

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: July 23, 2018

+ W.P.(C) 5594/2018, CM No. 21804/2018

SANDEEP SHARMA

..... Petitioner

Through: Mr. Varun Goswami,
Mr. Shashi Mohan, Advs.

versus

THE CHAIRMAN & ORS

..... Respondents

Through: Mr. T. Singhdev, Ms. Manpreet Kaur,
Ms. Amandeep Kaur, Mr. Tarun
Verma, Ms. Puja Sarkar and
Mr. Abhijit, Advs. for R1
Mr. Chetan Sharma, Sr. Adv. with
Mr. Santosh Mishra, President NDBA,
Mr. Neeraj, Hony. Secretary of
NDBA, Mr. S.N. Verma, Adv.,
Mr. Vijay Joshi, Mr. Amit Gupta,
Mr. Sushil Kumar Pandey,
Mr. Ajay Digpaul, Mr. B. Singh,
Mr. Rajesh Kumar, Mr. Dilip Kumar,
Mr. Mayank Sharma and
Ms. Madhuri Dhingra, Advs. for
R4/NDBA

AND

+ W.P.(C) 7318/2018, CM No. 27920/2018
MANISH KUMAR

..... Petitioner

Through: Mr. Varun Goswami,
Mr. Shashi Mohan, Advs.

versus

THE CHAIRMAN, BAR COUNCIL OF DELHI & ORS

..... Respondents

Through: Mr. T. Singhdev, Ms. Manpreet Kaur,
Ms. Amandeep Kaur, Mr. Tarun
Verma, Ms. Puja Sarkar and
Mr. Abhijit, Advs. for R1
Mr. Chetan Sharma, Sr. Adv. with
Mr. Santosh Mishra, President NDBA,
Mr. Neeraj, Hony. Secretary of
NDBA, Mr. S.N. Verma, Adv.,
Mr. Vijay Joshi, Mr. Amit Gupta,
Mr. Sushil Kumar Pandey,
Mr. Ajay Digpaul, Mr. B. Singh,
Mr. Rajesh Kumar, Mr. Dilip Kumar,
Mr. Mayank Sharma and
Ms. Madhuri Dhingra, Advs.
for R4/NDBA

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (ORAL)

1. By this order I shall decide the pleas of maintainability /
admissibility of the writ petitions as taken by Mr. Chetan Sharma,
learned Senior Counsel appearing for the Secretary, NDBA.

W.P.(C) 5594/2018

2. This is a petition which has been initially filed by the
petitioner with the following prayers:-

*“It is, therefore, most respectfully prayed that this
Hon’ble Court may very graciously be please to:*

*a) direct the respondent No.1 i.e Bar Council of
Delhi to take charge of the affairs of respondent*

No.4 and to carry out the elections process of NDBA, 2018 under its supervision and control;

b) direct the respondent No.5 not to act in any manner in the capacity of Returning officer of NDBA election, 2018 and to hand over all the documents, communications, papers etc to the respondent no.1;

c) direct the respondent No.1 to nominate its two members who are or had been members of NDBA to constitute a fresh election committee of NDBA under the Chairmanship of respondent No.2;

d) direct the respondent No.2 and 3 not to finalize the list of voters for NDBA elections, 2018 till constitution of fresh Election Committee as prayed in prayer (c) hereinabove;

e) direct the fresh election committee to issue necessary directions in terms of para 12 of judgment dated 18.10.2016 in W.P.(C) 8106/2010;

f) pass such further order and / or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice."

3. Suffice to state, that on May 24, 2018 Mr. Varun Goswami, learned counsel appearing for the petitioner has confined the writ petition to prayer (b). The prayer (b), in substance is a challenge to the appointment of respondent No.5 as

a Returning Officer of the NDBA Election, 2018.

W.P.(C) 7318/2018

4. This writ petition has been filed with the following prayers:-

““It is, therefore, most respectfully prayed that this Hon’ble Court may very graciously be please to:

- a) direct the respondent No.1 i.e Bar Council of Delhi to take charge of the affairs of respondent No.4 and to carry out the elections process of NDBA, 2018 under its supervision and control;*
- b) declare the minutes of the General Body meeting of Members of NDBA dated 15.05.2018 reflecting respondents shown at serial no. 5 to 15 being appointed as Returning Officer / Additional Returning Officer as void and illegal;*
- c) restrain the respondents mentioned at serial no. 5 to 15 not to act in any manner in the capacity of Returning officer / Additional Returning Officers of NDBA election, 2018 and to hand over all the documents, communications, papers etc to the respondent no.1;*
- d) direct the respondent No.1 to nominate its two members who are or had been members of NDBA to constitute a fresh election committee of NDBA under the Chairmanship of respondent No.3/4;*
- e) direct the respondent No.4 to finalize the list*

of voters for NDBA elections, 2018 after re-constitution of fresh election committee in terms of prayer D above, after proper scrutiny of declaration forms and publish the same with complete detail of members such as address, mobile no., photographs, email id etc. as has been done by Election Committee constituted for other Bar Associations;
f) pass such further order and / or direction which this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice."

5. In substance, the challenge in this writ petition is to the minutes of the General Body Meeting of Members of NDBA dated May 15, 2018 wherein the respondent Nos.5 to 15 have been shown to have been appointed as Returning Officer / Additional Returning Officers; for re-constitution of the Election Committee; for preparation of voter list after proper scrutiny of declaration forms by giving complete details of Members such as address, mobile number, photographs, email ID etc. This petition has been filed by one Mr. Manish Kumar, Advocate. His grievance, as noted from the writ petition is, that despite being enrolled with Bar Council in the year 2004, and whose name appeared in the tentative voter list has been declared ineligible to

vote. Firstly on the ground his name did not appear in the list of voter of Bar Council of Delhi. Later, on the removal of this defect on the ground that he had not filed the AIBE certificate, which requirement came into existence for the Advocates graduating in the academic year 2009-2010 and thereafter.

6. Mr. Varun Goswami, learned counsel appearing for the petitioners has broadly made four submissions; (i) that the present petitions are maintainable under Article 226 of the Constitution of India, that too against, NDBA through its Secretary as it is a settled law in terms of the judgment of this Court in *P.K. Dash (supra)*, the NDBA's activities have public character; (ii) that the Election Committee constituted by this Court in *P.K. Dash (supra)* could not have while preparing the voter list left to the NDBA, the process of collecting the declaration forms from the Members of the NDBA. It is the responsibility of the Election Committee to the total exclusion of the Executive of NDBA; (iii) the minutes showing the respondent no.5 as Returning Officer is illegal as he was not appointed as RO and he could not be so appointed as number of irregularities were committed during the last election held in the year 2016 when he was also Returning Officer; (iv) that the appointment of respondents 6 to 15 (in

W.P.(C) No. 7318/2018) as Additional Returning Officers is illegal as no such appointment is contemplated in the Byelaws of the NDBA.

7. Insofar as plea No.1 is concerned, the submission of Mr. Goswami is that the Division Bench of this Court in ***P.K. Dash (Supra)*** was concerned with the issue of “*one bar one vote*” in the elections held for different Bar Associations in Delhi. According to him, by referring to various paras of the judgment including Para 36, this Court conclusively held that the activities of a Bar Association including, in the Court functioning, management, policy etc. have a predominantly public character and is amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. He has in his submissions also referred to the order passed by the Division Bench on October 18, 2016 in CM No. 36262/2016 in the said writ petition, to contend, in the said order the Division Bench has given directions to the Bar Association to constitute an Election Committee of three Members for the purpose of preparing a list of Members eligible to vote. In other words, the NDBA being a Bar Association, is also required to follow the directions given and the petitioners having challenged, the process evolved by the Election

Committee in the preparation of voter list and the minutes of the meeting of GBM of NDBA and the appointment of Returning Officer / Additional Returning Officers, the writ petitions are maintainable under Article 226 of the Constitution of India. He also referred to the following judgments in *W.P.(C) No. 22635/2017 Amol Shrivastava v. Bar Council of India*; *W.P.(C) No. 55898/2004 Shiv Kumar Akela v. Registrar Societies Firm and 144 (2007) DLT 286 Ramesh Dutt v. State Election Commission* in support of his submissions.

8. Insofar as submission No.2 is concerned, Mr. Goswami submitted that the Election committee constituted in terms of the orders passed by this Court in *P.K. Dash (supra)*, has acted contrary to the intent and directions of this Court in the said judgment. He submitted that it was the respondent No.3 i.e the District & Sessions Judge who asked the Secretary, NDBA to give two names of the senior members of the Bar for constitution of the Election Committee. However, the nomination of the District & Sessions Judge as the Chairperson of the Election Committee, the same was neither communicated by the Ld. District and Sessions Judge nor by the respondent Secretary, NDBA/Chairperson. The fact of appointment of the Chairperson

of the Election Committee came to the knowledge of the Members of the Bar only after the Secretary, NDBA started asking the Members to file the declaration forms for preparation of voter list. He submitted that the judgment of this Court in *P.K. Dash (supra)*, the calling of declaration, from the Members, scrutiny thereafter and preparation of voter list for election of NDBA was the exclusive responsibility of the Election Committee under the Chairmanship of a Judicial Officer to the total exclusion of the current executive of the Secretary, NDBA. However, the declaration forms were circulated and received by the Secretary, NDBA and further the last date for filling up the declaration form was extended at the whims and fancies of the executive of the NDBA. In this respect, he stated that in the circular dated March 09, 2018 issued at the behest of Secretary, NDBA, the last date of submission of declaration form was March 31, 2018, which was extended from time to time till April 23, 2018. He submitted that some of the forms were received by the staff of respondent No.2 NDBA whereas certain Members were directed to drop the declaration form in the drop box kept at the office of the respondent No.2, which has resulted in arbitrary destruction of some forms.

9. Mr. Goswami submitted that on May 18, 2018 the Election Committee has come out with a tentative voter list for removing defects, the same contained only name and Bar Council enrolment number of the members making it difficult for the members particularly contestants to identify the members detail. Representations were made to the Election Committee for providing complete details of the members in the voter list which have not been answered to. According to him, in complete disregard to the established norms and expectations of the Members, the Election Committee, once again, came out with final voter list containing only names and enrolment numbers making the election vulnerable to bogus voting and rigging. In substance, it was his submission that the Election Committee completely dependent upon Secretary, NDBA for scrutinizing the declaration forms resulting in many Members becoming disentitled to vote. He stated it is precisely for this reason, a prayer is made in the writ petition that the Chairperson, Election Committee to finalize the list of voter of NDBA Elections, 2018 after reconstitution of fresh Election Committee on the Bar Council of Delhi nominating two of its Members.

10. His further submission on non-application of mind by the Election Committee is by referring to minutes of the meeting of the Election Committee dated February 26, 2018 wherein the Committee has made a reference to the letter dated April 10, 2017 of the Honorary Secretary, New Delhi Bar Association in which it was stated that the executive Committee will be completing its tenure in the month of April, 2018, which according to him was incorrect / false representation as the Executive Committee having been elected in the year 2016 had already completed its tenure in 2017. Unfortunately, the Committee has taken as a gospel truth, the representation made by the Secretary, NDBA of its completing the tenure in 2018. This according to him also depicts the malafide of the Secretary, NDBA.

11. Insofar as submission No.3 above is concerned, it was the submission of Mr. Goswami that as per the constitution of NDBA, the election of Executive Committee has to be conducted by a Returning Officer, who continues to be the Returning Officer for a year after his appointment by the General Body. The tenure of Executive Committee can get extended only for six months after expiry of one year in case, no election is conducted

during that period. He submitted that the last election of Executive Committee of NDBA was conducted on May 6, 2016, when the Respondent No.5 acted as Returning Officer to conduct the Election of NDBA, 2016, when number of irregularities including but not limited to bogus voting, rigging, surplus printing of ballot papers, circulation of ballot papers openly outside the polling booth, influencing the voter by distribution of cash and lavish parties etc. took place. Despite being in the knowledge of all the aforesaid, the respondent No.5 did nothing to ensure fairness in the election and on the contrary, promoted the same by his act of omission and commission. He referred to number of representations made at that time, which according to Mr. Goswami are self-explanatory. Since the respondent No.5 continued to be the Returning Officer for a period of one year from the last election held on May 06, 2016, a representation was made to him by one Vikas Sharma, Advocate to constitute the Election Committee to conduct the election of NDBA for the year, 2017 but respondent no.5 chose to remain evasive and simply washed off his hands by forwarding the said representation to the President, NDBA vide his letter dated February 3, 2017. Thereafter, various representations were made

to Secretary, NDBA and learned District and Sessions Judge by the members of NDBA to constitute election committee and to call General Body Meeting for appointment of Returning Officer for conducting election of NDBA, the tenure whereof had already expired on May 6, 2017. However, they miserably failed and deliberately violated the directions of this Court in the above cited judgment for a period of one year even after expiry of tenure of the executive committee. Moreover, none of the representations were responded by them and without verifying the facts from the constitution of NDBA and giving opportunity to the members to clarify, the Secretary, NDBA and learned District and Sessions Judge solely believed on false representation of the Secretary, NDBA that the tenure of Executive is expiring in April 2018. Finally, respondent no.4 was nominated by the respondent no.3 as the Chairperson of Election Committee on January 10, 2018 in terms of aforesaid judgment of this Court.

12. According to Mr. Goswami, contrary to the intent and directions of the aforesaid judgment, it was learned District and Sessions Judge, who asked Secretary, NDBA to give names of two senior members of the Bar for constitution of Election

Committee. It was further submitted the Secretary, NDBA took more than a month time to nominate two senior members of the Bar. The Secretary, NDBA vide his letter dated February 15, 2018 circulated to the members of the Bar that as requested by respondent No.3, Ld. District and Sessions Judge, they have nominated Shri Suresh Chandra Sharma and Shri Krishan Nautiyal as members of the Bar for constitution of Election Committee. However, as far as the nomination of Chairperson, Election Committee by respondent No.3 is concerned, the same was neither communicated by the Secretary, NDBA nor by the learned District and Sessions Judge till that time. The fact of appointment of respondent No.4 as the Chairperson of Election Committee came to the knowledge of members of the Bar only after the Secretary, NDBA started asking its members to file their declaration forms for preparation of voter list.

13. It was the submission of the learned counsel for the petitioner that once again, Secretary, NDBA continued to avoid calling of General Body Meeting, (in short GBM) for appointment of Returning Officer (in short RO) to conduct election. After rigorous efforts of the members vide their collective letter dated April 26, 2018 signed by about 219

members and addressed to the Acting Hon'ble Chief Justice of this Court, finally, the Secretary, NDBA was forced to call GBM on May 15, 2018. However, there was strong apprehension amongst the members that, Secretary, NDBA will definitely try to create chaos in the GBM and hence, one more representation signed by 79 members was made on May 11, 2018 to maintain harmony and prevent any untoward incident. Finally, the GBM was called / convened on May 15, 2018 at about 4pm with arrangement of videography as well, where more than 400 members participated. In the said meeting, it was unanimously approved that Shri Bhupendra Singh, Advocate, Chamber No.230, Patiala House Courts, New Delhi shall be the Returning Officer for conducting election of NDBA, 2018. However, Secretary, NDBA surrounded by some unscrupulous elements who were not even the members of NDBA disrupted and stopped the videography, created ruckus, chaos and manhandling with members of the Bar and finally, the entire executive committee left the GBM abruptly at about 4.30 pm. Within few minutes, thereafter, the Secretary, NDBA came out with a letter mentioning therein that agenda for amendment in constitution of NDBA and restoration of members has been adjourned, and to

utter shock and surprise of members, it was informed that Shri S. C. Chawla, the respondent No.5 herein, has been appointed as returning officer with 10 others names being respondents no. 6 to 15 as Additional Returning Officers. It is noteworthy, that Mr. Bhupendra Singh, Advocate, who was unanimously elected as returning officer in the GBM of NDBA held on May 15, 2018 was shown as one of the Additional Returning Officers. He further submitted that the constitution of NDBA does not make any provision for appointment of additional returning officer and that too by the Executive Committee. Moreover, there was no discussion about the appointment of any Additional Returning Officers in the General Body Meeting. It is further submitted, respondent No.5 herein on the same date at 5.30 pm also issued a SMS in collusion with Secretary, NDBA thanking all the members of NDBA fraudulently claiming his appointment as Returning Officer by GBM. Upon coming to know the aforesaid arbitrary, highhanded and malafide acts on the part of Secretary, NDBA, said Shri Bhupendra Singh, Advocate submitted letter to the President, NDBA on May 16, 2018 thereby resigning from the post of Additional Returning Officer. Even the members of NDBA (signed by about 184) have also filed their objections

about the appointment of respondent No.5 as the Returning Officer. The petitioner believes that the minutes of the meeting of General Body Meeting dated May 15, 2018 have also been forged by the Executive Committee of NDBA with malafide intent to reflect the appointment of respondent nos. 5 to 15. The petitioner has made many attempts to seek copy of the minutes of GBM along with copy of unedited videograph from the Secretary, NDBA. However, the Secretary, NDBA is neither entertaining the request nor has supplied the same to the petitioner. Since the minutes of GBM and Video graph is not in custody and possession of the petitioner, the NDBA be directed to file the same.

14. Insofar as submission No.4 above is concerned, it is his submission that the appointment of respondents 6 to 15 is not contemplated under the Byelaws of the NDBA. Any appointment, which is not sanctioned by the Byelaws of the NDBA, is illegal and arbitrary.

15. On the other hand, Mr. Chetan Sharma, learned Senior Counsel appearing for the Secretary, NDBA submitted that the present petitions filed by the petitioners are primarily against the NDBA and as such are not maintainable. According to him, the

judgment of *P.K. Dash (supra)*, on which reliance has been placed by Mr. Goswami is not applicable in the given facts more so in view of the relief sought by the petitioners. According to him, in *P.K. Dash (supra)*, the Division Bench of this Court was concerned with one important issue of “one bar one vote” concerning all the Bar Associations in Delhi, whereas in these petitions, the reliefs are primarily sought against the NDBA. According to him, the judgment in *P.K. Dash (supra)* concerns the Advocates as a Class rather than a single Advocate as is the case herein. Mr. Sharma has taken me through various paragraphs of the judgment in support of his contention. He seeks the dismissal of the writ petitions on this ground only.

16. That apart, it is his submission, insofar as W.P.(C) No. 7318/2018 is concerned, the cause of action for the petitioner to file the petition is the exclusion of his name from the voter list. He concedes to the fact that the exclusion of his name from the voter list by the Election Committee was an inadvertent error, which has since been rectified by the Election Committee. According to him, as the very substratum for which the petitioner has filed the petition goes, this petition needs to be dismissed as infructuous. He also stated, the petitioner Manish Kumar has not

prayed for the relief of inclusion of his name in the list purposefully knowing well such an action has been taken by the Election Committee and has claimed reliefs which are more in the nature of reliefs sought in a PIL. He also submitted, this petition has been filed only to overcome the statement made by the learned counsel for the petitioner in W.P.(C) No. 5594/2018 on May 24, 2018 giving up similar prayers and confining that writ petition to prayer (b).

17. That apart, Mr. Sharma has drawn my attention to various averments made in the writ petitions including those related to the minutes of the General Body Meeting held on May 15, 2018 alleging that the same have been forged and also the allegation that it was Bhupendra Singh, Advocate who was elected by the GBM as Returning Officer and not the respondent No.5 S.C. Chawla, to contend that they being disputed questions of fact cannot be gone into in a writ petition. The petitioners must be relegated to civil court. According to Mr. Sharma as against 187 Members, who submitted representations only, Sandeep Sharma / Manish Kumar have approached this Court shows the petitions are motivated, at the behest of few.

18. Mr. Sharma also submitted, the ill motive of the

petitioners to file these petitions is also clear from the serious allegations made against the Chairperson of the Election Committee, which shows lack of regard and propriety towards a high judicial officer. Such averments borders contempt, which shall disentitle the petitioners, the reliefs as sought for.

19. Insofar as the allegations against respondent No.5 are concerned, Mr. Sharma denies the same. According to him, respondent No. 5 is a Senior Member of the Bar with a long standing and was the right person to be nominated as the Returning Officer. He stated, except making bald allegations in representations, persons aggrieved against the alleged conduct of respondent No.5 have not cared to seek any remedy, by knocking the doors of the Court challenging his action / inaction as a Returning Officer in the elections held in 2016. Further he stated the relief sought now challenging his appointment as Returning Officer for ensuing election is premature as the respondent No.5 has not done anything till date, which necessitated allegations of bias against him.

20. On the appointment of additional Returning Officers, it is the submission of Mr. Sharma, by conceding that there is no stipulation in the Byelaws of the NDBA contemplating such

appointments, such appointments were made in the past for assisting the Returning Officer who alone cannot look after all the logistics necessary for conducting the election. He stated that Additional Returning Officers, now appointed shall only assist the Returning Officer in conducting the election and shall not take any decision which the Returning Officer is empowered under the Bye-laws in relation to Election. He clarifies they shall assist the Returning Officer in the smooth conduct of the Election. He also justify their appointments as of persons of long standing at the Bar.

21. He also stated that the preparation of the voter list by the Election Committee is not in violation of the dicta of ***P.K. Dash (supra)***. According to him, the direction of this Court is that the Election Committee shall compile the names of the Members of the Bar for voting purpose. On the aspect that the Secretary, NDBA has intentionally delayed the holding of the elections by exceeding its term beyond the period of one year, Mr. Sharma has stated that in the past also the GBM has extended the tenure of the Executive. He also stated, if it is the case of the petitioners that the tenure had expired in May, 2017, why did the petitions have been filed only in the month of July, 2018, which surely

suggest the same are as an afterthought. In the end, Mr. Sharma seeks the dismissal of the writ petition.

22. Having heard the learned counsel for the parties, insofar as the objection of maintainability of the petitions is concerned, Mr. Goswami had relied upon the judgment of the Division Bench of this Court in *P.K.Dash (supra)*, which according to him covers the issue in favour of the petitioners. The primary submission of Mr. Chetan Sharma on the non applicability of the judgment of this Court in *P.K.Dash (supra)* is that this Court in the said case was dealing with an important issue of “*one bar one vote*”, which concerns all the Bar Associations in Delhi whereas in the petitions in hand, which have been filed by two individual members with reliefs primarily directed against the NDBA challenging the minutes of the meeting of the General Body of the NDBA dated May 15, 2018 wherein decision has been taken for appointment of Returning Officer / Additional Returning Officers on various grounds. In other words, it is his submission, the issue raised is an internal issue of the Bar Association and as such not amenable to the jurisdiction of the Court under Article 226 of the Constitution of India. Any interpretation in favour of the petitioners would result in spate of petitions against the

Association under Article 226 of the Constitution of India. I am afraid such submissions of Mr. Sharma are not sustainable in view of clear pronouncement by this Court in *P.K.Dash (supra)*. No doubt, the issue with which the Court was concerned was “one bar one vote” during election of all the Bar Associations in Delhi but the Court, after noting the position of the Advocates in the Courts in India and the importance of their role in judicial decision making and the role discharged by them in Court administration and functioning, which includes Court procedure framed after consultation with the Bar Associations; important policy and administrative decision with regard to allotment of chambers; allotment of commercial spaces / common spaces earmarked for parking lots; rules for designation of a Senior Advocate, has clearly come to a conclusion that the activities of a Bar Association have a predominantly public character. In this regard, I reproduce para 36 of the judgment as under:-

“36. Given this position of Advocates in Courts in India, and the importance of their role in judicial decision making, their conduct in respect of matters not regulated by law may appear, on the façade, beyond the pale of what may be described as “public functions”. Yet, that is not the case. Bar

Associations- like the respondents, apart from the statutory bodies such as Bar Councils, also occupy a pivotal role in Court administration and functioning. This can be gathered from the fact that Court procedure is framed after consultation with such Bar Associations, important policy and administrative decisions such as rules to allot chambers, use of common spaces, allotment of commercial spaces, their identification (all meant for the use of the AIR 1957 SC 250 2000 (7) SCC 264 WP(C) Nos.8106/2010, 6851/2012, 7549/2012 & 2689/2014 Page 29 litigant public and members of the Bar) earmarking of parking lots, policies and rules for designation of senior counsel under the Advocates Act, are taken, more often than not, with the consultation and inputs from these Bar Associations, in view of their representative nature. Any dispute within such association invariably has repercussions in court functioning. Conflicts with members of the public, interface with the local administration and police authorities routinely - for security of court, court precincts, chambers, etc. need active participation by Bar Associations. Often, individual grievances of members of the Bar in court premises require intervention and deft handling on the part these Associations, in the absence of which Court proceedings would be disrupted. Above all, elections

of Bar Associations quite often lead to large-scale requests for adjournments, and litigants have to pay the price. Intervention through court policies requiring discipline in canvassing for votes and what is permissible in the form of leaflets and pamphlets, use of speakers, etc, by the Bar Associations, if left unregulated would also seriously undermine court functioning. These show that Bar Associations' activities have a pre- dominantly public character, and can, in many instances, affect court functioning. As a result, it is held that the nature of relief sought in these proceedings is intrinsically connected with public functioning of the court and affect them. Consequently the present proceedings are maintainable under Article 226 of the Constitution of India.”

23. The Court having held that the Bar Association's activities have predominantly a public character, merely because in the cases in hand, this Court is concerned with only one Bar Association being NDBA and the decision taken in its GBM, it cannot be said that the dicta of the Court in the said judgment is not applicable. Once, the Court has determined the activities of a Bar Association have public character, the reliefs, which have been sought by the petitioners even though with regard to the minutes of the meeting of the GBM relatable to the appointment

of Returning Officer / Additional Returning Officers, the said reliefs shall also be maintainable in a petition under Article 226 of the Constitution of India. That apart, Mr. Goswami is right in contending that the issue of maintainability of a petition can also be put to rest in view of the order passed by the Division Bench in CM No. 36262/2016 in ***P.K. Dash (supra)***, wherein the Court had in fact given directions to the Bar Associations for constituting Election Committee of three Members for preparing the list of Members eligible to vote. Further the challenge in W.P.(C) 7318/2018 is also with regard to the voter list prepared by the Election Committee pursuant to the directions of this Court in ***P.K. Dash (Supra)***. So, the objection of Mr. Chetan Sharma on the maintainability of the writ petitions, needs to be rejected.

24. Before I come to the second submission made by Mr. Goswami, it is necessary to deal with the submission made by Mr. Chetan Sharma that the writ petition being W.P.(C) 7318/2018 has become infructuous as the cause of action, for which the petitioner has filed the petition that his name does not find mention in the list of Members eligible to vote has been granted, as it has been decided by the Election Committee to

allow Mr. Manish Kumar to vote. This submission of Mr. Sharma is appealing on a first blush, but I find Mr. Manish Kumar even though not sought any prayer with regard to rectification of the error crept in, in the voter list but has made other prayers. The prayers as sought for have already been reproduced above. Mr. Sharma may be right in contending, the present petition has been filed only to overcome the statement made on May 24, 2018 in W.P.(C) No. 5594/2018 wherein the petitioner had confined the said writ petition to prayer (b), which relates to appointment of respondent No.5 as the Returning Officer. That can't be a ground to reject the W.P.(C) 7318/2018 as the petitioner herein being a Member of the NDBA had represented to the Chairperson, Election Committee vide his representation dated May 29, 2018 with regard to the manner in which the voter list has been prepared as the same is incomplete without giving details of the Members such as address, photograph, contact details, email ID etc. That apart, Sandeep Sharma, the petitioner in W.P.(C) 5594/2018 is amongst the members of Bar Association who had submitted representation dated May 17, 2018, stating that Mr. Bhupender Singh was elected as Returning Officer. So on both the counts, the cause of

action being existing, the petitioners are within their right to file the petitions. Having said that, it is to be seen whether in the facts such reliefs can be considered and granted. To answer the same, it is necessary to reproduce the directions given by the Court in ***P.K. Dash (supra)*** in CM No. 36262/2016 on October 18, 2016, as under:-

“13. The following directions shall be added by way of modifications:

(a)(i) For every election the Bar Association shall constitute an Election Committee of three members. This Committee shall be formed three months before the end of the tenure of the office bearer of the Bar Association. The Committee shall comprise of two advocates with not less than 20 years’ standing, who would not contest in the forthcoming elections, chaired by a Judicial Officer not below the rank of Additional District Judge of five years’ standing nominated by the concerned District Judge.

(a)(ii) Such Election Committee would be responsible for the task of verifying the declarations and preparing the list of members eligible to vote having regard to the directions in para 52(a) above. Such list shall be prepared and displayed for objections after which the final list of voters shall be prepared at least four weeks before the date of

voting.

(a) (iii) The Chairman of the Election Committee, i.e the concerned judicial officer shall ensure the preservation of the records relevant to verify the declarations. Such records, including the declarations given by the members, the final list of voters and the final list of candidates with their declarations shall be kept in the custody of the concerned District Judge and available for scrutiny. The District Judge shall in turn ensure that such documents are digitized and kept in safe custody.”

25. From the above, it is clear that a three Member Election Committee constituted by the Bar Association would be responsible for the task of verifying the declaration in preparing the list of Members eligible to vote. The directions in 52(a) of the judgment in ***P.K. Dash (supra)*** reads as under:-

“52. In the light of the above findings and conclusions, the following directions are issued:

(a) The following rule, incorporating the one-bar, one vote principle shall stand incorporated forthwith in relation to every Bar Association in Delhi (including the Delhi High Court Bar Association, the Delhi Bar Association, the New Delhi Bar Association, the Rohini, Shahdara, Saket and Dwarka Courts Bar Association and all other

Court/Tribunals attached Bar Associations):

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

XXXXXX XXXXXX XXXXXX"

26. There is nothing in the orders to suggest that the declaration need to be called in the manner suggested by the petitioner in W.P.(C)7318/2018. The apprehension of the petitioner that if the voter list is not prepared in the manner suggested by them, then bogus voting, rigging and other irregularities shall be committed, is without any basis and also premature without the conduct of the Election. That further, I

have been informed that the declaration was sought in terms of form approved by the Election Committee which requires a member to give information with regard to his Bar Council enrollment number, his NDBA membership number, e-mail, Residential address, Chamber / Office address etc, in terms of the following format.

NEW DELHI BAR ASSOCIATION ELECTIONS – 2018

DECLARATION FORM

1.	Name	
2.	Father's name	
3.	Age (D.O.B)	
4.	Residential Address	
5.	Chamber / Office Address	
6.	Bar Council enrollment No.	D/ /
7.	NDBA Membership No.	
8.	AIBE Details (if applicable)	Passed/Pending/Result awaited (for those members Passed & Enrolled with BCD after 2009-2010)
	Details of Dues Deposited by the Cheques of self / Spouse/Blood Relations	Cheques No.....dated.....drawn on.....Bank Branch
10	Receipt No. & Date	
11	E-mail	
12	Are your Name is in the Voter List of BCD elections-2018	BCD Voter's List No..... If not state the reason.....

The apprehension of the petitioner is also unfounded on the ground that this court in *P.K. Dash (supra)* has given directions to the Chairperson of the Election Committee to ensure preservation of the records, relevant to verification of the declarations including the declarations given by the Members, the final list of voters and final list of candidates with their declaration by keeping it in the custody of the concerned learned District Judge and available for scrutiny. In fact, a direction has been given to digitize the documents and to keep it in safe custody. When such safeguards have been directed, the plea / apprehension of the petitioners is unfounded. Even the plea of Mr. Goswami that taking declaration from members, scrutiny thereof and preparation of voter list for election of NDBA was the exclusive responsibility of the Election Committee is concerned, the directions of the Court in *P.K. Dash (Supra)* are clear. It appears, even the petitioners have not raised any objection with regard to the NDBA seeking declarations from the individual members. In fact, on a specific query, I am informed that Manish Kumar had submitted the form by dropping it in the drop Box. So having acquiesce himself in the situation / process

of framing the voter list, the plea is unsustainable. I also note from the documents placed before the Court during submissions, that, the Election Committee has, also in the process of verification sought information from the Bar Council of Delhi with regard to some Members. A point in reference is the letter dated May 19, 2018, received by the Chairperson of the Committee from the Bar Council of Delhi. Moreover, the voter list cannot be interfered at the behest of one person.

27. At this stage, it is necessary to observe that serious allegations have been made against the Chairperson of the Election Committee. During the course of his submissions, Mr. Goswami has stated that the petitioner does not doubt the capability and integrity of the Chairperson and Members of the Committee. If that be so, the allegations made in the petition surely suggest that they have been made only for the purpose of making it. Such a conduct is not called for when the petitioners are Advocates. The Chairperson of the Election Committee and the two Members have only discharged their responsibility as mandated by this Court in *P.K. Dash (supra)* and bestowed on them by the Ld. District and Sessions Judge and the Bar Association.

28. Insofar as the submission of Mr. Goswami regarding the appointment of respondent no.5 as the Returning Officer is concerned, his submission centered around the manner in which the elections were conducted in the year 2016 when also he was the Returning Officer. He had referred to various representations made after the election held in the year 2016. Suffice to state, the said representations are dated May 08, 2016 and May 09, 2016, that too by Advocates Mr. Virendra Singh Maan and Mr. Narendra Kumar Sharma. No doubt, allegations have been made with regard to the discrepancies noted in the conduct of the election but the said allegations remained in the realm of allegations without being substantiated in a Court of Law. Even otherwise, the plea of Mr. Sharma that the respondent No.5 has been appointed as a Returning Officer for the election which is yet to take place and as such the allegations of bias are premature is appealing. Further, this Court is of the view, after the judgment of this Court propounding the concept of “*one bar one vote*” and also directing preparation of the voter list by a Committee headed by a Senior Judicial Officer in ***P.K. Dash (supra)***, the situation has changed and is not akin to the one existed in the year 2016 when the last election took place. The

preparation of voter list, surely would ensure, holding of elections in a fair and proper manner. Any irregularity during the conduct of elections, would give a cause of action to the petitioners to agitate the same in accordance with law. So, the challenge regarding appointment of respondent No.5, is without any merit and the same is rejected.

29. Insofar as the challenge of the petitioner to the appointment of Additional Returning Officers is concerned, there is no dispute that there is no stipulation in the byelaws of the NDBA for such appointments but the plea of Mr. Sharma that even in the past, i.e in the years 2010, 2012, 2014, 2016 Additional Returning Officers have been appointed to assist the Returning Officer is required to be taken note of. He also stated, Additional Returning Officers are only to assist the Returning Officer in the conduct of the election and that they shall not discharge any of the functions, of a Returning Officer under the byelaws including (i) to fix the dates of nomination withdrawal and elections in consultation with the President; (ii) to reject the nomination filed by a candidate if it not in order; (iii) to declare the result of the elections. Taking the statement of Mr. Sharma on record and making it clear that Additional Returning Officers

would only assist the Returning Officer by carrying out the duties as assigned to them for the smooth conduct of the election, I am not inclined to interfere with their appointment.

30. I do not see any merit in the petitions. The same are dismissed. No costs.

CM No. 21804/2018 in W.P.(C) 5594/2018 (for interim relief)
CM No. 27920/2018 in W.P.(C) 7318/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 23, 2018/ak



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