

Unknown Vs. Delhi High Court Bar Association and ors.

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Court : Delhi

Decided On : Nov-23-2011

Judge : G.S.Sistani, J.

Appeal No. : CS(OS) 2883 of 2011

Appellant : Unknown

Respondent : Delhi High Court Bar Association and ors.

Judgement :

1. Allowed, subject to just exceptions.

2. Application stands disposed of.

CS(OS) 2883/2011 & IA.No.18525/2011 (u/O.39 Rs-1 & 2 CPC)

3. Issue summons in the suit and notice in the application. Learned counsel for the defendants accept summons in the suit and notice in the application.

4. A member of the Executive Committee of Delhi High Court Bar Association (hereinafter referred as "DHCBA") has knocked the doors of this court for justice. Counsel for the plaintiff submits that the Executive Committee of DHCBA had passed a resolution dated 08.01.2010 and the minutes of the resolution were ratified by the Executive Committee of DHCBA in its meeting held on 12.04.2010. The resolution passed on 17.05.2010 was ratified in the meeting held on

13.09.2010. The defendants in its meeting held on 21.09.2011 by way of agenda at item no.2 comprehensively discussed and passed amendments in the guidelines and modalities for holding elections and amongst many other decisions the minutes of the meeting dated 08.01.2010 was decided to be given prospective effect. The minutes of this meeting were ratified in the meeting of the Executive Committee on 18.11.2011.

5. The first grievance of the plaintiff is that the defendants have been acting against their own decisions and they have not been conducting their affairs in accordance with the Rules by not following their own decisions. It is submitted that Executive Committee has decided not to give effect to its own resolution with respect to fixing the minimum number of years as eligibility for members seeking election and also the decision taken for payment of security deposit of the contesting members.

6. Aggrieved by the opinion/ resolution dated 09.11.2011 of the Executive Committee of DHCBA, present suit has been filed. Operative portion of the opinion/ resolution dated 09.11.2011 reads as under:

"The Executive Committee, therefore by consensus of majority resolved/ opined that no office bearer or member executive of the present Executive Committee was eligible to offer/ repeat his/her candidature for the same post as office bearer or category of member executive, in view of the Bar created by rule 19(b)"

7. Mr.Mittal, counsel for the plaintiff submits that the opinion / resolution dated 09.11.2011 of the Committee is patently incorrect since the term of office as per Rule 19(a) is one year and unless two "elected consecutive terms" are held by a person, such person cannot be barred to hold office or contest for the post of member executive in the next elections. According to Mr.Mittal, the correct interpretation of Rule 19(a) and 19 (b) would mean that to incur the disability to contest two elected terms would be a pre-requisite. It is further submitted that the opinion/ resolution of the Executive Committee would have adverse effect on the rights of the plaintiff, as the defendant no.16, the Chief Election Officer, would be forced to follow the dictates in the form of opinion/ resolution of the Executive Committee. Counsel for the plaintiff has also drawn attention of the court to the

Minutes of the Executive Committee held on 08.01.2010. In support of his submission that the understanding of the Executive Committee of Rule 19(a) and 19 (b) was that a member, who has held a particular office in the association for a total number of four terms, should not be eligible to contest for the said post, whereas the interpretation sought to be given now is not the number of terms, but the number of years. Operative portion of the resolution reads as under:

"The members also discussed the election rules. It was decided that a person desiring to contest for the post of President, Vice-President & Hony. Secretary should respectively be a member of Delhi High Court Bar Association for at least 25, 20, 15 years respectively. The members also decided that any member who has held a particular office in the association for total number of 4 (four) terms should not be eligible to contest for the said post. Sh.Ramesh Gupta, Sr. Advocate proposed that henceforth tenure of the Executive Committee should be two years and that the next elections should be held in the month of February, / March."

8. He further contends that this is the first time such an interpretation has been given to Rule 19(a) and 19 (b) and in the past no persons was debarred for contesting the election in respect of holding an office for two years consecutively.

9. Counsel for the plaintiff contends that the opinion/ resolution of the bar is against the very Rule 19(b), which has to be read along with Rule 19(a) of the Rules of the Delhi High Court Bar Association. Rules 19(a) and 19(b) read as under:

"19. (a) The President, Vice President, Honorary Secretary, Jt. Secretary and Treasurer and 10 (ten) members of the Executive Committee shall be elected at the Annual General Meeting of the members and the Executive Committee shall hold office for one year, provided that if and when their said term of office has expired and no election has taken place, the Executive Committee shall continue in office until such election takes place.

(b) The office bearers and the members of the Executive Committee of the Association shall be elected by secret ballot. No office bearer and member of the Executive Committee shall be eligible to hold same office for more than two

consecutive years/terms."

10. It is the contention of counsel for the plaintiff that this Rule 19(a) provides that the Executive Committee shall hold office for one year and in case the said term of office has expired and no election has taken place, the Executive Committee shall continue in office, until such election takes place. As per rule 19(b) the office bearers, members of the Executive Committee of the Association shall be elected by secret ballot and no office bearer and member of the Executive Committee shall be eligible to hold the same office for more than two consecutive years/terms.

11. According to counsel for the plaintiff in case the Executive Committee does not hold election after one year, their term would automatically be extended and they shall continue to remain in office, till such election takes place and that entire period shall be called as 'term'.

12. This court has had an occasion to hear Mr.Viraj Datar, advocate, members of DHCBA, and also Mr.D.K. Sharma (Secretary), Mr.Kirti Uppal (Vice President), Mr.Pradeep Dewan (Executive Member) and others. All of them have supported the opinion/ resolution and have submitted that a careful reading of Rule 19(a) and 19(b) would show that there an embargo on a Member of the Executive Committee for being eligible to hold the same office, in case he has held the same for two years consecutively. Elaborating their arguments further, it is submitted that necessity for passing such a resolution and giving this opinion has arisen on account of the fact that in the past it has been noticed that the elections are not held within a period of one year and the term is extended upto even two years. It is contended that even after extending the term the same persons take part in election and the rule is frustrated. Although Mr.Sharma, submits that in the past year there were various cogent reasons as to why the election could not be held within the time specified. Members of the Committee submit that with a view to impose self-restriction and an embargo for re-contesting, this rule is to be read in a manner to dissuade persons from contesting election for the same post over and over again; and further view a view to give a chance and opportunity to other members to contest for different posts. It is also submitted that taking into

consideration the interest of the Bar Association and reading the Rule harmoniously, they were of the view that in case a person remains in office for two years, he/ she cannot contest election for the same post. It is further contended by them that the Bar Association in the past two years of their term have made lots of efforts to bring electoral reforms, and rules have been framed to conduct elections and it has been decided inter alia that for the post of President, Vice-President and Secretary there will be no campaigning and the candidates will not move around with more than 5 (five) persons at a time; there will be no proxy parties; there will be no placards and election material will be circulated; and there will be no campaigning 24 hours prior to the election. They further submit that the Executive Committee is interested in bringing in further reforms with a view to curtail admission to the DHCBA and also to weed out such persons, who have enrolled themselves as members, but are neither active legal practitioners nor actively practice in the Delhi High Court and in fact do not belong either to the Delhi or the NCR region. They further submit that in these circumstances and with a view to address various issues, and malpractices which have crept in, the aforesaid opinion was rendered and the resolution was passed. It is further submitted that the suit has been filed by the plaintiff in her individual capacity and she alone would be entitled to relief, if any. Another submission which has been made is that there is no intention nor Rule 19(a) and 19(b) has been amended and neither there is any challenge to the Rule 19(a) and 19(b) of the Delhi High Court Bar Association Rules in the suit. It is also submitted that in case the plaintiff fills in the form, it is for the Chief Election Officer (defendant no.16) to consider her candidature and in case he finds her eligible, she may contest the election.

13. Counsel for the plaintiff, however, submits that by rendering the opinion the Executive Committee, which is in fact a resolution, the Executive Committee has indirectly issued a mandate to the Chief Election Officer (defendant No.16) and thus defendant no.16 would be bound by this resolution and the rights of the plaintiff would be curtailed. Counsel for the plaintiff submits that this court must render its decision with regard to interpretation of Rule 19(a) and 19(b) of the Delhi High Court Bar Association Rules, with a view to lend clarity in the matter and further to avoid multiplicity of proceedings and to create a consensus among the member of the Bar in future as well.

14. This matter was mentioned to the Judge Incharge (Original Side) yesterday and came up before this court at around 4:00 p.m. The matter was thereafter taken up in Chamber and adjourned for today. The entire proceedings in this court have been held in the most cordial manner and as expected from the Members of this Bar and the office bearers. Each person must be complemented for the same.

15. After hearing counsel for the defendants and Mr.D.K.Sharma and Mr.Kirti Uppal, I am satisfied that the efforts and aim of the Members of the Executive Committee has been to ensure that the election should be held in a fair and free manner and further the interest of the Bar should be given paramount importance and nothing should be done which would bring a bad name to this Bar Association, which has been formed with the aims and objects which they have been fulfilling to the satisfaction of most of the members of the Bar Association. Various suggestions have been made and one consensus which has been arrived at is that certain portions of the Rules certainly require amendment either to clear the ambiguity or to make changes which have become necessary with the passage of time and with a view to curtail ills which have crept into the system. It is felt by all that in case the Rules are suitably amended, they will act as a deterrent to such persons, who want to take advantage of the ambiguity in the rules.

16. A careful reading of Rule 19(a) and 19(b), which has been reproduced above, gives a clear mandate that the Executive Committee shall hold office for one year. It is uniformly agreed that for reasons good or bad this has not been adhered to in past. It is jointly submitted that this is a practice which should be deprecated and the executive should ensure that unless for extremely compelling reasons the term of the Executive Committee should not be extended in future. It is further agreed that in fact a date should be fixed for holding election every year and a fixed mechanism should be put in place in case the election is not held after one year or on the date fixed. It has been suggested that in such a situation either past Presidents/ Secretaries or Senior Advocates or Attorney General or Additional Solicitor General should be appointed, which would act as a deterrent to extend the term by one year. Another issue which requires immediate attention of the Bar Association and which has been expressed openly is the issue of bogus members or such members who are only visitors to this court on the day of election. It is

common knowledge that these persons have neither appeared in this court nor have any intention nor they are regular members of this Bar Association. It has also been noticed that these persons, who do not even pay their subscription, which was subject of another suit which has been disposed with the active cooperation of the Members of the Executive and the counsel for the plaintiff today itself. The practice which is followed by these members is probably to wait for the date of election to be announced and then hope and pray that somebody would either pay their subscriptions and/ or invite them over for a party even before the result is announced and for various reasons, a view which has been shared by all. Although I am of the view that no person with self-respect and a lawyer by profession would allow himself or herself to be used for such purpose, but they seem to have become part of this system. Having said and noticed that all who are present in this court today, the Members of the Executive and other lawyers, have principally assured this court that they themselves would like to weed out such persons as they do not contribute to this institution. If they cannot give any positive contribution, I am of the view that the Bar Association should be lent enough support by the regular lawyers to ensure that they are weeded out. I may add that it is not that they cannot contribute to the system in a positive manner and cannot become part of the system, as this system is not meant for any chosen few, but they cannot be visitors on the day of election.

17. I am also in agreement with the stand taken by the Committee as regards the aim and object and the intention behind the resolution and the opinion which has been rendered.

18. The stand of the Executive Committee to introduce reforms, to peep into their own system, to check their own system, to carry out a self- audit and point out their own mistakes and lapses, requires courage and is certainly laudable

19. Careful reading of Rule 19(a) would show that the term of the execution is one year. A proviso has been added that if and when the said term of office has expired and no election has taken place, the Executive Committee shall continue in office until the election takes place. Rule 19(b) states that no office bearers and members of the Executive Committee shall be eligible to hold same office for more

than two years consecutive years/ terms. To give an illustration in case the election is held in the year 2000 and then in the year 2001 and office bearers will be debarred from contesting the election at the end of two years for the same post. However, in case the election is not held at the end of one year in the year 2000 and is held after 18 months, the entire period of the Executive Committee would be considered as one term, as Rule 19(a) provides that when the said term of office is expired and no election has taken place, the Executive Committee shall continue in office till such time the election takes place. The Makers of the Rule had visualized the situation when for some reason the election may not take place after completion of one year and with a view to avoid any uncertainty with regard to the status of the Executive Committee, it was deemed appropriate that the Executive Committee would continue in office until such election takes place. I am sure the framers of the Rule never expected that a time would come when the Executive Committees would make extension an exception and not the rule. However, as per Rule 19(b) no office bearers and member of the Executive Committee is eligible to hold the same office for two consecutive years/terms. In case intention of the Makers of the Rule was that under no circumstances would an office bearer and member of the Executive Committee be eligible to hold the same office for more than two consecutive years, there was no occasion to add the word 'terms' after the word 'years'. In my view the embargo created by Rule 19(b) would apply only after completion of two terms and thus the interpretation rendered by the Executive Committee is incorrect and is liable to be stayed.

20. Although at the cost of repetition I may add that the view expressed by the Executive Committee may be in the interest of Bar, it would be open to the Executive Committee to bring this issue before the General Body after the elections have taken place and seek their opinion as to whether Rule 19(a) and Rule 19(b) require an amendment and to avoid any ambiguity and uncertainty in the next election.

21. For the present it would have to be left to the wise discretion of those who wish to contest and the voters who are the most powerful and the voters must decide who is/are the best persons to lead the Bar, lest one day one has to repent. It is hoped that the election will be conducted in a congenial atmosphere and the

electoral reforms as suggested will be implemented in letter and spirit.

22. List the matter for directions on 18.01.2012, as prayed.

23. Copy of this order be given DASTI to the parties under the signatures of the Court Master.

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