

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

CWP No. 8328 of 2018

Date of Decision: 04.04.2018

NISHI BHARGAVA

.....Petitioner

V/S

BAR COUNCIL OF PUNJAB AND HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Ms. Nishi Bhargava, Advocate,
Petitioner in person.

Respondent No. 2 in person.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner is a practicing Advocate at Hisar who has preferred this petition to challenge the order dated 31.03.2018 passed by respondent No. 2 (Returning Officer of District Bar Association, Hisar) by which she has been informed that she is not eligible to cast her vote in the forthcoming elections for having been enrolled as an Advocate with the Bar Council of Himachal Pradesh vide enrolment No. HIM/69/1985.

The brief facts of this case are that the petitioner, after obtaining the Degree in Law from the Himachal Pradesh University, Shimla in the year 1985, got herself enrolled as an Advocate with the Bar Council of Himachal Pradesh, having enrolment No. HIM/69/1985. After her marriage in the year 1993, the petitioner has settled at Hisar and has started her legal practice at the District Courts, Hisar after becoming the member of the District Bar Association. It is alleged that she has been casting her vote in all the previous

elections of the office bearers of the District Bar Association but in the forthcoming elections, which are scheduled to be held on 06.04.2018, she has filed her nomination papers to contest for the post of Vice-President. It is submitted that the elections schedule was given on 15.03.2018 for the election of the office bearers of the District Bar Association, Hisar for the year 2018-19 as per which the nomination papers were to be filed w.e.f. 16.03.2018 to 17.03.2018 between 11.00 A.M. to 3.00 P.M., the date for scrutiny of nomination papers was fixed for 19.03.2018 upto 3.00 P.M., the date for withdrawal of nomination papers was fixed for 21.03.2018 between 11.00 A.M. to 2.00 P.M and the date of polling is fixed as 06.04.2018 between 9.00 A.M. to 4.30 P.M.

Since the nomination papers of the petitioner were accepted, therefore, the petitioner started canvassing for the elections. According to respondent No. 2 there was a complaint made by some members of the Bar Association, Hansi that there are lawyers enrolled with other Bar Councils who should not be allowed to cast their votes in terms of the Bar Associations (Constitution and Registration) Rules, 2015. In view thereof, the Bar Council of Punjab and Haryana sent a letter dated 30.03.2018 to the District Bar Association, Hisar and also to respondent No. 2 on the subject of Bar Association Election 2018-2019 in which the names of various advocates were mentioned who are enrolled with the other State Bar Council. The Bar Council of Punjab and Haryana has observed that *“Since prima facie, they are enrolled with other State Bar Councils, they are not entitled to be a voter under Rule 6 of the Bar Associations (Constitution and Registration) Rule, 2015 (for rule see website www.bcph.co.in), unless they get their names*

transferred under Section 18 of the Advocates Act, 1961 through the Bar Council of India. Therefore, their names are required to be deleted from the voter list, on due verification from the original enrolment certificate and entire voter list be re-examined in view of the above facts and also send a complete list of voters after deletion, to the Bar Council positively by 2nd April, 2018.

The returning officer of the Bar Association is further requested to conduct the election on the basis of latest revised list of voters of the Bar Association in a free and fair manner. The transparency in the election be properly maintained.

The responsibility as to authenticity of the voters list shall remain with the Returning Officer of the Bar Association.”

The Respondent No. 2, has submitted that in view of the aforesaid letter, the voters' list has been revised and the names of all those lawyers who have been enrolled with other State Bar Councils than the Punjab and Haryana Bar Council have been deleted and the revised voters' list has been submitted to the Bar Council of Punjab and Haryana on 02.04.2018.

The petitioner has submitted that there is not fault on her part because as a member of the Bar Association since 1994 she has been casting her vote till the last year. It is further submitted that the petitioner, after receiving the impugned letter dated 31.03.2018, has also made a representation to the Bar Council of Punjab and Haryana on the same day i.e. 31.03.2018 but the said representation is still under consideration. The petitioner has prayed that since the impugned order has been passed on 31.03.2018 and no time is left with her to contest the reasons given by the

respondents for depriving her to cast vote and to contest, she may be allowed to contest the elections provisionally.

On the other hand, respondent No. 2 has submitted that impugned order dated 31.03.2018 has been passed strictly in consonance with the instructions of the Bar Council of Punjab and Haryana and also in terms of Clause 6 of the Rules which deals with the admission of members and elections of the Bar Associations.

It is submitted that Clause 6 of the Rules categorically provides that any Advocate enrolled with other State Bar Council shall not be entitled to Vote in the election unless he get his name transferred under Section 18 of the Advocates Act, 1961, before the finalization of the Voter List.

It is further submitted that the petitioner is a practicing Advocate who should have the knowledge about the provisions of the Rules in which it is categorically mentioned that the person who is enrolled in the Bar Council other than Punjab and Haryana, would not be eligible to cast his/her vote in the forthcoming elections until and unless he/she gets his/her enrolment transferred.

It is pertinent to mention that while deciding LPA No. 1427 of 2014 on 01.09.2014, the Division Bench of this Court had issued directions to the Bar Council of Punjab and Haryana to enact the appropriate Rules for conducting the elections.

As a consequence, Bar Council of Punjab and Haryana has enacted the Rules with the aim and object to bring uniformity and transparency relating to the elections of the office bearers and also to avoid complexity in view of the bye laws framed by the various Bar Associations

which are affecting the purity and fairness of the elections of the office bearers of the Bar Associations.

Apropos, elections of the office bearers of the Bar Association coming under the jurisdiction of Bar Council of Punjab and Haryana are being regulated by the Rules in which Rule 6 deals with admission of members and elections of the Bar Associations and read as under: -

Admission of Members and Election of the Bar Associations

Any person enrolled as an Advocate with the Bar council of Punjab and Haryana, wishing to become a member of a Bar Association may apply in writing to the Secretary/authorized person of the Bar Association for admission on an application prescribed as per the constitution/by laws of the concerned Bar Association with a copy of the application to the Bar Council. Such an advocate will have to furnish an affidavit to the Bar Association with a copy to the Bar Council to the effect that he will remain in active practice and will not do any other business/Service, or other profession as prohibited under the Advocate Act/Rules of Bar Council of India.

Any Advocate enrolled with other state Bar Council shall not be entitled to Vote in the election unless he get his name transferred under Section 18 of the Act, before the finalization of the Voter List. Under the Rules of Bar Council of India, every advocate is under an obligation to see that his name appears on the roll of the Bar Council within those jurisdiction he ordinarily practises.

A) Every bar Association will supply a copy of its constitution/by laws to the Bar Council of Punjab and Haryana. The amendment in the existing constitution/by laws can be done by the Bar Association as per its own constitution/by laws.

B) (i) There shall be election of every Bar Association by secret ballot for electing its office bearers every year on 1st Friday of the Month of December, in case the 1st 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 31st of August of each year. It will be the duty of the Bar Association to get the annual subscription cleared before finalizing the list of voters on or before 31st 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 15th 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.

ii) For conducting the annual elections, every Bar Association shall nominate returning officer/election committee as per their own constitution/by laws and intimation of the same shall be sent to the Bar Council of Punjab and Haryana.

Rule 11 (A) of the Rules deals with the dispute redressal mechanism by the Bar Council which reads as under” –

11. Role of 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 suo-moto or on the basis of the complaint filed by any effected member and the decision of the Bar Council will be final.

No doubt that the petitioner is a member of the Bar Association, Hisar but admittedly she has been enrolled as an Advocate with Bar Council of Himachal Pradesh having enrolment No. HIM/69/1985. It is also not disputed that she had casted her vote in all the previous elections as a

member of the Bar Association and this time she has filed the nomination paper to contest the election as the Vice president. The nomination paper was not rejected on the ground that she has been enrolled in the Himachal Pradesh. However, the Bar Council, while entertaining the complaint made by the some of the members, found that there are lot many advocates/members of the Bar Association who have not still got their enrollment transferred from the other State Bar Councils to the Bar Council of Punjab and Haryana.

Therefore, the Bar Council of Punjab and Haryana swung into action and wrote a letter to the District Bar Association Hisar that in view of the Rule 6 of the Rules, such type of members should not be allowed to participate in the elections until and unless they get their enrollment transferred under Section 18 of the Advocates Act.

The petitioner did not get her enrollment transferred from the Bar Council of Himachal Pradesh to the Bar Council of Punjab and Haryana so far. It is also alleged by the petitioner that she had already moved to the Bar Council of Punjab and Haryana by way of a representation dated 31.03.2018 against the decision taken by the Returning Officer for not allowing her to cast her vote on the ground that she is enrolled as an advocate with the Bar Council of Himachal Pradesh and the said representation has not been decided one way or the other and the elections are around the corner. Respondent No. 2 has submitted that once the petitioner has already availed the remedy under the Rules by filing an application, the writ petition in its present form is not maintainable.

In this regard, I am of the considered opinion that the petitioner has not made the prayer in the writ petition for seeking a direction to the Bar Council of Punjab and Haryana to decide the application dated 31.03.2018 to participate in the forthcoming elections scheduled to be held on 06.04.2018.

Be that as it may, since the petitioner is already before the Bar Council and the elections are scheduled to be held on 06.04.2018, thefore, while disposing of the present writ petition, respondent No. 1 is directed to take up the matter immediately on 05.04.2018 and decide the same in one way or the other. The petitioner shall appear before the Bar Council on 05.04.2018 at 11.00 A.M.

Copy of this order be given dasti to the petitioner for compliance of the order.

April 4, 2018

Ess Kay

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking / reasoned :	✓ Yes / No
Whether Reportable :	✓ Yes / No