
(2013) 10 UK CK 0017
In the Uttarakhand High Court
Case No : Special Appeal No. 383 of 2013

Amar Pal Singh

APPELLANT

Vs

Yogendra Singh Tomar and Others

RESPONDENT

Date of Decision : 09-10-2013

Acts Referred:

Citation : AIR 2014 Utt 21

Hon'ble Judges : Barin Ghosh, C.J.; Serves Kumar Gupta, J

Bench : Division Bench

Advocate : S.P.S. Panwar and Piyush Garg, for the Appellant; V.B.S. Negi, Paresh Tripathi, M.C. Pant, Kishore Kumar and D.S. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, C.J.—Facts of this case are not in dispute. Section 15 of the Advocates Act, 1961 authorises the State Bar Councils to make rules to carry out the purposes of Chapter-II of the said Act, which Chapter applies to State Bar Councils. Clause (a) of sub-section (2) thereof specifically authorises to provide for in the Rules the election of members of the Bar Council by secret ballot, including the conditions subject to which persons can exercise the right to vote by postal ballot, preparation and rejection of electoral rolls and the manner in which the result of election shall be published. In exercise of powers so vested, Uttarakhand Bar Council made Rules known as Bar Council of Uttarakhand Election Rules, 2009 (hereinafter referred to as the "first Rule"). Clause (c) of sub-section 2 of Section 15 of the said Act authorises State Bar Councils to make rules to provide for manner of election of the Chairman and the Vice Chairman of the Bar Council. In exercise of such power, Uttarakhand Bar Council made the Rules for election of Chairman and the Vice Chairman (hereinafter referred to as the "second Rule"). Clause 2 of the second Rule provides as follows:

The election shall be held by the Secretary, by secret ballot, by single transferable vote in accordance with the rules laid down in Chapter I relating to the election of members, who shall also act as Returning Officer under these

Rules.

An election, pursuant to the said second Rule, was held on 19th January, 2013. Three of the members of the Council, namely, Amar Pal Singh, Yogendra Singh Tomar and Surendra Mittal offered themselves as candidates for being elected as Chairman. On that date, 19 members of the Council exercised their votes through secret ballots. In the ballots, it was specifically mentioned, amongst others, that the preferences shall be indicated either in English or in Hindi. It was also indicated that, if preference is not indicated in that manner, the ballot will be rejected. Four ballots were rejected. After rejecting four ballots, first and the second preference votes were counted and, on the basis thereof, Amar Pal Singh was declared elected. Yogendra Singh Tomar filed a writ petition and he, amongst others, contended, which contention was pressed, that rejection of four ballots was illegal. The matter reached the Hon"ble Supreme Court. The Hon"ble Supreme Court passed an order to the effect as follows:

Leave granted.

Learned counsel for the parties have agreed that if the learned single Judge opens the sealed cover containing the ballot papers which have been disputed and if he personally examines and comes to a particular conclusion, the parties will not raise any objection.

In the aforesaid circumstances, we request the learned single Judge of the High Court to get the sealed cover opened upon perusal of the ballot, take appropriate decision in accordance with the Rules and Regulations framed by the Bar Council of Uttarakhand.

Thus, the order passed by the learned single Judge is modified, as stated hereinabove and the order passed by the Division Bench of the High Court in Special Appeal No. 101 of 2013 is quashed.

Special Appeal No. 101 of 2013 shall be deemed to have been disposed of as the learned single Judge is to examine the validity of the ballot papers as stated hereinabove. We are sure that the learned single Judge shall dispose of the petition within one month from the date of receipt of this order by the High Court.

In view of the above observations and directions, the Civil Appeal stands disposed of with no order as to costs.

2. In the circumstances, a learned single Judge of this Court opened those four ballots and found that one of them has been marked and in other three, preference has been shown by using Roman script. Parties are not disputing the above finding. In terms of the direction of the Hon"ble Supreme Court, the learned single Judge was required to take appropriate decision in accordance with the Rules and Regulations framed by the Bar Council of Uttarakhand upon examining the validity of the said ballot papers. The learned single Judge, while doing so, read into the second Rules the first Rules, where it has been specifically provided that preference can be indicated either in English or in Hindi or in

Roman script. He, accordingly, held that three out of four ballots were valid. After having had declared the validity of those three ballots, learned Judge took into account the number of votes, each candidate received. He found that Amar Pal Singh has received six first preference votes and three second preference votes, whereas Yogendra Singh Tomar has received eight first preference votes and one second preference vote. The learned Judge, then, considered the judgment of the Hon'ble Supreme Court, rendered in the case of University of Poona and Others Vs. Shankar Narhar Ageshe and Others, where the Hon'ble Supreme Court held that determination by lot in case of equality of votes is neither a principle of universal application, nor is it a common law principle and it is only permissible when there is a specific statutory provision to that effect, and proceeded to conclude that in a situation of that nature, where drawing of lot has not been provided as the mechanism to sort out a situation of that nature, result will be declared on the basis of first preference votes. In that case, while the Rules did not provide for drawing of lots, an indication was given in Rule 75(4) as was discussed in Paragraph 17 of the judgment, that in the case of a tie, there will be importance of the first preference votes.

3. Be that as it may, in the present Appeal, it is the contention of appellant Amar Pal Singh that if the first Rule is read into the second Rule, then the whole of the first Rule has to be read and, in Clause 29 of the first Rule, it has been specifically provided that the procedure prescribed in Rule 3(c) of the Rules of the Bar Council of India, in Chapter 2 Part III shall be followed and, in Chapter 2 Part III of the Bar Council of India Rules, it has been specifically mentioned that when at the end of any count, only one seat remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus papers can be transferred, the Returning Officer shall decide by lot, which of them shall be excluded and after excluding him in the manner, as aforesaid, declare the other candidate to be elected and, accordingly, that being a specific provision of the Rules, the lot was required to be drawn. We asked the learned counsel for Mr. Yogendra Singh Tomar, whether he is agreeable for drawing of lots. Learned counsel refused to accede to the same. Learned counsel for Mr. Yogendra Singh Tomar, however, submitted that Chapter-2 of Part III of the Bar Council of India Rules cannot be applied to the case of election of Chairman as Clause 12 of Chapter I of the Bar Council of India Rules deals with election of Chairman and Vice Chairman and there, the member securing the largest number of votes shall be declared elected. Learned counsel for Yogendra Singh Tomar also drew our attention to the judgment of the Hon'ble Supreme Court, rendered in the case of Lalit Mohan Pandey Vs. Pooran Singh and Others, for the purpose of enlightening us the manner in which a statute pertaining to election is required to be interpreted. In the said judgment, however, there is no observation of the Hon'ble Supreme Court that in the absence of a guideline given in the Statute, anything can be borrowed from another Statute for the purpose of interpreting a provision of the Statute under interpretation. A look at Clause 12 of Chapter I of Part 2 of the Bar Council of India Rules would amply

demonstrate that there is no provision for election by single transferable vote, i.e. on the basis of preference. Therefore, when the Rules, under which the election was held and in which election, Yogendra Singh Tomar participated without any protest, specifically provides for preference, it cannot be contended that the said election should have been held not on the basis of single transferable vote, i.e. preferential vote, but on the basis of single vote to be cast in favour of a single candidate. From a look at the judgment of the Hon"ble Supreme Court, rendered in the instant case, we think, it was obligatory on the part of the Court to ascertain, whether the ballots were validly rejected by the Returning Officer or invalidly rejected. There is no dispute that one out of the four ballots was validly rejected. The question is, whether the other three were validly rejected or not. In the event, the first Rule can be read in the second Rule, no doubt, rejection of those three ballots was invalid, inasmuch as, in the first Rule, it has been specifically mentioned that options can be denoted even in Roman script and there is no dispute that the voters, who used those three ballots, used Roman script while denoting their preferences. The question is, whether, by reading the second Rule, the Returning Officer could, at all, for a moment, think that the first Rule should be read into the second Rule. There is no dispute that nowhere in the second Rule, there is even a mention of the first Rule. There is no Chapter I relating to the election of members in the first Rule. The words "in accordance with Rules laid down in Chapter I relating to election of members" do not indicate which Rules laid down in Chapter I relating to election of members has been referred. In a situation of that nature when the Returning Officer made it clear that the preference is required to be given either in Hindi or in English, and when the ballots contained indication of preference in Roman, can it be said that the rejection of those ballots by the Returning Officer was improper? In the ballots, it was mentioned that in the event, preference is shown otherwise than in Hindi or English, the same shall be rejected. None of the voters objected to the same at any point of time at or before exercising their right under the ballots. In those circumstances, can it be said that the Returning Officer made an error in invalidating those three ballots. The learned single Judge applied the principles of *mutatis mutandis* while incorporating the provisions of the first Rule in the second Rule. We have not been shown one single authority, where, on the basis of the principle of *mutatis mutandis*, a provision of one law can be lifted and fitted into another law without there being any indication in the law, in which the same is being inserted, that the same may be done. The second Rule provided election by single transferable vote. In the Bar Council of India Rules, there are Parts 1, 2, 3, 4, 5, 6, 7, 8 and 9. Except in Parts 8 and 9, in all other parts, there is Chapter I. Chapter I of Part 2 deals with election of members of the Council. Can it be said that by reading Clause 2 of the second Rule, the Election Officer could read Chapter 1 of Part II of the Bar Council of India Rules into the second Rule. We do not think that he could, at all, do so, inasmuch as, as aforesaid, in Chapter I Part II of the Bar Council of India Rules, there is no contemplation of election of a Chairman by a single transferable vote or by preferential votes. In the circumstances, once again, the question comes to

be considered, whether the Returning Officer, while rejecting those three ballots, acted contrary to what he was required to do? The fact remains that Rule 2 of the second Rules, having not indicated even by implication that first Rule should be read into or the Bar Council Rules should be read into the second Rule and the ballot papers having specifically mentioned that the same will be declared invalid in the event, preferences are given in any other manner, except by Hindi or English numerals, the rejection of those ballots by the Returning Officer, we think, cannot be questioned.

4. We, accordingly, allow the Appeal, set aside the judgment and order under Appeal. The certificate, orally prayed for, under Article 134-A of the Constitution of India, is rejected.