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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER

D.B. CIVIL WRIT PETITION(PIL) NO.18688/2013

POONAM CHAND BHANDARI

Vs.

THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JODHPUR & ORS.

DATE:09.10.2014

HON'BLE THE ACTING CHIEF JUSTICE MR. SUNIL AMBWANI

HON'BLE MR.JUSTICE VEERENDR SINGH SIRADHANA

Mr. Poonam Chand Bhandari, petitioner, present in person.
Mr. S.P. Sharma, Senior Counsel assisted by
Mr. Gaurav Sharma,
Mr. Rakesh Chandel and
Mr. Abhinav Bhandari, for the petitioner.
Mr. A.K. Gupta,
Ms. Ritu Somani and
Mr. Vishnu Sharma on behalf of
Mr. P.K. Sharma, for the respondents.

We have heard learned counsel appearing for the petitioner.

Mr. Ajeet Bhandari appears for the Bar Council of India.

This writ petition, filed in public interest, raises an important question of law for the welfare of the Advocates practising in the Courts of law, Tribunals and other Forums in the State of Rajasthan, which, in turn, raises an important issue of public interest.

As the issues raised by the Advocates many a times spill out of the Bar Associations and affect the working in Courts, considering the recent agitation of the Advocates in the State of Rajasthan, on account of which judicial work in the State was disturbed for more than two months, we find that the issue raised in this writ petition require urgent

attention of the Court.

The petitioner is a practising Advocate in the Rajasthan High Court at Jaipur Bench. By this writ petition, he has prayed for the following reliefs:-

"(a) Call for the resolution of the Bar Council of Rajasthan relating to "One Bar One Vote";

(b) Direct that with immediate effect "One Bar One Vote" has to be implemented across the State and further pass any other orders/directions necessary for implementation of the same;

(c) Constitute a committee to formulate criteria to identify the regular practitioners in this Court and direct that only such advocates would be permitted to cast their votes in the elections of the association;

Any other writ, order or directions to which the petitioner may be entitled to in the circumstances of the case may be issued in his favour."

Learned counsel appearing for the petitioner submits that the question as to whether an Advocate is entitled to vote in the election of the Office Bearers of more than one Bar Association, of which he is a member, came up for consideration before the Supreme Court in a leading case in Supreme Court Bar Association And Others Vs. B.D. Kaushik, (2012) 6 SCC 152. The Supreme Court, after examining the matter, which had arisen from a civil suit, constituted a Implementation Committee and considered its resolutions. The Supreme Court Bar Association, in its meeting, resolved to reject the recommendations of the Implementation Committee, on which the Supreme Court in the interim application filed subsequently, deliberated over the matter and

while giving detailed directions, established the principle of "One Bar One Vote". It was held that the directions issued by it are under Article 142 of the Constitution of India and which were binding on all the Court and authorities. The directions issued by the Supreme Court are being implemented for conducting the affairs of holding elections in the Supreme Court. In paragraph 86 of the judgment, the Supreme Court clarified that the directions are binding under Article 142 of the Constitution of India, to do complete justice between the parties, and that the Court did not become *functus officio* even after delivering the main judgment for implementing the directions.

We are informed that the Bar Council of Rajasthan, considering the importance of the issue, which arise in the affairs of the various Bar Associations across the State of Rajasthan, has framed the Bar Associations of Rajasthan Rules, 2013 (in short, 'the Rules of 2013'), in its General Meeting held on 11.05.2014. The Rules of 2013 were approved by the Bar Council of India under Section 15(3) of the Advocates Act, 1961 on 17.06.2014, on which the Rules of 2013 have come into force and have become applicable. The Preamble of the Rules of 2013 made by the Bar Council of Rajasthan reads as follows:-

"The profession of advocacy is a noble one because the advocate serves the society with all decency, responsibility and with dignity. Advocates are the representative class of society. The leaders of bar project the standard and quality of their members. In recent past years the procedure to choose leaders of Bar Associations has been polluted. Also, the fact is there that the welfare schemes introduced by Rajasthan Bar Council and the Bar Council of India are not being properly implemented.

It is the duty of state Bar Council to promote the growth of Bar Associations for the purpose of effective implementation of the welfare schemes prepared by it. Therefore, in order to give effective implementation of the welfare schemes for the advocates of state of Rajasthan and also to provide systematic and disciplined election process for the Bar Associations of state of Rajasthan, these rules are framed under the powers conferred under section 6 (dd) of the Advocates Act, 1961."

The Advocates' Welfare Fund Act, 2001, came into force on 01.11.2001 in whole of India, except the State, in which enactment specified in Schedule II of the Act is applicable. The Rajasthan Advocates Welfare Fund Act, 1987, is placed at S.No.6 in Schedule II. The saving clause of the Advocates Welfare Fund Act, 2001, saves the enactments specified in Schedule II, and thus in the State of Rajasthan, the Rajasthan Advocates Welfare Fund Act, 1987 is in force.

Rule 2(a) of the Rules of 2013, made by the Bar Council of Rajasthan, and approved by the Bar Council of India on 17.06.2014, defines a Bar Association to mean a Bar Association registered under the Rajasthan Societies Registration Act, 1958, and recognized/registered under Section 14 of the Rajasthan Advocates Welfare Fund Act, 1987. The Bar Association is required, under the Rules of 2013, to admit its members on an application prescribed in Schedule 1 of the Rules of 2013. Rule 12, provides for arrears of subscription, and that Rule 12(i) and (ii), provides for eligibility to contest and right to vote. Rule 12 of the Rules of 2013, which restricts a member to exercise his right to vote in any other Bar Association, either in Rajasthan or in India, except the Bar

Association of his choice, is quoted below:-

"ARREARS OF SUBSCRIPTION

12. Any member whose subscription is in arrears for three months, his name shall be notified on board, by the General Secretary of the Association informing him, to pay the same within one month from the date of the notice. If such member fails to pay the arrears within that time, he shall forthwith cease to be a Member of the Association on the conclusion of 4th month. On payment of the amount of arrears and on his applying for re-admission within one month from the date of his ceasing to be a member, the Executive Committee may admit him to membership without the payment of a fresh admission fee, otherwise his memberships will be forfeited.

ELIGIBILITY TO CONTEST AND RIGHT TO VOTE

(i) The member, who exercises his right to vote in any other Bar Association of (High Courts, District Courts, or Bar Association at any level) either in Rajasthan or India, except the Bar Association of his choice, shall not be eligible to contest and shall have no right to vote.

(ii) Every member before casting or contesting the election his vote shall, in a prescribed form, give a declaration that he is not casting his vote or contesting the election in any other election of advocates in any other Bar Association.

If such a declaration is found to be false, then his membership shall automatically be suspended for three years and he will not be entitled to become member of any Bar Association during that period."

Rule 46, provides for the consequences in case of breach of Rules. Rule 47, provides that subject to these Rules the Executive Committee may, from time to time, frame bye-laws, for the purpose of carrying out the objects or regulating the activities of the Association. The bye-laws framed shall not be effective till they have been approved

by the Bar Council. Rule 50, which is relevant for the purpose, provides that every Bar Association of Rajasthan shall be required to take affidavit from its members to the effect that such member is not the member of any other Bar Association, is quoted as below:-

"50. Every Bar Association of Rajasthan shall be required to take affidavit from its members to the effect that such member is not the member of any other Bar Association.

In affidavits above said will be required to be furnish within a period of four months from the date of commencement of these rules, if any member does not furnish such affidavit, his name shall be removed from the roll of members of the Association."

The contents of the application for admission as member of the Bar Association in Schedule 1 of the Rules of 2013, framed by the Bar Council of Rajasthan, provided in clause 50, is as follows:-

SCHEDULE 1

APPLICATION FOR ADMISSION AS MEMBER OF THE
BAR ASSOCIATION

1. THAT the Applicant wishes to become the Member of the Bar Association as Ordinary/Life Member.
2. THAT the application of the applicant has been proposed and seconded by continuing Member of the Association for last 5 years.
3. THAT the Applicant neither applied nor intends to obtain the Membership of any other Association than this.
4. THAT the Applicant is actively and regularly practicing in the Court, the Association of which he wishes to become the Member.
5. THAT the particulars of enrolment with Bar Council of Rajasthan are given hereunder:-

(i) Name of the Applicant.....

- (ii) Father's and Mother's name of the Applicant.....
- (iii) Permanent Address of the Applicant.....
- (iv) Local Address of the Applicant.....
- (v) Registration Number with the Bar Council of Rajasthan
- (vi) Name of the Association, if any, of which he is Member.....

6. THAT the applicant's name finds place at Senior No..... on the Roll of the Advocates regularly practicing in the Court prepared by the Secretary of the Bar Association duly approved by the Executive Committee.

7. THAT the applicant has not been convicted for any offence related to moral turpitude or is involved in any criminal case pending under the provisions of the I.P.C./Cr.P.C.

8. THAT the applicant is not facing any trial before the Bar Council of Rajasthan for profession misconduct/any other misconduct under section 35 of the ADVOCATES ACT, 1961 nor has been punished.

9. THAT the applicant has also read over and understood the Rules governing the professional misconduct and etiquette framed by the Bar Council of India provided by the Bar Council of Rajasthan at the time of enrolment and undertakes to adhere to it.

10. THAT the applicant is hereby submitting the Admission fee as well as undertakes to pay the Membership Subscription of the Association regularly as and when it falls due and in case his Membership dues exceeds for more than 3 months and will be deemed to have surrendered my Membership of the Association and the same shall be deemed to have seized after the conclusion of one month unless the dues are cleared.

11. THAT the applicant is a Member and has paid mandatory fees under the Bar Council of India Advocates Welfare Fund Rule 40 of the Bar Council of India Rules.

12. THAT the applicant has read over the Bar Associations of

Rajasthan Rules, 2013 framed by the Bar Council of Rajasthan and adopted by the Bar Association and he undertakes to act as per the provisions of the Bar Associations of Rajasthan Rules, 2013 and in case of violation of any provisions the Bar Association will be entitled to cancel my Membership.

13. THAT the applicant further commits that in case of violation of any provision of BYE LAWS deliberately, he can be tried by the Bar Council of Rajasthan under Section 35 of the ADVOCATES ACT, 1961.

14. THAT the applicant has personally inquired and verified that the Bar Association for which he proposes for Membership is affiliated to the Bar Council of Rajasthan, and has adopted and obtained registration as per the Bar Associations of Rajasthan Rules, 2013.

15. THAT the applicant declares that he has not obtained the Memberships of any other Association and in any case he is not availing voting right in any other Association to which otherwise he is entitled to be a Member Under Bar Associations of Rajasthan Rules, 2013.

16. THAT the applicant hereby declares that he has read over the Bar Associations of Rajasthan Rules, 2013 duly approved by the Bar Council and adopted by the Bar Association duly registered under the provisions of Societies Registration No..... and undertakes that he will abide by such Rules and in case of violation face penal consequence.

17. THAT the applicant undertakes to intimate the President/ Secretary of the Bar Association in case he wants to change his membership for any other associations. The applicant also undertakes that he shall intimate to the office of association in case he is punished by the competent court for the offence involving moral turpitude.

Note. The applicant shall file an affidavit along with the application form mentioning the fact that above said informations

are true and correct.

Note: In case any contents of the above said affidavit are found incorrect then such persons shall be liable to be punished under section 35 of the Advocates Act, 1961."

Clause 50, quoted as above, does not restrict the membership of any Advocate, enrolled with the Bar Council of Rajasthan, to be a member to any one Bar Association. An Advocate can become a member of as many Bar Associations as may admit him to its membership. The clause, however, restricts that he shall not avail voting right in any other Association to which otherwise he is entitled to be a member under the Bar Associations of Rajasthan Rules, 2013.

We are informed that there are more than 200 Bar Associations in the State of Rajasthan, and that all the Bar Associations are registered under Section 14 of the Rajasthan Advocates Welfare Fund Act, 1987. All the Associations are not required to obtain fresh registration under the Bar Associations of Rajasthan Rules, 2013. The requirement under Rule 3(i) of these Rules only requires that the Bar Association shall be a society registered under the Rajasthan Societies Registration Act, 1958 and recognized/registered under Section 14 of the Rajasthan Advocates Welfare Fund Act, 1987. By virtue of the registration of any Bar Association under the Rajasthan Societies Registration Act, 1958, and the Rajasthan Advocates Welfare Fund Act, 1987, such a Bar Association shall be deemed to be registered under the Bar Associations of Rajasthan Rules, 2013, and consequently, the Bar Associations of Rajasthan Rules, 2013, will be applicable to all such

registered Associations.

The upshot of the above discussion is that each of Bar Association and its members are now regulated by the Bar Associations of Rajasthan Rules, 2013, which specifically provides, under Rule 12(i), that each member of the Bar Association will be entitled to vote only in the election of the office bearers of the Association, for which he has made his choice and for which he will file a declaration/application under Schedule 1 of the Rules of 2013, to be supported by an affidavit.

Some of the representatives of the Bar Associations appeared and made objection that they have not been impleaded as party and that they must be heard in the matter.

We do not find that any of the Bar Associations has applied for impleadment in the writ petition, and further that none of the Bar Associations has challenged the validity of the Bar Associations of Rajasthan Rules, 2013, as approved by the Bar Council of India on 17.06.2014, and under which they are now regulated by virtue of their registration under the Rajasthan Societies Registration Act, 1958, and the Rajasthan Advocates Welfare Fund Act, 1987. The representatives appearing before us, have not made any such submission that they do not want to continue their registration under the Rajasthan Advocates Welfare Fund Act, 1987. We are of the view that unless the Bar Associations of Rajasthan Rules, 2013, are challenged, they cannot successfully object to the prayers made in the writ petition.

As observed in the opening paragraph of this order, the

freedom to vote in more than one Bar Association has resulted into the issues raised by the Advocates, which are mostly local assume cascading effect on the entire Bar Associations, and consequently, affect the administration of justice in the State of Rajasthan. In our view, it has become imperative for the Court to issue directions for implementation of the Bar Associations of Rajasthan Rules, 2013, so that the welfare activities of the Advocates in the State of Rajasthan are effectively carried on and its benefit is utilized by the Advocates. Learned counsel appearing for the Bar Council of India and Bar Council of Rajasthan have not opposed the prayers. They have rather supported the arguments raised by the Counsel appearing for the petitioner to implement the mandate of the Supreme Court and the Rules of 2013, made by the Bar Council of Rajasthan and approved by the Bar Council of India under Section 15(3) of the Advocates Act, 1961.

In view of the above discussion, we direct, in the spirit of the directions issued by the Hon'ble Supreme Court in Supreme Court Bar Association And Others Vs. B.D. Kaushik(supra), and the mandate of the Bar Associations of Rajasthan Rules, 2013, that the principle of "One Bar One Vote", will be applicable for Advocates in the State of Rajasthan, and that every Advocate, even if he/she is a member of more than one Bar Association, will be entitled to vote in the meetings of only one Bar Association of his choice for electing the office bearers, and for that purpose, he/she will have to indicate his/her choice, clearly and unequivocally, by way of giving an affidavit, which is a condition

precedent for membership in Schedule 1 of the Bar Associations of Rajasthan Rules, 2013.

We further direct that since the elections to elect the office bearers of the Bar Associations, are proposed by the Bar Council of Rajasthan in the second week of December, 2014, as stated by learned counsel appearing for the Bar Council of Rajasthan, each Advocate of any category, practising in the State of Rajasthan and who is a member of any Bar Association, or of more than one Bar Association, will file an affidavit in the proforma, prescribed in Schedule 1 of the Bar Associations of Rajasthan Rules, 2013. The proforma along with an affidavit will be filed by every Advocate within a period of four weeks from today, in the respective Bar Associations. Every Bar Association will forward a list of all such Advocates with their names, address, enrolment number and date of filing of the application on proforma in Schedule 1, with affidavit to the Bar Council of Rajasthan on or before 10.11.2014. The Bar Council of Rajasthan will file an affidavit in the Court giving the details of the list received by it, in a tabulated form.

The matter will again be listed on 17.11.2014. All the pending applications or the applications which may be filed in the matter, will come up for orders on the next date.

It will be open for the Bar Council of Rajasthan to declare the date of elections of all the Bar Associations, in terms of the Bar Associations of Rajasthan Rules, 2013.

It is made clear that we have neither adjudicated the matter

with regard to the elections, nor we have passed any order, which may be adverse to the interest of any Advocate or the Bar Associations. This order only seeks to implement the directions of the Hon'ble Supreme Court in Supreme Court Bar Association And Others Vs. B.D. Kaushik (supra), and the Bar Associations of Rajasthan Rules, 2013, which have come into force on its approval by the Bar Council of India on 17.06.2014.

A copy of this order will be uploaded on the official website of the Rajasthan High Court by tomorrow i.e. 10.10.2014.

(VEERENDR SINGH SIRADHANA), J. (SUNIL AMBWANI), ACTING C.J.

/KKC/

Certificate:

All corrections made in the order have been incorporated in the order being emailed.
KAMLESH KUMAR
P.A.



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