

(2012) 10 OHC CK 0007

In the Orissa High Court

Case No : Writ Petition (Civil) No. 16417 of 2012

Brundaban Pradhan and Others

APPELLANT

Vs

Orissa State Bar Council and Others

RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Advocates Act, 1961 — Section 6

Citation : AIR 2013 Ori 39 : (2013) 1 OLR 26

Hon'ble Judges : V. Gopala Gowda, C.J;B.K. Misra, J

Bench : Division Bench

Advocate : Samir Ku. Mishra, J. Pradhan, P. Prusty, S.K. Roul, D.K. Pradhan and B.K. Nayak, for the Appellant; U.C. Mishra, A. Mishra, D.R. Sandha and A. Bal for O.P. 3 to 8, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Misra, J.—The petitioner No. 1, who is an Advocate and President of the Banpur Bar Association, along with four others, in this writ petition have questioned the propriety of the instructions issued, by opposite party No. 1, Orissa State Bar Council under Annexures-3 and 5, to follow the Rules and Regulations of Banpur Bar Association in convening general body meeting on or before 5th September, 2012 and for conducting election on or before 13th September, 2012 when some members of the Banpur Bar had complained to opposite party No. 1 regarding the illegalities committed with regard to the election of office bearers of Banpur Bar Association under Annexure-2 series. The grievance of the petitioners is that the direction of the opposite party No. 1 to convene the general body meeting on or before 5.9.2012 as well as for conducting election on or before 30.9.2012 amounts to interference in the functioning of the association and is without jurisdiction as the opposite party No. 1 has no authority to interfere with the internal affairs of the association because of the simple reason that under the old bye-law, the office bearers are to be selected and not elected.

2. We have heard learned counsel for the petitioners as well as counsel appearing for opposite parties 3 to 8. Perused the resolution book of Banpur Bar Association along with connected materials, which were produced pursuant to our direction in connection with election of office bearers of Banpur Bar Association. It is an admitted fact that Banpur Bar Association is a registered association since 1987 and it has its own bye-law since the date of its registration. Article 6 of the bye-law of Banpur Bar Association candidly discloses that the Executive Committee of the Association, namely, President, Vice-President, Secretary, Treasurer, Assistant Secretary and two annually elected members are to be included in the Executive Body of the Association and they shall be elected at the Annual General Body meeting of the Association and shall continue to hold office until the next Annual General Body meeting. This bye-law, which according to the learned counsel for the petitioners, is the old bye-law, never speaks that the Executive Committee of Banpur Bar Association including the President are to be selected, but not elected. This bye-law has been produced before us by the petitioners, among whom, petitioner No. 1 is claiming to be the President of the Banpur Bar Association. This bye-law still holds full force as the proposed amendments to the bye-law have not yet been submitted to the competent authority under the Society Registration Act. The resolution book, which has also been produced before us shows that as per the general body meeting, which was held on 6th September, 2000, certain amendments to the bye-law was felt necessary and accordingly, the Association in its resolution No. 10 dated 21.9.2000 proposed the amendments. Under Article No. 6 it is again reiterated that the Executive Members shall be elected in the election of the association. Hence, the contention of the learned counsel for the petitioners and the case of the petitioners that under the old bye-law, the President and other office bearers of the Association are selected, but not elected is without any substance and basis and that is enough for this Court not to entertain this writ petition as it tantamount that the petitioners have not approached this Court with clean hands. Besides that we also found serious infirmities in the so-called election of the office bearers, which took place on 30.11.2011 pursuant to the notice issued by petitioner No. 1 on 23.11.2011. This notice has been issued for holding election is not supported by any resolution adopted by Banpur Bar Association as the resolution book shows that after 5.10.2002 there is no further entry. We are not interested to deal with that aspect of the matter in this writ petition as we are not called upon to decide that fact. But suffice to say that everything is not in order. The so-called notice for holding the election of the office bearers of Banpur Bar Association for the year 2011-12 contains the election schedule, which shows that polling of votes would commence from 10.30 A.M. to 3.30 P.M. on 30.11.2011 and the counting of votes would start at 3.45 P.M. onwards. But the result-sheet, i.e., the counting of votes clearly indicates that the counting of votes took place at 3.30 P.M. in the Bar room on 30.11.2011. This shows that the counting of votes took place when the voting hour was not over. Perusal of the record also reveals another sordid affair, which is a tell tale story about the election that took place on 30.11.2011. The said

paper contains the following:

Out of issued balad papers candidates submitted only 10 nomination for different posts.

Sd/- Shyam Sundar Mishra, Member, Election Conducting Committee for the election of office bearers of Bar Association, Banpur 2011-12.

The aforesaid document has been certified by one Mr. Shyam Sundar Mishra, Member of the Election Conducting Committee for election of the office bearers of the Banpur Bar Association, 2011-12. So, if we accept this document, then the counting sheet, which shows that 92 ballots were used, is shrouded with suspicious circumstances.

3. It is trite that the right to vote is of course indispensable. The right to free and fair elections underlines the importance of the exercise of the right to vote and the requirement that every election should be fair. The concomitant of the right to vote which is the basic postulate of democracy is thus two fold: first, formulation of opinion about the candidates and second, the expression of choice by casting the vote in favour of the preferred candidate at the pooling booth. The availability of proper and relevant information about the candidate fosters and promotes the freedom of speech and expression both from the point of view of imparting and receiving the information. (People's Union for Civil Liberties and Another Vs. Union of India (UOI) and Another, and Kuldip Nayar Vs. Union of India (UOI) and Others,).

4. Keeping in mind the aforesaid well established constitutional mandate and in view of the anomalies which we find in the election process, we have no hesitation to hold that the Election of Office bearers of Banpur Bar Association for the year 2011-12 is shrouded with suspicious circumstances and therefore on receipt of allegations about such malpractices the opposite party No. 1 in order to safeguard the rights and privileges of the advocates on its roll within the meaning of Section 6 of the Advocates Act, 1961 after holding the enquiry into the allegations, issued instructions under Annexures-3 and 5 for holding election on the date fixed after convening a general body meeting of the association. We do not find anything wrong in the approach of the opposite party No. 1 as the apex body.

5. In view of the foregoing discussion, we are not inclined to quash the instructions issued by opposite party No. 1 under Annexures-3 and 5. Accordingly, the writ petition being devoid of any merit, stands dismissed. No costs.

V. Gopala Gowda, C.J.

I agree.