

(2003) 02 DEL CK 0037

In the Delhi High Court

Case No : I.A. 2089 of 2003 in S. No. 424 of 2003

Dr. Raj Vardhan Azad

APPELLANT

Vs

All India Ophthalmological Society and Others

RESPONDENT

Date of Decision : 24-02-2003

Acts Referred:

Citation : (2003) 2 AD 625 : (2003) 103 DLT 518 : (2003) 67 DRJ 671

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : A.K. Sinha and P.R. Rajhans, for the Appellant; Rajiv Nayyar and Jasmeet Singh, for the Respondent

Judgement

Vikramajit Sen, J.—The dispute in the present case centres around the elections to the posts of Honorary General Secretary and Honorary Treasurer of the All India Ophthalmological Society (Defendant No. 1). The elections took place in January, 2002 at Ahmedabad. There is no dispute in respect of the election of Dr. D.K. Sen as the President and Dr. Atul Kumar as the Joint Secretary etc. The controversy pertains to the post of Honorary General Secretary and Honorary Treasurer.

2. The functioning of any Society is to be carried out strictly in accordance with its Constitution and Bye-laws, to which even the General Body is the subject. If it is the view of the prescribed majority of the General Body, as specified in its Constitution, that amendments are required thereto, the Constitution must be amended before the views of the General Body can be implemented. This is the crux of the dispute. There is a provision in the present Constitution that the Honorary General Secretary, as well as the Honorary Treasurer, shall be from the same city. Perhaps this was with a view to ensure the smooth functioning of the Society. In today's day and age, with advanced technology, this requirement could possibly be viewed as being out-dated.

3. Defendant No. 7 had contested the elections to the post of Honorary General

Secretary along with Shri K. Ravi as Honorary Treasurer, both of the candidates being from Chennai. The opposite combination was that of Dr. Raj Vardhan Azad (plaintiff) as Honorary General Secretary and Dr. Lalit Verma as the Honorary Treasurer both of whom are from Delhi.

4. Defendant No. 7 had addressed a letter dated 1.12.2001 to the Members and it inter alias contains the following paragraph:

" According to the new constitution the Hony. Gen. Secretary and the Hony. Treasurer must stand for this election jointly. In this endeavor, I am ably supported by Dr. R. Ravi a noted paediatric ophthalmologist from Chennai and a person with tremendous organizational and administrative skills. "

5. It transpires that Defendant No. 7 polled approximately 100 votes more than the plaintiff for the post of Honorary Treasurer. However, the plaintiff and Defendant No. 8, on a combination of the votes received, polled higher votes than the opposite combination of Defendant No. 7 and Dr. K. Ravi.

6. As per the Constitution of the Society, any dispute relating to the election was to be resolved by the "Election Commission" of the Society. This Body also has the right to declare the results of the election. The Commission declared the plaintiff and Defendant No. 8 as having been duly elected to their respective posts. It is apparent from the documents emanating from the Commission that there was no manner of doubt that the candidates to these posts must be from the same city. Since all the candidates participated in the elections on this very understanding, they cannot now be heard to the contrary on their not having succeeded.

7. It appears that on the remonstrance of Defendant No. 7, who had received the highest votes for the post of General Secretary, this decision declaring the plaintiff and Defendant No. 8 as having won their election was sought to be reviewed. It has been contended by learned counsel for the plaintiff, and with force, that after the declaration of the results, the Commission had become functus officio and, Therefore, could not have reviewed the Order. Be that as it may, Defendant No. 7 had filed a Suit in this Court, bearing No. 665/2002, raising the question that the Constitution neither envisages nor permits the aggregation of the votes cast in favor of the joint runners to the post. To this extent, the Objection seems to have been well-taken, since learned counsel for the plaintiff before me is unable to show any provision contained in the Constitution and the Bye-laws framed there under. It has been strongly contended by Mr. Nayyar, learned Senior Counsel for Defendants No. 1 and 7 that " Corporate Democracy " must prevail. I am unable to accede to this argument, since every society must function strictly in consonance with its Constitution. The difficulty that arises is that Suit No. 665/2002, in which Interim Orders in favor of the present Defendant No. 7 were passed, did not run its full course and was withdrawn without notice to the plaintiff herein or to any of the Defendants in that Suit. Mr. Nayyar states that advance copy was served and that fact has been

denied. The withdrawal took place on a pre-pond date, i.e. 28/1/2003 and in the absence of the Defendants. In these circumstances, the principle of constructive res judicata would come as an obstacle in the path of the Defendants herein and the arguments that have been raised on the factual matrix obtaining in the previous Suit would be barred from being canvassed again.

8. On 3.12.2002, it was specifically brought to the notice of the Court that the controversy was to be placed before the General Body. Permission was granted by the Court for convening of the General Body Meeting. The General Body did meet and appears to have decided in favor of Defendant No. 7, assuming the office of the Honorary Secretary and Defendant No. 8 (the running mate of the plaintiff) as the Honorary Treasurer. These two persons, however, are from different cities. In my view, the General Body was not empowered under the Constitution to decide on a matter contrary to its provisions. The Constitution and Bye-laws of the Society must be amended before a new regime can be put in place.

9. The question is whether the plaintiff has set-up a prima facie case. The fact that the Election Commission had declared the plaintiff and Defendant No. 8 as having succeeded in the election goes in favor of the plaintiff. The fact that the Suit filed by the present Defendant No. 7 was permitted to be withdrawn, without confirming the interim injunction or decreeing the Suit or retaining Leave to file on the same cause of action, also goes in favor of the plaintiff. It has been contended on behalf of the Defendant that the balance of convenience is in favor of the Defendants for the reason that Defendant No. 7 has assumed the Office of the Honorary General Secretary. This position is hotly contested by the plaintiff and cannot in disputably be established from the documents before me. Any Society must function in accordance with its Constitution and if it does not do so, irreparable loss and injury is caused to every Member thereof. There is also a letter of the proposer of the Resolution allegedly passed at the A.G.M. held on 17.1.2003 to the effect that replacement of the plaintiff by Dr. Babu Rajendran is unconstitutional, illegal, ultra virus of the Bye-laws and the Constitution. When this Resolution itself is shrouded in controversy, it cannot be relied upon to voice the views of the General Body. The elected President, Dr. D.K. Sen, has stated that he shall abide by the decision of the Court. All this goes to show that the situation is in a state of flux.

10. For these reasons, I am, prima facie, satisfied that the so-called Resolution of the General Body Meeting dated 17.1.2003, upsetting the elections is ultra virus and deserves to be set aside. I am also satisfied that Defendant No. 7 should be restrained from assuming the Office of the Honorary Secretary of Defendant No. 1. Ordered accordingly.

11. Arguments have been heard at length. Keeping in view the request that time to file a Reply should be given, the Application is not finally disposed of.

12. Reply be filed within four weeks. Rejoinder be filed within two weeks

thereafter.

13 Renotify on 13.5.2003.

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14. Written Statement be filed within four weeks. Replication be filed within two weeks thereafter.

15. Renotify on 13.5.2003.