

(2011) 08 DEL CK 0087

In the Delhi High Court

Case No : Writ Petition (C) 5644 of 2011

Meenakshi Kanwar

APPELLANT

Vs

Vinay Aggarwal and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Citation : (2011) 08 DEL CK 0087

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Anit Sharma, for the Appellant; Atul Sharma, Nitesh Jain and Rakesh Kumar, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner claims to have been elected unopposed to the post of Organizing Secretary of Indian Medical Association (IMA), Haryana (not made a party to the present writ petition) for a term till 31st December, 2011. It is further the claim of the Petitioner that on an election petition being filed by certain other persons (who have also not been made party over here), the Respondent No. 4 Indian Medical Association, Head Quarters, New Delhi on 3rd January, 2011 constituted an Election Tribunal. It is the case of the Petitioner that the said election petition has been filed beyond the prescribed time of 15 days as prescribed in Memorandum, Rules and Bye-Laws of IMA (HQ) and in fact the Election Tribunal ought not to have been constituted. It is further the case of the Petitioner that the said Election Tribunal vide its Minutes of Meeting dated 13th February, 2011 (signed on 4th April, 2011) unanimously declared the election of the Petitioner as well as election to the other posts to be violative of the norms of democracy, equality and fairness and directed fresh elections to be held. This writ petition has been filed for quashing the said decision of the Election Tribunal.

2. Even if it were to be believed that the Minutes of the Meeting of 13th February, 2011 were signed on 4th April, 2011, this petition has been filed after four months therefrom.

3. The counsel for the Respondent No. 4 IMA (HQ) appearing on advance notice states that the Petitioner has suppressed facts from this Court. It is stated that multifarious litigations with respect to the aforesaid elections of IMA (Haryana) are pending in Courts of several districts of Haryana. It is further contended that the same advocate who has preferred this petition had also earlier filed W.P.(C) No. 4672/2011 on behalf of one Dr. Naresh Jindal and which writ petition was dismissed on 1st August, 2011; that the Petitioner has suppressed from this Court that the Election Commission has now vide Notification dated 26th/30th May, 2011 announced fresh elections to IMA (Haryana). It is yet further contended that the husband of the Petitioner has also filed a suit in the Court at Faridabad impugning the Minutes of the AGM held on 23rd April, 2011 of IMA (HQ) in which the election aforesaid was set aside and fresh elections directed. It is contended that the Petitioner has suppressed the suit filed by her husband also. It is yet further contended that IMA (HQ) has received summons of CS(OS) No. 1780/2011 filed in this Court purportedly on behalf of IMA (Haryana) but by the husband of the Petitioner on behalf of IMA (Haryana) impugning the decision aforesaid dated 13th February, 2011/4th April, 2011 and which has also been concealed. It is stated that an application for interim relief was filed in the said suit also but no interim relief was granted.

4. On enquiry, the counsel for the Petitioner states that the Petitioner is not expected to know the activities of her husband. On further enquiry whether the Petitioner is residing along with her husband, the answer is in the affirmative. On yet further enquiry whether the husband of the Petitioner has any interest adverse to the Petitioner, the answer is again in the negative.

5. The counsel for the Petitioner has however with reference to the Memorandum, Rules and Bye-Laws of IMA (HQ) and IMA (Haryana) has sought to contend that setting aside of the election is improper. It is further contended that the election which was set aside and election now underway are only to the post of President and Vice President and not of the post of Organizing Secretary to which the Petitioner was elected unopposed.

6. A perusal of the Agenda item No. E-14, which has been approved by the AGM of IMA (HQ) shows that the entire election process in which the Petitioner was elected unopposed was set aside and it was found that there is absolute void in the Haryana State branch requiring immediate elections. There is thus no merit in the contention of the counsel for the Petitioner that the decision in the AGM on 23rd April, 2011 does not concern the post of Organizing Secretary.

7. The counsel for the Respondent No. 4 IMA (HQ) has also contended that the first phase of the fresh election process for the post of President and two Vice Presidents is underway and the last date of receipt of ballot papers is today and the counting is to commence from tomorrow.

8. The aforesaid facts would show that the Petitioner and her husband are indulging in judicial adventurism. They have been filing and have got filed

petitions to stall the election process now underway. It is inconceivable that the Petitioner would not know about the suit filed by her husband. In fact, the counsel for the Petitioner has been answering queries about the said suit. The same is indicative of the Petitioner being fully in the know of the said suits and filing whereof was not disclosed before this Court. The purport of all the said proceedings is the same i.e. to stall the elections now underway, whether by impugning the order of the Election Tribunal or the decision in the AGM of IMA (HQ). It was incumbent upon the Petitioner, while approaching this Court in discretionary jurisdiction to make a clean breast of affairs and which has admittedly not been done. Though the Petitioner is liable to be proceeded against for abuse of process of this Court but it is felt that imposing costs on the Petitioner while disposing this petition would serve the purpose. Accordingly, while dismissing the petition, the Petitioner is directed to deposit costs of Rs. 30,000/- with the Delhi High Court Legal Services Authority and to file the receipt of the said cost with the Registry of this Court within 10 days failing which the Registry to re-list this petition for initiating appropriate proceedings against the Petitioner.