

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JAIPUR BENCH, JAIPUR

D.B. CIVIL REVIEW PETITION No. \_\_\_\_\_/2014  
IN  
D.B. CIVIL WRIT PETITION (PIL) NO. 18688/2013

The Bar Council of India Vs Poonam Chand Bhandari & ors.

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Counsel for the petitioner no.2

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The Bar Council of India                      Vs            Poonam Chand Bhandari & ors.

Synopsis

1. In the aforesaid writ petition the Hon'ble Court was pleased to certain directions on 09.10.2014 regarding holding of elections of Bar Associations in Rajasthan.
2. That the applicant Bar Council of Rajasthan agrees and has no objection in principle to the proposition of holding elections of all the Bar Associations in Rajasthan on one day and the member having right of vote in one Association.

However some discrepancies have been noticed due to which this application for review/reconsideration/modification of the judgement has become necessary. The discrepancies are mentioned in para 1 to 7 of the petition.

Counsel for the Petitioner no.2

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Poonam Chand Bhandari son of Late Rikhab Raj Bhandari,  
aged about 58 years, R/o A-14, Malviya Nagar, Jaipur, email:  
poonamchandbhandari@yahoo.com, Ph. No. 0141-2755356 and PAN  
Card No. AAYPB4703D.

...Petitioner

Versus

1. The High Court of Judicature for Rajasthan, Jodhpur through the Registrar General.
2. The Bar Council of Rajasthan, through its Secretary, High Court Compound, Jodhpur.
3. The Bar Council of India, New Delhi, through its President.

...Respondents

Petition under Article 226 of the Constitution of India for review/reconsideration/modification of judgment dated 09.10.2014 passed by Hon'ble the Acting Chief Justice Mr. Sunil Ambawani and Hon'ble Mr. Justice Virendra Singh Siradhana in D.B. Civil Writ Petition (PIL) No. 18688/2013 – on behalf of respondent no. 2 –The Bar Council of Rajasthan.

To,

The Hon'ble Acting Chief Justice and his Companion Judges of the High Court of Judicature for Rajasthan, Jaipur Bench, at Jaipur.

MAY IT PLEASE YOUR LORDSHIPS,

The humble review petitioner most respectfully begs to submit as under: -

- A. That the aforesaid writ petition (PIL) was decided by the Hon'ble Court with the following directions: -

*“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, practicing 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."*

- B. That the applicant Bar Council of Rajasthan agrees and has no objection in principle to the proposition of holding elections of all the Bar Associations in Rajasthan on one day and the member having right of vote in one Association.

However some discrepancies have been noticed due to which this application for review/reconsideration/modification of the judgment has become necessary. Inter-alia the discrepancies are as below: -

1. That the Bar Associations of Rajasthan Rules, 2013 were considered and approved by The Bar Council of Rajasthan in its general meeting dated 11<sup>th</sup> May 2014 vide resolution no. 66 of 2014 which reads as under: -

*"RESOLVED" that the proposed Report of the Committee on 'Bar Associations of Rajasthan Rules, 2013' be and is hereby adopted and decided that the same be sent to Bar Council of India for its approval.*

*IT IS FURTHER RESOLVED that the matter regarding implementation of Rules be considered and decided by the Bar Council, on receipt of the approval of the Bar Council of India.”*

- 1.1 That the draft of the rules was sent for approval to Bar Council of India in terms of Section 15 (3) of the Advocates Act, 1961.
- 1.2 That an inadvertent mistake occurred inasmuch as the decision/resolution of the Bar Council of Rajasthan as to the commencement of the Rules was that the matter regarding implementation of the rules will be considered and decided by the Bar Council on receipt of the approval of the Bar Council of India but in the draft rules sent to The Bar Council of India inadvertently it was mentioned in Rule 1 (ii) that they shall come into force from the date they are approved by the Bar Council of India.
- 1.3 Thus the intention of the rule framing authority namely the Bar Council of Rajasthan was that the date of implementation will be decided by The Bar Council of Rajasthan itself after receiving approval from Bar Council of India. A meeting of the Bar Council of Rajasthan was also fixed for 12.10.2014 which included the agenda item no. 5 for fixing the date of implementation of the Rules but it could not be brought to the notice of the Hon'ble Court.
- 1.4 The Bar Council of India gave its approval in its meeting dated 17.06.2014 and conveyed it to Bar Council of Rajasthan vide its letter dated 23.06.2014. In the judgment the date of commencement of the rules has been taken as 17.06.2014 which is the date of resolution of the Bar Council of India.

1.5 It is also submitted that the rules have not been published in the official gazette so far.

1.6 Section 15 (3) of the Advocates Act, 1961 reads as under: -

“No rules made under this section by State Bar Council shall have effect unless they have been approved by the Bar Council of India.”

Thus the language of sub-section 3 is in negative form i.e. the rules cannot be enforced before its approval. It is consistent with the intention of Bar Council of Rajasthan expressed in its resolution no. 66 dated 11.05.2014 that the date of implementation of the rules will be fixed by the Bar Council of Rajasthan after getting approval from Bar Council of India.

2. The Bar Council of Rajasthan has also framed Renewal of Certificate of Practice Rules, 2006. Rule 5.1 thereof requires renewal of certificate of practice. The last date for getting the certificate of renewal has been fixed by the Bar Council of Rajasthan as 31.12.2014. The definition of ‘Advocate’ in the Rules of 2013 requires that his name should exist on the roll under Renewal of Certificate of Practice Rules, 2006. Thus the process of renewal of certificate of practice is still undergoing and the last date fixed by the Bar Council of Rajasthan has not yet expired. It may be submitted that there are approximately 65,000 advocates on the roll of the Bar Council of Rajasthan, out of which only about 20,000 advocates have got the certificate of renewal so far.

2.1 It has also come to notice that Bar Council of India has also framed Rules regarding certificate of renewal of practice recently

in its general meeting dated 14.10.2014 and they are being sent for publication in the gazette. As soon as the Rules framed by the Bar Council of India are published in the gazette, the Rules framed by Bar Council of Rajasthan may result in some inconsistency. The Rules framed by Bar Council of Rajasthan have not been published in gazette.

3. That a committee constituted by general body of Bar Council of Rajasthan has made certain recommendations for making changes in the Bar Associations of Rajasthan Rules, 2013, on 12.10.2014. The recommendations have been sent to all the members of Bar Council of Rajasthan. Thereafter it will be placed in the next general meeting of Bar council of Rajasthan likely to be held in the month of November 2014. Thereafter the amendments, if any, will be sent for approval of the Bar Council of India.
4. That clause 11 of Schedule-I of the Rules of 2013 which provides for application for admission as member of the Bar Association, requires as under: -

*“11.That the applicant is a member and has paid mandatory fees under the Bar Council of India Advocate’s welfare fund Rule 40 of the Bar Council of India Rules.”*

Rule 40 of Bar Council of India Rules inter-alia provides that every advocate borne on the rolls of the State Bar Council shall liable to make certain payment towards the Bar Council of India Advocate’s Welfare Fund. In view of the requirement of Rule 40 of Bar Council of India Rules and clause 11 of Schedule-I of the Rules of 2013 it seems necessary that reasonable time is provided to the members of the Bar for compliance of Rule 40 of the Bar Council of

India Rules. The committee has also recommended deletion of Note appended to Rule 5 and Rule 7.

5. That though the Bar Council of Rajasthan has no objection for holding of elections of Bar Associations in December 2014 as it has nothing to do for the elections but some practical difficulties are being felt as mentioned above and further it has been noticed that the last elections of some of the Bar Associations have been held only some months back and even one year will not be completed till December 2014. Last elections of different Bar Associations have been held on different dates, the term will be completed on different dates in the year 2014 or 2015. Therefore it was submitted before the Hon'ble Court that the Bar Council of Rajasthan proposes that elections of Bar Associations as per Rules of 2013 be held in December 2015. In any case reasonable time seems to be necessary for completion of all the formalities before holding elections.
6. That the committee constituted by the general body of the Bar Council of Rajasthan has also recommended that Rule 50 (first) of the Rules of 2013 may be deleted. Even otherwise whereas the requirement of Rule 50 was to submit affidavit within period of four weeks from the date of commencement of the Rules, the judgment dated 09.10.2014 requires such affidavit to be submitted within a period of 4 weeks.
7. That in the judgment it has been mentioned that "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 Association of Rajasthan Rules, 2013". In this respect it is submitted that the Rules namely

Rule 50 (second) (b) itself provides that the elections will be held every year on 2<sup>nd</sup> Friday of December. Thus the Bar Council of Rajasthan is not required to declare the date of election in view of the provision. However it seems that some amendments/modifications in the Rules is required inasmuch as the 2<sup>nd</sup> Friday of December may sometime happen to be a public holiday.

It is therefore most respectfully prayed that in view of the general meeting of the Bar Council of Rajasthan proposed to be held in the month of November 2014 for considering all the related issues and in view of the discrepancies noticed and pointed out hereinabove the judgment dated 09.10.2014 may kindly be reviewed/reconsidered/modified suitably in the interest of justice.

Any other order which this Hon'ble Court considers fit and proper in the interest of justice may kindly be granted in favour of the respondent no. 2.

Humble petitioner no. 2

Through Counsel  
Vinod Kumar Tamoliya/Bharti Trivedi/  
Narendra Singhal/Ajit Maloo  
Advocates

Notes: -

1. No such review petition has been filed prior to it before this Hon'ble Court.
2. PF, notices and extra sets shall be submitted within stipulated period.
3. It has been typed by my private Steno.
4. Pie papers were not readily available, hence typed on stout papers.

Counsel for the petitioner no. 2

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Affidavit in support of review petition

I, R.P. Malik, aged 54 years, working as Secretary of the Bar Council of Rajasthan, High Court Building, Jodhpur, do hereby take oath and state as under:-

1. That I am working as Secretary of the Bar Council of Rajasthan, High Court Building, Jodhpur and am well conversant with the facts and circumstances of the case.
2. That the annexed review petition has been drafted by my counsel under my instructions. Contents of para A to B and its sub-para nos. 1 to 7 of the review petition are true and correct to my personal knowledge.

DEPONENT

Verification:

I, the above named deponent do hereby verify on oath that contents of para No. 1 and 2 of my above affidavit are true and correct to my personal knowledge. Nothing material has been concealed therein and no part thereof is false.

So help me God.

DEPONENT