
(2005) 08 MAD CK 0135

In the Madras High Court

Case No : Writ Petition No. 26338 of 2004 and W.P.M.P. No. 28761 of 2005

Mr. S. Rajasundar

APPELLANT

Vs

Bar Council of Tamilnadu

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Advocates Act, 1961 — Section 28, 3, 6, 7(1), 7(2)
Bar Council of Tamil Nadu Election Rules, 1975 — Rule 2

Citation : (2005) 4 LW 84 : (2005) 4 MLJ 384

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : Party in Person, G. Rajagopal, S.C and R. Kaaruppan, for the Appellant; K. Venkatakrishnan, for the Respondent

Judgement

D. Murugesan, J.—The Writ petition pertains to the election to the General Council of the State Bar Council. The Notification for conduct of Election was made on 12.7.2005. The date of Election is on 9.9.2005. The petitioner is one of the contestant for the said election. He has approached this court for a direction that the Election to be held on 9.9.2005, should be conducted under the supervision and direction of a retired High Court Judge. In support of the said plea, the petitioner has averred that the Secretary-cum-Returning Officer of the Bar Council of Tamil Nadu was appointed as a Secretary only on 5.7.2005, i.e. one week prior to the date of Election Notification. He has no experience in the conduct of Election. The decision to appoint him as Secretary was made by the Council without any application of mind. In the last Election, the ballot papers had been printed in excess and were misused by some of the candidates stood for election. There was tampering of ballot boxes when they were shifted from the concerned polling booths to Chennai for counting. The grievance of petitioner is that the Election should be conducted in a free and fair manner and for the said purpose and more particularly taking into consideration of the instances that had happened during the Election held in the year 2000, the Election should be conducted under the supervision of a retired Judge of this Court.

2. Mr. G. Rajagopal learned senior counsel would submit that, inasmuch as the Bar Council has very vital functions as referred in Section 6 of the Act, the Election to the Bar Council should be conducted with utmost care and free from any complaint whatsoever. Even during the Election conducted in the year 2000, there were tampering of votes when the ballot papers were brought from polling booths in various parts of the State to Chennai and number of names of the advocates who are dead or later on became judges of this Court have not been deleted and in their place votes were polled in the last Election and in fact the challenge made to the Election by filing Petitions to the Committee of Advocates and such Petitions have not been disposed of and in fact, the learned senior counsel would submit that the Petitions themselves are not traceable in the Office of the Bar Council of Tamilnadu and in such circumstances to ensure a fair and free Election to the Bar Council the prayer in the writ petition should be ordered.

3. Mr. K. Venkatakrishnan, learned counsel, appearing for the Bar Council on the other hand would submit that though the Secretary who has been appointed as Returning Officer was appointed as Secretary only on 5.7.2005, he has got a standing experience of 25 years at the Bar. The Secretary has already taken steps in the conduct of Election and there are about 162 polling booths for approximately 45,000 members to cast their votes. The strict procedures for conduct of Election are: (i) for each polling booth, Polling Officers, at the level of either President or Secretary are appointed to ensure the members to exercise their votes freely and fairly; (ii) immediately after polling is over, the ballot boxes are sent to Chennai by a reputed courier agency with utmost security; and (iii) the voting is by way of secret ballot and the ballot boxes are sealed to ensure any tampering and in such circumstances the request of the petitioner for appointment of a Retired Judge of this Court for conduct of Election is not warranted.

4. Mr. R. Kaaruppan, learned counsel, who is present in the court also argued with the permission of the court on the ground that he is also one of the contestant, that on the basis of the allegations made by the petitioner, for a free and fair Election, some of the Senior Counsel may be appointed as Polling Observers by this Court instead of a retired Judge of this Court.

5. In order to amend and consolidate the laws relating to Legal Practitioners and to provide for the constitution of Bar Councils and All India Bar and with an avowed object of establishing an All India Bar Council and a common roll of Advocates, as well as the Bar Councils at the State level, The Advocates Act, 1961, was enacted. It has got a paramount object for the integration of the Bar into a single class of legal practitioners, prescription of a uniform qualification for the admission of persons to be Advocates, the division of Advocates into Senior Advocates and other Advocates based on merit and for creation of autonomous Bar Councils one for whole of India and one for each State.

6. In terms of Section 3 of the Act, each State shall have a State Bar Council.

Section 6 of the Advocates Act, 1961, relates to the functions of the State Bar Councils which are as follows:-

"6. Functions of State Bar Councils:(1) The functions of a State Bar Council shall be-

- a. to admit persons as advocates on its roll;
 - b. to prepare and maintain such roll;
 - c. to entertain and determine cases of misconduct against advocates on its roll.
 - d. to safeguard the rights, privileges and interests of advocates on its roll;
 - (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section and clause (a) of sub-section (2) of section 7;]
 - (e) to promote and support law reform
 - (ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and paper of legal interest;
 - (eee) to organise legal aid to the poor in the prescribed manner
 - (f) to manage and invest the funds of the Bar councils
 - (g) to provide for the election of its member
 - (gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub section (1) of section 7;
 - (h) to perform all other functions conferred on it by or under this Act;
 - (i) to do all other things necessary for discharging the aforesaid functions.
- (2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of-
- (a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;
 - (b) giving legal aid or advice in accordance with the rules made in this behalf;
 - (c) establishing law libraries].
- (3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section."
7. In exercise of power u/s 28 of the Act, "The Bar Council of Tamilnadu, Election Rules 1975" were framed. Considering the above wider and vital functions, the functions of the State Bar Council are vested in the Members and to elect such members, the Election is notified. In exercise of Rule 2(xiv), a Returning Officer

shall be appointed by the Bar Council for the conduct of an Election. The said Rule does not restrict the power to appoint the Secretary of the Bar Council as a Returning Officer. The discretion for making such appointment shall vest with the State Bar council. However, considering the important role played by the State Bar Council, the Elections must be certainly free and fair one and for the said purpose Returning Officer must be of experienced person to conduct Elections. The grievance of the petitioner is that the Returning Officer was appointed as Secretary only on 5.7.2005 and in a period of one week, he was appointed as a Returning Officer. With the lack of experience to conduct the Election, the Election will not be free and fair if the Secretary is allowed to act as a Returning officer. In my opinion, the said submission cannot be accepted. The Returning Officer has got a standing of nearly 25 years in the Bar. Though there is no experience for the Returning Officer to conduct the Election, it is not specifically pleaded by the petitioner as to who will be the competent Advocate, who has necessary experience for the conduct of Election and in that event, the council could have considered his name. Except an allegation as to the inexperience of the Secretary who was appointed as Returning Officer, no further materials are furnished to sustain the claim that the Returning Officer will be incompetent to conduct the Election due to his inexperience. Hence, I reject the said contention of the petitioner.

8. In so far the contention as to the conduct of Election in a free and fair manner, there cannot be any second opinion that each and every Election including the Election in question should be free and fair and the Members of the Advocate community should be allowed to exercise their votes without any fear and in a free manner. The apprehension of the petitioner is that in view of the happenings during the last election held in the year 2000, this Court must ensure that the same happenings do not repeat this year also considering the role and responsibility of the Body to which the Election is being held.

9. I find some force in the above contention. Though the Secretary has taken all steps to conduct the Election by already identifying 162 polling booths to enable nearly 45,000 members to cast their votes, wherein nearly 144 Advocates are contesting, fairness must be exhibited in the conduct of the Election and there cannot be even a least doubt in any member that the Election will not be held in a free and fair manner. Of course, in the event any tampering, malpractice, or violation of the Rules and Regulations in the conduct of Election are found, a remedy would be only to file a petition before the Committee constituted for that purpose questioning the Election. In this regard, Paragraphs 7 and 8 of the Affidavit filed in support of the Writ Petition needs reference. They are as follows:-

"7. I respectfully submit that when the elections were conducted in the year 2000 lot of malpractice has been reported in the conduct of the elections. It is reliably understood that the ballot papers have been printed in excess and were misused by some of the candidates stood for election in 2000 and there was tampering of ballot boxes when they were shifted from the concerned pooling

booth to Chennai for counting. For example, one Advocate by name Viswanathan stood from Pattukottai Bar and was a member of the Bar Council earlier. It is reliably understood that more than 100 members of the Pudukottai Bar casted him the first votes. Similarly an Advocate by name Ratnavel ex MLA stood for election from Musiri Bar for whom also several Advocates from Musiri and Trichy casted their votes. When the above ballot boxes were being shifted via Thiruchi, one of the contesting candidates interfered with the courier, took the Ballot Papers and converted the No. 1 as No. 4 and replaced various ballot papers. Though one of the persons affected filed a petition before the Bar Council of Tamilnadu, the same was not disposed of and likewise there were several instances during the elections in 2000, where the ballot boxes were tampered and extra ballot papers were used and there was no body to control the situation, as the elections were held by the very staff of the Bar Council of Tamilnadu who are under the control of the members of the Bar Council of Tamilnadu.

8. I respectfully submit that I have reliable information that such malpractices are likely to recur in the forthcoming elections for the Bar Council of Tamilnadu to be held on 9th September 2005 and hence with a view to ensure free and fair poll to Tamilnadu Bar Council which the supreme body of the Advocates in Tamilnadu, I am filing this present writ petition."

10. It is the specific case of the petitioner that during the last Election, the ballot boxes were tampered while they were shifted from the concerned Polling Booths to Chennai for counting. The petitioner has come out with a specific instance where one Advocate by name Mr. Viswanathan stood from Pudukottai Bar and was a member of a Bar Council earlier who had secured at least 100 votes from Pudukottai Bar was shown to have voted only one vote in the ballot box. Similarly a complaint in respect of one Advocate by name Mr. Rathinavelu of Musiri Bar. The specific allegation of the petitioner is that while the ballot boxes were shifted the tampering had taken place. As already pointed out, some of the names of the then Advocates, who are now Judges of this Court, have not been deleted from the list of Members enrolled.

11. The Election has got a series of procedures. There is no allegation as to all other aspects, except the non removal of certain names as well as tampering of the ballot boxes while they were on transit. In my opinion, if these two grievances are addressed by proper directions, the petitioner would not have any grievance. As already referred, the Election is conducted to a Body representing the legal fraternity of the entire State and therefore, the wishes of the Members of the Bar should be reflected in the results. For ensuring such free and fair Election, in my opinion, the Election should be conducted by the Secretary, but under the supervision of some of the learned Senior Counsel of the High Court Bar. There must also be a direction to ensure that the ballot boxes are kept intact and delivered to the Secretary without any delay.

12. Accordingly, the writ petition is disposed of with the following directions:-

(i) The Returning Officer shall take all steps to conduct the Election on 9.9.2005 as notified on 12.7.2005.

(ii) The Returning Officer shall proceed with the Election and the Election shall be held under the supervision of the following Senior Counsel of this Court, namely, (1) Mr. G.Masilamani, (2) Mr. M. Ravindran, (3) Mr. M. Venkatachalapathy, and (4) Mr. S.V. Jayaraman.

(iii) The above four Senior Counsel shall be entitled to monitor the conduct of Election, and also can issue suitable instructions to the Returning Officer for a free and fair Election.

(iv) The Election will be held in 162 Polling Booths as already identified.

(v) The Returning Officer shall appoint the Polling Officer/Officers in each Polling Booths.

(vi) Immediately, on the completion of the polling, within the stipulated time, the ballot boxes shall be covered in a carton box and placed and sealed in gunny bags under the supervision of the Polling Officers. The Returning Officer shall ensure that the ballot boxes are handed over to him as sealed at the Polling Booths and also that no meddling takes place during the transit.

(vii) The counting of votes shall be done in the presence of the Returning Officer, the Committee of Senior Counsel and the other candidates who are entitled to be present as per Rules. In the event if any assistance at the time of counting of votes is required, certainly both the Returning Officer as well as the learned Senior Counsel are entitled to avail such assistance.

13. After pronouncement of the above order, Mr. G. Rajagopal, learned Senior Counsel and Mr. R. Kaaruppan, learned counsel submitted that contrary to the Rules, the Members contesting in the Election are pasting small notices and wall posters in the compound walls of the High Court as well as the City Civil Court and Court of Small Causes Buildings, in addition to erecting banners and cut outs. Such type of canvassing is not permitted under the Rules and therefore such type of canvassing must be restricted.

14. On the above submissions, I heard Mr. K. Venkatakrishnan, learned counsel appearing for the Bar Council as well. The learned counsel also submitted that the Rules do not contemplate of such canvassing. In that view of the matter, and taking judicial note of the fact, I direct the Returning Officer to ensure that no candidate shall paste notice or wall posters either in the compound wall of the court buildings or put up banners, cut out etc., within the premises of the High Court buildings, including City Civil Court and Court of Small Causes. This Court earnestly hope that the learned Members of the Bar and particularly the Members who are contesting the Election shall adhere to the Rules strictly and also abide by any directions issued by the Returning Officer in this behalf.

15. Consequently connected W.P.M.P is closed. No costs.