

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

1. CWP No. 9764 of 2018

Dr. Anmol Rattan Sidhu **...Petitioner**

versus

Bar Council of Punjab and Haryana and others **...Respondents**

2. CWP No. 10069 of 2018

Dr. Anmol Rattan Sidhu **...Petitioner**

versus

Bar Council of Punjab and Haryana and others **...Respondents**

Date of decision : 29.08.2018

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. D.V. Sharma, Sr. Advocate with
Mr. Tushar Sharma, Advocate
for the petitioners in both the cases.

Mr. B.S. Rana, Sr. Advocate with
Mr. Parveen Kaushik, Advocate
for respondent Nos. 1 and 2 in both the cases

Mr. G.S. Bhatia, Advocate,
Mr. Harinder Sharma,
Mr. Rajan Gupta and Mr. Arvind Galav, Advocate
for respondent No. 3 in 9764-2014
for 3 and 4 in 10069-2018.

Mr. Puneet Jindal, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate
for respondent No. 4 and 5 in CWP No. 9764-2018

RITU BAHRI, J.

The above said two petitions, as noted above, are being
disposed of by this common judgment, having arisen out of the impugned

notices dated 16.04.2018 and 19.04.2018 along with elections petitions (Annexure P-1 collectively) issued by respondent No. 2 in the elections disputes, raised by respondent No. 3-Chouhan Sativinder Singh Sisodia, Advocate and Mr. Dinesh Kumar in their separate elections petitions. The prayer made in the petitions is for restraining respondent No. 2 from proceeding under the Bar Associations (Constitution and Registration) Rules, 2015 (fort short 'Rules 2015) (Annexure P-6 colly).

Brief facts of the case as pleaded by the petitioner in the present case are that the Punjab and Haryana Bar Association (Regd.) Chandigarh is a society registered under the Societies Registration Act, 1860 (herein after to be referred to as "the High Court Bar Association'), who framed its own Rules and Regulations. Annexure P-2 is the copy of Rules and Regulations of the High Court Bar Association. The above said Rules and Regulations provides for the terms and conditions of admission of members, consequences of non-payment of subscription fee, categories of members, eligibility for membership etc. All the members of the High Court Bar Association constitute the General Body, which elects from amongst its members an Executive Committee. The constitution of the Executive Committee (Governing Body) has been given in Rule 12 of Annexure P-2, which shows that the General Body of the High Court Bar Association elects a President, Vice President, Honorary Secretary, Joint Secretary and Treasurer besides electing 25 members of the Executive Committee.

Further Rule 12 (c) provides that no member shall be eligible to hold office of the same post for more than 2 consecutive terms. However, the Honorary Secretary shall not be eligible to hold same office for more than one term. The affairs of the Bar Association are governed by the Rules

attached as Annexure P-2 and are administered by the Executive Committee under the overall supervision and control of the General Body of the High Court Bar Association. The tenure of the office bearers and the Members of the Executive Committee is one year from the date of elections and thereafter, they cease to hold office. In case no elections could be held for any reason, then five designated Senior Advocates to be named by the General Body will function as the Executive Committee till fresh elections are held, who are to arrange the fresh elections within 3 months, thereafter, in all circumstances. The Office bearers of the Executive Committee are also to take oath after the elections are held.

The elections to the High Court Bar Association is to be conducted by an elections Committee, consisting of Chairman, co-chairman and 04 other members. The members of the Election Committee cannot canvass in favour of any candidate in the elections. However, they can cast their vote in favour of any candidate. The elections Committee exercises full and absolute control over the elections and its decision is final and binding. The Election Committee is to be formed by the Executive Committee before elections.

The tenure of the existing Managing Committee was to expire in April, 2018. Therefore, the Executive Committee of the High Court Bar Association passed a resolution on 27.02.2018 (Annexure P-3) and unanimously decided to refer the matter to the Election Committee already formed by the General House, which is to take all the decisions with regard to the holding of elections to the High Court Bar Association and the elections were to be held in the first week of April, 2018.

Accordingly, the matter was placed before the General Body of

High Court Bar Association in its meeting held on 16.03.2018 at 1:00 P.M in which the General Body by majority voice vote constituted the elections Committee for conducting the elections for the year 2018-19 and following were the members of the elections Committee:-

1. Sh. R.L. Batta, Sr. Advocate (Chairman)
2. Sh. G.S. Punia, Sr. Advocate (Co-Chairman)
3. Sh. Surender Lamba, Advocate (Co-Chairman)
4. Ms. Aarti Gupta, Advocate (Co-Chairman)
5. Sh. Dalbir Malik, Advocate (Co-Chairman)
6. Sh. Jagbir Malik, Advocate (Co-Chairman)

A copy of proceedings of the meeting of the General Body dated 16.03.2018 is Annexure P-4. Thereafter, the elections were conducted on 06.04.2018 and the petitioner in the present writ petition was elected as President of the High Court Bar Association by the Election Committee with a margin of 63 votes having secured 1770 votes. As per Rules and Regulations of the High Court Bar Association, the decision of the Election Committee is final and binding, which cannot be called into question before any Forum.

Dissatisfied with the holding of elections of the President of the High Court Bar Association, respondent No. 3 in both the petitions has invoked the provisions of Rule 12 (a) and 13 (a) of the Bar Associations (Constitution and Registration) Rules, 2015 and filed election petitions before respondent No. 1 and the Election Tribunal has issued notices dated 16.04.2018 and 19.04.2018 (Annexure P-1 colly) to the petitioner.

The petitioner by way of filing the above mentioned writ petitions is challenging notices dated 16.04.2018 and 19.04.2018

(Annexure P-1 colly) on the ground that the Specially Constituted Tribunal, constituted by the Bar Council of Punjab and Haryana, has no jurisdiction to entertain any Election petition. There is no provision under the Advocate Act, 1961 to constitute any Tribunal to deal with the elections held by the High Court Bar Association.

Learned senior counsel for the petitioner submits that the Rules 2015 were framed only for the District Bar Associations and Bar Associations at the Sub Divisional Level. Rules 2015 are not applicable to the elections of the High Court Bar Association and thus, the impugned notices are without any jurisdiction. The name of the High Court Bar Association was also included by mistake in the Rules.

To give force to its contention, learned senior counsel for the petitioner has further referred to C.M. No. 535-LPA-2015 in LPA No. 1427-2014 filed by Mr. Rakesh Gupta, the then Chairman, Bar Council of Punjab and Haryana, Chandigarh in which he filed an affidavit dated 18.02.2015 (Annexure P-7 colly) stating therein that the rules which have been framed by the Bar Council of Punjab and Haryana in compliance of the terms issued by this Hon'ble Court does not talk about the elections in the Punjab and Haryana High Court Bar Association as the same has already been to the elections of District/Sub-Division Level Bar Association at Punjab/Haryana/U.T. Chandigarh.

Learned senior counsel for the petitioner while referring to the above affidavit dated 18.02.2015 (Annexure P-7 colly) and states that this affidavit makes it abundantly clear that the Rules 2015 framed were only made for the elections of District Bar Associations and Bar Associations at the Sub Divisional Level in the State of Punjab, Haryana and U.T.

Chandigarh.

This Court then vide order dated 27.02.2015 (Annexure P-8) passed the following order on the above application filed by the Chairman, Bar Council of Punjab and Haryana, Chandigarh. The operative part of the order reads as under:-

“(2) It is stated by Mr. Gupta that final decision with regard to formulation of these Rules is required to be taken by the Bar Council of India. If that is so, let the Bar Council of Punjab and Haryana forward these Rules to the Bar Council of India who shall then take an appropriate decision in accordance with law and, if need be, after obtaining viewpoints of all the stakeholders.

(3) Since the aforesaid Rules pertain to District and Sub Divisional Bar Associations, the averments made in the accompanying affidavit may be treated to have been modified to that extent.

(4) Disposed of.”

Learned senior counsel for the petitioner then referred to the judgment of Madhya Pradesh High Court passed in **WP No. 750-2017 titled as Bar Association, Chadhoda, District Guna vs. State Bar Council of MP and anr, decided on 09.01.2018** (Annexure P-9) wherein it has been held that Bar Council has no authority or power or jurisdiction to stay the election process or to interfere with the election affairs of Bar Association.

Learned senior counsel appearing for respondent No. 1 and 2 has argued that the impugned show cause notices issued to the petitioner in the election petitions filed under Rule 11 (c) of Rules 2015 does not lack the jurisdiction as the Rules were framed by the Bar Council of Punjab and Haryana and were duly approved by Bar Council of India vide resolution dated 02.05.2015. The Rules are statutory in nature and have been upheld by a Division bench of this Court in Civil writ petition No. 24392 of 2015

filed by ***Rakesh Punia v. Bar Council of India another, decided on 21.12.2016*** (Annexure A-2) . The petitioner has legal and efficacious remedy to raise all the pleas and raise factual as well as legal objections if any before the Election Tribunal, in response to the show cause notices of the Election Petitions.

On the other hand, learned counsel for respondent No. 3 at the very outset has referred to LPA No. 1427 of 2014, decided on 01.09.2014 (Annexure P-5) wherein the appellant in that case intended to contest the elections for the post of President in District Bar Association Gurgaon for the fourth time and was debarred by the Bye Laws of District Bar Association, Gurgaon. However, the Bar Council was called upon to impress upon to enact appropriate Rules for brining uniformity to all the Bar Associations under its control and the LPA Bench disposed of the appeal and ***the Bar Council was directed to take notice of other anomalies which are affecting the purity, fairness, transparency and democratic values in the annual elections of Bar Associations.***

In compliance of the above referred judgment, the Bar Council framed the Rules, 2015 (Annexure P-6 colly) , which were approved by the Bar Council in its meeting and were further sent to the Bar Council of India, vide letter dated 30.06.2015 (Annexure A-1) and endorsed to the Bar Council on 16.07.2015.

The Rules 2015 were then challenged before this Court in a writ petition i.e 24392-2015 filed by ***Rakesh Punia v. Bar Council of India another, decided on 21.12.2016*** (Annexure A-2). The said writ petition was dismissed but it was clarified that the Bench only addressed the question of the competence of the State Bar Council to frame rules regulating the

elections of the Bar Associations and have held that the regulation of elections to the Bar Associations through framing of such Rules to achieve fairness and transparency in the election process is not ultra vires the provisions of the 1961 Act. It is also not violative of the fundamental rights under Article 19 (1).

Learned counsel for the respondents has further argued that the petitioner is one of the elected members of the Bar Council and being so, he was also a party to the framing of Rules 2015 and further in entering into correspondence with the Bar Council of India for getting its approval. Thus, it is highly inappropriate for the petitioner to raise all such pleas in the present writ petition for objections regarding the applicability of Rule 2015 on the High Court Bar Association.

Thereafter, the Bar Council issued a letter dated 12.10.2017 (Annexure A-4) to the President/Secretaries of all the Bar Associations in the State of Punjab, Haryana and U.T Chandigarh including the High Court Bar Association to follow the Rules mentioned in this regard in Rules 2015. Vide letter dated 22.11.2017 (Annexure A-5), the Bar Council conveyed its decision to conduct elections of all the Bar Associations in Punjab, Haryana and U.T. Chandigarh including High Court Bar Association and gave the schedule of elections.

Vide letter dated 06.03.2018 (Annexure A-6), the Bar Council directed the Secretary, High Court Bar Association to submit the list of eligible voters and also to send the panel of Returning Officer for conducting the elections on the due date. Then, the Bar Council of Punjab and Haryana issued another letter dated 07.03.2018 (Annexure A-7) to all the Secretaries, Presidents of the Bar Associations including High Court Bar

Association stating therein that in accordance with Rules, 2015, they are required to send the voter list under Rule 6 (b) (i) and thereafter, repeated communications have been sent by the Bar Council of Punjab and Haryana in reference to the letter dated 22.11.2017 and 23.02.2018. The Bar Council in its meeting held on 20.11.2016 decided that the elections of the Bar Associations in State of Punjab, Haryana and Chandigarh including High Court Bar Association would be on the same day i.e 06.04.2018 and the voter list was required to be submitted to the Bar Council by 15.03.2018. It was further brought to the notice that for preparation of voter list, Rules Certificate and Place of Practice (Verification) Rules, 2015 and regarding conduct of All India Bar Association Examination are required to be taken into consideration, vide letter dated 07.03.2018 (Annexure A-7).

Thereafter, vide letter dated 12.03.2018 (Annexure A-8), the Bar Council directed the President/Secretary, High Court Bar Association and other Presidents/Secretaries of other Bar Associations in the State of Punjab/Haryana/U.T Chandigarh that those who had not sent the voter list with their enrollment numbers, residential address, mobile numbers and name of Returning Officers and Assistant Returning Officer with their mobile number, failing which, it will be observed that the Bar Council shall appoint adhoc committee/appoint of Returning Officer in view of the Rules approved by the Bar Council of India, vide letter dated 01.11.2017.

In compliance of this letter, the Executive Committee of the High Court Bar Association headed by the petitioner in the capacity of President of High Court Bar Association passed a resolution dated 27.02.2018 which is duly signed by him in the capacity of the President and also by the Honorary Secretary. Thereafter, the High Court Bar Association

informed the Chairman of Bar Council of Punjab and Haryana that Election Committee has been formulated for elections to be held on 06.04.2018 and Mr. S.S. Grewal (Nabha) is the Chairman of the Election Committee of High Court Bar Association, vide letter dated 13.03.2018 (A-9). Vide letter dated 12.03.2018 (A-10), the copy of the members of the election Committee along with elections Schedule of the High Court Bar Association was sent by the Election Committee to the Chairman, Bar Council of Punjab and Haryana. Vide letter dated 14.03.2018 (A-11), the Chairman of the Bar Council sent a letter to the Honorary Secretary of Chairman, High Court Bar Association conveying the appreciation of the steps taken by the High Court Bar Association for holding elections on 06.04.2018.

The then Chairman of the Election Committee sent a letter dated 15.03.2018 (A-12) to the Chairman, Bar Council of Punjab and Haryana, Chandigarh vide which information was sent that on the request of the members of the Bar and in view of heavy rush in the account office as well as on the affidavit counters, the time and date for submission of the affidavits and clearance of dues have been extended from 15.03.2018 to 19.03.2018 till 3:00 P.M. The tentative list will also be sent on 20.03.2018.

The tentative voter list was then sent by the Election Committee, vide letter dated 21.03.2018 (A-13) and final voter list was sent by the Chairman of the elections Committee to the Chairman, Bar Council of Punjab and Haryana, vide letter dated 22/23.03.2018 (A-14).

Mr. Puneet Jindal, learned Senior counsel appearing for High Court Bar Association on instructions from Mr. R.S. Randhawa, Advocate has informed the Court that pursuant to Rules 2015, the Bar Association of Punjab and Haryana High Court has not sought registration with the Bar

Council of India. It has further been informed that in the ***CWP Nos. 5162 of 2015 and 7472 of 2017 filed by Ranjan Lakhanpal v. Bar Council of India and others***, the Court has been apprised that the draft rules have been prepared by the Sub Committee, which shall be put forth for the perusal of the Executive, Committee and thereafter for the discussion in the General House meeting. The Bar Association is in the process of drafting the Election Rules.

Heard learned counsel for the parties and have gone through the records of the case.

The question for consideration before this Court would be whether any elections Petition under Rule 11 (c) is maintainable under Rules 2015 before the elections Tribunal constituted under Rule 11 (d) under the said Rules to challenge the elections to the Executive Committee.

The basis of the Rules 2015, was due to a writ petition filed by one of the petitioner, who intended to contest the election for the post of President in District Bar Association Gurgaon for the fourth time and was debarred by the Bye Laws of District Bar Association, Gurgaon. The writ petition was dismissed and LPA No. 1427-2014 (Annexure P-5) was filed in this Hon'ble Court in which the Bar Council was called upon to impress upon to enact appropriate Rules for bringing uniformity to all the Bar Associations under its control and the LPA Bench disposed of the appeal on 01.09.2014 by giving a direction to the Bar Council to take notice of other anomalies which are affecting the purity, fairness, transparency and democratic values in the annual elections of Bar Associations.

Thereafter, a CM No. 535-LPA-2015 (Annexure P-7 colly) was filed by Rakesh Gupta, the then Chairman, Bar council of Punjab and

Haryana, stating therein that there was certain confusion while making the compliance report with regard to the elections to the Punjab and Haryana High Court Bar Association. A prayer was made to take on record an affidavit dated 18.02.2015 for removing the confusion and in the affidavit dated 18.02.2015, it has been stated that the Rules which have been framed by the Bar Council of Punjab and Haryana in compliance of the terms issued by this Court does not talk about the elections in the Punjab and Haryana High Court Bar Association, as the same relates to the elections of the District/Sub-Division Level Bar Association at Punjab/Haryana/U.T. Chandigarh. C.M application was disposed of vide order dated 27.02.2015 (Annexure P-8) to refer the rules drafted to Bar Council of India.

The petitioner is seeking quashing of the impugned notices on the ground that the then Chairman, Bar Council of Punjab and Haryana, Chandigarh in his affidavit clearly stated that these Rules 2015 does not talk about the elections in the Punjab and Haryana High Court Bar Association.

However, reference at this stage can be made to an observation made in ***Rakesh Punia's case (supra) (A-2)***, wherein vires of Rules 2015 were challenged and the writ petition was dismissed and in para No. 42 to 44, it was observed as under:-

“42. Based on the aforesaid considerations, we are satisfied that the State Bar Council is empowered in terms of the above referred provisions to frame rules which have as their object to bring about uniformity and transparency in matters relating to the elections of the Bar Associations, within its jurisdiction. In fact framing of such Rules may be considered an inevitable necessity to effectuate the broad legislative scheme evidenced by the Acts and Rules referred to

above wherein the Bar Associations recognized by the State Bar Council have been assigned a Central role as also in view of the role and importance of the Bar Associations in the administration of justice and the imperative noticed and stressed even by Hon'ble the Supreme Court to ensure that the Associations are truly the representatives of the Advocates practicing in the Courts. Accordingly we do not find any merit in the argument of the petitioner that the Rules are ultra vires being beyond the Rule making power of the State Bar Council.

43. It is also noteworthy, as is stated on behalf of the Bar Council, that the Rules have been framed after exhaustive consultation with the Bar Associations in Punjab and Haryana. Before finalizing the Rules a meeting of the Presidents/ Secretaries/ office Bearers of all the Bar Associations from Punjab and Haryana was called and it was only after getting their proposals and suggestions that the rules were framed. The Rules thus reflect the broad consensus of the representatives of the advocates on this issue. (ii) Whether the regulation of elections of the Bar Associations is violative of the rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution of India?

44. On the issue of whether framing of the Rules to regulate elections violates the fundamental rights of the petitioners under Article 19(1)(c) of the Constitution, a complete answer is furnished by the decision of the Delhi High Court in P.K.Dash's case (supra). In that case, a petition was filed in the Delhi High Court praying for directions from the Court that the rules governing allotment of Chambers for advocates in various court complexes should be amended to restrict eligibility to one chamber in the entire territory of Delhi, even though they may be members of more than one bar association. It was also prayed that the Bar Council of Delhi should ensure introduction of 'One Bar One Vote' throughout

all the Bar Associations in Delhi. Those resisting the introduction of the 'One Bar One Vote' principle relied on the fundamental right to form associations under Article 19(1)(c) of the Constitution and the consequential autonomy to conduct the affairs of the association as per their own volition.”

The Rules 2015 had been framed after following the proper procedure and after communicating with the then President, High Court Bar Association and its members, through various communications mentioned above. The Rules had been framed to bring uniformity and transparency in matters relating to the elections of the Bar Associations, within its jurisdiction and further to mandate introduction of '**One Bar One Vote**'.

Once in ***Rakesh Punia's case (supra)***, the Division Bench of this Court has upheld the power of Bar Council to frame Rules under the Advocate's Act, 1961, the impugned notices have rightly been issued to the petitioner under Rules, 2015.

The vires of the Rules have already been challenged and the Division Bench of this Court dismissed the writ petition, vide Civil Writ petition No. 24392-2015 titled as ***Rakesh Punia v. Bar Council of India another, decided on 21.12.2016 (Annexure A-2)***. The object of Rules 2015 is to only bring transparency in the elections. In Rule 2 (e) of Rules 2015, it has been clearly mentioned that the Court means all kind of Courts (including Punjab and Haryana High Court) and shall include the Tribunals, Commissions, Forums and any other statutory body and authority where the lawyers are entitled to appear under any provision of law.

The judgment cited by learned senior counsel for the petitioner passed by Madhya Pradesh High Court passed in ***WP No. 750-2017 titled as Bar Association, Chadhoda, District Guna vs. State Bar Council of MP***

and anr, decided on 09.01.2018, is not applicable to the facts of the present case, as in that case, there were no Rules framed by the Bar Council for regulating elections. In that case, the State Bar Council passed a suo moto proceeding and set aside the election of the petitioner.

In the present case, Rules 2015 have been approved by the Bar Council and thereafter, the High Court Bar Association had participated in the elections process, thus, there is no ground to interfere in the impugned notices. The elections Tribunal had rightly entertained the Election Petitions and sent the notices to the petitioner, as per Section 11 (c) of Rules 2015, which reads as under:-

11. ROLE OF THE BAR COUNCIL

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) In case any dispute arises after the declaration of the result, the aggrieved party shall approach the Bar Council by way of elections Petition within 15 days of the declaration of the result accompanied by a fee of Rs.5000/-.

As per Rules 2015, the impugned notices have been issued to the petitioner and the petitioner cannot seek setting aside of the impugned notices merely on the ground that in C.M. No. 535-LPA-2015 passed in LPA No. 1427-2014, an affidavit was filed by Rakesh Gupta, the then Chairman, Bar council of Punjab and Haryana, Chandigarh stating therein that the Rules which have been framed by the Bar Council of Punjab and Haryana in compliance of the terms issued by this Court does not talk about the elections in the High Court Bar Association and further on the ground that Mr. R.S. Randhawa who is present in the Court, has informed the

Court that pursuant to Rules 2015, the Bar Association of Punjab and Haryana High Court has not sought registration with the Bar Council.

Firstly, the aim of the Rules is to bring uniformity, transparency relating to the elections of the Office Bearers of all the Bar Associations that comes within the jurisdiction of the Bar Council and to avoid the complicity of the bye laws framed by various Bar Associations, which were affecting purity, fairness and democratic value in the annual elections of the Bar Associations.

Even the Bar Council vide letter dated 12.10.2017 informed the President/Secretaries of all the Bar Associations in the State of Punjab, Haryana and U.T Chandigarh including the High Court Bar Association to follow the Rules 2015 and the petitioner who himself was the President at that time never raised any objection that the Bar Council was not the competent authority to conduct the elections or it has no jurisdiction in the elections affairs of the High Court Bar Association.

In compliance of letter dated 12.03.2018 (Annexure R-3/3), the High Court Bar Association vide letter dated 13.03.2018 (A-9) informed the Chairman of the Bar Council of Punjab and Haryana that Election committee has been formulated for election to be held on 06.04.2018. Then, vide letter dated 14.03.2018 (A-11), the Chairman of the Bar Council sent a letter to the Honorary Secretary of Chairman, High Court Bar Association conveying the appreciation of the steps taken by the High Court Bar Association for holding elections on 06.04.2018. The tentative voter list was then sent by the Election Committee, vide letter dated 21.03.2018 (A-13) and final voter list was sent by the Chairman of the elections Committee to the Chairman, Bar Council of Punjab and Haryana, vide letter dated

22/23.03.2018 (A-14).

Hence, the above said communications makes it abundant clear that the election of the High Court Bar Association were held as per Rules, 2015. The petitioner in the capacity of President had participated in the proceedings as contemplated under Rules 2015. Now the petitioner cannot take a U-turn when the election petitions have been filed under the said Rules. Further the constitutional validity of the Rules 2015 has already been upheld by this Court in Civil Writ Petition No. 24392 of 2015 titled as ***Rakesh Punia v. Bar Council of India another, decided on 21.12.2016 (Annexure A-2).*** The petitioner cannot be allowed to take a plea that the said Rules are not applicable and he is estopped by his own act and conduct to raise this plea after the elections are over. The petitioner is always at liberty to raise all factual and legal pleas before the Election Tribunal constituted under the statutory rules.

Thus, there is no merit in the present petitions and the same are dismissed.

29.08.2018

G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>