

(2020) 02 PAT CK 0392

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22318 Of 2018

Raj Nath Sharma

APPELLANT

Vs

Bihar State Bar Council And Ors

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Advocates Act, 1961 — Section 3, 3(2), 3(3), 5, 6, 7(1), 7(1)(g), 7(g), 9, 9(1), 9(1)(a), 9(2), 9(A), 9(a)(1), 9(a)(2), 10(1)(a), 10(1)(b), 10A, 10(3), 15, 15(2)(c), 15(3), 48(b), 48B(1), 49, 49(1)(i), 49A
Bar Council Of Bihar Rules, 1962 — Rule 1, 1(b), 8, 8(1), 9, 12, 15
Constitution Of India, 1950 — Article 14, 226

Citation : (2020) 02 PAT CK 0392

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Dinu Kumar, Ritika Rani, Anjani Kumar, Sanjay Prasad, Vishwajeet Kumar Mishra, Shantanu Kumar, Praveen Kumar

Final Decision : Allowed

Judgement

This writ application has been filed seeking following reliefs:-

"(A) For issuance of the writ in the nature of declaration guidelines issued under the signature of Secretary, Bar Council of India vide letter dated 23-06-2018 as contained in Annexure-1 with respect terms of Chairman and Vice-Chairman of the Bihar State Bar Council for a period of 1 & ½ years in place of 2 & ½ years, constitution of Executive Committee, Enrollment Committee, Finance Committee, Chambers Committee, Disciplinary Committee, Co-chairman, Bihar Advocate Welfare Trustee Committee, Finance Committee, Enrollment Committee, Pension Committee, Disciplinary Committee, Building Committee, General Committee, Editorial Board, Rules Committee, Seminar Committee, Legal Aid Committee, Election Committee and others committee are without jurisdiction and contrary to the Section 3(3), 5, 6, 9(1), 9(2), 9(A), 10(1)(a) & 10(1)(b) of the Advocate Act, 1961 (Act No.25 of 1961 hereinafter referred as Act, 1961), void, ab-initio, violation of Article 14 of the Constitution of India and unfair and untransparent,

malafide, illegal and bad in law.

(B) Also declaring the consequential action taken by the Bihar State Bar Council in its meeting vide resolution No.14/2018 dated 12-08-2018 and Resolution No.26 dated 23-09-2018 in adopting the guidelines issued by the Bar Council of India as contained in Annexure-1 without jurisdiction and contrary to the Section 3(3), 5, 6, 9(1), 9(2), 9(A), 10(1)(a) & 10(1)(b) of the Advocate Act, 1961 (Act No.25 of 1961 hereinafter referred as Act, 1961), void, ab-initio, violation of Article 14 of the Constitution of India and unfair and untransparent, malafide, illegal and bad in law.

(C) Also for quashing the guideline issued by the Bar Council of India dated 23-06-2018 as contained in Annexure-1.

(D) Also for quashing the proceeding of the meeting of general meeting of the Bihar State Bar Council held on 12-08-2018 vide resolution no.14/2018 as contained in Annexure-2 by which guideline contained in annexure 1 has been adopted proceeding of the meeting of the general body of the Bihar State Bar Council held on 23-09-2018 as contained in Annexure-3 by which 5 Co-chairman, 3 persons of Bihar Advocate Welfare Trustee Committee, 9 members of the Executive Committee, 9 members of the Finance Committee, 6 Enrollment Committee, Pension Committee, 13 Disciplinary Committee, Building Committee of 5 persons, Chamber Committee of 5 persons, and General Committee of 7 persons, Editorial Board of 7 persons, Rules Committee of 5 persons, Seminar Committee of 5 persons, Legal Aid Committee of 5 persons, 3 Election Committee.

(E) Also declaring any decision taken by the General body of Bihar State Bar Council as per the communication dated 23-06-2018 as contained in Annexure-1 is against the interest of Advocate misuse of the public money and against the duty assigned to the Bihar State Bar Council which is trustee in the eye of law.

(F) Also declaring any decision taken by the Bihar State Bar Council and its committees after adopting guideline as contained in Annexure-1 is void, illegal and bad in law."

Case of the Petitioner :-

2. Petitioner asserts that he is an advocate-on-record of this Court having AOR No 01905 and is on the State Roll of Bihar State Bar Council (hereinafter referred to as 'the BSBC'). Elections were held for electing the members of BSBC in 2018 whereafter the Returning Officer, appointed for the elections, declared 25 members (Respondent 4 to 28) elected, leading to issuance of a Gazette notification, vide BCI-D-2520/2018 (council) dated 23.06.2018. Thereafter, the BCI issued guidelines to the BSBC for elections of the office bearers of BSBC and a member Representative for the Bar Council of India (hereinafter referred to as 'the BCI'). The said guidelines fixed 1 ½ years tenure for the Chairman, Vice-Chairman, Executive Chairman and Executive Vice-Chairman, 2 years for

Building-cum-Chamber Committee, 2 years for the Enrollment Committee, Co-Chairmen, members of Executive Committee and Disciplinary Committee. On 23/06/2018 itself, the guidelines of BCI were adopted vide Resolution No 14/2018 dated 12/08/2018 passed by the General Body of BSBC. General Body of the BSBC, vide resolution dated 26/09/2018 constituted committees in accordance with the said guidelines issued by the BCI.

3. It is the petitioner's case that as the Advocates Act, 1961 (hereinafter referred to as the Act) does not vest such power in the BCI to issue guidelines and fix tenures of its members, the issuance of such guidelines by the BCI and compliance by the BSBC is illegal, beyond jurisdiction and therefore unsustainable. These guidelines are, according to him, contrary to the provisions under Sections 3(3), 5, 6, 9 (1), 9(2), 10(1)(a) & 10(1)(b) of the Act.

4. It has further been asserted that five members have been appointed as co-chairmen, which is in violation of section 3 of the Act. Further, the BSBC had no jurisdiction to constitute a three-member Bihar Advocates Welfare Trustee Committee which has been indicated in Annexure 3. Nine members have been elected for the Executive Committee, which is also contrary to the provision under Section 10(1)(a) of the Act, 1961. Constitution of six Enrollment Committees consisting of a convener and two other members is in violation of section 10(1)(b) of the Act. The guidelines are in violation of Sections 9(1)(a), 9(2), 9(a)(1) and 9(a)(2) of the Act and Article 14 of the Constitution of India.

5. The fixation by the BCI of terms of the members of various committees, according to the petitioner, was without jurisdiction and contrary to the statutory provisions noted above. The BSBC is made to bear the expenditure of more than Rs. 50 Lakh every year on TA/DA of the members of the committees which has increased to nearly a crore in last 5 years which is against the interest of the advocates of the State, the petitioner asserts.

6. It is the petitioner's grievance that the BCI and BSBC have failed to provide basic facilities like lift, pure water and hygienic public conveniences in of Bihar State Bar Council Bhawan, meant for advocates and have been misusing State Bar Council fund in meeting air-fares for the travels of the members of the BSBC, by holding meetings outside the State.

7. A supplementary affidavit has been filed by the petitioner stating therein that tenure of the Chairman of the BSBC, as per the Act is five years, whereas BCI has fixed the tenure of Chairman and Vice-Chairman of BSBC as 1 ½ years. Neither the BCI nor the BSBC ever published in official Gazette any Rule prescribing terms of Chairman and Vice-Chairman of the BSBC to be 1 ½ years in place of 5 years, and the term of other office bearers.

8. It is his case that Chapter VI of BCI Rule prescribes for publication in official gazette, any Rule framed by it or by a State Bar Council. Unless amendment is made under the said Sections in question, BCI cannot exercise such powers which are exclusively vested with State Bar Council.

9. I.A. No.1 of 2019 has been filed to implead Mr. Dharamnath Yadav, a member of BSBC, as party Respondent 30 in the writ petition, as according to the petitioner, he has availed undue advantage of irrational and illegal acts of the BCI and the BSBC, by his nomination in the committees of the Council.

Case of the BSBC :

10. A Counter Affidavit on behalf of Respondent No 1 and 2 (BSBC) has been filed stating that as per the provisions of the Act and the Rules rule framed thereunder, the BCI is the highest rule making body in respect of State Bar Councils and, therefore, the rules framed by the BCI is to be adhered to and complied with by the State Bar Councils. The BCI is the apex body to regulate the terms and conditions as well as practice and the procedure of the State Bar Councils. It has been also stated that on 30.07.2008, a decision was taken by Special Committee of the BSBC to reduce the tenure of Chairman and Vice-Chairman to two and half years which was accepted by BCI vide its resolution no 124 dated 12.10.2008. Further, vide Resolution no 8/2018 dated 11.08.2018, BCI unanimously authorized its 3 senior office bearers to recommend the names of members to different committees of BCI. The guidelines of the Apex Body has been adopted vide resolution no 14/2018 dated 12.08.2018. Further, the BCI has already resolved to the effect that "such adoption should not create any financial impact or burden on the financial exchequer of the council".

11. A supplementary Counter Affidavit on behalf of Respondent no 1 and 2 has been filed to state that copies of the writ application has been served to all the members of the BSBC except Shri Madan Mohan Mishra.

12. A 2nd Supplementary Affidavit on behalf of Respondent no 1 and 2 has been filed stating therein that vide e-mail dated 20/09/2019 the Secretary, BCI has communicated a resolution of BCI vide item no 296/2019 dated 11.08.2019 in which it has been mentioned that the Act provides for five members in an executive committee and three in an enrollment committee only.

13. A third supplementary counter affidavit has been filed on behalf of respondents no. 1 and 2. Along with the said counter affidavit, a copy of communication dated 20.09.2019, issued by the Secretary, Bar Council of India, addressed to all the State Bar Councils has been brought on record. The said communication refers to resolution no. 221/2017 dated 28.10.2017 and the guidelines sent to the Bar Council and has noticed certain inadvertent mistakes in the nature of typographical errors. It notices the fact that whereas the Act provides for only 5 members to be there in the Executive Committee of the such Bar Councils and 3 members in the Enrollment Committee, more members have been directed to form the said Committees. Accordingly, the impugned guidelines have been modified with a direction to include only 5 members in their Executive Committees and 3 members in the Enrollment Committee.

Case of BCI

14. A Counter Affidavit has been filed on behalf of Respondent No 3 and 4 (BCI) stating that the petitioner has failed to show as to how Annexure-1 has affected him and that he is obliged to establish his locus standi to maintain this case, he being in no manner associated with the affairs of the BSBC, which is an elected body. The BCI has already taken necessary steps for rectification in constitution of the Committees in accord with Section 10(1)(a) & 10(1)(b) of the Act. As far as tenure of the office bearers is concerned, according to the guidelines of Apex Court, there is an Election Tribunal functioning for such purposes in BCI for the State Bar Councils. The tribunal is headed by former Hon'ble Chief Justice of the High Court and two former Judges of different High courts. Moreover, three Election Tribunals were constituted to look into the matters arising out of election of all the State Bar Councils. The petitioner is neither a member of BSBC nor eligible to contest either for the post of Chairman or any other post in BSBC. He is an outsider and has no locus to maintain the challenge.

15. It has also been stated that none of the provisions referred to by petitioner states anything about the tenure of the office bearers of the BSBC. Section 10(3) states that State Bar Council and BCI may constitute from amongst its members such committees as it may deem necessary for the purpose of carrying out the provision of this Act. Section 7(g) of the Act states that BCI is to exercise general supervision and control over the State Bar Councils. Section 48 B of the Act empowers the BCI to issue any direction to any State Bar Council. The Co-chairmen of any State Bar Council are not paid any TA/DA or any allowances for the work done by them. Section 10(3) provides that such things cannot be questioned in a court of law. However, the matter has been reviewed so far as number of members of executive and enrollment committees are concerned. The resolutions for deciding the disputes in relation to election of the State Bar Council were implemented only after approval of the Apex Court. The BCI has issued directions to State Bar Councils to limit the number of members of executive committee to five and enrollment committee to three. The resolution (Annexure 1) was accepted by majority of votes.

16. A Counter Affidavit on behalf of Respondent No. 30 has been filed stating, inter alia, that the selection was made by accepting the following procedure stated in Para 6A of the writ petition. Also that the allegations levelled are totally false and concocted. CCTV is working well.

Submissions and Discussion:

17. It can be easily noticed from the materials on record and the reliefs, which the petitioner has sought, that his main grievance is against issuance of guidelines by the BCI dated 23.06.2018, which, according to the petitioner, is not within the jurisdiction of the BCI, as the Act or the Rules framed thereunder doesnot contemplate such jurisdiction.

18. I must notice, at the very outset, the fact that the General Body of the BSBC, through its Resolution No. 14 passed on 12.08.2018, has adopted the guidelines

issued by the BCI. Relevant portion of the said Resolution is being extracted hereinbelow from Annexure-2 to the writ application : -

"After due discussion the members unanimously resolved to adopt the guidelines framed by the Bar Councils of India as appended along with communication dated 23.06.2018. It was further resolved that such adoption should not create any financial impact or burden on the financial exchequer of the Council. It was further resolved that in exceptional circumstances or for some exigency payment of Travelling allowance to Co-Chairman would be payable subject to prior approval of the Council or Chairman and post confirmation of the same by the Council."

19. Mr. Dinu Kumar, learned counsel appearing on behalf of the petitioner, has referred to Section 7 of the Act, which delineates various functions of the BCI and has submitted that none of the functions, confers any power on the BCI to issue guidelines of the nature, as has been done in the present case. He has contended that the said guidelines are in conflict with statutory provisions as contained in Sections 3(3), 5, 6, 9(1), 9(2), 9(A), 10(1)(a) and 10(1)(b) of the Advocates Act, 1961 (hereinafter referred to as 'the Act'). He has referred to Section 49A of the Act to submit that since the said guidelines were not published in the official gazette, they did not have any binding effect on the State Bar Councils to follow.

20. Referring to Sections 9, 9A, 10(1)(a) and 10 of the Act he has contended that it is purely within the domain of the State Bar Council to constitute Legal Aid Committees and the Committees other than Disciplinary Committees. He would contend that Section 10A of the Act deals with transaction of business by the Bar Councils and Committees thereof. According to him, the BCI had no jurisdiction to control the functioning of the Bar Council, the way it has been done. He has argued that despite the fact that the BCI is aware about the tenure prescribed under Chapter-III of the Bar Council of India Rules, 1962, the aforesaid guidelines have been issued in violation of the provisions.

21. Mr. Praveen Kumar, learned Advocate, though not representing either of the parties in the present proceeding, stood up to argue in favour of the points raised in the writ application and has referred to Sections 49(1)(i) and Section 15 of the Act. With reference to Section 49(1)(i) of the Act, Mr. Kumar has contended that Section 49 confers upon the BCI jurisdiction to frame Rules for discharging its functions under the Act, but only for the purposes mentioned therein. Referring to clause (1) of sub-section (1) of Section 49 of the Act, he has submitted that the BCI has jurisdiction to frame Rules prescribing general principles for guidance of State Bar Council and manner in which the directions issued or orders made by the BCI may be enforced. He has, however, submitted that the guidelines have apparently not been issued in exercise of Rule making power of the BCI. He has also referred to Section 9 of the Act, which makes provisions for constitution of Disciplinary Committees, each of which should consist of three persons, according to him, in terms of the guidelines issued by the BCI. He has submitted

that the constitution of the Committees as suggested in the guidelines is in clear conflict with the statutory provisions.

22. Learned counsel appearing on behalf of the BCI has questioned the locus standi of the petitioner, who is neither a Member of the BCI nor of the State Bar Council. According to him, issuance of the impugned guidelines by the BCI does not give the petitioner any cause of action to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. He has submitted that there is no averment in the writ application to indicate as to how the petitioner is personally aggrieved with the issuance of the guidelines and, therefore, according to him, this writ application deserves to be dismissed as not maintainable. He has submitted that the guidelines have been issued by the BCI in discharge of its function under Clause (g) of sub-section (1) of Section 7 of the Act, which confers upon the BCI jurisdiction to exercise general supervision and control over the State Bar Councils. He has argued that the posts of Co-Chairmen have been created at the level of State Bar Councils for smooth functioning of the affairs of the State Bar Councils, which does not have any financial implication. According to him, it is merely internal arrangement of the State Bar Council and there is no such statutory provision, which restricts the State Bar Council to elect one or more Co-Chairpersons. In relation to constitution of Executive Committee and Enrollment Committee, he has referred to statement made in paragraph 11 of the counter affidavit to submit that the matter has since been reviewed by the BCI. He has submitted that this writ application lacks bonafide. He has referred to paragraph 14 of the counter affidavit to submit that the BCI has issued a direction to the State Bar Councils to limit the number of Executive Committees to five (5) and Enrollment Committees to three (3). He has argued that the BSBC had, in past, constituted several Enrollment Committees against which no dispute was ever raised. He has further argued that the BSBC has resolved to follow the impugned guidelines issued by the BCI, by a majority decision with dissent expressed by only two of its members.

23. Learned counsel appearing on behalf of the BSBC has referred to Section 48B of the Act and has submitted that for the proper and efficient discharge of the functions of the State Bar Council or any Committee thereof, the BCI may, in exercise of its power of general supervision and control, give such directions to the State Bar Council or any Committee thereof as may appear to the BCI to be necessary and it is obligatory for a State Bar Council or the Committees to comply with such directions. He has referred to the statement made in paragraph 6 of the second supplementary counter affidavit filed on behalf of the BSBC to submit that the BSBC has received a communication through e-mail dated 20.09.2019 from the BCI, wherein it has been mentioned that the Act provides for only five members there in the Executive Committee of the State Bar Councils and three members in the Enrollment Committee. Accordingly, the State Bar Councils have been asked to include only five members in their Executive Committees and three members in the Enrollment Committees. It has further been stated that the aforesaid directions issued by the BCI will be put up for

consideration by the general body of BSBC, in its next general body meeting.

24. I do not find much force in the preliminary objection taken on behalf of the Respondents questioning the locus standi of the petitioner to maintain this application. The petitioner, a practicing advocate on the rolls of the BSBC, has every right to raise to legal and jurisdictional issues touching the functioning of the BSBC. In any view of the matter, after having noticed glaring legal issues involved, this Court cannot shut its eyes and refuse to entertain the application on technical plea of this nature.

25. Before, I consider the rival submissions on behalf of the parties in respect of legality of the impugned guidelines issued under letter dated 23.06.2018 by the BCI, it would be apt to examine first, the character of the said guidelines, with reference to the jurisdiction of the BCI.

26. The guidelines were issued in June 2018 and as is apparent from the said communication, it was issued after declaration of result of the election of members of the State Bar Council. There is a direction issued in the said letter to the State Bar Council that its first meeting shall be convened by the Returning Officer immediately after publication of result in official gazette. The said direction is apparently in exercise of power under Section 7(1)(g) read with Section 48B(1) of the Act. To exercise general supervision and control over the State Bar Councils is one of the functions of the BCI under Section 7(1)(g) of the Act. Section 48B confers upon the BCI power, for proper and efficient discharge of the functions of the State Bar Councils, to give necessary directions to the State Bar Councils. Section 48B of the Act mandates a State Bar Council to comply with the directions issued by the BCI.

27. The BCI further directed that the elections for the post of Chairman, Vice-Chairman, Co-Chairmen and other posts shall be held simultaneously and election of the Member, Bar Council of India, shall be held prior to election of other office bearers of the State Bar Council. For the election of the Member, Bar Council of India, the Secretary, Bar Council of India, would act as the returning officer. It also indicated that if the special committee so decided, elections of other posts of State Bar Councils may be held in New Delhi in the Meeting Hall of the BCI soon after election of Chairman, Co-Chairmen and Vice-Chairman of the State Bar Council.

28. It is evident from the language, tone and tenor of paragraph 3 of the letter dated 23.06.2018 that to the extent the BCI was asking the Officiating Secretary, BSBC, to hold elections simultaneously for the post of Chairman, Vice-Chairman and Co-Chairmen and other posts, it was certainly in the nature of direction under Section 48B of the Act. The nomination of the Secretary, BCI, to act as the returning officer for election of Member, BCI, to be held in the Office of the BCI prior to election of the office bearers of the BSBC was also in the nature of direction to the BSBC under Section 48B of the Act. In the same third paragraph, the BCI has recorded in the impugned letter thus:-

"The elections for the posts of Chairman, Vice-Chairman, Co-Chairman and others posts shall be held simultaneously at one time. For election of the Member-Bar Council of India, the Secretary, B.C.I. will act as Returning Officer and this election shall be held in Bar Council of India prior to election of Office-bearers of State Bar Council. However, if the Special Committee so decides, the elections of other posts of State Bar Council may also be held at Delhi (in the meeting Hall of Bar Council of India), on the following/very next day soon-after the election of Chairman and Vice-Chairman of State Bar Council."

(underlining for emphasis)

29. It was apparently a choice given to the special committee to decide whether to hold or not to hold election for other posts in Delhi, soon after election of the Chairman and Vice-Chairman of the BSBC.

30. The letter further refers to some of the Committees to be constituted of the BCI. The case does not involve any dispute in respect of the Committees of the BCI. After referring to the various Committees of the BCI, the impugned letter proceeds to consider the status of Co-Chairmen of State Bar Councils. It is clear from the said letter that there was a proposal lying before the BCI from the State Bar Council of West Bengal on the point of status of Co-Chairmen of a State Bar Council. The letter clarifies that Co-Chairmen of State Bar Council shall be elected by general body of State Bar Councils and their tenure will be co-extensive with the Chairman. It further refers that the Chairman, BCI, is authorized to remove any difficulty or confusion with regard to the status or entitlement of Co-Chairmen of State Bar Council.

31. After having mentioned, as above, the BCI has recorded as under : -

"Therefore, the office is to inform State Bar Councils about the following details: -

1. Chairman (Tenure 1 ½ Years for Bihar)

(a)

(b)

(c)

(d)

2. Vice-Chairman (Tenure 1 ½ Years for Bihar)

(a)

(b)

(c)

(d)

3. Executive Chairman (Tenure 1 ½ Years for Bihar)

(a)

(b)

(c)

(d)

4. Executive Vice-Chairman (Tenure 1 ½ Years for Bihar)

(a)

(b)

(c)

(d)

5. Building cum Chambers Committee (Tenure 2 Years for Bihar)

(a) Chairman/Convenor

(b) Member

(c) Co-opted

6. Trustee Committee Members (Tenure as per the Advocates Welfare Act))

(a)

(b)

7. Member Plus 1 Special Invitee in B.C.I. Rule 40 Committee (2 Years)

(a)

(b)

(c) Special Invitee (permanent)

8. Enrolment Committees : (Tenure 2 years)

(a)

(b)

(c)

(d)

(e)

(f)

9. Co-Chairman

(a)

(b)

(c)

(d)

IIInd Term

(a)

(b)

(c)

(d)

IIIrd Term

(a)

(b)

(c)

(d)

10. Members of Executive Committee

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i)

11. Disciplinary Committees (Tenure 2 years) with one co-opted member to be co-opted by the Chairman of the Executive Committee in Consultation with the Chairman, Disciplinary Committee(s)

(I)

(II)

(III)

(IV)

(V)

(VI)

(VII)

(VIII)

(IX)"

32. The character of the impugned communication, to the extent it relates to determining the status of Co-Chairmen of a State Bar Council, in my view, is in purported exercise power of the BCI of its general supervision and control over State Bar Councils.

33. This is to be noted that under the scheme of the Advocates Act, State Bar Councils are constituted under Section 3 of the Act, whereas Section 4 deals with constitution of BCI. Sub-section (3) of Section 3 of the Act mandates that there shall be a Chairman and Vice-Chairman of each State Bar Council. The said provision does not contemplate any period fixed for the said post of Chairman and Vice-Chairman. The Act does not contemplate any provision for the post of Co-Chairmen. No Rule has been shown to the Court, which contemplates creation of post of Co-Chairmen nor any decision either of the BCI or State Bar Council has been produced before me to justify election of Co-Chairman.

34. So far as the challenge of the petitioner to constitution of various Committees is concerned, Section 10 of the Act empowers the State Bar Council to constitute two Standing Committees, namely, Executive Committee, consisting of five members; and an Enrollment Committee, consisting of two members.

35. As has been noticed above, the discrepancies in relation to constitution of the said two Standing Committees have been directed to be rectified by the BCI. Till the matter was last heard, it was not brought to the notice of the Court whether the said two Standing Committees, namely, Executive Committee and Enrollment Committee, have been reconstituted or not strictly in terms of Section 10 of the Act. Sub-section (3) of Section 10 of the Act empowers the State Bar Council and the BCI to constitute from amongst its members such other Committees as it may deem necessary for the purpose of carrying out the provisions of the Act. Apparently, therefore, there is no lack of jurisdiction in the State Bar Council to constitute from amongst its members, Committees other than the Standing Committees mentioned in Section 10 of the Act. Section 9 of the Act authorises State Bar Council to constitute one or more Disciplinary Committees.

36. On conjoint reading of Sections 9, 10(1) and 10(3), it can be easily noticed that there can be following three categories of Committees, which a State Bar Council may constitute : -

- (i) One or more Disciplinary Committees in accordance with Section 9 of the Act;
- (ii) Two Standing Committees, namely, Executive Committee and Enrollment Committee under Section 10(1)(a) and 10(1)(b) of the Act; and

(iii) Other Committees as the State Bar Council may deem necessary for the purpose of carrying out the provisions of the Act from amongst its members.

37. The statutory provisions restrict the State Bar Councils, while exercising their jurisdiction to constitute Committees, by clearly mentioning that the same can be done only for the purpose of carrying out the provisions of the Act.

38. I have not encumbered the present judgment by referring to such Committees, which are required to be constituted under other provisions of the Act in the absence of a duly elected body of State Bar Council as the elected body of State Bar Council in the State of Bihar is in place and the dispute arises out of constitution of Committees by the said elected body under the guidelines issued by the BCI.

39. Coming back to the functions of the State Bar Councils, as incorporated in Section 6 of the Act, it can be noticed that to safeguard the rights, privileges and interests of Advocates on its roll is one of the functions of the State Bar Council under Clause (d) of sub-section (1) thereof. Sub-section (2) of Section 6 of the Act enables State Bar Councils to constitute one or more funds in prescribed manner for the purpose of giving financial assistance to organize welfare schemes for the indigent, disabled or other advocates.

40. In any view of the matter, impugned communication of the BCI, suggesting State Bar Council to constitute committees is, to that extent, is advisory in nature. The BSBC has, in its meeting held on 12.08.2018, resolved to accept the guidelines issued by the BCI. It is, thus, the correctness of the impugned decision of the State Bar Council to constitute various committees, which is to be examined in the present case.

41. There may not be any controversy over constitution of Disciplinary Committees, 'an Executive Committee', consisting of five members elected by the Council from amongst its members, and 'an Enrolment Committee', consisting of three members elected by the Council from amongst its members. The Standing Committees stipulated under Section 10A of the Act are to be constituted by election. There cannot be any dispute over constitution of more than one disciplinary committees by the Bar Council. The said power vests in the Bar Council to constitute more than one disciplinary committees. Other than the said three types of committees, the following committees have been constituted by the general body of BSBC in its meeting held on 23.09.2018, as has been asserted in the writ application :-

(1) Co-Chairman

(2) Bihar Advocates Welfare Trustee Committee/

(3) Finance Committee

(4) Pension Committee

(5) Advocates Welfare Fund of Bar Council of India for the State of Bihar.

- (6) Building Committee
- (7) Chamber Committee
- (8) Journal Committee
- (9) Editorial Committee
- (10) Rules Committee
- (11) Seminar Committee
- (12) Legal Aid Committee

42. The purpose of constitution of Committee of a Co-Chairmen is not known. Going by the names of other committees, as mentioned above, though it is difficult for this Court to hold that the same have not been constituted for the purpose of carrying out various provisions of the Act, counter affidavits filed on behalf of the BCI and the BSBC are completely silent on this aspect and do not indicate explicitly the purpose for which the said Committees have been constituted. It is true that the BCI does have the jurisdiction to issue directions of binding nature, but such directions will essentially have to be in conformity with the statutory mandate. The jurisdiction to constitute committees vests in the State Bar Councils for the purposes of carrying out the provisions of the Act and not otherwise. A plea that the recommendation of the BCI to nominate/elect Co-Chairmen of State Bar Councils throughout the country has been accepted, cannot be the sole basis for this Court to approve something which has been done in the absence of and contrary to statutory mandate.

43. I have already dealt with nature of the impugned communication dated 23.06.2018 in the foregoing paragraphs.

44. Learned counsel appearing on behalf of the BSBC has referred to Section 48B of the Act to contend that the said communication of the BCI being directory in nature has been followed by the State Bar Council in toto and accordingly, a Committee of elected Co-Chairmen has been constituted. It has, however, not been disputed that subsequent communication of the BCI made in September, 2019, whereby the earlier guidelines were sought to be modified and the BSBC was asked to constitute Committees in accordance with the provisions of the Act has not been implemented so far. The crux of the statement made in paragraph 9 of the third supplementary counter affidavit filed on behalf of the BSBC is that the said communication dated 20.09.2019, has not been given effect to, because of the pendency of the present case before this case since the matter was at the stage of final hearing and disposal .

45. I have carefully examined various provisions of the Act and the Rules framed thereunder. The Act does not contemplate any post of Co-Chairman. Under the scheme of the Act, the State Bar Councils are constituted under Section 3 of the Act. Sub Section (3) of Section 3 of the Act mandates that there shall be a Chairman and a Vice-Chairman for each State Bar Councils. No provision has

been shown to the Court that envisages creation of post(s) of Co-chairman. No decision, either of the BCI or the State Bar Council has been produced before me to justify election of Co-Chairman and constitution of a Committee consisting of such elected Co-Chairman.

46. In my view therefore, the constitution of the first Committee of consisting of Co-Chairman by the State Bar Council has no statutory sanction and, therefore, cannot upheld.

47. Coming to the Disciplinary Committees, as provided under Section 9 of the Act, the language of the provision is unambiguous and provides that BCI shall constitute one or more disciplinary Committees. At the same time, it mandates that each disciplinary Committees shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Bar Council from amongst Advocates who possess the qualification specified in the proviso to sub Section (2) of Section 3 of the Act, who are not members of the Council, with clear stipulation that senior most Advocates amongst the members of the disciplinary Committee shall be the Chairman thereof. Constitution of all Executive Committees by the State Bar Council with members more than three (3) in number is patently illegal against the provision of Section 9 (1) of the Act. There is one Executive Committee constituted by the State Bar Council having nine (9) members. Clause (a) of sub Section (1) of Section 10 clearly lays down that an Executive Committee shall consist of 'five members elected by the Council' from amongst its members. As has been noticed above, the Bar Council of India has already issued direction to the State Bar Council to re-constitute the Executive Committee with five (5) members only in place of nine (9). The constitution of the Executive Committee of the State Bar Council with nine (9) members, in Court's opinion, is also illegal being in clear breach of Section 10 (1) (a) of the Act. Similarly, under the Act, there can be only one Enrollment Committee. The State Bar Council has constituted six Enrollment Committees instead, in clear breach of Section 10 (1) (b) of the Act. Further, whereas the said provision requires constitution of Enrollment Committee with three members, each of the six Enrollment Committees consist of five members. Out of the said six Enrollment Committees, which Committee shall be allowed to continue or whether Committee will have to be re-constituted will certainly depend upon the final decision of the BSBC, in accordance with the provisions of the Act.

48. Sub Section (3) of Section 10 of the Act allows the State Bar Council to constitute 'from amongst its members, such other Committees as it may deem necessary' for the purpose of carrying out the provisions of the Act'. Neither the guidelines issued by the BCI nor the constitution of the Committees made by the State Bar Council indicates the specific purpose under the Act, which is to be carried out by the respective Committees. In the Court's opinion, the fairness and propriety demand that the respective purposes are indicated for constitution of one or more Committees by the State Bar Council in accordance with Section

10 (3) of the Act.

49. My attention has been drawn by learned counsel appearing on behalf of BSBC to the Rules governing constitution of various committees of the BSBC prescribed under Chapter IX of the Bar Council of Bihar Rules, 1962. It is evident on reading of Rule 1 of said Rules under Chapter IX that two committees, namely, Executive Committee and Enrollment Committee, have been recognized as Standing Committees. The Rules deal with existence/ constitution of other committees, namely :-

(i) Disciplinary Committees

(ii) Finance Committee

(iii) Examination Committee

(iv) Registration Committee and

(v) Committees which may be formed thereafter

50. It is evident on reading of Rule 1(b) of the Rules that the Bar Council may constitute committees other than the committees mentioned therein. As has already been noticed, such other committees may be constituted for carrying out the purposes of the Act only, and not otherwise. Rule 8 of Chapter IX of 1962 Rules, prescribes the procedure for constitution of the committees, which reads as under :-

"8 (i) The Bar Council shall constitute the Committee by electing members of the Committees at one or more meetings of the Bar Council held for the purpose ordinarily in the month of January every year or at such time as may be considered necessary.

(ii) Members of the Bar Council shall be duly proposed and seconded at the meeting for election to each committee.

Where the number of names duly proposed and seconded be equal to the seats in the committee the members so proposed and seconded shall be declared to be elected as members of the committee.

In the event of there being more names proposed than seats to filled in any committee votes shall be taken at the meeting either by show of hands or by secret ballot as the members present at the meeting may decide. Members securing larger number of votes shall be declared elected. In the event of two or more members securing equal number of votes, lots shall be drawn by the President of the meeting and the person in whose favour the lot is drawn shall be declared elected."

51. Rule 9 is a significant provision, which lays down that term of office of Members of the Committee shall be one year from the date of election. The proviso to Rule 9, however, states that the term of office of a member of a committee shall extend even beyond one year till such time such elections are

held for the next term for the membership of the Committee. It is clear on reading of Rule 9 of Chapter IX of 1962 Rules that the election of the members for the committees of the BSBC is one year only and the elections are to be held thereafter. Sub-rule (1) of Rule 8 prescribes constitution of committee by electing members of the committee in meetings to be held ordinarily in the month of January. This is, however, an admitted position that no election of the members of the committees has been held after constitution of the committees in 2018. This is also to be noted that Rule 12 of Chapter IX of 1962 Rules reinforces the requirement of following procedure laid down for constitution of committees, through election, unless otherwise expressly directed by the Bar Council. Apart from the fact that an Executive Committee has been constituted with nine members in place of five members and more than one enrollment committees have been constituted in violation of the statutory prescriptions. It is apparent from the records that no election was held for the purpose of constitution of committees in accordance with the statutory rules, as noted above.

52. The BSBC has relied on resolution No. 8/2018 dated 11.08.2018 in the meeting of the General Body of the Council wherein it was unanimously resolved that the Chairman, BCI, Chairman, BSBC, and Vice-Chairman, BSBC, were authorized to recommend the names of the members for constitution of the different committees of BSBC as per the Act and the Rules. On the strength of the said resolution dated 11.08.2018, recommendations were made by the Chairman, BCI, Chairman, BSBC, and the Vice-Chairman, BSBC, nominating the Chairman and Members of various committees, as has been noticed above. The said recommendations are said to have been accepted by the General Body of Bihar State Bar Council held on 23.09.2018. The extract from the proceedings of the meeting of the General Body of BSBC held on 23.09.2018 is there at Annexure-3. On reading of the said extract, it is evident that no election, as stipulated, and in accordance with the procedure prescribed under Rule 8 of Chapter IX of Bar Council of Bihar Rules 1962, was held. If the extract from the proceedings of the meeting of the General Body of BSBC held on 11.08.2018 is to be seen, the Chairman, BCI, Chairman, BSBC, and Vice-Chairman, BSBC, were authorized to recommend the names of the members for constitution of different committees of BSBC 'as per Act and the Rules'. The said authorization was in clear defiance of the provisions under the Act and the Rules.

53. The decision to fix the tenure of Chairman and Vice-Chairman, BSBC (1½ years) is also being seriously questioned on behalf of the petitioner. It has been argued that a Bar Council is constituted after election for a term of five years and, therefore, fixing of tenure of 1½ years for Chairman is illogical, as four Chairmen, each having tenure of 1½ years, cannot function during the term of the Council, which is of five years.

54. This is to be noted that Rules were framed under Section 15(2)(c) of the Act for election of Chairman and Vice-Chairman of the Bar Council, which prescribed, inter alia, that Chairman or Vice-Chairman so elected, would hold office for the

rest of the term of the Bar Council. It is the case of BSBC that on 30.07.2008, tenure of Chairman and Vice-Chairman was reduced to 2½ years on the basis of decision of Special Committee of the Council in the absence of regularly elected body. The said decision fixing tenure of Chairman and Vice-Chairman as 2½ years has been approved by the BCI vide resolution No. 124 dated 12.08.2008. It is accordingly the case of BSBC that the original rule, which required the term of Chairman and Vice-Chairman of the Council to be the same as the term and the Council stood amended with the approval of resolution by the BCI and thereby fixing the tenure of Chairman and Vice-Chairman as 2 ½ years.

55. It has already been recorded hereinabove that BCI, through impugned communication dated 23.06.2018, has fixed the tenure of Chairman and Vice-Chairman as 1½ years. It is the case of the BCI that the communication by the BCI to the BSBC to revise the tenure of Chairman and Vice-Chairman to 1½ years was advisory in nature, which was accepted by the BSBC and adopted. It is accordingly the case of the BCI that the requirement of approval by the BCI of the decision taken by the BSBC on the advice of BCI became meaningless, as otherwise required under Section 15(3) of the Act.

56. Before, I proceed to interpret the requirement under the Act, which confers rule making power on State Bar Council, I am of the view that unless specifically statutorily prescribed, an elected body may mutually agree to fix the term of its Chairman or Vice-Chairman or any other office bearer, however, such decision cannot partake the nature of statutory provision. Provisions under Act, Rules/the statutory prescriptions will have to be strictly followed, as they exist. It is trite to say that if a statute requires something to be done in a particular manner, that will have to be done in that manner only or not at all. If fixation of 2½ years tenure for the post of Chairman and Vice-Chairman of the Bar Council was by way of amendment in 2008, in exercise of power under Rule 15 of the Rules, any amendment could be made only after following the procedure prescribed under the Rules. Meaning thereby, under Section 15 of the Act, the Bar Council could amend the rule first which could have been subsequently approved by the Bar Council of India under sub-section (3) of Section 15 of the Act.

57. The guidelines dated 23.06.2018 issued by the Bar Council of India, to the extent it prescribed the tenure of Chairman and Vice-Chairman of the Council, in my considered view, cannot have the effect of amending the statutory rules under Section 15 of the Act, despite the same having been accepted, subsequently, by the General Body of the BSBC. The Act stipulates framing of rules by the BSBC first and approval of such rules by the BCI thereafter and not vice versa. The said communication, in my considered opinion, cannot be termed as a direction under Section 48B of the Act. It is the case of the BCI itself, as I have already noticed, that the said guidelines were not directions under Section 48B, which BSBC has treated, though wrongly, to be mandatory directions issued by the Bar Council of India under Section 48B of the Act.

Conclusions :

58. In view of the above discussions, I have no hesitation in coming to the following conclusions :-

(i) Since the Act does not contemplate any post of Co-Chairman, a committee consisting of Co-Chairman said to have been elected by the elected members of BSBC, is per se illegal. There is no provision under the Act of any office bearer of BSBC in the name of Co-Chairman. It is held accordingly.

(ii) The constitution of Executive Committee consisting of nine members instead of five, as prescribed under the Act, is also illegal.

(iii) The Act contemplates constitution of one Enrollment Committee consisting of three members. There cannot be multiple Enrollment Committees in view of specific statutory provisions under the Act, as has been discussed.

59. For the reasons aforesaid and in the light of what has been held hereinabove, it has become imperative for this Court to issue certain directions to the BSBC to reconstitute its Standing Committees and other committees strictly in accordance with the requirements under the Act and the Rules, which are as under:-

(i) The Secretary, BSBC, is directed to ensure that an Executive Committee consisting of five members and an Enrollment Committee consisting of three members elected by the Council from amongst its members are constituted by following the procedure prescribed under Rule 8 of Chapter IX of Bar Council of Bihar Rules, 1962. Other committees will also have to be constituted in accordance with the procedure prescribed under Rules 8 and 12 of Chapter IX of 1962 Rules. The aforesaid directions must be complied with within six weeks.

(ii) The BSBC has jurisdiction of constitute other committees also. It is directed that the specific functions to be discharged by such committees for carrying out the purposes of the Act, must be specifically mentioned at appropriate places.

(iii) The term, which the BCI has suggested for the posts of Chairman and Vice-Chairman cannot have statutory character. It will be open, however, for the Council to take a decision in this regard but strictly in accordance with law, as prescribed under the Act and the Rules framed thereunder.

60. In special facts and circumstances of the case, applying de facto doctrine, I observe that any decision of the committees, constitutions of which have been held to be illegal, will not be called into question on that ground alone.

61. This writ application is allowed with abovementioned observations and directions.

62. No order as to costs.