

(2016) 12 DEL CK 0102
In the Delhi High Court
Case No : W.P.(C) 11815 of 2016

Surender Pal Singh Chauhan

APPELLANT

Vs

Delhi Bar Association

RESPONDENT

Date of Decision : 20-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ADDelhi 517

Hon'ble Judges : Ms. Hima Kohli, J.

Bench : Single Bench

Advocate : Mr. Kirti Uppal, Senior Advocate with Mr. Divya Darshan Sharma, Advocate, for the Respondent Nos. 2 and 3 (In person); Mr. Sacchin Puri, Senior Advocate with Mr. Sanjeev Nasir and Mr. Udit Malik, Advocates, for the Respondent No. 1/Association; Petitioners

Final Decision : Disposed Off

Judgement

Ms. Hima Kohli, J. - The present petition has been filed by the petitioner praying inter alia for setting aside the election notice dated 17.11.2016 issued by the respondent No. 1/Delhi Bar Association (in short "DBA") stating inter alia that the Executive Committee of the DBA in its meeting held on 22.10.2016, has appointed the Election Commission comprising of three persons, namely, Shri R.P. Tyagi, Advocate, Shri Ravi Chawla, Advocate and Shri Joginder Antil, Advocate and three members of the Election Committee named in the notice are Shri V.K. Khanna, Addl. District Judge, Shri Naresh Gambhir, Advocate and Shri N.L. Gupta, Advocate. The second relief prayed for by the petitioner is for appointment of an independent Election Tribunal in terms of the Constitution of the respondent No. 1/DBA.

2. In the course of arguments, the petitioner, Mr. S.P.S. Chauhan, Advocate, who appears in person, states that he does not wish to press prayer (c), which is for removal of the name of Shri Naresh Gambhir, Advocate from the Election Committee for the reason that a consent order had been passed on 27.10.2016,

in CONT. CAS(C) 887/2016, wherein the names of three persons including that of Mr. Naresh Gambhir, Advocate as a member of the Election Committee was accepted and the said order, though modified on 15.11.2016, did not interfere in the constitution of the members of the Election Committee.

3. It is submitted by the petitioner that the impugned election notice dated 17.11.2016 refers to the appointment of Shri Ravi Chawla, Advocate, apart from two other members of the Executive Committee and he has a bona fide apprehension that the said gentleman has a bias against him. The petitioner submits that the aforesaid gentleman has been regularly appearing for the respondent No. 2 in the previous litigations pertaining to the election of the respondent No. 1/DBA for the years 2014-16. On this ground, setting aside and quashing of the election notice dated 17.11.2016 and appointment of an independent Election Commission and Election Tribunal in terms of Rule 14(i) the Constitution of the respondent No. 1/DBA is prayed for.

4. Mr. Puri, learned Senior Advocate appearing for the respondent No. 1/DBA and Mr. Uppal, learned Senior Advocate appearing for the respondents No. 2 and 3 oppose the maintainability of the present petition and state that any order, as prayed for by the petitioner, shall derail the entire election process, which is being monitored from time to time in CONT. CAS(C) 887/2016, arising out of orders passed in four civil suits, all challenging the order dated 27.10.2014 passed by the then Election Tribunal (Annexure P-3). It is submitted that a common order dated 27.05.2015 was passed in the aforesaid suits, where a statement made on behalf of the plaintiffs therein that the Delhi Bar Association election shall be held on 25.01.2016, for which the election process shall commence on 11.12.2015 in accordance with the Constitution, was accepted by all the parties. Counsels for the defendants therein agreed that they would withdraw all the allegations levelled against the plaintiffs therein in the election petitions. As a result, the said suits were disposed of in terms of the statements made by the counsels for the parties and it was clarified that the Executive Committee of the DBA that was declared elected on 23.05.2014, shall continue to hold office till the next elections.

5. It is an undisputed position that the election process did not commence on 11.12.2015 in terms of the undertakings recorded in the order dated 27.05.2015, referred to herein above. As a result, CONT.CAS(C) 887/2016 was filed by Mr. Naresh Chand Gupta against the respondent No. 2 herein, wherein an order dated 28.09.2016 was passed, recording inter alia the statement of Mr. Puri, Senior Advocate, who was appearing for the respondent No. 2 therein that an election notice dated 09.09.2016 had been issued, declaring the date of polling as 25.11.2016 and the proposal was to appoint an Election Commission by 25.10.2016.

6. In the meantime, an order dated 18.10.2016 came to be passed by the Division Bench in W.P.(C) 8106/2010 entitled P.K. Dash, Advocate and Ors. v. Bar Council of Delhi and Ors., wherein certain modifications were made in the

judgment delivered on 31.05.2016, by directing amongst others, that for every election, the Bar Association shall constitute an Election Committee of three members and the said Committee shall be formed three months before the end of the tenure of the office bearers of the Bar Association. It was also directed that the Committee shall comprise of two advocates with not less than 20 years' standing, who would not contest in the forthcoming elections and it would be chaired by a Judicial Officer not below the rank of Additional District Judge of five years' standing nominated by the concerned District Judge. The tasks assigned to the Election Committee were to verify the declarations and prepare a list of members eligible to vote. The said list was to be displayed for inviting objections after which the final list of voters was directed to be prepared four weeks before the date of voting.

7. On 27.10.2016, when the parties had appeared in the contempt proceedings, with their consent, three members from the Bar Association were appointed as members of the Election Committee, namely, Mr. Naresh Gambhir, Advocate, Mr. N.L. Gupta, Advocate and the third member was directed to be appointed by the District Judge, Tis Hazari, Central District, Delhi, on or before 04.11.2016. While passing the said order, notice was taken of the orders passed by the Division Bench on 18.10.2016 in the captioned writ petition. It was also directed that the Election Committee shall carry out the mandate in accordance with the directions issued by the Division Bench. Further orders were passed with regard to scrutinising the declarations, finalising of the list of voters, completing the process of filing nominations, scrutinization of the nominations forms, withdrawal of nominations etc. The Election Committee was directed to conduct the election on 20.01.2017. Pertinently, the said contempt petition is still pending and is now listed on 09.01.2017.

8. After passing of the order dated 27.10.2016, the respondent No. 1/DBA had filed an application on 10.11.2016, in the case of P.K. Dash, Advocate (supra) seeking a change in the constitution of the Election Committee and for appointment of a fresh Election Committee. On 11.11.2016, the said application was withdrawn by the applicant with liberty to seek recourse to remedies available in law, which was duly granted by the Division Bench. Thereafter, the applicant/respondent No. 1/DBA filed an application in the contempt proceedings for seeking correction in the order dated 27.10.2016, wherein it was recorded that the Election Committee shall conduct the election on 20.01.2017. A request was made to substitute the words, "Election Committee" with "Election Commission". The said application was taken up on 15.11.2016 and with the consent of the parties, the order dated 27.10.2016 was modified by deleting the following sentence:-

"The Election Committee shall conduct the election on 20.01.2017"

9. Instead, the following sentence was incorporated in the order dated 15.11.2016 :-

"The election shall be conducted on 20th January, 2017 in accordance with the Division Bench order dated 18th October, 2016 passed in W.P.(C) 8106/2010"

10. On the said date, learned counsel for the respondent/DBA had assured the Court that the election notice dated 28.10.2016 shall be recalled and a fresh election notice shall be issued within two days.

11. It is pursuant to the aforesaid order that the impugned election notice dated 17.11.2016 has been issued by the respondent No. 1/DBA, where under the constituents of the Election Commission and the Election Committee have been declared for the information of its members.

12. This court is of the opinion that the grievance of the petitioner that Mr. Ravi Chawla, one of the members of the Election Committee is biased against him would hold water if it was a One-man Committee. But that is not so. In the present case, the Election Committee comprises of three members. The petitioner has expressed complete faith in the remaining two members. In these circumstances, even if there is any apprehension in his mind about the fairness of one member, the very fact that there are two other members in the Election Committee, who are, as per the petitioner himself, neutral and unbiased, their presence shall be sufficient safeguard to ensure that a free and fair election is conducted. In any case, the petitioner has elected not to implead Mr. Chawla as a respondent in these proceedings, though the relief prayed for in the petition is for his removal. Also, since it has been stated on behalf of the respondents that the respondent No. 2 is not even proposing to contest in the coming elections of the DBA, the said objection pales into insignificance.

13. This Court is therefore not inclined to interfere in the constitution of the Election Commission for the reasons stated above and also for the reason that such a relief does not lie against the respondents in writ proceedings.

14. As for the constitution of the Election Committee, as noted above, the petitioner stated that he does not wish to press the said relief. This leaves the relief at prayer (b), which is for appointment of an independent Election Tribunal in terms of the Constitution of the respondent No. 1/DBA, for resolving election disputes.

15. The petitioner has drawn the attention of the Court to the Constitution of the respondent No. 1/DBA and states that Rule 14(i) prescribes that a three-member Election Commission and a three-member Election Tribunal shall be appointed by the Committee by December, 11 every two years. He states that the respondents have not constituted the Election Tribunal till date.

16. Mr. Puri, learned Senior Advocate appearing for the respondent No. 1/DBA concedes that no notice, declaring the constitution of the Election Tribunal has been placed in public domain till now. He, however, states on instructions that Mr. J.H. Jafri, Advocate, Mr. H.S. Kohli, Advocate and Mr. Arun Sharma, Advocate have been appointed as members of the Election Tribunal, in terms of a decision

taken by the Executive Committee of the respondent No. 1/DBA in a meeting held on 22.10.2016.

17. Now that the aforesaid three names are in public domain, the apprehension of the petitioner that an independent Election Tribunal has not been constituted by the respondent No. 1/DBA, so far, stands assuaged. However, it is deemed appropriate to direct the respondent No. 1/DBA to issue a notice declaring the names of the members of the Election Tribunal within 24 hours from today, for dissemination amongst its members.

18. The petition is disposed of with directions issued to the respondent No. 1/DBA, the Election Commission and the Election Committee constituted by the respondent No. 1/DBA to ensure that the orders passed by the Division Bench in P.K. Dash, Advocate (supra) on 18.10.2016, the orders dated 27.10.2016 and 15.11.2016 passed in CONT. CAS(C) 887/2016 are complied with in letter and spirit.

19. It is hoped and expected that no reason is given to any member of the respondent No. 1/DBA to approach the Court for any further relief pertaining to the impending elections, which are expected to be conducted in a free and fair manner and in a congenial atmosphere, in accordance with the Rules and Regulations and in terms of the orders mentioned above.

20. It is made clear that the above order shall not be treated as precedent on the aspect of the maintainability of a writ petition against the DBA and in case in the future, such an objection is raised, it shall be considered and decided in accordance with law.