

(2012) 01 DEL CK 0067
In the Delhi High Court
Case No : LPA No. 18 of 2012

Sh. Dushyant Sharma

APPELLANT

Vs

Haryana Wrestling Association and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0067

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sudhir Nandrajog with Mr. Navin Chawla and Mr. Bharat Arora, for the Appellant; Narender Hooda, for R-1, Mr. Pradeep Dewan, with Mr. Rajiv Samaiyar, for R-3 and Mr. Devvrat, for R-4/UOI, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.

Caveat No. 37/2012

The counsel for the caveator/respondent No. 3 has appeared. The caveat stands discharged.

LPA No. 18/2012

1. The challenge in the appeal is to the order dated 04.01.2012 of the learned Single Judge allowing W.P.(C) No. 4860/2011 filed by the respondents No. 1&2 and declaring Article XIII (d) of the Constitution of the respondent No. 3 Wrestling Federation of India (WFI) to have stood deleted on 05.02.2011 and declaring the elections held by respondent No. 3 WFI between 05.04.2011 and 15.04.2011 (on the basis of said Article XIII (d)) to be illegal and yet further setting aside the election of the appellant (during the said elections) to the post of President of the respondent No. 3 WFI and consequently directing fresh election for the said post.

2. Article XIII (d) supra is as under:-

It shall be a mandatory requirement for elections to the post of President, Senior Vice President and Secretary General that only those members, who had held the office in the outgoing Executive Committee of WFI for a period of 4 years shall be eligible to contest the election.

The said Article was purportedly introduced in the Constitution of respondent No. 3 WFI in the year 2007.

3. It was the case of the respondents No. 1&2/writ petitioners that a Special Meeting of the General Body of the respondent No. 3 WFI was held on 05.02.2011 wherein amendment of the Constitution of the respondent No. 3 WFI was approved and one of the amendments approved was of deletion of aforesaid Article XIII (d). It was further the case in the writ petition that notwithstanding the said deletion, nomination of the respondent No. 2 Mr. P.V. Rathee, being the representative of the respondent No. 1 Haryana Wrestling Association for the post of President of the respondent No. 3 WFI in the elections to be held on 15.04.2011 was rejected treating the aforesaid Article XIII (d) to be then in force.

4. The learned Single Judge in a detailed well considered judgment has found/held:

(i) that the respondent No. 3 WFI in its counter affidavit filed before the learned Single Judge admitted and acknowledged the position that vide Resolution passed in the General Council meeting held on 05.02.2011, Article XIII (d) was deleted and the said position was confirmed in the next meeting of the General Council held on 18.06.2011;

(ii) that notwithstanding the Minutes of the Meeting held on 05.02.2011 being not confirmed till 18.06.2011 i.e. till after the holding of the elections, the said deletion had come into force on 05.02.2011 itself;

(iii) that the meeting held on 05.02.2011 was validly called by the President of respondent No. 3 WFI who was authorized to call the said meeting;

(iv) that there was no requirement for the amendment to be registered with the Registrar of Societies and the amendment by way of deletion of Article XIII (d) supra, to come into operation was not dependent upon registration thereof with the Registrar of Societies;

(v) that the respondents No. 1&2 writ petitioners were entitled to maintain the writ petition challenging the election to the post of President alone without challenging the election to the other posts of Senior Vice President & Secretary General also affected by Article XIII (d) supra;

(vi) that the Government of India vide its communication dated 07.04.2011 had objected to the restrictive Article XIII (d) supra being enforced in the election scheduled on 15.04.2011 and to the schedule of elections which did not give due time at each stage of the election process.

Accordingly, it was held that Article XIII (d) stood deleted on 05.02.2011 and

rejection of nomination of respondent No. 2 for the post of President on the basis thereof was illegal and the election of appellant to the said post set aside and re-election ordered.

5. The senior counsel for the appellant has challenged each of the findings aforesaid of the learned Single Judge. It is contended that the President of respondent No. 3 WFI was not empowered to call the meeting of 05.02.2011, which could be called by the Secretary General only; that the Resolution in the said meeting deleting Article XIII (d) could not u/s 12 of the Societies Registration Act, 1860 be effective without a second such meeting being convened at an interval of one month after the former meeting and which was admittedly not held and the confirmation of the Minutes of the Meeting of 05.02.2011 according to the respondents also took place only on 18.06.2011; that Article XIII (d) thus was in force at the time of election on 15.04.2011; that the Registrar of Societies also vide letter dated 23.03.2011 had refused to incorporate the amendments purportedly carried out in the meeting of 05.02.2011 for the said reason; that thus the nomination of the respondent No. 2 for the post of President being contrary to Article XIII (d) was rightly rejected.

6. We are unable to find merit in any of the contentions aforesaid and concur with and affirm the findings on each of the aforesaid aspects arrived at by the learned Single Judge. We have enquired from the counsel for the appellant as to how Section 12 of the Societies Act, which applies to alteration of the purpose or purposes for which the Society has been established, is attracted to the amendment aforesaid. The senior counsel for the appellant with reference to Sections 1 and 2 of the Societies Act has contended that since the Rules and Regulations of the Society are to be filed along with the Memorandum of Association, the provisions of Section 12, would apply to an amendment of the said Rules and Regulations also. We are again, unable to agree. Section 12, if was intended to apply to amendment of Memorandum of Association, nothing prevented the legislature from providing so. The legislature however chose to restrict the applicability of Section 12 to alteration of the purpose for which the Society has been established. Thus the same cannot have any applicability to any other alterations in the Memorandum of Association, even if the Rules and Regulations are to be said to be a part thereof.

7. We may notice that the Apex Court in *Supreme Court Bar Association and Others Vs. B.D. Kaushik*, observed that Rules relating to exercise of right to vote and contest the elections do not amount to altering, amending or changing the aims and objects of the Society and can be done without the consent of the Registrar as provided in the Societies Registration Act. It was also held that a Society is entitled to have its own Rules and Regulations which are in the nature of a contract amongst the members of the Society and which though required to be registered under the Societies Registration Act do not acquire any statutory character and the authority to amend, vary and rescind such Rules vests in the General Body of the members of the Society. A Division Bench of the Allahabad

High Court recently in Allahabad High School Society and Others Vs. State of U.P. and Others, noticed the distinction between amendment of objects of the Society and amendment of Rules of the Society and held the provisions of Section 12 of the Societies Registration Act to be not applicable to amendment of Rules and which amendment was held to be possible at a meeting of the Society. The said view was confirmed by the Apex Court in judgment reported as Allahabad High School Society, Allahabad and Another Vs. State of U.P. and Others, .

8. Besides the aforesaid, we on a larger plane are of the opinion that a Clause as Article XIII (d) supra in the Constitution of respondent No. 3 WFI which is a National Sports Body recognized by the Government of India in the sport of Wrestling, is undemocratic and unsustainable. Once elections of the respondent No. 3 WFI are required to be held periodically, we find it absolutely illogical to restrict the elections to the post of President, Secretary General and Vice President to only those who have held the said office earlier. There is no basis whatsoever for perpetuating control and management of the respondent Federation in a few persons and it ought to be left to the electorate of the Federation to elect whosoever they find most suitable for discharging the obligations thereunder. A clause as Article XIII (d) smacks of creation of fiefdom which cannot be permitted. The elected officials cannot in this manner be given carte blanche which will have the effect of eliminating elections and allowing them to retain their offices indefinitely. Decentralized power is preferable to power centralized and concentrated. Article XIII (d) supra tantamounts to one-man rule which is in negation of democracy and jeopardizes the democratic mechanism intended for the Societies.

9. This Court in Narinder Batra Vs. UOI ILR (2009) Del 280 noticed the Guidelines of the Government mandating that in order to be entitled to financial assistance or recognition as a National Level Body by the Union Government, the same is required to be a Society or an Association or a Federation which enforces democracy by fixing the tenure of the office bearers. It was further observed that such national level federations enjoy a monopoly position and are directly concerned with selection of teams to represent the country and the same set of office bearers cannot be permitted to control selection or act in other matters relating to National Sports Federations influencing the development of sports in the country. It was yet further held that if such tenure clause was not enforced, the office bearers could be repeatedly elected allowing them to dominate the affairs of the Association/Federation resulting in creation of monopoly having the potential to damage the sport itself. A limited office tenure minimizes if not eliminates allegations, criticisms and elements of nepotism, favouritism and bias of any kind. New office bearers with fresh ideas and enthusiasm can make a valuable addition to such organizations and also ensure removal of corrupt and undesirable in the organization.

10. Notice may also be taken of Dental Council of India and Another etc. Vs. Dr. H.R. Prem Sachdeva and Others etc., also laying down that continuance in office

of the elected/nominated members should not go on for perpetuity. Similarly in *Kashmir Singh Vs. Union of India (UOI) and Others*, also though relating to *Shiromani Gurudwara Prabhandhak Committee*, it was held that Article 310 of the Constitution of India provides for a tenure and it does not contemplate a life tenure or a permanent term; Article 16 which is a species of the equality clause contained in Article 14, speaks of grant of equal opportunity to all; allowing a person to hold public office indefinitely would be opposed to the Constitutional scheme; Constitution of India does not envisage holding of office in perpetuity. It was yet further held that allowing holding office in perpetuity has the potential of abuse of position. Though in relation to a Cooperative Society, it was similarly held in *Bhandara District Central Co-operative Bank Ltd. and Others, Vs. State of Maharashtra and Another etc.*, that it is not meant to be run as a close preserve of an individual or a group of persons and it is desirable to have active participation of as many members as possible.

11. We, for this reason also are of the opinion that no interference is required in the discretion exercised by the learned Single Judge in quashing the election to the post of President and which discretion is found to be in consonance with the principles of equity, justice and good conscience.

12. We are therefore not inclined to entertain this appeal.

13. The senior counsel for the appellant at this stage has contended that once the learned Single Judge has found the elections to the other two posts of Secretary General & Vice President also to be bad, he has erred in not setting aside the same and in setting aside the election to the post of President only.

14. We may notice that though the respondents No. 1 & 2 writ petitioners had filed the writ petition challenging the elections to the other posts also but finding that respondent No. 2 had filed nomination for the post of President only, notice of the petition was issued limited to the challenge to the election for the post of President. The counsel for the respondents No. 1&2 today also states that the respondents No. 1&2 have no objection to setting aside of the election of other two posts also and which election suffers from the same malaise as the election to the post of President which has been set aside.

15. The senior counsel for the appellant also contends that if the elections to the other two posts are also set aside, the appellant will have the option in the fresh elections ordered by the learned Single Judge to contest for either of the posts.

16. However, in the absence of the electees to the other two posts before this Court, we cannot set aside the election thereto. We have enquired from the senior counsel for the appellant as to why the appellant, if interested to contest the election to the other two posts, has not taken independent remedy for having the same set aside.

17. The senior counsel for the appellant at this stage states that the fresh elections directed be stayed to enable the appellant to apply for setting aside of

the elections to the post of Vice President and Secretary General also.

18. We are however not inclined to accede to the said request also. The election to the post of President would be independent of the elections to the post of Secretary General and Vice President when set aside. Moreover, we are informed that the election process is already in motion. It is open to the appellant to take independent proceedings challenging the elections to the other two posts and on succeeding in the same seek directions for simultaneous holding of the elections.

19. The appeal is therefore dismissed. No order as to costs.

Dasti under signature of the Court Master.