THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.12.2013

+ FAO (OS) No. 510/2013

DELHI BAR ASSOCIATION & OTHERS … Appellants

versus

DELHI HIGH COURT BAR ASSOCIATION & ANOTHER … Respondents

Advocates who appeared in this case:

For the Appellants : Mr R.K. Sharma with Mr Rajiv Khosla, Ms Harshit Jain, Ms Daisy, Ms Preeti Bhardwaj, Ms Anshul Gupta and Mr A.K. Roy

For the Respondents : Mr A.S. Chandhiok, ASG with Mr J.P. Sengh, Sr Advocate, Mr Mohit Mathur, Mr Gurpreet S. Parwanda, Mr Vidit Gupta, Ms Yamini Khurana, Mr Vishnu Kant, Ms Harleen Singh, Mr Sumit Batra and Ms Ankita Gupta

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J

1. This appeal is directed against the order dated 31.10.2013 passed by a learned single Judge of this court in CS(OS) 2111/2013 and IA No. 17553/2013. The suit was filed by 8 plaintiffs. Plaintiff Nos. 1 to 6 were the Delhi Bar Association, the New Delhi Bar Association, Rohini Court

Bar Association, Shahdara Bar Association, Saket Bar Association and the Dwarka Court Bar Association. Plaintiff Nos. 7 and 8 were two individual advocates. The defendants were the Delhi High Court Bar Association (Defendant No.1), Mr Mohit Mathur, Honorary Secretary, Delhi High Court Bar Association (Defendant No.1A) and the Bar Council of Delhi (Defendant No.2). The suit was filed seeking, *inter alia*, the following prayers:-

> "It is therefore most respectfully prayed to this Hon'ble Court to grant:
>
> a. Decree of Declaration in favour of the plaintiffs and against the Defendant no. 1 thereby declaring the amended Rules Null and Void, inoperative, Non-Est and inconsequential in the eyes of Law and not binding before the same are approved by the General House.
>
> b. Decree of Permanent Injunction in favour of the Plaintiffs Associations and against the Defendant no. 1, thereby restraining its office bearers and Executive Committee from implementing the amended Rules and acting upon on such amended rules for any purpose whatsoever.
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> c. Decree of permanent injunction in favour of the plaintiff associations and against the defendant no. 1 restraining them from acting upon the election schedule dated 26.10.2013 based upon alleged amended rules.
>
> d. Decree of Mandatory injunction in favour of the plaintiffs and against the Defendant no. 1 to act in according with the original rules of its constitution and to hold the elections in terms thereof and also pass mandatory injunction against the defendant no. 2 to see that the defendant no. 1 performs its duties and act in accordance with the original rules as existed in the Last elections held in December, 2011.

e. Decree of mandatory injunction in favour of the plaintiffs and against the defendants thereby directing the defendant no. 1 to allow the members to deposit arrears of subscription by giving reasonable time as per the practice adopted in the previous elections to enable them to cast vote in the elections."

2. Alongwith the said suit, the plaintiffs had also filed the above mentioned IA No.17553/2013 under Order 39 Rules 1 & 2 CPC for the following ad interim reliefs:-

"It is therefore most respectfully prayed that this Hon'ble Court may be pleased to: -

a. pass "an ad-interim injunction in favour of plaintiffs and against the defendants no. 1, restraining its office bearers, executive committee members and others responsible members from acting upon in any manner and for any purposes whatsoever on the basis of alleged amended rules and bye laws during pendency of suit without the prior approval of the same from the General House.

b. Direct the defendant no. 1 to act and hold elections as per their original rules as existed in the previous elections held in December, 2011.

c. Decree of mandatory injunction in favour of the plaintiffs and against the defendants thereby directing the defendant no. 1 to allow the members to deposit arrears of subscription by giving reasonable time as per the practice adopted in the previous elections to enable them to cast vote in the elections.

d. Any other or such further order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of

the case may kindly be passed in favour of the plaintiffs and against the defendant no.1."

3. In the suit, the learned single Judge, by virtue of the order dated 31.10.2013, directed issuance of summons which was accepted by all the defendants. The learned single Judge also directed that the written statement be filed within 30 days alongwith the original documents and the replication, if any, be filed within 30 days thereafter alongwith the original documents. The learned single Judge further directed that the suit be listed before the Joint Registrar for admission / denial of documents on 15.01.2014 and before the court for framing of issues on 25.02.2014.

4. However, before the summons were issued in the suit, the learned single Judge held that plaintiff Nos. 1 to 6 (the six bar associations) were neither necessary nor proper parties and, therefore, they be deleted from the array of parties and the amended memo of parties be filed within a week. The learned single Judge was of the view that the dispute, which is sought to be raised in the suit, was with regard to the purported amendment to the election rules carried out by the Delhi High Court Bar Association (DHCBA). It was observed by the learned single Judge that as the bar associations were not members of the DHCBA, they were neither necessary nor proper parties. The learned single Judge rejected and, in our view correctly, the submissions of the learned counsel for the plaintiffs that as a large number of members of the bar associations were also members of the DHCBA, the said bar associations were vitally interested and that they were, therefore, necessary and / or proper parties. The learned single Judge

correctly held that the said associations being separate juristic entities, were strangers to DHCBA in relation to the disputes involved in the present suit. We agree with the view taken by the learned single Judge that as to what are the rules of the DHCBA and whether they have been properly amended or not is an issue which concerns the DHCBA and its members and is of no concern to the said six bar associations which have their own set of rules and their own set of members. We, therefore, agree with the view taken by the learned single Judge that the presence of the said six bar associations, which were initially arrayed as plaintiffs 1 to 6, is not at all necessary for the effective and complete adjudication of the issues involved in the suit. Arguments to the contrary raised by the learned counsel for the appellants are rejected and we uphold the decision of the learned single Judge in deleting the said plaintiffs from the array of parties and reinforce the direction that the amended memo of parties, after deleting the said plaintiff Nos. 1 to 6 (who are appellant Nos. 1 to 6 in the present appeal), be filed within a week.

5. This takes us to the main point of controversy in the present appeal and that is the order passed by the learned single Judge in IA No.17553/2013 which was an application under Order 39 Rules 1 and 2 CPC filed by the plaintiffs seeking ad interim orders. Insofar as the said application is concerned, the learned single Judge had issued notice which was accepted by the learned counsel for the defendants. Mr A.S. Chandhiok, Senior Advocate and President of DHCBA, was heard on behalf of DHCBA. The learned single Judge, after noting the arguments on both sides, observed that the elections on the basis of the impugned amended rules had already been notified on 26.10.2013 and that as the

election process had already been set in motion prior to the filing of the suit, interference with the said election process, at this stage, was not called for. The learned single Judge also observed that the impugned amended rules essentially introduced the concept of "one bar one vote", which, according to the learned single Judge, even otherwise, did not appear to be something that called for interference at that stage as, according to him, the said principle had been adopted by several other bar associations, including the Supreme Court Bar Association. In this context, the learned single Judge referred to the fact that the Supreme Court had upheld the adoption of the said concept in ***Supreme Court Bar Association v. B.D. Kaushik*: 2011 (13) SCC 774** as also in ***Supreme Court Bar Association v. B.D. Kaushik*: 2012 (8) SCC 589**.

6. After noting the above, the learned single Judge observed that the issue whether the adoption and implementation of the amendment rules was legal or not was certainly an issue which arose for consideration and would be considered by the court after the pleadings are completed and the parties have led their evidence. The learned single Judge observed that, at that stage, while considering the application, the court had to consider, inter alia, as to where the balance of convenience lay and whether irreparable loss and injury would be caused to the parties if an interim order of injunction is passed or refused. The learned single Judge concluded that he was of the view that the balance of convenience was in favour of refusing the interim injunction at that stage. Consequently, the learned single Judge concluded as under:-

> "As aforesaid, the present petition has been filed after the election process has been set into motion, even though the amended rules were in existence - as they were made a part of the judicial record since January 2013 and, in any event, one of the prominent member and leader of the bar, Mr. Rajiv Khosla became aware of them on 30.08.2013. Pertinently, he is a member of the Bar Council of Delhi, and is a signatory to the resolutions which form part of the aforesaid writ petition filed by defendant no.1. The amended rules, as aforesaid, are essentially implementing the principle of "one bar one vote", which is also a principle which has been approved by the Supreme Court. The election process is already underway. Accordingly, in my view, the plaintiff is not entitled to any ex parte ad interim injunction at this stage.
>
> List for consideration on 25.02.2014."

7. The grievance of the appellants / plaintiffs before the learned single Judge as also before us is that the impugned amendment to the rules had not been carried out in accordance with the procedure prescribed in the rules themselves for carrying out the amendments. When this was pointed out to the learned single Judge, he, however, refrained from considering the impact of the submission and / or the allegation that Rules 33 and 65 had not been followed at all. This would be evident from para 6 of the impugned judgment, which reads as under:-

> "As noticed above, the grievance of the plaintiff is with regard to the adoption and enforcement of the amended election rules which, primarily, have the effect of enforcing the "one bar one vote" principle. The primary submission of Mr. Singh, learned senior counsel for the plaintiffs is that the amendment of the rules has not been carried out in accordance with the procedure prescribed in the rules themselves for carrying out the amendment. In this regard, reference has been made to Rule 33

and 65. Essentially, these rules provide that amendments have to be carried out in a general meeting by a majority of 2/3rd. My attention has been drawn to several facts and documents to submit that the defendant association has not held a general body meeting for amendment of the said rules in terms of Rule 33 and 65. At this stage, I do not consider it necessary to refer to the details and particulars of the documents and materials relied upon for the said purpose. I may, however, note that the amended rules were filed by the defendant association in CS(OS) No.2883/2011 titled Nivedita Sharma v. Delhi High Court Bar Association & Ors. on 15.01.2013. Therefore, the said rules formed part of the judicial record, in this court itself from 15.01.2013."

(Underlining added)

8. It was also contended by Mr Khosla that the suit mentioned in the above extract [i.e., CS (OS) 2883/2011] was a collusive suit between the plaintiffs therein (***Nivedita Sharma v. Delhi High Court Bar Association & Others***). The order passed on 30.08.2013 in the said suit reads as under:-

"30.08.2013

IA.No. /2013 and CS(OS) No.2883/2011

Mr.Mittal, counsel for the plaintiff has handed over in Court today an application. Registry is directed to register and number the application.

Mr.Sunil K.. Mittal, coucel for the plaintiff and Chandhiok, learned senior counsel appearing on behalf of the defendant / Delhi High Court Bar Association have drawn attention of the Court to the orders passed by this Court on 6.8 2012, 6.9.2012, 18.10.2012 and. 29.11.2012. Mr.Sunil K. Mittal, counsel further submits that the rules have since been prepared the same should be taken on record.

In the application handed over in court today, the applicant/ plaintiff has made the following prayers:

(a) the said Constitution and Rules, etc. may be taken on record;

(b) directions may be issued to the Defendants to abide by the same and hold election in terms thereof;
(c) the Suit may be disposed of in terms thereof;
(d) pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice.?

Mr. Chandhiok, learned senior counsel appearing on behalf of the defendant / Delhi High Court Bar Association submits that the rules have been passed by the Executive Committee, copy of the rules have been filed and the Delhi High Court Bar Association shall abide by the same and will hold elections in terms thereof.

Taking into consideration the submissions made by Mr.Sunil K. Mittal and Mr.A.S. Chandhiok, on record and as agreed the suit and all the applications are disposed of on the basis of the statements which have been made by the parties.

Mr. Rajiv Khosla, applicant in person in IA.No.1539/2013 in which notice is yet to be issued, submits that the rules have been framed illegally as the same have not been placed before the General Body. He also submits that the rules have no force of law and the same cannot be relied upon by the Executive Committee of the Delhi High Court Bar Association. He seeks to challenge the rules and submits that he will avail of such remedies as available, as per law.

IA.No.1539/2013 (u/0.1 R.10 CPC)
No grounds are made out to implead the applicant as a party in the present suit. Even otherwise, the submission of Mr. Khosla has been heard and recorded. Application stands dismissed."

9. It was contended on behalf of the appellants that the said order is neither a judgment nor a decree as it decided nothing. Reliance was placed on ***S. Satnam Singh v. Surender Kaur*****: AIR 2009 SC 1089** wherein the Supreme Court observed as under:-

> "14. A 'decree' is defined in Section 2(2) of the Code of Civil Procedure to mean the formal expression of an adjudication which, so far as regards, the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. It may either be preliminary or final. It may partly be preliminary and partly be final. The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading upto the passing of an order. The circumstances under which an order had been made would also be relevant.
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> 15. For determining the question as to whether an order passed by a court is a decree or not, it must satisfy the following tests:
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> (i) There must be an adjudication;
>
> (ii) Such adjudication must have been given in a suit;
>
> (iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit;
>
> (iv) Such determination must be of a conclusive nature; and
>
> (v) There must be a formal expression of such adjudication."

10. Taking us through the above order, Mr Khosla submitted that an application [IA No._____/2013] had been handed over on behalf of the plaintiff in that suit across the bar. The prayer in the application was that

the constitution and the rules etc. be taken on record and directions be issued to the defendant (Delhi High Court Bar Association) to abide by the same and hold elections in terms thereof and that the suit be disposed of accordingly. In the said order, it is recorded that Mr Chandhiok, appearing on behalf of DHCBA, submitted that the rules had been passed by the "Executive Committee" and the DHCBA would abide by the said rules and would hold elections in terms thereof. Consequently, the learned single Judge, taking into consideration the submissions made on behalf of the plaintiff therein and the defendant, disposed the suit and all applications on the basis of the said statements. In the backdrop of the Supreme Court decision in ***S. Satnam Singh*** *(supra)*, it was therefore submitted on behalf of the appellants that the order dated 30.08.2013 was not a 'decree' at all as there was no adjudication or determination. It was also submitted that, in any event, the order dated 30.08.2013 could not, in any way, bind the appellants herein who were not parties to the suit [CS(OS) 2883/2011].

11. It is also evident from the order dated 30.08.2013 that Mr Rajiv Khosla had moved an application in that suit, being IA No.1539/2013, seeking impleadment. His application was also taken up for consideration on that date and while considering the application, the submission of Mr Rajiv Khosla to the effect that the impugned rules had been framed illegally as the same had not been placed before the General Body was recorded. The submission of Mr Khosla that the rules had no force of law and that the same could not be relied upon by the Executive Committee of the DHCBA was also noted. It was also recorded that Mr Khosla sought to challenge the rules and that he submitted that he would avail all such remedies as were available in law. In these circumstances, the learned single Judge held

that no grounds for impleadment of Mr Khosla had been made out and, accordingly, the application for impleadment was dismissed.

12. The learned single Judge, who passed the order dated 30.10.2013, which is impugned before us, was impressed by the fact that, though Mr Khosla had come to know of the framing of the rules at least on 30.08.2013 itself, the present suit had been filed only on 29.10.2013 nearly two months later. According to the learned single Judge, this passage of time is relevant in view of the intervening developments which had taken place. The developments were that the Bar Council of Delhi had passed an order superseding the Executive Committee of DHCBA. The said order was stayed in a writ petition and the Division Bench, in an LPA filed there against, did not interfere with the stay order. We need not delve into the details of those proceedings. What is relevant is that the learned single Judge felt that because of the "delay" in filing the suit and, particularly when the election process itself had started, it was not appropriate to interfere with the same by staying the elections or by passing any interim directions affecting the election. On this aspect, it was submitted on behalf of the appellants that the suit was filed on 29.10.2013, immediately after the elections were notified on 26.10.2013. Moreover, the so-called 'delay' could not be foisted upon the appellants who were not parties to the order dated 30.08.2013 in CS(OS) 2883/2011.

13. At this juncture, it would be pertinent to set out the relevant provisions of the Delhi High Court Bar Association Rules, 1993. Rule 65 of the DHCBA Rules, 1993 reads as under:-

> "65. These rules shall not be varied, added to or deleted otherwise than by a special resolution in that behalf passed at a General Meeting in the manner prescribed by Rule 33.

And, Rule 33 of the DHCBA Rules, 1993 reads as follows:-

> "33. Every member shall have one vote on every motion made at any General Meeting. All motions put to a General Meeting shall be determined by a majority of votes. Ordinarily, the voting shall be by show of hands, but it shall be by secret ballot, if demanded by any member present at the meeting. Provided that no resolution for the variation of or addition to or deleting of these rules or any of them shall be deemed to be carried unless not less than three-fourth of the members present shall vote for the same. Provided further no resolution calling in question the conduct or character or for expelling a member shall be put to vote except by secret ballot. If in the case of any motion determinable by a mere majority of votes, the votes for and against the same be equal in number, the President shall have a casting vote. No vote may be given by proxy. In the event of a secret ballot the meeting shall be adjourned for a period not more than 7 days to make arrangements for holding the secret ballot. Procedure for holding the secret ballot shall as far as possible be the same as the procedure for holding annual general election."

14. It was contended on behalf of the appellants that alteration of the rules was prohibited except by way of a special resolution in that behalf passed at a General Meeting in the manner prescribed by Rule 33. While ordinarily, all motions put to a General Meeting were to be determined by a majority of votes, it was specifically provided in the said Rule 33 that no resolution for the variation of or addition to or deletion of these rules or any of them shall be deemed to be carried out unless not less than three-fourth of the members present shall vote for the same. It was, therefore,

contended on behalf of the appellants that before any amendments could be made to the DHCBA Rules, 1993, it would require the calling of a General Body Meeting and to be carried out by a resolution passed by three-fourths of the members present. According to the appellants, the impugned amendments were not passed in any General Meeting in the manner prescribed under Rule 65 read with Rule 33 of the DHCBA Rules, 1993. Consequently, it was submitted that the elections, which had been notified on 26.10.2013, could not be held at all under the impugned amended rules and ought to be held under the DHCBA Rules, 1993.

15. On the other hand, Mr Chandhiok, appearing for the DHCBA, submitted that in view of the order dated 30.08.2013 passed in CS(OS) 2883/2013, he was duty-bound to abide by the amended rules because his statement to this effect had been recorded therein. He also submitted that, in any event, there was substantial compliance with the said Rules 65 and 33 of the DHCBA Rules, 1993. In an attempt to demonstrate this, he took us through the events starting from 08.01.2010 when the Executive Committee passed a resolution wherein it was, *inter alia*, proposed that a person would be eligible to contest for the post of President, DHCBA only if he had been a member of DHCBA for 25 years. Similar stipulations were made with respect to other office bearers of the Executive Committee. It was submitted by Mr Chandhiok that in the said meeting, it was also resolved that the tenure of the Executive Committee ought to be two years and not one year. Thereafter, on 09.11.2011, the Executive Committee in its meeting interpreted Rule 19 (b) of the DHCBA Rules, 1993 in a particular manner. Rule 19 of the DHCBA Rules 1993 reads as under:-

> "19. (a) The President, Vice President, Honorary Secretary, Jt. Secretary and Treasurer and 10 (ten) members of the Executive Committee shall be elected at the Annual General Meeting of the members and the Executive Committee shall hold office for one year, provided that if and when their said term of office has expired and no election has taken place, the Executive Committee shall continue in office until such election takes place.
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> (b) The office bearers and the members of the Executive Committee of the Association shall be elected by secret ballot. No office bearer and member of the Executive Committee shall be eligible to hold same office for more than two consecutive years / terms.
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> (c) The outgoing President/Secretary shall be ex-officio members of the Executive Committee, but in case the outgoing President / Secretary contest the election for the same office is / are not returned, they shall forfeit the right of being member of the Executive Committee."
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> (Underlining added)

16. There was some dispute with regard to this interpretation. The said suit being CS (OS) 2883/2011 entitled ***Nivedita Sharma v. DHCBA*** was filed on 22.11.2011. On 23.11.2011, a learned single Judge of this court clarified the meaning of the said Rule and, in particular, Rule 19 (b) by holding that the embargo created by Rule 19(b) would apply only after completion of two 'terms' and thus, the interpretation rendered by the Executive Committee was incorrect and was liable to be stayed. However, while doing so, the learned single Judge also observed as under:-

> "20. Although at the cost of repetition I may add that the view expressed by the Executive Committee may be in the interest of Bar, it would be open to the Executive Committee to bring this issue before the General Body after the elections

have taken place and seek their opinion as to whether Rule 19(a) and Rule 19(b) require an amendment and to avoid any ambiguity and uncertainty in the next election."

17. Mr Chandhiok further stated that on 02.12.2011, an Annual General Meeting of the DHCBA was convened. The minutes of the said meeting are at pages 124 to 126 of the appeal paper book. In the said minutes, there is a reference to the order dated 23.11.2011 passed by the court in CS (OS) 2883/2011. A proposal was moved that the next Executive should examine the decision taken by the Executive Committee for amending the rules and / or for bringing the reforms and that the proposed rules and the reforms should be circulated amongst the members and the Executive Committee should hold a referendum and get them approved in a Special General Body Meeting convened within four months of the new Executive Committee taking charge of the office. The resolutions passed unanimously in the said AGM held on 02.12.2011 were as under:-

"VI] The members present at the AGM unanimously approved the proposals of Sh. Ram Watel, Shri Anoop Bagai and Sh. Jagmohan Sabharwal and the house passed the following resolutions:-

i) The General Body of the Delhi High Court Bar Association resolved that the elections to the post of Office Bearers and the Member Executive shall be held on 3rd Friday of December, 2012 and thereafter on 3rd Friday of December every succeeding year and if for any reason the third Friday of December of the concerned year is a holiday, the elections shall be held on the next working Friday; and in case, the Elections are not held as above, the Executive Committee shall stand dissolved and a Committee of 5 past Presidents and 5 past

Secretaries shall take over from the executive and hold the Elections;

ii) The Executive Committee shall, within 4 months of its assuming office shall hold special GBM for the amendment and rules and also to bring out Electoral reforms. The Executive Committee shall also consider various decisions of the existing Executive Committee in the said regard. The Executive Committee shall circulate in advance the proposed amended rules and electoral reforms and seek referendum from the members sufficiently in advance of the special GBM.

iii) The member desired that the resolution be circulated under the signatures of Hony. Secretary, within a week.

The meeting ended with the vote of thanks to the Chair."

(Underlining added)

18. Mr Chandhiok submitted that the election for the office bearers and members of the Executive Committee of the DHCBA was held on 16.12.2011. The newly elected Executive Committee came into office shortly thereafter. It was further stated by Mr Chandhiok that in January, 2012, the Executive Committee constituted a sub-committee to consider and frame amended rules and bye-laws. According to him, in February, 2012, a notice was sent to the members of the DHCBA with regard to the proposed amendments and a request was made for inputs. It was further stated by Mr Chandhiok that during February to May 2012, office bearers of the Executive Committee received inputs and had group discussions. He stated that another notice was issued on 14.08.2012 requesting the members to suggest changes / inputs to the proposed amendments in the rules and bye-laws.

19. He further stated that, in the meanwhile, the suit being CS (OS) 2883/2011 entitled Nivedita Sharma v. DHCBA & Ors continued and on 14.12.2012, an order was passed therein in IA 22104/2012, whereby it was observed that amendments could be carried out to the rules not limited to Rule 19 thereof. It was further stated by Mr Chandhiok that on 15.01.2013, the proposed amended constitution, rules and election bye-laws were filed in the said suit – Nivedita Sharma v. DHCBA & Ors. At this juncture, we may point out that we had called for the court file of CS(OS) 2883/2011 and found that the said documents had indeed been filed on 15.01.2013.

20. It was further stated by Mr Chandhiok that on 29.01.2013, IA No.1539/2013 was filed by Mr Rajiv Khosla under Order 1 Rule 10, CPC seeking impleadment as a co-defendant in the said suit – Nivedita Sharma v. DHCBA & Ors. Mr Chandhiok also stated that in ***WP(C) 8106/2010 (P.K. Dash v. Bar Council of Delhi & Others***) in which, *inter alia*, the issue of "one bar one vote" is pending consideration before a Division Bench of this court, an affidavit was filed on behalf of the Delhi High Court Bar Association on 14.03.2013. It was stated that alongwith the said affidavit, the proposed amended rules were also filed. However, at this juncture itself, we may point out that we had also called for the file of WP(C) 8106/2010 and while we find that Mr Chandhiok was correct in stating that an affidavit was filed on behalf of the DHCBA in that writ petition on 14.03.2013, what had been annexed as Annexure R4-A to that affidavit were only the copies of the bye-laws allegedly framed by the DHCBA relating to the conduct of elections of DHCBA and not the rules.

21. Mr Chandhiok then drew our attention to the said order dated 30.08.2012 passed by a learned single Judge in the said suit – CS(OS) 2883/2011: Nivedita Sharma v. DHCBA – and submitted that the amended Constitution, Rules and Bye-laws were handed over in court to the learned single Judge with the request that the same be taken on record. We have already noted the prayers made in IA _____ /2013 (to be numbered) and the order passed by the court on that application.

22. According to Mr Chandhiok, the order dated 30.08.2013 in Nivedita Sharma v. DHCBA & Ors was a judgment and / or a decree and, therefore, unless it was set aside, it would hold the field. He submitted that in that order, the learned single Judge had taken on record the amended Constitution, Rules and the Bye-laws and had also recorded his statement that the DHCBA would abide by them and would conduct elections in accordance with it.

23. Mr Chandhiok submitted that in view of the statement made by him before court on 30.08.2013, a notice was issued on 16.09.2013 to all the members of DHCBA referring to the amended Constitution, Rules and Bye-laws and thanking all the members for giving their fruitful inputs. He further submitted that pursuant to the statement made by him as recorded in the order dated 30.08.2013, the schedule of elections was announced on 26.10.2013. The notice announcing the same reads as under:-

> "NOTICE
>
> In terms of the Constitution of the Delhi High Court Bar Association, the Rules and Election Bye-laws (amended up-to-date), members, by the notices dated 01.10.2013 and

07.10.2013 were notified that the elections of the Office Bearers and the Members of the Executive Committee of the Association shall be held on Friday i.e. 13 12.2013.

Members may kindly note the Election Schedule for the forthcoming elections, to be conducted by the Election Commission.

SCHEDULE-

18.11.2013 to 21.11.2013: Filing of Nominations.
22.11.2013: Scrutiny of Nomination Papers 5:00 pm
25.11.2013 - 27.11.2013: Withdrawal of Nomination Papers till 4:30 pm
29.11.2013: Annual General Meeting at 4:30 pm.
(Followed by High Tea)

13.12.2013: Polling between 10:00 am to 5:00 pm

The list of the members entitled to exercise their franchise or participate in the forthcoming election shall be uploaded on the Delhi High Court Bar Association website on or before 31.10.2013. Members desirous of downloading the same, may kindly download from the website.

The Executive Committee express best wishes to all the contestants in the forthcoming elections."

24. Mr Chandhiok submitted that pursuant to the announcement for the schedule of the elections, 37 candidates are in the field. The candidates were required to be proposed and seconded by eligible members. He submitted that all of them, the candidates and their proposers and seconders, have made a declaration that they would abide by the amended rules. In fact, according to Mr Chandhiok, around 400 members have made similar declarations.

25. On being asked a pointed question as to whether the amendments had been passed in a General Meeting or not, Mr Chandhiok stated that that was not so and that the amendments had been passed in the Meeting of the Executive Committee. However, at the same time, he submitted that it was not at all necessary for the General Body Meeting to be held to pass a resolution approving the amendments proposed by the Executive Committee. Because, according to him, members had participated in the deliberation process and there was a virtual 'referendum' on the issue as the proposed rules, etc. had been filed in CS(OS) 2883/2011 as far back as on 15.01.2013 and was to the knowledge of the members and, particularly, Mr Khosla, inasmuch as he had filed an application for impleadment in that suit and had, even then, opposed the proposed amendments. As such, according to Mr Chandhiok, there was substantial compliance of Rules 65 and 33 of the DHCBA Rules, 1993.

26. Furthermore, Mr Chandhiok submitted, there was a "judgment" in the case of ***Nivedita Sharma v. DHCBA & Ors*** which took the amendment rules on record and, therefore, the same had the "approval" of the court. It was also submitted that 400 members had already declared that they would abide by the new rules at the time of nominations. It was also contended that members of the DHCBA in general had ratified it. Mr Chandhiok further submitted that the question with regard to the amended Rules was only one of procedure and not of law. According to him, there was an irregularity, if at all, which can always be rectified through ratification and therefore the election process, which has commenced, cannot be stopped. In fact, he went to the extent of submitting that even if there was an

illegality, the election process cannot be interfered with, once it is set in motion. For this, he placed reliance on the Supreme Court decision in the case of ***Supreme Court Bar Association v. B.D. Kaushik*****: 2011 (13) SCC 774**. In that decision, which concerned elections to the Supreme Court Bar Association, the Supreme Court observed that "since 1952, this court has authoritatively laid down that once election process has started, the courts should not ordinarily interfere with the said process by way of granting injunction". (Underlining added). Mr Chandhiok strongly relied on the said decision as it pertained to a Bar Association, albeit of the Supreme Court, and, in which, the principle of 'one bar one vote' was upheld. The court also decried the stay which had been granted in the suit therein. However, at this juncture, we must add that the appellants sought to distinguish the case in ***B.D. Kaushik*** *(supra)* from the present case by, *inter alia*, submitting that in that case, the General Body had approved the amendments but, in the present case, there was no resolution of the General Body approving the impugned amendments. He also placed reliance on ***N.P. Punnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Salem Dist. & Others*****: AIR 1952 SC 64** as well as a decision of this Division Bench in ***Yachting Association of India v. Boardsailing Association of India & Ors***: ***LPA 523/2013*** decided on 22.08.2013.

27. It was, therefore, submitted by Mr Chandhiok that, in any event, there were many issues of fact which require a trial and it would be best if this court did not interfere with the election process, but directed the parties to complete pleadings expeditiously and the suit itself be decided at an early date. In this context, Mr Chandhiok submitted that the written statement could be filed within two days and the learned single Judge could

be requested to expedite the hearing of the interim application. In fact, in paragraph 34 of the reply filed on behalf of the DHCBA to the application (CM No.17864/2013), it is stated as under:-

> "34. The respondent No.1 therefore respectfully submits that the above mentioned Preliminary Submissions and Objections may kindly be decided first in point of time and in case it becomes necessary to have pleadings of the parties, then the present appeal be dismissed with a request to the Hon'ble Single Judge to expedite hearing of the interim applications after giving an opportunity to the respondents to file their response."

28. At this juncture, it would be pertinent to point out that in the course of hearing before us, we had on 21.11.2013 passed an order in the said CM No.17864/2013 wherein we had directed as under:-

> **"<u>CM No. 17864/2013</u>**
>
> Although we have heard this matter at great length for three days, we feel that it would be necessary for the respondents to file a reply to this application as certain factual issues have been stated which need a response. The reply be filed within two days.
>
> Renotify on 26.11.2013."

29. However, the said reply was not filed within the two days and a further extension was requested and was granted on 26.11.2013. The reply is now on record, but instead of answering the factual aspects raised in CM No.17864/2013, the respondent (DHCBA) has raised several preliminary objections without adverting to the crux of the matter as to whether there was or there was not any General Body Meeting held wherein the impugned amendments had been passed. This factual aspect has been

avoided entirely in the reply. However, to be fair to Mr Chandhiok, in the course of arguments before us, he had, as mentioned above, upon a pointed question being put to him, categorically stated that, in point of fact, the amendments had not been passed in a General Meeting, but had only been approved in the Meeting of the Executive Committee.

30. The submission on behalf of the appellants has throughout been that since Rules 65 and 33 of the DHCBA Rules, 1993 have not been followed, the amendment would be a nullity. Reliance was placed on several decisions, but there is only need to refer to the decision of the Privy Council in the case of ***Nazir Ahmed v. King-Emperor*: AIR 1936 PC 253 (2)** for the proposition that where certain thing is to be done in a certain way that thing ought to be done in that way or not at all. In ***Nazir Ahmed*** *(supra)*, the Privy Council observed as under:-

> "… The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

31. Consequently, it was submitted on behalf of the appellants that since the amended rules were *non est*, the election based on those rules would also be *non est* and instead of going through the process of holding an election, the same should be held on that basis of the unamended rules and for this purpose, the dates of the election ought to be rescheduled.

32. It was also contended on behalf of the appellants that there is nothing sacrosanct about the election process if the basis of the election itself is under challenge. They referred to the Supreme Court decisions in the cases

of ***Election Commission of India through Secretary v. Ashok Kumar & Others*: 2000 (8) SCC 216** and ***B.D. Kaushik*** *(supra)* to submit that while "ordinarily" there should not be any interference with an election process once it has been set in motion, it is not an absolute rule and there may be extraordinary and special circumstances when interference, particularly when the elections are not held under the Representation of the People Act, 1951 as envisaged under Article 329 of the Constitution, may be called for. Here, we are concerned only with an election of the office bearers of an association which cannot be elevated to the level of an election to the Legislative Assembly or to Parliament. It was submitted that in the present case, the circumstances were so extraordinary that it warranted interference by the court.

33. After having heard the counsel at length and having given our deep consideration to all aspects of the matter, we are of the view that the matter arising out of IA No.17553/2013 ought to be remanded to the learned single Judge for a fresh consideration and for a conclusive determination of the appellant's said application for interim relief. There are several reasons for this. First of all, we feel that the learned single Judge ought not to have brushed aside the arguments raised on behalf of the appellants with regard to violation of Rules 65 and 33 of the DHCBA Rules, 1993 by merely referring to the fact that the amended rules had been taken on record by virtue of the order dated 30.08.2013 in the suit – ***Nivedita Sharma v. Delhi High Court Bar Association & Others***. The fact that the amended rules had been taken on record in that suit did not preclude the appellants from challenging them as they were not parties to that suit. Nor was the learned

single Judge precluded from considering the arguments based on the said Rules 65 and 33 of the DHCBA Rules, 1993. They were independent arguments raised on behalf of the appellants and the learned single Judge ought to have considered the same.

34. Secondly, the learned single Judge, although he felt that at the very initial stage an interference was not warranted with the application under Order 39 Rules 1 and 2 CPC, ought not to have listed the application for consideration well after the date of the election. The election is scheduled to be held on 13.12.2013 and the next date fixed in the said application is 25.02.2014. In our view, if the learned single Judge thought that it was necessary to have the reply of the defendants before he decided the application, he ought to have given a short time to the defendants to file their response to the said application and ought to have listed the application for disposal at an early date so that he could dispose of the application prior to the date of election. The learned single Judge did not reject the application, but listed it on 25.02.2014, over two months after the date of election (13.12.2013). We may recall that the prayers in the application were, *inter alia*, for an injunction restraining the DHCBA from acting upon the amended rules and to hold elections as per the DHCBA Rules, 1993. By 25.02.2014, the election would have been held and the application would be rendered infructuous. Therefore, in our view, it was incumbent upon the learned single Judge to have disposed of the application, one way or the other, but, in accordance with law, at an early date, at least, prior to the date of the poll.

35. Thirdly, we are of the view that the learned single Judge was under a mistaken impression that under no circumstances could an election be interfered with once the election process had been set in motion. The Supreme Court decisions in ***N.P. Punnuswami v. The Returning Officer*: AIR 1952 SC 64**, ***Mohinder Singh Gill v. The Chief Election Commissioner*: AIR 1978 SC 851** and ***Election Commission of India v. Ashok Kumar*** *(supra)*, all involved elections "to either House of Parliament or to the House or either House of the Legislature of a State" and therefore the provisions of Article 329(b) of the Constitution came into play. Article 329(b) imposes a bar on calling in question such an election except by way of an election petition under any law made by the appropriate Legislature. Article 329(b) is not involved in the present election as it is only an election of the office bearers of an association. Nevertheless, as observed by this court in the ***Yachting Association*** case *(supra)*, the principles of law relating to elections of the type mentioned in Article 329(b) have been extended to elections in general also as in the case of an election to a Managing Committee of a society in ***Shri Sant Sadguru Janardan Swami v. State of Maharashtra*: (2001) 8 SCC 509**. For such elections as are outside the scope of Article 329(b), courts have, as a rule of prudence, generally adopted the hands-off approach during the pendency of an election process. But, the absolute bar imposed by Article 329(b) is not there. And, that is why in ***B.D. Kaushik*** *(supra)*, the Supreme Court observed that the courts should not ordinarily interfere with the election process by way of granting injunction. The degree of care and caution to be exercised by the court in interfering with an election process while

entertaining an election dispute not hit by the bar of Article 329(b) has been stated in ***Ashok Kumar*** *(supra)* as follows:-

> "5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

36. It is thus evident from the decisions of the Supreme Court in ***Election Commission of India v. Ashok Kumar*** *(supra)* and ***B.D. Kaushik*** *(supra)* that, even in cases which fall outside the bar of Article 329(b) of the Constitution, "ordinarily" the court does not interfere with the election process. That is, indeed, the overwhelming trend of court decisions. But, that does not mean that even in extraordinary circumstances, the court cannot interfere, particularly, with elections to bodies, such as bar associations, etc. which do not involve Article 329(b).

37. Fourthly, the factual matrix and chronology of events, as submitted by Mr Chandhiok and recorded by us in this order, are now available and Mr Chandhiok has stated categorically that the written statement would be filed within two days. These facts were not there when the learned single Judge passed the impugned order. We feel that it would be appropriate that

the learned single Judge considers the matter in the backdrop of the factual matrix of the case.

38. It is for these reasons that we are remitting the matter to the learned single Judge for a 'conclusive' decision on the appellant's application (IA No.17553/2013). The learned single Judge will consider all the three aspects which are necessary while deciding such interim applications, namely, the existence of a strong *prima facie* case, balance of convenience and the question of irretrievable harm and injury. In doing so, the learned single Judge would also consider whether this is a case which is of such an extraordinary character where interference with the election process is called for ?

39. We are informed that certain candidates, more specifically four candidates, have been declared elected as they were unopposed. We make it clear that the election of those candidates as well as any other candidates, who may be elected in the present elections, if held, would, in any event, be subject to any orders that may be passed by the learned single Judge in the said suit CS(OS) 2111/2013. By virtue of the impugned order, the defendants were to file their written statements within 30 days. However, even if the defendant No.1 (DHCBA) has not filed the written statement, we accept Mr Chandhiok's undertaking that the DHCBA shall file its written statement within two days, and permit the DHCBA to do so. The application being IA No.17553/2013 shall be listed before the learned single Judge on 05.12.2013, and not on 25.02.2014 as earlier directed in the impugned order, for a consideration afresh and particularly on the

parameters indicated above prior to the poll date of 13.12.2013. With these observations and directions the appeal stands disposed of.

There shall be no order as to costs.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

December 03, 2013
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