

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 13118 of 2016

Reserved on: 01.09.2016

Date of decision: 06.09.2016

Nirmal Singh

....Petitioner(s)

Versus

Bar Council of Punjab and Haryana and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Sanjeev Sharma, Sr. Advocate,
with Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. Manoj Kumar, Advocate,
and Ms. Seema Arora, Advocate,
for respondents no. 1 and 2.

Mr. Kanwaljit Singh, Sr. Advocate,
with Mr. Chirag Wadhwa, Advocate,
Ms. Swati Rathi, Advocate,
and Mr. Ramesh Hooda, Advocate.
for respondent no. 3.

None for respondent no. 4.

Mr. Sanjeev K. Aaryan, Advocate,
for Mr. M.K. Taya, Advocate,
for respondent no. 5.

Mr. M.S. Khillan, Advocate,
for respondent no. 6.

G.S.SANDHAWALIA, J.

The petitioner challenges the order dated 04.07.2016
(Annexure P-7) whereby a three Member Election Tribunal of the Bar
Council of Punjab and Haryana-respondent no. 2 has allowed the election
petition filed by respondent no. 3 and set aside the result declared by the
Returning Officer-respondent no. 6 qua the post of the President of the

District Bar Association, Karnal (in short 'DBA, Karnal') held on 23.05.2016. Accordingly, re-poll for the post of the President had been directed which was to be held on 11.07.2016 by constituting a Three Member Team of the Advocates of the District Bar Association, Karnal as Returning Officers and Assistant Returning Officers. The re-poll was to be done on the basis of the original voter list of 1394 voters which was prepared on 20.05.2016 as per the record produced on 02.07.2016. An independent observer was also appointed under whose supervision the election was to be held and to get the videography of the entire election process conducted including the counting of the votes and a request was made for proper security arrangements at the venue of the election by requesting the police authorities, Karnal.

Respondent no. 3-election petitioner had preferred the petition under Rule 11(c) of the Bar Association (Constitution and Registration) Rules, 2015 (in short '2015 Rules') filed on 24.05.2016 (Annexure P-1) on the ground that in the elections held on 23.05.2016, he had also contested for the post of the President and had polled 463 votes whereas the present petitioner had polled 462 votes. It was his case that he had won by a margin of one vote and had also been garlanded and his statement had been taken. On account of the conduct of the Returning Officer, who had called the present petitioner into the counting hall and thereafter closed the doors and declared him elected within 15 minutes as winner by margin of one vote, the election petition was filed on the ground that the same was in connivance with the said Returning Officer. His request for recounting had not been taken into consideration and he had been assaulted and manhandled and he had placed reliance upon the C.D. attached with the petition. It is also his

case that 35 votes more had been illegally added in the additional voter list and the rules did not permit the admission of the votes without notice to the contestants.

The stand of the present petitioner in the written statement dated 13.06.2016 (Annexure P-4) and defence was that the allegations of corrupt practice have not been mentioned and the rules under which the election petition had been filed was under challenge before this Court and, therefore, the proceedings should be adjourned sine die. The election petitioner had never been declared as elected by the Returning Officer nor any press note had been issued and no document had been attached by the petitioner that he had been elected. The election petition was liable to be dismissed as the same had not been filed as per the procedure prescribed for filing the election petition and neither the relevant affidavits had been attached. It was his case that the election petitioner had tried to enter in the administrative block of the Bar Association when the counting was going on and his supporters had also gathered just to create nuisance. They had unnecessarily raised cries that they had won and the media persons had come on spot. But when the Returning Officer had declared the result, they had left the place and gone away. No complaint had been filed before any authority and the petitioner had been declared the winner. The documents which had been placed on record after the filing of election petition could not be read as evidence and could not be treated as part and parcel of the election petition. The factum of the margin of one vote inter se the parties had been denied on the ground that the chart had been wrongly prepared on the basis of presumption and assumption and no record had been placed on record. Regarding the addition of 35 votes, it was submitted that there was

no violation of the Rules and all those votes had been added in the supplementary voters list of members who had paid the electricity charges.

Mr. Sanjeev Sharma, senior counsel appearing for the petitioner has submitted that the Tribunal had no jurisdiction to decide the lis since the Memorandum of Association (in short 'MOA') of the District Bar Council, Karnal provided that there would be an Election Tribunal under Article 26 and 27 and the petition could have been only filed before such a Tribunal. It was accordingly argued that respondent no. 2-Tribunal had no jurisdiction and that the Tribunal constituted by the District Bar Association accordingly would have the jurisdiction. It was submitted that the 2015 Rules were subject matter of challenge in CWP No. 5232 of 2015 on account of the remand order passed by the Apex Court. Other connected matters including CWP No. 6047 of 2015 whereby, challenge had been raised to the letter dated 21.03.2015 addressed by the Bar Council of Punjab and Haryana whereby, directions had been issued for holding of the elections for the year 2015-16 were also pending. It was submitted that in view of the remand order dated 07.10.2015 (Annexure P-12) in Civil Appeal No. 8362 of 2015, the issue was still pending consideration before this Court. Therefore, the Tribunal would have no jurisdiction since the procedure prescribed to challenge the election should have been before the Election Tribunal as per the MOA of the District Bar Council, Karnal.

It was accordingly submitted that the election petition had to be filed within half an hour after the declaration of the result before the Election Tribunal and only on the ground of recounting as per Rule 14 of the Election Rules of the MOA. The ballot papers were only to be preserved till the disposal of the election petition. It is accordingly

submitted that since the election petition was not filed within the prescribed period and having been filed before respondent no. 2 on the next day, there was no such obligation to preserve the ballot papers and, therefore, they had been rightly destroyed.

Mr. Kanwaljit Singh, senior counsel for respondent no. 3, on the contrary, has justified the order passed keeping in view the peculiar facts and circumstances of the case. It is submitted that the act and conduct of the Returning Officer was not above board and there was no other alternative left except to order the re-election on account of the fact that the ballot papers had been destroyed in a haste. An adverse inference had rightly been drawn against the petitioner and, therefore, the order was liable to be upheld. It was also submitted that the petitioner on his own preferred an application under Section 48A of the Advocates Act, 1961 before the Bar Council of India (in short 'BCI') for transfer of the election petition and, therefore, there was an alternative and efficacious remedy available to him and the present petition was not maintainable.

It was submitted that there was no stay order passed in the writ petitions which were pending and, therefore, the rules having been approved by the Bar Council as provided under Section 15(3) of the 1961 Act were very much in force and on that account, the Election Tribunal had the jurisdiction and re-election had been rightly ordered. The conduct of the Returning Officer was referred to to show that in spite of directions issued by the Tribunal, he had not produced the record and thereafter, taken a stand that the record had been given to the officials of the Bar Association, Karnal and, therefore, neither it had been handed over to the Bar Association and there was no other way out except to order re-election keeping in view the

thin margin of victory.

It is a matter of record that on 01.09.2014, the Division Bench in LPA No. 1427 of 2014, directed the Bar Council of Punjab and Haryana to enact appropriate rules which could be applied uniformly to all sub divisional and district level Bar Associations by consulting the office bearers of all Bar Associations. A uniform pattern of eligibility conditions for contesting, voting and for the tenure of the Executive Members/Office Bearers of the District Bar Associations at all sub divisional levels was to be introduced. Keeping in view the said directions, the 2015 Rules were framed and placed before the Division Bench on 27.02.2015. On account of the fact that the final decision was to be made by the BCI, direction was issued that the rules be forwarded to the BCI which would take an appropriate decision in accordance with law after obtaining view point of all stake holders. The relevant portion of the order dated 27.02.2015 in C.M. Nos. 477-LPA and 535-LPA of 2015 in LPA No. 1427 of 2014 reads as under:-

“(2) It is stated by Mr. Gupta that final decision with regard to formulation of these Rules is required to be taken by the Bar Council of India. If that is so, let the Bar Council of Punjab and Haryana forward these Rules to the Bar Council of India who shall then take an appropriate decision in accordance with law and, if need be, after obtaining viewpoints of all the stakeholders.

(3) Since the aforesaid Rules pertain to District and Sub Divisional Bar Associations, the averments made in the accompanying affidavit may be treated to have been modified to that extent.

(4) Disposed of.

Thereafter on 05.03.2015, the Bar Council of Punjab and Haryana forwarded the said rules of the BCI on 05.03.2015 for approval under Section 15(3) of the Advocates Act. The same were approved vide Resolution No. 70 of 2015 by the General House of the BCI in a meeting held on 02.05.2015 and accordingly conveyed to the Bar Council of Punjab and Haryana on 30.06.2015. Section 15(1) and 15(3) of the Advocates Act read thus:-

“15. Power to make rules.--(1) A Bar Council may make rules to carry out the purposes of this Chapter.

(3) 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.”

The said approval was also thereafter forwarded to all Presidents of the Bar Associations in the State of Punjab and Haryana vide endorsement dated 16.07.2015, which would be clear from the letter dated 30.05.2016, which reads as under:-

***“BAR COUNCIL OF INDIA
(Statutory Body Constituted under the Advocates Act, 1961)
21, Rouse Avenue Institutional Area, New Delhi – 110 002***

BCI: D: 3046/2015 (Council Mtg.2.5.2015)

30.6.2015

The Secretary

Bar Council of Punjab & Haryana

Law Bhawan, Dakshin Marg

Sector 37A, Near Batra Theater

Chandigarh – 160 036

Ma'am/Sir,

The General House of the Council at its meeting held on 2.5.2015 under

Item No.93/2014 has considered the letter dated 5.3.2015 received from Mr. Pravesh Yadav, Hony. Secretary Punjab & Haryana regarding approval of the Bar Associations (Constitution and Registration) Rules, 2015. After consideration the council has passed the following resolution:-

Resolution No.70/2015

The Bar Associations (Constitution and Registration Rules, 2015 received through Hony Secretary Mr. Pravesh Yadav, Bar Concil of Punjab & Haryana vide his letter dated 5.3.2015, is hereby approved.

This is for your kind information.

[A.K. Pandey]

Joint Secretary

BAR COUNCIL OF PUNJAB AND HARYANA, CHANGIDARH

Endst. No. BCPH/MISC/6124 to 6126/2015

Dated

16/7/15

A copy of the above letter is forwarded to the following for information and n/a.

- 1. All Hon'ble Members Bar Council of Punjab and Haryana, Chandigarh.*
- 2. The President, Punjab and Haryana High Court Bar Association, Chandigarh.*
- 3. All Presidents, Bar Association in the State of Punjab, Haryana and U.T. Chandigarh.*

(Pravesh Yadav)

Hony Secretary”

That the General House of the District Bar Association of Karnal on 05.05.2016 (Annexure R-6/1) appointed respondent no. 6 as the

Returning Officer (in short 'RO') for holding elections. Similarly, two Assistant Returning Officers (in short 'ARO') were also appointed vide the letters of even date. The election was scheduled to be held on 23.05.2016 as per the election notice dated 09.05.2016 (Annexure R-6/2) issued by the RO/ARO. It is in such circumstances, the dispute arose on 23.05.2016 whereby the petitioner has been declared as a winner by virtue of one vote, which would be clear from the form depicting total number of votes polled (Annexure R-6/3) issued by respondent no. 6. The reasoning given by the Election Tribunal is that the C.D. showed that the election petitioner had been declared elected and in the absence of the ballot papers which were not produced in spite of the fact that the election petition was filed without any delay on 24.05.2016, a serious doubt had been raised that the same had intentionally not been produced. The finding was recorded that respondent no. 6 had stated that the same had been destroyed and thus, the best evidence had been withheld. Recounting could not be ordered and, therefore, framing of issues was not required and neither recording of evidence and resultantly, directions for re-poll had been issued.

To appreciate the reasoning recorded by the Tribunal, it would be necessary to take into consideration the interim orders passed by the Tribunal. As noticed, the election was held on 23.05.2016 and the result was also declared on the same date. Immediately on 24.05.2016, the election petition (Annexure P-1) was filed under the 2015 Rules. A direction was issued to respondent no. 6-the Returning Officer on the first date itself to produce the entire record. The record also pertained to the total ballot papers including consumed and un-consumed. On the next date on 27.05.2016, the Returning Officer informed the Tribunal on telephone

that his counsel is on the way. Thereafter, the counsel had also put in appearance and undertook to produce the entire record on the next date of hearing which was 03.06.2016. The order dated 27.05.2016 reads as under:-

“Respondent NO. 4 R.O. Informed us on telephone that his counsel is on the way and he assured that let the matter be adjourned he will come present at the adjourn date.

At this stage Sh. Jasmer Singh, Advocate on behalf of respondent no.4 R.O. put in appearance.

Sh. Vikram Singh, Advocate put in appearance on behalf of respondent no.2 seeks time to file reply with an advance copy to the petitioner.

On the last date of hearing i.e. 24.5.2006 it was made clear that respondent No. 4 to produce the entire records concerning the elections of the Distt. Bar Association, Karnal, but the ld. Counsel appearing for respondent no.4 stated that the entire record as mentioned in the order dated 24.5.2006 will be produced on the next date of hearing. Now to come up on 3.6.2016 at 3.00 pm.”

On the next date, another undertaking was given by the Returning Officer himself that he would produce the entire record since talks of compromise were going on. The order dated 03.06.2016 reads as under:-

“Both the parties i.e. petitioner and respondent no.1 are of the view that there can be an amicable settlement and for that they are seeking short adjournment. In the interest of justice the matter is adjourned to 10.6.2016 at 2.00 PM. The respondent no.4 Sh. Acharan Singh who is present in person stated that he will produce entire record on the next date of

hearing, in case the matter may not be settled.”

On 10.06.2016, when the case was taken up, counsel for the Returning Officer appeared but he failed to appear and the Tribunal was forced to comment upon his conduct and also the fact that on an earlier occasion also, improprieties had been committed by him. Resultantly, another direction was issued to produce the record on 23.05.2016. The relevant part of the order dated 10.06.2016 reads as under:-

“On 27.5.2016 the respondent No.4 was specifically directed through his counsel Sh.Jasmer Singh Advocate that the entire records pertaining to the elections of District Bar Association Karnal be produced on the next date of hearing. On 3.6.2016 the respondent No.4 was personally present but did not produce the records rather he undertook that he will produce the record on the next date of hearing as the talks for compromise are going between the parties. Today Sh. Jasmer Singh Advocate came present but Sh. Acharan Singh respondent No.4 did not come present and the records have also not been produced. Sh. Jasmer Singh Advocate seeks an adjournment that the records will be produced on the next date of hearing. We see no reason to adjourn the case unnecessarily as this is only a lame excuse despite repeated adjournments the R.O. has failed to produce the records. Therefore, we are of this view of the respondent No.4 is taking the case in casual manner and is not seriously considering the repeated requests made by the Bar Council to produce the records even on the earlier occasion in the year 2015 when respondent No.4 was appointed at R.O. for the elections of DBA Karnal. His behaviour was such that Bar Council had to suspend his licence for the irregularity committed by him during elections. It is worthwhile to

mention here that Sh. Acharan Singh at that time undertook that he will act properly in future but similarly, this time again his act and conduct is such that cannot be ignored but at the same time we are to see the interest of justice. Let one last opportunity be granted to Sh. Acharan Singh to produce the entire records of the elections of the DBA Karnal held on 23.05.2016, failing which the matter will be taken up by the Bar Council for proceedings of misconduct against Acharan Singh and the present case will be decided on the facts available on the file.”

Thereafter a somersault was made by the said respondent, who took the plea that the original records are in the custody of the President's office and had been handed over to one Sh. Jasmer Singh, clerk of the office and that he had only photocopies of the nomination forms, voter list etc. the said statement dated 13.06.2016 reads thus:-

“Statement of Sh. Acharan Singh, RO respondent no.4 stated that I am having Photostat copies of the nominations forms as well as voter list, Additional voter list and the list of votes prepared on the date of election alongiwth Photostat coies of the result sheet of the office bearers and also the bill regarding printing of ballot papers etc. I also produce the constitution of the Distt. Bar Association, Karnal. I also produce the photo copy of the applications submitted by certain members who add their names in the voter list. I also produce the original list of polling cum counting agents. All the original records are with the custody of President's office which I handed over to Sh. Jasmer Singh clerk of the office.”

In view of the said stance taken by respondent no. 6 he was also directed to file a specific affidavit. The petitioner also filed his reply on the

same date. The relevant part of the order reads as under:-

*“Reply filed on behalf of respondent no.1.
Copy given to the Ld. Counsel for the petitioner.*

Statement of Sh. Acharan Singh respondent no.4 recorded separately who has produced certain records which are taken into custody. From the perusal of the election petition filed by the petitioners. Sh. Acharan Singh is required to furnish a specific affidavit in the form of reply indicating the following:

- a) Whether at the first instance you declared Sh. Deepak Sachdeva by margin of one vote?*
- b) Whether there was any written request/complaint from any candidate for the post of President for recounting of votes?*
- c) Whether the recounting was done, if done, how many times and whether in the presence of all the candidates.*
- d) Whether you allowed 35 persons as additional voters to cast their votes on the date of elections.”*

Accordingly, directions were issued to the President/Office Superintendent to produce the record within three days. The concerned clerk appeared on 02.07.2016 and stated that he had not destroyed the ballot papers and no record pertaining to the same had been handed over to him. Even the ballot boxes were not handed over to him or the office by the Returning Officer. His statement on 02.07.2016 reads thus:-

“Statement of Sh. Jasmer Singh, office Clerk of Distt. Bar Association, Karnal on SA:-

I have brought the summoned record pertaining to the elections of Distt. Bar Association, Karnal and the said filed duly page marked by me from page no. 1 to page no. 125 is being tendered. This is the original

record submitted by the R.O. with the DBA office on 23.5.2016 at 8.30 PM. I did not destroy the ballot papers. No record pertaining to the ballot papers has been handed over to me. I am the incharge of the office of DBA, Karnal. Even, the ballot boxes were not handed over to me or the office by the Returning Officer.”

On the same day, respondent no. 6-Returning Officer's statement was also recorded that the ballot papers had been destroyed by the office as per the Constitution of the District Bar Association, Karnal on account of no application having been moved by any party regarding re-counting. His statement reads as under:-

“Statement of Sh. Acharan Singh, RO respondent no.4 on SA:-

Stated that except the record which has been page marked from page no. 1 to page no. 25 of the election file which has been produced by Sh. Jasmer Singh, office Clerk of Distt. Bar Association, Karnal, there is no other relevant record pertaining to the elections as the ballot etc. has been destroyed by the office as per the Constitution of Distt. Bar Association, Karnal, as no application was moved any of the party to the election regarding recounting.”

It is, thus, apparent from the above sequence of events that the written statement was thereafter filed by the present petitioner on 13.06.2016 taking the plea that the election petition was not in accordance with the law. The pleadings were not precise and specific regarding the corrupt practice. It is also a matter of record that an application dated 02.07.2016 (Annexure P-6) was also filed before the respondent-Tribunal for adjourning the proceedings sine die on account of the transfer petition which had been filed before the BCI under Section 48 of the Advocates Act.

It is thereafter that the factum of issues having not been framed had accordingly been raised which is now also raised that the Tribunal has decided the issue in a summary manner.

The sequence of events only goes on to show that there is no dispute that the margin of victory was very slender which would be apparent from the certificate itself filed in favour of the election petitioner by the Returning Officer (Annexure R-6/3) wherein, he had declared the petitioner a winner by 463 votes and the election petitioner had only got 462 votes. In such circumstances, the Tribunal has rightly commented that it is in haste the record had been destroyed even though the petitioner and other respondents had been put to notice by the election petitioner, respondent no. 3 herein on the very next date. The effort is but obvious to ensure that a recount was not ordered which could have changed the result and the petitioner's status as the elected candidate could have been disturbed. The zimini orders recorded above would go on to show that the stance of respondent no. 6 kept on changing. He was well aware that the election petition had been filed and, therefore, the record should have been preserved by him. The haste with which the said respondent has destroyed the record or not made it available to the Tribunal goes on to point out that there was something to hide and, therefore, an adverse inference has to be drawn against the petitioner and respondent no. 6 in such circumstances. The Tribunal was well justified in rejecting the objection that the issues had to be framed since a very narrow controversy was involved before the Tribunal in view of the admitted stand of the Returning Officer and the absence of the record with the employees of the Bar Association.

In such circumstances, the order passed by the Tribunal does

not suffer from any infirmity which would warrant interference. The effort to get the proceedings also transferred would go on to show that the petitioner only wanted to hold on to the fruits of the office and to avoid a decision against him. The argument of the senior counsel that the 2015 Rules are pending consideration before this Court and the directions of the Division Bench dated 04.08.2015 whereby, it was directed that the Rules be enforced has been set aside on 07.10.2015 is of no basis. As noticed above, in view of the directions issued by the Division Bench on 27.02.2015, the Rules had been produced before the BCI, who had approved the same in its meeting on 30.06.2015 and, therefore, after they had been circulated to all the Bar Associations of the States. Accordingly, the argument that the Tribunal would have no jurisdiction in view of the MOA of the District Bar Association, Karnal is without any basis. A perusal of the MOA (Annexure P-8) would also go on to show that under Article 22, an Election Tribunal is to be appointed for hearing election petitions at the time of appointing the R.O. The said Article reads as under:-

“ARTICLE 22 Annual General Elections

(1) Notice for the Annual General Meeting.

The Executive Committee shall fix a date for the annual general meeting to be held in the month of December with 7 days prior notice to member.

(2) Holding Annual General Meetings.

The Annual General Meeting of the Association shall be held in the last month of the official year of the Association to transact the following business:-

- i) to discuss the progress report of that year*
- ii) to pass the accounts of that year:*
- iii) to appoint Returning officer and Asstt. Returning Officer for the election of the new Executive Committee in the month of January following year:*
- iv) to appoint an Election Tribunal for hearing election petitions.”*

The Election Tribunal so appointed by the Bar Association would have the jurisdiction to decide the election petition as per the Rules framed under the MOA under Article 27. The said Article reads thus:-

ARTICLE 27. Election Tribunal

A member having not less than 20 years of standing at the Bar and not intending to contest the elections shall be appointed with the consent as Election Tribunal. The tenure of such Election Tribunal shall come to an end as soon as the Election Petitions, if any, are disposed off and he shall function and discharge his duties as provided in the rules framed under the Memorandum of Association.

Rule 14 lays down the criteria for the Election Tribunal and this period of tenure reads as under:-

“RULE-14. Election Tribunal

One member of Election Tribunal shall also be appointed by a majority decision in the Annual General Meeting of the House only for a limited purpose of hearing Election Petition(s), if any, a Member having at least 20 years practice of the Bar shall only be eligible to be appointed as Election Tribunal, its tenure shall come to an end as soon as no petition is pending before it.”

Thus, it would be apparent that appointment of the Election Tribunal is to be done at the time of when the RO is to be appointed. Nothing has been brought on record to show that any such person was designated as Election Tribunal by the District Bar Association in its Annual General Meeting and, therefore, the argument raised by the counsel for the petitioner that respondent no. 2-Tribunal would not have any jurisdiction is without any basis.

The 2015 rules lay down that Rule 11(c) provides that the Election Tribunal consisting of the elected members of the Bar Council would decide the election petition. The said provisions read thus:-

“11. Role of the Bar Council

a. In case of any dispute in connection with the Voter list in elections of the office bearers the matter will be taken up by the Bar Council su-moto or on the basis of complaint filed by any effected member and the decision of the Bar Council will be final.

b. That in order to resolve the above said dispute or to decide any dispute the Chairman of the Bar Council will constitute a committee of three members of the Bar Council whose decision will be final.

c. In case any dispute arises after the declaration of the result the aggrieved party shall approach the Bar Council by way of Election Petition within 15 days of the declaration of the result accompanied by a fee of Rs. 5,000/-.

d. After the receipt of the Election Petition the Chairman of the Bar Council shall constitute an Election Tribunal consisting of Three Elected Members of the Bar Council and the said Election Petition will be decided expeditiously preferably within 2 months. And the decision of the Tribunal shall be final.”

In the absence of any interim order passed in the pending petitions challenging the validity of the Rule, the order passed by the Tribunal cannot be set aside solely on the ground that the Rules are subject matter of challenge. As noticed, the discretion which has been exercised by the Tribunal is on the face of it justified keeping in view the peculiar facts and circumstances.

Even otherwise, an alternative remedy is available to the

petitioner under Section 48A of the Act, which is reproduced as under:-

“48A. Power of revision.--(1) The Bar Council of India may, at any time, call for the record of any proceeding under this Act which has been disposed of by a State Bar Council or a Committee thereof, and from which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of such disposal and may pass such orders in relation thereto as it may think fit.

(2) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.”

It is not disputed that the petitioner himself had preferred an application for transfer under the said provision before the BCI. Keeping in view the alternative and efficacious remedy which is available is another ground for the present Court not to interfere in the order passed by the Election Tribunal.

The Apex Court in ***City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others, (2009) 1 SCC 168*** laid down the principles whereby, this Court would exercise its remedy under Article 226 of the Constitution of India. It was specifically held that this Court had to consider whether the petitioner has an alternative and efficacious remedy for the resolution of the dispute. Paragraphs 29 and 30 of the judgment reads as under:-

“29. In our opinion, the High Court while exercising its extraordinary jurisdiction under Article 226 of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether

any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under Article 226 of the Constitution.

30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors. The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self defeating affidavits or statements of Government spokesmen by themselves do not form basis

to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”

It is not disputed that for the entire election process, the secrecy of ballot is sacrosanct and when prima facie circumstances which are strong to suspect the purity, propriety and legality in the counting of votes, the Election Tribunal can then direct recount. The purpose is that if the allegations of irregularity or illegality are well founded, the Election Tribunal will necessarily exercise its jurisdiction even if issues were not framed. Once the factual matrix is beyond an anvil of doubt, the making of such an order was imperatively necessary for deciding the dispute and for doing complete and effective justice between the parties. The purity of elections being tarnished and having been materially effected, the resort to re-count of votes could not have been done in the present case. Therefore, the decision for re-polling on account of the fact that serious allegations against the R.O. have been substantiated is thus, well justified.

A Full Bench of this Court in ***Radha Kishan vs. Election Tribunal-cum-Sub-Judge, Hissar, AIR 2000 (Punjab) 1***, while examining the provisions of the Haryana Panchayati Raj Act, 1994 and Section 176(4) (b) and keeping in mind the earlier two Full Benches of this Court, in ***Lal Chand vs. State of Haryana, 1998 (2) PLR 640*** and ***Smt. Anju vs. Additional Civil Judge (Sr. Divn.), Pehowa, 1998 (2) PLR 393***, over-ruled the Division Bench judgment in ***Bharat Singh vs. Dalip Singh, 1996 (1) PLR 70***. It was held that “definite averments supported by an affidavit in accordance with Rules and preferably some documents in support, there would be *sine qua non* to passing an order of scrutiny and computation/recounting of votes by the Court considering the election petition”. Resultantly, it was held that there is no necessity to go into a

detailed enquiry and documentary evidence. The relevant portion reads thus:-

“In the above observations were recorded by the Hon'ble Apex Court in the cases falling under the Representation of People Act, 1951. Admittedly the provisions alike section 176(4)(b) of the Haryana Act is not embodied in that statute. Rule 69 controls the manner of recount before the returning officer and is hardly of any consequence and does not deal with the procedure or the powers of the court while entertaining a petition or application under section 4(b) of section 176 of the Act. The Court must take a view which would further the cause and the object of the statute rather than a view which would frustrate the very purpose of such enactment. The limited cases falling within the narrow scope of section 4(b) of the Act would require the Court, to pass an order in accordance with law, provided a petition presented to the Court with definite averments founded on actual facts verified or annexed with affidavit as required under the rules and with documents, if any, in support thereof. The expression 'shall' should be taken to its logical end and meaning. The legislature has certainly emphasised the need for entertaining and expeditious disposal of such application because they would help in resolving the controversy if founded on good material at the earliest possible stage and would help the candidate validly and rightfully elected to enjoy complete terms prescribed under the law to the office to which he was elected. We would like to follow the mid path to the two judgments of Division Benches of this Court, referred to above. The court would not be obliged to pass an order of recount the scrutiny and computation of votes on mere asking by the applicant in absence of any material as

described above. On the other hand, the Court is not required to go into the detailed inquiry based on detailed oral and documentary evidence before passing such order. We have already noticed that scope of the section is very limited one and the relief that can be granted finally on such application is only of recount with the object to scrutiny and computation of valid votes in favour of the candidates. Ambit and jurisdiction of this section cannot be extended by the court by holding that a regular inquiry is to be conducted by the Court for granting the relief under this limited provision. Acceptance of such submission would probably frustrate the object of the legislation.”

Accordingly, the present writ petition is dismissed. However, since on account of the interim order, re-poll could not be ordered on 11.07.2016, the Tribunal's order be complied with by holding elections on 16.09.2016.

06.09.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No

