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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 15.04.2009
Pronounced on: 21.04.2009

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WP(C) No.7444/2009

SURENDER PAL SINGH CHAUHAN & ANR.

....PETITIONERS

Through : Mr. Rajinder Sharma and Mr. Rajiv Khosla,
Advocates with petitioners in person.

Versus

BAR COUNCIL OF INDIA & ORS.

....RESPONDENTS

Through :Mr. Sanjeev Sachdeva with Mr. Preet Pal Singh, Advocates
for respondent/BCI.

Mr. V.P. Singh, Sr. Advocate with Mr. Amol, Advocate for
Respondent.

Mr.Sanjay Jain, Senior Advocate with Mr. Sarfaraz Ahmad,
Advocate for respondent.

Mr. K.C. Mittal with Mr. Khatri, Advocates for Respondent

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

S.RAVINDRA BHAT, J.

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1. The writ petitioner in these proceedings seek intervention of the court in respect of elections to the Bar council of Delhi ("BCD"), scheduled to be held sometime this year.

2. Briefly the facts of the case are that according to the petitioners, the Bar Council of Delhi is acting illegally and in contravention of provisions of the Advocates Act and the Bar Council of India Rules, in regard to the time schedule within which electoral rolls are to be revised or corrected; and in requiring every advocate or elector to furnish a declaration that he or she is not subjected to any disqualification spelt out in Rule 2 of the Bar Council of India Rules (hereafter called "BCI Rules"). The petitioners also complain that the notice published in a newspaper, by the Honorary Secretary, is no notice in the eye of law since, the Rules mandate employment of a full-time Secretary and not an Honorary Secretary, as was done by the BCD.

3. The petitioners complain that the notification issued by the BCD on 27-1-2009, but published on 5-3-2009 did not comply with the 150 day mandatory period, in terms of Rule 4(2) of the Rules framed by the BCI (hereafter called "The BCI Rules"). It is alleged that the notice on the one hand posited that those desirous of voting in the forthcoming elections had to fill a declaration form, and furnish it, but at the same time, restricted receipt of such forms to 16th March, 2009. It is alleged that such declaration cannot be insisted upon, in view of the clear mandate of Rule 3 of the BCI rules, read with Section 3 of the Advocates Act, 1961, which confers a right on every Advocate, the right to practice law, to vote in the elections of the State Bar Council which maintains his or her name in its rolls. It is said, besides, that even before the publication of the impugned notice, the incumbent office bearers of the BCD had ensured that no less than 80,000 declaration forms were issued to their confidants, with a view to see that genuine voters were excluded from the election process. It is urged, in addition that the BCD has to issue individual notices to the Advocates, at the addresses maintained in its office, asking them to furnish all the information required in the form.

4. Mr. Rajinder Sharma and Mr. Rajeev Khosla, learned counsel for the petitioner, submitted that the impugned actions of the BCD are illegal and unsustainable. Reliance was placed on the decision reported as *Bar Council of India v. Surjeet Singh*, (1980) 4 SCC 211 (hereafter *Surjeet Singh's case*) to say that in the absence of any rule, the BCD could not restrict the right of an Advocate to cast his or her vote in an election. It was urged that though the BCD, a State Bar Council, can frame rules, they are for limited purposes, and that such Rules have to be approved by the BCI under Section 15(3). By prescribing that registered advocates have to fill a form, as a precondition to cast their vote, which is without any statutory sanction, the BCD has acted illegally. It was next argued that under Rule 4(2) of the BCI Rules, the BCD was under a statutory obligation to issue notice to each advocate enrolled with it, so that they could fulfil requirements such as payment of dues, mandated by Rule 40.

5. It is argued that BCD has to prepare a fresh electoral roll only in case no roll is in existence; if there is any in existence, revision, according to Rule 6, has to be made. The BCD already has its own electoral rolls; it also has information about disqualification of Advocates. It can therefore, effectuate the conditions in Rule 2 of BCI Rules, without requiring every Advocate to furnish a declaration. The petitioners also contend that during the last Bar Council elections, more than 14,000 advocates could not exercise their franchise, since their names were deleted from the electoral roll, on the ground that they could not make payment to the Advocates Welfare Funds, constituted by the BCI, in terms of its Rule 40. Though the BCD has issued almost a lakh of forms which Advocates have to fill and furnish, in regard to their qualification to vote, it has not published a list of those eligible to vote, according to its records. BCD has also not indicated which of the Advocates have not paid the amounts, in terms of Rule

40. Therefore, the proposal to prepare the electoral rolls within the time, indicated in the impugned notice is illegal.

6. The BCI argues that originally, the condition of having to file a declaration, introduced in 1978 by the BCD, was declared *ultra vires* in *Surjeet Singh*. The BCI introduced a similar rule, requiring Advocates to furnish declarations, like the one, required in the rule struck down in *Surjeet Singh*, in 1980; it continued till 1991, when it was deleted. It is argued that the BCD's proposal, requiring advocates to furnish a declaration, is contrary to the Rules, particularly Rule 2, which only requires such declarations to be made by those who are subjected to disqualifications. Further, the consequence of not furnishing declarations by such persons (i.e. those subject to disqualifications) is that they are deemed to have committed misconduct under Section 35 of the Advocates Act. It is contended that though Rule 40 mandates that Advocates have to pay the requisite amounts, and there is a reference to such position, in Rule 2, that does not lead to the conclusion that a declaration of the kind sought has to be furnished. Counsel emphasized that once the BCI had introduced a similar requirement, which remained in place for almost a decade, after which it was discarded in 1991, the BCD could not have brought about a similar requirement, or a precondition for electors' exercising their franchise in its elections, without prior permission of the BCI, under Section 15 (3). The BCD's impugned action is without statutory mandate, as rule making under Section 49 is the prerogative of the BCI. Underlining its submissions, the BCI argues that its rules, as on 6-9-1980, specifically provided as follows:

"By the said notice the secretary shall also inform the advocates concerned that unless information required by the said notice in question is received by the state Bar Council in the prescribed form or forms exactly similar thereto, within the specified time or within

the extended time as stated hereinabove, his name shall not be included in the Electoral Roll and he shall not be entitled to take part in the election in question."

Counsel also urged that the form of notice, under Rule 4 as prescribed by the BCI had contained the following requirement:

"The advocate concerned is specifically to note that unless he/she furnishes the particulars noted below, his/her name shall not be included in the electoral roll."

BCI contends that with the deletion of the above two requirements, and the consequence spelt out, there is no obligation cast on Advocates, who are not subjected to any disqualification, to furnish declarations. Insisting them to do so, as the BCI is doing, would frustrate the object of a fair election.

7. It is argued that there is no requirement of issuing individual notices to Advocates, as contended by the petitioners, since that Rule was amended in 1991. Learned counsel for BCI relied on a chart showing the original rule, as it existed after *Surjeet Singh (supra)*, and the rule as amended in 1991. Counsel points to the existing Rule 4(2) which does not require State Bar Councils to issue individual notices to electors. Learned counsel also relies on the full text of the 1991 notification, issued by the BCI, which amended the existing rules. The BCI indicates a four step procedure which has to be followed by State Bar Councils, when holding elections. In terms of such procedure, in the first step, the State Bar council has to update the rolls, by making entries about those advocates who are disqualified, according to its records; this exercise should also comprehend those who are not entitled to vote, because of payments not being made under Rule 40, and the amounts if any, due from each advocate. The updated State roll should be made available to Advocates, by keeping a copy at various offices of such Bar Council, and various bar associations; consequently, the concerned Advocates should be

required to make payments, within reasonable time. In the second step, a notice under Rule 4(1) should be issued, declaring elections, in 150 days, and also mandating that Advocates who are disqualified should file declarations. The notice so published should also indicate that Advocates who do not furnish the declaration would be deemed guilty of misconduct, in terms of explanation to Rule 2 (of the BCI Rules). The third step involves preparation of the electoral rolls, and in the publication, 120 days prior to the election; the preliminary rolls should be displayed and accessible to all Advocates, through their Bar Associations. The fourth step involves consideration of applications under Rule 4(3) for corrections, and issuance of reasoned orders while disposing of such objections. The final step involves placing, on display the final electoral roll not more than 75 days and not less than 60 days before the elections.

8. The BCD's position is that its notice, asking Advocates to furnish declarations, in order to exercise their franchise, is legal, and in accordance with law. It was submitted by Mr. V.P. Singh, Senior Advocate that *Surjeet Singh's* case was in the context of a Rule introduced by the BCD requiring individual Advocates to furnish declarations. The BCD submits that the judgment nowhere indicates that the Court held that such declaration could not be obtained. Elaborating this, it was submitted that a joint reading of Section 3(4) and Rule 2 would show that the former deals with the rights of individual Advocates to vote, (subject to disqualifications, if any); the law stipulates specific disqualification conditions which barred Advocates from exercising voting rights. Rule 3, it was submitted, is expressly subject to Rule 2 and entitles the State Bar Council to exclude such Advocates who are subjected to disqualification from the electoral process.

9. Learned Senior counsel appearing for the BCD submitted that Rule 4 operates in a different field and spells out the procedure to be adopted for preparation of an electoral roll, from amongst the State Rolls and the methodology which State Bar Councils have to follow for the purpose. After following the various steps mentioned in Rule 4, a final electoral roll is prepared under Rule 5; the time limit for voting is also specified by the provisions.

10. Learned senior counsel for the BCD submitted that the rules are to be read conjointly with the form annexed to it, as part of Rule 4, which clearly requires individual Advocates to furnish declarations. Learned counsel submitted that the previous history of the rule, or that Supreme Court had decided that a similar condition, which had not been lawfully introduced in *Surjeet Singh's* case should not deter this Court from adopting a correct interpretation. If the law contemplates doing something in its own terms, the circumstance that for some time, such condition had been spelt out in clearer or express terms, would not detract from their existence if a natural interpretation of the rule or concerned regulation permits such inference. Learned counsel relied upon the decision reported as *Chief Inspector of Mines v. Lala Karam Chand Thapar* AIR 1961 SC 838. The BCD also relied upon Section 24 of the General Clauses Act, 1897 in support of the submission.

11. Before proceeding further, it would be necessary to reproduce the relevant extracts of the BCI Rules, which are as follows:

"BAR COUNCIL RULES

Part-III

Certain matters relating to state council

Chapter-I

Electoral roll, disqualification of membership and vacation of office

(Rules under Sections 3 (4), 10B, 15 (2) (a) and 49 (1) (a) and (ab) of the Act)

1. Every advocate whose name is on the electoral roll of the State Council shall be entitled to vote at an election.

2. The name of an advocate appearing in the state roll shall not be on the electoral roll, if on information received or obtained by the State Bar Council concerned on the basis of which it is satisfied that-

(a) his name has at any time been removed;

(b) he has been suspended from practice, provided that his disqualification shall operate only for a period of five years from the date of the expiry of the period of suspension;

(c) he is an undischarged insolvent;

(d) he has been found guilty of an election offence in regard to an election to the State Council by an election tribunal, provided however, that such disqualification shall not operate beyond the election next following after such finding has been made;
(e) he is convicted by a competent court for an offence involving moral turpitude, provided that this disqualification shall cease to have effect after a period of two years has elapsed since his release;

(f) he is in full-time service or is in such part-time business or other vocation not permitted in the case of practising advocates by the rules either of the State Council concerned or the Council ;

(g) he has intimated voluntary suspension of practice and has not given intimation of resumption of practice ;

(h) if he has not paid the subscription under Rule 40 Chapter-II, Part VI of the Rules and obtained receipt from the State Bar Council ;

(i) he has incurred any disqualification mentioned in the Act or the rules made thereunder.*

Explanation:

If an advocate who has incurred any disqualification as referred to in rule 2 and does not furnish details about it as required in the notice under rule 4 of these

rules within the time specified shall be deemed to have committed an act of other misconduct as referred to in Section 35(1) of the Act.

3. Subject to the provisions of rule 2, the name of every advocate entered in the State Roll shall be entered in the electoral roll of the State Council.

4. (1) In preparing the electoral roll, unless the State Bar Council concerned is already maintaining a list of advocates who are entitled to be voters in terms of Rule 2 of these Rules, at least 150 days before the date of election, shall publish notice issued by the Secretary of the State Bar Council concerned in prescribed form in the official gazette and in two or more local newspapers, one English and the other in a local language, as may be decided by the State Bar Council, asking each of the advocates on the roll of the concerned State Bar Council to intimate the State Bar Council within the time to be specified in the said notice or within such extended time as may be given/allowed by the State Bar Council for reasons to be recorded, as to whether he has incurred any disqualification mentioned in Rule 2 of these rules and quote rule 2 of these rules in the said notice.

(2) A preliminary electoral roll containing the names of all advocates whose names are required to be included under these rules shall be put up on the notice board of the State Council within 120 clear days before the expiry of the term of the members of the said State Council necessitating the election (and relevant portion thereof shall be sent to such Bar Associations as the Secretary considers fit).

Provided that the Bar Councils whose term of office already expired or shall expire within 120 days from the date of commencement of these rules shall, as far as possible, publish the electoral roll forthwith and fix the elections for a date after not less than 120 clear days from the date of publication of the electoral rolls.

(3) Before final publication of the electoral Roll, a State Bar Council may, if satisfied, on an application made by any particular advocate giving sufficient reasons, allow his name to be included in the electoral roll in question, and on such inclusion the advocate concerned shall be entitled to take part in the election.

5. The final electoral roll shall be prepared after incorporating such changes as may be necessary including the addition of the names of advocates enrolled after the preparation of the preliminary roll and put up on the notice board of the State Council not more than 75 clear days and not less than 60 clear days before the date of election. (Intimation of such publication shall be given within a week after the publication to the Bar Association aforesaid).

6. *Revision of electoral roll: If for any reason the election to the State Council is postponed beyond the date of expiry of the term of its members the preliminary or the final electoral roll shall be revised so as to include there in the names of advocates enrolled up to 75 clear days before the date of the election.*

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8. *The nomination of any person who at the date of scrutiny thereof is subject to any of the disqualifications referred to in Rule 2 shall be rejected.*

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Form of notice under rule 4

It is hereby notified that for the purpose of preparing final electoral roll in accordance with rules 2 and 3 of chapter I, Part III of the rules framed by the Bar Council of India under Sections 3 (4), 10B, 15(2) (a), 49 (1) (a) and (ab) of the Advocates Act, 1961, for the next election of members to this Council, the particulars as to any of the disqualifications as referred to in clauses (a) to (i) of rule 2 shall be furnished by an advocate who has incurred them to the State Council within the time specified in the notice issued under rule 4. (Herein below to reproduce Rule 2 with Explanation).

Dated the _____ *secretary*

Number on the State Roll :

1. *Name of the advocate as on the roll:*
(in block letters)
2. *(a) Address of the advocate*
(as on the State roll)
(b) Present address :
3. *(a) Have you incurred any of the disqualifications mentioned in rule 2 of Chapter I, Part III of the rules of the Bar Council of India ?*
4. *Are you a member of any Bar Association? (If so, give the name)*
5. *Where do you intend to cast your vote? (If you are not a voter entitled to vote by postal ballot)*

I. hereby declare and affirm that the foregoing statements are true to my knowledge and I have not concealed anything thereto.

Date

Signature in full.

.....

12. The relevant provisions of Chapter II, Part VI of the Rules, requiring payment of Advocates' Welfare Fund, is in the following terms:

"40. Every Advocate borne on the rolls of the State Bar Council shall pay to the State Bar Council a sum of Rs. 300/- every third year commencing from 1st August, 2001 along with a statement of particulars as given in the form set out at the end of these Rules, the first payment to be made on or before 1st August, 2001 or such extended time as notified by the Bar Council of India or the concerned State Bar Council.

Provided further however that an advocate shall be at liberty to pay in lieu of the payment of Rs. 300/- every three years a consolidated amount of Rs. 600/- . This will be a life time payment to be kept in the fixed deposit by the concerned State Bar Council and the Bar Council of India at the ratio of 80:20 as envisaged under Rule 41 and interest to be used for the purpose of this rule.

"Out of life payment, 80% of the maount will be retained by the State Bar Council in a fixed deposit and remaining 20% has to be transferred to the Bar Council of India. The Bar Council of India and State Bar Council have to keep the same in a fixed deposit and the interest on the said deposits shall alone be utilized for the Welfare of the Advocates."

Explanation 1 : Statement of particulars as required by rule 40 in the form set out shall require to be submitted only once in three years.

Explanation 2. All Advocates who are in actual practise and are not drawing salary or not in full time service and not drawing salary from their respective employers are only required to pay the amount referred to in this rule.

Explanation 3. This rule will be effective from 1st August, 2001 and for period prior to this, advocates will continue to be covered by old rule.

41. (1) All the sums so collected by the State Bar Council in accordance with Rule 40 shall be credited in a separate fund known as "Bar Council of India Advocates Welfare Fund" and shall be deposited in the bank as provided hereunder.

(2) The Bar Council of India Advocates Welfare Fund Committee for the state shall remit 20% of the total amount collected and credited to its account, to the Bar Council of India by the end of every month which shall be credited by the Bar Council of India and Bar

Council of India shall deposit the said amount in separate fund to be known as "Bar council of india advocates welfare fund." This fund shall be managed by the Welfare Committee of the Bar Council of India in the manner prescribed from time to time by the Bar Council of India for the Welfare of Advocates.

(3) The rest 80% of the total sum so collected by the Bar Council of India Advocates Welfare Fund Committee for the State under Rule 41 (1) shall be utilised for the welfare of advocates in respect of Welfare Schemes sponsored by the respective State Bar Councils and this fund shall be administered by the Advocates Welfare Committee for the State which shall submit its report annually to the Bar Council of India.

(4) In case of transfer of an advocate from one State Bar Council to other state Bar Council, 80% of the total sum collected so far in respect of that advocate by the Bar Council of India Advocates Welfare Committee for the State under Rule 41 (1) where the said Advocate was originally enrolled, would get transferred to the Advocates Welfare Fund Committee of the Bar Council of India for the State to which the said Advocate has got himself transferred.

42. If any advocate fails to pay the aforesaid sum within the prescribed time as provided under rule 40, the Secretary of the State Bar Council shall issue to him a notice to show cause within a month why his right to practice be not suspended. In case the advocate pays the amount together with late fee of Rs. 5/- per month, or a part of a month subject to a maximum of Rs. 30/- within the period specified in notice, the proceedings shall be dropped. If the advocate does not pay the amount or fails to show sufficient cause, a Committee of three members constituted by the State Bar Council in this behalf may pass an order suspending the right of the advocate to practise.

Provided that the order of suspension shall cease to be in force when the advocate concerned pays the amount along with a late fee of Rs. 50/- and obtain a certificate in this behalf from the State Bar Council."

13. For a better appreciation of the rules as existing before 1991, when the BCI had directed that every Advocate, as a condition for exercising voting rights, had to furnish a declaration, it would be necessary to extract the relevant parts of Rules 2 and 4. These rules existed till 1-1-1991; they were introduced in 1980:

(1) Rule 2, before it listed out the conditions of disqualification, provided that:

"The name of an advocate appearing in the State Roll shall not be on the Electoral Roll, if on information furnished by the advocate concerned in terms of Rule 4 information received or obtained by the State Bar Council concerned that:..."

(2) The Explanation to Rule 2 was added by the 1991 amendment;

(3) The unamended Rule 4(1) read as follows:

"4. (1) In preparing the electoral roll, unless the State Bar Council concerned is already maintaining a list of advocates who are entitled to be voters in terms of Rule 2 of these Rules, at least 150 days before the date of election, shall publish notice issued by the Secretary of the State Bar Council concerned in prescribed form in the official gazette and in two or more local newspapers, one English and the other in a local language, as may be decided by the State Bar Council, asking each of the advocates on the roll of the concerned State Bar Council to intimate the State Bar Council within the time to be specified in the said notice or within such extended time as may be given/allowed by the State Bar Council for reasons to be recorded, as to whether he has incurred any disqualification mentioned in Rule 2 of these rules. (Rule 2 has to be quoted in the notice). By the said notice the Secretary shall also inform the advocates concerned that unless information required by the said notice in question is received by the State Bar Council in the prescribed form or forms exactly similar thereto, within the specified time or within the extended time as stated hereinabove, his name will not be included in the Electoral Roll and he shall not be entitled to take part in the election in question.

(2) The Secretary of the State Bar Council shall also send a similar notice with a prescribed form to all advocates on the Roll of the State Bar Council in ordinary post with certificate of posting, asking the advocate concerned to furnish all the informations mentioned in the notice and in the form attached therewith or in a form exactly similar thereto either typed, printed or cyclostyled, within the time specified in the notice. Unless such information is furnished within the time specified the name of the advocate concerned shall not be included in the electoral roll and he shall not be entitled to take part in the election in question."

(All the underlined portions were changed subsequently)

14. A careful reading of the above would show that in the Bar Council of India Rules, which had been amended with effect from 06.09.1980, there was a clear direction in terms of Rule 4(1) requiring the Secretary of the State Bar Council to inform the Advocates about the information required to be furnished by them with a further enabling power (with the State Bar

council) to exclude the names of those Advocates not furnishing such information. This power of the State Bar Council and the obligation cast upon each Advocate was further reinforced by the structure of Rule 4(2) as it existed for the period between 06.09.1980 and 01.01.1991. The State Bar Council had to send notices in a prescribed form to all Advocates, asking them to furnish all information mentioned in such notice, and further clarifying that:

“Unless such information is furnished within the time specified, the name of the Advocate concerned shall not be included in the Electoral Roll and he shall not be entitled to take part in election in question.”

15. Rule 4(3) further took forward the idea by stating that an accidental omission to send any notice, by the State Bar Council to any individual Advocate could not have the effect of invalidating the election. However, the essential obligation to furnish information in the form of the notice sent, in terms of Rule 4(1) and (2) had been clearly spelt out. Such obligation, of every Advocate and the corresponding power to exclude voting right of such Advocates, who did not furnish information was omitted after 01.01.1991. The BCD is not contending that it has framed any regulations with the prior approval of the BCI, in terms of Section 15(3), casting an obligation on every Advocate to furnish declarations or information of the kind sought for in the impugned notice. Although during the initial stages, counsel for BCD had tried to argue that the Rules of the BCI mandated disclosure of information, after the production of notification, and the arguments on behalf of the BCI, that position was not pursued. Interestingly, what is argued is that the existing rule position casts a similar obligation which compels publication of the impugned notice and that in order to exercise voting rights, each Advocate has to necessarily furnish the declarations called for.

16. So far as the first question regarding existence of the application is concerned, there is no express obligation cast on every Advocate to furnish information in the form of a declaration, that he or she is not disqualified for any of the reasons spelt out in Rule 2. What is argued by the BCD is that such an application has to be necessarily implied. Reliance is placed on Section 3(4) and Rule 2 read with the form appended to Rule 4.

17. In *Surjeet Singh*, the Supreme Court was called upon to decide whether an identical obligation to furnish information through declarations insisted upon by the BCD, by an amendment, made in 1978 was sustainable. The Court declared that such an obligation could not be insisted upon by the BCD without prior sanction under Section 15 (3) of the BCI. The Court's reasoning is in the following terms:

"8. In order to determine the point at issue we shall now read some relevant provisions of the Advocates Act. Section 3 provides for the constitution of the State Bar Council, sub-section (4) of which says:

"An advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of a State Bar Council, unless he possesses much qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council."

On a plain reading of this sub-section it is manifest that under the Act the qualifications and conditions entitling an advocate to vote at an election or for being chosen as a member of the State Bar Council have to be prescribed by the Bar Council of India. The State Bar Council has no such power. The power of the State Bar Council is merely to prepare and revise from time to time the electoral roll subject to the rules made by the Bar Council of India concerning the qualifications and conditions aforesaid. This interpretation of Section 3(4) of the Act finds ample support from the very specific provision contained in Section 49(1)(a) providing for the general power of the Bar Council of India in these terms:

"49. (1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe—

(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;"

Great reliance was placed on behalf of the appellants on the concurrent power of the State Bar Council and the Bar Council of India engrafted in Section 15 of the Advocates Act. It is true that the power to make rules conferred by Section 15 is both for the Bar Council of India as also for the Bar Council of a State. But no provision of Section 15 can override the specific provision made in Section 3(4) and Section 49(1)(a) of the Act. Sub-section (1) of Section 15 says— “A Bar Council may make rules to carry out the purposes of this Chapter” which means Chapter II including Section 3. But the power to prescribe qualifications and conditions entitling an advocate to vote at an election being that of the Bar Council of India Section 15(1) cannot be interpreted to confer power on the State Bar Council to make rules regarding the qualifications and conditions aforesaid. The relevant words of sub-section (2)(a) of Section 15 are the following:

“In particular, and without prejudice to the generality of the foregoing power, such rules may provide for:

(a) ... the preparation and revision of electoral rolls and the manner in which the results of election shall be published.”

The State Bar Council can frame rules for the preparation and revision of electoral rolls under Section 15(2)(a). That would be in conformity with the latter part of sub-section (4) of Section 3 also. But in the garb of making a rule for the preparation and revision of the electoral rolls it cannot prescribe disqualifications, qualifications or conditions subject to which an advocate whose name occurs in the State roll can find place in the electoral roll resulting in his deprivation of his right to vote at the election. In the instant case under the impugned proviso failure on the part of an advocate to submit the required declaration within the specified time entitles the State Bar Council to exclude his name from the electoral roll. Such a thing was squarely covered by the exclusive power conferred on the Bar Council of India under Sections 3(4) and 49(1)(a) of the Advocates Act. The State Bar Council had no such power.

8-A. *Sub-section (3) of Section 15 says:*

“No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.”

Introduction of the impugned proviso in Rule 3(j) of the Delhi Bar Council Election Rules was approved by Resolution 18 of 1978 passed by the Bar Council of India. Any rule made by the State Bar Council cannot have effect unless it is approved by the Bar Council of India. But the approval of the Bar Council of India can make the rule made by the State Bar Council valid and effective only if the rule made is within the competence of the State Bar Council, otherwise not. Mere approval by the Bar Council of India to a rule ultra vires the State Bar Council cannot make the rule valid. Nor has it the effect of a rule made by the Bar Council of India. Making a rule by the Bar Council of India and giving approval to a rule made by the State Bar Council are two distinct and different things. One cannot take the place of the other.

9. We, therefore, hold that the impugned proviso to Rule 3(j) of the Delhi Bar Council Election Rules is ultra vires and invalid and the electoral roll prepared by the Delhi Bar Council on the basis of the same resulting in the exclusion of the names of about 2000

advocates from the said roll was not valid in law. We are further of the opinion that the whole election was invalid on that account and it could be challenged as such in a writ petition. It was not a case of challenging the preparation of the electoral roll on the factual basis of wrong exclusion of a few names. For the said purpose Rule 4 occurring in Chapter I of the Bar Council of India Rules could come into play. But here, because of the invalidity of the Rules itself, the preparation of the electoral roll was completely vitiated a matter which cannot be put within the narrow limit of the said rule.

10. The illegal preparation of the electoral roll by the Delhi Bar Council on the basis of the invalid proviso to Rule 3(j) goes to the very root of the matter and no election held on the basis of such an infirmity can be upheld. There is no question of the result being materially affected in such a case..”

18. Section 3(4) enacts that Advocates, who do not possess the qualifications prescribed by the State Bar Council, or do not fulfill the rules made in that regard, would not be entitled (disqualified) from voting at an election. In exercise of the power under Section 49(1)(a), concededly, the BCI framed Rules. Rule 2, which talks of both the State roll (i.e the roll of Advocates) and the Electoral Roll, prescribes that if the State Bar Council, on information received or obtained by it, is satisfied that an Advocate is subjected to any or some of the disqualifications spelt out in sub-clause (a) to sub-clause (i), it shall not enter his name in the Electoral Roll. The explanation very importantly states that an Advocate incurring any disqualification described in Rule 2 (a) to Rule 2(i) and not declaring it would also be deemed to have committed an act of “other misconduct” referred to in Section 35(1) of the Act.

19. A careful analysis of Section 3(4), Rule 2 and Rule 3 show that though every Advocate is entitled to exercise voting rights, such a right is subject to his not being disqualified. The State Bar Council is entitled to exclude an Advocate, who has incurred any of the disqualifications mentioned in Rule 2(a) to (2)(i). The explanation (to Rule 2) states that in case an Advocate does not furnish information about his disqualification as required by Rule 4, he shall be deemed to have committed misconduct under Section 35 of the Advocates Act. Rule 4(1) unambiguously

states that the State Bar Councils, while preparing electoral rolls should publish 150 days before the election notice by their Secretaries, asking every Advocate on its rolls to intimate whether within a specified time, whether he or she has incurred any disqualification described in Rule 2.

20. The above discussion would show that while the question of disqualification has been dealt with in clear terms, and an obligation is cast on every Advocate, who is suffering such disqualification, to disclose it [by virtue of explanation to Rule 2 and Rule 4(1)], there is no like obligation cast on every Advocate appearing on the state rolls. In other words, the obligation to make disclosure or declaration is only upon an Advocate who appears on the State rolls and is also subject to any of the disqualifications; such of those Advocates who are not laboring under any disqualification have not been dealt with at all. This inference is reinforced by the Explanation to Rule 2 which provides the consequence, i.e. “deemed misconduct” in the case of one who has suffered disqualification but does not disclose it. The Form to Rule 4 relied upon also clearly refers to Explanation to Rule 2.

21. It is well settled that when a Statute or law prescribes that when an act or something should be done in a particular manner, that method or act alone is permissible; other methods of doing or performing it are deemed unlawful – (*Ref. Nazir ahmed v. Emperor* AIR 1936 PC 253, Following *Taylor v. Taylor* 1876 (1) Ch. D. 426]. This rule was approved and applied in *Ramachandra Keshav Hadke v. Govind Joti Chavare* 1975 (1) SCC 559.

22. The legislative history of the BCI Rules, which are to some extent relevant, and permissible as external aids (See *State of T.N. v. Pyare Lal Malhotra*, (1976) 1 SCC 834), clearly does not support the construction advanced on them, by the BCD. On the contrary, the BCI had

the benefit of Supreme Court's ruling in *Surjeet Singh*; in its wisdom, it cast an obligation on advocates to furnish declaration forms as a condition precedent for exercising voting rights. That obligation existed for almost 11 years between 1980 and 1991, when it was ultimately discarded. The enactment of a positive obligation, which existed undeniably during some point in time, and its deletion therefore, are relevant extraneous aids in construing the rules. The deliberate omission of such an existing positive obligation, prescribed in the previous rule, should deter the court from using the interpretive process to re-enact it, when the rule making body clearly intended it to cease operation. The court should also adopt this approach because another rule of interpretation of statutes is that where the statute provides for a consequence, of a duty to observe some condition, the obligation is deemed mandatory (See *State of UP –V.- Babu Ram Upadhyay* 1961 (2) SCR 679; *Mohan Singh –V.- International Airports Authority of India* 1997 (9) SCC 132). Here, a combined reading of Explanation to Rule 2 and the form to Rule 4, as well as Rule 4(1) itself would show that one consequence has been prescribed, i.e. an Advocate subjected to disqualification, on not furnishing the required declaration, is deemed to have committed misconduct. Such an unambiguous provision therefore, debars the court from extending its operation to those who do not suffer from any such disqualification, and therefore do not furnish the declaration. Doing so, would also amount to reading into the rules words that were neither intended, nor arise out of necessary implication.

23. So far as the petitioners' second complaint about issuance of individual notices are concerned, intimating the amount or amounts due, this pertains to the procedure for preparing the electoral roll; Rule 4(2) talks of publication of a notice, in respect of those who have to furnish declarations. Clearly, this notice is not individual; it is to be published in newspapers.

Rule 4(2) is worded in an entirely different manner. It obliges State Bar Councils to put up, on their notice boards, to put up, in their notice boards “ *A preliminary electoral roll containing the names of all advocates whose names are required to be included*” under the rules; this is to be done within 120 clear days before the expiry of the term of the members of the said State Council necessitating the election. These are clear pointers that the BCD is under no obligation to issue individual notices to *all members*. The petitioners’ argument that such notice is necessary to facilitate clearance of dues, payable under Rule 40, is not borne out, because those who do not pay such amounts cannot insist on inclusion of their names, by virtue of Rule 2 (h). This aspect can be taken care of by the State Bar Council, while undertaking the revision, and co-relating the amounts received. The list published under Rule 4 would be a preliminary one; if any voter has concerns, about its accuracy, he can represent, after which the final list would be published, under Rule 5. Here too the decision of the court rests on the logic of the reasoning applied in the findings relating to the first question, since the structure of the rule (Rule 4) has undergone a change; earlier, the rule had mandated individual notices to each advocate, in the manner contended by the petitioners. Now it merely insists on publication – in the newspapers, under Rule 4(1), and in the State Bar Council’s notice board, under Rule 4(2).

24. Coming now to the third question, i.e whether the publication of the impugned notification was in accordance with law; it is apparent that the notification is dated 27th January, 2009. However, it was published in the newspapers on 5th March, 2009. It also gave short notice to the advocates to furnish the declarations (which have been held not to be applicable to all), or face disenfranchisement. The publication of a notice, dated 27-1-2009, in March, 2009 can hardly be said to be in compliance with the legal requirements spelt out in

Rule 4(2). The rules having prescribed the mode of information dissemination, and the form of publication, there was a corresponding obligation on the BCD to meaningfully grant the opportunity to the concerned Advocates, and thereafter undertake revision.

25. In view of the above discussion, it is declared and directed that:

(1) There is no obligation on all Advocates to furnish declarations about the matters mentioned in Rule 2 of the Bar Council of India Rules; the obligation is only upon those who are subjected to the disqualifications mentioned in the rule. The consequence of not furnishing – by such Advocates subjected to disqualifications – would be that they are not entitled to vote; they are also deemed as having committed misconduct. Likewise, there are no such consequences in the case of those not subjected to any disqualification.

(2) Individual notices do not have to be issued to all Advocates, at their addresses, under Rule 4. The Bar Council has to publish a notice in the newspapers, under Rule 4(1); it has to put up on its notice board, a preliminary electoral roll, under Rule 4(2).

(3) The Bar Council of Delhi is hereby directed to issue a corrigendum, to its earlier notice, dated 27-1-2009, published on 5-3-2009 to the effect that such of the Advocates who have incurred disqualification, in terms of the BCI Rules, should furnish their declarations, to it, to that effect. The form of the notice required to be furnished by such advocates too shall be published, in the newspapers, in the same manner, as was done, when the notification was published on 5-3-2009. The publication shall be done within two weeks. In such event, the period of 150 days mentioned in Rule 4(1) shall be reckoned from 5-3-2009.

(4) The further steps to finalize the electoral rolls, and hold elections to the Bar Council of Delhi, shall be done, in accordance with law and the Bar Council Rules; for this purpose, the BCD should ensure that copies of the rolls, prepared under Rule 4(1) are placed on its web site, and also made available for facility of all members, with all bar associations.

26. The writ petition is partly allowed, in the above terms. There shall be, however, no order as to costs.

April 21, 2009

(S.RAVINDRA BHAT)

JUDGE