

Before Justice M.M.S.Bedi, J.

SATPAL WADHAWAN — *Petitioner*

versus

BAR COUNCIL OF PUNJAB AND HARYANA — *Respondents*

CWP No.225 of 2017

March 18, 2017

Constitution of India, 1950 – Art. 226 and 227 – Bar Associations (Constitution and Registrations), Rules, 2015, Rule 11 – Invalidation of nomination papers after conduct of election – Petitioner contested for post of President in election of District Bar Association, Kapurthala – Nomination filed and security deposited vide cheque on 12.12.2016 – Nomination scrutinized on 13.12.2016 – Cheque deposited on 12.12.2016 returned on 17.12.2016 on account of alteration/require drawer authentication – Election held on 22.12.2016 – Petitioner declared elected on 22.12.2016 – Objection regarding candidature of Petitioner filed on 22.12.2016 reporting dishonor of cheque – Objection forwarded to Bar Council of Punjab and Haryana returned with direction to returning officer to decide the issue – Returning officer rejected nomination of Petitioner on 27.12.2016 and declared Respondent No. 3 as elected – Challenged - Held, action of returning officer in entertaining objection after election is malafide and illegal – Petitioner could have been granted time to remove the defect – order passed by Bar Council of Punjab and Haryana also not sustainable – Petitioner held to have been elected – Petition allowed.

Held that, it is important to note here that the cheque of the petitioner has not been dishonoured for want of funds as per the memo of the bank annexure P-6. It was unpaid on account of “alteration require drawer authentication”. Photocopy of the cheque reflects that there is a slight overwriting on the figure ‘six’. The certificate annexure P-8, Balance Confirmation Certificate, indicates that there was a credit balance of more than Rs.85000/- as on December 22, 2016. In such case the nomination of the petitioner cannot be held to be invalid. The circumstances mentioned hereinabove clearly indicate that the result had been declared on December 22, 2016 without there being any objections pertaining to the defect, if any, in the nomination despite the fact that the information had already been received from the bank on December 17, 2016 regarding the defect in the cheque. Even if it is

presumed that result was not declared on December 22, 2016, even then the Returning Officer was not competent to make a reference regarding invalidity of nomination papers on account of irregularity of security as not only the election process had been initiated but it had already culminated in the casting of votes. It is apparent that result having been declared and petitioner having been declared as winner, the application annexure P-1 could not have been entertained by the Returning Officer.

(Para 14)

Further held that, the delay regarding scrutiny of the nomination of the petitioner is malafide. The petitioner could have easily been granted time to remove the defect by certifying the correction on the over-writing which has been made by him. The action of the Returning Officer in entertaining the objection after the election is mala fide and illegal action warranting interference by this Court. The order annexure P-9 dated December 26, 2012 which has been passed by the Bar Council of Punjab and Haryana High Court declaring the nomination of the petitioner bad is also not sustainable. The order passed by the Returning Officer on December 27, 2016 disqualifying the petitioner and rejecting his nomination is also null and void, order having been issued after declaration of result.

(Para 15)

Further held that, in view of the above, the writ petition is allowed. The orders Annexures P-9 and P-10 are set aside. The petitioner is held to have been elected without prejudice to the right of respondent No.3 to challenge the election of the petitioner under the Bar Associations (Constitution and Registrations) Rules, 2015. The period of limitation to file election petition will commence from the date of receipt of certified copy of the order by the parties. Nothing said in the above said judgment will prejudice the rights of the parties, in election petition, if any filed by respondent No.3.

(Para 16)

I.P.S. Kohli, Advocate
for the petitioner.

Gaurav Sharma, Advocate
for respondent No.1.

Jagjit Singh, Advocate
for respondent No.2.

H.S. Dhandi, Advocate
for respondent No.3.

M.M.S. BEDI, J. oral

(1) The petitioner contested the election of District Bar Association, Kapurthala for the post of President against respondent no.3. Vide order Annexure P-10, dated 27 December, 2016, the Returning Officer, Mr. Jugraj Singh held that in view of provisions of Section 34 of the Representation of the Peoples Act, 1951, the deposit of the money by the petitioner vide a cheque being not proper and the petitioner having failed to fulfill the condition of nomination, his nomination papers would be deemed to have been rejected. As a consequence of said observation respondent no.3-Harjit Singh Sandhu, the other sole contestant, was declared as elected President of the District Bar Association, Kapurthala.

(2) The petitioner has challenged the above said order Annexure P- 10, on the ground that the nomination papers of the petitioner have been rejected by the Returning Officer after the declaration of result with a mala fide intention. The petitioner also seeks a direction for quashing of the order dated 26th December, 2016-Annexure-P-9, passed by respondent no.1, Bar Council of Punjab and Haryana at Chandigarh, whereby it has been directed that the Returning Officer, District Bar Association, Kapurthala, respondent no.2, would decide the issue of rejection of nomination form of the petitioner.

(3) The brief facts, which are relevant for the decision of the present writ petition, are that the petitioner was elected as President by a declaration Annexure-P-3 which was displayed on the notice board of the District Bar Association, Kapurthala on 22.12.2016. The vernacular of Annexure P-3, appended with the petition, is a hand written document signed by respondent No.2, which reads as follows:-

Total Votes 268
Votes Polled 242
Cancelled 01
Satpal Wadhawan 123

H.S. Sandhu 118
Satpal Wadhawan has won by five (05) Votes
Sd/- Sd/-
A.R.O. R.O.
22.12.16

(4) Down below the above said declaration, there is a note appended which reads as follows:-

“A member of DBA, Kapurthala has given written objection over the candidature of Satpal Wadhawan today reporting dishonour of cheque given by Satpal Wadhawan on a/c of his nomination fees. Objection kept open. To be sent to Bar Council of Pb. & Haryana at Chandigarh.

Sd/- ARO
22.12.2016

sd/-RO”

(5) A perusal of above vernacular Annexure-P3 indicates that the upper portion of the document reflects that a declaration had been made by the Returning Officer and Assistant Returning Officers, to the effect that the petitioner had won by five votes, but the endorsement purported to have been signed on the same day and signed by the same signatories i.e. Returning Officer and two Assistant Returning Officers is to the effect that a member of District Bar Association, Kapurthala has given written objection regarding the candidature of Satpal Wadhawan, the petitioner, regarding the dishonour of the cheque which was given by him, on account of his nomination fee. The Returning Officer appears to have made an observation that objection had been kept open but the same was sent to the Bar Council of Punjab and Haryana at Chandigarh. The objection which had been raised by one Mr. Tek Sharan Sharma, Advocate on 22 December 2016 has been shown to have been submitted at 10:20 AM. The said objection Annexure-P-5 is purported to have been filed on 22.12.2016, the date, after the process of election had been initiated as the date of election admittedly was 22.12.2016. The petitioner has pleaded in the writ petition that the last date for filing of the nomination papers for all the posts was 12.12.2016, and the petitioner had presented his nomination papers for the post of President on 12.12.2016 along with a cheque amounting to Rs.6,000/-, in favour of the District Bar Association, Kapurthala. The Returning Officer along with Assistant Returning Officers have duly scrutinized the nomination papers of the petitioner and the other candidate for the post of President and after their scrutiny, declared candidature of the petitioner, Satpal Wadhawan and respondent No.3, Harjit Singh Sandhu, Advocate, vide a notice dated 13.12.2016-Annexure P-2.

(6) The election for the post of President was held peacefully on 22.12.2016. The petitioner claims that out of 268 total votes, 242 votes were polled and one vote was cancelled, 123 votes were polled in

favour of the petitioner, Satpal Wadhawan, Advocate, whereas 118 votes were polled in favour of respondent No.3, Harjit Singh Sandhu, Advocate. The petitioner claims that he was declared winner to the post of President, District Bar Association, Kapurthala and the result prepared Annexure P-3 (mentioned hereinabove) was announced. Few photographs have been placed on record as Annexure P-4, wherein the petitioner is shown garlanded as winner along with a number of bar members and office bearers, who were elected unanimously by the Bar. The grievance of the petitioner is that after the declaration of the result the objection had been raised to the candidature of the petitioner by one Tek Sharan Sharma, Advocate, on the ground that the cheque amounting to Rs.6,000/- issued by the petitioner along with his nomination form had been dishonoured. The copy of the objection petition as mentioned hereinabove stands appended as Annexure P-5. The petitioner claims that the report was made by the Treasure of the District Bar Association, Kapurthala, on the same very date on the back side of Annexure P-5, and that the said report would reveal that the cheque of the petitioner was returned vide memo dated 17.12.2016, on the ground that cheque had some alterations and required authentication. The petitioner has placed on record the memo dated 17.12.2016-Annexure-P-6 and copy of the cheque submitted by him as Annexure P-7. The petitioner has pleaded in the present writ petition that as the cheque was issued by the petitioner and handed over to the District Bar Association on 12.12.2016 and was presented on 17.12.2016 and as per the certificate of the bank Annexure P-8, the petitioner had sufficient funds on 12.12.2016 as well as on 17.12.2016. The return of the cheque on account of alteration will not confer any disqualification of the petitioner, especially when the same had not been made public or communicated to the petitioner. The Returning Officer has filed an application before the Bar Council of Punjab and Haryana at Chandigarh. The petitioner claims that the Returning Officer had not acted fairly as it was not disclosed by him to the Bar Council of Punjab and Haryana at Chandigarh-respondent No.1, that the polling of the votes and counting had been completed and the result had also been declared on the same date. As a result of which, Bar Council of Punjab and Haryana at Chandigarh-respondent no.-1 had passed the order dated 26 December, 2016 directing the respondent No.2 to decide the issue at his own level in view of the Section 34 of the Representation of the Peoples Act, 1951.

(7) On the basis of the order Annexure-P-9 dated 26.12.2016 passed by the Bar Council of Punjab and Haryana at Chandigarh, the

Returning Officer alongwith Assistant Returning officers called a meeting on 27.12.2016 and passed the order dated 27.12.2016, whereby the nomination papers of the petitioner have been rejected. A copy of the order has been placed on record as Annexure-P-10. The petitioner claims that vide Resolution signed by 123 members of the District Bar Association, Kapurthala, the role of Returning Officer and Assistant Returning Officers was condemned. A copy of the Resolution has been placed on record as Annexure-P 11.

(8) The petitioner has referred to the role of the Bar Council as per Rule 11 of the Bar Associations (Constitution and Registrations) Rules, 2015 framed by the Bar Council of Punjab and Haryana at Chandigarh, in accordance with the directions of the Division Bench of this Court in LPA No.1427 of 2014, to contend that in case of any dispute having arisen after the declaration of the result, the aggrieved party is required to approach the Bar Council by way of election petition within 15 days of the declaration of the result accompanied by a fee of Rs.5,000/-. The petitioner has challenged the order passed by the Bar Council Annexure-P-9 dated 26.12.2016, directing the Returning Officer, after declaration of result to consider the validity of nomination and the order passed by the Returning Officer on 27.12.2016 Annexure P-10 on the ground of patent illegality, mala fide, arbitrariness and being discriminatory.

(9) On notice having been issued to the respondents, the allegations have been controverted by the Returning Officer as well as the respondent No.3, Harjit Singh Sandhu. Counsel for Returning Officer, respondent No.2, when controverted with the declaration of result Annexure P-3, clarified that he had not declared petitioner, Satpal Wadhawan as successful candidate vide Annexure P-3 and states that the objection had been kept open as per the endorsement.

(10) Counsel for respondent No.3 has vehemently urged that the writ petition has been filed by misleading and misstating the facts. It has been urged that the writ petition is not maintainable. The counsel for respondent No.3 has submitted that the nominations were filed from 08.12.2016 to 12.12.2016 and security fee of Rs.6,000/- submitted by the petitioner with the nomination papers on scrutiny had been found to be defective. The cheque submitted by the petitioner was dishonoured on 17.12.2016, but despite the said fact he did not take any step to deposit the amount of security in cash or get the cheque cleared. The Returning Officer under the impression that cheque would be cleared accepted the nomination papers after scrutiny on 13.12.2016. It is

admitted by respondent No.3 that after the process of election had started on 12.12.2016, objection was filed by one Tek Sharan Sharma and respondent No.3, Harjit Singh Sandhu on 22.12.2017, that the security cheque of the petitioner had been dishonoured, and he had not deposited the same till then. It is admitted that Returning Officer after the counting of the votes had made a reference. It has been denied that result had been declared before making a reference to the Bar Council.

(11) I have heard counsel for the petitioner and counsel for the respondents and carefully gone through the facts and circumstances of the case and the documents placed on the record I have duly appreciated the contentions raised by the counsel for the petitioner as well as counsel for the respondent and the Returning Officer.

(12) The controversy which is required to be adjudicated upon is whether the election process once initiated could be invalidated on the ground that the nomination papers are invalid on account of security amount having not been deposited;

Whether in the circumstances mentioned hereinabove, the result of the election could be said to have been declared on 22.12.2016;

Even if, it is presumed that the result had not been declared on 22.12.2016, whether Returning Officer was competent to make a reference regarding the invalidity of the nomination papers on account of irregularity in the security;

Whether the irregularity pointed out in the present writ petition of delay regarding the scrutiny of the nomination could be said to be an act suffering from the vice of some mala fide;

Who out of the petitioner or respondent No.3 could be said to have been elected; and

Depending upon the above said point, whether it would be the petitioner or respondent No.3 who could be relegated to the remedy of filing an election petition.

(13) In this case the nomination process started on December 8, 2016 and finished on December 12, 2016. Security was deposited by petitioner on December 12, 2016. Nomination finished on December 12, 2016. The cheque of security deposited on December 12, 2016 was returned on December 17, 2016. The scrutiny was done on December

13, 2016 vide annexure P-2 by Returning Officer and two Assistant Returning Officers. Election was held on December 22, 2016. The objection annexure P-5 submitted by Tek Sharan Sharma dated December 22, 2016 was submitted challenging the eligibility after the election had already taken place whereas cheque had already been received back on December 17, 2016. Retention of cheque till December 22, 2016 is mala fide and illegal. The only process to challenge the election of petitioner is to file an election petition as per Rule 11 of the Bar Associations (Constitution and Registrations) Rules, 2015.

(14) It is important to note here that the cheque of the petitioner has not been dishonoured for want of funds as per the memo of the bank annexure P-6. It was unpaid on account of “alteration require drawer authentication”. Photocopy of the cheque reflects that there is a slight over-writing on the figure ‘six’. The certificate annexure P-8, Balance Confirmation Certificate, indicates that there was a credit balance of more than Rs.85000/- as on December 22, 2016. In such case the nomination of the petitioner cannot be held to be invalid. The circumstances mentioned hereinabove clearly indicate that the result had been declared on December 22, 2016 without there being any objections pertaining to the defect, if any, in the nomination despite the fact that the information had already been received from the bank on December 17, 2016 regarding the defect in the cheque. Even if it is presumed that result was not declared on December 22, 2016, even then the Returning Officer was not competent to make a reference regarding invalidity of nomination papers on account of irregularity of security as not only the election process had been initiated but it had already culminated in the casting of votes. It is apparent that result having been declared and petitioner having been declared as winner, the application annexure P-1 could not have been entertained by the Returning Officer.

(15) As discussed hereinabove, the delay regarding scrutiny of the nomination of the petitioner is malafide. The petitioner could have easily been granted time to remove the defect by certifying the correction on the over-writing which has been made by him. The action of the Returning Officer in entertaining the objection after the election is mala fide and illegal action warranting interference by this Court. The order annexure P-9 dated December 26, 2012 which has been passed by the Bar Council of Punjab and Haryana High Court declaring the nomination of the petitioner bad is also not sustainable. The order passed by the Returning Officer on December 27, 2016 disqualifying

the petitioner and rejecting his nomination is also null and void, order having been issued after declaration of result.

(16) In view of the above, the writ petition is allowed. The orders Annexures P-9 and P-10 are set aside. The petitioner is held to have been elected without prejudice to the right of respondent No.3 to challenge the election of the petitioner under the Bar Associations (Constitution and Registrations) Rules, 2015. The period of limitation to file election petition will commence from the date of receipt of certified copy of the order by the parties. Nothing said in the above said judgment will prejudice the rights of the parties, in election petition, if any filed by respondent No.3.

Dr. Sumati Jund