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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9760/2017**
MS. KANIKA CHAUHAN

..... Petitioner
Through Mr.Amar Nath Saini and
Mr.Mohd.Hris Usmani, Advocates.

versus

SAKET BAR ASSOCIATION AND ANR.

..... Respondents
Through Mr.Rakesh Tiku, Sr. Adv. with
Ms.Aarushi Tiku, Mr.Gaurav Kohli,
Advocates for R-1.
Mr.Gaurav Puri, Advocate for R-2.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **21.11.2017**
C.M. No.41636/2017

Petitioner has impugned the order dated 31.10.2017 passed by the Chairman, Election Committee (Saket Court Complex, Delhi) wherein the representation of the petitioner seeking the addition of her name in the eligible voter list (of the ensuing election of the Saket Court Bar Association) had been declined.

The case of the petitioner is that she was enrolled with the Bar Council of Delhi vide enrolment No. D/2383/2013 in the year 2013. She had taken membership with the Saket Bar Association on 15.10.2016 vide membership No. KJ-541. She completed one year of the membership with respondent No. 1 (Saket Court Bar Association)

on 15.10.2017. Submission is that as per the bye laws, rules and regulations of the Saket Bar Association and particularly rule 10 a voting right is to be granted to a person who has completed one year of enrolment with that Bar and this one year has to be counted from the date of the declaration of the schedule of the general election. The declaration of the schedule of the general election was done on 15.11.2017. The petitioner had completed one year of enrolment on 15.10.2016. Her name thus not having been included in the eligible list of voters is an illegality which is liable to be rectified by this court.

On advance notice, learned counsel for the respondents have put in appearance. Petitioner had prayed for an interim relief on 17.11.2017. This court was not inclined to grant any interim relief but notice on the interim application had been issued. This order was the subject matter of an appeal before the Division Bench which was disposed of on 13.11.2017. The appeal was dismissed.

Learned counsel for the petitioner submits that Rule 10 of the Saket Bar Association Rules which deals with the voting rights of an eligible voter has been rampantly ignored.

Relevant would it be to reproduce Rule 10 of the Memorandum of Association and Constitution of Saket Bar Association. It reads herein as under:-

“10. Voting Right:

No member shall have voting right in the election of the SAKET BAR ASSOCIATION if he/she has not completed minimum one year on the roll of the Association before

the date of declaration of the schedule of the general election. The members shall follow the rule of one bar – one vote excluding High Court and Supreme Court.”

This rule starts with a non-obstante clause. It states that no person who has not completed one year on the roll of the Saket Bar Association will be entitled to vote and this one year has to be counted from the date of the declaration of the schedule of the general election. The rule of one Bar one vote (excluding the High Court and Supreme Court) is also contained in this voting right.

Learned counsel for the respondent rightly pointed out that on the date when a declaration had to be submitted by an eligible voter stating that he / she has not cast his vote (in that year) in any Bar Association of the District Court, the petitioner was not an eligible voter. The date of the submission of such a declaration had to be filed on or before 31.07.2017 which was later on extended up to 14.08.2017. On both these dates the petitioner was not in a position to submit any such declaration; not having completed one year. She thus could not form a declaration that she had cast / not cast her vote in any other Bar Association of any other District of Delhi; in the absence of such a declaration her name could not be considered for an eligible voter.

Learned counsel for the respondent points out that this matter is no longer res integra and this issue has in fact been settled by the Division Bench of this court in its judgment pronounced on 31.05.2016 in *W.P.(C) 8106/2010, P.K. Dash vs Bar Council of Delhi & Ors.* Learned counsel for the petitioner infact also relies upon the

same judgment.

This judgment had laid down the principle of one Bar one vote in relation to every Bar Association in Delhi (including Delhi High Court Bar Association, the Delhi Bar Association, the New Delhi Bar Association, the Rohini, Shahdara, Saket and Dwarka Courts Bar Association and all other Court / Tribunals attached Bar Association). This is contained in para 52 of the judgment which had enlisted its conclusions and directions.

Relevant would be to extract the aforementioned findings:-

“A member who exercises her or his right to vote in any year in the High Court or a District Court Advocate’s/ Bar Association election shall not be eligible to contest for any post – either as member of the executive or of an office Bearer of any other Association or to cast her or his vote at the election. Every member before casting his vote shall in the prescribed form furnish a ‘Declaration’ that she/he has not voted and is not voting in any other election of the Supreme Court Bar Association, Delhi High Court Bar Associations, any other District Court Bar Association, and has not done so in the past one year. Provided, however, that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of the Association for a period of three years.

Based on the declaration of members, the Bar

Association shall prepare, a list of voters. Only the members whose names are included as the final voters- after excluding those who had voted in elections of any other Bar Association in that year or the previous year, shall be entitled to vote, contest, propose and second any candidate in the Bar Association Election.

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Explanation (3) “Declaration” means a declaration in the following form:

I... (State name, and full description, i.e., parentage, age, particulars of Bar Council enrolment, and membership of the Bar Association of the Court complex where chamber allotment is sought) do hereby solemnly declare and affirm that I have not voted for and/or am not contesting for any elective post, in any other Bar Association of which I am also a member in the last one year and that I will not do so in any election during this year in such Bar Association.—In case this declaration is detected to be false, my right to vote shall remain suspended for three years after such declaration is detected to be false.

The above condition shall be deemed to be incorporated in the conditions of eligibility applicable for voting as well as candidature for the post of member of any executive body (by whatever name called) and every office bearer of each association (President, Vice President, General or Honorary Secretary, Assistant,

Joint Secretary, Treasurer, Asst. Treasurer, or any other bearer of each association by whatever other name called) immediately and shall be given effect to in every election to each Bar Association hereafter. This condition shall remain in force and bind all Bar Associations as condition for their recognition.”

These conditions as laid down by the Division Bench which are a mandate for all Bar Associations (admitted position) to follow clearly provide that a declaration has to be given by an eligible voter disclosing his/her parentage, age, number of his/her Bar Council Enrolment membership with a clear undertaking stating that he/she has not voted in any other Bar Association and will also not to do so in the future. This condition has to be incorporated in the condition of eligibility applicable for voting and is binding on all Bar Associations.

A harmonious reading of this condition as highlighted in para 52 of the judgment (supra) read with Rule 10 of the Saket Bar Association Rules reflects that the voting right clearly provide that before the eligibility of a voter can be decided a declaration/undertaking has to be furnished by the said voter declaring before the Election Committee that he or she has not cast his/her vote in any other Bar Association till that date. This declaration in the case of the present election had to be furnished by an alleged voter on or before 31.07.2017 which date had been extended to 14.08.2017. Admittedly on that date the petitioner was not a candidate who had completed one year of enrolment with the

Saket Bar Association and thus was not in a position to furnish this declaration. In the absence of this declaration the question of her being considered as an eligible voter does not arise. The impugned order in this background suffers from no infirmity.

Learned counsel for the petitioner places reliance upon the judgment delivered in *Sanjeev Kumar & Ors vs Registrar of Co-operative Societies & Ors*, W.P.(C) 7821/2015 to substantiate his submission that if the voter list is not prepared correctly such an election would be void. This is a settled position of law is a legal position which is undisputed. This judgment is not applicable to the facts of the present case. Petitioner has failed to make out that she falls in the category of an eligible voter.

Petition is without merit. It is dismissed.

INDERMEET KAUR, J

NOVEMBER 21, 2017

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