

(2018) 12 BOM CK 0025
In the Bombay High Court
Case No : Writ Petitioner No. 13171 Of 2018

Gulabchand @ Gulabrao Shivram Gawand And Ors	APPELLANT
Vs	
Thane Dist. Courts Bar Association Thru Presidentand Ors	RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Constitution of India, 1950 — Article 142, 226
Rules and Regulations of Supreme Court Bar Association, — Rule 18

Citation : (2018) 12 BOM CK 0025

Hon'ble Judges : B. P. Dharmadhikari, J;Sarang V. Kotwal, J

Bench : Division Bench

Advocate : Prasad S. Dani, Santosh D. Patil, Pritiviraj S. Gole, Surel Shah, Swaroop Karande, Makarand Bakore, Amit Sale, Shruti D. Vyas, Kailas Dewal, J . M. Joshi, Walawalkar, Tushar Sonawane, S. M. Oak, Akshay Deshpande

Final Decision : Disposed Off

Judgement

Sarang V. Kotwal, J

1. Rule. Rule is made returnable forthwith. The matter is heard finally with consent of the parties.

2. This Petitioner is preferred by four Advocates practising in the Thane District and Sessions Court. The Petitioner is filed seeking certain directions in respect of conduct of the ensuing elections of the Thane District Court Bar Association (for short, 'TDCBA') for the year 2018-2020. TDCBA is impleaded as the Respondent No.1 in the Petition. The Respondent No.2 is the Bar Council of Maharashtra and Goa, the Respondent No.3 is the Bar Council of India and the Respondent No.4 is the State of Maharashtra. There are some intervention applications filed in the instant Petitioner.

3. Substantive prayers in the Petitioner are as follows :

"(a) By an appropriate writ/order/direction, of this Hon'ble Court, the Respondent No.1 be directed to conduct the ensuing elections for the year 2018-2020 in

accordance with the principle of "One Bar, One Vote".

(b) By an appropriate writ/order/direction, of this Hon'ble Court, the Respondent No.2 Bar Council of Maharashtra and Goa and the Respondent No.3 Bar Council of India, be directed to implement the said principle of "One Bar, One Vote" throughout the State of Maharashtra and Goa and the elections to the Bar Associations be directed to be held strictly as per the principle and/or rule of 'One Bar, One Vote'."

4. The case of the Petitioners, in nutshell, is as follows :

4.1 The Petitioner Nos.1 and 2 are practising for more than 35 years and the other Petitioners are practising since more than 10 years. They are members of the Respondent No.1. It is averred in the Petitioner that many Advocates were practising in the vicinity of Thane and were also members of other bar associations, apart from being members of the Respondent No.1. It is the case of the Petitioners that many such Advocates are made members of the Respondent No.1 mostly by contesting candidates or interested persons with sole intention of creating a vote bank in the elections. It is further pleaded in the Petition that the members of the Respondent No.1 decided to constitute a committee comprising of 7 senior members who were to consider the appropriate amendment to the existing constitution of the Respondent No.1 to propagate the principle of 'One Bar, One Vote'. A draft was prepared in that behalf and was published on the notice-board of the Respondent No.1 inviting objections to the proposed amendment. According to the Petitioners, for a period of one month, no member had submitted any written objection to the proposed amendment and the amendment was decided to be passed in the Special General Body Meeting which was to be convened for the said purpose.

4.2 On 14/08/2018, 151 members of the Respondent No.1 had written a letter to the committee communicating approval for the purpose of introducing the principle of 'One Bar, One Vote'. The Special General Body Meeting was convened on 11/09/2018 for implementing these changes in the constitution. A few more changes were proposed through the amendment and it was decided that such suggestions should be forwarded to the constitutional committee for its consideration. The meeting was postponed to a further date to reconsider the fresh amended draft. Thereafter, the committee again submitted a fresh draft of proposed amendment after considering these suggestions. The adjourned meeting was kept on 13/11/2018. According to the Petitioners, on 13/11/2018, the meeting was not conducted peacefully and there was a dispute on this issue. It is the case of the Petitioners that during the said meeting, the members who are described by the Petitioners as 'outside members', tried to take charge of the meeting forcefully. It appears that the proposed amendment for 'One Bar, One Vote' was not passed and no decision was taken on that issue.

4.3. According to the Petitioners, the absence of the implementation of the principle of 'One Bar, One Vote' would lead to a situation where all office-bearers

of any given Bar Association could comprise of those regularly practising elsewhere and their loyalty would be suspect in the event of conflicting positions of different bar associations. It is further the case of the Petitioners that, it would be almost impossible to pass any resolution in respect of the issues raised by the members of the Respondent No.1.

4.4 The Petitioners have submitted that the decision rendered by the Hon'ble Supreme Court and different High Courts leaves no option to the Respondent No.1 but to implement the principle of 'One Bar, One Vote'.

5. It appears that there is a serious conflict on this issue amongst the members of the Respondent No.1. No reply is filed by the Respondent No.1 explaining the prevailing situation.

6. Apart from these Respondents mentioned above, there are Civil Applications preferred by the intervenors. Civil Application No.2538 of 2018 is preferred by the Applicants who are members / life members of the Respondent No.1 as well as Navi Mumbai Court Bar Association. Civil Application No.2537 of 2018 is preferred by the office-bearers of Bhiwandi Advocates Bar Association. They are also members of the Respondent No.1. The learned Senior Counsel for the Petitioners has submitted that he has no objection if these intervenors are heard in this Petition. Apart from them, the two Returning Officers Mr. Abhyankar and Mr. Duduskar who were appointed for the purposes of the proposed elections of the Respondent No.1, were also heard through their respective Counsel.

7. By an additional Affidavit, the Petitioners have brought subsequent events on record as follows :

7.1 On 27/11/2018, one of the two Election Officers Mr.Abhyankar issued a notification that the elections should be held as per the principle of 'One Bar, One Vote'.

7.2 On 28/11/2018, the other Election Officer Mr. Duduskar issued a notification annulling the order passed by Mr. Abhyankar on 27/11/2018.

7.3 On 28/11/2018, again Mr.Abhyankar issued another notification mentioning that the notification issued by him on 27/11/2018 continued to bind the elections.

7.4 On the same day, Mr.Duduskar issued another notification declaring that the notification issued by Mr.Abhyankar should be ignored and that the members would not be required to give any declaration in respect of 'One Bar, One Vote'.

7.5 Thus, it can be seen that there is utter chaos and confusion prevailing at present in respect of conduct of elections of the Respondent No.1.

8. In this background, the Petitioner was argued before us. We have heard the learned Counsel for respective parties. Mr. Dani, learned Senior Counsel, led the arguments in support of the application of principle of 'One Bar, One Vote'. The rival group was led by Mr. Walawalkar, learned Senior Counsel, in contending that the said principle should not be applied to the present elections as the

constitution of the Respondent No.1 was not amended to include the rule of 'One Bar, One Vote'.

Mr. Dani, learned Senior Counsel appearing for the Petitioners, relied on the Judgments of the Hon'ble Supreme Court in the case of Supreme Court Bar Association and Ors. Vs. B. D. Kaushik and Ors. (2011) 13 SCC 774 Mr. Dani further relied on the Judgment of a Division Bench of the High Court of Delhi in the case of P. K. Dash and Ors. Vs. Bar Council of Delhi and Ors. AIR 2016 Delhi 135 Mr. Dani also relied on the decision of the High Court of Madhya Pradesh (Indore Bench) in the case of Amol Shrivastava and Ors. Vs. Bar Council of India and Ors. Writ Petitioner No.22635/2017 (PIL), decided on 14/02/2018.

10. In the case of B. D. Kaushik (supra), the Hon'ble Supreme Court decided the question of validity of Rule 18 of the Rules and Regulations of Supreme Court Bar Association. The amended Rule 18 incorporated the principle of 'One Bar, One Vote'. The implementation of the said rule was challenged before a Civil Judge in Delhi in a civil suit. By an interim order, the learned Civil Judge had stayed the implementation of the said rule. The said order was challenged before the Hon'ble Supreme Court and while setting aside the order of the learned Civil Judge granting stay, the Hon'ble Supreme Court discussed various facets of the principle of 'One Bar, One Vote', taking into consideration the prevailing situation in the Supreme Court Bar Association. The Hon'ble Supreme Court took note of the fact that many Advocates were not regularly practising in the Supreme Court and were practising at far away places, these Advocates were members of their local association as well as the Supreme Court Bar Association. In paragraphs 28, 29, 69, 70 and 71, the Hon'ble Supreme Court has observed thus :

"28. There is no manner of doubt that court annexed Bar Associations constitute a separate class different from other lawyers associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognized by the concerned court. Court annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and Bar are like two wheels of a chariot and one cannot function without the other. The court annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practising in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practising in the court, parking place, canteen besides several other amenities. In the functions organized by the court annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice- versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular

practitioners are treated as officers of the court and are shown due consideration.

29. Enrollment of advocates not practising regularly in the court is inconsistent with the main aim and object of the Association. No court can provide chambers or other facilities for such outside advocates, who are not regular practitioners. Neither the Association nor the court can deal with them effectively if they commit any wrong. There are sufficient indications in the Memorandum of Association and the Rules and Regulations of SCBA, which indicate that the Association mainly tries to promote and protect the privileges, interest and prestige of the Association and to promote union and cooperation among the advocates practising in the court and other associations of advocates...

69. The learned counsel has pointed out that the SCBA is facing a crises today, because of the induction of the vast number of members who do not practise regularly in the Supreme Court of India and, therefore, have no interest whatsoever in the function of the Apex Court or in the reputation, prestige and well being of the SCBA whereas, on the other hand, the sole objective of such persons is to ensure that their respective sponsor(s), who paid their subscription and entrance fee, would be elected to one of the posts of the SCBA, including the post of SCBA President. The learned counsel has expressed apprehension that the day may not be far of when the entire set of office bearers of the SCBA may be persons with no regular practice in the Supreme Court of India and who may have their regular practice in other courts in Delhi or even in the adjoining towns or even in a city as far away from Delhi as Chandigarh.

70. The learned counsel argued that the SCBA has to shoulder great responsibility in regard to the effective functioning of the Supreme Court itself, the dispensation of justice and to represent the regular practising members of the Bar from time to time. According to the learned counsel the present situation, which virtually renders the regularly practising members strangers in their own court can only be remedied if this Court were to step in, to exercise its vast powers under Article 142 of the Constitution, to ensure that the functioning of the Court itself is not affected by reason of the huge influx, into the SCBA, of advocates who have no interest in the functioning of the Supreme Court, its Bar or its association.

71. The learned counsel asserted that the circumstances prevailing are such that it is imperative for the well being of the institution, as well as Apex Court of the country itself, and its regularly practising members to ensure that it is only the regularly practising members who will be eligible to cast votes at the SCBA elections. For this purpose the learned counsel has suggested that it is essential that the right to vote in the SCBA elections is restricted to the categories of persons enumerated in the Interim Board of Management circular dated 22-3-2010, the relevant portion whereof has been extracted in the written submissions."

The suggestions of the learned Senior Advocate referred to in the paragraphs

above, were approved by the Hon'ble Supreme Court and finally the amended Rule 18 embodying the principle of 'One Bar, One Vote' was upheld.

11. Learned Senior Counsel Mr. Dani submitted that the law laid down by the Hon'ble Supreme Court in the case of B. D. Kaushik (supra) was binding and therefore, even the Respondent No.1 was bound to follow the same principle of 'One Bar, One Vote'.

12. On the other hand, Mr. Oak submitted that the Judgment in B. D. Kaushik's case (supra) was rendered in the facts of that case and the Hon'ble Supreme Court had not declared it as law for all the associations in India. Mr. Oak further added that the principle of 'One Bar, One Vote' was a sound principle and should be adopted but only after amendment of the rules in that behalf framed by the Respondent No.1. Mr. Oak therefore submitted that the ensuing elections declared must be allowed to take place and the amendment of such rules can be considered afterwards.

13. Mr. Dani has relied on the Judgment of High Court of Delhi in the case of P. K. Dash (supra). In that case, the Petitioners therein had contended that the elections of the bar associations should be conducted on the principle of 'One Bar, One Vote'. While considering the case of the Petitioners therein, the Delhi High Court relied on the Judgment of B. D. Kaushik's case (supra). The Division Bench of Delhi High Court has taken into consideration the argument that the Supreme Court formulation in the case of B. D. Kaushik's case (supra) was contextual because the SCBA had resolved to introduce such a rule and the Apex Court exercised its power under Article 142 of the Constitution of India. After considering all the arguments, the Division Bench of the High Court at Delhi upheld the principle of 'One Bar, One Vote' and issued certain directions which involved furnishing of a declaration by a member that he was exercising his right to vote only in one Bar Association.

14. Similar stand was taken by a Division Bench of the High Court of Madhya Pradesh in the case of Amol Shrivastava (supra) and the principle of 'One Bar, One Vote' was made applicable to the members of the High Court Bar Association, Indore / District Bar Association. In the said Judgment, it was observed that the Division Bench only sought to implement the directions of the Hon'ble Supreme Court in the case of B. D. Kaushik's case (supra).

15. Both the High Court of Delhi and High Court of Madhya Pradesh have held that since the Bar Association in those cases before them performed public duty, they were amenable to the writ jurisdiction under Article 226 of the Constitution of India. In any case, none of the parties before us have raised any issue that this Court cannot issue a writ under Article 226 of the Constitution of India to the Respondent No.1.

16. Mr. Walawalkar submitted that the election process has begun and therefore,, this Court should not interfere at this stage. We have noted down the events which have occurred in the election process and in particular, the chaotic

situation which is prevailing at present. Therefore, in our opinion, this is a rare case which calls for our interference though the election process has begun. In view of discussion in the body of this Judgment and chaotic situation noted supra, we find that polling on 10/12/2018 as scheduled, is not possible. Elections need to be conducted in cordial atmosphere and in adherence to the principle of 'One Bar, One Vote'. Hence, it is in the interest of Bar Association that the elections are rescheduled at an earliest possible opportunity.

17. The Bar Council of India has already passed a resolution dated 21/09/2015 which reads thus :

"The Council has discussed and deliberated on the issue of one bar one vote once again. The matter is sub-judice before the Hon'ble Delhi High Court on the basis of law laid down by Hon'ble apex Court in the case of SCBA Vs B. D. Kaushik, the Bar Council of India also approves the rule of one Bar one Vote as it will be good for the health of the institution and the associations. Let a copy of this resolution be issued to all the Bar Associations of the country without delay."

18. The Bar Council of Maharashtra and Goa, by a letter dated 13/10/2015, has issued a letter to all the Taluka and District Bar Associations, which reads thus :

"In pursuance to the subject noted above, it is informed to all Bar Associations that Hon'ble Supreme Court in Civil Appeal No.3401/2003 between Supreme Court Bar Association Vs A. K. Manchandra has considered the place of voting of Advocate in particular Bar Association. In the said matter, at the time of preparation of list of Bar Association, each member shall give a written intimation to the Bar Association whether he is a member of another Bar Association. It shall be mandatory that a member whose name is included in the said list, to give permanent declaration that he would vote only in a particular Bar and would not vote in any of the election of any Court or Tribunal and vice versa. The copy of this declaration shall be displayed on the Notice Board. It is further considered that once such declaration has been given, it will be valid till it is revoked.

The said subject has been considered by the Bar Council of India and has resolved vide its resolution No.169/2015 thereby approves the rule of "one Bar one Vote" as it will be good for the health of institution and the association. It was further resolved to issue copy of this resolution to all Bar Associations in the Country for its compliance and for doing the needful."

19. Mr. Walawalkar, on instructions, stated that the said letter of the Bar Council of Maharashtra and Goa was never received by the office-bearers of the Respondent No.1.

20. Having given our thoughtful consideration to the submissions made before us, the Judgments cited and the situation prevailing in respect of the elections of the Respondent No.1, we are of the opinion that the principle of 'One Bar, One Vote' must be implemented even in this elections of the Respondent No.1. The Hon'ble Supreme Court has emphasized the need of implementation of such

principle. The Hon'ble Supreme Court has observed that embodiment of such principle in the rules does not affect any fundamental rights of the Advocates who are members of more than one Bar Associations. Though the said Judgment was delivered in the case of Supreme Court Bar Association, the observations of the Hon'ble Supreme Court are in the nature of obiter and have binding force. A Division Bench of the Madhya Pradesh High Court has already held so and we are in respectful agreement with the said observation. The Division Bench of Madhya Pradesh High Court had clarified that their order only sought implementation of the directions of the Hon'ble Supreme Court in the case of B. D. Kaushik (supra). Our order also cannot take any other course and by this order, we are only seeking implementation of the directions of the Hon'ble Supreme Court in the case of B. D. Kaushik (supra). The High Court of Delhi has also taken a similar view and has issued certain guidelines and we see no reason to take a different view.

21. The contention of the intervenors who are members of other associations as well, apart from being members of the Respondent No.1 is that, their valuable rights are affected if they are not allowed to vote in the elections of the Respondent No.1. It is their contention that though they are practising in the Courts outside Thane city, they also come regularly to Thane District and Sessions Court for conducting their matters and they also need the facilities which are available to the members of the Respondent No.1. In the light of the observations of the Hon'ble Supreme Court, such Advocates who are practising in other Courts and are members of other Bar Associations as well as of the Respondent No.1, will have to make a choice for casting their vote. Such restrictions would not be unreasonable as is observed by the Hon'ble Supreme Court in the case of B. D. Kaushik (supra).

22. In view of the above discussion, we issue the following directions :

(i) The elections of the Respondent No.1 shall be held according to the principle of 'One Bar, One Vote'.

(ii) A member desirous of casting his vote in the elections of the Respondent No.1, shall be required to furnish a declaration that he will cast vote only in the elections of the Respondent No.1 and such declaration shall be in effect for a period of two years. Such a member shall not cast his vote in any other election of any other Bar Association during the period for which such declaration is valid.

(iii) The election programme which is already declared for the Respondent No.1, is set aside. The elections shall be held as expeditiously as possible after complying with the above directions.

(iv) The Rule is made absolute in the aforesaid terms.

(v) Civil Application No.2512 of 2018 for amendment is allowed. Applicants are permitted to add Respondent Nos.5 and 6 in the Petition as per prayer clause (b) made in the said Application. Necessary amendment be carried out forthwith. We

have heard respective Counsel for Respondent Nos.5 and 6.

(vi) Other Civil Applications are disposed of in view of discussion supra.