

BABU VERGHESE AND ORS.

v.

BAR COUNCIL OF KERALA AND ORS.

MARCH 16, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Advocates Act, 1961—Section 8A, and 10-A—Term of office of State Bar Council—Extension under proviso to Section 8A—Held, can be granted only before the expiry of its original term—The term cannot be extended by way of a resolution of the Bar Council of India after the expiry of the term of the State Bar Council—Any election after the expiry of term without its having validly extended was invalid—Also held on facts, that urgent action initiated under Rule 6 of the Bar Council of India Rules was not completed before the expiry of the term of the State Bar Council—Therefore, no action could be considered to have been taken under Rule 6, nor did the post term resolution of the Bar Council of India could be considered to have confirmed any such action—Thus, the Members of the State Bar Council continued in office without any valid extension—Bar Council of India Rules, Rule 6.

Administrative Law—Doctrine of ultra vires—Statute prescribing the doing of an act in a particular manner—Held, could not be considered to have been done unless it was done in the prescribed manner—Jurisdiction—Exercise of.

Election—Professional Bodies—Non-compliance with statutory provisions—Effect of.

The term of Bar Council of Kerala was to expire on 27.1.1997, but before the expiry of the term, it approached the Bar Council of India (BCI) for extension of its term by six months under proviso to Section 8 of the Advocates Act, 1961. Though no meeting for extension of term was held by the BCI before 27.1.1997 as requested by the State Bar Council, on 13.1.1997, the Chairman of BCI purporting to act under Rule 6 of the Bar Council of India Rules got a draft resolution circulated to 18 members for sending their opinion as to whether or not the proposed extension should be granted. Before 27.11.1997 only 4 members sent their opinion, the other 4 sent it after this date. Later on, the BCI in its meeting dated 8.2.1997 formally extended the term of the State Bar Council for 6 months. During this extended term

- A the State Bar Council conducted election and counting of votes was completed on 3.4.1997. The elections were challenged before the High Court, *inter alia*, on the ground, that the term of the State Bar Council having expired on 27.1.1997, it had ceased to have any jurisdiction to conduct the elections. The High Court held that the term of the State Bar Council would be treated to have been extended by the BCI before the expiry of its original term. Hence this appeal.
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- C It was contended by the appellant that the election after the expiry of the term of the State Bar Council was no election as it ceased to exist and consequently it had ceased to have any jurisdiction for conducting a fresh election. It was also contended that the extension of the term of the State Bar Council by the BCI by way of a resolution passed on 8.2.1997 would not have the effect extending the term with retrospective effect i.e. with effect from 27.1.1997. It was further contended that the elections were not held as contemplated under Section 8A (3) of the Advocates Act through a Special Committee and hence any election held by the State of Bar Council was a nullity.

- D It was contended by the respondents that the term was deemed to have been extended on 13.1.1997, the date on which the Resolution for extending the term was circulated to all the 18 members of the BCI although the entire resolution may have been passed on 8.2.1997.

- E Allowing the appeal, this Court

- F HELD : 1.1. A reading of Sections 8 and 8-A of the Advocates Act, 1961 clearly indicates that extension has to be granted before expiry of the original term so as to maintain continuity of the term. In the present case, process for granting extension was initiated on 13.1.1997 by circulating a draft resolution to the members of Bar Council of India under Rule 6 of the Bar Council of India Rules which contemplates 'urgent action' being taken on the opinion of majority members. It is this 'action' which is required to be confirmed in the next meeting. It is obvious that if no action is taken, the question of confirmation does not arise. [1136-H]

- G 1.2. Though 'action' under Rule 6 was initiated on 13.1.1997 yet it was not completed before 27.1.1997. Out of 8 members of BCI, only four gave their opinion before 27.1.1997. Remaining four gave their opinion after this date but even then total eight members who gave opinion, were less than the majority. The opinion of four members was insufficient for 'action' being taken. On that basis, no extension could be considered to have been granted. [1137-B-C]
- H

1.3. If Rule 6 was intended to be applied, then all of its requirements should have been fulfilled. It is a basic principle of law that if the manner of doing a particular action is prescribed under any statute, the act must be done in that manner or not at all. [1137-D] A

Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, [1954] SCR 1098 : AIR (1954) SC 322; *Deep Chand v. State of Rajasthan*, [1962] 1 SCR 662 : AIR (1961) SC 1527 and *State of Uttar Pradesh v. Singhara Singh & Ors.*, AIR (1964) SC 358 : (1964) 1 SCWR 57, relied on. B

Sri Parmeshwari Prasad Gupta v. Union of India, [1973] 2 SCC 543, distinguished. C

Taylor v. Taylor, (1875) 1 Ch D 426; *Nazir Ahmed v. King Emperor*, 63 Indian Appeals 372; AIR (1936) PC 253, referred to.

2.1. It is also not possible to say that resolution dated 8.2.1997 of BCI was a 'confirmation' of the extension already granted. This is because no action had been validly completed under Rule 6 before 27.1.1997. In fact action initiated under Rule 6 was abandoned and later on, BCI took a different course in its resolution dated 8.2.1997. In view of the facts and circumstances of this case, Rule 6 cannot be pressed into service to impart validity to the so-called extension granted by BCI. Fresh elections could have been held by the Kerala Bar Council only before the expiry of its term. Otherwise, the jurisdiction to hold elections passes on to the Special Committee appointed by the BCI in terms of the provisions contained in Section 8A which are imperative in character. Since the Kerala Bar Council had ceased to have any jurisdiction on the expiry of its term and the so-called extension of its term has been wholly illegal, the elections held by Kerala Bar Council were therefore farcical in character and on that basis, the respondents cannot claim themselves to be the duly elected members of the Council. [1140-D-E] D E F

2.2. It cannot be said that elections having already been held and members having been in office for more than one and a half years, the Court should not intervene, specially as the appellants could have challenged the elections by way of an election petition, which was not done. [1140-B] G

2.3. Queerly the High Court, merely after looking into the correspondence between the State Bar Council and the Bar Council of India, as also H

A the resolution adopted on 8.2.1997, came to the conclusion that the term of the State Bar Council shall be treated to have been extended before the expiry of the original term. This view is wholly erroneous and contrary to the mandatory provisions contained in the Act and the Rules framed there-under. [1140-F]

B *Bar Council of Delhi v. Surjit Singh*, AIR (1980) SC 1612 = [1980] 3 SCR 940 : [1980] 4 SCC 211, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1504 of 1999.

C From the Judgment and Order dated 11.12.97 of the Kerala High Court in O.P. No. 8524 of 1997.

V.K. Beeran, V.J. Francis and P.I. Jose for the Appellants.

D V.R. Reddy, M.M. Paikaday, Vipin Nair, K.M.K. Nair, Ramesh Babu M.R. Romy Chake, Rajive Mehta, Sanjay Parikh and P.B. Suresh for the Respondents.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted.

E Bar Council of Kerala, which was constituted under the Advocates Act, 1961 (for short, the 'Act'), on 28th January, 1992, was to last for a term of five years which expired on 27th January 1997. But before the expiry of the term, it approached the Bar Council of India (BCI, for short) through its letter dated 31st December, 1996 for extension of its term by six months. A reminder for this purpose was also sent on 13th January, 1997.

F On receipt of the reminder from the State Bar Council, a Resolution was circulated by the BCI to all its 18 members on 13th January, 1997 proposing to extend the term for a period of six months. In its meeting held on 8th February, 1997, BCI confirmed the Resolution on which opinion was obtained from the members by circulation. It was during this period of six months that elections were held and a new State Bar Council for Kerala was elected.

G It appears that for holding fresh elections, the Preliminary Electoral Roll was published on 28.12.1996 followed by notice of publication of the

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final Electoral Roll on 22.1.1997, which was challenged by one Shri P.G. Chacko, Advocate, by O.P. No. 1987/97 filed in the High Court on 31.1.1997. The Petition was, however, dismissed in limine on 6.2.1997 against which Writ Appeal No. 307 of 1997 was filed before the Division Bench. It further appears that in the meantime, the Kerala Bar Council adopted a resolution on 1.2.1997 to conduct the elections. After the extension of term by the Bar Council of India by its resolution dated 8.2.1997, the process of elections was started and the elections were held with counting of votes being completed on 3.4.1997. The results were declared on the same day, but they were published in the Kerala Gazette on 6th of May, 1997. It was, at this stage, that O.P. No. 8524 of 1997 was filed on 21.5.1997 in the High Court challenging the elections on the grounds, *inter alia*, that the term of the Kerala Bar Council having expired on 27.1.1997, it had ceased to have any jurisdiction to conduct the elections. This Writ Petition as also the Writ Appeal referred to above, were disposed of by a common judgment passed on 11.12.1997 dismissing the Writ Petition as also the Writ Appeal. The High Court has held that the term of the Kerala Bar Council will be treated to have been extended by the Bar Council of India before the expiry of its original term. It is against this judgment that the present appeal has been filed.

We have heard learned counsel for the parties. Learned counsel appearing for the appellants has contended that the impugned election by which a new Bar Council for the State of Kerala has been elected is no election in the eye of law as the State Bar Council, on the expiry of its term on 27th January, 1997, had ceased to exist and consequently had ceased to have any jurisdiction for conducting a fresh election. It is also contended that the extension of the term of the State Bar Council should have been granted by the BCI before 27th of January, 1997 and since the extension was granted by a Resolution adopted on 8th February, 1997, it would not have the effect of extending the term with effect from 27th of January, 1997. It is contended that immediately on the expiry of the term of the State Bar Council, fresh elections could have been held only in the manner provided under Section 8A (3) of the Act and since the elections were not held in that manner through the Special Committee but were held by the State Bar Council, which had ceased to have any jurisdiction in the matter, the elections were a nullity.

Mr. V. R. Reddy, learned Senior counsel appearing on behalf of BCI as also Mr. K.M.K. Nair, appearing on behalf of the Bar Council of Kerala,

A have contended that the term of the State Bar Council shall be deemed to have been extended on 13th of January, 1997, namely, the date on which the Resolution for extending the term was circulated to all the eighteen members of the BCI and since eight of the members had already given their consent for extending the term by a period of six months and others had not raised any objection, the Resolution of Confirmation adopted on 8th February, 1997 would relate back to the date on which the Resolution for extension of the term by six months was circulated under Rule 6 of the Bar Council of India Rules. That being so, the decision, it is contended, to extend the term of the State Bar Council shall be deemed to have been taken by the BCI on 13th January, 1997 and, therefore, the State Bar Council retained its jurisdiction to conduct fresh elections which had been validly held.

D Learned counsel for the appellants also raised a few other contentions, specially those relating to the Revision of Electoral Rolls etc., but we need not look into those contentions as we intend to dispose of this appeal on the questions mentioned above.

E "Bar Council" has been defined in Section 2(1)(d) as a Bar Council constituted under the Act. The definition of the "State Bar Council" is contained in Section 2(1)(m) which means a Bar Council constituted under Section 3. "Bar Council of India" is defined in Section 2(1)(e) as the Bar Council constituted under Section 4.

F Section 3, *inter alia*, provides that there shall be a Bar Council for the State of Kerala and the Union Territory of Laccadive, Minicoy and Amindivi Island, to be known as the Bar Council of Kerala. Section 5 provides that every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and may by the name by which it is known, sue and be sued. Section 6 defines the functions of the State Bar Council while Section 7 defines the functions of the Bar Council of India. Term of office of the members of State Bar Council is indicated in Section 8 which is reproduced below :

H "The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54)

shall be five years from the date of publication of the result of his election: A

Provided that where a State Bar Council fails to provide for the election of its members before the expiry of the said term, the Bar Council of India may, by order, for reasons to be recorded in writing, extend the said term for a period not exceeding six months". B

Another provision which has a bearing on the term of office of the members of State Bar Council, is contained in Section 8A which is reproduced below :

"8A. (1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be referred to in section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of - C

- (i) the *ex officio* member of the State Bar Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman. D

Provided that where there are more than one *ex officio* members, the senior most amongst them shall be the Chairman; and E

- (ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, F

to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

(2) On the constitution of the Special Committee and until the State Bar Council is constituted - G

- (a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee.
- (b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall H

A be the rights, liabilities and obligations of the Special Committee.

(c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the Special Committee.

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(3) The Special Committee constituted under sub-section (1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold elections to the State Bar Council within a period of six months from the date of its constitution under sub-section (1), and where, for any reason the Special Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period."

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D These two Sections indicate that the term of office of an elected member of a State Bar Council is five years from the date of publication of the result of his election, which is extendable by a period not exceeding six months provided the elections have not been held before the expiry of the term. If the State Bar Council does not hold fresh elections either before the expiry of five years' term or the extended term, the BCI, in either

E of the two situations, would constitute a Special Committee to discharge the functions of the State Bar Council until a new Bar Council is constituted. For this purpose, Special Committee would hold elections to constitute the State Bar Council within the extended period of six months. The life of Special Committee is, however, extendable.

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It is obvious that fresh elections have to be held before the expiry of the five years' term and if they are not so held, it would be open to the BCI to extend the term by six months to enable the State Bar Council to hold fresh elections. The extension has to be granted before the expiry of the original term so as to maintain continuity of the term.

G

It may be pointed that the term of members of the Bar Council under the Advocates Act as originally enacted in 1961 was six years with a provision of retirement for one third of the members after every two years, but by Act No. 23 of 1966, Section 8 was amended and it was provided as

H under:

"8. Term of office of members of State Bar Council -

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(1) The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be four years from the date of publication of the result of his election.

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(2) An outgoing member shall continue in office until the publication of the result of the election of his successor."

The term of office was reduced from six to four years but it was provided that the outgoing member would continue till the result of the election of his successor was published. This amounted to an indirect and automatic extension of the term. But, by further amendment by Act No. 38 of 1977, this provision was deleted with the result that on the expiry of the term, a member would immediately cease to be a member and would not continue in office until the publication of the result of the election of his successor. By the same amendment, however, the term of the member was raised from four to five years.

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Since BCI is a creature of Statute, namely, the Advocates Act, 1961, which refers to it as a body corporate, it acts through its members and various Committees and transacts its business through various Resolutions at its meetings. Section 10A, which provides for transaction of business by Bar Councils and Committees thereof, provides as under :

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"Transaction of business by Bar Councils and committees thereof -

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(1) The Bar Council of India shall meet at New Delhi or at such other place as it may, for reasons to be recorded in writing, determine.

(2) A State Bar Council shall meet at its headquarters or at such other place as it may, for reasons to be recorded in writing, determine.

G

(3) The committees other than disciplinary committees constituted by the Bar Councils shall meet at the headquarters of the respective Bar Councils.

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A (4) Every Bar Council and every committee thereof except the disciplinary committees shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

B (5) The disciplinary committees constituted under Section 9 shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed."

C BCI has been given the Rule making power under Section 15 of the Act which, *inter alia*, provides as under :-

"15(1) A Bar Council may make Rules to carry out the purposes of this Chapter.

D (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for :

(a)

(b)

E (c)

(d)

(e)

F (f)

(g)

(ga).....

G (gb).....

(h) the summoning and holding of meetings of the Bar Council, the conduct of business thereat, and the number of members necessary to constitute a quorum.

H (i)

- (j) the summoning and holding of meetings, the conduct of business of any such committee and the number of members necessary to constitute a quorum. A
- (k) C
- (l) B
- (m) C
- (n) C
- (3) C

In exercise of its powers under Section 15(2) of the Act, BCI has made Rules known as "Bar Council of India Rules". Chapter II of the Rules contains Rules relating to "Meeting of Council and its Committees (other than those of the Disciplinary Committee)." These Rules have been made under clauses (h) and (j) of Section 15 (2) of the Act. Rules 1 to 12 contained in this Chapter are reproduced below: D

"1. Notice of every meeting of the Council and the Committees shall ordinarily be sent by the Secretary not less than 15 days before the date of the meeting, except when the Chairman or any two members require a meeting to be called on short notice on grounds of urgency. No proceedings shall be invalidated merely on the ground that the rule relating to notice is not strictly complied with. E

2. Notice of the meeting shall specify the time and place of the meeting and shall contain the agenda fixed for the meeting. F

3. No member shall be entitled to bring forward for the consideration of the meeting any matter of which he has not given ten days notice to the Secretary, unless the Chairman, in his discretion, permits him to do so. G

4. The minutes of the previous meeting shall ordinarily be read and recorded at the subsequent meeting.

5. The quorum for the meeting of the Council shall be seven; and for all other Committees except the Executive Committee and the H

A Legal Education Committee, the quorum shall be two. The quorum for the Executive Committee and the Legal Education Committee shall be four.

B 6. If urgent action by the Council or by any Committee of the Council other than a Disciplinary Committee becomes necessary, the Chairman of the Council or of such Committee as the case may be may permit the business to be transacted by circulation of papers to the members of the Council or the Committee as the case may be. The action proposed to be taken shall not be taken unless agreed to by a majority of the members of the Council or the Committee as the case may be. The action so taken shall be forthwith intimated to all the members of the Council or the Committee concerned. The papers shall be placed before the next meeting of the Council or the Committee concerned for confirmation.

D 7. The Council or any Committee may adjourn from day to day or any particular day, without further notice.

E 8. A member shall address the chair when speaking at a meeting of the Council and he shall be entitled to speak only once on each subject, unless otherwise required or permitted by the Chairman to do so.

F 9. Save as otherwise provided in these rules, the decision on any matter shall be by majority, and in the case of equality of votes, the Chairman of the meeting shall have a second or casting vote.

G 10. No matter once decided shall be reconsidered for a period of three months unless the Council by a two-thirds majority of the members present so permits.

11. Any Committee may refer for advice any matter to the Council.

H 12. In the absence of the Chairman and the Vice-Chairman at any meeting, a member chosen by members present shall preside at the meeting."

Rule 1 contemplates a notice of not less than 15 days of the proposed meeting which is to be sent ordinarily by the Secretary, but if the Chairman or any two members so require, the meeting can be convened on short notice on grounds of urgency. The notice has to specify the time and place of the meeting as also the agenda fixed for that meeting. The minutes of the previous meeting are required to be read and recorded at the subsequent meeting. That is how the business has to be ordinarily transacted by the BCI. If, however, urgent action is to be taken by the BCI, the provisions contained in Rule 6 can be invoked.

Since in the instant case a resolution for extension of the term of the Kerala Bar Council was sought to be passed by the process of circulation as provided by Rule 6 and the High Court has found it to have been validly done, it was this Rule which constituted the focal point of debate by both the sides in this appeal. We would, therefore, first analyse Rule 6 to find out its requirements as also the essential elements of the "manner prescribed" thereunder and then examine whether those requirements were fulfilled in order to justify the resolution of "confirmation". The requirements of Rule 6 are :-

- (a) There should be a need for urgent action by the BCI;
- (b) The Chairman shall then permit the business to be transacted by circulation of papers to the members;
- (c) Action proposed to be taken shall not be taken unless agreed to by a majority of the members;
- (d) Action so taken shall be forthwith intimated to all the members; and
- (e) The papers shall be placed before the next meeting of the Council for confirmation.

Rule 6 can, therefore, be resorted to for urgent action. This can be done by circulation of papers to all the members and if majority of the members so agree, the action would be taken immediately subject to two requirements that "(i) the action so taken is forthwith intimated to all the members; and (ii) the papers are placed before the next meeting for confirmation." It is, therefore, the "action taken on the majority opinion" which is required to be confirmed in the subsequent meeting.

A In order to find out as to how the BCI had proceeded in the matter, we sent for the original record which were produced before us by the counsel for the BCI. The record indicates that the BCI by its letter dated 13th January, 1997, addressed to all members, circulated a Resolution under Rule 6 for extension of the term of the Kerala Bar Council by six months. This letter reads as under :

B *"THE BAR COUNCIL OF INDIA*

BCI:D:118:1997

21, Rouse Avenue
Institutional Area,
New Delhi- 110002.

C 13th Jan., 97

To,

D All the members of the
Bar Council of India.

Sub: Extension of the term of the Kerala Bar Council for a further period not exceeding six months.

E Sirs,

F The Chairman has desired that the enclosed Resolution be circulated to the members for approval under Rule 6, Part II Chapter II of the Rules of the Bar Council of India for extension of the term of the Kerala Bar Council by six months from 27th Jan., 1997. The term of the Bar Council of Kerala expires on the 27th of Jan., 97 and hence the urgency.

A copy of the letter of the Bar Council of Kerala is also enclosed. Members are requested to kindly send the Resolution back to us after signature on approval.

G Thanking you,

Yours faithfully,
Sd/-
(C.M. Balaraman)
Officiating Secretary

H Enc: As above."

The proposed Resolution, which accompanied this letter, reads as under : A

"THE BAR COUNCIL OF INDIA

*RESOLUTION UNDER RULE 6, PART II, CHAPTER III OF
THE BAR COUNCIL OF INDIA.* B

RESOLUTION

Resolved that the term of the Bar Council of Kerala be and is hereby extended for six months from 27th Jan., 1997 under Proviso to Section 8A under the Advocates Act 1961 for the reasons set out in the letter of the Bar Council of Kerala dated 31.12.1996. C

Place Approved / Not Approved
Date

(SIGNATURE OF THE MEMBERS)" D

Further documents which have been filed before us are the photostat copies of the list of members to whom this Resolution was circulated under Certificate of posting on which only one postal stamp is clear which is of 14th January, 1997. Response from the following eight members only was received by the BCI on various dates, noted against their names : E

- | | | |
|--------------------------|---|-----------|
| 1. Mr. Ashok Desai | : | 15.1.1997 |
| 2. Mr. Ashok Deb | : | 18.1.1997 |
| 3. Mr. D.V. Patil | : | 25.1.1997 |
| 4. Mr. Jagannath Patnaik | : | 25.1.1997 |
| 5. Mr. Arun Misra | : | 30.1.1997 |
| 6. Illegible | : | 3.2.1997 |
| 7. Mr. Gopakumaran Nair | : | 4.2.1997 |
| 8. Illegible | : | 7.2.1997 |

The matter came up for the consideration of BCI in the meeting of H

A 8th February, 1997 and the following resolution was adopted:

"RESOLVED that the term of the Bar Council of Kerala be and is hereby extended for six months from 27.1.1997 under proviso to section 8A of the Advocates Act, 1961 for the reasons set out in the letters of the Bar Council of Kerala -

B

1. Letter No. KBC/BCI/991 of 1996 dated 31-12-1996
2. Letter No. KBC/BCI/38 of 1997 dated 13-1-1997."

C This resolution was communicated to the Bar Council of Kerala by registered A.D. post on 12.2.1997.

D

A perusal of this resolution indicates that the extension in the term was granted under the Proviso to Section 8A of the Act. The resolution does not speak of "confirmation" as, indeed, there could not be any "confirmation" as no action on the resolution which was circulated to members was taken possibly because only eight had responded and that too, very late, as the term of the State Bar Council had already expired 27.1.1997.

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Learned counsel for BCI and the counsel appearing for Kerala Bar Council contended that Resolution adopted on 8.2.1997 was a resolution of "confirmation" under Rule 6 and, therefore, it would relate back to the date (13.1.1997) on which the resolution was circulated to the members. The term shall be deemed to have been extended from that date. This argument must fail.

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Rule 6 contemplates confirmation of "action" taken by the BCI. The manner in which action would be taken has been prescribed in the Rule itself. It provides that if urgent action becomes necessary, the Chairman may permit the business to be transacted by circulation of papers to all its members but the action proposed to be taken will not be taken unless agreed to by a majority of the members. The Rule further requires that the action so taken shall be intimated to all the members and the papers shall be placed in the next meeting for confirmation. The Rule, therefore, contemplates "urgent action" being taken on the opinion of the majority of the members. It is this "action" which is confirmed in the next meeting. It is obvious that if no action is taken, the question of confirmation does not

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arise.

In the instant case, process for "action", no doubt, was initiated, but no action was taken. The resolution for extension of the term of the Kerala Bar Council was circulated on 13th or 14th January, 1997 and opinion of eight members was also received but no "action" was taken on that basis nor was any member intimated of the "action" taken. By the time the opinion of the eight members was obtained, the term of the Kerala Bar Council stood expired on 27.1.1997. By that date, namely, by 27.1.1997, only four members, namely, Mr. Ashok Desai (15.1.97); Mr. Ashok Deb (18.1.97); Mr. D.V. Patil (25.1.97); and Mr. Jagannath Patnaik (25.1.97) had indicated their approval. But that was not enough as the Rule itself provides that "action" will not be taken unless agreed to by a majority of the members. Since there were eighteen members in the BCI, the opinion of four of the members was wholly irrelevant and insufficient for "action" being taken. On that basis, no extension could be granted, nor was it granted.

We may point it out that the process for extension of the term of Kerala Bar Council was initiated under Rule 6. If Rule 6 is to be applied, it must be shown that all its requirements were fulfilled.

It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor*, (1875) 1 Ch.D 426 which was followed by Lord Roche in *Nazir Ahmad v. King Emperor*, 63 Indian Appeals 372 = AIR (1936) PC 253 who stated as under :

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

This rule has since been approved by this Court in *Rao Shiv Bahadur Singh & Anr. v. State of Vindhya Pradesh*, [1954] SCR 1098 = AIR (1954) SC 322 and again in *Deep Chand v. State of Rajasthan*, [1962] 1 SCR 662 = AIR (1961) SC 1527. These cases were considered by a Three-Judge Bench of this Court in *State of Uttar Pradesh v. Singhara Singh & Ors.*, AIR (1964) SC 358 = [1964] 1 SCR 57 and the rule laid down in *Nazir Ahmad's* case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary

A principle of administrative law.

Now, the BCI could act in the matter in three ways :

- B (a) It could convene its meeting by giving 14 days' notice to all its members under Rule 1 and pass a resolution extending the term of Kerala Bar Council.
- (b) It could convene the meeting on a short notice under Rule 1 and pass the above resolution.
- C (c) It could act under Rule 6 by circulating the resolution to all its members and on obtaining the opinion of the majority, extend the term of the Kerala Bar Council subject to confirmation at the next meeting.

D BCI did not adopt the modes available to it under (a) and (b), but invoked the provisions of Rule 6 and adopted the mode indicated at (c). It circulated the resolution to its members proposing extension in the term of the Kerala Bar Council by six months. Opinion of only four of the members was obtained by 27.1.1997 which is the date on which the term of the Kerala Bar Council expired. Since majority of the members had not expressed their approval by that date in favour of the resolution, no "action" was taken. It was clearly a case of abandonment. The other essential requirements of Rule 6 were, therefore, not complied with. BCI, however, in its regular meeting held on 8.2.1997, passed a resolution extending the term of the Kerala Bar Council by six months under the Proviso to Section 8. Once the move initiated under Rule 6 was abandoned and no "action" was taken as majority opinion had not been obtained by 27.1.1997 nor even thereafter, the BCI or the Kerala Bar Council cannot legally fall back upon Rule 6 to contend that the resolution adopted on 8.2.1997 would relate back to the date on which the resolution under Rule 6 was circulated.

G Learned counsel for the respondents have placed strong reliance on the decision of this Court in *Sri Parmeshwari Prasad Gupta v. Union of India*, [1973] 2 SCC 543 in support of their contention that "confirmation" would relate back to the date on which "action" was taken. This case is clearly distinguishable. Here, the services of the General Manager of a H company were terminated by a resolution passed at a meeting of the

Directors, of which notice to one of the Directors was not given. This meeting was held on 16.12.53 and the services were terminated by letter of the Chairman dated 17.12.53. The decision taken by the company in terminating the service at the earlier meeting, of which notice was not given to one of the Directors, was confirmed in a regularly convened meeting on 23.12.53. It was in this context that this Court held that although the earlier meeting at which the resolution for terminating the services of the General Manager was adopted was not valid as notice to one of the Directors was not given, the subsequent meeting at which the resolution of confirmation was adopted, would cure the defects and the subsequent resolution would relate back to the date on which "action" was taken and the services were terminated. That is to say, the termination would be effective from the date on which the original resolution was adopted. The decision was essentially based on the effect of "confirmation" in a regularly convened meeting on the "action" which had already been taken. It was this defect which was cured by a resolution of confirmation at the subsequent meeting and it was held that this resolution would relate back to the date on which the services were terminated.

This principle cannot be applied in the instant case. BCI, as pointed out earlier, took no "action" on the basis of the resolution circulated to its members. In fact, it abandoned the whole process and adopted a resolution of extension only at its meeting on 8.2.1997 which would not relate back to the date of circulation as 'mere circulation' is not "action" and that too, based on majority opinion, within the meaning of Rule 6 which was required to be confirmed.

Learned counsel for the respondents in their written submissions have referred to Dictionary meaning of the word "confirm" or "confirmation" in support of their argument that it has the effect of validating the earlier act. We appreciate their effort and add to their research the maxim, "*Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit*". (Confirmation supplies all defects, though that which had been done was not valid at the beginning.) But, as pointed out above, it was not a case of "confirmation" as no "action" under Rule 6 was taken. Since the term of the Kerala Bar Council had expired on 27th January, 1997 and they had ceased to be members with effect from that date, their term could not be legally revived with retrospective effect by BCI on 8th February, 1997

A when it adopted the resolution for extension of the term by six months. The Kerala Bar Council had ceased to have any jurisdiction and could not hold fresh elections which could be held only by the Special Committee appointed by the BCI.

B Lastly, it was contended by learned counsel for the respondents that the elections already having been held and the members having been in office for more than one and half year, this Court should not intervene, specially as the appellants could have challenged the elections by way of an Election Petition which was not done. This contention is wholly devoid of merit. The decision of this Court in *Bar Council of Delhi & Anr. v. Surjit Singh & Ors.*, AIR (1980) SC 1612 = [1980] 3 SCR 940 = [1980] 4 SCC 211 is a complete answer to this contention.

D In the instant case, it was the question of jurisdiction to hold elections which was agitated in the Writ Petition. Fresh elections could have been held by the Kerala Bar Council only before the expiry of its term. Otherwise, the jurisdiction to hold elections passes on to the Special Committee appointed by the BCI in terms of the provisions contained in Section 8A which are imperative in character. Since the Kerala Bar Council had ceased to have any jurisdiction on the expiry of its term and the so-called extension of its term has been held by us to be wholly illegal, the elections held by E the Kerala Bar Council were farcical in character and on that basis the respondents cannot claim themselves to be the duly elected members of the Council.

F Queerly, the Kerala High Court, merely after looking into the correspondence between the State Bar Council and the Bar Council of India, as also the resolution adopted on 8th February, 1997, came to the conclusion that the term of the State Bar Council shall be treated to have been extended before the expiry of the original term. This view, in our opinion, is wholly erroneous and contrary to the mandatory provisions contained in the Act and the Rules framed thereunder. The impugned judgment cannot, G therefore, be sustained. The appeal is consequently allowed and the judgment passed by the High Court is set aside. The Writ Petition filed by the appellants stands allowed.

H The Bar Council of India is directed to appoint a Special Committee as contemplated by Rule 8A within two weeks from the date on which a

copy of this judgment is communicated to them and the Special Committee shall, within four months of its being constituted, hold the elections for constituting a new Kerala Bar Council in accordance with law. Till the elections are held, the Special Committee shall, as provided by Section 8A of the Act, discharge the functions of the State Bar Council with all other consequences provided thereunder.

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There will be no order as to costs.

R.K.S.

Appeal allowed.