
(2022) 09 DEL CK 0093

In the Delhi High Court

Case No : Civil Writ Petition No. 8197, 13027 Of 2022, Civil Miscellaneous Application No. 34021, 39465-39466, 39473-39474, 39915-39916, 40005-40006? Of 2022

Rajiv Khosla

APPELLANT

Vs

Delhi High Court Bar Association & Ors.

RESPONDENT

Date of Decision : 12-09-2022

Acts Referred:

Citation : (2022) 09 DEL CK 0093

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : Sunil Singh, Anuwesha Borah, Mohit Mathur, Sudhdanshu Batra, Nikhil Mehta, Devashu Chauhan

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. In the backdrop of forthcoming elections for the Executive Committee of the Delhi High Court Bar Association ["DHCBA"] scheduled for 29th September 2022, Petitioners in W.P. (C) No. 13027/2022 (Mr. S.C. Malhotra) and W.P. (C) No. 13030/2022 (Mr. Ashutosh Kumar Singh), who are members of the DHCBA, are aggrieved with deletion of their names from the list of eligible voters. They seek time to pay their outstanding dues in terms of rules/ resolutions/ guidelines/ constitution of the DHCBA, and to be included in the electoral roll. Petitioner in W.P. (C) No. 8197/ 2022 (Mr. Rajiv Khosla) is seeking implementation and strict compliance of the judgment dated 31st May, 2016 and order dated 18th October, 2016, both in W.P.(C) 8106/2010 titled P. K. Dash, Advocate & Ors. v. Bar Council of Delhi & Ors., as well as of the extant rules and regulations of DHCBA, in light of which, he seeks directions to DHCBA to: (i) follow the mode of payment of subscription for voting rights; (ii) constitute Election Commission as per the directions in P. K. Dash (supra); and (iii) conduct elections in a timely manner.

2. Counsels for DHCBA and the Election Commission have handed over some documents containing the election schedule, resolutions and notices of DHCBA, and brief submissions – all of which are taken on record. Considering the common grounds urged, afore-noted documents shall be treated as part of the record in each of the cases.

FACTS

3. The factual background of the present dispute is as follows:

3.1. On 06th August 2022, a list titled: 'Consolidated Provisional List Of Eligible And Ineligible Advocates/Voters Of The DHCBA Election, 2022' was notified by the Election Committee of DHCBA [hereinafter, "Provisional List"]. List-A annexed thereto contained tabulated particulars of 9173 members with a 'yes/' 'no' against their name in the last column titled 'Whether provisionally entitled to vote'. Mr. Ashutosh Kumar Singh was at serial number 7173 and Mr. S.C. Malhotra was at serial number 4111, with a 'yes' against their names.

3.2. As per resolution of the DHCBA dated 09th August 2022, cut-off date for payment of arrears of subscription till 30th June 2022, was fixed as 22nd August 2022 upto 5:00 P.M. [hereinafter, "cut-off date"].

3.3. Thereafter, on 26th August, 2022, a list titled: 'Final List for the forthcoming DHCBA Election-2022' was issued by the Election Committee of DHCBA, which was uploaded on the Delhi High Court website on 30th August, 2022 [hereinafter, "List dated 26th August 2022"]. The said list was accompanied with: (i) a cover letter dated 26th August 2022, signed by the Election Committee, (ii) Annexure A containing the findings of the Committee qua 824 objections received by it to the Provisional List, (iii) Annexure-B titled: 'Consolidated List Of Eligible And Ineligible Advocates/Voters Of The Delhi High Court Bar Association Election – 2022' containing tabulated particulars of 9173 members with a 'yes/' 'no' against their name in the last column titled 'Whether entitled to vote'. Mr. Ashutosh Kumar Singh was at serial number 7173 and Mr. S.C. Malhotra was at serial number 4111, with a 'yes' against their names.

3.4. On 29th/ 30th August, 2022, after verification of clearance of dues by the Election Commission, a list of 6444 voters, titled: 'List Of Eligible Advocates/Voters Of The Delhi High Court Bar Association Election- 2022' was uploaded on the website of DHCBA [hereinafter, "List dated 30th August 2022"]. In this list, the names of Mr. S.C. Malhotra and Mr. Ashutosh Kumar Singh did not feature at all.

3.5. Aggrieved from the above action of the Respondents, present petitions came to be filed.

CONTENTIONS OF THE PARTIES

4. Mr. Rakesh Tikku, Senior Advocate for Petitioners, along with Mr. Rajiv Khosla, Petitioner-in-person, have made the following submissions:

4.1. The List dated 26th August 2022, was published on the Delhi High Court website on 30th August 2022, under the description 'Final List for the forthcoming DHCBA Election-2022', and is still displayed there publicly. It was also circulated by other modes, without any riders, and hence, the Petitioners assumed the same to be the final list, whereunder their names were shown as eligible to vote.

4.2. However, on 30th August 2022 itself, the Respondents instead published the List dated 30th August 2022, not on the Delhi High Court website, but on the DHCBA website. There is reasonable ground for members/voters to be confused by such duplicity of lists. In fact, this list has not been published on the Delhi High Court website till date.

4.3. The List dated 30th August 2022 does not give a list of candidates debarred from voting, or provide any reasons for their exclusion/ omission.

4.4. No notice or intimation was given to members whose names were featuring as entitled to vote in the List dated 26th August 2022, but were struck-off by way 'final' electoral roll viz. List dated 30th August, 2022.

4.5. In absence of any intimation, many members whose names featured in the List dated 26th August 2022, but not in the List dated 30th August, 2022, continued to be confident of their status, and are now rudely shocked with their names not featuring in the updated 'Final' list. They and other such members should be given opportunity to pay their dues.

4.6. The members had no opportunity to contest such debarment, which is violative of principles of natural justice.

4.7. Petitioners have paid their dues till March 2022, and if opportunity is given, shall make payment of subscription fee as required, within any time schedule as may be directed by the court. The court may consider re-fixing the cut-off date for arrears of subscription fees as 30th March 2022, as this would not prejudice anyone and would render many members, including the Petitioners, eligible to vote.

4.8. The schedule of elections is not being followed in the matter set out in Clause 3 of the document titled: 'Guidelines / Modalities for Conducting / Holding Elections to the Executive committee of the Delhi High Court Bar Association to be followed pursuant to the resolution of the Executive Committee of the DHCBA dated 22-05-2003'; as well as in the manner given in P. K. Dash judgment and order.

5. Mr. Mohit Mathur and Mr. Sudhanshu Batra, Senior Advocates for DHCBA, have advanced the following submissions:

5.1. W.P. (C) No. 13027/2022 is not maintainable as the Petitioner (Mr. S.C. Malhotra) is falsely representing himself to be a member of DHCBA under membership number 12308/2014; As per DHCBA records, the said membership

number belongs to one Mr. Harshit Khurana, and thus, this petition deserves to be dismissed at the threshold.

5.2. It is trite law that once election process commences, the same cannot be interfered with and/or interdicted by any Court, and the only remedy for any aggrieved party is to approach the Court after the elections. [Reliance placed on N.K Gambhir Vs Carpet Export Promotion Council & Anr., 61 (1996) DLT 457.] Since the process of filing nominations will commence from 13th September, 2022, the Petitioners' grievances do not survive for adjudication, and for all intents and purposes, have been rendered infructuous.

5.3. All members of DHCBA, including Petitioners, were duty bound to act responsibly and should have cleared their dues in a timely manner, so as to ensure that there were no outstanding dues on their part. In fact, the DHCBA had sent multiple reminders through public notices, SMSs, social media platforms, as well as through members of its executive committee and other members, to all DHCBA members at large; however, Petitioners seem to have clearly ignored the same and the present petitions have been filed in bad faith.

6. Mr. Sandeep Agarwal and Mr. Akshay Makhija, Senior Counsel for the Election Commission, while clarifying the process of preparation of the final voter list, contended as follows:

6.1. The election is scheduled to be conducted in the following manner:

13.09.2022

The Nomination Forms for the Elections 2022 will be available in the DHCBA office.

13.09.2022 to 15.09.2022

Filing of Nomination Papers between 11:00 a.m. to 05:00 p.m. in the office of DHCBA.

16.09.2022

Scrutiny of Nomination Papers at 05:00 p.m. in the office of DHCBA.

17.09.2022 to 19.09.2022

Withdrawal of the Nomination Papers till 02:30 p.m. on 19.09.2022.

28.09.2022

Polling of votes between 10:00 a.m. to 05:00 p.m.

The electoral roll has to be finalized one month prior to the conduct of elections, as per para 13(a)(ii) of the Order dated 18th October 2016 in P. K. Dash (supra). [13. The following directions shall be added by way of modifications: (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.] Therefore, the Commission cannot embark on a never-ending exercise and a cut-off period date is required to be fixed.

6.2. The Election Committee received 824 objections on the provisional list, which were addressed in Annexure-A of the List dated 26th August 2022.

6.3. After verification of declaration forms and preparation of the List dated 26th August 2022 by the Election Committee, the Election Commission took over the process of preparing the final list. The final List dated 30th August 2022 has been made by the Election Commission, with external help, by running a software which weeds out names of members who have arrears as on the cut-off date.

6.4. In fact, even on this list many objections were received, of which 200 have been cleared and included in the electoral roll by way of a supplementary list, and more are being addressed. Such objections are based on members showing evidence of deposit of subscription prior to the cut-off date.

ANALYSIS

7. The Court has considered the above submissions.

The Election Committee

8. The Election Committee was constituted in terms of paragraph no. 13(a) of the order dated 18th October 2016 in P. K. Dash (supra) and given the task of scrutinizing the declaration forms. The 'Security Committee' was re-designated as 'Election Committee' as noted in the order of this court dated 31st May, 2022 in W.P. (C) No. 8197/ 2022. Further, vide order dated 2nd June 2022, 'Registrar of this Court or his nominee' viz. Mr. Deepak Garg OSD (Rules) and Mr. Dinesh Rastogi, Advocate were added to the Election Committee. Thus, the designated Election Committee stood comprised of Mr. Deepak Garg, (Chairperson), Mr. Prosenjeet Banerjee, Mr. Prateek Chhindra, Mr. Pawan Garg and Mr. Dinesh Rastogi.

The Election Commission

9. The Election Commission was formed on 09th August 2022 and tasked with conducting the elections in a free and fair manner. It comprises of Mr. Ravi Kant Chadha, Senior Advocate (Chief Election Commissioner) and Mr. R.K. Watel, Mr. Ravi Gupta, Mr. Sandeep P. Agarwal, and Mr. Akshay Makhija, Senior Advocate.

The Voter Lists

10. The Election Committee prepared Provisional List on 06th August, 2022. This list was circulated amongst members of DHCBA inviting objections, which were to be filed by 5:00 PM on 22nd August, 2022. On the next day, DHCBA forwarded 690 objections received by them, filed before the cut-off date, to the Election Committee, which then, meticulously examined the same and prepared a second

provisional list. This is the List dated 26th August 2022, which contains: (i) Annexure-A i.e., findings of the Election Committee qua 824 objections received in respect of the Provisional List; and (ii) Annexure-B titled: 'Consolidated List of Eligible And Ineligible Advocates/Voters Of The Delhi High Court Bar Association Election – 2022' comprising tabulated particulars of 9173 members with a 'yes'/'no' against their names in the column titled "whether entitled to vote". Petitioners have based their claim on the basis of the above list and status reflected thereon.

11. The Election Commission took over the task from the Election Committee, and prepared and published a final list of voters i.e., the List dated 30th August, 2022 containing the names of 6444 eligible members.

12. The List dated 26th August 2022 does have a column where Petitioners have been shown to be eligible to vote; however, that itself would not create any right in favour of Petitioners or such other members, to vote in the forthcoming elections as voters' status cannot be ascertained without referring to the covering letter dated 26th August 2022 affixed with List dated 26th August 2022. Petitioners are resting their case only on the status reflected in the said list, and are ignoring the communication that accompanied it. List dated 26th August 2022 was prepared by the Election Committee, in line with the principle of "One Bar, One Vote" envisaged in P. K. Dash (supra). In order to be eligible to vote, Petitioners and members of DHCBA were not only required to meet this criterion, but also had to clear their subscription dues before the cut-off date. This was clearly mentioned in the covering letter/ communication dated 26th August, 2022, which was sent by the Election Committee to the DHCBA, enclosing the List dated 26th August 2022. The said letter reads as follows:

"In pursuance of the minutes of meeting dated 06.08.2022 of this Committee, the "Consolidated Provisional List of Eligible And Ineligible Advocates/Voters of the Delhi High Court Bar Association" had been circulated to the members of the DHCBA for inviting objections to the same. In the said meeting, it was also decided that objections could be filed till 05.00 P.M. of 22.08.2022.

On 23.08.2022, DHCBA forwarded 690 objections received by them till 05.00 P.M. of 22.08.2022. However, this Committee received 134 objections on the e-mail of the Election Committee as well till 22.08.2022. In all, the Committee received a total of 824 objections.

Each objection was meticulously considered. The findings of the Committee qua all the 824 objections in the form of a tabulated chart is at Annexure-A.

On the basis of the outcome of the objections, the Committee, in accordance with the decisions taken by it in its previous meetings, has prepared a voter list which is at Annexure-B.

The Committee records that the voter list prepared by it (at Annexure B) is final from the standpoint of compliance of principle of "One Bar One Vote" laid down

by the Hon'ble High Court in the case of "P.K. Dash, Advocate & Ors. vs. Bar Council of Delhi & Ors." in W.P.(C) No. 8106/2010. The other eligibility criteria (including Associate Members & clearance of dues etc.) for being included in the final voter list contained in the Rules and Regulations / Bye-laws of the DHCBA will have to be looked into by the DHCBA/Election Commission constituted by DHCBA.

You are requested to forthwith display the list at prominent places within the Delhi High Court premises including uploading on your website. for the information of the members.

Further, copy of the above Annexure-A and Annexure-B would also be made available on the website of Hon'ble High Court of Delhi shortly.

Further in compliance of the order dated 18.10.2016 in P.K. Dash (C.M. Appl. 36262/2016 in W.P.(C) 8106/2010), you are requested to provide to the Chairperson, Election Committee the records, i.e. the final list of voters and the final list of Candidates with their declarations as the said records would be required to be digitized and preserved in terms of the said Judgement." [Emphasis supplied]

13. The above-extracted communication, along with the voters list, was uploaded as a consolidated document (PDF) on the Delhi High Court website under the "Public Notices" category, which fact is not in dispute.

14. The List dated 26th August 2022 is not the 'final voters list', as contended by the Petitioners. Rather, it was a list of those members who had complied with the principle of "One Bar, One Vote". The final list was to be prepared by the Election Commission, by removing the names of such members who had not cleared the dues by the cut-off date, as is evident from the above extracted letter.

15. Indeed, Mr. Makhija has explained to the Court that after receiving the said list, the Election Commission took assistance from an official of DHCBA to finalise the list of eligible voters who met the eligibility criteria, and in particular, settlement/clearance of outstanding bar subscription fees. After due evaluation, the final list was published on 30th August, 2022 on the DHCBA website, under the title: 'List of Eligible Advocates/Voters Of The Delhi High Court Bar Association Election - 2022'. Petitioners and other members who did fulfil the above eligibility criteria of clearing their dues before the cut-off date, have consequently not been included in this list.

16. The issue of cut-off date goes to the heart of the dispute. The DHCBA and the Election Commission urge that the cut-off date is relevant for freezing the voters' list. The election process has already started and is under way. The Members of the Bar were given ample opportunity to pay their dues by way of many circulars/notices and ample publicity and announcements. The covering letter dated 26th August 2022 from the Election Committee to the Secretary, DHCBA, while forwarding the list of members as ANNEXURE-B to the said letter,

clearly states that the said list "is final from the stand point of compliance of principles of one bar one more laid down by the High Court in case of P.K. Dash v. Bar. (...)". It further states that the said letter, and both its ANNEXURES A and B, would be made available on the website of the High Court of Delhi. Thus, the Election Commission, keeping in mind the DHCBA resolution dated 09th August 2022 passed by the DHCBA as well as the said letter dated 26th August 2022 passed by the Election Committee, prepared the final voter list and declared the election schedule on 29th August 2022.

17. It must also be noted that even after publication of the final list dated 30th August, 2022, the Election Commission is still receiving objections, claiming that their dues stood paid on the cut-off date. Only such members, who have furnished verifiable proof of payment of subscription, and thus whose names erroneously do not find mention in the List dated 30th August, 2022, are being declared as 'eligible voters' by publication of a supplementary list.

18. It is not in dispute that Petitioners failed to clear their dues up-to 30th June 2022, and are not eligible, to vote. They thus cannot seek parity with such members. They want to acquire eligibility by asking the DHCBA to change the cut-off, or by affording an opportunity to pay the dues at this stage. There is indeed merit in the Election Commission's contention that the present Petitioners, and similarly placed members of DHCBA, who have not been able to pay their dues by 22nd August 2022, have not been found to be eligible to vote in the forthcoming elections. Although, extension of time for payment seems to be an innocuous prayer on Petitioners' behalf, but in reality, the opening for such a window, for however short a duration, would have a ripple effect on the entire election process, making it a never-ending process, and thus, the same cannot be entertained.

19. Furthermore, altering the cut-off date of subscription fee arrears to 30th March 2022, at the Petitioners' behest, would also upset the entire election schedule, as it would entail preparing a fresh list and there would be no finality to the issue. The judgment of P. K. Dash (supra) is crystal clear that the voter's list needs to be finalized a month before the election. The list of 30th August 2022 has been prepared and published in adherence with such timelines. If such a prayer is allowed, then there will be no sanctity of the cut-off date and it would be a never-ending process. At this stage, when the nomination process has begun, if Petitioners are given an opportunity to pay their subscription fees, the same opportunity would then have to be extended to all other members. This, in the opinion of the Court, would only further delay the election process and is contrary to the interests of the DHCBA as a whole, especially when there has already been delay in the elections.

The Controversy qua Resolution of 2003

20. Next, we may look at Clause 03 of Resolution dated 22nd May 2003, which has been a hotly contested point in the arguments before the Court. Mr. Tiku has

relied upon a DHCBA Rulebook /booklet to argue that the cut-off date fixed by DHCBA is violative of the rules. The relevant provision reads as under:

"Any member who is in arrears of his/her dues towards the Bar for more than three months from the date of schedule of the elections shall not be entitled to vote unless he/ she clears the dues within 15 days from the date of declarations of schedule of elections." (sic)

21. In this regard, a primary objection taken by the Election Commission is that in W.P. (C) No. 8197 of 2022, vide its order dated 22nd June 2022, while redesignating the Scrutiny Committee as Election Committee, this Court had directed the parties to proceed in terms of the judgment and order in P. K. Dash (supra). This is because, there are no rules/constitution or fixed guidelines for holding and conducting the elections to the Executive Committee of DHCBA, and those put-on record by the Petitioners as alleged to have been passed by the Executive Committee of DHCBA on 22nd May 2003, do not, in actuality, exist in the original minutes of the meeting of the Executive Committee of DHCBA dated 22nd May 2003. The Election Commission has verified the same from the original records. Otherwise also, it has proceeded on the basis of the various office orders and resolutions passed by the Executive Committee of the DHCBA, in terms of the judgment/order dated 31st May 2016 and 18th October 2016 passed in P. K. Dash (supra). It has also been argued that the resolution containing the said clause was never adopted by the General Body meeting. The Election Committee has produced a resolution of the said date in court, to demonstrate that there is a printing error in the booklet published by DHCBA and that the provision relied upon has no force of law.

22. Nevertheless, on merits, it has been argued that the arrears of three months "from the date of schedule of elections" means three months prior to 28th September 2022, and hence, the date of arrears has been kept as 30th June 2022.

23. There is no contest that the date of declaration of schedule of elections is 29th August 2022, and the date of schedule of elections is 28th September 2022. On being queried by the court as to why the word "from" appearing in the document is being read as 'prior', Mr. Agarwal states that if the intention was to the contrary, the drafters would have used the word 'after', which has deliberately not been done. Hence, "from" is to be interpreted as 'before' or 'prior', and accordingly, the Election Commission has done a back calculation of the date of election, on this logic, to arrive at the cut-off date.

24. However, Mr. Batra has disagreed with this interpretation, stating that the date of clearance of dues being "within 15 days from the date of declarations of schedule of elections" has to be read as 15 days after 29th August, 2022, i.e., 13th September, 2022, and no other interpretation is possible in this regard.

25. While the Court finds merit in the submission of Mr. Tikku, to the limited extent that members would have no reason to doubt the rules which are duly

published by the DHCBA, or verify the original records to confirm the authenticity of the published rules, and accordingly, the above-extracted rule ought to be given due consideration; however, even if published rules are accepted to be binding, the Court finds no reason to afford an opportunity to the Petitioners to clear the dues or change the cut-off date. There is also no reason to get into the interpretation of Clause 3, even though the interpretation canvassed by Mr. Sandeep is not convincing in the slightest, for the reason stated below.

26. Mr. Tiku has strongly emphasized that Petitioners were taken by surprise by the removal of their names in the final list, that too scarcely a few days after being notified of their inclusion. He argues that since the covering letter was published on the High Court website, the Petitioners had no means of knowing that the said list was tentative. In the opinion of the Court, since the final list was still under preparation, inclusion of the Petitioners' names in the provisional list dated 26th August 2022 did not create any right in their favour, and likewise, deletion also did not create any cause of action in their favour. No member was afforded a chance to clear the dues after the cut-off date. Only such members who had cleared their dues before the cut-off date but were still excluded, were permitted to be included in the final voter list, subject to proof of payment. This, certainly, is not the case canvassed by the Petitioners. Thus, the petitioners have neither a right nor a cause of action to bring the present petitions before this court.

27. On another query by the court, to the senior counsel for the Election Commission, as to whether the candidates were informed about the removal of their names, or whether the reasons for the same were disclosed, he states that the outcome of the exercise of checking subscription dues is not disclosed publicly, for the reason that the intent is not to name and shame, or to penalize such members, and this practice has been followed across numerous elections of the DHCBA in the past. The List dated 26th August 2022 was pasted in public places, basis which, over 600 representations were received, and as of today, approximately 200 members have been added back to the list and more may continue to be added.

Conclusion

28. The court is conscious that the objective of clearance of subscription fee dues as an eligibility condition for voting, is to encourage the members to pay their dues, which money then forms the corpus for activities of the association. However, members who are desirous of voting, ought to have been vigilant of their rights. DHCBA had indeed afforded ample opportunities and made sufficient publicity of the announcement of clearance of subscription fee dues, which, however, was not availed of by the Petitioners, for reasons best known to them. Considering the voluntary nature of the association, and the active action of filling out a declaration form, any member of the DHCBA who files a declaration form is essentially giving their written indication to participate in its election process. However, the filling-up of a declaration form, in itself, confers no right to

them to participate in the electoral process. Indeed, this court finds no fault in DHCBA's contention that such members should have up-to-date subscription fees, in the absence whereof, they can be debarred from exercising a right which they have subscribed to, with such subscription monies. There is also merit in the argument that today, the non-payment of fees by the cut-off date is a fact which cannot be glossed over or excused. Necessary consequences have to follow.

29. In view of the foregoing, the Court does not find any merit in the present petitions, and accordingly, the same are dismissed, along with pending applications.