
(2006) 01 DEL CK 0070

In the Delhi High Court

Case No : LPA 597 of 2004

Javed Rahat and Others

APPELLANT

Vs

Bar Council of India and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Advocates Act, 1961 — Section 8, 8A, 8A(3)
Bar Council of India Rules, 1975 — Rule 2, 4
Delhi Bar Council Election Rules, 1968 — Rule 34

Citation : AIR 2006 Delhi 200 : (2006) 129 DLT 104 : (2006) 87 DRJ 175

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Puneet Aggarwal, Rakesh Aggarwal and Rahul Kumar, for the Appellant; V.P.Singh Ashok Kashyap, Sanjeev Sachdeva and Rohit Nagpal, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 14.5.2004. Heard learned counsel for the parties and perused the record.

2. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

3. The petitioner/appellant filed the writ petition praying for the following reliefs:-

i) To restrain the members of the said expired body of Bar Council of Delhi from discharging the statutory duties of State Bar Council and to stay the elections on 29.9.2003 and 30.9.2003; and

ii) to quash the notice dated 25.8.2003 and 17.9.2003 of the expired Bar Council of Delhi; and

iii) to declare the process of election held by the members of the said expired Bar

Council of Delhi as illegal and contrary to the provisions of Advocates Act, 1961, Bar Council of India Rules and Bar Council of Delhi Rules;

iv) to quash all decisions/orders/resolutions passed by the said expired body of Bar Council of Delhi after its expiry on 30.3.2003; and

v) to quash the letter dated 4.3.2003 of the Bar Council of India granting extension w.e.f. 1.4.2003 to the Bar Council of Delhi after its expiry.

vi) to appoint a Special Committee u/s 8A of the Advocates Act, 1961 consisting of advocates enrolled with the Bar Council of Delhi excluding the members of expired Bar Council of Delhi and contesting candidates in the forthcoming election of the Bar Council of Delhi, to discharge the functions of the Bar Council and hold forthcoming elections of members of Bar Council of Delhi in a fair and impartial manner; and

vii) to pass any other orders/directions in the interest of justice.

4. The facts as stated in the writ petition are that the Bar Council of Delhi is a statutory body constituted under the Advocates' Act. A newly elected body consisting of 25 members of the Bar Council of Delhi was constituted for five years on 31.3.98. Copy of the Official Gazette dated 31.3.98 is Annexure P-1 to the writ petition.

5. u/s 8 of the Advocates' Act the term of office of an elected member of the State Bar Council is five years from the date of publication of the result of his election. However, the proviso to Section 8 states that if the Bar Council fails to hold the election before the expiry of the term of members, the Bar Council of India may for reasons to be recorded in writing, extend the said term not exceeding six months. u/s 8A of the Advocates Act if the State Bar Council does not hold the elections before the expiry of the term of five years or the extended term referred to in Section 8, the Bar Council of India shall constitute a Special Committee which has to hold elections to the said council within six months from its constitution vide Section 8A(3).

6. It is alleged in paragraph 6 of the writ petition that the Bar Council of Delhi was duty bound to start the process of election at least 150 days before the expiry of its term of office, and hence the election process should have started latest by 30.10.2002 vide Rule 4, Chapter I Part (iii) of Bar Council of India Rules.

7. However, the Bar Council of Delhi started the process of election through the notification dated 25.1.2003 which was published in the official gazette. It was mentioned in the said notice dated 25.1.2003 that the Advocates who wanted to contest the elections had to furnish a declaration to the effect that they have not incurred any of the disqualifications as referred to in Rule 2 of Chapter I Part-III of the Bar Council of India Rules. The last date for acceptance of such declaration was 20.3.2003 following which the names of the advocates who have not furnished the said declaration was not to be included in the electoral roll under preparation.

8. It was submitted that in keeping with Rule 2 Chapter I, Part-III of the Rules of Bar Council of India, the Bar Council of Delhi was not entitled to exclude the name of any advocate from the electoral roll if he has not submitted any declaration. It is alleged that the Bar Council should have asked the advocates to submit the declaration as prescribed under Rule 4 of Chapter I Part III of Bar Council of India Rules. However, flouting this provision, the Bar Council of Delhi altered the proforma of the declaration form, thereby excluding thousands of advocates from the electoral roll. True copy of the declaration form sought by the Bar Council of Delhi is Annexure P-2. Copy of notice dated 25.1.2003 issued by the Honorary Secretary of the Bar Council of Delhi is Annexure P-3.

9. It is alleged in para 10 of the writ petition that the original term of five years of the Bar Council of Delhi expired on 30.3.2003. Consequently all the 25 elected members ceased to be the members of the Bar Council of Delhi on 30.3.2003 and there was no extension by the Bar Council of India from 31.3.2003. Hence, in view of Section 8A of the Advocates Act, a special committee should have been constituted to hold the free and fair elections of the next body of the Bar Council of Delhi, but this was not done. Hence, it is alleged that as the Bar Council of India had not granted the extension to the Bar Council of Delhi, the said expired body of Bar Council of Delhi was not having any authority to discharge the statutory functions of the Bar Council of Delhi and it should not have held the elections. It is alleged that the extension letter dated 4.3.2003 of the Bar Council of India to an already expired Bar Council of Delhi is illegal and invalid in the eyes of law in view of the decision of the Supreme Court in Babu Verghese and Others Vs. Bar Council of Kerala and Others, . Copy of the extension letter dated 4.3.2003 of the Bar Council of India to the Bar Council of Delhi is Annexure P-4.

10. It is alleged in para 14 of the writ petition that the preliminary electoral roll was not put on the notice board of the Bar Council of Delhi on 29.5.2003. No specific dates for publication of the final roll was disclosed either by this notice dated 29.5.2003 or by any other notice by Bar Council of Delhi. It is alleged in para 15 that the preliminary electoral roll should have been sent to all the Bar Associations and should have been put on the notice board and it should have been intimated in the said notice that any advocate can apply in writing for inclusion or deletion of his name in the electoral roll by a specific time. However, this was allegedly not done.

11. In para 16, it is alleged that there was no material on record and there was no satisfaction of the Bar Council of Delhi relating to 15,000 advocates that they have incurred any disqualification under Rule 2 of Chapter I Part III of Bar Council of India Rules. It is alleged in para 17 that the Honorary Secretary of the said expired Bar Council of Delhi published on 30.7.2003 a final voters list dated 16.7.2003. It is alleged that the names of about 2,548 advocates in the final voter list which were not in the preliminary electoral roll. It is alleged that these 2,548 names were included in the voters list without taking a decision in the

meeting of expired Bar Council of Delhi. It is alleged that the office bearers of the expired Bar Council of Delhi have included the names of only those advocates who have promised them their vote and support. On the other hand, other lawyers have been deprived of their right to apply for inclusion of their names in the voters list after the alleged publication of the preliminary electoral roll.

12. It is alleged that the expired Bar Council of Delhi notified the schedule of election on 30.7.2003 fixing the schedule of election for 19.9.2003 at Tis Hazari Court, Delhi without taking the permission of the District Judge, Tis Hazari, Delhi vide Annexure P-7.

13. It is alleged in para 20 that some of the advocates including petitioner Nos. 2 & 3 who wanted to contest the election went to the office of the Bar Council of Delhi to file their nomination papers, but their nomination papers were not accepted by the Bar Council of Delhi due to a stay order of the Bar Council of India. However, subsequently when the petitioner Nos. 2 & 3 visited the office of the Bar Council of Delhi on 29.8.2003 they were informed that the Bar Council of India has revoked its stay order dated 19.8.2003 and the last day of filing of the nomination was 28.8.2003 as a notice was published in Indian Express dated 27.8.2003 fixing last date of receipt of nomination as 28.8.2003. Therefore, petitioner Nos. 2 & 3 could not file their nomination papers for contesting the election scheduled for 30.9.2003.

14. In para 22 it is alleged that the Bar Council of Delhi vide a resolution by circulation dated 18.8.2003 decided that the names of the advocates which could not appear in the voters list prepared by the Bar Council because of some clerical or office mistake shall be included in the addenda to be issued in respect of the electoral list of the Bar Council for the purposes of the ensuing election. True copy of the resolution is Annexure P-10.

15. It is alleged in para 23 that the Bar Council of Delhi by a blatant violation of the rules and regulations and without any notice to anyone has issued a supplementary electoral list on 18.9.2003.

16. In para 26 of the writ petition, it is alleged that by a consent order the Delhi High Court had directed the Bar Council of Delhi to have polling on 29.9.2003 at Delhi High Court and on 30.9.2003 at Tis Hazari Court. Pursuant thereto notices were issued in the various newspapers and elections were held. Aggrieved, the writ petition was filed for quashing the entire process of election.

17. A counter affidavit was filed by the Bar Council of Delhi in the writ petition and we have perused the same. Preliminary objections have been taken that all the candidates contesting elections for the Bar Council of Delhi were not impleaded and the Bar Council of India was also not impleaded. Hence the petition was not maintainable.

18. It is further stated in the counter affidavit that the Bar Council of India had appointed a Special Committee u/s 8-A of the Advocates Act on 13.10.2003 to

look after all the functions of the Bar Council of Delhi. The original term of the Bar Council of Delhi was up to 30.3.2003 and the Bar Council of India extended the term of the Bar Council of Delhi from 1.4.2003 for six months.

19. In the impugned judgment, the learned Single Judge, in our opinion, rightly held that the extension of the term of the Bar Council of Delhi was done by the Bar Council of India before the expiry of the five years term of the Bar Council of Delhi. Hence, in our opinion, the extension granted by the Bar Council of India was valid and the decision of the Supreme Court in Babu Verghese's case (supra) has no application.

20. The decision to hold polling on 29.9.2003 at Delhi High Court and on 30.9.2003 at Tis Hazari Court was as per the directions of the Division Bench of this Court in LPA 610/2003.

21. In our opinion, the learned Single Judge has rightly held that the petitioner had an alternative remedy of filing an election petition under Rule 34 of the Bar Council of Delhi Rules after the elections were over.

22. It is well settled by a series of judgments by the Supreme Court that when the election process commences, there should not be any interference by the Courts. It is only after the election results are declared and the persons elected assume the charge of the office, that an election petition, if permitted under the rules, can be filed. If there is no provision for an election petition, then a civil suit should be filed. However, the Court should not interfere once the election process has started. Even if the elections are over a writ petition challenging the election should not be entertained, and the petitioner should be relegated to the alternative remedy of filing an election petition, and if there is no provision for an election petition, then he should file a civil suit.

23. Thus the Constitution Bench of the Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . held that once the election process starts, it is not permissible for the courts to interfere with the election process, otherwise no election can ever be held. The same view was followed in series of decisions of the Supreme Court in Ram Phal Kundu Vs. Kamal Sharma, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , S.T. Muthusami Vs. K. Natarajan and Others, , S.S.S.J.S.(M.M.), etc. In Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, a writ petition was filed alleging irregularity in preparation of the electoral roll. It was contended that the electoral roll being the substratum of the election for Constituting the Managing Committee and the same having not been prepared and finalized in accordance with the mandatory rules, no election can be held on such electoral roll. The Supreme Court while dismissing the appeal held that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society, and the election process having been set in motion, the High

Court should not have stayed the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.

24. In S.T. Muthusami Vs. K. Natarajan and Others, , Shri Kihota Hollohon Vs. Mr. Zachilhu and others, , Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, and S. Fakruddin and Others Vs. The Govt. of A. P. and Others, a similar view was taken. In view of the above, we dismiss the writ petition on the ground that petitioner had an alternative remedy of filing an election petition under Rule 34 of Delhi Bar Council Rules.

25. Learned counsel for the appellant contended that the period for filing the election petition has expired. If that is so, the petitioner is himself to blame and this Court has no power to extend the limitation period. Also we are informed that some election petitions have been filed under Rule 34. The same should be decided expeditiously in accordance with law.

26. Appeal dismissed.