

(2014) 03 CHH CK 0040
In the Chhattisgarh High Court
Case No : W.P. (C) No. 1266 of 2013

Mohd. Arshad Khan

APPELLANT

Vs

Bar Council of India

RESPONDENT

Date of Decision : 20-03-2014

Acts Referred:

Advocates Act, 1961 — Section 15(2), 2(1)(d), 2(1)(e), 2(1)(m), 3

Citation : AIR 2014 Chh 105 : (2014) 1 CG.L.R.W. 478 : (2014) 4 MPJR 67

Hon'ble Judges : Nawal Kishore Agarwal, J

Bench : Single Bench

Advocate : V.G. Tamaskar, Abhishek Pandey and Sandeep Dubey, Advocate for the Appellant; Prashant Jaiswal, Sr. Adv., Pankaj Shrivastava, Shailendra Sharma, Shailendra Bajpai, S.C. Verma, Sanjay Patel, R.S. Baghel, Rahul Mishra, R.S. Patel, J.K. Gilda, Malay Kumar Bhaduri, and Manoj Paranjpe, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Nawal Kishore Agarwal, J.

1. This order shall govern the disposal of W.P. (C) Nos. 1266 and 1366 of 2013 as the points involved in them are identical. I shall proceed to state the facts from the record of W.P. (C) No. 1266 of 2013. The petitioners, who are practising lawyers of State of Chhattisgarh, also participated in the election process, have approached this Court challenging the entire process of Chhattisgarh State Bar Council (hereinafter referred to as the State Bar Council).

2. Facts, in nutshell, as projected by the petitioners are that the original term of the outgoing members of the State Bar Council was till 15-11-2012, which was extended by the Bar Council of India (henceforth, the BCI) for a further period of 6 months, which was expired on 15-5-2013, and thereafter, elections of the State Bar Council are required to be conducted, as per the provisions of Section 8A of the Advocates Act, 1961 (hereinafter referred to as the Act of 1961), which have not been complied with by the respondents No. 2 & 4, and therefore, the

ongoing election being conducted by respondents No. 2 & 4 is bad in the eye of law.

3. The petitioners have prayed that respondent No. 1 may be directed to constitute a Special Committee as provided u/s 8A of the Act of 1961 and then the election be held under supervision and control of said committee.

4. By raising preliminary objection, respondents No. 1, 2 & 4 would submit: the petitioners are voters, are also candidates in the ongoing election; are estopped from filing the instant petition challenging the entire election process; the petition is also not maintainable, inter alia, on the ground that efficacious alternative remedy of filing election petition is also available to the petitioners.

5. On merits of the matter, it was further contended on behalf of respondents No. 1, 2 & 4 that by resolution dated 12-8-2012, the State Bar Council resolved to hold elections of the State Bar Council of Chhattisgarh during its original term. Vide resolution dated 5-5-2013 (Annexure D-1), the election programme was approved, i.e., during the extended period of 6 months. By the same resolution, respondent No. 4 was appointed as in-charge of the elections within the meaning of Rule 6 and Rule 32 of the State Bar Council Elections Rules, 2013 (for short, "Rules of 2013") (Annexure R/2-5). Rule 6 of the Rules of 2013 provides that notice of the time and place of election shall be given by the publication over the signature of the Secretary or Official Secretary or Officer on Special Duty (OSD) in one issue of daily newspaper in the State not less than 45 clear days before the date of election. Similarly, explanation to Rule 32 provides that for the purpose of these Rules "Secretary/Secretary in-charge" shall mean a person appointed as Secretary or any other person appointed by the Bar Council to perform the duties of the Secretary under these Rules. It is not in dispute that respondent No. 4, namely, Smt. Mallika Bal has been appointed as Official Secretary/District Secretary w.e.f. 30-3-2007. Smt. Mallika Bal issued a notification dated 10-7-2013 notifying the programme of election (Annexure R/2-1). There may be some confusion because a notice was issued to the office of the State Bar Council on 10-7-2013 but it was published in the Official Gazette on 19-7-2013. This is because for any publication in the Official Gazette minimum seven days or more is required after having been dispatched to the Government Press at Rajnandgaon. However, in compliance of Rule 6 of the Rules of 2013, a notice was also published in the daily newspaper, namely, Harbhoomi (Annexure D-2). Thus, there has been due compliance of each and every step of law required under the Act and Rules in the context of the matter.

It was further contended, vide resolution No. 88/2013, a Special Committee has been constituted for the State Bar Council by the Bar Council of India and vide resolution No. 89/2013, the Bar Council of India has directed the Special Committee of the State Bar Council of Chhattisgarh to hold its elections as per schedule given by the State Bar Council and further to ensure that there is no further extension of date of the election. Vide resolution 104/2013 wherein earlier resolution dated 26-5-2013, which constituted a Special Committee, was

modified to the extent that Mr. Faisal Rizvi will not be the member of the Special Committee and the Council, authorized by the Chairman of the Council to nominate remaining two members of the Special Committee. This resolution and the letter was forwarded to the State Bar Council of Chhattisgarh vide letter dated 10-7-2013. There was a period wherein there was no Advocate General of the State of Chhattisgarh, and therefore, it was directed by the Bar Council of India that in absence of the Advocate General, the two other members of the Special Committee can only look after the routine matters of the Council (Annexure P/13) and in view of above, ongoing election process is perfectly valid and the petition deserves to be dismissed.

6. In reply to above, it has been argued by the counsel appearing for the petitioners that though the Special Committee has been constituted consisting of Advocate General and two other members but, in fact, this committee was never handed over the affairs of the State Bar Council after the expiry of original term and even after the extended term. They submit that even after expiry of extended term day-to-day affairs of the State Bar Council are being taken care of by the previous body and respondent No. 4 is acting at the hands of outgoing body. He further submits that though the Special Committee is said to have been constituted on 10-7-2013 but till date no meeting of the said committee has held and respondent No. 4 is conducting the election of its own at the behest of the outgoing body. He also submits that if the committee has been constituted under the provisions of Section 8A of the Advocates Act, then it is the said committee which should supervise and conduct the entire election. However, in the present case, the committee has not been given any power to conduct the election. The petitioner has also contended that presently there is no Secretary in the State Bar Council and respondent No. 4 was allegedly appointed as Deputy Secretary -- the post which is not existing in the office of State Bar Council and it is she who is conducting the election. Respondent No. 4 is not having qualification to hold the post of Secretary and thus she has absolutely no right to conduct the election of State Bar Council. The petitioner has further doubted the constitution of Special Committee dated 10-7-2013 and submits that the same is nothing but merely a paper formality completed subsequently.

7. The learned Advocate General referring to provisions contained in the Bar Council of India Rules would submit: under Rule 6, if for any reason the election to the State Council is postponed beyond the date of expiry of the term of its members, the preliminary or the final electoral roll is required to be revised so as to include therein the names of Advocates enrolled up to 75 clear days before the date of election and as the elections are not held because of interim order passed by this Court, being ex-officio Chairman, he is bound to comply with the mandate of the rules as framed by virtue of the provisions of the legislation, and therefore, the entire election process will have to be carried on de novo right from the exercise of preparation of electoral roll under Rule 4 of Chapter-1 Part-III and the same will have to be revised in terms of Rule 6 of the Rules. He further argued that alternative remedy of an election petition is no bar for

entertaining the present writ petitions.

8. I have heard learned counsel for the parties and the interveners and perused the paper book.

9. The Bar Council has been defined in Section 2(1)(d) as a Bar Council constituted under the Act. The definition of the "State Bar Council" is contained in Section 2(1)(m) which means a Bar Council constituted u/s 3. "Bar Council of India" is defined in Section 2(1)(e) as the Bar Council constituted u/s 4.

10. Section 3, inter alia, provides that there shall be a Bar Council for the State of Chhattisgarh. Section 5 provides that every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immovable, and to contract, and may by the name by which it is known, sue and be sued. Section 6 defines the functions of the State Bar Council while Section 7 defines the functions of the Bar Council of India. Terms of office of the members of the State Bar Council is indicated in Section 8 which is reproduced below:

8. The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in Section 54) shall be five years from the date of publication of the result of his election:

Provided that where a State Bar Council fails to provide for the election of its members before the expiry of the said term, the Bar Council of India may, by order, for reasons to be recorded in writing, extend the said term for a period not exceeding six months.

11. Another provision which has a bearing on the term of office of the members of the State Bar Council is contained in Section 8A which is reproduced below:

8A. Constitution of Special Committee in the absence of election.--(1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be, referred to in section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of--

(i) the ex officio member of the State Bar Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman:

Provided that where there are more than one ex officio members, the senior-most amongst them shall be the Chairman; and

(ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

(2) On the constitution of the Special Committee and until the State Bar Council

is constituted--

(a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee;

(b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special Committee;

(c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise, shall stand transferred to the Special Committee.

(3) The Special Committee constituted under sub-section (1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold election to the State Bar Council of India within a period of six months from the date of its constitution under sub-section (1), and where, for any reason the Special Committee is not a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period.

12. According to above provisions, it is clear as crystal that term of Office of elected member of State Bar Council for 5 years from the date of publication of the result of his election, which is extendable by a period not exceeding six months provided the elections have been held before the expiry of the term. If the State Bar Council does not hold fresh elections either before the expiry of the five years" term or the extended term, BCI, in either of the two situations, would constitute a Special Committee to discharge the functions of the State Bar Council until a new Bar Council is constituted. For this purpose, the Special Committee would hold elections to constitute the State Bar Council within the extended period of six months. The life of the Special Committee is, however, extendable.

13. Thus, there is a complete mechanism provided in the Act to carry out the work of the Bar Council when the elected body ceased to exist by operation of law.

14. In exercise of its powers u/s 15(2) of the Act, BCI has made rules known as the "Bar Council of India Rules". As per Part-II, Chapter-I, Rule 3, the election of member of the Council shall be conducted by the Secretary of the State Council who shall act as the Returning Officer.

15. As per Part-III, Chapter-I, sub-rule (2) of Rule 4, a preliminary electoral roll containing the names of all advocates whose names are required to be included under these rules shall be put up on the notice board of the State Council within 120 clear days before the expiry of the term of the members of the said State Council necessitating the election (and relevant portion thereof shall be sent to such Bar Associations as the Secretary considers fit) As per part-III, Chapter-I, Rule 6, if for any reason the election to the State Council is postponed beyond the date of expiry of the term of its members the preliminary or the final

electoral roll shall be revised so as to include therein the names of advocates enrolled up to 75 clear days before the date of the election.

16. Another important provision relevant for decision is Rule 6 of State Bar Council Election Rules, 2013, which were approved by the Bar Council of India on 23-6-2013. As per Rule 6(a), notice of time and place of election shall be given by publication over the signature of Secretary or office Secretary or OSD in the State Gazette and in one issue of daily news paper in the State not less than 45 clear days before the date of election. Indisputedly, in the instant case, election programme has been published in the Official Gazette on 19-7-2013.

17. As per Rule 2(p) of the State Bar Council of Chhattisgarh Election Rules, 2013, "Returning Officer" means the person appointed by the State Bar Council of Chhattisgarh to conduct an election, i.e., OSD and in case no Returning Officer is appointed, then the Secretary. Rule 32 is also important and relevant, which reads thus:

32. Conduct of Elections: Except as otherwise provided in these rules the Secretary shall be incharge of the conduct of the election.

Explanation: For the purposes of these rules, "Secretary/Secretary Incharge" shall mean a person appointed as Secretary u/s 7 of the Act, or any other person appointed by the Bar Council to perform the duties of the Secretary under these rules.

18. As per respondents own case, Special Committee u/s 8A of the Act of 1961 was constituted by respondent No. 1 on 26-5-2013, which was further modified vide resolution dated 104/2013 dated 23rd June, 2013 and vide letter dated 10-7-2013, the Bar Council of India informed the Secretary, Bar Council of Chhattisgarh regarding constitution of Special Committee with a request to Special Committee to take steps in order to hold election of State Bar Council at the earliest. The above facts are self-explanatory in nature and go to show that since the State Bar Council failed to provide for the election of its members before the term of 5 years or the extended term, the Special Committee was constituted by the Bar Council of India. Once the Special Committee has been constituted, it is for the Committee to hold elections in accordance with such directions as the Bar Council of India may give in this behalf within the meaning of Section 8A of the Act of 1961.

19. Now, I shall examine whether or not the elections were being conducted by the Special Committee. As per Section 8A of the Act of 1961, after 15-5-2013, the State Bar Council had ceased to have any jurisdiction and could not hold fresh elections which could be held only by the Special Committee appointed by BO whereas in the instant case election programme has been published in the Official Gazette on 19-7-2013, that is, a date after 15-5-2013 by the State Bar Council and not by the Special Committee constituted by the BCI in this behalf. Not a single document has been filed before me showing the Special Committee has held any meeting for the purpose of conducting elections nor notice of

election within the meaning of Rule 6(a) of the Rules of 2013 has been published by and on behalf of the Special Committee, and therefore, the elections being conducted by the State Bar Council, were without jurisdiction.

20. The matter can be looked from another angle also. As per Part-III, Chapter-I, Rule-6, if for any reason the election of the State Council is postponed beyond the date of expiry of the term of its members, the preliminary or final electoral roll shall be revised so as to include therein the names of Advocates enrolled upto 75 clear days before the date of election. In the instant case, this Court, vide interim order dated 30-8-2013, has restrained respondents No. 2 & 4 from conducting election process of the State Bar Council and now the preliminary or final electoral roll is required to be revised so as to include therein the names of Advocates enrolled upto 75 clear days before the date of election and so also the entire election process will have to be carried on de novo.

21. Preliminary objection as to maintainability of the writ petitions raised by the learned counsel appearing for respondents No. 1, 2 & 4 is also devoid of substance as the decisions of the Supreme Court in the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, and Babu Verghese and Others Vs. Bar Council of Kerala and Others, , are complete answer to this contention wherein the similar contentions raised were negated by the Supreme Court.

22. For the reasons mentioned hereinabove, the petitions deserve to be and are hereby allowed in part. The respondent No. 1 is directed to constitute the Committee in terms of Section 8A of the Act of 1961 by extending term of existing Committee or by constituting new Committee u/s 8A of the Act, 1961, within a period of three weeks from today and the Special Committee shall, within 5 months of its being constituted, hold the election for constituting a new Chhattisgarh State Bar Council in accordance with law. Till the elections are held, the Special Committee shall, as provided by Section 8A of the Act of 1961, discharge the functions of the State Bar Council with all other consequences provided thereunder.

23. In view of above, intervention applications filed by the interveners are disposed of. However, the application for direction to respondent No. 1 to send the name of Shri S.P. Choubey to Guinness Book of World, being irrelevant to the present lis, is rejected. There will be no order as to costs.