

(2022) 06 DEL CK 0093
In the Delhi High Court
Case No : Civil Suit (OS) No. 286 Of 2022

Narendra Nahata

APPELLANT

Vs

Shree Aggarsen North Ex Welfare Society (Regd.)

RESPONDENT

Date of Decision : 01-06-2022

Acts Referred:

Citation : (2022) 06 DEL CK 0093

Hon'ble Judges : Neena Bansal Krishna, J

Bench : Single Bench

Advocate : Kirti Uppal, Vikas Manchanda, Riya Gulati, Himanshu Bidhuri, Anish Dewan, Naman Garg, Ritu Jain, Sanjeev Sindhwani, Rajeev Aggarwal, Shilpa Singh, Tanmay Mehta, Virender Singh Rana

Final Decision : Dismissed

Judgement

Neena Bansal Krishna, J

1. Plaintiff, a member of defendant No.1-Society which is registered under Societies Registration Act, XXI of 1860, has filed a suit for declaration, permanent and mandatory injunctions with the following reliefs:

"a. Pass the decree of Declaration that the election notification dated 21.04.22, as the process of conducting election by Defendant No.2 of Defendant No.1 society be declared sham and rigged, as in the entire process there was no group recognized and only on the date of allotment of symbol common symbol has been issued by the Defendant No.2 under the garb of previous practice; and

b. Pass decree of declaration that forming of group/party to contest the election of Defendant No.1 is bad and election is also against the election notification also;

c. Pass decree of declaration that all the contestants of election be given different symbol or no symbol to the election of Defendant No.1 society and issuance of common symbol is against the MOA and rules of Defendant No.1 and also not defined under the society registration Act, 1860 where in the defendant no.1

society is registered; and

d. Pass decree of declaration there by declaring the act of distribution of common symbol to defendant No.2 vide order dated 04.05.22 as bad and against the MIOA and rules of Defendant No.1; and

e. Pass a decree of declaration that acts of Defendant No.4, 7 to 10, 15, 22, 24, 25, 27, 29, 31, 33, to 35, 37, 38, 40 to 42 and 44 to 47 contesting with symbol of Coin and brick. And defendant No.3, 12, 13, 16, 17, 21, 23, 28 and 30 contesting with the symbol "Bow with Arrow" and the Defendants No.3, 19, 26 and 36 contesting with symbols of Stethoscope and the defendant No.14 and 20 allotted with symbol of OM be declared to have been doing/indulged in unfair activity and working against the interest of Defendant No.1 society in association with Defendant No.2; and

f. Pass a decree of Permanent Injunction be passed in favour of the Plaintiff and against the Defendants thereby directing the Defendant No.1 society not to allow any contestants/ candidates to contest election with common symbol for free and fair election in the present election or in future elections and same should be based on their calibre to get elected: IN ALTERNATE the Defendant No.1 and 2 be directed to not mark any symbol to any of the contestants/ candidates in the present election as well as in the future election; and

g. Pass a decree of Mandatory Injunction thereby directing Defendant No.1 and 2 to conduct the election among contestants/ candidates by treating them as an individual contestants and not any group of set of persons for the Election of the election so scheduled in term of GBM decision dated 27.02.22 of the Defendant No.1 and the election in group or with common symbol be restrained in future also; and

h. Pass a decree of Mandatory Injunction thereby directing election so scheduled in term of GBM decision dated 27.02.2022 of the Defendant No.1 be conducted through some retired judge of this Hon'ble Court and similar practice be done under the instruction of registrar of societies in future while appointing the returning officer; and

i. Pass a decree of mandatory injunction there by directing the defendant No.1 and 2 to conduct election so scheduled in term of GBM decision dated 27.02.22 of the Defendant No.1 through EVM and not by paper ballot as the previous election was also done through EVM; and

j. Pass a decree of Mandatory injunction there by directing the defendant No.1 so scheduled in term of GBM decision dated 27.02.22 of the Defendant No.1 by taking any independent place of office of returning officer of the election; and

k. any other or further relief or reliefs to which the Plaintiff is entitled in law and equity and the Hon'ble Court deem fit and proper be passed in favour of the Plaintiff and against the Defendants."

2. Essentially, the relief sought as "Prayer-A" is that the election Notification dated 21st April, 2022 be declared sham and rigged but the elections have already been concluded on 22nd May, 2022 and '' has become infructuous.

3. "Prayer-B" was to declare the forming of groups/party to contest the election of defendant No.1 as bad. "Prayer-C" was a declaration that all the contestants of the election be given different symbol and no member should be given a common symbol and issuance of such common symbol is against Memorandum of Association and Rules of defendant No.1. "Prayer-D" was to declare distribution of common symbols by defendant No.2 as bad. "Prayer-E" also related to issue of common symbols being issued to different contesting members. The relief of permanent injunction was sought to restrain the contestants from contesting the Elections under the same symbol and mandatory injunction was sought to conduct the elections amongst the candidates as individuals and not as a group. Learned counsel for the plaintiff has vehemently argued that the other reliefs claimed in the plaint may have now become infructuous, but "Prayer-C" which is in respect of issuance of common symbols been against the Memorandum of Association and Rules of defendant No.3, still survives.

4. However, the issuance of common symbols or contesting elections was all a part of conducting the elections. Since the elections stand concluded, these Prayers have also become infructuous.

5. A Mandatory Injunction was sought that the election scheduled to be held in terms of General Body Meeting decision dated 27th February, 2022 be conducted through a retired District Judge and that the elections be conducted through EVM and not paper ballot and that for the purpose of conducting the elections on 22nd May, 2022 any independent place like office of Returning Officer, be taken.

6. The plaintiff by way of the present suit had sought to challenge the steps being undertaken by the Returning Officer for conducting of elections. The elections stands concluded on 22nd May, 2022 and any grievances about any procedure and practice followed during the elections can now be challenged as part of a challenge to elections. The reliefs claimed in the present suit have become infructuous in view of the elections having been successfully concluded on 22nd May, 2022 and the Executive Committee having been duly elected. Nothing more survives in the present suit which is hereby dismissed, as infructuous.