

(2014) 02 DEL CK 0014

In the Delhi High Court

Case No : I.A. No"s. 20968 of 2013, 414 and 415 of 2014 in CS (OS) 2625 of 2013

Utkarsh

APPELLANT

Vs

Delhi Bar Association

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11 16 34 5 8
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 11 151 9

Citation : (2014) 208 DLT 302

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Kirti Uppal, Mr. Nikhil Kharbanda and Mr. Anshumaan Sahni, for the Appellant; R.K. Sharma, Nithin Ahlawat, Rajeev Rathi, Ms. Dezy Gaur and Mr. Rajiv Khosla, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The plaintiff, a practicing advocate, has filed the present suit against the defendant, Delhi Bar Association, for mandatory injunction. It the case of the plaintiff that the defendant is governed by a Constitution which is amended from time to time and that the last amendment was carried out by the general body of the defendant in its meeting on 12th January, 2010. As per the Constitution of the defendant, the defendant has to be governed by a committee elected by the members of the defendant in the elections held every two years.

2. As per clause 13 of the Constitution of the defendant, the said elections have to be held by 25th of January every two years. Accordingly, since the last elections were held in January, 2010, the term of the existing committee elected in 2012 has come to an end and the elections ought to have been mandatorily held before 25th January, 2014.

3. The Constitution of defendant further stipulates certain dates on which certain

steps have to be taken so as to ensure that the elections are held before the 25th January of the election year. The same are mentioned as under:

4. It is the case of the plaintiff that none of the clauses pertaining to the holding of elections on time have been complied with by the defendant and no valid justification or cogent reason is being put forward by the existing committee of the defendant for not complying with the said provisions/clauses of the Constitution as amended on 12th January, 2010.

5. It has been stated by the plaintiff that as per Clause 14(i) of the Constitution of the defendant, the mandatory appointment of the Election Commission as well as the Election Tribunal were not made as of 18th December, 2013 and that even the election date had not been notified.

6. Since the plaintiff, who had served as a treasurer of the defendant for the period 2009-2012, has been desirous to contest the elections slated to be held in January, 2014, the plaintiff approached the members of the existing committee who assured him that the schedule of the elections in the Constitution would be adhered to.

7. However, after having waited for the election commission and election tribunal to be formed and election schedule to be declared on 11th December, 2013 and 15th December, 2013 respectively, the plaintiff vide a notice dated 16th December, 2013 requested the Defendant to initiate the process for the said elections to be held in January 2014.

8. The Hony. Secretary of the defendant vide a notice 17th December, 2013 informed that the date for clearing the arrears of subscription was fixed as 10th January, 2014, which date according to the plaintiff, in terms of Clause 15(ii) of the Constitution could not be extended at all. However, the said notice dated 17th December, 2013 did not contain any information with regard to the formation of the Election Commission and Election Tribunals.

9. It is the case of the plaintiff that as on the date of filing the suit, that the defendant had not commenced the election process, completely disregarding the various mandatory provisions of the Constitution of the defendant. Further the Election Commission and the Tribunal are yet to be formed, election date is yet to be decided and the mandatory 3 weeks period between the date of announcement of election and the election date has to be adhered to.

10. Apprehending that it was highly unlikely that the elections could be held on or before 25th January, 2014, the plaintiff filed the present suit for mandatory injunction seeking direction for the defendant to adhere to the election schedule as stipulated in the Constitution, being mandatory. The plaintiff also has filed an application being I.A. No. 20968/2013 under Order 39 Rule 1 and 2 read with Section 151 CPC for grant of interim injunction.

11. Upon the service of notice upon the defendant, the defendant instead of filing the written statement filed two applications, first being I.A. No. 414/2014 u/s 5

of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") read with Order 7 Rule 11 CPC and second being I.A. No. 415/2014 u/s 8 of the Act.

12. It has been stated by the defendant that by virtue of provision 35 of the Constitution/by-laws of the defendant, there exists an arbitration clause for resolving the disputes between the members and the defendant. Accordingly, no suit or other legal proceedings in this respect are maintainable in the court of law.

13. In a reply to the said applications, the plaintiff has stated that the said applications filed by the defendant are an attempt to delay the elections as the plaintiff does not raise any dispute which could be covered under the said arbitration clause and that the plaintiff is seeking only the enforcement of mandatory clauses of the Constitution.

14. The matter came up for hearing when Mr. Kirti Uppal, learned Senior counsel appeared on behalf of the plaintiff and Mr. R.K. Sharma, Advocate appeared on behalf of the defendants.

15. Mr. Uppal, learned Senior counsel for the plaintiff has made his submissions which can be outlined in the following manner:

a) Firstly, learned counsel for the plaintiff has argued that the present petition under the provisions of Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") is misconceived in as much as there is no dispute which has been covered within the ambit of the arbitration clause. It is stated that the present suit merely seeks the enforcement of the mandatory provisions of the constitution of the defendant association. Thus, there exists practically no dispute which is arbitrable in nature warranting the appointment and reference to the arbitration.

b) Secondly, learned counsel for the plaintiff has argued that the existence of the arbitrable dispute between the parties is a condition precedent for the reference of the dispute to the arbitration. Learned counsel for the plaintiff has cited several judgments of the apex court as well as of this court holding that in case the dispute which has been raised in the suit is not covered within the ambit of the arbitration clause contained in the agreement, the dispute is not arbitrable and the suit cannot be said to be barred under the provisions of the Act.

c) Thirdly, learned counsel for the plaintiff argued that the mere reading of clauses 14 and 15 of the Constitution of the defendant Association makes it clear that the election of the association shall be held by January 25 every two years and prior to the said election, the three member election commission shall be appointed by the committee of the association by December 11, every two years. As per the learned counsel for the plaintiff, the defendant association having failed to take any positive step towards appointment of the election commission or for that matter holding the election by January 25 after passing of two years from the earlier election held on 15th February, 2012 is clearly violating the

mandatory rules contained in the association. It has been argued that the defendant as an association has not pointed out any step in response to the legal notice dated 17th December, 2013 issued by the plaintiff relating to the holding of the election and the said position remains the same before this court where the defendant is not pointing out clearly the steps taken by the defendants towards holding the election as per the constitution of the rules but the defendant is interested to arbitrate the subject by seeking appointment of the arbitrator and deferring the moot question of holding the election of the Defendant association. Accordingly, as per the learned counsel for the plaintiff, this court should pass the necessary directions to the defendant association to hold the election as per the rules contained the constitution of the defendant.

16. In view of the aforementioned submissions advanced, it has been prayed by the learned counsel for the plaintiff that the prayers made in IA No. 20968/2013 may be allowed and IA No. 414/2014 and IA No. 415/2014 filed by the defendants may be dismissed.

17. Mr. Uppal, learned Senior counsel has referred following decisions in support of his submissions:

- a. Yogi Agarwal Vs. Inspiration Clothes and U and Others,
- b. Nandram Hanutram Vs. Raghunath and sons Ltd.,
- c. Mr. Akshay Kapur and Others Vs. Mr. Rishav Kapur and Others,
- d. Dilip Construction Company Vs. Hindustan Steel Ltd.,

18. Per contra, Mr. Sharma and other Advocates appearing for the defendant-Association have made their submissions which can be enumerated as under:

a) Firstly, Mr. Sharma, learned counsel for the defendant argued that the plaintiff being a member of the defendant Association wrote to the defendant on 16th December, 2013 raising some dispute concerning the steps to be taken towards the election of the association. The said dispute is clearly between the member and the association and would fall within the sweep of clause 35 which is an arbitration clause provided under the constitution of the Defendant association. Thus, the plea of the plaintiff that the right to sue to enforce mandatory provisions of the constitution is distinct from the dispute raised between a member and association is frivolous one. Thus, there exists clearly an arbitrable dispute which can be conveniently referred to an arbitration.

b) Secondly, learned counsel for the defendant has argued that the association has already appointed Sh. Ravinder Singh, a senior member of the bar as an arbitrator to decide the disputes. It is argued that the said appointment of the arbitrator has been notified on the notice board for the information of the members on 15th February, 2012 and thus despite the same being in the knowledge of the plaintiff, the plaintiff has not approached for the referring the dispute for the arbitration. It is the defendant which has filed the petition seeking

reference of dispute to the arbitration. This court should allow the petition u/s 8 of the Act and proceed to refer the dispute to the arbitration.

c) Thirdly, learned counsel for the defendant has argued that when there exists an arbitration clause to resolve the dispute between the parties, then the court is bound to refer such dispute for arbitration and all the defences to be taken by the other party shall be decided by the arbitrator in terms of the provisions of Section 16 of the Act. Learned counsel for the defendant has cited the following judgments in support of Section 8 application preferred by him:

- a) Sant Finance Company vs. Darshan Singh, 2006 (4) RCR (Civil) 535.
- b) Alcove Industries Ltd. Vs. Oriental Structural Engineers Ltd.,
- c) Shri Roshan Lal Gupta Vs. Shri Parasram Holdings Pvt. Ltd. and Another
- d) Sumati Vs. Sarla Puri
- e) Bhushan Steel Ltd. Vs. Singapore International Arbitration Centre and Another,
- f) Saipem Triune Engineering Pvt. Ltd. Vs. Indian Oil Petronas Pvt. Ltd.,
- g) Aspire Investments Private Ltd. Vs. Nexgen Edusolutions Private Ltd.
- h) Devinder Kumar Gupta Vs. Realogy Corporation and Another,
- i) State of Madhya Pradesh Vs. Bacchudas @ Balram and Others,
- j) The Empire Jute Co. Ltd. and Others Vs. The Jute Corporation of India Ltd. and Another,
- k) Shree Subhlaxmi Fabrics Pvt. Ltd. Vs. Chand Mal Baradia and Others,
- l) Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums,
- m) P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others,

19. In view of the submissions advanced by the learned counsel for the defendant, it has been prayed that this court should proceed to dismiss the suit and refer the matter to the arbitration in terms of IA No. 414/2014 and IA No. 415/2014. The Committee has already appointed its member Sh. Ravinder Singh, Advocate as Arbitrator vide meeting held on 18th February, 2012 and despite of having knowledge, the plaintiff has not approached the defendant.

20. I have gone through the plaint, documents filed therewith, injunction application and the applications filed by the Defendant. I have also given careful consideration to rival contentions of the parties and submissions advanced by the learned counsel for the parties appearing at the bar. I shall now proceed to discuss the various aspects which fall for consideration before this court one by one alongside the submissions advanced by the parties.

21. First and foremost, it is for me to discuss the legal position as to whether the court hearing an application u/s 8 of the Act in a pending suit is within its domain

to go in to the aspect of arbitrability of the dispute or not prior to referring the matter to the arbitration. This is due to the reason that the contention has been raised by the learned counsel for the defendant that the court is bound to refer the matter to the arbitration relegating the parties to raise all other contentions before the arbitrator. I find that the legal position is well settled that the court hearing the petition u/s 8 of the Act in the pending suit has to go into all the aspects of the arbitrability of the dispute prior to referring the parties to the arbitration. The said legal position is clearly discernible from the judgment passed by the Supreme Court in the case of *Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and Others*, wherein the Supreme Court was considering the scope of Section 8 of the Act in the SLP. The Supreme Court speaking through R.V. Raveendran, J. (as his Lordship then was) has observed that the powers of the court while hearing application u/s 8 of the Act are wider and the Court has consider the arbitrability of dispute from all the spheres as the arbitrability as a word has to be understood in the different contexts prior to referring the dispute to the arbitration. In the words of Supreme Court, it was observed thus:

The nature and scope of issues arising for consideration in an application u/s 11 of the Act for appointment of arbitrators, are far narrower than those arising in an application u/s 8 of the Act, seeking reference of the parties to a suit to arbitration. While considering an application u/s 11 of the Act, the Chief Justice or his designate would not embark upon an examination of the issue of "arbitrability" or appropriateness of adjudication by a private forum, once he finds that there was an arbitration agreement between or among the parties, and would leave the issue of arbitrability for the decision of the arbitral Tribunal. If the arbitrator wrongly holds that the dispute is arbitrable, the aggrieved party will have to challenge the award by filing an application u/s 34 of the Act, relying upon sub-section 2(b)(i) of that section. But where the issue of "arbitrability" arises in the context of an application u/s 8 of the Act in a pending suit, all aspects of arbitrability have to be decided by the court seized of the suit, and cannot be left to the decision of the Arbitrator. Even if there is an arbitration agreement between the parties, and even if the dispute is covered by the arbitration agreement, the court where the civil suit is pending, will refuse an application u/s 8 of the Act, to refer the parties to arbitration, if the subject matter of the suit is capable of adjudication only by a public forum or the relief claimed can only be granted by a special court or Tribunal.

(Emphasis Supplied)

The term "arbitrability" has different meanings in different contexts. The three facets of arbitrability, relating to the jurisdiction of the arbitral tribunal, are as under: (i) whether the disputes are capable of adjudication and settlement by arbitration? That is, whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties (the arbitral tribunal) or whether they would exclusively fall within the domain of public for a (courts). (ii) Whether the disputes are covered by the arbitration agreement? That is, whether

the disputes are enumerated or described in the arbitration agreement as matters to be decided by arbitration or whether the disputes fall under the "excepted matters" excluded from the purview of the arbitration agreement. (iii) Whether the parties have referred the disputes to arbitration? That is, whether the disputes fall under the scope of the submission to the arbitral tribunal, or whether they do not arise out of the statement of claim and the counter claim filed before the arbitral tribunal. A dispute, even if it is capable of being decided by arbitration and falling within the scope of arbitration agreement, will not be "arbitrable" if it is not enumerated in the joint list of disputes referred to arbitration, or in the absence of such joint list of disputes, does not form part of the disputes raised in the pleadings before the arbitral tribunal.

(Emphasis Supplied)

22. The said judgment of Booz Allen (supra) has been followed by the courts in India consistently including this court from time to time. Therefore, following Booz Allen (supra) and applying the dictum laid down therein to the facts of the present case, the argument of the defendant that this court should leave the aspects of arbitrability to the arbitration u/s 16 to the decide would be contrary to the exposition of the law laid down by the Supreme Court in the case of Booz Allen (supra) and the scope of Section 8 of the Act. As such the submission of the learned counsel for the defendant cannot be acceded to.

23. This Court shall now proceed to evaluate the question as to whether the nature of the dispute raised by the plaintiff is covered within the ambit and sweep of the arbitration clause 35 contained in the constitution of the defendant or not.

24. In order to answer the question of arbitrability, it is deemed expedient to first analyze certain provisions of the constitution of the defendant Association which are reproduced herein after:

Clause 1:

1. The name of the Association is "Delhi Bar Association.

Clause 4:

4. Definitions:

Unless the context otherwise provides the following provisions in the constitution and the rules made there under shall mean:

(i) "The Association" means Delhi Bar Association,

(ii) "The Committee" means Executive Committee of the Association; sub Committees other than Executive Committee shall have a prefix denoting the name of the sub-committee.

(iii) "Member" means the member of the Association,

(iv) "Clerk" means the person working under a member on a monthly stipend/emoluments and whose name is entered in the concerned register of the Association,

(v) "Employee" means the employee under the employment of the Association,

(vi) "General Body" means a meeting of the Association comprising the members of the Association.

(vii) "Election Commission" means election commission constituted by the Committee, every two years, to hold and to supervise the election and to declare the results of elections of the Association,

(viii) Screening Committee shall comprise of five members and shall be headed by the President,

(ix) Active member shall mean one who is an uninterrupted member and regularly paying subscription,

(x) Enrolment Committee shall be the Committee constituted out of the Committee to enroll a member to the Association and shall be headed by the President.

Clause 9:

9. Governance:

The Association shall be managed, controlled, supervised and governed by the Committee consisting of:

1 seat shall be reserved for lady member, 2 Sr. members shall be elected having above 21 years standing at the Association, 2 members shall be elected having standing of above 10 years upto 21 years and 2 members shall be elected having standing below 10 years.

The person willing to contest the election of the Association shall have the following qualifications:

(i) He shall be a member of the Association,

(ii) He has no outstanding towards the Association,

(iii) He shall abide by the Constitution and the election rules of the Association,

(iv) He shall have the requisite standing of the Association as prescribed against the respective post, desirous of so contesting, which are enumerated hereunder:

Clause 10:

10. Duties and Functions:

a. President

(i) The President shall preside over the meetings of the Association and the

Committee.

(ii) The President shall authenticate the minutes of the meeting after approval of the same by the Committee and in exceptional situation call for Emergency Meeting.

(iii) The President shall represent the Association and be the spokesperson thereof.

(iv) The President shall constitute and preside over the Screening Committee and any other meetings.

(v) The President shall constitute Election Commission in consultation with the Committee and nominate senior members of the Association for deliberations and constitution of the Election Commission.

b. Senior Vice-President

The Senior Vice-President being the senior members of the Association, after the President, shall officiate in the absence of the President and in case the President becomes incapacitated to discharge his functions for any reasons whatsoever.

c. Vice-President

The Vice-President shall officiate in the absence of the President and Senior Vice-President or in case where the President/Senior Vice-President become incapacitated to discharge the functions for any reasons whatsoever.

d. Hony.-Secretary

(i) The Hony. Secretary shall convene meetings and issue notices of such meetings.

(ii) The Hony. Secretary shall be keep the minutes of proceedings of all meetings of the Association and Committee.

(iii) The Hony. Secretary shall implement the decisions of the Committee or the General Body, communicate/present to the Authorities on behalf of the Association with the knowledge and consent of the Committee.

(iv) The Hony. Secretary shall be the custodian of the records of the Association.

(v) The Hony. Secretary shall contest all legal proceedings for and on behalf of the Association and engage counsels in consultation with President.

(vi) The Hony. Secretary shall prepare the Annual Report of the Association and its Committee and to place the same in the Annual General Body Meeting for its approval.

(vii) The Hony. Secretary shall discharge the administrative functions including sanction of the bills of recurring expenses.

(viii) The Hony. Secretary shall be keep proper records of the Association and

maintain the books of accounts of the Association and get it audited periodically.

(ix) The Hony. Secretary shall be perform all other duties and to transact all other business concerning the Association and to do all other work as the Committee entrusts from time to time.

(x) The Hony. Secretary shall be do all other acts, things and deeds for the due compliance of the provisions of the Constitution.

(xi) The Hony. Secretary shall take all other steps to keep and maintain the finances of the association in sound condition.

(xii) The Hony. Secretary shall be the custodian of the properties and securities of the association, except money.

e. Additional Secretary

I. The Additional Secretary shall perform the duties of the Hony.-Secretary in his absence on in case the Hony.-Secretary becomes incapacitated for any reason whatsoever.

II. The Additional Secretary shall assist the Hony.-Secretary in his day to day work and shall perform the duties assigned.

f. Joint Secretary

The Joint Secretary shall officiate in the absence of the Hony.-Secretary and Additional Secretary or in case where the Hony.-Secretary/Additional Secretary become incapacitated to discharge the functions for any reasons whatsoever.

g. Treasurer

(i) Shall exercise general supervision over the collection of subscription and to deposit funds collected by the Association in the Banks approved by the Committee except such amount as may be required for recurring expenditure not exceeding Rs. 5000/- (Rs. Five Thousand) or any other sum which may be approved by the Committee for being kept as imprest money.

(ii) Shall countersign all receipts to be issued to the members.

(iii) Shall check the accounts of the Association periodically and get the accounts audited annually.

(iv) Shall supervise the account maintained, day to day, by the person authorized to do so.

(v) Shall render such assistance to the Hony.-Secretary required for preparation of the annual accounts and financial estimates of the Association and submit the same to the Annual General Body Meeting for its approval.

Clause 11:

11. Committee

The Committee shall hold control and administer the property and funds of the Association and use the same for achieving aims, objects and welfare of the members and shall have, inter-alia, the following powers:

(a) To nominate and constitute, inter-alia, the following subcommittees in the first meeting held after assuming office:

(i) Three members Disciplinary Committee from amongst its office-bearers and co-opt any other three members from the Association having more than 10 years standing. The Chairman of the Disciplinary Committee shall be a senior member having 21 years or above standing in the Association.

(ii) "Screening Committee" shall comprise of five members and shall be headed by the President and the other four members shall be co-opted from the Association, of which two members having 21 years of standing at the Association.

(iii) Library Committee comprising five members including Additional Secretary/ Joint Secretary and the remaining members shall be co-opted from the Association by the President and Hony.-Secretary.

(iv) Gardening and Sanitation Committee comprising of the Additional Secretary/ Joint Secretary and other members of the Committee will include Member Executive below 10 years and Lady Member Executive and one member would be co-opted.

(v) Grievance Committee shall be headed by the Senior Vice-President and other members of the committee will include Vice-President in membership and two members having been elected from the category of above 10 years but below 21 years standing at the Association and the fifth member will be co-opted.

(vi) Library Committee shall be constituted by the Hony.-Secretary in consultation with the President to look after the various libraries of the Association.

The duties of Library Committee shall be:

To exercise general supervision over the affairs of the library.

To maintain and improve the library.

To suggest the purchases of books for the library.

To ensure that relevant books, journals, periodicals, news papers and magazines are purchased in the library on the recommendation of the Committee. No purchase should be made unless recommended by the Library Committee.

To maintain a register of the books in the library, the price of each book, the amount annually written off, books lost and destroyed.

To apprise the Committee about the status of the library.

To keep minutes of the meetings of Library Committee.

To keep and maintain a register for complaints and suggestions about library.

(b) To appoint and make rules for the following activities:

(i) To appoint an arbitrator having not less than 21 years of practice at Bar.

(ii) To appoint staff, peons and other employees of the Association. No employee shall be employed by any individual member of the Committee.

(iii) To make rules of service of the employees and to define their duties.

(iv) To make rules for grant of leave to the employees and to frame the gratuity rules.

(v) To make disciplinary action against the employee including removal. The dismissed employee may, however, be reinstated by the Committee only after due hearing and upon their satisfaction, provided the aggrieved person appeals in writing.

(vi) To fix, revise the salaries and allowances and grant advances etc. and to make rules in this behalf.

(vii) To manage and relate the finances, accounts, investments, properties and all administrative affairs of the Association and for that purpose to appoint such agents as it may deem fit.

(viii) To accept bequests, donations and transfer of property to the Association.

(ix) To enter into, vary, carry out, confirm and cancel the contracts, license on behalf of the Association.

(x) To invest monies of the Association for the benefit and welfare of the members.

(xi) To take disciplinary action against the defaulting members, including cancellation of the membership, imposing of penalty and/or the cancellation of chamber/seat and taking possession thereof.

(xii) To distinguish between practicing advocates of Tis Hazari Courts and "other courts" and to such "other advocates" by taking away the right of vote, chamber/seat and minimizing other facilities after keeping them in the different category of "Non Active Advocate". However such distinction shall only be made at the recommendation of the screening committee.

Explanation:

This is being done for identifying the practicing advocates of Tis Hazari Courts. Any member who is aggrieved by the recommendation of the screening committee for keeping his name in the list of "non active advocates" can appeal along with the proof to the executive committee against such recommendation.

- (i) To constitute three-member Election Commission by 11th December every two years.
- (ii) To remove any structure or seat, which in the opinion of Committee, is likely to cause hindrance in the passage or road and to ensure that the seats or chambers are built in symmetry.
- (iii) To remove or demolish any seat or structure which are not as per guidelines laid down by the Committee.
- (iv) To reserve any place in the court compound for any specific purchase and use as deem fit by the Committee. The Committee, however, shall provide alternative place to members who have been such displaced due to the aforesaid reservation.
- (v) To exercise all the power of the Association not otherwise provided for by this Constitution, in order to fulfill the aims and objects of the Association.
- (vi) The Committee shall have no right to waive off any of the clause.

A three-member Committee shall be constituted by the Hony. Secretary in constitution with the president consisting of two males and one female member, having a standing upto 3 years of the Association. 13. Elections:

- (i) Elections of the Association shall be held by 25th January every two years by secret ballot.
- (ii) No office bearer shall be eligible to contest/repeat for the same post/office in the Elections, to be held every two years.
- (iii) Election of the Association shall be held under the supervision of the Election Commission.

14. Election Commission and Tribunal:

- (i) A three-member Election Commission and three-member Election Tribunal shall be appointed by the Committee by December 11, every two years.
- (ia) The Elections shall not be delayed beyond January 25. However in case of delay, if any, beyond control of the Election Commission, then the outgoing Committee and the Election Commission shall jointly seek the approval for the proposed postponement of the Elections from the General Body, to be convened for the purpose.

Provided that the postponement of the Elections for more than fifteen days shall not be sought at one time.

Further provided that the Committee and the Election Commission shall not seek more than two such postponements.

- (ib) In case of the Elections being delayed, for the above reasons, the term of the forthcoming Committee shall be proportionately for shorter term. However,

the next Elections shall be held by January 25 of the succeeding tenure of two years as provided in the Constitution.

(ii) Qualifications of members of Election Commission and Election Tribunal.

A member, who has not contested any Election of the Association during the last two terms immediately preceding the appointment, shall be qualified to be appointed as member of the Election Commission and Election Tribunal.

(iii) No member, who has been a proposer/seconded of a candidate in the election of the Association held during a period of 2 Elections immediately preceding the appointment will be qualified to be appointed as member of the Election Commission and Election Tribunal.

(iv) Member proposed to be appointed as a member of Election Commission and Election Tribunal should be impartial and a man of integrity and should have at least 20 years standing at the Association.

(v) Member accepting the appointment as a member of the Election Commission/Tribunal shall be required to give a declaration that he/she shall not contest election of the Association for a period of next two terms and that he/she is not associated in any manner with the election of any candidate.

(vi) Term of the Election Commission shall be from December 11 of the year of its appointment till declaration of the final result of the ensuing Committee, the following year.

(vii) That in case any member of the Election Commission/Tribunal resigns, withdraws, incapacitated for any reason or dies, then the Committee shall appoint a new member in substitution thereof.

Duties and Powers of the Election Commission:

(i) Election Commission once constituted shall have powers to appoint election officers, returning officers and counting officers.

(ii) Election Commission immediately after its being appointed shall start the process of election i.e. preparation of rolls, declaration of election schedule and arrangements for election.

(iii) Election Commission shall supervise the strict observance and compliance of the election rules framed under the Constitution.

(iv) The Association shall make its staff available to the Election Commission for the election process and for conducting the same. The Election Commission shall also be provided with the funds required for the election arrangements.

(v) The Election Commission shall give the voter list/CD containing the names, addresses, phone Nos. of the eligible voters to the candidates after 3 days of the last date fixed for clearance of dues of the members.

15. Election Rules:

Election of the Association shall be held by January 25 every two years, in case of 25th January being a Holiday, then the Election shall be conducted prior to the said date, preferably on Friday. The Election Commission shall make every endeavour to complete the election process by January 31.

The Election Commission shall give 3 weeks prior notice for announcing the election schedule pursuant to its appointment. In case the Election Commission fails to announce the same by December 15 of the year of its constitution, then the Election Commission shall stand automatically dissolved. Thereupon the outgoing Committee shall convene an urgent meeting for the sole purpose of announcement of Election and simultaneously constitute an Election Tribunal for conducting the election, which shall discharge its functions from the next day, i.e. December 18. All the powers of the Committee shall stand vested with the Election Tribunal which shall name the Returning Officer and constitute new Election Commission by December 21. The Election Tribunal shall be a guiding authority to the Committee to ensure that the Constitution of the Association shall be followed in letter and spirit.

(i) Those members who are on the rolls of the Association as on 31st January of the preceding year shall have the right to vote. No member who is in arrears shall have the right to vote.

(ii) Subscription of the Association shall be accepted by cash/cheque, up to 15th December of the preceding year.

(iii) Nominations for various posts will be received at least 12 days prior to the date of polling. The date of scrutiny will be the next day of the last day of receipt of application and the date of withdrawal shall be 2 days thereafter.

(iv) There shall be a nomination form for each post/office with one Proposer and a Secunder, who are eligible to vote.

(v) The nomination paper shall be accompanied by the non-refundable security deposit for each respective post:-

(vi) The candidates are prohibited from issuing any posters, letters, visiting cards, pamphlets, handbills or any other election material including banners, badges in support of their candidature either themselves or through their supporters. However, the candidates except candidates for President and Secretary can distribute cyclostyled/typed/computerized slips of size of note more than 3 x 4 inches, on white paper with black-ink, indicating their names and the office for which the election is being contested. Violation of this rule will result in disqualification of the candidate and cancellation of his nomination by the Returning Officer.

(vii) On the date of polling no canvassing shall be permitted. The candidates and their supporters shall not be permitted to stand within 100 sq. ft. From the

polling booth. The candidate or their supporters will not be allowed to enter into booths unless they are specifically permitted by the Election Commission.

(viii) That in order to avoid bogus voting the members will be required to produce the identity card before the election officer at the time of polling.

(ix) The polling shall be held from 9.30 a.m. to 5.00 p.m. The voters having entered the polling station by 5.00 p.m. shall be allowed to vote and for that purpose the Committee shall be empowered to extend the time for casting of votes by such voters.

(x) The ballot boxes shall be kept for overnight custody in a room to be sealed with the seal of Election Commission in presence of the candidates or their agents. And after the polling is over, the ballot boxes shall be sealed with the seal of Election Commission in presence of the candidates or their agents.

(xi) The counting of the ballots shall be taken up by the Election Commission on the date already fixed, following the polling date, from 10.30 a.m. till the counting is over.

i) The room where the ballot boxes are kept for overnight custody as per clause (xi) above shall be opened by the Election Commission in presence of the candidates or their agents.

ii) The sealed ballot boxes shall be opened by the Election Officers under the supervision of the Election Commission in the presence of the candidates or their agents.

(xii) At the time of counting of votes there shall be one or more counting officers for each office. The candidates himself and one agent will be permitted to remain present at the counting to be held within close doors under the supervision of two officers appointed by the Election Commission for the purpose.

(xiii) For the information of the members waiting outside the counting hall the result for each candidate for each office shall be announced after count of every 200 votes. The result of the count shall be announce and authenticated by the officers appointed by the Election Commission. The results so announced by the aforesaid officers shall be final.

(xiv) Any dispute concerning election of any candidate shall be decided by the Election Commission on the petition made in this regard by the candidate.

(xv) The petition challenging the election result of any candidate for any office may be preferred before the Election Tribunal within a period of seven days of the declaration of the Election results.

(xvi) The election petition shall precisely state the grounds of challenge and shall be accompanied with a fee of Rs. 2,500/- to be deposited with the Association and the receipt thereof be attached to the election petition.

(xvii) On receipt of the election petition the Election Tribunal shall call the

respondents and may require the respondents to submit the comments in writing. On consideration of the material on record, the commission shall decide the petition within 45 days.

(xviii) The decision of the Election Tribunal on election disputes shall be final and binding on all members of the Association. The result of election or the decision of the Election Tribunal shall not be challenged in any court of law.

(xix) The ballot papers used in the election and unused ballot papers shall be preserved under the custody of Election Commission till such time as the same are required for disposing of election petition filed in terms of the provisions of sub clause (xvi) and (xvii) above.

Explanation-I:-

If no petition challenging the results of election is filed within the period stipulated in sub-clause (xvi) above, the Election Commission shall be empowered to order the destruction of used and unused ballot papers.

Explanation-II:-

The Election Commission in its power, can order preservation of ballot paper only for the offices in respect of which Election petition(s) is (are) preferred before it. The ballots preserved shall remain under the custody of the Election Commission till the Election petitions are disposed off.

Clause 21:

21. Requisition of General Body Meeting:-

A special meeting of the Association may be called by the Executive Committee.

(a) On receipt by the President or Secretary of a requisition signed by not less than 1/10 of its those members entitled to vote at a meeting of the Association accompanied by the resolution which the requisitionists want to put for discussion and decision of the General Body of Association. The resolution so circulated and submitted should be in the name of proposer and seconder.

(b) The President or Secretary as the case may be may refuse to call the requisitioned meeting if the notice of the requisition is not accompanied with the resolution of requisitionists and name of the proposer and seconder of the resolution.

(c) The requisitioned meeting of the Association shall be called by the President or Secretary within 7 days of the requisition notice provided requisition notice complies with the requirements laid down in sub-clause (a) of this rule.

(d) The requisitioned meeting is not called by the President or Secretary within seven days of the receipt of requisition notice, the requisitionists shall be at liberty to call the General Body Meeting of the Association by giving a notice or not less than two days to the committee and by specifying the venue and time of

the meeting to the members.

(e) The requisitioned General Body Meeting called by the requisitionists under clause (d) of this rule, shall be presided over the President of the Association and presided conducted by the Secretary provide that in case the President of Association fails to preside over the meeting or refuse to preside over the requisitioned meeting shall be presided by the senior-most executive member of 25 years & above standing in the Bar.

(f) Provided that in the event of failure or a refusal by the executive member to conduct the requisitioned meeting the proceedings of the meeting shall be conducted by the proposer of the requisition circulated by the requisitionists.

(g) The quorum for an ordinary General Body Meeting & requisitioned meeting shall be 1/8 of the members enrolled who are entitled to vote in any meeting of the association. For want of quorum, the meeting shall be invalid and would not be entitled to transact any business.

(h) In absence of the president and vice-president the members shall elect a chairman for the meeting who should be desirably by senior member of the Bar.

(i) All decision at the meeting shall be taken by a show of hands or by secret ballots if the chairman of the meeting so directs with approval of the members.

(j) No person other than member shall have right to vote at the meeting.

Clause 33:

33. Status:

The association shall be a society by the name aforesaid having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract.

(i) The association can sue or be sued by its name through the Secretary.

(ii) The Secretary shall contest all legal proceedings for and on behalf of the association through counsels to be engaged by him in consultation with President.

(iii) Should there exist a situation where the executing committee is ousted, the election commission shall take the power of President and Secretary and shall depute any of its member to defend the legal proceedings against the Association as well as to initiate legal proceedings for and on behalf of the association in case of urgency by engaging counsels for the purpose.

Clause 35:

35. Arbitration:

All disputes, differences between members and members between member(s) and association shall be resolved by means of arbitration by the Arbitrator appointed by the Committee the decision of the Arbitrator shall be final and

binding on the contending parties. No suit or legal proceedings shall be maintainable inter-se the members and member(s) and association in any court of law.

Clause 36:

36. Right of Dissent:

Members shall have right of dissent against the decisions of the Committee. Such dissent however shall not be expressed by the member/members through handbills, posters or press statement. The members disagreeing with the decision of the Committee shall have right to voice the dissent by first placing in writing before the Committee to do the needful within 48 hours. If nothing is done by the Committee within the aforesaid time then through the requisitioning of General Body Meeting in terms of provision laid down in clause 21. Non compliance of the provision shall tantamount to misconduct.

25. From the collective reading of the aforementioned clauses contained in the constitution of the defendant association, the following position so far as it concerns the functioning of the defendant association emerges:

a) The name of the defendant Association is Delhi Bar Association having its registered office situated within the court compound at Tis Hazari Court or other place where the Committee decides with the approval of the General Body of the Association.

b) The definition clause defines the terms used in the rules and also meaning of the distinct functionaries under the constitution. "The Association" under clause 4 (1) means Delhi Bar Association. The committee is distinctly defined under clause 4 (II) means Executive committee of the association, sub-committee other than Executive Committee Similarly Member has been defined under clause 4 (III) means the member of the association. Election Commission has been defined under clause 4 (vii) means election commission constituted by the committee every two years to hold and to supervise the election and to declare results of the elections of the Association.

c) The reading of the definition clause makes it clear that the association is distinctly defined under the constitution than that of the committee which governs the association. The committee acts a distinct functionary under the constitution. It is noteworthy to keep in mind this distinction as association has its own role and responsibilities as against the committee though in some senses the committee acts for and on behalf of the association.

d) Clause 9 makes it clear that the association shall be managed, controlled, supervised and governed by the committee consisting of president, senior vice president, vice president, Hony Secretary, Joint Secretary, Treasures and Seven other member executives. Therefore, the association as a body is run by its functionary which is committee though has emanated from association but has certain role and responsibility towards the functioning, supervising, governing of

the association which are distinct from association as a whole.

e) Clause 10(a)(i) provides the duties and functions of the president who shall preside over the meetings of the association and committee. The election commission as per sub clause (v) of shall be constituted in consultation with the committee.

f) Clause 11 provides the responsibilities and duties of the committee amongst which the constitution of the three member election commission by 11th December every two years. Thus, it is the committee to constitute the election commission in consultation with the president and the president of the association being part of the committee shall preside over the committee.

g) Clauses 12(i) and (iii) provide that the election of the association shall be held by 25th January every two years by secret ballot and shall be held under the supervision of the election commission.

h) Clause 14(i) again reiterates that the three member election commission shall be appointed by the committee by December 11, every two years. Clause (ia) provides that the election shall not be delayed beyond January 25. In case of the delay beyond the control of the election commission, the outgoing committee and election commission shall jointly seek the approval for the proposed postponement of the elections from the General Body to be convened for the said purpose. It is further provided that the postponement of the election for more than fifteen days shall not be sought at one time. Clause 14 further sets out the role and duties of the election commission in detail.

i) Clause 15 provides for the election rules wherein it has been stated that the election commission shall make every endeavor to complete election process by January 31. It is mentioned in clause 15 (xv) that any dispute concerning the election of any candidate shall be decided by the election commission and sub clause (xvi) states that the dispute challenging the result of election can be done before the election tribunal by filing the election petition.

j) Clause 21 provides the mode of the requisition of General Body meeting. The said requisition of General Body meeting has a role to play while conducting the election process.

k) Clause 35 provides for the arbitration clause relating to dispute between the members inter se and the disputes between the members and association shall be resolved by the appointment of the arbitrator.

26. The conjoint effect after holistic reading of the clauses of the constitution of the defendant relating to the functioning of committee, existence of election commission, process of conducting the election and existence of the arbitration clause can be summed up in the following manner:

a) That the arbitration clause contained under the clause 35 of the constitution of defendant association is concerned with all the disputes and differences which

arise between the members inter se of the association or between the members and the association as a whole. In effect any dispute between the members inter se or members vis-?-vis the association shall be resolved by the arbitration by appointment of the arbitrator.

b) It is equally noteworthy to mention that the forming of the election commission and taking the process thereon is the domain partly of the committee and partly of the election commission which are distinct functionaries under the constitution of the defendant which are distinctly defined and assigned separate roles and responsibilities as per the clauses of the constitution.

c) Whereas the committee has a role to play in starting the election process by appointment of the election commission timely by December 11th every two years after consulting with the president, the process of the election is taken further by the said election commission which shall endeavour to complete it by December 31st and in case of the delay both the committee and commission shall jointly seek extension by the requisition of general body meeting.

d) Accordingly, the dispute raised by the member whereby the committee is alerted for its failure to observe the duties casted upon the same by appointment of the election commission is the dispute vis-?-vis a member and committee under the constitution seeking insistence of the compliance of the rules and bye laws of the constitution as against the dispute between a member and association as a whole. Thus, by the very wordings of clause 35 which is the arbitration clause contained in the constitution, Prima facie, it appears that the dispute raised by the member seeking compliance of the mandatory rules and regulations by the committee and bringing to the notice the duty of the committee to appoint election commission and to take steps further is not the dispute between a member and association but the dispute between a member and committee and the same is prima facie not covered by the same. This is due to the reason that the committee is distinctly defined under the constitution than that of the association and assigned separate responsibilities to govern and supervise the association as against the role and functions of the association towards each and every member of the association.

e) There is procedure prescribed under the rules of the constitution to raise a voice against the decision of the committee by the member as per clause 36 of the constitution. The raising of the voice by the member against the committee can be done by placing before the committee to do the needful within 48 hours as per the clause 36 of the constitution and if nothing is done by the committee within the aforesaid time, then through the requisitioning of the General body meeting in terms of the provisions of clause 21. The reading of the clause 36 alongside clause 35 also clarifies the said position that challenging the decision of the committee operates in a distinct field than that of dispute inter se members or between the members and the association and both clauses 35 and 36 are operating in distinct fields.

f) There is a complete mechanism under the clause 14 and 15 which has been mandate upon the committee and election commission to follow in a time bound manner and otherwise the committee shall appoint another election commission and conduct the election as expeditiously as possible.

g) In case the elections are not held timely, then the election commission and committee shall seek postponement of the elections from General body which shall be convened for the said purpose as per clause 14 (ii).

27. It is thus clear that the constitution of the defendant is a complete code in itself providing for the mechanism for functioning of association, committee, election process etc. As I have observed on prima facie basis while discussing the effect of the reading of the clauses of the constitution that the dispute by a members assailing or raising voice against the functioning of the committee is not covered within the ambit of the clause 35 of the constitution. The said dispute prima facie is not arbitrable in nature as it is not covered within the sweep of the arbitration clause. Consequently, no useful purpose will be served by referring the said dispute to the arbitrator as per Section 8 of the Act. Thus, the application filed by the defendant seeking reference to the arbitration in the instant case is not maintainable nor it can be said that the suit is barred under the provisions of Section 5 of the Act. None of the decisions referred by the defendant is applicable to the facts and circumstances of the present case.

28. The matter can also be seen from another angle which is that even assuming that there exists any ambiguity between the overlap of the duties of the association and that of the committee under the constitution so far as the applicability of the arbitration clause in relation to the acts of the executive committee are concerned. Still, one thing is pretty clear which is that the disputes relating to the election process are to be treated distinctly from that of all other disputes and they would not fall within the ambit of the arbitration clause provided in the constitution. This is clear from the intent of framers of the rule when the rules provide that the role of holding the election vests with the independent functionary which is election commission to be appointed by the committee. The election disputes of the candidates shall be entertained by the election commission and the challenge of the result shall be entertained by the election tribunal. All this would mean for the purposes of holding of election and conducting the same upto declaration of result, the process of election has been intended by the framers of the constitution to be kept separate from that of the business of committee or executive already functioning so that free and fair elections are conducted unprejudiced by the working of the governing body. Therefore, the dispute challenging or seeking to challenge the initiation process of the election of the defendant's association as per the intendment of the framers are specifically enacted as domain of the election commission and thus would not fall with the general provision contained in the arbitration clause as per clause 35. In the interim, if the election commission is not appointed due to the failure to observe the rules and the disputes relating of the elections are

intended to be kept separate from the other business of the association, the suit of the present nature is maintainable at the instance of the affected parties like members etc which can bridge the gap between the time of failure to observe rules upto appointment of the election commission by setting the machinery into motion and calling upon the defendant through the executive to set up election commission and take the election process further. This view is prima facie in nature considering the overall reading of the clauses of the constitution of the defendant and is independent reasoning to my prima facie finding that the dispute of a member vis-à-vis committee is distinct from a dispute vis-à-vis association as whole.

29. The suit of the present nature calling upon the defendant and its executive committee to conduct the election is not barred even u/s 9 of the Code of Civil Procedure. This is due to the reason that the constitution of the defendant nowhere bars the dispute between the members of the association vis-à-vis the executive committee of the association through association calling upon to perform its duties by holding the elections as per the rules. In case the committee fails to act even after bringing to the notice of the committee the rules of the association and to do any act as per the rules, any member of the association cannot remain remediless which will lead to the rights of the members prejudicially affected and further collapse the functioning of the association as per the rules. In any case, the free and fair elections are the hallmark of the democracy in the institution be it country or association or society. If the rules mandate the time bound election process to be conducted, it becomes bounden duty of the committee or governing body to act as per rules and conduct elections in interest of the institution. Thus, the suit of the present nature in such a case cannot be said to be barred neither expressly nor can be inferred by reading of any provisions of the constitution of the defendant. Mr. Uppal has referred decisions in support of his main submission that when there is no dispute which are covered under the ambit of arbitration clause, but in the present case the suit is merely filed for the purpose of enforcement of mandatory provisions if that is the position in the matter, then there is apparent force in his argument. It is not necessary to discuss the same.

30. As I have also observed that there exists a complete mechanism for raising the voice against the decisions of the committee as per the clause 36 whereby the member should call upon the committee to do the needful by giving 48 hours notice and otherwise seek requisition of the general body meeting as per clause 36 read with clause 21 of the constitution. In the instant case, the plaintiff has written to the president and Secretary of Delhi Bar association on 16th December, 2013 by giving two days notice to start the process of elections by appointment of the election commission and tribunal as per the rules/articles of the constitution. Though, the said two days notice does not quote clause 36 of the constitution and does not call upon the executive committee to requisition the general body meeting which leads to the plaintiff not following due process contained in the constitution but at the same time, what the notice dated 16th

December, 2013 does is that it brings to the notice of the President and Secretary who are the part of the executive committee of the defendant association that they have duty to perform which is to hold the elections in a time bound manner by quoting the rules/articles of the constitution. There is no denial by the Defendant that the association has not received such notice written by the plaintiff. There is nothing on record stated by the defendant association that pursuant to the receipt of the notice dated 16th December, 2013, the defendant through the executive committee which is governing the association has requisitioned the general body meeting or has even taken any positive steps towards holding of the elections which the rules of the defendant association mandate and make it obligatory upon the committee which governing the association. On the contrary, the defendant through its committee is seeking a reference of the dispute to the arbitration without informing this court the steps taken towards the election process or filing any material suggesting the appointment of the election commission and following the mechanism under the constitution.

31. Ordinarily, this court would have insisted the plaintiff to follow the due process calling upon the plaintiff to first seek requisitioning of the general body meeting and thereby calling upon the executive committee of the defendant Association to form election commission. But considering that already considerable delay has been caused for starting of the election process especially when rules of the constitution provide the time bound schedule for conducting the election and do not even permit 15 days extension at one stretch to postpone the elections, it is deemed expedient that this court should pass interim directions to the defendant association so that the executive committee governing the defendant should immediately adhere to the rules of constitution and start the election process by forming election commission and proceeding in the manner provided in the rules of the constitution in the time bound manner. Accordingly, the defendants through their executive committee are directed to take the necessary steps towards holding the election as per the mechanism provided under clause 14 and 15 of the constitution of the defendant forthwith. All pending three applications mentioned above are disposed of.

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The defendant is granted four weeks" time to file written statement with an advance copy to the plaintiff who may file replication thereto within four weeks thereafter.

List the matter for admission/denial of documents before Joint Registrar on 28th April, 2014.