
(2015) 07 RAJ CK 0147
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6079 of 2014

Shri Mewara Kshtriya Samaj and Others	APPELLANT
Vs	
Asulal and Others	RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 07 RAJ CK 0147

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : M.R. Singhvi, Senior Advocate assisted by Bhavit Sharma, for the Appellant; S.S. Bhati, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J—This writ petition has been filed by the petitioners aggrieved against the order dated 6.8.2014 passed by the Additional Civil Judge (Jr. Div.) No. 1, Jodhpur Metropolitan as upheld by order dated 26.8.2014 passed by the Additional District Judge No. 3, Jodhpur Metropolitan, whereby the application filed by the respondents under Order XXXIX, Rule 1 & 2 CPC has been accepted and the appeal filed by the petitioners has been rejected.

2. The respondents No. 1 to 29 filed a suit for declaration and injunction in relation to their membership of the petitioner-Society - Shri Mewara Kshtriya Samaj. It was inter-alia claimed in the suit that the plaintiffs were entitled to be indicated as members of the Society being eligible. However, the respondents were wrongly denying the plaintiffs' right of membership and consequential right to vote at the elections scheduled to be held on 17.8.2014.

3. The following reliefs were prayed for in the suit:-

4. Alongwith the suit, an application under Order XXXIX, Rule 1 & 2 CPC seeking injunction was filed, inter-alia, claiming that the plaintiffs-applicants have prima

facie case in their favour, balance of convenience is also in their favour and in case, the relief as prayed for was not granted, the same would result in irreparable injury to them.

5. It was, inter-alia, also indicated that the elections of the Society were scheduled to be held on 17.8.2014 and if the applicants were deprived of right to contest the elections and to vote at the said elections, they would be suffering irreparable injury.

6. With the averments as aforesaid, the following relief was prayed for in the application seeking temporary injunction:-

7. The petitioners filed reply to the application seeking interim relief. Besides disputing the facts alleged in the application regarding prima facie case, balance of conveyance and irreparable injury, plea was raised that as the election process has already started on 15.7.2014 with the issuance of election programme, which was published in the news-paper on 16.7.2014 and as the suit has been filed on 1.8.2014, the plaintiffs-applicants cannot seek injunction qua the election process in between.

8. The trial court after hearing the parties came to the conclusion that the plaintiffs-applicants had prima facie case in their favour in view of the affidavits filed by the persons, who were members of the Society indicating that the applicants were residents of the city from before 1960 and also came to the conclusion that in case, the petitioners were not given right to participate in the elections, they would suffer more instead of the defendants and such injury would be irreparable and passed the following order:-

9. From the above direction issued by the trial court, it would be seen that the trial court while accepting the application under Order XXXIX, Rule 1 & 2 CPC directed that in the elections to be held on 17.8.2014, the plaintiffs be treated as active members temporarily and be granted right to vote at the said elections.

10. Feeling aggrieved, the petitioners filed appeal.

11. During the pendency of the appeal, on 16.8.2014 i.e. a day before the election scheduled to be held, the appellate court at 4:30 p.m. passed the following order:-

"4.30 PM/16.8.2014

12. By way of above interim order in the appeal, the appellate court directed that the votes cast by the plaintiffs would be kept in separate cover and all votes cast may be secured till further orders of the Court and one of the plaintiffs may be inducted as a polling agent and votes cast may be sealed in his presence. Whereafter, it is submitted that the polling, in fact, took place on 17.8.2014 and the votes cast at the election in terms of the interim order dated 16.8.2014 are lying secured.

13. Whereafter, the appellate court, after hearing the parties, by its impugned

order dated 26.8.2014, dismissed the appeal filed by the petitioners on coming to the conclusion that the plaintiffs have been successful in making out prima facie case, balance of convenience was in their favour and irreparable injury would be caused to them.

14. Whereafter, it appears that certain persons, who contested the elections as candidates, also filed a suit seeking declaration of the result of the elections held on 17.8.2014.

15. The petitioners aggrieved by the orders passed by two courts below filed the present writ petition.

16. When this writ petition came up before this Court for admission on 7.10.2014, the following order was passed by a coordinate Bench:-

"Heard learned counsel for the parties.

Admit. Issue notice. Issue notice of the stay petition also.

Mr. M.S. Purohit, learned counsel accepts notices on behalf of the respondent No. 2.

Let, notice be issued to the remaining respondents.

In the meanwhile and until further orders, effect and operation of the impugned order dated 26.8.14 passed by the Additional District Judge No. 3, Jodhpur Metropolitan in Civil Misc. Appeal No. 18/14 and order dated 6.8.14 passed by the Additional Civil Judge (J.D.), No. 1, Jodhpur Metropolitan, shall remain stayed.

Needless to say that in view of the interim order passed by this court as aforesaid, the result of the elections of the petitioner-Society conducted while treating the respondents-plaintiffs as active members thereof and by including their names in the voters' list, shall not be declared."

17. The candidates, who had participate in the elections and had filed suit seeking declaration of result also filed application in the present writ petition for being impleaded as party, the application filed by them was disposed of by order dated 9.1.2015 and they were permitted to intervene in the matter.

18. It is submitted by learned counsel for the petitioners that both the courts below have committed grave error in interfering with the election process; the trial court has granted relief to the plaintiffs, which was not sought in the temporary injunction application; the same amounts to granting the final relief as prayed for in the suit and the finding of the court regarding prima facie case, balance of convenience and irreparable injury are also vitiated.

19. Elaborating on the submissions, learned counsel for the petitioners submitted that the plaintiffs prayed for stay of the election process and instead of dealing with the said relief, the trial court has directed grant of right of vote during the election process, which is contrary to the settled position of law; the First Appellate Court did not deal with the aspect when a specific objection was raised

by the petitioners in their appeal and on that count alone, the order passed by the appellate court stands vitiated and the same deserves to be set aside.

20. Further submissions have been made that the election process had commenced by way of publication of election programme on 15.7.2014, the suit was filed on 1.8.2014 during the election process and grant of injunction by the trial court during the election process is in violation of settled position of law and, therefore, the orders passed by the courts below cannot be sustained.

21. Reliance was placed on Shri Sant Sadguru Janardan Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, (2001) 8 AD 84 : AIR 2001 SC 3982 : (2001) 8 JT 287 : (2001) 6 SCALE 585 : (2001) 8 SCC 509 : (2001) AIRSCW 3959 : (2001) 7 Supreme 362 and V.K. Majotra Vs. Union of India (UOI) and Another, AIR 2003 SC 3909 : (2003) 2 JT 137 Supp : (2003) 7 SCALE 297 : (2003) 8 SCC 40 : (2003) SCC(L&S) 1202 : (2003) 3 SCR 483 Supp : (2003) 2 UJ 1473 : (2003) AIRSCW 4504 : (2003) 6 Supreme 943 .

22. Learned counsel for the respondents opposed the submissions made by learned counsel for the petitioners.

23. It was submitted that both the courts have concurrently held in favour of the applicants and therefore, while exercising power under Article 227 of the Constitution of India; the concurrent findings are not open to challenge. It is further submitted that looking to the entire conduct of the petitioners in depriving the applicants from being inducted as members of the Society and depriving them from exercising their right to vote at the elections of the Society, the trial court was justified in directing their participation in the elections and the order granted being just and proper in the circumstances of the case does not call for any interference. It was submitted that as the petitioners have asked for a relief in the nature of declaration regarding their right to get inducted as members of the Society and to participate in the election, it cannot be said that the relief granted by the trial court is beyond the prayer made by the plaintiffs and therefore, the order impugned deserves to be sustained.

24. Learned counsel for the intervenors submitted that once the plaintiffs have already cast their votes, the said votes deserves to be counted and while exercising power under Article 227 of the Constitution of India, the directions given by the courts below are not required to be interfered with by this Court.

25. I have considered the submissions made by learned counsel for the parties and have perused the material placed on record.

26. As noticed herein-before, the suit was filed on 1.8.2014 by 29 plaintiffs, inter-alia, seeking membership of the Society and inclusion of their names in the electoral rolls and consequential right to vote at the ensuing elections due to be held on 17.8.2014. The relief prayed for in the suit pertained to (i) declaration of plaintiffs' right to seek membership and participate in the election process and

(ii) permanent injunction was sought that till such time that the petitioners are granted membership and included in the electoral role, the allegations of the Society be not held.

27. In the temporary injunction application, the permanent injunction sought in the suit was sought by way of temporary injunction, inter-alia, seeking a direction that the elections be not held, the procedure be suspended during the pendency of the suit.

28. The petitioners opposed the grant of injunction by way of filing reply to the application.

29. After hearing the parties, the trial court while considering the issue pertaining to prima facie case, came to the conclusion that as to whether the plaintiffs-applicants were residents from before 1960 would be decided after the evidence is led by the parties and to that extent there was a serious and substantial dispute pertaining to civil rights between the parties and based on its finding, found prima facie case in favour of the plaintiffs and as noticed herein-before the court came to the conclusion that if the plaintiffs were not permitted to cast vote in the election, they would suffer more injury and the same would be irreparable loss and went on to direct participation of the plaintiffs as temporary active members and to cast vote.

30. Hon"ble Supreme Court in Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi and Others, AIR 2010 SC 475 : (2010) CriLJ 379 : (2010) 1 Crimes 38 : (2009) 14 JT 102 : (2009) 13 SCALE 563 : (2010) 1 SCC 237 : (2009) 15 SCR 662 , while dealing with the requirements of a petition under Article 226 of the Constitution of India with reference to provisions of the Code of Civil Procedure observed as under:-

"30. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed for by the petitioner. Though the court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner."

31. Further a Division Bench of this Court in State of Rajasthan and Ors. v. Mohan Lal Swami D.B. Civil Special Appeal (Wris) No. 1232 of 2014, decided on 14.10.2014 with reference to grant of final relief at the interim stage observed as under:-

"It is well settled that in normal course the court should not grant an interim relief that amounts to acceptance of the cause sought to be agitated by the party aggrieved. Having considered the argument advanced and in view of the law laid down by Hon"ble Supreme Court in the case of Deoraj Vs. State of Maharashtra

and Others, AIR 2004 SC 1975 : (2004) 98 CLT 254 : (2004) 3 CTC 289 : (2004) 4 JT 440 : (2004) 4 SCALE 274 : (2004) 4 SCC 697 : (2004) 3 SCR 920 : (2004) AIRSCW 2134 : (2004) 3 Supreme 126 , on which heavy reliance is placed by learned counsel for the respondent petitioner, the power to grant any interim relief that amounts to granting a final relief should be exercised in rare and exceptional cases, and should not grant such relief unless being satisfied that withholding of it would prick the conscience of the Court, and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing. An interim order of mandatory nature can be granted by the Court on arriving at the conclusion that non-granting of interim order would result in causing extreme hardship and irreparable loss on account of not following the settled position of law. In usual course no final relief at interim stage by way of interim order should be granted. The grant of interim relief of mandatory nature or of the nature that amounts to grant of final relief would depend upon rare, exceptional and compelling circumstances which are required to be spelt out by the court while granting such relief."

32. A bare look at the prayer made by the plaintiffs and the relief granted by the trial court, it is apparent that the relief granted is totally different from what was prayed for in the temporary injunction application. The direction of the trial court to treat the plaintiffs as temporary active members and to give right to them to cast vote during the elections, appears to be beyond what was even prayed for by the plaintiffs in the temporary injunction application. The grant of relief by the trial court in the nature of conferring right on the plaintiffs during the pendency of the suit cannot apparently be treated as temporary in nature, which could undone in case ultimately, the suit filed by the plaintiffs is rejected and/or even withdrawn. Therefore, the nature of relief granted by the trial court, apparently appears to be wholly without jurisdiction.

33. It is no doubt true that the trial court while granting interim relief is not bound by the relief prayed for by the plaintiffs in the temporary injunction application and it is always open for the trial court to grant injunction, which in the circumstances of the case, the trial court feels appropriate. However, while exercising its discretion in grant of such injunction, the trial court is required to remain well within the settled parameters i.e. the relief has to be within the four corners of law, within the scope of the suit and must record reasons for grant of a particular relief.

34. The trial court failed to record any reasons whatsoever for granting the relief as granted by it by its order dated 6.8.2014. Whereafter, when the appeal was filed by the petitioners, the appellate court first granted injunction dated 16.8.2014 and directed to keep the votes cast by the plaintiffs in a separate cover, whereafter in its impugned order dated 26.8.2014, though specifically noticed the contentions raised by the appellants-plaintiffs that the trial court was not justified in granting the relief not prayed for, beyond the scope of the suit and grant of such relief would amount to granting final relief in the suit and cited

judgments in favour of its contentions, however, it failed to deal with the said aspects and has merely on coming to the conclusion that the plaintiffs have prima facie case in their favour and that the trial court has not stopped the election process rejected the appeal.

35. The manner in which the appellate court has dealt with the issues raised by the petitioners cannot be approved, as despite noticing the contentions raised, the Court has chosen to ignore the same.

36. As submitted by learned counsel for the petitioners and held by the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra), ordinarily the courts should not interfere in the election process, once the process has already started. Further in view of the settled position of law that relief by way of temporary injunction which amounts to grant of final relief in the suit also should not be granted, both the courts below were not justified in passing the injunction and rejecting the appeal.

37. So far as the submissions made by learned counsel for the respondents that as concurrent findings have been recorded by two courts below, this Court while exercising power under Article 227 of the Constitution of India should not interfere with the orders impugned, is concerned, it is no doubt true that both the courts have recorded the concurrent findings on the issue pertaining to prima facie case, balance of convenience and irreparable injury, however, both the courts have failed to record any reasons for grant of injunction and/or upholding the same and as the injunction granted by the trial court as upheld by the First Appellate Court is ex-facie against the settled position of law, both the orders cannot be sustained.

38. In view of the above discussion, the writ petition is allowed. The impugned orders dated 6.8.2014 and 26.8.2014 passed by the trial court and the First Appellate Court respectively are quashed and set aside.

39. During the pendency of the appeal before the appellate court, the votes have already been cast on 17.8.2014, which are lying secured under the interim order dated 16.8.2014 passed by the appellate court, the Electoral Officer is directed to take further steps in regard to the votes polled and shall not count the votes cast by 29 plaintiffs and kept in separate cover. The Electoral Officer is directed to take steps within ten days from the date copy of this order is placed before him.

40. Looking to the nature of dispute involved, it would be to the benefit of all the parties if the suit is decided by the trial court as expeditiously as possible, therefore the trial court is directed to decide the suit preferably within a period of 09 months.

41. No order as to costs.