCBA, were highly condemnable and left much to be desired. Mr. Desai submitted that after Mr. P.H. Parekh, the elected President of the SCBA had been shouted down, it was unceremoniously declared that he had resigned and his resignation from the post of President of the SCBA had been accepted in the meeting by a Resolution said to have been adopted at the meeting itself. Mr. Desai submitted that seeing the manner in which the meeting was being taken over by a certain section of the persons present at the venue of the meeting, Mr. Parekh requested Mr. Ram Jethmalani, learned Senior Advocate and a former President of the SCBA, to preside over and conduct the meeting. Mr. Desai further submitted that even Mr. Ram Jethmalani was

not permitted to preside over the meeting and Mr. Pramod Swarup, a Senior Advocate and Member of the Executive Council, was prevailed upon to preside over the meeting, where certain resolutions were allegedly adopted, which were not only unlawful, but even contumacious.

18. Mr. Desai then referred to the letter dated 17th January, 2012, addressed by one Mr. Arun Kumar, Advocate, to Hon'ble the Chief Justice of India enclosing copies of the Resolution purportedly passed by the Members of the SCBA on 16th January, 2012, in its Special General Meeting. The said Resolution purported to have been adopted on 16th January, 2012, is extracted hereinbelow :-

"RESOLUTION

Special General Body Meeting held on 16.01.2012 at 4.15 PM at Supreme Court Lawns passed the following Resolutions through Voice Vote and Show of Hands :

The Special General Body of the SCBA, presided over by Mr. Ram Jethmalani, Sr. Advocate (who

was invited to preside over the meeting by President Mr. P.H. Parekh), has resolved that :

- (1) Under the Rule making powers of SCBA (General Body) it is resolved that the judgment of Hon'ble Supreme Court dated 26.9.2011 passed in the case of HCBA Vs. B.D. Kaushik should not be given effect to.
- (2) The Implementation Committee proposed by the Hon'ble Supreme Court vide its judgment dated 26th September, 2011 passed in the case of SCBA Vs. B.D. Kaushik has itself ignored the judgment and is left with no authority to issue any list of the regular practicing Members of SCBA as it has acted in a manner which is detrimental to the interest of Members of SCBA and, therefore, the Implementation Committee stands dissolved.
- (3) The Members of Implementation Committee, namely, (i) Shri P.P. Rao, Sr. Advocate, (ii) Shri K.K. Venugopal, Sr. Advocate, and (iii) Shri Ranjit Kumar, Sr. Advocate, are forthwith expelled from the Primary Membership of the SCBA.
- (4) All the active Members of SCBA, without any classification, will be eligible to vote in the annual elections, subject to their clearing the annual subscription/ dues and filing of the Declaration Form.
- (5) Mr. P.H. Parekh, President of SCBA has publicly announced his resignation from his post with immediate effect. His

resignation is forthwith accepted by the General Body.

The Meeting ended with thanks to the Chair.

Resolution signed by more than 400 SCBA Members present during the Special General Body Meeting."

19. Mr. Desai also drew our attention to the minutes of the meeting of the Executive Committee purported to have been held on 18th January, 2012, chaired by Mr. Pramod Swarup, Senior Executive Member, who had purportedly chaired the General Body Meeting held on 16th January, 2012. Mr. Desai pointed out from the minutes that the same resolution which had been adopted at the General Body Meeting of 16th January, 2012, was also adopted at the purported meeting of the Executive Committee held on 18th January, 2012.

20. On the resolutions said to have been adopted both at the Special General Body Meeting and the

meeting of the Executive Committee of the SCBA allegedly held thereafter, Mr. Desai submitted that the said resolutions are *per se* in disregard of the judgment of this Court in SCBA Vs. B.D. Kaushik and are, therefore, null and void. Mr. Desai also pointed out that the resolution starts by recording that "The Special General Meeting of the SCBA was presided over by Mr. Ram Jethmalani, Sr. Advocate", but Mr. Ram Jethmalani, who was present in the Court stated that he did not preside over the meeting and he had also expressed his view that everybody should speak in a decorous manner. Mr. Parekh, the President and all concerned parties should be given a full hearing and all grievances should be ventilated in accordance with law. Mr. Desai submitted that the statement made by Mr. Ram Jethmalani in Court had not been contradicted by anyone.

21. Mr. Desai also submitted that the Special General Body Meeting of the SCBA had been convened on 16th January, 2012, only for the purpose of considering the implication of the judgment dated 26th September, 2011, passed in Civil Appeal Nos.3401 and 3402 of 2003, and the agenda of the said meeting clearly reflected the same. Mr. Desai submitted that there was no suggestion that the meeting was held to consider :

- a) that the validity of the aforesaid judgment should not be given effect to;
- b) that the Implementation Committee should be dissolved;
- (c) that the Members of the Implementation Committee, namely, Mr. K.K. Venugopal, Mr. P.P. Rao and Mr. Ranjit Kumar, learned Senior Advocates should be expelled from primary membership of the Association;
- (d) that the members who were not eligible should be entitled to vote, notwithstanding the judgment delivered in B.D. Kaushik's case (supra); or

(e) that anybody's resignation should be accepted.

22. Referring to Section 173(2) of the Companies Act, 1956, Mr. Desai contended that as had been repeatedly held by this Court, at any Extraordinary General Meeting, along with a notice of the meeting, a statement setting out all material facts in respect of each item of business to be transacted at the meeting, had to be annexed. In this regard, Mr. Desai referred to the decision of this Court in Claude-Lila Parulekar (Smt.) Vs. Sakal Papers (P) Ltd. & Ors. [(2005) 11 SCC 73], in which it was categorically held that in respect of special business an explanatory statement had to be annexed to the notice of the Board Meeting and in the absence thereof, any decision taken in connection with such special business would be invalid. A similar view had earlier been expressed in Life Insurance Corporation of India Vs. Escorts Ltd. & Ors. [(1986) 1 SCC 264].

23. Mr. Desai submitted that even Mr. Dinesh Dwivedi and Mr. S.P. Singh, learned Senior Advocates, had, at the very first instance, submitted that Resolution Nos.1 and 4 relating to the decision not to give effect to the judgment of this Court dated 26th September, 2011, and that all active members of SCBA without any classification would be eligible to vote in the annual elections, could not be defended and submitted that the same be disregarded and treated as withdrawn. Mr. Desai urged that even the decision to expel the three senior members of the SCBA, who had been appointed as the members of the Implementation Committee, was not only irregular, but in complete violation of the Rules relating to expulsion of members of the SCBA and in breach of the principles of natural justice. Mr. Desai also urged that when the aforesaid resolution was sent to the Vice-President of the SCBA on 17th January, 2012, the majority of

the members of the Executive Committee by a circular resolution of even date requested him to withdraw the same and on such request being communicated to Mr. Parekh, he withdrew his resignation on 18th January, 2012. The meeting of the Executive Committee on 18th January, 2012, was, therefore, wholly unauthorized and all the members of the Executive Committee were so informed by way of SMS and E-mails dated 18th January, 2012. Mr. Desai submitted that the Minutes of the meeting held on 18th January, 2012, were unanimously recalled by the Executive Committee on 19th January, 2012, in their entirety. It was also pointed out that out of the 21 members, 18 members were present in that meeting of the Executive Committee held on 19th January, 2012.

24. Mr. Desai further submitted that Rule 35 of the SCBA Rules and Regulations provided for the removal of a member from the SCBA on receipt of a written

complaint. Rule 35 provides the procedure for dealing with such complaints and categorically indicates that only if the Committee was satisfied that there was a *prima facie* case against a member complained against, it would direct the complaint, together with the report of the Committee or Sub-Committee, to be placed before a General Meeting of the Association and afford the member concerned a reasonable opportunity of being heard in person.

25. Mr. Desai submitted that certain subsequent developments are also required to be taken note of and, in particular, a requisition notice dated 23rd March, 2012, signed by 2/3rd of the Members of the SCBA, many of whom were signatories to the General Body Meeting resolution dated 16th January, 2012, requiring the Executive Committee to initiate the process of election and to publish the list of voters on or before 17th April, 2012, failing which the Members would call a General Body Meeting and

pass a resolution of "No Confidence" against the Executive Committee. Mr. Desai submitted that the requisition was considered by the Executive Committee of the SCBA and in its meeting of 11th April, 2012, it was resolved that since the matter had been heard by this Court and judgment had been reserved on 4th April, 2012, the requisition notice dated 23rd March, 2012, should be placed before this Court with an application seeking proper directions.

26. Mr. Desai submitted that yet another requisition notice dated 18th April, 2012, was received on 20th April, 2012, purported to have been signed by 252 advocates, calling upon the members of the Executive Committee to convene a General Body Meeting on 25th April, 2012, failing which the requisitionists would hold a General Body Meeting on that day and pass a resolution of 'No

Confidence' and also fix the date of holding of the elections of the SCBA in the month of May, 2012.

27. Mr. Desai submitted that the manner in which the Special General Meeting was held on 16th January, 2012, was highly contumacious and, therefore, void, and was liable to be declared as such. Furthermore, the subsequent notices received for holding Requisition Meetings containing a demand for finalization of the Voters' List, was completely contrary to the directions given in the judgment dated 26th September, 2011, particularly, when an illegal resolution was purportedly adopted expelling the three members of the Implementation Committee from the primary membership of the SCBA.

28. Mr. Harish N. Salve, learned Senior Advocate, who appeared for the Supreme Court Advocate-on-Record Association, submitted that as far as the maintainability of Interlocutory Application No.1 of 2012 is concerned, there could not be any doubt

that the directions issued under Article 142 of the Constitution are binding upon all, unless they are recalled or set aside in a manner known to law. Mr. Salve submitted that any attempt to defy the directions would empower this Court with jurisdiction to take appropriate action for compelling compliance, including by way of contempt. Mr. Salve submitted that the application had been made in furtherance of the judgment dated 26th September, 2011, and the underlying object of the application was to uphold the majesty of this Court and to ensure that the directions were duly implemented in the spirit in which they were given. Mr. Salve submitted that since the resolutions said to have been adopted by the General Body of the Association on 16th January, 2012, were in defiance of the directions issued by this Court, this Court would always have jurisdiction to deal with such violation or to give further directions for effective implementation thereof.

29. Mr. Salve submitted that the Respondents had themselves accepted that Resolution No.1 was in defiance of the judgment of this Court. As a result, the other Resolutions were a fall-out of Resolution No.1 and could not, therefore, be accepted. Referring to Resolution No.5 relating to Mr. P.H. Parekh's resignation, Mr. Salve submitted that the same was not part of the agenda for the meeting held on 16th January, 2012. Mr. Salve submitted that the minutes of the meetings held on 16th and 18th January, 2012, lacked credence and acceptability on account of the circumstances in which they were adopted.

30. On the question of whether the Implementation Committee acted contrary to the judgment dated 26th September, 2011, Mr. Salve submitted that the Implementation Committee acted in keeping with the guidelines in Vinay Balchandra Joshi's case (supra) as was directed by this Court and the object of the

directions given in the judgment dated 26th September, 2011, was to make a list of those who regularly practise in the Supreme Court, as they alone would have voting rights in the matter of elections of the Office Bearers of the Supreme Court Bar Association in terms of the judgment. Such task had to be performed by the Committee within a given time and whatever steps that were taken by the Implementation Committee were in the light of such directions.

31. Mr. Salve submitted that given the manner in which the purported Resolutions were adopted in the meetings said to have been held on 16th and 18th January, 2012, the same were liable to be declared as *non est* in law. Mr. Salve further submitted that a direction should be given to the Implementation Committee to continue with the work of finalizing the Voters' List, as per the directions given in the judgment dated 26th September, 2012, on a war

footing and to publish the Voters' List as early as possible, so that the subsequent steps could be taken for conducting the elections of the Office Bearers of SCBA expeditiously.

32. Appearing on behalf of some of the members of the SCBA, Mr. Dinesh Dwivedi, learned Senior Advocate, firstly submitted that Interlocutory Application No.1 filed in Civil Appeal No.3401 of 2003, was not maintainable, either under Order 47 of the Supreme Court Rules, 1966, or under Order 13 Rule 3 thereof. Furthermore, since the judgment dated 26th September, 2011, was not under challenge, even the provisions of Order 40 of the Supreme Court Rules were not applicable to the application. Mr. Dwivedi, however, accepted the fact that Resolution Nos.1 and 4, which, according to him, had been adopted at the Special General Body Meeting of the SCBA held on 16th January, 2012,

could not be supported and he was not, therefore, pressing the same.

33. Mr. Dwivedi urged that once the judgment had been delivered, the Court became *functus officio* and any further proceeding in relation to the disposed of matter could be only by way of the provisions for review, both under the Code of Civil Procedure, as also under Order 47 of the Supreme Court Rules, 1966. Reiterating his earlier submissions, Mr. Dinesh Dwivedi submitted that the judgment dated 26th September, 2011, had attained finality and could not be modified or altered in any manner. In support of his aforesaid submissions, Mr. Dwivedi firstly referred to and relied upon the decision of this Court in Durgesh Sharma Vs. Jayshree [(2008) 9 SCC 648], wherein, as a general principle, it was held that the inherent powers vested in a Court, could not be invoked when there were specific provisions in law in that

regard. The decisions in A.R. Antulay Vs. R.S. Nayak & Anr. [(1988) 2 SCC 602]; Union Carbide Corporation Vs. Union of India [(1991) 4 SCC 584] and Supreme Court Bar Association Vs. Union of India & Anr. [(1998) 4 SCC 409], were also referred to, wherein, it had, *inter alia*, been held that Article 142 of the Constitution empowering the Supreme Court to pass a decree or to make such order, as is necessary for doing complete justice in any case or matter pending before it, cannot be invoked as a matter of course. It was urged that a *lis* would have to be pending before the Supreme Court in order to invoke jurisdiction under Article 142 of the Constitution. Mr. Dwivedi urged that in the present case, since the appeals themselves had been disposed of, there was no pending *lis* which would allow the invocation of the extraordinary powers vested in the Supreme Court under Article 142 of the Constitution.

34. Mr. Dwivedi submitted that in an application of this nature, the extraordinary powers vested in the Supreme Court under Article 142 of the Constitution could not be invoked to allow the prayers made and the same being entirely misconceived, were liable to be rejected.

35. Representing the Supreme Court Advocates Association (Non-AOR), Mr. S.P. Singh, learned Senior Advocate, firstly submitted that I.A. Nos.1 and 2 of 2012, filed on behalf of the SCAORA, were not maintainable, since they neither fell within the ambit of a Review Petition under Article 137 of the Constitution of India or Order XL of the Supreme Court Rules, 1966. It was also urged that SCAORA was not a necessary party and the application filed by it was in gross abuse of the process of the Court. Mr. Singh submitted that none of the rights of any of the members of SCAORA have been affected by the Resolutions adopted by

the Governing Body of the SCBA on 16th January, 2012 and, if at all any clarification was required, the members of the Implementation Committee could have come and obtained directions from the Court.

36. Mr. Singh submitted that the main intention of the requisition meeting was to bring to the notice of the Executive Committee of the SCBA various irregularities committed by the Implementation Committee which needed to be rectified. It was submitted that what had transpired at the meeting of the General Body of SCBA on 16th January, 2012, was a reflection of the mood of the members of the SCBA, who were of the view that the Executive Committee of the SCBA was trying to stall the elections which were required to be conducted within the month of May, 2012. Mr. Singh reiterated the submissions made by Mr. Dwivedi and submitted that since the General Body of the SCBA had accepted the resignation of Mr. Parekh given

voluntarily, the subsequent meeting of the Executive Committee held in his absence could not be faulted, since even the Vice-President of the Association refused to preside over the meeting.

37. Mr. Singh also urged that the Implementation Committee had deviated from the directions given in the judgment passed by this Court on 26th September, 2011, and the questionnaire issued by it contained various anomalies and excluded even Senior Advocates practising in this Court but living outside Delhi, such as in Noida and Gurgaon, from being eligible to vote.

38. Apart from the above, the names of various Advocates and Advocates-on-Record had been wrongly shown in the list which was also bound to create confusion. For example, the name of Shri M.C. Bhandare, the present Governor of Orissa and the name of a sitting Judge of the Madras High Court, have been included in the list, which clearly went

to show that the Implementation Committee had not applied its mind to the preparation of the Voters' List. Mr. Singh also urged that the consideration of valid members who were eligible to vote was to be considered by the SCBA which meant the General Body and not the Executive Committee alone. Accordingly, even the appointment of Mr. K.K. Venugopal, Mr. P.P. Rao and Mr. Ranjit Kumar, Senior Advocates, as members of the Implementation Committee, was irregular and unlawful and any decision taken by the Committee must be held to be void.

39. Mr. Singh submitted that various mal-practices were resorted to by the persons who have been at the helm of affairs of SCBA, by throwing lavish parties and using other means to attract votes at the time of election to the Executive Committee of the Association. Mr. Singh submitted that far from protecting the interests of the members of the Bar,

some of the present members of the Executive Committee were more concerned about their own aggrandizement to the detriment of the interests of the members of the Bar. Mr. Singh submitted that the Resolutions adopted by the General Body Meeting of the SCBA at the meeting held on 16th January, 2012 and the subsequent meeting of the Executive Committee held on 18th January, 2012, had been legally adopted and could not be interfered with, especially in a Petition which was not maintainable.

40. Dr. Rajiv Dhawan, learned Senior Advocate, briefly appeared for some of the members and urged that having regard to the questionnaire published by the members of the Implementation Committee, some clarification was necessary as to the voting rights of the members of the Association.

41. Apart from Dr. Dhawan, among others who addressed the Court, were Mr. Ashok Arora, learned

Advocate and former Honorary Secretary of the SCBA, Mr. Pramod Swarup, Senior Executive Member of the SCBA, Mr. Dinesh Kumar Garg, former President of SCAORA. Each of them spoke, either in support of the submissions made by Mr. Dinesh Dwivedi and Mr. S.P. Singh or in favour of those made by Mr. Harish Salve and Mr. Ashok Desai.

42. Since Mr. Ranjit Kumar, learned Senior Advocate, besides being a member of the Implementation Committee, was also appointed as *amicus curiae* by this Court in the matter, we requested him to file written submissions in the matter. In a brief submission, Mr. Ranjit Kumar submitted that despite all the apprehensions expressed by Mr. Dinesh Dwivedi and Mr. S.P. Singh, that the rights of the practising lawyers in the Supreme Court to form an Association had been curtailed or that the provisions of the Societies Registration Act were being violated by the

Implementation Committee, none of the aforesaid rights of the members of the SCBA had been curtailed in any manner. Mr. Ranjit Kumar submitted that all that the judgment dated 26th September, 2011 in B.D. Kaushik's case had done was to regulate the right to vote and for that purpose the Implementation Committee was appointed to oversee the same. The membership of the members of SCBA was not affected in any way on account of such regulations.

43. From the facts as narrated hereinabove, one thing is clear that in view of the order of interim injunction passed in the two suits filed by Mr. B.K. Kaushik and Mr. A.K. Manchanda restraining the SCBA from implementing its Resolution dated 18th February, 2003, amending Rule 18 of the Rules and Regulations, till the final disposal of both the suits, the two appeals were filed by SCBA through its Honorary Secretary, Mr. Ashok Arora, and Ms.

Sunita B. Rao as Coordinator of the Implementation Committee. When the two appeals were taken up for hearing, one of the major issues which was canvassed was that in connection with the holding of elections to the Executive Committee of the SCBA, one of the methods resorted to for the purpose of ensuring a candidate's success in the election was to enroll a large number of members to vote for a particular candidate. The same had given rise to a lot of discussion and deliberation which ultimately resulted in the amendment of Rule 18 regarding the eligibility of such members to contest and vote at any election. It was also proposed that a member who exercised his right to vote in any High Court or District Court, Advocates' Association or Bar Association, would not be eligible to contest for any post of the SCBA or to cast his vote at the elections. It was also proposed that every member before casting his vote would, in a prescribed form, give a declaration

that he had not voted in any other election of advocates in the High Court/District Court Bar Association. Any false declaration would invite automatic suspension of the member from the membership of the SCBA for a period of three years. The requisition dated 10th January, 2003, was placed for consideration at a Special General Body meeting of the SCBA on 18th February, 2003, and the amendment was adopted by a majority of 85% of the members present and voting. Thereafter, at a further meeting of the Executive Committee convened on 3rd March, 2003, it was resolved to hold election of the Office Bearers/Executive Members for the next session and for the constitution of the Election Committee. It was further resolved to hold elections on 25th April, 2003. Despite an attempt by some of the members to stall the proceedings, in the meeting of 10th March, 2003, it was resolved to constitute an Implementation Committee to implement the Resolution on "One Bar

One Vote" which had been adopted at the General Body Meeting on 18th February, 2003.

44. As indicated hereinbefore, the challenge to the Resolution dated 18th February, 2003, in the two suits filed by Mr. B.K. Kaushik and Mr. A.K. Manchanda resulted in the appeals being preferred in this Court by the SCBA through its Honorary Secretary, Mr. Ashok Arora.

45. The matter was, thereafter, considered in detail by the Hon'ble Judges who took up the appeals for hearing and directed that it was necessary to identify the regular practitioners for the purpose of establishing the eligibility of the members who would be entitled to vote in the elections and, accordingly, the Hon'ble Judges directed that for the said purpose the best course would be to adopt the methodology set out in Vinay Balchandra Joshi's case (supra), and, thereafter, it would be open to the Office Bearers of the SCBA

or a Small Committee, which may be appointed by the SCBA, consisting of three Senior Advocates, to collect information and to prepare a list of regular members practising in this Court and another separate list of members not regularly practising in this Court and a third list of temporary members of the SCBA. After placing the list on the SCBA website and inviting objections, the Committee could then take a final decision which would be final and binding on the members of the SCBA, and, thereafter the final list of regular practitioners of the Supreme Court would be displayed by the SCBA.

46. Once such directions had been given in the judgment disposing of the two civil appeals filed by the SCBA through Mr. Ashok Arora, the members of the SCBA were bound by the directions contained therein and the said directions had to be obeyed, however aggrieved a member of the SCBA might be.

The agenda for the meeting of the General Body which was convened on 16th January, 2012, to consider the implications of the judgment in B.D. Kaushik's case, did not permit the members to consider any other agenda for which notice had not been given, whatever may have been the mood of the members present at the meeting. If any member felt aggrieved by the judgment delivered on 26th September, 2011, he could have taken recourse to other lawful means available to him under the law. The Resolutions adopted at the General Body Meeting on 16th January, 2012, and, thereafter, on 18th January, 2012, were not only an affront to the majesty and dignity of the Supreme Court, but were outright contumacious. It is highly regrettable that the members of the Supreme Court Bar Association, which is the leading Bar Association in the country and whose members are expected to provide leadership and example to other Bar Associations of the country and to act in aid of

the judgments of the Courts, should have resorted to a Resolution not to abide by the judgment and to even act in defiance thereof by resolving that all members of the Bar Association would be entitled to vote in the elections. Although, Mr. Dinesh Dwivedi did concede that the second and fourth Resolutions adopted at the meeting of 16th January, 2012, should not be taken into consideration, the attempt to justify the conduct of the members of the SCBA at its meeting held on 16th January, 2012, cannot be supported. Mr. Ram Jethmalani, learned Senior Advocate, who was present at the meeting submitted in no uncertain terms that he had not chaired the General Body Meeting convened on 16th January, 2012, and was not a party to the Resolutions which had been adopted at such meeting. On the other hand, Mr. Jethmalani submitted that he had cautioned the Members not to act in an unruly manner and to allow the proceedings to be conducted in a lawful and free manner and to allow each

member, who had a grievance, including Mr. Parekh, to express his views and then to adopt any Resolution that the members felt was needed to be adopted in the light of the agenda of the meeting.

47. We cannot help but notice that although the General Body Meeting had been convened to consider the implications of the judgment dated 26th September, 2011, what transpired later is a complete departure therefrom. The members of the SCBA present at the meeting were bent upon their own agendas, which were directed against the three senior members of the Bar, who had been appointed as members of the Implementation Committee, together with the President. In our view, this was not a method which should have been resorted to for the said purpose. The meeting degenerated into a chaotic situation in which various things were done, which were not in accordance with the provisions of the Rules and Regulations of the

SCBA, and were against the normal rules of decorum and cannot be supported, despite attempts made to do so by Mr. Dwivedi and Mr. Singh. The manner in which the three members of the Implementation Committee whose names had been referred to by the Hon'ble Judges in the judgment dated 26th September, 2011, were treated, speaks volumes of the manner in which the Hon'ble Members of the SCBA conducted themselves. If any member is aggrieved by the actions of any other member and seeks his removal from the membership of the SCBA, the rules provide the manner in which the same is to be done and certainly not arbitrarily. It is no doubt true, that some of the members were aggrieved by the methodology adopted by the Implementation Committee for preparing the list of eligible voters for the election, but the same was done pursuant to the directions given by this Court in its judgment dated 26th September, 2011. If the members were aggrieved by the questionnaire which was

promulgated, nothing prevented them from approaching this Court and asking for modification of the contents thereof. We are, therefore, unable to accept the manner in which the purported General Body Meeting of the SCBA was conducted on 16th January, 2012, and the Resolutions adopted therein, some of which the members themselves were unwilling to support, as well as the same resolutions purportedly adopted by the Executive Committee of the SCBA on 18th January, 2012.

48. At this stage, it will also be necessary for us to deal with the question of maintainability of I.A. Nos.1 and 2 raised both by Mr. Dinesh Dwivedi and by Mr. S.P. Singh. Their main contention is that once the judgment has been delivered by the Court, the Court becomes *functus officio* and in the absence of any pending lis, this Court could not have entertained the said two applications.

49. We are unable to accept the said submission made by Mr. Dwivedi and Mr. Singh, since the need to implement the directions contained in the judgment does not cease upon the judgment being delivered. In order to enforce its orders and directions, the Supreme Court can take recourse to the powers vested in it under Article 142 of the Constitution to do complete justice to the parties. In such cases, the lis does not cease and the expression "matter pending before it" mentioned in Article 142 of the Constitution, would include matters in which orders of the Supreme Court were yet to be implemented, when particularly such orders were necessary for doing complete justice to the parties to the proceedings. To take any other view would result in rendering the orders of the Supreme Court meaningless. In this regard, reference may be made to the Constitution Bench decision of this Court in Supreme Court Bar Association Vs. Union of India & Anr. [(1998) 4 SCC

409], referred to hereinbefore, wherein the question before the Bench was the power of the Supreme Court to punish for contempt of itself under Article 129 read with Article 142 of the Constitution. While considering the same and holding that the power vested in the Supreme Court under Article 142 should not be used to supplant substantive law applicable to a case, being curative in nature, their Lordships also observed that the plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes, though are not limited by those statutes. This Court held that these powers also exist independent of the statutes with a view to doing complete justice between the parties. This power exists as a separate and independent basis of jurisdiction, apart from the statutes, and stands upon the foundation for preventing injustice in the

process of litigation and to do complete justice between the parties. This Court further observed that this plenary jurisdiction is thus the residual source of power which this Court may draw upon as necessary, whenever it is just and equitable to do so and, in particular, to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. In the event the parties do not or refuse to abide by its decision, the Supreme Court would have no option, but to take recourse to the provisions of Article 129 of the Constitution or under the provisions of the Contempt of Courts Act, 1971.

50. When a judgment has been delivered by this Court, it is the obligation of all citizens to act in aid thereof and to obey the decision and the directions contained therein, in view of the provisions of Article 141 of the Constitution,

until and unless the same are modified or recalled. In the said background, each of the Resolutions said to have been adopted at the purported meeting of the General Body of the SCBA on 16th January, 2012, do not muster scrutiny and must be held to be in violation of Article 141 of the Constitution and cannot, therefore, be countenanced. Apart from the fact that the agenda for the meeting did not include the matters in respect whereof the resolutions have been adopted, the resolutions themselves, being in flagrant violation of the judgment delivered by this Court on 26th September, 2011, have to be set aside. It is the duty of all the members of the SCBA to abide by and to give effect to the judgments of this Court and not to act in derogation thereof. The purported resolution expelling the three senior members of the Implementation Committee, appointed under the directions of this Court, from the primary membership of the Association, speaks volumes as to

the illegality thereof and the deliberate and willful attempt on the part of the members, who are alleged to have passed such a resolution to overreach the orders of this Court. The same is sufficient ground to set aside the resolutions purportedly adopted at the meeting held on 16th January, 2012, notwithstanding the technical arguments advanced by Mr. Dwivedi and Mr. Singh.

51. Since the members of the Bar are involved, we do not wish to add anything further, except to express the hope that in future this kind of unruly and undignified behaviour will not be repeated. Even if the members of the SCBA have any grievance against the judgment delivered on 26th September, 2011, they have to obey the same in the scheme of judicial discipline.

52. Accordingly, I.A. No.1 of 2012 in Civil Appeal Nos.3401 and 3402 of 2003 is allowed. All the Resolutions purported to have been adopted in the

General Body Meeting of the SCBA held on 16th January, 2012, and the meeting of the Executive Committee are held to be invalid and are set aside. Consequently, the composition of the Office Bearers of the SCBA prior to the adoption of the alleged resolutions of 16th January, 2012, stand restored. The alleged resolution expelling the three senior members of the SCBA constituting the Implementation Committee appointed under the directions of this Court, is set aside. The Implementation Committee shall, therefore, continue with the work assigned to it for identification of the members of the SCBA eligible to vote in the elections in terms of the directions given in the judgment dated 26th September, 2011. However, if any member of the SCBA is aggrieved by the methodology adopted by the Implementation Committee for identification of such eligible members, he/she may make a representation to the Executive Committee of the SCBA within a fortnight from date and if such a representation or

representations is or are received within the specified period, the Executive Committee of the SCBA will look into such objections and take a decision thereupon and, if necessary, to apply to the Court, before further steps are taken by the Implementation Committee in regard to identification of members eligible to vote at the elections. For a period of two weeks, the Implementation Committee shall not take any further steps in the matter, and shall, thereafter, resume the work of identification of members of the SCBA eligible to vote on the instructions that may be given by the Executive Committee of the SCBA in this regard. The process of identifying the members of the SCBA eligible to vote in the elections for selection of the members of the Executive Committee must be completed within four weeks from the date of individual objections received, if any, are decided finally. Thereafter, the SCBA shall set the dates for the election

schedule, including publication of the list of members of the SCBA eligible to vote in the elections, so that the elections can be held once the final list is approved and published.

53. We expect all the members of the SCBA to cooperate with the Implementation Committee and the Executive Committee of the SCBA to complete the publication of the list of members of the SCBA eligible to vote in the elections within the time specified, and, thereafter, to cooperate in the conducting of the elections for the election of the Office Bearers of the SCBA.

54. I.A. No.1 of 2012 in Civil Appeal Nos.3401 and 3402 of 2003 is thus disposed of. Let copies of this order be made available to the President of the SCBA and the members of the Implementation Committee for immediate compliance. A copy of the operative portion of this judgment may also be put up on the web-site and Notice Board of the SCBA for

general information of all of its members. All connected IAs are also disposed of by this order.

55. Having regard to the observations made hereinabove, the Contempt Petition No.45 of 2012, filed in the civil appeals by Dr. Parvin Kumar Mutreja, Advocate, and two others, is also disposed of by virtue of this order.



.....J.
(ALTAMAS KABIR)

.....J.
(SURINDER SINGH NIJJAR)

New Delhi

Date: 07.05.2012