
(2018) 07 RAJ CK 0208

In the Rajasthan High Court

Case No : Civil Writ Petition No.1754 of 2017

**Amit Kumar Dusad @APPELLANT@Hash Akhil Bhartiya Khandelwal
Vaishya Mahasabha & Another**

Date of Decision : 19-07-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 227

Citation : (2018) 07 RAJ CK 0208

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Babu Lal Gupta, M.M. Ranjan, Rohan Agarwal, P.C. Dewanda

Final Decision : Disposed Off

Judgement

Under challenge is the order dated 8.11.2016 dismissing the petitioners-plaintiffsâ?? (hereinafter â??plaintiffsâ??) T.I. application under Order 39

Rule 1 and 2 CPC in his suit for declaration and permanent injunction wherein the plaintiff had sought a declaration that the office bearers nominated

by the AGM should not be allowed to function in tandem with duly elected office bearers or even otherwise as there was no such provision under All

India Akhil Bhartiya Khandelwal Vaishya Mahasabha (hereinafter â??Mahasabhaâ??) constitution as amended up to 08.01.2012. Also under

challenge is the affirming order dated 10.01.2017 passed in Civil Misc. Appeal.

Mr.B.L. Gupta, counsel for the plaintiffs has submitted that the courtsâ?? below have misdirected themselves in holding that the AGM under the

Constitution of the Mahasabha could act in all areas unless a specific prohibition could be pointed out and as such aside of office bearers of the

Mahasabha elected in elections held under the Constitution of the Mahasabha, multiple office bearers with the same designation could also be

nominated at the Annual General Meeting of the Mahasabha by a resolution passed. Mr.B.L. Gupta submitted that Clause 7(3) of the Constitution of

Mahasabha indeed provides that the decisions taken by the AGM would be binding on all, yet that clause cannot be interpreted as a Henry VIII clause

and the power thereunder has to be restricted to the functions of the Mahasabha as provided in the preceeding Clause 7(2) of the Constitution.

Mr.B.L. Gupta submitted that in the facts obtaining what is happening is that aside of duly elected office bearers of Mahasabha, multiple office

bearers of similar designation have taken over its functioning to the detriment of the functioning of the Mahasabha of which the petitioners are

members by the elected office bearers. In the aforesaid manner the constitution of the Mahasabha is being repeatedly breached. Mr.B.L. Gupta

submitted that in the circumstances the impugned orders passed by the court below are wholly perverse and founded on a clear mis-reading of the

Constitution of Mahasabha. It was submitted that the petitioners thus have a prima facie case, balance of convenience in their favour and would suffer

irreparable loss as members of the Mahasabha if its management were to continue to be done in a manner ultra vires of its constitution. The courts

below having failed to do justice, the court exercise its jurisdiction under Article 227 of the Constitution of India to so do.

Mr.M.M. Ranjan, Senior Counsel appearing with Mr.Rajesh Mehrishi for the respondents submitted that the AGM has consistently nominated office

bearers of the Mahasabha for the over a decade. Practice is thus the law. It was submitted that the resolutions nominating office bearers of the

Mahasabha with designations equivalent to that of the elected members were passed by the AGM in which the petitioners were a party and no

objections were raised at the relevant time by them. Estoppel against the petitioners is invoked. Mr. M.M. Ranjan further submitted that even

otherwise neither the suit nor the interim application therein at the instance of the plaintiffs could be utilized for passing of orders against the nominated

members who were not impleaded. Mr.M.M. Ranjan further submitted that the resolutions of the Mahasabha have already been acted upon, the

nominated member put in place and by way of an interim order status quo ante can not be restored. Mr.M.M. Ranjan finally submitted that the scope

of the jurisdiction of this court under Article 227 of the Constitution of India is supervisory and until the orders impugned are palpably capricious

perverse or passed in excess of jurisdiction, no interference is warranted. Such a situation does not presently obtain, he submitted.

Heard. Considered.

I am of the considered view that in the facts of the case the extended competing contentions of counsel for the parties require to be considered.

Admit.

Prima facie there is substance in the case of the petitioners that the Mahasabha in terms of its powers under Clause 7(3) of the Constitution is limited

to the matters set out in the Clause 7 (2) thereof. The Mahasabha under its Constitution cannot become a parallel body to nominate office bearers

with designation at par with that of the duly elected members and interfere in their functioning.

The petitioners are seeking injunction against the Mahasabha against allowing this illegal state of affairs of office bearers nominated by the AGM

functioning and obstructing the management by the office bearers elected under the Mahasabha's Constitution.

In this view of the matter, I would direct in the interim till disposal of the petition that the Mahasabha disallow and restrain the Members nominated by

it office bearers from functioning in that capacity on all counts and interfere with the management of the Mahasabha by its elected members.

Put up as prayed for final arguments in the second week of October 2018.