IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8193 of 2015
Date of Decision: April 30, 2015

Savita

...Petitioner

Versus

Bar Council of Punjab & Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Petitioner in person with
Mr. B.S. Bajwa, Advocate.

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AUGUSTINE GEORGE MASIH, J. (Oral):

Petitioner, who is an advocate, and got herself enrolled under the Bar Council of Punjab & Haryana on 09.09.2014, was allotted Enrollment No. P/2192/2014. She applied for membership of the Punjab & Haryana High Court Bar Association (hereinafter referred to as 'High Court Bar Association') and was granted the same on 30.10.2014. After becoming the member of the High Court Bar Association, the petitioner states that she is practising in this Court and appearing regularly in cases.

2. On 17.03.2015, elections of the High Court Bar Association was declared. Date of election was fixed as 23.04.2015. Last date for submission of nomination forms was 09.04.2015. Petitioner being member of the High Court Bar Association finding her name in the voters list at Sr. No.4195 filled the nomination form for the post of Lady Member Executive and deposited the requisite

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application fee of ₹10,000/-.

3. Petitioner alleges that she has been orally informed by the Election Committee of the High Court Bar Association-respondent No.3 that her name is deleted from the voters list for the reason that she was given waiver of subscription dues and since she has no right to vote, her nomination for the post of Lady Member Executive is rejected.

4. This action of the Election Committee of the High Court Bar Association-respondent No.3 has been challenged by the petitioner in this petition on the ground that her name has been wrongly deleted from the voters list without giving her an opportunity of hearing. She further submits that petitioner had not made any application for waiver of subscription. In fact, she came to know about the waiver having been given to her only on the day when she went to submit subscription dues in the office of the High Court Bar Association. After coming to know that she had been given the waiver like other members of subscription dues which is not justified as per the orders passed by this Court, she has paid all her dues on 24.04.2015. In support of this, she has placed on record the receipt issued by the High Court Bar Association (Annexure P-7). She contends that at the time of submission of nomination, she was not told that those candidates who are given waiver of subscription dues are not eligible to vote or to contest for any post of the Governing body of the High Court Bar Association. She contends that even under the Rules and Regulations of the High Court Bar Association, it

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is not mentioned that there is no power to waive off the subscription with the Executive Committee or the office-bearers of the High Court Bar Association. She contends that for the fault of the Executive Committee of the High Court Bar Association granting the waiver to advocates who have recently enrolled themselves with the Bar Council of Punjab and Haryana as an advocate was meant for the benefit of the young lawyers who have just joined the profession. This has been done for a justified reason and is not wrong as it is the duty of the High Court Bar Association to work for the welfare of the advocates and to fight for their dignity and respect. In any case, this practice of waiver of subscription for initial two years to the junior advocates has been continuing for the last 3-4 years and members have earlier also been contesting the elections taking the benefit of the said waiver in subscription, therefore, an exception cannot be carved out in the case of the petitioner. She contends that in case the nomination of the petitioner is permitted to cancel, at this stage, it would be a issue of her dignity and respect in the High Court Bar Association and that too, without any fault on her part. A valuable right has accrued to the petitioner which cannot be taken away with retrospective effect as she had already submitted her nomination papers. The decision of declaring the waiver in subscription to be not in accordance with law, can only be perspective in nature and not retrospective. It can cause serious harm to the rights of the petitioner without any fault on her part.

5. It has been contended that the right to vote and right to

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contest elections, is a fundamental right and the same cannot be allowed to scuttle down by the Election Committee-respondent No.3 as the same is not permissible in law and equity. Prayer has, thus, been made for issuing a mandamus directing respondents No.2 and 3 to allow the petitioner to cast her vote and contest the forthcoming elections for the post of Lady Member Executive of the Governing Body of respondent No.2.

6. I have heard counsel for the petitioner at length and the petitioner also made submissions as per the pleadings and grounds to challenge the action of respondent No.3 referred to above for deleting her name from the voters list and rejecting her nomination papers to the post of Lady Member Executive by respondent No.3, but on considering the same, I am unable to accept any of the contentions which have been raised at bar for the reasons stated hereinafter.

7. The contention as has been raised that the right to vote and right to contest the elections is a fundamental right of the petitioner, the same only has to be mentioned here and rejected in the light of the various judgments passed by the Hon'ble Supreme Court and the Full Bench judgments of this Court where, it has been held that right to vote is not a fundamental right but a statutory right. If that be so, the right to contest the elections would directly be dependent on the said right to vote as provided for under the Rules and Regulations of respondent No.2, for a member to be eligible to contest for any post, he/she must have a right to vote. Since, the

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waiver granted to the members of the High Court Bar Association is not in consonance with the Rules and Regulations of respondent No.2, no further right to contest the election can accrue and such members cannot be said to be eligible for inclusion of their names in the voters list. Since the right to vote is a statutory right, the mandate of the statute unless fulfilled in toto, would not confer the right to vote to any member who has been given any benefit not in consonance with the statute.

8. The basic contention of the petitioner which would clinch her right, if any, for including her name in the voters list to the forthcoming elections of the Governing Body of the High Court Bar Association-respondent No.2 and consequently, her right to contest the elections of respondent No.2 would be dependent on the answer to the question as to whether any waiver could be granted of the subscription which has to be paid by the member of the High Court Bar Association?

9. Reply to this question stands given by this Court in orders dated 09.04.2015 and 22.04.2015 in CM-4639-40-2015 in/and CWP-5162-2015 (O&M), Ranjan Lakhanpal Vs. Bar Council of India & others, where this issue has, in details, been thrashed and the stand of the High Court Bar Association with regard to the power for waiver of the Executive Committee or its office-bearers stands rejected. For convenience, relevant part of the order dated 09.04.2015 reads as follows:-

"CM-4639-40-2015 in/and CWP-5162-2015 (O&M),

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titled as Ranjan Lakhanpal Vs. Bar Council of India & others

The matter was taken up prior to the lunch break when the petitioner, in pursuance to the statement made on 07.04.2015 which finds recorded in the order passed by this Court of the said date, filed an affidavit alongwith the list of persons whose subscription stands waived either in full or in part, copy of the said affidavit alongwith annexures were handed over to Mr. Mansur Ali, learned counsel for Punjab & Haryana High Court Bar Association-respondent No.3 and the matter was kept after the lunch break for him to seek instructions with regard to the verification and authenticity of the averments made in the affidavit and the documents appended therewith.

Mr. Mansur Ali, learned counsel for respondent No.3, on instructions, very fairly states that the documents as appended with the affidavit cannot be denied as they are supplied by the Punjab & Haryana High Court Bar Association, Chandigarh, itself.

It is conceded by the counsel for the parties that at least, there are members between two hundred and fifty to three hundred or even more in whose cases, powers of waiver of subscription have been exercised and about the waiver/exemption in entrance fee to the Bar Association, nothing can be said as of now although there are claims and denials on that .

Mr. Mansur Ali, counsel for respondent No.3, has produced the Rules and Regulations of Punjab & Haryana High Court Bar Association, Chandigarh

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and has tried to justify the exercise of the said powers of waiver by the Executive Committee by bringing it within the ambit of Rule 3 Aims and Objections of the Bar Association and sub-Rule 'a' Clauses (ii) and (iii). The said two provisions read as follows:-

> ***"a.*** *The aims and objects of the Bar Association shall be:-*
> ***(i)*** *XXX XXX XXX*
> ***(ii)*** *To act for the welfare of the members of the Association.*
> ***(iii)*** *To under take all such activities as are in the interest of the members of the association."*

A perusal of the above would show that these Rules do no envisage nor can it be construed that waiver of subscription or entrance fee can be treated to be an act of welfare of the members of the Association or such activities which are in the interest of the members of the Association. This Court fails to understand how waiver of subscription or entrance fee would enhance the aims or objects. Further, as per Rule 4 which deals with the terms of admission of members and sub-rule (c) with entrance fee and subscription does not provide for or remotely indicate towards any waiver of such subscription or entrance fee. Rule 5 deals with the consequence of non-payment of subscription fee which reads as follows:-

> ***"5. CONSEQUENCES OF NON PAYMENT OF SUBSCRIPTION FEE:-***
> ***Arrears in payment of Subscription:-***
> *It shall be the responsibility of every member to clear the subscription. Any member who is in arrears of subscription for more*

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than six months shall be deemed to be in arrears of subscription.

Notice:- *A notice in the Daily Cause List shall be given to the members in arrears of subscription for the clearance of the same within seven days from the publication of the notice in Daily Cause List.*

Second Notice- *A seven days second notice shall be given to the members who fail to clear their arrears to subscription after issuance of first notice, in the manner prescribed above.*

Final Notice:- *A seven days final notice shall be given to the members who failed to clear their arrears of subscription after the issuance of first and second notice, in the manner prescribed above.*

Publication of Names of the Defaulters in the Daily Cause List- *The names of the members who fail to clear their subscription after the expiry of the period of the third and final notice, shall be published in the Daily Cause List and they will be given additional period of seven days to clear their dues."*

Rule 6 deals with the fine and forfeitures to be imposed on any member, according to which, a person who is defaulter in clearing his arrears of subscription can be put under suspension, however, with a power to the Executive Committee for revocation of the suspension subject to clearance of all the dues and arrears of subscription together with a penalty of ₹500/-, but the penalty can be waived by passing a speaking order. This further shows that the subscription amount can, under no circumstance, be waived. For ready reference Rule

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6 is reproduced below:-

> *"**6. FINE AND FORFEITURES TO BE IMPOSED ON ANY MEMBER:-***
> ***a. Suspension of Defaulters:-*** *Any member who fails to clear his arrears of subscription even after publication of his name in the Daily Cause List he shall be deemed to have been suspended from the membership of the Association after the expiry of seven days period from the publication of his name in the Daily Cause List. The suspended member shall lose his entitlement for all the rights and amenities of a member of the Association and his name shall not be published in the Directory of the Association.*
> ***B, Revocation of Suspension by the Executive Committee:-*** *On the application of the suspended member, the Executive Committee may on sufficient grounds may revoke his suspension subject to clearance of all the dues and arrears of subscription together with a penalty of Rs.500/-. However the Executive Committee may waive the penalty by a speaking order."*

As regards the eligibility of a member to contest elections or hold office as an Executive Member is governed by Rule 12. Mode of election of the Governing Body is under Rule 13 and as per sub-rule 'b' thereof, only eligible voters can be the Office-bearers of the Committee and the Officer of the Association. Election Committee overlooks the process of election and the Constitution thereof has been provided under Rule 13 (b) (ii). Eligibility for members to contest and vote at elections is contained in Rule 13 (b) and (c) read as follows:-

> *"**(b)** No member shall be eligible to*

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> *cast his/her vote at the election unless:*
> *i. He/she is in possession of Identity Card at the time of casting his/her vote and show it on demand, if so required.*
> *ii. Any member who is in arrears of his/her subscription or any dues to the Bar Association as per Rule 12 (c) (iii) of these Rules shall not be eligible to vote or propose or second the candidature of any member to any of the post. Such member shall not be eligible to contest the election.*
> *iii. Out Station Members shall not be entitled to contest the election.*
> ***(c)*** *A person who becomes a member of the Association after 31st January in a Calendar year or any other date so fixed by the Executive Committee shall not be entitled to take part in election held in that Calendar year in any manner or to vote thereto or to stand for election or propose or second any member of the Committee or any other office of the Association thereto."*

Rule 12 (c) (iii) which stands referred to in the above Rule 13 (b) (ii) reads as under:-

> *"**iii.** He/she has paid his/her arrears of subscription by 31st March of the year or any other date fixed by the General House if so required and is not in arrears on any account.*
> *The tentative list of eligible voters shall be published by the Election Committee and thereafter voter list shall be displayed after getting objections if any."*

A perusal of the above would show that any member who has any arrears of his/her subscription or any dues to the Bar Association as per Rule 12 (c) (iii) of these Rules shall not be eligible to vote or

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propose or second the candidature of any member to any of the post and would not be eligible to contest the elections. It is specifically mentioned that out station members shall not be entitled to contest the elections. The cut off date has also been mentioned for a person to be eligible for casting the vote i.e. 31st January in a calendar year, however, the Executive Committee can fix any other date as well. In the present case, for this calendar year, it has been decided that candidate must be a member on or before 10.03.2015. Reference in this regard is made by the counsel for respondent No.3 to Annexure R-3/1 which is the decision of the General House dated 10.03.2015.

A perusal of the above provisions and rules would show that there is no power of waiver either with the Executive Committee or the Office-bearers as far as the subscription is concerned. Wherever power of waiver has been provided, the same has been specifically mentioned as in the case of members where they have been put under suspension because of default of arrears (Rule 6 reproduced above) his suspension can be revoked by the Executive Committee on application of the suspended member showing sufficient grounds for revocation of suspension subject to clearance of all the dues and arrears of subscription together with a penalty of ₹500/- which can be waived. The power of waiver is only to penalty and not to subscription or the arrears. This makes it amply clear that there is no power with the Executive Committee or the Office-bearers to waive the subscription.

The position with regard to the entrance fee is

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very clear, here there is no question of any penalty as it is the mandatory requirement to seek admission to the Bar Association {Rule 4 (c)} where also there is no powers for waiver as already observed wherever power of waiver has been provided for the same, has been specifically so provided under the Rules. Counsel for respondent No.3 has very fairly states that there is no specific power of waiver of monthly subscription or admission fee provided under the Rules and Regulations.

In the present case, it is not in dispute that there are large number of such members in whose cases waiver in monthly subscription, admittedly, has been granted which being without any jurisdiction or authority under the Rules would itself put a question mark with regard to their eligibility to include their names in the voter list. The number of such members is not disputed to be more than 250 by the counsel for respondent No.3 although asserted otherwise by the petitioner who says it to be more than 300 such members. Taking the number to be at leas 250 members as admitted by counsel for respondents No.3-Association, the same will have a direct effect and bearing on the ultimate voting and result of the election. This Court cannot be a silent spectator to such blatant violation of the Rules and Regulations under its nose and shut its eyes to it. If that is allowed to continue, that would virtually be meaning that this Court, when the matter has been brought to its notice and is in the know of it, is permitting the election to continue where the Rules and Regulations of the Punjab &

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Haryana High Court Bar Association, Chandigarh, had been violated, is supporting such illegality which cannot be.

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The basic question at this stage, which is being dealt with is with regard to the power of the Executive Committee or the Office-bearers to waive the subscription fee what to say of admission fee. There being no provision under the Rules for such a waiver, this Court is of the tentative view that the voter list itself may be required to be modified/changed/recast in consonance with the provisions contained under the Rules and Regulations of the Association. However, to give another opportunity to the respondent-Bar Association to place the true factual position and specifically give the lists of members with regard to whom the Executive Committee or the Office-bearers of the Association have exercised the power of waiver in payment of admission fee and monthly subscription for the period between 1st April, 2014 to 31.03.2015 as also to put forth any defence showing the power/jurisdiction, if any, with the Executive Committee/Office-bearers of the Association to do so, an affidavit be filed in this regard in Court within a period of 10 days with an advance copy to the petitioner.

In view of the above, since the nominations have already been filed and no one has any grievance on this score, no direction in this regard is given, however, the further process of the elections be not continued without the specific permission of this Court.

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List for further consideration on 22.04.2015.

Copy of this order be given *dasti* to the counsel for the parties under the signatures of the Special Secretary of this Court."

The matter was thereafter taken up on 22.04.2015 when the following order was passed:-

"In pursuance to and in compliance with the order passed by this Court on 09.04.2015, an affidavit has been filed on behalf of respondent No.3 in Court today, copy of which has been handed over to the petitioner.

On considering the submissions, which have been made by the applicants/parties and/or their counsel and keeping in view the earlier detailed order dated 09.04.2015 passed in this case, it is not disputed that as per the provisions contained in the Constitution and the Rules/Regulations governing the respondent No.3, there is no power of waiver with regard to the monthly subscription or the entrance fee.

If that be so, all members, who have been enrolled by giving the benefit of waiver in the entrance fee as also the subscription, cannot have a voting right as they would not fulfil the condition of eligibility, as has been laid down under the Rules and Regulations of respondent No.3.

In view of the above, direction is issued to the Election Committee to delete the names of such members of the Bar from the voters list, who have been granted waiver either in the entrance fee or the subscription during the period 01.05.2014 to 31.03.2015. This exercise be completed on or

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> before 27.04.2015. The tentative voters list be displayed on the Notice Board of the Bar Room, Ladies Bar Room, Accounts Office, Library, official website of the Bar Association as also the Daily Cause List on 27.04.2015 by 4:00 P.M. The objections will be accepted up to 29.04.2015 by 4:00 P.M. by the Election Committee. The final voters list be displayed in the same manner as the tentative voters list on 30.04.2015 by 4:00 P.M. after deciding the objections, if any, received within the stipulated period by the Election Committee. The rest of the election programme will be finalized by the Election Committee and the elections held as per the Constitution and Rules and Regulations of the Association. It would be appropriate and appreciated if the elections are conducted and held on or before 08.05.2015.
>
> List for further consideration on 08.07.2015.
>
> Copy of the order be given dasti to the counsel for the parties under signatures of Bench Secretary of this Court."

10. In view of the above, there can be no dispute that there is no power of waiver with regard to the monthly subscription or the entrance fee to member of the High Court Bar Association provided for under the Rules and Regulations of respondent No.2.

11. Perusal of the writ petition and the pleading which have been referred to above, it appears that the petitioner is aggrieved of the orders dated 09.04.2015 and 22.04.2015 passed by this Court referred to above as the action taken by the Election Committee-respondent No.3 is in pursuance to the above referred two orders.

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Petitioner has not even chosen to get herself impleaded as a party to the writ petition wherein abovesaid orders were passed by this Court. Petitioner has chosen not to challenge those orders and having accepted the same, cannot now assert that there is power of waiver with regard to monthly subscription with the Governing Body/Executive Committee of the High Court Bar Association. It appears that the present writ petition is mis-conceived.

12. In view of the above position under law, the ground taken by the petitioner that she did not seek any waiver of subscription and has been so granted at its own by the High Court Bar Association and therefore, cannot be penalized now for something for which she is/was not responsible or that the principles of natural justice have not been followed or the removal of her name from the voters list or that practice of waiver of subscription have been continuing for the last 3-4 years cannot sustain. However, it may be added here that ignorance of law can be no excuse nor can it be taken as a defence. Every individual is deemed to know the law of the land and the Courts merely interpret the law and do not make law. Ignorance of law cannot be taken as a excuse for not taking appropriate steps in consonance with the requirement of the statute and therefore, the submission and argument of the petitioner that she did not know the true legal position cannot be accepted either in principle nor in law particularly when she is a professional law-graduate. Reference can be made to the judgment of the Hon'ble Supreme Court **Swadeshi Cotton Mills Co. Ltd. Vs. Government of U.P. & others, 1975 (4)**

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13. These excuses/submissions as have been put forth by the petitioner for another reason cannot be accepted as she is not a layman but a law-graduate and a practising advocate as per her own assertion in the writ petition. It is neither appropriate nor expected from an advocate to raise such a plea. It may be added here that she is aspiring to be a Lady Member Executive of the Governing Body of the High Court Bar Association and her plea that she did not know the Rules and Regulations of respondent No.2 even at the time of filing of the nomination papers, cannot be relished, much less, accepted or believed.

14. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

15. Copy of this order be given *dasti* to the petitioner under the signatures of Special Secretary of this Court.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 30, 2015
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