

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018
CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.2041 of 2018
and WMP.Nos.2553 & 2554 of 2018

G.Selvakumar

.. Petitioner

vs.

1.Bar Council of India,
rep. by its Secretary,
No.21, Rouse Avenue Institutional Area,
New Delhi – 110 002.

2.Bar Council of Tamil Nadu & Puducherry,
rep. by its Secretary,
High Court Campus,
Chennai – 600 104.

3.The Special Committee,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus,
Chennai – 600 104.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to Resolution No.117 of 2018 dated 24.1.2018 passed by the third respondent Committee and quash the same and thereby direct the second respondent to conduct the election in accordance with the provision of the Advocates' Act, 1961 and the letter of the first respondent dated 22.1.2018 in Ref.No.BCI:D:357:2018 (Council Elections).

For Petitioner

: Mr.V.Ayyathurai

(2)

Senior Counsel
and Mr.N.S.M.Md.Jafarullah

For Respondents : Mr.S.R.Raghunathan
for 1st respondent

Mrs.Selvi George
for 2nd respondent

Mr.R.Singgaravelan
Senior Counsel
and N.Chandrasekaran
for 3rd respondent

ORDER

(Order of the Court was made by *the Hon'ble Chief Justice*)

The petitioner, an advocate enrolled with the Bar Council of Tamil Nadu and Puducherry, with Enrollment Number Ms.1296/2011, and practising inter alia in this High Court has filed this writ petition, by way of public interest, under Article 226 of the Constitution of India, challenging Resolution No.117 of 2018, dated 24.1.2018 of the Special Committee constituted by the Bar Council of India under Section 8-A of the Advocates Act, 1961, to discharge the functions of the Bar Council of Tamil Nadu and Puducherry, whereby the Bar Council of Tamil Nadu and Puducherry Conduct of Election Rules, 1975 have been amended.

2. The impugned Resolution No.117 of 2018, dated 24.1.2018, is

(3)

set out herein below for convenience:

RESOLUTION NO.117 OF 2018 DATED 24.01.2018 :-

Resolved to amend the Bar Council of Tamil Nadu and Puducherry Conduct of Election Rules by bringing the following amendment :-

In exercise of the powers conferred under Sec.8-A, Sec. 15 and all other enabling provisions, the following amendment is made to the Bar Council of Tamil Nadu and Puducherry conduct of Election Rules :-

- 1. These amendments shall come into force with effect from 24.01.2018.*
- 2. After Rule 7, the following rule shall be inserted.*

7-A. Eligibility to contest elections

- 1) Only advocates, who have been in practice for a continuous period of 10 years as an advocate are entitled to contest in the election.*
- 2) The advocate should have filed at least 10 vakalats every year for the previous 5 years prior to the date of filing the nomination to be eligible to contest for any post in the Bar Council of Tamil Nadu and Puducherry. For designated Senior Advocates, the filing of vakalat is not required.*
- 3) Any advocate, who is punished for contempt of court is not entitled to contest for election to any post in the Bar Council of Tamil Nadu and Puducherry.*
- 4) Any advocate, who holds an official position in any political party including the founder of the political party is not entitled to contest in the election to the post of Member of the Bar Council of Tamil Nadu and*

(4)

Puducherry.

- 5) *Any advocate, who is facing a disciplinary proceedings either before the State Bar Council or Bar Council of India is not entitled to contest in the election.*
- 6) *If charges have been framed by any court against any advocate in respect of criminal cases for an offence involving moral turpitude and attracting a punishment of three years imprisonment or more, other than offences relating to matrimonial disputes and civil disputes between family members not involving any serious offences of murder and grievous injury endangering the life of the victim, such advocate shall not be entitled to contest.*
- 7) *Any advocate, who has already has been elected for two consecutive terms as a Member of the Bar Council of Tamil Nadu and Puducherry will not be entitled to contest in the election.*

7-B. *Any advocate desiring to contest in the election shall along with his nomination, submit proof for satisfying the conditions stipulated in Rule 7-A, above along with an affidavit in non-judicial stamp paper (Rs.20/-) stating that he does not suffer from any disqualification mentioned in Rule 7-A and if such an affidavit is found to be false, his nomination can be cancelled at any time by the returning officer/s before the election and if elected, his election shall be deemed to be invalid.*

Provided that no order shall be passed under this Rule without giving the candidate a reasonable opportunity of

being heard.

7-C. *Any advocate filing nomination for the election of the Bar Council of Tamil Nadu and Puducherry should not involve himself in any corrupt practice by bribing them either in terms of money or in terms of any other consideration. If any complaint regarding the same is received by the Bar Council of Tamil Nadu and Puducherry, summary enquiry will be held by the Returning Officer/s and the candidate shall be disqualified from contesting in the election to the Bar Council of India and Bar Council of Tamil Nadu and Puducherry for a period of seven years.*

Apart from that, the disciplinary proceedings will also be initiated against the said advocate under Sec.35(1) and Sec.42 of the Advocates Act, 1961 by placing the candidate under suspension of practice immediately.”

3. The object of the Advocates Act, 1961 is to amend and consolidate the law relating to legal practitioners and to provide for, inter alia, the constitution of Bar Councils, one for the whole of India and one for each State. One of the main features of the Advocates Act, 1961 is the integration of the bar into a single class of legal practitioners known as Advocates with the division of Advocates into Senior Advocates and Advocates based on experience and merit.

4. The Advocates Act, 1961 aims to regulate and streamline the

(6)

legal profession through a hierarchical machinery of the Bar Council of India and the State Bar Councils. Respondent No.1 has been constituted under Section 4(1) and Respondent No.2 under Section 3(1)(cc) of the Advocates Act, 1961. Respondent Nos.1 and 2 are body corporates under Section 5 of the Advocates Act, 1961 having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, to contract, and to sue or be sued by the name by which they are known.

5. Some of the relevant provisions of the Advocates Act, 1961 are set out herein below for convenience:

CHAPTER-I
(PRELIMINARY)

.....

Section 2. Definitions.-

(1) In this Act, unless the context otherwise requires,-

(a) to (c)

(d) "Bar Council" means a Bar Council constituted under this Act;

(e) "Bar Council of India" means the Bar Council constituted under section 4 for the territories to which this Act extends;

.....

(m) "State Bar Council" means a Bar Council constituted under section 3.

CHAPTER-II

(BAR COUNCILS)

.....

Section 3. State Bar Councils.-

(1) *There shall be a Bar Council -*

(a) *to (c) ...*

(cc) *for the State of Tamil Nadu and the Union Territory of Pondicherry to be known as the Bar Council of Tamil Nadu.*

(2) *A State Bar Council shall consist of the following members, namely:—*

(a)

(b) *in the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of the State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council:*

Provided that as nearly as possible one-half of such elected members shall subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian Bar Councils Act, 1926 (38 of 1926).

(3) *There shall be a Chairman and a Vice-Chairman of each*

(8)

State Bar Council elected by the Council in such manner as may be prescribed.

(3A)

(4) An Advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

(5) Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the Advocates (Amendment) Act, 1964 (21 of 1964), but every election after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.

Section 4. Bar Council of India. -

(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:—

- (a) the Attorney-General of India, ex officio;*
- (b) the Solicitor-General of India, ex officio;*
- (c) one member elected by each State Bar Council from amongst its members.*

(9)

(1A) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub-section (2) of section 3.

(2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

(2A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be:

Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendments) Act, 1977 (38 of 1977), assumes charge of the office.

(3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall—

(i) in the case of a member of a State Bar Council who holds office ex-officio, be two years from the date of his election or till he ceases to be a member of the State Bar Council, whichever is earlier; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council:

Provided that every such member shall continue to hold

office as a member of the Bar Council of India until his successor is elected.

Section 5: Bar Council to be body corporate.—

Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both moveable and immovable, and to contract, and may by the name by which it is known sue and be sued.

Section 6. Functions of State Bar Councils. —

(1) The functions of a State Bar Council shall be—

- (a) to admit persons as advocates on its roll;*
- (b) to prepare and maintain such roll;*
- (c) to entertain and determine cases of misconduct against advocates on its roll;*
- (d) to safeguard the rights, privileges and interests of advocates on its roll;*
- (dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section clause (a) of sub-section (2) of section 7;*
- (e) to promote and support law reform;*
- (ee) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and paper of legal interest;*
- (eee) to organise legal aid to the poor in the prescribed manner;*
- (f) to manage and invest the funds of the Bar*

Council;

- (g) to provide for the election of its members;*
- (gg) to visit and inspect Universities in accordance with the directions given under clause (i) of sub-section (1) of section 7;*
- (h) to perform all other functions conferred on it by or under this Act;*
- (i) to do all other things necessary for discharging the aforesaid functions.*

(2) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of—

- (a) giving financial assistance to organise welfare schemes for the indigent, disabled or other advocates;*
- (b) giving legal aid or advice in accordance with the rules made in this behalf;*
- (c) establishing law libraries.*

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in subsection (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

Section 7. Functions of Bar Council of India.—

(1) The functions of the Bar Council of India shall be—

- (b) to lay down standards of professional conduct and etiquette for advocates;*
- (c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar*

Council;

(d) to safeguard the rights, privileges and interests of advocates;

(e) to promote and support law reform;

(f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;

(g) to exercise general supervision and control over State Bar Councils;

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

(ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(ib) to organise legal aid to the poor in the prescribed manner;

(ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;

(j) to manage and invest the funds of the Bar

(13)

Council;

(k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act;

(m) to do all other things necessary for discharging the aforesaid functions;

(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of—

(a) giving financial assistance to organise welfare schemes for indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

(c) establishing law libraries.

(3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

Section 8A. Constitution of Special Committee in the absence of election.—

(1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be, referred to in section 8, the Bar Council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of—

(i) the ex officio member of the State Bar

(14)

Council referred to in clause (a) of sub-section (2) of section 3 to be the Chairman:

Provided that where there are more than one ex officio members, the senior-most amongst them shall be the Chairman; and

(ii) two members to be nominated by the Bar Council of India from amongst advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

(2) On the constitution of the Special Committee and until the State Bar Council is constituted—

(a) all properties and assets vesting in the State Bar Council shall vest in the Special Committee;

(b) all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special Committee;

(c) all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise, shall stand transferred to the Special Committee.

(3) The Special Committee constituted under sub-section (1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold election to the State Bar Council within a period of six months from the

date of its constitution under sub-section (1), and where, for any reason the Special Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period.

Section 9. Disciplinary Committees. —

(1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be persons elected by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.

(2)

Section 9A. Constitution of legal aid Committees. —

(1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed.

(2) The qualifications, the method of selection and the term of office of the members of legal aid committee shall be such as may be prescribed.

Section 10. Constitution of committees other than

disciplinary committees.—

(1) A State Bar Council shall constitute the following standing committees, namely:—

(a) an executive committee consisting of five members elected by the Council from amongst its members;

(b) an enrolment committee consisting of three members elected by the Council from amongst its members.

(2) The Bar Council of India shall constitute the following standing committees, namely:—

(a) an executive committee consisting of nine members elected by the Council from amongst its members;

(b) a legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

(3) A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purpose of carrying out the provisions of this Act.

Section 15. Power to make rules.—

(1) A Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot, the preparation and revision of electoral rolls and the manner in which the result of election shall be published;

(c) the manner of election of the Chairman and the Vice Chairman of the Bar Council;

(d) the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council 4[or to the office of the Chairman or Vice-Chairman] shall be finally decided;

(f) the filling of casual vacancies in the Bar Council;

(g) the powers and duties of the Chairman and the Vice Chairman of the Bar Council;

(ga) the constitution of one or more funds by a Bar Council for the purpose of giving financial assistance or giving legal aid or advice referred to in sub-section (2) of section 6 and sub-section (2) of section 7;

(gb) organisation of legal aid and advice to the poor, constitution and functions of committees and sub-committees for that purpose and description of proceedings in connection with which legal aid or advice may be given;

(18)

(h) the summoning and holding of meetings of the Bar Council, the conduct of business thereof, and the number of members necessary to constitute a quorum;

(i) the constitution and functions of any committee of the Bar Council and the term of office of members of any such committee;

(j) the summoning and holding of meetings, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;

(k) the qualifications and the conditions of service of the secretary, the accountant and the other employees of the Bar Council;

(l) the maintenance of books of accounts and other books by the Bar Council;

(m) the appointment of auditors and the audit of the accounts of the Bar Council;

(n) the management and investment of the funds of the Bar Council.

(3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.

CHAPTER – III

(ADMISSION AND ENROLMENT OF ADVOCATES)

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Section 28. Power to make rules.—

(1) A State Bar Council may make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of

the foregoing power, such rules may provide for—

- (a) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under section 20;*
- (c) the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council;*
- (d) the conditions subject to which a person may be admitted as an advocate on any such roll;*
- (e) the instalments in which the enrolment fee may be paid.*

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India.

CHAPTER-IV **(RIGHT TO PRACTISE)**

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Section 34. Power of High Courts to make rules.—

(1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practise in the High Court and the courts subordinate thereto.

(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's

advocate upon all proceedings in the High Court or in any Court subordinate thereto.

(2) Without prejudice to the provisions contained in sub-section (1), the High Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articled clerks to be passed by the persons referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.

CHAPTER-V
(CONDUCT OF ADVOCATES)

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Section 35. Punishment of advocates for misconduct—

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

CHAPTER-VI
(MISCELLANEOUS)

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Section 49. General power of the Bar Council of India to make rules.

(1) The Bar Council of India may make rules for discharging its functions under this Act, and, in particular, such rules

may prescribe—

(a) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council;

(ab) qualifications for membership of a Bar Council and the disqualifications for such membership.”

6. In exercise of its rule making powers conferred by the Advocates Act, 1961, the Bar Council of India has framed the Bar Council of India Rules. Chapter I of Part II contains Rules relating to electoral roll for elections, voting, disqualification of membership, etc. of the Bar Council of India and Chapter I of Part III relates to Electoral roll, Disqualification of Membership and Vacation of Office relating to the State Bar Councils.

7. Some of the relevant Rules of Chapters I and II in Part III of the Bar Council of India Rules are set out herein below:

PART III

CERTAIN MATTERS RELATING TO STATE COUNCIL

CHAPTER I

ELECTORAL ROLL, DISQUALIFICATION OF
MEMBERSHIP AND VACATION OF OFFICE

1. Every advocate whose name is on the electoral roll of the State Council shall be entitled to vote at an election.

2. The name of an advocate appearing in the state roll shall not be on the electoral roll, if on information received or obtained by the State Bar Council concerned on the basis of which it is satisfied that-

(a) his name has at any time been removed;

(b) he has been suspended from practice, provided that his disqualification shall operate only for a period of five years from the date of the expiry of the period of suspension;

(c) he is an undischarged insolvent;

(d) he has been found guilty of an election offence in regard to an election to the State Council by an election tribunal, provided however, that such disqualification shall not operate beyond the election next following after such finding has been made;

(e) he is convicted by a competent court for an offence involving moral turpitude, provided that this disqualification shall cease to have effect after a period of two years has elapsed since his release;

(f) he is in full-time service or is in such part-time business or other vocation not permitted in the case of practising advocates by the rules either of the State Council concerned or the Council ;

(g) he has intimated voluntary suspension of practice and has not given intimation of resumption of practice;

(h) if he has not paid the subscription under Rule 40 Chapter-II, Part VI of the Rules and obtained receipt from the State Bar Council;

(i) he has incurred any disqualification mentioned in the Act or the rules made thereunder

(j) his name has been included in the list of non-practicing advocates published under Rule 20.4 of the Bar Council of India Certificate of Practice and Renewal Rules, 2014.

Explanation.- These amendments shall be applicable only in the cases where the Bar Council of India Certificate of Practice and Renewal Rules, 2014 apply.

Explanation: If an advocate who has incurred any disqualification as referred to in rule 2 and does not furnish details about it as required in the notice under rule 4 of these rules within the time specified shall be deemed to have committed an act of other misconduct as referred to in Section 35(1) of the Act.

3. Subject to the provisions of rule 2, the name of every advocate entered in the State Roll shall be entered in the electoral roll of the State Council.

4. (1) In preparing the electoral roll, unless the State Bar Council concerned is already maintaining a list of advocates who are entitled to be voters in terms of Rule 2 of these Rules, at least 150 days before the

date of election, shall publish notice issued by the Secretary of the State Bar Council concerned in prescribed form in the official gazette and in two or more local newspapers, one English and the other in a local language, as may be decided by the State Bar Council, asking each of the advocates on the roll of the concerned State Bar Council to intimate the State Bar Council within the time to be specified in the said notice or within such extended time as may be given/allowed by the State Bar Council for reasons to be recorded, as to whether he has incurred any disqualification mentioned in Rule 2 of these rules and quote rule 2 of these rules in the said notice.

(2) A preliminary electoral roll containing the names of all advocates whose names are required to be included under these rules shall be put up on the notice board of the State Council within 120 clear days before the expiry of the term of the members of the said State Council necessitating the election (and relevant portion thereof shall be sent to such Bar Associations as the Secretary considers fit).

Provided that the Bar Councils whose term of office already expired or shall expire within 120 days from the date of commencement of these rules shall, as far as possible, publish the electoral roll forthwith and fix the elections for a date after not less than 120 clear days from the date of publication of the electoral rolls.

(3) Before final publication of the electoral Roll, a State Bar Council may, if satisfied, on an application made by

any particular advocate giving sufficient reasons, allow his name to be included in the electoral roll in question, and on such inclusion the advocate concerned shall be entitled to take part in the election.

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9. Application of these rules : These rules shall govern the elections of all State Bar Councils to be held after these rules are enforced, and all State Bar Councils holding the elections of their members shall prepare their electoral rolls in terms of these rules.

CHAPTER-II: RULES TO SECURE AT LEAST A MINIMUM NUMBER OF ADVOCATES OF 10 YEARS' STANDING:

1. (a) These rules shall apply to the election of members of all the State Councils in India.

(b) In the case of any repugnancy between these rules and any rule or rules of any of the State Councils, these rules shall prevail and rules framed by the State Councils shall be void to the extent of such repugnancy.

2. The elections of members of the State Councils shall be in conformity with the proviso to Section 3 (2) of the Act and these rules.

3. There shall be no limit to the number of candidates on the State rolls for at least 10 years that could be declared elected under these rules."

8. The proviso to Section 3(2)(b) of the Advocates Act, 1961 provides that as nearly as possible, one-half of the elected members of a State Council shall, subject to any rules that might be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State Roll. Rule 3 of Chapter II of Part III of the Bar Council of India Rules makes it clear that there is no limit to the number of candidates on the State Rolls, enrolled for atleast 10 years that could be declared elected under these Rules.

9. The judicial system is an important pillar of democracy. The basic attributes of the Judiciary are its independence, its impartiality and its endeavour to render justice to those who knock at the doors of the Judiciary.

10. The members of the bar constitute an important part of the judicial system. In an adversarial system, it is the advocates who assist the Courts in rendering justice. It is, thus, absolutely imperative that the members of the bar also conform to the highest standards of integrity as also erudition.

11. The members of the legal profession are addressed within

the profession as "*learned*" because of their erudition. All lawyers are perceived to be knowledgeable. The members of the legal profession are officers of court, even though they may be representing the interests of their clients. Lawyers are expected to be persons of integrity who assist in the delivery of justice. Even though lawyers may advance the interests of the clients, they are expected to conform to certain ethics. Even though a lawyer may persuade the court to interpret the law and hold in favour of his client, a lawyer is under no obligation to mislead the court or tell a lie in court, even if so instructed by his/or her client. Such is the high standard of ethics of members of the legal profession that even advertising to secure clients is a bar. Campaigning in elections is a bar.

12. The Bar Council of India and the State Bar Councils are entrusted with the solemn duty of streamlining the legal profession and ensuring that the legal profession conforms to the highest standards.

13. Some of the duties and functions of the Bar Councils and in particular the State Bar Councils, include entertaining and determining complaints of misconduct against advocates, and promoting and supporting law reforms.

14. It is, thus, imperative that members of the Bar Council be selected in a fair manner by the process of fair elections and those who are eligible for membership of the Bar Councils be practising advocates of integrity. Thus, a rule which debars advocates facing disciplinary proceedings before a Bar Council, involved in criminal proceedings or guilty of contempt of court from contesting for the membership of a Bar Council can neither be held to be arbitrary nor illegal.

15. Considering the immense responsibility on the Bar Councils to maintain the highest standards of discipline, integrity and even their role in law reforms, it is necessary that the members should collectively have some experience. Therefore, a cut-off on the basis of the number of years of practice cannot also be said to be arbitrary or illegal. The number of vakalatnamas is only to ensure that the advocates concerned are in actual practice. The number of vakalatnamas in a year is only ten, which is less than one vakalatnama in a month.

16. The argument attacking the exclusion of the requirement of vakalatnama for Senior Advocates appears to us to be an argument in

desperation. Even the arguing counsel, in our view, did not urge this seriously enough. Their main grievance was against the cut-off on the basis of number of years of practice. There are well settled rules for designation of advocates as Senior Advocates and it is only advocates with experience and good practice who are, as per norms devised by the High Court, designated senior advocates by the Full Court. The decision of the majority of the Judges prevails. A lawyer's standing in the bar gets legal recognition by his designation as Senior Advocate.

17. It is true as argued by one of the counsel that even before actually being designated as Senior Advocates some lawyers get briefed by other advocates on record who file their vakalatnamas, obviously because of their standing. They may not be able to show sufficient number of vakalatnamas. First of all, no such advocate intending to contest the election is before us. In any case, such advocates have remedy of an appeal to the Bar Council of India under Section 48-A of the Advocates Act, 1961. In such cases, reported decisions and/or orders of Court recording their appearance as arguing counsel may suffice.

18. The petitioner is aggrieved by the condition of eligibility of ten years of legal practice as an advocate to contest the election for

membership of the Bar Council of Tamil Nadu and Puducherry and in particular the requirement of filing atleast 10 vakalats every year for the previous 5 years prior to the date of filing of nomination. The ban on an advocate holding an official position in any political party from contesting the election to membership of the State Bar Council is also under question.

19. Mr.V.Ayyathurai, learned Senior Counsel questioned the power and/or authority and/or jurisdiction of the Special Committee to pass the resolution making the impugned amendments and also argued that the restrictions imposed were arbitrary, discriminatory and without jurisdiction.

20. Emphasizing on the proviso to sub-section (2) of Section 3 of the Advocates Act, 1961, Mr.V.Ayyathurai, argued that, subject to any rules that might be made in this behalf by the Bar Council of India, only one half of the elected members could be persons who had for at least ten years been advocates on a State roll.

21. Mr.Ayyathurai argued that the Special Committee had no power to make continuous practice for a period of ten years as an Advocate the condition precedent for contesting the election, as this

was patently contrary to the proviso to Section 3(2) of the Advocates Act, 1961.

22. Referring to Section 3(4) of the Advocates Act, 1961, Mr.V.Ayyathurai submitted that an advocate could only be disqualified from contesting for membership of a State Bar Council or from being chosen as a Member of such State Bar Council, if he did not possess the requisite qualifications or specified requisite conditions as might be prescribed in this behalf by the Bar Council of India.

23. Mr.Ayyathurai also argued that the constitution of Special Committee by the Bar Council of India is made by way of a temporary measure. The Special Committee is to discharge the day to day functions of the State Bar Council till a duly elected Bar Council is constituted to maintain continuity and to continue proceedings. Its main function is stipulated in sub-section (3) of Section 8-A of the Advocates Act, 1961, under which it might in accordance with such directions as the Bar Council of India may give to it in this behalf, hold election to the State Bar Council within a period of six months from the date of its constitution under sub-section (1) and where, for any reason, the Special Committee was not in a position to conduct election within the said period of six months, the Bar Council of India

might, for reasons to be recorded by it in writing, extend the said period.

24. In the instant case, it appears that the General Body of the Bar Council of India at its meeting held on 21.1.2018 declared the schedule of election for respective Bar Councils, including the Bar Council of Tamil Nadu and Puducherry. It appears that in compliance of the orders of the Supreme Court, the Council resolved and finalized the following schedule for the elections in Tamil Nadu and Puducherry:

25.01.2018	Publication of Notice in Official Gazette and two daily newspapers one in English and another in Regional Language
01.02.2018	Filing of Nominations
15.02.2018	Last date for receipt of nominations
22.02.2018	Last date for withdrawal of nominations
01.03.2018	Publication of final list of candidates
28.03.2018	Date of Election

25. The letter No.BCI:D:357:2018 (Council Election), dated 22.1.2018 from the Bar Council of India to the Secretary, Bar Council of Tamil Nadu and Puducherry is annexed to the typed set of papers filed along with the writ petition.

26. By another letter No.BCI:D:344/2018 (Council), dated 22.1.2018, the Bar Council of India informed all concerned that the General Body of the Bar Council had, at its meeting held on 21.1.2018, appointed Hon'ble Mr.Justice G.M.Akbar Ali, a retired Judge of this Court as Returning Officer to conduct the elections of the Bar Council of Tamil Nadu and Puducherry.

27. On 25.1.2018, the Bar Council of Tamil Nadu and Puducherry, through its Secretary, issued a notice informing all its members of the resolution adopted by the Bar Council of India on 21.1.2018 with regard to fixation of schedule of elections to State Bar Councils. The notice was, inter alia, published in newspapers on 25.1.2018.

28. In the meanwhile, on 24.1.2018, the Special Committee passed the impugned resolution. From the recital of the resolution, it is apparent that the amendments have been made in exercise of powers conferred under Section 8-A, Section 15 and other enabling provisions of the Advocates Act, 1961.

29. Mr.S.R.Raghunathan, learned counsel appearing on behalf of

the Bar Council of India drew the attention of this Court to Section 15(3) of the Advocates Act, 1961 and submitted that the writ petition was premature. Under Section 15(3) of the Advocates Act, 1961, no rules made under Section 15 by a State Bar Council are to have effect unless they have been approved by the Bar Council of India. Mr.Raghunathan submitted that the impugned resolution had been forwarded to the Bar Council of India and a decision was to be taken by the Bar Council of India at its meeting to be held on 04.2.2018. Today, we have been informed that decision has been deferred by the Bar Council of India.

30. Mr.R.Singaravelan submitted that the impugned resolution has been forwarded to the Bar Council of India only by way of abundant caution, and no approval is really necessary. We are, however, unable to accept the above said contention. As observed above, the recital to the impugned resolution itself indicates that the amendments have been made under Section 15 of the Advocates Act, 1961 and Section 15(3) clearly provides for approval of the Bar Council of India. On a combined reading of Sections 15(3) and 28(3) of the Advocates Act, all rules framed by the State Bar Councils are subject to approval of the Bar Council of India.

31. Mr.Ayyathurai, learned Senior Counsel appearing on behalf of the petitioner has questioned the power of the Special Committee to effect the impugned amendments. If this Court accepts the argument of Mr.Ayyathurai that the Special Committee does not have the power to bring about the impugned amendments, the impugned amendments would be invalid, null and void. The approval of the Bar Council of India cannot cure inherent invalidity. If this Court were to hold that the impugned amendments were invalid, null and void for the reasons argued by Mr.Ayyathurai, there could be no question of giving effect to the amendments. The Bar Council of India would possibly have to frame similar rules, if it deemed it appropriate to do so.

32. Section 15 of the Advocates Act, 1961 empowers a Bar Council, that is, the Bar Council of India and State Bar Councils, to make rules to carry out the purposes of Chapter II of the Advocates Act, 1961. Such rules may provide for the matters prescribed in subsection (2) of Section 15, such as the election of members of the Bar Council by postal ballot, the preparation and revision of electoral rolls and the manner in which the result of election shall be published; the manner of election of the Chairman and the Vice Chairman of the Bar Council; the manner in which doubts and disputes as to the validity of

an election to the Bar Council or to the office of the Chairman or Vice Chairman shall be finally decided; the filling of casual vacancies in the Bar Council; the powers and duties of the Chairman and the Vice Chairman of the Bar Council, etc. The power to frame rules under Section 15 is wide and the matters specified in sub-section (2) of Section 15 are illustrative and not restrictive. The power of the Bar Council of India and the State Bar Councils to frame Rules are concurrent under Section 15 of the Advocates Act, 1961.

33. Mr.Ayyathurai, however, argued that Section 49 of the Advocates Act, 1961 empowered the Bar Council of India to make rules for discharging its functions under the Advocates Act, particularly prescribing the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council, including the qualifications or disqualifications of voters, and the manner in which an electoral roll of voters might be prepared and revised by the State Bar Council and also to prescribe qualifications for membership of a Bar Council and the disqualifications for such membership. Mr.Ayyathurai submitted that the power to frame rules prescribing qualifications for membership of a Bar Council lay with the Bar Council of India and not the State Bar Council.

34. In support of his submissions, Mr.Ayyathurai cited the judgments of the Supreme Court in *Bar Council of Delhi and another v. Surjeet Singh and others*, reported in AIR 1980 SC 1612 and *Bar Council of Maharashtra and Goa v. Manubhai Paragji Vashi*, reported in (2012) 1 SCC 314.

35. In *Bar Council of Delhi*, supra, the Supreme Court held that no rules made under Section 15 of the Advocates Act, 1961 were to have effect, unless approved by the Bar Council of India, and the approval of the Bar Council of India could only make rules made by the State Bar Council valid and effective only if the State Bar Council was competent to make those rules, but not otherwise. Mere approval by the Bar Council of India of an *ultra vires* rule framed by the State Bar Council cannot make the rule valid.

36. In *Bar Council of Maharashtra and Goa*, supra, the Supreme Court followed its earlier judgment in *Bar Council of Delhi*, supra, and held that approval of the Bar Council can make a rule made by the State Bar Council valid and effective, only if the State Bar Council is competent to make the rule and not otherwise. The Supreme Court held:

"14. It will be clear from the language of Section 49(1)(a) of

the Act that the Bar Council of India has the power to make rules prescribing the conditions subject to which an Advocate may be entitled to vote at an election to the State Bar Council, including the qualification or disqualification of voters, and the manner in which the Electoral Roll of voters may be prepared and revised by the State Bar Council. In exercise of its power the Bar Council of India has made rules in Part III, Chapter - I of the Bar Council of India Rules, 1975.

15. Rule (1) and 2(h) of these rules are quoted hereinbelow:

'1. Every advocate whose name is on the electoral roll of the State Council shall be entitled to vote at an election.

2. The name of an advocate appearing in the state roll shall not be on the electoral roll, if on information received or obtained by the State Bar Council concerned on the basis of which it is satisfied that

xxx

(h) if he has not paid the subscription under Rule 40 Chapter-II, Part VI of the Rules and obtained receipt from the State Bar Council;'

16. The language of Rule (1) is clear that every Advocate whose name is on the Electoral Roll of the State Council shall be entitled to vote at an election. Rule 2(h), however, states that the name of an Advocate appearing in the State Roll shall not be on the Electoral Roll if he has not paid the subscription under Rule 40, Chapter - II, Part VI of the

Rules and obtained receipt from the State bar Council. The language of Rule 2(h) is therefore verbatim the same as Rule 6(h) of the State Bar Council Rules made by the State Bar Council and lays down a condition subject to which an Advocate will be entitled to vote inasmuch as it provides that he will be entitled to vote provided he has paid his subscription. The State Bar Council could not have made such a provision in Rule 6(h) of the State Bar Council Rules in exercise of its powers under Section 15 of the Act and such a provision could only be made by Bar Council of India under Section 49(1)(a) of the Act. The High Court was, therefore, right in holding that Rule 6(h) of the State Bar Council Rules was ultra vires Section 49(1)(a) of the Act. However, as Rule 2(h) of the Bar Council of India Rules makes exactly the same provision, names of the Advocates who had not paid the subscription had to be deleted from the electoral roll.”

37. On the other hand, Mr.R.Singgaravelan appearing on behalf of the Special Committee strenuously contended that the Bar Council of India and the State Bar Councils had concurrent power to frame rules prescribing qualifications for membership of a Bar Council and the disqualifications for such membership. Had the Bar Council of India framed any specific rules prescribing qualifications for membership of a Bar Council, those Rules would have prevailed. However, the Bar Council of India has not framed any rules.

38. Mr.R.Singgaravelan is, in our view, right in his submission that the Bar Council of India and the State Bar Councils have concurrent power to frame rules prescribing qualifications for membership of a Bar Council and the disqualifications for such membership. Section 49 of the Advocates Act, 1961 is an enabling provision which specifically empowers the Bar Council of India to make Rules for discharging its functions under the Advocates Act, 1961, including the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council, the qualifications or disqualifications of voters and the manner in which the electoral roll of voters might be prepared and revised by a State Bar Council. It can also make rules prescribing qualifications for membership of a Bar Council and the disqualifications for such membership. However, as rightly pointed out by Mr.R.Singgaravelan, the Bar Council of India has not framed any rules prescribing qualifications for membership of State Bar Councils or disqualifications for such membership. The amendments are, therefore, not in contravention of and/or repugnant to any rules framed by the Bar Council of India.

39. As argued by both Mr.Ayyathurai and Mr.R.Singgaravelan, a judgment is a precedent for the issue of law that is raised and decided. Words and sentences in a judgment cannot be read out of context. A

judgment has to be construed in the context of the facts in which the judgment was rendered taking into consideration the provision of statute in issue.

40. Both in *Bar Council of Delhi, supra*, and *Bar Council of Maharashtra and Goa, supra*, the Supreme Court was considering the rules enacted by the State Bar Councils which disqualified advocates from voting. The courts were not dealing with rules of eligibility for the purpose of contesting elections.

41. Section 15 of the Advocates Act, 1961 confers power on a Bar Council and/or in other words, concurrent powers on the Bar Council of India and State Bar Councils to make rules to carry out the purposes of Chapter II of the Advocates Act read with Section 6 of the said Act, which enumerates the functions of State Bar Councils and in particular, Section 6(1)(g) and 6(1)(h). A State Bar Council has the power to frame rules for election of its members and for all other functions conferred on it by the Advocates Act, 1961.

42. Section 49 of the Advocates Act, 1961 enumerates the general powers of the Bar Council of India to make rules for discharging its functions. The aforesaid rules "**may**" prescribe the

conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council, including the qualifications or disqualifications of voters and the manner in which an electoral roll of voters may be prepared and revised by a State Bar Council.

43. The power conferred on the Bar Council of India under Section 49 of the Advocates Act, 1961 does not denude the State Bar Council of power to frame rules. However, the power of the State Bar Council to frame rules is subject to the condition that the Rules made by a State Bar Council are to have effect only if they have been approved by the Bar Council of India and in case of any inconsistency and/or repugnancy between the rules framed by the State Bar Council and the Bar Council of India, the rules framed by the Bar Council of India are to prevail.

44. Section 49(1)(ab) of the Advocates Act, 1961 enables the Bar Council to frame rules prescribing qualifications for membership of a Bar Council and the disqualifications for such membership. However, as pointed out by Mr.R.Singgaravelan, no rules have been framed under Section 49(1)(ab) and as such, there is no question of any inconsistency.

45. Both in *Bar Council of Delhi, supra*, and *Bar Council of Maharashtra and Goa, supra*, the Supreme Court set aside rules disqualifying voters upon reference to Section 3(4) of the Advocates Act, 1961, which provides that an advocate shall be disqualified from voting at an election under sub-section (2) or for being chosen as, and for being, a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed by the Bar Council of India, and subject to any such rules that may be made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

46. As stated above, Rule 1 of Chapter I of Part III provides that every advocate whose name is on the electoral roll of the State Bar Council shall be entitled to vote at an election. The name of an advocate appearing in the State Roll can only be excluded from the electoral roll, in circumstances specified in Rule 2. Rule 3 makes it clear that subject to the provision of Rule 2, the name of every advocate entered in the State roll shall be entered in the electoral roll of the State Council. The rules framed by the concerned Bar Councils prescribing rules disqualifying votes was found to contravene Section 49 read with Section 3(4) of the Advocates Act, 1961. Be it noted that in *Bar Council of Delhi, supra*, the Supreme Court also noted that the

Bar Council of India and the State Bar Councils had concurrent powers to frame rules, but the rules framed by a State Bar Council could not take effect unless approved by the Bar Council of India.

47. In *Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and others*, reported in (2011) 9 SCC 573, the Supreme Court held that the provisions conferring power on the State Bar Councils to frame rules had to be given a wide scope. The Court should give such statutory provision a purposive construction to perpetuate the object of the Act, while ensuring that such rules framed were within the field circumscribed by the parent Act.

48. In *Pratap Chandra Mehta*, supra, the issue was whether despite the absence of the enabling provisions in the principal statute, namely, the Advocates Act, empowering subordinate State Bar Councils to enact provisions for removal of the office bearers of the State Bar Councils by 'no confidence motions', such power could be read into the general clause of Section 15(1) of the Advocates Act, 1961, and whether Rules 121 and 122A of the M.P. Rules are invalid for want of prior approval from the Bar Council of India? The Supreme Court held that Section 15(1) of the Advocates Act, 1961 was of wide amplitude and there was no reason to restrict the scope of the

rule making power under Section 15(1), so as to exclude removal on a vote of no-confidence from the ambit of the rule making power conferred by that provision. The Supreme Court observed as under:

"21. The functions of the State Bar Council and the Bar Council of India are prescribed under Sections 6 and 7 of the Advocates Act. Besides admitting persons as advocates on its rolls [Section 6(a)] and maintaining such rolls [Section 6(b)], it is for the State Bar Councils to provide for the elections of its members [Sections 6(g)] and to perform all other functions conferred on it by or under this Act [Section 6(h)]. Section 6(i) of the Advocates Act allows the State Bar Councils to do all other things necessary for discharging their functions.

22. Functions of the Bar Council of India are of a wider spectrum than that of the State Bar Council. Bar Council of India has to lay down standards of professional conduct and etiquette for the advocates, the procedure to be followed in Disciplinary Committees and to safeguard the rights, privileges and interest of advocates. The Bar Council of India may, under Section 7(k) of the Advocates Act, provide for the election of its members. This provision is identical to Section 6(g) of the Advocates Act. Similarly, Sections 6(h) and 6(i) are equivalent to Sections 7(l) and 7(m) of the Advocates Act.

...

25. Section 15 of the Advocates Act is one of the most relevant provisions, which needs to be examined by this

Court, as according to the contention raised by the Appellants, Rule 122A is ultra vires Section 15 of the Advocates Act. Section 15 of the Advocates Act gives power to the Bar Council to make rules to carry out the purposes of 'this Chapter'. 'This Chapter' means Chapter II of the Advocates Act. Inter alia, this Chapter deals with constitution, election and functions of the Bar Councils.

....

46. As already noticed, the thrust of the challenge to the vires of Rule 122A is primarily that Section 15 of the Advocates Act does not contemplate the framing of such a Rule by the State Bar Councils. Rule 122A is stated to be ultra vires Section 15 of the Advocates Act and, it is argued, that the introduction of such provision suffers from the vice of excessive delegation. Section 15 of the Advocates Act empowers the State Bar Councils to frame Rules to carry out the purposes of this Chapter. 'This Chapter' obviously means Chapter II of the Act. Let us examine what Chapter II contains.

47. Under Section 6(1)(g), the function of the Bar Council is to provide for the election of its members and under Sections 6(1)(h) and 6(1)(i), the State Bar Council has to perform all other functions conferred on it by or under this Act and to do all other things necessary for discharging the aforesaid functions.

*48. In our view, Sections 6(1)(h) and 6(1)(i) have to be read and interpreted conjointly. **We see no reason why the expression 'manner of election of its members' in Section 6(1)(g) should be given a restricted meaning,***

particularly in light of Sections 6(1)(h) and 6(1)(i). The responsibility of the State Bar Councils to perform functions as per the legislative mandate contained in Section 6 of the Act is of a very wide connotation and scope. No purpose would be achieved by giving it a restricted meaning or by a strict interpretation. The State Bar Council has to be given wide jurisdiction to frame rules so as to perform its functions diligently and perfectly and to do all things necessary for discharging its functions under the Act. The term of office of the members of the State Bar Council is also prescribed under Chapter II, which shall be five years from the date of publication of the result of the election. On failure to provide for election, the Bar Council of India has to constitute a special committee to do so instead.”

(emphasis supplied)

49. Mr.R.Singgaravelan rightly argued that in Bar Council of Delhi, supra, and Bar Council of Maharashtra and Goa, supra, the Supreme Court was deciding the question of disqualification of voters and held that State Bar Councils have no power to frame rules disqualifying voters and such rules without power could not be validated by approval of the Bar Council of India in view of the bar of Section 3(4) of the Advocates Act, 1961.

50. Rule 1 of Chapter I in Part III of the Rules framed by the Bar Council of India mandates that every advocate whose name is on the electoral roll of the State Council shall be entitled to vote at an election and Rule 3 mandates that subject to the provisions of Rule 2, the name of every advocate entered in the State roll shall be entered in the electoral roll of the State Council.

51. On a conjoint reading of Rules 1, 2 and 3, every advocate entered in the State roll is, as of right, entitled to be entered in the electoral roll and to vote at an election subject to the disqualifications stipulated in Rule 2. The language and tenor of Rules 1, 2 and 3 leave no room for exclusion of an advocate from the electoral roll or from allowing him to vote under any other Rule. These Rules are mandatory.

52. In the later decision of *Pratap Chandra Mehta*, supra, the Supreme Court was dealing with a rule framed by a State Bar Council in relation to membership and/or removal of an elected member from the office of Chairman, Vice Chairman. The Supreme Court clearly held that there was no reason why the expression "*manner of election of its members*" in Section 6(1)(g) should be given a restricted meaning. The responsibility of the State Bar Councils to perform

functions as per the legislative mandate was of a very wide connotation and scope. The State Bar Council had to be given wide jurisdiction to frame rules so as to perform its functions diligently and perfectly and do all things necessary for discharging its functions under the Act. We are, thus, constrained to hold that the State Bar Councils have the power to frame rules prescribing the eligibility for contesting elections to the membership of the Bar Council.

53. As observed above, a minimum 50% approximately of the membership has to be reserved for advocates with continuous ten years of practice. That is, the minimum under the proviso to Section 3(2)(b) of the Advocates Act, 1961. No State Bar Council can frame rules decreasing that percentage. However, there is no upper limit and there is no bar in law to framing a rule which makes continuous practice of ten years as advocate the eligibility criteria for any kind of membership in the State Bar Council.

54. A perusal of Section 8-A of the Advocates Act, 1961 makes it abundantly clear that the Special Committee constituted under the said Section has all powers of the State Bar Council mentioned in sub-sections (a) to (c) of sub-section (2) of Section 8-A of the Advocates Act, 1961. We are unable to hold that the Special Committee does not

have the competence to frame rules. This proposition finds support from the decision of a Division Bench of Kerala High Court in *Bar Council of Kerala v. T.D.Parameswaran Unni*, reported in 2010 (2) KHC 189. The Division Bench held that merely because earlier resolution had been taken by the Special Committee, the subsequent elected Committee of the Bar Council had no authority to discard such decision. The Special Committee is empowered to exercise all the powers which the Bar Council of Tamil Nadu and Puducherry are empowered to exercise. However, any rules framed would only take effect on approval of the Bar Council of India. Needless to mention that the power of the Bar Council of India to approve or disapprove would include the power to approve or disapprove partially and/or with modifications.

55. In course of hearing of this public interest litigation, for the ends of justice, we heard numerous other advocates, including advocates who had filed writ petitions in other courts, although they were not formally impleaded as respondents, they were given the opportunity to make submissions on questions of law.

56. One of the advocates, Mr.G.Murugendran, contended that he was desirous of contesting the elections, but is now disqualified, as he

does not have the requisite ten years of practice. He falls short of ten years by a few months. Learned counsel has very competently argued the case. Though he has practice of less than ten years, his competence appears to be exceptional. However, some experience is definitely necessary considering the importance of the functions of Bar Councils and the objects for which the Bar Councils have been constituted. There would have to be a cut-off somewhere for experience. If the cut-off were five years, those with four years of practice would feel hurt.

57. Similarly, disqualification of those convicted of offences and/or found guilty of contempt of court is also not discriminatory or arbitrary. Be it noted that such conditions are there in case of membership of many other professional bodies and also for employment.

58. Mr.P.Puhazh Gandhi submitted that the Bar Council of India has framed rules relating to electoral roll, disqualification of membership and vacation of office. Referring to Rules 8 and 9 of Chapter I of Part III of the Bar Council of India Rules, he submitted that the nomination of any person who at the date of scrutiny thereof is subject to any of the disqualifications referred in Rule 2, shall be

rejected. Rule 8 operates after the nomination is filed and Rule 9 provides that the rules shall govern elections of all State Bar Councils and all State Bar Councils holding the elections of their members shall **“prepare their Electoral Rolls in terms of these rules”**. In our view, Rules 8 and 9 do not debar the State Bar Councils from framing of eligibility rules, as observed above.

59. The writ petition, therefore, fails. Needless to mention that the rules will only take effect subject to approval by the Bar Council of India. Since the amended rules have not yet been approved by the Bar Council of India, candidates with less than ten years of practice may file their nominations without prejudice to the rights and contentions of either party. However, the filing of nominations would not confer any right on the candidate and in the event the rules are ultimately approved by the Bar Council of India, the deposit made by the candidates concerned shall be refunded to them with utmost expedition. No costs. Consequently, W.M.P.Nos.2553 and 2554 of 2018 are closed.

60. Mr.P.Puhazh Gandhi, learned counsel has raised a question as to the stage at which a candidate may be disqualified on the ground of misconduct – whether it would be merely on receipt of a complaint

and/or upon reference to the Disciplinary Committee of the Bar Council. Mr.R.Singaravelan submitted that disqualification will only apply once the matter is before the Disciplinary Committee. The said submission is recorded.

(I.B., CJ.) (A.Q., J.)
05.02.2018

Index : Yes
Internet : Yes

Note to Registry:

Issue order copy today

bbr/sasi

To:

- 1.The Secretary,
Bar Council of India,
No.21, Rouse Avenue Institutional Area,
New Delhi – 110 002.
- 2.The Secretary,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus,
Chennai – 600 104.
- 3.The Special Committee,
Bar Council of Tamil Nadu & Puducherry,
High Court Campus,
Chennai – 600 104.

(54)

THE HON'BLE CHIEF JUSTICE
AND
ABDUL QUDDHOSE.J

(sasi)

W.P.No.2041 of 2018

05.02.2018