IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 2ND DAY OF APRIL 2025 / 12TH CHAITHRA, 1947

WP(C) NO. 26651 OF 2024

PETITIONERS:

1 **AISHA P**
AGED 66 YEARS
MEMBER, BAR COUNCIL OF KERALA, W/O E SANKARAN POTTY, AGED 66 YEARS, SREESAKARAM, PADINJATTINKARA, KOTTARAKKARA P.O., KOLLAM, PIN - 691506

2 **ASHRAF K A,**
AGED 54 YEARS
S/O ABDUL RAHIMAN, KUNNUMMAL, PUTHIYAKAVU, PAPPINVATTOM, THRISSUR, PIN - 680685

BY ADVS.
THOMAS ABRAHAM
MERCIAMMA MATHEW
ASWIN.P.JOHN
R.ANANTHAPADMANABAN
PAUL BABY
SWATHY A.P.
THARA ELIZABETH THOMAS

RESPONDENTS:

1 **BAR COUNCIL OF INDIA**
21 ROUSE AVENUE, INSTITUTIONAL AREA, NEAR BHAL BHAVAN, NEW DELHI REPRESENTED BY ITS SECRETARY, PIN – 110002.

2 **BAR COUNCIL OF KERALA**
BAR COUNCIL BHAVAN, HIGH COURT CAMPUS, ERNAKULAM REPRESENTED BY ITS SECRETARY, PIN – 682031.

3 **HONORARY SECRETARY**
BAR COUNCIL OF KERALA, BAR COUNCIL BHAVAN, HIGH COURT CAMPUS, ERNAKULAM, PIN – 682031.

4 **T S AJITH**
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT

ATHULYA, MAMMIYOOR, GURUVAYOOR P O, THRISSUR, (ADV.AJITHTS@GMAIL.COM), PIN – 680101.

5 N MANOJ KUMAR
ADVOCATE, STATE ATTORNEY, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT AMAR, HOUSE NO. 49,697 R RAJEEV NAGAR, ELAMAKKARA P O, ERNAKULAM – (MANOJNARENDRAN@GMAIL.COM), PIN – 682026.

6 SHARAFUDEEN M
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT SHAS, CHETTAMCOONNU P.O., THELLICHERRY, KANNUR, (SHARAFUDHEEN.ADV@GMAIL.COM), PIN - 670101

7 SANTOSH KUMAR P
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT THE LAW AND JUSTICE, MANJALIKKULAM, THAMBANOOR P O, THIRUVANANTHAPURAM – (ADVSANTHOSHKUMARP@GMAIL.COM), PIN - 695001

8 RAJKUMAR K R
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT THATTATHAMBILIL HOUSE, WARIAM ROAD, ERNAKULAM – (RAJKUMARKRKHC@GMAIL.COM), PIN - 682816

9 JAYACHANDRAN K P
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT S/O. SRI. PURUSHOTHAMAN PILLA, ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), TC 9/1200, DWARAKA, TEMPLE ROAD, SASTHAMANGALAM P O, THIRUVANANTHAPURAM (KPJADV@YAHOO.CO.IN), PIN - 695010

10 SAJEEV BABU P
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT PURUSHOTHAMS BUILDING, DWARAKA MADAM, NEAR NEW BHARATH STUDIO, ANANTHAVALEESWARAM, NEAR COLLECTORATE, KOLLAM- (ADVSAJEEVBABU@GMAIL.COM), PIN - 691009

11 ANIL KUMAR K N
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT S/O. SRI. NARAYANAN NAIR, P O ROAD, PERUMBAVOOR, - (ANILRATIONAL@GMAIL.COM), PIN – 683542.

12 SHAJI B S
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT RITU, T.C/14/2056(4), VENPALAVATTOM, ANAYARA P O, THIRUVANANTHAPURAM (ADVANAYARASHAJI@GMAIL.COM), PIN – 695029.

13 MOHAMMED SHA P A
ADVOCATE, (MEMBER, BAR COUNSEL OF KERALA), HIGH COURT CAMPUS, ERNAKULAM 682031 RESIDING AT 4C, EXPRESS ESTATE APARTMENTS, NEAR A J HALL, KALOOR, ERNAKULAM – (ADVOCATESHAH@YAHOO.CO.IN), PIN - 682017

BY ADVS.
M.U.VIJAYALAKSHMI
K.JAJU BABU (SR.)(K/116/1981)
SRI.RAJIT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.03.2025, THE COURT ON 02.04.2025 DELIVERED THE FOLLOWING:

C.S.DIAS,J.

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W.P (C)No.26651 of 2024

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Dated this the 2nd April, 2025

JUDGMENT

The petitioners are the members of the Bar Council of Kerala, who were co-opted to the two vacancies that arose due to the death and the resignation of two members. The 1st petitioner was elected by the members of the Bar Council of Kerala ('BCK', for brevity) on 20/3/2022, and she was co-opted as a member of the XIIth BCK on the same day by resolution No.161 of 2022. Similarly, the 2nd petitioner was elected on 20/8/2023 and was co-opted as a member on the same day by resolution No.254 of 2023. The term of the XIIth BCK expired on 6/11/2023, on completion of 5 years as stipulated under Section 8 of the Advocates Act, 1961 (‘Act’ for brevity). Since the elections of the next BCK could not be conducted within the stipulated time, the Bar Council of India (‘BCI’, for short), in the exercise of its powers under the proviso to Section 8, extended the term of the BCK by a further 6 months. The extended period also expired on 6/5/2024. After that, the BCI extended the term

of the XII[th] BCK for an additional term of 18 months. Subsequently, by Ext.P1 communication, the BCI nominated a few among the 25 BCK members to the three committees viz. (i) Office Bearers of the Committee, (ii) Executive Committee and (iii) Enrolment Committee. The cardinal purpose of constituting the committees was to continue the day-to-day functioning of the BCK, ensure that the election is conducted within 18 months, and take necessary steps to conduct periodical enrolments of fresh applicants. The BCI had earlier issued Ext.P1(a) notification amending Rule 32 of the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 ('Verification Rules', for brevity). The said rule stipulates that in case the term of the elected members of any State Bar Council is likely to expire due to delay in the process of identification of non-practising advocates, verification of their certificates, and delay in the preparation of the electoral roll for the election to the State Bar Council, the BCI may allow the elected members of the State Bar Council to continue for an extended tenure. However, stating that Rule 32 only mentions the extension of the term of the elected members/office bearers

of the State Bar Council, the petitioners are being kept out of the meetings of the XIIth BCK. The extension granted by the BCI for the period beyond the periods mentioned under Section 8 and the proviso to Section 8 of the Act has to be made applicable to all the members without any distinction. The co-opted members cannot be held in a different class from the elected members. The petitioners are deprived of their right to continue as members of the XIIth BCK. The strength of the BCK, as per Section 3(2)(b) of the Advocates Act, 1961, is 25, as the electorate exceeds 10,000 members. The filling of the vacancies of elected members through co-option is a statutory procedure that cannot be watered down by any casual decision. The enrolment function is not an extraordinary meeting and 10 days' notice to all members of the State Bar Council is mandatory. Therefore, the meeting for the proposed enrollment is illegal. Hence, the writ petition.

2. The first respondent has filed a statement through its Standing Counsel contending that the petitioners were co-opted as members of the BCK. The five-year term of the BCK came to an end on 06.11.2023. The term was then extended for six

months till 06.05.2024. After that, the BCK was dissolved. BCI then constituted a special committee invoking its powers under Rule 32 of the Verification Rules. The petitioners have no legal right to continue as members of the BCK because they were co-opted members, and the term of the BCK has not been extended. This Court has rejected the challenge against the constitution of the Committee in W.A.No.788/2024. The judgment has become final. Therefore, the writ petition may be dismissed.

3. The respondents 2 and 3 have filed a counter affidavit stating that the cases challenging the amendment to Rule 32 of the Verification Rules are pending consideration before the Hon'ble Supreme Court of India. To avoid conflicting judgments, the cases pending before the various High Courts on the same question have been transferred to the Hon'ble Supreme Court. The 1st respondent is competent to amend the Rules in view of the powers under the Advocates Act, 1961. Rule 32 has been amended with the *bona fide* intention of removing advocates from the rolls of the Bar Council who do not possess valid certificates. By Ext.R2 (a) letter, the BCK had

requested the BCI to extend the term of the XIIth BCK as per the amended Rule 32 to complete the verification process. Accordingly, by Ext.2 (b), the BCI has extended the tenure of all the elected members by another 18 months. After that, by Ext.R2 (c), committees were constituted, and they have taken charge on 21.05.2024. The challenge against Ext.R2 (c) was rejected by this Court by Exts. R2 (d) and (e) judgments. As the petitioners are co-opted members, they cannot continue as members of the XIIth BCK. The writ petition may be rejected.

4. Heard: Sri. Thomas Abraham, the learned Counsel for the petitioners; Sri. Rajit, the learned Counsel for the 1st respondent/ BCI, and Sri. Jaiju Babu, the learned Senior Counsel for respondents 2 to 4 and 8.

5. Sri. Thomas Abraham submitted that he was not pressing relief No. (iv), i.e., to quash Ext.P1 letter to the extent of constituting three committees.

6. The petitioners' grievance is that they are being sidelined from the XIIth BCK in view of Ext.R2 (b) resolution passed by the BCI.

7. It is undisputed that the petitioners were elected and co-

opted as members of the XIIth BCK as per Rule 17 of Chapter IV of the Bar Council of Kerala Rules, 1979, on the death and resignation of two members. It is also not disputed that the original term of five years of the XIIth BCK came to an end on 6.11.2023. As the elections were not conducted within the stipulated timeframe, the BCI, in exercising its powers under the proviso to Section 8 of the Act, extended the term of the XIIth BCK for an additional six months, which expired on 6.5.2024. Before the expiry of the extended term, by Ext.R2(a) letter, the BCK had requested the BCI to extend the term of the XIIth BCK by invoking its powers under the amended Rule 32 of the Verification Rules. Consequently, the BCI passed Ext.R2 (b) resolution extending the tenure of the elected members of the XIIth BCK for 18 months to complete the verification process. It was also resolved that a committee be constituted to complete the verification process. Accordingly, by Ext.R2 (c) letter dated 20.05.2024, three committees were constituted.

8. In the above context, it is necessary to refer to the amended Rule 32 of the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015, which reads as

follows:

"Rule 32. In case the term of elected members of any state Bar Council is likely to expire/expires due to delay in the process of identification of non-practicing advocates or verification of their certificates or delay in the preparation in the electoral roll for the election to the state Bar Councils due to the aforementioned reasons, the Bar Council of India may allow the elected members/and the office-bearers of the State Bar Council(s) to continue to function beyond their extended tenure under Section 8 of the Advocates Act, 1961 in order to complete the process of verification and in order to ensure that no non-practicing Advocate becomes a voter or a member of any state Bar Council. The State Bar Council(s) shall be required to complete the process of verification within a period of 18 months from the date of extension of their tenure by the Bar Council of India and shall complete the process of election within a period of 6 months therefrom.

In case, of failure to complete the process of verification and the election within the said extended period as prescribed under this Rule, the Bar Council of India may dissolve the State Bar Council and shall proceed to constitute the Special Committee as provided under Section 8A of the Advocates Act, 1961".

(emphasis given)

9. The above Rule bestows the BCI with the power to extend the term of a State Bar Council up to 18 months to identify non-practising Advocates and verify their certificates to conduct the fresh election, dehors the timeframe stipulated under Section 8 of the Act, viz., 5 years and 6 months (the original term plus the extended term).

10. The BCI is conferred with the power to extend the term of a State Bar Council up to 18 months for the identification/verification process. Once the process is

complete, the elections have to be held within 6 months. However, if the process cannot be completed within 18 months, then the BCI may dissolve the State Bar Council and proceed to constitute a Special Committee as contemplated under Section 8 A of the Act.

11. On an analysis of the above provisions, I disagree with the submission of the learned Counsel for the 1st respondent that the XIIth BCK has been dissolved. If that is the case, in view of Rule 32 of the Verification Rules, the BCI is not empowered to extend the term of the members and is bound to constitute a Special Committee under Section 8 A of the Act. Hence, this Court is of the view that the XIIth BCK is in existence but is functioning through the three committees constituted under Ext.R2 (c) order.

12. It is also to be noted that the request of the BCK in Ext.R2 (a) letter was to extend the term of the XIIth BCK as per the amended Rule 32 of the Verification Rules. Accordingly, by Ext.R2 (b) resolution, the BCI extended the term of the elected members of the BCK. Taking the words ‘elected members’ as a cue, the petitioners are not being invited to the

programs/functions of the XIIth BCK because they are co-opted members and not elected members.

13. Section 3 (2) (b) of the Act mandates that those State Bar Councils having an electorate exceeding ten thousand members, in addition to the Advocate General of the State as the Ex-officio member, the State Bar Council shall consist of twenty-five members, to be elected from amongst the advocates on its electoral roll. Hence, the strength of BCK is 26 members.

14. To maintain the strength of the members at the above number, Rule 2 (e) of the Bar Council of Kerala Rules, 1979, is incorporated to fill a casual vacancy that may arise before the expiry of a member's term of office. Rule 17 lays down the procedure for filling such casual vacancies.

15. There is no dispute that the petitioners were elected by the members and co-opted to the XIIth BCK, as per the procedure contemplated under the Rules, to ensure that the BCK functions with the statutory strength. Since BCI has extended the term of the XIIth BCK by Ext. R 2(b) resolution, irrespective of the fact that the petitioners were co-opted to the

BCK at a later stage, the petitioners cannot be differentiated from the elected members. The Act and the Rules do not treat co-opted members as a separate or distinct class. The petitioners have the right to continue as members of the XIIth BCK until it is dissolved. The elected members mentioned in Ext.R2 (b) resolution include the petitioners.

In light of the above discussions, I allow the writ petition by declaring that the elected members of the XIIth Bar Council of Kerala in Ext R2 (b) resolution shall also mean and include the petitioners. The petitioners shall be entitled to all the rights and privileges of elected members of the Bar Council of Kerala as mentioned in Ext.R2 (b) resolution.

The writ petition is ordered accordingly.

Sd/-C.S.DIAS, JUDGE

ma/01/04/2025

APPENDIX OF WP(C) 26651/2024

PETITIONER EXHIBITS

Exhibit P1	**THE TRUE COPY OF THE COMMUNICATION NO.BCI:D:2494/2024 DATED 20/5/2024 ISSUED BY THE BAR COUNCIL OF INDIA**
Exhibit P2	**THE TRUE COPY OF THE NOTICE NO.KBC/M/XII-EMT./3871/2024 DATED 20/7/2024**
Exhibit P3	**THE TRUE COPY OF THE REPRESENTATION DATED 22/7/2024 SENT BY THE PETITIONERS**
EXHIBIT P1(a)	**THE TRUE COPY OF THE GAZETTE NOTIFICATION NO.BCR:D:3430/2023 DATED 23/6/2023**

RESPONDENT EXHIBITS

Exhibit R2(a)	**True copy of the letter dated 13.4.2024 of the Secretary of Bar Council of Kerala addressed to the 1st respondent**
Exhibit R2(b)	**True copy of the letter dated 6.5. 2024 of the 1st respondent**
Exhibit R2(c)	**True copy of the communication dated 20.5.2024 issued by the 1st respondent**
Exhibit R2(d)	**True copy of the judgment dated 3.6.2024 of this Honorable Court in WP(C) No. 18361/2024**
Exhibit R2(e)	**True copy of the judgment dated 19.8.2024 of this Honorable Court in W.A No. 788/2024**

PETITIONER EXHIBITS

EXHIBIT P4	**The true copy of the letter dated 6/5/2024 issued by the Secretary, Bar Council of India to the Secretary, Bar Council of Kerala**