



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 11411 of 2024

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Biswakesh Mohapatra *Petitioner(s)*
-versus-
The Odisha State Bar Council *Opposite Party (s)*
& Ors.

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Tusar Kumar Mishra, Adv.*

For Opposite Party (s) : *Mr. A. P. Bose, Adv.*
Mr. M. K. Chand, Adv.
Mr. S. Mohanty, Adv.

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-03.01.2025

DATE OF JUDGMENT:-14.02.2025

Dr. S.K. Panigrahi, J.

1. The Petitioner in the present Writ Petition is challenging the non-compliance with the order dated 27.03.2024, passed by the Central Election Committee to the Election Officer of the Khordha District Bar Association. Further, the petitioner is seeking the disqualification of Opposite Party No. 4 in accordance with Rule 25 of the Khordha District Bar Association Rules, 1957.



I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

- (i) The Secretary of the Odisha State Bar Council notified that the elections for the Office Bearers and Members of the Executive Body of affiliated Bar Associations for the year 2024-25 would be held on 30.03.2024. The elections were to be conducted on the basis of 'one bar, one vote, one day,' in accordance with Sub-Rule 42 of Rule 21 of the Odisha State Bar Council Rules.
- (ii) The Khordha District Bar Association appointed Mr. Laxman Parida, Advocate, as the Election Officer for conducting the elections.
- (iii) Pursuant to a notice dated 12.03.2024, issued by the Election Officer, candidates intending to contest for the posts of President, Vice-President, Secretary, Joint Secretary, Treasurer, Senior Executive Body Member, and Junior Executive Body Member were required to file an application before the Election Officer to obtain the nomination form. The last date for filing nominations for these posts was set as 12.03.2024.
- (iv) In response to the notification dated 12.03.2024, several candidates submitted their nominations for various posts. The petitioner and Opposite Party No. 4 filed their nominations for the position of Treasurer.
- (v) On 15.03.2024, the petitioner lodged a complaint before the Election Officer of the Khordha District Bar Association, alleging that Opposite Party No. 4 was ineligible to contest the election for the post of Treasurer due to having only three years of practice experience, as he had cleared the All-India Bar Examination in 2021.



- (vi) The Election Officer considered the complaint and dismissed it on the ground that Opposite Party No. 4 had been included as a valid voter in the voter list issued by the Odisha State Bar Council. Accordingly, the nomination of Opposite Party No. 4 was accepted, and the petitioner's grievance was rejected.
- (vii) Aggrieved by the rejection of his complaint, the petitioner submitted a representation to the Odisha State Bar Council.
- (viii) The Odisha State Bar Council, in response to the petitioner's grievance, constituted a Central Election Committee, chaired by Member Bibhu Prasad Tripathy, with the inclusion of five other members. Upon deliberation, the Committee concluded that Opposite Party No. 4, having cleared the All-India Bar Examination only in March 2021, could only be considered a practicing advocate from that date forward. In light of this, the Committee, by an order dated 27.03.2024, communicated through a notice dated 29.03.2024, directed the Election Officer of the Khordha District Bar Association to verify whether the eligibility criteria for the post of Treasurer necessitated a minimum of ten years of regular practice. If such a ten-year requirement was established, the Election Officer was instructed to take the requisite steps to invalidate the nomination of Opposite Party No. 4, as he did not meet the stipulated eligibility criteria.
- (ix) Despite the directions of the Central Election Committee, the Election Officer failed to comply with the order. The petitioner subsequently submitted another representation before the Chairman of the Odisha State Bar Council on 03.04.2024, highlighting the non-compliance and



reiterating his grievance. This representation remains pending for disposal.

- (x) Aggrieved by the non-compliance with the directions of the Central Election Committee, the petitioner has filed the present writ petition, seeking that Opposite Party No. 4 be treated as a non-practicing advocate from the date of his enrollment to March 2021 (i.e., the date of passing the All-India Bar Examination) and be disqualified under Rule 25 of the Khordha District Bar Association Rules, 1957.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the Petitioner earnestly made the following submissions in support of his contentions:
- (i) The petitioner contended that the nomination of Opposite Party No. 4 for the position of Treasurer of the Khordha District Bar Association is invalid due to his failure to meet the stipulated eligibility criteria. As per the All India Bar Examination Rules, 2010, law graduates from the academic year 2009-2010 onwards must pass the All India Bar Examination to practice law in India. Upon enrollment with a State Bar Council, they are permitted to practice law, subject to clearing the All India Bar Examination within two years. Failure to do so results in disqualification from practicing until the examination is cleared. The Opposite Party No. 4, who obtained his law degree in 2012 and enrolled in 2013, did not appear for the All India Bar Examination until 2021, thereby exceeding the two-year limit. His valid practice experience, therefore, commenced only in 2021, and the period from 2013 to 2021 should not be counted. Rule 9 of the All India Bar Examination Rules,



2010, unequivocally states that no advocate enrolled under Section 24 of the Advocates Act, 1961, is entitled to practice unless they pass the All India Bar Examination. Consequently, Opposite Party No. 4 is ineligible for the post of Treasurer, which mandates a minimum of ten years of practice.

- (ii) The petitioner further submitted that, under the Odisha State Bar Council's Bar Association (Affiliation and Election Rules 2021), enacted pursuant to Section 15 of the Advocates Act, an 'Advocate' is defined under Sub-Rule (d) of Rule 2 as an advocate entered in the State roll, practicing the profession of law, and who has submitted the necessary verification and declaration forms under the Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015. Furthermore, such an advocate must have passed the All India Bar Examination, if required, and must not have incurred any disqualification. Since Opposite Party No. 4 did not pass the All India Bar Examination until 2021, he failed to meet this eligibility criterion.
- (iii) The petitioner also pointed out that the Khordha District Bar Association, established in 1957, amended its rules on 04.07.2017. Rule 25(e) of the amended rules requires candidates for the post of Treasurer to have at least 10 years of practice at the Bar. As the Opposite Party No. 4 does not meet this requirement, his nomination contravenes the amended rule and should be deemed invalid.
- (iv) The petitioner submitted that the Khordha District Bar Association had published a notification in 2021 stipulating that candidates for any post within the Association must have a minimum of 10 years of practice as



an advocate. However, since Opposite Party No. 4 qualified for the All India Bar Examination in 2021, his valid practice experience is limited to three years for the period 2024-2025, in accordance with the All India Bar Examination Rules.

- (v) The petitioner contended that when the law is violated, every citizen has the right to approach the competent court of law. Additionally, when the principles of natural justice are breached, the petitioner has the right to file a writ application. To buttress this argument, the petitioner relied on the Supreme Court's observations in *Whirlpool Corporation v. Registrar of Trademarks*¹, that a writ petition is maintainable despite alternative remedies, especially when filed to enforce fundamental rights, where there has been a violation of natural justice, or where an order or proceeding is without jurisdiction or challenges the vires of an act. The petitioner also placed reliance on *Kuntesh Gupta v. Hindu Kanya Mahavidyalaya*², where the Supreme Court observed that when an action is taken under an invalid law or arbitrarily, without legal sanction, the availability of an alternative remedy is not a bar to filing a writ.
- (vi) The petitioner further contended that the amended rules of the Khordha District Bar Association, dated July 2017, not being approved by the Collector of Khordha, is a flawed argument. The election for the years 2017-18, 2018-19, 2020-21, 2021-22, 2022-23, and 2023-24 was conducted

¹ (1998) 8 SCC 1

² (1987) 4 SCC 525



in pursuance of the amended rules. Thus, the principle of acquiescence applies.

- (vii) The petitioner submitted that he has not challenged the election of Opposite Party No. 4 therefore he has not filed an election petition before the Election Tribunal. Moreover, the Tribunal has not yet been constituted by the Odisha State Bar Council.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. The Learned Counsel for the Opposite Parties earnestly made the following submissions in support of his contentions:
- (i) The Khordha District Bar Association was established in 1982-83, and the applicability of the Rules operative from August 1957, with amendments in 1976, 2006, and 2017, is neither relevant nor applicable in the present case.
- (ii) The eligibility criteria for the post of Treasurer in the Khordha District Bar Association do not require the candidate to be a senior valid member with a minimum of 10 years of practice. Such averments are false and fabricated to support the petitioner's case. There is no restriction on the post of Treasurer, and therefore, neither the Election Officer nor the Odisha State Bar Council has the authority to reject the candidature of Opposite Party No. 4 or prevent him from continuing in the post until the term expires. The Third Amended Bye-Laws, effective from 8th November 2006, do not prescribe any eligibility criteria based on years of practice for the Treasurer post, though they do specify practice requirements for other office bearers. Furthermore, the proposal for the Fourth Amended Bye-Laws, which would extend



specific practice requirements for the Treasurer post, was made in July 2017 and sent to the District Magistrate for approval, but has not been approved by the competent authorities, as confirmed by the letter dated 29th July 2024 under the RTI Act. Therefore, the petitioner's argument regarding the applicability of the proposed amendment is baseless. The nomination, election proceedings, and subsequent continuation of Opposite Party No. 4 as Treasurer are justified. The petitioner's actions, including approaching different forums and this Hon'ble Court, appear to be driven by personal vendetta and harassment against Opposite Party No. 4, wasting valuable judicial time. It is therefore a fit case for imposing exemplary costs on the petitioner to uphold the ends of justice.

- (iii) While the Opposite Party No. 4 enrolled in the year 2013, he was unable to appear for the All India Bar Examination until 2021 due to personal reasons, despite regularly practicing as an advocate. The Bar Council imposed no restriction on his practice, and he successfully passed the All India Bar Examination on his first attempt in 2021. Since there are no eligibility restrictions for the post of Treasurer, his nomination paper was duly accepted by the Election Officer of the Khordha District Bar Association. The petitioner's complaint was rightly rejected, as Opposite Party No. 4's name was never delisted from the Voter List published by the Odisha State Bar Council from 2013 to 2024. Additionally, Opposite Party No. 4's name was included in the List of Valid Voters for the current year (2024-25).



- (iv) In this writ petition, the petitioner has challenged the election for the post of Treasurer of the Khordha District Bar Association on various grounds, raising complaints regarding the submission of the nomination papers by Opposite Party No. 4 before the Election Officer of Khordha District Bar Association and the Election Committee of the Odisha State Bar Council. After failing to succeed at every juncture, the petitioner has filed this writ petition. The law provides that any person aggrieved by the election of office bearers of an association has a remedy to approach the Election Tribunal, not the High Court. Furthermore, the validity of Opposite Party No. 4's membership on the date of the election is not in dispute, and such validity can only be challenged through a Public Interest Litigation (PIL), which must be adjudicated by the Division Bench of this Court. Therefore, the writ petition, with the prayer to treat Opposite Party No. 4's period of practice from his enrollment until 2021 and disqualify him from holding the post of Treasurer of the Khordha District Bar Association in 2024, is not sustainable, as the writ petition is not maintainable in law.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard the learned counsel for the Parties and perused the materials placed on record.
6. The primary issue for consideration in the instant matter is whether Opposite Party No. 4 is ineligible for the post of Treasurer of the Khordha District Bar Association on the grounds that he passed the All India Bar Examination in 2021 despite being enrolled as an advocate in 2013.



7. In this regard, this Court has considered the All India Bar Examination Rules, 2010, particularly Rule 9, which is reproduced hereinunder:

“9. No advocate enrolled under Section 24 of the Advocates Act, 1961 shall be entitled to practise under Chapter IV of the Advocates Act, 1961, unless such advocate successfully passes the All India Bar Examination conducted by the Bar Council of India. It is clarified that the Bar Examination shall be mandatory for all law students graduating from the academic year 2009-2010 and onwards and enrolled as advocates under Section 24 of the Advocates Act, 1961.”

8. A perusal of the above rule clearly demonstrates that the All India Bar Examination is mandatory for all law students graduating from the year 2009-10 onwards. Passing this examination is a critical requirement, directly linked to maintaining the standard of individuals seeking to obtain a license to practice law as a profession. The Supreme Court in **Bar Council of India v. Bonnie Foi Law College**³ had upheld the Bar Council of India's power to conduct pre-enrolment examination i.e. All India Bar Examination observing that the quality of lawyers is an important aspect and part of administration of justice and access to justice and it is this quality control, which has been the endeavour of all the efforts made over a period of time.
9. It is further imperative to note that as per the BCI Resolution dated 31.01.2017, the right to practice for an advocate who has graduated after 1st July 2010 would only be valid under a provisional enrolment for two years, during which time the advocate can take the Bar Examination as many times as necessary.

³ (2023) 7 SCC 756



10. In the present matter, the petitioner clearly graduated after 1st July 2010, having graduated in 2012. He enrolled in 2013, but only cleared the All India Bar Examination in 2021. The Central Election Committee's finding in this regard is clear that he was required to clear the All India Bar Examination within two years of his enrolment, i.e., by February 2015. However, he cleared the All India Bar Examination only in March 2021. Therefore, for the period between February 2015 and March 2021, he was effectively a non-practicing advocate, having no right to vote in Bar Association elections or State Bar Council elections. Consequently, Opposite Party No. 4 can only be credited with three years of practice. The Central Election Committee accordingly directed the Election Officer, Khordha District Bar Association, to verify whether the Khordha Bar Association's By-Laws require ten years of regular practice as a mandatory criterion for the post of Treasurer, and if so, to take appropriate steps to invalidate the nomination of Opposite Party No. 4 as he does not meet the eligibility criteria.
11. It is noted that despite such direction, the Election Officer has not taken any action, and the candidature of Opposite Party No. 4 has been accepted for the post of Treasurer. The election process has proceeded without consideration of the Central Election Committee's order.
12. Upon perusal of the Consolidated By-Laws of the Khordha District Bar Association, it is clear that, as per Rule 25(e), a candidate must be a senior valid member of the Association, with at least ten years of practice in the Bar. The relevant provision is reproduced herein below:



“25. Eligibility: (e) For the post of Treasurer, the candidate should have been a senior valid member of the Association, having at least ten years of practice in the Bar.”

13. It is undisputed that Opposite Party No. 4 had not cleared the All India Bar Examination until 2021. In light of the facts and applicable rules, it is evident that the nomination of Opposite Party No. 4 is invalid, as his experience can only be counted from 2021, as confirmed by the decision of the Odisha State Bar Council. This Court does not find merit in the contention that the amendments are not applicable to the Khordha Bar Association, as previous elections have been conducted in accordance with the amendments, and the Consolidated By-Laws, specifically Rule 25(e), are clear on this matter.

V. CONCLUSION:

14. In light of the foregoing, the Election Officer, Khordha Bar Association is hereby directed to comply with the order of the Central Election Committee and take necessary steps to invalidate the nomination filed by Opposite Party No.4 as he does not meet the requisite eligibility criteria.
15. Accordingly, this Writ Petition is **allowed**.
16. Interim order, if any, passed earlier stands vacated.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 14th February, 2025/