

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 15876 of 2022

Rajiva @ Rajiv Ranjan Son of Late Kedar Nath Singh, Resident of Village and P.O. Sherpur, P.S. - Maner, District - Patna, at present President Bar Association, Danapur.

... .. Petitioner/s

Versus

1. Bihar State Bar Council through its Chairman, Bar Council Bhawan, Patna, Bihar - 800001.
2. Convenor, Executive Committee cum Election Commission Bihar State Bar Council.
3. Secretary Bihar State Bar Council, Bar Council Bhawan, Patna.
4. Ad Hoc Committee, Bar Association Danapur through its President Ram Nath Singh.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Shashank, Advocate Mr. Apurv Harsh Advocate Mr. Manu Tripurari, Advocate Mr. Sujit Kumar, Advocate Mr. Prashant Bhardwaj, Advocate Mr. Mahima Sharma, Advocate Mr. Rajeev Ranjan, Advocate
For the BSBC	:	Mr. Shantanu Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 31-07-2023

1. The present writ petition has been filed for quashing the letter dated 13.10.2022,



communicated through Whatsapp by the Secretary, Bihar State Bar Council, whereby and whereunder the petitioner has been directed to hand over charge of the Bar Association, Danapur to the Ad hoc Committee, as also for issuance of a writ in the nature of quo warranto qua the respondent no.4, i.e. the Adhoc Committee of the Bar Association, Danapur. The petitioner has also prayed for quashing of the letter dated 15.10.2022, whereby and whereunder the Convernor, Executive Committee-cum-Election Commission, Bihar State Bar Council has prohibited the petitioner from holding the election of Returning Officer of the Bar Association, Danapur, for quashing of the letter dated 26.10.2022 issued by the Secretary, Bihar State Bar Council, whereby and whereunder the explanation of the petitioner has been rejected and further for directing the respondents to allow the Returning Officer, validly elected on 18.10.2022 to continue in the office.

2. The brief facts of the case, according to the petitioner, are that the petitioner was elected as



the President of the Bar Association, Danapur with effect from 24.05.2019 for a period of two years, however, after expiry of his term, the election of the Bar Association, Danapur could not be held in the year 2021 on account of spread of Covid-19 infection, hence extension was granted by the Bihar State Bar Council from time to time and the then Office bearers of the Bar Association, Danapur, with the petitioner as the President, kept working till the month of October, 2022. It is also submitted that the term of the Office bearers of the Bar Association, Danapur was extended, vide letters dated 13.04.2021, 16.04.2022 and 04.08.2022 and lastly, with effect from 01.08.2022 for three months by the Bihar State Bar Council. It is next submitted that on 12.09.2022, a meeting of the Executive Committee of the Bar Association, Danapur was held and it was decided to hold the election of the Returning Officer and choose a Three-Men Committee so as to enable them to hold the next election of the Bar Association, Danapur. On 18.10.2022, the election for the post of the



Returning Officer was held and Sri Dinesh Kumar Singh, Advocate was declared elected as the Returning Officer, Bar Association, Danapur, whereafter, the Bihar State Bar Council was informed vide letter dated 19.10.2022 regarding selection of the Returning Officer. However, the Bihar State Bar Council, vide letter dated 13.10.2022, in view of the anarchy prevailing at the level of the Bar Association, Danapur and election having not been held for a long period, communicated its decision to constitute an Adhoc Committee of the Association with effect from 01.11.2022, resulting in the then existing Old Executive Committee of the Association having stood dissolved. It was also resolved by the Bihar State Bar Council that newly constituted Ad hoc Committee shall convene the meeting of the General Body of the Association before 15.02.2023 for initiating the process of election of the Association by way of appointing the Returning Officer/Assistant Returning Officer and Three-Men Committee as per the provisions of Uniform Model



Rules so that the election of the Association can be completed as soon as possible. The newly constituted Ad hoc Committee of the Association was also directed to complete the work of Audit of the Association by a competent authority within three months. The Bihar State Bar Council had also sent its communications to the Ad hoc Committee, Bar Association, Danapur, vide letter dated 26.10.2022 stating therein that the election of the Association should be initiated and completed in the manner prescribed under Rules 15, 17 and 19 to 20 of the Uniform Model Rules as also as per the earlier decision of the Committee dated 07.10.2022 and 15.10.2022.

3. The learned counsel for the petitioner has submitted that Section 15 of the Uniform Rules for Bar/Advocates'/Lawyers' Association of Bihar (hereinafter referred to as the "Uniform Rules") provides that term of the Office bearers and the members of the Executive Committee shall be two years from the date of election which shall be counted from 16th April of the year and after the



expiration of the terms, the Executive Committee shall cease to function and the Election Commission of the Bihar State Bar Council shall take steps to hold the election, within a period of three months. The Ld. counsel for the petitioner has also referred to Rule 19 (x) of the Uniform Rules to contend that the election dispute, if any, is required to be raised before the Bar Council, otherwise the Bar Council has no power, authority or jurisdiction to interfere with the election process of the Danapur Bar Association, hence the action of the Bihar State Bar Council is illegal.

4. The learned counsel for the petitioner has further contended that since the election of the Officer bearers of the Association has to be held on the date fixed under the Rules, the General Secretary/Secretary is required to convene annual general meeting in the month of February to consider the election matter before completion of the term of the office on 15th April of the year and the General Body, in the Annual General Meeting, has to appoint a Returning Officer who shall then



publish the programme of election of the Officer bearers and the election shall then be conducted by secret ballot. Nonetheless, in the present case, the Bihar State Bar Council has interfered in the election process, initiated by the Bar Association, Danapur without any authority of law. In this regard, the learned counsel for the petitioner has relied upon a judgment reported in **2015 SCC Online All 7470 (Janpad Diwani Evam Faujdari Bar Assoc., Gautam Budh Nagar vs. Bar Council of UP)** as also on a judgment rendered by the Hon'ble Madhya Pradesh High Court dated 09.01.2018 in the case of **Bar Association Lahar vs. State Bar Council of M.P. and Anr. (W.P. No.750 of 2017)** to contend that the Bihar State Bar Council has no authority to interfere with the election process or with the election of a bar association.

5. *Per contra*, the learned counsel for the respondent-Bihar State Bar Council has submitted by referring to the counter affidavit filed in the present case that the terms and conditions



regarding the functioning of the Officer bearers of the Association/Associations are governed by the Uniform Rules, which have been duly approved by the Bar Council of India, vide letter dated 22.12.2003. All the recognized associations of the State of Bihar are being governed by the Uniform Rules/ Model Rules. It is further submitted that it is not in dispute that the Uniform Rules have not been challenged by the petitioner. The fact remains that no other ex-office bearer has challenged the action taken by the Executive Committee of the Bihar State Bar Council.

6. The learned counsel for the respondent-Bihar State Bar Council has referred to Rules 15, 15 A, 19, 32 and 32 A of the Uniform Rules, which are reproduced herein below:-

“15. Terms of the office-bearers.-Terms of the office-bearers and the members of the Executive Committee, shall be two years from the date of election which shall be counted from 16th April of the year After expiration of the terms, the Executive Committee shall cease to



function and the election Commission of the Bihar State Bar Council shall take steps to hold the election within a period of three months.

The Election Commission of the State Bar Council shall make arrangement for management of the concerned Bar Association to hold election within three months from 16th April.

The interim arrangement, in between the period of the meeting of General Body of the council, shall be done by the Chairman of Bar council.

The Executive Committee of the Bar Association shall become functus officio from 16th April of the year.

Explanation:

(a) The cutoff date of election of the office bearer/bearers is 1st to 15th April of the year.

(b) The election of each Association shall be completed on or before 15th April and the cutoff date for subsequent election shall be 1st to 15th April of the year.

15-A. *The action of the Returning Officer/office bearers shall amount to*



misconduct for which disciplinary action may be taken by the Council.

19. (i) *The Election of the office bearer of the Association be held on the date fixed under the Rules. The General Secretary/ Secretary shall convene the annual general meeting in the month of February to consider the election matter before completion of the term of the office on 15th of April of the year.*

(ii) *The returning officer shall be appointed in the Annual General meeting by the General Body.*

(iii) *The returning officer shall publish the programme of the election of the Office bearers.*

(iv) *The election shall be conducted by secret ballot, as and when occasion arises, provided; there shall be no voting in the event of unanimous election.*

(v) *The practicing member, whose name appears on the roll of Association shall be eligible to be entered in voter list.*

(vi) *Any kind of election-dispute including the entry and omission of the name in the voter list shall be decided by a three*



members committee. This committee shall be constituted by the Association in Annual General Meeting in which the resolution to hold the election is adopted. The members of the Committee shall be from those advocates having a practice of 25 years and above in District Bar Association and 10 years and above in Sub-Divisional Bar Associations and/or Senior Advocate subject to relaxation under Rule 13(A).

The General Secretary of the Association shall supply the general register of Advocates on roll to the Returning Officer within a week of the appointment by the General Body. The Returning Officer shall prepare a preliminary voter list in accordance with the names appearing on the general register of the Bar Association. The Returning officer shall publish the preliminary voter list on the notice board and call for objections, if any, and decide the same expeditiously preferably within three days. The objection may be filed within 7 days of the publication of preliminary voter list.

(vii) Any member aggrieved by the



decision of Returning Officer in relation to the entries of names in the voter list may challenge within seven days of its decision or publication of voters list by filing a petition to the three men committee. The committee shall decide the matter without any delay preferably before the filing of nomination. Such person shall be eligible to participate in the election including to contest.

(viii) A final voters list shall be published fifteen days prior to the date fixed for election. The Returning Officer shall get a preliminary voters list published and shall call, for objection within a reasonable time. The final list shall be published after disposal of objection, if any. The parties and objector shall be heard before deciding the complaint objections as laid down in Rule (vi) below."

(ix) The name of the candidate shall be nominated by two persons whose name appear in the voters list.

(x) The Election dispute will be raised before the Bar Council.

(xi) The aggrieved party may file application within 30 days of the election



before the Bar Council.

(xii) The Bar Council shall dispose of the appeal within two months.

(xiii) The fee for filing election petition is prescribed as Rs. 2000/- (Rs. Two thousand)

(xiv) The nomination fee will be as follows:-

<i>President</i>	<i>Rs. 1,000.00</i>
<i>Vice President</i>	<i>Rs. 1,000.00</i>
<i>General Secretary/Secretary</i>	<i>Rs. 1,000.00</i>
<i>Treasurer, Assistant Secretary and Joint Secretary</i>	<i>Rs. 500.00</i>
<i>Executive Member</i>	<i>Rs. 250.00</i>

32. *Decision of the Bar Council shall be binding on all the Association and lawyer of the State of Bihar. Amendment/ alteration, etc. in rule is subject to approval of the Bar Council.*

32-A. *The Executive Committee of Bihar State Bar council will act as Election Commission and will have all powers to get the election conducted in all affiliated Bar/ Advocates/ Lawyers Association including change of Returning Officer, stay of counting, stay of election result, annul the election and cancel the result."*



7. It is the further submission of the learned counsel for the respondent-Bihar State Bar Council that admittedly, the petitioner and other Office bearers of the erstwhile Executive Committee of the Bar Association, Danapur had taken charge of the office of the Association in the month of April, 2019 after the last election was held, hence in terms of Rule 15, the said Executive Committee of the Association had become *functus officio* in the month of April, 2021, however continued functioning on account of its tenure having been extended from time to time by the Bihar State Bar Council in order to enable it to hold fresh elections, nonetheless, it miserably failed to hold any election. It is also submitted that since last many years no audit of the Bar Association, Danapur has been done and the petitioner being the President of the Association was responsible not only to take steps for audit of the affairs of the Bar Association Danapur but also for holding elections of the Association but it failed to discharge its duties. In such view of the matter, the Executive Committee-



cum-Election Commission of the Bihar State Bar Council had to pass a resolution dated 07.10.2020, and thereafter, functions of the petitioner as President of the Bar Association Danapur, the Secretary and other Office bearers have ceased and an Ad hoc Committee has been appointed to conduct the elections. It is stated that the earlier Executive Committee of the Bar Association Danapur has no right to continue for an indefinite period, hence the present writ petition is devoid of any merit and is fit to be dismissed.

8. Having heard the learned counsel for the parties and having perused the materials on record, it is clear that Uniform Rules are applicable to all the Bar Associations affiliated with the Bihar State Bar Council and the same have also not been challenged by the petitioner. Rule 15 of the Uniform Rules prescribes the term of the Office bearers of the Executive Committee to be two years from the date of election, which in the present case has stood expired in the month of April, 2021 itself, whereafter the Executive



Committee ceased to function and by virtue of Rule 32(A) of the Uniform Rules, the Executive Committee of the Bihar State Bar Council was required to act as an Election Commission and was also possessed of all the powers to get the election conducted in all its affiliated Bar/Advocates'/ Lawyers' Associations, including change of the Returning Officer, stay of counting, stay of counting result, annulling of the election and canceling of the election. Hence, the Uniform Rules empowers the Bihar State Bar Association to make arrangement for management or ad hoc management of the concerned Bar Association and hold election within the stipulated time. It is also clear from a bare perusal of the Uniform Rules that the Executive Committee of the concerned Bar Association shall become *functus officio* after completion of its tenure.

9. In the present case, admittedly, after expiry of the term of the office bearers of the association, elected in the month of April, 2019, in the month of April 2021, their terms of office was extended from



time to time with a clear instruction to hold the election, however, no steps were taken for holding the elections resulting in numerous complaints being received by the respondent Bihar State Bar Council, whereafter, the Executive Committee of the Bihar State Bar Council took a decision to appoint an Ad hoc Committee for the purposes of selecting a Returning Officer and holding election of the Bar Association, Danapur. Thus, it is seen that the Bihar State Bar Council has acted in consonance with the Uniform Rules, in order to protect the democratic process of election.

10. This Court further finds that the then Executive Committee of the Bar Association Danapur, despite expiry of its term had been stalling elections on one pretext or the other and now it has been more than two years since the elections are due and have not been held. Therefore, this Court is of the opinion that there is no illegality in the decision of the Bihar State Bar Council, as contained in its letter dated 13.10.2022, to appoint an Ad hoc Committee of the



Bar Association, Danapur for convening the meeting of General Body of the Association, initiating process of election by appointing a Returning Officer and a Three-Men Committee as per the provisions of the Uniform Model Rules and to complete the work and audit of the association, which in view of this Court is in consonance with Rules 15 and 32 of the Uniform Rules.

11. At this juncture, it may be mentioned that the Model Rules have been framed for the promotion and advancement of legal profession, for protecting the interest of the members of profession and the members of the Associations etc., hence it provides for dealing with untoward situations which may arise in the functioning of the Bar Associations, one of such a situation being like the present one. It is unimaginable, inconceivable and preposterous that there would be no remedy and the Bar Council would be helpless in case a Bar Association decides not to hold election after expiry of the terms of its Office bearers. In order to fill the void Uniform Rules have been framed.



Moreover, in the present case, it is not that the Bar Council has interfered in the election process but has acted in a most democratic manner inasmuch as while constituting Ad hoc Committee, vide its resolution as contained in letter dated 13.10.2022, it has directed the Ad hoc Committee to convene the meeting of the General Body of the Association for initiating the process of election as would be apparent from the relevant extract of the said letter dated 13.10.2022 which is being reproduced herein below:-

“It is further resolved that the aforesaid newly constituted Ad-hoc Committee may convene the meeting of General Body of the Association within 15.2.2023 for initiating the process of election of the Association by way of appointing one Returning Officer, if required, one Assistant Returning Officer and Three-Men Committee as per provisions of Uniform Model Rules so that the election of the Association may be completed and taking over the charge of newly elected stakeholders of the Association will be taken place on or before 15.4.2023.”



12. This Court further deems it relevant to take into account the conduct of the petitioner, who has left no stone unturned in order to stall the elections with a view to illegally usurp and occupy the post of the President of the Bar Association, Danapur. The decisions cited by the petitioner, as aforesaid, are first of all not binding upon this Court and more over distinguishable in the facts and circumstances of the case. As far as the judgment rendered by the learned Single Judge of the Hon'ble Allahabad High Court, in the case of ***Janpad Diwani Evam Faujdari Bar Association, Gautam Budh Nagar, U.P.*** (Supra) is concerned, the same has held that since the Bar Association in question was registered under the Societies Registration Act, 1860, the power of the Registrar or the Prescribed Authority, appointed under the Societies Registration Act, with regard to conduct of elections and settlement of the election disputes, cannot be taken away, hence the Bar Council cannot step into the shoes of the Prescribed Authority, but this is not the case in the present



proceedings. As far as the judgment rendered by the Hon'ble Madhya Pradesh High Court, in the case of **Bar Association Lahar, District-Bhind** (supra) is concerned, the same is also distinguishable, in the facts and circumstances of the present case inasmuch as firstly the same has not considered a situation where Uniform Rules are applicable and secondly, in the present case the Bihar State Bar Council has in a most reasonable and democratic manner directed the Adhoc Committee to convene the meeting of General Body of the Association for initiating the process of election. On the contrary the present case is squarely covered by a judgment dated 21.12.2016, rendered by the Hon'ble Division Bench of the High Court of Punjab and Haryana in the case of **Rakesh Punia Versus Bar Council of India and Anr.**, reported in **2016 SCC OnLine P&H 19696**, paragraphs no. 34 to 56 whereof are reproduced herein below:-

"34.Hon'ble the Supreme Court in recent cases has recognized the importance and



the vital role played by the Bar Associations and emphasized the responsibility of the Bar Associations in regulating conduct of its members and of being accountable for default. From implementing the Vishaka guidelines, to directing that there shall be no strike calls, the Bar Associations have been held to be accountable. (Medha Kotwal Lele v. Union of India, (2013) 1 SCC 297, Common Cause, A Registered Society v. Union of India, (2006) 9 SCC 295)

35. *The functioning of the court-annexed Bar Associations as part of the machinery for administration of justice was underscored by the Supreme Court in Supreme Court Bar Assn. v. B.D. Kaushik, (2011) 13 SCC 774 in the following words:*

“28. There is no manner of doubt that court-annexed Bar Associations constitute a separate class different from other lawyers' associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognised by the court concerned. Court-annexed Bar Associations function as part of the machinery for administration of justice.



As is said often, the Bench and the Bar are like two wheels of a chariot and one cannot function without the other. The court-annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have the Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practising in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practising in the court, parking place and canteen besides several other amenities. In the functions organised by the court-annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice versa.



There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration."

36. *In this case, Hon'ble the Supreme Court upheld the amendment of Rule 18 of the Supreme Court Bar Association Rules and Regulations, which restricted voting right of a Member of the Supreme Court Bar Association to contest any post or cast a vote at election of Supreme Court Bar Association, if such Member had exercised right to vote in any High Court/District Court Bar Association election.*

37. *In Sudha v. Chennai Advocates Assn., (2010) 14 SCC 114, the Supreme Court repelled a challenge to bye laws of a Bar Association which imposed certain conditions for participation of its members in the elections. It was prescribed that a member of the Association having practice of less than two years would not be entitled to vote and that a member of the Association who has not put in three years of practice would not be entitled to contest the election. An entry fee and*



yearly subscription for members of the Bar was imposed. A certain amount was required to be deposited for contesting the elections.

38. *Hon'ble the Supreme Court held that these amendments which had been carried out to deter non-lawyers from participating in the elections of the Bar Associations could hardly be regarded as being against the legal profession. The Court noticed that the legal profession is different from other professions in that what lawyers do, affects not only an individual but the administration of justice which is the foundation of civilized society. It was stressed that it is the duty of the Bar Associations to ensure that there is no unprofessional and/or unbecoming conduct by the advocates at the time of election of the office bearers of the association. The observations of the Court which are instructive in the present context, as some such conditions are a part of the impugned Rules, are reproduced below:*

“40. The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it



are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification prescribed by different universities, the honour as a professional has to be maintained by its members by their - exemplary conduct both in and outside the court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as an intelligent citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The different Associations of the members of the Bar are being formed to show the strength of lawyers in case of necessity. The lawyer while exercising vote in an election of office-bearers of the Association must conduct himself in an exemplary manner. Those who are concerned about the high standard of the profession are supposed to take



appropriate action to see that the election takes place peacefully and in an organised manner.

41. Many a time it is noticed that those who are not lawyers get entry into the Association room by putting on merely black coat as at the time of election the feelings are running high. Such elements take undue advantage of the situation and bring a bad name to the Association of the advocates. Therefore, to deter such elements the amendments have been carried out in the bye-laws. Those amendments carried out in the bye-laws of the Association can hardly be regarded as against the legal fraternity in general and as against junior members of the Bar in particular.

42. In every society or association some code of conduct has to be laid down as to in which manner the voting should be done and who would be competent to vote. The associations of advocates are expected to rise to the occasion as they are responsible to uphold the dignity of courts and majesty of law and to pre-



vent interference in administration of justice. It is the duty of the associations to ensure that there is no unprofessional and/or unbecoming conduct by the advocates at the time of election of the office bearers of the association. This being their duty it was necessary to amend the bye-laws of the Association.

43. The amendment prescribing that a member of the Association having practice of less than two years would not be entitled to vote or that a member of the Association who has not put in three years of practice would not be entitled to contest the election are reasonable and are meant for enhancing the status and image of members of the Bar. These restrictions have been brought to uphold the dignity of courts and majesty of law and to ensure that there is no unprofessional and/or unbecoming conduct. The other amendments to which the learned counsel for the appellant has taken exception also do not impose unreasonable restriction on the members of the Association.



44. Clause 12 of the amended bye-laws refers to the eligibility criterion to cast vote and to contest the election and the same has not been regarded as unreasonable. Clause 10 of the amended bye-laws prescribes entry fee and yearly subscription for the members of the Bar. The prescription of Rs. 2000/- as entry fee and yearly subscription of Rs. 1000/- as well as Rs. 2000/- can hardly be regarded as exorbitant. One who is a member of the Association of advocates can realise that several expenditures have to be incurred by the Association on behalf of its members. Further staff has to be employed to carry out day-to-day instructions and they have to be paid reasonable salary. Having regard to the circumstances prevailing as on today, the prescription of entry fee or yearly subscription can hardly be regarded as exorbitant. It is also noticed in several Bar Associations that certain members without making payment of entry fee or yearly subscription enjoy the facilities provided by the Association. In some cases it



is found that some advocates become members of the Association by making payment of yearly subscription initially but thereafter do not renew their membership and go on enjoying all the facilities provided by the Association. Under the circumstances, the stipulation that in case of non-renewal of membership, a member will have to pay a sum of Rs. 5000/- for reviving his membership can hardly be regarded as arbitrary.

45. Again Clause 17 which prescribes deposit of amount for contesting the elections cannot be regarded as arbitrary. If no amount is required to be deposited for contesting the elections the same is likely to result into chaos and undeserving elements would take advantage of the situation. In the lighter vein someone mentioned in the Court that if no amount is required to be deposited for contesting elections all the members of the Association would contest elections and there would be no voters. Therefore, the plea that the amount required to be deposited for contesting the elections should be re-



duced to a reasonable level cannot be accepted nor can the said clause be regarded as illegal or arbitrary.”

39.*The Delhi High Court in P.K. Dash's case (supra) repelled the contention that the Bar Associations were purely private bodies voluntarily formed with their own constitution, hence, the court, in exercise of the powers under Article 226, could not mandate the introduction of 'One Bar One Vote' principle. The Court held that in view of the importance of the role of Advocates in the judicial decision making, and the role of Bar Associations in the administration of justice, they can aptly be said to be performing public functions and the Court could direct that the amendments be made to the Bar Association Rules to include the 'One Bar One Vote' rule to ensure free and fair elections. It was observed:*

“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 facade, 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 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. Of-



ten, 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 predominantly 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."



Discussion:

(i) Whether the 2001 Rules are ultra vires being beyond the Rule making powers of the State Bar Council?

40. Reference to the above statutes, Rules and decisions of the Supreme Court distinctly point to the pivotal role that the Bar Associations play not only in the administration of justice and generally promoting the interests of the Advocates but also in implementing the statutory or nonstatutory schemes for their welfare. In fact such schemes would be impossible of implementation without associating the Bar Associations, because it is only the Bar Associations that reach, involve and touch every practicing member of the profession. Perhaps it is in realization of this fact that Section 6(1)(dd) was inserted in the 1961 Act by the 1993 (Amendment) Act, to empower the State Bar Councils to promote growth of Bar Associations for purposes of implementing the welfare schemes for advocates.

41. As per the 2001 Act, it is a pre-condition for becoming a member of the Advocates' Welfare Fund for an advocate



to be a member of a Bar Association duly recognized by the State Bar Council. As per Section 16, every Bar Association, whether existing prior to the enforcement of the 2001 Act or formed thereafter, is required to get itself registered with the State Bar Council. As per Section 16(3) every application for recognition is required to be accompanied by a copy of the Rules and bye-laws of the association, names and addresses of the office-bearers of the association; a list of members of the association containing the name, address, age, enrollment number, date of enrollment and ordinary place of practice. As per Section 16(4), the State Bar Council may after making such enquiry as it deemed necessary, recognize the association. The decision of the Bar Council regarding recognition of an association has been made final. Section 17 of this Act obliges every State Bar Association and State Advocates' Association to furnish to the State Bar Council a list of its members on or before 15th April, every year. As per Section 17(2)(c), every State Bar Association or State Advocates Association is required to inform the State Bar Council of such other



matters as may be required by the State Bar Council from time to time.

42. *The power to frame rules under the 2001 Act have been conferred on the Central and State Government as per Sections 35 and 36 thereof. However, in Section 15 of the 1961 Act the power to frame rules in respect of matters in Chapter II of the Act, which comprises Sections 3 to 15, have been conferred on the Bar Councils which includes the Bar Council of India and the State Bar Councils. Though as per Section 15(3) no Rules made by State Bar Council shall have effect unless approved by the Bar Council of India.*

43. *The case of the petitioners is that there is no provision in the 1961 Act which empowers the State Bar Council to make any rule to regulate elections to the Bar Associations, which are private voluntary Associations whereas the stand of the State Bar Council is that it derives such a power from the provisions of Sections 6(1)(dd), 6(1)(h), 6(1)(i) read with Section 15 of the 1961 Act and Sections 16, 17 and 18 of the 2001 Act.*



44. *One thing is clear that none of these provisions in specific terms empower the State Bar Councils to make rules regarding the elections to Bar Associations. The question is whether such rule making power can be inferred from the general Rule making power to carry out the purposes of the Chapter II as conferred under Section 15(1) of the 1961 Act, keeping in view the functions of the Bar Council, particularly in Section 6(1)(dd) which relates to promoting growth of Bar Associations for the purposes of effective implementation of welfare schemes; Section 6(1)(h) which relates to performing all other functions conferred on it by or under the Act and Section 6(1)(i) which empowers the Bar Council to do all other things necessary for discharging its functions.*

45. *The scope of rule making power under a Statute has been subject matter of judicial decisions. It has been held that the court while considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under*



the Act and then decide whether the subordinate legislation conforms to the parent statute. It has been held that the Court while ensuring that the rules framed are within the field circumscribed by the parent Act the Court would be justified in giving the provision a purposive construction to effectuate the object of the Act.

46. *In Union of India v. S. Srinivasan, (2012) 7 SCC 683, the Supreme Court observed as under:*

“30. In this context, it would be apposite to refer to a passage from State of T.N. v. P. Krishnamurthy wherein it has been held thus :

“16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and



easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity."

32. Keeping in view the aforesaid enunciation of law, we think it appropriate to consider the nature, object and scheme of the enabling Act, the power conferred under the Rule, the concept of purposive construction and the discretion vested in the delegated bodies."

47. *In Pratap Chandra Mehta v. State Bar Council of M.P.,(2011) 9 SCC 573, Hon'ble the Supreme Court while examining powers of the State Bar Council to frame Rules under Section 15 of the 1961 Act stressed upon the necessity of giving a purposive construction to achieve the object of the Statute. It was held that the responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act was of a very wide connotation and scope.*



The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and to do all things necessary for discharging its functions under the Act. It was held that it would not be in consonance with the principles of law to give that power a strict interpretation, unless restricted in scope by specific language. This is particularly so as the provisions delegating power are of a generic nature such as Section 15(1) which requires Bar Councils to frame rules “to carry out the purposes of this Chapter” and Section 15(2), which further uses generic terms whereby the Bar Council is empowered to frame rules “in particular and without prejudice to the generality of the foregoing powers”. It was emphasized that the power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable.

48. *The Court observed as under:*

“48. In our view, Sections 6(1)(h) and 6(1)(i) have to be read and interpreted conjointly. We see no reason why the expression “manner of election of its members” in Section 6(1)



(g) should be given a restricted meaning, particularly in light of Sections 6(1)(h) and 6(1)(i). The responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act is of a very wide connotation and scope. No purpose would be achieved by giving it a restricted meaning or by a strict interpretation. The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and perfectly and to do all things necessary for discharging its functions under the Act. The term of office of members of the State Bar Council is also prescribed under Chapter II, which shall be five years from the date of publication of result of the election. On failure to provide for election, the Bar Council of India has to constitute a special committee to do so instead.

49. Section 15(2) then provides that without prejudice to the generality of the foregoing powers, rules may be framed to provide for the preparation of electoral rolls and the manner in



which the result shall be published. In terms of Section 15(2 Xc), the manner of the election of the Chairman and the Vice-Chairman of the Bar Council and appointment of authorities which would decide any electoral disputes is provided. The expression "manner of election of the Chairman" again is an expression which needs to be construed in its wide connotation. The rules so framed by the State Bar Council shall become effective only when approved by Bar Council of India in terms of Section 15(3) of the Advocates Act.

50. The power of the State Bar Council to frame rules under Section 45 of the Advocates Act as a delegate of the Bar Council of India has to be construed along with the other provisions of the Advocates Act, keeping in mind the object sought to be achieved by this Act. In this regard, greater emphasis is to be attached to the statutory provisions and to the other purposes stated by the legislature under the provisions of Chapter II of the Advocates Act. This



is an Act which has been enacted with the object of preparing a common roll of advocates, integrating the profession into one single class of legal practitioners, providing uniformity in classification and creating autonomous Bar Councils in each State and one for the whole of India. The functioning of the State Bar Council is to be carried out by an elected body of members and by the office-bearers who have, in turn, been elected by these elected members of the said Council. The legislative intent derived with the above stated objects of the Act should be achieved and there should be complete and free democratic functioning in the State and All-India Bar Councils.

51. The power to frame rules has to be given a wider scope, rather than a restrictive approach so as to render the legislative object achievable. The functions to be performed by the Bar Councils and the manner in which these functions are to be performed suggest that democratic standards both in the election process and in



performance of all its functions and standards of professional conduct need to be adhered to. In other words, the interpretation furthering the object and purposes of the Act has to be preferred in comparison to an interpretation which would frustrate the same and endanger the democratic principles guiding the governance and conduct of the State Bar Councils.

52. The provisions of the Advocates Act are a source of power for the State Bar Council to frame rules and it will not be in consonance with the principles of law to give that power a strict interpretation, unless restricted in scope by specific language. This is particularly so when the provisions delegating such power are of generic nature, such as Section 15(1) of the Act, which requires the Bar Councils to frame rules to “carry out the purposes of this Chapter” and Section 15(2), which further uses generic terms and expressly states that the Bar Council is empowered to frame rules “in particular and without prejudice to the generality of the forego-



ing powers". If one reads the provisions of clauses (a), (c), (g), (h) and (i) of sub-section (2) of Section 15 of the Act, then, it is clear that framing of rules thereunder would guide and control the conduct of business of the State Bar Councils and ensure maintenance of the standards of democratic governance in the said Councils. Since the office-bearers like the Chairman and the Vice-Chairman are elected by a representative body i.e. by the advocates who are the elected members of the Council, on the basis of the confidence bestowed by the advocates/electorate in the elected members, there seems to be no reason why that very elected body cannot move a "no confidence motion" against such office-bearers, particularly, when the rules so permit.

58. The above enunciated principles clearly show that the language of the statute has to be examined before giving a provision an extensive meaning. The Court would be justified in giving the provision a purposive construction to perpetuate the



object of the Act, while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation, when discretion is vested in such delegatee bodies. In such cases, the language of the rule framed as well as the purpose sought to be achieved, would be the relevant factors to be considered by the Court.

60. Purposive construction, to a large extent, would help to resolve the controversy raised in the present case. The purpose of the Advocates Act is the democratic and harmonious functioning of the State Bar Councils, to achieve the object and purposes of the Act. We are unable to see how the provisions of Rule 122-A fall foul of the ambit and scope of Section 15 of the Advocates Act and, for that matter, any other provisions of that Act. On the contrary, they are in line with the scheme of the parent Act."

49. 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.

50. *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.

(ii) Whether the regulation of elections of the Bar Associations is violative of the rights of the petitioners guaranteed under Article 19 (1)(c) of the Constitution of India?

51. *On the issue of whether framing of the Rules to regulate elections violates the fundamental rights of the petitioners under Article 19(1)(c) of the Constitution, a complete answer is furnished by the decision of the Delhi High Court in P.K. Dash's case (supra). In that case, a petition was filed in the Delhi High Court praying for directions from the Court that the rules governing allotment of Chambers for advocates in various court complexes should be amended to restrict eligibility to one chamber in the entire territory of*



Delhi, even though they may be members of more than one bar association. It was also prayed that the Bar Council of Delhi should ensure introduction of 'One Bar One Vote' throughout all the Bar Associations in Delhi. Those resisting the introduction of the 'One Bar One Vote' principle relied on the fundamental right to form associations under Article 19(1)(c) of the Constitution and the consequential autonomy to conduct the affairs of the association as per their own volition.

52. *Accordingly, the Court had to decide as to whether the direction by the Court to enforce the 'One Bar One Vote' would violate the rights under Article 19(1)(c) of the Constitution. The Court held that this restriction would not constitute violation of the rights under Article 19(1)(c) of the Constitution. Referring to various decisions of Hon'ble the Supreme Court holding that the right to form associations or unions was not absolute, but subject to reasonable restrictions, it was observed as under:—*

“43. The right to association is not uni-dimensional. It cannot be viewed solely from the perspective of the in-



dividual seeking membership of an association. The association itself has the right to restrict or contour its membership. There is nothing unreasonable in an association set up for a particular purpose, admitting, or conferring full benefits of its membership only upon those who fulfil to the extent required by it, the conditions required. As recounted earlier, the right to association encapsulates the right to continuance of the association. The A.P. Dairy Development Corporation Federation case (supra) emphasised that; at the same time, the Court held that “there cannot be any objection to statutory interference with their composition or functioning merely on the ground of contravention of individuals right of freedom of association by statutory functionaries.” The regulation of the association's functioning through law was held not to extend to the benefit of life offices and life membership in Periyar Self-Respect Propoganda Institution v. State of Tamil Nadu, AIR 1988 Mad 27. In Toguru Sudhakar Redd v. State of A.P., AIR 1994 SC



544, the Supreme Court held that the power of the Government to nominate women to the co-operative societies under Section 31 of the A.P. Co-operative Societies Act was valid; this provision was construed to be in furtherance to Article 15(3) of the Constitution of India. Consequently it is held that the respondents' Submission that the introduction of the one man one vote rule would impair the internal autonomy of the Bar Associations in Delhi, is without merit.

44. This Court has already dealt with its jurisdiction under Article 226 of the Constitution to entertain petitions in respect of bodies involved in public functions, and to issue directions to them. A subsidiary though important question that needs to be addressed, in the light of the respondent associations' contention is that in view of specific provisions in their Constitutions/Bye-laws prescribing the manner of amendment whether the Court can issue directions and incorporate such conditions. Here, it is important to notice that the rationale for introducing the one man one vote rule are



powerful : it ensures orderliness in court proceedings, avoids loss of time (where adjournments on the part of practitioners in given courts are sought, merely to enable them to canvass in for and cast votes, in elections in the concerned court (to which the association is annexed) and other courts as well) and eliminates conflicting or divided loyalties of members of multiple Bar Associations, who might be holding executive positions in more than one Bar Association. Most importantly, lawyers practicing in a given court are ensured that their voices are heard and their grievances are highlighted from one of their regular practitioners, who have a stake in its welfare.

45. The Court's role in regulating court time and also mandating rules of conduct for Advocates in not only conduct of proceedings, but generally in matters connected with Court functioning can be found in Section 34 of the Advocates Act (2); it is also part of the High Court's inherent power to regulate procedure and its affairs, or matters connected there-



with, as a Court of Record (Article 215 of the Constitution). The amplitude of power under Article 215 is emphasised only by the clarification that it includes the power to punish for contempt : i.e., the High Court" shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself." Coupled with these, and the power of superintendence over the courts subordinate to it, by virtue of Article 227 of the Constitution of India, the self-regulatory nature of its functions is reinforced. Therefore, as regards activities of bodies and associations which are intrinsically connected with the discharge of a court's administrative and judicial responsibilities, the absence of any enacted law is not a factor restricting the use of such power. As mentioned earlier, in regard to chamber allotment, rules for allotment, participation in decisions connected with some of the court's administration, Bar Associations play a significant role. These are in effect recognised Bar Associations. This be-



ing the case, the insistence of the court that such associations should follow standard norms to ensure orderliness and efficiency are as inherent to its functioning as the power of a Presiding Officer of a court to regulate the conduct of the proceedings on a day to day basis. Therefore, the submission that this court lacks power to frame a rule, or mandate the framing of such rules, is devoid of merit. This Court is fortified in its conclusions in this regard, by two decisions of Supreme Court..."

53. *Though, the above decision has been rendered in the context of the High Court's power to mandate introduction of 'One Bar One Vote', but the principle thereof would be applicable to the Rules framed by the Bar Council for regulating the elections to the Bar Associations which rules have been framed with the avowed objective to ensure fairness and transparency in the election process and holding of elections at regular intervals.*

54. *Thus, there is no merit in the argument of the Ld. Counsel for the petitioners that the mere framing of Rules*



by the Bar Council to regulate the elections of the Bar Associations with the objective aforesaid violates the rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution.

(iii) Whether the Rules are invalid on any procedural ground?

55. *We also find no merit in the argument of the Ld. Counsel for the petitioners that the 2015 Rules are invalid as proper procedure was not followed. In view of the proceedings of the Bar Council of Punjab and Haryana and the communications referred to by the Ld. Counsel for the Bar Council, we find that the statutory pre-requisi- tes for the validity of the Rules were complied with. The draft Rules after being framed by the Rules Drafting Committee, were considered by the Bar Council of Punjab and Haryana, which sent the same for approval to the Bar Council of India. The General House of the Bar Council of India approved the same in its meeting held on 2.5.2015.*

56. *Thus, there is no merit in the present set of petitions and the same are dismissed. It is clarified that in the present*



set of petitions, we have only addressed the question of the competence of the State Bar Council to frame rules for regulating the elections of the Bar Associations and have held that the regulation of elections to the Bar Associations through framing of such Rules intended to achieve fairness and transparency in the election process is not ultra vires the provisions of the 1961 Act. It is also not violative of the fundamental rights under Article 19(1)(c) of the Constitution. We have not gone into the validity of individual provisions of the 2015 Rules as no argument was addressed regarding any individual provision. So this decision should not be construed as having opined on and affirmed the validity of each & every provision of 2015 Rules.”

13. This Court deems it appropriate to refer to a judgment dated 10.07.2008, rendered by a co-ordinate Bench of this Court, in the case of **Praveen Kumar vs. Union of India & Ors.**, reported in **(2009) 1 PLJR 260**, paragraph nos. 2 to 8 whereof are reproduced herein below:-



“2. The writ application has been filed by the Advocate of this Hon'ble Court challenging a notification dated 3-3-2008. By virtue of this notification, the Bar Council of India while exercising power under Section 8-A of the Advocates Act, 1961, has constituted a Special Committee of three persons because the election to the body which is Bihar State Bar Council (B.S.B.C.) was not held within the statutory period. Petitioner has a grievance especially on the nomination of two persons in the Special Committee who were members of the outgoing council. There cannot be any dispute that the Advocate General shall have to be one of the persons nominated in this regard ex officio but, nomination of two other persons who too had a duty and moral responsibility to see the election is held within time cannot be made part and parcel of the Special Committee. It would amount to conferring a recognition despite failed responsibility of holding the next election within the time frame.

3. No doubt the powers under Sec. 8-A has been given to the Bar Council of India (B.C.I.) to nominate any advocate who is,



on the roles of the Bar Council of the State but, it is not understood as to how the Bar Council of India understood the same as a provision to mean that the said nomination shall be restricted to persons or members who were part and parcel of the outgoing Bar Council.

4. *A decision of the Hon'ble Supreme Court has been brought to my notice reported in the case of Anup Singh v. Bar Council of India, 2008 (2) BBCJ 126. The Court does not feel very happy after reading the same. Supreme Court has categorically held that at no occasion any election to a Bar Council is held in time. In most of the occasions the statutory life of the Bar Council has been extended by another six months by not holding an election well within time under the statute. This seems to be universal phenomenon across the country. This by itself may cast some doubt over the bona fide of the functioning of such body in matters of holding election within time.*

5. *It does not enthuse this Court to enter into such dispute between lawyers on the judicial side. A body consisting of eminent and seasoned counsels should be able to*



handle their affairs in conformity with the law but, since there seems to be a failure on their part which is statutory, the matter has travelled to the Court. The Court has no option but to resolve the issues in this regard.

6. *One of the members nominated on the Special Committee namely Shri Suraj Narayan Sinha, Sr. Advocate, has since the date of notification has come to occupy the post of Chairman of Bar Council of India. This is a development which has forced the hand of the said advocate how to opt out of the Special Committee. In this regard a communication dated 30-6-2008 has been brought to my notice. It is a communication with a request to accept his resignation by the Special Committee. A request has been made that it should be done by circulation instead of holding a meeting on the next appointed date.*

7. *In view of the communication of the Counsel, it is directed his resignation be accepted by the Special Committee by circulation within a week. The Secretary, Bar Council of India is hereby further directed that he shall take steps for filling up the two vacants of Special Committee*



excepting the Advocate General by making fresh nominations. Nomination shall not include any person who was part and parcel of the outgoing State Bar Council of Bihar. The second exercise should be done by the Bar Council of India preferably within two weeks so that the object and purpose of appointing a Special Committee for holding election to the body at the earliest, in the interest of the legal fraternity is not jeopardized in any manner or delay. The above direction would be in conformity with the direction/decision rendered by the Hon'ble Supreme Court in the case of Anup Singh (supra).

8. *The writ application stands disposed of to the extent indicated above. Let a copy of this order be handed over to Mr. S.K. Ghosh appearing on behalf of the Bihar State Bar Council and Mr. Abhay Shankar Singh counsel representing Bar Council of India for communication."*

14. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not find any merit in the present writ petition, hence the



present writ petition stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	21.12.2022
Uploading Date	31.07.2023
Transmission Date	NA

