

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Civil Writ Petition No.14449 of 2014**

Date of decision:03.12.2014

Tahir Hussain Ruparya, Advocate, son of Ch. Wali Mohammad,  
Advocate, age 42 years, R/o Nuh, District Mewat, Haryana.

... Petitioner

versus

Bar Council of Punjab and Haryana, through its Secretary, Law  
Bhawan, Sector 37-A, Chandigarh, and others.

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Raman Sharma, Advocate,  
for the petitioner.

Mr. Sumeet Puri, Advocate,  
for respondent No.1.

Mr. Kunal Dawar, Advocate,  
for respondent No.2.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

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**K.Kannan, J. (Oral)**

1. The petition is at the instance of an Advocate of the Bar Association, Mewat (Nuh), who was declared elected with 118 votes against 120 for the post of a President in the election held on 20.05.2014. A complaint was made by the 2<sup>nd</sup> respondent contending that he had paid a nomination fee of ₹5,500/- to the Returning Officer for the election that was originally scheduled to

take place on 24.04.2014. There was bedlam and disorder on that date with members indulging in a free-for-all-fight that resulted postponement of the election. The election was postponed to 20.05.2014 with the concurrence of the Bar Council of Punjab and Haryana.

2. The complaint was given by the 2<sup>nd</sup> respondent before the Bar Council of Punjab and Haryana contending that the election held without naming the 2<sup>nd</sup> respondent also as a contestant for the post, was not valid. His claim was based on the fact that for the election dated 24.04.2014, he had already paid ₹5,500/- as nomination fee and the same was received by the Returning Officer and his name must have also been therefore declared as a contestant for the post of President. The Chairman of the Bar Council, who entertained the complaint proceeded to hold on the proof adduced by him that the complainant had paid ₹ 5,500/- as nomination fee for the election that was originally scheduled to take place on 24.04.2014, and could not have been kept out of fray, and the election held on 20.05.2014 was incompetent. The Chairman, who headed the Ad hoc Committee, for deciding the election dispute, directed that a fresh election will be held and a schedule be prepared for conducting election under the supervision of 2 members named in the order. This order passed on 04.07.2014 is the subject of challenge in this writ petition.

3. The petitioner states that there was no election petition filed before the Bar Council and, therefore, the Committee had no jurisdiction to set aside the duly conducted election for the post of President. The further contention is that any complaint received for professional misconduct could be processed and considered under Chapter V of the Advocates Act read with Chapter VII of the BCI Rules and a complaint on validity of election itself not forming part any of the misconduct contemplated under the rules could not be the basis for setting aside the election. Consequently, the election which was set aside by the order was incompetent and liable to be set aside.

4. At the time of arguments, the counsel for the petitioner stated that the State Bar Council has itself no power to set out any rules for conduct of election for any Bar Association. He would submit that neither Section 15 nor Section 28 of the Advocates Act, 1963 that deals with power of the State Bar Council to make rules for the subjects covered under Chapter II and Chapter III respectively contemplate framing of rules for the election of a Bar Association. At the previous hearing, after hearing the parties at some length, I had adjourned the case today for consideration of whether the State Bar Council has power to frame rules for elections in District Bar Associations. The counsel only refers me to the provisions under Sections 15 and 28 and states that the election of the Bar Association must be taken as flowing from the general

power of the State Bar Council to regulate the conduct of members. I pondered for a while whether it will be appropriate to take the issue of the validity of the election rules framed by the Bar Council, for, this writ petition makes no direct challenge to the election rules in this writ petition. Indeed, the petitioner himself had filed his nomination and contested the election only as per the election rules formulated by the Bar Council and there is no express challenge to the rules under which he himself got elected. I find that the submission is not without some legal merit but perhaps this is not an occasion when it should be taken up and decided without a challenge to the election rules themselves. It could await future adjudication, if a specific challenge is brought on that ground. I do not therefore decide on the validity of election rules made by the State Bar Council.

5. If the election had taken place as per the rules, the rules do provide for any member who is aggrieved to file a complaint with the State Bar Council. Rule 12 is in general terms a provision relating to the role of the Bar Council vis-a-vis any dispute. The rule provides as under:-

“a) In case of any dispute, if the Constitution or the by-law does not provide any remedy, then the Bar Council shall take all effective steps to resolve the dispute.”

6. I can hardly find any scope for a Chairman or a Committee to examine a dispute brought by the 2<sup>nd</sup> respondent as constituting a power to decide on the validity of an election. If each expression mentioned in the rules has to be examined, it can be noticed that the election is simply not a subject that can ever be imported. A dispute relating to the constitution ought to mean the manner of functioning or the distribution of powers within the Bar Association. The bye-laws which can provide for a manner of carrying on with the activities should refer to how the respective office bearers will discharge the functions. I will give no room for a Bar Council to decide on the validity of an election by the Bar Association. It is here that the provisions of the Advocates Act, 1963 itself obtain relevance, for, the examination of the provisions would reveal whether the Bar Council can play any role in the manner of election of office bearers of a local Bar Association.

7. Section 6 of the Act which is brought under Chapter II deals with the functions of Bar Councils. Section 6 details clauses (a) to (i) as the different functions and it includes in clause (g) that it could “ provide for the election of its members” (emphasis supplied). It should be understood that this Section contemplates the Bar Council to provide for an election of the members of the Bar Council and not for members of Bar Association. Section 15 which gives the power to make rules contains in clause (1) that, “A Bar

Council may make rules to carry out the purposes of this Chapter.”

The chapter that delineates the functions of the Bar Council makes no reference to functions of Bar Association. Chapter II provides for the establishment of the State and All India Bar Council through Sections 3 and 4 respectively. Section 5 deals with the legal character of the Bar Council as a body corporate. Section 6 deals with the functions of State Bar Councils and Section 7 deals with the functions of Bar Council of India. Section 7A enables the Bar Council of India to become a member of international legal bodies and Section 8 deals with term of office of members of State Bar Council. Section 8A deals with the constitution of Special Committees in the absence of its members and Section 9 empowers a Bar Council to set up Disciplinary Committees. Section 9A deals with the constitution of legal aid Committees and Section 10 deals with the constitution of committees other than disciplinary committees. It may be pointed out even here that Section 10 does not contemplate any Committee for conduct of elections. Section 10A deals with transaction of business by Bar Councils and committees and Section 10B sets out disqualification of members of Bar Council. Section 11 deals with the staff who would be officiating in the Bar Council and Section 12 deals with the accounts and audit. The acts done by the Bar Council, Section 13 declares would not be invalidated by any vacancy in, or any defect in the

constitution of Committee and the election to the Bar Councils itself could not be questioned on certain grounds set out under Section 14. I have extracted all the relevant provisions contained in Chapter II and would find no scope for the Bar Council to regulate an election in the Bar Association. Chapter III deals with admission and enrollment of advocates. The admission to the Bar Council secures a licence to practice in any part of India but beyond that the chapter itself does not control the manner of admission to a Bar Association. Section 28 which allows for power to make rules likewise would contain no reference to election in the Bar Association at any place. The examination of these provisions is only to find whether there is any role for the Bar Council in the manner of deciding on an election dispute.

8. The expression “any dispute” occurring under Rule 12 framed by the State Bar Council though, is wide, is followed by reference to what the dispute shall relate to. Such a dispute can only be regarding a matter which the constitution and the bye-laws of a Bar Association do not provide. I am informed that there is not even a written Constitution or Bye-law for the Bar Association. Further, the opening portion of clause 12 of the Sate Bar Council Rules states that, “autonomy of the Bar Council shall be respected and maintained.” This itself is a serious fetter on the Bar Council to interfere in any activity that recognizes a democratic process of

election of its office members. If the Bar Association itself has not even a Constitution or Bye-laws, then a dispute relating to an election to a local bar association which has no statutory character, can be brought in challenge only by a normal civil suit as a matter requiring an adjudication of civil rights of parties under Section 9 of Civil Procedure Code and could not be brought before a Bar Council for resolution. There have been perhaps cases where the State Bar Council has taken such initiative to quell the disputes amongst the members of a Bar Association. If parties have themselves submitted to the State Bar Council's benign intervention and they are prepared to abide by the decision, I find no reason to comment about the efficacy or validity of such exercise. Again, if all the Bar Associations pass resolution investing the Bar Council with such a power, it may be valid as a multilateral contract, but not otherwise. In this case, the decision of the Bar Council Committee is put to challenge in a writ petition and it is pointed out that a Committee which can decide on misconduct of what is contemplated under Section 35 of the Act cannot arrogate to itself a right to decide on the validity of an election. I would support such a view and hold that the State Bar Council or any Committee constituted by it, has no such power to declare the election in a Bar Association as invalid. I clarify that this decision is only in relation to election dispute of local bar association and has nothing to do with the election of

members of Bar Council itself. In respect of the latter, the Bar Council has surely such a right by virtue of Section 15 of Advocates Act. I do not pronounce on whether the 2<sup>nd</sup> respondent's nomination ought to have been put through in the second election which was held on 20.05.2014. I would only hold that a resort by the 2<sup>nd</sup> respondent before the Bar Council to challenge the election was incompetent and for the same reason, the decision that the Bar Council has taken was also legally incompetent.

9. The order setting aside the election is quashed and the writ petition is allowed to the above extent.

**(K.KANNAN)**  
**JUDGE**

03.12.2014  
sanjeev