

(2006) 12 DEL CK 0123

In the Delhi High Court

Case No : IA No. 5642/04 in CS (OS) 945/04

Shri R. Damodar and Others

APPELLANT

Vs

Andhra Association, Delhi (Regd.) and Others

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2007) 94 DRJ 119

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : B.K. Sood and V.K. Singh, in is No. 5642/04 in CSOS 945/04 and B.M. Rao and Veronica Francis, in is Nos. 7848-49/04 in CSOS 1328/0, for the Appellant; Jayant Bhushan and Sanjay K. Pathak, for Dfs- 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—CS(OS) No. 945/2004 and CS(OS) 1328/2004 both challenge the election process of Andhra Association, Delhi, the defendant No. 1 in both the suits. The plaintiffs in both the suits have filed applications under Order 39 Rule 1 & 2 CPC for interim injunction which are being disposed of by this common order.

2. Suit No. 945/2004 is filed by R. Damodar and others against Andhra Association, Delhi and its Secretary and President. plaintiffs, R.Damodar and others, are members of the defendant No. 1 Society. The election of the Working Committee of defendant No. 1 was held in April, 2001 and the term of the Working Committee came to an end in 2004. The Working Committee of defendant No. 1 decided to hold Annual General Body Meeting on 29.8.2004 with a view to hold elections on 5.9.2004. A pre-election notice was published in the newspaper Times of India and in Eenadu on 13.5.2004 informing the members that a General Body Meeting would be held on 29.8.2004 and election of the Working Committee of the Association and the Trust would be held on 5.9.2004.

The notice also informed that eligible persons could fill up the requisite membership forms available in Andhra Association office up to 6.00 PM of 24.7.2004, that the membership forms could be available also with the branch secretaries, that the applicants were required to fill the prescribed membership form, pay the subscription against receipt and sign the membership register kept for this purpose and that the voters list would be made ready by 11.8.2004. The members were also informed that all changes in the addresses would be made in the office of defendant No. 1 between 11.00 AM to 6.00 PM on 12th, 13th and 14th August, 2004 after which no alteration in the list would be permitted. plaintiffs, R.Damodar & others, filed this suit on 31.8.2004 with the prayer for a decree for perpetual injunction restraining the defendants from holding the election, a decree for mandatory injunction directing appointment of an Administrator for holding the election of defendant No. 1 Association after finalization and settlement of list of the members of defendant No. 1 by including the names of the members who have been left out by defendants No. 2 & 3, a decree for declaration declaring the rejection of nomination forms of plaintiff Nos. 1 to 5 being bad and illegal and for certain other decrees for declaration. R.Damodar and others also filed an application under Order 39 Rule 1 & 2 CPC, is 5642/04, seeking an injunction against holding of the proposed election. In is 5642/04 this Court passed an order on 2.9.2004. The order-sheet of 2.9.2004 shows that Mr. B.K. Sood, arguing for the plaintiffs, submitted before the Court that rejection of candidature of one of the plaintiffs, Mr. C.B.S. Reddy, was wholly illegal. He further contended that almost 6,000 valid voters had not been permitted to participate in the electoral process as their names did not appear in the voters list. On these two grounds the injunction against holding of the proposed election was sought. This Court, however, directed that since the election process had commenced, it would not be appropriate to interdict the same. However, since there was a serious dispute, the Returning Officer/Chief Electoral Officer, Mr. S. Madhusudan Babu, was directed not to declare the results till further orders of the Court. Mr. Sood further raised doubts about the fairness of the manner in which the election was likely to be conducted. On the request of Mr. Sood, the Court appointed Mr. Reetesh Singh, Advocate as Observer to be present at the venue of election on 5.9.2004 from 8.00 AM to 6.00 PM. The election was accordingly held as per schedule. Election was accordingly held on 5.9.2004 under observation of Mr. Reetesh Singh.

3. The other suit, bearing CS(OS) 1328/2004 is filed by P. Subba Rao and others on 17.11.2004. plaintiffs in this suit are also members of the Andhra Association. They are also aggrieved by the alleged irregularities committed in preparing the list of members. The reliefs prayed for by them in the suit are a decree declaring the "Authenticated Voters" List" comprising of 8463 members as incomplete and fraudulent and incapable of being acted upon, a decree for declaration that the committee appointed for scrutinizing the nomination forms was incompetent, a decree for declaration that the report dated 21.8.2004 submitted by the Membership Scrutiny Committee is invalid, a decree for declaring that the

election held on 5.9.2004 is unconstitutional, a decree for permanent injunction directing the defendants that the result of the elections held on 5.9.2004 be not declared, and a decree for mandatory injunction directing the defendants to hold fresh election for the Working Committee of the Association and for the positions of the Trustees of the Andhra Association Delhi Trust under the aegis of an Administrator. is 7848/2004 under Order 39 Rule 1 & 2 CPC was filed along with this suit with the prayer to withhold the election result. is No. 7849/2004 has also been filed along with this suit seeking appointment of an Administrator. However, no order has been passed on the applications. The two applications under Order 39 Rule 1 & 2 CPC in the two suits were also listed for hearing together.

4. On 7.11.2006 after some arguments on the application is 5642/2004, this Court observed that the prayer to restrain the defendants from carrying on and holding election of defendant No. 1 Association on 5.9.2004 does not survive as the election has already been held under the supervision of an Observer albeit the results are in a sealed cover and are not declared so far. The second prayer in the application under Order 39 Rule 1 & 2 CPC is for appointment of an Administrator. Mr. Sood, counsel appearing for the plaintiffs submitted that since fresh election is due in the year 2007, an Administrator had to be appointed and to this extent the application is still surviving. However, the prayer for appointment of an Administrator in the application only related to the election already held. It was also observed on that date that the prayer for appointment of an Administrator would amount to seeking a mandatory injunction which under Order 39 Rule 1 & 2 CPC could be granted only in a very rare situation and that if the mandatory injunction was granted, it would amount to disposing of the whole suit. So far as the prayer for injunction in Suit No. 1328/2004 is concerned, the same relates to declaring of results. Accordingly, the only limited question on which the arguments were addressed was whether the result of the election should now be declared. Mr. Rao, counsel arguing for the plaintiffs in Suit No. 1328/2004 submits that since the election has been held on an invalid list of members, the same is bad and, Therefore, the result of the election should not be declared. The objections raised by Mr. B.M. Rao can be enumerated as under:

(1) Bye-law No. 4.3 of the Election Manual requires voters list in two forms; (i) consolidated list, and (ii) branch-wise list, to be made available by the General Secretary by the date notified in the pre-election notice, which was not done. The appointed day was 11.8.2004 but the consolidated list was made available only on 21.8.2004 which fact was notified in the notice published in the Indian Express dated 17.8.2004. He further contends that the list made ready by 11.8.2004 was only a list of new members numbering 5772 and not the consolidated list or the branch-wise list. As the final list was prepared on 21.8.2004, there was no scope for any corrections. Mr. Rao further says that the branch-wise list was made available only on 1.9.2004.

(2) Because of delay in bringing out the consolidated list and lack of opportunity

to make corrections, the names of 530 live members were omitted from the list and 775 ghost members with non-existent addresses appeared in the list and 6140 members enrolled with the branches were not included in the list.

(3) On 26.8.2004 the Chief Electoral Officer wrote a letter to the President, Mr. M.G. Rao, stating that consolidated voters list be deemed to include the live members bearing Serial Nos. 8464 to 8963 which shows that these names had actually not been included in the list requiring deeming of these members to have been included in the list. By the time this letter was received, the time for filing of nominations, scrutiny as well as notification of candidates was over.

5. The defendants strongly defend the allegations that the list was not made available on 11.8.2004. It is contended in para-8 of the written statement that the list was made duly prepared and was made available by 11.8.2004 and the members were allowed to bring out any defect in the electoral roll and to get the same rectified up to 14.8.2004. The plaintiffs did not raise any objection to the voters list prepared by 11.8.2004. The election notification dated 18.8.2004 mentioned that the voters list would be available for a price. The defendants contend that the plaintiffs have not complied with the notification and are now raising a false demand. It is further contended by the defendants in para-14 of the written statement that after rectification the list was prepared as per schedule but because of some computer defect, certain names of live members could not be reproduced in the fresh list, but the defect was promptly rectified and a supplementary list was made available to the Chief Electoral Officer on 21.8.2004 which duly included the names of the plaintiff Nos. 16 to 30. It is further submitted by the defendants that the plaintiffs participated in the election and caste their votes and that no member was deprived of the facility of casting their votes or participating in the election.

6. So far as the ghost members are concerned, it is contended by the defendants' counsel Mr. Jayant Bhushan that those members were in the pre-existing list and were not included by the present Secretary of defendant No. 1. The earlier list, it was pointed out by Mr. Rao, included only 28 members with the common address of Gurgaon Road, Nangal Dairy whereas in the list made available for the election in question, there are 171 such members suggesting that all members beyond the number of 28 had been enrolled by the General Secretary Mr. Satyanarayanan. Defendants submit that at present only a prima facie view has to be taken and, Therefore, it cannot be said without any evidence that these 171 members are not in existence or ghost members. So far as 6140 members are concerned, the case of the defendants is that these members were enrolled by the branches whereas the relevant rule provided that the new members could be enrolled only by the General Secretary although the branch Secretaries could process or arrange for the applications. The attention of the Court is drawn to the relevant rule, namely, Article 46 of the Constitution of the Association, which is as under:

MEMBERSHIP

a) Membership shall be open to all those above the age 18 years and belonging to the Andhra community and residing in Delhi.

b) Any person eligible as a member of the Association under Sub-rule (a) shall on application in the prescribed form and payment of the admission fee and membership subscription specified in Sub-rule (a) of Rule 7, be enrolled a member of the Association by the General Secretary.

c) The members of the Association shall, without payment of an additional fee be entitled to take part in all the activities of the Branch situated in the area of their residence.

7. The relevant provision regarding branches is available in Article 13 and Article 13a(i) provides for the role of the branches in enrollment of members and it says as under:

BRANCHES

13.a(i) The Branches of the Association shall arrange the enrollment of members and the collection of subscription from the members, resident in their respective areas only.

8. It is submitted by Mr. Jayant Bhushan that this provision does not give any power to branch secretaries to enroll members although it does provide that the branches of the Association shall arrange the enrollment of the members. The plaintiffs have failed to show any proof which allows branch secretaries to perform the function of enrollment of new members or gives the branch secretaries parallel power for such enrollment. It is pointed out by the defendants that in the public notice dated 13.5.2004 it was categorically mentioned that persons intending to become members can fill up requisite membership form available at the Andhra Association office on all working days up to 24.7.2004, although it was also mentioned in the notice that the forms were also available with the branch secretaries. The notification did not say that the applications could be submitted at any place than Andhra Association office, namely, the principal office of the Association or the office of the General Secretary. The notice also said that the membership register had to be signed by that date. The register was available only in the principal office.

9. About the remaining objection particularly about the letter whereby certain members were deemed to have been included in the list, the defendants contend that no objection about the same was raised in the General Body Meeting held on 29.8.2004. It is reiterated that the supplementary list of 500 members which was later submitted to the Chief Electoral Officer because of the defect in the computer was done with the consent of the Chief Electoral Officer and no malafides could be attributed to the defendants and that no prejudice was caused to these members, some of whom even filed nominations and contested the election and all participated in the voting.

10. The plaintiffs referring to the judgment in the case of A.S. Gahlout and

Others Vs. Lt. Governor of Delhi and Others, have submitted that elections of cooperative societies should be free and fair and should be done according to the procedure prescribed in their own regulations. However, this judgment also says that the law governing general election, namely, the Representation of People's Act, was not applicable to such elections. Mr. Jayant Bhushan referred to the judgment of the Supreme Court in the case of Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, which held that once the election process was set in motion, High Court would not be justified in interfering with the election process although a candidate cannot be precluded from challenging the correctness of the election. The question before this Court is whether the result of the election which has already been held should still be kept in abeyance or should now be declared.

11. From the foregoing it is clear that the objection that 6140 members who submitted application for registration with the branches were wrongly not included in the list does not have much force since the rules allow the General Secretary to enroll new members and do not give any such specific power to the branch secretaries. So far as non-inclusion of certain live members is concerned, since admittedly some of them have contested the election and some have also voted, it is doubtful as to whether non-inclusion of their names, because of some computer defect, has caused any prejudice or whether even if any prejudice is caused, it was so great as to vitiate the election. Further since no objection to the list was raised in the General Body Meeting on 29.8.2004, it will be wrong to totally discard the election held on the basis of that list. So far as ghost members are concerned, the matter has to be examined only on evidence and their names cannot be precluded from the list only on the ground that their addresses are common. These addresses, in fact, give the name of the road and the area without giving the house numbers. It remains to be decided after trial as to whether these members were rightly included in the list. Thus the prima facie case does not appear to be in favor of the plaintiffs.

12. So far as the balance of convenience is concerned, the same also is not in favor of withholding the results of the election. Neither party is going to be benefited if the results are withheld. The democratic process has come to a standstill because of withholding of the election results. It is in the interest of justice as well as in the interest of all the members of defendant No. 1 Association that the results are declared and the democratic process is restored.

13. So far as the prayer for appointment of an Administrator is concerned, since the election has already been held and the result will now be declared, there is no ground calling for appointment of an Administrator. If, however, on any subsequent date any such need is felt, the plaintiffs would be at liberty to file an appropriate application to that effect.

14. On the basis of the foregoing discussion, I am of the strong opinion that the result of the election need not be withheld anymore. The applications under Order 39 Rule 1 & 2 CPC filed in both the suits and the application u/s 151 CPC

filed in CS(OS) 1328/04 are accordingly dismissed. The sealed cover containing results of the election be now opened and results declared today after the lunch recess.

15. No opinion expressed in this order will prejudice the parties at trial.

16. List before the appropriate Bench for framing of issues and admission/denial of documents, if any, on 29th January, 2007.