

(2019) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Revision Petition No. 150 Of 2019

District Cricket Association Hanumangarh And Ors

APPELLANT

Vs

Principal Secretary And Ors

RESPONDENT

Date of Decision : 05-11-2019

Acts Referred:

Rajasthan Sports (Registration, Recognition And Regulation Of Associations) Act, 2005
— Section 8(1)(b), 8(b), 23, 35

Citation : (2019) 11 RAJ CK 0005

Hon'ble Judges : Abhay Chaturvedi, J

Bench : Single Bench

Advocate : Vikas Balia, Sajjan Singh, Sanjay Nahar

Final Decision : Allowed

Judgement

1. This revision petition has been filed challenging the order dated 19.09.2019 (Annexure-12) passed by respondent No.1, whereby the appeal filed by respondent No.4 was allowed and a direction was issued to appellant District Cricket Association, Hanumangarh to hold election of the District Cricket Association, Hanumangarh within a period of one month.

2. Brief facts giving rise to this petition are that election of the District Cricket Association, Hanumangarh (in short 'DCA, Hanumangarh') was earlier held in the year 2008 for the term 2008-2012. Since, some irregularities were allegedly committed by the then secretary i.e. the respondent No.4 herein, therefore, the Dy. Registrar, Co-operative Societies, District Hanumangarh after initiating an inquiry under Section 23 of The Rajasthan Sports (Registration, Recognition And Regulation of Associations) Act, 2005 (in short 'the Act of 2005') vide order dated 01.05.2012 (Annexure-1) dissolved the executive body and constituted an ad-hoc committee for holding fresh election. The aforesaid order was challenged by one of the Club i.e. Blue Bells Cricket Academy, Sangaria before this Court in S.B. Civil Writ Petition No.5633/2012 and at the same time, the order dated 01.05.2012 (Annexure-1) was also challenged by the respondent No.4 before the

Appellate Authority i.e. respondent No.1. In the meanwhile, in pursuance of the order dated 01.05.2012, respondent No.5, in capacity of a convener, vide letter dated 04.05.2012 appointed an election officer and a special AGM was called on 11.05.2012, wherein it was decided that the elections shall be held on 04.06.2012. The petitioner No.2 was declared to be elected as Secretary in the said election. After completion of the term of 2012-2016, elections of petitioner association were held for the term 2016-2020 and petitioner No.2 was elected as Secretary of the petitioner association for the term of 2016-2020.

3. It is relevant to note that on 09.09.2019, in writ petition filed by one of the Club-Blue Bells Cricket Academy, Sangaria bearing SBCWP No.5633/2012, an application was moved by the petitioner-club therein to withdraw the said writ petition stating that against the order impugned, it has already preferred an appeal and as such without pursuing the present writ petition, the petitioner would be satisfied, if the writ petition is permitted to be withdrawn with a direction to the Appellate Authority to decide its appeal, at an early date. This Court vide order dated 09.09.2019 (Annexure-13) permitted the petitioner-Blue Bells Cricket Academy, Sangaria to withdraw the writ petition and a direction was issued to the Appellate Authority to decide the appeal expeditiously. Thereafter, the Appellate Authority-respondent No.1 while allowing the appeal set aside the order dated 01.05.2012 (Annexure-1) passed by the Dy. Registrar, Co-operative Societies, Hanumangarh and directed to hold election of the DCA, Hanumangarh within a period of one month vide order dated 19.09.2019 (Annexure-12). Being aggrieved against the order dated 19.09.2019 (Annexure-12), the petitioner has filed this revision petition.

4. Learned counsel for the petitioner submits that Section 8 (b) of the Act of 2005 provides that Election of the executive body shall be held at least once in every four years. Thus, after expiry of four years, the tenure of the executive body automatically would come to an end. The dispute before the Appellate Authority-respondent No.1 was with regard to the election held in the year 2008 for the term 2008-2012. It was further submitted that elections of DCA, Hanumangarh for the term 2012-2016 and 2016-2020 were held on 04.06.2012 and 03.04.2016 respectively in accordance with the provisions of the Act of 2005. The Observer of the Rajasthan Cricket Association (herein after referred to as 'RCA') was present at the time of holding the election and these elections were never challenged by anyone, therefore, the petitioner association is duly elected Association which has its term up to the year 2020. After the aforesaid these two elections held on 04.06.2012 and 03.04.2016 respectively, the appeal before the Appellate Authority-respondent No.1 has become infructuous.

5. It was further urged by learned counsel for the petitioner that the Appellate Authority was not informed about the election held for the term of 2012-2016 and 2016-2020 nor the appellants were given any notice of the appeal, thus, there is violation of the principle of natural justice. The impugned order was passed without hearing the appellants who are duly elected and affected parties.

It was further submitted that the dispute before the Appellate Authority was about the dissolution of the committee and constitution of the ad-hoc committee. The Appellate Authority was required to adjudicate only to that extent and it was not within the jurisdiction of the Appellate Authority to have passed an order of fresh election of DCA, Hanumangarh within a period of one month, as Section 35 of the Act of 2005 does not confer any power with respondent No.1 to direct for fresh election, especially in appeal and when there was no prayer for holding fresh election. It was also urged that the respondent No.1 herein while filing reply to the writ petition in S.B. Civil Writ Petition No.6505/2012, admitted that the order dated 01.05.2012 was perfectly in accordance with the provisions of law. Hence, now it is not open to respondent No.1 to set aside the order dated 01.05.2012 (Annexure-1).

6. Per contra, learned counsel for the respondent No.1 supported the impugned order and urged that the order passed by the Appellate Authority is perfectly in accordance with law. It is contended by learned counsel for the respondent that the Appellate Authority after considering all the facts and circumstances of the case, held that the elections were conducted in contravention of the stay order (Annexure-R/4/4) passed by this Court in S.B. Civil Writ Petition No.5633/2012, hence, the elections were bad in law. It was further urged that the copy of the said stay order was sent through speed post to one Deepak Bishnoi on 01.06.2012. It was refused to receive on 02.06.2012. It was further submitted that the petitioner was having knowledge about the existence of the dispute pending before this Court as well as before the learned Appellate Court. As convener, Deepak Bishnoi was party to the appeal in SBCWP No.5633/2012 and well acquainted with the fact of passing of stay order therein. Hence, the alleged election held on 04.06.2012 is void-ab-intio.

7. It was further submitted that the aforesaid elections were not recognised by the DCA, Hanumangarh. The entire system and process adopted by the petitioner are completely perverse, malafide and unconstitutional. The petitioner and the person interested are not at all lawfully elected persons and nor recognised in accordance with law as all the acts have been done in deliberate disobedience of the stay order.

8. It was further averred that in compliance of the order dated 19.09.2019 (Annexure-12) DCA, Hanumangarh has held its meeting on 07.10.2019, wherein it was declared that the election for the term 2019-2023 to be held and Shri Lalchand Kocher has also been appointed as election officer. The notice to call the Annual General Meeting on 10.11.2019 has also been issued to the respective members and office bearers of DCA, Hanumangarh. It is well settled principal of law that once the election process is declared/started and notified, it should not be stayed. In support of his contention, learned counsel for the respondent relied upon the following judgments:

1. State of Punjab and Ors. Vs. Dhanjit Singh Sandhu reported in 2014 AIR SCW 4485 Supreme Court;

2. Century Flour Mills Ltd Vs. S. Supplah and others reported in AIR 1975 Madras 270;
3. Jehal Tanti and Ors. Vs. Nageshwar Singh (D) thr. LRs reported in AIR 2013 Supreme Court 2235;
4. Babu Lal Losania Vs. State of Rajasthan reported in [2009] 3 RLW(Raj) 2418;
5. Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha, and Another Vs. State of Maharashtra and Others reported in 2001 AIR SCW 3959
6. Bharatiya Janta Party, West Bengal Vs. State of West Bengal and Others reported in (2018) 5 SCC 365.
9. Learned counsel for the respondent No.3- Rajasthan Cricket Association, while supporting the impugned order, urged that the fresh election as ordered by the Appellate Authority will lead to a healthy atmosphere amongst the players in the District as legal battle is dragging out for the last so many years altogether. Now the legal battle should be come to an end. It was also reiterated that election process has been started which cannot be stayed. In support of contention, he relied upon the judgment of Hon'ble the Supreme Court in the case of Shaji K Joseph Vs. V. Viswanath & Ors. Arising out of SLP (C) No.22902 of 2011, decided on 22.02.2016 and the judgment of West Bengal State Election Commission and Ors. Vs. Communist Party of India (Marxist) and Ors. arising out of SLP (C) No.15123 of 2018.
10. Heard and considered the submissions made by learned counsel for the parties and perused the law laid down and the judgments relied upon by the parties.
11. A perusal of the material available on record shows that elections held on 15.06.2008 were found to be not in accordance with the provisions of the Act of 2005 and Rules, 2004 and also against the principles of natural justice. It was also found that illegality and irregularities were committed by the then executive body of DCA, Hanumangarh, Therefore, the executive body of DCA, Hanumangarh was dissolved and ad-hoc committee was constituted vide order dated 01.05.2012 (Annexure-1). The order of the Dy. Registrar, Co-operative Societies, Hanumangarh (Annexure-1) was challenged by the respondent No.4 before the Appellate Authority-respondent No.1 and the prayer was made that the order dated 01.05.2012 be quashed and set aside.
12. As per Section 8 (1) (b) of the Act of 2005, the term of the petitioner association is four years. Thus, the election held on 15.06.2008 was for a period only up to 14.06.2012. It is borne out that on 04.06.2012, election of DCA, Hanumangarh were held and Shri Sanjay Singh Meel and Shri Het Ram Dharnia were elected as a President and Secretary receptively for the term 2012-2016 and Shri Sultan Singh Jandu, the election officer issued his report dated 04.06.2012 (Annexure-4) in this regard. Respondent No.3-Rajasthan Cricket

Association also issued a certificate of continuing affiliation (Annexure-5). Respondent No.3 also issued certificate of affiliation to the office bearers of DCA, Hanumangarh vide letter dated 09.07.2014 (Annexure-6).

13. After the completion of the term of the elected committee of the petitioner Association for the term 2012-2016, elections were held on 03.04.2016 under the supervision of Shri Surta Ram Bishnoi, the election officer in the presence of Shri Shatrudhan Tiwari, Observer who was representative of RCA-the respondent No.3. Shri Surta Ram Bishnoi, the election officer issued certificate of conducting election on 03.04.2016 (Annexure-10). Respondent No.3-Rajasthan Cricket Association issued certificate of affiliation dated 06.04.2016 (Annexure-11). Hence, it is apparent that after passing of the order dated 01.05.2012 (Annexure-1) two elections of DCA, Hanumangarh were held on 04.06.2012 and 03.04.2016 respectively for the term 2012-2016 and 2016-2020.

14. It is admitted position that these two elections were never challenged by any one before any authority and the petitioner association is working as a duly elected body till date and its term is up to 02.04.2020.

15. A perusal of the impugned order dated 19.09.2019 (Annexure-12) goes to show that the Appellate Authority-respondent No.1 has not taken note of the two elections held after passing of the order dated 01.05.2012 nor it shows that any party to the proceeding brought the fact of two elections to the notice of the Appellate Authority. The petitioners are duly elected, most affected persons by the proceedings and the order passed by the Appellate Authority. No opportunity of hearing was afforded to them before passing the impugned order, therefore, the impugned order passed is in utter violation of principles of natural justice. Hence, in this background of the matter, the impugned order cannot be sustained.

16. So far as the contention of the learned counsel for the respondents that the elections were held in utter disregard or violation of the stay order dated 30.05.2012 passed by this Court in SBCWP No.5633/2012 is concerned, as observed above, the term of the election held on 15.06.2008 was only for four years and after four years, the term had already expired. Apart from that, it has not come on the record that the elections were held having the knowledge of the stay order passed by this Court in S.B. Civil Writ Petition No. 5633/2012. As a matter of fact, the appeal pending before the Appellate Authority-respondent No.1 had become infructuous after two elections held on 04.06.2012 and 03.04.2016 in accordance with the provisions of the Act of 2005 as the matter pending before the Appellate Authority with regard to the election held for the term 2008-2012 only.

17. So far as the plea of respondent that since the election process has been started in compliance of the impugned order dated 19.09.2019 (Annexure-12), therefore, the process cannot be stopped. In this connection, the judgments were cited by learned counsel for the respondent Nos.1 and 3. All these judgments relate to election dispute, thus, the Court held that in the matter

involving election dispute, the aggrieved party must avail alternate remedy available in law. As against this, the petitioners herein, have challenged the order dated 19.09.2019 (Annexure-12), whereby the Appellate Authority has illegally ordered for holding fresh election within a period of one month. As a matter of fact, the present revision petition does not relate to challenge any election of members of the committee or raises election related dispute. The election is only an ancillary issue/relief, hence the election programme published cannot preclude the petitioner to challenge the impugned order. It may also be observed here that the present case is not a case where the tenure of the election has been completed and thereafter process of election has been initiated for a new term but in the present case, the elections were duly held in accordance with the provisions of the Act of 2005 and executive body is working and the term of the committee is effective up to 02.04.2020 and in the meantime by the operation of the order dated 19.09.2019 (Annexure-12), fresh election is sought to be held. Hence, the objection with regard to the initiation of process of election is not tenable.

18. In the course of arguments, learned counsel for the respondent No.1 raised objections regarding elections held in the year, 2008 and 2012 but when elections held on 04.06.2012 and 03.04.2016 were not challenged before the appropriate forum and still working as duly elected body, therefore, these arguments have no relevance at all and has no significance in the present matter. The respondent No.1 has also not taken notice of these two elections while passing the impugned order.

19. In view of the above, the impugned order passed without having regard to the election held on 04.06.2012 and 03.04.2016 and without affording an opportunity of hearing to the petitioner cannot be sustained and as such, deserves to be set aside.

20. Consequently, the revision petition is allowed and the order dated 19.09.2019 (Annexure-12) passed by the Appellate Authority i.e. respondent No.1 is quashed and set aside.