

(Proceedings through V.C.)

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

CWP-18471-2020

Date of Decision : 05.11.2020

Sandeep and others

..... Petitioners

Versus

Bar Council of India and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present : Mr. Sudhir Aggarwal, Advocate
for the petitioners.

Mr. R.K.Hooda, Advocate
for respondent No.1

Mr. Rajesh Lamba, Advocate
for respondent No.2.

Ms. Reena, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH , J. (Oral)

Petitioners have approached this Court praying for issuance of writ in the nature of mandamus directing the respondents to include their names in the voters' list for election of the Sohna Bar Association, Sohna, District Gurugram, stated to be held on 06.11.2020 and permit them to cast their votes.

Briefly, the facts are that the petitioners were enrolled with the Bar Council of Punjab and Haryana at Chandigarh on various dates. They were initially given the provisional enrollment certificate and were required to pass the All India Bar Examination (AIBE) within a period of two years

of issuance of the provisional enrollment certificate. Because of the prevailing pandemic, as the AIEB-XV was not held by the Bar Council of India (hereinafter referred to as BCI), petitioners could not pass the same. However, their names were included in the voter list (Annexure P-2) issued initially by the Returning Officer for elections to the District Bar Association. Voter numbers of the petitioners have also been given in para No.5 of the writ petition. On issuance of letter dated 16.03.2020 by the Bar Council of India which mandated passing of the AIBE, names of the petitioners were deleted from the voter list.

On 28.10.2020, Bar Council of India has again issued another letter intimating resolution dated 27.10.2020, passed by the General Council of the Bar Council of India, according to which, those newly enrolled advocates who could not clear their AIBE due to delay in conduct of AIEB-XV by the BCI, shall be allowed to be included in the list of voters and will have the voting rights of the elections to the concerned Bar Association. It was further mentioned that if the voters' list had already been prepared, amendment be carried out accordingly for incorporation of such names till 48 hours before the elections.

Petitioners approached respondent No.3-Returning Officer Election Committee Sohna Bar Association, Sohna, District Gurugram for incorporation of their names in the voters list. Since the said exercise has not been carried out, the petitioners have approached this Court with this grievance by filing the present writ petition.

Notice of motion was issued by this Court and the counsel for the respondents have put in appearance.

Mr. R.K.Hooda, Advocate appearing for respondent No.1-Bar

Council of India has explained that the letter dated 28.10.2020 (Annexure P-4) issued by the BCI allows those advocates who had not been able to clear the AIBE due to delay in conduct of AIBE-XV to take part in the elections. This permits names of such advocates to be included in the voters list for the election to be held to a Bar Association in case they fulfil the other eligibility conditions as per the respective Bar Associations Constitution, Rules and Regulations.

Mr. Rajesh Lamba, Advocate, who puts in appearance for the Bar Council of Punjab & Haryana-respondent No.2 points out that petitioners No.4, 5, 8 and 13 are members of the Bar Association of Gurugram and their names also find mentioned in the voters list at Sr. No.201, 5353, 3255 and 1672 respectively. He, on this basis, *inter alia* contends that inclusion of the names of these petitioners in the voters list of Gurugram clearly indicates that they have already submitted their affidavits that they will not be casting vote in elections of any other Bar Association. He, therefore, asserts that these four petitioners at least qua whom the Bar Council has been able to verify the facts would not have the right of inclusion of their names in the voter list of Bar Association Elections in Sohna.

Learned counsel for the petitioners in response to the assertion of Mr. Rajesh Lamba, Advocate for respondent No.2 submits that in case this be the position and they have already filed an affidavit to that effect with the Bar Association of Gurugram with their names included therein in the voters list, these petitioners may probably have no right for inclusion of their names in the voters list. He, however, states that in case the petitioners have not filed any such affidavits in the Bar Association of Gurugram then subject to their submitting an affidavit with the Bar Association at Sohna,

their names be also included in the voters list. Qua the other petitioners also, he asserts that the said advocates would submit their specific affidavits as per the requirement of the Rules indicating therein that they have not and would not cast their votes in the elections of any other Bar Association except for Sohna.

Having considered the submissions made by the counsel for the parties and keeping in view the letter dated 28.10.2020 (Annexure P-4), issued by the Bar Council of India, as it is apparent from the said letter, the condition of an advocate having cleared the AIEB for being eligible for inclusion of his name in the voters list and to cast the vote stand waived. This means that depending upon the Bar Association concerned where the advocate is registered, the cut of eligibility date for the purpose of an advocate for being eligible for inclusion of the name in the voters list is relevant. This claim has to be seen accordingly. In case all the other conditions as mandated for an advocate to be eligible for inclusion of the name in the voters list stands fulfilled then and then only the name of such advocate can be included in the voters list.

In the present case, as it is apparent from the facts that names of the petitioners did figure in the initial voters list which was issued by the Returning Officer of the Bar Association, Sohna-respondent No.3 it is because of the letter dated 16.03.2020, issued by the Bar Council of India that the names of these petitioners were deleted from the voters list. The conditions then imposed was the mandate with regard to the passing of the AIBE, which condition stands waived as per letter dated 28.10.2020 of BCI. Therefore, in case, the petitioners fulfill all the other eligibility conditions except for passing AIBE which exam has not been held by the Bar Council

of India because of the prevailing pandemic, their names are required to be included in the voters list.

It goes without saying that in case the petitioners No.4, 5, 8 and 13 have already submitted affidavits in the District Bar Association, Gurugram and their names exist in the voters list there because of that, their names are not required to be and cannot be included in the voters list of the Bar Association at Sohna. Other petitioners if they are otherwise eligible and have filed their affidavits that they would not cast votes in election of any other bar association excepts for Sohna, then their names be included in the voters list at Bar Association, Sohna.

With these observations and directions, the present petition is disposed of making it clear that this order would not be limited to the petitioners alone but will be applicable to similarly placed advocates as it has been brought to the notice of the Court by the counsel for the Returning Officer-respondent No.3 that some other applications have also been received from the advocates whose names were earlier included in the earlier voters list but lateron deleted because of the letter dated 16.03.2020 issued by the Bar Council of India earlier. The said exercises be carried out forthwith by respondent No.3.

(AUGUSTINE GEORGE MASIH)
JUDGE

05.11.2020
mamta

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No