
(2011) 05 DEL CK 0105

In the Delhi High Court

Case No : Writ Petition (C) No. 704 of 2011 and CM Application No's. 1486, 2002, 3178, 3320, 4244 and 5263 of 2011

Swami Chakrapani

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 05 DEL CK 0105

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Vivek Sharma and Rajesh Raina and Indira Tiwari, Constituted Attorney, Akhil Bharat Hindu Mahasabha and Vinay Srivastava, Office bearer, for the Appellant; P.R. Chopra, for R1 and Tripurari Rai and Vineet Seth for Intervenor Madhu Mukul Tripathi, for Kamlesh Tiwari, Intervenor and Chander Prakash Kaushik, National President and Munna Kumar Sharma, National General Secretary, Akhil Bharat Hindu Mahasabha, for the Respondent

Judgement

S. Muralidhar, J.—The Petitioner claims to be the National President of the Akhil Bharat Hindu Mahasabha ("ABHM?"), an unrecognized registered political party. He challenges a communication dated 14th January 2011 by the Respondent Election Commission of India ("ECI?") which inter alia states that the ECI would not entertain "any communication received from any groups and will not recognize anyone as the authorized office-bearers of the party".

2. Based on a letter dated 6th September 2006 sent to the ECI by the Petitioner, followed by letters dated 6th July 2007 and 9th July 2007, the ECI by its communication dated 7th August 2007 addressed to the Petitioner informed that "the list of office-bearers submitted by the party by the letter dated 6th September 2006 has been taken on record". The said letter also referred to an earlier letter dated 18th May 2007 received from Dr. Indira Tiwari as regards the allotment of an election symbol and stated that since the party was a registered unrecognized political party, it was not entitled for either reservation or exclusive allotment of any election symbol.

3. In the meanwhile, CS (OS) No. 837 of 2007 had been filed in this Court by Mr. Bhai Paramjeet, Mr. Vaidya Neelendra Gautam, Mr. Indra Pal Singh and Mr. Yati Narsighanand (Deepak Bhagat) against the Petitioner Mr. Swami Chakrapani, Mr. Dinesh Chandra Tyagi and Mr. Chander Prakash Kaushik (the applicant in CM APPL No. 2002/2011). The suit was for a declaration that the claim of the Petitioner herein to be the National President of the ABHM was "unconstitutional, illegal and without authority". A declaration was also sought as to the invalidity of a resolution dated 1st April 2007 adopted under the Presidentship of the Petitioner herein to increase the number of General Secretaries of the ABHM from one to five and the members of the National Executive from forty to eighty. A permanent injunction was sought to restrain the Petitioner herein from calling any meeting of the National Executive/ Kendriya Mahasamiti in the name of the ABHM.

4. Following the filing of the above suit and an intimation being sent to the ECI in that behalf, a letter dated 21st August 2007 was sent by the ECI to the Petitioner stating that in view of the pendency of CS (OS) No. 837 of 2007, ECI had reviewed its earlier decision dated 7th August 2007 and had decided to withdraw the said decision forthwith. Consequently nobody was being recognized as the authorized office-bearer of the ABHM. It was further stated that "further cause of action regarding office-bearers of the party will depend upon the decision of the Hon"ble Court in the present suit".

5. On 13th August 2007 in CS (OS) No. 837/2007 the Court rejected an application being IA No. 9048/2007 for an interim injunction against the Petitioner herein. Subsequently, on 22nd March 2010 the suit was dismissed by the following order:

None for the Plaintiffs.

Previous order of the court would reveal that repeated adjournments were taken on 02.05.2009 and 27.07.2009. The Plaintiffs were again accommodated 04.12.2009.

In view of the repeated default of the Plaintiff, the CS(OS) No. 837/2007 and the pending applications are dismissed for non-prosecution.

6. It is an admitted fact that no steps have been taken for revival of the suit thereafter.

7. In response to letters dated 28th June 2010 and 12th August 2010 written to it, the ECI wrote a letter on 8th October 2010 to Dr. Indira Tiwari, National General Secretary of the ABHM as follows:

Madam,

I am directed to refer to your letters dated 28.06.2010 and 12.08.2010, on the subject cited, and to state that the Commission has decided that in the matter of office bearers of the party, the status quo ante as recognized by the Commission

by its letter No. 56/41/2003-JS-III dated 07.08.2007 and existing prior to the filing of the Civil Suit CS (OS) No. 837/2007 before the Delhi High Court (which was dismissed by the High Court on 22.03.2010), will be maintained, for the present. You are, therefore, advised to furnish the present list of office-bearers of the party, along with all supporting evidence/documents immediately.

8. As acknowledged in the impugned letter dated 14th January 2011 of the ECI, Dr. Indira Tiwari also submitted papers to show that the Petitioner herein had been elected as President of the ABHM for the years 2008-10 and 2010-12. A list of office bearers for the aforementioned period was also furnished to the ECI. The impugned communication dated 14th January 2011 further notes that even at that stage a claim had been made by a group led by Mr. Munna Kumar Sharma that they were the authorized office bearers "but they did not furnish any documentary evidence in support of their claim at that point of time." A third group led by Mr. Nand Kishore Mishra also claimed that they were the authorized office bearers of the ABHM. However, they also did not furnish any documentary proof, and therefore, that claim was also not given credence. The ECI further proceeded to note in the impugned order dated 14th January 2011 that:

Thereafter, on the basis of documents furnished by Dr. Indira Tiwari and in absence of any substantial documentary evidence submitted by the other factions of the party, the Commission took the lists of office-bearers submitted by Smt. Indira on record and communicated accordingly to the party vide its letter dated 11.11.2010.

9. The Petitioner has further placed on record, a copy of communication dated 11th November 2010 addressed by the ECI to one Mr. Rajesh Raina, Advocate in response to application under the Right to Information Act, 2005 wherein, it was stated that "as per the commissions present record, Mr. Swami Chakrapani is the National President of Akhil Bharat Hindu Mahasabha

10. Thereafter the ECI received the following representations/letters:

(i) dated 20.12.2010, 03.12.2010 (two letters), 08.12.2010, 10.12.2010 and 16.12.2010 from Shri Viresh Kumar Tyagi,

(ii) letter dated 10.11.2010 from Shri Indra Pal Singh,

(iii) letter dated 02.12.2010 from Shri Kamlesh Tiwari,

(iv) letters dated 10.12.2010 and 13.12.2010 from Shri Baba Pandit Nand Kishore Mishra, and

(v) letters dated 18.12.2010 and 22.12.2010 from Dr. Santosh Rai (Copies enclosed) raising objections and disputes with regard to the office-bearers of the party.

11. As noted in the impugned communication, the above persons challenged the election of the Petitioner as the National President of the ABHM and "also staked claim of themselves being the authorized office bearers of the party and having

expelled the rival claimants." Thereafter the ECI, in its impugned order dated 14th January 2011, proceeded to observe as under:

4. As you know well, the Akhil Bharat Hindu Mahasabha is a registered un-recognized political party and the Commission does not enquire into disputes within un-recognized political parties for adjudicating on claims regarding election of office bearers or expulsion of others made by rival groups within such parties, as in the instant case.

5. In view of the above, the Commission has now decided that the rival groups which have raised the dispute should either settle the dispute amicably within the party or through the competent court of law. Consequently, the communication given by Commission's letter of even number dated 11.11.2010, may be treated as withdrawn.

6. Until the above dispute is settled as aforesaid, the Commission will not entertain any communication received from any groups and will not recognize any one as the authorized office-bearer of the party (i.e. Akhil Bharat Hindu Mahasabha).

(emphasis in original)

12. It was submitted by Mr. Vivek Sharma, learned Counsel appearing for the Petitioner that there is no basis whatsoever for the ECI to have reversed its decision to take on record the list of office bearers as submitted by Dr. Indira Tiwari in response to the ECI's communication dated 8th October 2010. He submitted that in effect the ECI had reviewed its decision to maintain the status quo ante as recognized by the ECI's letter dated 7th August 2007. He submitted that mere giving of representations by those challenging the election of the Petitioner as the National President of the ABHM was insufficient reason for the ECI to recall its earlier decision. The ECI should have waited for the disputes to be resolved through the civil court before passing any order.

13. The petition has been opposed by Mr. Chander Prakash Kaushik (the intervener in CM APPL No. 2002/2011) and Mr. Kamlesh Tiwari (the intervener in CM APPL No. 3320/2011). Mr. Tripurari Rai, learned Counsel appearing for Mr. Chander Prakash Kaushik and Mr. Madhu Mukul Tripathi, learned Counsel appearing for Mr. Kamlesh Tiwari submitted that the course adopted by the ECI was the correct one. In the face of the claim of the Petitioner being disputed, the ECI had rightly decided not to recognize anyone as the office bearer of the ABHM till the disputes were not resolved in the civil court. It is submitted that any other decision of the ECI would have impliedly recognized the Petitioner to be an office bearer of the ABHM which in any event was beyond the jurisdiction and powers of the ECI. It was submitted by both counsel that this was an internal dispute within the party and could not have been resolved by the ECI.

14. Appearing for the ECI, Mr. PR Chopra, learned Advocate submitted that the decision communicated to the Petitioner on 7th August 2007 was of an

administrative nature which was not finally determinative of the rights of the respective claimants to be office bearers of the ABHM. It was a decision that could be reviewed depending on the developments from time to time. It is further submitted that in any event the ECI does not decide the internal disputes of an unrecognized registered political party. In the circumstances, the impugned decision not to recognize the Petitioner as the President of the ABHM did not call for interference.

15. At this stage, it may be mentioned that by an order dated 4th February 2011, this Court had stayed the operation of the impugned communication dated 14th January 2011 of the ECI. From the letter dated 21st August 2007 written by the ECI to the Petitioner, it is apparent that the decision to recall the earlier decision communicated on 7th August 2007 was on account of the pendency of suit CS (OS) No. 837/2007. The said letter itself indicated that the ECI would take a further decision depending on the outcome of the said suit. The suit was dismissed by this Court on 22nd March 2010. Consequently, there was no pending challenge to the claim of the Petitioner to be the National President of the ABHM. The very fact that such suit was filed in which not only the Petitioner but also Mr. Chander Prakash Kaushik (the intervener in CM APPL No. 2002/2011) was the Defendant, itself shows that the Petitioner had laid the claim of being the President of the ABHM even at the time of filing of the said suit. With the dismissal of the said suit, the legal challenge to the Petitioner's claim failed. While this by no means precludes a challenge in the future by anyone else to the Petitioner's claim, including the interveners in CM APPL No. 2002/2011 and 3320/2011, the fact remains that neither of those interveners have chosen to approach the civil court seeking any declaration to that effect.

16. Consistent with the stand that it was not expected to adjudicate on the internal disputes of an unrecognized registered political party, the ECI ought not to have acted upon the letters received by it in November and December 2010 challenging the Petitioner's election as the President of the ABHM. The ECI ought to have informed those claimants that they had to go to the Civil Court to have their claims adjudicated. While the observation in the impugned order dated 14th January 2011 that the ECI has decided that the groups which have raised the disputes "should either settle the dispute amicably within the party or through the competent Court of law" were justified, the decision in para 6 of the impugned order that the ECI "will not entertain any communication received from any groups and will not recognize any one as the authorized office-bearer" of the ABHM, is unsustainable in law. The mere fact that letters were written to the ECI by rival claimants was not a good enough reason for the ECI to reverse its decision to accept the list of office bearers submitted by the Petitioner. With the dismissal of CS (OS) No. 837/2007, the logical step for the ECI to take was to revive the decision taken on 7th August 2007 which is in fact what it did in its communication to the Petitioner's group on 11th November 2010. In other words, there was no justification for the ECI to reverse the said decision by means of the impugned communication dated 14th January 2011.

17. For the aforementioned reasons, this Court sets aside the impugned order dated 14th January 2011 of the ECI. The intervention applications, i.e., CM Application Nos. 2002/2011 and 3320/2011 are disposed of by granting liberty to the Applicants to seek their remedies in appropriate proceedings. The present order will not also preclude the ECI from acting upon an order hereafter passed by a civil court of competent jurisdiction in the matter.

18. The writ petition is accordingly allowed and the applications are disposed of, but in the circumstances, with no order as to costs.