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(2010) 12 CAL CK 0035

In the Calcutta High Court

Case No : APOT No. 612 of 2010, G.A. No. 3591 of 2010 and CS No. 108 of 2010

East Bengal Club — APPELLANT

Vs

Paltu Mukherjee and Others — RESPONDENT

Date of Decision : 14-12-2010

Acts Referred:

Citation : (2011) 1 CHN 184

Hon'ble Judges : Sambuddha Chakrabarti, J;Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : P.C. Sen, Ajay Chatterjee and Atish Ghosh, Sayantan Bose and Satyabrata Chakrabarty, for the Appellant; S.N. Mukherjee, Debasish Kundu, R. N. Ghosh, Jishnu Saha and S. Chowdhury and Jayanta Kr. Mitra, Ranjan Bachawat and Debnath Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the Defendant No. 1 in a suit for injunction and other reliefs and is directed against the order dated December 1, 2010, passed by a learned Single Judge of this Court by which His Lordship disposed of four different applications filed in the proceedings by setting aside the scheduled election of the Appellant/club of the year 2010-11, which was fixed on December 5, 2010, with further direction that the process of election should be conducted under the supervision of a special officer (Gen. Shankar Roy chowdhury, (Retired)). His Lordship further directed that the election should be conducted on the basis of photo electoral roll and voters'' list of the club prepared on September 20, 2010 and that no fresh nomination would be sought and the candidates already in the fray would contest for the respective posts. The special officer was given liberty to fix the date, time and venue of election. His Lordship made it clear that if the special officer thought it fit, the election might be held at St. Paul''s School, Amherst Street, and that the special officer should be responsible for appointing polling agents for the election in consultation with all concerned; however, the special officer''s decision in this

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regard would be final. The special officer was further directed to put such measures as he deemed fit for the scrutiny of the postal ballots and the custody of undelivered postal ballots. The special officer was also directed to set the norms for polling agents to verify the identity of the members intending to cast their votes in the election and was directed to be personally present during the election to decide and resolve the disputes relating thereto on the spot. His Lordship further directed that the entire process including the declaration of the result should be preferably completed by February 15, 2011.

2. Being dissatisfied, the Defendant No. 1, the club, has come up with the present appeal while the Plaintiff has filed cross-objection against some of the observations of the learned Single Judge.

3. Mr. Sen and Mr. Chattterjee, the learned senior advocates appearing on behalf of the Appellant, have strenuously criticized the order passed by His Lordship on the ground that as there was no illegality committed by the management in charge of the administration of the club in following the Rules of election, His Lordship erred in law in passing a direction for appointment of a special officer for the purpose of conducting the election. Those learned Counsel submit that a Civil Court should not interfere with the management of election of a club unless there are gross irregularities established against the club-administration. They contend that the existence of the selfsame address of various outstation-members of the club cast a doubt in the mind of His Lordship about the fair process of election and that is the real reason for passing such an order. The learned Counsel for the Appellant contended that such addresses were given by the members themselves and as such, the club authority had nothing to do in the matter. Similarly, the induction of five thousand new members including six hundred outstation-members during the last term of the present committee cannot be a ground for passing a direction of holding the election under the supervision of a special officer when the eligibility of those persons to become a member of the club is not in dispute. The learned Counsel for the Appellant contended that the previous direction for preparation for photo identity voters'' list have been substantially complied with and the same could not be fully complied with because in spite of specific advertisements given in the newspapers asking those members to supply their photographs, they decided not to comply with such request. The learned advocates for the Appellant, thus, pray for setting aside the order passed by the learned Single Judge and for direction of holding the election under the supervision of the election board as prescribed in the Rules of the club.

4. The learned Counsel appearing on behalf of the Plaintiff as well as the supporting Defendants have, however, opposed the aforesaid contentions of the learned advocates for the Appellant and they have contended that the learned Single Judge on consideration of the entire materials on record having exercised His Lordship''s discretion in favour of appointing a special officer for the purpose of holding a fair election, this Court, as an Appellate Court, should not interfere

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with the discretion exercised by the learned Single Judge. According to those learned Counsel, this is not a case of an illegal exercise of discretion nor is it a case where the discretion exercised by the learned Single Judge can be branded as a perverse one justifying interference at the instance of the Appellate Court. The learned Counsel for the Respondents, thus, pray for dismissal of the appeal.

5. Therefore, the only question that arises for determination in this appeal is whether the learned Single Judge, in the facts of the present case, was justified in passing the order impugned in this appeal by appointing a special officer for the purpose of holding the next election of the club.

6. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the total number of the members of the club is more than 8000 and among them, more than 800 members are outstation-members who are entitled to cast their votes either by postal ballot or by casting the same in a regular manner like other members of the club. In the present appeal, on the prayer of the learned Counsel for the Respondents, we directed the learned advocate appearing on behalf of the election board to give inspection of the envelopes containing the filled up postal ballots sent back by the outstation-members by Registered Post which have come back to the President of the club as per the Rules of the club. After such inspection, the learned Counsel for the Respondents pointed out that from the 44 envelopes sent by Registered Post by the outstation-members containing their secretly filled up ballot papers, it appears that one side of those envelopes have been cut off by a pair of scissors or a sharp cutting instrument of the said nature, and thereafter, that particular end has been re-pasted by some adhesive substance. Thus, in those envelopes, instead of the usual practice of the one side of the envelope being closed by the use of glue, both the sides are pasted by bonding agent which is quite unusual and unnatural. By referring to those envelopes, the learned Counsel for the Respondents submitted that those envelopes have been subsequently tampered with and the ballot papers originally sent by those members by Registered Post have been definitely either replaced or mutilated to suit the purpose of the candidates who are loyal to the ruling group of the club with the connivance of the President of the club. It is also brought to our notice that according to the instruction given by the President of the club, the Ballygange Post Office, within whose jurisdiction the President of the club resides, has taken decision to handover those envelopes only to the person nominated by the President to receive those envelopes. Consequently, all the learned Counsel for the Respondents submit that the President of the club cannot evade his responsibility of explaining such tampering of the envelopes.

7. Mr. Chatterjee, the learned senior counsel appearing on behalf of the Appellant, however, after examining those envelopes, in his usual fairness, did not dispute that in respect of those 44 envelopes, both the sides are pasted by glue which is unusual and that one side of the envelope has been cut by taking aid of a pair of scissors or any sharp cutting instrument and thereafter, has been

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pasted by some adhesive substance. Mr. Chatterjee, however, submits that from the aforesaid fact the Respondents'' allegations that those have been tampered with at the instance of the ruling group of the club has not been established. According to Mr. Chatterjee, those envelopes in the above condition might have been sent even by those members who might be loyal to the Respondents after tampering those in such a fashion in order to create suspicion in the mind of the Court. Mr. Chatterjee, therefore, prayed before us for not drawing any adverse inference against the ruling group of the club.

8. On an overall consideration of the materials on record, we find that the aforesaid 44 filled up postal ballots sent by Registered Post indicate that there has been definite tampering of the original envelopes which were purchased from the shop. The question, whether those have been tampered by those members themselves to create confusion or done at the behest of the ruling group of the club after those had reached the President''s residence, cannot be conclusively adjudicated without examining those voters. But the fact remains that when about 5% of the total postal ballots are found to be tampered on the face of those envelopes, there is no trace of doubt that the atmosphere of election in the club is definitely not congenial. We are also impressed by the submissions made by the learned Counsel for the Respondents that in this state of affairs, there is no guarantee that the unused ballot papers should not be improperly used as "cast vote" by declaring an exaggerated percentage of votes cast. Moreover, although, the direction for preparation of the photo identity electoral role has been ordered quite a long time back, it appears that the said direction has not been fully complied with and quite a substantial number of members'' photograph does not appear on such electoral role distributed by the club to the contesting candidates.

9. The learned Counsel for the Respondents also pointed out that in the addresses of some of outstation members, in the past, as test cases, letters were sent by Registered Post but those envelopes came back with the postal endorsement "insufficient address". Those envelopes were placed before us. But this time, while the ballot papers were sent at those very addresses, those have been received. It is also submitted that more than one envelope containing the ballot papers sent to different addresses of a locality by Registered Post have been received by one person on their behalf and the envelopes containing the filled up ballot papers from those addressees have been posted not from the respective places of the senders, but from G.P.O and that too all at a time as would appear from the serial numbers of the Registration. According to the leaned counsel for the Respondents, the aforesaid facts also create a doubt in the mind of any reasonable individual that the ballot papers did not reach the hands of the genuine members.

10. It is now settled law that in an appeal against discretionary orders, like injunction, appointment of receiver, special officer etc., the Appellate Court should not interfere with the exercise of discretion by the Trial Judge merely

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because from the selfsame fact a different view is possible. (Uttar Pradesh Co-operative Federation Ltd. Vs. Sunder Brothers of Delhi,). In a subsequent case of Manjunath Anandappa Urf. Shivappa Hanasi Vs. Tammanasa and Others, , the Apex Court reiterated the aforesaid principles which are required to be followed while hearing an appeal against a discretionary order by observing that "an appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine."

11. This is a fit case where election should be held under the supervision of a special officer. Mutual acrimonious exchange of words apart, a bare examination of the doubtful postal ballots has convinced us that after all, all is not well inside the club. The postal ballots bear marks of tampering. It is not for us in the present exercise to try to adjudicate the group or persons responsible for it. But at the same time, it cannot be gainsaid that the management in charge of the administration of the club after receiving these envelopes ought to have entertained reasonable doubt in their minds that this must have been unauthorisedly interfered with by some designing persons. But instead, they treated those envelopes as genuine and included those in the total number of the envelopes received by Registered Post. If the Court does not intervene in such a case, it will be failing it in its duties. Election results then will be declared on the basis of these dubious ballots as well.

12. We feel, this is an area where the performance of the club management is not upto the level of expectation. The vigilance that ought to have been exercised by the club is grossly wanting. Assuming that when these envelopes were submitted to the Court, it did not occur to them that they were in fact trying to produce tampered materials, we, at the same time, are constrained to hold that considering the nature of tampering which can even be easily and visibly detected, this definitely should have occurred to them and they in all fairness, ought to have been far more vigilant before producing those tampered envelopes as valid ones.

13. This is a serious lapse, which in our opinion, should forfeit the right of an administration to conduct the election. We have no shadow of doubt that this administration must be excused from the charge of election.

14. Thus, on consideration of the facts disclosed in the order impugned and the factors discussed by us in this judgment, we are of the same view with the learned Single Judge that for fair and impartial election of the club, the same should be held under the supervision of an impartial special officer. Regarding the choice of the special officer (General Shanker Roy Chowdhury (Retd.)) appointed by the learned Single Judge, none of the parties has raised any objection although the Appellant opposed the appointment of any special officer. We also approve the said choice of the learned Single Judge. However, in addition to the directions given by the learned Single Judge, we direct the special officer to see that the same particular type of envelopes be sent along with the ballot papers to all the outstation-members as "return envelope" for the purpose of returning the

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ballot with a specific direction that if the ballot paper is returned in any other envelope than the one sent as "return envelope", the ballot should be cancelled. In the postal ballot papers sent to the outstation members, the date of election must be specifically indicated so that those members can comply with the Rules of the election for casting votes by posting those well in advance. Since for the purpose of conducting election, huge number of booths is required to be opened, every candidate will be entitled to appoint such number of agents as he thinks fit not exceeding, however, the number of booths so that in every booth, a candidate shall have an agent to verify the identity of the voters. The election should be conducted on a Sunday and the total number of voters being more than 8000 and there being huge number of candidates for different posts, it is expected that a particular voter will require at least five minutes to cast his vote after complying with all the formalities. We, therefore, direct the special officer to see that the venue of election should be such as will be able to accommodate sufficient number of booths so that the election is conducted in a peaceful and fair manner. The special officer should be especially careful in verifying the identity of those members whose photographs do not appear in the voters'' role prepared by the club and he may, in this connection, pass suitable and reasonable direction upon those members to produce additional documents in support of their identity before permitting them to cast votes. Such direction should be published well in advance in two daily news papers published from Kolkata.

15. We, thus, find no merit in this appeal and the same is dismissed with the additional directions given to the special officer by us in this order. The cross-objection is also disposed of in terms of this order.

16. In the facts and circumstances, there will be, however, no order as to costs.

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