

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 30.05.2018
Date of Decision : 06.07.2018.

+ **W.P.(C) 2142/2016 & C.M. No. 9187/2016**

STATE BAR COUNCIL OF M.P. Petitioner
Through: Mr.Vikas Upadhyay with Mr.Vidit
Monge, Advs.

versus

BAR COUNCIL OF INDIA & ORS Respondents
Through: Mr.Kirti Uppal, Sr. Adv. with Mr.Preet
Pal Singh with Ms.Priyam Mehta,
Advs. for BCI.
Mr.J.P. Sengh, Sr. Adv. with Mr.Sunil
Dalal, Adv. & Ms.Garima Goel, Adv.
for R-4.

+ **W.P.(C) 2215/2016 & C.M. No. 9552/2016**

SUNIL GUPTA Petitioner
Through: Mr.Nitin Gaur, Adv. with
Mr.Anshuman Ashok, Adv.

versus

BAR COUNCIL OF INDIA & ORS Respondents
Through: Mr.Preet Pal Singh with Ms.Priyam
Mehta, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

1. The present batch of writ petitions raise common issues with similar prayers and are, therefore, being decided vide this common judgment.

2. The first writ petition being *WP(C) No. 2142/2016* has been preferred by the State Bar Council of Madhya Pradesh (hereinafter referred to as "SBCMP") seeking *inter alia* a direction to the Bar Council of India (hereinafter referred to as "BCI") as also the Chairman of the BCI to implement the SBCMP's resolutions dated 29.06.2014 and 07.02.2015, whereby Mr. Sunil Gupta was, in accordance with Section 4(1)(c) of the Advocates Act, 1961 (hereinafter referred to as the "Act"), elected and re-affirmed as the representative member of the SBCMP in the BCI. The SBCMP has also sought quashing of the order dated 05.12.2015 passed by the BCI (hereinafter referred to as the "Impugned Order"), whereby the Election Petition being *Election Petition No. 01/2014* filed by the Mr. Sunil Gupta challenging the alleged election of Mr. Pratap Mehta as the representative member of the SBCMP in the BCI, has been dismissed on the ground that it is meritless.

3. The second writ petition being *WP(C) No. 2215/2016* has been preferred by Mr. Sunil Gupta, who being aggrieved by the BCI's Impugned Order dated 05.12.2015, has also sought prayers similar to the ones sought by the SBCMP in *WP(C) No. 2142/2016*.

4. Before dealing with the controversy in issue, it will be appropriate to refer to the factual matrix leading to the filing of the present batch of writ petitions. For the sake of convenience, the parties are being referred to by their respective statuses in *WP(C) No. 2142/2016*. The brief facts as emerge from the record are that the Petitioner/SBCMP held the elections for its constituent members and declared the results for the same in May-June 2014, pursuant where to it issued a notice dated 09.06.2014 for holding the first meeting of its

newly elected members on 29.06.2014. As per the aforementioned notice, the agenda for the meeting to be held on 29.06.2014 was to conduct elections for the various posts and committees of the Petitioner/SBCMP, including the post of its representative member in the Respondent No. 1/BCI (hereinafter referred to as the “Concerned Post”). For the sake of ready reference, the relevant extract of the Petitioner’s notice dated 09.06.2014 is reproduced hereinbelow: -

“
Part-B
*Serial No. 1: Discussion, consideration and decision regarding
the election of the representative member of the Bar Council for
the Bar Council of India*”

5. Pursuant to its aforementioned notice dated 09.06.2014, the Petitioner held a meeting on 29.06.2014, which was presided over by the then Advocate General of the State of Madhya Pradesh and duly attended by all the 25 members of the Petitioner/SBCMP. It is the Petitioner’s case that in the said meeting, the Respondent No. 3/Mr. Sunil Gupta’s name was proposed for the Concerned Post, and since the same was unanimously approved by all its members, the Respondent No. 3 was elected as the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI in accordance with Section 4(1)(c) of the Act. It is the Petitioner's further case that its Secretary had duly communicated the result of the aforesaid meeting to the Respondent No. 1 whereafter the Respondent No. 3 took charge of the Concerned Post and started discharging the accompanying official duties. However, it transpires that on 29.06.2014 itself, 9 members of the Petitioner/SBCMP wrote a letter to its Secretary requesting him to organize a meeting for conducting elections to the various posts and committees of the Petitioner/SBCMP. The said letter alleged that after

the election of the Petitioner/SBCMP's Chairman on 29.06.2014, the meeting had been adjourned and the available members, without any further notice to the members who had thereafter left the place of meeting, reconvened the meeting and purportedly elected the Respondent No. 3 to the Concerned Post.

6. Thereafter, it emerges that some of the Petitioner/SBCMP's members, on 13.07.2014, sent letters to its Secretary with a request to initiate a 'No-Confidence Motion' under Rule 122-A of State Bar Council of Madhya Pradesh Rules (hereinafter referred to as the "SBCMP Rules") against Mr. Rameshwar Neekhara, the Petitioner/SBCMP's Chairman. The Petitioner/SBCMP's members made the aforesaid request on the ground that even though the meeting held on 29.06.2014 was to be reconvened for the purpose of conducting elections to the other posts and committees of the Petitioner/SBCMP, the Chairman had paid no heed to the said request and no meeting for the aforementioned purpose was organized either on 29.06.2014 or even thereafter till 13.07.2014.

7. Taking cognizance of the letters dated 29.06.2014 and 13.07.2014 sent by the various members of Petitioner, the Petitioner's Secretary sent a notice dated 19.07.2014 to all the members of the Petitioner/SBCMP informing them of a special meeting scheduled to be held on 02.08.2014 for deciding the issues brought forth in the said letters. For the sake of ready reference, the Petitioner's notice dated 19.07.2014 is reproduced hereinbelow:-

*“MADHYA PRADESH STATE BAR COUNCIL: JABALPUR
HIGH COURT CAMPUS, JABALPUR-482007*

*SI./SBC/MP/Special Meeting/General Body/4311/2014
Date-19/7/2014*

Amended Letter for the Special Meeting Dated 16/7/2014

To,
All the Hon'ble Members,
State Bar Council of Madhya Pradesh
Sir/Ma'm,

The special meeting of general body of Madhya Pradesh State Bar Council has been called at 11 o'clock in the morning on 2nd of August, 2014, day – Saturday, in the meeting Hall of Council's office. In which, a signed letter dated 29/06.2014 by 9 honourable members, 2 letters dated 13/07/2014 signed by 11 honourable members received on 14/07/2014, and 2 letters dated 15/07/2014 received from email signed by 2 honourable members and 2 letters dated 16/07/2014 Centre by onse honourable member, out of which by one letter the request has been made to call for meeting for the election to the post of vice-chairman, Treasurer are, representative to the bar Council of India and other committees and by the 2nd letter the proposal for non-confidence has been submitted against the Chairman of the Council under rule 122-A of the Council. Both the aforesaid letters are to be adjudicated in the special meeting. You all are requested to be present in the meeting.

That for the convenience of Hon'ble members, rule 122-A is as under:-

122A. The Chairman, Vice-Chairman or the Treasure of the Council could be removed by a voice of no confidence passed by majority of the members, present and voting in a meeting of the Council especially called for a purpose, provided that at least 7 members of the Council have signed the requisition for holding such a special meeting, and such meeting, shall be called within a period of 21 days from the date of receipt of the requisition by the Secretary.

*Sd/-
Acting Secretary”*

8. It emerges that when the special meeting was convened on 02.08.2014, the Petitioner/SBCMP's members withdrew the proposed No-Confidence Motion against its Chairman, who in turn, by placing reliance on the various letters sent by Petitioner/SBCMP's members, declared all the elections held on 29.06.2014, except his own, as void

since they were not conducted as per law. The Chairman categorically observed that after his election, the meeting held on 29.06.2014 had been adjourned and consequently, some members had already left the place of the meeting and, therefore, even though some elections were conducted by the remaining members, all such subsequent elections were void since they had been conducted without any notice to the other members of the Petitioner/SBCMP. The Chairman, therefore, directed that the minutes of the meeting held on 29.06.2014 recording the elections to all the posts and committees of the Petitioner/SBCMP, excluding the post of Chairman, be deleted from the minutes' book. Furthermore, the Chairman, after observing that all the members who had been elected to various committees and posts of the Petitioner on 29.06.2014, except the Respondent No. 3, had tendered their resignations, directed holding of fresh elections on the same date for all such vacant posts as also the Concerned Post. It is in this subsequent election, held on 02.08.2014, that the Respondent No. 4/Mr. Pratap Mehta was declared as the elected representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI.

9. Aggrieved by the aforesaid resolution dated 02.08.2014, recording that Respondent No. 4 had been elected to the Concerned Post, the Respondent No. 3 filed an Election Petition being *Election Petition No. 01/2014* under Rule 9 of the Bar Council of India Rules (hereinafter referred to as the "BCI Rules") read with Section 40-B of the Act before the Respondent No. 1/BCI, thereby impugning the said resolution. It is the Respondent No. 3's case that he had also raised objections to the Respondent No. 4's election to the Concerned Post before the Petitioner/SBCMP.

10. During the pendency of the Respondent No. 3's aforementioned election petition, the Petitioner/SBCMP after re-examining the facts of the case, passed a resolution dated 07.02.2015, with a majority of 17 votes, withdrawing its earlier resolution dated 02.08.2014, thereby re-affirming the Respondent No. 3 as its representative member in the Respondent No. 1/BCI. While passing the aforesaid resolution dated 07.02.2015, the Petitioner observed that the election held on 29.06.2014 had been conducted as per the prescribed agenda in the notice dated 09.06.2014 and since the Respondent No. 3 had neither resigned from his post nor any No-Confidence Motion had been passed against him, his election to the Concerned Post remained valid. In this resolution, the Petitioner also declared the election of the Respondent No. 4 to the Concerned Post vide the resolution dated 02.08.2014, as null and void.

11. Keeping in view the fact that he had been re-affirmed as the Petitioner/SBCMP's representative member in the Respondent No. 1/BCI, the Respondent No. 3, on 11.02.2015, filed an application before the Respondent No. 1 seeking leave to withdraw his aforementioned Election Petition. However, instead of allowing the Respondent No. 3's application for withdrawal, the Respondent No. 2/Chairman of the BCI, by placing reliance on the statements of the majority of the members of the Petitioner/SBCMP, vide order dated 16.11.2015 held that a *prima facie* case existed in favor of Respondent No. 4 and therefore, allowed him to join the Respondent No.1/BCI as a member pending the final orders of the sub-committee which was to be specially constituted for enquiring into the elections of the Respondent

No. 3/Mr. Sunil Gupta and the Respondent No. 4/Mr. Pratap Mehta to the Concerned Post.

12. Pursuant to the aforesaid order dated 16.11.2015, the Respondent No. 2, on 21.11.2015, constituted a sub-committee for considering the issues raised by Respondent No. 3. The Sub-committee considered the aforementioned letters sent by the Petitioner/SBCMP's members to the Petitioner/SBCMP's secretary as also the statements given by the Advocate General of the State of Madhya Pradesh and the Petitioner/SBCMP's Secretary and came to the following conclusions:

“8. The Secretary, State Bar Council of MP issued notice on 09.06.2014 for holding elections to the office of Chairman/Vice-Chairman of Bar Council of Madhya Pradesh, its different Committees and election to the office of Member-Bar Council of India for 29.6.2014. This was the First Meeting after the declaration of the results and publication of the names of the elected members.

9. This First Meeting was attended to by all the elected members of the State Bar Council and it was Pradesh. The record reveals that Mr.Rameshwar Neekhara, Sr. Advocate was declared elected as the Chairman of the State Bar Council by the Ld. Advocate General.

10. After this election was over, this First Meeting was adjourned. Even the minutes of the proceedings of the First Meeting prepared by the Secretary of the State Bar Council and approved by the Chairman on 11.07.2014 clearly reveal that this First Meeting was adjourned after the conclusion of the election of the Chairman. The apparent reasons for this adjournment given in the said Minutes are that the newly elected Chairman was to be congratulated on his election and the members were to honourably see off the Advocate General.

11. The Minutes further reveal that sometime after the First General Council Meeting was over and AG was seen off and new Chairman was congratulated on his victory, fresh Meeting of the Council was started by the “members present there”. It is apparent that in this second meeting all the members were not present. However, the newly elected Chairman was present. This record is completely silent as to the identity and number of members who

attended this second meeting. There is no record as to who formally convened this second meeting. It is even not clear at what place this 2nd meeting took place. Once a meeting was adjourned, how could it have been resumed without proper and legal notice to all the members? When this meeting was adjourned, the members were not told that the meeting would resume that day. It was imperative that members should have been specifically told that the meeting would resume that day. No such thing was done. This adjournment is an admitted fact. Another thing which is apparent from the face the record is that at the time of announcement of adjournment, there was no announcement as to when the meeting would resume. It was adjournment simpliciter without assigning any time or day for its resumption. We are of the opinion that once the meeting is adjournment sine die. The acts/deeds of "congratulating the news elected Chairman" and non-specific as to the duration of time that the members may take in completing the aforesaid acts/deeds. These acts/deeds may consume any account of time and may take any form. It cannot be said that these acts are inherently of short and insignificant duration. Had it been so, there was no need of announcing a formal adjournment of the meeting. After such adjournment, every member having voting rights is entitled to fresh due notice of the meeting.

One thing is clear that part of the business (i.e. election of Vice Chairman, Treasurer, Member-BCI and constitution of different Committees etc.) fixed for 29.06.2014 was not transacted on that day in the First Meeting that was adjourned at about 12 Noon.

12. *The record further reveals that the Secretary of the Council prepared the Minutes later on and he put his signatures on each paper but the Chairman put his signature only on the last page on 11.07.2014.*

13. *One controversy between the parties is if election to the office of Member-Bar Council of India and election to different Committees of the State Bar Council were held on 29.6.2014 in which he was declared elected. This claim is that this election took place in the second gathering that took place after the First Meeting had been adjourned. On the other hand, the case of the respondent is that the meeting of the State Bar Council on 29.6.2014 was presided-over by Advocate-General who acted as Returning Officer for election to the office of Chairman, Bar Council of Madhy Pradesh. After declaration of the aforesaid results, meeting was adjourned sine-die and other business fixed for 29.6.2014 was not transacted on that day. This position is supported by the Statement of*

Officiating Secretary, State Bar Chairman, the meeting was adjourned and the advocate General left the office. In this respect, there is one representation made by nine members of the State Bar Council addressed to the Chairman that election meeting held on 29.6.2014 was filled up by way of election, but no meeting after such adjournment took-place and a request was made that the House may be reconvened. This letter was received in the office of State Bar Council on 29.6.2014 itself. The Officiating Secretary states that this application/representation by 9 members was made at about 2 PM and the second so-called meeting/gathering had taken place only after 2 PM.

Much reliance cannot be placed on these Minutes qua constitution of different Committees of the State Bar Council and election of Bar Council of India member for the following reasons:-

*(i) As per Rule 3 of Chapter I, Part-II of Bar Council of India Rules framed under the Advocates Act, 1961, the election to the office of Member-Bar Council of India is to be conducted by the Secretary of the State Bar Council who shall act as Returning Officer. We have perused the minutes and it nowhere shows that election to the office of Member-Bar Council of India was conducted by the Secretary as Returning Officer on 29.6.2014. The statement of Secretary, State Bar Council of Madhya Pradesh recorded on **3.1.20145** also reinforces the aforesaid position.*

(ii) It is proved on record that after the Chairman of the State Bar Council was elected on 29.6.2014, the meeting was adjourned. In this respect, we have closely scrutinized the election record and we are of the firm opinion that the meeting on 26.6.2014 was adjourned sine-die after the election to the office of Chairman of State Bar Council was concluded and there is no material to show that this meeting was reconvened that second gathering of some of the Members of the State Bar Council took place which is being styled as a "Council meeting" by the petitioner in which different committees were constituted and election of the office of member-bar Council of India was held has no sanctity in the eyes of law. It is no Council meeting in the eyes of law. It is just a informal gathering of some members of the State Bar Council.

(iii) The position that no election meeting was held in the afternoon hours is supported by the letters/emails dated 13.07.2014 received in the office of State Bar Council on

14.07.2014 wherein as many as 11-13 members of the State Bar Council have stated that no election to the office of Bar Council of India had taken place on 29.06.2014 and that the adjourned meeting was never reconvened in the afternoon hours.

(iv) Had meeting leading to the election of Member-bar Council of India taken place in the So-called second meeting on 29.06.2014 the Secretary of the State Bar Council would have taken necessary steps for communicating the same to the Secretary, Bar Council of India and for publication in the State Gazette as per Law. But nothing of this sought has been done. The fact that no follow up action was taken by the Secretary of the State Bar Council in terms of Rule 8 (9) of the relevant rules, envisaging communication of the result of the election of Member-Bar Council of India to the Secretary, Bar Council of India forthwith and to send the same for gazetted notification only leads to aforesaid office on 29.06.2014.

14. The plea of the Petitioner that the Secretary of the State Bar Council communicated the election result⁶ of the petitioner to Bar Council of India in compliance of Rule 8(9) is not borne out from the record of the case. There is no communication on the file showing that such communication was ever made by him. Not only this, the election result has admittedly not been published in the State gazette.

15. In the light of the aforesaid discussion, the Minutes of the meeting of 29.6.2014 with respect to the election of Member-Bar Council of India and constitution of different committees of the State bar Council is of no help to the petitioner and his part of the Minutes is bad in law cannot be relied upon for any purpose.

16. The fact that Petitioner Mr.Sunil Gupta attended Meeting of the Bar Council of India and was member of the Inspection team of Bar Council of India which inspected law colleagues is of little importance. This conduct on the part of Bar Council of India or on the part of the Petitioner cannot validate his election. In fact, no election had taken place in which Petitioner could be said to have been elected as Member-Bar Council of India.

17. Another important contested issue between the parties which awaits decision is about the validity and legality of the election of Member-Bar Council of India held on 2.8.2014. Vide letter bearing No.KSBC/MP/SPCL/Meeting/Gen. Meeting/4311/MP/SPCL Meeting/Gen.Meeting/4311/2014 dated 19.7.2014, Secretary of State Bar Council convened a Special Meeting of General House of the State Bar Council of Madhya Pradesh for 2.8.2014 and agenda for this meeting was as follows:-

1. Consideration of letter dated 28.6.2014 written by nine member of the State Bar Council;
2. Consideration of letter dated 13.7.2014 received in the office of State Bar Council on 14.7.2014 signed by the 11-13 Members of State Bar Council.
3. Consideration of two letters sent to the Secretary State Bar Council through emails.

18. In this agenda, it is specifically mentioned that the meeting is being convened in order to find a solution to the demands made in the aforesaid letters and for holding meeting for election of Vice-Chairman, Treasurer and Member-State Bar Council of India and constitution of different Committees of the State Bar Council. The copies of the aforesaid letters were also annexed with this agenda as pages 1 to 7. Further no confidence motion as against the Chairman under Rule 122A of the State Bar Council of Madhya Pradesh Rules, was fixed for consideration.

19. This notice was addressed to all the member of the State Bar Council who in response thereto attended special meeting of the State Bar Council held on 2.8.2014 this meeting was attended by all the 25 member.

20. Vide the aforesaid letter/representation dated 29.6.2014 moved by 9 Members of the State Bar Council, a request was made that the meeting of the State Bar Council which was adjourned on 29.6.2014 may be reconvened so that the un-transacted business of the agenda for 29.6.2014 i.e. holding of election of Member-Bar Council of India and filling up of other posts offices/committees is transacted. The other letters dated 13.7.2014 and email also contain a special request that the meeting which was adjourned on 29.6.2014 after the election of Chairman State Bar Council may be convened. In addition to it, agenda contained consideration of the no confidence motion as against the Chairman, State Bar Council.

21. If aforesaid agenda dated 19.7.2014 and annexures No.1 to 7 are read as a whole harmoniously, it becomes clear that the meeting of 2.8.2014 was in continuation of the meeting held on 29.6.2014 in order to dispose of and transact the un-transacted business which was fixed for 29.6.2014. In this respect representation of 9 Member dated 29.6.2014 is very specific and clear.

22. In this view of the matter no exception can be taken to the legality of the meeting held on 2.8.201 on the ground that sufficient notice of the election of Member-Bar Council of India was not given the Members.

23. In our considered view the aforesaid notice dated 19.7.2014 is sufficient notice for holding of election to the office of Member-Bar Council of India held on 2.8.2014 was duly published in the State gazette.

24. In the light of the above discussion we are of the considered view that the election petition filed by Mr.Sunil Gupta is without merits and deserves to be rejected under rule 10(1) of the relevant rules as it does not disclose any prima-facie case and there is no need for determination of this dispute on merits under Rule 10(2) of the Rules.

13. After considering the Sub-committee's report dated 04.12.2015, the General Body of the Respondent No. 1/BCI, vide its Impugned Order dated 05.12.2015, dismissed the Respondent No. 3's Election Petition holding that the Respondent No. 3's election to the Concerned Post was invalid and that there was no infirmity in the Respondent No. 4's election to the Concerned Post. In the meanwhile, upon learning about the Respondent No. 2's order dated 16.11.2015 allowing the Respondent No. 4 to join the Respondent No. 1/BCI as a member till the final order of the Sub-committee, the Petitioner/SBCMP preferred a writ petition being WP(C) No. 973/2016 impugning the said order of

the Respondent No. 2. However, it transpires that during the pendency of the aforesaid writ petition, the Petitioner, on 09.02.2016, was informed of the Respondent No. 1's Impugned Order dated 05.12.2015 dismissing the Respondent No. 3's election petition as meritless. It is in these circumstances that the Petitioner/SBCMP has withdrawn the writ petition being *WP(C) No. 973/2016* and approached this Court vide *WP(C) No. 2142/2016* to challenge the Impugned Order dated 05.12.2015.

14. Having set out the facts hereinabove, I may now refer to the rival contentions of the parties. Mr. Vikas Upadhyay, learned counsel for the Petitioner, contends that on 29.06.2014 all the elections held pursuant to the election of Petitioner's Chairman, including the Respondent No. 3/Mr. Sunil Gupta's election to the Concerned Post, had been conducted as per the procedure prescribed under the BCI Rules and were, therefore, perfectly valid. He submits that in accordance with Rule 7 of the BCI Rules, the Petitioner had, through its Secretary, sent a notice on 09.06.2014 to all its members with the prescribed agenda for conducting elections on 29.06.2014 to the various posts and committees of the Petitioner/SBCMP, including the elections to the Concerned Post.

15. Taking his aforementioned plea further, Mr. Upadhyay submits that Rule 3 of the BCI Rules mandates that the Secretary of a State Bar Council shall act as the Returning Officer for the purpose of conducting elections to the post of its representative member in the Bar Council of India. Therefore, he contends, the Respondent No. 3's election to the Concerned Post having been conducted by the Petitioner/SBCMP's Secretary in the presence of all its 25 members, who had unanimously

elected the Respondent No. 3, was valid. In support of his aforesaid plea, Mr. Upadhyay also places reliance on the Minutes of the Meeting dated 29.06.2014 to show that not only the attendance sheet had been signed by all the 25 members but even each page of the minutes of the aforesaid meeting had been duly signed by the Petitioner/SBCMP's Secretary and thereafter approved by its Chairman. Mr. Upadhyay further submits that after the Respondent No. 3 had been elected to the Concerned Post on 29.06.2014, his name was uploaded on the Respondent No. 1's website as a member of the Bar Council of India and the Respondent No. 1 had also issued him visiting cards and envelopes addressing him as its member.

16. However, Mr. Upadhyay submits that while the Respondent No. 3 was elected to the Concerned Post in accordance with law, the Petitioner's Chairman had, vide resolution dated 02.08.2014, cancelled the Respondent No. 3's election without following the procedure prescribed under the BCI Rules. He submits that if any of the members of the Petitioner/SBCMP were of the view that the Respondent No. 3's election to the Concerned Post was not conducted in accordance with law, it was open to them to challenge the same by way of an Election Petition under Rule 9 of the BCI Rules, which was not done in the present case. Therefore, he contends, the cancellation of the Respondent No. 3's election was manifestly illegal.

17. Without prejudice to his aforesaid contention, Mr. Upadhyay submits that even the election of the Respondent No. 4/Mr. Pratap Mehta to the Concerned Post was in clear violation of the BCI Rules as also the SBCMP Rules. He submits that when a notice is issued under Rule 7 of the BCI Rules to schedule a meeting for electing the

representative member of a State Bar Council in the Bar Council of India, the said notice should also specifically include the agenda for conducting the said election, which was admittedly not done in the case of the Respondent No. 4's election. He submits that the meeting held on 02.08.2014 was only scheduled to consider some of the letters sent by a few members of the Petitioner/SBCMP to its Secretary, which letters pertained to entirely different issues. Even otherwise, he submits, as per Rule 15 of the SBCMP Rules, the Petitioner/SBCMP's decision cannot be reconsidered within a period of 3 months unless the same is permitted by at least a 2/3rd majority. Therefore, Mr. Upadhyay contends that the resolution recording the Respondent No. 3's election to the Concerned Post, having been passed only on 29.06.2014, could not have been reconsidered by members much less than a 2/3rd majority in the meeting held on 02.08.2014. Thus, Mr. Upadhyay's contention is that the resolution dated 29.06.2014 recording that the Respondent No. 3 had been elected to the Concerned Post was reconsidered by the Petitioner within a period of three months by less than a 2/3rd majority of its members and was, therefore, the said reconsideration was illegal

18. Finally, Mr. Upadhyay contends that since none of the members of the Petitioner/SBCMP have hitherto challenged the resolutions dated 29.06.2014 and 07.02.2015 electing and re-affirming the Respondent No. 3/Mr. Sunil Gupta as the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI, the said resolutions have attained finality and on this ground alone, the writ petition is entitled to succeed.

19. Mr. Nitin Gaur, learned counsel for the Respondent No. 3/Mr. Sunil Gupta, while reiterating the submissions made by Mr. Upadhyay,

at the outset submits that it has been falsely contended by the Respondents No. 1 and 2 that subsequent to the Chairman's election, the meeting held on 29.06.2014 was adjourned *sine die* and no other elections were held thereafter. While refuting the aforesaid contention of the Respondents No. 1 and 2, Mr. Gaur submits that the meeting was never adjourned on 29.06.2014 but it was only halted for some time to see off the then Advocate General, who had presided over the meeting for election of the Petitioner/SBCMP's Chairman. Thereafter, Mr. Gaur submits that the elections to the other posts and committees of the Petitioner/SBCMP were to be conducted under the supervision of the newly elected Chairman. In support of his aforesaid plea, Mr. Gaur places reliance on the minutes of the meeting dated 29.06.2014, wherein it has been duly recorded that the said meeting was “*stayed for seeing off the Advocate General and thereafter again meeting was commenced and elections on difference post and committee was held.*”

20. Mr. Gaur further contends that the Respondent No. 1 has, by passing the Impugned Order, completely usurped jurisdiction which it did not possess and has arbitrarily dismissed the Respondent No. 3's election petition. He submits that after the Petitioner/SBCMP had on 07.02.2015, by a 2/3rd majority, withdrawn the resolution dated 02.08.2014 and re-affirmed the Respondent No. 3/Mr. Sunil Gupta as its elected representative in the Respondent No. 1/BCI, the Election Petition had become infructuous and the same ought to have been permitted to be withdrawn. He, thus, contends that once the Respondent No. 3 had filed an application for the withdrawal of the election petition, the jurisdiction of the Respondent No. 1 to act on the said petition ended there itself, but the Respondent No. 1, instead of

dismissing the petition as withdrawn, illegally dismissed the petition as meritless.

21. On the other hand, Mr. J.P Sengh, learned Senior Counsel for the Respondent No. 4/Mr. Pratap Mehta, by placing reliance on the statement dated 03.01.2015 of the Petitioner's Secretary as also the letters dated 29.06.2014 and 13.07.2014 sent by the members of the Petitioner/SBCMP, contends that after the election of Petitioner's Chairman on 29.06.2014, the meeting was adjourned *sine die* and no elections to other posts and committees of the Petitioner were conducted thereafter. Even otherwise, he contends, the Respondent No. 3/Mr. Sunil Gupta could not have been validly elected to the Concerned Post on 29.06.2014 since his election was not conducted as per the mandatory procedure prescribed under the BCI Rules. By placing reliance on the statement dated 03.01.2015 of the Petitioner's Secretary, Mr. Mukesh Mishra, who had categorically admitted before the Respondent No. 1's Enquiry Committee that he had never been appointed as the Returning Officer for the purpose of conducting the elections to the Concerned Post on 29.06.2014, Mr. Sengh submits that it has been wrongly contended on behalf of the Petitioner as also the Respondent No. 3 that the Petitioner/SBCMP's Secretary had conducted the election to the said post on 29.06.2014. He, thus, contends that the election dated 29.06.2014 was in violation of the BCI Rules as the Petitioner's Secretary had never been appointed as the Returning Officer for the aforesaid election.

22. Mr. Sengh further submits that as per Rule 8(9) of the BCI Rules, after the result of the election of a representative member of a State Bar Council in the Bar Council of India is declared, the Secretary

of the concerned State Bar Council is required to communicate the aforesaid result to the Secretary of the Bar Council of India and also send the same to the concerned gazette for its publication. He contends that the alleged election of the Respondent No. 3/Mr. Sunil Gupta as the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI was neither communicated by the Petitioner's Secretary to the Respondent No. 1 nor was it notified in the Gazette as required under Rule 8(9) of the BCI Rules. Mr. Sengh, thus, contends that the alleged election of Respondent No. 3 on 29.06.2014 was rightly not accepted by the Respondent No. 1. On the contrary, he contends it is the Respondent No. 4's election to the Concerned Post, which is valid since it was conducted strictly in accordance with the procedure laid down in the BCI Rules. He submits that the meeting held on 02.08.2014 had been preceded by an agenda for holding the elections to the Concerned Post, as stated in the Petitioner's amended notice dated 19.07.2014, whereafter the Petitioner's Secretary had been duly appointed as the Returning Officer as per Rule 3 of the BCI Rules for conducting the aforesaid elections on 02.08.2014. Thereafter, he submits that as per Rule 8 (9) of the BCI Rules, the result of the Respondent No. 4's election to the Concerned Post was duly communicated to the Respondent No. 1's Secretary vide letter dated 02.08.2014 and notified in the Official Gazette on 15.08.2014.

23. Mr. Sengh further contends that the Petitioner's resolution dated 07.02.2015 reviving the election dated 29.06.2014 is bad in law insofar as the election of the Respondent No. 3/Mr. Sunil Gupta is concerned. He submits that after the Petitioner's Chairman had already concluded that that no valid elections, except his own, had taken place on

29.06.2014, there was no question of reviving the same as it already stood expunged from the minutes' book vide resolution dated 02.08.2014. He further contends that even otherwise, once the Respondent No. 3's Election Petition was *sub-judice*, the resolution dated 07.02.2015 could not have been passed by the Petitioner and thus, the same had been rightly stayed by the Respondent No. 2 by passing an interim order to the effect on 08.02.2015.

24. Taking Mr. Singh's pleas further, Mr. Kirti Uppal, learned Senior Counsel for the Respondent No. 1/BCI and the Respondent No. 2/Chairman of the BCI, submits that once a representative member of the Petitioner in the Respondent No. 1/BCI is elected, he can only be removed either under Rule 4 of the BCI Rules or by passing a No-Confidence Motion against him. By placing reliance on Rule 4 of the BCI Rules, Mr. Uppal submits that a person elected as a member of the Bar Council of India under Section 4(1)(c) of the Act, ceases to be a member either from the date he ceases to be a member of the State Bar Council or on the Bar Council of India's acceptance of his resignation. Mr. Uppal, thus, contends that once the Respondent No. 4/Mr. Pratap Mehta was elected as the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI vide resolution dated 02.08.2014, the Petitioner had no power to declare his election as void or revive the resolution dated 29.06.2014 recording Respondent No. 3's election to the Concerned Post.

25. Mr. Uppal further submits that the Petitioner has wrongly contended that the Respondent No. 2/Chairman of the BCI did not have jurisdiction to pass the order dated 16.11.2015 allowing the Respondent No. 4 to join the Respondent No. 1 as a member till the final order of

the Sub-committee. He contends that as per Rule 18 of the BCI Rules, the Chairman of the BCI can pass interim orders in revisional and other matters relating to the supervisory jurisdiction of the BCI and in his absence, even the chairman of the Sub-committee can pass any orders relating to supervisory jurisdiction of the BCI. He, thus, contends that the Respondent No. 2 had, by passing the order dated 16.11.2015, rightly permitted the Respondent No. 4 to join the Respondent No.1/BCI as its member pending the final order of the sub-committee.

26. Having heard the rival contentions of the parties and perused the record, I find that the first issue which arises for my consideration in the present petitions is whether the Respondent No. 3/Sunil Gupta was validly elected as a representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI on 29.06.2014 after following the procedure prescribed in the BCI Rules? If yes, could his election to the said Post, vide resolution dated 29.06.2014 be set aside and in his place, could Respondent No. 4/Mr. Pratap Mehta be elected as the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI? Furthermore, even if the Respondent No. 3/Mr. Sunil Gupta's election to the Concerned Post vide resolution dated 29.06.2014 is invalid, has the election of the Respondent No. 4/Mr. Pratap Mehta on 02.08.2014 to the said Post been conducted in accordance with the procedure prescribed under the BCI Rules?

27. Before proceeding further, it may be appropriate to refer to Sections 4 and 8 of the Advocates Act, 1961, which read as under:-

“4. Bar Council of India.—

(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:—

(a) the Attorney-General of India, ex officio;

(b) the Solicitor-General of India, ex office

*1[***]*

(c) one member elected by each State Bar Council from amongst its members.

8. Term of office of Members of State Bar Council.—

The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be five years from the date of publication of the result of his election:

Provided that where a State Bar Council fails to provide for the election of its member before the expiry of the said term, the Bar Council of India may, by order for reasons to be recorded in writing, extend the said term, the Bar Council of India may, by order, extend the said term for a period not exceeding six months.”

28. It may also be necessary to refer to the relevant provisions of Part-II, Chapter-1 of the Bar Council of India Rules, which read as under: -

“2.(1) The notice and agenda for the first meeting of the State Council held after the election of its members on the expiry of the term of its members elected at the previous election under Section 8 of the Act may include the election of a member of the State Council to the Council under Section (1) (c) of the Act.

(2) Every such election shall be held not later than 30 days after the first meeting of the State Council after election under Section 8 of the Act.

3. The election of a member of the Council shall be conducted by the Secretary of the State Council who shall act as the Returning Officer.

4. A person elected as a member of the Council under Section 4 (1) (c) of the Act shall cease to be such member :

(a) from the date when he ceases to be a member of the State Council as mentioned in Section 4 (3) (ii) of the Act.

(b) on the acceptance by the Council of his resignation.

x x x

7. Every notice by the Secretary of the State Council fixing a date for the election of a member to the Council under these rules shall be sent not less than 15 clear days before the date fixed for the election. A

copy of the said notice shall be sent simultaneously to the Secretary of the Council.

8. (1) The name of each candidate for the election shall be proposed by one member and seconded by another member of the State Council at the meeting. No member shall propose or second more than one name.

(2) If only one candidate has been duly nominated, the Returning Officer shall declare him elected.

(3) Any nominated candidate can withdraw before the voting takes place.

(4) If the number of candidates duly nominated is more than one, there shall be an election by secret ballot. The Returning Officer shall provide voting papers with the names of the candidates typed. Each voting paper shall bear the signature of the Returning Officer.

(5) A voter in giving his vote shall place in his voting paper the mark 'X' against the name of the candidate of his choice.

The voting paper shall not be signed by the voter and in the event of any erasures, obliterations or alterations in the voting papers or of the voting paper purporting to have been signed by the voter, the voting paper shall be deemed to have been defaced and the vote purporting to have been given thereby shall not be taken into account for the purposes of the election. Subject to the provisions of Rule 10, the decision of the Returning Officer whether the voting paper has or has not been defaced shall be final.

A voting paper shall be invalid on which-

(a) the mark 'X' is not made, or

(b) the mark 'X' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply, or

(c) the mark 'X' and any other mark or figures are set opposite the name of the same candidate, or

(d) there is any mark in writing by which the voter can be identified.

(6) The Returning Officer shall count the valid votes immediately after the close of voting in the presence of the candidates or their nominees who may choose to be present.

(7) The candidate securing the largest number of the votes shall be declared elected by the Returning Officer. In the case of two more candidates securing an equal number of votes, the Returning Officer shall decide the election by drawing lots.

(8) Immediately after the declaration of the result, the Returning Officer shall put the ballot papers used for voting in the election in a

separate cover, have the cover closed and sealed with his signature and that of all contesting candidates if they desire to do so.

(9) The result of the election shall be communicated forthwith to the Secretary of the Council and sent to the State Gazette or Gazettes concerned for publication.

9. *(1) In case of a dispute arising out of the election, any of the contesting candidates, or any other member of the State Council, may challenge the election by a petition which shall be filed with, or dispatched by registered post to the Secretary of the Council within 10 clear days of declaration by the Returning Officer of the result of the election as mentioned in Rule 8 (7). The petitioner shall also send copies of the petition to all the contesting candidates and to the Secretary of the State Council.*

(2) As soon as possible after the receipt of the copy of the petition under sub-rule (1), the Secretary of the State Council shall send the sealed cover containing the ballot papers referred to in Rule 8 (8) above, and all other papers and records relating to the election to the Secretary of the Council

10. *(1) The Council may reject any petition received under Rule 9, if, in its opinion, there is no prima facie case.*

(2) If the Council is of the opinion that there is a prima facie case, either the Council or a Committee of the Council comprising not more than 3 members of the Council constituted therefor shall, after hearing all the parties concerned, determine the said dispute.

(3) The Council, or the Committee, as the case may be, shall have all or any of the following powers:

(a) to dismiss the petition;

(b) to set aside the election;

(c) to declare any candidate as having been duly elected;

(d) to order a fresh election; and

(e) to make an order as to costs.

(4) A copy of the Order of the Council or the Committee may be sent to the State Council.

(5) The State Council concerned shall cause such fresh election to be held as may be ordered under sub rule (3) of this rule.

(6) The parties shall be entitled to obtain copies of the Order or the decision of the Council or of the Committee as the case may be, on payment of the charges, if any, prescribed therefor under the rules of the Council. The Chairman of the Council or the President of the Committee, as the case may be, may also permit copies of any other part of the record of the enquiry to be furnished on payment of such

charges as may be prescribed during the pendency of the election petition.

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22. On a motion of "No confidence" being passed by Bar Council of India by a resolution passed by majority of not less than 3/4th of the members present and voting and such majority passing "No confidence motion" is more than 2/3rd of the total number of members constituting the Bar Council for the time being, the Chairman or Vice-Chairman or any other office bearer against whom the motion is passed shall cease to hold office forthwith.

Notwithstanding anything contained in the Act or the Rules made thereon, the Chairman or Vice-Chairman shall not preside over the meeting in which motion of "No confidence" is discussed against him and such meeting shall be convened on a notice of atleast one month. The chairman or the Vice-Chairman shall have the right to vote, speak or take part in the proceeding of the meeting."*

29. The procedure for electing a member of a State Bar Council to be a member of the Bar Council of India is stipulated under the rules framed in Part-II, Chapter-1 of the Bar Council of India Rules. As per the procedure laid down in the BCI Rules, once the members of the State Bar Councils are elected under Section 8 of the Act, the State Bar Councils are required to hold a 'first meeting' of its newly elected members for conducting elections to the various posts and committees of the said Councils. In accordance with Rule 2, the notice and agenda of the first meeting may include an agenda for the election of a member of the State Bar Council to the BCI under section 4(1)(c) of the Act, which election in any case is to be held not later than 30 days after the 'first meeting' of the State Bar Council. Rule 3 further provides that the Secretary of the State Bar Council shall act as the Returning Officer for the purpose of conducting the election of a member of the BCI and Rule 7 makes it incumbent upon the Secretary of the State Bar Council

to send a 15 days' clear notice to all the members of the State Bar Council for fixing a date for the election of a member of the State Bar Council to the BCI, which communication is also required to be simultaneously sent to the Secretary of the BCI.

30. The procedure for conducting the election of the representative member of the State Bar Council in the Bar Council of India is explained in Rule 8, according to which, the candidate's name has to be proposed and recorded by members of the State Bar Council with a further rider that no member can propose or second more than one name in a meeting. Where only one candidate is nominated, the Returning Officer, i.e., the Secretary of the State Bar Council, shall declare him as the elected member of the Bar Council of India. However, in case more than one candidate is nominated, the election is to be conducted by way of a secret ballot. In such an eventuality, it is for the Returning Officer to provide voting papers with the typed name of the candidates, duly signed by the Returning Officer himself, to the members. As is evident from the Rules noted hereinabove, immediately after the voting has been closed, it is for the Returning Officer to count the valid votes and declare as elected the candidate who secures the largest number of votes, and immediately thereafter keep the ballot papers in a separate cover and seal the same with his signature and that of the contesting candidates, if they so desire. It is also incumbent upon the Returning Officer to forthwith communicate the result of the said election to the Secretary of the Bar Council of India as also to the concerned Gazette for its publication.

31. Having noted the statutory procedure to be followed for the election of the State Bar Council's representative in the Bar Council of

India, I may now proceed to examine the first issue as to whether the Respondent No. 3/Mr. Sunil Gupta's election to the Concerned Post on 29.06.2014 was conducted as per the procedure prescribed under the BCI Rules.

32. The first undisputed fact that emerges from the record is that the Petitioner/SBCMP had, in accordance with the requirement under Rules 2 & 7 of the BCI Rules, vide its notice dated 09.06.2014 circulated a specific agenda to all its constituent members for conducting elections on 29.06.2014 to the various posts and committees of the Petitioner/SBCMP, including the post of its representative member in the Respondent No. 1. Pursuant to the said notice, a meeting of the Petitioner's General Body was admittedly held on 29.06.2014 in which Mr. Rameshwar Neekhara was elected as the Petitioner's Chairman. The Minutes of the Meeting dated 29.06.2014 also show that after the election of the Petitioner's Chairman on 29.06.2014, the meeting was adjourned briefly at 12.30 p.m. for congratulating the newly elected Chairman, soon whereafter it was resumed in the presence of all the available members who then proceeded to elect the Respondent No. 3 to the Concerned Post in accordance with Part-B of the Agenda in the notice dated 09.06.2014. It is also undisputed that after the Respondent No. 3 had been elected to the Concerned Post, some of the members of the Petitioner had sent letters dated 29.06.2014 and 13.07.2014 to the Petitioner's Secretary contending therein that, on 29.06.2014 after the election of Mr. Rameshwar Neekhara as the Petitioner's Chairman, no further meeting had taken place and therefore, there was no question of the Respondent No. 3 having been elected to the said post on 29.06.2014.

33. At this stage, it may be pertinent to note that in the special meeting of the Petitioner's General Body held on 02.08.2014, all members who had been allegedly elected to the various posts and committees of the Petitioner/SBCMP on 29.06.2014, except for the Respondent No. 3, had tendered their resignations. Thereafter, the General Body, comprising of all 25 members of the Petitioner, came to a conclusion that only the election of its Chairman on 29.06.2014 was valid and decided to hold fresh elections on the same date for electing its representative member in the Bar Council of India. In this meeting held on 02.08.2014, the Petitioner, vide its resolution no. 3/GB/2014 dated 02.08.2014, upon the name of the Respondent No. 4 being proposed for the Concerned Post, declared him as elected for the said post. This decision of electing the Respondent No. 4 to the Concerned Post was not only communicated to the Respondent No. 1 but was also published in the Official Gazette on 15.08.2015.

34. It is the Respondent No. 4's election to the Concerned Post on 02.08.2014 that was challenged by the Respondent No. 3 by way of an election petition before the Respondent No. 1, pursuant where to a sub-committee was constituted by the Respondent No. 1 for considering the issues raised by the Respondent No. 3. Based on the statement of the Petitioner's Secretary and the letters sent by Petitioner's members, the Sub-committee in its report dated 04.12.2015 came to a categorical conclusion that the minutes whereby the Respondent No. 3 was allegedly elected to the Concerned Post were bad in law and could not be relied upon for any purpose, and merely because the Respondent No. 3 had been permitted to attend some meetings of the Respondent No. 1,

it could not be held that he had ever been validly elected to the Concerned Post.

35. A perusal of the record shows that the Petitioner's Secretary, in his statement dated 03.01.2015 to the Respondent No. 1's Enquiry Committee, in no uncertain terms admitted that subsequent to the election of the Petitioner's Chairman on 29.06.2014, the meeting had been adjourned *sine die* and thereafter some of the members had left the place of meeting. He further admitted that it is only the remaining members who had reconvened the meeting without any notice thereof to the other members and had conducted elections to the various posts and committees of the Petitioner/SBCMP. In his aforesaid statement, the Secretary had also admitted that the said election of the Respondent No. 3 to the Concerned Post on 29.06.2014 was neither communicated by the Petitioner to the Respondent No. 1 nor notified in the official gazette in accordance with Rule 8(9) of the BCI Rules.

36. During the pendency of the aforesaid election petition, the Petitioner had vide its resolution dated 07.02.2015 reiterated that the Respondent No. 3's election to the Concerned Post was the only valid election and thus, it cancelled the resolution dated 02.08.2014 in which the Respondent No. 4 was declared as the elected representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI. However, despite the Petitioner's resolution dated 07.02.2015 re-affirming the election of the Respondent No. 3 to the Concerned Post, the Respondent No. 1 vide its Impugned Order dated 05.12.2015, by relying on the Subcommittee's report dated 04.12.2015, dismissed the Respondent No. 3's Election Petition by holding that the election of Respondent No. 3 to the Concerned Post on 29.06.2014 was not valid, thus concluding that there

was no infirmity in the election of the Respondent No. 4 to the Concerned Post on 02.08.2014.

37. In light of the aforementioned undisputed facts, what becomes apparent is that the procedural requirements necessary to convene a meeting for holding an election to the Concerned Post on 29.06.2014 were undoubtedly followed, as not only an agenda for the same had been duly circulated on 09.06.2014 but even the Petitioner's Secretary, who in terms of Rule 3 of the BCI Rules has to act as the Returning Officer, was present. However, it also emerges from the record that the that on 29.06.2014 after the election of Petitioner's Chairman, the meeting had indeed been adjourned even if for a short duration, whereafter only some of the members held a meeting amongst themselves in which Respondent No. 3 was allegedly elected. The core question, thus, would be whether this election of Respondent No. 3 by some of the members of the Petitioner can be held to be valid merely because the meeting was preceded by a valid agenda circulated as per the Rules? In determining the answer to this question, a crucial fact which has to be kept in mind is that in his statement dated 03.01.2015 before the Sub-committee, the Petitioner's Secretary had categorically admitted that after the election of the Petitioner's Chairman on 29.06.2014, no other election had been conducted in accordance with the procedure prescribed under the BCI Rules. The Advocate General, in his statement dated 22.12.2014 before the Sub-Committee of Respondent No. 1 has also stated that he had left the place of meeting after the election of Petitioner's Chairman. Thus, in view of the specific stands taken by the Petitioner's Secretary as also the Advocate General of Madhya Pradesh, I find no merit in Mr.

Upadhyay's contention that the Respondent No. 3 was validly elected for the Concerned Post on 29.06.2014.

38. Having come to the conclusion that it is not possible to hold that the Respondent No. 3's election to the Concerned Post on 29.06.2014 was valid, I may now examine the question as to whether the Respondent No. 4's alleged election to the Concerned Post on 02.08.2014, was valid. In this regard, it needs to be kept in mind that before the Respondent No. 4 could be elected, it was incumbent upon the Petitioner to follow the entire process set down in the BCI Rules, more particularly, the procedure as prescribed under Rules 2, 7 and 8 of the BCI Rules. Rule 7 makes it clear that before any proposal for electing the Respondent No. 4 could even be considered in the meeting held on 02.08.2014, an agenda for the same had to be necessarily circulated at least 15 days before the proposed elections. However, it is interesting to note that it has neither been averred on behalf of the Respondent No. 4 nor anything has been placed on record to show that any agenda for holding fresh elections for the Concerned Post had ever been circulated before the meeting held on 02.08.2014, and the only agenda circulated for holding the said meeting was for considering the letters dated 29.06.2014 and 13.07.2014 sent by some members, which letters admittedly did not even refer to holding of any elections.

39. Thus, what emerges from the record is that the meeting dated 02.08.2014 was held only to consider the letters dated 29.06.2014 and 13.07.2014 written by certain members of the Petitioner/SBCMP, alleging therein that after the election of Petitioner's Chairman on 29.06.2014, no valid election to any other posts or committees of the Petitioner could have taken place. Therefore, in my considered opinion,

in the special meeting held on 02.08.2014, the only decision which could have been taken was regarding the validity of the election of the Respondent No. 3 to the Concerned Post on 29.06.2014. In view of the categorical mandatory provisions of the BCI Rules requiring an agenda for the election proposed to be conducted in any meeting to be circulated at least 15 days prior to the said meeting, which was admittedly not circulated for conducting the Respondent No. 4's alleged election on 02.08.2014, the Respondent No. 4's election in the said meeting cannot be held to be valid.

40. Having come to the conclusion that the alleged election of the Respondent No. 4 on 02.08.2014 is in itself unsustainable, I do not deem it necessary to deal with Mr. Upadhyay's contention that the Respondent No. 3's election to the Concerned Post, having been conducted in the meeting held on 29.06.2014, could not have been reconsidered before a period of three months with less than a 2/3rd majority of the members of the State Bar Council. It is for the same reason that I also do not deem it necessary to deal with the contention of Mr. Kirti Uppal that the Respondent No. 4 can be removed as a member of Respondent No. 1 only by passing a No-Confidence Motion against him or in the alternative only in situations where he no longer remains a member of State Bar Council of Madhya Pradesh. Once the Respondent No. 4's very election on 02.08.2014 is found to be invalid, he cannot be permitted to continue as a representative member of the Petitioner in the Respondent No. 1/BCI, as a consequence whereof Respondent No. 1's Impugned Order dated 05.12.2015 upholding the election of Respondent No. 4 is also unsustainable and is liable to be quashed.

41. In light of the fact that the elections of both Respondents No. 3 and 4 are invalid, the question which now arises concerns who should hold the post of the representative member of the Petitioner/SBCMP in the Respondent No. 1/BCI. Keeping in view the settled legal principle that a Court exercising its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India, can and should mould the relief to be granted to the peculiar facts and circumstances of the case, in my considered opinion the Petitioner cannot be left unrepresented in the Respondent No. 1/BCI and, therefore, this court must issue appropriate directions to ensure the representation of the Petitioner/SBCMP in the Respondent No. 1/BCI.

42. Having given my thoughtful consideration to this question regarding the representation of the Petitioner/SBCMP in the Respondent No. 1/BCI, I am of the view that the only manner in which this issue can be resolved, so as to be fair and just to all concerned, would be to direct the Petitioner/SBCMP to hold fresh elections to the Concerned Post after following the due procedure as prescribed in the BCI Rules, and to further direct the Respondent No. 1/BCI to accept the name of the representative so elected by the Petitioner/SBCMP.

43. At this stage, it may also be noted that when the present petitions were initially being taken up for hearing, a suggestion had been mooted by the learned Senior Counsel for the Petitioner that the Petitioner be granted liberty to hold a fresh election for electing its representative member in the Respondent No. 1/BCI, which suggestion was not accepted by any of the Respondents. Learned Senior Counsel for the Respondents No. 1 and 2 had objected to such a course of action on the ground that a person once elected as a representative of the State Bar

Council can be removed either by passing of a No-Confidence Motion against him in the Bar Council of India or if he ceases to be a Member of the State Council. He had further contended that there was no process by which the Respondent No. 4 could be removed as a member of the Respondent No. 1/BCI at this stage, after his name has already been notified in the Official Gazette. In my considered opinion, once it is found that the very election of Respondent No. 4 to the Concerned Post on 02.08.2014 itself cannot be sustained, the plea of the Respondent No. 1/BCI that Respondent No. 4 cannot be removed from the said post except in the aforesaid two circumstances, is wholly misconceived, since it is not a case where an elected representative is being removed but one in which the alleged representative of the SBCMP in the BCI had not been validly elected in the first place.

44. For the aforesaid reasons, the Respondent No. 1's Impugned Order dated 05.12.2015 upholding the elections of the Respondent No. 4 to the Concerned Post cannot be sustained.

45. The prayers in the writ petitions, so far as they seek implementation of the Petitioner's Resolutions dated 29.06.2014 and 07.02.2015 electing the Respondent No. 3 as a member representative of Petitioner/SBCMP in the Respondent No.1/BCI, are rejected. However, the prayer quashing the Respondent No. 1's Impugned Order dated 05.12.2015 is allowed and accordingly the Impugned Order dated 05.12.2015 is quashed and set aside. The Petitioner in *W.P.(C) No.2142/2016*, i.e., the State Bar Council of Madhya Pradesh is directed to hold within a period of 4 weeks, fresh elections for electing its representative member in the Respondent No.1/BCI by following the procedure as prescribed in the BCI Rules. Upon the Petitioner

communicating the result of the election to be held in terms of the aforesaid directions to the Respondent No. 1/BCI, the said Respondent No. 1 would take consequential steps to include the name of the person elected by the Petitioner/SBCMP as its representative member in the Respondent No. 1/BCI.

46. The writ petitions along with pending applications are, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

JULY 06, 2018
sr/gm