

(2013) 11 AP CK 0075

Andhra Pradesh High Court

Case No: Writ Petition No. 24758 of 2013

G. Bala Subrahmanyam and
Another

APPELLANT

Vs

Bar Council of Andhra Pradesh
and Others

RESPONDENT

Date of Decision: Nov. 7, 2013

Citation: (2014) 2 ALD 101 : (2014) 1 ALT 264

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: M. Sudheer Kumar, for the Appellant; G.M. Mohiuddin for Respondent No. 1
and Sri V.R. Machavaram, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This writ petition is filed for a mandamus to set aside proceedings in Roc. No. 534/2013, dated 20.08.2013, of respondent No. 1. I have heard Sri M. Sudheer Kumar, learned counsel for the petitioners; Sri G.M. Mohiuddin, learned Standing Counsel for respondent No. 1, and the learned counsel representing Sri V.R. Machavaram, learned counsel for respondent No. 3.

2. The petitioners are the members of respondent No. 3-Bar Association, Nellore. Respondent No. 3 was registered under the provisions of the Societies Registration Act, 1860 in the year 1917 and it is presently governed by the provisions of the A.P. Societies Registration Act, 2001 (for short "the Societies Registration Act"). As per the byelaws of respondent No. 3, elections to the Executive Committee shall be held once in a year. The petitioners, however, pleaded that the elected body of respondent No. 3 has not conducted elections for more than three years. The petitioners further pleaded that respondent No. 2, who was appointed by

respondent No. 3 as an Election Officer, has issued an election notification on 23.07.2013 proposing to conduct elections to the Executive Committee of respondent No. 3. The following was the election schedule published by respondent No. 2:

Receipt of nominations : From 13.08.2013 to 19.08.2013 upto 5.00 pm

Scrutiny & publication of list : 20.08.2013

Withdrawals : 21.08.2013 upto 12.00 noon

Final list publication : 21.08.2013

Election : 30.08.2013 as per the Schedule existing

3. The petitioners pleaded that in pursuance of the said election notification, the election process was commenced and several members have filed their nominations, that scrutiny of the nominations was held on 12.08.2013 and that after scrutiny, valid nominations were published. That for the offices of the General Secretary and Treasurer, one valid nomination each was received, that as there was no valid nomination for the office of the Vice President, respondent No. 2 announced that fresh notification will be issued for the said post. The petitioners claimed that they have filed their nominations for the offices of Secretary and Treasurer respectively and that as declared by respondent No. 2, there were no other valid nominations in respect of the said offices, and therefore they are deemed to have been elected as such.

4. It appears, certain members of respondent No. 3-Bar Association have sent a complaint to respondent No. 1 alleging commission of several irregularities by respondent No. 2 in the election process. The Secretary of respondent No. 1 has addressed the impugned proceedings to one E. Venkata Rami Reddy, Secretary of respondent No. 3-Bar Association, wherein it was informed that the members of the Executive Committee of respondent No. 1-Council has considered the complaint signed by 267 advocates of respondent No. 3 alleging commission of many irregularities in the process of elections to the Bar Association and that the Executive Committee of respondent No. 1 has resolved to inform the Secretary of respondent No. 3 to stop further elections to the Bar Association and to appoint an ad hoc Committee to conduct elections to the Bar Association. The Secretary further stated in the communication that he was informed by the Chairman of respondent No. 1 that in view of adoption of common byelaw by respondent No. 3, it has to follow the same and elections have to be conducted as per the byelaws. Accordingly, the Secretary of respondent No. 3 was asked to stop all further proceedings while informing that the Bar Council will constitute an ad hoc Committee for holding elections and the particulars thereof will be intimated in short time. Feeling aggrieved by the said communication, the petitioners filed this writ petition.

5. Various pleas have been raised by the petitioners on the matters such as non-registration of the revised common byelaws. However, at the hearing, Sri M. Sudheer Kumar, learned counsel for the petitioners, confined his submissions to the lack of jurisdiction of respondent No. 1 in interdicting the election process after its commencement. The learned counsel argued that even assuming that the common byelaws bind respondent No. 3, respondent No. 1 can interfere in the matter of election strictly in accordance with byelaw No. 24 and that as the circumstances envisaged in the said byelaw did not exist in the present case, the respondent No. 1-Bar Council is denuded of its jurisdiction to interfere with the election process.

6. Sri G.M. Mohiuddin, learned Standing Counsel for respondent No. 1, opposed the above submission. According to him, as the elections were not held before the expiry of one year term of the previous Managing Committee, respondent No. 1 has stepped in on coming to know about the said fact and has accordingly issued the impugned proceedings.

7. No counter affidavit has been filed on behalf of respondent No. 3. In order to determine the jurisdiction of respondent No. 1 to interfere in the election process, it is necessary to refer to byelaw No. 24 based on which respondent No. 1 has initiated action by issuing the impugned proceedings. The said byelaw reads as under:

24. POWERS OF STATE BAR COUNCIL:

In case Elections are not held within the stipulated time for any reason whatsoever the General Secretary shall intimate the same to the Bar Council and the Executive Committee of the Bar Council either suo-motu or on any complaint shall appoint an Adhoc-Committee from Senior members of the Association to manage the affairs of the association and to conduct the Election as per the schedule fixed by the State Bar Council. In such an event, the outgoing body shall duly handover the charge to the Adhoc-Committee.

8. The learned Standing Counsel for respondent No. 1 has fairly conceded that except byelaw No. 24, there is no other byelaw under which respondent No. 1 can exercise its jurisdiction or control over the affairs of respondent No. 3-Bar Association. As per the above re-produced byelaw, the only situation in which respondent No. 1 can interfere is where the elections are not held within the stipulated time for any reason whatsoever, either on the intimation given by the General Secretary or any complaint or suo motu, the Executive Committee of the Bar Council shall appoint an ad hoc Committee from the senior members of the Association to manage the affairs of the association and to conduct the elections as per the schedule fixed by the Bar Council. In such event, the out going board will duly handover charge to the ad hoc Committee.

9. In the backdrop of this byelaw, it is necessary to refer to the reasons contained in the proceedings on which respondent No. 1 has interfered with the election process. It is stated in the impugned communication that 267 advocates of respondent No.

3-Bar Association sent a complaint to respondent No. 1 alleging that many irregularities contrary to the byelaws were committed in the process of conducting elections and that therefore, the Executive Committee has decided to stop all further proceedings of the elections to the Bar Association and appoint an ad hoc committee to conduct elections.

10. A copy of the complaint sent by the alleged members of the Bar has been filed along with the counter affidavit of respondent No. 1. A cursory glance at the complaint would show that while there was no complaint against non holding of the elections for three years, all the allegations centered around the various irregularities committed by respondent No. 2, Election Officer, in the process of conducting elections. Thus, the only reason on which respondent No. 1 has interfered with the election process was the alleged illegalities committed by respondent No. 2 while conducting elections.

11. In my opinion, if any illegalities have been committed during the election, the same gives rise to an election dispute. Byelaw No. 23 clearly envisaged such election dispute and also an appellate remedy. Having regard to the limited jurisdiction conferred on respondent No. 1 by byelaw No. 24, as rightly pointed out by the learned counsel for the petitioners, it has no power or authority to interfere with the election process after the same is commenced. It is neither stated in the impugned proceedings nor it is the pleaded case of respondent No. 1 that it has exercised its power under byelaw No. 24 as no elections were conducted for three years and that therefore having regard to the felt need, it has interfered by appointing an ad hoc committee for holding elections.

12. On these incontrovertible facts, I am of the opinion that the circumstances envisaged in byelaw No. 24 did not exist for respondent No. 1 to interfere with and interdict the election process which was admittedly commenced and was half way through when the impugned proceedings were issued.

13. The learned Standing Counsel for respondent No. 1 submitted that as the elections were not held within one year, the election process commenced by the previous Executive Committee whose term has expired long back, cannot be recognised as per byelaw No. 24 and a situation has arisen for the Bar Council to taken note of the fact that since the elections were not held within the stipulated time, it has sought to appoint an ad hoc committee and hold elections.

14. This submission is not supported either by the impugned proceedings or by the counter affidavit. It is not the plea of respondent No. 1 that as the election was not held for a period of three years, the outgoing body has no power or authority to issue election notification and conduct elections. The law is well settled that any order passed by a statutory or administrative authority needs to be supported by the reasons contained therein (See [Commissioner of Police, Bombay Vs. Gordhandas Bhanji](#), and [Mohinder Singh Gill and Another Vs. The Chief Election](#)

Commissioner, New Delhi and Others,

15. As noted hereinbefore, the only ground on which respondent No. 1 intervened in the election process was the alleged illegalities committed by respondent No. 2 in the process of holding elections. Such a ground completely falls outside the scope of byelaw No. 24.

16. The learned Standing Counsel has submitted that while byelaw No. 23 envisages constitution of a committee consisting of three members by the Bar Association on the date of appointment of election officer for deciding the election dispute, no such committee was constituted by respondent No. 3 and therefore, the aggrieved parties will be deprived of their right to raise the election dispute. In my opinion, it is for the aggrieved party to work out his remedies either under the byelaws or if the same is not possible u/s 23 of the Societies Registration Act.

17. On the above analysis, I am of the opinion that interference with the election process of respondent No. 3 by respondent No. 1 is wholly without jurisdiction and the impugned proceedings are accordingly set aside. Respondent No. 2 is directed to resume the election process from the stage where it was stopped. If any person is aggrieved by the election result, he shall be free to avail appropriate remedy in accordance with law.

18. The writ petition is accordingly allowed. As a sequel to disposal of the writ petition, W.P.M.P. Nos. 30513 and 30514 of 2013 shall stand disposed of as infructuous.