
(2019) 09 DEL CK 0172

In the Delhi High Court

Case No : Civil Writ Petition No. 9955 Of 2019, Civil Miscellaneous Application
No. 41224 Of 2019

Vandana Sharma

APPELLANT

Vs

Dwarka Court Bar Associates & Ors

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Citation : (2019) 9 AD(Delhi) 105

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : D.K. Sharma, M.C. Premi, Sidharth, Devendra Dagar, Nishima Arora

Final Decision : Allowed

Judgement

Sanjeev Sachdeva, J

1. Petitioner seeks a mandamus to the respondents to include the name of the petitioner in the final voters list and to re-schedule the election for the Dwarka Court Bar Association 2019-20 voting for which is scheduled on 21.09.2019 or in the alternative to permit the petitioner to contest the election for the post of Lady Member Executive in the said elections.

2. The petitioner enrolled as an Advocate with the Delhi Bar Association and became a member of Dwarka Court Bar Association in the year 2010. The name of the petitioner figured in the tentative voters' list for the ensuing election of the Dwarka Court Bar Association. Petitioner also submitted her declaration in terms of the judgment of the Division Bench of this Court in W.P.(C) 8106/2010 titled P.K. Dash, Advocate & Ors. Vs. Bar Council of Delhi & Ors. (2016) 230 DLT 325 (DB) as modified by the subsequent order dated 18.10.2016 in the said Petition.

3. The petitioner contends that though she is also a member of Shahdara Bar Association and her name figured in the voter list for the election of the Shahdara Bar Association in the year 2017, she did not cast her vote in the said election.

4. The name of the petitioner did not figure in the final voter list of the voters eligible to vote for the Dwarka Court Bar Association. She filed an objection with the Election Committee and also submitted a certificate issued from the Shahdara Bar Association to the effect that though her name figured in the voter list, she did not cast her vote in the said election.

5. Learned counsel for the petitioner submits that despite the petitioner having furnished the requisite certificate and undertaking, respondents have rejected her nomination for the post of Lady Member Executive as her name did not figure in the final voter list.

6. Mr. Devendra Dagar, Advocate who is also member of the Election Committee - Respondent no. 3 for the year 2019-20 appearing in person for the Election Committee submits that the nomination of the petitioner was rejected solely on the ground that her name did not figure in the final voter list.

7. Learned counsel appearing for respondent no. 2 & 4 i.e. Bar Association as also the Nodal Officer/Administrative Officer submits that name of the petitioner was deleted from the final list of voters as her name figured in the Shahdara Bar Association voters list for the 2017 and since thereafter no further election after 2017 was held, she is disqualified in terms of the judgment of the Division Bench in P.K. Dash & Ors. (Supra).

8. It is noticed that the Division Bench in P.K. Dash & Ors. (Supra) by its judgment dated 31.05.2016 laid down the principle of "one bar one vote" and made it applicable to all the Bar Associations in Delhi. By order dated 18.10.2016, the directions were slightly modified and the rule incorporating "one bar one vote" principle was enunciated as under: -

"52. In the light of the above findings and conclusions, the following directions are issued:

(a) The following rule, incorporating the one-bar, one vote principle shall stand incorporated forthwith in relation to every Bar Association in Delhi (including the Delhi High Court Bar Association, the Delhi Bar Association, the New Delhi Bar Association, the Rohini, Shahdara, Saket and Dwarka Courts Bar Association and all other Court/Tribunals attached Bar Associations):

"A member who exercises her or his right to vote in any year in the High Court or a District Court Advocate's/Bar Association election shall not be eligible to cast her or his vote and/or contest for any post - either as member of the executive or of an office Bearer, at the election of any other Bar Association. Every member before casting his vote shall in the prescribed form furnish a "Declaration? that she/he has not voted in the immediately preceding election to any other Bar Association and is not voting in any election of the Supreme Court Bar Association or any other Bar Association. Provided, however, that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of the Association for a

period of three years.

Based on the declaration of members, the Bar Association shall prepare, a list of voters. Only the members whose names are included as the final voters- after excluding those who had voted in elections of any other Bar Association in that year or the previous year, shall be entitled to vote, contest, propose and second any candidate in the Bar Association Election."

9. In terms of "one bar one vote" principle the Division Bench has laid down that a member who exercises her or his right to vote in any year in the High Court or a District Court Advocates'/Bar Association election shall not be eligible to contest for any post -either as member of the executive or of an office Bearer, at the election of any other Bar Association. Such member prior to casting his vote shall in the prescribed form furnish a "Declaration? that she/he has not voted in the immediately preceding election to any other Bar Association and is not voting in any election of the Supreme Court Bar Association or any other Bar Association.

10. The Division Bench held that Based on the declaration of members a final voters list is to be prepared by the Bar Association and the list is to be prepared by excluding those who had voted in elections of any other Bar Association in that year or the previous year.

11. The Division Bench has laid-down that if such a declaration is found to be false, it shall entail automatic suspension of the member giving such false declaration from membership of the Association for a period of three years.

12. As per the election committee, the name of the petitioner was deleted from the final list because her name figured in the voter list of Shahdara Bar Association.

13. In my view, the respondent- election committee has misconstrued the rule. The rule as laid-down by the Division Bench becomes an embargo only when a member has exercised his/her right to vote and casted a vote in the election of some other bar association. Merely because the name figures in the voter list would not constitute a disqualification in terms of the principle of 'one bar one vote' as laid-down by the Division Bench.

14. The petitioner has furnished a certificate from a member of the Election Committee dated 05.09.2019 who has certified that as per the records available in the office of Shahdara Bar Association, the petitioner has not casted her vote in the election of the Shahdara Bar Association conducted in the year 2017.

15. Since the petitioner has given a certificate/declaration that she has not casted her vote in the Shahdara Bar Association 2017, she does not suffer the disqualification on the principle of "one bar one vote". Accordingly, the decision of the election committee to delete her name from the final list is incorrect and the consequential rejection of her nomination is also erroneous.

16. The name of the petitioner is liable to be included in the final voter list in terms of the certificate as well as declaration furnished by her and the rejection of her nomination on the said ground is liable to be quashed.

17. In view of the above, a writ of mandamus is issued directing the respondents to include the name of the petitioner in the final voter list and to include the name of the petitioner as a candidate for the post of Lady Member Executive in the ensuing election of the Dwarka Bar Association.

18. It is, however, clarified that the issue as to whether petitioner had actually casted her vote or whether the declaration or certificate dated 05.09.2019 furnished by the petitioner is incorrect, is left open to be considered by the election committee, if any complaint is received.

19. The petition is accordingly allowed in the above terms.

20. Order dasti under signatures of the Court Master.