

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.6.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.5010 of 2015

Vinifred Bose

... Petitioner

Vs.

1. The Bar Council of Tamil Nadu and Puducherry
rep. by its Chairman
High Court Campus
Chennai 104.
2. D.Amaladhas
3. K.P.Cyril Raj

.... Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records of the first respondent relating to the resolution No.248/2014 dated 07.11.2014 communicated under cover of the letter in ROC.No.201/2015 dated 29.01.2015 and quash the same.

For Petitioner : Mr.R.Subramanian
For Respondent-1 : Mr.S.Y.Masood
For Respondent-3 : Mr.Kingston Gerald

O R D E R

(Made by V.Ramasubramanian,J)

The petitioner, who is a member of the Eraniel Bar, has come up with the above writ petition challenging a resolution passed by the Bar Council of Tamil Nadu and Puducherry, authorising the Chairman to constitute a Committee to conduct the election of Eraniel Bar Association and also to empower the Committee to prepare the voters' list after verifying the affidavits produced by two rival groups.

2. Heard Mr.R.Subramanian, learned counsel for the petitioner, Mr.S.Y.Masood, learned counsel for the first respondent Bar Council and Mr.Kingston Gerald, learned counsel for the third respondent. The second respondent has been served with notice. But, he has not chosen to enter appearance. His name is printed in the cause list. There is no representation for him.

3. The short ground on which the petitioner challenges the impugned resolution is that it is not one of the functions of the Bar Council to supervise or oversee the conduct of the elections to any of the associations. It appears that there was a duly elected body. It also appears that there were allegations of misappropriation. Thereafter, elections were notified in December 2013. One Viagulamuthu, a senior member of the Eraniel Bar was appointed as the Election Officer. He notified the elections to be held on 07.01.2014.

4. Only one set of nominations were received and two persons who filed nominations for the post of President and Secretary withdrew the nominations. Thereafter, the Election Officer declared a set of 10 candidates as having been elected as President, Vice President, Secretary, Joint Secretary, Treasurer, Librarians and 4 Executive Committee Members.

5. But, a paper publication was made on 04.01.2014 by the outgoing office bearers claiming that another set of candidates were elected. This was refuted by the Election Officer.

6. However, the second respondent who claimed to have been elected, addressed letters to the Bar Council contending that there were two rival groups who claimed to have been elected. On the basis of the said letter, the Secretary of the Bar Council directed the respondents 2 and 3 to be present in his office for the conduct of an enquiry regarding the election dispute.

7. While it was pending, the period of office of the duly elected Committee expired on 31.12.2014. Therefore, the General Body seems to have decided to appoint an Advocate by name Xavier Raj as the Election Officer and he notified the elections for the year 2015. The election was conducted on 19.12.2014 and one group of persons got elected.

8. However, the Secretary of the Bar Council sent a communication dated 29.01.2015 to the respondents 2 and 3 notifying that in the meeting held on 07.11.2014, the Bar Council had passed

the resolution to authorise the Chairman to constitute a Committee for the conduct of election to the Eraniel Bar Association. Aggrieved by the said order, the petitioner, who was elected as the Secretary in the election for the year, 2015 has come up with the above writ petition.

9. It is seen from the provisions of the Advocates Act, 1961 that Section 6 defines the functions of the State Bar Councils and Section 7 defines the functions of the Bar Council of India. None of the clauses from (a) to (h) relate the conduct of any election to any one of the Bar Associations or Advocate Associations. Though clause (i) to Sub-section (1) of Section 6 confers residuary power upon the Bar Council to do all other things necessary for the discharge of various functions indicated in clauses (a) to (h), the same also cannot be relied upon by the Bar Council to oversee or conduct an election to one of the Bar Associations. There are more than 100 Associations of Advocates or Bar Associations recognised by the Bar Council of Tamil Nadu in terms of Section 13 of the Tamil Nadu Advocates Welfare Fund Act, 1987. If the Bar Council takes upon itself the role of supervising or overseeing the elections to each of the Associations, the Bar Council may lose focus on the functions statutorily entrusted to them.

10. Mr.S.Y.Masood, learned counsel for the first respondent contended that Section 9-A of the Tamil Nadu Advocates Welfare Fund Act, 1987 empowers the Bar Council to give such directions as are necessary for the carrying out of the purposes of the Act. Therefore, the learned counsel submitted that the authorisation given to the Chairman to constitute a Committee to oversee and supervise election to the Bar Association, was within the power conferred under Section 9-A.

11. But, we are unable to agree. The power to give general directions conferred upon the Bar Council under Section 9-A is for the purpose of ensuring that the purposes of the Act are satisfied. The purpose of the Tamil Nadu Advocates Welfare Fund Act is to constitute a welfare fund for the benefit of advocates on cessation of practice and for matters connected therewith or incidental thereto. The only purpose of the 1987 Act is to provide succour to Advocates who cease to practice or Advocates who suffer from any disability or who die. We do not know how this purpose is sought to be achieved by constituting a Committee to supervise the election to the Associations.

12. There is no other provision either in the Advocates Act, 1961 or in the Tamil Nadu Advocates Welfare Fund Act, 1987,

conferring power upon the Bar Council to pass such a resolution. Therefore, the writ petition is allowed. The impugned order is set aside.

13. Mr.S.Y.Masood, learned counsel for the Bar Council submitted that the Bar Council will be in a fix as to the person to whom stamps could be supplied in the event of two sets of persons claiming to be the office bearers of the very same association. But, this problem can always be addressed in different methods. The Bar Council can initiate steps, either for cancellation of registration or for the recognition of any other Association or conduct an enquiry for the limited purpose of finding out the person to whom stamps could be supplied. Alternatively, the Bar Council could also direct the parties to obtain appropriate orders from the appropriate civil Court to enable them to distribute the stamps.

In the result, the writ petition is allowed. There shall be no order as to costs. Consequently, M.P.Nos.1 and 2 of 2015 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kpl

To

The Chairman,
The Bar Council of Tamil Nadu and Puducherry
High Court Campus
Chennai 104.

+1cc to Mr.S.Y.Masood, Advocate, S.R.No.28556
+1cc to Mr.R.Subramanian, Advocate, S.R.No.28684

W.P.No.5010 of 2015.

GP(CO)
CA(24/06/2015)

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