
(2009) 1 PLJR 260

Patna High Court

Case No: CWJC No. 4310 of 2008

Praveen Kumar

APPELLANT

Vs

The Union of India and
Others

RESPONDENT

Date of Decision: July 10, 2008

Acts Referred:

- Advocates Act, 1961 - Section 8(A), 8A

Citation: (2009) 1 PLJR 260

Hon'ble Judges: Ajay Kr. Tripathi, J

Bench: Single Bench

Advocate: B.K. Choudhary and A.S. Singh, Praveen Kumar, S.K. Ghosh, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Learned counsel appearing in person is given liberty to delete paragraph No. 11 of the rejoinder affidavit filed in the case. The writ application has been filed by the Advocate of this Hon"ble Court challenging a notification dated 3.3.2008. By virtue of this notification, the Bar Council of India while exercising power u/s 8(A) of the Advocates Act, 1961, has constituted a Special Committee of three persons because the election to the body which is Bihar State Bar Council (B.S.B.C.) was not held within the statutory period. Petitioner has a grievance especially on the nomination of two persons in the Special Committee who were members of the outgoing council. There cannot be any dispute that the Advocate General shall have to be one of the persons nominated in this regard ex-officio but, nomination of two other persons who too had a duty and moral responsibility to see the election is held within time cannot be made part and parcel of the Special Committee. It would amount to conferring a recognition despite failed responsibility of holding the next election within the time frame.

2. No doubt the powers u/s 8A has been given to the Bar Council of India (B.C.I.) to nominate any advocate who is on the roles of the Bar Council of the State but, it is not understood as to how the Bar Council of India understood the same as a provision to mean that the said nomination shall be restricted to persons or members who were part and parcel of the outgoing Bar Council.

3. A decision of the Hon"ble Supreme Court has been brought to my notice reported in the case of Anup Singh vs. Bar Council of India and Another, 2008(2) BBCJ 126. The Court does not feel very happy after reading the same. Supreme Court has categorically held that at no occasion any election to a Bar Council is held in time. In most of the occasions the statutory life of the Bar Council has been extended by another six months by not holding an election well within time under the statute. This seems to be universal phenomenon across the country. This by itself may cast some doubt over the bona fide of the functioning of such body in matters of holding election within time.

4. It does not enthuse this Court to enter into such dispute between lawyers on the judicial side. A body consisting of eminent and seasoned counsel should be able to handle their affairs in conformity with the law but, since there seems to be a failure on their part which is statutory, the matter has travelled to the Court. The Court has no option but to resolve the issues in this regard.

5. One of the member nominated on the Special Committee namely Shri Suraj Narayan Sinha, Sr. Advocate, has since the date of notification has come to occupy the post of Chairman of Bar Council of India. This is a development which has forced the hand of the said advocate how to opt out of the Special Committee. In this regard a communication dated 30.6.2008 has been brought to my notice. It is a communication with a request to accept his resignation by the Special Committee. A request has been made that it should be done by circulation instead of holding a meeting on the next appointed date.

6. In view of the communication of the Counsel, it is directed his resignation be accepted by the Special Committee by circulation within a week. The Secretary, Bar Council of India is hereby further directed that he shall take steps for filling up the two posts of Special Committee excepting the Advocate General by making fresh nominations. Nomination shall not include any person who was part and parcel of the outgoing State Bar Council of Bihar. The second exercise should be done by the Bar Council of India preferably within two weeks so that the object and purpose of appointing a Special Committee for holding election to the body at the earliest, in the interest of the legal fraternity is not jeopardized in any manner or delay. The above direction would be in conformity with the direction/decision rendered by the Hon"ble Supreme Court in the case of Anup Singh (supra).

7. The writ application stands disposed of to the extent indicated above. Let a copy of this order be handed over to Mr. S.K. Ghosh appearing on behalf of the Bihar State Bar Council and Mr. Abhay Shankar Singh counsel representing Bar Council of India for

communication. The writ application is allowed.