
(2012) 07 MP CK 0107
In the Madhya Pradesh High Court
Case No : Writ Petition No. 9714 of 2011

L.N. Kailashia

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 26, 30, 31, 33, 34

Citation : (2012) 4 MPJR 128

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Samdarshi Tiwari, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Jha, J.—The petitioner has filed this petition being aggrieved by order dated 3.6.2011 passed by the respondent no. 1 State whereby it has been directed, on an appeal being filed by respondent no. 3 to hold elections of the respondent Society and till then the committee headed by respondent no. 3 shall be granted adhoc recognition. The brief facts, as averred by the petitioner in the present petition, are that the petitioner claims to be the President of the M.P. Class-III Government Employees Association, Bhopal, which is a society registered under the provisions of the M.P. Societies Registrikaran Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam") having registration No. 1079. It is stated that previously one Mahendra Sharma was the duly elected President of the Society who retired on 31.3.2006. It is stated by the petitioner that thereafter the elections of the society were held on 29.7.2006 and the petitioner was declared elected. It is stated that however in the interim period, another faction of the society headed by respondent no. 3 proclaimed itself to be the duly elected society and started functioning pursuant to which an order was issued by the State Government on 24.6.2006 restraining him from doing so.

2. The respondent no. 3, being aggrieved by the order dated 24.6.2006, filed a

petition before this Court which was registered as W.P. No. 9003/2006 and was disposed of by order dated 7.7.2006 granting liberty to the respondent no. 3 to assail order dated 24.6.2006 by filing an appeal u/s 40 of the Adhiniyam, pursuant to which respondent no. 3 filed an appeal before the Registrar, Firms and Societies, M.P. which was ultimately dismissed by order dated 29.9.2006. However, in the meanwhile, the Registrar also directed an enquiry to be conducted into the affairs of the society.

3. Being aggrieved by order dated 29.9.2006, the petitioner as well as respondent no. 3, both filed appeals before the State Government which came to be disposed of by order dated 17.8.2007, Annexure P-10, with a direction to the Registrar, Firms and Societies, Bhopal to get the enquiry concluded within 60 days and thereafter, on that basis, to take up proceedings for constituting a proper committee and till then to grant adhoc recognition to the committee headed by respondent no. 3.

4. The petitioner, being aggrieved by the aforesaid order dated 17.8.2007, Filed a Writ Petition before this Court which was registered as W.P. No. 11316/2007 and came to be disposed of by order dated 21.1.2010 in the following terms:-

Since by the impugned order dated 17.8.2007 passed by respondent no. 1 the process of election of petitioner as Provincial President of Madhya Pradesh Class III Government Employees' Association Bhopal was questioned, he had filed the present petition.

Admittedly, the term of petitioner as Provincial President has expired on 29.7.2009 and he is still continuing to hold that office by virtue of an interim order dated 27.8.2007 of this Court.

As the term of petitioner as Provincial President has come to an end, this petition has become infructuous. Now, the Registrar, Firms and Societies, Bhopal (respondent no. 2) will take steps to hold the election of association at the earliest and will also ensure that the election process is fair.

With the above observation, the petition stands finally disposed of.

5. In the meanwhile, as the petitioner sought to hold elections of the society, therefore, the authorities issued an order on 16.2.2010 restraining the petitioner from doing so till conclusion of the enquiry which was ultimately concluded by the respondent and an order dated 15.7.2010 was passed directing the authority concerned to hold the elections of the society in accordance with law with a direction to both the fractions to produce the record and assist one Shri Alok Nagar, Assistant Registrar, Firms and Societies, Bhopal, who had been authorized for the purpose of holding elections.

6. The respondent no. 3, being aggrieved by the order passed by the Registrar, Firms and Societies, Bhopal dated 15.7.2010, filed an appeal before the respondent no. 1 claiming right of adhoc recognition till the conclusion of the elections and this appeal, filed by him, has been allowed by the impugned order

dated 3.6.2011 on the ground that the order dated 17.8.2007, Annexure P-10, by which the committee headed by respondent no. 3 had been directed to be given adhoc recognition till the conclusion of the elections, had not been set aside by this Court in the writ petition filed by the petitioner and, therefore, it continued to remain in force and, accordingly, while the authorities could proceed further with the holding of elections of the society, till conclusion thereof the committee headed by respondent no. 3 be given adhoc recognition.

7. The learned counsel for the petitioner submits that the petitioner was elected as a President and though his term was over, he continued to work as a President of the Society and, therefore, it is the petitioner and his committee who has the power and authority to assist the Registrar or his nominee to hold and conclude the election and not respondent no. 3 more so in view of the facts which have come up on record in the enquiry conducted by the respondent authorities wherein it has categorically recorded a finding to the effect that the respondent no. 3 was not functioning as President; there was no record indicating that any proceedings were held to elect him as President; that he was unable to produce the records indicating that he was functioning as such.

8. It is secondly submitted by the learned counsel for the petitioner that the society, of which the petitioner is the President, is an unaided society and in such circumstances the Registrar or the State Government has no power to interfere in its functioning or to conduct the elections and in such circumstances the impugned order be set aside and the petitioner, who is till date functioning as President, be permitted to conduct the elections in accordance with law.

9. As an alternative submission, it is submitted by the learned counsel for the petitioner that the respondents be directed to hold the elections but till then the observations and directions of the respondent no. 1 to give adhoc recognition to the committee headed by respondent no. 3 be set aside. The learned counsel for the petitioner also states that he has no objection to the holding of the elections and would render all assistance in holding the same.

10. The learned Govt. Advocate for the respondent/State, per contra, submits that the term of the petitioner as President is over and in such circumstances he cannot continue as President. It is further submitted that the Society of the petitioner is registered under the provisions of the Adhiniyam and is, therefore, statutorily required to comply with the provisions of the Adhiniyam and on its failure to do so, the authorities have the power to take action against the petitioner under the provisions of sections 26, 30, 31, 34, 38 and 39 of the Adhiniyam including de-recognizing the society and cancelling its registration on its refusing to comply with the provisions of the Adhiniyam and in such circumstances the contention of the petitioner to the contrary deserves to be rejected.

11. I have heard the learned counsel for the parties at length. From a perusal of the record as well as the documents filed by the petitioner, it is clear that the

order directing the respondent Registrar and his nominee to hold elections of the society and till then to give adhoc recognition to the committee headed by respondent no. 3 for the first time came into existence by order dated 17.8.2007, Annexure P-10, issued by the State on appeals being filed by the petitioner as well as respondent no. 3.

12. It is further clear that the petitioner, being aggrieved by the aforesaid order, had filed a petition before this Court which was registered as No. 11316/2007 and was disposed of by order dated 21.1.2010 which has already been reproduced hereinabove. A perusal of the aforesaid order indicates that the petition, filed by the petitioner, was disposed of on account of the fact that the term of the petitioner as President was over and, therefore, the petition filed by him had been rendered infructuous. In other words, the Court refused to interfere in the order passed by the State dated 17.8.2007 on account of the fact that the petitioner's term as President was over and, therefore, the directions issued by respondent no. 2 in the order dated 17.8.2007, Annexure P-10, continued to exist and remain in operation.

13. It is further apparent that the Registrar, while passing the order dated 15.7.2010 after conclusion of the enquiry by him, overlooked this aspect and directed holding of the elections by appointing an inquiry officer and it was under these circumstances that the respondent no. 3 filed an appeal before the State bringing to its notice the fact that the direction issued by the respondent no. 1 on 17.8.2007 in the order passed by it in the appeals, filed by the petitioner as well as respondent no. 3, had not been set aside by this Court on a challenge being made by the petitioner and in such circumstances, while the direction issued by this Court in W.P. No. 1 1316/2007 to the Registrar, Firms and Societies, Bhopal to take steps to hold elections of the society at the earliest in a free and fair manner be implemented, till conclusion of the election the Registrar be directed to grant adhoc recognition to the committee headed by respondent no. 3 in compliance of the order dated 17.8.2007. It is further apparent from a perusal of the impugned order that the respondent no. 1, on taking into consideration the aforesaid aspect and on recording a finding to the effect that the previous direction issued by it dated 17.8.2007 has not been set aside by this Court, has reiterated the same.

14. In the facts and circumstances of the case, I find no reason to interfere in the impugned order passed by the respondent no. 1 specifically in view of the fact that the petitioner had assailed the directions issued by the respondent no. 1 by order dated 17.8.2007 passed in the appeals filed by the petitioner as well as respondent no. 3 in the writ petition no. 11316/2007, but this Court refused to interfere in the same and in fact disposed of the petition with a direction to the Registrar, Firms and Societies to hold elections in a free and fair manner on account of the fact that the term of the petitioner was over and the petition had become infructuous.

15. Quite apart from the above, as it is an undisputed fact that the previous

petition, filed by the petitioner, W.P. No. 11316/2007, challenging the direction issued by the State Government by order dated 17.8.2007, Annexure P-10, to hold elections and in the meantime to grant adhoc recognition to the committee headed by respondent no. 3, has not been entertained and has been disposed of as infructuous, this second petition challenging the same direction is intact barred and cannot be entertained and, therefore, the petition filed by the petitioner deserves to be dismissed on this count also.

16. At this stage, it is relevant to state that the contention of the petitioner regarding lack of authority, of the Registrar and the State to take action against the petitioner as it is an unaided society is meritless and misconceived as the said pre-condition only relates to exercise of powers of supersession of a society contained in Section 33 of the Adhiniyam and is not a pre-condition for exercise of other powers under the Adhiniyam and as the present case does not relate to supersession, therefore, the contention of the petitioner deserves to be rejected.

17. Yet another ground has been raised by the learned counsel for the petitioner which is to the effect that the petitioner was not impleaded as a respondent by the respondent no. 3 while assailing the order passed by the Registrar dated 15.07.2010 directing holding of the elections and in such circumstances the impugned order dated 03.06.2011 be quashed as it has been passed behind his back.

18. The aforesaid contention of the petitioner deserves to be and is hereby rejected on two grounds; firstly that the respondent No. 3 had filed the aforesaid appeal before respondent No. 1 only to bring to his notice the fact that the direction issued by the respondent no. 1 on 17.08.2007, in the appeals filed by the petitioner as well as respondent No. 3, directing the Registrar to grant adhoc recognition to the committee headed by respondent No. 3 has been overlooked by the Registrar while passing order dated 15.07.2010 in spite of the fact that the same had not been interfered with by this court in the writ petition filed by the petitioner, which was disposed of on 21.01.2010 as it had become infructuous and the respondent no. 1 has merely reaffirmed its previous order. Secondly, the petitioner has been granted full opportunity in the present petition to point out any illegality or infirmity in the order passed by the respondent no. 1 as well as to place all his submissions and facts before this Court which he would have placed before respondent no. 1 had he been impleaded as a respondent and the petitioner has raised all possible grounds before this Court which have been considered by this Court and have been rejected, specifically as the order dated 17.8.2007, Annexure P-10, and the directions contained therein have not been interfered with by this Court in the previous writ petition, W.P. No. 11316/2007, filed by the petitioner.

19. Though it is pointed out by the learned counsel for the petitioner that while disposing of the petition this Court did observe that the petitioner continued to hold the post by virtue of an interim order dated 27.07.2007, however, the said observation of the Court was only to indicate that the petitioner was continuing

as President inspite of the lapse of his term only on account of the interim order. The said observation was not made with an object of stating that the petitioner shall continue to function as President even after the lapse of his term as President till the conclusion of the elections. The aforesaid erroneous interpretation which is urged by the learned counsel for the petitioner to be accepted and recorded by this Court cannot be accepted keeping in mind the fact that this Court disposed of the petition as infructuous, thereby refusing to entertain the challenge made by the petitioner to the order dated 17.08.2007, wherein respondent No. 1 had directed the Registrar, Firms and Societies to hold elections and till then to grant adhoc recognition to the Committee headed by respondent no. 3.

20. In the circumstances, while this Court is not inclined to interfere in the impugned order passed by respondent no. 1, however, looking to the fact that due and proper elections of the society concerned have not been held since 2006 inspite of several orders by the Registrar, the State as well as this Court, the present petition is disposed of with a direction to the respondent no. 2. Registrar, Firms and Societies, Bhopal to take all possible steps to ensure that the elections of the Society concerned are conducted in accordance with law at an early date as far as possible within a period of three months. It is also observed that in case the Registrar finds that the society or any of its factions impede the early, free and fair conduct of the election, the Registrar would be at liberty to take action against the society in accordance with the provisions of sections 26, 30, 31, 34, 38 and 39 of the Adhiniyam including de-recognition. It is further directed that the petitioner and the respondent no. 3 would also render full co-operation and assistance to facilitate free and fair conduct of the elections which would be undertaken by respondent no. 2 at the earliest. With the aforesaid directions and observations the petition, filed by the petitioner, being meritless deserves to be and is hereby dismissed. In the facts and circumstances of the case, there shall be no order as to the costs.