High Court of Judicature at Allahabad
(Lucknow)
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Neutral Citation No.2024: AHC-LKO:54447-DB
Reserved on: 31.05.2024
Delivered on: 08.08.2024

Reserved
Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 350 of 2024

Petitioner :- Dinesh Kumar Singh And Others
Respondent :- Bar Council Of U.P. Thru. Its Chairman , Prayagraj And Others
Counsel for Petitioner :- Sharad Pathak,Abhinav Mishra,Piyush Pathak
Counsel for Respondent :- Subhash Chandra Pandey,Dilip Kumar Pandey,Ganga Prasad Mishra,Shailesh Pathak

WITH

Case :- WRIT - C No. - 1645 of 2024

Petitioner :- Faizabad Bar Associaton , Ayodhya Thru. Secy. Sri Vipin Kumar Mishra
Respondent :- Bar Council Of U.P. Allahabad Thru. Its Chairman And Others
Counsel for Petitioner :- Prashansa Singh
Counsel for Respondent :- Subhash Chandra Pandey

Hon'ble Rajan Roy,J.
Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.)

(1) Heard Shri Sharad Pathak, learned Counsel for the petitioners, Sri Subhash Chandra Pandey, learned counsel for opposite party no.1, Sri G.P. Mishra, learned counsel for opposite party no.3, Sri Dileep Kumar Pandey, learned counsel

for opposite party no.6 and Sri Shailesh Pathak, learned counsel for opposite party no.7 in P.I.L. No.350 of 2024 and Shri H.G.S. Parihar, learned Senior Counsel assisted by Mrs. Prashansa Singh, learned Counsel for the petitioner in Writ-C No.1645 of 2024. We had also interacted with members of the two Elders Committee as noticed in our order dated 31.05.2024.

(2) These two writ petitions involve common/ inter-related issues, therefore, they were clubbed and heard together and are now being decided by a common judgment. Public Interest Litigation No.350 of 2024 is a P.I.L. filed by Members of Faizabad Bar Association seeking the following reliefs:-

> *"(i) to issue writ order or directions in the nature of Mandamus commanding the opposite party no. 1, 2 & 3 to hold fresh election of Faizabad Bar Association, Ayodhya for the year 2024 forthwith, by putting a condition that the election shall be valid only till the month of December, 2024 and thereafter the newly elected Governing Council may hold fresh election of Faizabad Bar Association in the last week of December 2024 in accordance with the rules of registered byelaws of Faizabad Bar Association more particularly item no. 51-B.*
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> *(ii) to issue writ order or directions in the nature of Mandamus commanding the opposite party no. 1 and all Bar Associations affiliated with it to implement resolution dated 12.09.2021 (Annexure no. 6) in letter and spirit and to hold elections of Governing Councils of respective Bar Associations in the last week of December of every year so that no delay is caused, in holding of elections in any Bar Associations.*
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> *(iii) to issue writ order or directions in the nature of Mandamus commanding the opposite party No. 1 & 2 to publish list of Advocates in public domain in accordance with Bar Council of India certificate and place of practice (Verification Rules 2015) indicating the place of practice of every advocate registered with the Bar Council of Uttar*

Pradesh in order to implement the principle of "One Bar One Vote" in letter and Spirit".

(iv) to allow this writ petition with all costs in favour of the petitioners."

(3) Learned counsel for the opposite parties have raised a preliminary objection that the petition styled as a public interest litigation is not maintainable as all the petitioners are members of bar association and they have personal interest in the matter. However, learned counsel for the petitioners has submitted that categorical averment has been made in writ petition that though they are members of Faizabad Bar Association, the petition has been filed in larger interest of the bar association and its members as elections to the Governing Council are not being held for quite some time and that the petitioners do not propose to contest the ensuing elections, therefore, there is no personal interest involved in the writ petition. We have considered the preliminary objection. Looking into the subject matter and issue and as the petitioners have specifically averred that they do not propose to contest the ensuing elections and as the subject matter is in larger interest of the bar association which is a court annexed bar, therefore, in our opinion, this petition ought not to be dismissed as not maintainable. Even otherwise, we have *suo-motu* powers in such matters. Ordinarily, if an election to the bar association is challenged and it involves disputed questions of fact then the High Court may not interfere in the matter but in a case where elections are not being held or the rules for holding of such elections are not being followed, the High Court does interfere in the facts of a given case so as to ensure smooth functioning of the judgeship as, smooth conduct of elections to a bar

association have a bearing on such functioning as already observed by a Co-ordinate Bench of this Court in the judgment dated 22.05.2023 rendered in a bunch of petitions leading being Writ-C No.3531 of 2023 [Rajeev Sonkar & anr. vs. Bar Council of U.P. Thru. Chairman, Prayagraj & Ors.]. Non-holding of elections may lead to unrest amongst members of bar association which in turn may affect the functioning of the courts itself. Therefore, we do not find any merit in this preliminary objection in the facts of this case.

(4) The facts in brief are that Faizabad Bar Association is the only association functioning in the judgeship of Faizabad (now Ayodhya). It is registered with Deputy Registrar, Societies under the Societies Registration Act, 1860. However, it is also affiliated to the Bar Council of U.P. and such affiliation is governed by rules framed by the Bar Council, namely, Bar Council of Uttar Pradesh Advocates Association Affiliated Rules, 2005. U.P. Bar Council has also framed model by-laws contents of which have been incorporated by the District Bar Association by making suitable amendments. Faizabad Bar Association has its own bye-laws duly approved by the Deputy Registrar, Societies, copy of which is also on record. It is not in dispute that an election to the Governing Council of the Faizabad Bar Association was held in July, 2021 and the term of the elected Governing Council expired in July, 2022. As elections were not being held, therefore, Writ-C No.7415 of 2023 [Surya Bhan Verma vs. Bar Council of U.P. Prayagraj Thru its Chairman & Ors.] was filed seeking the following reliefs:-

> *"i. Issue a writ order or direction in the nature of Mandamus commanding the opp. parties particularly the opp. parties no.*

> *4 & 6 to get conduct the election of office bearers of the Executive Body of The Faizabad Bar Association, Faizabad for the Session 2023- 2024 (w.e.f. 01.08.2023 to 31.07.2024) within the stipulated time as may be fixed by the Hon'ble Court.*
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> *ii. Issue any other order or direction which this Hon'ble Court may deem fit and proper under the special circumstances of the case.*
>
> *iii. allow the petition with costs."*

(5) A Co-ordinate Bench passed an order on 29.08.2023 in following terms :-

> *"Vakalatnama filed by Sri Girish Chandra Verma, Advocate on behalf of opposite party nos. 2 & 4 is taken on record.*
>
> *We have heard counsel for the petitioner, learned counsel for the Bar Counsel of Uttar Pradesh, Sri Subhash Chandra Pandey, learned counsel for opposite party no. 1 and Sri Girish Chandra Verma, learned counsel for opposite party nos. 2 & 4.*
>
> *The Elders Committee is herewith directed to immediately take over the working of Bar Association and proceed to conduct the Election as per the membership list. Learned counsel for opposite party nos. 2 & 4 states that there is no dispute that the Elders Committee shall forthwith take over the working of the Faizabad Bar Association and shall conduct the Election positively within a period of six weeks from today.*
>
> *The aforesaid statement of Sri Girish Chandra Verma on behalf of opposite party nos. 2 & 4 is taken on record.*
>
> *With the aforesaid, petition is disposed of."*

(6) An application for modification was filed on which another order was passed on 13.10.2023. In view of the aforesaid, elections to the Governing Council were to be held by 06.11.2023 and results were to be declared thereafter within a period of 48 hours. Thereafter, an application for extension of time was filed which was rejected on 30.10.2023.

(7) Consequently, the Elders Committee which had taken over under the orders of the Court referred hereinabove issued a Notification dated 19.10.2023 for holding elections with a clear stipulation that they were to be held prior to 06.11.2023 and the elections would be only for the period ending December, 2023, meaning thereby, the elected Governing Council would function only till December, 2023. The rationale behind it was that in view of directions of this High Court in certain writ petitions, Bar Council had issued certain orders by which elections to all district bar associations were to be held in December, 2023 itself and the same had been adopted by the Faizabad Bar Association by amending its bye-laws. Relevant documents in this regard are on record and a communication sent to the U.P. Bar Council by the Faizabad Bar Council are also on record. This was a piquant situation which had arisen on account of a statement being made before the High Court that elections would be held before 06.11.2023, ordinarily, it would be held in December. As per the bye-laws, the tenure of the Governing Council would be one year but in the said Notification for election, which was never challenged by anybody including the petitioners in connected petition bearing Writ-C No.1645 of 2024, the elections were to be held for electing a Governing Council only till December, 2023, meaning thereby, thereafter, in keeping with the stipulations in the bye-laws and in terms of the orders of Bar Council of U.P., fresh elections would be held and the tenure of the newly elected Governing Council i.e. the subsequent Governing Council elected in December, would be one year.

(8) In pursuance to the aforesaid Notification dated 19.10.2023, nomination forms were filed by the candidates along with an affidavit / undertaking clearly mentioning therein -'Election proceeding is under the direction of Hon'ble High Court under writ petition No.7415/ 2023 order on dated 13.10.2023. The deponent is well aware that the present election according to bye-laws for November, 2023 to 31st December, 2023'. Thus, the candidates who filed the nomination forms and the proforma notary affidavit clearly stated that they were aware that elections were to be held only for electing a Governing Council for the period November, 2023 to 31st December, 2023. Such affidavits were given by the private opposite parties herein who had been elected subsequently in the said elections and it is the case of the petitioners that they are bound by the said affidavit/ undertaking given by them.

(9) Be that as it may, in pursuance thereof, elections were held and a new Governing Council was elected. Opposite party no.6 was elected as its Secretary and opposite party no.5 as its President. However, in December, 2023, they changed their stand and the elected office bearers claimed that their tenure would be one year. Some correspondence took place with the Elders Committee and the matter ultimately went up to the Bar Council of U.P. Initially, the Bar Council of U.P. passed some orders but subsequently, as is evident from the counter affidavit filed by the it in connected Writ-C No.1645 of 2024, on an inquiry being held based on the inquiry report dated 18.02.2024 it was found that, in fact, elections were held for electing a Governing Council only for a term of two months

but the elected President concealed this fact while complaining to the U.P. Bar Council which led to passing of the initial orders by it, which were of interlocutory in nature. The U.P. Bar Council has made its stand very clear that the officer bearers who were elected in the said election could not function beyond period of two months and thereafter, fresh election would have to be held. It is this fresh election which has not been held leading to filing of this writ petition.

(10) In the connected petition, of course, the elected Governing Council through its Secretary who is opposite party no.6 in the leading writ petition have challenged the orders passed by the U.P. Bar Council and claim their right to continue as elected office bearers. At this very stage, we may point out that in the connected writ petition filed by the elected office bearers through Vipin Kumar Mishra who is opposite party no.6 in the leading writ petition, has not disclosed filing of affidavits by them as referred hereinabove. Therefore, this is clearly a concealment of fact, just as, it was concealment before the U.P. Bar Council as mentioned by it in its counter affidavit.

(11) As already stated, ordinarily, tenure of an elected Governing Council would be one year but considering the peculiar circumstances referred hereinabove it was made known to all the budding candidates that election to the Governing Council would be only for functioning till December, 2023 and not beyond it. Nobody challenged the said Notification dated 19.10.2023. In fact, all the candidates filed their affidavits that they were aware of this fact and therefore, they waived

whatever rights they had under the bye-laws and acquiesced to the aforesaid arrangement. In this view of the matter, the elected office bearers cannot wriggle out of their own undertaking / affidavit filed at the time of election and renegade from it. They are bound by it.

(12) It is also pertinent to mention that initially an Elders Committee was looking after the affairs but subsequently the Governing Council headed by opposite party nos.5 and 6 elected another Elders Committee, therefore, by their conduct also they are forfeited their claim to function for a period of one year.

(13) We may also point out that there are allegations and counter-allegations by the petitioners of the leading writ petition as well as the private opposite parties, the members of the earlier Elders Committee and the subsequent Elders Committee against each other. We do not wish to go into those allegations regarding their conduct and functioning suffice it to say that we are only concerned with getting election to the Governing Council of Bar Association held timely and smoothly.

(14) We may also mention that in the judgeship of Faizabad, there is a long history of going on strikes and from the report of District Judge which we have requisitioned what comes out is that in the month of November, 2023, out of 21 working days, lawyers abstain from work on 12 days, in December, 2023, out of 20 working days, lawyers abstain from work on 08 days, in January, 2024, out of 24 working days, lawyers abstain from work on 13 days, in February, 2024, out of 24 working days, lawyers abstain from work on 11 days, in

March, 2024, out of 22 working days, lawyers abstain from work on 10 days, in April, 2024, out of 23 working days, lawyers abstain from work on 12 days. Thus, out of a total of 134 working days from November, 2023 to April, 2024, lawyers abstain from work on 66 days which is a pathetic situation. This period includes the period during which the opposite party nos.2, 3, 5 and 6 were managing the affairs of the Bar Association. A Co-ordinate Bench of this Court at Allahabad has already taken up the issue of continued and repeated strikes in the district judgeships vide Contempt Application (Criminal) No.12 of 2024 [In Re. vs. District Bar Association of Prayagraj]. The orders passed in the said proceedings will apply to the District Bar Association, Faizabad also and shall be complied strictly.

(15) Having said so, we are also conscious of the fact that there may be many issues or grievances of the Bar Association pertaining to the judgeship, in such an eventuality, the same can be raised before the District Judge or at the District Level Grievance Redressal Committee if it has been constituted or the committee at the High Court level for district courts in pursuance to decision of Hon'ble the Supreme Court rendered in M.A. No.859 of 2020 in SLP(C) No.5440 of 2020 on 20.04.2023 **'District Bar Association Dehradun vs. Ishwar Shandilya & Ors.'** and also before the Administrative Judge and which can be considered so as to resolve the issues as far as possible, but, resorting to strike is no solution. Raising the grievances appropriately before the competent level and consideration of the same by such authority is the solution. We have been informed that there is some problem pertaining to

operation of lifts in the judgeship. If it is so, the District Judge should look into the matter and if still not resolved, the matter can be taken up with the Administrative Judge concerned whom we request to consider the same.

(16) Now, considering the allegations and the counter-allegations by the petitioners and the private opposite parties including Elders Committee as also the fact that the elected Governing Council itself reconstituted the Elders Committee whereas members of earlier Elders Committee were represented before us have submitted that elected members of the Governing Council wanted the records which contained the affidavit submitted by them containing the stipulation as already noted hereinabove and when that was not given, therefore, as a malafide action, the Elders Committee was changed, illegally so, dehors the bye-laws. On the other hand Sri Parihar, learned counsel appearing for the elected members of the Governing Council submitted that the earlier Governing Council committed grave irregularities which were sought to be inquired and that the petitioners are also tainted persons. The petitioners have denied these allegations and have levelled counter-allegations against the private opposite parties.

(17) As already stated, we do not wish enter into all this dispute which can be seen before other fora as may be prescribed in law. As of now, we are concerned with getting the elections held smoothly and within time. The stand of the U.P. Bar Council is also very clear from the counter affidavit filed in the connected writ petition. It has clearly stated that the orders which were passed by it in the matter were

interlocutory orders and after receipt of inquiry report dated 18.02.2024, it is clear that members of the Governing Council who were elected in the elections held on 06.11.2023 had no right to continue after December, 2023. Therefore, the Bar Council is also of the view that fresh elections have to be held and in fact, it has been stated that in spite of several directions, the same have not been held as yet.

(18) During course of argument, we have also been informed that list of senior members of Bar Association given by the petitioners and annexed as Annexure 8 to the supplementary affidavit to the petition contains the names of several persons who in fact are not regular practitioners. We do not express any opinion on this except that there is a dispute regarding the said list also and it is not acceptable to the private opposite parties and the Elders Committee herein. We have also been informed that many of the senior members of the Bar do not come to court regularly and are not practicing regularly though some of them do participate in the political activities in the bar association, therefore, their nominations as members of the Elders Committee would not be in larger interest of the Bar Association.

(19) We have also been informed that because of nature of the election Notification dated 19.10.2023 which was to elect a Governing Council only till December, 2023, many of the candidates who were serious contenders for various posts in the Governing Council, did not file their nominations. Therefore, this is also an aspect which we have taken into consideration.

(20) Now, considering the aforesaid dispute relating to two Elders Committee also, we are of the opinion that ends of justice would be met if we constitute an Elders Committee to take over the affairs of the Faizabad Bar Association and also to get the elections to its Governing Council held smoothly and in accordance with law by December, 2024.

(21) We have pondered over the issue and also tried to get some feedback from the district itself and based on the aforesaid, we are of the opinion that the following Advocates who are regularly practicing in the Faizabad Bar Association and enjoy good reputation will be part of the Elders Committee:-

(a) Sri Jokhu Prasad Tiwari

(b) Sri Priyanath Singh

(c) Sri Vijay Kumar Srivastava

(d) Sri Girish Pratap Singh

(e) Sri Arvind Kaul

(22) In the event, any of the aforesaid members who have been made part of the Elders Committee backs out then he shall be substituted by one of the following advocates in the order in which their names appear in this judgment:-

(a) Sri Balram Verma

(b) Sri Sabih Mohammad Rizvi

(c) Sri Ram Krishna Tewari

(23) This Elders Committee has been constituted in the peculiar circumstances which has presented before us as neither the earlier nor the subsequent Elders Committee as referred above is acceptable to the parties herein and also as we are of the opinion that those who regularly practice in the bar association should be part of the Elders Committee.

(24) The aforesaid Elders Committee shall now take over within three days of passing of this order. It shall manage the affairs of the Faizabad Bar Association and initiate the process for holding elections to its Governing Council as per law and shall ensure that the said process is completed and elections are held and results are declared by December, 2024 and the newly elected office bearers take oath soon thereafter.

(25) We further direct the Elders Committee to publish a list of advocates in public domain in accordance with the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 indicating place of practice of advocate registered with the Bar Council of U.P. in order to implement the principle of one bar one vote, which shall be strictly adhered.

(26) We also order that Elders Committee shall strictly adhere to the rules known as Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015 (hereinafter referred to as 'the Rules, 2015') and the principle of 'One Bar One Vote' in letter and spirit. The principle of one bar one vote has found judicial approval in the decision of Hon'ble the Supreme Court reported in 2011 (13) SCC 744 **'Supreme Court Bar Association & Ors. vs. B.D. Kaushik'**; 2012 (6) SCC 152 **'Supreme Court Bar Association & Ors. vs. B.D. Kaushik'**; 2012

(8) SCC 589 **'Supreme Court Bar Association & Ors. vs. B.D. Kaushik'** and 2016 SCC Online Del 3493 **'P.K. Dash & Ors. vs. Bar Council of Delhi & Ors.'**. The same has also been followed by various Division Benches of this Court such as in the case of P.I.L. Civil No.18055 of 2021 [In Re: Unruly Behavior & Breach of Protocol During Awadh Bar vs. Awadh Bar Association Lucknow] pertaining to the Awadh Bar Association of the High Court at Lucknow and Writ-C No.3531 of 2023 [Rajeev Sonkar & anr. vs. Bar Council of U.P. Thru. Chairman, Prayagraj & Ors.] and connected matter pertaining to the Central Bar Association, District Court, Lucknow.

(27) Needless to say that newly elected Governing Council will have a tenure as prescribed in relevant bye-laws.

(28) The newly constituted Elders Committee shall not pass any resolution for abstaining from judicial work.

(29) As regards relief no.(ii) in the leading writ petition, this is certainly an aspect which will allay many complications which arise pertaining to election in district judgeships. It will allay the disputes which arise as regards the some advocate having voted in more than one bar association. This would also be in keeping with the judgments referred hereinabove. However, instead of issuing direction as of now, we would rather direct the U.P. Bar Council to take a call in the matter and if it finds that holding elections in all district bar associations on the same day in the State of U.P. will be in the larger interest of the advocates and will prevent many disputes pertaining to elections then it should consider issuing necessary orders/ resolutions in this regard making it binding upon all

district bar associations. Let the U.P. Bar Council take a decision in the matter at the earliest say within three months of passing of this order. If any cause of action arises in this regard in future, it is open for any aggrieved person to approach this Court again. We accept relief no.(ii) in the leading writ petition in the said terms for the reasons already given hereinabove

(30) As regards repeated strikes at District Court, Faizabad (Ayodhya), it is provided that in the event the District Bar Association, Faizabad or those managing its affairs give any call or pass any resolution for lawyers to abstain from judicial functioning for any reason then the same shall be communicated by the District Judge, Faizabad (Ayodhya) to the Registrar General, Allahabad High Court as also the Senior Registrar of this Court at Lucknow and the Senior Registrar of this Court at Lucknow shall place the said communication before the Bench which has been assigned criminal contempt matters for considering initiation of *suo-motu* contempt proceedings.

(31) Accordingly, **Public Interest Litigation No.350 of 2024 is disposed of** in the aforesaid terms.

(32) As regards the connected writ petition bearing **Writ-C No.1645 of 2024**, as already observed, the petitioners therein concealed the factum of having filed affidavits which disclose that they were aware that they have filed the nomination knowing very well that the elections were being held on 06.11.2023 for electing a Governing Council only for two months and they had also given undertakings or affidavits in

this regard but have not filed the same with the writ petition nor have they disclosed it in the writ petition. In fact, the pleadings in the writ petition are very casual. There is hardly and pleadings or material which could persuade us to interfere on their behalf and grant the relief prayed for especially as they never challenged the election notification dated 19.10.2023 rather they accepted it. The stand of U.P. Bar Council is evident in their counter affidavit filed in the said petition, according to which, the orders which have been challenged and which were issued by it were interlocutory orders pending inquiry into the dispute pertaining to the Faizabad Bar Association and subsequently, based on the final inquiry report dated 18.02.2024, it is clear that the Governing Council which was elected on 06.11.2023 was to operate only for two months and therefore, the stand of U.P. Bar Council that they do not have any right beyond the said period, rightly so.

(33) In view of the discussion already made, we do not find any merit in this writ petition and **dismiss** the same subject to the observations made hereinabove.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 08.08.2024
Shanu/-

At the time of delivery of the judgment, it has been informed that even after the judgment was reserved the President and the General Secretary of the earlier Governing Council which was elected only till December, 2023 have passed resolutions for abstaining from judicial work. Even

today such resolution has been passed. We make a note of it at the end of our judgment. The Governing Council/ Executive which was elected only upto December, 2023 shall not manage or interfere in the affairs of the Bar Association.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 08.08.2024
Shanu/-