

**REPORTABLE****IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS.8172-8173 OF 2018****PRATAP MEHTA****... APPELLANT(S)****VERSUS****SUNIL GUPTA & ORS.****... RESPONDENT(S)****WITH****CIVIL APPEAL NOS.8174-8177 OF 2018****BAR COUNCIL OF INDIA****... APPELLANT(S)****VERSUS****STATE BAR COUNCIL OF M.P.  
& ORS. ETC.****... RESPONDENT(S)****J U D G M E N T****ASHOK BHUSHAN, J.**

These appeals have been filed against the common judgment dated 17.07.2018 of the High Court of Delhi in Letters Patent Appeal NO.365/2018 and other connected LPAs. Letters Patent Appeals were filed by the appellant aggrieved by common judgment dated 06.07.2018 of learned Single Judge in Writ Petition(C)No.2142 of 2016 (State

Bar Council of M.P. vs. Bar Council of India & Ors.) and Writ Petition (C) No.2215 of 2016 (Sunil Gupta vs. Bar Council of India & Ors.). Learned Single Judge vide its judgment dated 06.07.2018 disposed of the writ petitions with certain directions.

2. The brief facts of the case necessary to be noted for deciding these appeals are:

State Bar Council of Madhya Pradesh held the elections for its constituent members in the month of May-June, 2014. After declaration of the result notice dated 09.06.2014 was issued for holding the first meeting of newly elected members on 29.06.2014. Agenda for the meeting to be held on 29.06.2014 was to conduct the elections for the various offices and the Committees of the State Bar Council of Madhya Pradesh including the office of its representative member in the Bar Council of India. In these appeals we are concerned only with one Agenda item which is to the following effect:

" *Part-B*  
*Serial No.1: Discussion, consideration and decision regarding the election of the representative member of the Bar Council for the Bar Council of India."*

3. Pursuant to notice dated 09.06.2014, a meeting was held on 29.06.2014, which was presided over by the Advocate General of the State of Madhya Pradesh and was attended by all the 25 members of the State Bar Council of M.P. In the meeting, one Shri Rameshwar Neekhara was elected as Chairman.

4. The case of the respondents, who were writ petitioners before the High Court was that in the said meeting, election for other office bearers including election for representative member of the State Bar Council to Bar Council of India was held in which Shri Sunil Gupta was unanimously elected. Shri Sunil Gupta, also started working as member representative in the Bar Council of India. On 29.06.2014, 9 members of the State Bar Council wrote a letter to its Secretary requesting him to organise a meeting for conducting elections to the various offices and Committees of the State Bar Council. It was further alleged in the letter that after the election of Chairman on 29.06.2014, the meeting has been adjourned and the members without any further notice to the members who had thereafter left the place

of meeting, reconvened the meeting and elected Shri Sunil Gupta as representative of the Bar Council of India. A letter dated 13.07.2014 was also sent to the above effect by 13 members.

5. On 13.07.2014 another letter was sent to the Secretary by 13 members requesting to consider a no-confidence motion under Rule 122A of the State Bar Council of M.P. Rules against Shri Rameshwar Neekhara, the Chairman. Taking cognizance of the letters dated 29.06.2014 and 13.07.2014 sent by various members to the Secretary, notice dated 16.07.2014/19.07.2014 was issued to the members of State Bar Council informing them of a special meeting scheduled to be held on 02.08.2014 for deciding the issues brought forth in the said letters. The special meeting was convened on 02.08.2014. The proposed no-confidence motion against Chairman was withdrawn, Chairman relying on the various letters sent by the members declared all the elections held on 29.06.2014 except his own, as void. All the office bearers and members who were elected on 29.06.2014 submitted their resignations from their respective posts

except Shri Sunil Gupta who refused to resign as representative to the Bar Council of India. On 02.08.2014, election of several officer bearers including representative to the Bar Council of India was conducted in which Shri Pratap Mehta was declared elected as representative of the State Bar Council to the Bar Council of India.

6. Aggrieved by the Resolution dated 02.08.2014 electing Shri Pratap Mehta, Election Petition No.01/2014 was filed by Shri Sunil Gupta before the Bar Council of India. During pendency of the aforesaid Election Petition, State Bar Council passed Resolution on 07.02.2015, with a majority of 17 votes, withdrawing its earlier Resolution dated 02.08.2014, thereby re-affirming that Shri Sunil Gupta is its representative member in the Bar Council of India. Shri Sunil Gupta filed an application on 11.02.2015 before the Bar Council of India for seeking leave to withdraw his Election Petition No.01/2014. However, instead of permitting for withdrawal, Chairman of the Bar Council of India passed an order dated 16.11.2015 observing that

Pratap Mehta has *prima facie* case, hence, he permitted Pratap Mehta to join as representative of the State Bar Council in the Bar Council of India pending the final report of the sub-committee which was constituted for enquiring into the elections of Shri Sunil Gupta and Shri Pratap Mehta. The sub-committee submitted its report in which report sub-committee found that election of Shri Sunil Gupta cannot be held to be valid as representative of State Bar Council in the Bar Council of India rather it is Shri Pratap Mehta who was elected on 02.08.2014 in continuation of the meeting held on 29.06.2014 which meeting was held to dispose of and transact the un-transacted business which was fixed for 29.06.2014. The Bar Council of India passed an order dated 05.12.2015, dismissing the Election Petition filed by Shri Sunil Gupta. Bar Council of India held that there is no infirmity in the election of Shri Pratap Mehta as representative to the Bar Council of India.

7. The State Bar Council of M.P. withdrew Writ Petition (C) No.No.973 of 2016 challenging order dated 16.11.2015 and Writ Petition(C) No.2142 of 2016 was filed by the

State Bar Council of M.P. challenging order dated 05.12.2015 of the Bar Council of India. Another Writ Petition (C)No.2215 of 2016 was filed by Shri Sunil Gupta challenging order dated 05.12.2015 passed by the Bar Council of India. Both the writ petitions were heard by the learned Single Judge and have been decided by a common judgment dated 06.07.2018. Learned Single Judge held that election of Shri Sunil Gupta as representative in the Bar Council of India dated 29.06.2014 is not valid. Learned Single Judge also held that election dated 02.08.2014 electing Shri Pratap Mehta as representative in the Bar Council of India is also not valid it having been held contrary to the Bar Council of India Rules.

8. The learned Single Judge vide its judgment dated 06.07.2018 allowed few of the prayers made by writ petitioners, however, certain other prayers were refused. Allowing the petition, learned Single Judge held that election of representative in Bar Council of India from the State Bar Council of Madhya Pradesh held on 29.06.2014 as well as 02.08.2014 were both invalid.

In the circumstances, learned Single Judge took the view that the State Bar Council cannot be without any representative in the Bar Council of India, hence he directed for holding of fresh elections by the State Bar Council to elect its representative in the Bar Council of India. Paragraph 45 of the judgment contains the operative portion of the judgment, which is to the following effect:-

"45. The prayers in the writ petitions, so far as they seek implementation of the Petitioner's Resolutions dated 29.06.2014 and 07.02.2015 electing the Respondent No. 3 as a member representative of Petitioner/SBCMP in the Respondent No.1/BCI, are rejected. However, the prayer quashing the Respondent No. 1's Impugned Order dated 05.12.2015 is allowed and accordingly the Impugned Order dated 05.12.2015 is quashed and set aside. The Petitioner in W.P.(C) No.2142/2016, i.e., the State Bar Council of Madhya Pradesh is directed to hold within a period of 4 weeks, fresh elections for electing its representative member in the Respondent No.1/BCI by following the procedure as prescribed in the BCI Rules. Upon the Petitioner communicating the result of the election to be held in terms of the aforesaid directions to the Respondent No. 1/BCI, the said Respondent No. 1 would take consequential steps to include the name of the person elected by the Petitioner/SBCMP as its representative member in the Respondent No. 1/BCI."



9. Aggrieved by the judgment dated 06.07.2018, Shri Pratap Mehta and Bar Council of India filed letters patent appeals before the Division Bench of the High Court. All the appeals were dismissed by the Division Bench vide its judgment dated 17.07.2018. Shri Pratap Mehta aggrieved by said judgment has filed Civil Appeal Nos. 8172-8173 of 2018 whereas Bar Council of India has filed Civil Appeal Nos. 8174-8177 of 2018. All the appeals have been heard together.

10. Shri Vikas Singh, learned senior counsel has appeared for Shri Pratap Mehta whereas Shri S.N. Bhat has appeared for Bar Council of India. Shri Vikas Upadhyay, learned counsel has appeared for State Bar Council of Madhya Pradesh. Shri Nitin Gaur, learned counsel has appeared on behalf of Shri Sunil Gupta.

11. Shri Vikas Singh, learned senior counsel appearing for the appellants submits that High Court committed an error in exceeding its jurisdiction under Article 226 by entering into the issues of the facts by re-appreciating evidence. It is submitted that High Court under Article

226 could not have re-appreciated evidence and come to a different conclusion to one which was arrived at by Bar Council of India, the adjudicating authority, regarding election of State Bar Council for electing a representative to the Bar Council of India. It is submitted that both learned Single Judge as well as the Division Bench of the Delhi High Court committed an error in holding that there was no agenda for holding election of the State Bar Council representative for Bar Council of India for the meeting dated 02.08.2014. It is submitted that for the meeting dated 02.08.2014, letters of the members of the State Bar Council dated 29.06.2014 as well as 13.07.2014 itself contain items, which were to be considered in the meeting to be scheduled, hence agenda of the meeting was very much clear and High Court erred in setting aside the election dated 02.08.2014 on an erroneous ground. The meeting dated 02.08.2014 being an adjourned meeting of 29.06.2014, no separate agenda was required to be issued for the meeting dated 02.08.2014.

12. Shri Vikas Upadhyay, learned counsel appearing for

State Bar Council submits that the meeting dated 02.08.2014 was not an adjourned meeting of meeting dated 29.06.2014. He submits that special meeting was convened by the Secretary of the State Bar Council to take a decision on the letter dated 29.06.2014 and 13.07.2014 given by members of the State Bar Council. The question as to whether the election of representative to the Bar Council of India was validly held on 29.06.2014, was a disputed question, which was required to be decided before holding any fresh election, hence no fresh election could have been held on 02.08.2014. He further submits that the Bar Council of India Rules framed under the Advocates Act, 1961 are statutory rules, which govern election of the member of the State Bar Council to the Bar Council of India, which election is to be held in accordance with the Statutory Rules. The election dated 02.08.2014 for electing a member of the State Bar Council to the Bar Council of India having not been held in accordance with Part II of Bar Council of India Rules has rightly been invalidated by the High Court. It is submitted that election dated 02.08.2014

is in breach of Rules 2, 3 and 7. He further submits that State Bar Council having already elected Shri Sunil Gupta as its member in the Bar Council of India on 29.06.2014, the said election could not have been set aside except in accordance with the procedure as prescribed in Rule 9 of the Bar Council of India Rules. There was no challenge to the election dated 29.06.2014 of Shri Sunil Gupta as per Rule 9, hence it was not within the jurisdiction of State Bar Council to elect another representative in place of Shri Sunil Gupta. He submits that in the Election Petition No.1 of 2014 filed by Shri Sunil Gupta in spite of there being application by Shri Sunil Gupta to withdraw the election petition in view of the resolution of the State Bar Council dated 07.02.2015, the Bar Council of India erroneously proceeded to decide the election petition on 05.12.2015. He further submits that in pursuance of judgment of learned Single Judge as confirmed by Division Bench on 17.07.2018, the State Bar Council has fixed 12.08.2018 for holding election of the State Bar Council's representative in the Bar Council of India, which

election has been held on 12.08.2018 and the result of the election in pursuance of order of this Court dated 03.10.2018 has been submitted before this Court in the sealed envelope on the date fixed for hearing.

13. Learned counsel for the Bar Council of India supported the decision of the Bar Council of India dated 05.12.2015. It is submitted that in the meeting dated 29.06.2014, no election was held except the election of Chairman. After election of Chairman, the meeting was adjourned, which is recorded in the meeting itself. The letter dated 29.06.2014 and 13.07.2014 submitted by members of the State Bar Council were for fixing a meeting to hold rest of the elections and that meeting having been fixed for 02.08.2014, no fresh agenda was required to be issued and there was no illegality in the meeting dated 02.08.2014. It is further submitted that on 02.08.2014, apart from electing the representative to the Bar Council of India, rest of the elections were conducted and no one has any objections regarding elections held on 02.08.2014 except Shri Sunil Gupta, who did not submit his resignation on that day whereas

all other office bearers and members elected on 29.06.2014 has submitted their resignations. He submits that High Court committed an error in holding that election dated 02.08.2014 in so far as it relates to representative of State Bar Council in the Bar Council of India is not correct.

14. We have considered the respective submissions of the parties and have perused the records.

15. The entire dispute in the present appeals centres round the election dated 02.08.2014 in so far as it relates to election of Shri Pratap Mehta as State Bar Council representative in the Bar Council of India. The learned Single Judge having held that election of Shri Sunil Gupta on 29.06.2014 as State Bar Council representative in the Bar Council of India was not valid and the said decision having not been challenged either by the State Bar Council or by Shri Sunil Gupta, the said issue has become final between the parties. The High Court having held that election dated 02.08.2014 is not valid in so far as it relates to election of representative of State Bar Council in the Bar Council

of India is concerned, the only issue to be answered is as to whether the said election is valid or not?

16. The Advocates Act, 1961, Section 4 provides for the Bar Council of India. According to Section 4(1)(c) in the Bar Council of India, one member has to be elected by each State Bar Council from amongst its members.

Section 4(1)(c) is as follows:-

"4. Bar Council of India.-(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:-

- (a) ... ..
- (b) ... ..

- (c) one member elected by each State Bar Council from amongst its members."

17. Under Section 49 of the Advocates Act, 1961, Bar Council of India is empowered to make rules for discharging its functions. In exercise of power under Section 49 and all other enabling powers under the Advocates Act, 1961, the Bar Council of India has framed the Bar Council of India Rules. Chapter I of Part II of the Rules refers to Section 15, Sections 4 and 10B of the Advocates Act, 1961. Chapter I Part II of the

Rules, thus, are to give effect to provisions of Section 4 of the Act, which provides for constitution of Bar Council of India in which one of its members to be elected by each State Bar Council from amongst its members. Rule 2, Rule 3 and rule 7 of Chapter I of Part II of the Rules are as follows:-

"2. (1) The notice and agenda for the first meeting of the State Council held after the election of its members on the expiry of the term of its members elected at the previous election under Section 8 of the Act may include the election of a member of the State Council to the Council under Section (1) (c) of the Act.

(2) Every such election shall be held not later than 30 days after the first meeting of the State Council after election under Section 8 of the Act.

3. The election of a member of the Council shall be conducted by the Secretary of the State Council who shall act as the Returning Officer.

7. Every notice by the Secretary of the State Council fixing a date for the election of a member to the Council under these rules shall be sent not less than 15 clear days before the date fixed for the election. A copy of the said notice shall be sent simultaneously to the Secretary of the Council."

18. A conjoint reading of the aforesaid Rules indicate that for holding election of a member of Bar Council of India to be elected by State Bar Council, notice and



agenda has to be issued by the Secretary of the State Bar Council, which is a statutory requirement. There is no issue between the parties regarding the fact that agenda dated 09.06.2014 was issued for the meeting of the members of the State Bar Council on 29.06.2014 including the agenda for electing a member from the State Bar Council to the Bar Council of India as noticed above. Minutes of the meeting dated 29.06.2014 has been brought on the record in Civil Appeal Nos. 8174-8177 of 2018 as Annexure A4. A perusal of the proceeding indicates that all 25 elected members and learned Advocate General, who is Ex-officio member was present and meeting started at 11.00 am and by 12.00 noon, the election of the Chairman was completed. The Minutes record that for greeting the newly elected Chairman and to see-off learned Advocate General, the proceeding of the meeting were stayed/adjourned and thereafter again the meeting started in presence of members for election of rest of the office bearers and members of the Committees. It is useful to refer to the above portion of the proceeding (English translation of the proceeding

brought on record), which is to the following effect:-

"The meeting of the Council started at 11:00 am at morning and till 12:00 noon the election for the post Chairman was completed and in wishing the newly elected Chairman and for giving respectful departure to the Hon'ble Advocate, the working of the meeting was stayed. Thereafter, again the meeting of general assembly was started before the present members and the remaining office bearers and member of the Council were elected."

19. The proceeding dated 29.06.2014 also contain a resolution as Resolution No. 7 Part B, by which Shri Sunil Gupta's name was proposed and unanimously approved as representative of the State Bar Council to the Bar Council of India. On 29.06.2014 itself, 9 members submitted a letter addressed to Chairman of the State Bar Council that no information of holding of adjourned meeting after 2.00 pm was received by them, hence adjourned meeting be called for completing the rest of the elections. To the same effect is another letter dated 13.07.2014 by 13 members of the Bar Council of State, which was received on 15.07.2014 by the State Bar Council. Another letter dated 13.07.2014 signed by 13 members of the State Bar Council was submitted to the

State Bar Council of M.P. requesting for convening a meeting under Rule 122A for considering no confidence motion against the Chairman of the State Bar Council – Shri Rameshwar Nikhra. The Officiating Secretary of the State Bar Council issued a notice dated 16.07.2014 to all the members of the State Bar Council referring to the letters received from members where election proceeding of Vice-Chairman, Treasurer and representative to the Bar Council of India are being disputed and no confidence motion has been presented against the Chairman. The officiating Secretary has convened a special meeting dated 02.08.2014 for disposal of aforesaid letters received from the members of the State Bar Council. It is useful to extract the entire notice dated 16.07.2014 issued by officiating Secretary, which is to the following effect:-

“No. — SBC/MP/Important Meeting/General  
Body/4277/2014,

Date 16/07/2014

To,  
All Hon'ble Members  
State Bar Council of Madhya Pradesh,  
Sir/Ma'm,,

The Special Meeting of the General Body of the  
State Bar Council of Madhya Pradesh is

scheduled for 2nd August, 2014, Day-Saturday, in the Meeting Room of the Council's Office at 11: O'clock in the Morning, in which the letter dated 29/06/2014 signed by 9 Hon'ble Members of the Council, two letters dated 13/07/2017 received on 14/07/2014 signed by 11 Hon'ble Member and Two letters signed by 2 Hon'ble Members received by e-mail dated 15/07/2014 and one letter signed by 1 Hon'ble Member received on 16/07/2014, vide which because of the election process of the Vice Chairman of the Council, Treasurer, various committees including the representative to the Bar Council of India being disputed, a proposal for no confidence against the Chairman of the Council has been submitted under Rule 122-A of the Council. In the special meeting both the aforesaid letters are to be decided. You all are requested to be present in the Meeting.

For the convenience of the Hon'ble Members Rule 122-A of the Council is as under:-

"122-A The Chairman, Vice Chairman or the Treasurer of the Council could be removed by a vote of no confidence passed by majority of the members present and voting in a meeting of the council especially called for the purpose provided that at least 7 members of the Council have signed the requisition for holding such a special meeting, and such meeting shall be called within a period of 21 days from the date of receipt of the requisition by the Secretary".

Sd/-

(MUKESH MISHRA)

Officiating Secretary

ENCLOSED- The letters dated 29/06/2014, 14/07/2014, 15/07/2014 and 16/07/2017 received from the Hon'ble members."

20. Another notice referred to as Amended notice of letter dated 16.07.2014 convening a special meeting was issued on 19.07.2014, which is to the following effect:-

No. - SBC/MP/Important Meeting/General Body/4311/2014,

Date 19/07/2014

Amended letter for date 16/07/2014 of Special Meeting

To,

All Hon'ble Members

State Bar Council of Madhya Pradesh,

Sir/Ma' m,

The Special Meeting of the General Body of the State Bar Council of Madhya Pradesh is scheduled for 2<sup>nd</sup> August, 2014, Day-Saturday, in the Meeting Room of the Council's Office at 11: O'clock in the Morning, in which the letter dated 29/06/2014 signed by 9 Hon'ble Members of the Council, two letters dated 13/07/2017 received on 14/07/2014 signed by 11 Hon'ble Members and Two letters signed by 2 Hon'ble Members received by e-mail dated 15/07/2014 and two letters signed by 1 Hon'ble Member received on 16/07/2014, in which vide one letter the prayer has been made to call for the meeting for election of the Vice-Chairman of Council, Treasurer, election of various committees along with the representative to the Bar Council of India and vide the second letter the no-confidence motion has been presented against the Chairman of the Council under Rule 122-A of the Rules of the Council. In the special meeting both aforesaid letters are to be decided. You all are requested to be present in the meeting.

[Enclosure-Page 1 to 7]

For the convenience of the Hon'ble Members Rule 122-A of the Council is as under:-

"122-A The Chairman, Vice Chairman or the Treasurer of the Council could be removed by a vote of no confidence passed by majority of the members present and voting in a meeting of the council especially called for the purpose provided that at least 7 members of the Council have signed the requisition for holding such a special meeting, and such meeting shall be called within a period of 21 days from the date of receipt of the requisition by the Secretary".

Sd/-

(MUKESH MISHRA)

Officiating Secretary

NOTE- The letters received from the Hon'ble Members in relation to the Special Meeting has already been sent alongwith the letter dated 16/07/2014."

21. The notice dated 16.07.2014 as well as dated 19.07.2014 clearly indicate that special meeting was convened for taking a decision on the letters received from members of the Council. The notice dated 19.07.2014 categorically mentions **"in the special meeting both aforesaid letters are to be decided"**. The letters dated 29.06.2014 and 13.07.2014 has been referred in the notice where following two subjects were mentioned:-

- (a) Request for convening a meeting for conducting elections of the rest of the office bearers and

members;

- (b) Under Rule 122-A, considering the motion of no confidence given by 13 members of the Bar Council against the Chairman, Rameshwar Nikhra.

22. The notice dated 16.07.2014 clearly indicate that it did not contain any agenda for the meeting. The notice convening the meeting only referred to consideration of letters received from the members, which was specifically mentioned as noticed above. The subject mentioned in both the notices was to the following effect:-

(i) Notice dated 16.07.2014 **"in the special meeting both the aforesaid letters are to be decided";**

(ii) Amended notice dated 19.07.2014 **"in the special meeting both aforesaid letters are to be decided".**

23. **Shackleton** on the Law and Practices of Meetings, Fourteenth Edition, while dealing with the subject "notice" states following:-

"The purpose to be stated

A notice, to be valid, must clearly state the business to be transacted at the meeting and

give all material information to enable it to be fully understood."

24. It is clear from the aforesaid that notices dated 16.07.2014 and 19.07.2014 were issued not for convening any adjourned meeting rather special meeting was convened to consider two set of letters given by members of the Council requesting for convening a meeting for holding elections of office bearers and the members of different Committees including representative to Bar Council of India and for considering no confidence motion against the Chairman of the State Bar Council. In the notice dated 16.07.2014 as well as notice dated 19.07.2014, the subject of special meeting was thus for disposal of letters received by the members of the Council. It is to be noted that the minutes of the proceeding dated 29.06.2014 has recorded and signed by Chairman containing the election of not only the Chairman rather election of other office bearers and different representatives, which is clear from the proceedings brought on the record by Bar Council of India itself as Annexure A4. It is a well established



principle that minutes of the proceeding signed by the Chairman are prima facie evidence of proceeding and decisions recorded therein are deemed to be valid until contrary is proved. **Shackleton**, while dealing with minutes as evidence in Chapter 8 states following:-

**"8. MINUTES AS EVIDENCE**

**8-07** In general, minutes form evidence of the matters to which they refer, which can be relied on in civil proceedings:

'In an action against one or several members of the Gosport and Forton Water Works Company for the value of lead pipes supplied by the plaintiffs to the company, after the defendant had been proved to be a partner in the company the entries in a book containing a record of the proceedings of the society produced at its meetings, and open, to the inspection of all members, were admissible in evidence against the defendant; the minutes showed that the order had been authorised by the society:"

When minutes are signed by the chairman of the meeting, or the next succeeding meeting, they are prima facie evidence of the proceedings, and decisions recorded therein are deemed to be valid until the contrary is proved. In practice, certified copies of minutes are frequently provided to third parties as evidence of the matters decided upon at the Meeting.

The chairman of a meeting has authority to determine all incidental questions which arise

at the meeting, and an entry by him in the minute book of the result of a poll, or of his decision on such questions, is prima facie evidence of that result, and the onus of displacing that evidence is thrown on those who impeach the entry:"

25. Thus, the letters issued by the members on 29.06.2014 and 13.07.2014 raised a dispute containing allegations disputing minutes of the proceeding of the meeting dated 29.06.2014. Thus, it was a disputed matter as to what actually happened on 29.06.2014, i.e. as to whether the election of other office bearers and representatives were validly completed on 29.06.2014 or after the election of the Chairman, the meeting was adjourned. This dispute was to be resolved in the special meeting dated 02.08.2014, which was clearly indicated by notice dated 16.07.2014 and 19.07.2014 as indicated above. The issue of agenda alongwith the notice is requirement of a valid meeting and it is only in context of adjourned meeting that no fresh agenda need to be issued. The notices dated 16.07.2014 and 19.07.2014 having not contained any agenda and the meeting also not being described as adjourned meeting,

issuance of agenda for the meeting was necessary. Issuance of an agenda, if any election was to be conducted on 02.08.2014 was necessary.

26. We, thus, do not find any infirmity in the view of the High Court - both of learned Single Judge as well as the Division Bench that no election could have been conducted on 02.08.2014 for electing member to the Bar Council of India from the State Bar Council. Further, the election of the member to the Bar Council of India is statutorily regulated by Bar Council of India Rules and Rule 7 require notice by the Secretary of the State Council fixing a date for the election of the member to the Council. The notices dated 16.07.2014 and 19.07.2014 cannot be read as notice as required under Rule 7 for holding election of a member to the Bar Council of India from the State Bar Council, hence, the conduct of election of a member as a representative from State Bar Council to Bar Council of India in the meeting dated 02.08.2014 cannot be said to be in conformity with Rule 7 of Bar Council of India Rules. The High Court was, thus, clearly right in its view that election of Shri

Pratap Mehta on 02.08.2014 as member of the Bar Council of India was not a valid election. The learned Single Judge having already taken a view that election dated 29.06.2014 electing Shri Sunil Gupta as the representative to the Bar Council of India was not a valid election, which issue was not, however, agitated either by the State Council or by Shri Sunil Gupta, there is no need to ponder over the above election. Both the elections dated 29.06.2014 and 02.08.2014 to elect a member in the Bar Council of India having been held to be invalid, the High Court was right in issuing directions for conducting a fresh election to elect a member in the Bar Council of India, which was necessary and just.

27. Now, we come to the submission of Shri Vikas Singh that High Court committed error in re-appreciating the evidence on record and coming to a different conclusion to one which was recorded by the Bar Council of India. Shri Vikas Singh has relied on the judgment of this Court in **Waryam Singh and another Vs. Amarnath and another, AIR 1954 SC 215; Syed Yakoob Vs. K.S.**

**Radhakrishnan and others, AIR 1964 SC 477.**

28. In **Waryam Singh (supra)**, the landlord has filed a petition for eviction on the ground of non-payment of rent by the tenant. The Rent Controller rejected the application of the landlord against which landlord has moved to the Judicial Commissioner, Himachal Pradesh. Exercising jurisdiction under Articles 226 and 227, which allowed the application for ejectment of tenant, which has been noted in Para 10 of the judgment, which is to the following effect:-

"10. The respondents moved the Judicial Commissioner, Himachal Pradesh, under Articles 226 and 227 of the Constitution of India for setting aside the order of the District Judge. The learned Judicial Commissioner held that in view of the admitted failure to pay the rent as provided by the rent deed or at the first hearing of the court under the proviso to Section 13 (2) (i) the courts below had acted arbitrarily in refusing to make an order for ejectment against the tenants who had not done what was incumbent on them to do under the law and that such a situation called for interference by the Court of the Judicial Commissioner in order to keep the subordinate courts within the bounds of their authority. He, accordingly, set aside the orders of the courts below and allowed the application for ejectment but gave the appellants three months' time for vacating the premises. The appellants have now come up before this court on appeal by special leave obtained from this

court."

29. The tenant challenged the orders under Articles 226 and 227 in this Court and one of the submissions raised was that Judicial Commissioner acted wholly without jurisdiction in as much as the order of the Rent Controller exercising powers under the Act was not amenable to the jurisdiction of the High Court under Article 227, the said submission is noted in Para 11, which is to the following effect:-

"11. Learned advocate appearing in support of this appeal urges that the learned Judicial Commissioner acted wholly without jurisdiction inasmuch as (1) the Rent Controller or the District Judge exercising powers under the Act was not amenable to the jurisdiction of the High Court and, therefore, Article 227 confers no power on the Court of the Judicial Commissioner over the Rent Controller or the District Judge, and (2) that Article 227 read with Article 241 confers no power of judicial superintendence on the Court of the Judicial Commissioner."

30. This Court repelled the submission of the tenant and held that the High Court has judicial superintendence over tribunals and authorities. In Paragraph Nos. 13 and 14, following has been laid down:-

"13. Re. 2.-The material part of Article 227 substantially reproduces the provisions of

Section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by the Article also to Tribunals. That the Rent Controller and the District Judge exercising jurisdiction under the Act are Tribunals cannot and has not been controverted. The only question raised is as to the nature of the power of superintendence conferred by the Article. Reference is made to clause (2) of the article in support of the contention that this article only confers on the High Court administrative superintendence over the subordinate courts and tribunals. We are unable to accept this contention because clause (2) is expressed to be without prejudice to the generality of the provisions in clause (1). Further, the preponderance of judicial opinion in India was that Section 107 which was similar in terms to Section 15 of the High Courts Act, 1861, gave a power of judicial superintendence to the High Court apart from and independently of the provisions of other laws conferring revisional jurisdiction on the High Court.

In this connection it has to be remembered that Section 107 of the Government of India Act, 1915, was reproduced in the Government of India Act, 1935, as Section 224. Section 224 of the 1935 Act, however, introduced subsection (2), which was new, providing that nothing in the section should be construed as giving the High Court any jurisdiction to question any judgment of any inferior court which was not otherwise subject to appeal or revision. The idea presumably was to nullify the effect of the decisions of the different High Courts referred to above. Section 224 of the 1935 Act has been reproduced with certain modifications in Article 227 of the Constitution. It is significant to note that

sub-section (2) to Section 224 of the 1935 Act has been omitted from Article 227.

This significant omission has been regarded by all High Courts in India before whom this question has arisen as having restored to the High Court the power of judicial superintendence it had under Section 15 of the High Courts Act, 1861, and Section 107 of the Government of India Act, 1915. See the cases referred to in *Moti Lal v. The State through Shrimati Sagrawati*. Our attention has not been drawn to any case which has taken a different view and, as at present advised, we see no reason to take a different view.

14. This power of superintendence conferred by Article 227 is, as pointed out by Harries C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*<sup>2</sup>, to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. As rightly pointed out by the Judicial Commissioner in the case before us the lower courts in refusing to make an order for ejectment acted arbitrarily. The lower courts realised the legal position but in effect declined to do what was by Section 13(2)(i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so. In our opinion there is no ground on which in an appeal by special leave under Article 136 we should interfere. The appeal, therefore, must stand dismissed with costs."

31. The above decision in no manner support the case of the appellant rather it reiterates that



the High Court under Articles 226 and 227 can interfere with an arbitrary order passed by an authority. The next judgment relied by the appellant is Constitution Bench judgment of this Court in **Syed Yakoob (supra)**. This Court had elaborately considered the scope of Article 226 of the Constitution in the aforesaid case. This Court held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. It was further held that jurisdiction of High Court under Article 226 to issue a writ of certiorari is a supervisory jurisdiction and the High Court exercising it is not entitled to act as an appellate court.

32. The findings of the fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. There cannot be any dispute to the above propositions laid down by the Constitution Bench of this Court. However, in the same judgment, in paragraph 8,

following was laid down by this Court:-

"8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record....."

33. Applying the above proposition in the present case, it was clear that High Court had referred to statutory provisions of Bar Council of India Rules and came to the

conclusion that there was no notice of agenda for holding election of the State Bar Council member in the Bar Council of India for meeting dated 02.08.2014. An obvious error of law was committed by Bar Council of India in dismissing the election petition of Shri Sunil Gupta. The High Court was right in exercise of its certiorari jurisdiction to set aside the erroneous order of the Bar Council of India. The High Court was, thus, well within its jurisdiction in deciding the writ petition and submission of the learned counsel for the appellant cannot be accepted that the High Court exceeded its jurisdiction in deciding the writ petition.

34. Learned counsel for the appellant has also relied on **K. Narasimhiah Vs. H.C. Singri Gowda and others, AIR 1966 SCC 330.** In the above case, this Court held that three days clear notice to Councillors for holding a special general meeting is not mandatory. What was held that period of notice in the facts of that case was not mandatory. Present is not a case where any one has complained that there was no notice for meeting to be held on 02.08.2014. In the above case also, the notice

was received by members, some of them have received three days notice, some of them had received notice of less than three days. In the above circumstances, this Court held that provision of three days notice was only directory and not mandatory. The said judgment has no application in the present case.

35. Another judgment relied by the appellant is **P. Kasilingam Vs. P.S.G. College of Technology, AIR 1981 SC 789**. In the said case, this Court was dealing with a question regarding effectiveness of resignation and consequence of withdrawal of resignation before the effective date. The said case has no application in the present case. Last case relied by the appellant is **V.S. Krishnan and others Vs. Westfort Hi-tech Hospital Ltd. and Others, (2008) 3 SCC 363**. In the above case, the Court held that when there are materials to show that notices were sent, the burden is on the addressee to rebut the statutory presumption. In paragraph 29, following has been held:-

**"29.** Section 172 as well as Section 53 emphasised "giving notice". We have already adverted to how notice should be given for AGM

as per Section 172(2) and Sections 53(1) and (2) of the Act. In view of the fact that the Company has placed materials to substantiate that notices, in terms of the above provisions, were given, as rightly pointed out by learned Senior Counsel for the contesting respondents, statutory presumption under Section 53 will apply though the said act is rebuttable. In view of the fact that there are materials to show that notices were sent, the burden is on the addressee to rebut the statutory presumption. The High Court, on verification of those materials, has concluded that "postal receipt with post office seal was produced to show that notice was sent to all shareholders by certificate of posting in the correct address as per the report".

36. In the present case, challenge to the proceeding dated 02.08.2014 was not on the ground of want of notice for the special meeting, hence this case also does not help the appellant in the present case.

37. Learned counsel appearing for the State Bar Council has produced the result of fresh election dated 12.08.2018 as conducted in pursuance of the directions of the High Court, which election was also permitted by this Court vide its order dated 09.08.2018 but with a condition that the result thereof shall not be declared without the permission of the Court.

38. In view of the foregoing discussions, we are of the view that there are no merits in these appeals, which are hereby dismissed. In view of the dismissal of the appeals, the election already conducted on 12.08.2018 be given effect to by all concerned. The appeals are dismissed subject to above. Parties shall bear their own costs.

.....J.  
( A.K. SIKRI )

.....J.  
( ASHOK BHUSHAN )

NEW DELHI,  
November 02, 2018.