

(2015) 09 DEL CK 0451
In the Delhi High Court
Case No : CS(OS) No. 745/2014

Nand Kishore Mishra and Others APPELLANT
Vs
Dinesh Chandra Tyagi and Others RESPONDENT

Date of Decision : 22-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
General Clauses Act, 1897 — Section 21

Citation : (2015) 09 DEL CK 0451

Hon'ble Judges : Manmohan Singh, J.

Bench : Single Bench

Advocate : Avdhesh Kr. Singh, Advocate, for the Appellant; R.P. Sharma, Advocate, for the Respondent

Judgement

Manmohan Singh, J.

I.A. No. 19399/2015 (u/s 151 CPC by D-2) and I.A. No. 19584/2015 (u/o XXXIX R.1 & 2 CPC, by D-3)

1. The plaintiffs have filed the suit for declaration, rendition of account, permanent and mandatory injunction against the defendants. One of the prayers made in the suit is that defendant No. 3 Sh. Swami Chakrapani, who is claiming himself as National President of Akhil Bharat Hindu Mahasabha (in short, called as "ABHM"), be declared as unconstitutional and illegal and the election of the National President of ABHM be conducted under the supervision of a retired Judge of this Court and further, the defendants No. 2 and 3 be not permitted to operate any account of ABHM and not to misuse the property of ABHM in any manner whatsoever.

2. The main matter was heard from time to time for the purpose of holding the elections in ABHM. The same is coming up before the Joint Registrar on 9th October, 2015 for further proceedings and also before Court on 3rd November, 2015. In the meanwhile, the abovementioned two applications have been filed by

defendants No. 2 and 3.

3. The first application being I.A. No. 19399/2015 is filed by defendant No. 2 for directions to the Election Commission of India (defendant No. 5). It is stated in the application that the assembly election in the State of Bihar is scheduled to be held in the month of October/November, 2015. Defendant No. 5 has refused the allotment of reserved symbols to ABHM because of internal dispute in the party. The said communication dated 22nd July, 2015 is placed on the record. It is claimed that defendant No. 2 is the National President of ABHM since 2005. He is the Head of ABHM who is planning to contest the elections in 65 assembly constituencies in the State of Bihar. The list of the said constituencies is enclosed with the application.

4. The second application being I.A. No. 19584/2015 is filed by defendant No. 3 of the similar nature. Defendant No. 3 is also claiming as National President of ABHM declared by defendant No. 1. It is stated in the application that Swami Chakrapani (defendant No. 3) has been elected as National President of ABHM. His tenure is valid till 17th March, 2017. Thus, he is entitled to field the candidates of ABHM in the upcoming Bihar assembly elections, 2015.

5. Learned counsel for defendant No. 5, who is appearing on behalf of the Election Commission of India, has informed that there are more than 10 factions and in each of the factions, one of the persons is claiming himself as President of ABHM. He submits that unless they decide the dispute themselves as to who is the real President of ABHM, it is not possible for his client to allow the different factions, to allot the symbols and allow the respective Presidents to field and set up the candidates on behalf of ABHM. He has also suggested that the appropriate course is that let the fresh elections be held in ABHM under the supervisions of this Court and any retired Judge of this Court be appointed as Observer so that the elections be held smoothly and as soon as the elections are held in the ABHM in fair manner, the elected President may approach defendant No. 5 for granting the symbol as well as to contest the elections in Bihar. Similar is the argument of the learned counsel for the plaintiffs.

6. It is pertinent to mention that prior to the filing of these applications, earlier the similar dispute came up before the Division Bench of this Court in LPA No. 522/2011 which was filed against the judgment dated 2nd May, 2011 allowing W.P.(C) No. 704/2011 filed by respondent No. 2 therein, namely, Swami Chakrapani (defendant No. 3) by quashing the order dated 14th January, 2011 of the Election Commission of India. The said appeal was disposed of by judgment dated 16th March, 2012. After discussing each and every aspect of the matter, in paras 7 to 12, the Hon'ble Division Bench had passed the following order:--

"7. What we however find is that the disputes as to the management of ABHM were pending since the year 2004-06 and owing whereto the respondent No. 1 ECI had decided not to recognize or deal with any of the rival groups all of whom were claiming to be in management of ABHM. There is nothing to show that

ABHM had before accepting the respondent No. 2 Swami Chakrapani as office bearer of ABHM on 07.08.2007 conducted any inquiry. However on learning of the filing of the civil suit aforesaid, such decision was also kept in abeyance. After the suit was dismissed for non prosecution, again even though there were rival claims but respondent No. 2 Swami Chakrapani was again accepted as President only for the reason of some documents on his behalf having been submitted while no such documents were submitted on behalf of his rival groups. Accordingly, the communication dated 11.11.2010 recognizing respondent No. 2 Swami Chakrapani as office bearer was issued. However, the respondent No. 1 ECI continued to receive representations/complaints against recognition so accorded to respondent No. 2 Swami Chakrapani as the President/office bearer of ABHM, which resulted in the ECI, on 14.01.2011 withdrawing such recognition.

8. It is this ambivalent attitude of respondent No. 1 ECI which has weighed with the learned Single Judge in quashing the letter dated 14.01.2011. We may however notice that even the learned Single Judge has not returned any finding as to the correctness of the decision dated 11.11.2010 of respondent No. 1 ECI recognizing respondent No. 2 Swami Chakrapani as President/office bearer of ABHM. We are of the view that in the face of disputes since the year 2004, the recognition in the year 2010 of respondent No. 2 Swami Chakrapani as the President/office bearer, notwithstanding the dismissal of the civil suit for non prosecution, could not have been accorded without it being established before the respondent No. 1 ECI, i) as to who all were the members of ABHM; ii) whether the elections as prescribed in the Rules and Regulations of ABHM had been held or not; and iii) whether the respondent No. 2 Swami Chakrapani had so been elected as the office bearer/President. There was no such material before the respondent No. 1 ECI. It cannot also be lost sight of that even as on 11.11.2010, the respondent No. 1 ECI was continuing to receive opposition to the claims of respondent No. 2 Swami Chakrapani. The said opposition however appears to have been disregarded by the respondent No. 1 ECI only for the reason of being without any substantiating documents. However when respondent No. 1 ECI continued to receive objections to the claim of respondent No. 2 Swami Chakrapani, it undoubtedly reviewed its decision dated 11.11.2010.

9. We differ from the opinion of the learned Single Judge that the respondent No. 1 ECI could not have so reviewed its decision without an order of a competent Court of law. That would have been the position had the recognition earlier accorded to the respondent No. 2 Swami Chakrapani been with the consent of all concerned or had the communication of his election as President/office bearer been a unanimous one. It could then have been said that subsequent objection thereto was an afterthought and ECI would then have been justified in refusing to revoke the recognition without Court order of the earlier unanimous intimation being no longer valid. However the respondent No. 1 ECI on 14.01.2011 appears to have felt that its earlier decision dated 11.11.2010 was erroneous. The learned Single judge has held that the respondent No. 1 ECI could not have so corrected its decision. We are however of the view that this Court in exercise of

powers of judicial review ought not to interfere with a decision of a body such as the respondent No. 1 ECI which decision is otherwise found to be correct in law. Such a decision cannot be quashed/set aside merely for the reason that earlier an erroneous decision had been taken. We are further of the view that in the face of such challenges, it is for the person who is wanting to exercise rights as President/office bearer to seek a declaration to such office and he cannot be allowed to hold office or to exercise powers thereof merely for the reason of the others having not approached the Court of law. We may however clarify that we have so concluded in view of there being no unequivocal document before us of the election of the respondent No. 2 Swami Chakrapani as office bearer of ABHM in accordance with its constitution. Rather what is before us is, material to show that there have been disputes since the year 2004 as to the internal management of ABHM and which do not appear to have been resolved at any point of time. Merely because the persons who had filed the suit chose not to pursue the same cannot confer any legitimacy to the respondent No. 2 Swami Chakrapani when a large number of other persons concerned with ABHM are continuing to dispute the claim of respondent No. 2 Swami Chakrapani. We have also perused the written statement filed by the respondent No. 2 Swami Chakrapani in the suit aforesaid and from which also we are unable to cull out any clarity on the matter. Moreover the said suit was filed in the year 2007 while what was for consideration in the year 2010 was the election of the respondent No. 2 for the period 2010-12.

10. ABHM as aforesaid is not a recognized political party. Though the term "recognized political party" is not defined in the Act but the Explanation to Section 52 thereof provides that "recognized political party" means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party, to after taking into account all the available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of ECI is made binding on all such rival sections or groups. However the said Clause does not apply to unrecognized political parties as ABHM is. ECI was/is thus not empowered to in the face of rival claims of respondent No. 2 Swami Chakrapani and others take any decision as to whose claim was correct. That being the position, ECI could not have on 11.11.2010 recognized respondent No. 2 Swami Chakrapani as the President/office bearer of ABHM. We are thus of the view that the decision dated 11.11.2010 of ECI of preferring the claim of respondent No. 2 Swami Chakrapani over that of others was clearly beyond the powers/jurisdiction of ECI. Axiomatically the corrective action of ECI on 14.01.2011 is found to be in accordance with law and thus cannot be faulted with. We may mention that the Supreme Court in Janata Dal (Samajwadi) Vs. Election Commission of India, has held the ECI empowered to rescind its orders even in the absence of any specific power therefor. It was held

that Section 21 of the General Clauses Act, 1897 applies. ECI was thus empowered to, on 14.01.2011 rescind the earlier order dated 11.11.2010 which as aforesaid was beyond its powers/jurisdiction.

11. We are further of the view that in the absence of ECI being empowered to decide such inter se disputes of an unrecognized political party, the decision dated 11.11.2010 was an administrative decision, not taken in exercise of any quasi judicial powers. The Supreme Court in R.R. Verma and Others Vs. Union of India (UOI) and Others, , has held that decisions in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.

12. We have opted to pass a speaking judgment even though the term 2010-12 for which the respondent No. 2 Swami Chakrapani claims to be President/office bearer is expiring, to clarify the position since respondent No. 1 ECI may be faced with communication by respondent No. 2 Swami Chakrapani with respect to subsequent years and further since we deem it proper to clarify the position as respondent No. 1 ECI may face such issues qua other political parties also."

7. Subsequently, the review petition was filed by Swami Chakrapani - defendant No. 3, being R.P. No. 403/2012. The same was also dismissed by order dated 13th July, 2012 with some observations. The above said order passed in the review petition by Hon"ble the Chief Justice and Sh. Rajiv Sahai Endlaw, J. was challenged before the Supreme Court, wherein the Special Leave Petition was dismissed on 6th May, 2013.

8. Dr. Indira Tiwari, Power of Attorney Holder who is appearing on behalf of defendant No. 3 Swami Chakrapani, has reiterated that the review petition was allowed in favour of defendant No. 3 as certain observations were made in the review petition. I do not find any observations in favour of defendant No. 3 to the effect that he is declared as President of ABHM by the Review Court.

9. The suggestion given by the learned counsel for defendant No. 5 as well as the learned counsel for the plaintiffs shall be considered on the next date. As far as the prayers of the present applications are concerned, the same cannot be granted in view of internal disputes in the ABHM. The issues involved are yet to be decided. The last date for filing the nomination in Bihar for first phase is 23rd September, 2015. Both the defendants No. 2 and 3 are proposed to set up their candidates and it would not be possible for completion of process of internal elections of ABHM prior to the said date. Thus, this Court is not inclined to grant the prayers made in both the applications. The same are accordingly dismissed.

CS(OS) No. 745/2014

List the matter before the Joint Registrar on 9th October, 2015 and before Court on 3rd November, 2015 the dates already fixed. Dasti under the signatures of Court Master.