

YOGENDRA SINGH TOMAR

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v.

BAR COUNCIL FOR UTTARAKHAND AND OTHERS
(Civil Appeal No. 11176 of 2013)

DECEMBER 17, 2013

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[ANIL R. DAVE AND DIPAK MISRA, JJ.]

Bar Council of Uttarakhand Election Rules, 2009 – Rules 20, 22 and Form C/Rules for Election of Chairman and Vice Chairman, 2009 – State Bar Council – Election to the post of Chairman – Three of the ballots rejected by Returning Officer – Respondent No.3 declared elected – Appellant challenged the election and sought for recounting, treating the rejected votes in his favour – Single Judge of High Court personally examining the rejected ballots, declared them valid in favour of the appellant – Division Bench of High Court held that rejection of the ballots by Returning Officer could not have been questioned – On appeal, held: The Election Rules have been carelessly drafted – Unless the provision relating to Method of Voting (r. 20), provision stipulating when the voting papers can be declared invalid (r. 22) and instructions for guidance of voters (Form C) are read conjointly, harmoniously and purposely, the whole exercise will lead to chaos – Direction to hold fresh election as per Rules – Advocate.

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Appellant and the third respondent contested for the election of Chairman of Bar Council of Uttarakhand. Respondent No. 3 was declared as elected. The appellant filed writ petition seeking declaration of the election as null and void and also sought for recounting of the votes by treating the rejected votes in his favour as the same were cast in accordance with the stipulations made in Bar Council of Uttarakhand Rules, 2009. The Single Judge of High Court personally examined the rejected votes and held that in view thereof, the appellant had secured

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- A higher number of first preference votes than respondent No. 3 and hence he deserved to be elected as the Chairman. In compliance of the order, the appellant took charge as the Chairman. In appeal, against the order of Single Judge, Division Bench of High Court held that the rejection of the ballots by the Returning Officer could not have been questioned and allowed the appeal.

Disposing of the appeal, the Court

- HELD: 1. The Rules have not been appositely drafted and more care should have been taken in drafting the same. The Bar Council of Uttarakhand would be well advised to bring in an apposite set of Rules for election of the Chairman and Vice-Chairman in accordance with the Advocates Act, 1961 in clear cut terms so that hereinafter these kind of disputes do not arise. [Para 24] [572-A-C]

2. Rules 20 (Method of Voting) and 22 (Voting Papers when invalid) of the Bar Council of Uttarakhand Election Rules, 2009 along with form "C" ,which provides for instruction for the guidance of voters, they are to be read conjointly, harmoniously and purposively. Unless there is a holistic reading of the Rules and the Form, the whole exercise is likely to lead to a chaos and it has actually led to such a situation. The ballot papers were not printed in accordance with the Rules. [Para 22] [571-A-B]

3. It is directed that there should be a fresh election for the post of the Chairman and it should be open to all the eligible candidates to contest. The Returning Officer shall notify the date and the election should be held as per Rules. The returning Officer shall fix a schedule so that by 10.1.2014 the results are declared. It is further clarified that the election tribunal, as stipulated in the Rules, shall be constituted much before as per the Rules so that the writ petitions are not filed directly before the

High Court. It is also clarified that if a candidate has followed the method of voting as prescribed in paragraph 4 of Form "C" which is in accord with Rule 22(f) of the 2009 Rules, his ballot paper shall not be declared invalid. The election held shall be for a period of one year as prescribed under the Rules and it shall be treated as a fresh election and the period shall commence as prescribed under the Rules. [Para 23] [571-E-G]

4. In any democratic institution, like the Bar Council, where holding of election is imperative, the authority concerned, the aspirants and the electoral college have a greater degree of responsibility. Collective collegiality must surface. There has to be individual ambitions, but the institutional aspirations should be treated as paramount. Every member of the profession should understand, realize and practise so that the nobility of the profession is maintained and sustained in a noble manner. [Para 25] [572-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11176 of 2013.

From the Judgment and Order dated 09.10.2013 of the High Court of Uttarakhand at Nainital in SA No. 383 of 2013.

Krishnan Venugopal, Manan Verma and Diksha Rai for the Appellant.

Vijay Kumar, Pyush Garg (for Aniruddha P. Mayee), Madhvi Divan, Ranjeeta Rohtagi for the Respondents.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. The appellant, a practising advocate, was duly elected as a Member of the Bar Council of Uttarakhand and being eligible to contest for the post of Chairman of the Bar Council

- A filed the nomination papers for the said post, election for which was scheduled to be held on 19.1.2013. The election, as scheduled, was held on the date fixed and on the basis of the voting, the appellant and the third respondent received six votes of first preference each, respondent No. 4 received three votes of first preference and four votes of first preference were declared invalid. The first preference votes secured by the respondent No. 4 were eliminated and his second preference votes were counted. After counting of votes on the principle of single transferable vote the third respondent secured eight votes as against seven by the appellant as a result of which the Returning Officer declared the third respondent as the elected Chairman of the Bar Council of Uttarakhand.

3. As facts would unfurl, an election tribunal was required to be constituted under Rules for Election of Chairman and Vice-Chairman, 2009 (for short "the Rules") on or before the date on which the time of schedule is fixed under Rule 4 of Bar Council of Uttarakhand Election Rules, 2009 (for brevity "the 2009 Rules"). As no election tribunal was in existence, the appellant approached the High Court of Uttarakhand at Nainital in Writ Petition (M/S) No. 168 of 2013 for declaring the result of election of the Chairman, Bar Council of Uttarakhand held on 19.1.2013 as null and void. A further prayer was made to command the respondents to recount the votes by treating the rejected votes in favour of the appellant as the votes had been cast in accordance with the stipulations made in the 2009 Rules.

4. The learned single Judge by order dated 25.3.2013 passed in interim order by appointing one Mr. Manoj Tiwari, senior advocate, as a special officer to examine the rejected votes and submit a report to the Court. The said interim order wherein maintainability of the writ petition, absence of alternative remedy due to non-constitution of election tribunal and the jurisdiction of the High Court were decided in favour of the appellant was assailed in Special Appeal No. 101 of 2013 and the Division Bench vide order dated 10.4.2013 directed stay

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of the interim order as well as all the proceedings in the writ petition. A -

5. Being dissatisfied, the appellant preferred Special Leave Petition (C) No. 15330 of 2013 and this Court on 27.8.2013 passed the following order: - B

"Learned counsel for the parties have agreed that if the learned Single Judge opens the sealed cover containing the ballot papers which have been disputed and if he personally examines and comes to a particular conclusion, the parties will not raise any objection. C

In the aforesaid circumstances, we request the learned Single Judge of the High Court to get the sealed cover opened upon perusal of the ballot, take appropriate decision in accordance with the Rules and Regulations framed by the Bar Council of Uttarakhand. Thus, the order passed by the learned Single Judge is modified, as stated hereinabove and the order passed by the Division Bench of the High Court in Special Appeal No. 101 of 2013 is quashed. D E

Special Appeal No. 101 of 2013 shall be deemed to have been disposed of as the learned Single Judge is to examine the validity of the ballot papers as stated hereinabove. We are sure that the learned Single Judge shall dispose of the petition within one month from the date of receipt of this order by the High Court. In view of the above observations and directions, the Civil Appeal stands disposed of with no order as to costs." F

6. After the aforesaid order was passed, the learned single Judge took up the matter and on 18.9.2013 passed the following order: - G

"In compliance of Hon'ble Supreme Court's order sealed cover envelop of the votes was opened in the Court in the H

- A presence of learned counsel for the parties. I find that in one ballot paper which is declared invalid tick mark ' ' is put in front of two candidates. In another invalid paper 'II, III, I' mark is put in front of the candidates, in another ballot paper II, I mark is put in front of two candidates whereas in one ballot paper II, I mark is put in front of another candidates."
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7. Thereafter, the learned single Judge allowed the writ petition by holding that the appellant had secured higher number of first preference votes than the respondent No. 3 and hence, he deserved to be elected as the Chairman of the Bar Council of Uttarakhand and, accordingly, set aside the election of the third respondent and passed consequential orders.
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8. Pursuant to the order passed by the learned single Judge, the appellant took charge as the Chairman of the Bar Council on 4.10.2013. In the meantime, legal propriety of the judgment and order passed by the learned single Judge was called in question in Special Appeal No. 383 of 2013 and the Division Bench on 9.10.2013, after referring to the history of the litigation, interpreted the 2009 Rules as well as the Rules and came to hold as follows: -
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- "We do not think that he could, at all, do so, inasmuch as, as aforesaid, in Chapter I Part II of the Bar Council of India Rules, there is no contemplation of election of a Chairman by a single transferable vote or by preferential votes. In the circumstances, once again, the question comes to be considered, whether the Returning Officer, while rejecting those three ballots, acted contrary to what he was required to do? The fact remains that Rule 2 of the second Rules, having not indicated even by implication that first Rule should be read into or the Bar Council Rules should be read into the second Rule and the ballot papers having specifically mentioned that the same will be declared invalid in the event, preferences are given in any other
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manner, except by Hindi or English numerals, the rejection of those ballots by the Returning Officer, we think, cannot be questioned." A

9. When the present matter was listed for the first time on 21.10.2013, this Court, while issuing notice, had directed stay of implementation of the impugned order as a consequence of which the appellant is continuing on the post of Chairman of Bar Council of Uttarakhand. B

10. We have heard Mr. Krishnan Venugopal, learned senior counsel for the appellant and Mr. Vijay Kumar, learned counsel for the respondents. C

11. At the outset, we would like to state with certitude that the Bar Council of Uttarakhand could have taken pains to draft the Rules which deal with "Election for Chairman and Vice-President" of the Bar Council with more clarity, precision, with a sense of definiteness and sans ambiguity. But, unfortunately, the drafting of the Rules has ushered in a state of chaos and confusion as a result of which these kind of election disputes have travelled to the Court. It is necessitous to clarify how the Rules are absolutely unclear and capable of being ambiguous. To understand, we have to refer to the 2009 Rules. Bar Council of Uttarakhand, Nainital, in exercise of powers conferred by Section 15 of the Advocates Act, 1961 (Act No. XXI of 1961), has framed a set of rules called Election Rules, 2009. Rule 3(f) defines "Chairman" to mean the Chairman of the Bar Council of the State of Uttarakhand. Rule 3(l) defines "First Preference" and "Second Preference". Rule 5 provides for method of election. Rule 20 provides for method of voting. It reads as follows: - D
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"20. Method of Voting: G

- (1) Every voter shall have only one vote at the election irrespective of the number of seats to be filled.
- (2) (a) A voter in giving his vote. H

- A (b) shall place on his voting paper the figure '1' in the space opposite the name of the candidate whom he chooses for his first preference, and may in addition place on his voting paper the figure '2' '3', and '4' and so on, in the opposite the names of the other candidates in the order of his preference. The maximum preferences shall be the number of seats otherwise the voting paper shall be invalid.
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- C (3) A voting paper shall not be signed by a voter. Any voting paper containing any erasures, obliterations, overwriting and alterations or the signature of a voter shall be deemed to have been defaced and no votes purporting to have been given thereby shall be taken into account for the purpose of the election.
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- (4) The decision of the Returning Officer as to whether a voting paper has or has not been defaced shall be final."

E 12. Rule 22 stipulates when voting papers get invalid. It reads as follows: -

1. Section 32 - Termination of proceedings.

- F (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub- section (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where-
- G (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in, obtaining a final settlement of the dispute,
- (b) the parties agree on the termination of the proceedings, or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- H (3) Subject to section 33 and sub- section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

"22. Voting Papers when invalid:

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A voting paper shall be invalid on which.

- (a) The figure '1' is not marked; or
- (b) The figure '1' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or
- (c) The figure '1' and some other figures are set opposite the name of the same candidate; or
- (d) There is any mark in writing by which the voter can be identified;
- (e) A voting paper in which the preferences are indicated in words as 'one' 'two' etc.
- (f) The marking on the voting paper is not in the international form of Indian numerals, in Hindi, English or Roman."

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13. Form "C" which has been prescribed under Rule 4 deals with instructions for the guidance of voters. Paragraph 4 of the said instructions deals with method of voting. It reads as follows: -

"4. METHOD OF VOTING:

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- (1) A voter in giving his vote:
 - (a) Shall place on his voting paper the figure "1" in the space opposite the name of the candidate whom he chooses for his first preference; and
 - (b) May in addition place on his voting paper the figure "2" and "3" and so on, in the space opposite the names of the other candidates

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A in the order of his preference in Hindi, English or Roman numerical.

(2) A voter shall not sign the voting paper nor place any mark thereon by which he can be identified."

B 14. Paragraph 5 prescribes when voting papers become invalid. It is as follows: -

"5. VOTING PAPERS WHEN INVALID:

C A voting paper shall be invalid on which:

6.1.1.the figure '1' is not marked; or

6.1.2.the figure '1' is set opposite the name of more than one candidate or is so placed as to render it doubtful to which candidates it is intended to apply; or

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6.1.3.the figure '1' and some other figure are set opposite the name of the same candidate; or

E 6.1.4.there is any mark in writing by which the voter can be identified;

6.1.5.the marking on the voting paper is not in the international form of Indian numerical."

F 15. Coming to the Rules that deal with "Election of Chairman and Vice-President" it is necessary to refer to Rule 2. It is as follows: -

G "2. The election shall be held by the Secretary, by secret ballot, by single transferable vote in accordance with the rules laid down in Chapter I relating to the election of members, who shall also act as Returning Officer under these Rules."

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16. Rule 3 provides the tenure of Chairman and Vice-Chairman. It reads as follows: - A

"3. The Bar Council shall after its being constituted in its first meeting or as soon as possible thereafter every one year elect a Chairman and a Vice-Chairman from amongst its members." B

17. It is interesting to note that the nomenclature of the Rules says "Rules for Election of Chairman and Vice-President" and Rule 1 states that 'Election' in these Rules shall mean the election of the "Chairman and the Vice-Chairman". C
We are only pointing out the same to show how due care has not even been taken to name the Rules in a proper way. We have said so as Section 3(3) of the Advocates Act, 1961 clearly states that there shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed. Section 15 of the Act provides a Bar Council to frame rules to carry out the purposes of the said Chapter. The Rules have been framed under Section 15(2)(g) of the Act. Sub-section (2)(g) of Section 15 reads thus: - D

"15. Power to make rules. - E

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

(g) the power and duties of the Chairman and the Vice-Chairman of the Bar Council." F

18. The carelessness in framing the Rules is obvious. Rule 2 of the Rules provides that the election shall be held by a single transferable vote in accordance with the Rules laid down in Chapter I relating to election of members and the Secretary shall act as the Returning Officer under the Rules. In the 2009 Rules there is no "Chapter". This has, in fact, created confusion in the delineation by the learned single Judge and deliberations of the Division Bench of the High Court. In the instructions on G
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A the ballot papers, which are in Hindi on being translated in English, read as follows: -

"Please caste your vote in order as 1, 2, 3 in Hindi or in English against your preferred candidates."

B 19. The learned single Judge, as is evident from his order, has been compelled to observe thus: -

C "Undoubtedly, the manner in which both the Rules, i.e., Rule A and Rule B have been framed, leave much to be desired. Not only are they not happily worded, there is a total carelessness in preparing or even in adopting these Rules. Some of the provisions of Rule A for example (Rule 13) still refers to U.P. Gazette and U.P. Government."

D 20. After so stating he has referred to the Rules and after referring to various authorities, has opined that the voters who had cast their votes by ascribing Roman numerals their votes could not have been declared invalid. The rest of the analysis by the learned single Judge on this score need not be adverted to.

E 21. The Division Bench, as is demonstrable, interpreting the Rules, opined that regard being had to the peculiar situation when in the ballot papers it was mentioned that in the event preference is shown otherwise than in Hindi or English, the same shall be rejected and none of the voters had objected to the same at any point of time before exercising their rights under the ballots, the Returning Officer had not made any error in invalidating the three ballots. It has further opined that the learned single Judge had fallen into error by applying the principle of mutatis mutandis while incorporating the provisions of the first Rule to the second Rule.

F 22. Having perused the orders passed by the learned single Judge as well as that of the Division Bench, we have no trace of doubt that the approach to this case should have been

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undertaken in a different manner. On a reading of Rules 20 and 22 of the 2009 Rules along with form "C" which provides for instruction for the guidance of voters, we are of the considered view that they are to be read conjointly, harmoniously and purposively. Quite apart from the above, it is interesting to note, as admitted before us, that the ballot papers were not printed in accordance with the Rules. Needless to say, unless there is a holistic reading of the Rules and the Form, the whole exercise is likely to lead to a chaos and it has actually led to such a situation.

23. Presently to the necessary directions. We have been apprised at the Bar that the term of the appellant as Chairman of the Bar Council of Uttarakhand is going to be over on 19.1.2014. We have also been told that for holding a fresh election two weeks' notice is required to be given notifying for filing nomination papers and withdrawal. The learned counsel for the parties initially suggested that there should be fresh election confining to the appellant and the third respondent. After giving our anxious consideration, we are of the considered opinion that there should be a fresh election for the post of the Chairman and it should be open to all the eligible candidates to contest. The Returning Officer shall notify the date and the election should be held as per Rules. The returning Officer shall fix a schedule so that by 10.1.2014 the results are declared. To avoid any kind of confusion, we clarify that the election tribunal, as stipulated in the Rules, shall be constituted much before as per the Rules so that the writ petitions are not filed directly before the High Court. We would also like to clarify that if a candidate has followed the method of voting as prescribed in paragraph 4 of the Form "C" which is in accord with Rule 22(f) of the 2009 Rules, his ballot paper shall not be declared invalid. The election held shall be for a period of one year as prescribed under the Rules and we repeat at the cost of repetition that it shall be treated as a fresh election and the period shall commence as prescribed under the Rules.

A 24. Before parting with the case, we may state that the
Rules have not been appositely drafted and more care should
have been taken in drafting the same. A contention was
advanced by Mr. Krishnan Venugopal that the concept of single
transferable vote is unknown to the election of a Chairman or
B a Vice-Chairman to the Bar Council in all the States and also
in Bar Council of India. We do not intend to comment on the
said submission. However, we would only suggest that the Bar
Council of Uttarakhand would be well advised to bring in an
apposite set of Rules for election of the Chairman and Vice-
C Chairman in accordance with the Advocates Act, 1961 in clear
cut terms so that hereinafter these kind of disputes do not arise.
The said exercise may be undertaken after carrying out our
directions.

D 25. We have already used the phrase "before parting" and
expressed our views about proper drafting of rules and,
therefore, what we are further going to add, may appear as an
elongation but we are disposed to think, it is necessary. In any
democratic institution, like the Bar Council, where holding of
election is imperative, the authority concerned, the aspirants
E and the electoral college have a greater degree of
responsibility. Collective collegiality must surface. Needless to
say, there has to be individual ambitions, but the institutional
aspirations should be treated as paramount. Every member of
the profession should understand, realize and practise so that
F the nobility of the profession is maintained and sustained in a
noble manner.

26. With the aforesaid directions, the appeal stands
disposed of without any order as to costs.

G Kalpana K. Tripathy

Appeal disposed of