
(2013) 03 PAT CK 0090
In the Patna High Court
Case No : CWJC No. 3891 of 2013

Harendra Chaubey and Others

APPELLANT

Vs

The Bihar State Bar Council and Another

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 1 PLJR 37

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Amrendra Kumar and R.K. Pathak in 3891, Praveen Kumar and Dr. Kislay in 2983, for the Appellant; Ashutosh Kr. Pandey, Rama Kant Sharma and Gyan Prakash Ojha, for the Respondent

Final Decision : Allowed

Judgement

J.N. Singh, J.—From a copy of the Model Rules framed by the Bihar State Bar Council (for short "Bar Council"), it appears that it was passed by the General Body of the Bar Council in its meeting held on 28.7.1991, vide Resolution No. 54. However, since then it was pending for approval of Bar Council of India (Union Council), which finally approved it, vide its letter No. 5414/2003 dated 22.12.2003 and since then, the Model Rules has come into operation. Rule 13 of the Model Rules prescribes that an Executive Committee of a Bar Association (registered/affiliated with the Bar Council) is to consist of a President and all office bearers; seven members elected by the General Body and five members co-opted by the President and office bearers. Rule 13(A) lays down that any member of the Executive Committee, having experience of 25 years, and above shall be eligible to the post of President and Vice President and advocates, having experience of 20 years or above, shall be eligible for the post of Secretary/ General Secretary and Treasurer. Likewise, advocates, having a practice of 10 years or above, shall be eligible for the rest of the posts of office bearers. Office bearers shall be eligible for election to the same post continuously for two terms.

It is also provided in the said Rules that Bar Council may relax the aforesaid eligibility criteria in special circumstances. The said Rule 13(A) of the Model Rules, as amended up-to-date, is being reproduced hereinbelow for easy reference:--

The Member having experience of 25 years and above, shall be eligible to the post of President and Vice-President the advocates having experience of 20 years or above shall be eligible for the post of Secretary/General Secretary and Treasurer. The advocates having a practice of 10 years shall be eligible to the rest of the posts of office bearers. The office bearers shall be eligible for election to the same post continuously for two terms only. This will be prospective:

Provided that Bar Council may relax aforesaid eligibility criteria in special circumstances.

2. In 2007 Bar Council received a letter from a member and representations from different associations requesting for relaxation of the eligibility criteria. Bar Council noticed that at several places new districts/sub-divisions had been established. In the circumstances, in the meeting held on 14.1.2007, vide Resolution No. 2/2007, Bar Council passed the resolutions relaxing the said criteria. According to this Resolution, for the affiliated Bar Association at District and High Court level, a lawyer having practice of 20 years was held eligible to contest the election for the post of President, instead of required 25 years of practice, and for the rest of the posts, minimum ten years of practice was made a requirement on uniform basis and for members of the Executive Committee, requirement of any length of practice was waived. Similarly, for Sub-Divisional Courts, required length of practice was reduced to seven years and five years for President and other office bearers, respectively, with no required length of practice for the members of the Executive Committee. This Resolution of the Bar Council came into operation and elections for the members of Executive Committees and for office bearers of the respective Bar Associations were held all over the State with this relaxation. Later on the Bar Council thought it necessary to reconsider the said Resolution no. 2/2007 and the matter was placed in the meeting of the Bar Council dated 14.1.2012. After due deliberation the Bar Council, vide Resolution No. 3/2013, resolved that Resolution No. 2 dated 14.1.2007 was not part of Rule 13(A) nor can it be treated as part thereof. Hence it resolved that only the provisions of Rule 13(A) of the Uniform Rules for Bar Associations will remain in force. The decision was resolved to be communicated to all the affiliated Bar Associations. For easy reference, the said Resolution No. 3/2012 dated 14.1.2012 is also reproduced hereinbelow:--

Took up agenda no. 11. Considered the letter of Hon"ble Member Shri Akhauri Mangla Charan Shrivastava and it is resolved that the relaxation granted by the General Body vide resolution No. 2 dated 14.1.2007 of the Bar Council regarding relaxation of Length of Practice for contesting election for the post of President and other office bearers of Bar Associations was granted under the proviso provided under Rule 13-A, which provides that Bar Council may relax aforesaid

eligibility criteria in special circumstances.

Considering the special circumstances prevailing at that time the relaxation was made and any relaxation as provided in proviso of Section 13A can only be granted by the Bar Council considering special circumstance only and that will vary from case to case basis. The Resolution No. 2 dated 14.1.2007 has not amended Rule 13-A, therefore, it cannot be treated as part of Rule 13-A and only main provision of Section 13-A of Uniform Rules for Bar Association, will remain in force. Let this decision be communicated to all the affiliated Bar Associations and also be published in B.B.C.J.

3. It appears that, some earlier elected office bearers of different affiliated Associations, thereafter, submitted applications before the Bar Council for extending relaxation in their cases as granted by the said Resolution no. 2/2007. This necessitated the Bar Council to hold a meeting and pass the impugned Resolution No. 2/2013 dated 20.1.2013. For easy reference, this resolution is also being reproduced hereinbelow:--

Took up agenda No. 17. Took up the matter of relaxation of age of President/Vice President, Secretary/General Secretary and Treasurer of the Associations, it is resolved that the persons who had availed the relaxation in age and became successful in the last election, 2011 shall be eligible to the relaxation order resolved earlier but this will not apply to other person and the Association. It will also not apply to the election already held. This resolution shall not be a precedent. All the petitions pending till date shall be disposed of by the Chairman. The relaxation shall be governed only in accordance with the Uniform Rules. All the petitions regarding relaxation stands disposed of, as already observed. Communicate this resolution forthwith to all the Associations of the State.

4. By this resolution, the Bar Council took a decision to allow continuance of relaxation in case of only those persons who had availed relaxation and had become successful in the last election. This Resolution was held not to apply to election already held and not to be a precedent. This resolution is under challenge in these two writ applications on the ground of being violative of Article 14 of the Constitution of India.

5. Learned counsels for the petitioners submit that in terms of proviso to Rule 13(A) of the Model Rules, the Bar Council had granted relaxation for the posts, which was available to all the candidates who intended to file nominations or had filed nominations. Under 2007 Resolution, there was no discrimination between the candidates and relaxation was being granted to every member of the Association for contesting the elections for the post of member of the Executive Committee or for the post of office bearers. They submit that this Resolution was superseded by the Bar Council itself by Resolution dated 14.1.2012. Hence, since 14.1.2012, the original Rule 13(A) became operative. They submit that, it was clearly resolved in the Resolution dated 14.1.2012 that the said relaxation was

not to be treated as part of Rule 13(A) which could be granted by the Bar Council considering special circumstances only and which was to vary on case to case basis. They further submit that, by the said impugned Resolution dated 28.1.2013, the relaxation has not been extended in respect of the posts for the present election to all the intending candidates or members of the Associations as was done by 2007 Resolution. Instead, Bar Council has granted relaxation only to successful candidates of 2011 elections, leaving out the candidates who, though, had contested in the election in 2011 with the relaxation, but were unsuccessful. Hence, they submit that, on the one hand, Bar Council has favoured the candidates who contested the election and became successful in 2011 elections, by allowing them to contest again with relaxation, on the other hand, it has debarred the candidates who had contested the election with the relaxation earlier, from contesting election this time with relaxation only because they were unsuccessful earlier. They submit that there can be no conceivable rationale for this classification and discrimination meted out by the Bar Council in granting liberty to the members of the Association to contest the election. They submit that decision is not on consideration of special circumstances and on case to case basis, as contemplated in Resolution dated 14.1.2012. They submit that the impugned decision of the Bar Council is, in the circumstances, unreasonable, arbitrary and discriminatory as it amounts to undue favour to the elected members of the Association debarring others from equal treatment and equal opportunity to contest the election and for getting elected.

6. As against this, learned senior counsel for the Bar Council submits that this Resolution is only one time measure and since the lawyers had availed the relaxation and had become successful in 2011 elections on the basis of the said Resolution of 2007, they have been allowed relaxation for the present election also. He submits that it will be inequitable to debar them from participating in the election this time, as once they have participated and have got elected. He submits that in fact some of the elected office bearers and members had represented before the Bar Council requesting that, since availing the relaxation they had become successful earlier, they should not be debarred this time from contesting the election by withdrawing the relaxation.

7. Having heard learned counsel for the parties and having considered the materials available on record, this Court finds that the Resolution of 2007 was a resolution which was general in nature and benefits of the Resolution was available to all the advocates registered with their respective associations. Relaxation was granted to the post and not to a particular person and any person who intended to get elected for the post of office bearers or executive committee had an opportunity to avail the relaxation and file his nomination and contest on merits. Learned counsel for the petitioners is right that the said Resolution, in effect, stood withdrawn by the Bar Council itself vide its Resolution dated 14.1.2012 with the stipulation that the relaxation could be granted considering special circumstances, on case to case basis. Though learned senior counsel for the Bar Council has submitted that the said Resolution dated 14.1.2012 did not

completely wipe out the effect of Resolution 2007, his submission, in the opinion of this Court, has no substance. The moment Bar Council resolved that "only main provision of section 13A of Uniform Rules for Bar Associations will remain in force", it clearly intended to wipe out the effect of Resolution dated 14.1.2007. But the submission of the learned counsel for the petitioners that this took away the jurisdiction of the Bar Council to take any further resolution for granting relaxation has also no substance as long as the proviso to Rule 13(A) remains on the Statute Book. Hence it is clear that the Bar Council has the jurisdiction to take resolution in terms of the said proviso till the same itself is held ultra vires. Hence, this Court has no hesitation in holding that Resolution dated 20.1.2013 taken by the Bar Council was in terms of the proviso to Rule 13(A) and, therefore, well within its jurisdiction.

8. Now the question is as to whether the said Resolution is unreasonable, arbitrary and discriminatory, or not. It may be that, candidates of 2011 election, who became successful availing relaxation granted under 2007 Resolution, may not have the eligibility to contest the present election on account of 2012 Resolution, but only because they were successful and other contesting candidates were unsuccessful, they cannot be given extra benefits, depriving the same to the unfortunate unsuccessful candidates who contested the election but lost. This Court does not find any rationale behind this discrimination made out by the Bar Council between candidates intending to contest election for members of the executive committees and for the posts of respective associations. Hence relaxation granted by Resolution No. 2/2013 dated 20.1.2013, only in favour of the successful candidates of the last election, is held arbitrary and discriminatory. The Resolution is, therefore, to that extent, is held ultra vires and violative of Article 14 of the Constitution of India.

9. Learned senior counsel for the Bar Council has informed this Court that, except for election of two Associations, namely, Chapra Bar Association and Bhabua Bar Association, in respect of which these two writ applications have been filed, election of all other Associations is over and results have been declared. Since no intending candidate or member of any other association has challenged the said Resolution of the Bar Council, this Court makes it clear that this order shall not affect the result of election of any other association of the State whose election is complete, but without any prejudice to any challenge to any election by way of election petition in accordance with law.

10. CWJC No. 2983 of 2013 relates to Chapra Bar Association where election has not been held. From Annexure-2 it appears that schedule of election was notified by the Election Officer in which 12.2.2013 was the date fixed for scrutiny of the nomination papers in the evening and 13.2.2013 was the date fixed for withdrawal of nomination papers. This Court heard the matter on 12.2.2013 and stayed the election of Chapra Bar Association. Learned counsel for Bar Council submits that nomination papers were filed by 12.2.2013 and they were scrutinized on 12.2.2013 itself, Out of the nomination papers which were found

valid, since there were only two nominations for the two posts of auditors, result was declared in respect of the post of auditors that very day. Hence, their election cannot be set aside by this Court.

11. The submission of the learned senior counsel for the Bar Council does not find favour with this Court. It is obvious that before expiry of date of withdrawal of nomination papers, result could not be declared. Scrutiny of nomination papers was admittedly done in the evening of 12.2.2013. The order of stay was passed by this Court on 12.2.2013 in the first hour itself. The said order was passed by this Court, in any case, in presence of learned counsels for the parties and before scrutiny of nomination papers was held in the evening. Hence, the restraint order became applicable on the Election Officer and he could not hold scrutiny in the evening of 12.2.2013 and declare result. In the circumstances, the election of the two auditors is held to be in teeth of stay order of this Court and as such is non est.

12. These writ applications are allowed with the aforesaid observations and directions. Bar Council shall issue necessary directions to the Election Officers of Chapra Bar Association and Bhabua Bar Association to publish fresh election schedule and hold elections in accordance with law as early as possible.