
(2002) 05 DEL CK 0286
In the Delhi High Court
Case No : IA. 4620/02 in S. 936/02

Deepak Talwar

APPELLANT

Vs

Rotary International and Another

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Citation : (2002) 98 DLT 373

Hon'ble Judges : B.N. Chaturvedi, J

Bench : Single Bench

Advocate : H.L. Tikku, K.R. Chawala and Kunal, for the Appellant; Rajiv Dutta and Enakshi Kulsreshtha, for the Respondent

Judgement

B.N. Chaturvedi, J.—By this application the plaintiff seeks two reliefs, namely, (a) direction defendant No. 1 by way of an ad interim ex parte order to put in abeyance the order dated 25.2.2002, and (b) direct defendant No. 1 by way of an ad interim ex parte order to complete the election review procedures in respect of the complaint petition filed by defendant No. 2 on 8.1.2002 before 23-26 June, 2002 when the Rotary International Convention is scheduled to be held.

2. Adverting to the relevant facts, election for the post of District Governor nominee for the year 2002-2003 was held on 28th of January, 2001 in which the plaintiff was declared successful. The defeated candidate filed a complaint petition on 12/14th of March, 2001 against the election so held and on that complaint the Board of Directors vide their order dated 10.11.2001 set aside the elections held on 28.1.2001 and ordered for fresh elections to be held on 15.12.2001. Against the order dated 10.11.2001, instead of filing an appeal under the bye-laws, the plaintiff filed a suit No. 2433/2001 before this Court. An application was made in the said suit seeking stay against holding of elections on 15.12.2001.

3. After hearing the parties, following orders were passed on 14.12.2001 and

19.12.2001 respectively.

"S. No. 2433/2001 & is No. 11046/2001 (14.12.2001)

After hearing counsel for the parties at length, with the consent of the parties, let elections be held as scheduled. A direction is issued to defendant No. 3 that he will compile the results of the elections, will not announce the same and the results shall be brought in Court in sealed envelop.

Renotify on 19.12.01 for further direction."

"S. No. 2433/2001 & is No. 11046/2001 (19.12.2001)

Pursuant to the order passed by this Court, after consent of the parties on 14.12.2001, it was directed that let elections be conducted as scheduled. A direction was issued to defendant No. 3 who was returning officer that he will compile the result of the elections, will not announce the same and the results shall be brought in Court in a sealed envelop.

The result has been brought in a sealed envelop along with ballot papers. I have perused through the results. Hundred votes have been obtained by defendant No. 5 and plaintiff has obtained 32 votes. Taking that into consideration defendant No. 5 has got higher number of votes than the plaintiff. Defendant No. 3 is directed to announce the result. The result in a sealed envelop along with ballot papers is handed over to defendant No. 3 who may make public announcement of the same in accordance with law.

Mr. Makhija says that the matter may be adjourned for taking appropriate steps.

Renotify on 4.2.2002 for further hearing."

4. The result of the elections held on 15.12.2001 were thus declared and the rival candidates was found successful. The plaintiff through his club filed a complaint petition against the second elections held on 15.12.2001 on 8.1.2002. The complaint petition is still pending for disposal by Rotary International.

5. Learned counsel for the defendants states that the same is to be taken up and disposed of by the concerned body before the Convention to be held during 23rd to 26th of June, 2002 at Barcelona. In view of such a statement by learned counsel for the defendants, no specific direction in terms of prayer (b) is required to be issued. The defendants shall abide by the aforesaid statement made by their counsel.

6. After filing the said complaint petition against elections held on 15.12.2001, an order dated 25.2.2002 was passed by defendant No. 1 disqualifying him from contesting the election in question any further in view of the fact that he filed suit No. 2433/2001 and IA. No. 11046/2001 bypassing the RI guidelines. This particular order disqualifying him is being questioned by the plaintiff primarily on the plea that such an order renders his complaint petition against second election held on 15.12.2001 infructuous as even if his complaint petition is eventually

decided in his favor, having been disqualified from contesting the election in question, he would actually be getting no relief at all.

7. The learned counsel for the plaintiff contends that the impugned order disqualifying the plaintiff being related to first election could have been passed immediately after the filing of suit No. 2433/2001 and is No. 11046/2001 by the plaintiff. He contends that as a matter of fact after filing of the aforesaid suit and application, the second election was held on 15.12.2001 with the consent of both the parties and thus the defendant No. 1 had waived the action, if any, disqualifying the plaintiff for having filed the said suit and the application without completing the RI election review procedure. It is contended that the impugned order disqualifying the plaintiff was actually passed only to frustrate the complaint petition against the second election. The learned counsel for the defendants, of course, controverts such a contention.

8. The learned counsel for the defendants points out that the impugned order disqualifying the plaintiff from contesting the election in question was not made earlier as the plaintiff had agreed to holding to second election and declaration of results of that election. He adds that the impugned order had to be passed in view of the plaintiff filing an appeal and pursuing the same before Division Bench of this Court against the order dated 19.12.2001 passed by the learned Single Judge. Whatever be the reason prompting the defendant to make the impugned order, the fact remains that because of such an order the complaint petition filed by the petitioner, which is pending for disposal, is liable to be rendered infructuous. The impugned order is purported to have been passed under RI bye-laws 10.050.5 against which, according to the learned counsel for the defendants, an appeal is provided under RI bye-law 5.020. Such an appeal can be filed within a period not later than six months and at least 90 days prior to the opening of RI Convention. The impugned order having been passed on 25.2.2002 the time for filing an appeal against that order is still there and the plaintiff, if so advised, may file such an appeal against the impugned order.

9. Since the impugned order tends to limit the right of the plaintiff of file a complaint petition against second election held on 15.12.2001 and rather renders the same infructuous in as much as even a favorable decision thereon would be inconsequential, in view of disqualification against contesting the election in question being in operation. In the circumstances, pending appeal, if any, to be filed against the impugned order, if sounds just and equitable to keep the operation of impugned order dated 25.2.2002 in abeyance and it is ordered accordingly.

10. The application is disposed of in the aforesaid terms.