

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.12113 of 2019

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the inaction of the respondents in implementing the direction of the Hon'ble Supreme Court in **Supreme Court Bar Association v. B.D.Kaushik** and judgment of Division Bench of Delhi Court in **P.K.Dash, Advocate v. Bar Council of Delhi**, regarding one bar one vote and not following the list of members of the 2nd respondent communicated by the 1st respondent as per the Certificate of Practice submitted by the members of the 2nd respondent for conducting the elections of the office bearers of the 2nd respondent as illegal and arbitrary.

Heard Sri T.Surya Satish, learned counsel for the petitioner, Sri G.M.Mohiuddin, learned counsel for the respondents 1 & 2 and Sri B.Vijaysen Reddy, learned counsel for the 3rd respondent.

Learned counsel for the petitioner submits that only 429 advocates of the 2nd respondent Bar Association are entitled to vote in the elections conducted by the 3rd respondent on 22.06.2019, since by the date of election, only 429 Advocates are having Certificate of Practice and others i.e., 59 Advocates, who are members of the 2nd respondent Bar Association are not entitled to participate and vote in the elections, as they have not obtained Certificate of Practice before the date of elections, from the 1st respondent. He submits that as per Rule 21 of the Bar

Council of India Certificate and Place of Practice (Verification) Rules, 2015 (for short 'the Rules of 2015') also envisages that unless the Certificate of Practice is issued, they are not eligible to vote. He further submits that since the 1st respondent has statutory obligation to implement Rule 21 of the Rules of 2015, he sought for a direction to the 1st respondent for implementation of the judgment of the Hon'ble Supreme Court in **Supreme Court Bar Association v. B.D.Kaushik[(2012) AIR (SC) Civil 1728]**.

On the other hand, learned Standing Counsel for the 1st respondent submits that last date for obtaining Certificate of Practice is extended till 31.07.2019 and that all the Advocates, who have obtained Certificate of Practice, are eligible to participate and vote in the elections. He submits that the exercise of scrutinizing the applications filed by the Advocates for obtaining Certificate of Practice, could not have been completed before the date of elections, because, for the first time, the 1st respondent is implementing the directives of the Hon'ble Supreme Court regarding issuance of Certificate of Practice.

Sri B.Vijaysen Reddy, learned counsel for the 3rd respondent submits that election notification was issued on 12.06.2019 and by that time, all the members of the 2nd respondent association are the voters for participating in the elections and that the last date is extended till 31.07.2019 for obtaining Certificate of Practice and several Advocates have already filed applications for obtaining Certificate of Practice. He also submits that the petitioner has efficacious alternate remedy

under Section 23 of the Telangana Societies Registration Act, 2001,(for short ‘the Act of 2001’) since the dispute is among the members regarding disqualification and also about the process of election.

In this case, it is to be seen that in the writ affidavit itself, it is stated that the entire process of election itself is wholly illegal, contrary to the settled law of elections laws and process and same is canvassed by the learned counsel for the petitioner. Admittedly, the main dispute is with regard to conduct of elections to the 2nd respondent association, which is registered under the Societies Registration Act, 2001. Even according to the learned counsel for the petitioner, though election notification was issued on 12.06.2019, but the Advocates, who have obtained Certificate of Practice till the date of election i.e.,22.06.2019 can also be considered for voting. These aspects were disputed by the counsel appearing for the respondents 1 to 3. Learned counsel for the 1st respondent submits that, for the first time, the 1st respondent is implementing the directives of the Hon’ble Supreme Court, which goes to show that the dispute in the Writ Petition is essentially one of the election dispute. All these factors have to be adjudicated before the District Court, which is competent to deal with these issues under Section 23 of the Act of 2001, which reads as follows:

“23. Dispute regarding management: In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and conciliation Act,1996, (Central Act 26 of 1996) or may file an application in the District Court

concerned and the said court shall after necessary inquiry pass such order as it may deem fit.”

In view of above provision, all the disputed questions of fact, can be raised before the District Court and learned counsel for the petitioner can raise all these issues before said Court. This Court is also of the opinion that these disputes can be effectively adjudicated by the District Court, as such, this Court is not inclined to entertain the Writ Petition.

In view of above facts and circumstances, I do not see any reason to entertain this Writ Petition and accordingly, the same is dismissed. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand dismissed.

A.RAJASHEKER REDDY,J

08-07-2019
kvs

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