

(2014) 12 CHH CK 0010

In the Chhattisgarh High Court

Case No : Writ Petition (C) Nos. 1981 and 2212 of 2014

Awadh Tripathi

APPELLANT

Vs

The Bar Council of Chhattisgarh

RESPONDENT

Date of Decision : 05-12-2014

Acts Referred:

Advocates Act, 1961 — Section 8A
Constitution of India, 1950 — Article 226, 329(b)

Citation : (2014) 12 CHH CK 0010

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Single Bench

Advocate : Satish Chandra Verma, Saurabh Dangi, Advocates and Party-in-Person, Advocate for the Appellant; P.K.C. Tiwari, Sr. Advocate, Prafull Bharat, Addl. Advocate General, Sanjay Patel, Advocate, P.S. Chandel, Ravindra Parashar, R.S. Baghel, Advocate Santosh Kumar Yadu, Leeladhar Chandra, Brijesh Kumar Shukla, Shailendra Dubey, R.N. Vyas and Ashok Tiwari, Advocate for the Respondent

Judgement

Prashant Kumar Mishra, J.

1. This order shall govern disposal of both the writ petitions i.e. WP(C) Nos. 1981 & 2212 of 2014, as both the petitions arise out of and raise common issues with regard to the election of the State Bar Council of Chhattisgarh (for short "the SBC") to elect 25 members. Both the writ petitions were analogously heard on admission, intervention and vacating stay.

2. In WP (C) No. 1981 of 2014 (for brevity "1st petition") the petitioners have prayed for a direction to the respondent Nos. 2, 3 & 4 to register First Information Report (for short "FIR") and submit a preliminary enquiry report before this Court; for directing the election process of the SBC to some other agency from the stage where the allegations have been leveled and to handover all the records to an independent agency for further action from the stage of second round of counting (counting of the second preference vote) and for

further direction to the respondent No. 1 i.e. The Bar Council of Chhattisgarh through officiating Chairman, Advocate General (for short "AG") to make a request to the other respondents to take cognizance of the matter for investigation about the allegations leveled in the writ petition.

By an amendment application (IA No. 13) dated 17-11-2014, the petitioners of the 1st petition have also sought amendment in the petition to seek additional relief for quashment of the entire election process.

3. In WP (C) No. 2212 of 2014 (for brevity "2nd petition") the petitioner has prayed for quashment of the election; direction to the respondent No. 3 Superintendent of Police, Bilaspur to register FIR and to direct respondent No. 1 i.e. Bar Council of Chhattisgarh to conduct fresh elections under the surveillance of a retired High Court Judge.

4. Petitioners of both the writ petitions are Advocates and contesting candidates in the general elections of the SBC, for which votes were polled on 14-8-2014. The term of the office of the outgoing body of the SBC expired on 15-11-2012, which was extended by the Bar Council of India (for short "the BCI") for a further period of six months, thereafter, under Section 8A of the Advocates Act, 1961 (for short "the Act, 1961"), election of the SBC was required to be conducted by a special committee. When the election process was started on 5-5-2013, during the extended term, the said notification was challenged in WP (C) No. 1366 of 2013 (Ashok Kumar Tiwari V. Bar Council of India & others). By order dated 20-3-2014, the said writ petition was allowed in part directing the BCI to constitute a committee in terms of Section 8A by extending the term of existing committee or by constituting new committee under Section 8A of the Act, 1961. The Special Committee functioning at that time was allowed to discharge the functions of the SBC till the new elections are held.

5. No relief has been claimed that the constitution of the Committee was illegal and similarly there appears no dispute about the conduct of election from the stage of issuance of notification till counting of first preference votes.

6. According to the petitioners, when they were present in the process of counting of second preference votes on 26-9-2014 they realized that the ballots have been manipulated, tampered or fabricated. They witnessed that one candidate namely; Shri Sukhwant Mishra secured only 13 votes in the first preference and, thus, eliminated, however, when his second preference votes were counted, in place of figure "02" it was mentioned "022" in some ballots.

7. It is mentioned in the second petition that the candidate Shri Sukhwant Kumar Singh secured 11 votes of first preference, however, the second preference votes in his ballots were given either to candidate No. 19 Shri Bharat Luniya or candidate No. 62 Shri Prabhakar Singh Chandel and this was done by disfiguring/ tampering the ballots by adding figure "1" before figure "2" to make it "12" or by adding figure "2" after the earlier mentioned figure "2" to make it "22" and at the same time against candidate Nos. 19 or 62, the word "02" or "2" was

entered. Thus, the candidate who was granted second preference vote was made as if he has secured 12th or 22nd preference and the candidate Nos. 19 or 62 have been given the second preference votes in these ballots. It is further stated that one candidate No. 42 himself noted the ballot papers which were tampered or defaced.

8. Having seen the ballots the petitioners lodged a complaint with the Station House Officer, Police Station, Civil Lines, Bilaspur on 2-10-2014, before the Superintendent of Police, Bilaspur on 4-10-2014 and prior to this a complaint was made before the AG on 26-9-2014 and 29-9-2014. One of the petitioner allegedly received threat calls for which also a report was lodged with the Police on 1-10-2014.

9. In the 1st petition, affidavits of some Advocates of Malkharoda have been filed, wherein the Advocates of the said Bar have stated that candidate No. 19 is not known to their Bar and has never met them in course of campaigning, therefore, they are surprised as to how the said candidate secured votes from Malkharoda.

10. Based on the above pleadings, learned counsel for the petitioners would contend that the sanctity of the election process has suffered a serious dent, therefore, the entire election has to be set aside and fresh election deserves to be ordered. They would submit that the illegalities are culpable in nature and are so pervasive that it requires rejection of ballots wherein candidate Nos. 19 or 62 have secured second preference votes by manipulation, fabrication or tampering and such rejection of ballots would have the effect of setting aside the entire election.

11. Shri Verma & Shri Dangi, learned counsel appearing for the petitioners, have raised an emotional pitch to argue that in order to save the institution fresh election is the only way out and the guilty must be booked to face criminal action. To buttress their contention, learned counsel placed reliance upon the decisions rendered in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, , Election Commission of India Through Secretary Vs. Ashok Kumar and Others, , Food Corporation of India and Another Vs. SEIL Ltd. and Others, and Extra Judicial Execution Victim Families Association (EEVFAM) and Another Vs. Union of India (UOI) and Another, .

12. Per contra, Shri Bharat, learned Addl. Advocate General appearing for the respondents, Shri Shailendra Dubey & Shri Brijesh Kumar Shukla, would submit that the petitioners have alternative remedy, therefore, the writ petitions are not maintainable. Learned counsel placed reliance upon the decisions rendered in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, , N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and Ram Avtar Khandelwal Vs. Bar Council of Rajasthan and Others, .

13. According to them there is no proof of tampering and it is the wish of the voter to accord preference according to his choice; similarly use of different ink

may also happen for different reasons. They would further submit that the writ petition is based on mere apprehension and surmises and the proceedings have been stayed for last about two months.

14. Shri P.K.C. Tiwari, learned senior counsel, Shri Leeladhar Chandra, Shri Ashok Tiwari & Shri R.N. Vyas, would submit that bald allegations have been levelled in the writ petition, however, even though a fact finding enquiry may be ordered by the Court, the election or the election process cannot be challenged in the writ petition.

15. Shri Tiwari, learned senior counsel would particularly submit that out of 106 candidates, 65 candidates have already been eliminated and only 41 candidates are remaining in the fray. Since list of 26 candidates is finally published, only 15 candidates are remaining to be eliminated, but because of the interim order the whole election process has been kept on hold. In addition, they would submit that all the contesting candidates are necessary parties, in the absence of which the writ petitions are not maintainable.

16. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

(A) Maintainability of the writ petitions :

17. There is no dispute between the parties that the subject election of the SBC is conducted under the rules known as the State Bar Council of Chhattisgarh Election Rules, 2013 (for short "the Rules"). Rule 3(1) defines "first preference", "second preference" and "third preference" votes.

18. Rule 3(1) reads as under:--

"3(1) "First Preference" means the figure "1" set opposite the name of a candidate; "second preference", means the figure "2" set opposite the name of a candidate and "third preference" means the figure "3" set opposite the name of a candidate and so on.

"Provided that if any voter gives the preference on ballot paper in Hindi I.E. to say 1 or 2 or 3 gives preference in Hindi or English words, or in roman numerals even such voting papers shall be deemed to be valid. However, in case of any ambiguity with respect to preference or in case of any dispute, the returning officer shall have the powers to reject the ballot paper for which he shall record the reasons."

19. Rule 3(r) defines the word "Transferred Vote". It reads as under:--

"3 (r) "Transferred Vote" in relation to any candidate means a vote the value or part of the value of which is credited to such candidate which is derived from the voting paper on which a second or a subsequent preference is recorded for such candidate."

20. Rule 5 of the Rules speaks about method of election and provides that

election to the Bar Council shall be by the single transferable vote by and amongst the voters in the electoral roll in accordance with these rules and the voter shall vote a place where he ordinarily practices

21. Rule 20 provides for Method of Voting. It reads as under:--

20. METHOD OF VOTING:

(1) A voter in giving his vote

Shall place on his voting paper the figure "1" in the space opposite the name of the candidate whom he chooses for his first preference, and may in addition, place on his voting paper the figure "2" or the figure "2" and "3" or the figures "2" "3" and "4" and so on in the space opposite the names of the other candidates in the order of his preference. Marking of preference in Hindi or A English numerals or words or Roman numerals will be deemed to be valid as per sub-rule (1) of Rule 3.

Voting paper shall not be signed by a voter and in the event of any erasers, obliterations or alteration in the voting paper or of the voting paper purporting to have been signed by the voter, the voting paper shall be deemed to have been defaced and no votes purporting to have been given thereby shall be taken into account for the purpose of the election.

(2) The decision of the Advocate-General whether a voting paper has or has not been defaced shall be final.

22. Rule 25 provides that if at the end of any count, or at the end of the transfer of any parcel or sub-parcel of an excluded candidate, the value of voting papers credited to a candidate is equal to or greater than the quota that candidate shall be declared elected.

23. Rule 30 speaks about determination of result and publication thereof, whereas, Rule 31 speaks about disputes as to the validity of election.

24. Rules 30 & 31 of the Rules read as under:--

30. DETERMINATION OF RESULT AND PUBLICATION THEREOF:

(1) Upon the completion of the count, a list of the candidate elected to the Bar Council shall be prepared and signed by the Returning officer and submitted by him to the Advocate General who shall verify the same by his signature.

(2) After such certificate, copy of the list shall be published in the official gazette and shall also be sent to the Advocate General and to the Bar Association to affix as they may direct and may also be sent to other similar Associations. A copy of the same shall also be put upon the Notice Board of the Bar Council.

(3) On the publication of the list in the Official Gazette the persons whose names appear in the list shall be deemed to have been declared as elected. The members of the Bar Council shall be deemed to have been elected on the date of

publication of their names in the official gazette.

31. DISPUTES AS TO THE VALIDITY OF ELECTION:

(1) Any voter may contest the validity of the election of a candidate declared to the Bar Council by a petition signed by him and supported by an affidavit and delivered to the Secretary personally or sent by registered post so as to reach him within 15 days from the date of publication of the results of the election.

(2) The petition shall be accompanied by fees of Rs. 25,000/- (Rupees Twenty Five Thousand), (by BCI Resolution No. 11/2013) which shall be paid in cash or shall be sent by Money order. In case, it is sent by Money Order. The money order Receipt shall be attached to the petition. The fees shall not be refundable".

(3) Such petition shall include as respondents all the contesting candidates, and the petition shall be accompanied by as many as copies as there are respondents.

(4) All disputes arising under the above sub rule shall be decided by a Tribunal to be known as an Election Tribunal comprising of 3 advocates whose names are on the State Roll and who are not less than of 15 years standing.

(5) The Election Tribunal shall be appointed by the Bar Council on or before the Date on which the time of the election is fixed under rule 4. Where there is one or more vacancies in the Tribunal by reason of death, resignation or any other cause whatsoever the same shall be filled up by the Bar Council of India from amongst the advocates on the roll of the State Bar Council of Chhattisgarh.

(6) The Election Tribunal shall have all or any of the following powers:

(i) To dismiss a petition.

(ii) To order re-poll at the place where polling has not taken place or polling has taken place but for some reason other is held by the Tribunal to have been vitiated due to substantial irregularity.

(iii) To order recount.

(iv) To declare any candidate to have been duly elected on a recount.

(v) To set aside the election of candidate whom either by himself or through any other person acting with his consent or connivance is guilty of corrupt practices.

The following shall be deemed to be corrupt practices for the purposes of this act;

(1) "Bribery" that is to say

(A) any gift, offer or promise of any gratification to any person whomsoever with the object, directly or indirectly of inducing.

(a) A person to stand or not to stand as, or to withdraw from being a candidate at an election or,

(b) An elector to vote or refrain from voting at a election, or as required to,

(i) a person for having stood or not stood or for having withdrawn or not having withdrawn his candidature or

(ii) an elector having voted or refrained from voting.

(B) the receipt or agreement to receive, any gratification whether as a motive or a reward.

(a) by a person for standing or not standing as or for withdrawing or not withdrawing from being a candidate; or

(b) by any person whomsoever or himself for any other person for voting or refraining from voting or inducing or attempting to induce any elector to withdraw or not to withdraw his candidature.

For the purpose of this clause the term "gratification" is not restricted to pecuniary gratification or gratification estimable in money and it includes all forms or entertainment and all forms of employment for reward.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere with the free exercise of any electoral right including the issuing or sending of any appeal; or manifesto for voted whether direct or indirect.

Provided that a mere intimation of a candidature with a bare request for a vote shall not amount to undue influence.

And provided further that a candidate or his agent may also orally ask for votes from voters: but on the date of election such request shall not be made within a radius of 200 yards from the polling station. And candidates may issue a written intimation to his voters announcing his candidature and seeking their votes or their first preference votes, which intimation shall not contain any other publicity or his eulogy. Such written intimation shall also not amount to undue influence.

Attempt to secure from any voter his ballot paper with intent to ensure that the vote has been cast or is to be cast for a particular candidate shall be deemed to interfere with the free exercise of the electoral right of the said voter.

(3) The hiring or procuring, whether on payment or otherwise of any vehicle or vessel or the use of such vehicle or vessel for the free conveyance of any elector or any polling station.

EXPLANATION: The vacancy arising under sub-rule-6 (iv) shall be filled as a casual vacancy.

(vi) In other cases to declare a vacancy to be filled up as a casual vacancy.

(vii) To make an order as to costs.

(7) The trial of any election petition shall as far as possible be governed by the Civil Procedure Code.

(7)(a)(1) Notwithstanding the absence of the Chairman or any member of the

Election Tribunal on the date fixed for hearing of an election petition before it, the Tribunal may hold or continue the proceedings and no order made by the Election Tribunal in any such proceedings shall be invalid merely by reason of the absence of the - Chairman or member thereof any such date, provided that any two out of the three persons constituting the Tribunal are present. Provided further that no final order on the petition shall be made in any proceeding unless the Chairman and other members of the Election Tribunal are present.

(2) The Election Tribunal may make such order as to costs of any election petition or proceeding before it as it may think fit and any such order shall be executable as if it was an order of Civil Court of Chhattisgarh.

(8) No petition shall lie on the ground that any nomination paper was wrongly rejected or the name of any voter wrongly included or omitted from the electoral roll or any error or irregularity which is not of a substantial character.

(9) The voting papers and other records relating to the elections shall not be destroyed until the expiry of the time fixed for the filing of any petition under clause (1) of this rule.

(10) In case where a petition or petitions have been filed under clause (1) no such voting papers or records shall be destroyed till all the election petitions are finally disposed off."

25. The scheme of voting by single transferable vote, declaration of result and dispute as to the validity of the election, as mentioned herein above is explicit to the effect that a candidate may give his first or second or third preference of votes, however, there is no indication that if after a particular preference say up to 1 to 5, the voter has thereafter given preference from 8 to 10 leaving gap of preference No. 6 & 7, the whole ballot would be invalid. It may be possible in a given case that when a gap occurs the preferential votes polled after the gap may not be transferred, however, the Rules again do not provide that in such a situation the whole ballot will be invalid.

26. It is again not in dispute before this Court that when a complaint was made to the AG alleging illegality or defacing or tampering, the AG himself examined the matter and decided that there is no illegality in counting or tampering of ballots. Under Rule 20(2) of the Rules such decision of the AG has been accorded finality.

27. Shri Verma, learned counsel for the petitioners, has argued that the AG's decision would be final when there is allegation of "defacing", however, in the present case, petitioners are complaining of tampering of ballots by altering the preference by adding figures before or after the already given preference by the voter, therefore, the case of the petitioners would not be covered under Rule 20(2) of the Rules.

28. The aforesaid argument is referred only to be rejected because under Sub-rule (1) of Rule 20 it is provided that "voting paper shall not be signed by a voter

and in the event of any erasers, obliterations or alteration in the voting paper or of the voting paper purporting to have been signed by the voter, the voting paper shall be deemed to have been defaced and no votes purporting to have been given thereby shall be taken into account for the purpose of the election.

29. Thus, by a deeming fiction, the word "defacing" includes erasing/obliteration or alteration, which is exactly the allegations made by the petitioners by calling it tampering of ballot. It would be apt to add here that the finality attached to the AG's decision is only for determining the validity of a ballot in course of counting and the same does not bind the election tribunal when election petition is filed by a candidate. (See: Ram Avtar Khandelwal (supra) para 15).

30. Rule 31 provides for dissolution of dispute as to the validity of election. The election petition can be filed by any voter. Thus, the petitioners, being voters or candidates in the election have the remedy of filing an election petition. In the said election petition, the tribunal has the power to dismiss a petition; to order re-poll at the place where polling has not taken place or polling has taken place but for some reason other is held by the Tribunal to have been vitiated due to substantial irregularity; to order recount; to declare any candidate to have been duly elected on a recount; to set aside the election of candidate whom either by himself or through any other person acting with his consent or connivance is guilty of corrupt practices. Thus, if the election tribunal finds that the ballot has been tampered and election of a candidate has been materially and substantially effected because of counting of such tampered votes in his favour, it may set aside the election or may order for re-count.

31. It has been argued by learned counsel for the petitioners that since result of the election has not yet been declared and there is challenge to the entire election, the remedy of filing election petition is neither available to them nor is efficacious, however, the Supreme Court in K.K. Shrivastava (supra) held thus in paras 3 & 4:--

"3. It is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision. Again in the present case an election petition covering the same subject-matter is actually

pending. There is no foundation whatever for thinking that where the challenge is to an "entire election" then the writ jurisdiction springs into action. On the other hand the circumstances of this case convince us that exercise of the power under Article 226 may be described as mis-exercise. It is unfortunate that an election petition, which probably might have been disposed of long ago is still pending because the writ petition was pending in the High Court and later on special leave having been granted these appeals have been pending in this Court. How injurious sometimes the repercussions of entertaining writ petitions are where they should not be, is illustrated by this very case.

4. In this view we hold that the High Court fell into an error in entertaining the petitions and so we allow these appeals. We need hardly say that the tribunal created by the Bar Council takes note of the fact that as considerable lapse of time has already occurred it must now move quickly to hear and dispose of the election disputes. We express no opinion on the reasoning of the High Court on the merits of the case. With these observations, we allow the appeals but the parties will bear their own costs."

32. In *N.P. Ponnuswami* (supra) it has been held that the law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution, and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court.

33. In *Ram Avtar Khandelwal* (supra) the Single Bench of the High Court dismissed the writ petition which was filed when the counting was going on. Dismissing the appeal before the Division Bench, it has been held thus in para 15:--

"15. It is true that according to Sub-rule (3) of Rule 23, the opinion of the Advocate General or his nominee in regard to the question whether or not a voting paper is defaced has been made final. But that finality is for the Returning Officer and not for the Election Tribunal. That is how the provision needs to be read. There is a purpose behind the finality attached to the opinion of the Advocate General or his nominee qua the returning officer. In case the opinion of the Advocate General or his nominee is not made binding on the returning officer, the election process once started will be liable to be delayed and derailed as a voter or a candidate will be able to challenge the same, at time, even before the completion of the election process. It seems to us that it was only with a view to allow the election process to complete without obstruction or impediment that the decision of the Advocate General or his nominee was made final for the returning officer. The finality attached to the decision is binding on the Returning Officer and does not bind the Election Tribunal. After the result of the election is declared the voter or a candidate can challenge the decision before the Tribunal

on the ground that there are erasures, obliterations, alterations, in the voting paper and the vote could not be taken into account. The Election Tribunal can physically check the voting papers to find out whether or not there are erasures, obliterations or alterations in them and in case the Election Tribunal finds erasure, obliteration or alteration in the voting papers, it can direct the Returning Officer to recount the votes by ignoring the votes, which are defaced. Since the Election Tribunal is empowered to direct recounting of votes on the ground that the votes counted by the Returning Officer are defaced, the appellant ought to have resorted to the remedy provided under Rule 34 of the Rules."

34. The Division Bench of the Rajasthan High Court relied on K.K. Shrivastava (supra) and relegated the petitioner therein to the alternative remedy prescribed by law.

35. In the case in hand also, like in the Ram Avtar Khandelwal's case (supra) the allegation of alteration and obliteration of ballot papers and change of original marking of preference were leveled. The said petitioner also contended before the Rajasthan High Court that there was clear cut evidence of tampering of ballot papers and the written objection preferred by them with regard to such ballot papers were not considered. In that case also the matter was referred to the AG who decided against the petitioner. Thus, the facts and allegations in both the cases are exactly similar.

36. In Anugrah Narain Singh and Another Vs. State of U.P. and Others, the Supreme Court quashed the interim orders granted by the High Court staying the election and observed that if the election is imminent or well under way, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections. The importance of holding elections at regular intervals cannot be overemphasized. If holding of elections is allowed to stall on the complaint of a few individuals, then grave injustice will be done to crores of other voters who have a right to elect their representatives to the democratic bodies.

37. In Ashok Kumar (supra) the Supreme Court held thus in para 32:--

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be held it is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the

Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision. Called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

38. in view of the settled legal position, as mentioned above and for the fact that in the case in hand the Rules provides for raising of election dispute before the

Election Tribunal whose establishment/constitution has been approved by the BCI vide its letter dated 23-6-2014, this Court is of the considered opinion that the present writ petitions in so far as it calls in question the election process or the entire election are not maintainable.

(B) Effect of non-joinder of the contesting candidates as necessary party/respondents :

39. In the context of elections under the Representation of Peoples Act, 1951, all the contesting candidates are necessary parties where the petitioner seeks a declaration that he may be declared elected after setting aside the election of the returned candidate. Even in cases where the election of the returned candidate is under challenge, any other candidate against whom allegation of corrupt practice is leveled, is also a necessary party.

40. In the present set of Rules concerning the election of the SBC, Rule 31 of the Rules deals with the disputes as to the validity of election. Sub-rule (3) thereof specifically provides that such petition shall include as respondents all the contesting candidates, and the petition shall be accompanied by as many as copies as there are respondents. Thus, even if the present petition is not an election petition, the legislative intent is clear that whenever any election of the SBC is called in question, all the contesting candidates are necessary parties. The petitioners have not joined all the contesting candidates as respondents, therefore, in so far as it challenges the election, is not maintainable for this reason also.

(C) Action on the allegations leveled by the petitioners :

41. It has been canvassed before this Court that when the second preference votes were counted, some candidates raised serious objections and, thereafter, lodged complaint to the effect that some ballots have been tampered. This Court while passing interim order on 14-10-2014 observed thus :

"During the course of hearing, one order dated 8-10-2014 passed by the Chairman Special Committee was placed for perusal. A perusal of such order would go to show the Chairman has recorded a finding that charges of tampering of ballots are not correct and has further recorded that charges of tampering cannot be summarily decided at this stage as effective mechanism exists by way of election petition before the Election Tribunal."

42. This Court, after anxious consideration further ordered formation of 3 member committee of observers till the election counting is complete. The team consist of Shri B.P. Sharma, Shri Rajeev Shrivastava and Shri Ashok Swarnkar, Advocates; subsequently, Shri Rajeev Shrivastava, Advocate rescued himself and in his place Shri Subhash Yadav, Advocate was included in the Special Observer Committee. It was further directed by this Court that the Special Observer Committee shall have the power to inspect necessary papers of election and objections and shall be at liberty to form and prepare their opinion/independent

report on conducting election and may submit it to the special committee of the Bar Council of Chhattisgarh for further action.

43. By another detailed interim order passed on 16-10-2014 this Court noted the prevailing circumstances and the effort made by some lawyers to frustrate the work of Special Observer Committee and in view of the ensuing Deepawali Holidays, directed the stay of counting of votes so as to arrest any further allegation or counter allegation of tampering. This Court also directed that the ballots may be kept in a sealed cover and the Superintendent of Police was directed to keep armed guard for custody of the ballots. It was further observed that the Special Observer Committee shall be authorized to access to the ballots to examine the allegations of tampering of ballot papers and shall be free to take any decision to arrive at a conclusion about the validity of ballots and thereafter may place it for further action.

44. In view of the interim order passed by this Court, as indicated above, process of counting is presently kept on hold. It has been informed that out of 106 contesting candidates, 65 candidates have already been eliminated and only 41 candidates are remaining in fray. At the end of counting list of 26 candidates is finally published and thus only 15 candidates are required to be eliminated. Thus, it is amply clear that the counting is almost at its fag end. Since the challenge to the election or the election process by way of writ petition has been negated by this Court, but at the same time allegations and counter allegations are levelled making serious allegations of tampering and this Court has formed Special Observer Committee, I deem it appropriate to issue directions in both the writ petitions in the following manner :

"? The counting of remaining ballots shall be conducted in presence of Special Observer Committee. The Bar Council of Chhattisgarh shall sincerely and bona fide assist the Special Observer Committee in inspecting the ballots in course of counting.

? Special Observer Committee shall prepare a report as to the ballots which may be having suspicion of tampering.

? At the end of counting, the Special Observer Committee may inspect the ballots on and from the stage of commencement of counting of second preference votes and prepare a report for this also.

? The report prepared by the Special Observer Committee shall be submitted to the Special Committee of the Bar Council of Chhattisgarh for further action as directed by this Court in its interim orders, against which Special Leave Petition has been dismissed by the Supreme Court.

? The Special Committee of the Bar Council of Chhattisgarh shall consider the report of the Special Observer Committee and may take further decision for taking action against the persons who may have been found guilty of defacing/ tampering of ballots.

? In view of the findings in the preceding paras of the judgment/order that challenge to the election process or the validity of election is not maintainable, the petitioners would be at liberty to prefer a duly constituted election petition before the Election Tribunal constituted by the Bar Council of Chhattisgarh. In the event of filing of election petition, it is expected of the election Tribunal to make all endeavour to dispose of the same as early as possible."

45. With the aforesaid observations and directions both the writ petitions stand disposed of at the admission stage.