
(2006) 03 PAT CK 0060
In the Patna High Court
Case No : CWJC No. 3018 of 2004

Ashok Kumar Singh

APPELLANT

Vs

The Bihar State Bar Council and Another

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2006) 2 PLJR 633

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Advocate : Kripa Nand Jha, for the Appellant; Ganesh Pd. Singh and Keshav Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Barin Ghosh, J.—Heard both the parties. The Bar Council of Bihar is a body corporate constituted by and under the provisions of Advocates Act, 1961. Section 6 of the Act directs what shall be the functions of a State Bar Council as that of the said Council. The principal functions of the said Council is to admit persons as advocates on its roll, to entertain and determine cases of misconduct against advocates on its roll, to safeguard the rights, privileges and interests of advocates on its roll, to promote the growth of Bar Associations and to promote and support law reforms. It has also been directed to perform all other functions conferred on it by or under the Act and also to do all other things necessary for discharging the aforementioned principal functions. Section 11 of the Act contained in Chapter II of the Act is as follows:-

"(1) Every Bar Council shall appoint a Secretary and may appoint an Accountant and such number of other persons on its staff as it may be necessary.

(2) The Secretary and the Accountant, if any, shall possess such qualifications as may be prescribed."

2. At the same time, sub-section (1) of Section 10 of the Act provides that a

State Bar Council shall constitute an Executive Committee consisting of five members elected by the Council from amongst its members; and an enrolment committee consisting of three members elected by the Council from amongst its members.

3. Section 15 of the Act authorises a State Bar Council to make rules to carry out the purposes of Chapter-II of the Act including rules prescribing qualifications and conditions of services of Secretary, the Accountant and other employees of the Bar Council. The said Council has framed rules and in Clause 8 of Chapter-I thereof has provided that Secretary means the Secretary of the Bar Council and includes any person appointed by the Bar Council to perform any of the duties of the Secretary. Under Clause 2 of Chapter-IX of the rules, it has been provided that the Committees shall exercise, subject to the general control and supervision by the Bar Council, the powers, duties and functions conferred or imposed upon or assigned to each one of them by the Act and the rules and other rules made under the Act and by directions or resolutions of the Bar Council. By Clause-13 of Chapter-IX of the rules, it has been provided that the proceedings of the Committees shall be placed before the Bar Council and at the same time, by Clause-14 of the said rules, it has been provided that the Executive Committee shall be the Chief Body of the Bar Council and shall be entitled to appoint officers and staff of the Bar Council, define their duties and powers and determine all matters concerning their employment provided that the Chairman may make temporary appointments for a period up to one month. By Clause-1 of Chapter-XI, amongst others, it has prescribed that the qualification of the Secretary shall be, inter alia, above the age of 35 years. Sub-clause (5) of Clause 1 of Chapter-XI of the said Rule provides the conditions of services of the employees of the Bar Council. The provisions contained therein directs how an employee of the Bar Council may be removed.

4. On 10th August, 2003, an advertisement was published in the Hindustan Times. As would be evidenced from the advertisement, the same was issued by the Bihar State Bar Council. The advertisement published, amongst others, a vacancy for the post of a. Secretary. The advertisement directed that the minimum age of the aspirant shall be 35 years as on 19th July, 2003 and the maximum age shall be 40 years as on 19th July, 2003. It directed each applicant to furnish a Bank Guarantee of Rs. 500/- in favour of Bihar State Bar Council. The advertisement directed application to be submitted in the format prescribed therein.

5. In the counter affidavit, it has not been contended that the petitioner did not apply in terms of the said advertisement. There is also no dispute that on 18th September, 2003, a letter was issued by the Secretary Bihar State Bar Council to the petitioner whereby it was held out that a written test for the post of Secretary will be held on 12th October, 2003 at 11.30 a.m., in the Auditorium of the Bar Council, and interview for the post of Secretary will be held on 15th October, 2003 and in the written test, the main questions will be from the

Advocates Act and the Rules framed thereunder as well as General Knowledge and General English. The object of that letter was to request of the petitioner to appear at the written test as well as in the interview..

6. In the proceeding of the meeting of the Executive Committee of the said Council held on 28th October, 2003 at 4.15 p.m., one of the agendas was "to consider the matter regarding appointment of the Secretary of Bihar State Bar Council". As against the said agenda, the minutes recorded the following decision:-"Took up Item No. 2 of agenda for appointment of the Secretary, Written test was held on 12th October, 2003 and oral (interview) was held on 15th October, 2003. Answer sheets have been examined. Marks obtained in written test and interview have been indicated in a separate sheet signed by the members present. As per result, Sri Ashok Kumar Singh has obtained 71 marks which is highest. Rest of the candidates have obtained their marks indicated in the result sheet. Since there is only one post, therefore, the candidate, who has obtained the highest marks i.e. Ashok Kumar Singh, is appointed as the Secretary of the Bihar State Bar Council. Let a letter of appointment be issued in his name with a direction to join on 1st November, 2003 at 10.30 A.M. positively and take charge."

7. Subsequent thereto, on 29th October, 2003, under the signature of the Secretary Bihar State Bar Council an appointment letter was issued in favour of the petitioner. The text of that letter is as follows:

"You are hereby appointed on the post of Secretary of Bihar State Bar Council, Patna in the pay scale of Rs. 6500-100-6900-EB-150-7500-250-11000 plus admissible allowance as per decision of the Bar Council.

You are directed to join the post on 1.11.2003 at 10.30 A.M. and take charge of the said post."

8. It appears from the Minutes Book of the Bihar State Bar Council that a meeting of the said Council was held on. 16th November, 2003. What were the agendas to be considered at that meeting are, however, not known inasmuch as the same have not been produced. Be that as it may, from the minutes of the said meeting, it appears that on 16th November, 2003, it was decided that the said meeting be postponed till 7th/ December, 2003. The minutes of the said meeting has been signed by the Chairman of Bihar State Bar Council and by the petitioner in his capacity as Secretary, Bihar State Bar Council. That suggests that the petitioner was functioning as Secretary of Bihar State Bar Council as on 16th November, 2003. On 4th January, 2004, the Bar Council held a meeting. In that, one of the agendas was "details of appointment of Secretary and Accountant alongwith extract from the proceeding of the meeting of the Executive Committee for information". In relation to the said agenda, the minutes recorded the following decision:-Took up item No. 1 of the agenda. The Council disapproves the appointment of the Secretary and Accountant of Bihar State Bar Council namely, Shri Ashok Kumar Singh and Shri Sushil Kumar Singh

respectively with immediate effect. Shri Ashok Kumar, Assistant and a law graduate of the Bihar State Bar Council is authorized to work as officiating Secretary in his own pay scale and Shri Lala Krishna Murari Prasad, retired Accountant of Bihar State Bar Council is appointed on contract basis for a period of three months as Accountant of Bihar State Bar Council. He will get his pay per month as he has drawn in the month in which he retired. All accounts of the Bar Council and others shall be operated now by the Chairman alongwith officiating Secretary, Shri Ashok Kumar."

9. There is no dispute that the Secretary of the Bihar State Bar Council, who was officiating before the petitioner was appointed, retired on 31st October, 2003. There is also no dispute that by using the word "shall" in sub-section (1) of Section 11 of the Act, there is a mandate of the legislature upon the body corporate, that is the Bihar State Bar Council, to appoint a Secretary. Inasmuch as on 31st October, 2003, the Secretary so appointed was to retire, it became obligatory on the part of the Council to appoint a Secretary with effect from 1st November, 2003. As aforesaid, the rules authorize permanent appointment of a Secretary or to ask anyone else to discharge the duties of the Secretary. The Bar Council decided to take recourse to appoint a permanent Secretary and for that matter not only invited applications by an advertisement but also conducted written examination followed by interview and selected a person. There is no dispute that the selected person joined as such Secretary on 1st November, 2003.

10. Subsequent thereto, as aforesaid, the Bar Council disapproved the appointment of the petitioner as such Secretary and only then authorised another person to work as officiating Secretary.

11. This officiating Secretary on 5th January, 2004 wrote a letter to the petitioner and therein indicated that by mistake in the appointment letter of the petitioner, the words "as per decision of the Bar Council" had been written which should be read "as per the decision of the Executive Committee". The fact remains that the appointment letter of the petitioner did not mention that the appointment given thereby is either as per the decision of the Bar Council or as per the decision of the Executive Committee. On 5th January, 2004, the officiating Secretary so appointed on 4th January, 2004 wrote yet another letter to the petitioner, the text whereof is as follows:—"I have to inform you that the General Body of Bihar State Bar Council in its meeting dated 4.1.2004 has disapproved your appointment on the post of Secretary. Therefore, you are removed from the post of Secretary with immediate effect. You are directed to hand over the charge of the post of Secretary to Shri Ashok Kumar". In view of the said letter, the petitioner has approached this Court by filing the present writ petition.

12. The learned counsel for the Bar Council argued that in terms of the mandate contained in sub-section (1) of Section 11 of the Act, it is the Bar Council, who alone can appoint the Secretary and not the Executive Committee of the Bar Council. Emphasis was given on the words "shall" and "may" as used in sub-section (1) of Section 11 of the Act. It was stated that when the statute directs

with a positive assertion a thing to be done, the body, who has been directed to do that thing, is required to do the same. It was, thus, contended that the appointment of the petitioner by the Executive Committee was per se illegal. Before making such submission, no attention was given to the language used by the legislature in sub-section (1) of Section 11 of the Act. By using the expression "shall" the legislature has directed the Bar Council to appoint a Secretary. The mandate is complete. The Bar Council cannot do without appointing a Secretary and at the same time by using the expression "may" the legislature has granted a discretion to the Bar Council to appoint or not to appoint an Accountant and such number of other persons as its staff as it may be necessary. The legislature used a mandate in the matter of appointment of Secretary but in the matter of appointment of Accountant and other staff left the matter with the Bar Council. In the counter affidavit, no attempt has been made as to how despite a statutory mandate the post of Secretary could remain vacant from 1st November, 2003 until 4th January, 2004. The fallacy in the argument that it is the Bar Council, who is to appoint the Secretary and the Executive Committee is not competent to appoint the Secretary should be looked at from a different perspective also. Apart from sub-section (1) of Section 11 of the Act, there is no mandate to appoint by the Act. It must be kept in mind that by the Act itself, the Bar Council has been constituted as a body corporate. The employees to be appointed will be the employees of that body corporate and not of any of its committees. At the same time, the Act has directed that the Bar Council shall have an Executive Committee and the Rules made by the Council have authorised that Executive Committee to give appointments, It is true that the Bar Council is a superior authority and all its committees, including its Executive Committee, function under its supervision and when the rules direct that the proceedings of the Executive Committee meeting shall be placed before the Bar Council, it suggests that the Bar Council can nullify any decision of the Executive Committee. But that cannot be stretched to imagine that the Executive Committee is incompetent to appoint Secretary and that appointment must emanate from the Bar Council. The submissions, as were made, were made without reading the Act and the Rules or without appreciating the meanings thereof. It was submitted, surprisingly that the advertisement itself was unauthorised inasmuch as, higher age limit had been prescribed in the advertisement. At the same time, it has been accepted that the Bar Council did not take any step to issue a corrigendum to rectify the upper age limit or to put up an advertisement stating that the earlier advertisement stands withdrawn. The Bar Council forgot that it was dealing with the people, who had responded to an advertisement put up by the Bar Council. It invited applications, accepted fees, made people to sit in the written examination followed by the interview and later on, even without making a whisper in any of its proceedings, has instructed the Counsel engaged by it to contend before the Court that the advertisement was unauthorised. A body of elite has functioned in such a deplorable manner is unparalleled.

13. Be that as it may, a reading of the Act as well as the Rules will clearly show that the Bar Council cannot do without a Secretary. It must appoint a Secretary. It may appoint a Secretary or it may ask a person to discharge the duties of the Secretary. The Secretary retired on 31st October, 2003. The Bar Council could not keep the post of Secretary vacant from 1st November, 2004. It took steps to fill-up the post of Secretary much prior to the date the post of Secretary was to become vacant. For that purpose, it advertised and thereby invited applications. Applications were received, written examination followed by interview was held. Petitioner was selected amongst the candidates, who contested for the post. He was issued an appointment letter. He discharged the duties of the Secretary. Later on, the Bar Council, purported to disapprove the appointment of the petitioner. There cannot be any quarrel that being a superior authority than the Executive Committee, the Bar Council was capable of disapproving any step taken by the Executive Committee. But before doing so, it was required to apply its mind and give reasons therefor. The decision for disapproval does not convey even a whisper of reason why all the steps taken by the Bar Council to fill-in that post culminating in the appointment of the petitioner had been disapproved by it. Being a statutory authority, Bar Council is an authority within the meaning of Article 12 of the Constitution of India and accordingly, is obliged to make available the rights enshrined in Chapter-III of the Constitution of India to each member of the citizen dealt with by it. Article 14 requires giving of reasons to support its actions. It has not done so. It has acted in a most autocratic manner. By permitting the petitioner to work as Secretary and thereby saving itself from the rigorous of the statute for the period 1st November, 2003 till 4th January, 2004, it could not unceremoniously dump the petitioner and ask somebody else, a chosen person of the members of the Bar Council, and not a selectee, to discharge the duties of the Secretary to the Bar Council.

14. For the reasons, as indicated above, I have no other option but to conclude that the decision to disapprove the appointment of the petitioner followed by the communication thereof to the petitioner are so incurably bad that the same cannot be permitted to remain even for a second and accordingly, both of them are quashed. The writ petition succeeds and it is declared that the petitioner is continuing even up to date as Secretary of the Bihar State Bar Council and he should be paid his remunerations accordingly. This disposes of the writ petition.