

(2016) 10 DEL CK 0026
In the Delhi High Court
Case No : Writ Petition (C) 8106 of 2010

P.K. Dash, Advocate

APPELLANT

Vs

Bar Council of Delhi

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 234 DLT 571

Hon'ble Judges : Mr. S. Ravindra Bhat and Mr. Siddharth Mridul, JJ.

Bench : Division Bench

Advocate : Sh. B.S. Jakhar, Advocate, for the Dwarka Court Bar Association; Sh. Amar Nath Sain, Advocate, for the Petitioner; Sh. Vikram Pradeep, Proxy Counsel, for Sh. Viraj. R. Datar, Advocate, for the DHC; Sh. Kanwal Chaudhary, Advocate, for the Dwarka Court Bar

Final Decision : Partly Allowed

Judgement

C.M. APPL.36262/2016 IN W.P.(C) 8106/2010

Mr. S. Ravindra Bhat, J. - This order will dispose of application by the petitioner and some others, which seek a clarification as to certain aspects arising from the judgment of this Division Bench, dated 31st May 2016 (hereafter "the main judgment").

2. The judgment dealt with two issues, viz. firstly the applicability of the "one bar one vote" rule to various Bar Associations in Delhi and secondly, the "one chamber in the city" rule to advocates and whether a legal practitioner can lay claim to more than one chamber in the several court complexes in the city, given that they are built at public expense. The applications before this court (as by way of modification/clarification) are in respect of the first issue; the applications regarding the second issue would be heard separately and orders made later.

3. The applicants urge that while establishing the "one bar one vote" principle, the court, in the main judgment had proceeded on the assumption that there

exists uniformity in respect of election tenures in the several Bar Associations across the city, which is incorrect. It is also emphasised that frequently, elections to Bar Associations are not conducted in a timely manner, often leading to extended tenures of over one year. Given these factors, the main judgment's requirement for advocate-voters to furnish an undertaking that each of them did not vote or contest elections in the previous year, would be ineffectual and meaningless. It is further highlighted that there is no method, whereby all Bar Associations compulsorily maintain election records, especially of the voter's declarations in the past, or whether some or all of them voted in any particular bar election. This, it is urged, renders verification of the declarations required by the main judgment a difficult task. The applicants also argue that these require appropriate modification of the judgment, to ensure that declaration by electors is in respect of the previous or preceding election in the Bar Associations other than in which they or she/he chose to vote in a given year. Furthermore, the court, it is argued, should evolve a mechanism whereby individual declarations are maintained by every Bar Association for at least two years, or till the elections to the next term are conducted and all disputes are adjudicated.

4. Some counsels who addressed in support of the applications also argued that with the coming into force of statutory rules framed by the Delhi Bar Council, in compliance with the Supreme Court judgment, every practicing advocate has been made to furnish a written declaration stating the number of years she or he has been in practise, the court where she or he ordinarily practices, and other relevant details. These would facilitate the task of verification during elections.

5. The Bar Associations - represented by their counsels, opposed the modification. The arguments of these counsels were that the main judgment is pending appeal by special leave; since the Supreme Court is seized of the matter, this court should desist from clarifying or modifying the judgment. It is submitted in this context that the implications of the main judgment were known, or could have been reasonably be known to the applicants and if their apprehensions were bona fide, they would have approached this court earlier. It is stressed that since elections to the Delhi High Court Bar Association have been announced and are around the corner, the applicants have, in a motivated manner, so to speak, sought refuge under the so called request for modification which should be rejected.

6. As to the merits of the applications, it is argued that this court has, in effect intruded into the autonomy of the Bar Associations and should refrain from doing so further. Counsel after counsel have reiterated that deciding on the tenure of the Bar Associations and the repercussions if elections are not held each year are matters which cannot fall within the domain of this court's writ jurisprudence, much less by way of clarification of a judgment already delivered over which a section of the bar have reservations.

7. Counsel for the Bar Associations also argued that whether the declarations are effective or practical should be left to the wisdom of the respective electorate and

also that this court should not make any further modifications on the issue of yearly declarations or as to evolving a mechanism for effective implementation of its judgment.

Analysis and conclusions

8. The relevant operative part of the main judgment delivered on 31st May, 2016 reads as follows:

"52. In the light of the above findings and conclusions, the following directions are issued:

(a) The following rule, incorporating the one-bar, one vote principle shall stand incorporated forthwith in relation to every Bar Association in Delhi (including the Delhi High Court Bar Association, the Delhi Bar Association, the New Delhi Bar Association, the Rohini, Shahdara, Saket and Dwarka Courts Bar Association and all other Court/Tribunals attached Bar Associations):

"A member who exercises her or his right to vote in any year in the High Court or a District Court Advocates"/Bar Association election shall not be eligible to contest for any post - either as member of the executive or of an office Bearer of any other Association or to cast her or his vote at the election. Every member before casting his vote shall in the prescribed form furnish a "Declaration" that she/he has not voted and is not voting in any other election of the Supreme Court Bar Association, Delhi High Court Bar Associations, any other District Court Bar Association, and has not done so in the past one year.

Provided, however, that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of the Association for a period of three years. Based on the declaration of members, the Bar Association shall prepare, a list of voters. Only the members whose names are included as the final voters-after excluding those who had voted in elections of any other Bar Association in that year or the previous year, shall be entitled to vote, contest, propose and second any candidate in the Bar Association Election."

Explanation(1) The term "any other Bar Association" means any Bar Association of which the voting or contesting member is a member of other than the one in which she or he is seeking to cast his or her vote, and/or contest for any elective post.

Explanation (2) "office bearer" "member of executive committee" and "elective post" mean any position to which if the member is elected, would entail exercising decision making powers either in the capacity as holder of the post, (such as President, Secretary etc.) or as part of a collective body by whatever name called (such as executive committee, governing committee or council, etc.).

Explanation (3) "Declaration" means a declaration in the following form:

I....(State name, and full description, i.e., parentage, age, particulars of Bar

Council enrolment, and membership of the Bar Association of the Court complex where chamber allotment is sought) do hereby solemnly declare and affirm that I have not voted for and/or am not contesting for any elective post, in any other Bar Association of which I am also a member in the last one year and that I will not do so in any election during this year in such Bar Association. In case this declaration is detected to be false, my right to vote shall remain suspended for three years after such declaration is detected to be false."

The above condition shall be deemed to be incorporated in the conditions of eligibility applicable for voting as well as candidature for the post of member of any executive body (by whatever name called) and every office bearer of each association (President, Vice President, General or Honorary Secretary, Assistant, Joint Secretary, Treasurer, Asst. Treasurer, or any other office bearer of each association by whatever other name called) immediately and shall be given effect to in every election to each Bar Association hereafter. This condition shall remain in force and bind all Bar Associations as condition for their recognition."

9. As is evident from the foregoing discussion, the applicants seek a modification of the judgment in two respects—firstly the reference to the "past one year" should be substituted with a reference to having not voted in the previous election in the Bar Associations (other than in which the elector proposes to vote) and further that the reference to elections "this year" should be similarly modified. The second is that an appropriate mechanism for preservation of election records, particularly declarations and electors and candidates list together with mechanism for implementation of judgment, should be indicated. The Bar Associations oppose this move on the ground that the application is not bona fide as it is belated and that this court should not further meddle in its political processes.

10. With respect to the first claim, the Bar Association's basic objection is that the applications are belated; besides, this Court should not modify its final judgment. At the same time, there is no denial of the fact that neither are the elections to all the Bar Associations in the city of Delhi synchronous in the sense that they are held in one year nor to the fact that there is no uniformity in the tenure of these Associations. If these facts are kept in mind, the applicants' grievance is well-founded. The lack of uniformity in the tenure (the number of years for which a particular Bar Association's Office Bearers are elected to hold office) would mean that in a given previous year, if there were no election in some Bar Associations, multiple voting in Bar Associations' elections would be permissible. This Court is of the considered opinion that the applicant's grievance is well-founded; instead of reference to a previous year, the Court accepts the claim for modification of para 52(a) of the main judgment.

11. The second aspect highlighted and argued by the applicants was the related grievance with respect to lack of any mechanism to ensure that election processes, especially maintenance of voters' list and the declaration of individual candidates who vote as well as those contesting in elections, are preserved.

12. The Court is of the opinion that at present the materials on record nowhere show that the voters' list or any other related material are to be preserved according to the constitution of any of the Bar Associations.

Accordingly, the main judgment requires suitable modification. Likewise, an appropriate institutional mechanism to oversee the elections and ensure that the directions are complied with too have to be factored. The failure to do so will in effect render the directions devoid of vitality and substance. In the circumstances, para 52(a) shall be substituted as follows:

"52. In the light of the above findings and conclusions, the following directions are issued:

(a) The following rule, incorporating the one-bar, one vote principle shall stand incorporated forthwith in relation to every Bar Association in Delhi (including the Delhi High Court Bar Association, the Delhi Bar Association, the New Delhi Bar Association, the Rohini, Shahdara, Saket and Dwarka Courts Bar Association and all other Court/Tribunals attached Bar Associations):

"A member who exercises her or his right to vote in any year in the High Court or a District Court Advocate's/Bar Association election shall not be eligible to cast her or his vote and/or contest for any post - either as member of the executive or of an office Bearer, at the election of any other Bar Association. Every member before casting his vote shall in the prescribed form furnish a "Declaration" that she/he has not voted in the immediately preceding election to any other Bar Association and is not voting in any election of the Supreme Court Bar Association or any other Bar Association. Provided, however, that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of the Association for a period of three years.

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Explanation (3) "Declaration" means a declaration in the following form:

I?.(State name, and full description, i.e., parentage, age, particulars of Bar Council enrolment, and membership of the Bar Association of the Court complex where chamber allotment is sought) do hereby solemnly declare and affirm that I have not voted for and/or have not contested for any elective post, in any other Bar Association of which I am also a member in the immediately preceding election and that I will not do so in any election during this year in such Bar Association. In case this declaration is detected to be false, my right to vote shall remain suspended for three years after such declaration is detected to be false."

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13. The following directions shall be added by way of modifications:

(a)(i) For every election, the Bar Association shall constitute an Election Committee of three members. This Committee shall be formed three months

before the end of the tenure of the office bearers of the Bar Association. The Committee shall comprise of two advocates with not less than 20 years" standing, who would not contest in the forthcoming elections, chaired by a Judicial Officer not below the rank of Additional District Judge of five years" standing nominated by the concerned District Judge.

(a)(ii) Such Election Committee would be responsible for the task of verifying the declarations and preparing the list of members eligible to vote having regard to the directions in para 52(a) above. Such list shall be prepared and displayed for objections after which the final list of voters shall be prepared at least four weeks before the date of voting.

(a)(iii) The Chairman of the Election Committee, i.e. the concerned judicial officer shall ensure the preservation of the records relevant to verify the declarations. Such records, including the declarations given by the members, the final list of voters and the final list of candidates with their declarations shall be kept in the custody of the concerned District Judge and available for scrutiny. The District Judge shall in turn ensure that such documents are digitized and kept in safe custody.

14. The application is partly allowed in the light of the above directions.

15. Order dasti under the signatures of the Court Master.