

(1980) 01 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jur. Case No. 657 of 1979

Bakshi S.B.P. Sinha and Others

APPELLANT

Vs

The Bihar State Bar Council and Another

RESPONDENT

Date of Decision : 11-01-1980

Acts Referred:

Advocates Act, 1961 — Section 15
Bihar State Bar Council Rules — Rule 47
General Clauses Act, 1897 — Section 21

Citation : AIR 1980 Patna 189

Hon'ble Judges : Hari Lal Agrawal, J; Choudhary Sia Saran Sinha, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Prabha Shanker Mishra, Sadanand Jha and Arun Kumar Singh No. 3, for the Appellant; Basudeva Prasad, B.P. Samaiyar, A.K. Samaiyar and Ashok Kumar Roy for No. 1 and Tara Kant Jha, for No. 2, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—This writ application under Articles 226 and 227 of the Constitution of India has been filed by some of the Advocates of this Court who were contesting the election of the Bihar State Bar Council, the poll for which took place on 14-12-1978. By this application they are challenging the vires of the resolution of the State Bar Council (respondent No. 1) dated 18-2-1979, cancelling the entire election and to hold fresh election. The grievance of the petitioners is that the Bar Council had no jurisdiction to cancel the election and direct for fresh elections, as that would amount to interfering with the process of election. Although a copy of the resolution has not been filed by the petitioners as it was not available with them, it has been quoted in the counter-affidavit filed by respondent No. 1.

2. The necessary facts may now be briefly stated. Earlier the term of office of the elected members of the Bar Council was only 4 years before the recent amendment of 1978. Now it has been raised to 5 years. As the term of office of

the sitting members of the Bar Council was expiring on 22-12-1978, by its Resolution No. 47 adopted at a meeting respondent No. 1 held on 9th July, 1978, it resolved to hold the election for the members of the Bar Council on 8th January, 1979, throughout the State, but by a subsequent resolution, being Resolution No. 59, dated 20-8-1978, the date of election was altered and was fixed as 14th December, 1978, instead of 8th January, 1979. The Returning Officer was authorised to draw up the election programme accordingly. It may be mentioned that the total number of the seats to be filled up by the members in the State Bar Council is 25. In pursuance of the above resolution a notice under Rule 6 of the Rules framed by the Bihar State Bar Council was issued laying down the election programme. According to this programme the date of filing nomination was fixed from 28-10-1978 to 13-11-1978 and 14-11-1978 was the date fixed for scrutiny of the nomination papers. After fixing the other date for withdrawal of the candidature and publication of the list of candidates, the date of polling was fixed on the 14th December, 1978. The place of counting of votes was the office of the Bar Council situate in the High Court building, Patna. The polling for the election was accordingly held at various polling stations and booths set up by the Bar Council throughout the State and the polling was concluded on the same day at all the booths. From the reports of the Presiding Officer of Muzaffarpur polling station it appears that polling had to be suspended at that polling station for some time but it was resumed soon thereafter and was ultimately concluded. The petitioners have stated in the writ petition that in Danapur also some trouble took place and the ballot box was brought by Shri Silesh Chandra Mishra in his car from Danapur. Reports received from the Presiding Officers of Samastipur, Muzaffarpur and Nawadah polling stations also indicate that corrupt practices were adopted at those places. Some of the ballot papers at the time of counting were found to have been defaced or altered at Danapur and Samastipur polling stations. However, the counting of the votes started on 20-12-1978, after the ballot boxes from all the polling stations and booths had been received. In the meantime a title suit, being Title Suit No. 5 of 1979, was instituted in the court of the Munsif at Danapur by various Advocates alleging therein that a large number of ballot papers were found having been tampered with and forged, wrongly showing first preference votes having been cast in favour of Shri Jitendra Prasad Shukla, It was further alleged that as the Returning Officer did not concede to the request of the plaintiffs for holding a fresh poll under Rule 33 of the Rules (which I will refer to hereafter) as at some of the polling stations where extensive rigging and tampering of the ballot papers had taken place, the entire election was vitiated and the Bar Council was in collusion with the Returning Officer and accordingly the election in question should be declared illegal and void. It further appears that an order for maintaining status quo was issued by the Munsif, Danapur, upon respondent No. 2, the Returning Officer, who was impleaded as defendant No. 1, in the suit. We have been informed that the title suit has since been dismissed on 20-8-1979 and, therefore, there is no impediment for the respondents to conclude the counting and declare the election. Although a few criminal cases filed at different

places are said to be still pending, no other order of any court was brought to our notice which could stand in the way of the respondents to proceed with the counting and declare the election.

3. However, on 20-12-1978, when the counting of the ballot papers was going on, some trouble had taken place. After the first round of counting had concluded, it is alleged that some of the candidates who found themselves in a losing position demanded recounting and re-examination of the ballot papers. The Returning Officer had to concede the demand and while the recounting had started after fresh verification and scrutiny of the ballot papers. Shri Debi Prasad Sharma, a candidate, threatened the Returning Officer and other staff engaged in the counting with dire consequences. However, as we have been called upon to decide purely a question of law. I do not feel it necessary to enter into any detailed discussion of these indecent events which are said to have taken place on the date of the counting of the ballot papers.

4. In order to answer the question now I would refer to some of the relevant provisions of the Advocates Act and the Rules framed thereunder by the Bihar State Bar Council.

Section 6 of the Act enumerates the functions of the State Bar Council and one of them is to provide for the election of its members. The term of office of an elected member of the Bar Council is to be now 5 years from the date of the publication of the result of the election as provided u/s 8, but an outgoing member is to continue in office until the publication of the result of his successor. The Bar Councils have been authorised by Section 15(2) to make rules in relation to various matters as provided therein.

According to Rule 5 of the Rules framed for election of members, the Bar Council is to notify to all Bar Associations at least one month before the date of publication of notice, the intended election and the date by which objections, if any, to the electoral roll is to be filed before it. Rule 6 lays down the procedure for issuing of notice of election programme and Rule 4 of the method of election which is to be by single transferable vote by and amongst the voters on the electoral roll. A Returning Officer to conduct the election has to be appointed who has to secure nomination of Presiding Officers and Polling Officers by orders of the Executive Committee of the Bar Council to conduct the election at the polling booths under his direction and control. Rule 26 lays down the procedure for challenging the identity of a bogus voter and Rule 29, the conditions when a ballot paper has to be declared invalid.

Then there are two rules dealing with the "adjournment of poll" and "fresh poll". Rule 32 authorises a Presiding Officer to announce adjournment of the poll to another date (to be notified later on) if the proceedings at any polling station are interrupted or obstructed or it becomes impossible to take the poll due to any natural calamity or any sufficient cause. Similarly, according to Rule 33 if the ballot box used at any polling station is unlawfully taken away or in any way is

tampered with or destroyed, lost or damaged which in the opinion of the Returning Officer makes it impossible to announce the result of that polling station, he may declare the said polling to be void and report the matter to the Bar Council forthwith and hold a fresh poll on a day to be fixed with the previous approval of the Executive Committee of the Bar Council. But it is important to note that in both the cases the decision to adjourn a poll or declare a poll to be void is to be taken by the Presiding Officer and the Returning Officer and the Bar Council as such is not involved save and except in approving the date for the fresh polls. There is no other provision in the rules for any fresh poll much less for declaring the election void or invalid. In the counter-affidavit of respondent No. 1, however, it has been said that as the Rules were framed in hurry, no provision for a contingency as obtaining in this case could be incorporated in the Rules.

5. Be that as it may, from the facts stated earlier we have seen that although some disturbance was reported from the Muzaffarpur Polling Station, leading to even stoppage of the poll for a few hours, the polling was not adjourned and was concluded. Trouble started at the stage of the counting of the votes. It has, therefore, to be seen as to whether the Bar Council had any authority in law to cancel the earlier polls and order fresh polling.

6. Learned counsel for the petitioners on these facts contended that once the calendar of events for holding the election was published, the Bar Council became functus officio in the matter of postponing or otherwise making amendment or alteration in the election programme and, therefore, it could not take any ad hoc decision in the matter as done.

7. Mr. Balbhadra Prasad Singh, in support of the application referred to the case of Minister of Health v. King, (1931 AC 494), for the proposition that a statutory Body cannot act beyond its framework and must confine its activities within the four corners of the statute within which it is functioning. To the same effect he cited another decision of the Nagpur High Court in the case of AIR 1943 26 (Nagpur) . The proposition as such needs hardly any discussion and was not contested by the learned counsel for the other side, his argument being that by virtue of the provisions of Section 21 of the General Clauses Act the Bar Council must be deemed to possess the power for ordering a fresh poll if in its wisdom it thought fit and proper to do so in the situations as in the present case. The heart of the argument of Mr. Balbhadra Prasad Singh is that the action of the Bar Council in effect amounts to cancellation of the election already held and the grounds which were sought to be relied upon by the Bar Council had hardly any relevancy as it has no jurisdiction at all to cancel the polls already completed as it was bound to declare the result thereafter and it was a matter falling within the realm of the Tribunal and the election could be challenged by a regular election petition.

Mr. Singh also referred to the case of The State of Bihar Vs. D.N. Ganguly and Others, , to counter the contention advanced on behalf of respondent No. 1 that

power u/s 21 of the General Clauses Act cannot be exercised to undo a matter which had already passed out of the jurisdiction of the authority concerned. In this case it was held that a reference made u/s 10(1) of the Industrial Disputes Act could not be cancelled or superseded by the appropriate Government and such a power cannot be claimed by implication. Section 21 of the General Clauses Act only embodies a rule of construction which should be applied if the construction cannot be arrived at or determined with reference to the context or subject matter of the particular statute. The principle of Section 21 of the General Clauses Act, therefore, can be invoked in appropriate cases to justify modification or cancellation of also an administrative order by the same authority as the principles underlying this section apply not only to acts of legislature but also to statutory orders passed in exercise of powers conferred by any subordinate legislation, as was held by a Bench of this Court in the case of Partabpore Company Ltd. v. Cane Commr. Bihar, Patna, (1969 BLJR 46). The nature of the order under resolution dated 18-2-1979, passed by respondent No. 1, however, cannot be said to be an order passed u/s 21 of the General Clauses Act, or in any event, it cannot be saved under the implied powers under that section as the order does not amount to postponement or alteration of an election programme but amounts to cancellation of an election already held. Therefore, it was not of the nature justifying modification or cancellation of the earlier election programme issued by the Bar Council by its administrative order as was done on the earlier occasion changing the date of polling from 8-1-1979 to 14-12-1978. Orders making such kind of modifications can well be said to have been passed under the general authority conferred by Section 21 of the General Clauses Act.

8. Mr. Basudeva Prasad referred to two cases of the Allahabad High Court where it was held that the Bar Council has the power to order fresh poll. The cases are (1) Ravi Kiran Jain Vs. Bar Council of U.P. and Others, and (2) again arising out of the same matter between the same parties a little later (Ravi Kiran Jain and Others Vs. Bar Council of U.P. and Others,). The petitioner on the earlier occasion had filed a writ application for a direction to the Bar Council of Uttar Pradesh to hold the election of its members on the dates scheduled according to the election programme and not on the postponed dates. A contention was advanced before a learned single Judge of the Allahabad High Court that "once the date for fixing the election programme was notified, the nomination papers were filed and the last date for filing the nomination papers expired, the Bar Council had no power or authority in law to postpone the election or to fix fresh dates for holding elections. The learned Judge repelled this contention and held that power of the Bar Council to fix time, place and date of the election was not exhausted merely on the issue of notification of the programme. It can alter, modify or rescind its order fixing the various dates otherwise preposterous results might follow. For taking this view the learned Judge gave illustration of natural calamities like earthquake, flood or grave emergencies such as war and the like, the situations obviously covered by Rule 32 of the Bihar Bar Council

Rules. It is no doubt true that at the stage when the petitioner had gone to the court, the process of election as such had already started but that was at the stage of filing of the nomination papers. Even the date for withdrawal and scrutiny had not expired and no polling had taken place. In these circumstances, it was held that the Bar Council had jurisdiction to postpone the election and change dates for election.

After the elections of the Bar Council were held the petitioner challenged the election, leading to the next case. The challenge was on the ground that the electoral roll was not prepared within 120 days of the expiry of the term of the elected members of the Bar Council and since the electoral roll itself was defective, the entire election was rendered void. The earlier decision of the learned single Judge that the Bar Council has power to alter the dates of poll was affirmed this time by the Division Bench. Neither of these authorities, in my considered opinion, lay down any principle that the Bar Council has got any power to change or alter the election programme after it is once published, under its purported general authority u/s 21 of the General Clauses Act. In all the cases which have been cited and relied upon there was some such emergent circumstance of the nature contemplated under Rule 32 of the Rules framed by respondent No. 1 and, therefore, they are not of any help to Mr. Basudeva Prasad. But that apart, here respondent No. 1 by the impugned resolution has purported to cancel the polling already held under a supposed authority to alter or amend the election programme.

9. In the case of Mohd. Yunus Saleem Vs. Shiv Kumar Shastri and Others, , while considering a case under the Representation of the People Act it was held that the Election Commission has got power to alter the date of poll u/s 30 of the Act read with Section 21 of the General Clauses Act. Mr. Basudeva Prasad had placed implicit reliance upon this case, but the facts of this case betray the reliance of Mr. Prasad as in this case also the grounds for alteration of the election programme were exactly in the situation stated by the learned Judge of the Allahabad High Court and the alteration was ordered at a time when the stage of polling had not reached. According to the election programme, the polling at Aligarh and Koil was to take place on March 1, and some other places on 3rd March, 1971. The polling in Aligarh and Koil was completed peacefully on March 1, but on March 2, a communal riot took place in Aligarh city and the Election Commission on receipt of reports of the local authorities at Aligarh postponed the poll in the remaining segments from March 3 to March 9, 1971, again in a situation as contemplated by our Rule 32. The adjournment of the poll was challenged on the ground that the programme once fixed could not be altered. The Supreme Court rejected the argument.

10. Mr. Basudeva Prasad also referred to the case of the Bar Council of West Bengal and Others Vs. Miss Ajanta Aughstin, , in support of his preposition that it was not always obligatory to go to the Tribunal as in this case a Civil suit was held to be maintainable. There the matter had gone to the High Court against

the decision on the question of jurisdiction of the civil court to entertain an election dispute of the Bar Council as a preliminary issue. It was held by the learned Single Judge that exclusion of the jurisdiction of the civil court was not to be readily inferred as such exclusion must either be explicitly expressed or clearly implied and inasmuch as the West Bengal Bar Council Rules did not contain any provision expressly excluding the jurisdiction of the civil courts, the jurisdiction of the civil court was not excluded since before the Election Tribunal an election could be challenged only "by a voter" and the plaintiff being not a voter was certainly not hit by the implied exclusion of the jurisdiction of the Civil Court. This authority is, therefore, entirely distinguishable and is hardly of any assistance to Mr. Basudeva Prasad. Rather on a closer scrutiny of this case it also goes against him on account of the "implied exclusion" theory propounded therein.

11. In the case before us also, the essence of the argument advanced on behalf of the petitioners is that the grounds on which the Bar Council took its decision to hold fresh election and cancelled the earlier election was a matter which can be agitated before the Tribunal as that was a "dispute" relating to election and, therefore, it should be decided in the manner prescribed by the rules and the aggrieved party, therefore, must follow that remedy before that forum.

12. It may hardly be emphasised that the court should be reluctant to interfere with the process of election. It was held by the Supreme Court in the case of K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, , 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."

13. In the second case of the Allahabad High Court (Ravi Kiran Jain and Others Vs. Bar Council of U.P. and Others, , also the learned Judges rejected the writ application challenging the election on the ground that "Section 15(2)(d) of the Election Rules lays down that a dispute relating to election shall be decided in the manner prescribed in the rules".

14. Mr. Tara Kant Jha, who appeared for respondent No. 2, namely, the Returning Officer, referred to us the case of the The State of Karnataka and Others Vs. Gunjahalli Nagappa and Others, , to emphasise that the process of election once started cannot be intercepted. That was a case of election to Karnataka Municipality. Under Rule 75 of the Election of Councillors Rules (1965) the State Government had the power of superintendence, direction and control of the conduct of elections under the Rules and was entitled to make such orders as it deemed fit for ensuring that the elections are held in accordance with the provisions of the Act, namely, the Karnataka Municipal Act (22 of 1964). A mistake had occurred in the allotment of the list of voters. On this account the State Government, pursuant to its powers under Rule 75, had "cancelled the calendar of events published by the Returning Officer and directed him to issue

fresh calendar of events "after getting the voters" list completed strictly as per the division notified." This order was passed by the Government at a stage when only nominations were filed and after the scrutiny and withdrawal the list of the contesting candidates was published by the Returning Officer, but the main step to complete the process of election, namely, the poll was still to take place later on, on 10th January, 1975, and the State Government had passed the impugned order on 30-12-1974. It was held by the Supreme Court that "'election" means the entire process consisting of several stages and embracing several steps by which the elected member is returned, whether or not it is found necessary to take a poll". The list of voters, therefore, must remain the same throughout the process of election and it was not permissible for the State Government to pass the impugned order although Rule 75 has given the power of superintendence to the State Government.

15. Now remains for consideration an argument advanced on behalf respondent No. 1 that such question could not be decided by the Election Tribunal under Rule 47. Rule 47 of the Bihar Bar Council Rules deals with the "dispute as to the validity of the elections". According to this provision any voter may contest the validity of an elected candidate to the Bar Council by a petition signed by him and filed in the manner laid down and the Election Tribunal has been authorised inter alia to set aside the election of the candidate who, either by himself or through his agent, is guilty of corrupt practices.

Clause (1) of Rule 47 lays down that "Any voter may contest the validity of the election of a candidate declared to have been elected to the Bar Council by a petition signed by him.....". Then Clause (4) further provides that "All disputes arising under the above sub-rules shall be decided by a Tribunal to be known as an Election Tribunal comprising 3 Advocates whose names are on the State Roll".

16. I, therefore, have no doubt in my mind to come to the conclusion that the aggrieved party could raise all his grievances relating to the alleged irregularities committed at the election. A statutory tribunal having been created by the Act and the Rules conferring special jurisdiction thereon to decide all election disputes, the law has thereby created a special forum for the redressal of the grievances arising out of the election and, therefore, the aggrieved party must seek the remedy before that forum.

17. In K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, where the validity of election of all the returned candidates of the Bar Council was challenged, it was observed by the Supreme Court that there was no foundation whatsoever for thinking that where the challenge is to the "entire election then the writ jurisdiction springs into action". The relevant rule in that case was Rule 31 (4) which reads as follows:

"All disputes arising under the above sub-rules shall be decided by a tribunal to be known as Election Tribunal.....".

This rule is in pari materia with our Rule 47. From the judgment of the Supreme

Court it is not clear as to on what grounds the entire election was challenged, as the learned Judges did not go "into the grounds of the challenge" and observed that the remedy to be followed was by an election petition.

18. We have seen that in the present case the poll had been completed, ballot boxes had been brought down to the office of the Bar Council and counting and thereafter the recounting had all taken place, although reports had been received from various polling booths of obstruction, interference and mal-practices having been adopted by or on behalf of the contesting candidates, a conduct which, if correct, is certainly very sad and disquieting. The members of the noble profession of law in general and those aspiring to be elected as the office bearers to the Bar Council, their apex body, in particular must exhibit a very high standard of code of conduct and respect for the rule of law and must not allow themselves to surrender to the ignoble forces dominating various other walks of the society. Such a conduct is bound to lower their dignity and bring the entire institution to a disrepute. However, it was at this stage that further counting was stopped and the result of the election could not be declared.

19. The intervention of respondent No. 1 at the stage of the counting of the ballot papers has obstructed the completion of the process of election. Recourse to the procedure under Rule 47, therefore, cannot be taken by any voter as the right to file an election petition would arise only after the election of a candidate to the Bar Council is declared.

20. For the view that I have taken the action of the Bar Council cannot be upheld and, as has been prayed for by the petitioners, the Bar Council must be directed to declare the results of the election. I would accordingly direct the Bar Council to complete the counting of the ballot papers and then declare the result of the elections. The result of the successful candidates must be published within a period of three weeks from today. From the discussions made above it goes without saying that the validity of the election of the candidate (s) declared to have been so elected, may be challenged by any voter by a regular election petition before the Election Tribunal.

21. I would accordingly quash and cancel the resolution passed by respondent No. 1 dated 18-2-1979. Let an appropriate writ issue accordingly. In the circumstances, however, I shall make no order as to costs.

Chaudhary Sia Saran Sinha, J.

22. I agree. I would, however, like to make some observations of my own. The Bihar State Bar Council Rules have been framed by the Bar Council of Bihar u/s 15(2)(a) and (d) of the Advocates Act, 1961, While Section 15(2)(a) provides for making rules for the election of the members of the Bar Council including the conditions subject to which persons can exercise the right to vote, the preparation and revision of electoral rolls, the manner in which election shall be held and the manner in which results of election shall be published, Section 15(2) (d) states that rules may be framed providing for the manner in which and the

authority by which doubts and disputes as to the validity of an election to the Bar Council or to the office of the Chairman or Vice-Chairman shall be finally decided. The relevant rule framed by the Bar Council of Bihar is enshrined in Rule 47 of the above rules, Clause (4) of which states that all disputes arising under the above sub-rules shall be decided by a tribunal to be known as an Election Tribunal comprising 3 Advocates whose names are on the State Roll and who are not less than of 10 years" standing. Sub-rule (5) of Rule 47 states that 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. Sub-rule (6) of Rule 47 states about the powers of the Election Tribunal and Clause (iv) of Sub-rule (6) provides for the setting aside of the election of the candidate who either by himself or through his agent is guilty of corrupt practices. This sub-clause then enumerates what will be deemed to be the corrupt practice and item (4) thereof, which is of a sweeping nature, states that "in other cases to declare a vacancy to be filled up as a casual vacancy". The allegations and the counter-allegations in the instant case, are obviously such as would have fallen within the purview of the Election Tribunal appointed by the Bar Council of Bihar.

23. As a statutory body the Bar Council of Bihar has to function strictly within the four corners of the Advocates Act. Having exercised its legislative functions, if I may say so, by framing the Bihar State Bar Council Rules, it may not be within the competence of the Bar Council of Bihar to encroach upon the said rules so long as they stand intact or to put off the applicability thereof in exercise of what may be called its administrative powers by adopting a resolution of the nature as the impugned one particularly when the Act, above-mentioned, does not reserve any residuary powers regarding the same.

24. Para 15 of the counter-affidavit filed on behalf of respondent No. 1 stated, inter alia, that an extraordinary situation was created which was not and could not have been anticipated while framing the rules and could not therefore be brought under the ambit of any rule framed by the Bar Council of India or the State Bar Council under the Advocates Act. In view of the sweeping nature of the rule making power, as envisaged in Section 15 of the Advocates Act and Rule 47 of the above rules, which have been referred to above, the above submission made in para 15 of the counter-affidavit does not represent the correct position.

25. The Bar Council of India can exercise certain supervision and control over the Bihar Bar Council. The Bihar Bar Council referred the matter to the Bar Council of India and, as will appear from Annexure 1 to the petition, the Bar Council of India opined that no interference with the process of election by that Council was called for and it expected that the process of election will be completed in accordance with the rules and the legitimate disputes arising out of violation of the Election Rules will be dealt with in accordance with the rules themselves. In spite of all these the Bihar Bar Council came out with the impugned resolution.