
(2015) 05 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 1369, 1721/2015 and Review Petition No. 128 of 2015

Balaji Developers and Others

APPELLANT

Vs

State of MP and Others

RESPONDENT

Date of Decision : 11-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Society Registrikaran Adhiniyam, 1973 — Section 26, 27, 28, 29, 30

Citation : (2015) 05 MP CK 0017

Hon'ble Judges : Rohit Arya, J

Bench : Single Bench

Advocate : Prashant Sharma, for the Appellant; Sangeeta Pachauri, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rohit Arya, J.

1. The aforesaid two writ petition Nos. 1369/15 and 1721/15 under Article 226 of the Constitution of India are filed with grievance that despite term of office bearers of the executive body being over, new election of the Madhya Pradesh Chamber of Commerce and Industries, Gwalior has not been held though more than a year has passed by. Therefore, indulgence of this Court is sought in the matter of new election. Review Petition has been filed seeking review of the order dated 05/03/2015 in W.P. No. 1370/2015.

2. Madhya Pradesh Chamber of Commerce and Industries, Gwalior (hereinafter referred to as the "Chamber of Commerce") is a society registered under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 (hereinafter referred to as the Adhiniyam, 1973). Chamber of Commerce has its own bye-laws duly ratified by the Registrar, Firms and Societies. Bye-laws have been placed on record in W.P. No. 1721/2015 as Annexure P/1. Aims and objects of the Chamber of Commerce are detailed in clause 3 of the Byelaws. It is essentially a society

for development of business in the State of Madhya Pradesh and to provide all such measures for its sustained growth, protection and advise to the business community at large in the State of Madhya Pradesh. Chapter I of the byelaws inter alia provides for category of members of the Chamber of Commerce and clauses 1.1 Hon"ble members, 1.2 sanrakshak member, 1.3 life members and 1.4 general member as defined under the said clause. Clause (2) describes eligibility of the members, Clause (3) deals with as regards procedure for membership, Clause (4) deals with disqualification of membership. Clause (5) provides for duties and rights of members, Clause (6) provides for maintenance of membership register; Clause (8) deals with membership fees. Chapter-II deals with annual general body meeting and emergency meetings. Chapter - III deals with executive body of the Chamber of Commerce and inter alia clause (16) provides for the nature of activities to be undertaken by the executive body. Clause (16.2) provides for functioning and duration of the elected body. Relevant provisions are (16.2), (16.3) and (16.4) which are reproduced below:

3. Rights and duties of the executive body are defined under clause 18 of the byelaws. Relevant for the purposes of this matter are (18.3), (18.8), (18.19) and (18.21).

4. Election of the executive body is provided under clause (23) of the bye-laws whereunder members falling under clause 1.1 Hon"ble members, 1.2 sanrakshak member, 1.3 life members and 1.4 general member are eligible in different formations as provided thereunder to participate in the election of the executive body. Schedule I appended to the bye-laws is election rules for executive body and provides for detailed procedure to be followed in the matter of elections including the appointment of election officer, eligibility of candidates, election programme, declaration of results etc.,

5. Undisputedly, last elections of the executive body of the Chamber of Commerce were held on 11/01/2011. The next election was compulsorily required to be conducted within 03 months from the date of expiry of the term of the executive body under the same clause. Undisputedly, uptill now, election of the executive body has not been held. More than a period of one year has passed by. Inaction on the part of the Chamber of Commerce in this behalf is in flagrant violation of clause (16.4) of its byelaws. Further, continuance of the office bearers of the executive body on account of clause (16.3) thereof by no yardstick could justify its inaction in the matter of holding of elections after expiry of the period of 03 years. The Chamber of Commerce is a registered society under the Adhiniyam, 1973. It has its own registered byelaws and it is not a mere association of private persons. It is obliged to regulate its functions in accordance with the byelaws and thereby comply with the requirements of the Adhiniyam, 1973 and the Rules framed thereunder.

6. Registrar, Firms and Societies is invested with the powers as engrafted in various sections of the Adhiniyam, 1973 for affairs of the registered society for various matters inter alia maintenance of register of members, acquisition,

transfer by sale, gift or otherwise of its immovable properties only with the prior permission of the Registrar in writing, utilization of funds acquired upon such transactions, books and accounts to be maintained by the society, etc., Registrar is empowered to seize record of the society as provided for under section 26 of the Adhiniyam, 1973. Chapter VI of the Adhiniyam, 1973 deals with annual returns, audit, inspection and supervision inter alia under section 27 it provides for that once in every year, on or before the forty-fifth day succeeding the day on which according to the regulations of the society the annual general meeting of the society is held to convene the general body meeting and also furnish the elected list of office bearers under time frame provided thereunder. Sections 28 and 29 empowers for audit and inspection of accounts and documents. Section 30 empowers the Registrar to enforce attendance and vested with the powers in that behalf as provided for under the Code of Civil Procedure, 1908. Section 31 empowers the Registrar to call for information. Chapter VII of the Adhiniyam, 1973 deals with enquiries and supersession inter alia under section 32 empowers the Registrar for enquiry and settlement of disputes on its own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society. Section 33 empowers the Registrar for supersession of governing body. Section 34 empowers the Registrar for dissolution of societies and adjustment of their affairs. Besides, there are provisions for offences and penalties under Chapter IX empowering the Registrar to impose penalties if society is found to be functioning in contravention of sections 27 and 30 of the Adhiniyam, 1973.

7. Therefore, looking to the scheme of the aforesaid Adhiniyam, 1973, there is an effective check, control and regulation in relation to the affairs of the functioning of the society, upon failure or avoidance to adhere to byelaws and provisions of the Adhiniyam, 1973 and the Rules framed thereunder.

8. It appears that there has been growing discontentment amongst the members of the Chamber of Commerce for the reasons that the elections of the executive body have not been held for a considerable long period.

9. It appears that there is serious dispute as regards membership and, therefore, writ petition was filed before this Court vide W.P. No. 5770/2012 (Ravi Gupta Vs. State of MP and ors). The said writ petition was disposed of vide order dated 13/02/2014 which reads as under:

"Shri Prashant Sharma, Advocate for the petitioner.

Shri Praveen Newaskar, Dy. Govt. Advocate for the respondents/State.

This petition under Article 226 of the Constitution of India filed by the petitioner claiming himself to be a member of the Society, respondent no. 5 registered under the M.P. Societies Registration Act has raised certain grievance regarding the validity of membership of the society by preferring a legal notice to the Registrar, Cooperative Society.

This Court refrains from going into the merits of the tenability of the said notice or in regard to the validity of the membership of respondent society as the same would involve the exercise of deciding the disputed questions of facts.

The petitioner is thus free to approach the competent authority i.e. Registrar/Deputy Registrar/Assistant Registrar as the case may be, by preferring appropriate application in terms of the provisions of M.P Societies Registration Act.

Needless to emphasize that if the petitioner does so, the authority concerned is expected to consider and decide the same after adjudicating the entitlement of the petitioner to file the said representation/appeal as expeditiously as possible."

10. In the context of the aforesaid order, it further appears that the Assistant Registrar, Firms and Societies, Gwalior has passed an order on 07/01/2015 whereunder certain directions have been issued for incorporation of certain provision in the bye-laws as regards membership and finalization thereof.

11. Thereafter, another writ petition was filed vide W.P. No. 1370/2015 (Ravi Gupta Vs. State of MP and ors) which was disposed of by this Court by order dated 05/03/2015 which reads as under:

"Shri Prashant Sharma, Advocate for the petitioner. Though by filing this petition challenge is made to the order passed by Assistant Registrar, Gwalior dated 25/2/2015; whereby, direction is issued to the Chairman, M.P. Chambers of Commerce and Industries, Gwalior to conduct the elections in accordance with Act of 1973 and amended Rules of 1998 and the provisions of registered constitution of the society.

Learned counsel for the petitioner submits that the Assistant Registrar, Firms and Societies, Gwalior in compliance of the order dated 13/2/2014 passed by this Court in W.P. No. 5770/2012 has passed a detailed order (Annexure P/5) dated 7/1/2015, therefore, it is prayed that direction is also required to be issued to hold the elections keeping in mind the directions issued by Assistant Registrar vide order dated 7/1/2015.

Without commending upon the merits of the submissions advanced, it is considered apposite to direct the Assistant Registrar, Firms and Societies, Gwalior to ensure the compliance of order passed by it on 7/1/2015 in the matter of compliance of the order impugned dated 25/2/2015.

With the aforesaid direction, petition stands disposed of.

It is made clear that this Court has not expressed any opinion on the merits of the case."

12. Therefore, it appears that there has been persistent disputes, differences and discontentment amongst the members of the Chamber of Commerce in the matter of dispute of membership and further continuance of the executive body after expiry of its term and not conducting the general body meeting for

conducting the elections.

Review Petition No. 128/2015

13. The review petition has been filed seeking review of the order dated 05/03/2015 disposing of W.P. No. 1370/2015. The review petition is filed in the following name:

"Madhya Pradesh Chamber of Commerce and Industry (A society registered under Society Registrikaran Adhiniyam) through the Hon'ble Secretary, Madhya Pradesh Chamber of Commerce and Industry, Sanatan Dharm Mandir Road, Lashkar, Gwalior."

14. On a query as to whether the executive body of the Chamber of Commerce has authorised the Secretary to file the Review Petition, learned counsel refers to Annexure A/9 and submits that meeting of the executive body was convened on 25/02/2015. It is further submitted that in this meeting, it was resolved to file the instant review petition. However, upon careful perusal of Annexure A/9, learned counsel failed to point out any such decision taken by the executive body (Annexure A/9). The aforesaid query was raised in the context of clause (18.9) of the byelaws whereunder all legal and Court proceedings have to be conducted by the executive body and under clause (18.21) thereof, it may delegate its power in that behalf to any office bearers of the committee or members. Learned counsel for the revision petitioner at this stage took the plea that even if there is no resolution of the executive body, still the Secretary can file the instant review petition and referred to clauses (29.6) and (34) of the byelaws which are reproduced below:

Upon perusal of the aforesaid clauses, it appears that they do not in fact, authorise the Secretary to institute any legal or court proceedings on behalf of Chamber of Commerce and in fact, it only provides that the Secretary shall ensure activities of the Chamber of Commerce in accordance with law.

15. Therefore, in the light of specific provision under clauses (18.9) and (18.21) of the byelaws and for want of any resolution by the executive body authorising the Secretary to file the instant review petition, in the opinion of this Court, the review petitioner is not competent to maintain the instant review petition having no power or authority or competency to file the same.

16. That apart, even on merits, the review is sought of the order dated 05/03/2015 passed in W.P. No. 1370/2015. This Court has not commented upon the merits of the submissions advanced by the petitioner therein with reference to the order passed by the coordinate Bench of this Court on 13/02/2014 in W.P. No. 5770/2012 and the order passed by the Assistant Registrar, Firms and Societies, Gwalior dated 07/01/2015.

17. Admittedly, no review petition was filed seeking review of the order dated 13/02/2014 disposing of W.P. No. 5770/2012 in the context whereof, the Assistant Registrar, Firms and Societies, Gwalior has passed the order dated

07/01/2015. The order dated 07/01/2015 passed by the Assistant Registrar, Firms and Societies, Gwalior has not been challenged by the review petitioner before the appropriate forum under the Adhinyam, 1973. Therefore, the grievance of the review petitioner that the order passed by this Court dated 05/03/2015 in W.P. No. 1370/2015 deserves to be reviewed as the review petitioner was not heard by the Assistant Registrar before passing of the order dated 07/01/2015 cannot be countenanced. If the review petitioner was not heard before passing order dated 07/01/2015, he is always at liberty to assail the same in accordance with law. Therefore, in the opinion of this Court, no ground is made out for review of the order dated 05/03/2015 passed in W.P. No. 1370/2015. Accordingly, the review petition sans merit and is accordingly dismissed.

W.P. No. 1369/2015

18. Petitioner, Shri Balaji Developers has sought for quashment of order dated 25/02/2015 passed by the Assistant Registrar, Firms and Societies, Chambal Division, Gwalior. By the aforesaid order, the Assistant Registrar has written to the President/Secretary of the Chamber of Commerce in the context of complaint dated 20/02/2015 and the correspondence of the Registrar dated 24/12/2014, 07/01/2015 and 06/02/2015 with a direction to ensure compliance of the provisions of the Adhinyam, 1973 and the amended Rules, 1998 as well as byelaws of the registered society in the matter of elections of Chamber of Commerce. The petitioner claims to be member of the Chamber of Commerce. However, there is no averment in the writ petition supporting documents that the petitioner is a member of the Chamber of Commerce. It appears that this Court had allowed the amendment application, I.A. No. 1716/2015 on 26/03/2015 but no such amendment has been carried out within the period stipulated in the said order and even uptill the date of hearing of the case. Even otherwise, the document, Annexure P/10 annexed with the amendment application is not an authentic list of membership of Chamber of Commerce. Therefore, the same is not countenanced. That apart, the relief of quashment of communication dated 25/02/2015 (Annexure P/1) in the opinion of this Court is totally misconceived. By the aforesaid communication, the Assistant Registrar has only required the President/Secretary of the Chamber of Commerce to take action in the matter of holding of elections in accordance with the Adhinyam, 1973 and the amended Rules framed thereunder and byelaws of the society. In the opinion of this Court, the aforesaid communication is in the interest of the members of the society of Chamber of Commerce and during the course of hearing, learned counsel also prays that election should be held contrary to relief claimed. Therefore, it appears that petition has been filed for some collateral purpose and not bona fide, on which this Court does not propose to further dilate upon. Hence, I see no reason to sustain such a challenge. Accordingly, writ petition sans merit and is hereby dismissed.

W.P. No. 1721/2015

19. In this writ petition, two persons, Awadh Singh Dhakre and Rajeev Chaddha have approached this Court with a grievance that despite the term of the executive body has expired and more than one year has passed by but still the election is not being held, therefore, there is growing discontentment amongst members of the Chamber of Commerce. Hence, for redressal of grievance, direction is sought against respondents No. 1 and 2 for conducting elections for the Chamber of Commerce.

20. Learned senior counsel for the petitioner, State's counsel and counsel for the respondent No. 3 are heard.

21. Last elections of the executive body of Chamber of Commerce was held on 11/01/2011. The term of 03 years as provided under clause (16.2) of the byelaws has come to an end on 10/01/2014. No steps whatsoever have been taken by the executive body to conduct the fresh elections as per election rules appended to the Scheduled I of the byelaws. It is a society registered under the Adhiniyam, 1973. It is not mere a association of the private persons. The Chamber of Commerce has its own byelaws duly ratified by the Registrar, Firms and Societies. Members and the executive body of Chamber of Commerce owe allegiance to the byelaws and the provisions of the Adhiniyam, 1973 for their sustenance and continuance. Their activities contrary to such binding set of rules invalidate the same. The Chamber of Commerce being a registered public body, it can sue and be sued in its own name. Its duty and accountability towards byelaws and the provisions of the Adhiniyam, 1973 cannot be undermined. It owes a public duty to ensure conduct of affairs in accordance with law as it has been engaged in the activities intended for business promotion, development and regulation thereof through out the State of Madhya Pradesh through its members drawn from different nature of business and avocations. It is very unfortunate and sorry state of affairs that despite, completion of the tenure, elections of office bearers of the executive body have not been held and over a period of one year has elapsed after completion of the last elections. There is discontentment, disappointment, erosion of faith and trust amongst the members on issues relating to functioning, membership and avoidance of elections by the Chamber of Commerce. W.P. No. 5770/2012 (supra) was filed with the aforesaid nature of grievance. A coordinate Bench of this Court had directed the Assistant Registrar to look into the grievance and pass necessary orders. W.P. No. 1370/2015 (supra) was filed seeking direction to the Assistant Registrar to ensure free and fair elections. Office bearers of the executive body of the Chamber of Commerce have failed to discharge their obligations as contemplated under clause (16.3) of the byelaws and they have not complied with the directions issued in the matter of membership and elections from time to time by the Assistant Registrar, Firms and Societies viz., 24/12/2014, 07/01/2015, 06/02/2015 and 20/02/2015. Under such circumstances, it is considered apposite to ensure free and fair elections for different posts of the executive body from amongst the eligible members for sustenance of reputation and credibility of the Chamber of Commerce which is an important public platform of the entrepreneurs and members of business

community.

22. Registrar, Firms and Societies, an authority under the Adhiniyam, 1973 exercises the effective and pervasive control through various provisions of the Adhiniyam, 1973 including holding of enquiry into the constitution, working and financial condition of the society with the power to call for the record, verification, seizure of record, calls for attendance of the members and office bearers in an enquiry and after enquiry may also take recourse to dissolution of society, if required. Therefore, in the fitness of things, in the opinion of this Court and to ensure free and fair elections, the Assistant Registrar, Firms and Societies, Chambal Division, Gwalior is entrusted to hold the elections as per byelaws of the Chamber of Commerce as the executive body has failed to discharge its obligations in accordance with clause (16.4) of the byelaws and has become vulnerable in the eyes of members of its own society.

23. Accordingly, W.P. No. 1721/2015 is disposed of with the following directions:

(i) the Assistant Registrar, Firms and Societies, Chambal Division, Gwalior (respondent No. 2) shall issue notice to the executive body of Chamber of Commerce through its Secretary/President for convening a meeting on 18/05/2015 or on such other date convenient to him/her and the executive body of the Chamber of Commerce but not later than 22/05/2015 at his/her office;

(ii) the executive body through its authorised representative shall appear before the Assistant Registrar on the date so fixed alongwith complete record relating to members of the Chamber of Commerce as existed as on 11/04/2014;

(iii) the executive body shall comply with all the directions of Assistant Registrar in the matter of summoning of any other record required in relation to finalization of membership of Chamber of Commerce;

(iv) the executive body shall extend full cooperation to the Assistant Registrar;

(v) it is appropriate to mention that the directions issued by the Assistant Registrar in the communication dated 07/01/2015 claimed to be without affording opportunity to the executive body as complained by leaned counsel for the Chamber of Commerce during the course of arguments, the same either shall not be insisted or used in the matter of finalisation of list of eligible members and voters list of Chamber of Commerce;

(vi) list of eligible members shall be prepared strictly in accordance with the provisions relating to membership in the byelaws of the Chamber of Commerce;

(vii) in the process of finalisation of list of eligible members, the Assistant Registrar shall ensure that the membership of each member is properly verified with due advertence to the record maintained by the executive body;

(viii) further dates of meeting for the purpose of finalisation of list of eligible members shall be fixed by the Assistant Registrar in consultation with the authorised representative of the executive body; (ix) the process of finalization

of eligible members shall be completed on or before 30/05/2015;

(x) thereafter, the Assistant Registrar shall take recourse to hold elections strictly in accordance with election rules appended as Schedule I to the byelaws and after election so held shall notify the list of elected office bearers to function as lawful members of the executive body of the Chamber of Commerce. This exercise be completed by 20/06/2015; and

(xi) the Assistant Registrar, Firms and Societies, Gwalior shall be at liberty to approach this Court for any direction (if necessary) by filing appropriate application/proceedings.

24. Accordingly, Writ Petition No. 1721/15 stands disposed of with the aforesaid directions.

25. It is made clear that any observations made in this order are only for the purpose of deciding this writ petition and shall have no bearing in the matter of finalisation of list of eligible members for the purpose of holding elections of the office bearers of the executive body of the Chamber of Commerce by the Assistant Registrar.

26. Let, a typed copy of this order be supplied to the State's counsel for onward transmission and official use.