
(2013) 05 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19943 of 2012

Gulab Shankar Ghode

APPELLANT

Vs

The State Bar Council of M.P.

RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Madhya Pradesh Adhivakta Kalyan Nidhi Adhiniyam, 1982 — Section 16, 17

Citation : (2013) 05 MP CK 0007

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Parag S. Chaturvedi, for the Appellant; Sameer Seth, Learned Counsel for Respondent Nos. 1 and 3 and Shri Rahul Rawat, Learned Counsel, for the Respondent

Judgement

Sanjay Yadav, J.—I.A. No. 994/2013 and 1399/2013 are taken up for consideration. Whereas I.A. No. 994/2013 is at the instance of respondent No. 1, I.A. No. 1399/2013 has been filed by respondent No. 3 for vacating the stay order dated 29.11.2012. Petition is directed against the order dated 4.11.2012, passed by Secretary, M.P. State Bar Council; whereby, ad hoc election committee has been constituted to get the election of Bar Association Multai conducted. The said order has been questioned on the anvil that it is beyond the power of the M.P. State Bar Council to appoint an ad hoc committee for conducting the election of Bar Association.

2. While admitting the petition on 29.11.2012 and taking into consideration the decision rendered in the case of R.N. Tiwari Vs. State Bar Council of Madhya Pradesh and Others,] it was directed that further proceedings in the impugned election shall remain stayed till next date of hearing.

3. Interlocutory applications under consideration have been filed seeking vacating of said stay order. It is contended on behalf of respondent No. 1 and 3 that ad hoc committee for conducting election of Multai Bar Association was constituted in wake of the fact that since 2009 no election had taken place and

bye-law 13 empowers the State Bar Council to constitute an ad hoc committee to hold the election. It is further contended that the decision rendered in case of R.N. Tiwari (supra) is not applicable in the instant case as the case of R.N. Tiwari (supra) was decided on the basis of admitted facts that there was no provisions empowering the State Bar Council to interfere in the election of Bar Association.

4. Contentions are opposed by learned counsel for the petitioner who has placed reliance on the provisions contained in the Madhya Pradesh Adhivakta Kalyan Nidhi Adhiniyam, 1982. Relying upon the provisions contained under Sections 16 and 17, it is contended by learned counsel for the petitioner that the extent of power of State Bar Council to control the functions of Bar Association is limited within the four corners as prescribed under Sections 16 and 17 of 1982 Act which does not empower State Bar Council to interfere in respect of election process. Reliance is also placed on R.N. Tiwari (supra).

5. Considered the rival submissions.

6. Section 16 of the 1982 Act provides for recognition and registration of Bar Association. Whereas Section 17 stipulates the duties of Bar Association; wherein the Bar Associations are under obligation to intimate to the Bar Council any change of the office bearers of the association within fifteen days from the date of such change; any change in the membership including admissions and re-admissions within thirty days from the date of such change" the death, retirement, cessation or suspension of practice of any of its member within thirty days from the date of the happening of the event or on receiving of the intimation thereof, whichever is later and such other matters as may be required by the Bar Council, from time to time.

7. The aforesaid provisions came up for consideration in R.N. Tiwari (supra) wherein it was observed by the Division bench:

4. The Act of 1982 embodies the statutory scheme for establishment of a Welfare-fund for Advocates. Bar Association have been given some role in this behalf. Section 16 empowers the State Bar Counsel to grant recognition to a Bar Association or to withdraw recognition. The Association is required to apply for recognition and pay annual subscription or other fees as may be determined. Every application shall be accompanied by the Rules or bye-laws and every particulars referred to u/s 16 of the Act of 1982. The duties of Bar Association are enumerated in Section 17. There is nothing in either of these provisions or any of other provisions of the Act of 1982 which can be read as conferring on the Bar Council any power to interfere in the election process. Significantly, this Act does not confer on the Bar Council any power to make rules.

8. Our attention is invited to rules framed by the State Bar Council for the recognition of Bar Associations. Rule 3 contemplates certificate of recognition being granted by the Bar Council to the Bar Association on compliance with the conditions enumerated therein and on application in the prescribed form. The Bar Association must have a constitution and that must receive the approval for the

Bar Council. The Bar Association must work regularly and its accounts must be maintained properly and audited annually. List of membership as well as list of office bearers as on 1st January must be sent to the Bar Council by 31st Jan., every year. The Bar Association must be prepared to execute the scheme sponsored by the Council and send such reports and information as may be desired by the State Bar Council. Rule 4 relates to withdrawal of recognition. The Bar Council may at any time withdraw its recognition. The circumstances under which recognition can be made are not exhaustively set out. If the Bar Association is not working properly or if it has defaulted in compliance of the circulars of Bar Council, recognition may be withdrawn.

6. The Act of 1982 and the Rules referred to above may empower the Bar Council to grant or withdraw recognition to Bar Associations. Recognition may not be granted to a Bar Association which does not function properly or which does not function under approved constitution or bye-laws. It is one thing to say that recognition can be withdrawn and it is quite a different thing to say that the Bar Council can interfere in the electoral process. There does not appear to be any statutory foundation for the claim of the Bar Council that it has power to interfere in the electoral process. Learned counsel for the Bar Council submitted that the proposed bye-laws of the Association have not been approved and the election was scheduled to be held under the new-bye-laws and therefore if the election process is allowed to continue, there may be risk of the Bar Council withdrawing the recognition. We are not for the present concerned with the amplitude of such power vested in the Bar Council, Assuming that the Bar Council has such power, that cannot comprehend within its scope the power to interfere in the electoral process.

9. Careful reading of finding arrived at by Division Bench in R.N. Tiwari (supra) would reveal that no provision was shown to be in existence empowering the State Bar Council to intervene in the matter.

10. The facts in the present case; however, presents different picture. It is not disputed by the petitioner that bye-laws have been framed by the Multai Bar Association and they are governed by the same. Bye-law 13 of the Bye Laws (brought on record as Annexure P-1) deals with the election process. Clause stipulates:

11. Thus, Multai Bar Association in case of expiry of period and in absence of any election being held has empowered the State Bar Council to appoint an ad hoc body for holding the elections. This fact is not disputed by the petitioner in reply filed to application vacating stay. In paragraph 4 it is stated "that, the provision of 13 of the constitution of Multai Bar Association has provide the authority of respondent No. 1 to appoint the adhoc committee for purpose of the election". The only objection seems to be that the person whose membership has been cancelled are being appointed as member of ad hoc committee. That, the aforesaid provision make the present case distinguishable from the case of R.N. Tiwari (supra).

12. Therefore, it is prima facie established that it is within the power of State Bar Council to constitute an ad hoc committee for holding election. In the case at hand it is also not in dispute that after 2009 no elections of Multai Bar Association has been held. Therefore, as per clause 13 imperative it was for a State Bar Council to step in and appoint an ad hoc committee.

13. In respect of the contentions put forth on behalf of the petitioner that ad hoc committee constituted by the State Bar Council, comprises of the persons who have been dispelled from the membership, which will effect fair election. To rule out such apprehension the respondent No. 1 would reconsider for constitution of an ad hoc committee having existing members.

14. Subject to above, since the petitioner has failed to make out a prima facie case and that the State Bar Council have the authority to constitute ad hoc committee, the ex parte interim stay granted on 29.11.2012 is vacated.

15. Let the matter be now set out for hearing in due course. C.c. as per rules.