

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

% **Date of Decision: April 30, 2009**
+ **L. P. A. No. 187/2009 & CM Nos. 5944-46/2009**

BAR COUNCIL OF DELHI & ANOTHER

.....Appellants
Through: Mr.V.P. Singh and Mr.Sanjay
Jain, Sr. Advocates with
Mr.Jayant Tripathi, Advocate

versus

SURENDER PAL SINGH CHAUHAN & OTHERS

..... Respondents
Through: Mr. R.K. Sharma and Mr.Rajiv
Khosla, Advocates for
respondents No.1 and 2.
Mr.Sanjeev Sachdeva, Advocate
for respondent No.3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE NEERAJ KISHAN KAUL

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

AJIT PRAKASH SHAH, CHIEF JUSTICE (ORAL) :-

The present appeal is preferred by the Bar Council of Delhi (BCD) against the order dated 21.04.2009 passed by S. Ravindra Bhat, J. in Writ Petition No. 7444 of 2009 filed by respondent Nos. 1 and 2. Respondents No. 1 and 2 are practicing advocates and their names appear on State Bar Council roll of Advocates. In the writ petition they impugned the notification issued by the BCD dated 27.1.2009 (published on 5.3.2009) requiring all the advocates to file declarations in the form prescribed by the BCD failing which they shall not be included in the Electoral Roll under preparation.

2.It was *inter alia* averred in the writ petition that such declaration

cannot be insisted upon, in view of the clear mandate of Rule 3 of the Bar Council of India (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. Reliance was placed on the decision reported in **Bar Council of Delhi and others vs. Surjeet Singh and others**, (1980) 4 SCC 211 to contend 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). It was contended that 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. A contention was also raised that the notification which was issued by BCD on 27.1.2009, but was published on 5.3.2009 did not comply with the 150 days mandatory period, in terms of Rule 4 (a) of the Rules framed by the BCI. It was alleged that even before the publication of the impugned notice, the incumbent office bearers of the BCD has 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 was 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.

3. Though the writ petition was mainly and vigorously contested by the BCD, the BCI maintained that the impugned notification requiring Advocates to furnish declaration, is contrary to the BCI 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 was stated that after the decision in **Bar Council of Delhi and others vs. Surjeet Singh and others** (supra), the BCI had introduced a similar requirement, which remained in place for almost a decade, after which it was discarded in 1991. The BCD, therefore, could not have brought about a similar requirement, or a precondition for elector's exercising their franchise in its elections, without prior permission of the BCI, under Section 15 (3). Therefore, the impugned action of BCD is without statutory mandate, as rule making under Section 49 is the prerogative of the BCI.

4.Learned single Judge has taken the view:

“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.

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.”

5.Learned single Judge consequently declared that there is no obligation on all advocates to furnish declaration about the matters mentioned in Rule 2 of the BCI Rules; the obligation is only upon those who are subjected to the disqualifications mentioned in the Rule. Accordingly, BCD was 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 BCD was further directed to take steps to finalize the electoral rolls, and hold elections to the Council in accordance with law and the BCI Rules.

6.On behalf of the appellant/BCD, it was submitted by Mr. V. P. Singh, learned Senior Counsel that Surjeet Singh’s case was in the context of a Rule introduced by the BCD requiring individual

Advocates to furnish declarations. He submitted that the judgment nowhere indicates that the Court held that such declaration could not be obtained. Elaborating this, it was submitted that BCD has formulated the declaration form, exactly as per the requirement of BCI Rules which, in turn, have been framed to meet the statutory requirements of Section 3(4) of the Advocates Act. Learned senior counsel submitted that Rule 2 contains as many as nine eventualities of incurring disqualification for the purpose of voting in a State Bar Council election within the meaning of Section 3(4) of the Advocates Act. Except those provided in clauses (a), (b), (g) and (h) and partially, to some extent, (i), a State Bar Council has no means to be aware of such disqualifications. According to him the rational behind the declaration form can be gathered not by reading any particular Rule in isolation but needs to be gathered from the conjoint reading of Section 3(4) of the Advocates Act and the BCI Rules. Learned senior counsel further submitted that the requirement of furnishing the declaration form is a positive requirement and each Advocate is obligated to comply with the same within the framework of Rule 4(1) read with Rules 2 and 3. Learned senior counsel submitted that the previous history of the rule, or that the Supreme Court has 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. It is implicit that the Advocates failing to furnish the declaration as per Rule 4 would be disentitled from exercising their right to vote.

7.Mr. Rajiv Khosla appearing for respondent no. 1 & 2 and Mr. Sanjeev Sachdeva appearing for BCI countered all the submissions

urged on behalf of the appellants and supported the judgment of the learned single Judge.

8. We find no substance in any of the submissions urged on behalf of the appellants. We are in agreement with the decision of the learned single Judge. We proceed to briefly state our reasons for the same.

9. Section 3 of Advocates Act provides for the Constitution of the State Bar Council, Sub-section (4) of which says :-

(4) 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 such 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.

10. A plain reading of this sub-section makes it clear that the qualifications and conditions entitling an advocate to vote at an election for being chosen as a member of the State Bar Council has to be prescribed by the Bar Council of India. The State Bar Council has no such power. Further Sub-section (3) of Section 15 clearly provides that 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. In the present case, the procedure prescribed by the State Bar Council is not approved by the BCI.

11. We may also refer to the relevant rules occurring in Chapter I of Part III of the Bar Council of India Rules. Rule 1 says:

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

Rule 2 lays down situations in which the name of an Advocate appearing in the State Roll shall not be entered in the electoral roll and which runs thus:

“2. The name of an advocate appearing in the state roll shall not be on 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) 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.”

Rule 3 provides:

“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.”

Rule 4 then provides:

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.”

Rule 5 provides for preparation of final electoral roll after incorporating such changes as may be necessary including addition of the names of the Advocates enrolled after the preparation of the preliminary roll and putting up the same 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. Rule 6 speaks of revision of electoral roll and Rule 8 says that 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.

Form of notice under Rule 4 is as follows:

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 (g) 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.

.....

....

(emphasis supplied)

.....

12. In Surjeet Singh’s case validity of a proviso added to Rule 3(j) of the Bar Council of Delhi Election Rules, 1968 was considered by the Supreme Court. The proviso added to Rule 3(j) provided that on failure to file a declaration or on filing of incomplete or incorrect declaration in any respect, it shall be presumed that name of such Advocate is not to be entered on the Electoral Roll in accordance with Rule 3 of Chapter I of Part III of the BCI Rules. In accordance with that proviso copy of the declaration form was sent to the Advocates whose names found place in the State Roll of Advocates asking them to return the declaration form duly filled up and signed within the specified period. The Electoral Roll was finally published excluding the names of about 2000 Advocates, who had failed to submit such declaration forms. The writ petition challenging the whole election by attacking the validity of the proviso to Rule 3(j) was allowed by the Delhi High Court. Affirming that judgment, the Supreme Court held as follows:

“7. Section 24 of the Advocates Act provides for persons who may be admitted as advocates on a State roll. Clause (a) of sub-section (1) says that the person must fulfil such other conditions as may be specified in the rules made by the State Bar Council under Chapter III of the Act which concerns the

admission and enrolment of advocates. Under the Rules so framed a person desirous of being enrolled as an advocate has to apply in the prescribed form furnishing all the details of his qualifications to be enrolled as an advocate. In item 3 of the application the applicant declares-"I declare that upon admission I propose to practise within the State of Delhi." At the end of the application form certain undertakings are given by the applicant. Clause (c) of the undertaking runs thus:-

I hereby declare and undertake that-

* * *

(iv) I intend to practise ordinarily and regularly within the jurisdiction of the Bar Council of Delhi.

(v) I shall inform the Bar Council of any change of address of my residence or place of practice for the proper maintenances of the roll and voters' list.

According to the case of the Delhi Bar Council many advocates after having been enrolled and put on the State roll of advocates of Delhi break the said undertaking. They do not ordinarily and regularly practise within the jurisdiction of the Bar Council of Delhi nor do they inform any change of address for the proper maintenance of the roll and the voters' list. It is a pertinent matter no doubt. It is the duty of the Bar Council to obtain information as to whether any person put on the roll of State advocates ceased ordinarily and regularly to practise within the jurisdiction of the Bar Council of Delhi; if so, to, take steps for removal of his name from the State rolls. That would automatically, as we shall presently show, debar the person concerned to be put on the electoral roll. But no provision in the Advocates Act or any rule was brought to our notice enabling the Delhi Bar Council to remove the name of a person from State roll if he has broken the undertaking aforesaid. Section 26-A of the Advocates Act merely says – "A State Bar Council may remove from the State roll the name of any advocate who is dead or from whom a request has been received to that effect". In para 2 of the affidavit of Shri D. Gupta, Advocate it is stated:-

It is the experience of this Council that most of the advocate who are elevated to the Bench or those who join subordinate judiciary or family or other business or employment, seldom care to notify this Council to get their licence revoked or suspended, nor do the advocates shifting their place of practice from Delhi to elsewhere, care to notify this Council in that respect,

although the undertaking at internal page 8 of the Enrolment form of this Council oblige them to do so.

It may be so but the lacunae in this regard have got to be removed by amending the Advocates Act or by properly framing the rules in that respect. We are definitely of the opinion that so long the existing rules framed by the Bar Council of India remained in vogue all persons whose names are on the State roll are entitled proprio vigore to be put on electoral roll. Rule 1 occurring in Chapter I of Part III of the Bar Council of India Rules says :-

Every advocate whose name is on the Electoral Roll of the State Council shall be entitled to vote at an election.

Rule 3 provides :-

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.

Exceptions to Rule 2 are to be found embodied in Rule 3 which runs thus :-

The name of an advocate appearing in the State Roll shall not be entered in the Electoral Roll, if on information obtained by the State Council:

- (a) his name has at any time been removed;
- (b) he has been suspended from practice, provided that this 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 fulltime 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 of the Council;

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

None of the clauses in Rule 3 covers a clause of the kind found in the proviso to Rule 3(j) of the Delhi Bar Council Election Rules. Rule 3 of Delhi Bar Council Election Rules is headed 'Interpretation'. Clause (j) of the said Rules says :-

"Electoral Roll" means and includes the roll containing the names of the advocates prepared in accordance with the rules of the Bar Council of India in Part III, Chapter I.

The impugned proviso added to Clause (j) in the year 1978 runs thus: -

Provided that the Electoral Roll shall not include the name of such advocate who fails to file in the office of the Bar Council, on or before such date (not being earlier than 30 days of the date of notification) as may be notified by the Bar Council in such manner as may be considered proper by it from time to time, or within 45 days of the putting up of the preliminary Electoral Roll Under Rule 4(1) of Chapter I of Part III of the Bar Council of India Rules, a declaration containing the name, address and number of the advocate on the State Roll and to the effect that:-

(a) He is an advocate ordinarily practising in the Union Territory of Delhi and that his principal place of practice is within Union Territory of Delhi;

(b) He is not an undischarged insolvent;

(c) He has never been convicted by any court for an offence involving moral turpitude;

or

A period of two years has elapsed since his release after being convicted of an offence involving moral turpitude;

(In case of conviction particulars of such conviction should be given)

(d) He is not in full-time service or business or in any such part-time business or other vocation as is not permitted in the case of practising advocates by the rules of the Bar Council; and

(e) He has not been suspended from practice;

and on the failure to file the declaration or on filing of incomplete or incorrect declaration in any respect, it shall be presumed that the name of such advocate is not to be entered on the Electoral Roll in accordance with Rule 3 of Chapter I of Part III of the Bar Council of India Rules.

In these appeals we are not concerned with the propriety or legality of asking such a declaration from a person belonging to the noble profession. We shall proceed on the assumption, that such an information could be asked for from a person concerned whose name is on the State roll of Advocates. On the furnishing of such information the name of the advocate concerned could not be included in the electoral roll only if on the basis of that information one or more clauses of Rule 3 of the Bar Council of India Rules to be found in Part III, Chapter I could come into play, not otherwise. In these appeals, we are not concerned with any such case. The controversy here centers round the fact that under the impugned proviso mere failure to file the required declaration disqualified the advocate concerned from being put on the electoral roll thus depriving him of his right to vote or to stand as a candidate. The crux of the matter in these appeals is as to whether such a proviso was valid or ultra vires.

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 such 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."

(emphasis supplied)

13. After Surjeet Singh's case, the Bar Council of India introduced a similar rule in clause 5 of BCI Rules. The rules of the Bar Council of India as on 06.09.1980 specifically provided as under:

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 herein above, his name shall not be included in the Electoral Roll and he shall not be entitled to take part in the election in question.

14. The Form of notice under rule 4 as prescribed by BCI also contained the following:

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.

15. As on 1980 when the above disqualification was prescribed the requirement of rule 2 was that notice had to be sent to all advocates at their respective addresses in ordinary post with certificate of posting. With effect from 01.01.1991 the rule disqualifying the advocate from right to vote on failure to file declaration was specifically deleted and also the provision requiring the sending of individual notices was deleted from the rules. The note in the notice was also deleted.

16. The above amendments in the rules as made w.e.f. 01.01.1991 clearly shows that the intention of the BCI is not to make the failure to file declaration as a disqualification. Thus, the notification issued by the Bar Council of Delhi making the failure to file declaration as a disqualification is contrary to the rules of Bar Council of India. It is also noticed that the declaration form prescribed by BCD is contrary to

the form which has been prescribed by BCI. In the form prescribed by the BCI the particulars as to the disqualification(s) has to be furnished by an Advocate who has incurred them and not by all Advocates whereas the impugned notification prescribes that the last date for acceptance of the declaration is 16th March, 2009, failing which the name of the Advocate shall not be included in the Electoral Roll under preparation. It is not permissible for the State Council to frame rules or prescribe form which is contrary to the form prescribed by the BCI. Thus, the impugned notification and the declaration form cannot have any effect being in contradiction to the provisions of Section 15(3) of the Advocates Act.

17. We are in agreement with the learned single Judge that the impugned notice and declaration form are in contravention to the provisions of Section 15 (3) of the Advocates Act. Therefore, there is no warrant to interfere with the order of learned single Judge. Accordingly, the appeal is dismissed. All the pending applications are disposed of accordingly.

CHIEF JUSTICE

NEERAJ KISHAN KAUL, J

APRIL 30, 2009
rb/nm