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

Date of decision: 17th July, 2018

+ **LPA 366/2018 & CM Nos.27475-76/2018**

PRATAP MEHTA

..... Appellant

Through: Mr. J.P. Sengh, Senior
Advocate with Mr. Sunil Dalal,
Ms. Garima Goel & Mr. Rajiv
Singh, Advocates

versus

STATE BAR COUNCIL OF MADHYA

PRADESH & ORS

..... Respondents

Through: Mr. Vikas Upadhyaya,
Advocate for the State of M.P.

WITH

+ **LPA 372/2018 & CM Nos.27693-94/2018**

BAR COUNCIL OF INDIA & ANR

..... Appellants

Through: Mr. Preet Pal Singh, Advocate

versus

STATE BAR COUNCIL OF MP & ORS

..... Respondents

Through: Mr. Vikas Upadhyaya,
Advocate for the State of M.P.

WITH

+ **LPA 371/2018 & CM Nos.27691-92/2018**

BAR COUNCIL OF INDIA & ANR

..... Appellants

Through: Mr. Preet Pal Singh, Advocate

versus

SUNIL GUPTA & ORS

..... Respondents

Through

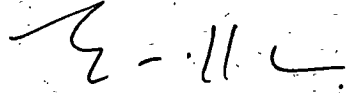
CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

For detailed order, see judgment passed in LPA
365/2018.


SANJIV KHANNA, J


CHANDER SHEKHAR, J

JULY 17, 2018

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\$~53 to 56

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

Date of decision: 17th July, 2018

+ **LPA 365/2018, CAV No.620/2018 & CM Nos.27472-73/2018**

PRATAP MEHTA Appellant

Through: Mr. J.P. Sengh, Senior
Advocate with Mr. Sunil Dalal,
Ms. Garima Goel & Mr. Rajiv
Singh, Advocates

versus

SUNIL GUPTA & ORS Respondents

Through: Mr. Bhardwaj S. Iyengar & Mr.
Nitin Gaur, Advocates

WITH

+ **LPA 366/2018 & CM Nos.27475-76/2018**

PRATAP MEHTA Appellant

Through: Mr. J.P. Sengh, Senior
Advocate with Mr. Sunil Dalal,
Ms. Garima Goel & Mr. Rajiv
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versus

STATE BAR COUNCIL OF MADHYA

PRADESH & ORS Respondents

Through: Mr. Vikas Upadhyaya,
Advocate for the State of M.P.

WITH

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BAR COUNCIL OF INDIA & ANR Appellants

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versus
STATE BAR COUNCIL OF MP & ORS Respondents
Through: Mr. Vikas Upadhyaya,
Advocate for the State of M.P.

WITH

+ LPA 371/2018 & CM Nos.27691-92/2018

BAR COUNCIL OF INDIA & ANR Appellants
Through: Mr. Preet Pal Singh, Advocate
versus
SUNIL GUPTA & ORS Respondents
Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

1. Aforestated Letters Patent Appeals under Chapter-X of the Letters Patent Act impugn common judgment dated 6th July, 2018 by the learned Single Judge in W.P.(C) No.2142/2016, *State Bar Council of M.P. v. Bar Council of India & Ors.* and W.P.(C) No.2215/2016, *Sunil Gupta v. Bar Council of India & Ors.*
2. Present *lis* is an unfortunate litigation regarding election of the representative of the State Bar Council of Madhya Pradesh ('SBCMP') to the Bar Council of India ('BCI'). SBCMP and BCI are pitted and opposing each other on the question who should represent SBCMP before the BCI.

3. It is undisputed that Mr. Rameshwar Nikhra was elected as the Chairman in the General Body Meeting ('GBM') of SBCMP held on 29th June, 2014 at Jabalpur. As per recorded minutes of the GBM of SBCMP held on 29th June, 2014, the meeting had recommenced after an adjournment/suspension consequent to the election of the Chairman, and thereupon, Vice-Chairman, Treasurer and members of various committees including SBCMP representative to BCI were elected. Minutes state that Mr. Sunil Gupta, petitioner in W.P.(C) No.2215/2016 before the Single Judge, was elected to represent SBCMP at the BCI.

4. On 29th June, 2014 itself, nine members of SBCMP had written a letter addressed to the Chairman of SBCMP, stating that post election to the post of Chairman, the GBM was adjourned. There was no information about recommencement of GBM till 2 pm and no meeting took place in the meeting hall thereafter. The Chairman was requested to conduct remaining elections by holding "adjourned meeting" of GBM.

5. Subsequently, two letters both dated 13th July, 2014 were written to the officiating secretary of the SBCMP. First letter signed by thirteen members was under Rule 122-A of the M.P. State Bar Council Rules to call for a special meeting within 21 days to consider no-confidence motion against the Chairman as after election of the Chairman on 29th June, 2014, GBM of the SBCMP was adjourned and had not been called in spite of the letter by 9 members dated 29th June, 2014. Second letter had

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asserted that upon election of the Chairman, election for other posts including BCI representative was adjourned. Nine members had written letter dated 29th June, 2014 at 2.20 P.M. that elections for the remaining posts be conducted. It was regrettable that meeting was not called for holding elections. Officiating secretary was requested to call for a meeting within 21 days on receipt of the letter for conducting election for the remaining posts.

6. In view the letters dated 29th June, 2014 and 14th July, 2014 (letters dated 13th July, 2014 were received by SBCMP on 14th July, 2014), emails from two members and another letter by one member disputing election process of Vice Chairman, Treasurer and various committees in representative to the BCI, Officiating secretary vide notice dated 16th July, 2014 had convened and informed members that a special GBM of the SBCMP was scheduled on 2nd August, 2014. As this notice is of some relevance, we reproduce the same in entirety including the portion with the signature of the officiating Secretary enclosing the letters dated 29th June, 2014, 14th July, 2014, 15th July, 2014 and 16th July, 2014. Notice dated 16th July, 2014 reads:-

Sir/Ma'am,

The Special Meeting of the General Body of the State Bar Council of Madhya Pradesh will be organized on 02nd August, 2014 Day-Saturday, in conference hall of council office at 11:00 am in which the signed letter by 9 Hon'ble Member of the council dated 29.01.2014 and two letters dated 14.07.2014 signed by Hon'ble Members received on 14.07.2014

and two e-mails signed by two Hon'ble Members by them two letters were received dated 15.07.2014 and two letters signed by one Hon'ble Member was received on 16.07.2014 in which by one letter request was made to call the meeting for election on the post of Vice President, Treasurer of the council, for representative to Bar council of India and with it for various committees and in the second letter under rule 122A of the council, against the Chairman no confidence proposal was presented. In the special meeting both the above two letters have to be decided. It is requested that all of you shall attend the meeting (Annexure page 1 to 7)

For the convenience of the Hon'ble Members Rule 122-A of the Council is as follows:-

122-A The Chairman, Vice Chairman or the Treasurer of the Council could be removed by a vote of no confidence passed by majority of the members, present and voting in a meeting of the council especially called for the purpose, provided that at least 7 members of the Council have signed the requisition for holding such a special meeting, and such meeting shall be called within a period of 21 days from the date of receipt of the requisition by the Secretary."

Sd/-

(MUKESH MISHRA)
Officiating Secretary

Annexure - Letter dated 29.06.2014, 14.07.2014, 15.07.2014 and 16.07.2014 from the Hon'ble members.

(Emphasis supplied)

7. Subsequent notice by the officiating secretary dated 19th

July, 2014, amending the earlier notice dated 16th July, 2014, reads as under:-

"Sir/Ma'am,

The Special Meeting of the General Body of the State Bar Council of Madhya Pradesh is scheduled for 2nd August, 2014, Day-Saturday, in the Meeting Room of the Council's Office at 11:00 O'Clock in the Morning, in which the letter dated 29/06/2014 signed by 9 Hon'ble Members of the Council, two letters dated 13/-7/2-14 received on 14/07/2014 signed by 11 Hon'ble Member and Two letters signed by 2 Hon'ble Members received by e-mail dated 15/07/2014 and two letters signed by 1 Hon'ble Member received on 16/07/2014 in which vide one letter the prayer has been made to call for the meeting for election of the Vice-Chairman of Council, Treasurer, election of various committees along with the representative to the Bar Council of India and vide the second letter the no-confidence motion has been presented against the Chairman of the Council under Rule -122-A of the rules of the Council. In the special meeting both the aforesaid letters are to be decided. You all are requested to be present in the Meeting. [Enclosure-Page 1 to 7]

For the convenience of the Hon'ble Members Rule 122-A of the Council is as under:-

"122-A The Chairman, Vice Chairman or the Treasurer of the Council could be removed by a vote of no confidence passed by majority of the members, present and voting in a meeting of the council especially called for the purpose, provided that at least 7 members of the Council have signed the requisition for holding such a special meeting, and such meeting shall be called within a period of 21 days from the date of receipt of the requisition by the

Secretary."

Sd/-

(MUKESH MISHRA)
Officiating Secretary

NOTE- The letters received from the Hon'ble Members in relation to the Special Meeting has already been sent alongwith the letter dated 16/07/2014/.

(Emphasis supplied)

8. Thereafter, special GBM of the SBCMP was held on 2nd August, 2014. Minutes of this meeting read as under:-

"MINUTES OF MEETING

Today on 02/08/2014, the special meeting of State Bar Council has been held on the meeting Hall of Council under the chairmanship of Shri Rameshwar Neekhra. He has thanked all the members for his election as the chairman.

The Chairman of the council Hon'ble Rameshwar Neekhra declined to preside over the meeting of general body, but the majority of Hon'ble members by giving a reference to rule 2,3,4,5 and 6 of the rules of Council has said that the special meeting has to be presided over by the chairman of Council.

Thus, on the request of members the special meeting was started and it has been presided over by Shri Rameshwar Neekhra, the Chairman of Council.

Hon'ble Member Shri Ashok Shukla has produced a letter of 14 members in the special meeting withdrawing the no-confidence motion against the chairman. Thus, the no-confidence

motion submitted is not being considered.

In the meantime, Member Shri Dinesh Narayan Pathak has produced resignations of some of the honourable members but Hon'ble Member Shri Sunil Gupta has not tendered his resignation. In the meantime, honourable member Shri Ashok Shukla has requested that no election has been conducted as per law. It has been supported by 14 other members present in the meeting. Thus, considering the decision of the majority the chairman has passed following order.

DECISION-

The consideration has been made upon a letter presented by nine Hon'ble members at 2:20 o'clock in the Council and along with that the signed letter by 14 members. On 29/06/2014 after the election of Hon'ble Chairman, the general body meeting had been post-phone and honourable members had gone to the places of their residence, they did not get any information later. This fact has been mentioned by all 12 members during the meeting. In these circumstance, the Chairman has held that the election has not been conducted as per law, therefore all the proceedings on 29/06/2014, except of the election of Chairman, the election for Vice Chairman, Treasurer, representative member of BCI and the election of all the committees, that is void because of the majority of members and law and the same may be deleted from the earlier minute books. Hon'ble Member Shri Manish Dutt, Vivek Singh and some other members whose names are illegible, have submitted their resignations. Since, this has been held that no election process as per law has taken place therefore the resignations submitted may be kept on record.

In these circumstances, the request has been made to Hon'ble Chairman by the Hon'ble members

that the meeting may be adjourned for further proceedings and the meeting may be adjourned for further proceedings and the meeting will start again at 12:30 o'clock. The information with regard to the same be given to all the members and request be made to all the members to be present in the meeting at 12:30 o'clock.

The meeting has started again at 12:30 o'clock in presence of all the members and all the aforesaid members appeared and have participated in the meeting. At the start of meeting Hon'ble Members Shri Mrigendra Singh, Dinesh Narayan Pathak have given a written as well as oral objections with regard to legality of the election. Since, it has been held earlier therefore there is no necessary to pass order again. Election process has been started.

RESOLUTION NO. – 3/ G.B./2014

REGARDING THE ELECTION OF REPRESENTATIVE OF COUNCIL FOR THE BAR COUNCIL OF INDIA:-

The Secretary of the counsel has requested the honourable members to propose a name for the representation of Madhya Pradesh State Bar Council before the Bar Council of India. Hon'ble Member Shri Vijay Kumar Choudhary has proposed the name of Hon'ble Member Shri Pratap Mehta which has been supported by Hon'ble Member Shri Shivendra Upadhyay and with the majority of 14 members and in absence of any other name being proposed, Hon'ble member Shri Pratap Mehta has been elected as a representative member of Bar Council of India."

The aforesaid minutes reveal that a member produced a letter signed by 14 members withdrawing the no-confidence

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motion against the Chairman. Accordingly, the no-confidence motion against the Chairman was not considered. Another member had produced resignation letters of members from their posts as per the election held on 29th June, 2014. However, Mr. Sunil Gupta had not tendered his resignation. Minutes record that another member had stated that elections had not been conducted as per law, which version was supported by 14 other members. In view of the decision of the majority, it was directed that except for the post of the Chairperson, elections for other posts had not been conducted as per law in the meeting/proceedings held on 29th June, 2014. Election of the Vice Chairman, Treasurer, representative members of the BCI and other Committees was declared void. Accordingly, minutes of the GBM on 29th June, 2014 regarding the elections should be deleted. Special GBM was thereupon suspended to reconvene at 12:30 p.m. Some members post 12.30 p.m. had made written as well as oral objections regarding legality of the elections. In view of the earlier deliberation on elections, the minutes record that there was no necessity to pass an order again. Thereupon, the election process was started. Mr. Pratap Mehta, appellant before us in LPA No. 365/2018, was elected as representative member of SBCMP to the BCI.

9. In the same meeting election of the Vice Chairperson, Treasurer and members of various committees was held. We are not concerned or required to comment and pronounce any verdict and decision on elections to the said posts. As noticed

above, members "elected" to these post on 29th June, 2014 had resigned. We are concerned with the election of SBCMP representative to BCI.

10. Gazette Notification regarding election of Mr. Pratap Mehta as SBCMP's representative to the BCI was published on 15th August, 2014 and intimation was sent to the BCI.

11. In the meanwhile, Mr. Sunil Gupta had preferred election petition No. 01/2014 before the BCI, asserting his right as an elected member of SBCMP to represent them in BCI and questioning election of Mr. Pratap Mehta in the special GBM held on 2nd August, 2014. While the election petition was pending, in the GBM of SBCMP held on 7th February, 2015, seventeen members present vide Resolution No. 19/GB/2015 had unanimously resolved that election was held on 29th June, 2014, as per the prescribed agenda issued by the Secretary of the SBCMP, and Mr. Sunil Gupta was elected as representative to the BCI. Resolution had recoded that Sunil Gupta had taken charge thereof and started discharging the duties and had not resigned from the post till date. Resolution passed was to show confidence in Mr. Sunil Gupta. It was resolved to recommend to the BCI that Mr. Sunil Gupta was the elected representative of SBCMP. The resolution declared as void, resolution dated 2nd August, 2014 by which Mr. Pratap Mehta had been elected as the representative to BCI.

12. Consequently, Mr. Sunil Gupta preferred an application before the BCI dated 11th February, 2015, seeking liberty to

withdraw election petition No. 1/2014 as it has become infructuous in view of resolution dated 7th February, 2015 confirming his election as the representative to the BCI.

13. On 21st November, 2015, BCI constituted a sub-committee to consider the issues raised by Mr. Sunil Gupta. Sub-committee vide its report dated 4th December, 2015 concluded that minutes of the GBM dated 29th June, 2014 regarding election of representative to BCI and constitution of different committees of the SBCMP were bad in law and could not be relied upon. There was nothing on record to show the communication of the election result to the BCI as per rules. Election result had not been published in the State Gazette. Sub-committee also examined the legality of the election held on 2nd August, 2014 and had observed:-

"18. In this agenda, it is specifically mentioned that the meeting is being convened in order to find a solution to the demands made in the aforesaid letters and for holding meeting for election of Vice-Chairman, Treasurer and Member-State Bar Council of India and constitution of different Committees of the State Bar Council. The copies of the aforesaid letters were also annexed with this agenda as pages 1 to 7. Further no confidence motion as against the Chairman under Rule 122A of the State Bar Council of Madhya Pradesh Rules, was fixed for consideration.

19. This notice was addressed to all the member of the State Bar Council who in response thereto attended special meeting of the State Bar Council

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held on 2.8.2014 this meeting was attended by all the 25 members.

20. Vide the aforesaid letter/representation dated 29.6.2014 moved by 9 Members of the State Bar Council, a request was made that the meeting of the State Bar Council which was adjourned on 29.6.2014 may be reconvened so that the untransacted business of the agenda for 29.6.2014 i.e. holding of election of Member-Bar Council of India and filling up of other posts offices/committees is transacted. The other letters dated 13.7.2014 and email also contain a special request that the meeting which was adjourned on 29.6.2014 after the election of Chairman State Bar Council may be convened. In addition to it, agenda contained consideration of the no confidence motion as against the Chairman, State Bar Council.

21. If aforesaid agenda dated 19.7.2014 and annexures No.1 to 7 are read as a whole harmoniously, it becomes clear that the meeting of 2.8.2014 was in continuation of the meeting held on 29.6.2014 in order to dispose of and transact the untransacted business which was fixed for 29.6.2014. In this respect representation of 9 Member dated 29.6.2014 is very specific and clear.

22. In this view of the matter no exception can be taken to the legality of the meeting held on 2.8.201 on the ground that sufficient notice of the election of Member-Bar Council of India was not given the Members.

23. In our considered view the aforesaid notice dated 19.7.2014 is sufficient notice for holding of election to the office of Member-Bar Council of India held on 2.8.2014 was duly published in the

State gazette.

24. In the light of the above discussion we are of the considered view that the election petition filed by Mr. Sunil Gupta is without merits and deserves to be rejected under rule 10(1) of the relevant rules as it does not disclose any prima-facie case and there is no need for determination of this dispute on merits under Rule 10(2) of the Rules."

Accordingly, the sub-committee held that the special GBM on 2nd August, 2014 was in continuation of the GBM held on 29th June, 2014. Special GBM on 2nd August, 2014 had disposed of business fixed for 29th June, 2014. Reference was made to the representation of nine members dated 29th June, 2014.

14. BCI thereafter vide resolution no. 291/2015 dated 5th December, 2015 disposed of the Election Petition No. 1/2014 simply recording that the sub-committee report had detailed the reasons and there was no merit in the election cases against Mr. Pratap Mehta. No other reason and ground was stated.

15. The aforesaid resolution dated 5th December, 2015 was challenged by the SBCMP and Mr. Sunil Gupta in Writ Petition (C) Nos. 2142/2016 and 2215/2016, which have been decided by the impugned judgment dated 6th July, 2018.

16. Plea and contention that Mr. Sunil Gupta was elected as the representative member of SBCMP to the BCI on 29th June, 2014, was not accepted. We need not dwell on the said finding, as we are concerned with the second finding that, election of

Mr. Pratap Mehta for the same post on 2nd August, 2014 was unsustainable and contrary to the rules/law. On election of Mr. Pratap Mehta, impugned judgment holds:-

"38. Having come to the conclusion that it is not possible to hold that the Respondent No. 3's election to the Concerned Post on 29.06.2014 was valid, I may now examine the question as to whether the Respondent No. 4's alleged election to the Concerned Post on 02.08.2014, was valid. In this regard, it needs to be kept in mind that before the Respondent No. 4 could be elected, it was incumbent upon the Petitioner to follow the entire process set down in the BCI Rules, more particularly, the procedure as prescribed under Rules 2, 7 and 8 of the BCI Rules. Rule 7 makes it clear that before any proposal for electing the Respondent No. 4 could even be considered in the meeting held on 02.08.2014, an agenda for the same had to be necessarily circulated at least 15 days before the proposed elections. However, it is interesting to note that it has neither been averred on behalf of the Respondent No. 4 nor anything has been placed on record to show that any agenda for holding fresh elections for the Concerned Post had ever been circulated before the meeting held on 02.08.2014, and the only agenda circulated for holding the said meeting was for considering the letters dated 29.06.2014 and 13.07.2014 sent by some members, which letters admittedly did not even refer to holding of any elections.

39. Thus, what emerges from the record is that the meeting dated 02.08.2014 was held only to consider the letters dated 29.06.2014 and 13.07.2014 written by certain members of the Petitioner/SBCMP, alleging therein that after the election of Petitioner's Chairman on 29.06.2014, no valid election to any

other posts or committees of the Petitioner could have taken place. Therefore, in my considered opinion, in the special meeting held on 02.08.2014, the only decision which could have been taken was regarding the validity of the election of the Respondent No. 3 to the Concerned Post on 29.06.2014. In view of the categorical mandatory provisions of the BCI Rules requiring an agenda for the election proposed to be conducted in any meeting to be circulated at least 15 days prior to the said meeting, which was admittedly not circulated for conducting the Respondent No. 4's alleged election on 02.08.2014, the Respondent No. 4's election in the said meeting cannot be held to be valid."

17. In view of the findings, learned Single Judge did not examine the contention of Mr. Sunil Gupta that elections conducted on 29th June, 2014 could not be reconsidered before a period of three months with less than a 2/3rd majority. Second contention that election to the post of representative to the BCI could not have been considered on 2nd August, 2014 without Mr. Sunil Gupta's elections being set aside or his removal from the post, was also not considered. This is clear from the following observations and findings recorded by the learned Single Judge:-

"40. Having come to the conclusion that the alleged election of the Respondent No. 4 on 02.08.2014 is in itself unsustainable, I do not deem it necessary to deal with Mr. Upadhyay's contention that the Respondent No. 3's election to the Concerned Post, having been conducted in the meeting held on 29.06.2014, could not have been reconsidered

before a period of three months with less than a 2/3 majority of the members of the State Bar Council. It is for the same reason that I also do not deem it necessary to deal with the contention of Mr. Kirti Uppal that the Respondent No. 4 can be removed as a member of Respondent No. 1 only by passing a No-Confidence Motion against him or in the alternative only in situations where he no longer remains a member of State Bar Council of Madhya Pradesh. Once the Respondent No. 4's very election on 02.08.2014 is found to be invalid, he cannot be permitted to continue as a representative member of the Petitioner in the Respondent No. 1/BCI, as a consequence whereof Respondent No. 1's Impugned Order dated 05.12.2015 upholding the election of Respondent No. 4 is also unsustainable and is liable to be quashed.

41. In light of the fact that the elections of both Respondents No. 3 and 4 are invalid, the question which now arises concerns who should hold the post of the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI. Keeping in view the settled legal principle that a Court exercising its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India, can and should mould the relief to be granted to the peculiar facts and circumstances of the case, in my considered opinion the Petitioner cannot be left unrepresented in the Respondent No. 1/BCI and, therefore, this court must issue appropriate directions to ensure the representation of the Petitioner/SBCMP in the Respondent No. 1/BCI."

18. Thereupon, learned Single Judge held that the issue could be best resolved by directing the SBCMP to hold fresh elections for the post of the representative to the BCI. Accordingly, the

following directions have been issued:-

"45. The prayers in the writ petitions, so far as they seek implementation of the Petitioner's Resolutions dated 29.06.2014 and 07.02.2015 electing the Respondent No. 3 as a member representative of Petitioner/SBCMP in the Respondent No. 1/BCI, are rejected. However, the prayer quashing the Respondent No. 1's Impugned Order dated 05.12.2015 is allowed and accordingly the Impugned Order dated 05.12.2015 is quashed and set aside. The Petitioner in W.P.(C) No.2142/2016, i.e., the State Bar Council of Madhya Pradesh is directed to hold within a period of 4 weeks, fresh elections for electing its representative member in the Respondent No. 1/BCI by following the procedure as prescribed in the BCI Rules. Upon the Petitioner communicating the result of the election to be held in terms of the aforesaid directions to the Respondent No. 1/BCI, the said Respondent No. 1 would take consequential steps to include the name of the person elected by the Petitioner/SBCMP as its representative member in the Respondent No. 1/BCI."

19. Mr. Sunil Gupta and SBCMP have accepted the decision and want to proceed with the election. Mr. Pratap Mehta and BCI have filed appeals challenging setting aside of election of Mr. Pratap Mehta as representative of SBCMP to the BCI. It was submitted that elections on 2nd August, 2014 were valid and the impugned order does not notice Rule 1 of the BCI Rules regarding elections of member of Bar council. Reliance was placed on judgment of Madhya Pradesh High Court in W.P.(C) No. 4499/2018, **Rameshwar Neekhra vs. The State Bar**

Council of Madhya Pradesh and others decided on 26th February, 2018.

20. Rule 1 of the BCI Rules reads as under:-

"1. Notice of every meeting of the Council and committees shall ordinarily be sent by the Secretary not less than 15 days before the date of the meeting except when the Chairman requires a meeting to be called on short notice on grounds of urgency. If any five or more members of the Council require in writing, a meeting to be called on short notice of not less than 10 days for consideration of specified matters, the Secretary shall convene the meeting on such date as requisitioned and the agenda for such meeting shall include matters specified by such members. No proceeding shall be invalidated merely on the ground that the rule relating to notice is not strictly complied with."

In our opinion, Rule 1 of the BCI Rules, would apply to every meeting of BCI and its committees. Rule 1 refers to "council", which has been defined in Part I clause (f) of the BCI Rules to mean, the BCI. "State Council" has been defined in Part I clause (J) of the BCI Rules to mean a "Bar Council" constituted under Section 3 of the Advocates Act, 1961. Thus, Rule 1 applies specifically to "council" i.e. BCI and not to the State Councils like SBCMP.

21. We will now refer to Rule 2, 3, 4, 7 and 8 of the BCI Rules which read as under:-

"2. (1) The notice and agenda for the first meeting of the State Council held after the election of its members on the expiry of the term of its members elected at the previous election under Section 8 of

the Act may include the election of a member of the State Council to the Council under Section (1) (c) of the Act. (2) Every such election shall be held not later than 30 days after the first meeting of the State Council after election under Section 8 of the Act.

3. The election of a member of the Council shall be conducted by the Secretary of the State Council who shall act as the Returning Officer.

4. A person elected as a member of the Council under Section 4 (1) (c) of the Act shall cease to be such member : (a) from the date when he ceases to be a member of the State Council as mentioned in Section 4 (3) (ii) of the Act. (b) on the acceptance by the Council of his resignation.

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7. Every notice by the Secretary of the State Council fixing a date for the election of a member to the Council under these rules shall be sent not less than 15 clear days before the date fixed for the election. A copy of the said notice shall be sent simultaneously to the Secretary of the Council.

8. (1) The name of each candidate for the election shall be proposed by one member and seconded by another member of the State Council at the meeting. No member shall propose or second more than one name.

(2) If only one candidate has been duly nominated, the Returning Officer shall declare him elected.

(3) Any nominated candidate can withdraw before the voting takes place.

(4) If the number of candidates duly nominated is more than one, there shall be an election by secret ballot. The Returning Officer shall provide voting papers with the names of the candidates typed. Each voting paper shall bear the signature of the Returning Officer.

(5) A voter in giving his vote shall place in his

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voting paper the mark 'X' against the name of the candidate of his choice. The voting paper shall not be signed by the voter and in the event of any erasures, obliterations or alterations in the voting papers or of the voting paper purporting to have been signed by the voter, the voting paper shall be deemed to have been defaced and the vote purporting to have been given thereby shall not be taken into account for the purposes of the election. Subject to the provisions of Rule 10, the decision of the Returning Officer whether the voting paper has or has not been defaced shall be final. A voting paper shall be invalid on which- 4 (a) the mark 'X' is not made, or

(b) the mark 'X' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply, or

(c) the mark 'X' and any other mark of figures are set opposite the name of the same candidate, or

(d) there is any mark in writing by which the voter can be identified.

(6) The Returning Officer shall count the valid votes immediately after the close of voting in the presence of the candidates or their nominees who may choose to be present.

(7) The candidate securing the largest number of the votes shall be declared elected by the Returning Officer. In the case of two more candidates securing an equal number of votes, the Returning Officer shall decide the election by drawing lots.

(8) Immediately after the declaration of the result, the Returning Officer shall put the ballot papers used for voting in the election in a separate cover, have the cover closed and sealed with his signature and that of all contesting candidates if they desire to do so.

(9) The result of the election shall be communicated

forthwith to the Secretary of the Council and sent to the State Gazette or Gazettes concerned for publication."

Rule 2 states that agenda notice for the first meeting of the State Council held after election of its members shall include the election of member of the State Council to the BCI. Election shall be held not later than 30 days after the first meeting of the State Council after election under Section 8 of the Act. Rule 4 states that a person elected as a member of Council under Section 4 (1) (c) of the Act shall cease to be member from the date when he ceases to be a member of the State Council or on the acceptance of his resignation by the Council (i.e. BCI). Thus, resignation of representative of the State Council to BCI requires acceptance by the BCI. Rule 7 states that every notice of the Secretary of the State Council fixing a date for the election of a member to the Council under the Rules shall be sent in not less than 15 clear days before the date fixed for the election. A copy of the said notice shall be simultaneously sent to the Secretary of the Council i.e. BCI. Rule 8 states that the name of each candidate for the election shall be proposed by one member and seconded by another member of the State Council at the meeting. If only one candidate has been duly nominated, the Returning Officer shall declare him elected. Nominated member/candidate can withdraw before the voting takes place. If more than one member is nominated, elections would be held by secret ballot.

22. It is obvious and the facts noted above hardly require articulation and elucidation to hold that there was complete and absolute non compliance of the statutory BCI Rules, even assuming that SBCMP could have decided on election of Mr.Sunil Gupta. Agenda for the meeting as circulated vide Notice dated 16th July, 2014 as amended agenda vide Notice dated 19th July, 2014 did not postulate and envisage holding of election for representative of SBCMP to BCI. The agenda fixed was to examine and take a decision on letters dated 29th June, 2014 and 13th July, 2014 and other communications, i.e. whether the minutes dated 29th June, 2014 were correct and election was not held. Motion of no-confidence against the Chairman was to be also considered. Agenda did not state and stipulate that elections would be held on 2nd August, 2014. Letters were circulated as enclosures with the Notice to examine and decide on the allegation made therein, and not for conducting and holding of elections on 2nd August, 2014. As per minutes dated 29th June, 2014 elections had been held. We would without hesitation and reservation reject the submission that the agenda fixed was to elect representative to BCI.

23. Reasoning of the sub-committee referring to letters enclosed with the Notice is erroneous and ill-reasoned. It is illusory and fallible. It falls foul and does not refer to the Rules. Letter dated 29th June, 2014 had alleged that elections to different posts other than that of the Chairman were not held on 29th June, 2014 and had requested the Chairman to hold

remaining elections by holding "adjourned meeting". Notices convening the special GBM by the officiating secretary did not accept or even comment and indicate that the request for "remaining elections" at the "adjourned meeting" had been accepted. Notices do not remotely whisper and suggest that "remaining election" would be held. Special GBM was to be held to decide on the correctness of the allegations in the letters. Fate and decision on the agenda was unknown and uncertain when the Notice for special GBM was circulated. It was not possible for the officiating secretary to mention beforehand the fate of the no confidence motion and state that election for posts other than the Chairman was not held on 29th June, 2014. Notice as amended did not state that elections would be held, post a decision accepting the assertions in the letters circulated.

24. As noted earlier, minutes of the GBM held on 2nd August, 2014 state that, the no-confidence motion against the Chairman was withdrawn. Other members except Mr. Sunil Gupta, who were 'elected' on 29th June, 2014 had tendered their resignation. Mr. Sunil Gupta had pressed and insisted that he had been elected as the SBCMP representative for the BCI.

25. BCI submits that it was not informed of Sunil Gupta's 'election' and neither had the election been notified. Further, minutes of the meeting dated 29th June, 2014 are disputed by the BCI. Notification is subsequent to election and not a condition precedent. BCI had not pronounced and decided the election dispute relating to the minutes dated 29th June, 2014 till 5th

December, 2015. This was long after the "election" was held on 2nd August, 2014.

26. "Election" of Mr. Sunil Gupta had not been challenged before BCI. He had not ceased to be a member under Rule 4 of the BCI Rules. Several issues were raised in the appeal preferred by Mr. Sunil Gupta, before BCI. Whether SBCMP, vide a subsequent resolution dated 2nd August, 2014 could have nullified the 'election' of Mr. Sunil Gupta as per minutes of the GBM on 29th June, 2014 without his election being challenged or being set aside by the BCI? What was the report of the Returning Officer for the "election" on 29th June, 2014 and effect thereof? Whether and when "election" would be complete? Whether SBCMP would be permitted to take a u-turn vide resolution dated 7th February, 2015 and the legal effect thereof? Aforesaid substantial questions have not been decided by the BCI. Perfunctory and cryptic order dated 5th December, 2015 passed by the BCI by simply relying on the sub-committee report has not helped. We would also observe that repeated change in position and stand of SBCMP on their representative to BCI is a cause of concern and has contributed to the litigation.

27. At this stage, counsel for the appellants submit that proceedings of SBCMP should not be invalidated on the ground of failure to make strict compliance of the Rules relating to Notice. Reliance is placed on Rule 1A of the State Bar Council of Madhya Pradesh Rules. This, as noted above, is not a case of

absence of strict compliance, albeit a case of complete and absolute non compliance of Rules 2, 7 and 8 of the BCI Rules. Election was held by SBCMP without there being an agenda and in flagrant and unconcealed violation of the BCI Rules. Violations are not technical or procedural lapses and flaws, but substantial, and have the affect of total negation and transgression of the election process, which ensures free, fair and transparent election. Violations are absolute in the sense that they annul and obliterate fairness essential for democratic election. Out and out failure to follow the procedure for election cannot be overlooked. Given the factual context noticed above and given the change in stand of the SBCMP on the question of "election" of the representative to BCI, compliance with the BCI Rules, as recorded in the special SBCMP meeting on 2nd August, 2014, was mandated and required. Compliance would have ensured such disputes do not arise in elections of the State Bar Councils.

28. In *Rameshwar Neekhra (supra)*, a Division Bench of Madhya Pradesh High Court had observed that election to the post of Chairman, post resignation, was unanimous and plea of failure or absence of agenda was raised by a disgruntled minority member. This being a case of resignation, the Division Bench observed Rule 13, Part C, Chapter II of the BCI Rules would not apply. This decision is distinguishable and had examined and answered a different factual matrix and situation.

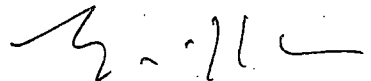
29. Counsel for the appellant had expressed apprehension

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that the respondents are proceeding in haste and hurry to hold elections for representative to the BCI. We have called upon counsel for the respondents, to obtain instructions and ensure that the elections for the posts are held after some gap and not in haste and hurry. Counsel for the respondents had stated that he would obtain instructions and inform the date of elections.

30. In the aforesaid circumstances, we are of the opinion that the finding on the question of "election" of SBCMP representative to BCI and directions passed by the learned Single Judge do not require interference.

31. In view of the aforesaid discussion, we do not find any merit in the present appeals and the same are dismissed. No order as to costs.


SANJIV KHANNA, J


CHANDER SHEKHAR, J

JULY 17, 2018

b/ssn X