

(2013) 02 AHC CK 0131

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4067 of 2013

Brajendra Singh Rawat

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c), 19(4)

Citation : (2013) 3 ADJ 44

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : H.N. Singh and Vineet Kumar Singh, for the Appellant; R. Pande and Rakesh Pande, for the Respondent

Judgement

1. Heard Shri H.N. Singh assisted by Shri Vineet Kumar Singh for the petitioner. Learned Standing Counsel represents respondent No. 1. Shri Rakesh Pande appears for respondent Nos. 2, 3 and 4. Dr. Akhilesh Kumar Sharma has appeared on Behalf of respondent No. 5. An amendment application has been filed by the petitioner on 12.2.2013 for incorporating some facts, grounds as well as a prayer to quash the order dated 8.2.2013 passed by Shri Balwant Singh, Chairman, Special Committee and Member of U.P. Bar Council, Allahabad. The amendment application is allowed. Let the amendments be carried out within a week.

2. Learned Standing Counsel, appearing for the State respondent; Shri Rakesh Pande appearing for Bar Council of Uttar Pradesh and Dr. Akhilesh Kumar Sharma appearing for Chaudhary Charamveer Singh will file counter-affidavit to the writ petition as well as amendment application within four weeks. The petitioner will have one week thereafter to file rejoinder-affidavit.

3. List for hearing on 4.4.2013.

4. On the stay application, it is submitted by Shri H.N. Singh that the petitioner was elected on 4.5.2006 as Secretary of Agra Collectorate Bar Association, Agra,

which is a Society registered under the Societies Registration Act. He still continues to hold the office of Secretary under the bye-laws of the Society which provide for Executive Members to hold office, until the next elections are held. He submits that the Agra Collectorate Bar Association, Agra is not affiliated to the Bar Council of Uttar Pradesh, nor has adopted the Model Bye-laws proposed by the Bar Council of Uttar Pradesh, providing for Elders' Committee for taking over charge, if the elections are not held after completing the term of the Executive Committee of the Bar Association. The Agra Bar Association Collectorate, Agra has not applied for amendment of its bye laws providing for constituting an Elders Committee, to the Registrar, Societies Registration Act.

5. Shri H.N. Singh submits that under the Advocates Act and the Rules framed by the Bar Council of Uttar Pradesh, it has no jurisdiction or authority to interfere in the elections of the Bar Associations, which are independent and autonomous societies registered under the Societies Registration Act. He submits that in the present case, the Chairman of the Bar Council of Uttar Pradesh has assumed powers, which he does not have under the Advocates Act to supervise the elections of the Agra Collectorate Bar Association, Agra. The Chairman, Bar Council of Uttar Pradesh had passed orders on 17.10.2012, 9.11.2012 and has issued directions to the Secretary, Bar Council of Uttar Pradesh for holding elections purportedly on a complaint signed by more than 200 Advocates to the Secretary, Bar Council of Uttar Pradesh, for holding elections. The Chairman has issued directions to the President/ Secretary of the association to publish the election programme; to declare the date of elections and has also passed orders directing the President/Secretary of the association to cooperate with the Assistant Secretary of the Bar Council of Uttar Pradesh for holding elections. The orders passed by the Chairman of Bar Council of Uttar Pradesh are quoted as below:

ORDER

In the matter of

Collectorate Bar Association, Agra

A complaint signed by more than 200 advocates has been placed by the Secretary, Bar Council of Uttar Pradesh before me in which it is alleged that the last election of the association was held on 4.5.2006, since then till today no election of the association held.

Inspite of the fact that a circular has already been sent to all the bar associations affiliated with the U.P. Bar Council that if the term of the associations has already been expired then it is bounded duty of the President and Secretary to hold a election within 15 days, but it transpires that the President/Secretary of the Collectorate Bar Association, Agra have not declared and published the election and have not chalked out the programme of election even till today.

In such circumstances President/ Secretary are hereby directed to declare the

election and publish the same within 10 days from the date of receipt of this order, failing which they are hereby directed to appear before the Chairman, Bar Council of UP on 31.10.2012 in the premises of Bar Council of U.P., Allahabad at 3.30 p.m. and explain as to how and why they have not complied the order.

Secretary, U.P. Bar Council is directed to send copy of this order through fax of District Magistrate, Agra with a covering letter for service as well as through speed post.

Sd/- (Imran Mabood Khan) 17.10.2012 Chairman

ORDER

A complaint has been filed by one Ishaq Lahoriya, Advocate Agra stating therein that the office bearers of Agra Collectorate Bar Association are extracting money on the pretext of membership fee. They have also not declared election for the last more than 6 years. The allegations are serious.

Hence, the Assistant Secretary, Bar Council of Uttar Pradesh is hereby directed to supervise and manage the election programme of Collectorate Bar Association, Agra. He is also directed to look after the entire account of the present election as well as of the association since 2006 till today and submit the report. Assistant Secretary is directed to visit Agra within 3 days from the date of order.

President/Secretary of Collectorate Bar Association, Agra are hereby directed to cooperate to Assistant Secretary, Bar Council of Uttar Pradesh Shri Subhash Chandra Pandey, failing which suitable action shall be drawn against them.

Secretary, Bar Council of Uttar Pradesh is directed to send a copy of this order alongwith covering letter to District Magistrate through fax for compliance.

Sd/- (Imran Mabood Khan) Chairman 09th Nov 2012

6. Shri H.N. Singh states that Shri Balwant Singh, appointed as Chairman of Special Committee by the Bar Council of Uttar Pradesh, is interfering in the elections by giving directions for finalisation of voter's list and election programme. At his instance, the Chairman has now passed an order on 16.1.2013, giving rise to this writ petition, quoted as below:

ORDER

A complaint filed by one Ch. Dharmveer Singh, Advocate and many others has been placed before me by the Secretary, Bar Council of U.P. regarding mal-practice in election of Collectorate Bar Association, Collectorate, Agra. It is alleged in the complaint that more than 400 advocates could not be included in the voter list as member though they have applied for membership but refused on the pretext of delay and many other flimsy grounds. It is also alleged that old members have been included in the membership without any scrutiny as to whether they are practicing at Agra or not. It is also contended that for the last six years election has not been held at Collectorate Bar Association, Agra and the

election officer is not extending the right to vote to the persons who are practicing their for the last more than two years.

In such circumstances it is advisable that if 400 advocates could not be included in the voter list and could not be fair and impartial, if the members who have been kicked out from the old list without any scrutiny as to whether they are practicing at different district then the inclusion of their names in the voter list is also illegal, similarly if the election officer has not issued and pasted the notice on the notice board allowing those who are enrolled with the U.P. Bar Council for the last more than 2 years, the voter list is not proper.

In such circumstances, Chairman of the Committee as well as Committee is suggested to extend the dates of election by means of passing a fresh order rescheduling the dates of election within next 30 days.

Secretary, U.P. Bar Council is hereby directed to send a copy of this order to the Chairman, Elder Committee of Collectorate Bar Association, Agra through fax of District Magistrate, Agra as well as through speed post.

Copy of this order shall be sent to the Chairman of the Committee Sri Balwant Singh through special messenger immediately.

Sd/- (Imran Mabood Khan) 16.1.2013

7. By this writ petition, the petitioner has prayed for a writ, order or direction in the nature of certiorari quashing the order dated 16.1.2013 quoted as above, passed by the Chairman, U.P. Bar Council, Allahabad. He has also prayed for a writ, order or direction holding Model Bye-laws passed by the U.P. Bar Council vide its resolution No. 2389/2005 in its meeting dated 9.1.2005 and confirmed it by resolution in its meeting dated 12.2.2005 as ultra vires to the Societies Registration Act, 1960 and the provision of Article 19(1)(c) of the Constitution of India.

8. Shri H.N. Singh submits relying upon Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, , that the rights guaranteed by Article 19(1)(c) of Constitution of India cannot be confined to the initial stage of forming an association. If it was to be so confined, the rights would be meaningless because as soon as an association is formed, a law may be passed interfering with its composition so that the association formed may not be able to function at all. The right can be effective only if it is held to include within, it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. Article 19(4), on the fact of it, cannot be called in aid to claim validity of the Act. The provisions for reconstituting the society into the Sammelan is void. The whole Act becomes ineffective.

9. Shri Rakesh Pande, appearing for Bar Council of Uttar Pradesh states that the Chairman of the Bar Council acted on the complaint signed by more than 200 advocates. The petitioner has no right to maintain the writ petition or to challenge the orders as he is usurping the office of the Secretary for last six

years. He has not held elections and is continuing to hold the office of the Secretary without any authority. It is submitted that the Bar Council, in the best interest of the Advocates, who have formed the association, passed certain orders for the purposes of ensuring maintenance of ethics and conduct of the Advocates in District Agra. The orders were passed on the request of the Advocates. He has relied upon election programme fixed by the petitioner himself in which he has provided for decision on the objections to the nomination of the Elders Committee and the appeal to the Bar Council of Uttar Pradesh. Shri Pande submits that the petitioner himself has called in aid the statutory office of Bar Council of UP to conduct the elections. When it was found that he has enrolled persons, who are not advocates enrolled with the Bar Council practicing at Agra, the Chairman has to act and to direct that the elections to be held from amongst the validly enrolled members.

10. Shri Rakesh Pande states that even if there is no power under the Advocates Act or under the Rules and Regulations framed by Bar Council of Uttar Pradesh, it has inherent authority as a statutory body to regulate the conduct of the Advocates, to pass orders in the interest of the Advocates. He submits that the election programme has been announced and that there is no reason for the High Court to interfere in the matter.

11. Dr. Akhilesh Kumar Sharma, appearing for respondent No. 5, one of the candidates for elections, submits that the petitioner is usurping the office of the Secretary and that the election programme was announced with the consent of members of the association. He submits that this Court should not interfere at the instance of the petitioner, who is continuing to hold the office of the Secretary for last six years without holding the elections. The elections have been announced and that the elections should be allowed to be held in accordance with the law.

12. We have heard the parties on the stay application and are of the view, that the Bar Councils under the Advocates Act do not have any powers to either supervise or to interfere in the elections of the Bar Associations, which are associations formed and registered under the Societies Registration Act. The Collectorate Bar Association, Agra is not affiliated nor he adopted the Model Bye-laws. The Bar Council of Uttar Pradesh has no authority or business to either finalise the voters list and to approve the election programme. No such role has been assigned to the Bar Council of Uttar Pradesh under the Advocates Act, nor any request has been made by any one to the Bar Council of Uttar Pradesh to arbitrate or mediate in the matter.

13. As a statutory body all the actions of the Bar Council of Uttar Pradesh should be justified under the Act, Rules or Regulations validly made by it and notified under the Act. The Bar Council of Uttar Pradesh has no authority in law to interfere in the elections of the Bar Associations. We may also add here that the Bar Council of Uttar Pradesh does not appear to realise that even if the powers, which are not vested in it, are exercised in good faith for maintaining the conduct

and behaviour of the advocates, it may ultimately result into Bar Council becoming a hot bed of the activities of the advocates for contesting the elections. These powers vested in the Civil Court, and the Registrar of the Societies, and in the State of UP to be exercised by the Prescribed Authority u/s 25 (1) of the Societies Registration Act as amended in the State of UP, cannot be usurped by the Bar Council of Uttar Pradesh. For the aforesaid reasons, until further orders, the effect and operation of the order dated 16.1.2013 passed by the Chairman, Bar Council of Uttar Pradesh as well as the order dated 8.2.2013 passed by Shri Balwant Singh, Chairman, Special Committee and Member of U.P. Bar Council are stayed. The Bar Council of Uttar Pradesh and its members and functionaries are restrained from interfering in the elections of the Collectorate Bar Association, Agra and in any other association of Advocates, registered under the Societies Registration Act. It will be open to the members of the Collectorate Bar Association, Agra to hold the elections, which have been notified in accordance with the law. If any person or member is aggrieved by any step in the elections or the final result may approach the Court or the Prescribed Authority under the Societies Registration Act in accordance with the law.