

(2013) 12 MP CK 0089

In the Madhya Pradesh High Court

Case No : Writ Petition No. 21079 of 2013

Rishi Kumar Shingla

APPELLANT

Vs

Bar Council of India and Others

RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 1 JLJ 153

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Anil Khare, Mr. Naman Nagrath, s, Mr. Manish Kumar Tiwari, Mr. Harjas Singh Chhabra, S. Mishra, Jasneet Hora, Yash Soni and N. Keshwarwani, for the Appellant; Udayan Tiwari, Advocate for the Respondent No. 1 and Shri Siddharth Gulati, Advocate for Respondent Nos. 2 and 3, for the Respondent

Judgement

Rajendra Menon, J.—A copy of writ petition along with annexures be supplied to Shri Siddharth Gulati and Shri Udayan Tiwari, Advocates appearing for respondents on advance notice, during the course of the day. Learned counsel for parties are heard on the question of interim relief.

2. A resolution has been passed by the State Bar Council of M.P. being resolution No. 613/GB/2013 and based on this the Chairman has formulated certain rules, guidelines for conduct of election to the State Bar Council; and, in part A of the said rule/guidelines certain disqualifications have been prescribed in the matter of determining the eligibility of a candidate to participate in the forthcoming elections to the State Bar Council of M.P. As far as the present petition is concerned the question is with regard to disqualification contemplated under clause (1)(b). Clause (1)(b) of the rules/guidelines reads as under:-

(b) An Advocate who has been punished by Court or Tribunal for imprisonment for more than two year or have been punished from misconduct by State Boar Council u/s 35 of the Advocates Act, 1961 or an advocate against whom cognizance has been taken by the State Bar Council on complaint u/s. 35 of the Advocate Act shall be disqualified to contest the election of Member, State Bar

Council of Madhya Pradesh.

(Emphasis supplied)

3. It is pointed out by Shri Anil Khare, learned Senior Advocate that the second part of the resolution which prescribes that an Advocate against whom cognizance has been taken by the State Bar Council on a complaint u/s. 35 of the Advocate Act, from contending in the election is beyond the powers vested with the Bar Council of M.P. And in formulating the election Guidelines/Rules, illegality has been committed. Inviting my attention to sub Section 4 of Section 3 of the Advocates Act, 1961, it was argued by Shri Anil Khare, learned Senior Counsel, that the only authority contemplated under law and empowered to enact the rules for disqualification is the Bar Council of India and the State Bar Council is not authorized to prescribe the disqualification for contesting the election.

4. In support of his contention he invites my attention to the judgment rendered by the Supreme Court in the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, and the stipulation contained therein. It is further submitted by him that the petitioner has submitted his nomination paper and as a complaint against him u/s 35 of the Advocates Act is pending, he apprehends that his nomination paper would be rejected. It is said that scrutiny of the papers are to take place tomorrow at 10 AM, and if an interim protection is not granted to the petitioner, he shall suffer adverse consequences.

5. Shri Siddharth Gulati, counsel appearing for the State Bar Council on advance notice and instructions, made a two fold submission. The first submission made is that as far as present petitioner is concerned only a complaint has been received against him. The State Bar Council has not taken cognizance of the complaint, therefore, the apprehension of the petitioner is not correct. The second contention of the respondent Council is that based on resolution No. 613/GB/2013 passed by the State Bar Council of MP, the election rules/guidelines are framed, which has been approved by the Bar Council of India. Shri Gulati produces a letter dated 31/02/2013 and submits that the rules/guidelines have been approved by the Bar Council of India. Accordingly, on the basis of the aforesaid Shri Gulati makes a submission that the requirements of the rules as contemplated under sub-Section 4 of Section 3, are completed. He further submits that as no adverse action is being taken against the petitioner, no interim order be passed. It is further stated that as the rules/guidelines have been granted approval by the Bar Council of India, the same has statutory force and therefore, challenge to the validity of the rules has to be made before the Division Bench.

6. Shri Anil Khare, learned Senior Counsel, refutes the aforesaid and submitted that even though statement is made by Shri Gulati, learned counsel for State Bar Council, to the effect that the present petitioner will not suffer any adverse consequences, but the fact remains that rules/guidelines are per se illegal and

unsustainable; and, if the same is permitted to stand and if nominations are rejected on such considerations it would cause adverse effect on the right of many contesting candidates and, therefore, the discretion available with this Court under Article 226 of the Constitution of India should be exercised and enforcement of the rules be stayed for the present.

7. As far as rules/guidelines being approved by the Bar Council of India are concerned Shri Khare, learned Senior Advocate, submits that these are not rules framed under the statute, but they are only guidelines formulated by the Chairman and Secretary of State Bar Council. That apart it is submitted that when the provision of sub Section 3 of Section 4 of the Advocates Act contemplates rules to be framed by the Bar Council of India, framing of rules or guidelines by the State Bar Council cannot be prima-facie held to be sustainable.

8. During the course of hearing Shri Anil Khare, learned Senior Advocate, had invited my attention to a judgment rendered by the Supreme Court in the case of Surjeet Singh (supra), to say that the contentions advanced by Shri Siddharth Gulati to the effect that the guidelines/rules have been approved by the Bar Council cannot be accepted, as this question is already considered and rejected by the Supreme Court in the aforesaid case.

9. Having heard learned counsel for the parties, I find much force in the objection raised by the petitioner and the submissions made as indicated hereinabove. On going through the record it is clear that under sub section 4 of Section 3 of the Advocates Act, for the purpose of prescribing disqualifications for contesting the election to the State Bar Council is concerned, the only authority empowered to legislate is the Bar Council of India. As far as the present rules or guidelines are concerned, it is formulated by the Chairman of the State Bar Council of Madhya Pradesh, based on certain delegation or authority given to him by general body of the State Bar Council, however, while framing the guidelines/rules neither the requirements of the Advocates Act nor the disqualification prescribed as per the rules framed by the Bar Council of India in the matter has been taken into consideration. Available on record are the statutory rules for disqualification framed by the Bar Council of India, which goes to show that the only disqualification contemplated is with regard to contesting of the election by an Advocate who has been punished as per the rules after due inquiry into the complaint received. There is nothing in the rules framed by Bar Council of India, which prevents an Advocate from contesting the election merely because a complaint u/s 35 has been lodged. That apart, the rule making power having been vested with the Bar council of India, prima-facie the action of the State Bar Council in formulating the guidelines or rules seems to be unsustainable. Prima facie the guidelines or rules as challenged in the petition seem to be beyond the rule making power of the State Bar Council of Madhya Pradesh. That apart, it is inconsistent to the rules already framed by the Bar Council of India, in the matter of elections to the State Bar Council.

10. As far as the statement made to the effect that petitioner's candidature

would not be rejected is concerned, I am not inclined to refrain from passing any interim order on this concession, as scrutiny of nomination papers are to be held tomorrow and if such a rule is given effect to, the candidature of many persons may be rejected, it may cause adverse consequences to them. As the rules/guidelines is per se illegal and will have serious consequences on the right of many advocates, this Court deems it appropriate to exercise its discretion in the matter restraining enforcement of the rules/guidelines for the present.

11. That apart, the statement to the effect that the guidelines have been approved by the Bar Council of India is wholly misconceived once, the law contemplates framing of rules in a particular manner, anything done contrary to the statutory provisions is unsustainable.

12. That apart, in the case of Surjeet Singh (supra), legal question as is involved in this writ petition has already been considered and it has been held by the Supreme Court that in the matter of conducting elections to the Bar Council, no power is vested with the State Bar Council to formulate any rule prescribing qualification and conditions. The only power available to the State Bar Council is to merely prepare and revise the electoral rolls from time to time, subject to rules framed by the Bar Council of India. It is held that the rule making power for conduct of election is exclusively vested with the Bar Council of India.

13. That apart, in paragraph 8-A, statutory provisions have been taken note of and it has been held that approval by the Bar Council of India cannot make a rule made by the State Bar valid and effective, as the State Bar Council itself does not have any power to make rules and mere approval of such a rule by the Bar Council of India will not make the rule valid, as it is already ultra vires and beyond the State Bar Council. It is held that an ultra vires rule made by the State Bar Council cannot be validated by the Bar Council of India.

14. Keeping in view the aforesaid judgment rendered by the Supreme Court also, the arguments and justification given by Shri Gulati cannot be accepted.

15. Accordingly, prima facie as enforcement of the rules/guidelines for the current election seems to be unsustainable. The provision as impugned and as contained in part 1(b) of Annexure P/2 and the disqualification as contemplated therein, so far as it relates to preventing an advocate against whom cognizance has been taken by the State Bar Council on a complaint u/s. 35 of the Advocate Act from contesting the election to the State Bar Council of Madhya Pradesh is concerned, the same shall remain stayed until further orders.

16. List for further consideration in the first week of January, 2014, to enable the respondents to file their counter-affidavits.

17. A typed copy of this order be supplied to the parties concerned. Certified copy as per rules today.