

(2002) 12 DEL CK 0039

In the Delhi High Court

Case No : IA No. 9225 of 2002 in S. No. 1594 of 2002

Subhash Chand Vinayaka and Another

APPELLANT

Vs

All India Shwetambar Sthanakwasi Jain Conference and
Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2003) 102 DLT 733

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : R.K. Anand and Harish Malhotra, for the Appellant; P.C. Jain Aman Vachar and Santosh Kr. Chouria for Defendant No. 1, Pradeep Aggarwal, for Defendant No. 2, Rajeev Nayar Aman Vachar and Santosh Kr. Chouria for Defendant No. 2 and Vinay Sharma, for Defendant No. 4, for the Respondent

Judgement

J.D. Kapoor, J.—Applicants/plaintiffs were voters in the election for the post of President of All India Shwetambar Sthanakwasi Jain Conference (in short "Conference") to be held on 29.9.2002. There are as many as 8000 voters who were eligible to participate in the said election. The applicants through this application want to restrain defendant Nos. 2 & 3 from assuming the office of President and Chairman respectively so as not to give effect to the sham elections and results announced by defendant No. 4.

2. The main premise for obtaining aforesaid relief is that election to the office of President was held in contravention of schedule of election programme and the rules of the Conference. According to the plaintiff the nomination papers were to be filed by 23rd August, 2002 and the date of withdrawal was 23.9.2002 and the voting was to be done on 29.9.2002. It is averred that as many as four persons filed their nomination papers for the post of President namely S/Shri Nemichand Chopra Jain, Nagin Lal Jhamar, Ranjeet Singh Sojatia and Nemnath Jain. It is alleged that only two of them namely Nagin Lal Jhamar and Ranjeet Singh Sojatia withdrew from the nomination and Therefore election was to be

conducted from amongst Nemichand Chopra Jain and Nemnath Jain. As per the proceedings and decision of Chief Election Officer, Nemichand Chopra Jain was elected as President while Nemnath Jain was elected as Chairman. The proceedings and declaration of the result of election are to the following effect:-

"1. That the first candidate Shri Nemi Chand Chopra Jain (Palli) shall carry on the responsibility of the post of President of the All India Shwetamber Sthanakwasi Jain Conference for the next two years.

2. That the second Candidate Shri Naveen Lal Jhamar Jain (Megh Nagar) has withdrawn his Candidature.

3. That the Third candidate Nemnath Jain shall hold the post of Honorary Chairman of All India Shwetamber Sthanakwasi Jain Conference.

4. That the forth candidate Shri Ranjeet Singh Sajatya (Udaipur) has withdrawn his candidature.

All the four candidates made this declaration in the presence of Shri Pushp Jain, Member of Parliament, Officer Bearer of the Conference and the Present Public that is present.

6. Keeping in view the highest feeling expressed by all the four candidates. I Rama Nand Jain, Chief Election Officer, in consultation with my associates Assistant Election Officers unanimously - Shri Nemichand Chopra Jain (Palli) has been elected to the post of National President of All India Shwetamber Sthanakwasi Jain Conference, New Delhi for the next two years."

3. As is apparent from the aforesaid proceedings, the candidates who were left in the field were S/Sh. Nemi Chand Chopra Jain and Nemnath Jain. They decided and agreed not to contest the election. One of them agreed to be made the President while the other agreed for the post of Chairman.

4. Admittedly defendant No. 3 has taken over and assumed the office of President w.e.f. 1.10.2002. However, defendant No. 2 who was nominated as Chairman has not assumed the said office nor has taken over Chairman of said conference.

5. Merely because the applicants happen to be voters does not mean that they can force themselves upon the candidates. Acceptance of post of Chairman by Nemi Chand Chopra Jain by agreeing to the wishes of the people who were present there impliedly amounted to withdrawal of Nem Nath Jain from the post of President. Had he been insisting in getting the election of President conducted as per schedule of programme he would have not agreed to the post of Chairman. However, counsel for defendant No. 2 Nem Nath Jain states that Mr. Nem Nath Jain did not agree to the post of Chairman and insisted for elections and Therefore he has no taken over as Chairman. Though there is not an iota of such an indication in the proceedings of the elections, even if it is so, Nem Nath Jain alone has locus standi to institute the suit and none else. He cannot be

arrayed as defendant and be a dormant or silent spectator to the proceedings initiated by only two voters on his behalf. Having accepted the decision of Chief Election Officer and that too by way of deferring to the wishes of people who were present there, he cannot be allowed to fire the gun from the shoulders of others. Even otherwise one or two voters cannot be allowed to institute the suit in a derivative form or manner as there have to be substantive numbers to clothe the suit in representative capacity. Such an action is abuse of the process of the court particularly when the aggrieved person namely Nemnath Jain has not come forward to challenge the validity or veracity of the proceedings as noted by Chief Election Officer.

6. These observations are being made only for the purpose of dealing the question whether the President so elected can be restrained from obtaining the accounts of Society and can be restrained from assuming the office of President or not. Neither is there a prima facie case for interim injunction established by the applicants nor does the balance of convenience lie in their favor nor would they suffer irreparable loss or injury. Rather the Conference would suffer irreparable loss and injury if the prayer of the applicants is allowed.

7. Application is misconceived, frivolous and has no merit and is hereby dismissed.

IA 10781/2002

The President shall submit the details of the operation of the accounts from time to time to the Governing Body of the Conference during the pendency of suit.

is stands disposed of.

S. No. 1594/2002

List on 21st February, 2003.