

(2005) 03 DEL CK 0166
In the Delhi High Court
Case No : C.M. (M) No. 63 of 2005

Shri Ramesh Chander

APPELLANT

Vs

Shri Suresh Bhasin and Others

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 9
Constitution of India, 1950 — Article 227

Citation : (2005) 140 PLR 1

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : Vikas Singh and S.K. Aggarwal, for the Appellant; Vinay Bhasin and N.P. Singh, for Respondent No. 1, Rajiv Dutta and Uday Kumar, for the Respondent Nos. 2 and 3 and G.S. Sistani, for the Respondent No. 4, for the Respondent

Judgement

C.K. Mahajan, J.—This petition is directed against the order dated 12th January, 2005, passed by the learned Additional Senior Civil Judge, Delhi in M.C.A No. 113 of 2004 granting injunction in favor of the respondent No. 1/plaintiff and setting aside the order dated 6th May, 2004 passed by the Civil Judge, Delhi in Suit No. 96/2004 whereby the application of the plaintiff/respondent No. 1 under Order 39 Rule 1 and 2 CPC was dismissed.

2. The petitioner and respondent No. 1 claim to be the members of the Rotary International through their respective Clubs. On 28th September, 2002 a meeting of the Nomination Committee was held to select the Governor Nominee for the year 2004-2005 for District 3010. The petitioner was selected. The said decision was challenged and the respondent No, 1 was proposed as a challenging candidate, On 16th October, 2002, the then District Governor notified the name of challenging candidates to clubs. Elections were held on 26th December, 2002. Ballot-by-mail procedure was adopted for the elections instead of secret ballot. The petitioner got 72 votes whereas the respondent No. 1 got 78 votes. Respondent No. 1 was elected as Governor Nominee. On 15th January, 2003,

Rotary Club of Delhi West filed a complaint alleging irregularities in the conduct of Elections in October, 2003, the complaint was upheld by Rotary International Board (for short "RI Board") in its meeting held on 29th September to 3rd October, 2003 and an order was passed declaring the elections of respondent No. 1 was null and void and respondent No. 1 was also disqualified from seeking the office of District Governor until 1st July, 2005. The petitioner was appointed as District Governor pursuant to Rotary International Bye Law 13.080. On 29th October, 2003, the Club of respondent No. 1 filed an election complaint against the RI Board decision. The respondent No. 1 was informed that the said complaint was not proper recourse and he was advised to file an appeal in accordance with bye-laws 5.020. In February, 2003, the order passed by the RI Board in October, 2003 was amended to the extent of removal of the disqualification of respondent No. 1. Instead of filing the appeal, the respondent No. 1 filed a suit for declaration and permanent injunction praying therein that a decree of declaration be passed declaring decision No. 53 passed by the Board of Directors of Rotary International in October, 2003 as amended by the further decision of the Board of Directors of Rotary Club in February, 2004 as null and void and of no legal effect and consequently the respondent No. 1 continues to hold the office of District Governor for District 3010 of Rotary International for the year 2004-2005. It was further prayed that respondent No. 1 be allowed to hold the office and function as District Governor for Rotary District 3010 for the year 2004-2005. The respondent No. 1 also filed an application under Order 39 Rules 1 and 2 CPC for interim protection.

3. Summons/notices in the suit were issued on 29th March, 2004. The operation of decision No. 53 passed on behalf of Rotary International in October, 2003 and the decision passed in February/March, 2004 were stayed.

4. The application under Order 39 Rule 1 and 2 was opposed by the petitioner and the Rotary International.

5. The learned Civil Judge, Delhi by order dated 6th May, 2004 dismissed the application under Order 39 Rule 1 and 2 holding that the plaintiff/respondent No. 1 has got no prima facie case in his favor. He further held that the plaintiff had not adopted the internal procedure of appeal against the decision of the Board as stipulated in the Manual of Procedure, 2001. The respondent No. 1 assailed the said order in appeal. The appeal was allowed and the order of the Civil Judge, Delhi was set aside. It was held that equitable consideration lie in favor of the plaintiff as he was elected to the post of District Governor and his elections were not validly set aside. The petitioner was illegally elected to the post of District Governor despite the fact that he lost the elections. Thus, the petitioner had no right to hold the office of District Governor of the Rotary District 3010. The petitioner was restrained from holding the post of District Governor of Rotary District 3010 and from discharging the function of District Governor henceforth. The respondent No. 1/plaintiff was entitled to hold the post of District Governor till the disposal of the suit and further Rotary International/defendants 1 and 2

were restrained from interfering in the functioning of the plaintiff/respondent No. 1 as District Governor. The order dated 6th October, 2003 was stayed till disposal of the suit.

6. The petitioner has assailed the order passed by the lower appellate Court in the present petition. Counsel for the petitioner contends that the lower Appellate Court committed a jurisdictional infirmity in its order inasmuch as it has granted final relief to the plaintiff at an interlocutory stage contrary to the settled law as laid down by the Supreme Court. He further submits that the Appellate Court has further committed a jurisdictional error by holding that Clause 5.020 regarding appeal against board action "would not come into play as the order of removal was not passed in accordance with the provisions of Clause 5.03.02." It is contended that there was a remedy of appeal available to the plaintiff/respondent No. 1 and in the event of any illegality in the process of election as well as disqualification, the action of the Board could have been corrected by way of an appeal and that the filing of a civil suit in an election matter was impliedly barred u/s 9 of the Code of Civil Procedure. Reliance was placed on several judgments of the Supreme Court. It was further contended that the findings of mala fide and collusion are without any basis and foundation and the lower Appellate Court has grossly erred in reversing the findings of the Civil Judge. The findings recorded by the lower Appellate Court that the petitioner was not a qualified candidate for being elected as a District Governor because he belongs to suspended Club in also without any substance. It is stated that in terms of Clause 15.070 the status of the club is to be seen as on the date of the selection and not earlier. The suspension of the Club was only from 30.6.2002 to 20.9.2002 as would be evident from the Trial, Court record and the dues were paid on 20.9.2002. The selection was made on 28.9.2002. The lower Appellate Court was in error in holding that the Rotary International ought to have ordered fresh elections rather than appointing the petitioner under Clause 13.080 and that the RI had no power to remove a District Governor.

7. The petition is opposed by respondent No. 1. It was contended that the impugned order is just, fair and equitable. There was no bar in the respondent No. 1 filing a suit without exhausting the alternative remedy available to him. The collusion between the petitioner and Rotary International was amply demonstrated from a reading of the documents on record. Rotary International was aware that the ballot by mail procedure was being followed in the district and at no stage did the Rotary International object to adoption of this procedure. The plaintiff/respondent No. 1's removal from the post of District Governor Elect was in violation of principles of natural justice. The procedure for removal was not followed. The decision of the Rotary International dated 6th October, 2003 was barred by time.

8. I have heard learned counsel for the parties and perused the documents on record. I have also perused the order passed by the learned Civil Judge and the impugned order passed by the learned Additional Senior Civil Judge, Delhi.

9. At the outset it is urged by the petitioner and respondents 2 and 3 that this being an election matter the suit is not maintainable. This plea was neither taken up before the Trial Court or before the lower appellate Court. Thus this plea cannot be taken up in the present petition and is rejected.

10. The facts by and large, are not in dispute. It is settled law that the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or the Tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior Court or tribunal purports to have passed the order to correct errors of law in the decision. It is also well settled that the High Court while acting under this Article cannot exercise its power as an appellate Court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

11. I have also perused the Manual of the Rotary International. A perusal thereof shows that individuals are not members of Rotary International. It is the Clubs who hold membership. In the event of any dispute the Rotarians and clubs are obliged to follow the election review procedure. Failure to complete the election review procedure before seeking intervention of non-rotary agency or other dispute resolution system results in disqualification. Election process was challenged by the petitioner through the Club on allegations of irregularities. District Governor is the election officer and has full control over the election process. The District Governor responded to the complaint. Respondent No. 1 did not follow the election review procedure. Appeal filed by the Club of respondent No. 1 was in the nature of allegations against the petitioner and not against the election process. In these circumstances comments were invited from petitioner. Respondent No. 1's club did not file an appeal against the RI Board's action but the respondent No. 1 approached the civil Court.

12. A perusal of the impugned order shows that the lower Appellate Court misconstrued the bye-law of the Rotary International resulting in substantial miscarriage of justice. It is not disputed that secret ballot procedure is prescribed for elections. In contravention of the procedure prescribed, ballot by mail was adopted. The learned lower appellate Court further lost sight of the fact that respondent No. 1 failed to assail the election process. The petitioner's Club filed an election complaint in accordance with RI Bye-Laws alleging that there were irregularities in the election process. It was also alleged that respondent No. 1/plaintiff was involved in the prohibited activities enumerated in Clause 10.050.1

The RI Board upheld the complaint after considering the response of the Election Officer who was the District Governor. In addition the RI Board came to the conclusion that respondent No. 1 was guilty of campaigning, canvassing and electioneering and disqualified him from seeking office of District Governor until 2005. The disqualification was subsequently withdrawn on the said respondent filing an appeal. Since the decision was taken by the RI Board under Article X, it was not obligatory for RI Board to give any hearing to the respondent No. 1/plaintiff. The contention that there is violation of principles of natural justice is without any force and is rejected. The respondent No. 1 had a remedy of appeal as is evident from a bare reading of Clause 10.050.3. The RI Board duly considered the complaint of the petitioner's club in exercise of powers provided in Article X. The lower Appellate Court wrongly concluded that Article X is not applicable whereas the election complaint filed by the petitioner's club was itself under Clause 10.050.2. Clauses 5.020 of the Manual of Procedure 2001 of the Rotary International provides for appeals of Board action.

13. The decision was taken by the RI Board under Clause 10.050.3. The respondent No. 1/plaintiff did not complete the election review procedure under 10.050.5 and sought intervention of Non Rotary Agency. There is no dispute that the respondent No. 1/plaintiff has not chosen to file the appeal and instead filed the civil suit.

14. In terms of Clause 13.080 it is the sole discretion of the Rotary International whether to elect the Governor itself or to order for fresh elections, in the case in hand the Rotary International had decided to elect the petitioner who was the officially selected candidate prior to the challenge by the plaintiff/respondent No. 1 as per Clause 13.080 and there can be no challenge to the decision of the Rotary International. The finding that the Rotary International should have ordered for a fresh election rather than electing the petitioner, is in excess of jurisdiction of the Court. Computer generated letters without signatures were dispatched to the petitioner on 15th October, 2003 only even though the letter was dated 26.9.2003. The findings on collusion of any sort are wholly conjectural and based on surmises. The lower Appellate Court further failed to interpret Clause 15.070 and also the R.I. Circular dated 3rd July, 2003 that even the suspended club could nominate its members for District Governor Nominee. The petitioner Ramesh Chandra was otherwise eligible at the time of selection. Club suspension was on account of non-payment of RI dues which stood paid on 20.9.2002 i.e. well before the selection. It is the admitted case of the parties that on the date of selection the petitioner's club was qualified and, Therefore, the petitioner's selection could not be faulted. The lower Appellate Court has misconstrued the various provisions of the Manual of the Rotary International while exercising discretion in granting an interim injunction.

15. There is no material to sustain the finding that there was a scheme of mala fides in the mind of concerned authority/board as after setting aside of plaintiff's election, no time was given in District 3010 to select another nominee and

selected Ramesh Chander as District Governor Elect. It must not be overlooked that the burden of establishing mala fides is very heavy on the person who alleges the allegations of mala fide. There is not an iota of material to suggest in what manner the members of the Rotary International Board acted in a mala fide manner in selecting the petitioner as District Governor. There is no specific averment of mala fide and the lower appellate Court misdirected itself in construing that the selection of the petitioner to the post of District Governor indicated a sense of mala fide working in the minds of the concerned Board. The Board of Directors of the Rotary International comprises of 19 members from all over the world. The President of the Rotary International is one of the 19 Members and the Chairman of the Board. The President Elect of the Rotary International is one of 19 Members. The other 17 members are elected and nominated in accordance with the provisions of the Bye-Law. Without there being any specific instance of mala fide cited by the respondent No. 1, the allegation imputed are baseless and are to be rejected. Instances of mala fide must be specifically pleaded and proved. Mere allegations, suggestions and insinuations are not enough. The lower appellate court has lost sight of the fact that respondent No. 1 was not able to lay any firm foundation to substantiate the case of malice or mala fide against the RI Board while making the appointment of the petitioner. The RI Board is not an individual who can said to have had any interest in a particular person or persons. It is certainly not suggested that all the members of the Board had interest in the appointment of the petitioner.

16. By granting an interim injunction in favor of the respondent No. 1/plaintiff, the lower appellate Court has in fact granted the final relief which, in terms of the various pronouncements of this Court as well as by the Apex Court, cannot be granted at the interim stage. It is well known rule of practice and procedure that at the interlocutory stage a relief which is asked for and is available at the disposal of the suit is not granted. Time and again this Court as well as the Hon'ble Supreme Court have deprecated the practice of granting interim orders which practically give the principal relief sought in the suit for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. The Court at the interim stage ought not to grant a relief which in effect amounts to final relief, more so when the party claiming relief failed to makes out special circumstances to warrant stay at the interim stage. To grant the relief at the threshold would create a problem inasmuch as if the suit was eventually to be decided against the plaintiff/respondent No. 1 the petitioner would have suffered irreparable/irreversible injury and this type of an equity cannot be reversed. By allowing the respondent No. 1/petitioner to hold the post of District Governor till the disposal of the suit and restraining the Rotary International from interfering in the functioning of the plaintiff as District Governor, the lower Appellate Court has in fact granted final relief by way of an interim injunction which, to my mind, it could not have done at the interim stage. Taking the overall picture of the matter I am of the view that the lower appellate

Court ought not to have granted the injunction in such a matter. By granting the injunction the lower appellate Court committed a grave error in holding that respondent No. 1 was entitled to hold the post of District Governor despite the fact that after setting aside of the election the plaintiff/respondent No. 1 ceased to be the District Governor Elect. He had the remedy of assailing the decision of the Rotary International Board. The plaintiff chose not to do so. The learned lower appellate Court has in effect nullified the order of the Rotary International declaring the election of the respondent No. 1 as null and void. RI was put back in the seat when all the issues are in the melting pot and have to be adjudicated upon at the time of the trial of the suit. The trial has yet to commence. Whether if election is null and void and as to whether plaintiff was validly elected are matters to be decided in the suit.

17. A perusal of the impugned order shows that the learned lower appellate Court failed to consider whether the plaintiff has made out a prima facie case and that the balance of convenience lay in favor of the plaintiff. Satisfaction that there is a prima facie case by itself is not sufficient to grant an injunction. The Court is to be satisfied that non-interference by the Court would result in irreparable injury to the party seeking relief and that there is no other remedy available except one to grant injunction and the needs protection from the consequences of apprehended injury. Irreparable injury does not mean that there must be a material one namely one cannot be adequately compensated by way of damages. Balance of convenience must be in favor of granting injunction. The Court has to exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties. If the injunction is refused and compare it with the compelling probability or probabilities or likelihood of an injury. The lower appellate Court lost sight of the fact that the election of respondent No. 1 was declared null and void which is the dispute in the suit and to have given benefit on the basis of an interim order to hold the post of District Governor is deciding the suit on merits when the trial has yet to take place. In these circumstances it cannot be said that the plaintiff has made out a prima facie case or that the balance of convenience is in his favor. In fact irreparable injury has resulted to the petitioner who was appointed by the RI Board by exercising powers conferred to it under the relevant provisions of the RI Bye-laws. The lower Appellate Court has thus misdirected itself in reinstating the respondent No. 1 by prejudging the issues on merits.

18. To sum up, the election procedure is prescribed in the Rotary International Manual which is a Code in itself. The election disputes are also governed by the Manual. The decision of the RI Board was appealable as per the Manual. The respondent No. 1 rushed to the Civil Court without exhausting the remedy available to him in terms of the Manual. The lower appellate Court has granted final relief to respondent No. 1 contrary to the settled law that final relief cannot be granted at the interim stage unless there are special circumstances to warrant grant of the same. Special circumstances have not been made out in this case. The lower appellate Court, by granting an injunction, has set at naught the order

of the RI Board without adjudicating the issues raised in the plaint. It is to be noted that the term of the District Governor comes to an end on 30th June, 2005 whereas the lower appellate court has granted relief permitting the respondent No. 1 to continue as the District Governor till disposal of the suit. Perversity is writ large on the face of the record. The lower appellate court has also lost sight of the fact that the Club of the petitioner was not a suspended club as on 28.9.2002 and the petitioner was eligible at the lime of selection. The findings of the first appellate court to the contrary are perverse. The lower appellate court has in fact substituted its own findings without first deciding how the reasoning of the trial court was wrong. At the interlocutory stage, the Court has to see whether there are any equities that flow in favor of the aggrieved party. The facts of the present case did not warrant an order of injunction as there were no equities in favor of respondent No. 1 for the reason that the election of respondent No. 1 having been declared null and void, he stood disqualified and the petitioner was selected as the District Governor. The decision of the RI Board was not assailed by following the election procedure and at this stage the grant of injunction without adjudicating upon the issues raised in the suit was not justified. Findings of malafides against the Rotary International without there being any material or pleadings on record transcends the settled law of the land and borders on perversity to warrant relief.

19. This court is conscious of its limitations in exercise of its supervisory powers under Article 227 of the Constitution of India but when perversity is writ large on the face of the record the Court must intervene to rectify the manifest injustice. The lower appellate court has gone into the merits of the case to justify reversal of the order of the Civil Court at the interlocutory stage without addressing itself on the question of prima facie case, balance of convenience and irreparable injury. The lower appellate court has misdirected itself in reversing the findings of the Civil Court resulting in manifest injustice. No special circumstances had been disclosed to warrant grant of an injunction at the interlocutory stage.

20. In light of the aforesaid discussion, the impugned order cannot be sustained and is accordingly set aside and the order of the Civil Court is restored. Since the term of the District Governor for the year 2004-2005 is expiring in the end of June, 2005, the Trial Court is directed to expeditiously dispose of the suit. It is, however, made clear that the observations made in this order shall have no bearing on the trial of the suit.

The petition stands disposed of in the above terms.

The parties are left to bear their own costs.