

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1.

CWP No.22377 of 2018
Date of Decision:28.09.2018

Minderjeet Yadav

. Petitioner

Vs.

Bar Council of Punjab and Haryana and others

. Respondents

2.

CWP No.22613 of 2018

Rameshwar Das Bishnoi and others

. Petitioners

Vs.

Bar Council of Punjab and Haryana and another

. Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

In CWP No.22377 of 2018

Present: - Dr. Anmol Rattan Sidhu, Sr. Advocate, with
Mr.Raghav Gulati, Advocate,
for the petitioner.

Mr.B.S. Rana, Sr. Advocate, with
Mr.Gagandeep Singh Rana, Advocate, and
Ms.Divya Bajaj, Advocate,
for respondent No.1.

Mr.Ramesh Malik, Advocate,
for respondent No.2.

Mr.Rakesh Gupta, Advocate,
for respondent No.3.

None for respondent No.4.

Mr.Amit Khatkar, Advocate,
for respondent No.5.

In CWP No.22613 of 2018

Present: - Mr.Vikas Kumar, Advocate,
for the petitioners.

Mr.B.S. Rana, Sr. Advocate, with
Mr.Gagandeep Singh Rana, Advocate,
for the respondents.

RAKESH KUMAR JAIN, J.

This order shall dispose of two petitions bearing **CWP No.22377 of 2018** titled as **“Minderjeet Yadav Vs. Bar Council of Punjab and Haryana and others”** [for short ‘the 1st petition] and **CWP No.22613 of 2018** titled as **“Rameshwar Das Bishnoi and others Vs. Bar Council of Punjab and Haryana and another”** [for short ‘the 2nd petition] as the issues involved in both the petitions are common.

The Bar Council of Punjab and Haryana is a statutory body which finds its existence in Section 3(1)(d) of the Advocates Act, 1961 [for short ‘the Act’] in which it is provided that *“there shall be a Bar Council for the States of Punjab and Haryana and the Union Territory of Chandigarh to be known as the Bar Council of Punjab and Haryana”*. The term of the office of the member of the Bar Council of Punjab and Haryana [hereinafter referred to as ‘the Bar Council’] is five years from the date of publication of the result of his election as provided in Section 8 of the Act. The last election of the Bar Council was held on 31.5.2013 and 1.6.2016 and the notification of its result was published in the official gazette of the States of Punjab and Haryana and Union Territory, Chandigarh on 1.7.2013, 9.7.2013 and 2.07.2013 respectively. The petitioner, in the 1st petition, was elected as a member of the Bar Council and remained its Chairman as well. The term of the Bar Council was to expire on 8.7.2018 but on 13.5.2018 a general meeting of the Bar Council was held and resolutions No.14(a) to (g) regarding the ‘Bar Council Election’ were passed. It was resolved in Resolution 14(a) that Bar Council would comply with the provisions of Rule 4(1) of the Bar Council of India Rules by making wide publication of the notice in the prescribed form in the newspapers and gazette notifications etc. of the forthcoming elections and vide Resolution No.14(b), a sub committee was constituted under the Chairmanship of respondent No.3 for preparation

of the electoral roll on the basis of the verification forms received from the advocates under the certificate and place of practice (verification) Rules 2015 [for short 'the Rules of 2015']. It was also resolved in Resolution No.14(d) that the matter for seeking extension of term of office of the existing body of the Bar Council from the Bar Council of India, in terms of Section 8 of the Act, was taken up and considered. It was also resolved to issue letters/notices/SMS to advocates to submit their verification forms on or before the date fixed. The Bar Council of India granted extension of the term of the Bar Council vide its letter dated 17.6.2018 for a period of six months and also directed the Bar Council to hold the elections on 1st and 2nd November, 2018. The Bar Council issued an agenda for meeting dated 1.7.2018 in which relevant items were 7, 9 and 10 which read as under: -

“Item No.7. To consider the appointment of Returning Officer under Rule 35 of Bar Council of Punjab & Haryana Election Rules, 1968 and to authorize him/her to appoint observers for any Polling station which he consider necessary.

Item No.9. To consider the appointment of Assistant Returning Officer/s to assist the Returning Officer in conducting the Election of the Bar Council.

Item No.10. To consider and put up scanned copy of preliminary Electoral Roll, as well as, final Electoral Roll on the official website

of the Bar Council duly signed by the Secretary on each page.

The meeting was held on 1.7.2018, as proposed, with the complete coram in which the following resolutions were passed: -

***“Resolution No.7. The appointment of Returning Officer under Rule 35 Bar Council of Punjab & Haryana Election Rules, 1968 and to authorize him/her to appoint observers for any Polling station which he considers necessary was taken up and considered. It was unanimously resolved that Sh. Gurinder Pal Singh, Advocate be appointed as Secretary-cum-Returning Officer u/s 35 of the Bar Council of Punjab and Haryana Elections Rules, 1968, he will be the Incharge of conducting the Election of the Bar Council. Sh. Gurinder Pal Singh who was present in the meeting has consented to act as Secretary-cum-Returning Officer, for the election of the Bar Council and assured the House to perform his duties sincerely, lawfully and observing full transparency, as per the Election Rules of the Bar Council of India, as well as, State Bar Council Elections Rules/Resolutions.*”**

Resolution No.9. *The appointment of Assistant Returning Officer/s to assist the Returning Officer in conducting the Election of the Bar Council was taken up and considered. It was unanimously resolved that Hon'ble Chairman be authorized to appoint Assistant Returning Officer/s not more than ten."*

In the subsequent meeting held on 25.8.2018, the resolutions of 1.7.2018 and 31.7.2018 were confirmed/approved which read as under: -

"Resolution No.1. *The confirmation of proceeding of the meeting of the Bar Council of Punjab and Haryana held on 1.7.2018 and 31.7.2018, the copies of which were circulated with agenda, taken up and considered. After going through the entire proceedings of the Bar Council meeting dated 1.7.2018 were confirmed however only two members namely Mr. S.S. Bhinder and Mr. Minderjeet Yadav did not agree to confirmation on the ground as they were not present in the meeting held on 1.7.2018.*

The proceedings of extra ordinary meeting held on 31.7.2018 were also confirmed."

The petitioner (Minderjeet Yadav) has submitted that the electoral roll is defective because there are approximately 93,000 advocates

on the roll of the Bar Council whereas the electoral roll published by the Bar Council contains 54,000 advocates and hence, the valuable rights of the advocates to cast their votes have been taken away. It is submitted that the Bar Council has not made wide publicity, inasmuch as, messages were not sent by way of personal notice or letter and only SMS have been sent which could not be treated as due information to the advocates who have not been left out. Thus one of the prayers of the petitioner is for the issuance of a direction to the Bar Council for holding a fair and impartial election on the basis of proper electoral roll to be prepared by an independent committee under the supervision of a retired Judge of the High Court. He is also aggrieved against the appointment of respondent No.4 as Secretary-cum-Returning Officer being a sitting elected member. The prayer has also been made that the Assistant Returning Officer (ARO) should be appointed by the Election Tribunal.

It is pertinent to mention here that all the aforesaid issues were raised by the petitioner by way of an election petition which was filed before the Bar Council of India. The petitioner had earlier approached this Court by way of CWP No.18767 of 2018 which was listed along with another CWP No.19480 of 2018. Both the writ petitions were dismissed as infructuous because learned senior counsel appearing on behalf of the petitioner had informed the Court that the petitioner has approached the Bar Council of India for the redressal of his grievance and the matter is under active consideration of the Election Tribunal. It is also not in dispute that after the order was passed by this Court on 7.8.2018, the petitioner made an additional representation dated 13.8.2018 to the Election Tribunal, Bar Council of India in which he had raised all the issues which have been raised in the present petition as well. However, the Bar Council of India has

appointed the Hon'ble Mr. Justice Nirmal Singh, former Judge of the Jammu and Kashmir High Court as an Observer to oversee the election. The relevant extract of the order dated 19.8.2018 is reproduced as under: -

“The Election Tribunal of the Bar Council of India is in receipt of some complaints relating to election process of the State Bar Council of Punjab and Haryana. Mr. Minderjeet Yadav, complainant's grievance was that the electoral roll was not properly prepared and that the Returning Officer who has been appointed is a sitting member of the State Bar Council of Punjab and Haryana. Mr. Minderjeet Yadav had further contended that there is lack of transparency in the process of elections.

Mr. G.P. Singh, Returning Officer contended that after preparation of preliminary electoral roll, objections had been invited and is being considered and that the final electoral roll shall be published only after consideration of the objections. Mr. G.P. Singh stated that he being the RO and along with him the ARO/s are not contesting the election of the State Bar Council Elections and that is why they are competent to be appointed as RO and ARO/s.

The Tribunal held that the grievances are mainly against the RO and ARO/s as they are Members of the Bar Council and in order to avoid all future complications and for the purpose of transparency of the election, you may be kindly requested to act as an Hon'ble Observer to oversee the election."

A close scrutiny of the order dated 19.8.2018 shows that the Election Tribunal had held that the grievance of the petitioner is mainly against the appointment of Returning Officer and Assistant Returning Officer and not the electoral roll. It is also pertinent to mention that the order dated 19.8.2018 passed by the Bar Council of India is not subject matter of challenge in this petition.

Be that as it may, respondents No.2 & 3 have filed their separate replies. Insofar as the reply of respondent No.3 is concerned, he has categorically averred that in Rule 3(w) of the Bar Council of Punjab and Haryana Election Rules, 1968 (as amended) [for short 'the Rules of 1968'], the 'election committee' is defined which mean a committee constituted by the Bar Council before the date of election for drawing up a detailed programme of election and all other matters incidental thereto. It is submitted that on the day when he was appointed as member/chairman of the Committee he was not sure that he would contest the forthcoming elections but when he decided to contest the election then he submitted his resignation to the election committee on 23.6.2018 which has been accepted by the General House in its meeting held on 1.7.2018. He has further averred in the reply that his name has been unnecessarily dragged in the

present litigation whereas he has no concern whatsoever in the preparation of the electoral roll.

The reply of respondents No.1 & 2 is by and large the same. It is averred by respondent No.1 in its reply that with the appointment of the Observer by the Bar Council of India all the doubts of the petitioner have been addressed and the order of appointment of Observer has remained unchallenged. It is further submitted that the petitioner had already approached the Observer by submitting list of advocates whose verification forms were not received. When the matter has been referred by the Observer to the Election Tribunal of the Bar Council the matter has been referred back to the Observer of the Bar Council for decision. The list of certain advocates along with verification forms were placed before the Observer on 25.8.2018 but the present petition has been filed on 31.8.2018 without disclosing this fact which is an act of suppression of material facts from the Court. It is rather submitted that the petitioner, who was the Chairman of the Bar Council in the election held in 2013, has indulged in squandering away resources of the Bar Council for his personal benefit. I would not go into this issue at all as the issue before this Court is something else. It is further averred by respondent No.1 that the petitioner has no *locus standi* to espouse the cause of other advocates in regard to non-inclusion of their names in the voter list as the voting right is an individual right. Counsel for the respondents have also produced a list before the Court about the advocates who are specifically mentioned in the writ petition, allegedly left out in the list of voters, in which reason has been categorically mentioned by the Bar Council.

Learned counsel for the respondents has also observed that the entire proceedings in regard to the preparation of electoral roll has been taken care of by taking the following steps: -

- i. *“The State Bar Council has written its first letter to all Bar associations on 25.07.2015 giving schedule of submitting the verification form by individual advocates upto 10.08.2015.*
- ii. *The time for submission of verification forms was further extended upto 31.08.2015 vide letter dated 10.08.2015 addressed to all the Presidents in the States which was followed by another reminder dated 1.12.2015.*
- iii. *Another extension was granted vide letter dated 17.2.2016 to file the verification forms upto 31.3.2016.*
- iv. *A meeting of the General House of Bar Council was held on 20.3.2016 and unanimously a resolution was passed to circulate a letter to all the Bar Associations in the States of Punjab, Haryana and U.T. Chandigarh for strict compliance of the Verification Rules 2015 in reference to the letter*

dated 27.2.2016 received from Bar Council of India. Even, in the letter dated 10.3.2016 Bar Council of India had intimated to the State Bar Council that last date for completion of the process of the verification forms was extended upto 20.6.2016.

- v. On 21.7.2017 a detailed communication for strict implementation of the “Verification Rules 2015” was addressed to all the Bar Associations in the States of Punjab, Haryana and U.T. Chandigarh requiring all advocates to submit their verification forms at the earliest.*
- vi. Another letter was addressed to all the Presidents/Secretaries on 28.8.2017 wherein the time of 15 days was given to submit verification forms from the date of issue of the letter.*
- vii. That since the elections of the State Bar Council are to be held and notice under Rule 4 of the Bar Council of India was published in two news papers namely “Danik Bhaskar and*

The Tribune” on 19.5.2018 in which an important foot-note has been published for compliance of the verification rules and also specifically mentioned that non-compliance would result in putting the name of an advocate in the non-practising advocates’ list. The notice under rule 4 was also published in the official gazette of the States of Punjab, Haryana and U.T. Chandigarh with the same important foot-note as mentioned above. Still, further another opportunity was afforded to all the individual advocates by giving intimation through SMS from the Bar Council requiring verification forms to be submitted upto 15.6.2018. It may be pertinent to mention here that on receipt of certain representations, as a last opportunity, time further was extended for the aforesaid purpose upto 25.6.2018 and the intimation in this regard was also given by way of SMS to individual advocates on 20.6.2018. The narration of the above, facts would demonstrate that more

than sufficient opportunities have been afforded to all the concerned to submit the verification forms during the last about three years.”

Learned counsel for the Bar Council has further submitted that there is a difference between ‘right to practice’ and ‘right to vote’ and in this regard, it is submitted that different rules would apply i.e. Rules 2015 for ‘right to practice’ and Rules of 1968 in regard to ‘right to vote’. He has referred to Rule 13 of the Rules of 1968, which read as under: -

“Rule 13. (i) Preliminary Electoral Roll:-

A preliminary electoral roll containing the names of all advocates whose names are required to be included in accordance with the rules of Bar Council of India shall be put on the notice board of Bar Council within 120 clear days before the expiry of the term of members of the Bar Council necessitating the election and relevant portions thereof shall be sent to such Bar Associations as the Secretary considers fit.

A copy of the complete preliminary electoral roll shall also be made available for reference at the office of the Bar Council along with the preliminary electoral roll aforesaid, the Secretary shall also send notices giving intimation of the availability

of the list prepared under this rule for reference from the Secretary of the Bar Council or from the Bar Association concerned and call for applications for any additions, alterations or omission of any particulars in the preliminary electoral roll or for addition of names etc. in any portion of the preliminary electoral roll to reach the Secretary on or before the date specified in the said notice, not being less than twelve days from the date of notice. Every such application shall be signed by the applicant in full and shall contain the name of the advocate, the roll number, if any given, the date of enrolment as advocate particulars as the place where the advocate had been practicing since enrolment and period of such practice, the nature of the addition, omission, removal or other correction he requires and the address of the applicant and all the necessary particulars.

The Secretary may, if he considers it necessary, call for any information from the Advocate concerned or from any other person or authority with regard to the facts

stated or omitted to be stated in any such applications aforesaid.

(ii) Final Electoral Roll:-

The final electoral roll shall be prepared after incorporation such changes as may be necessary, including the addition of the names of Advocates enrolled after the preparation of the Preliminary Electoral Roll and put up on the notice board of the Bar Council not more than 75 clear days, and not less than 60 clear days, before the date of election. Intimation of such publication shall be given within a week after the publication to the Bar Associations aforesaid. The entries in the final Electoral Roll aforesaid shall be final and no additions, alterations, omissions, can be made there to excepting such alternations as may be necessary with reference to the death of an advocate or the removal of the name of an advocate for misconduct, an order of suspension for misconduct or a voluntary suspension from practice till the date of election.”

It is further submitted that due publicity was given and whosoever had filed the objection to the preliminary electoral roll, the same was decided accordingly and final electoral roll has been published.

As regards the appointment of the Returning Officer and Assistant Returning Officer is concerned, it is submitted that they have been appointed by way of Resolution of the Bar Council in the meeting which was held after due coram and further the said resolution has been confirmed by passing another resolution. Moreover, the Returning Officer Sh. S. P. Singh, is not a contesting candidate this time and there is no personal allegation against the ARO except for their alleged nearness to the sitting members.

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

It is apparent that the petitioner, who is asking for fair and partial election, is not espousing his own cause but the cause of the advocates fraternity, therefore, he is anxious about the manner in which the electoral roll has been prepared and RO and ARO have been appointed but the Bar Council has taken all due precautions in the matter of the process of election as the meeting was held on 13.5.2018 in which resolutions No.14(a) to (g) were passed regarding the 'Bar Council Elections'. Resolution 14(a) is sufficient to prove about the genuineness of the intention of the Bar Council as it decided to comply with the provisions of Rule 4(1) of the Bar Council of India Rules and the evidence brought on record with the reply of the Bar Council in the shape of the publication having been done in the newspapers, gazette notification etc. throws the light on the efforts made. Similarly Resolution 14(b) is regarding the preparation of electoral roll in terms of the Rules of 2015. The Committee was constituted and the

Chairman of the Committee (respondent No.3) had no idea that he would be contesting election but as soon as he made up his mind, he resigned from the committee and his resignation was accepted by the Bar Council long ago. The steps taken by the Bar Council, mentioned in para No.9 of its reply, from (i) to (vii) (reproduced hereinabove) show that the proper procedure has been followed. The Bar Council has tried to touch all the Advocates on its roll so that they, if in slumber, may wake up and instead of crying over the spilt milk later put their best foot forward for the purpose of ensuring the inclusion of their names in the final electoral roll. Interestingly, no one from the amongst advocates have filed the writ petition with Minderjeet Yadav (petitioner in the 1st petition), therefore, there is a 'question mark' on his *locus standi* as well. However, it is also an important factor that the petitioner had approached the Bar Council of India by way of Election petition and filed a writ petition before this Court while the said election petition was pending for the same relief and get the writ petition dismissed as infructuous to await the decision of the Election Tribunal. The Bar Council of India has passed an order on 19.8.2018, taking into consideration all the issues raised by the petitioner/Minderjeet Yadav, and appointed an Observer. The said order dated 19.8.2018 has not been challenged by the petitioner for the reasons best known to him rather he has made a complaint to the Observer about the electoral roll and as per the Bar Council while the Observer was seized of the subject matter the writ petition was filed.

Thus, I am of the considered opinion, keeping in view the aforesaid facts and circumstances, that there is no force in the arguments of the petitioner that the electoral roll has been defectively made by the Bar Council. Insofar as the appointment of RO and ARO are concerned, it would be suffice to mention that there is no arbitrariness in their

appointment because they have appointed on the basis of unanimous resolution passed by the Bar Council in the meeting duly convened and further the resolutions of their appointment have been confirmed in another resolutions which are on record as mentioned hereinabove. The argument of the petitioner in this regard is also not accepted. As a matter of fact, no other point has been raised in the 1st petition and the same is hereby dismissed.

Insofar as the 2nd petition is concerned, the petitioners are the members of the Bar Association, Sirsa who are aggrieved against the preparation of electoral roll in which their names have been left out/deleted. The writ petition has been contested by the Bar Council by filing a short reply in which the same pleas have been taken as have been taken in the reply filed in the 1st petition and a chart is also appended as Annexure R-1 dealing with the cases of the petitioners to show as to why their names have not been included in the voter list.

After going through the 2nd petition and the reply, much less Annexure R-1, I am satisfied with the reasons assigned by the respondents/Bar Council and hence, the 2nd petition is also hereby dismissed as having no merits.

A photocopy of this order be placed on the file of connected case.

28.09.2018

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No