

(2016) 01 AHC CK 0214
In the Allahabad High Court
Case No : Misc. Bench No. 916 of 2016

Shyam Narayan Mishra

APPELLANT

Vs

Central Administrative Tribunal Bar Association Lko. and
Others

RESPONDENT

Date of Decision : 25-01-2016

Acts Referred:

Advocates Act, 1961 — Section 15, Section 34

Citation : (2016) 3 ADJ 295

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : Chandra Bhushan Pandey and Abhinav Bhattacharya, for the Appellant; C.S.C. and Ankit Pande, for the Respondent

Final Decision : Disposed off

Judgement

1. The petitioner is a practitioner at the Central Administrative Tribunal, Lucknow Bench, Lucknow and has come up praying that the Elders Committee constituted pursuant to the judgement dated 10.8.2010 in Writ Petition No. 4211 of 2010 be reconstituted in terms of the model bye-laws that have been promulgated by the Bar Council of Uttar Pradesh in order to ensure a proper constitution of the Bar Association of the Central Administrative Tribunal that has slightly fallen into disarray on account of the circumstances explained in the writ petition.

2. The first issue before us is with regard to entertaining of such a writ petition in the background that the Central Administrative Tribunal (CAT) Bar Association Lucknow was registered as a society under the Societies Registration Act, 1860 with File No. 6082 and the certificate whereof was issued on 31.12.2004 that was valid only till 31.12.2009. It is an admitted position at the bar by Sri C.B. Pandey, learned counsel for the petitioner, Sri Dharmesh Sinha respondent No. 3 who is present in Court and was the outgoing Secretary, and also by the Returning Officer Sri G.S. Sikarwar, respondent No. 4, that the society thereafter went unrenewed, and as on date, there is no renewal of the said registration.

3. A situation had arisen in the past in the same background when the elections were to be held in the year 2010 and it is at that stage that Writ Petition No. 4211 of 2010 was filed in which an agreed situation was arrived at and the writ petition was disposed of on 10.8.2010 with a direction that the Elders Committee so constituted under the said judgement will get the elections held and for the said purpose the Elders Committee shall exercise all the powers of Executive Committee/General Body for scrutinizing the list of members, voter list of the Association and thereafter will take necessary steps for holding of elections as per the model bye-laws framed by the U.P. Bar Council within a period of six months. It was also directed that the Elders Committee shall take assistance of the Deputy Registrar, Firms, Societies and Chits, Lucknow for that purpose.

4. There are, therefore, two hurdles at the moment which continue to subsist, namely, that the registration of the society has not been renewed so far and the second is with regard to the affiliation of the Central Administrative Tribunal Bar Association with the Bar Council of U.P. for the purpose of enforcing the model bye-laws.

5. It is in this background that we have to first decide as to whether the present petition can be entertained for the purpose of interfering with any such elections relating to a body of persons whose society, even though registered, remains unrenewed and being a society of legal practitioners is currently not having any affiliation with the Bar Council of U.P.

6. Learned counsel for the petitioner has invited the attention of the Court to the order dated 8.5.2015 passed in PIL No. 15895 of 2015 where the issue relating to maintainability of a cause before the High Court was raised as the elections of the High Court Bar Association at Allahabad were being alleged to be held with the members who were not validly enrolled or entitled to participate.

7. The aforesaid issue was answered by a Seven-Judges Bench order in the said PIL in the following words:

"..... The restriction which has been imposed in the bye-laws, and which is furtherance of the statutory provisions contained in Section 15 of the Act must be strictly and scrupulously enforced. The purity of the electoral process for the High Court Bar Association must be maintained. To allow an entitlement to vote to persons whose subscriptions have not been paid till before the month in which the meeting of the Annual General Body is fixed, would be to defeat the salutary purpose underlying Section 15 of the Act and Bye-law 55. This encourages the unhealthy practice of subscriptions being paid by or on behalf of advocates only to enable them to vote. Membership of the High Court Bar Association is not only to facilitate a yearly casting of the vote. The High Court Bar Association is a court annexed Bar Association. The ordinary and life members are persons who are on the rolls of advocates regularly practising before the High Court of Judicature at Allahabad. The rolls are prepared in accordance with the Allahabad High Court Rules, 1952 to implement the provisions of Section 34 of the Advocates Act,

1961. The High Court Bar Association is not a mere private association of lawyers. The Association and its members have a vital role to discharge in the administration of justice. Its members have a duty to facilitate the administration of justice. Membership carries with it a solemn obligation to promote access to justice and an unconditional duty to desist from any act which would impede access to justice to all litigants. The close functional relationship of the Bar in the dispensation of justice and the position of the High Court Bar Association as representing the collective strength of the Bar make it a body distinct from a mere collection of private persons. Its functions and activities are interwoven into the fabric which binds the institution of dispensing justice. Elections of Court annexed Bar Association must be free from pollutants and taint. The High Court Bar Association has a significant role to play in the administration of justice. The Bar and the Bench are two pillars of the institution. The purity of the electoral process in the conduct of elections to the Bar Associations has a vital element of public interest since it is liable to affect the stability of the institution and the administration of justice. These directions are intended to facilitate the holding of free and fair elections.

We also commend to the Elders Committee the need to ensure that elections are conducted in a dignified manner consistent with the role and the responsibilities of lawyers. Banners and hoardings deface the walls of the High Court and its surroundings. The distribution of pamphlets and canvassing in the corridors of the High Court must be prohibited. The Elders' Committee would do well to put into place an appropriate restriction for the purpose."

8. In view of the aforesaid view expressed by Seven-Judges Bench and in view of the earlier judgement of the High Court dated 10.8.2010, we find that this is a peculiar situation where the same problem has arisen as was faced by the Central Administrative Tribunal Bar Association in the year 2010. This petition is, therefore, being entertained in the light of the observations made hereinabove on the peculiar facts and with the graceful consent of the learned lawyers who have agreed to settle the matter with the aid of this judicial intervention.

9. Learned counsel for the petitioner, the respondent No. 3 Sri Dharmesh Sinha and Sri G.S. Sikarwar, respondent No. 4 who are present in Court, agree to the situation that in order to streamline the holding of elections and the formation of the Central Administrative Tribunal Bar Association, some directions for rectifying the shortcomings be issued

10. In the background aforesaid, we, therefore, issue directions to the following effect:

"1. The Elders Committee shall stand constituted under this order, comprising of (i) Sri Asit Kumar Chaturvedi, learned Senior Advocate; (ii) Sri G.S. Sikarwar, Advocate, also practicing in the Central Administrative Tribunal; (iii) Sri Siddhartha Verma, Advocate, (iv) Sri Upendra Nath Misra, Advocate; and (v) Sri Sudeep Seth, Advocate. The Elders Committee that shall act as or on behalf of

the General Body and Executive Body of the Society to discharge all such functions for the purpose of getting the renewal of the society done and its affiliation with the Bar Council and consequently, holding of elections, as directed hereinabove.;

2. The aforesaid Elders Committee shall forthwith file an application before the Respondent No. 6, Deputy Registrar, Firms, Societies and Chits, Lucknow with late fee and with a request for renewal of the society referred to hereinabove. The Deputy Registrar shall within three weeks from the date of the presentation of the certified copy of this order, proceed to carry out necessary modalities and formalities for the renewal of the Society and inform the Elders Committee through Sri Asit Kumar Chaturvedi, Senior Advocate, about the same;

3. An application shall be filed with the Bar Council of U.P., respondent No. 5, represented by Sri Ankit Pandey, who is present in Court, and the Bar Council shall thereafter take steps for affiliation and accordingly intimate the Elders Committee about the model bye-laws which shall henceforth be made effective for the purpose of constituting the Bar Association and holding of elections and future functioning, as well. This shall also be done within a period of three weeks and the Bar Council shall endeavour to take up the matter in their next meeting, scheduled for the purpose of such affiliation;

4. The Elders Committee upon receipt of the renewal of the registration and the affiliation document from the Bar Council of U.P., shall then proceed to invite membership as per the model bye-laws and after enrolling such members, as may be necessary, within the time period specified, shall proceed to constitute the general body entitled to participate in the elections. This exercise shall be concluded within a period of six weeks thereafter and the final electoral roll shall be displayed. The elections shall be announced by the Elders Committee in a meeting to be held on a particular date and then the Elders Committee shall appoint a returning officer of its choice for holding of the said elections in accordance with law.

In the event the Elders Committee finds any difficulty in implementation of this order, it shall be open to the Elders Committee to apply for such modifications or directions, as may be necessary in this regard."

11. It is informed by the Bar that today the outgoing Executive Committee that had entered into the office by virtue of the judgement dated 10.8.2010, is to proceed to get the elections conducted.

12. We find from the judgement that the model bye-laws are to be preferred and, therefore, the tenure of the Committee of Management which came into office by virtue of the said judgement has admittedly expired.

13. In our considered opinion, the said Committee, therefore, could not have proceeded to pass any resolution for the purpose of holding elections and it ought to have taken recourse to the aforesaid proceedings only through the

Elders Committee. That having not been done, we declare the resolution dated 30.10.2015 so passed and all consequential action of enrollment and election on 25.1.2016 to be a nullity. Renewal/induction of membership, if any, under the said resolution, therefore, would not be of any consequence.

14. The elections shall only be held in terms of the directions given hereinabove and the learned counsel as well as parties have agreed to the said situation.

15. In view of the above, we do not find any reason to keep the matter pending any further and the writ petition stands disposed of with the aforesaid directions.

16. The writ petition is disposed of vide our orders of date, on separate sheets.