

(2016) 09 AHC CK 0219
In the Allahabad High Court
Case No : Writ C No. 42195 of 2016

Harbansh Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Societies Registration Act, 1860 — Section 25(2)

Citation : (2016) 9 ADJ 464 : (2016) 6 AILLJ 174 : (2016) 4 UPLBEC 2764

Hon'ble Judges : Dilip Gupta and Manoj Kumar Gupta, JJ.

Bench : Division Bench

Advocate : Narendra Singh, Rajiv Sharma, V.C. Mishra and Vikrant Pandey, Advocates, for the Petitioners; C.S.C, Anoop Trivedi and Manish Goyal, Advocates, for the Respondents; Sadhna Upadhyaya, Sant Sharan Upadhyay and Vijay Chandra Srivastava, Advocates, for the Pe

Final Decision : Dismissed

Judgement

1. Writ Petition No. 42195 of 2016 (first petition) has been filed by 22 ordinary/life members of the High Court Bar Association (Bar Association) with the following prayers :-

"(i) Issue a writ, order or direction in the nature of mandamus directing the Elders Committee to cancel the result declared in the meeting convened by the Chief Election Officer, Shri V.M. Zaidi in utter violation of the mandate of Rule 55 of the Bye-laws.

(ii) Issue a writ, order or direction in the nature of mandamus directing the Elders Committee to re-prepare the electoral role of the Association consisting of the Ordinary Members as well as the Life Members in accordance with the various decisions of this Court, Apex Court and provisions of the Bye-laws including the principles of "One Vote One Bar".

(iii) Issue a writ, order or direction in the nature of mandamus directing the

Elders Committee to appoint new Chief Returning Officer excluding those who were connected with the election for the members of the Governing Council of the Association 2016-17.

(iv) Issue a writ, order or direction in the nature of mandamus directing the Elders Committee to hold the fresh re-pole for electing the office bearers of the Governing Council of the Association adhering the direction issued by the High Court as well as the Apex Court from time to time.

(v) Issue a writ, order or direction in the nature of mandamus referring the matter to the Bar Council of U.P. under Section 35 of the Advocates Act for taking action against the Advocates involved in the misconduct of the election process of the Association as well as violation of Rules and direction of this Hon"ble Court and the Apex Court issued from time to time.

(vi) Issue a writ, order or direction in the nature of mandamus derecognizing the constitution of the Governing Council of the Association issued by Shri V.M. Zaidi and handing over charge to them in an illegally convened meeting of the General Body on 1.9.2016 in violation of Rule 55 whereby the Chairman Elders Committee alone was entitled to convene the same and declare the result.

(vii) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to ensure compliance of the various directions issued by this Hon"ble Court as well as Apex Court with regard to the membership of the various Annex Bar Association, all over the State of U.P.

2. Writ Petition No. 42660 of 2016 (Second Petition) has been filed with the following prayers :-

"(i) Issue a writ, order or direction in the nature certiorari setting aside the election of the Executive Body of High Court Bar Association held on 10th of August 2016 as the same is illegal and in serious contravention of the HCBA Bye-laws that have been upheld by order dated 8.5.2015 passed by the Hon"ble Full Bench [Seven Judges decision Annexure No. 9].

(ii) Issue, a writ order or direction in the nature of "Mandamus";

(a) constituting "Implementation Committee" to hold the HCBA Election 2016, afresh under monitoring of the Hon"ble High Court as was done by Hon"ble Division Bench in the case of District Court Bar Association matter Inre: Pankaj Kumar Singh (Annexure No.16 to the Writ Petition), following the order dated 8.5.2015 passed by the Hon"ble Full Bench [Seven Judges decision Annexure No.9]

(b) Directing the Election Committee 2016 of the High Court Bar Association to prepare comprehensive Voter List with photographs, addresses, e-mail, and phone numbers of the members/voters, after obtaining their affidavits to the effect that they have not voted in any other Court Annexed Bar Association in Allahabad or any other district in the State of Uttar Pradesh or any other States

in India.

(c) Directing preparation of comprehensive tentative voter list for elections High Court Bar Association Allahabad 2016 as stated above so that it should be ready for scrutiny by the members on the date declaring the final date for holding elections.

(d) That the objections be invited and the final voter list be published and conspicuously displayed and conveyed to the members of the bar and also be sent on e-mail of the ordinary members, at least 20 days in advance of the scheduled date for elections.

(e) To hold the elections by means of deploying Electronic Voting Machine in the Library Hall, in order to save the exorbitant expenditure in constructing tamboos (tents/tin sheets structures for elections of the Association.

(f) To form a committee including Hon"ble Judge(s) for full Digitalization of the High Court Bar Association making all information available online/e-mail viz; Voter List, Member Details, Executive Committees, Annual Budget, Minutes of All Meetings of the Executive Committee/Governing Council, Income and Expenditure Details, Legal Seminars, Cultural Functions Invitations, Visit of Dignitaries and Luminaries and other important information of the like, for ready reference/information of the members of the High Court Bar Association.

(iii) Issue, a writ order or direction in the nature of "ad interim mandamus" calling for the records of the HCBA viz. the list of members whose membership subscription dues have been cleared after 11.07.2016.

(iv) Issue, a writ order or direction in the nature of "ad interim mandamus" restraining the newly elected office bearers of Governing Council Body High Court Bar Association Election 2016 from functioning as such, and to give the charge of the HCBA Executive Council to Elders Committee until fresh elections are conducted as per the Mandamus prayed for in Prayer No. 2(a), 2(b), 2(c), 2(d), 2(e) & 2(f) during the pendency of the present Writ Petition before this Hon"ble High Court, so as to secure the ends of justice."

3. Rule 2 (i) of the Rules of the Association provides that the Association is a society registered under the provisions of the Societies Registration Act, 1860 (the Act) and shall consist of all Office bearers and the Members of the Governing Council and the General Body of the Association and also those who become Members of the Association by or under these Rules and continue to be Members. Rule 4(d) provides for constitution of a General Body comprising of all the Members of the Association.

4. Rule 5 provides that the Association shall have Honorary Members, Life Members, Non-resident Members and Ordinary Members.

5. Rule 15 deals with the Office-bearers and is as follows:-

"The Association shall have the following office-bearers who shall be elected

every year as per decision in the Annual General Meeting.

(i) President.

(ii) Senior Vice President.

(iii) Five Vice Presidents.

(iv) Honorary Secretary

(v) Treasurer

(vi) Three Joint Secretaries one of whom shall be in charge of administration, second in charge of the Library and a third in charge of the publication.

(vii) A Joint Secretary Women from amongst women Members of the Association to be elected by all the voters, to look after the women Rooms. Fifteen Members of the Governing Council."

6. Rule 16 dealing with the Governing Council is as follows:-

"The affairs of the Association shall be managed and its entire business including the investment of its funds shall be conducted by an under the control of the Governing Council consisting of :-

(i) Office bearers elected under rule 15.

(ii) The Advocate General, Uttar Pradesh will be an Ex-Officio member having right to vote.

(iii) The Former Presidents & Hony. Secretaries of the Association shall be Ex-Officio, member of the Governing Council having right to vote."

7. Rule 18 deals with the term of office and is as follows:-

"The Officer-bearers of the Association and members of the Governing Council shall hold the office till the completion of one year from the date of their election. However, in extra ordinary circumstances they may continue for a further period of one month more with the prior approval of Elder's Committee for the reasons to be recorded, within which they will get the election completed failing which the administration of the Association will vest in the Elders Committee who will hold the election as per bye-laws within another one month.

Explanation :- Date of election is date when the new Governing Council takes over the charge."

8. Rules 55 deals with the procedure of election and is reproduced :-

"The meeting of the Annual General Body of the Associate will be convened at least a month before the expiry of the term of the Officer Bearers and shall fix a date for Election.

The Elders Committee will act as Panel of the Returning Officers to hold Election

and be entitled to include any other Member of the Association; provided one is not contesting the Election and the result of the Election shall be declared in the Meeting of the General Body so convened by the Elders Committee.

In order to meet the heavy burden of expenditure of the Bar Association, the Elders Committee will also fix security money for various posts, which shall not be refundable after the nomination is filed and found valid Only Ordinary Members, who have put in 3 years of continuous Membership will be entitled to vote and participate in election provided their subscription is paid till before the month in which annual General Body Meeting is fixed.

The person, who has held Officer twice, will not be entitled to contest the Elections in sequence; however, he can re-contest after a gap of one year."

9. The first petition has been filed alleging that the last election of the Governing Council was held on 9 July 2015 and it took charge on 15 July 2015. The tenure of one year, therefore, expired on 15 July 2016. The meeting of the General Body for the purpose of holding fresh election for the year 2016-17 was called on 11 July 2016 and 10 August 2016 was fixed for holding the election in the said meeting. The Elders Committee nominated a Senior Advocate as the Chief Returning Officer and a team of five Assistant Returning Officers for conducting the said election. The Chief Election Officer declared the election programme which is as follows :

Sr. No.

Date

Programme

1

27.7.2016

Publication of voter list

2

27.7.2016 to 30.7.2016

Issuance of nomination form from 10:00 A.M. to 4:00 P.M.

3

28.7.2016

Filing and disposal of objections to the voter list.

4

29.7.2016

Publication of final voter list.

5

29.7.2016 to 30.7.2016

Security money deposit and filing of nomination form from 10:00 to 5:00 P.M.

6

31.7.2016

Scrutiny of nomination papers

7

31.7.2016

Withdrawal of nomination till 4:00 P.M.

8

1.8.2016

Publication of final list of candidates.

9

2.8.2016

Objection to list of candidates

10

3.8.2016

Disposal of objections to the list of candidates.

11

10.8.2016

Election will be held from 10:00 A.M. to 5:00 P.M.

The election took place on 10 August 2016 in which it is alleged that about 8160 votes were cast.

10. The main averments contained in the first petition regarding the illegality in the holding of the election are as follows :-

(i) The Annual General meeting should have been convened a month before the expiry of the tenure of 15 July 2016 and only those resident members/life members who had cleared the dues before a month of the holding of the Annual General Body meeting and completed three years regular membership were only entitled to vote but the members were permitted to clear the dues even after 15 July 2016 by the Chief Returning Officer. This deposit of membership fees could at best have continued the membership of the defaulting members but would not entitle them to participate in the election;

(ii) The petitioners and large number of members for the Bar Association had complained of the biased attitude of the Chief Election Officer towards a particular candidate and though not more than six thousands voters were actually cast but the number of votes cast was stated to be 8160;

(iii) Rule 55 provides that the result of the election shall be declared in the meeting of the General Body to be convened by the Elders Committee but the Chief Returning Officer on his own issued a message to the members inviting them "in the charge ceremony of newly elected office-bearers" on 1 September 2016 in the Library Hall of the High Court Bar Association. It is stated that the Chairman of the Elders Committee had informed the petitioners that he had not convened any meeting for the purpose of declaring the election result;

(iv) A day before the polling, about 2000 ballot papers were delivered to the elected President of the Bar Association in connivance with the printer which fact was known to the Chief Election Officer;

(v) A candidate for the post of Vice President was declared to have secured zero vote in the first round but on recount he is said to have secured 220 votes, while another candidate is said to have secured 1487 votes in the first round but on recount is said to have secured only 565 votes; and

(vi) The principle of "One Bar One Vote" was not adhered to as the electoral list consists of names of about two thousand members who are also members of other Bar Associations and have also participated in the election.

11. Some additional facts have been stated in the second petition which are as follows :

(i) the voters list had been prepared in utter disregard to the Bye-laws and an objection was filed before the Chief Election officer;

(ii) Only one day was provided to file objections to the voters list and as such reasonable opportunity was not provided to file objections;

(iii) The Chief Election Officer and the Elders Committee did not follow the bye-laws or the directions contained in the order dated 8 May 2016 passed by seven Judges in Public Interest Litigation (PIL) No. 15895 of 2015 (In Re: v. Zila Adhivakta Sangh Allahabad) as also judgment dated 14 May 2014 delivered by the Division Bench in Public Interest Litigation (PIL) No. 26676 of 2014 (Sunita Sharma v. Dy. Registrar Chits Funds Society & 5 Others) and the decision of the Supreme Court in Bar Association and Ors. v. B.D. Kaushik (2011) 13 SCC 774;

(iv) The dues of many members were deposited after 11 July 2016 but this fact can be ascertained only after the account of the High Court Bar Association is made known; and

(v) The principle of "One Bar One Vote" has not been followed.

12. What has, therefore, been mainly urged in both the writ petitions is the

participation in the election process by certain persons who were actually not entitled to participate as either their membership amount was deposited after the last date contemplated under the Rules or that they were the members of more than one association. It has also been urged that two thousand extra votes were cast and number of glaring illegalities were committed during the elections process. It is for this reason that it was sought to be urged by learned counsel for the petitioner that the entire election should be set aside and a fresh election should be ordered to be held in accordance with the Rules.

13. A preliminary objection was raised by Sri Anoop Trivedi learned counsel appearing for the Bar Association that the Court should decline to entertain this petition as the petitioners have a statutory alternative remedy available to them under Section 25 of the Act. In support of this contention, learned counsel has placed reliance on the decision of the Lucknow Bench of this Court in Shiv Sharan Upadhyay Advocate and Anr. v. Bar Council of U.P. & Ors. 2016 (1) AWC 900 (LB).

14. Sri V.C. Mishra, learned Senior Counsel for the petitioners appearing in the first petition and Sri Sant Saran Upadhyay, Sri Vijay Chand Srivastava and Ms. Sadhna Upadhyay learned counsel appearing for the petitioner in the second writ petition, however, contended that though the Bar Association is a society registered under the provisions of the Act but nonetheless it is a Court annexed Bar Association and, therefore, the petition is not only maintainable but should also be entertained by the Court so as to safeguard the interest of the High Court as well as of the Advocates regularly practicing in the Court. Learned counsel have placed reliance on the decision of this Court in Sunita Sharma (supra) and of the Lucknow Bench in Ajay Pratap Singh Advocate v. Oudh Bar Association, Lucknow and Others 2014 (3) ADJ 394. Learned counsel have also placed reliance on the decisions of the Supreme Court in Bar Council of Delhi v. Surjit Singh and Others AIR 1980 SC 1612 and B.D. Kaushik (supra).

15. We have considered the submissions advanced by learned counsel for the parties on the preliminary objection.

16. It is not in dispute that the Bar Association is a society registered under the provisions of the Act and that the Bar Association is a High Court annexed Association. The petitioners have sought the cancellation of the election result on a number of grounds.

17. Learned counsel for the petitioners have placed reliance on the Public Interest Litigation filed by Sunita Sharma. This petition was filed before the election was held to challenge the decision taken by the Elders Committee regarding the entitlement of certain persons to vote and for setting aside the tentative voters list published on 5 May 2016. The Division Bench observed that the having regard to the provisions of the Rules, the basic object and purpose of the High Court Bar Association can be sub-served only if the voters list is prepared so as to recognise those ordinary members who are advocates on the Rolls of the High Court regularly practicing in the High Court and who have been

admitted by the Governing Council under Rule 7 to be ordinary members. It was pointed out during the course of hearing that about 1600 members of the Bar Association have been included in the tentative voters list though they are not borne on the Advocates Roll of the High Court as maintained under Rule 3-A of Chapter XXIV of the High Court Rules. The Division Bench, therefore, observed that allowing such persons who are not regularly practicing before the Court to be included in the voters list would dislocate the very existence of the High Court Bar Association and this would not be in the interest of maintaining the sanctity, independence and functioning of this High Court. The Court also observed that it was constrained to intervene even though the election process had commenced in order to protect an Association of the Institution which has a direct bearing on the administration of justice from being spirited away by nearly 1600 outsiders who were not regular practitioners.

18. The decision of the Supreme Court in *Bar Council of Delhi and Ors. (supra)* has also been relied upon by the learned counsel for the petitioners. Writ Petitions had been filed in the Delhi High Court to challenge the election of Bar Council of Delhi held in the year 1978. The Delhi High Court allowed the three writ petitions and set aside the election for the reason that the impugned proviso to Rule 3(j) of the Delhi Bar Council Rules was found to be ultra vires and invalid and the electoral list so prepared by the Delhi Bar Council on the basis of said rule resulting in the exclusion of the names was, therefore, not valid in law. The Supreme Court held that since the election would not be a valid election on that account it could be challenged in a Writ Petition. In paragraphs 22, the Supreme Court also observed that if the alternative remedy fully covers the challenge to the election, then that remedy must be resorted to but as the Election Tribunal could not adjudicate upon the vires of the Rules, a writ petition could be entertained. The observations are as follows :-

"We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy then the remedy of writ petition to challenge the whole election is still available. In the present case we have pointed out above that the Election Tribunal would have found itself incompetent to declare the proviso to Rule 3(j) of the Delhi Bar Council Election Rules ultra vires and that being so the alternative remedy provided in Rule 34(8) was no remedy at all."

(emphasis supplied)

19. In *B.D. Kaushik (supra)*, the appeal before the Supreme Court was directed against an interim order dated 5 July 2003 passed under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908. The Supreme Court considered it appropriate, on the request made by the learned Senior Counsel, to give certain directions/guidelines for effecting implementation of the principle of "One Bar One Vote".

20. In *Ajay Pratap Singh, Advocate (supra)*, a preliminary objection has been raised on behalf of the respondents as well as interveners that writ petition filed in the High Court against the society was not maintainable. The Division Bench held that the Oudh Bar Association was a Court annexed Bar Association recognised by the High Court and so the petition was maintainable. The dispute that had been raised was regarding making a fresh list of members who were practicing in the Court and were not in arrears of subscription before notifying the general election. The Division Bench disposed of the petition with certain directions regarding the preparation of the list.

21. It needs to be stated that the decision of the Lucknow Bench in *Ajay Pratap Singh, Advocate (supra)* was subsequently explained and distinguished by a Division Bench in Civil Misc. Writ Petition No. 4508 of 2015 (*Ram Nath Tyagi v. State of U.P. and Others*, decided on 5 February 2015). This Writ Petition had been filed to challenge the order dated 3 December 2014 whereby the petitioner had been debarred from the membership of the Association for a period of one year. The petition was dismissed on the ground that the petitioner had a statutory alternative remedy under section 25(1) of the Act.

22. Thus, all the cases referred by the learned counsel for the petitioners relate to preparation of the voters list except Bar Council of Delhi where the High Court set aside the election result and the Supreme Court upheld the decision of the High Court. What is important to notice is that even in this decision the Supreme Court observed that the views expressed by some of the High Courts that merely because the election was challenged in a writ petition, it would be maintainable in spite of their being an alternative remedy available would not be quite correct for if an alternative remedy fully covers the challenge to an election, then that remedy alone must be resorted to. The Supreme Court had upheld the decision of the Delhi High Court to cancel the election result for the reason that the rule on the basis of which the electoral list had been prepared was found to be ultra vires. The Supreme Court observed that the Election Tribunal would have found itself incompetent to decide that proviso to Rule 3(g) of the Delhi Bar Council Election Rules was ultra vires and so the alternative remedy before the Election Tribunal was held not to be a remedy at all.

23. In these petitions, the election has been held and result has been declared, though there is a factual dispute as to whether it was declared in accordance with Rule 55 of the Rules or not. According to the petitioners, the Elders Committee had not convened the meeting of the General Body in which the election result was declared.

24. Section 25(1) of the Act, as amended in the State, on which reliance has been placed by the learned counsel for the respondents to contend that the petitioners have a statutory alternative remedy, is as follows:-

"Section 25(1) :- The prescribed authority may, on a reference made to it by the Registrar or by at least one-fourth of the members of a society registered in Uttar Pradesh, hear and decide in a summary manner any doubt or dispute in respect of the election or continuance in office of an office-bearers of such society, and may pass such orders in respect thereof as it deems fit:

Provided that the election of an office-bearer shall be set aside where the prescribed authority is satisfied:-

- (a) that any corrupt practise has been committed by such office-bearer; or
- (b) that the nomination of any candidate has been improperly rejected; or
- (c) that the result of the election in so far as it concerns such office-bearer has been materially affected by the improper acceptance of any nomination or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any noncompliance with the provisions of any rules of the Society.

Explanation :- A person shall be deemed to have committed a corrupt practise who, directly or indirectly, by himself or by any other person -

- (i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any elector to give or to refrain from giving a vote in favour of any candidate, or any person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate at the election;
- (ii) with a view to inducing any elector to give or refrain from giving a vote in favour of any candidate, or to inducing any person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at the election, offers or gives any money, or valuable consideration, or any place or employment, or holds out any promise of individual advantage or profit to any person;
- (iii) abets (within the meaning of the Indian Penal Code) the doing of any of the acts specified in clauses (i) and (ii);
- (iv) induces or attempts to induce a candidate or elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure;
- (v) canvasses on grounds of caste, community, sect or religion;
- (vi) commits such other practise as the State Government may prescribe to be a corrupt practise.

Explanation II :- A promise of individual advantage or profit to a person includes a promise for the benefit of the person himself or of any one in whom he is

interested.

Explanation III :- The State Government may prescribe the procedure for hearing and decision of doubts or disputes in respect of such elections and make provision in respect of any other matter relating to such elections for which insufficient provision exists in this Act or in the rules of the society."

25. Thus, under section 25(1) of the Act, the Prescribed Authority can decide any doubt or dispute in respect of an election or continuance in office of office-bearers of the Society and can pass such orders in respect thereof as it deems fit. The conditions under which the Prescribed Authority can set aside the election of office-bearers have also been provided. They, amongst others, include the setting aside of an election where any corrupt practise has been committed or where there has been non-compliance of any Rules of the Society. Section 25(1) of the Act, therefore, adequately covers the grounds raised by the petitioners to challenge the election result and there is no good reason as to why the petitioners should not avail this statutory remedy. The challenge by the petitioners is not to the validity of any Rule but to the preparation of the electoral list on the basis of the Rules. According to the petitioners, names of some members have been included which should not have been included. It has to be verified as to whether even such persons, whom the petitioners allege should not have been included in the voters list, had actually cast their votes. Allegations of corrupt practise have also been made inasmuch as it is asserted that 2000 ballot papers were supplied by the printer to a candidate. These are all factual disputes and it will not be appropriate for a Court exercising writ jurisdiction under Article 226 of the Constitution to actually examine such dispute particularly when there would entail leading of evidence. It is for this reason that, in the facts and circumstances of the present case, the Court is not inclined to entertain this petition when an alternative statutory remedy before the Prescribed Authority is available to the petitioners.

26. In this connection, learned counsel for the respondents have placed reliance on the decision of the Lucknow Bench in Shiv Sharan Upadhyay (supra). The High Court observed that a writ petition under Article 226 of the Constitution would not be an appropriate remedy to challenge the election, though in exceptional and extra ordinary circumstances the High Court can entertain such a writ petition. The Court found from the pleadings that the ground raised in the writ petition were purely factual, for which, evidence was required to be led by the parties. The Court observed that a statutory alternative remedy was available under section 25(1) of the Act which could be availed by the petitioners for raising all the grievances. The Court also observed that the petitioners could also file a civil suit in regard to the grievances raised in the petition.

27. Thus, for all the reasons stated above, we are not inclined to entertain these petitions as factual disputes have been raised and the petitioners have a statutory alternative remedy available under Section 25 (1) of the Act. The preliminary objection raised by the respondents is upheld and the petitions are,

accordingly, dismissed.