



भारतीय विधिज्ञ परिषद्
BAR COUNCIL OF INDIA

(Statutory Body Constituted under the Advocates Act, 1961)
21, Rouse Avenue Institutional Area, New Delhi - 110 002

3015
Received
But Contents Not Verified
Date: 27/12/17

December 9, 2017

BCI:D:5391/2017 (Council)

The Secretaries of
All the State Bar Councils.

Reg.: Bar Council of India Uniform Rules (and Mandatory Guidelines) for the Elections of Bar Councils, 2016.

Dear Secretaries,

I am forwarding herewith an attachment of "Bar Council of India Uniform Rules (and Mandatory Guidelines) for the Elections of Bar Councils, 2016". The provisions of the aforesaid rules which are not in conflict with the order of Hon'ble Supreme Court of India in Transferred Case(Civil) No. 126 of 2015(Ajayinder Sangwan and Ors. Vs. Bar Council of Delhi & Ors, are to be strictly followed in the coming elections of the State Bar Councils.

This is for your information and compliance.

Yours sincerely,


Srimalanto Sen
Secretary

Bar Council of India Uniform Rules (and Mandatory Guidelines) for the Elections of Bar Councils, 2016 :-

Objects and Statements:-

In recent past the Bar Council of India has noticed some instances of mal-practice in the elections of State Bar Councils. Similarly, in the elections of member, Bar Council of India also. The Council has been receiving frequent Election Petitions relating to election disputes. The elections of State Bar Council of Chhattisgarh is the worst illustration where even the Hon'ble High Court, after enquiry, found manipulations in the Ballot papers. In the elections of Member, Bar Council of India which takes place in the State Bar Council, the Secretary of concerned State Bar Council acts as Returning Officer for such elections which is also being questioned frequently. The disputes of election of member-representatives in Bar Council of India came from Punjab & Haryana Bar Council, Kerala Bar Council, Madhya Pradesh Bar Council, Chhattisgarh Bar Council. The matter of Madhya Pradesh Bar Council has gone upto High Court. It consumes a lot of valuable time of Bar Council of India, moreover it leads to unnecessary controversies when such matters come for adjudication before the Bar Council of India.

Therefore, the Council, in order to make the elections of State Bar Council fair and transparent, has framed these Uniform Rules for elections of State Bar Council laying down the mandatory guidelines for the conduct of elections of State Bar Councils and also of member, Bar Council of India from the State Bar Councils.

The Madras High Court has issued certain directions to the Bar Council of India for prescribing certain definite requirement of length of practice for the eligibility to contest the elections of the State Bar Councils. The Council has also been noticing that due to increase in the number of inexperienced and immature Advocates in the State Bar Councils, the Bar Councils are unable to stop/curb the unnecessary calls for strikes, boycotts, abstentions etc. The number of "non-practising Advocates" are increasing day by day in the Bar Councils. As a result the Bar Councils are unable to discharge the functions assigned to it. Some of the Members of Bar Councils itself are involved in giving frequent calls for strikes on baseless grounds causing serious harm to the reputation of the profession and irreparable loss to the poor helpless litigants.

It has also been experienced that the persons who are office-bearers of any Bar Associations (a society registered under the Society Registration Act, or an Association recognized by the State Bar Council or High Court or the local District Court or Taluka Court), if elected as a Member of the State Bar Council, he starts taking undue advantage of his position as a member of the State Bar Council. Even the smaller issues of Bar Associations such members are made the issues of entire State and many a times

the calls for strikes, boycotts, abstentions are given for whole State because of the issues/disputes of a particular Association. Not only this, such office-bearers take undue advantage of their positions even in the elections of State Bar Councils. This apart, such practice has been encouraging the attitude of groupism in the Associations. In case of any election- dispute coming before the Council of their Associations, such members succeed in applying their undue influence in the State Bar Councils. Therefore, the Council has felt it necessary to stop such practice. The office-bearers of any Bar Association would not be eligible to contest the elections of State Bar Councils. However, the word "office-bearer" shall include Presidents, Vice-Presidents, Secretaries/General Secretaries only. The office-bearers of lower office than the aforesaid posts shall be eligible to contest the elections of State Bar Councils.

Moreover, since the office-bearers of Supreme Court Bar Association are not supposed to indulge in the election disputes of any local Bar Association and Supreme Court Bar Association has the members from throughout the country, the office-bearers of Supreme Court Bar Association shall not be debarred from contesting the elections of the State Bar Councils to which they are enrolled.

The Council has also framed a separate Rule for membership of Bar Councils.

Therefore, there is an urgent need to take steps for electoral reforms in the elections of State Bar Councils and member, Bar Council of India. And in view of the aforesaid reasons, the Bar Council of India has framed the following Rules laying down the mandatory guidelines for the elections to the State Bar Councils to be followed by them, and if need be to get their Rules amended soon, so that no elections are held henceforth in violation of these Rules and Guidelines.

CHAPTER I

1. Short Title

These Rules shall be called as the "Bar Council of India Uniform Rules (and Guidelines) for the elections of Bar Councils, 2016."

2. Extent

These rules will be applicable to all the Bar Councils constituted under the Advocates Act 1961 and to all Advocates whose names appear on the State rolls being maintained by the State Bar Councils under section 17 of the Advocates Act, 1961.

3. Date of commencement

These rules shall come into force on the date of its publication in the Gazette of India.

4. Definitions

(a) Act means the Advocates Act, 1961.

(b) **Advocate** means as an advocate whose name is entered in the roll of Advocates being maintained by the State Bar Councils under section 17 of the Advocates Act, 1961.

(c) **State Bar Council** means the State Bar Councils as defined under Section 3(1) (a) of the Advocates Act, 1961.

(d) **A non-practicing Advocate** means an Advocate enrolled with any State Bar Council, but not in actual practice of Law and is engaged in some other public or private job, business, contract etc. not related to Legal profession: and who has been so declared under Rule 13 and Rule 20.2 of BCI Certificate and Place of Practice(Verification) Rules, 2015 or whose name does not find place in Register (of verified Advocates) maintained in the State Bar Councils and Bar Council of India.

(e) **Fake Persons** is a person who is involved in practicing in Courts of Law/Tribunals or other Legal forums without having a valid degree in law(without any enrolment in any state Bar Council) and use to appear in such Courts, Tribunals or Forums illegally posing him as an Advocate.

(f) **Bar Association:-**The word Bar Association shall include any Association of Advocates, by whatsoever name it may be known, which is either registered under the Society Registration Act or recognized by the State Bar council or by the High Court or the Local(District or Taluka, sub-Divisional Courts) or by the Bar Council of India.

(g) **Office-Bearer of the Bar Association:-** The word office-bearer shall mean and include the President, Vice-President, General Secretary or Secretary or Secretary General of the Bar Association, but it will not include Joint Secretary, Assistant Secretary or any other office-bearer. Provided that this restriction will not be applicable to the office-bearers of Supreme Court Bar Association.

Chapter II

Returning Officer(R.O.):

The Returning Officer to conduct the elections of any State Bar Council shall be a former Chief Justice of any High Court or a former Judge of any High Court having atleast 7 years of experience preferably as a Judge of any High Court. But if such Judges of other States are not available then Chief Justice or Judges of own State could be appointed.

The R.O. shall be appointed/nominated by the State Bar Council with the approval of Bar Council of India.

Assistant Returning Officers(A.R.Os):

There shall be two Assistant Returning Officers who shall be nominated by the State Bar Council with the approval of Bar Council of India. These Assistant Returning Officers will be preferably Advocates of some other states having standing practice of atleast 25

years; But if such Advocates are not available, the Advocates of same State could be appointed.

The team/personnel for conducting elections and counting of votes (ballots) shall be hired on the advice of R.O. from some other State. The counting team should have sufficient experience of counting of preferential votes either of Rajya Sabha elections or of State Bar Council elections.

In the elections of State Bar Council, every voter shall be required to exercise at least 5 preferences/options on their ballot papers failing which the ballot may be declared invalid depending on the discretion of Returning Officer.

An Advocate shall not be eligible to contest the elections of any State Bar Council, if he has been convicted for an offence involving moral turpitude.

Chapter III

Office-bearers of Bar Associations ineligible to be the members of Bar Council:-

An Advocate, who is an office-bearer of any Bar Association(except Supreme Court Bar Association) shall not be eligible to contest the election of State Bar Council. However, if such office-bearer has already resigned from his post before the date of notification of elections of State Bar Council, he shall be entitled to contest the elections of State Bar Council.

The Returning Officer shall reject the nomination paper of any such persons who were/are office-bearers of any Bar Association on the date of notification of elections of concerned State Bar Councils.

Chapter IV

Preliminary and final Electoral rolls/ Those who have not paid subscription amount of welfare u/R 40, Chapter II of PART-VI of Bar Council of India Rules Disqualified:

The preliminary electoral roll shall be prepared soon after publication of list of non-practicing Advocates under the Verification Rules 2015.

The list of non-practicing Advocates shall be sent by the State Bar Council to every Bar Association and the notice sent to individual through post shall mention clearly about the amount U/ R 40 to be paid by the Advocate and the notice shall also mention that if the Advocate does not pay the dues U/ R 40 Chapter II of Part-VI of Bar Council of India Rules, within a period of 60 days from the date of publication of notice, his name shall be removed from the roll of Advocates and he shall not be included in the list of voters either of State Bar Council or of any Bar Association: Format of notice to be sent by Bar Council of India to all the State Bar Councils.

After 160 clear days of such publication of notice, the State Bar Council shall publish the final electoral roll containing the names of all those Advocates who have not been included in the list of Non- practicing Advocates under Chapter VI of Bar Council of India Certificate and place of Practice (Verification) Rules, 2015 and who have cleared the welfare amount as required U/ R 40 Chapter II of Part-VI of Bar Council of India Rules. And those who have passed All India Bar Examination. (This part of condition shall be applicable on only those persons who have been enrolled after 2010). No election of any State Bar Council could be held unless the list of non-practicing Advocates is finally published as per Verification Rules.

After publication of final electoral roll as provided under Verification Rules, the date of filing of nomination paper shall be published by the R. O in newspaper as well as on the notice Boards of Bar Councils. The Bar Council shall also send the copy of notice for information to all the Bar Association. However, no election can be challenged or could be declared invalid merely on the ground of any irregularity of notice under these Rules.

Chapter IV

The electoral roll shall contain affixed (scanned) copy of the photograph of the voter (opposite to his name) which shall be taken from the photo attached in the verification form.

Nomination fee:-

The nomination fee for elections of the State Bar Councils shall be Rs. 30,000/- from each candidates. The nomination fee shall be non-refundable and will be used for meeting the expenses of election. The remaining amount, if any, shall be deposited in benevolent fund of State Bar Council.

Time frame for Election & counting:-

The election of State Bar Council shall be held within 60 days from the date of publication of final electoral roll. However, if for any reason, the elections are not held within this period of 60 days, the fresh list of voters will be prepared including the names of all newly enrolled Advocates who got enrolled 75 days before the date fixed afresh for election and election process shall begin afresh. The counting shall begin preferably within 15 days from the date of completion of voting.

All the State Bar Councils shall try as far as it is feasible and practicable, to conclude the process of counting within a period of 30 days from the day it starts. The place, timings, procedure etc. of counting shall be discretion of R.O. and A.R.Os. The R.O. shall ensure full security, safety of ballot papers and transparency in the counting. But at the same time, he shall take all suitable measures to protect the ballot papers and counting staff from any unlawful assembly, undue pressure or hooliganism. If needed, he can seek the help of local police by writing to higher police officials through the Chief Justice of High Court of State..

Chapter V

Election Tribunals:-

There shall be an State Election Tribunal to adjudicate any Election Petition relating to any disputes with regard to elections of the members of State Bar Council for every State Bar Council. The Tribunal shall be headed by a former Chief Justice of a High Court, a former Judge of a High Court and a Senior Advocate. The Chairperson and members of the Tribunal shall be from some other State and not from the State where the State Bar Council is situated. The Tribunal shall be constituted by the State Bar Council with the approval of Bar Council of India.

Note:- It is made clear that other State means a Judge whose permanent residence is not in the State where the State Bar Council sits. A former Judge of other State, who had served as Chief Justice or as a Judge of the High Court where State Bar Council sits but belongs to some other State, can be appointed as R.O. or Chairman of the State Bar Council Election Tribunal.

An appeal shall lie to "Bar Council of India Election Tribunal" against any order passed by the Election Tribunal for the State Bar Councils. The Bar Council of India Election Tribunal shall be headed by a former Judge of Supreme Court and it shall have two former Judges of High Court(s) and two Senior Advocates. The decision of Bar Council of India Election Tribunal shall be final. The Bar Council of India shall constitute the Bar Council of India Election Tribunal, after seeking the consent of Hon'ble former Judges and the senior Advocates.

That Tribunal shall have power to adjudicate in the election dispute and shall have all the powers to pass interim orders whenever it feels the necessity to do so.

Miscellaneous

Rules to have overriding effect:-

The provisions of these Rules shall have overriding effect over all other previous Rules of Bar Council of India or of any State Bar Council with regard to elections of State Bar Council and Bar Council of India.

Removal of difficulties:-

In case of any doubt or dispute as to the meaning, interpretation, execution of these Rules arises, the Bar Council of India shall be the final authority to settle such issues and its decision thereon shall be final.