

**(2014) 04 CAL CK 0089**

**In the Calcutta High Court**

**Case No : A.P.O. No. 17 of 2014 and C.S. No. 397 of 2013**

Amitava Mitter

APPELLANT

Vs

Royal Calcutta Golf Club and Others

RESPONDENT

---

**Date of Decision : 29-04-2014**

**Acts Referred:**

Companies Act, 1956 — Section 184, 185

**Citation : (2014) 04 CAL CK 0089**

**Hon'ble Judges : Arijit Banerjee, J;A.K. Banerjee, J**

**Bench : Division Bench**

**Advocate :** Pratap Chatterjee, Senior Advocate and Mr. Anand Prasad Agarwala, Advocate for the Appellant; Anindya Kumar Mitra, Senior Advocate, Mr. Partha Basu, Advocate and Mr. Sudhakar Prasad, Advocate for the Respondent No. 1 and 2 and Mr. Padam Khaitan, Advocate for the Respondent No. 10, Advocate for the Respondent

**Final Decision : Disposed Off**

---

## **Judgement**

Ashim Kumar Banerjee, J.—Royal Calcutta Golf Club is an organization registered under the Indian Companies Act 1882 as per the Memorandum and Articles of Association of the club. The income and the property of the club would be applied solely towards promotion of the object of the club, in effect, it was a non-profiteering concern and run by the members of the club as per the Articles. Every year, the Board of Directors are elected by the members. The procedure for election is fully prescribed by the Articles. The present dispute would relate to a complaint by a member who would question the election held by the club for constitution of the annual committee including its head, called as captain. The election is generally held in the month of September for one full calendar year. The subject election was held on September 27, 2013 that the appellant questioned as according to him, there were gross irregularity and illegality that surfaced in the said election. The genesis of the dispute would relate back to a large chunk of land belonging to the club that, according to the appellant, the general committee wanted to exploit for commercial gain. They were attempting

to hand over the said land to the real estate owners for construction of a five star hotel. The appellant filed a suit being C.S. No. 346 of 2013 inter-alia challenging the resolution Nos. 8 and 9 proposed by the notice dated August 27, 2013 and obtained an Order of injunction restraining the club to take any decision on the said agenda. Perusal of the said agenda would reveal attempt of the club to deal with the land in question. The present suit being C.S. No. 397 of 2013 would relate to a challenge to the election of the captain and the general committee held on September 27, 2013. Coupled with filing of the suit, the appellant moved an application for temporary injunction that the learned Judge declined that too, without calling for affidavit. Being aggrieved, the appellant approached us by filing the instant appeal.

#### THE JUDGMENT AND ORDER IMPUGNED:

2. Analysis of the judgment and Order dated December 10, 2013 would reveal as follows:

- i) Learned Judge considered the earlier suit and the interim injunction granted in the said suit.
- ii) Learned Judge considered the appellant's contention, fake ballot papers were generated, unauthorized persons voted and the authorized persons were not allowed to vote.
- iii) Only evidence to support such allegation was a document dated September 28, 2013 as signed by two observers, scrutineers and three other persons.
- iv) The document would suggest discrepancy in number of ballots printed and used in the election. Ballot papers issued for election for the post of captain, were numbered as 849 whereas the total votes cast were 868 that would have nineteen extra votes. Similar defects were also noticed in case of general committee.
- v) Per contra, the club and the elected committee members would raise the issue of inordinate delay in approaching the Court pointing out, the appellant did not contest the election and no unsuccessful candidate approached the Court challenging the election. In any event, the difference between the successful and unsuccessful candidate was so much, insignificant discrepancy would not materially change the situation.
- vi) The learned Judge observed, it was the duty of the officials to stop the election process contemporaneously. They did not do so in absence of any request, it would be difficult at later point of time to entertain such allegation.
- vii) His Lordship also observed, even if the elected committee was superseded the earlier committee would start functioning that would have no change in respect of the post of captain as the earlier captain was re-elected.
- viii) The irregularity pointed out, would be dealt with through a regular trial hence, protection was necessary to preserve the ballots.

ix) His Lordship appointed the respective Advocates-on-record as Joint Special Officers to preserve the ballots and gave direction for hearing of the suit.

x) His Lordship made it clear, the findings were prima facie.

#### RIVAL CONTENTIONS:

3. Mr. Pratap Chatterjee learned senior Counsel appearing for the appellant would submit, the captain had the responsibility to arrange for poll. He would refer to "Shackleton on the Law and Practice of Meetings". 10th edition, in this regard, the author observed, "it is the task of the chairman to give everyone a chance to vote and the detailed arrangements should be directed to that end." Mr. Chatterjee would submit, there was complete failure on the part of the administration particularly, the captain, in absence of any plausible reason as to the ballot papers being found in excess the persons responsible for the election process would owe some responsibility to dispel the doubt in the mind of the Court.

4. He would further contend, the issue being sent for regular trial, would make the lis infructuous as the tenure of the subject committee would be expiring within a few months. If ultimately the plaintiff would succeed in the suit the success would be infructuous.

5. Per contra, Mr. Anindya Kumar Mitra learned Senior Counsel appearing for the club administration would submit, the earlier suit would relate to item No. 8 and 9, such grievance of the appellant was well protected by the learned Single Judge vide Order dated September 25, 2013. The present issue with regard to the election process did not have any complain from any candidate participating in the election. None of the unsuccessful candidates made any contemporaneous or belated complain in respect of conducting of the election process. The appellant was a member of the club. He did not choose to contest the election. Having not contested the election, the appellant was not entitled to question the process. Mr. Mitra would further submit, the election was for twelve month period. The process could be preponed. Seven months already passed in between keeping five months remaining, this lis would not deserve any interference, more so, on a belated complain made after two months of holding of the election. Referring to the result of the election, Mr. Mitra would suggest, the difference between the successful and unsuccessful candidate being huge compared to the total number of votes polled, the issue would not call for any interference. He would submit, club was a domestic forum. Its affair was guided by its Memorandum and Articles of Association. Such domestic affair of the club would seldom come within the scope of judicial scrutiny unless it would hit the public policy of the State or the members of the public at large. He would rely upon the decision of this Court reported in Mahaliram Santhalia Vs. Fort Gloster Jute Manufacturing Co. Ltd. and Others, to suggest, unless there was manifest breach no interference was called for. Moreover, the plaintiff did not allege any fraud that would warrant interference. This Court should not interfere with the domestic election process.

He would rely upon the English decision in the case of Kensington North Parliamentary Election reported in 1960 All ELR 150.

6. On the role of the scrutineer, Mr. Mitra would draw our attention to Sections 184 and 185 of the Companies Act 1956 to suggest, the scrutineer could have objected contemporaneously. The election process was held by the persons appointed for the purpose. The management was not responsible for any alleged irregularity or illegality.

7. On the scope of interlocutory relief, Mr. Mitra would rely upon the decision in the case of Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim and Others, .

8. Adopting the submission of Mr. Mitra, Mr. Padam Khaitan appearing for the respondent No. 10 would rely upon the Apex Court decision in the case of D.P. Sharma Vs. The Commissioner and Returning Officer and Others reported in All India Reporter 1984 SC 654. He would rely upon paragraph 3 and 4 of the decision where in an identical situation the Apex Court declined to interfere with the election process.

9. While giving reply, Mr. Anand Prasad Agarwala learned advocate reiterated what had been stated by Mr. Chatterjee while opening his appeal. Mr. Agarwala would pray for fresh election being conducted.

10. We have considered the rival contentions. In a civil litigation the plaintiff would have an onerous responsibility to support his case made out in the plaint. At the interlocutory stage, the plaintiff would have to convince the Court to the extent, he had a prima facie case that is likely to succeed, if stands to trial. The Court, upon being satisfied as to the discharge of onus by the plaintiff at the interlocutory stage, would consider balance of convenience and deal with the application and grant appropriate relief. With this mind set, may we proceed to deal with the present lis.

11. The allegation is serious however; the illegality or irregularity that is apparent on the face of the record, would come from someone who did not contest the election. Moreover, there is no other evidence to support such allegation. If we keep aside the report of the scrutineer, we do not have anything to question the election process. Coming back to the scrutiny report, we find, the total votes polled would be in excess the number of ballot papers issued for the purpose. This would definitely demand an explanation from the concerned person. We specifically asked Mr. Mitra, he avoided the question. The issue must be gone into at the appropriate stage. The decision in the case of D.P. Sharma (supra) was rendered in respect of a general election. There, the Apex Court considering the difference being so huge, declined to interfere. If we follow the said principle per se, we would have to reject the prayer for interference however, this election is in a small arena compared to a general election. At the same time, we find, there is no challenge to the scrutineers' report, at least not yet placed before the Court. Learned Judge did not call for any affidavit.

12. Mr. Mitra would say, his written statement is ready. In such a situation, the issue, in our view, should be gone into at the appropriate stage after giving adequate opportunity to the respondents to confront the allegation.

13. In the case of Mahaliram Santhalia (supra), the learned single Judge observed, in a case of a company when the Article would suggest, the chairman's decision would be final and binding the Court should honour such direction and would be slow to interfere with a domestic decision entertaining the same within the scope of judicial review. Similarly, in the case of Wall Vs. Exchange Investment Corporation Limited (supra), the Article provided, no objection should be made to the validity of any vote except at the meeting. The House of Lords upheld the decision of the chairman and observed, the same would not come within the scope of judicial review. Similar view was taken by the election Court in the case of Kensington North Parliamentary Election (supra). On the scope of interlocutory relief Mr. Mitra relied upon the decision in the case of Mohd. Mehtab Khan (supra), the Apex Court observed, while considering a prayer for mandatory injunction, the appellate Court should not interfere with the exercise of the discretion that the learned Trial Judge exercised on appreciation of facts. If the reasons that weighed with learned Single Judge, is a possible view, the appellate Court should not interfere.

14. Coming back to the balance of convenience, we would find, the appellant was not vigilant to enough to approach the Court in time. Seven months have passed in between, only five months left for the next election. If we stop the committee and/or the elected candidates from performing their duty and if the plaintiff ultimately fails in the suit there would be grave injustice. It might be said, the contra might cause prejudice to the plaintiff. In our view, he should take the risk because of the delay caused by him. We permit the respondents to file the written statement in Court in course of the day. We also make a request to the learned single Judge to take up the hearing of the suit at the earliest so that parties could have a final decision on the issue before the term of the present committee would expire. One observation of His Lordship, in our view, is erroneous that might not have changed the ultimate conclusion. His Lordship observed, in case of stoppage of functioning of the present committee, the captain who was re-elected would continue to act. We join issue. However, we do not go in detail as we agree with the ultimate conclusion. We affirm the ultimate decision of His Lordship impugned herein and request the learned Judge to expedite the process of disposal of the suit.

15. The appeal is disposed of accordingly without any order as to costs.

Arijit Banerjee, J.

I agree.