

ALLAHABAD HIGH COURT

Ravi Kiran Jain

Vs.

Bar Council of U.P

Civil Misc. Writ No. 7113 of 1973

(K.N. Singh, J.)

30.01.1974

ORDER

K.N. Singh, J.

1. This is a petition under Article 226 of the Constitution claiming relief for the issue of a writ of certiorari quashing the resolution of the Bar Council of Uttar Pradesh dated 4th November, 1973, and for the issue of a writ of mandamus to the Bar Council of Uttar Pradesh to hold the election of its members on 7th and 8th January, 1974 and to issue direction to the respondents not to make any amendment in the final electoral roll prepared and finalized for the election of the Bar Council of Uttar Pradesh.

2. The term of the elected members of the State Bar Council of Uttar Pradesh expired on 5th April, 1973, but no fresh election was held with the result respondents Nos. 2 to 23 who are its members are continuing in the office. The matter relating to the ejection of members of the Bar Council came up for consideration before the meeting of the Bar Council of Uttar Pradesh on 22nd of April, 1973. The Bar Council adopted a resolution fixing the election programme. According to the resolution of the Bar Council, electoral roll, was to be finalized by 29th of August, 1973, the nomination papers were to be filed between 17th to 30th September and polling was fixed for the 5th and 6th November, 1973. The election programme was published under the notification dated 29th of August, 1973. Some nomination papers were filed but the election could not be held as on 16th September, 1973, another meeting of the Bar Council was held wherein it decided to postpone the election for a short period and extended the date for filing the nomination papers up to 31st of October, 1973, and date for polling was changed from 5th and 6th November to 7th and

8th January, 1974. The petitioner and 92 other persons filed their nomination papers for contesting the election to the membership of the Bar Council On 4th November, 1973, that is, after the expiry of the last date fixed for filing nomination papers, the Bar Council adopted another resolution postponing the election scheduled for 7th and 8th January, 1974. It was further stated that the next date for election would be fixed later on. On 5th November, 1973, the petitioner filed the instant petition under Article 226 of the Constitution for quashing the resolution of the Bar Council dated 4th November, 1973, and for issue of a direction to the respondents to hold the election on 7th and 8th January, 1973, as scheduled. Subsequently, the, petitioner got the petition amended claiming relief for the issue of a writ of mandamus directing the respondents not to make any amendment in the final electoral roll which had already been published prior to the filing of the nomination papers and to hold the elections within 31st day of the decision of the writ petition in case the petition was not decided before 7th of December, 1973.

3. Initially the petitioner impleaded the Bar Council of Uttar Pradesh through its Secretary and its members as respondents Nos. 1 to 22. Notices of the writ petition were issued to all the respondents as the petitioner had made allegations of mala fide against the members of the Bar Council. He alleged that the term of the elected members of the Bar Council expired on 5th April, 1973, but they were not holding elections deliberately, instead they have been postponing the elections on some pretext or the other, so that they could continue in office. Members of the Bar Council were alleged to have acted mala fide in postponing the elections on extraneous reasons for their own ulterior purpose. Notices were issued to all the members. Appearance was, however, put in by respondent No. 2, Sri Raja Ram Agarwal, the Chairman of the Bar Council, Sri S.K. Misra, Sri Harvind Dayal Srivastava, Sri A.P.S. Chauhan, Sri V.C. Misra, Sri G.C. Dwivedi and N.C. Rajvanshi, respondents Nos. 3, 6, 13, 20, 21 and 22. Sri S.N. Kakkar respondent No. 4, Advocate-General of Uttar Pradesh who is an ex-officio member of the Bar Council appeared before me during the course of the hearing of the writ petition and stated he has not been attending the meetings of the Bar Council since long, he was not interested in postponing the election or in continuing in the office. Respondent No. 14, Sri M.A. Ansari, appeared in person before me and made a statement that he was opposed to the postponement of the election of the Bar Council, but when the election was

postponed by the majority vote of the members, he tendered his resignation in protest. Sri V.C. Misra, respondent No. 19, also appeared in person before me, he made a statement that he had throughout been opposed to the postponement of the election and in fact each and every time when the matter came up for consideration before the Bar Council he asserted that the election be held as required by the Act and rules within time. He got his dissent noted in the minutes of the Bar Council and in protest he walked out of the meeting.

4. During the bearing, on petitioner's own request respondents Nos. 4, 9, 11 and 14, Sarvashri S.N. Kakkar, Babboo Lal Misra, Devendra Swaroop and Mohd. A. Ansari were deleted from the array of the respondents. Counter-affidavit has been filed on behalf of the Bar Council by its Secretary. Sri Raja Ram Agrawal, the chairman of the Bar Council has also filed his own affidavit denying the allegations of mala fide. Sarvasri S.N. Misra, G.C. Dwivedi, N.C. Rajvansi, A.P.S. Chauhan and V.C. Misra have filed their own affidavits denying the allegations of mala fide made against them by the petitioner.

5. The petitioner made the submissions on three grounds. Firstly, he contended that once the date for fixing the election programme was notified and the nomination papers were filed and the last date for filing the nomination papers expired, the Bar Council had no power or authority in law to postpone the elections or to fix fresh dates for holding elections. Secondly, the electoral roll as finalized before 29th August, could not be re-opened and no new names could legally be included in that roll. Lastly, he urged that the resolution of the Bar Council postponing the election was vitiated as the same had been adopted on extraneous considerations and the members acted mala fide in postponing the election. Sri Shanti Bhushan, the learned Counsel for the respondents urged that the Bar Council was legally competent to change dates fixed for election and to refix the same, the new Advocates who had been enrolled on Roll of Advocates were entitled to be included in the electoral roll and the members acted bona fide in postponing the elections.

6. In order to appreciate the rival contentions it is necessary to refer to the relevant provisions of the Advocates Act and the Rules framed there under regulating the elections. The State Bar Council of Uttar Pradesh has been constituted under Section 3 of the Advocates Act, 1961. By Section 8 the term

of members of the State Bar Council is four years from the date of publication of the result of their elections. Under Sub-Section (2) of Section 8 an outgoing member of the council is to continue to office until the publication of the result of the election of his successor. Bar Council of India is constituted under Section 4, it has been assigned statutory functions and duties under the Act. By Section 49-A(a) and (b) the Bar Council of India is empowered to make rules for discharging its functions under the Act and to frame Rules which may prescribe the conditions subject to which an Advocate may be entitled to vote at an election to the State Bar Council including the qualifications or disqualifications of voters, and the manner in which electoral roll may be prepared and revised by a State Bar Council. In exercise of its powers under Section 49 of the Act the Bar Council of India has framed rules for the preparation of electoral roll of the State Bar Council which are contained in part III of the Bar Council of India Rules, Rule 1 lays down that every Advocate whose name is on the Electoral Roll of the State Council shall be entitled to vote at an election. Rule 2 provides that subject to the provisions of Rule 3 the name of every Advocate entered in the State Roll shall be entered in the electoral roll of the State Council. Rule 3 prescribed disqualifications on the existence of which an Advocate is not entitled to get his name included in the electoral roll of the State Council. Rule 4(a) prescribes that a preliminary electoral roll containing the names of all Advocates whose names are required to be included under the rules shall be put up on the notice board of the State Council within 120 clear days before the expiry of the term of the members of the said State Council necessitating the election, and relevant portions thereof shall be sent to such Bar Associations as the Secretary may consider fit. Clause (b) of Rule 4 lays down that the final electoral roll shall be prepared after incorporating such changes as may be necessary including the, addition of the names of Advocates enrolled after the preparation of the preliminary roll, the same shall be put up on the notice board of the State Council not more than 75 clear days and not less than 60 clear days, before the date of election. Intimation of such publication shall be given within a week after the publication to the Bar Associations. Rule 4, therefore, contemplates that steps may be taken for preparation of preliminary electoral roll at least 120 days before the expiry of the terms of the membership of the State Bar Council. It further requires that the electoral roll should be finalized not more than 75 clear days before the date of the election and not less than 60 clear days.

7. The Bar Council of Uttar Pradesh in exercise of its power under Section 15(2) of the Advocates Act, 1961, framed Rules which regulate the manner and procedure of holding the election of the members to the Bar Council. These Rules are known as Bar Council of Uttar Pradesh Election Rules, 1968. Rule 4 lays down that the election of members to the Bar Council shall be held at such place or places, on such date or dates, and during such hour or hours as the Council may appoint. Different dates and different hours may be appointed for polling at different places. The Returning Officer is empowered to make necessary changes in the place and date of polling on his own motion or on a written request made by at least 20 Advocates of that place entitled to vote. Rule 5 lays down that the election shall be held by the single transferable vote from amongst the voters in the electoral roll. Rule 6 provides that notice of the time and place of election shall be given by publication under the signature of the Secretary, in one issue of a daily newspaper in the State not less than 60 clear days before the date of election. The notification is required to specify the dates for nominations, the dates for scrutiny, the dates for withdrawal of the candidature, and the date or dates of polling etc. This rule, further lays down that the last date for the filing of the nominations should not be less than 35 clear days before the date of the election and that there should be at least 5 clear days after the last date of the scrutiny for withdrawal of the candidature. Rule 7 lays down that no person shall be entitled to seek election unless his name is in the electoral roll. Rule 31 provides for the determination of result and publication thereof. Rule 32 makes provision for challenging the election of a candidate declared to have been elected to the Bar Council by a petition presented to the Secretary. The petition is required to be tried by an election tribunal constituted under the rules. Clause 8 of Rule 32 lays down that no petition shall lie on the ground that any nomination paper was wrongly rejected or the name of any voter was wrongly included in or omitted from the electoral roll, or any error or irregularity which is not of a substantial character. By R.33 the Secretary is designated to be in charge of the conduct of the election. These are the provisions of the Act and the Rules which deal with the term of the members of the Bar Council and the preparation and finalization of the final electoral roll and the conduct of the elections.

8. Sri Ravi Kiran Jain, the petitioner, argued his case in person. He contended

that once the Bar Council had fixed various dates for the conduct of elections, it exhausted its powers and thereafter it had no authority in law to re-fix the dates or to postpone the elections sine die. I have considered the question carefully but I do not find any substance in the argument. It is conceded that the power to fix the election programme and necessary dates for filing nomination papers, scrutiny, polling and counting is exclusively vested in the Bar Council. Rule 4 of the Election Rules 1968, confers that power on it. The Bar Council may exercise its powers under Rule 4 to fix dates for holding the election. It may exercise that power as and when occasion may arise. The principles laid down in Section 21 of the General Clauses Act would be fully applicable in interpreting Rule 4 of the Election Rules 1968. It is well accepted principle of legislation that whenever power is conferred on an authority to issue an order or notification that power would include power to amend, vary or rescind its orders subject to the like sanctions and conditions if any. Section 21 of the General Clauses Act embodies a rule of construction, the nature and extent of the application of that rule is governed by the relevant provisions of the rules which confer power to issue notification and to fix dates. In the instant case, Rule 4 confers power on the Bar Council to fix dates and to issue notification notifying the dates for the elections. In the absence of any restrictions or limitations express or implied, on the power of the Bar Council in the said Rules, the council is free to exercise that power from time to time of whenever it may consider it necessary. The power to modify, vary or rescind its notification must be conceded to the Bar Council. There is no limitation express or implied in the rules on the power of the Bar Council for exercising its power to modify, vary or rescind its notification relating to holding of election except that the power can be exercised only before the elections are held. The power of the Bar Council to fix time, place and date of the election is not exhausted merely on the issue of notification of the programme. It can alter, modify or rescind its order fixing the various dates; otherwise preposterous result would follow. Take a case where the Bar Council may have fixed dates for holding elections, but due to natural calamities like earthquake, floods or grave emergencies such as the country may be at war, the election programme cannot be adhered to, in that situation the Bar Council may consider it necessary to change the entire election programme. It may rescind the notification issued for holding of the election or postpone the election sine die. If the petitioner's contention is accepted the Bar Council will not be able to re-fix dates or to rescind its notification even in the

aforesaid circumstances, which would entail sessions consequences obstructing the constitution and working of the Bar Council. Any interpretation which may make the holding of elections impossible cannot be readily accepted. Till the elections had not been completed the Bar Council had full Jurisdiction to change the dates or to postpone the election. Once the elections are completed the Bar Council would be divested of its power to change the election programme or to require the holding of elections afresh. As already noted in the instant case only nomination papers had been filed, the date for withdrawal and scrutiny had not expired and the polling had not taken place. In the circumstances the Bar Council acted within its jurisdiction in postponing the elections and changing dates for election.

9. The petitioner placed reliance upon the law laid down in *Sha Mulchand and Co. v. Jawahar Mills*,¹ *State of Bihar v. D.N. Ganguly*,² *Gopi Chand V. Delhi Administration*,³ and *Governor of Himachal Pradesh v. Avinash Sharma*,⁴ in support of his contention that even on the application of the principles contained in Section 21 of the General Clause Act the Bar Council had no power to modify or rescind or vary the notification issued for holding the elections. I have considered the cases carefully, but I find that the provisions which were considered in those cases were not similar to those contained in Rules 4 and 6 of the Election Rules, 1968. The extent of the power of the Bar Council is to be determined having regard to the provisions contained in the Rules and not on any abstract principles. As already stated, there are no limitations or restrictions placed on the Bar Council in exercise of its powers in fixing dates for holding election under Rules 4 and 6 either expressly or by necessary implication. Therefore, the provisions contained in Section 21 of the General Causes Act is fully applicable in construing Rules 4 and 6. In my opinion, the Bar Council had full jurisdiction to change dates of the election and to postpone the election or to fix dates for holding the election afresh.

10. Sri. Jain contained that even if the Bar Council may have power to postpone the elections or to fix dates afresh for conduct of elections, it has no power to prepare a fresh electoral roll or to add names of Advocates to the electoral roll which was finalized prior to the issue of notification dated 29th August, 1973. According to him, the electoral roll as finalized by 29th August, 1973, should be the basis for holding the elections and no addition of fresh names can legally

be made in the electoral roll. As already noticed the Bar Council of India has framed Rules regulating the preparation of electoral roll. Every Advocate whose name is on the Roll of Advocates of the State has Council is entitled to get his name included in the electoral roll prepared under the Rules for electing the members of the State Bar Council. An Advocate whose name is in the Electoral Roll is entitled to vote at the election. Rule 4 requires publication of the preliminary electoral roll. Rule 4(b) lays down that the final electoral roll should be prepared and finalized and placed on the notice board of the State Bar Council not more than 75 and not less than 60 clear days before the date of election. The intention behind Rule 4(b) is clear that all those Advocates whose names may have been brought on the State roll of the State Bar Council should be included in the electoral list and for that purpose it has been laid down that the electoral roll should be finalized not more than 75 clear days and not less than 60 days before the date of election. It means that all those Advocates whose names are entered in the Roll of Advocates before 75 or 60 days of the election as the case may be should be included in the electoral roll. Thus those Advocates who may have been enrolled after 29th August, 1973 as Advocates and whose names are brought on the State roll of Uttar Pradesh as Advocates are entitled to get their names included in the electoral roll of the Bar Council of Uttar Pradesh. On enquiry I was told that there are about 1000 persons who have been enrolled as Advocates after 29th August, 1973. If the election is going to be held in April, or in any other month I do not find any justification to accept the contention that all those Advocates whose names have been included in the State roll of Advocates must be debarred from taking part in the elections. Rule 4(b) lays down a salutary Rule which requires that the electoral roll should be finalized at least 60 days and not more than 75 days before the date of poll. If for any reason the elections are postponed Rule 4(b) must be complied with and the electoral roll must be finalized up to date in accordance with that rule. If that is not done, Rule 4(b) would be violated and a large number of Advocates who have become eligible for being candidates at the election or for taking part in the voting would be debarred from exercising their right. I am, therefore, not prepared to accept the petitioner's contention.

11. Lastly, the petitioner vehemently urged that the members of the Bar Council acted mala fide in postponing the election on trivial and flimsy grounds only with a view to remain in power even though their term had expired. It is true

that the members of the Bar Council have continued to hold the office even though their terms expired on 5-4-1973. The petitioner alleges that the members of the Bar Council have deliberately been postponing the elections with a view to remain in power. The respondents have contested the petitioner's allegations. They have stated that the elections were postponed on bona fide grounds. If the allegations of mala fide are proved the resolution of the Bar Council postponing the elections would be rendered invalid. But allegations of mala fide are easy to make although very difficult to prove. It is well established that he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, abuse or misuse of the power. In the instant case, the petitioner therefore must establish the charge of bad faith, abuse or misuse of power by the members of the Bar Council. The motive or purpose of bad faith or personal ill-will of members of the Bar Council is difficult to be established by direct evidence as it is difficult to establish the state of a man's mind but mala fide in the sense of improper motive must be established by direct evidence, i.e. that it must be discernible from the conduct of the respondents. In the absence of direct evidence, circumstances must make out a strong case of mala fide. The inference of bad faith, ill will or misuse of power can be drawn on proved facts. But suspicion, howsoever strong, cannot take the place of proof to establish the charge of bad faith, malice or misuse of powers against the respondents. These general principles must be taken into account while considering the mala fides of respondents.

12. The petitioner has alleged that the elections were postponed from time to time with the result the elections have not been held and the Bar Council has not been constituted even though a period of eight months has expired and during all this time the respondents whose terms have expired have continued in office. The fact that the term of the members of the Bar Council expired on 5th April, 1972, and that they have continued to remain in office even after the expiry of their term is not disputed. It is also conceded that the elections have been postponed on various dates with the result the elections scheduled to be held in November and on 7th and 8th January, 1974, could not be held. The petitioner has further alleged that the respondents have deliberately been postponing the elections on some pretext or the other only with a view to remain in power. The contesting respondents except Sri V.C. Misra have taken the stand that they acted bona fide in postponing the elections. According to them

an Amending Bill had been introduced in the Lok Sabha proposing various amendments in the Advocates Act, 1964. The amendments proposed increase in the strength of the members of the Bar Council of Uttar Pradesh from 20 to 25. The provisions of the Bill had come to the knowledge of the members of the Bar Council through Sri S.N. Misra, a Member of the Bar Council, who happens to be a Member of Parliament also. The Bar Council was anxious that the elections be held after the Bill was converted into an Act to that instead of 20, twentyfive members could be elected. The respondents contend that in that situation the Advocates could get opportunity to elect five more members to the Bar Council. The contesting respondents have referred to the various resolutions of the Bar Council in support of their case. It is urged that on 10th September, 1972, i.e., much before the expiry of the term of the present Bar Council, the Bar Council requested the Government to expedite the passage of the proposed amendments. During the pendency of the Bill before Parliament the Bar Council took steps and prepared and finalized the electoral roll and in fact on 22nd April, 1973, it decided to hold elections and fixed various dates, for that purpose, by means of its notification dated 29th August, 1973. In September, 1973, the Amending Bill came up for discussion before the Lok Sabha. The Bar Council therefore, postponed the date of poll on 16th September and fixed 7th and 8th January, 1974 for poll. But as the Bill could not be converted into Act by that time, the Bar Council considered the question on 4th November, 1973, and by a majority vote it decided to postpone the elections sine the till the Amending Bill was passed. The instant writ petition was filed thereafter during the pendency of the writ petition the Amending Bill was converted into Act increasing the strength of the members of the Bar Council of Uttar Pradesh from 20 to 25. The Bar Council realised that revision and finalization of electoral roll will be necessary and therefore at its meeting dated 25th December, 1973 it fixed April 15 and 16, 1974, as the dates for poll. According to the respondents the aforesaid resolutions of the Bar Council had been passed in the larger interest of the Advocates of Uttar Pradesh. If the elections were held without waiting for the proposed amendments, the Advocates of Uttar Pradesh would have been deprived of five members for another period of four years. The respondents were not deriving any personal gain nor were they actuated by any malice or bias against the petitioner. They acted in the general interest of the Bar in a bona fide manner.

13. The petitioner, however, strenuously contended that the pendency of the Amending Bill before Parliament proposing amendments in the Advocates Act was not a relevant consideration for postponing the elections. He further urged that the respondents were deliberately postponing the elections. In fact they were not keen to hold the elections. The resolution dated 22nd April, 1973, was passed by the Bar Council only when the Bar Council of India made enquiries from the State Bar Council as to why the elections were not held. He further referred to the proceedings of the Bar Council dated 16th September, 1973. In that meeting three members of the Bar Council, Sarvasri R.H. Gupta, M.A. Jalil and A.P. Tiwari tabled a resolution for the postponement of the election on the ground that due to Dasehra and Diwali vacations and due to non-availability of pontoon bridges on certain rivers it was difficult for the Advocates to go to various districts for canvassing and since the Bill for amending the Advocates Act was pending before Parliament polling dates be changed from 5th and 6th November to 3rd and 4th December, 1973. The petitioner argued that this resolution was modified subsequently and instead another resolution was passed postponing the elections and fixing 7th and 8th January, 1974, as the dates for poll and the only reason given in that resolution was the pendency of the Bill before Parliament. The resolution which was passed, did not refer the main reason which, had impelled the aforesaid three members of the Bar Council to move for postponing the election. He urged that the resolution was merely a camouflage and the real intention was to postpone the elections. Sri V.C. Misra, a Member of the Bar Council who opposed the postponement of the elections has supported the petitioner. He also referred to the proceedings of the Bar Council in support of the contention that the contesting respondents were interested in remaining in office and for that purpose they had been postponing the elections of the Bar Council at the instance of some of the members of the Bar Council. These are the rival contentions made by the parties.

14. I have considered the matter carefully. In my opinion there is no necessity for recording a detailed finding on the question of mala fide. Even if the petition is allowed on the ground of mala fide, the petitioner cannot be granted the relief he claims. Elections could not be held on 7th and 8th January, 1974 as desired by the petitioner and as already discussed in the present circumstances the election could not be held without revision of the electoral rolls according to rules. That being so, the question of mala fide loses all its significance.. It is

true that the mere pendency of the Amending Bill before Parliament was no bar against holding the elections of the Bar Council. The Bar Council was free to hold the elections. But that by itself is not sufficient to record a finding that the respondents acted mala fide in postponing the elections. It cannot be denied that the benefit of increase of five members of the Bar Council could not be availed by the Advocate of this State for another period of four years if the elections were held in November or in January. Now, when the elections are scheduled to be held in April, the Advocates of this State will have five more representatives on the Bar Council of Uttar Pradesh. This consideration may not be proper, or desirable one but it is difficult to hold that this consideration was not a bona fide one. There is no material before me to record a finding that the dominant purpose in postponing the election was something different than that stated in the resolutions of the Bar Council in the respondents' affidavits filed in this Court. I do not consider it necessary to go into the details and record findings as in my opinion having regard to the facts and circumstances of the present case it is not necessary to do so. Moreover, Sri Shanti Bhushan, learned Counsel for the Bar Council, has given an undertaking before me that the various dates fixed by the Bar Council at its meeting held on 25th December, 1973, for holding the elections will not be changed and the elections as scheduled will be held. In view of the undertaking of the Bar Council elections are bound to be held in April. Meanwhile the electoral roll is being finalized. In the circumstances I do not consider it necessary to consider the question of mala fides any further.

15. In the result the petition fails and is accordingly dismissed, but there will be no order as to costs.

Petition dismissed.

Cases Referred.

1. AIR 1953 SC 98
2. AIR 1958 SC 1018
3. AIR 1959 SC 609: (1959 Cri LJ 782)
4. AIR 1970 SC 1576