

**Sr. No.**

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

**CWP No. 26072 of 2016(O&M)  
Date of decision:22.12.2016**

**Deepak Sachdeva**

**.....Petitioner**

**versus**

**Bar Council Punjab and Haryana, Chandigarh and others  
.....Respondents**

**Coram: Hon'ble Mr.Justice Rakesh Kumar Jain**

**Present:** Mr. Kanwaljit Singh, Sr. Advocate with  
Ms. Swati Rathi, Advocate  
for the petitioner.

Mr. Lokesh Sinhal, Advocate  
for respondent No. 1.

Mr. Vikram Rathore, Advocate  
for respondents No. 2 to 5.

**Rakesh Kumar Jain, J.(Oral)**

The election of the Bar Association, Karnal was held on 23.05.2016. The petitioner contested for the post of President but lost by one vote. He filed the Election Petition No. 4 of 2016 before the Election Tribunal of Bar Council of Punjab and Haryana which was allowed vide order dated 4.07.2016 and re-poll was directed. The said order was challenged by the effected candidate Nirmal Singh by way of a writ petition bearing CWP No. 13118 of 2016 which was though dismissed by this Court on 6.09.2016 but the date of re-poll was changed from 11.07.2016 to 16.09.2016. The re-poll was held on 16.09.2016 in which the petitioner was elected as president. He received a communication dated 29.09.2016 from the Bar Council of Punjab and Haryana that the general election of the Bar Associations in the States of Punjab, Haryana and UT Chandigarh shall be

held on Friday i.e. 2.12.2016. The petitioner made a representation on 10.10.2016 to the Chariman of the Bar Council seeking exemption from holding the election of the Bar Association, Karnal on the ground that the District Bar Association, Karnal was elected only on 23.05.2016 and had not completed its term of one year. The said application was considered by the Chairman of the Bar Council and passed the following orders:-

*“Seen and request allowed”  
Sd. Rajat Gautam,  
Chairman.”*

The petitioner was quite sanguine that there would be no election on 2.12.2016 but received another communication on 22.11.2016 as per which the elections were rescheduled for 22.12.2016. The petitioner made a representation to the Bar Council on 10.12.2016 for postponing the election as the request made by the petitioner had already been allowed on 18.10.2016 by the Chairman of the Bar Council for granting exemption from holding the election of Bar Association, Karnal but the said application/representation remained undecided and hence the petitioner filed the present writ petition in which notice was issued on 20.12.2016 for 21.12.2016 and the case has been taken up today keeping in view the urgency involved as the elections are going on in the District Bar Association, Karnal.

Learned counsel appearing on behalf of the petitioner has submitted that the tenure of the Association, even as per the Rules of the Bar Association, Karnal is one year and in this regard, he has referred to Article 19 which read as under:-

*“All the powers under the Memorandum of Association shall vest in the Executive Committee shall hold office for a term of one year and cannot be*

*removed or replaced during its tenure so long as it enjoys the confidence of the members. However, in exceptional circumstances the committee can be ousted or removed but any through a no confidence motion in accordance with the provisions of Article 20.”*

It is further submitted that the elections are governed by the newly drafted Rules by the Bar Council which are called The Bar Associations(Constitution and Registration) Rules, 2015(for short, 'Rules 2015') in which Rule 9 provides as under:-

*“The office bearers of the Bar Association and Members of the Executive Committee shall hold the office till the completion of one year from the date of their election. However, in extraordinary circumstances they may continue for a further period of one month with the prior approval of Bar Council, for reasons to be recorded. The office bearers of the Bar Association shall have to get the election completed within the extended time, failing which the administration of the Association will vest in a Adhoc Committee duly nominated by Bar Council, who will hold the elections at the earliest preferably within 1 month.”*

It is clear from the aforesaid provisions of the Bar Association and Bar Council that the tenure of the office of the Bar Association has to be one year and cannot be curtailed rather there is a provision for extension of one month. Since there is a security of tenure after the election, therefore, the counsel for the petitioner has submitted that the petitioner had approached the Bar Council with a representation on 10.10.2016 for exempting Bar Association, Karnal from holding elections on 2.12.2016 as directed vide letter dated 29.09.2016 and the said prayer made by the

petitioner was allowed by the Chairman of the Bar Council who had seen the application and then allowed the request made therein. It is further submitted that the said decision has not been reversed so far by the Bar Council and never communicated any other adverse decision. Learned counsel for the petitioner has further submitted that in case the Bar Association, Karnal had wrongly held the election on 23.05.2016, as it was to be held somewhere in December every year, the Bar Council had all the powers to de-recognize the elected body and to appoint an ad hoc committee to manage the affairs of the Bar Association but no such action was taken by them and thus, they are now estopped by their own act and conduct.

On the other hand, learned counsel appearing for the Bar Council has vehemently argued that elections are being held in terms of 6 (B)(i) of the Rules 2015, the said rule provides as under:-

*“There shall be election of every Bar Association by secret ballot for electing its office bearers every year on 1<sup>st</sup> Friday of the month of December, in case the 1<sup>st</sup> Friday falls on a holiday, the election will be held on next working day except Saturday. Every advocate can become member of one or more Bar Associations but he will have a right to cast his/her vote only at one Bar Association and for that he/she shall file an affidavit to this effect at every election that he/she intends to cast his/her vote in a particular Bar Association elections positively before 31<sup>st</sup> of August of each year. It will be the duty of the Bar Association to get the annual subscription cleared before finalising the list of voters on or before 31<sup>st</sup> of August of every year and thereafter, the Bar Association will send the list of eligible voters along with duly sworn affidavits and photocopy of subscription clearance proof on or before 15<sup>th</sup> of*

*September of every year. In case a particular Bar Association fails to make compliance well within time then the Bar Council will appoint Adhoc Committee who will take over the entire control of the Bar Association and will get the elections conducted under its supervision.”*

It is also submitted that the decision taken on 18.10.2016 was not conveyed to the petitioner and that illegality committed by the Bar Association, Karnal for holding the election on 23.05.2016 instead of December, 2015 cannot be allowed to continue as it would offend the provisions of 6(B)(i) of Rules, 2015. However, he could not deny that the Bar Council had the jurisdiction and power to de-recognize the Executive Committee elected on 23.05.2016 i.e. Bar Association, Karnal but no such action was taken against them and they were allowed to continue till the election has been declared for 22.12.2016.

I have heard both the learned counsel for the parties and perused the available record with their able assistance.

The question involved is *as to whether there should be elections of the Executive Committee of Bar Association, Karnal before the completion of its term of one year?*

There is no doubt that Rule 6(B)(i) of the Rules 2015 provides that every Bar Association has to elect its office bearers every year in the month of December meaning thereby, the election has to be held of Bar Association in the month of December every year. There is no dispute that the term of the office of the Bar Association has to be one year and can be extended for another one month meaning thereby, the tenure of the office of the Bar Association is secured atleast for one year which cannot be curtailed by mid term poll. Rule 11 of the Rules 2015 provides for the Role of the Bar

Council in case of any such kind of dispute.

In the present case, even if the elections were to be held in the month of December 2015 but the elections were actually held on 23.05.2016 after five months of the due date and the said elections were duly recognized by Bar Council as no action was taken against the Bar Association for holding election in contravention to Rule 6(B)(i) of Rules 2015. The election of the president was under challenge before the Bar Council in the month of May, 2016 itself and it was decided in the month of July, 2016 but even at that time there was not even a whisper on the part of the Bar Council about the election having been illegally held by the Bar Association, Karnal. The matter was before this Court in a writ petition which was disposed of on 6.09.2016 and even at that time there was no objection raised by the Bar Council that the election was wrongly held in the mid of the year. Further more, when this matter was brought to the notice of the Bar Council by the petitioner for seeking exemption from holding election then Chairman of the Bar Council allowed the application after perusing the same meaning thereby, that the petitioner has the concurrence of the Bar Council that there would be no elections like the elections being held in other association in the month of December and when the elections were declared for 22.12.2016, the petitioner made a representation on 10.12.2016 but the said representation was also not decided. All these facts, only leads to one irresistible conclusion that the elections held on 23.05.2016 had the concurrence of the Bar Council because had it been illegally held in the mid of the year, the Bar Council would have taken a strict action against the Bar Association in de-recognizing the elected body and appointing its Ad hoc Committee to

manage the affairs of the Bar Association. In the absence of any such action having been taken, the only interference which can be drawn by this Court is that the said executive committee deserved the exemption to complete the period of one year in terms of the provisions of Rule 9 of the Rules 2015. Thus, the questions posed in the earlier part of this order is decided in favour of the petitioner and against the respondents.

With these observations, the present writ petition is hereby allowed and the election of the Bar Association, Karnal which is being held today is hereby cancelled.

At this stage, learned counsel appearing for the Bar Council has submitted that the period of term of the office of the Bar Association, Karnal may be restricted till April, 2017 so that the fresh election may be held along with the other Bar Associations in April, 2017.

The request made by learned counsel for the Bar Council is accepted by learned counsel for the petitioner and thus, it is ordered that the tenure of the present Bar Association, Karnal shall be upto April, 2017.

A copy of this order be handed over to counsel for the parties under the signatures of the Special Secretary of this Court.

**22<sup>nd</sup> December, 2016**

Shivani Kaushik

**[Rakesh Kumar Jain]  
Judge**

*Whether Speaking/reasoned*

*Yes/No*

*Whether Reportable*

*Yes/No*