
(2007) 12 DEL CK 0151

In the Delhi High Court

Case No : C.M. No's. 15911-12, 16078 and 16978/07 in Writ Petition (C) 3787 of 2006 and W.P. (C) No. 7321 of 2007

Supreme Court Bar Asson. Multi State Cooperative Group
Housing Society Ltd.

APPELLANT

Vs

Central Registrar of Cooperative Societies
 Mohd.
Tajuddin Vs Supreme Court Bar Asson. Multi State
Cooperative Group Housing Society Ltd.

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 12 DEL CK 0151

Hon'ble Judges : Vikramajit Sen, J;S.L. Bhayana, J

Bench : Division Bench

Advocate : U. Sekhar, Pradeep K. Dubey and Abhigya, for SCBA in C.M. Nos. 15911-12, 16078 and 16978/07 in W.P. C 3787/2006 and Party in Person in W.P. C No. 7321/2007, for the Appellant; V.P. Singh Mukund, Jinendra Jain, Hemant Gupta, in C.M. No. 16978/07, Naushad Ahmed Khan in C.M. 11591-12/07, Upmanyu Hazarika, A.K. Mishra, in C.M. 16733/07, Gagandeep Sharma in C.M. 12636/07, U. Sekhar Pradeep K. Dubey and Abhigya for SCBA in W.P. (C) No. 7321/2007, for the Respondent

Final Decision : Disposed Off

Judgement

Vikramajit Sen, J.—A spate of applications have been filed in the interregnum between the initiation and culmination of the election process to the Board of Directors of the Supreme Court Bar Association Multi State Group Housing Society. The law on this question is well-settled, having withstood all assaults over half a century. The Constitution Bench had in *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Distt.* AIR (39) 1952 SC 64 observed that the word "election" takes within its sweep the entire procedure to be gone through to return a candidate to the Legislature. Their Lordships further opined that law does not contemplate two attacks on matters connected with elections, one under Article 226 in the course of the process of

election and the second after the election is completed. It was clarified that any matter, which has the effect of vitiating an election, should not be brought up at an intermediate stage before any Court. This proposition of law has been reaffirmed and applied by the Supreme Court in *Avtar Singh Hit Vs. Delhi Sikh Gurdwara Management Committee and Others*, One of us (Vikramajit Sen, J.) in *Avtar Singh Hit Vs. Delhi Sikh Gurudwara Management Committee and Others*, had been greatly impressed by the contention that since notices had not been issued/received by the Petitioner and he had consequently been precluded from participating in the election, the entire election process had become vitiated. It was on this premise that the election of the Members of the Executive Board of the Delhi Sikh Gurudwara Management Committee had been countermanded. This Order was reversed by the Division Bench whose view was upheld by their Lordships on the ratio of *Ponnuswami*.

2. These applications have been filed at a similar intermediate stage in the election process. We have perused the Report of Shri S.M. Aggarwal, Returning Officer on the subject of the conduct of the elections of the Society. Succinctly stated, he was impeded in completing the counting of the ballots by several members of the Society. We have carefully perused the said detailed Report. In our opinion, it will not be appropriate to accede to the requests made before us by various Applicants/Members that the election be countermanded, and repolling be ordered.

3. One of the arguments articulated before us is that persons who have not even paid their subscriptions have not only been allowed to vote but also to stand for elections. Although we are of the *prima facie* opinion that this may not be in consonance with law or equity, since the election process has already commenced, we must restrain ourselves from interfering with its reaching its culmination point.

4. We shall forbear from making any observations on the submission that some ballot boxes, allegedly misplaced, may have been interfered or interpolated with. The merits of such contentions would be jurally tested at the appropriate time.

5. Shri S.M. Aggarwal, Returning Officer, expressed his desire to resign. However, we decline to accept the resignation as, in our opinion, it is imperative that the counting of the ballot papers should be completed by him at the earliest.

6. We direct Shri S.M. Aggarwal, Returning Officer, to complete the counting of the ballots, which he was in the process of doing before a disruption was caused. This exercise be completed by him within thirty days from today. Shri S.M. Aggarwal, Returning Officer shall have the discretion to adopt whatever procedure he finds appropriate. He shall be free to choose his place of sitting; to choose his assistants; and to require and obtain police assistance, if he apprehends this necessity.

7. Needless to state any Objections which may already have been ventilated before us, or may have been perceived thereafter, may be initiated in accordance

with law. Shri S.M. Aggarwal shall be paid a sum of Rs. 25,000/by the Society within fifteen days from today. After completing the counting of the ballot papers the ballot boxes shall be stored with the Registry of the High Court of Delhi, in a place allocated by the Registrar-General.

8. Applications are disposed of in these terms.

9. W.P. (C) Nos. 3787/2006 & C.M. Nos. 7475/07, 12636/07, 16733/07, 16915/07, 16979/07 & W.P. (C) No. 7321/2007 & C.M. No. 13916/07

10. Renotify on 29.1.2008.

11. A copy of this Judgment be given Dasti under the signatures of the Court Master.