

(1993) 07 DEL CK 0013

In the Delhi High Court

Case No : Interim Application No. 80718 of 1992 and Suit No. 1988 of 1992

Ashok K. Ghosh

APPELLANT

Vs

Rotary International

RESPONDENT

Date of Decision : 07-07-1993

Acts Referred:

Citation : (1993) 51 DLT 299

Hon'ble Judges : V.B. Bansal, J

Bench : Single Bench

Advocate : K.K. Luthra, S. Luthra, A.M. Singhvi, M.L. Chawla, S.P. Aggarwal and Jayant Nath, for the Appellant;

Judgement

V.B. Bansal, J.

(1) This order will dispose of the application under Order 39 Rules 1 and 2 read with Section 151, CPC moved by the plaintiff with the following prayers :

(A)restraining defendant No. 3 from going for training or to act as District Governor District No. 3010 or to take over as the District Governor of the said District;(b) restraining the other defendants from entertaining defendant No .3 as District Governor elect of District 3010; and(c) as may be deemed fit and proper in the circumstances of the case .

(2) Shri Ashok K. Ghosh, plaintiff, has filed a suit for declaration that the election of Defendant No. 3 to the post of District Governor of District No. 3010 of defendant No. 1, held on 9-2-1992 be declared as void and illegal and inoperative and for a decree of permanent injunction restraining the defendant No. 3 from acting as District Governor of Rotary District No .3010 of Rotary International for the year 1993-94 in pursuance of the election held on 9-2-1992.

(3) Briefly stated, the averments made in the plaint have been that the plaintiff is the Chairman-cum-Managing Director of Prentice Hall of India Pvt. Ltd., the largest publishing company in India and as publisher of great repute the plaintiff

has the privilege of receiving many awards from the prominent publishing associations of the country and the world.

(4) Rotary International is the Association of Rotary Clubs throughout the world and membership of the Rotary International consists of members of Rotary Clubs, which continue to perform the obligations imposed by the Constitution of Rotary International, Rotary Club, Delhi, is one of the constituents of Rotary International and the Manual of Procedure issued by the Rotary International contains the text and constitution of bye-laws of Rotary International and the standard Rotary Club Constitution. The Rotary Club of Delhi is part of the District No. 3010 (hereinafter referred to as District 301) and is a geographical territory in which Rotary Clubs are associated for Rotary International Administrative purposes. Rotary Club of Delhi of which the plaintiff is a member is a part of District 3010.

(5) Selection of the District Governor nominee is to be made as per the bye-laws of the Rotary International. First of all the selection of the District Governor nominee is to be made by the Nominating Committee for each District and District Governor is to notify to every constituent club in the District calling upon the President of each club to propose the names of the persons duly qualified to be considered for selection. The plaintiff has been a senior active member as per Section 3 of Article Iv of the Bye-laws of Rotary International. Rotary International District 3010 is defendant No. 1 while Shri J.R. Jindal, District Governor is defendant No. 2 and Shri Deepak Kapur, the District Governor nominee is defendant No. 3, having been declared elected defeating the plaintiff.

(6) In pursuance of a notice by the defendant No. 2 asking the Club in the districts to propose the candidates from their respective clubs for election to the office of the District Governor nominee for the year 1993-94, the name of the plaintiff was unanimously proposed by the Rotary Club of Delhi and the decision was conveyed to the District Governor, defendant No. 2. The Nominating Committee considered three names, i.e., of the plaintiff, the defendant No. 3 and Dr. B.K. Daveson, and selected the plaintiff as official nominee for the year 1993-94. On 17-10-1991 the defendant No. 2 sent a communication of Presidents of all the Clubs informing them about the unanimous decision of the Nominating Committee in terms of Section 6 Clause "A" that the plaintiff had been selected as the unanimous District Governor nominee for the year 1993-94. It was also mentioned in the letter dated 17-10-1991 by Shri J.R. Jindal, defendant No. 2 that notwithstanding any nominations made by the Nominating Committee, any Club in the District can propose a candidate for District Governor nominee whose name had previously been duly suggested by the Nominating Committee by filing, with the District Governor, by not later than 30/11/1991, a resolution of the club adopted at regular meeting thereof nominating such candidate, duly certified by the Club Secretary and President. The name of Shri Deepak Kapur, defendant No. 3 was proposed by the Rotary Club of Delhi South u/s 7. Accordingly, letter dated 7-12-1991 was issued by the defendant No. 2 to

all club Presidents thereby notifying the names of Rtn. Ashok K. Ghosh, past President of the Rotary Club of Delhi and Rtn. Deepak Kapur, past President of Rotary Club of Delhi South, as required u/s 9 of Clause Viii of Procedure for Proposal of District Governor Nominee. It was also intimated that candidates will be balloted upon according to the procedure prescribed by Rotary International at the District Conference on 9/02/1992.

(7) A communication dated 6-1-1992 was sent to all the Presidents of the Clubs in the District by the defendant No. 2. thereby giving intimation that for the selection of District Governor nominee there will be a meeting at Hotel Maurya Sheraton, New Delhi and Credential Certificates from the Clubs were necessary for casting the votes. It was also intimated that the Credential Certificates were required to be deposited at the venue of the District Conference between 2.0 p.m. and 3.00 p.m. on 8-2-1992 and that only those clubs who had cleared their dues of Rotary International as well as district clubs dues would be entitled to cast their votes in the elections. Elections were accordingly held and the defendant No. 3 was declared elected. The grievance of the plaintiff has been that there have been violations of the rules and regulations and the election has not been conducted in the manner in which it ought to have been conducted. It is in these circumstances that the present suit has been filed, challenging the election.

(8) The suit has strongly been contested by the defendants. Defendant Nos. 1 and 2 have filed a joint written statement as also the reply to the application; while separate written statement and reply have been filed by defendant No. 3. It has Inter alias been pleaded that there has not been any violation of the rules and regulations and the election has been conducted in fair and impartial manner. A prayer has, Therefore, been; made that the suit as also the application may be dismissed.

(9) I have heard Shri K. K. Luthra, learned Counsel for the plaintiff; Dr. A.M. Singhvi, learned Counsel for defendant Nos. 1 and 2, and Shri S.P. Aggarwal, learned Counsel for defendant No. 3.

(10) Learned Counsel for the plaintiff has submitted that as per the rules Ballot Arrangement Committee could consist of only three persons but this Rule had been violated by the defendant No. 2 on account of having nominated Rtn. Rajesh Kumar as the fourth member. It has also been submitted by the learned Counsel for the plaintiff that the objection was specifically written by the plaintiff in his communication dated 13-3-1992 addressed to the defendant No. 2 that Rtn. Rajesh Kumar was allowed to sit as a fourth member. Article Xii (7)(g)(3) of the Manual of Procedure, 1989 provides that there will be only three members of the committee to be nominated by the District Governor. Learned Counsel for the defendants have submitted that Rtn. Rajesh Kumar was not a member of the Balloting Arrangement Committee who was only provided to assist the Committee in view of the fact that there was limited time available with the Balloting Committee. Reference has also been made to the letter dated

18-31992(exhibit P/5) written by the defendant No. 2 to the plaintiff in which it has specifically been stated that the District Secretaries were attached only to assist the Committee. It has also to be noted that there is a report dated 15-2-1992 by Shri S P. Virmani to the District Governor to the effect that there are only three members of the Ballot Arrangement Committee, viz. S/s S.P. Virmani, Lalit Mehra and K.K. Bhatia. There is no mention in this report that Rtn. Rajesh Kumar was a member of the Ballot Arrangement Committee. It is also pertinent to note that the plaintiff is from the Rotary Club of Delhi and so was Shri S.P. Virmani, member of the Ballot Arrangement Committee. Shri Deepak Kapur, defendant No. 3 is from the Rotary Club of Delhi South to which Shri Lalit Mehra belonged. It is, thus, clear that the Club of the plaintiff was very well represented in the Ballot Arrangement Committee and there has not been anything in the report or otherwise from which it could prima facie be said that Shri Rajesh Kumar was associated as a fourth member of the Ballot Arrangement Committee.

(11) Learned Counsel for the plaintiff has submitted that there was open canvassing by Rtn. Rajesh Kumar in favor of defendant No. 3 and in spite of an objection having been raised in this regard, no action was taken by the defendant No. 2 on account of which the election stands vitiated. Learned Counsel for the defendants have vehemently contested this proposition and have pleaded that, in fact, complaints were made from both the sides, i.e. on behalf of the plaintiff as also the defendant No. 3 that Rtn. Rajesh Kumar was canvassing and the moment this fact was brought to his notice, the defendant No. 2 took immediate steps for the removal of Rtn. Rajesh Kumar. It is thus, clear that there are allegations and it has to be verified only by way of evidence as to whether Rtn. Rajesh Kumar was canvassing and, if so, for whom. At this stage, in my view, it cannot be said that this would be a sufficient ground to hold that the election dated 9-2-1992 stands vitiated.

(12) Learned Counsel for the plaintiff has submitted that as per the rules and regulations of Rotary International, the result was required to be announced but the defendant No. 2 failed to do so. It is also submitted that the details of the votes casted in favor of the plaintiff and defendant No. 3 were not announced and, thus, there has been a material violation of the rules. Learned Counsel for the defendants have, on the other hand, submitted that the result of the election was, in fact, announced by the District Governor, defendant No. 2, at about 5.30 p.m. on 9-2-1992 and the mere fact that the details of the votes casted in favor of the plaintiff and defendant No. 3 had not been given would make no difference. Reference in this regard has been made to the report dated 15-2-1992 under the signature of Shri S.P. Virmani, stating therein that for the post of District Governor nominee, Shri Ashok Kumar Ghosh secured 54 votes while 72 votes were casted in favor of Shri Deepak Kapur and that the result duly signed by the members of the Ballot Arrangement Committee was communicated to the District Governor at about 5.00 p.m. and the result was announced.

(13) It is also pertinent to note that the magazine Indraprastha"dated 11-2-1992 published by the plaintiff himself gave the news that Rtn.past President Deepak Kapur elected District Governor nominee 1993-94 for Rotary International District 3010. There is a letter dated 10-2-1992Exhibit P/4, written by Shri J.R. Jindal, defendant No. 2, to the plaintiff stating therein that the result was announced at the close of the conference on 9-2-1992 at 5.30 p.m Can in these circumstances it be said that the result was not announced by the defendant No. 3 on 9-2-1992, the day on which the election was held ? The answer is in the negative. Even otherwise, can it be said that the election result has been materially affected on account of the alleged omission on the part of the defendant No. 2 in giving the details of the votes secured by the plaintiff and defendant No. 3 in the election .My answer at this stage is in the negative.

(14) Learned Counsel for the plaintiff has submitted that the ballot paper was defective, inasmuch as the plaintiff was not shown in it as the official nominee of the Balloting Committee and on this account the result has been materially effected and it was not made clear to the voters that the plaintiff was the official nominee. The question for consideration is as to whether there is any such requirement. Page 63 of the Manual of procedure, 1989 relates to elections of Rotary International and it is provided that all ballots for the election of a general officer of Rotary International shall include first the name of the candidate selected by the Nominating Committee, if any. followed in alphabetical order by the names of the other candidates, except that in those instances when no person has been proposed by the Nominating Committee the names of all the candidates shall be rotated on the ballot. Learned Counsel for the plaintiff has not been able to point out any provision under which such a mention was required to be made on ballot paper itself. It may, however, be mentioned that in the communication dated 17-10-1991 (letter Exhibit P/1). Shri J.R. Jindal, defendant No .2, had specifically informed all the Presidents of the Club that Shri Ashok K. Ghosh, plaintiff, has been unanimously selected for District Governor nominee for the year 1993-94 and vide letter dated 2-12-1991(Exhibit P/2), all the Presidents were informed that the plaintiff was selected by the Nominating Committee while Deepak Kumar was proposed u/s 7 by the Rotary Club of Delhi South. It is also pertinent to note that the voters for this election are not the individuals but the clubs. in these circumstances, prima facie, it cannot be said that there has been any violation of any rule by the defendant No. 2 by not mentioning on the ballot paper that the plaintiff was the official nominee of the Nominating Committee for the post of District Governor. It is pertinent to note that for the election of Rotary International President and Rotary International Directors there is a specific requirement in the manual itself that the ballot paper must state as to who is the nominee selected by the Nominating Committee. There's ,however, no such rule for the election of District Governor nominee. The requirement of Article Xii (7.8 and 7.9) has been complied with in the instant case by the defendant No. 2 by issuing letters Exhibits P/1 and P/2.

(15) Learned Counsel for the plaintiff has also submitted that there have been

casting of votes by unauthorised persons, which has materially affected the result and on this account the plaintiff is entitled to injunction prayed for. It has been submitted by the learned Counsel for the plaintiff that Shri Satish Jain, President of Rotary Club of Gurgaon casted the second vote in place of Shri R.S. Malik, Secretary, who did not come to attend the meeting. Similarly, he has submitted Shri T.R. Saluja, President of The Rotary Club of Delhi University had casted the second vote in place of his Secretary Shri Subhash Gambhir and Shri A.P. Khurana. President of The Rotary Club of Delhi Sainik Farms casted the second vote in place of his Secretary Shri Arvind Minocha. He has, thus, submitted that persons who were not authorised to exercise the right of vote have been permitted to cast second votes which were not permissible under the Rules. It is pertinent to note that the voter in the instant case is the club and not individuals. Credential Certificates have been filed on record which indicate that these Credential Certificates have been signed by the President and Secretary of each Club. A perusal of the Credential Certificates of the Rotary Club of Gurgaon shows that it was in favor of the President and Secretary and it was signed by them. A letter dated 9-2-1992 was written by Shri R.S. Malik, Secretary, addressed to the Chairman, Election Committee, stating therein that he was unable to come to Delhi due to unavoidable circumstances and authorised President, Rtn. Satish K. Jain to cast vote on his behalf for the election of District Governor nominee 1993-94. Similarly, there is a letter dated 9-2-1992 by Shri T. R. Saluja, President, Rotary Club Delhi University, addressed to the District Governor, defendant No. 2 stating therein that one vote was to be casted by him and another by his Secretary, Shri Subhash Gambhir, who could not come, having fallen sick and a prayer was made that he may be permitted to cast the second vote. Similarly, Shri A.P. Khurana, President, Rotary Club of Delhi Sainik Farms wrote a letter to District Governor, defendant No. 2, stating therein that Shri Arvind Minocha, his Secretary, had suddenly to leave for Chandigarh on account of which he was unable to cast his vote and so prayed that he may be permitted to cast the second vote on behalf of his Secretary. All these three applications were allowed by defendant No. 2 and accordingly three persons were authorised to cast the second vote. The question for consideration is to whether there is real violation of the rule and whether it has materially affected the result of the election. It is not disputed that each Club is entitled to one vote for each 25 or major fraction thereof of its members, honorary members excluded, based on the number of members of the Club as on the last date of the month preceding that in which the selection is to be made and the candidate receiving a majority of the votes cast is to be declared to be nominated to the office of the District Governor of the District. In the instant case the clubs had authorised the Presidents and Secretaries of the three Clubs to cast one vote each for the District Governor nominee. These authorisations/Credential Certificates were signed by the Presidents and Secretaries. The three persons being unable to be present personally for casting votes, the votes were allowed to be casted on their behalf by the representatives authorised by the Club to cast the vote. Prima facie, there does not appear to be any plausible objection to the same. In any case, can

it be said that by permitting the casting of three votes by the nominees of the three clubs, i.e., Rotary Club of Gurgaon, Rotary Club Delhi University and Rotary Club Sainik Farms the election stands vitiated. I do not find any cogent reasons to come to this conclusion at this stage. It is also pertinent to note that the plaintiff had secured 54 votes as against 72 secured by defendant No. 3. Even if these three votes are excluded from the votes casted in favor of defendant No. 3, the result would remain the same keeping in view the margin of votes. In these circumstances, I am clearly of the view that the election cannot be said to have been vitiated on this account.

(16) Learned Counsel for the plaintiff has submitted that the Clubs having outstandings against them have been permitted to cast vote on account of which the election stands vitiated. He has submitted that there were in fact eight clubs, viz. Rotary Club of Delhi Down Town (having two votes); Rotary Club of Delhi Rohini (one vote); Rotary Club of Delhi South West (one vote); Rotary Club of Hapur Central (two votes); Rotary Club of Mahendergarh (one vote); Rotary Club of Narnaul (one vote); and Rotary Club of Noida (one vote). He has thus submitted that eleven votes have been permitted to be casted through these could not be permitted on account of the Clubs being in arrears. Learned Counsel for the defendants 1 & 2 has, on the other hand, submitted that the latest report was received by defendant No. 2 on 4.3.1992 which indicates that the aforesaid eight clubs were in arrears. He has also submitted that there was no prior information with the defendant No. 2 who, as per the list available, permitted the clubs to exercise the right of franchise and, so, there is no illegality committed by the defendant No. 2 in the elections. Admittedly, there are two kinds of dues payable by each Rotary Club. One is the Rotary International dues, which are payable only in U.S. Dollars by each club directly to the Rotary International in Evanston, U.S.A. at the rate of U.S. dollar 14.50 per half year per member of the club and the second is called district dues which are payable by each club to the District Governor and varying according to the strength of members of each clubs. Reference in this regard can be made to pages 209 and 210 of the Manual. The clubs are required to make the payment directly to the Rotary International for which the record has to be maintained at the Head Office. A consolidated list of the defaulters is prepared and circulated to the District Governors. In the instant case it has specifically been claimed by the defendant No. 2 that the said list containing the names of the defaulter clubs was received on 4.3.1992, i.e. much after the holding of the elections on 9.2.1992. Can in these circumstances it be presumed that the defendant No. 2 or for that purpose the Balloting Committee have committed a lapse in permitting the casting of votes by unauthorised persons. Learned Counsel for the plaintiff has submitted that this information could be available to the defendant No. 2 from the office of the Rotary International in Delhi. Merely on account of the inaction of the defendant No. 1, it cannot be said that there is violation of the Rules and that the result was materially been affected. The matter will have to be gone into by way of evidence but prima facie it appears that the result cannot be said to have been

vitiated on this account. There will have to be a finding on the basis of the evidence which may be led by the parties to conclude whether defendant No. 2 had the information with regard to the default being committed by these eight clubs. Learned Counsel for the defendants have submitted that, in fact, every year such list is received only after the holding of the elections and the clubs have been making the payments of arrears to The Rotary International. We are not concerned here with the practice in the previous year or in the year 1993. But the question that will have to begin into during trial would be as to whether there has been any default in following the procedure and permitting unauthorised clubs to cast vote. It may also be noted that there were eleven votes of these clubs and even if these eleven votes of these clubs and even if these eleven votes are excluded along with the three votes referred to in the earlier part of the order, there is still majority of votes in favor of defendant No. 3. Learned Counsel for the plaintiff has referred to the judgment dated 10.5.1985 by Wadhwa J. in Suit No. 1435 of 1984. It was a suit by Kedar Nath Baba thereby challenging the election of Arjun Singh as President of Northern India Refrigeration and Air conditioning Trade Association, a Society registered under the Societies Registration Act. The election was held on 25.8.84 in which the plaintiff secured 51 votes while 54 votes were polled in favor of Arjun Singh, defendant. There was, thus, a margin of three votes only. There was a specific finding in the said case that four votes were invalid and, thus, had materially affected the result of the election of the President, Besides claiming the setting aside of the election of Arjun Singh as the President, a prayer was made by the plaintiff Kedar Nath Baba that he should be allowed to function as the President of the Association. The facts of the said case are, thus, entirely different and not applicable to the present case. There is no prayer by the plaintiff that he should be declared as elected and there is no specific finding with regard to the casting of invalid votes. It may also be noted that even considering the number of votes which have been challenged, the margin is so much, vast that the election cannot be said to have been materially affected. This judgment, thus, cannot be of any help to the plaintiff at this stage.

(17) Learned Counsel for the defendants have submitted that the plaintiff has no right to challenge the election of the District Governor nominee since only the clubs are the voters and nominations have also to be by the Clubs. It is, thus, submitted that if the plaintiff was aggrieved by the result of the elections, he could have approached his own club or any other club to challenge the election, but he was not competent to challenge the same in the Court. I do not agree with this submission. It is admitted case of the parties that the plaintiff was selected by Nominating Committee as official nominee for the post of District Governor. The District Governor nominee becomes a member of the Rotary International to which all the Clubs are affiliated. Rotary International is the Association of Rotary Clubs throughout the world and its membership consists of members of Rotary Clubs which continue to perform the obligations imposed by the constitutional documents. Rotary International Protocol, as mentioned at

page 59 of the Manual, gives the order of precedence in which the District Governor is mentioned at the far end. Once the plaintiff was nominated by the Nominating Committee he became the official candidate and could become a member of the Rotary International in his personal capacity. A valuable right, thus, accrues to a candidate who is nominated by the Nominating Committee and, in these circumstances, I am prima facie of the view that the relief cannot be declined only on this ground.

(18) Learned Counsel for the defendants have submitted that alternative and efficacious remedy was available to the plaintiff by way of approaching the Election Review Committee and having not exhausted the same the present suit could not be filed. An Election Review Committee is appointed annually by the President which functions in accordance with the terms of reference and it consists of nine members, one of whom is appointed as Chairman by the President. Procedure has been prescribed as to how the Election Review Committee is to proceed and examine the complaints relating to the elections to the office of the Rotary International. Article XII Section 7 of the Manual of Procedure deals with the qualifications of a District Governor and also even after the receipt of the signed statement from a nominee for the office of the District Governor. If the Board has cause to believe that the nominee would be unable to fulfill satisfactorily the duties and responsibilities of the office as provided in the bye-laws, the Board may suspend such nomination and could reject the nomination. It is the admitted case of the plaintiff that he had sent copies of the letters exchanged between the plaintiff and defendant No. 2 to the concerned officers of the Rotary International for their information and necessary action, as is mentioned in the letter dated 13.5.1992. by the plaintiff, addressed to the defendant No. 2. The receipt of the correspondence by the Rotary International is also proved on record from the letter dated 6.4.1992. from the Executive Service Officer Rotary International, addressed to the plaintiff, acknowledging the receipt of letter and enclosures sent by the plaintiff to Rotary International. It is the admitted case of the parties that the defendant No. 3 is only a District Governor nominee and the election is yet to take place in the Convention to be held from June 13 to June 16, 1993 in Orlando Florida (Page iii of the Manual). It is only after the nomination is approved in the Convention that one gets elected to the office of the District Governor. In any case, I do not think it necessary at this stage to come to a positive finding on this point in view of my conclusions on the objections on merits.

(19) Learned Counsel for the defendants have submitted that there has been inordinate delay on the part of the plaintiff to file the suit and he has not taken appropriate action within 30 days to challenge the election. Admittedly, the election took place on 9.2.1992 and the present suit was filed on 23.5.92. Submissions of the learned Counsel for the defendants has been that the plaintiff came to know of the result on 9.2.1992 and there is no plausible Explanation as to why he waited for more than three months to come to the Court. Learned Counsel for the defendants has, however, not been able to point out any specific

limitation provided in the Manual for challenging the election. Admittedly, the plaintiff had sent copies of the correspondence exchanged between him and defendant No. 2 to the Rotary International. It is different that he has not pursued the matter further with the Rotary International. However, in the absence of any specific limitation, it cannot be said that there has been inordinate delay on the part of the plaintiff to file the suit on 21.5.1993. This submission of the defendant is therefore ,rejected.

(20) Learned Counsel for the plaintiff has submitted that rules of secrecy were not followed in the election and mirrors were fitted all around the hall where the election was held and on this account the election cannot be said to be in accordance with the rules. Learned Counsel for the defendants has submitted that rules of secrecy were very well followed and there was no such complaint and has referred to the averments made in the written statement .This is a matter which would need investigation and prima facie it cannot be said that there was any violation of the rules of secrecy, especially when the votes are the clubs and the Credential Certificates are issued under the signatures of the President and Secretary of each club, authorising the President, Secretary of the members to vote.

(21) In view of my aforesaid discussion, prima facie I do not find any ground for the grant of injunction, restraining the defendant No. 3 from going for training or to act as District Governor or restraining the other defendants from entertaining the defendant No. 3 as District Governor elect. The application, Therefore, stands dismissed.

(22) Needless to mention that the observations made in this order are only for the purpose of the disposal of this application and will have no bearing on the final decision, which would be arrived at on the basis of evidence which may be lead by the parties.I.A. 80718192

(23) This application has been disposed of vide separate order on record dated 7.7.1993.S. No. 1988192

(24) Since, now, I am sitting on the appellate side, the case is to be listed before the Hon"ble Judge sitting on the Original side.

(25) To be listed before the Hon"ble Judge in charge (Original Side),subject to the orders of the Hon"ble the Chief Justice on 19/07/1993.