

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

(1) CWP No.14526 of 2020
Date of decision:16.09.2020

Shankar Gupta Advocate and others ...Petitioners

Versus

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

(2) CWP No.14524 of 2020

Naveet Kumar Dhall ...Petitioner

Versus

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

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Jaswant Singh

Present: Mr. Anand Chhibar, Senior Advocate, with
Mr. Gaurav Mankotia, Advocate,
for the petitioners in CWP No.14526 of 2020.

Mr. Pardhuman Garg, Advocate, for
Mr. Prashant Sethi, Advocate,
for the petitioner in CWP No.14524 of 2020.

Mr. Rakesh Gupta, Advocate,
for respondents nos.1 and 2.

Mr. Rajiv Atma Ram, Senior Advocate, with
Mr. Arjun Pratap Atma Ram, Advocate,
for respondent no.4 in CWP No.14526 of 2020.

Mr. Akshay Bhan, Senior Advocate, with
Mr. Amandeep Singh Talwar, Advocate,
for respondent no.5 in CWP No.14526 of 2020.

Mr. Jagjot Singh Lalli, Advocate, with
Mr. Shobit Phutela, Advocate,
for respondent no.6 in CWP No.14526 of 2020.

Mr. Gaurav Chopra, Advocate,
for respondent no.9 in CWP No.14526 of 2020.

Rakesh Kumar Jain, J.

Case taken up through video conferencing.

1. This order shall dispose of two writ petitions bearing CWP No.14526 of 2020 titled as “Shankar Gupta Advocate and others vs. Bar Council of Punjab and Haryana and others” (hereinafter referred to as the “first petition”) and CWP No.14524 of 2020 titled as “Naveet Kumar Dhall vs. Bar Council of Punjab and Haryana and others” (hereinafter referred to as the “second petition”) as the issues involved in both the petitions are common. However, for the sake of convenience, the facts are being extracted from the first petition.

2. The petitioners are the Members and Ex.-Office Bearers of the Bar Associations of Chandigarh as well as Panchkula who have prayed for the issuance of a writ in the nature of *certiorari* for quashing the notification dated 09.09.2020 (**Annexure P-1**) issued by the Bar Council of Punjab and Haryana (hereinafter referred to as the “Bar Council”) notifying the election programme of all the Bar Associations of the States of Punjab, Haryana and Union Territory Chandigarh including the Punjab and Haryana High Court Bar Association for the year 2020-21 by way of **online elections**, to be held on 30.09.2020/01.10.2020, while restricting the direct election only for the five posts, i.e. President, Vice President, Secretary, Joint Secretary and Treasurer and excluding the direct election to the remaining posts of Office Bearers and Executive Members, substituting it to nomination by the elected Office Bearers in the said election(s). The impugned notification has been issued, exercising the powers conferred under the Bar Associations (Constitution & Registrations) Rules, 2015 (hereinafter referred to

as the “Rules of 2015”), as amended upto date and approved by the Bar Council of India (hereinafter referred to as the “BCI”).

3. Learned counsel for the petitioners has referred to various decisions of this Court to trace the history of the Rules of 2015. It so happened that a writ petition bearing CWP No.5952 of 2014 titled as “**Mohinder Singh Chauhan vs. Bar Council of Punjab and Haryana, Chandigarh**” was filed by the petitioner therein to contest the election to the post of the President, Bar Association, Gurugram for the 4th time but since there was a fetter in the bye-laws of the Bar Association against any elected member for any post to hold office more than three times in his lifetime, therefore, the said petitioner had approached this Court to challenge the provisions in the said bye-laws, which were causing impediment in his way. The election was held during the pendency of the said writ petition in which the petitioner, namely, Mohinder Singh Chauhan was elected as the President but it was held by this Court that his election was contrary to the bye-laws, had no right to hold on to the office and his election was declared as invalid. The said writ petitioner filed an intra-court appeal bearing LPA No.1427 of 2014 against the order dated 14.08.2014. In the said appeal, the Court had observed that *“the question whether an Advocate-Member of the ‘Bar Association’ should be allowed to hold office for three-terms or more, essentially requires a policy decision by way of mandatory Statutory Rules for which the State Bar Council is vested with ample powers under the Advocates Act, 1961”*. The Bar Council was called upon to address the issue involved in the appeal and other related issues by enacting appropriate Rules, which may be applied uniformly to all the Sub Divisional or District level Bar

Associations and required to consult the office bearers of District Bar Associations to give effect to its decision uniformly in both the States and the U.T. Chandigarh. It was also observed that the Bar Council shall take notice of other anomalies which were affecting the purity, fairness, transparency and democratic values in the annual elections of Bar Associations. It was further observed that the Bar Council must ensure that comprehensive policy decision with appropriate statutory back-up, to be formulated henceforth by it, is given effect by all the Bar Associations without any exception, failing which the Bar Council should invoke its other statutory powers under the Act. In view of the aforesaid decision dated 01.09.2014, passed in the aforesaid appeal, the Bar Council, by way of a miscellaneous application, placed on record the Rules of 2015, which was meant to regulate the election and affairs of the District and Sub Divisional Bar Associations in both the States & U.T. Chandigarh. The Bar Council also informed the Court that the final decision is required to be taken by the BCI.

4. During the course of hearing, learned counsel appearing on behalf of the Bar Council has submitted that the Rules of 2015 were framed by the Bar Council on 02.05.2015 and approved by the BCI on 12.10.2015.

It is pertinent to mention here that before the Rules of 2015 could have been approved by the BCI on 12.10.2015, a batch of five writ petitions were heard together and decided by this Court with the leading case CWP No.6047 of 2015 titled as **“Harjot Singh Harikay vs. Bar Council of Punjab and Haryana and another”**. In all the five writ petitions which were decided together, the issue was regarding the election of the Bar Associations and the Rules of

2015 were in consideration. The aforesaid writ petitions were disposed by a Division Bench of this Court on 04.08.2015 with the following order:-

“These Rules have been framed after inviting suggestions and proposals from all the Bar Associations in the States of Punjab and Haryana. A majority of the Bar Associations responded. The suggestions and proposals sent by them and their existing bye-laws /Rules/regulations were duly considered. The 2015 Rules thus represent the consensus of the elected representatives of the Advocates. They seek to address the lacunae in the existing procedures/ regulations and aim to ensure that uniformity and transparency is maintained in the elections of the Bar Associations.

Though, in two petitions there was a specific challenge to the Rules, but during the course of hearing when these Rules were examined and discussed in detail and the purpose and objective of their formulation was highlighted, the challenge to the Rules was given up. A consensus was arrived at between the counsel for the parties and accordingly the case is being disposed of in terms of the following agreed order:

- (i) The 2015 Rules be enforced.
- (ii) Clause (e) of Rule 11 which ousts the jurisdiction of the Civil Court to entertain any dispute with regard to election of the Bar Association, would be deleted by the Bar Council. In Clause (c) of Rule 3 the Registration Fee for every Bar Association having strength of members upto 500 would be reduced from Rs.5,000/- to Rs.1000/- and for Bar Associations having more than 500 members the registration fee would be reduced from Rs.10,000/- to Rs. 2,000/-. Sh. Rakesh Gupta, Chairman Bar Council, who is present in Court, assures to take appropriate action in this regard.
- (iii) Where ever election to the Bar Association has been held before 11.05.2015, the elected office bearers

would hold office till fresh elections are held as per the 2015 Rules.

- (iv) Where elections were not held and the elected body has completed its term or where elections were held after 11.05.2015 on which date the interim order was passed by the Hon'ble Supreme Court, staying the operation of the order dated 22.4.2015 of this court, such elected bodies will cease to function and in their place an ad hoc body will be elected by the Bar Association under the supervision of the Bar Council. This ad hoc body will function till fresh elections are held in terms of the 2015 Rules. Such ad hoc body/Committee would be constituted within six weeks. The existing bodies shall continue to function till the ad hoc bodies are constituted.”

This order dated 04.08.2015 was passed much prior to the approval granted by the BCI on 12.10.2015 to the Rules of 2015 in terms of Section 15(3) of the Advocates Act, 1961 (hereinafter referred to as “the Act”). Be that as it may, the decision rendered by this Court in **Harjot Singh Harikay’s case (supra)** was reversed by the Supreme Court in the case of **Deepak Kumdu and others vs. Bar Council of Punjab and Haryana and others**, (2016) 15 Supreme Court Cases 689 on the ground that some of the Bar Associations were not heard and the matter was remanded back.

5. After the remand, a batch of four writ petitions bearing CWP Nos.5232, 23865, 24392 and 25912 of 2015 were taken up together with the lead case CWP No.24392 of 2015 titled as “**Rakesh Punia vs. Bar Council of India and another**”, in which the question for adjudication was framed as to “*whether the Bar Associations (Constitution and Registrations) Rules, 2015 (for short “the 2015 Rules”) are ultra vires being beyond the Rule making powers of the State Bar Council under the Advocates Act, 1961 (for short “the 1961*

Act? And further whether the said Rules are violative of the rights of the petitioners as guaranteed under Article 19(1)(c) of the Constitution?” In this case, learned counsel appearing on behalf of the Bar Council had argued that the source of power of the State Bar Council to frame the Rules of 2015 lay in Sections 6(dd), 6(h) and 6(i) read with Section 15 of the Act and had also relied upon the Sections 16, 17 and 18 of the Advocate Welfare Fund Act, 2001 (hereinafter referred to as the “Act of 2001”). It has been held in this case that the State Bar Council is empowered to frame the Rules in question and in this regard, reference could be had to the observations made in paragraph 42 and 43 of the said decision dated 21.12.2016, which are reproduced hereasunder:-

“42. Based on the aforesaid considerations, we are satisfied that the State Bar Council is empowered in terms of the above referred provisions to frame rules which have as their object to bring about uniformity and transparency in matters relating to the elections of the Bar Associations, within its jurisdiction. In fact framing of such Rules may be considered an inevitable necessity to effectuate the broad legislative scheme evidenced by the Acts and Rules referred to above wherein the Bar Associations recognized by the State Bar Council have been assigned a Central role as also in view of the role and importance of the Bar Associations in the administration of justice and the imperative noticed and stressed even by Hon'ble the Supreme Court to ensure that the Associations are truly the representatives of the Advocates practicing in the Courts. Accordingly we do not find any merit in the argument of the petitioner that the Rules are Ultra vires being beyond the Rule making power of the State Bar Council.

43. It is also noteworthy, as is stated on behalf of the Bar Council, that the Rules have been framed after exhaustive consultation with the Bar Associations in Punjab and Haryana. Before finalizing the Rules a meeting of the Presidents/ Secretaries/ office Bearers of all the Bar Associations from Punjab and Haryana was called and it was only after getting their proposals and suggestions that the rules were framed. The Rules thus reflect the broad consensus of the representatives of the advocates on this issue.”

It is also pertinent to mention that the decision in **Rakesh Punia’s case (supra)** has also been followed in two writ petitions bearing CWP Nos.9764 and 10069 of 2018 both titled as “**Dr. Anmol Rattan Sidhu vs. Bar Council of Punjab and Haryana and others**”, which were decided together on 29.08.2018 holding that the election of the Punjab and Haryana High Court Bar Association has been held as per the Rules of 2015.

6. From the resume of the aforesaid earlier litigation, it is clear that Rules of 2015 were framed by the Bar Council in view of the order dated 01.09.2014 passed in LPA No.1427 of 2014 and were held intra vires insofar as the competence of the Bar Council to frame the Rules is concerned in CWP No.24392 of 2015.

After the framing of Rules of 2015, elections have been regularly held of all the Bar Associations, affiliated to the Bar Council, in both the States of Punjab, Haryana and UT Chandigarh by way of **secret ballot**, which is provided in Rule 6(B)(i) of the Rules of 2015. The relevant part of the said Rules of 2015 is reproduced hereasunder:-

“6. ADMISSION OF MEMBERS AND ELECTION OF THE BAR ASSOCIATIONS

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B)(i) There shall be election of every Bar Association by **secret ballot** for electing its office bearers every year on 1st Friday of the month of December, in case the 1st Friday falls on a holiday, the election will be held on next working day except Saturday.”

The office bearers are defined in Rule 7 of the Rules of 2015 which reads as under:-

“7. OFFICER BEARERS:

Every recognized Bar Association shall have the following office bearers who shall be elected every year.

- i. A President.
- ii. A Vice-President.
- iii. A Secretary.
- iv. A Treasurer.
- v. A Joint Secretary.
- vi. A Library Incharge.
- vii. Executive Members (Numbers and age may be fixed by General Body of Bar Association).

Rule 9 of the Rules lays down the terms of office, which is also reproduced hereasunder for a ready reference:-

“9. TERMS OF OFFICE:-

The Office bearers of the Bar Association and Member of the Executive Committee shall hold the office till the completion of one year from the date of their election. However in extraordinary circumstances they may continue for a further period of one month with the prior approval of Bar Council, for reasons to be recorded. The office bearers of the Bar Association shall have to get the election completed within the extended time, failing which the administrative of the Association will vest in a Adhoc Committee duly nominated by Bar Council, who will hold the election at the earliest preferably within 1 month.

Haryana on or before 31st October of each year.

- (iii) The accounts of the Bar Association shall be audited and displayed on the notice board every year or before 31st October.
- (iv) In each election an observer may be sent by the Chairman of the State Bar Council, in case there is a request in writing by Returning Officer or candidate to supervise the election.

Note 1: All the Bar Associations, whose term is ending in the month of April, 2015 shall hold their elections 1st Friday of December, 2015 in case it is a holiday than on the next working day except Saturday. The said arrangement has been made in order to make compliance of the orders of Hon'ble High Court so as to bring purity, fairness, transparency and democratic values in the General Elections of the Bar Associations. Since it has come to the notice of the Bar Council that there is no proper maintenance of the record of the membership, resolutions, accounts etc. in the various Bar Associations moreover they are not having their own constitution therefore to bring uniformity in between all the Bar Associations it has been decided to hold the elections in all the Bar Associations falls within the jurisdiction of Bar Council of Punjab and Haryana.

Note 2: The Office Bearer of all the Bar Associations will obtain application of membership from afresh upto 31st March, 2015 from all the members of the Bar Associations in duplicate as per Proforma enclosed (Annexure A). One copy of the said form be

sent to Bar Council on or before 30th April, 2015.

Note 3: The Bar Association as well as Bar Council will maintain the list of the members of all the Bar Associations on the basis of aforesaid information. Any change will be intimated to the Bar Council from time to time.”

7. There was no dispute till the Bar Council passed a resolution on 18.06.2020 by which Rules 2(k), 6(B)(i) and 9 of the Rules of 2015 were proposed to be amended. The aforesaid resolution is reproduced as under:-

“The Bar Associations (Constitution and Registration) Rules, 2015-

Existing	Proposed Amendment
Rule 2 K: (k) Adhoc Committee means the Committee consisting of three Senior most members of the Bar Association duly appointed by the Chairman of the Bar Council in consultation with the District and Sessions Judge concerned or in case of Punjab and Haryana High Court Bar Association with the consultation of Hon'ble Chief Justice of Punjab and Haryana High Court.	Rule 6 B ((I):- Adhoc Committee means the Committee consisting of three members of Sub-Divisional Bar Association and five Members of the District Bar Association and the High Court Bar Associations having minimum practice at Bar for 10 years duly appointed by the Chairman of the Bar Council of Punjab and Haryana.
	Provided in Rule 9:- <u>Terms of the office</u> The office bearers of the Bar

	Association and members of the executive committee shall hold the office till the completion of one year from the date of their election. However in the extra ordinary circumstances they may continue for a further period of the one month with the prior approval of Bar Council, for reasons to be recorded. The office bearers of the Bar Association shall have to get the election completed within the extended time, failing which the administration of the Association will vest in a Adhoc Committee duly nominated by the Bar Council, who will hold the elections at the earliest preferably with in 1 month. The term of the existing Bar Association expired in the first week of April 2020. Even the extended period provided under above rule has expired in first week of May 2020. Thus, in view of the un- precedent situation need has arisen to amend The Bar Association Constitution & Registration) Rule 2015, After amended rule 6(N)(i) vide resolution 28.10.2017 approved by the BCI, the
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	following provision be added:
	If at any time during the existence of these rules the Bar Associations in the States of Punjab, Haryana and Chandigarh including High Court Bar Association are prevented from holding the Election of its office bearers within the time prescribed under these rules, beyond its control, due to the following reasons:- i) War or ii) Epidemic/pandemic or iii) Acts of God e.g. floods, earthquakes etc. Or iv) Lockdown/Public gathering prohibited by the order of the Government Then the elections of the office bearers of Bar Associations will be conducted by the Bar Council of Punjab and Haryana through the process of online voting. Explanation: i) The election by way of online-voting mode of the office bearers of the Bar Associations undertaken by the Bar Council of Punjab and Haryana under this amended rule on any day of the week as per the schedule fixed by the General House of the Bar Council. ii) The Executive Committee Members of the Bar Associations will be nominated by the Elected President and other office bearers. In case of dispute,

	majority decision will prevail. iii) Bar Council of Punjab and Haryana can adopt any other method in this regards: a) To ensure for free and fair election b) to maintain the secrecy of suffrage Note: The Voter list of the Bar Associations would be perform annexed herewith (In Excel format only). Soft copy of the voter list be sent to dbaelection2015@gmail.com.
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The aforesaid resolution dated 18.06.2020 was approved by the Bar Council on 19.06.2020 and was further approved by the BCI on 16.07.2020 in terms of its powers under Section 15(3) of the Act.

8. In the meanwhile, two writ petition bearing CWP Nos.13616 of 2020 titled as “Meer Singh vs. Bar Council of Punjab and Haryana and others” and CWP No.13630 of 2020 titled as “Maha Singh Yadav vs. Bar Council of Punjab and Haryana and others” came to be filed in this Court to challenge the validity of the resolution dated 18/19.06.2020 and the order dated 21.08.2020 by which the duly elected office bearers of the District Bar Association, Gurugram were replaced by an Adhoc Committee. Both the aforesaid writ petitions came up for hearing on 11.09.2020, in which the following order was passed:-

“Notice of motion to the limited extent of vires of the amended Rule 2(K) of the Bar Associations (Constitution and Registrations) Rules, 2015.

Mr. Rajesh Lamba, Advocate accepts notice on behalf of the respondent-Bar Council of Punjab and

Haryana and states that in any case the elections have now been notified the present petition has been rendered infructuous.

In our considered opinion, the vires of the amended Rule 2 (K) needs to be considered and therefore, the announcement or holding of elections would not rendered this writ petition infructuous. As regards vires of the amended Rule 9 of the Bar Associations (Constitution and Registrations) Rules, 2015, by the impugned resolution it has been provided that in a situation of war pandemic, act of God or lockdown, the election would be held through the process of online voting.

Learned counsel for the petitioner submits that this resolution in its entirety must go because it has been passed in violation of the directions of this Court.

In our considered opinion, in view of the current pandemic situation we would be inclined to overlook the infirmity, procedural or otherwise in the amendment to Rule 9 the Bar Associations (Constitution and Registrations) Rules, 2015. However, it is made explicitly clear that the validity of resolution qua Rule 2K of the Bar Associations (Constitution and Registrations) Rules, 2015 would be open. In the circumstances, the challenge to Rule 9 of the Bar Associations (Constitution and Registrations) Rules, 2015 is rejected.

Adjourned to 14.10.2020.

A photocopy of this order be placed on file of other connected matter.”

9. It is pertinent to mention here that before the order dated 11.09.2020 was passed by this Court, the Bar Council, after approval of the amendment by the BCI, issued the impugned notification dated 09.09.2020 notifying the election programme of **online elections** and restricted the direct elections to the post of five office bearers, i.e. President, Vice President, Secretary, Joint Secretary and Treasurer. The said notification dated 09.09.2020 is reproduced for a ready reference:-

“BAR COUNCIL OF PUNJAB AND HARYANA
LAW BHAWAN
Dakshin Marg, Sector -37A, Chandigarh, 160036,
Website www.bcph.co.in

Dated 09.09.2020

NOTIFICATION

Exercising the Powers conferred under “The Bar Associations (Constitution & Registration), Rules 2015. (As amended upto date approved by the BCI) The Bar Council of Punjab and Haryana is holding elections of all the Bar Associations of Punjab and Haryana and Chandigarh including the Punjab and Haryana High Court Bar Association (2020-2021) on the following dates:-

30.09.2020 (Wednesday)	All the Bar Associations of Punjab, Chandigarh and Punjab and Haryana High Court Bar Association.	9.00 AM to 2.00 PM
01.10.2020 (Thursday)	All the Bar Associations of Haryana	9.00 AM to 2.00 PM

The following schedule for the elections is hereby issued.

Upto date corrected voter list of all the voters of all the Bar Associations of Punjab, Haryana and Chandigarh with their phone number/enrolment number will be finalized by 12.09.2020 thereafter no request for correction in the voter list will be entertained except by the order by competent Court or by the Special Committee constituted as per Rules.

After having a meeting with the all Returning Officers of all the Bar Associations the following dates of nomination, withdrawal and scrutiny is hereby given:

16.09.2020	Calling of nomination for the Post of President, Vice President, Secretary, Joint Secretary and Treasurer from 10.00 AM to 5.00 PM to be taken by respective returning officers either personally or through email alongwith two photographs (passport size), the nomination fee is to be charged as per the Rules/Resolutions of the respective Bar Association and the said amount will be kept by the Bar Association in its account. Note: The eligibility of the candidates for various posts will be determined by the returning officers as per "The Bar Associations (Constitution & Registration) Rules, 2015. 2) The Bar Associations where the nominations papers have already been received by the Returning Officer for the elections which were to be held in the month of April will remain the same and no fresh nomination paper will be accepted.
17.09.2020	Scrutiny of the nominations paper from 10.00 to 12.00 PM
17.09.2020	Withdrawal of the nominations paper from 01.00 pm to 2.00 PM
17.09.2020	Deciding the objections if any qua nomination from 2.00 pm to 5.00 PM
17.09.2020	Final list of candidates of all the post will be displayed/pasted on notice board or the respective Bar Association and the same will be sent to the candidate on whatsapp as well as through email
	Nomination in original with photographs of all the candidates will be sent to the Bar Council immediately uptill 18.09.2020. Note: In case there is one candidate for the post then the returning officer will be authorized to declare the candidature of said post after the expiry of the time of

	withdrawal of nomination papers and intimation be given to the Bar Council.
	The Hon'ble Retired Judge of Punjab and Haryana High Court, Mr. Justice Rajiv Narain Rana will be the Chief Supervisor of the online elections.

The elections will not be held in those Bar Associations of Punjab, Haryana and Chandigarh where the Bar Associations have unanimously elected their office bearers for the year 2020-2021 and have conveyed the same to the Bar Council.

The election will be held only for five posts re, President, Vice President, Secretary. Joint Secretary and Treasurer and remaining posts and executive members will be nominated by the elected office bearers after elections.

The term of the office bearers of the Bar Association for the ensuing election will be uptill December 2021, therefore, the term will be from every December to December in future elections.

(Karanjit Singh)
Chairman"

10. Aggrieved against the impugned notification dated 09.09.2020, the present petitions have been filed.

The grievance of the writ petitioner in the second petition is that he is a practicing advocate at the District Courts, Jalandhar and is a member of the District Bar Association, Jalandhar. He has submitted that as per the amended Rules of the District Bar Association, which came into force on 01.03.2000, election to the post of President, Senior and Junior Vice Presidents, Secretary, Joint Secretary, Assistant Secretary and 7 Executive Members is to be held every year. He has further argued that he had contested the election for the post of Junior Vice President in the last year but

contesting the elections for the said post in the year 2020-21 but by virtue of the impugned notification, the direct election to the post of Junior Vice President has been curtailed and the said post has been made to fill up by way of nomination by the five Officer Bearers who would be elected this year. The case of the petitioner is that the posts of Junior and Senior Vice Presidents, Assistant Secretary and Executive Members have been put in the pool of indirect election which is against the spirit of the bye-laws or the Rules of the District Bar Association, Jalandhar.

Learned counsel appearing on behalf of the petitioners in the first petition, while opening his arguments, has vehemently contended that the Bar Council has not taken into confidence all the stakeholders before passing the resolution dated 18/19.06.2020, by which the amendments have been made in Rules 2(k), 6(B)(i) and Rule 9 of the Rules of 2015 even though the Rules of 2015 were framed in pursuance of the order passed by this Court in view of the direction issued by this Court vide order dated 01.09.2014 passed in LPA No.1427 of 2014, wherein it has been categorically observed and provided that the Bar Council shall consult the Office Bearers of the District Bar Associations at the time of framing of Rules. It is submitted that if the Office Bearers of the District Bar Associations were consulted at the time of framing of Rules of 2015, then they were equally required to be consulted at the time of making amendment in the Rules of 2015 and, therefore, the entire action of the Bar Council smacks of arbitrariness which is against the spirit of Article 14 of the Constitution of India.

It is further submitted that there are 145 Bar Associations, which includes the District Bar Associations and the Sub Divisional

Bar Associations etc. having enrollment of thousands of advocates, who do not have necessary tools for participating in the online elections to exercise their valuable right of franchise and also the Bar Council has no infrastructure for the same. It is, thus, submitted that the elections have been declared in an unholy haste without making a proper exercise even for the purpose of conducting the online elections, which otherwise should not have been permitted even if the country is passing through a tough time while facing COVID-19 because even the Election Commission of India has issued broad guidelines for the conduct of general elections/bye-elections during COVID-19 but no provision has been made for online polling and it is concededly the only Bar Council conducting such type of online elections of the Bar Associations.

He has further submitted that there is no justification with the Bar Council in holding the direct election only for five posts, i.e. President, Vice President, Secretary, Joint Secretary and Treasurer and not holding the direct election for the remaining posts of Office Bearers and the Executive Members who have been left to the mercy of the elected members to be elected by way of nomination after the elections. It is submitted that it is a matter of concern of the members of the Bar Association because this type of procedure adopted by the Bar Council will not only breed discontent but also arbitrariness in selecting Office Bearers of their group/choice by way of nomination.

It is further argued that the resolution dated 18/19.06.2020 appears to have been passed in a haste without application of mind because though Rule 7 has not been amended but the effect of the amendment has been put in Rule 9 by restricting the direct election

for the post of only five Office Bearers excluding the direct election of the other posts of Office Bearers and the Executive Members.

In the end, it is argued that not only the Rules of 2015 have no statutory backing but also the decision rendered by this Court in **Rakesh Punia's case (supra)** upholding the vires of the Rules of 2015 requires a re-look because there is no provision in Section 15 of the Act, empowering the Bar Council to frame Rules pertaining to the election of Bar Associations nor it is covered under any of the provisions of Chapter II of the Act much-less Section 6(dd), Section 6(h) and Section 6(i) of the Act.

11. Learned senior counsel appearing on behalf of respondent no.4 has also raised the similar arguments and has referred to a Division Bench judgment of the Madras High Court rendered in the case **Vinifred Bose vs. Bar Council of Tamil Nadu and Puducherry rep. by its Chairman High Court Campus Chennai 104, 2015(48) R.C.R. (Civil) 594.**

Learned senior counsel appearing on behalf of respondent no.5 has submitted that the interim order dated 11.09.2020 passed in CWP No.13616 of 2020, upholding the amended Rule 9 of the Rules of 2015 is not a binding precedent as the order has been passed without hearing the other party or noticing the relevant provisions of the Statute and thereby hit by the doctrine of *per inquirium*. In support thereof, he has cited a judgment of the Supreme Court rendered in the case of **State of Madhya Pradesh vs. Narmada Bachao Andolan and another**, (2011) 7 Supreme Court Cases 639.

Learned counsel appearing on behalf of respondent no.9 has also referred to some precedents on the issue that the Bar Council

has no jurisdiction to control and regulate the elections of the Bar Association(s). In support thereof, he has referred to various judgments rendered in the cases of **Janpad Diwani Evam Faujdari Bar Association, Gautam Budh Nagar, U.P. through its Secretary and another vs. Bar Council of U.P. and others**, 2015(53) R.C.R. (Civil) 311, **The Rajasthan High Court Advocates Association, Jodhpur through its President, Ranjeet Joshi s/o Shri Ranchhor Dassji Joshi aged 59 years b/c Pushkarna Brahmin, r/o 358, Kamla Nehru Nagar, Jodhpur and others vs. the Bar Council of Rajasthan through its Secretary, Rajasthan High Court Building, Jodhpur and others**, 2017(2) W.L.C. 526, **Bar Association Lahar, Dist. Bhind vs. State Bar Council of M.P. and another**, 2018 AIR (M.P.) 60, **Tahir Hussain Ruparya, Advocate vs. Bar Council of Punjab and Haryana, through its Secretary, Law Bhawan, Sector 37-A, Chandigarh and others**, 2014(5) Law Herald 4201 and **Partap Chandra Mehta vs. State Bar Council of M.P. and others**, 2011 AIR SC (Civil) 2045.

In reply, learned counsel appearing on behalf of the Bar Council has relied upon the orders passed by this Court in various writ petitions. To begin with, it is submitted that the Rules of 2015 have been framed in terms of the direction issued by this Court in LPA No.1427 of 2014. The vires of the Rules of 2015 were challenged in CWP No.24392 of 2015 and have been categorically upheld by this Court and that the resolution dated 18/19.06.2020 pertaining to the amendment in Rule 9 of the Rules of 2015, as per which the online elections are being held, has also been upheld by an interim order dated 11.09.2020 passed by this Court in CWP No.13616 of 2020, which has not been further challenged. It is,

thus, submitted that in view of the aforesaid orders passed by the Division Benches of this Court from time to time upholding the legality of the Rules of 2015 and the amendment made in Rule 9 of the Rules of 2015, it does not lie in the mouth of the petitioners to challenge the impugned notification without challenging the amendment in the Rules of 2015.

He further submitted that the direct election to the post of five office bearers has been restricted and indirect elections to the remaining posts of office bearers and executive members has been decided to be held as the number of Executive Members varies in different Bar Associations and it is not viable and possible to hold their elections by way of online polling. It is also submitted that the decision has been taken by the Bar Council for holding online elections in view of the pandemic COVID-19 which requires to maintain social distancing and other precautions.

12. In rebuttal, counsel for the petitioners has submitted that though the validity of the Rules of 2015 and the resolution dated 18/19.06.2020, by which the amendment has been brought in Rule 9, has not been challenged but the very fact that the notification has been issued by the Bar Council exercising its powers conferred under the Rules of 2015, the statutory source of framing of Rules of 2015 and also the amendment in the Rules, without there being any provision in the Rules of 2015 regarding amendment, is a legal issue which requires to be addressed. He has further submitted that the interpretation of Section 6(dd), 6(h) and 6(i) in respect of the elections to the Bar Association by this Court in **Rakesh Punia's case (supra)** is *per incuriam*.

It has been urged that the learned Division Bench in **Rakesh Punia's case (supra)** has referred to the functions of the State Bar Council as provided under Section 6(i) of Chapter II of the Act to be covered within the scope of sub-section (i) of Section 6 of Act and extended the same to the conduct of elections to Bar Associations. The welfare of the members of the Bar Association can, by no stretch of reasoning or imagination, be accepted to cover the matter of holding elections of the Office Bearers of the Bar Association. Even the doctrine of purposive interpretation, by relying upon the judgment of **Prakash Chandra Mehta's case (supra)** were wrongly applied as the matter dealt with by the Supreme Court was related to removal of Chairmen and Vice Chairmen of the Madhya Pradesh Bar Council as provided in the Rules therein. It was held that the general powers relating to elections enumerated in Section 6(g), 6(h) and 6(i) would include the manner of removal by No Confidence Motion of the office bearers of the Madhya Pradesh Bar Council. The *ratio decidendi* of the said decision would have no application to the elections of the Bar Association(s) in the backdrop of the provisions of the Act.

13. We have heard learned counsel for the parties and perused the record with their able assistance.

Although it is argued by learned counsel for the petitioners that the Bar Council had no competence to frame the Rules of 2015 and cited various judgments in support of their contention, namely, **Janpad Diwani Evam Faujdari Bar Association, Gautam Budh Nagar, U.P. through its Secretary and another vs. Bar Council of U.P. and others (Supra), The Rajasthan High Court Advocates Association, Jodhpur through its President, Ranjeet**

Joshi s/o Shri Ranchhor Dassji Joshi aged 59 years b/c Pushkarna Brahmin, r/o 358, Kamla Nehru Nagar, Jodhpur and others vs. the Bar Council of Rajasthan through its Secretary, Rajasthan High Court Building, Jodhpur and others, (Supra), Bar Association Lahar, Dist. Bhind vs. State Bar Council of M.P. and another (Supra), Tahir Hussain Ruparya, Advocate vs. Bar Council of Punjab and Haryana, through its Secretary, Law Bhawan, Sector 37-A, Chandigarh and others (Supra), Partap Chandra Mehta vs. State Bar Council of M.P. and others (Supra) and Vinifred Bose vs. Bar Council of Tamil Nadu and Puducherry rep. by its Chairman High Court Campus Chennai (Supra) and have also argued that the decision rendered by this Court in the case of **Rakesh Punia (Supra)** requires reconsideration because Sections 6 & 7 of the Act of 1961 have been misinterpreted and that the provisions of the Act of 2001 are not applicable but because of the fact that the petitioners in both the cases have not laid a challenge to the vires of the Rules of 2015, therefore, we are not going into this aspect in these writ petitions because the only challenge in these petitions is to the amendment to Rule 9 of the Rules of 2015 by which not only the procedure of holding the election by way of secret ballot has been done away with but also the elections of the members of the executive committee of all the Bar Associations have been dispensed with and their election is provided by way of nomination by the other members of the executive committee.

In this regard, learned counsel for the respondents has submitted that the Resolution has already been upheld by Division Bench of this Court in **CWPs-13616 & 13630-2020** because in

those cases, challenge to Rule 9 was rejected. It is pertinent to mention here that the order dated 11.9.2020 passed in the aforesaid writ petitions bearing CWPs-13616 & 13630-2020 would be *per incuriam* because the opinion expressed for overlooking the infirmity, procedural or otherwise in the amendment to Rule 9 of the Rules of 2015 as the current pandemic situation, looking into the fact that the Bar Council had no jurisdiction to challenge the procedure of election of the executive member from direct election to indirect election and the reason given by the Bar Council for not holding their direct elections was not examined as it has been stated by the counsel appearing on behalf of the Bar Council that the direct election of the executive members of the Bar Association was not feasible because members to be elected were large in number. Had these reasoning been examined in CWPs-13616 & 13630-2020, while passing the order dated 11.9.2020, the challenge to Rule 9 of the Rule of 2015, perhaps could not have been rejected, therefore, the order dated 11.9.2020 passed in CWPs-13616 & 13630-2020 is *per incuriam*.

In this regard, we may refer to the observations of the Supreme Court rendered in the case of **Narmada Bachao Andolan and another (Supra)** in which it has been held that “*Incuria literally means “carelessness”. In practice per incuriam is taken to mean per ignoratium. The Courts have developed this principle in relaxation of the rule of stare decisis. Thus, the “quotable in law” is avoided and ignored if it is rendered in ignorance of a statute or other binding authority.*” It has been further held that “*thus, “per incuriam” are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the court concerned, or a statement*

of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.”

The executive body of all the Bar Association comprises of the executive members besides the other office bearers, namely, the President, Vice President, Secretary, Joint Secretary and Treasurer. For example in the case of Bar Association of Punjab and Haryana, the executive committee consists of 26 members, comprises of 21 members of Executive and 5 Office Bearers and out of 21 members of the Executive, 10 members are elected having standing upto 10 years and 7 members are elected having standing of more than 10 years besides 2 members are from the designated Senior Advocates and one lady member from the Bar.

Similar is the position in respect of the Bar Association of Jalandhar where the executive members are elected and not nominated. It is an admitted fact that this Court had issued directions in LPA-1427-2014 to the Bar Council that it shall consult the Office Bearers of the District Bar Association while enacting appropriate Rules but at the time of passing the impugned Resolution by which amendment has been made in the existing Rules by which not only the procedure for the election has been changed from secret ballot to online voting but also the election of the executive members which was being held by way of secret voting is changed to an indirect elections by way of nomination by the Office Bearers after the election which shall definitely have the trappings of use of absolute power causing casualty of the

democratic procedure of fair representation to the existing body may be against the members of the Bar.

We, therefore, do not allow this practice to propagate in the name of current pandemic situation and are thus of the considered opinion that the amendment made in Rule 9 of the Rules of 2015 is patently illegal not only because of the reasoning that it goes against the spirit of bye-laws of the respective Bar Associations, without there being any amendment in them, but also there has been no consultation with the various stakeholders for this purpose. Hence, in view of the aforesaid discussion, we allow both the writ petitions and set aside the impugned resolution dated 9.9.2020. No costs.

A photocopy of this order be placed on the file of another connected case.

(RAKESH KUMAR JAIN)
JUDGE

16.09.2020
Vinod/Vivek*

(JASWANT SINGH)
JUDGE

<i>Whether speaking /reasoned</i>	:	<i>Yes/No</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>