

(1975) 04 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 226 of 1974

Chhabil Dass

APPELLANT

Vs

Inder Singh and Others

RESPONDENT

Date of Decision : 18-04-1975

Acts Referred:

Advocates Act, 1961 — Section 3(2)
Bar Council of Himachal Pradesh Rules, 1972 — Rule 34(4)
Bar Council of Punjab (Constitution and Conduct of Business) Rules, 1963 — Rule 32, 34, 35(1), 35(2), 38
Bar Council of Punjab and Haryana Election Rules, 1968 — Rule 34, 34(4)
General Clauses Act, 1897 — Section 8

Citation : AIR 1976 HP 6

Hon'ble Judges : R.S. Pathak, C.J.; D.B. Lal, J

Bench : Division Bench

Advocate : K.D. Sud, D.P. Sud and D.K. Khanna, for the Appellant; O.P. Sharma, for Inder Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—By this writ petition the petitioner prays for certiorari quashing the order of the Election Tribunal dated September 9, 1974 setting aside his election as Chairman of the Bar Council of Himachal Pradesh.

2. By the State of Himachal Pradesh Act, 1970, Himachal Pradesh became a State on and from January 25, 1971. Section 24 of the Act amended the Advocates Act, 1961, thereby providing for a Bar Council of Himachal Pradesh. The first Bar Council was constituted shortly thereafter, and its first meeting was held on November 7, 1971. When the term of office of the members was due to expire, proceedings were taken for the election of members to succeed them. On August 30, 1972 an election programme was issued setting out the dates for the different stages in the election process. After polling and counting of votes, the Advocate General of Himachal Pradesh verified the list of elected candidates, and the results were published in the Gazette on May 26, 1973.

3. It may be stated at this stage that by virtue of Section 24 (5) (a) of the State of Himachal Pradesh Act the rules made or deemed to have been made by the Bar Council of Punjab and Haryana and enforced immediately before the date on which the first Bar Council of Himachal Pradesh was duly constituted were, subject to such modifications and adaptations as were made therein by the Chairman of the Bar Council of Himachal Pradesh to be deemed to be rules made by the Bar Council of Himachal Pradesh and were to have effect accordingly. At that time the rules governing the Bar Council of Punjab and Haryana were the Bar Council of Punjab (Constitution and Conduct of Business) Rules, 1963 thereafter referred to for convenience as the Rules of 1963), and the Bar Council of Punjab and Haryana Election Rules, 1968 (which for convenience may be referred to as the Rules of 1968). The Chairman of the Bar Council of Himachal Pradesh adopted the two sets of rules with certain modifications and adaptations. Consequently, the Bar council of Himachal Pradesh is governed by the two sets of rules as modified and adapted.

4. Section 3 (3) of the Advocates Act, 1961, provides that there shall be a Chairman and a Vice-chairman of each State Bar Council elected by the Council in such manner as may be prescribed. Section 15 empowers the Bar council to make rules, and those rules may provide, by Section 15 (2) (a) for the election of members of the Bar Council, by Section 15 (2) (c) for the manner of election of the Chairman and the Vice-Chairman of the Bar Council and by Section 15 (2) (d) for the manner in which and the authority by which doubts and disputes as to the office of the Chairman or the Vice-Chairman are to be finally decided.

5. The Rules of 1963 cover a number of matters, including the manner in which the election of members of the Bar Council and the election of the Chairman and the Vice-Chairman of the Bar Council are to be held, and also the authority by which and the manner in which a challenge to those elections can be entertained and decided. The Rules of 1968 provide only for the election of members of the Bar Council and the forum and the manner in which disputes relating to those elections are to be decided. The parties are agreed that so far as the election of members of the Bar Council and the decision of disputes relating to such election are concerned they are governed by the Rules of 1968, and those Rules must be taken to have superseded the Rules of 1963 to that extent. The Rules of 1968 do not deal with the election of the Chairman and the Vice-Chairman and the decision of disputes concerning those elections. As regards those matters they remain within the purview of the Rules of 1963. It is also not disputed that the Rules of 1968 as modified and adapted by the Chairman of the Bar Council of Himachal Pradesh are described as the Bar Council of Himachal Pradesh Rules, 1972, to which I shall refer as the Rules of 1972. The Rules of 1972 relevant for the purposes of this case are identical with the corresponding Rules of 1968. No separate body of rules was framed for the Bar Council of Himachal Pradesh in respect of the election of the Chairman and the Vice-Chairman and the decision of disputes relating to those elections.

6. Under Rule 34 of the Rules of 1963 the Advocate General convened a meeting of the Bar Council for the purpose of electing the Chairman and the Vice-Chairman. On July 7, 1973 the Advocate General presided over the meeting. The only two candidates for election to the office of Chairman were the petitioner, Shri Chhabil Dass, and the first respondent, Shri Inder Singh, who are both advocates of this Court. Admittedly all the sixteen members of the Bar Council were present and they cast their votes. On counting it was found that an equal number of votes had been polled by the candidates. The Advocate General took the view that he had a casting vote, and gave that vote in favour of the petitioner. In the result the petitioner was declared elected Chairman of the Bar Council.

7. On July 19, 1973 the first, second and third respondents (whom I shall refer to as "the contesting respondents") filed an election petition before an Election Tribunal constituted on October 1, 1972 under Rule 34 (4) of the Rules of 1972. The Election Tribunal consisted of three Advocates, Kanwar Dalip Singh being the Chairman, and Shri H.S. Thakur and Shri Sushil Malhotra being members. The Chairman and, Shri H.S. Thakur held that the Election Tribunal was competent to entertain and decide the election petition while Shri Sushil Malhotra held to the contrary. On the question whether the Advocate General had the right to cast a vote at the meeting like other members of the Bar Council, the Chairman held that he had no such right while Shri H.S. Thakur and Shri Sushil Malhotra held that he did have such right. On the further question whether the Advocate General had the right to give a casting vote, the Chairman does not seem to have expressed any opinion in the matter, and while Shri H.S. Thakur took the view that the Advocate General had no right to give a casting vote, Shri Sushil Malhotra has held that he did have such right. Accordingly, on September 9, 1974 the Election Tribunal made an order by majority setting aside the election of the petitioner.

8. A number of grounds have been set out in the writ petition, but before us only two points have been pressed. It is contended that :

1. The Election Tribunal had no jurisdiction to entertain and decide the election petition, and
2. The Advocate General was entitled to vote as a member and as Chairman to give a casting vote and therefore, the order of the Election Tribunal was erroneous.

While supporting the order of the Election Tribunal, the contesting respondents urge that the meeting for the election of the Chairman was invalid inasmuch as it was not convened within fifteen days of the election to the Bar Council becoming final and also because notice of ten clear days as required by Rule 34 of the Rules of 1963 was not given.

9. Rules 34 and 35 of the Rules of 1963 are concerned with the election of the Chairman and the Vice-Chairman. They read:--

"34. First Meeting: Within 15 days from the election becoming final under Rule 31 the Advocate General shall convene a meeting of the Bar Council after giving notice of ten clear days for (1) election of the Chairman and Vice-Chairman; (2) electing Committees; and (3) transacting such other business as the Advocate General may direct. The Advocate General shall preside at the said meeting.

35. Election of Chairman and Vice-Chairman.

(1) The election of the Chairman and the Vice-Chairman shall be by ballot to be held in such manner as the Advocate General may determine :

Provided that in the event of there being more than two candidates, no member of the Bar Council shall be deemed to have been elected as Chairman and Vice-Chairman unless he shall have secured a majority of votes of the members present; and that in case of there being more candidates than two, the name of the candidate receiving the lowest number of votes shall be eliminated after the votes have been first recorded and thereafter the votes shall be taken for the other candidates and the same procedure shall be followed until any candidate receives a majority of votes of those present.

(2) Any dispute regarding the validity of the election of the Chairman or Vice-Chairman shall be decided by the committee of Advocates referred to in Rule 32, whose decision shall be final."

10. Point 1

Whether the Election Tribunal constituted under Rule 34 (4) of the Rules of 1972 was competent to entertain and decide the election petition?

11. It will be noticed that by Rule 35 (2) the dispute regarding the validity of the election of the Chairman has to be decided by a "committee of Advocates referred to in Rule 32. Rule 32 is concerned with the determination of election disputes in the matter of election to the Bar Council. It provides :--

"32. Determination of Election Disputes : Any dispute arising under Rule 30 shall be decided by a committee of Advocates consisting of three members of the Bar Council in the previous year who are not contesting the elections and such committee shall be constituted by the Bar Council 15 days before the date of election and the unanimous or majority decision of such committee shall be final. In case three members, not contesting elections, are not available, any Advocate or Advocates on the State roll of Advocates may be appointed on the Committee." When the Rules of 1963 were partially superseded by the enactment of the Rules of 1968, Rule 32 of the Rules of 1963 was replaced by Sub-rules (4) and (6) of Rule 34 of the Rules of 1968. The said sub-rules set out:--

"34. Disputes as to the Validity of Elections :

(4) 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.

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

(i) To dismiss a petition;

(ii) To order recount;

(iii) To declare any candidate to have been duly elected on a recount;

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

12. The contention of the petitioner is that the repeal of Rule 32 makes no difference to the operation of Rule 35 (2), and for the purpose of applying Rule 35 (2) reference has to be made to Rule 32 notwithstanding its repeal. So read, Rule 35 (2) contemplates that a dispute relating to the election of the Chairman should be entertained and decided by a committee of Advocates constituted in accordance with Rule 32. On the other hand, the contesting respondents urge that Rule 35 (2), when it speaks of the committee of Advocates referred to in Rule 32, must be read as referring to the Election Tribunal mentioned in Rule 34 (4) of the Rules of 1972.

13. It will be noticed that the Rules of 1963 provide for election to the Bar Council and the decision of disputes relating to that election, and separately to the election of the Chairman and the Vice-Chairman and the decision of disputes relating to that election. The two sets of provision are distinct, and this is so even though Rule 35 (2) incorporates by reference the provisions of Rule 32. Indeed, this separate identity of provision appears to be implied by Clauses (a), (c) and (d) of Section 15 of the Advocates Act also. Now a single body of legislation may in reality consist of a number of pieces of legislation conveniently put together, where each piece of legislation deals with a distinct matter. Viewed from that standpoint, it is apparent that the provisions in the Rules of 1963 which deal with the election to the Bar Council and the decision of disputes related to that election form one piece of legislation while the provisions relating to the election of the Chairman and the Vice-Chairman and the decision of disputes relating to such election form another piece of legislation. Rule 32 belongs to the former piece of legislation and Rule 35 (2) belongs to the latter. It will also be observed that Rule 35 (2) is an instance of legislation by reference or incorporation. It refers to rule 32, and for the purpose of applying Rule 35 (2) you must, as it were, incorporate the relevant provision of Rule 32 within it. Treating Rule 32 and Rule 35 (2) as provisions in two separate pieces of legislation, it will also be apparent that the legislation of which Rule 32 is part may be considered as earlier in point of sequence than the legislation which contains Rule 35 (2).

That is apparent because otherwise Rule 35 (2) would not have referred to Rule 32. Now, it will also be noted that Rule 32 of the Rules of 1963 has been repealed and re-enacted as Rule 34 (4) of the Rules of 1968. Upon that scheme of things, the question which we must consider is whether Rule 35 (2) must be

read to refer to Rule 32 or Rule 34 (4).

14. The petitioner relies on the principle that where the provisions of one statute are, by reference incorporated in another and the earlier statute is afterwards repealed, the provisions so incorporated continue in force so far as they form part of the second enactment. It is also pointed out that sometimes an Act of Parliament instead of expressly repeating the words of a section contained in a former Act merely refers to it, and by relation applies its provisions to some new state of things created by the subsequent Act. In such a case, it has been said, "the rule of construction is that where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second". If the case had been one of mere repeal there could have been no hesitation in accepting the contention that Rule 35 (2) must be taken to refer to the committee of Advocates mentioned in Rule 32. But the position in the present case is very different. It is a case where a piece of legislation, which was incorporated by reference in another piece of legislation, has been repealed and re-enacted. In a case such as this, the principle embodied in Section 8 of the General Clauses Act will come into play. Section 8 provides :--

"8. Construction of Reference to repealed enactments.--(1) Where this Act, or any Central Act or Regulation after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provisions so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) x x x x x x x

If that principle is applied, it seems clear that inasmuch as Rule 34 (4) has repealed and re-enacted Rule 32, reference in Rule 35 (2) to Rule 32 so repealed must, unless a different intention appears, be construed as reference to rule 34 (4). To that conclusion two possible objections can arise :--

(a) Section 8 refers to an Act or Regulation and not to a body of rules;

(b) Rule 34 (4) does not represent the re-enactment of Rule 32. Rule 35 (2) was not intended to refer to the Election Tribunal, which is a body of different composition and different scope of power.

It is a matter for consideration whether these objections are valid.

15. (a). It is not necessary that Section 8 in terms should be invoked in the present case. The section embodies a principle of construction, and can well be applied to subordinate legislation. In *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, Section 8 was applied to the construction of the charters of different High Courts, and it was observed:--

"The canon of construction of statutes enunciated in Section 38, Interpretation

Act and reiterated with some modifications in Section 8, General Clauses Act is one of general application where statutes or Acts have to be construed and there is no reasonable ground for holding that that rule of construction should not be applied in construing the charters of the different High Courts. These charters were granted under statutory powers and are subject to the legislative power of the Indian Legislature. Assuming however but not conceding, that strictly speaking the provisions of the Interpretation Act and the General Clauses Act do not for any reason apply, we see no justification for holding that the principles of construction enunciated in those provisions have no application for construing these charters."

The Delhi High Court in *Management of the Advance Insurance Co. Ltd. Vs. Gurudasmal, Supdt. of Police and Others*, applied the principle embodied in Section 8 to the construction of notifications issued under statutes. In my opinion, the principle can be applied to a body of rules, even though they do not fall within the express terms of Section 8.

16. (b) As regards the second objection it will be noted that Section 8 speaks of re-enactment with or without modification. In other words, the principle will apply even if the original provision is repealed and re-enacted with modification. The modification, it seems to me, should be such as does not destroy the essential substance of the original provision. If in its essence the provision remains the same, then notwithstanding the substitution of a different form or the adoption of or a variation in non-essential particulars in the re-enacted provision the principle is not offended. In the present case, Rule 32 speaks of a committee of Advocates consisting of three members of the Bar Council in the previous year who are not contesting the elections, and in case such members are not available any Advocate or Advocates on the State Roll of Advocates may be appointed on the Committee. Rule 34 (4) speaks of an Election Tribunal consisting of three Advocates whose names are on the State Roll and who are not less than of ten years standing. It will be noticed that both the Committee envisaged by Rule 32 and the Election Tribunal envisaged by Rule 34 (4) consist of three Advocates, who must be Advocates on the State Roll of Advocates; the only difference lies in the qualifying factor specified in each case. To my mind, the difference in the constitution of the two bodies turns on non-essential particulars. The change in the constitution of the body envisaged for deciding an election dispute is nothing more than a mere modification.

17. Our attention has been drawn to the circumstance that while the powers of the committee constituted under Rule 32 are not expressly limited, the Election Tribunal contemplated by Rule 34 (4) has only the limited powers detailed in Rule 34 (6) when disposing of an election petition. It seems to me that even if the scope of the powers be taken to have been reduced in the case of the Election Tribunal, the reduced scope does not in any way militate against the Election Tribunal being regarded as the body for adjudicating a dispute relating to the election of the Chairman and the Vice-Chairman. The power has been merely

modified, if at all and its essential nature has not changed from the original. I am of opinion that Rule 34 (4) amounts to a re-enactment, with modification, of Rule 32.

18. Accordingly I hold that when reading Rule 35 (2) of the Rules of 1963, we must substitute the words "the Election Tribunal referred to in Rule 34 (4) of the Rules of 1972" in place of "the committee of Advocates referred to in Rule 32." Reading Rule 35 (2) in that manner, it is apparent that the Election Tribunal had jurisdiction to entertain and decide the election petition filed by the first respondent.

19. Point No. 2

Whether the Advocate General was entitled to vote as a member and also to give a casting vote as Chairman of the meeting?

20. There can be no doubt that the Advocate General is a member of the State Bar Council. Section 3 (2) (a) of the Advocates Act, 1961 describes him as an ex-officio member. He enjoys the same right of vote as elected members. I am of opinion that he has a right to vote like other members in a meeting for electing the Chairman and the Vice-Chairman.

21. As regards the Advocate General's right to give a casting vote, the petitioner relies on Rule 38 of the Rules of 1963. Rule 38 provides :--

"38. Voting.--The voting of the Bar Council shall ordinarily be by show of hands. Each member present shall have one vote and the Chairman of the meeting shall have a casting vote."

22. Now Rule 34 declares that the Advocate General shall convene a meeting of the Bar Council for holding the election of the Chairman and the Vice-Chairman, and that he shall preside at the said meeting. It is a meeting of the Bar Council. Three kinds of meetings of the Bar Council are contemplated. There is the ordinary meeting of the Bar Council, mentioned in Rule 37 (1). Then there is the extraordinary meeting of the Bar council, for which provision is made in Rule 37 (2). The third kind of meeting of the Bar Council is the one contemplated by Rule 34. For the first two kinds of meetings the Chairman, and in his absence the Vice-Chairman, have been appointed by Rule 44 (1) to preside at the meeting. In the absence of both, Rule 40 enables the members present at the meeting to elect one from amongst them to preside over the said meeting, when such member presides over the meeting, he can be described as Chairman of the meeting. Although not Chairman of the Bar Council, he is Chairman of the meeting. The Chairman of a meeting is merely one who presides over the meeting. In respect of the third class of meetings mentioned above, that is to say a meeting for the election of the Chairman and the Vice-Chairman, the Advocate General is required by Rule 34 to preside at the meeting. When doing so he is Chairman of the meeting.

23. Rule 38, which determines the voting right of each member at a meeting of

the Bar Council and of the Chairman of the meeting, may be read now. Each member present has one vote and the Chairman of the meeting has a casting vote. The voting rights specified in Rule 38 apply to all manner of voting, whether it be by show of hands or by a ballot. Rule 38, which is evidently of general application, declares that voting at the meeting of the Bar Council shall ordinarily be by show of hands. That does not exclude altogether voting by ballot at a particular meeting. A meeting for the election of the Chairman and the Vice-Chairman is such a meeting. Rule 35 (1) provides that the election in such a case shall be by ballot. But whether the voting is by show of hands or by ballot, according to Rule 38 each member present has one vote and the Chairman of the meeting has a casting vote. To my mind, when the Advocate General presides at the meeting of the Bar Council for electing the Chairman or the Vice-Chairman the voting must be by ballot, each member present has one vote and the Advocate General as Chairman presiding at the meeting has a casting vote,

24. Our attention has been drawn to the proviso to Rule 35 (1) which requires that in order to be elected as Chairman or Vice-Chairman a candidate must secure a majority of votes of the members present and this, it is said, excludes the giving of a casting vote. I am unable to agree. There is no doubt that the principle that a candidate should secure a majority of votes of the members present applies to all cases of election of the Chairman and the Vice-Chairman, whether it is a case covered by the proviso or by the main part of Rule 35 (1). But to secure a majority of votes of the members present does not exclude a case where the majority is obtained by the Advocate General giving a casting vote where the votes are equal, the casting vote being an additional vote. Rule 35 (1) requires the securing of the majority of votes of the members present; it does not require the securing of votes of the majority of the members present.

25. I hold that the Advocate General was entitled to give a casting vote, and therefore, the declaration of the petitioner as elected Chairman of the Bar Council is not invalid.

26. The points raised by the contesting respondents may be considered now as points Nos. 3 and 4.

27. Point No. 3

Whether the provision in Rule 34 of the Rules of 1963 that the first meeting should be convened by the Advocate General within 15 days of the election becoming final under Rule 31 is mandatory?

28. Under Rule 31 the election to the Bar Council acquires finality on the expiry of 21 days from the date of publication of the list of elected members certified by the Advocate General. In the present case the list became final on June 15, 1973. The first meeting was convened on July 7, 1973. That was clearly beyond the period of 15 days mentioned in Rule 34. But in my opinion, the requirement that the first meeting should be convened within 15 days is directory only. There is nothing in the rules which suggests that if the period of 15 days is exceeded

the first meeting will become invalid or purposeless. The object of the first meeting will not be defeated if it is convened beyond the period of 15 days. To my mind, the requirement has apparently been made only in order to suggest that the first meeting should be called as expeditiously as possible.

29. Point No 4

Whether the first meeting is invalid because a notice of ten clear days was not given as required by Rule 34 of the Rules of 1963?

30. Notice of the first meeting was received on June 28, 1973 by at least one member, and the meeting was held on July 7, 1973. Now it appears that all the members of the Bar Council were present and they participated in the meeting, and no objection was raised as to the sufficiency of the period of notice. In such a case, the requirements as to notice may be considered as waived. In *Re. Express Engineering Work* (1920) 1 Ch 466. Younger, L. J. said;

"If you have all the shareholders present, then all the requirements in connection with a meeting are observed."

Reference may also be made to *Re. Oxted Motor Co.* (1921) 3 KB 32. In the circumstances, I am unable to hold that the meeting was invalid on the ground that all the members did not receive notice of ten clear days. Reliance was placed by the respondents on *Khan Chand etc. v. Sub Divisional Officer (Civil)* 1972 CrLJ 854. The provision in that case required notice to be sent "at least seven days before the date of meeting", language which is distinguishable from that employed in Rule 34. Moreover, the facts in that case show that objection was taken by some of the members present at the meeting to the insufficiency of notice.

31. On the aforesaid considerations, I am of opinion that the order of the Election Tribunal dated September 9, 1974 is vitiated and is liable to be quashed. The petitioner is entitled to succeed.

32. The writ petition is allowed, and the order dated September 9, 1974 of the Election Tribunal is quashed. The parties will bear their own costs.

D.B. Lal, J.

33. This petition under Articles 226 and 227 of the Constitution has been filed by Shri Chhabil Dass, Advocate wherein he has called in question the decision of the Election Tribunal dated September 9, 1974 (Annexure P.8) and wants the same to be quashed.

34. The petitioner's case is that he was duly elected as a member of the Bar Council of Himachal Pradesh along with 14 others the strength of the Bar Council being: 15 elected members and the Advocate-General ex-officio member. The respondent no. 4 who is the Advocate-General convened on July 7, 1973 the first meeting of the Bar Council for the election of Chairman and Vice-Chairman under Rule 34 of the Bar Council of Punjab (Constitution and Conduct of Business)

Rules, 1963 (hereinafter to be referred to as the Rules of 1963). As provided for in that Rule, the Advocate-General presided over that meeting. Two proposals, one of the petitioner and the other of the respondent No. 1 Shri Indar Singh, Advocate, were received for election to the post of Chairman. The poll was taken by a secret ballot and it was found that both the petitioner and the respondent No. 1 polled equal number of votes. Accordingly the Advocate-General determined the manner in which the dispute was to be resolved. He gave a casting vote in favour of the petitioner and the latter was declared elected.

35. After the election was so declared and published in the Gazette the respondents 1 to 3 who are Advocate-electors filed an election petition before the Election Tribunal constituted under Rule 34 of the Rules made by the Bar Council of Punjab and Haryana u/s 15 (2) (a) and (d) of the Advocates Act, 1961, as modified and adapted by the Chairman of the Bar Council of Himachal Pradesh (hereinafter to be referred to as the Himachal Pradesh Rules). By a majority decision dated September 9, 1974 the Election Tribunal has set aside the election of the petitioner on several grounds, the primary being that the Advocate-General had no right to give a casting vote.

36. The petitioner has contended in the foremost that the Election Tribunal was not the competent authority to entertain and decide the election petition. As such, according to petitioner, the decision of the Election Tribunal is non est and a nullity. Since the Election Tribunal had no jurisdiction to entertain and decide the election petition its decision is not binding on the petitioner. The petitioner has also supported his election on a variety of other grounds, but it does not appear necessary to describe all such grounds because the writ petition can be disposed of on the short question of jurisdiction exercised by the Election Tribunal.

37. The respondents have no doubt contended that the Election Tribunal had the jurisdiction and its decision cannot be oballenged by the petitioner. According to them, the committee of advocates referred to in Rule 32 of the 1963 Rules was replaced by an election tribunal referred to in Rule 34 of the Himachal Rules by a process of implied repeal because the Rules of 1963 were repealed by the Bar Council of Punjab and Haryana Election Rules, 1968 (hereinafter to be referred to as the Rules of 1968). It may be pointed out that Rule 34 of the Rules of 1968 is the same in material particulars as Rule 34 of the Himachal Rules. I can, therefore, as well refer to the Rules of 1968 instead of the Himachal Rules while deciding this petition.

38. The respondents, therefore, contend that in order to decide an election dispute the authority constituted under Rule 34 of the Rules of 1968 is the election Tribunal and this very authority decided the present election petition. Therefore, contend the respondents, the jurisdiction rested with the Election Tribunal and the election of the petitioner was rightly set aside.

39. In order to elucidate the point of controversy, the provisions for the

constitution of the Bar Council of Himachal Pradesh and the rules made by the Punjab Bar Council may be extracted. Section 24, Sub-section (5) (b) and (f) of the State of Himachal Pradesh Act, 1970 is in the following terms:

"24. (b) until the members of the first Bar Council of Himachal Pradesh required to be nominated under Clause (a) are duly nominated in accordance with the provisions of that clause, the Bar Council of Punjab & Haryana shall function as the Bar Council of Himachal Pradesh and the provisions of the Advocates Act shall so far as may be, apply accordingly;

(f) the rules made or deemed to have been made by the Bar Council of Punjab and Haryana in force immediately before the date on which the first Bar Council of Himachal Pradesh is duly constituted in accordance with the provisions of Clause (a) shall, subject to such modifications and adaptations as may be made therein by the Chairman of the Bar Council of Himachal Pradesh, be deemed to be rules made by the Bar Council of Himachal Pradesh and shall have effect accordingly" This would mean that the Rules of 1963 and the Rules of 1968 made by the Punjab Bar Council would be applicable. The relevant rules of the Punjab Rules of 1963 may now be stated as under :--

"30. Disputes as to validity of election.

(1) A candidate may contest the validity of the election of a candidate declared to have been elected to the Bar Council by a letter signed by him and addressed to the Secretary.

(2) Such letter shall state the grounds, on which the validity of the election is contested and shall be delivered to the Secretary within seven days of the date of publication in the Punjab Government Gazette of the list under Rule 29.

(3) The Secretary shall, on receipt of my such letter, refer the dispute, arising therefrom to the authority specified in Rule 32 for decision.

(4) Subject to other provisions contained in this rule, after the expiry of seven days from the date of such publication, the validity of the election of a candidate shall not be contested on any ground whatsoever.

(5) No election of a member or members to a Bar Council shall be called in question on the ground that due notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has not less than 30 days before that date, been published in the Punjab Gazette and Himachal Pradesh Government Gazette."

"32. Determination of election disputes.

Any dispute arising under Rule 30 shall be decided by a committee of Advocates consisting of three members of the Bar Council in the previous year who are not contesting the elections and such committee shall be constituted by the Bar Council 15 days before the date of election and the unanimous or majority decision of such committee shall be final In case three members, not contesting

elections, are not available, any Advocate, or Advocates on the State roll of Advocates may be appointed of the committee."

34. First meeting.

Within 15 days from the election becoming final under Rule 31 the Advocate General shall convene a meeting of the Bar Council after giving notice of ten clear days for (1) election of the Chairman and Vice-Chairman; (2) electing Committees; and (3) transacting such other business as the Advocate General may direct. The Advocate General shall preside at the said meeting."

35. Election of Chairman and Vice-Chairman.

(1) The election of the Chairman and the Vice-chairman shall be by ballot to be held in such manner as the Advocate-General may determine :

Provided that in the event of there being more than two candidates, no member of the Bar Council shall be deemed to have been elected as Chairman and Vice-Chairman unless he shall have secured a majority of votes of the members present; and that in case of there being more candidates than two, the name of the candidate receiving the lowest number of votes shall be eliminated after the votes have been first recorded and thereafter the votes shall be taken for the other candidates and the same procedure shall be followed until any candidate receives a majority of votes of those present.

(2) Any dispute regarding the validity of the election of the Chairman or Vice-Chairman shall be decided by the Committee of Advocates referred to in Rule 32, whose decision shall be final."

The relevant rules of the Punjab Rules of 1968 are as below :--

"4. Time and Place of Election: Election of members to the Bar Council shall be held at such place or places, on such date or dates, and during such hour or hours as the Council may appoint. Different dates and different hours may be appointed for polling at different places."

"34. Disputes as to the Validity of Elections :

(1) 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 any supported by an affidavit and delivered to the secretary personally or sent by registered post so as to reach him within 10 days from the date of publication of the results of the election.

(2) The petition shall be accompanied by a fee of Rs. 250/- which shall be paid in cash or sent by Money Order. In case it is sent by M. O. the M. O. receipt shall also be attached to the petition. The fee shall not be refundable.

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

(4) 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.

(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.

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

(i) To dismiss a petition;

(ii) To order recount;

(iii) To declare any candidate to have been duly elected on a recount; (iv) To set aside the election of the candidate who either by himself or through any other person acting with his consent is guilty of corrupt practices.

The relevant Himachal Rules of 1972, as modified and adapted u/s 24 (5) (f) of the State of Himachal Pradesh Act, 1970, are as under :--

"4. Time and place of Election : Election of members to the Bar council shall be held at such place or places, on such date or dates, and during such hour or hours, as the Council may appoint. Different dates and different hours may be appointed for polling at different places."

"34. Dispute as to the Validity of Elections :

(1) 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 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 a fee of Rs. 250/- which shall be paid in cash or sent by Money Order. In case it is sent by M. O., the M. O. receipt shall also be attached to the petition. The fee shall not be refundable.

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

(4) 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.

(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. Explanation : The date means the date on which polling is to be held.

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

(i) To dismiss a petition;

(ii) To order recount;

(iii) To declare any candidate to have been duly elected on a recount;

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

....."

40-44. The Punjab Rules of 1963 were made u/s 15 (2) (a) and (c) to (j) read with Sections 3, 8, 9 and 10 of the Advocates Act, 1961. The subsequent Punjab Rules of 1968 were made u/s 15 (2) (a) and (d) of the Advocates Act, 1961. These rules were adapted and modified, and the aforesaid Himachal Rules of 1973 were made.

45. It would be abundantly clear from Section 15, Sub-section (2) (d) of the Advocates Act, 1961 that the Bar Council could make and in fact they had made separate rules prescribing the manner in which, and the authority by which doubts and disputes as to the validity of (1) an election to the Bar Council, or (2) to the Office of the Chairman or Vice-Chairman, are to be finally decided. In fact in these rules, two categories of elections are contemplated, one for the election of the members to the Bar Council and Second for the election of a Chairman and a Vice-Chairman for which a meeting of the Bar Council is to be called by the Advocate General. The scheme as it permeates in the Rules of 1963 and the Rules of 1968, makes the position very clear in this respect. Therefore, u/s 15 (2) (d) the Bar Council could make two different sets of rules, one to settle the dispute as to validity of election to the Bar Council and the other to settle the dispute as to election to the office of the Chairman or Vice-Chairman. When I proceed to examine the scheme of the Rules of 1963 and the Rules of 1968, I come across very significantly that the latter set of rules were made only u/s 15 (2) (a) and (d) and the subject-matter of these rules is confined to the election of members of the Bar Council and disputes as to the validity of that election. Therefore, these rules have availed of Sub-clause (d) only to the extent it relates to the manner in which, and the authority by which, disputes regarding the election to the members of Bar Council are concerned. In fact the Rules of 1968 did not refer to the subject-matter contained in the rules commencing from Rule 34 of the Rules of 1963. It may therefore, be stated that the Rules of 1968 have repealed and re-enacted Rules 1 to 33 of the Rules of 1963 and these rules have dealt with the election of the members to the Bar Council and disputes relating thereto. In fact in the rules of 1968 there is no rule equivalent to Rules 34 and 35 of the Rules of 1963. These rules specifically deal with the election of Chairman and Vice-Chairman, and the first meeting to be called by the Advocate-General for that election. The Rules of 1963 no doubt mention under their heading Sub-section (d) of Section 15 (2), but that is so because the said rules were comprehensive and contained rules prescribing the manner in which, and the authority by which, disputes as to the validity of an election to the Bar Council and to the office of the Chairman were to be finally decided. These rules

were repealed and re-enacted to the extent the election of a member to the Bar Council was considered and the Rules of 1968 were made with that purpose. Since the manner in which a dispute of an election of member of the Bar Council is also the subject-matter of Sub-section (d), the same was described in the heading of the Rules of 1968. From this it cannot be concluded, in my opinion, that the entire Sub-section (d) was brought within the ambit of the Rules of 1968 for the obvious reason that there is not a single rule which deals with the election of a Chairman to the Bar Council.

46. In the aforesaid Rule 34 of the Rules of 1968, they talk of an Election Tribunal and its constitution is (a) three Advocates whose names are on the State roll, and (b) who are not of less than of 10 years standing. In the corresponding Rule 32 of the Rules of 1963, they talk of a Committee of Advocates and its constitution is (a) three members of the Bar Council of the previous year, and (b) who are not contesting the elections. The difference in the constitution of the two bodies is obvious. In the first case, the three Advocates have to be on the State roll and their standing should not be less than 10 years. In the second case, the three Advocates are required to be members of the Bar Council during the previous year and they should not be contesting the elections. It cannot, therefore, be stated that the constitution of the two bodies is one and the same. In fact they are two different bodies not only named differently in the rules but their constitution is also different. In fact it is admitted case that a Committee of Advocates as contemplated in Rule 32 of the Rules of 1963 has never been appointed to resolve the dispute of the impugned election of the petitioner.

47. The vexed question before us is as to whether the Election Tribunal constituted under Rule 34 of the Rules of 1968 can be construed to be a Committee of Advocates contemplated under Rule 32 of the Rules of 1963. It is true that in the Rules of 1963 both the disputes as to the election of a member to the Bar Council and as to the election of Chairman to the Bar Council were to be resolved by a Committee of Advocates, as is clear from Rule 35. But once the Rules of 1963 were repealed and re-enacted and Rule 34 of the Rules of 1968 was made and was confined to the election of a member to the Bar Council, it would be difficult to import the conception that the Election Tribunal contemplated therein will be the same body as the Committee of Advocates in Rule 32. In fact the framers of the rules have left the constitution of the Committee of Advocates to resolve the dispute as to the election of Chairman, as it was in the Rules of 1963. This they have done purposely, because otherwise they would have made a corresponding rule in the Rules of 1961. The Bar Council of Himachal Pradesh could as well adapt and modify the Rules of 1963 in a manner so that the disputes regarding election of Chairman to the Council could also be decided by the Election Tribunal. But the Chairman of the Bar Council of Himachal Pradesh has not done so. In fact a bare reading of Rule 34 of the Rules of 1968 as well as Rule 34 of Himachal Rules of 1972 makes it clear that the contest has to be of the validity of the election of a candidate declared to have been elected to the Bar Council. Therefore, these rules do not deal with

the validity of the election of a candidate declared 10 have been elected as Chairman to the Bar Council. As such these rules do not apply to the election of Chairman and one has to refer to the relevant rules of the Rules of 1963 in order to decide as to which authority could be appointed to decide the dispute as to the election of Chairman. As I have stated above the Committee of Advocates has not been appointed and it is that committee alone which could decide the present dispute. I am, therefore, of the opinion that the Election Tribunal appointed under Rule 34 of the Rules of 1968 will have no jurisdiction to decide the dispute as to the election of Chairman. For that a Committee of Advocates was required to be appointed under the relevant Rules of 1963.

48. The learned counsel for the respondents brought to his aid Section 8 of the General Clauses Act and asserted that the provisions of that section formidably support his contention. Section 8 of that Act will not apply for the simple reason that the Rules of 1968 have not repealed or re-enacted the provisions of the Rules of 1963 containing the election to the office of Chairman and an authority to be appointed to decide disputes arising therefrom. When there is no repeal or re-enactment, how can one bring in Section 8? Besides that, there is no reference to a Committee of Advocates "in any other enactment or in any instrument" but the reference is to an Election Tribunal in Rule 34 which has repealed and re-enacted the provisions contained in the Rules of 1963 which related to the election of a member to the Bar Council. This also completely dislodges any application of Section 8. That apart, a different intention obviously appears in the Rules of 1968 because they talk of an Election Tribunal which is a different body than the Committee of Advocates as its very constitution indicates. Therefore, no assistance can be obtained from Section 8 of the General Clauses Act.

49. There was yet another objection for the constitution of the Election Tribunal and it was stated that it was appointed on 1st October, 1972 while it should have been appointed on or before the date of which the time of the election was fixed under Rule 4. The learned counsel submitted that the adaptation and modification made by the Bar Council of Himachal Pradesh under Rule 34 of the Rules of 1968 was, that the date was defined under an explanation as the date on which polling is to be held. According to the learned counsel, this explanation could not be provided as no prior concurrence of the Bar Council of India was obtained. To me it appears, the controversy is of no avail to the petitioner. Even if this explanation is accepted as correct the date shall mean the date on which polling is to be held and that is exactly the date specified in Rule 4 which is referred to in Clause (5) of Rule 34 of the Himachal Rules of 1972. In Rule 4 aforesaid the date, time and place of election is nothing but the date, time and place of the polling. Therefore, the explanation containing definition of the date in the Himachal Rules of 1972 is nothing but reproduction of Rule 4 and the question still remains if the Election Tribunal was appointed on or before the date on which the time of election, was fixed under Rule 4. That was in fact done because the voting took place on 23-10-1972 and 28-10-1972 while the Election

Tribunal was constituted on 1-10-1972. Therefore, no exception can be taken on this account to the appointment of the Election Tribunal.

50. In view of my findings above, the Election Tribunal had obviously no jurisdiction to decide the dispute as to the Election of the petitioner to the office of the Chairman. As such the decision of the Election Tribunal is struck down as without jurisdiction and hence a nullity. The writ petition is allowed and the order of the Election Tribunal dated 9-9-1974 (Annexure P.8) is quashed.

51. In view of the special circumstances arising in the case, no order is made as to costs.