

Court No. - 34

Case :- WRIT - C No. - 13067 of 2020

Petitioner :- Meerut Bar Association And Another

Respondent :- Bar Council Of Uttar Pradesh And 4 Others

Counsel for Petitioner :- Vivek Saran, Anoop Trivedi
(Senior Adv.)

Counsel for Respondent :- C.S.C., Swetashwa Agarwal

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Ajay Bhanot, J.

Heard Sri Anoop Trivedi learned Senior Counsel and Sri Vivek Saran, learned Advocates appearing for the petitioners and Sri Ashok Khare learned Senior Counsel assisted by Sri Swetashwa Agarwal Advocate for the respondent No.3. Sri Amit Kumar learned counsel has put in appearance on behalf of the Bar Council of Uttar Pradesh namely respondent Nos.1 and 2.

This writ petition has been filed by two petitioners namely the Meerut Bar Association, Meerut through its Secretary as petitioner No.1 and Naresh Dutt Sharma, the Secretary, Meerut Bar Association as petitioner No.2. The order impugned in the writ petition is dated 29.06.2020 passed by the Chairman, Bar Council of Uttar Pradesh, Allahabad.

By means of the order impugned, the Elders Committee of the Meerut Bar Association (hereinafter referred as Association) constituted under the Bye-laws of the Association has been replaced/reconstituted by another five members Elders Committee on the objections taken by one Shyam Singh Advocate, Meerut, about the qualification of its members. The main objection was that two members of the

Elders Committee namely Sri Laxmi Chand Tyagi, Advocate and Sri Gopal Krishna Chaturvedi, Advocate are not in active practice and as such they could not be nominated as members of the Elders Committee under Clause-8 of the approved Bye-laws of the Association. On the said complaint being received, the Chairman, Bar Council of Uttar Pradesh had examined the updated voter list of the U.P. Bar Council issued on 31.12.2017, which was the basis of the last elections of the Bar Council of Uttar Pradesh and held that two Advocates namely Laxmi Chandra Tyagi and Gopal Krishna Chaturvedi were not in active practice as they were not coming to District Court, Meerut regularly as per the information got by him from his own sources. The Elders Committee of the Association comprising of Sri Laxmi Chandra Tyagi Advocate and Gopal Krishna Chaturvedi Advocate was reconstituted by removal of their names as members of the Committee. It appears that the name of one more member Sri Braham Pal Singh has also been removed as a member of the Elders Committee though there is no discussion in this regard in the order impugned. The newly constituted Elders Committee by the order impugned has been directed to initiate the process of elections of the Association and directed to inform the Bar Council of Uttar Pradesh on conclusion of the elections at the earliest.

The Elders Committee constituted under the order impugned dated 29.06.2020 is represented through its Chairman Sri Satya Prakash Rastogi in this writ petition as respondent No.3.

The relevant facts as brought on record in the writ petition and supplementary affidavit filed on 03.09.2020 are

that the Association is a registered society under the Societies Registration Act' 1960 having its registration number which is valid till date. The last elections of the Managing Committee of the Association were held on 18.04.2019 and with the declaration of result on 19.04.2019, the office bearers took oath of the office on 03.05.2019. The petitioner No.2 was elected as Secretary of the Association. The affairs of the Association including its elections are governed by the Bye-laws of the Association published in the year 2008-09, as approved by the Bar Council of Uttar Pradesh. There is no dispute between the parties with regard to the status of the petitioners as also the approved bye-laws of the Association.

Under the bye-laws, the Association, a registered body, has perpetual succession and can sue and be sued in its name through its Secretary. The dispute in the present case primarily is with regard to the reconstitution of the Elders Committee under Clause-8 of the bye-laws of the Association on intervention of the Bar Council of Uttar Pradesh. The main crux of arguments of the learned counsels for the petitioner's Association is that the Bar Council of Uttar Pradesh has no jurisdiction to replace/re-constitute the Elders Committee and thereby interfere in the ongoing election process initiated by the Outgoing Committee, i.e. the Executive Committee of the Bar Association term of which has expired on 03.05.2020. The newly constituted Elders Committee, i.e. the respondent No.3 being illegally constituted as against the bye-laws of the Association cannot conduct the elections. The resolutions dated 15.07.2020, 05.8.2020 and 20.08.2020 of the newly constituted Elders Committee/respondent No.3 taking steps for elections of the

Association are, thus, liable to be quashed being illegal. The prayer for mandamus has also been made restraining the respondent Nos.1, 2 and 3 from interfering in the process of elections initiated by the Outgoing Managing Committee of the Association scheduled by the press notification dated 19.08.2020.

Sri Ashok Khare learned Senior Advocate, on behalf of respondent No.3, raised preliminary objections with regard to the maintainability of the writ petition at the instance of the present petitioners. The submission is that with the expiry of their tenure as elected Executive Committee and Secretary of the Association, both the petitioners herein have no locus to maintain the present writ petition, i.e. to seek a direction to allow them to hold the elections and further to raise any dispute with regard to the constitution of respondent No.3 as Elders Committee of the Association and to restrain it from holding elections. The submission is that the maximum period for which an elected Executive Committee can be in-charge of the affairs of the Association is one year plus one month, which had expired by 03.06.2020. With the expiry of their tenure, the Outgoing Committee or its office bearers namely the President and Secretary of the Association cannot conduct the elections. The elections can only be conducted by the Elders Committee of the Association which is a statutory body constituted under Clause-8 of the bye-laws of the Association. The dispute raised by the petitioners with regard to the constitution of the Elders Committee under the clause 8 of the bye-laws by the Chairman of the Bar Council, Uttar Pradesh namely respondent No.3 cannot be adjudicated or

seen at their instance, in as much as, none of the members of the Elders Committee who are affected by the decision of the respondent No.2 dated 29.06.2020 are before this Court. As aggrieved person are not before the Court, Writ under Article 226 of the Constitution of India may not be issued at the instance of the elected body or the person which has outlived its term.

Above all, elections of the Association have been notified by respondent No.3 and date has been fixed for holding elections. Once the process of election is On, any interference by this Court would be a step to stall the democratic process of elections that too at the instance of those persons who have no say in the matter.

Lastly, it is contended that the writ petition is completely silent about any resolution of the Association being passed to authorize the petitioners to file the writ petition challenging the constitution of the Elders Committee/respondent No.3 so as to complete the process of elections, after the term of earlier elected Executive Committee had expired in the month of June' 2020.

In rejoinder, learned counsels for the petitioners placed reliance on the decision of this Court in the **Committee of Management, Vidyawati Higher Secondary School Shahpur, Sarain Azamgarh and another Vs. Assistant Registrar Firms, Societies and Chits, Azamgarh & others**¹ to assert that with expiry of the term of the office bearers of the society (Executive Committee) the right to convene a meeting for the

1. 2005(1) AWC 927

purpose of holding elections of the office bearers of the Outgoing Committee of management survives till the Registrar, Societies passes an order under Section 25(2) of the Societies Registration Act' 1960 notifying the meeting of the General Body of the Society for holding fresh elections. Admittedly, no such step has been taken by the Registrar till date by invoking its power under Section 25(2) of the Societies Registration Act. With regard to the powers of the Bar Council of Uttar Pradesh to re-constitute/replace the existing Elders Committee of the Association, reliance is placed on the judgement of the Division Bench of this Court in **Elder Committee Central Bar Association, Azamgarh Vs. State of U.P. & others**² wherein it was observed in paragraph No.'29' that the Bar Council though has power under Section 21 of the Advocates Act to decide the question of seniority amongst the Advocates who are enrolled with the Bar Council, if any representation is made or any dispute is raised on the said issue, but it does not have any authority on such complaint to either interfere in the elections of the Association or to stop the Elders Committee from taking steps for holding the elections.

Submission is that the observations in the above noted paragraph by the Division Bench squarely covers the issue herein, in as much as, the Bar Council of Uttar Pradesh has no jurisdiction to determine the constitution of Elders Committee or any dispute related to it. Another decision of the learned Single Judge in **Janpad Diwani Evam Faujdari Bar Association, Gautam Budh Nagar and Another Vs. Bar Council of U.P. & others**³ has been

2.2013(6) 90 (DB)

3.2016 (2) ADJ 451

placed before us to press that the Bar Council of Uttar Pradesh has no role to play in the holding of the elections of the Association and the Association being a registered society under the Societies Registration Act can hold the elections of its committees and any dispute with regard to the such elections by whatsoever name it is called, is independent of the control of the State Bar Council or the Bar Council of India. The model Bye-laws or model guidelines do not confer power on the State Bar Council or Bar Council of India to enter into any election dispute or to step into the shoes of the Authority under the Societies Registration Act in the garb of controlling or supervising of the affairs of the Association.

Having heard learned counsel for the parties and perused the record, in the light of the controversy before us with regard to the interference made by the Bar Council of Uttar Pradesh in the constitution of Elders Committee, we may first go through the Bye-laws of the Association approved by the Bar Council of Uttar Pradesh which provide for constitution, duties and powers of the Elders Committee as also the term of the elected body i.e. the Executive Committee of the Association.

Clause 4(c) of Bye-laws defines 'Elders Committee' as under:-

“(c)“Elders Committee” means a committee the composition of which is mentioned in By-Laws no.7 of these rules.”

“General body” and “Governing Council” or “Executive Committee” are defined in Clauses 4(d) and 4(e) in the following manner:-

(d) “General Body” means a body comprising of all the members of the Association.

(e) “Governing Council or Executive Committee or any other Committee” by whatever name called, means a body to manage the affairs of the Association.

The phrase “Practising Advocate” or “Advocate in active practice” has been defined in clause 4 (h) as under:-

(h) “Practising Advocate” or “Advocate in active practice” or Advocate in regular practice” includes an Advocate on roll prepared by State Bar Council, who files pleadings and Vakalatnama and who does not do any professional work other than that of an Advocate.”

The General Body of the Association under the Bye-laws is comprised of all the members of the Association whose names are mentioned in the register maintained by the Governing Council/Executive Committee which is an elected body consisting of office bearers elected under Clause 16 of the Bye-laws as also the Ex-officio members as per its constitution provided in Clause-17 of the Bye-laws. The office bearers of the Association are elected every year in the annual general meeting of the General Body of the Association. The term of the office bearers of the Association and members of the Governing Council/Executive Committee is one year from the date of their elections. As per clause 19 of the Bye-laws, the period of one year, however, can be extended for a further period of one month in extraordinary circumstances with the prior approval of the Elders Committee for which reasons have to be recorded.

In any case, as per the Clause 19 of the Bye-laws, the Outgoing Executive Committee is under obligation to get the elections completed within its extended tenure, failing which the administration of the Association will vest in the Elders Committee which will hold elections at the earliest as per the Bye-laws preferably, within another one month. Meaning thereby, in case elections are not completed by the Outgoing Committee within its tenure of one year or extended period of one month, it shall have no power to hold the elections under the Bye-laws. In that case, the Elders Committee being in the administrative control of the association can hold the elections within a further period of one month as provided under Clause 19 of the Bye-laws.

As regards the constitution of Elders Committee, Clause 8 of the Bye-laws provides as under:-

“ELDERS COMMITTEE

8. There shall be an Elders Committee of each association consisting of senior most members of the Association actively practising in that court as:-

a) As far as the High Court is concerned 5 designated Senior Most Advocates actively practising in High Court by virtue of their seniority.

(b) So far as District Court is concerned the seniority of the members of the Elders Committee will be determined taking into account the date of enrollment as an Advocate by the Bar Council and having atleast rendered 10 years regular practice in that court and continuing as regular practitioner of that Court.

(c) Senior most member of the Elders Committee will be the Chairman.”

The relevant Bye-laws 55 which provides the procedure of elections of Governing Council/Executive Committee is also to be quoted herein:-

“PROCEDURE OF ELECTION

“The meeting of the General Body of the Association convene at least a month before the expiry of the term of the office bearers and shall fix a date for Election.

The Elders Committee will act as Penal of the Returning Officer to hold Election and be entitled to include any other member of the Association, provided one is not contesting the Election and the result of the Election shall be declared in the meeting of General Body so convened by the Elders Committee.

In order to meet the heavy burden of expenditure of the Bar Association, the Elders Committee will also fix security money for various posts, which shall not be refundable after the nomination is accepted and found valid. Only ordinary members, who have put in 2 years of continuous membership will be entitled to vote and participate in the Election.

The person, who has held office, will not be entitled to contest the following Elections in sequence. However, he can re-contest after a gap of one year.”

A careful reading of the Clause 8 of the Bye-laws pertaining to constitution of Elders Committee and the Clauses 19 and 55 which speak about the power and responsibility of the Elders Committee, we find that the Elders Committee of the Association is a permanent statutory body. For District Court concerned, the Elders Committee is constituted in accordance with the seniority of the members of the concerned Bar Association, taking into account the

date of their enrollment as an Advocate by the Bar Council. The members of the Elders Committee must have atleast rendered 10 years regular practice in the Court concerned and must be continuing as regular practitioner of the said Court. Senior most member of the Elders Committee shall be its Chairman. As defined in Clause 4(h), an "Advocate in regular practice/regular practitioner" includes an Advocate on the roll prepared by the State Bar Council who files pleading and Vakalatnama and who does not do any other professional work other than that of an Advocate.

We may note that the Elders Committee of the Association was lastly constituted on 14.05.2019 after three of its five members had died. The remaining two members of the then committee namely Laxmi Chandra Tyagi Advocate and Sri Braham Pal Singh Advocate notified the constitution of Elders Committee by taking consent of three Senior Advocates namely Gopal Krishna Chaturvedi, Kulwant Singh and Satya Prakash Rastogi. The minutes of the meeting of the Elders Committee dated 14.05.2019 (page No.'9' of the supplementary affidavit) states that the above mentioned three Senior Advocates had accepted to be included as members of the Elders Committee and they were, accordingly, selected and the Elders Committee of the Association was constituted on 14.05.2019. The minutes of the meeting of the Committee dated 16.05.2019 appended as Annexure No.'1' to the writ petition (page '14') read as under:-

"एलडर्स कमैटी की बैठक आज दिनांक 16.05.2019 को अपरान्ह बजे पं० नानक चन्द सभागार में अध्यक्ष महोदय के कक्ष में श्री लक्ष्मी त्यागी एडवोकेट चेयरमैन की अध्यक्षता में हुयी जिसका संचालन श्री ब्रह्म सिंह एडवोकेट द्वारा किया गया, जिसमें निम्न लिखित सम्मानित सदस्य उपस्थित हुऐ।

- 1- श्री लक्ष्मी चन्द्र त्यागी (चेयरमैन)
- 2- श्री ब्रह्म पाल सिंह
- 3- श्री गोपाल कृष्ण चतुर्वेदी
- 4- श्री कुलवंत सिंह
- 5- श्री सत्य प्रकाश रस्तोगी

बैठक की कार्यवाही प्रारम्भ हुयी मेरठ बार एसोसिएशन, मेरठ अध्यक्ष श्री मांगे राम एडवोकेट व महामंत्री श्री नरेश दत्त शर्मा एडवोकेट ने एल्डर्स कमेटी के नये सम्मानित सदस्यगण श्री गोपाल कृष्ण चतुर्वेदी, श्री कुलवन्त सिंह, श्री सत्यप्रकाश रस्तौगी एडवोकेट्स का स्वागत किया।"

For a period of more than one year from 14.05.2019 till the disputed Elders Committee namely respondent No.3 was constituted on 29.06.2020, the above mentioned Elders Committee continued to manage the affairs of the Association to the extent of its powers and duties mentioned under the Bye-laws of the Association. None of the members of the General Body of the Association raised any dispute with regard to the constitution of the Elders Committee dated 14.05.2019. It appears that after expiry of tenure of the elected Executive Committee of the Association, for the first time, a dispute was raised with regard to its members by one Shyam Singh Advocate vide letter dated 10.06.2020 written to the Chairman, Bar Council of Uttar Pradesh, upon which the existing Elders Committee has been replaced/re-constituted as respondent No.3 giving charge of the elections of the Association.

Having gone through the Bye-laws and the material placed on record we are of the firm opinion that the Bar Council of Uttar Pradesh, i.e. the Chairman of Bar Council of

Uttar Pradesh, had no jurisdiction to entertain the application/letter dated 10.06.2020 written by Sri Shyam Singh Advocate raising a dispute regarding the constitution of the Elders Committee. We say so for all following reasons:-

(i) Firstly, that under the Bye-laws of the Association, the Elders Committee is a permanent statutory committee and any dispute relating to its constitution could only be raised either before it or the General Body of the Association. The Bar Council of Uttar Pradesh under Section 21 of the Advocates Act has only the power to decide any dispute between the parties (Advocates) regarding their inter-se seniority, taking into consideration of their date of enrollment with the Bar Council. In the instant case, no such dispute was raised before the Bar Council of Uttar Pradesh.

(ii) Secondly, under the Bye-laws of the Association, the role of Bar Council of India ends with the approval of the Bye-laws, in so far as the elections of the office bearers or constitution of the committees of the registered Association, any dispute relating to the office bearers of the Association elected under Clause 16 of the Bye-laws, by whatsoever named it may be called, can only be raised before the prescribed authority under Section 25 of the Societies Registration Act.

(iii) Thirdly, in any eventuality, the Elders Committee being a statutory permanent body constituted under the Bye-laws could not have been replaced by the Chairman of the Bar Council of Uttar Pradesh on its own. The order impugned does not record that any notice was issued to the members of

Elders Committee who have been replaced, though the Bar Council of India was bereft of power to do so.

We may further note that interference at the hands of the Chairman, Bar Council of Uttar Pradesh has been made vide order dated 29.06.2020 when the process of elections of the office bearers of the Association was already on. The record indicates that the Outgoing Executive Committee in a meeting held on 16.03.2020, prior to expiry of its tenure, had resolved to hold the elections of new committee for the year 2020-21 on the date fixed as 17.04.2020. The election officers were appointed to notify the detail election program. It appears that due to declaration of Nation-wise lock down as a result of outbreak of pandemic Covid-19, the elections had to be postponed. On 16.07.2020, again a resolution was passed by the Outgoing Committee to continue with the elections process, however, District Meerut being badly affected with the positive cases of pandemic Corona (Covid-19), elections could not be held. The detailed program for elections was, however, notified by the election officers on 19.08.2020, fixing 06.10.2020 as the date for holding fresh elections.

We may further note that it is not even the case of the contesting respondents that any meeting of General Body had been called by the Registrar, Societies for holding elections of the Executive Committee noticing that the Outgoing Committee has failed to conduct the elections within the time permitted in the Bye-laws. We may also note that none of the counsels could plausibly raise any dispute with regard to the extraordinary unfortunate circumstances of Covid-19 due to which the elections of Executive Committee

of the Association had to be postponed. None of the Advocates could place before us placed any resolution of the General Body of the Association to take any exception to the steps taken by the Outgoing Committee for holding elections of the new committee. There is no dispute about the steps taken by the Outgoing Executive Committee of the Association for holding elections placed on record. Only submission of learned Senior Advocate for respondent No.3 is that the resolution dated 16.03.2020 appended at Annexure No.'2' to the writ petition had been passed in the meeting of the Executive Committee and not of the General Body of the Association. The submission is that under the Bye-laws the Outgoing Executive Committee was required to convene a meeting of the General Body of the Association for fixing a date for holding elections. The resolution dated 16.03.2020, therefore, cannot be taken as an effort of the Outgoing Committee to conduct the elections for constitution of new committee in the spirit of the approved Bye-laws.

We are afraid to accept the said submission of learned Senior Advocate for the respondent No.3 in as much as, Bye-laws 19 which provides for the term of office bearers of the Association obligates the Outgoing Committee to ensure that the elections are completed within its tenure of one year and one month. The Elders Committee would get the administrative control of the Association after expiry of period of one year and one month and only on the failure of the Outgoing Committee to hold elections within the said period, it would get powers to hold elections as per the Bye-laws. The time period given to hold elections by the Elders Committee is another one month preferably.

Further, looking to the functions and duties of the Governing Council/Executive Committee provided under Clause 20 of the Bye-laws, it is clear that the Executive Committee would require to do all acts necessary for the fulfillment of the object of the Association including the procedure for elections. In Clause 55 of the Bye-laws, the date for elections has to be fixed in a meeting of the General Body of Association which could be convened atleast a month prior to the expiry of term of the office bearers. On fixing of such date, the elections are to be held under the supervision and control of the Elders Committee, which has to act as panel of the returning officer and authorized to declare the result of the elections. With the initiation of the election process notifying the date of election as 17.04.2020 by the Outgoing Committee, the then (existing) Elders Committee had stepped into the shoes of the returning officer.

In light of the controversy before us in the instant case, having reached at the conclusion that the Chairman, Bar Council of Uttar Pradesh had no jurisdiction to usurp the power for constitution of the Elders Committee under the Bye-laws of the Association, we hold that all steps taken by the respondent No.3 towards the holding of elections of the Association including its resolution dated 15.07.2020, 05.08.2020 and 20.08.2020 are without jurisdiction and, thus, illegal.

For the above discussion, the order dated 29.06.2020 passed by the Chairman, Bar Council of Uttar Pradesh, Allahabad is hereby quashed being without jurisdiction and, thus, illegal.

The respondent No.3, the Elders Committee constituted by the Chairman, Bar Council of Uttar Pradesh, Allahabad has been held to be incompetent to interfere in the affairs of the Association.

As far as the elections notified by the petitioners/Outgoing Committee/elected body/Executive Committee, we do not consider it proper to express any opinion upon the same, in as much as, all the issues which may arise in relation to the elections of the Association scheduled on 06.10.2020 would be examined by the competent authority under the relevant provisions of the Societies Registration Act' 1960, if raised.

We may also clarify that the observations made herein above are only in order to examine the validity of the decision taken by the respondent No.2 namely the Chairman, Bar Council of Uttar Pradesh, Allahabad. With our decision, the Elders Committee which had been constituted on 14.05.2019 would be under obligation to ensure that the provisions of the approved Bye-laws of the Association are strictly followed and the elections of the officer bearers of the Association are held at the earliest.

In view of the above, the writ petition is **allowed**.

Order Date :-09.09.2020

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