

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

CWP No.25517 of 2016 (O&M)

Date of Decision: December 21, 2016

District Bar Association, Fatehgarh Sahib and another

...Petitioners

Versus

Bar Council of Punjab and Haryana

...Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr.Lakhwinder Singh Sidhu, Advocate
for the petitioners.**

HARINDER SINGH SIDHU, J.

The prayer in this petition is two fold:

- (i) to quash the Bar Association (Constitution and Registration) Rules, 2015, (for short “ the Rules”) as being ultra vires the Rule making powers of the State Bar Council under the Advocates Act, 1961.
- (ii) to quash the letter dated 20.11.2016 (Annexure P-11) issued by the Bar Council of Punjab and Haryana, as per which the term of office bearers to be elected during the elections proposed to be held on 22.12.2016 has been fixed upto April. 2018 when the next general election would take place alongwith elections of the Punjab and Haryana High Court Bar Association.

In CWP No.24392 of 2015 titled 'Rakesh Punia vs. Bar Council of India and another' decided today, we have already upheld the competence of the State Bar Council to frame Rules to regulate the elections

to the Bar Associations.

We also find no merit in the prayer of the petitioner to quash the letter dated 20.11.2016, as per which the term of office of the office-bearers of the Bar Associations elected on 22.12.2016 would be till April, 2018. As is evident from the letter itself, the Bar Council has taken the decision to hold the elections of the Bar Associations in the States of Punjab, Haryana and U.T. Chandigarh along with the elections of the High Court Bar Association on a single day on the principle of 'One vote one Bar Association' in the larger interest of the Bar Associations. While taking this decision the Bar Council was conscious of the fact that Rule 9 of the Rules requires the election of the Bar Association to be held within one month of the expiry of the term of one year failing which ad hoc committee would be constituted to hold elections within a further period of one month. The decision to give a longer term till April, 2018 was necessitated in the larger interest to hold elections of all Bar Associations on a single day .

The relevant extract from the letter as under:

“In view of the above specific rule, which requires the election of the Bar Associations whose term has expired should be held within a period of one month from the expiry of the term. It is appropriate in the larger interest of the Bar Associations in both the States of Punjab, Haryana and U.T. Chandigarh that the election should be held on a single day on the principle of 'One vote one Bar Association' in order to maintain unanimity and transparency in the election of the office bearers of the Bar Associations. It has also been resolved that the elections of the office bearers of the Bar Associations would take place on 22.12.2016, the term of the office bearers would be till April 2018 elections which would take place alongwith the elections of the High Court Bar Association, which is the main prayer of

the representationist.”

The Rules have been framed and effectively enforced only in 2015. It is common experience that in the initial enforcement of a new Statute or Rules or Regulations difficulties arise especially when the move is from a wholly unregulated field to a regulated one or even when the transition is from one statutory regime to a different statutory regime. It is to facilitate such a transition that Acts containing substantive, amending or repealing enactments commonly include transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. (*Ref. Francis Bennion, Statutory Interpretation -Third Edition, 1997*).

Another legislative device sometimes resorted to is for statutes or other statutory instruments to contain a provision for “removal of difficulties” which authorise the competent authority to pass orders to remove initial difficulties in the implementation of the Act or statutory instrument by “making minor adaptations or peripheral adjustments without affecting the substance to make its implementation effective”.

There appear to be no such provisions in the present Rules.

Francis Bennion, in his Statutory Interpretation (*supra*) expresses the view that where an “Act fails to include transitional provisions expressly, the Court is required to draw such inferences as to the intended transitional arrangements as, in the light of interpretative criteria, it considers Parliament to have intended.”

In view of the reasons which find mention in the impugned order, which being limited only to the elections held in December, 2016, and are, thus, clearly operative in the transitional phase, we find no reason

to quash the same.

Accordingly, this petition is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

December 21, 2016

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No