

(2022) 05 DEL CK 0146
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 : 20-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2

Citation : (2022) 05 DEL CK 0146

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

Judgement

Neena Bansal Krishna, J

I.A. 7921/2022 (Under Section 151 of CPC seeking exemption from filing the certified copies and legible copies of the documents)

1. Allowed, subject to all just exceptions.

2. The plaintiff shall file better copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. Application is disposed of.

I.A. 7920/2022 (U/o XXXIX Rules 1 & 2 read with Section 151 of CPC for ad interim ex parte injunction)

1. This application has been filed under Order XXXIX Rules 1 and 2 read with Section 151 Civil Procedure Code, 1908 by the plaintiff with the prayer that the defendant No.1-Society be restrained from holding the Elections scheduled for 22nd May, 2022 till the disposal of the issue of allotment of common symbol to the respective candidates contesting the elections and that elections be not conducted till the allotment of common symbols to various defendants is held to

be against public policy and natural justice and against the welfare of the defendant No.1-Society.

2. The Notice of the suit and the application was served upon the defendants who appeared through their Counsels. At the outside Id. Senior Counsel clarified that the prayer for stay of elections was not being pressed and the elections scheduled to be held on 22nd May, 2022 may not be stayed but an ad-interim injunction was sought to the extent that the ballot papers may be reprinted and contestants may not be allowed to be represented through their symbols in the ballot papers.

3. Learned Senior Counsel for the plaintiff has argued that the plaintiff had sought specific information regarding allotment of symbols from the Returning Officer by his Letter dated 02nd May, 2022 to which only response given by returning Officer via e-mail dated 03rd May, 2022 was that the question was premature. Despite seeking specific information in regard to the allotment of symbol to a group, the Returning Officer failed to respond with any affirmative information. The pattern of symbols issued by the Returning Officer to a group of persons contesting the elections is totally contrary and in contravention to the response given by the Returning Officer, vide his letter dated 03rd May, 2022 in regard to common symbols for a group of persons.

4. Learned Senior Counsel has further argued on behalf of the plaintiff that there is a procedure to be followed for allotment of symbols and the same could not have been done by the Returning Officer randomly without following any procedure. The allotment of a common symbol to a group of people would lead to unfair elections and this can never be permitted.

5. Learned Senior Counsel submitted that the ballot papers in addition to showing the names of the candidates, also displays the allotted symbols against their names. The plaintiff at this stage is not seeking the stay of the elections scheduled for 22nd May, 2022, but the only request is to reprint the ballot papers without the symbols being put against the names of the contesting candidates. In this world of technology, this task is not difficult nor time consuming and can be done with minimal expense, cost and time. It was thus argued by the learned Senior Counsel for the plaintiff that it is in the interest of fair elections free from any kind of bias, that the ballot papers to be used for the elections to be held on 22nd May, 2022 must not have the symbols printed against the names of the candidates.

6. Learned Senior Counsel for the plaintiff in support his contentions has placed reliance on the decision of the Hon'ble Supreme Court in Election Commission of India Through Secretary vs. Ashok Kumar & Ors. (2000) SCC Online SC 1234, wherein the principles to be followed for ensuring smooth conduct of the elections have been enumerated.

7. Learned Senior Counsel on behalf of the respondent has argued that the same practice of allotting the symbols to a group of persons is being followed in the

past as is evident from the ballot papers for the elections held in the years 2016, 2018 and now in 2022, where the similar practice of allotment of symbols to a group of persons has been followed. The plaintiff became a member of the defendant No. 1-Society in the year, 2016 and never raised any grievance about this practice being followed in the Society in the past. Rather, the plaintiff himself has averred to this practice of allocating same symbol to a group of persons being followed in the Society in the past elections as well. A frivolous argument has been raised in this regard which is not tenable. The schedule of election had been notified on 21st April, 2022, wherein it was clearly indicated that the allotment of the symbols shall be done on 04th May, 2022 from 11:00 A.M. till 03:00 P.M. The plaintiffs had sufficient advance notice about the allotment of symbols to the candidates.

8. Moreover, it has been wrongly claimed by the plaintiff that incorrect information was furnished by the Returning Officer vide his response dated 04th May, 2022 by claiming that the question in regard to the allotment of symbol was premature. In fact, the allotment was done on 04th May, 2022 and the Returning Officer has correctly stated that the question was premature, since it could have been answered only after the allocation of symbols was done on 04th May, 2022.

9. It is further argued that the plaintiff in addition to have been put to prior notice vide Notification of schedule of election on 24th April, 2022, had himself applied for allotment of symbol and was in fact given a symbol of 'Shree'. The contention of the plaintiff that allotment of symbol to a group of persons would adversely affect the fairness of the procedure of election is without any basis.

10. Learned Senior Counsel for the defendant has relied upon a decision of Division Bench of Delhi High Court in *The Yachting Association of India vs. Boar Sailing Association of India & Ors.* ILR (2013) V Delhi 3539 LPA, wherein it had been reiterated up that the term 'election' includes all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result, and once the process of election has commenced, the intervention of the court can be sought merely to correct or smoothen the progress of election proceedings to remove obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time, the results are declared. The court must guard against any attempt to interrupt, protract or stall the election proceedings.

11. The reliance has also been placed by the learned Senior Counsel for the defendant on *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakai Dugdha Utpadak Sanstha & Ors. vs. State of Maharashtra & Ors.* (2001) 8 SCC 509, *Election Commission of India Through Its Secretary vs. Ashok Kumar & Ors.* (2000) 8 SCC 216, *P.V. Vijayaraghavan & Ors. vs. Nityam Software Solution Pvt. Ltd. & Ors.* MANU/DE/0263/2021, *Rajendra Prasad Gupta vs. Prakash Chandra Mishra & Ors.* MANU/SC/0211/2011 and *Kerala Samsthana Chethu Thozhilai Union vs. State of Kerala & Ors.* MANU/SC/1654/2006.

12. It is thus submitted that the present suit is merely an endeavor to stop the elections as has also been mentioned in clause-(a) of the Prayer paragraph of the plaint. No prima facie case is made out for grant of ad-interim stay.

13. Learned counsel Mr. Tanmay Mehta appearing on behalf of defendant Nos. 4, 8, 9, 10, 11, 16, 23, 25, 26, 28, 30, 32, 34, 35, 36, 38, 39, 41, 42, 43, 45, 46, 47 and 48 in addition to the arguments already mentioned above, has further submitted that in the entire plaint or the application for interim relief, no averment whatsoever has been made of what irreparable loss or injury would be caused to the plaintiff by allotment of a common symbol. It is asserted that no case is made out for grant of ad interim injunction.

14. Submissions heard.

15. The basic grievance of the plaintiff to the conduct of elections of defendant No.1 Society registered under The Societies Registration Act, 1860, scheduled for 22nd May, 2022, is in regard to the procedural fairness. According to him, by allotting a common symbol to a group of candidates would unfairly weigh with the voters and can result in unfair outcome.

16. The first aspect that may be considered is the relevance of having symbols for the candidates contesting the elections. Admittedly, there exist no Rules or enactment unlike for general State and National Elections, for allotment of symbols to the contesting candidates in an election of a Society. This is not the first time that the elections are being held by the Defendant no.1. It has been rightly argued that a practice to allot symbols to a group or individual candidates is being followed since many years which has never been challenged before. The purpose of having symbols has been explained by the plaintiff himself in paragraph 29 of his plaint wherein it is mentioned that one of the purpose of allotting symbol to a candidate is to facilitate his identification by illiterate people who cannot read and understand the candidate's name and background of the contestant.

17. The plaintiff has contended that in defendant No. 1-Society, all the voters are well-educated and can read the names of the candidates and there was no need of identification of the candidates by allocating symbols. The allotment of symbol only ensures and reinforces proper identification of the candidate and reduces the probability of any confusion in the mind of the voter and has been evolved merely as a facilitative procedure duly recognized by statutes in the case of State and National elections and followed by the Societies as a practice for fair elections. The plaintiff himself had applied for allotment of symbol reflecting his own concurrence to this practice as a part of election process.

18. Learned Senior Counsel on behalf of the defendants has argued that the plaintiff had notice about allotment of symbols since 21st April, 2022 when the election schedule was published and he cannot come at this belated stage to seek indulgence of the court.

19. The averments in the plaint and the accompanying documents show that the plaintiff had sought information about allotment of symbols on 02nd May, 2022. In order to address his concern, the plaintiff vide his letter dated 02nd May, 2022 to the Returning Officer, sought information in regard to the following three questions, which read as under:

"(i) Whether any party has been registered with a symbol to contest the election on a larger banner in the present society or not? Please provide the information in this regard.

(ii) Whether you will be providing a common symbol for a group of people or not?

(iii) Whether you will recognize an election under a group or not?"

20. A response was promptly given by the Returning Officer to the plaintiff's vide letter through vide e-mail dated 03rd May, 2022, which reads as under:

"(i) No party has been registered with a symbol to contest the election.

(ii) This issue has not been arisen so far.

(iii) This is a premature question as on date, as the schedule of election was already published."

21. It has been vehemently argued on behalf of the plaintiff that incorrect and evasive information was given by the returning Officer that "No party has been registered with a symbol to contest the election." However, the symbols were allotted only on 04th May, 2022 and no better reply except the query being premature, could have been given.

22. Further, not satisfied with the response, the plaintiff had immediately thereafter lodged his protest with the Returning Officer vide his letter dated 04th May, 2022 asserting that the information provided by the Returning Officer on 03rd May, 2022 that no group/party was registered for contesting elections in common, was not correct as one symbol had been allotted to a number of candidates as if they are contesting as a group of persons. It was mentioned in the letter that the symbol 'one-rupee coin' was allotted to one group of persons, who were contesting on all the 24 seats. The second symbol of 'bow and arrow' has been allotted to another one group of candidates, who were contesting on 9 seats, while 'stethoscope' has been allotted to the candidates who are doctors and are contesting on 4 seats. Symbol 'OM' has been allotted to 2 candidates, while 6 members who are contesting independently, have been allotted different symbols. Though, there were 46 candidates, who were contesting the elections, only 10 symbols have been allotted.

23. Similar representation was made by the plaintiff vide letter on 05th May, 2022 raising objection about the issue of common symbol. It was claimed to be a clear case of unfairness to other candidates, since no party or group is registered to contest the election. A request was made to issue separate symbols to all the candidates contesting the elections in order to maintain individual credibility of

the respective candidate so as to ensure procedural fairness in conduct of elections. It was claimed that since there is no registered group or company, allotment of common symbol to a group of people would be against the fair and impartial elections and would amount to a clear case of corruption, which must be curtailed.

24. The plaintiff, therefore, had been raising his concern about allocation of symbols since even prior to their allocation and it cannot be held that the plaintiff has raised this issue belatedly.

25. This contention of the defendants about the plea being raised belatedly does not hold any merit also for the reason that since it is nowhere the case of the plaintiff that there is any party registered with the Society. It is also not under challenge that a group of people have come together as a team by adopting same symbol. The plaintiff is not averse to symbol being allotted to every candidate but his apprehension is that if a group of people are allowed to contest under the same symbol, the outcome of the elections may not be fair. The plaintiff has been raising his concern in this regard since 03rd May, 2022 and had even made representations on 04th May, 2022 and 05th May, 2022 and when he did not get any favourable response, he approached the court for succour.

26. Be as it may, the sole anxiety of the plaintiff as discernable from his assertion in paragraph 29 of the plaint, is that every previous election has been done on group basis with an intention to grab the society and its property for extorting money and benefits, which should not be the intention of the society.

27. The question which needs consideration is whether the interference by the Courts once the election process has commenced, is warranted in the given factual situation. In the present case, the election notification was taken out on 21st April, 2022 and the date for filing the nominations was 29th April, 2022 and 30th April, 2022, the votes to be cast on 22nd May, 2022 and the counting of votes was to be done on 23rd May, 2022. It is clear that the election process has commenced on the date of notification i.e., 21st April, 2022 and in any case from 25th April, 2022 when the forms for nominations could be collected. The moot question is whether the election process can be stalled at this stage, especially on the ground agitated by the plaintiff.

28. The Supreme Court of India in the case of *In Election Commission of India Through Its Secretary vs. Ashok Kumar & Ors.* (2000) 8 SCC 216, referred to the decisions of the Constitution Bench of Supreme court of India in *Ponnuswami vs. Returning Officer, Nammakal Constituency* AIR 1952 SC 64 and *Mohinder Singh Gill vs. Hassan Uzzaman* (1978) 1 SCC 405 and summed up the guidelines in respect of conduct of election, relevant part of which is as under :

"(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the

election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election."

29. The same principles have been reiterated by the Division Bench of Delhi High Court in *The Yachting Association of India vs. Boar Sailing Association of India & Ors* (supra) that the fundamental law in regard to the elections is that once a process has commenced, the same cannot be protracted, obstructed or delayed in any manner. The election process having commenced, the court should not stall it in any manner.

30. The only other aspect that remains to be addressed is whether the decision sought would "subserve the progress of election and facilitate the completion of elections."

31. The sole premise agitated by the learned Senior Counsel for the plaintiff is that the allotment of a common symbol to a group of persons would result in unfair elections. However, the plaintiff himself has stated in his plaint that the common symbol was being allotted to a group of persons by way of past practice. The grievance of the plaintiff cannot be termed to be in the realm of progress or facilitating the progress of election. The election process has already commenced and whether the allotment of one symbol to a group of people resulted in unfair elections, can be determined only after the election process is completed and the result is declared. It is premature at this stage to claim that mere allotment of common symbol would result in unfair elections.

32. In any case, in view of the established principles as also reiterated by the Apex Court in the case of *Election Commission of India Through Its Secretary* (supra), the election process once commenced cannot be stayed or stopped. The allotment of common symbols to a group of persons has been done as a process of election and the same cannot be stayed or modified at this stage.

33. It is a fundamental principle as enunciated in *Election Commission of India Through Its Secretary* (supra) that while considering the matters pertaining to elections, guard must be taken to see that no attempt is made by a party to utilize the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior end or hidden end. It is only in a clear strong case that the court must intervene.

34. In the facts of present case, no prima facie case is made out for grant of ad-interim stay and the application is hereby dismissed.

CS(OS) 286/2022

1. List this matter on 01st June, 2022.