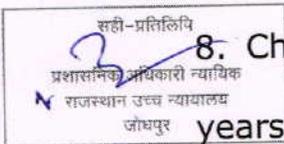


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR**

S.B. Civil Writ Petition No.11300/2018

1. Jagmal Singh Choudhary s/o Sh. Lichhman Ram Choudhary, Aged 73 years, resident of 78 Laxmi Nagar, Paota C Road, Jodhpur.
2. Naurang Singh Choudhary S/o Sh. Jhuntha Ram, aged about 64 years, R/o Ward No.12, Purani Abadi, Sri Ganganagar.
3. Suresh Chandra Shrimali S/o Sh. Natwar Lal Shrimali, aged about 62 years, R/o Shastri Nagar, Bhilwara.
4. Kuldeep Kumar Sharma S/o Sh. Nand Kishore Sharma, aged about 61 years, R/o 2, Raj Vilas Colony, Rathkhana, Bikaner.
5. Syed Shahid Hasan S/o Sh. Farook Hasan, aged about 56 years, R/o A-6-B, Suraj Nagar West, Civil Lines, Jaipur.
6. Sushil Kumar Sharma S/o Ghanshyam Sharma, aged about 55 years, R/o B-27, JP Colony, Tonk Phatak, Jaipur.
7. Sanjay Sharma S/o Sh. Om Prakash Sharma, aged about 48 years, R/o 1 Gopalpura Goan, Gopalpura Bypass, Jaipur.
8. Chiranji Lal Saini S/o Sh. Bhoja Ram Saini, aged about 52 years, R/o Plot No.5, Raja Ram Marg, Brampuri Khura, Jaipur.
9. Ram Prasad Singaria S/o Sh. Raju Ram, aged about 48 years, R/o Parihar Nagar, Bhadwasiya, Jodhpur.
10. Harendra Singh Sinsinwar S/o Sh. B.S. Sinsinwar, aged about 44 years, R/o 50-A, Nehru Nagar, Panipench, Jaipur.
11. Rajesh Panwar S/o Sh. H.R. Panwar, aged about 45 years, R/o Kanishka Resort, Near DPS, Pal Bye Pass, Jodhpur.
12. Sunil Beniwal S/o Sh. J.R. Beniwal, aged about 44 years, R/o 6-B-2 Road, Paota, Jodhpur.



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13. Ghanshyam Das Bansal S/o Sh. Prem Chand Bansal, aged about 45 years, R/o 118, Mahesh Colony, Tonk Phatak, Jaipur.

-----Petitioners

Versus

1. The Bar Council of India through its Secretary having its office at 21 Rouse Avenue, Near Bal Bhawan, Institutional Area, New Delhi.

2. The Secretary/Returning Officer, Bar Council of Rajasthan, High Court Building, Jodhpur (Raj.)

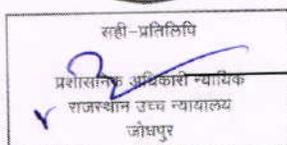
-----Respondents

For Petitioner(s) : Mr.M.S.Singhvi, Senior Advocate assisted by Mr.Hemant Dutt and Mr.Rajat Dave

For Respondent(s) : Mr.M.R.Singhvi, Senior Advocate assisted by Mr.Bhavit Sharma Mr.S.S.Ladreacha, Additional Advocate General with Mr.Vikas Choudhary Mr.Ranjeet Joshi

Mr.R.P.Malik, Secretary, Bar Council of Rajasthan present in person.

Dr.Mahesh Sharma applicant in person.



HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

सत्यमेव जयते
Order

02/08/2018

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

"(i) the impugned order dated 01.08.2018 (Annexure-9) passed by the respondent No.1 may kindly be declared illegal, arbitrary, unjust and

malafide one and same may kindly be quashed and set aside.

(ii) the respondents may kindly be directed not to interfere in the election of the Chairman, Vice Chairman and other office bearers of the Bar Council of Rajasthan.

(iii) the respondent No.2 may kindly be directed to hold the election as per notification dated 27.07.2018.

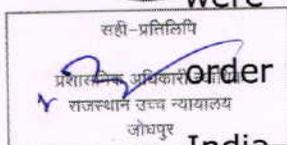
(iv) any other relief which the Hon'ble Court considers just and proper in the facts and circumstances of the case may be passed in favour of the petitioners."

2. This petition was filed today and the same day's permission was granted by this Court, looking into the urgency of the matter.

3. Brief facts of this case, as noticed by this Court are that the elections of the members of the Bar Council of Rajasthan were held on 28.03.2018 for electing 25 members of the State Bar Council. The results of such elections of the State Bar Council were declared on 03.06.2018. However, there was an interim order granted by the Election Tribunal No.3 of the Bar Council of India, and therefore, the related notification was kept in abeyance.

4. The Election Tribunal No.3 of the Bar Council of India was pleased to dismiss the complaints vide its order dated 07.07.2018. Subsequently, the list of elected candidates was notified in the Official Gazette on 17.07.2018.

5. The election schedule for electing the Office Bearers of the Bar Council of Rajasthan was declared by the Bar Council of India and the same was communicated to the Secretary, Bar Council of Rajasthan vide the letter dated 21.07.2018. The



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election schedule, as declared on 21.07.2018 was modified, and another communication was issued by the Bar Council of India vide its letter dated 24.07.2018 addressed to the Secretary, Bar Council of Rajasthan.

6. On 26.07.2018, another communication was addressed to the Secretary, Bar Council of Rajasthan, whereby Joint Secretary, Bar Council of India communicated that the election may be held as per the scheduled programme dated 21.07.2018. However, in addition to the Chairman and Vice Chairman, six Co-Chairmen were to be elected zone-wise. However, another letter bearing No.2952/2018 (CL) dated 27.07.2018 was addressed by the Joint Secretary, Bar Council of India to the Secretary, Bar Council of Rajasthan, whereby the number of persons to be elected as Co-Chairmen was revised from six to seven for seven zones of the State.



In pursuance of the aforementioned orders/communications dated 26.07.2018 and 27.07.2018, the Secretary, Bar Council of Rajasthan published the notification on 27.07.2018, whereby the election for electing the Chairman, Vice Chairman and seven Co-Chairmen zone-wise as well as Member

representatives to the Bar Council of India from the State Bar Council was notified.

8. The schedule, which was to be applied in accordance with the letter dated 24.07.2018 and the notification dated 27.07.2018, reads as follows:-

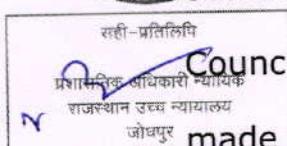
For the post of Chairman, Vice-Chairman and Seven Co-Chairmen (Zone wise) of this State Bar Council.

2 nd August 2018	Nomination for the post of office bearers of Rajasthan State Bar Council from 10.00 am to 4.00 pm on 2 nd
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	August, 2018. Scrutiny of nomination at 4.15 PM on 2 nd August, 2018. Publication of List at 4.45 PM on 2 nd August, 2018.
3 rd August, 2018	Withdrawal of nominations till 4.00 PM on 3 rd August, 2018. Final List of candidates to be put on the Notice Board of the Council at 5.00 PM on 3 rd August, 2018.
5 th August, 2018	Election of office bearers of Rajasthan State Bar Council at 11.15 am on 5 th August, 2018. Declaration of result at 12.30 pm on 5 th August, 2018.

For the post of Member representative to the Bar Council of India from this State Bar Council.

9 th August, 2018	Nomination for the post of the member representative to the Bar Council of India from 10.00 am to 4.00 pm on 9 th August, 2018. Scrutiny of nomination at 4.15 PM on 9 th August, 2018. Publication of List at 4.45 PM on 9 th August, 2018.
10 th August, 2018	Withdrawal of nominations till 4.00 PM on 10 th August, 2018. Final List of candidates to be put on the Notice Board of the Council at 5.00 PM on 10 th August, 2018.
12 th August, 2018	Election for the post of the member representative to the Bar Council of India from Rajasthan State Bar Council at 11.15 am on 12 th August, 2018. Declaration of result at 12.30 pm on 12 th August, 2018.



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The petitioners are aggrieved by the order dated 01.08.2018 issued by the Bar Council of India, whereby the Bar Council of India has initiated a probe into the complaints being made by the newly elected members of the Bar Council of Rajasthan, thus passing an order for deferring the elections for electing the Office Bearers of the Bar Council of Rajasthan as well as the Member Representatives to the Bar Council of India from the Bar Council of Rajasthan. The related schedule for elections was therefore, annulled, withheld, withdrawn, cancelled and deferred, until such enquiry/probe into such complaints is conducted.

10. Mr.M.S.Singhvi, learned Senior Counsel assisted by Mr.Hemant Dutt and Mr.Rajat Dave, Advocates for the petitioners has submitted that the Hon'ble Apex Court had passed an order dated 23.03.2018 in **IA No.39883/2018 in Transferred Case (Civil) No(s).126/2015 (Ajayinder Sangwan Vs. Bar Council of Delhi & Ors.)**, relevant portion of which reads as under:-

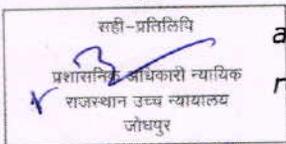
"The following Resolutions passed by the Bar Council of India shall be given effect to:

a) The State Bar Councils/Returning Officers are further requested to provide CCTV cameras or video coverage for the process of polling at sensitive polling booths. It is further resolved that any candidate, if found using any sort of unfair means, corrupt practice, bribing the voters, throwing lunch, dinner parties, breakfast etc. in and around the polling booths (for getting votes) should be debarred from contesting elections and their candidatures will be cancelled by the Tribunal.

b) That though the counting process will go on after elections and the result of the members will also be declared; But the results will not be sent for publication in the official gazette and will not attain finality, unless the concerned Tribunal finally approves the said result after holding enquiry, if any, into the complaints made. The result will be sent for publication in the official gazette only after getting approval from the Tribunals and the Bar Council of India. The office is directed to place the resolution before the Hon'ble Tribunals for the needful.

The same principle will apply for the elections of Chairman, Vice-Chairman, representative-Member and other posts of State Bar Councils/Bar Council of India. The Bar Council of India shall fix the schedule for the elections of the aforementioned posts after getting the final approval from the concerned Tribunals and after getting satisfied with the fairness of the elections. All the disputes and complaints are to be disposed of before the publication of the result in the official gazette.

c) That to request the Hon'ble member In-charge of the Tribunal for the State Bar Council of Bihar to appoint 5 Co-Observers in order to aid and assist the Hon'ble Observer for the State Bar Council of Bihar. This proposal is being made in view of serious complaints made by some Bar Associations and



the Advocate Mr. Avinash Motihari. The five Co-Observers will be authorized to look after the entire affairs of the elections of the State of Bihar and to report to the Hon'ble Observer and the Hon'ble Member In-charge for the State of Bihar of the Tribunal.

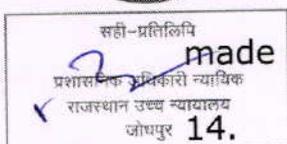
I.A. is disposed of accordingly."

11. Learned Senior Counsel for the petitioners has pointed out that in accordance with the direction (a) contained in the aforequoted order dated 23.03.2018, the polling booths were formed and the elections were conducted under the supervision of the Tribunal concerned.

12. Learned Senior Counsel for the petitioners further stated that as per direction (b) contained in the aforesaid order dated 23.03.2018 passed by the Hon'ble Apex Court, the Tribunal and the Bar Council of India, after holding the necessary enquiry into the pending complaints, sent the result for publication in the Official Gazette.

13. Learned Senior Counsel for the petitioners has pointed out that after such approval by the Tribunal and the Bar Council of India, the Gazette Notification of the result was recommended and made on 17.07.2018, which is Annexure-2 of the writ petition.

14. Learned Senior Counsel for the petitioners also stated that the same principle was to apply for the elections of Chairman, Vice Chairman, representative-Member and other posts of the State Bar Councils/Bar Council of India, for which the Bar Council of India was to fix the schedule for the elections, and after getting final approval from the concerned Tribunals and after getting satisfied with the fairness of the elections, so also after disposing of all the disputes and complaints, the result was to be published in the Official Gazette.



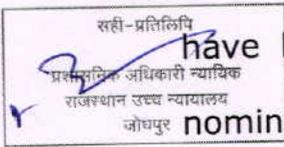
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15. Learned Senior Counsel for the petitioners further states that at this stage, when the notification was issued by the Bar Council of India and the schedule for the elections has been fixed, it would not be proper to withhold the same.

16. Learned Senior Counsel for the petitioners further stated that the democracy in the Statutory Institution of the Lawyers has to prevail and the election process once initiated and notified, cannot be rolled back.

17. In the meanwhile, Mr.M.R.Singhvi, learned Senior Advocate assisted by Mr.Bhavit Sharma; Mr.Ranjeet Joshi, one of the Members of the Bar Council of Rajasthan; Mr.S.S.Ladreacha, learned Additional Advocate General assisted by Mr.Vikas Choudhary; and Mr.R.P. Malik, Secretary, Bar Council of Rajasthan also came forward to assist this Court in the crucial matter pertaining to the Lawyers' elections.



18. Mr.M.R.Singhvi, learned Senior Advocate assisted by Mr.Bhavit Sharma, Advocate; and Mr.Ranjeet Joshi, one of the Members of the Bar Council of Rajasthan, assisting this Court, have laid their apprehensions that once the time for filing the nominations has gone, any interference by this Court would

render many of the Members incapacitated to vote for electing the Office Bearers of the Bar Council of Rajasthan, as the Members are scattered in the periphery of about 700 kms. ranging from Sriganganagar to Bhilwara and Jaipur to Udaipur.

19. Mr.M.R.Singhvi, learned Senior Advocate and Mr.Ranjeet Joshi have also averred that the time could have been given to the Bar Council of India to come with the record and submit its material before this Court, which would enable this

Court to find out as to whether the complaints so made need any serious contemplation and deferment of the elections.

20. Mr.S.S.Ladreacha, learned Additional Advocate General however has submitted that on behalf of the learned Advocate General, he has limited instructions to the extent that they are bound to act upon the aid and advice of the Bar Council of India, and thus, they are merely acting upon the directions being given by the Bar Council of India.

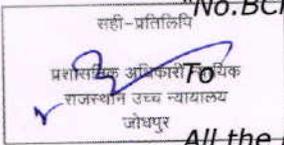
21. Mr.R.P.Malik, Secretary, Bar Council of Rajasthan appearing in person has also submitted that the Bar Council of Rajasthan is bound to follow the orders passed by the Bar Council of India, and thus, in pursuance of the aforementioned order dated 01.08.2018 received from the Bar Council of India to cancel and defer the elections, an order has been passed by the Bar Council of Rajasthan on 02.08.2018 to that effect.

The aforesaid order dated 02.08.2018 passed by the Bar Council of Rajasthan also reads as under:-



No.BCR/Elect/Ju/2018/4413

Dated : 02.08.2018



All the Hon'ble Members of the

Bar Council of Rajasthan.

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Sir,

Enclosed please find a copy of letter No.BCI:D:2997/2018 (CL) dated 01.08.2018 received from the Bar Council of India, New Delhi regarding withholding/cancellation/deferring of the elections including the schedule of elections of the office bearers including Chairman, Vice-Chairman and seven Co-Chairman of this State Bar Council and Member Representative to Bar Council of India from this State Bar Council for 5th August, 2018 and 12th August, 2018.

This is for your kind information and necessary compliance.

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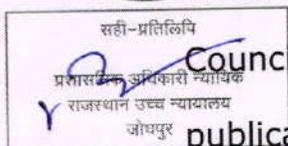
Yours faithfully,
Sd/-
(R.P. Malik)
Secretary

Encl: As above."

23. After hearing all the parties at length, this Court finds that the Hon'ble Apex Court in the aforequoted order dated 23.03.2018, while agreeing to the resolutions passed by the Bar Council of India, gave three directions in IA No.39883/2018 in Transferred Case (Civil) No(s).126/2015, which have already been reproduced hereinabove, and which throw sufficient light on the manner, in which the elections for electing the Members as well as the elections for electing the Office Bearers have to be conducted and completed.

24. The Hon'ble Apex Court in direction (a) contained in the aforementioned order dated 23.03.2018 has given directions to regulate the initial elections, which have already taken place and are not in dispute. Direction (b) given by the Hon'ble Apex Court in the said order requires that after getting the approval from the Tribunals supervising the elections and the approval from the Bar Council of India, the results of the elections were to be sent for publication in the Official Gazette, which has already been sent and published in the Official Gazette vide notification dated 17.07.2018.

25. The Hon'ble Apex Court, in the aforementioned order dated 23.03.2018, has further observed that the same principle shall apply for the elections of Chairman, Vice Chairman, representative-Member and other posts of State Bar Councils/Bar Council of India. The Bar Council of India shall fix the schedule for the elections for the above-mentioned posts, after getting final approval from the concerned Tribunals and after getting satisfied



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with the fairness of the elections. This stage has already been crossed, as the notification dated 27.07.2018 has been approved in the aforesaid manner and sent by the Bar Council of India, and the election schedule has also been announced.

26. Now comes the stage of that part of the direction (b) contained in the aforesaid order dated 23.03.2018 passed by the Hon'ble Apex Court, in which it has been clearly stipulated that all the disputes and complaints relating to the elections of Chairman, Vice Chairman, representative-Member and other posts of State Bar Councils/Bar Council of India, shall be disposed of before publication of the result in the Official Gazette.

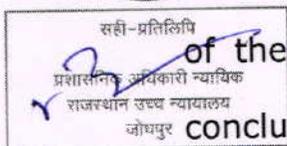
27. Thus, at this stage, this Court, while adjudicating the current dispute of schedule for elections deferred by the Bar Council of India vide its letter dated 01.08.2018 and executed by the Bar Council of Rajasthan vide its letter dated 02.08.2018, are required to be gone into, in light of the directions given by the Hon'ble Apex Court on 23.03.2018.

28. The matter has been heard at length in the latter half of the day i.e. on 02.08.2018, and by the time the hearing is concluded, the aforementioned schedule notified on 27.07.2018

almost stands frustrated, on account of the fact that the nominations could have been filed only today i.e. 02.08.2018 uptill 04:00 p.m., and the time therefor is thus almost over.

29. This Court finds that the related schedule already declared stands frustrated, as the date of nomination is no more available.

30. This Court however, feels that by no stretch of imagination, at this stage, the elections can be deferred, as if there are any complaints by the elected Members or any genuine



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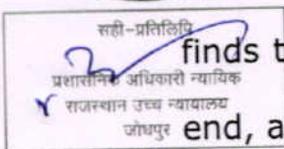
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complaint from any other Member, then the same can be looked into, as per the mechanism settled by the Hon'ble Apex Court, before the results are finally announced; but the same does not justify the deferring of the elections, which has been done vide the aforesaid letter dated 01.08.2018.

31. In the larger interest of democracy in the Statutory Institution of the Lawyers, it is essential to maintain the mandate of the Lawyers of the State of Rajasthan. The elected Members of the Bar Council of Rajasthan are already non-functional since June, 2015, and a long time has lapsed since the elected Members would start functioning and crucial operations providing reliefs, like medical relief, death relief and other reliefs are undertaken. It is also in the interest of a common citizen, the litigant, who only has a limited remedy against professional misconduct before the Statutory Body in question.



32. This Court has also seen Section 8A(2) of the Advocates Act, 1961, which requires the constitution of the Special Committee in the absence of elections, and this Court finds that the function of such Special Committee has come to an end, as only the elections for electing the Office Bearers remain.



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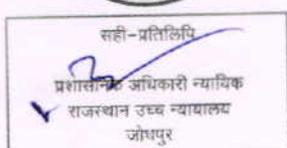
33. On being asked, the learned Additional Advocate General, Shri Shyam Ladreacha and Secretary, Bar Council of Rajasthan, Shri R.P.Malik replied that if directed, the new schedule of election could be completed on any Sunday after 12.08.2018.

34. This Court also finds that the Election Rules of the Bar Council of Rajasthan, Jodhpur also requires that the names of the elected Office Bearers have to be notified by the Bar Council of Rajasthan and a copy whereof shall be sent for publication in the Rajasthan Rajpatra.

35. In light of the above and while completely following the directions given by the Hon'ble Apex Court on 23.03.2018 on this issue, this Court passes the following directions in this case:

(a) Issue notice to the respondents. Mr.R.P.Malik, Secretary, Bar Council of Rajasthan is present in person and accepts notice. Hence, notice need not be issued to respondent No.2. However, notice be issued to respondent No.1 only and the same be given dasti to the learned counsel for the petitioners. Rule is made returnable on 20.08.2018.

(b) In the application received by this Court under Order 1 Rule 10 CPC moved by some of the Members, namely, Shri Ranjeet Joshi, Dr.Mahesh Sharma, Shri Yogendra Singh Shaktawat and Shri Kapil Mathur, we do not find any reason why the elected Members of the Bar Council of Rajasthan should not be heard for the purpose of the present adjudication, and thus, the application under Order 1 Rule 10 CPC is allowed and the applicants, as mentioned in the said application, are impleaded as party in this case. Let the amended cause title be filed accordingly. सत्यमेव जयते



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(c) The effect and operation of the order dated **01.08.2018** issued by the Bar Council of India and the order dated **02.08.2018** issued by the Bar Council of Rajasthan shall remain stayed.

(d) The Bar Council of India and Bar Council of Rajasthan are directed to issue fresh schedule for the elections within a period of three days from today, as the

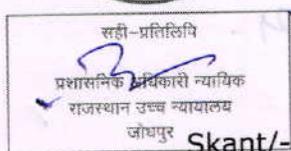
date for filing the nominations as per the earlier schedule has already gone.

(e) The sufficient communication shall be sent by the Bar Council of Rajasthan to each elected Member to apprise him of such schedule to be issued in pursuance of this order.

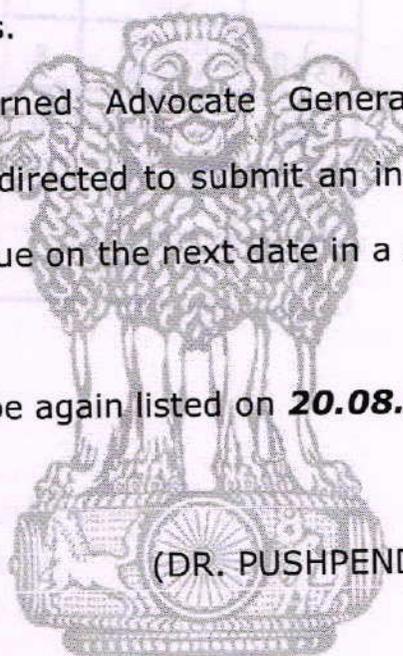
(f) The elections to be scheduled and conducted by the Bar Council of Rajasthan, as directed in direction (d) of this order, shall be completed on or before **19.08.2018**, but the result of such elections shall be kept in a sealed cover with the Secretary, Bar Council of Rajasthan, till further orders.

(g) The learned Advocate General of the State of Rajasthan is directed to submit an independent report on the whole issue on the next date in a sealed cover.

Let the matter be again listed on **20.08.2018**.



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(DR. PUSHPENDRA SINGH BHATI), J

सत्यमेव जयते

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3/8/18	दिवस/प्रसन्न	2	
4/2/18	दिन का दिन प्रति	3	
	दिन के दिन प्रति	4	
	दिन के दिन प्रति	5	
3/2/18	दिन के दिन प्रति	6	
	दिन के दिन प्रति	7	
03/08/18	दिन के दिन प्रति	8	
21	प्रतिदिन शुक्र	9	
R	प्रयोग	10	
P S	प्रति दिवस	11	

पत्र फोलियों मय ONE... 4/201
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 निरस्त सुदा संलग्न है।

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