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CS No. 3023/17

Alumini Association, Delhi College of Engineering Vs. Pramod Kumar

27.09.2017

Present: Sh. Suresh Tripathi, Ld. Counsel for the Plaintiff.
Sh. Abhishek Gupta, Ld. Counsel for the Defendant No. 1.
Sh. Apoorva Aggarwal, Ld. Counsel for Defendant No. 2.

Arguments on application under Order 39 Rule 1 & 2 CPC filed by plaintiff association heard. Ld. counsel for the defendants have submitted that some time may be given to file reply to the said application, which is opposed by ld. counsel for the plaintiff. Considering the fact that proposed elections are scheduled to take place on 06.10.2017 and today is last working day, before 03.10.2017, this court is proceeding further and deciding the said application, at this stage. This order is made, considering the possibility that in case this matter is adjourned today and said application is not decided today, then it will lead to confusion amongst the members of alumini association, Delhi College of Engineering, which is a registered body with Registrar of Societies vide registration No. S33032 in 1998.

The issue raised, in this case, at this stage is whether elections, which are sought to be conducted by defendants vide public notification dated 12.09.2017, as annexed with the plaint, can be given a go ahead or not? In order to decide the said issue, before coming to the facts of this case, I must mention here that in such like matters, where an injunction is sought for stay of election processes, unless there is a rare and exceptional case, the court should not grant an ad interim relief and should not withhold the election process or election result. This is the law of the land, as held in case laws titled as Deoraj Vs. State AIR 2004 SC 1975, Boddula Vs. State AIR 1996 SC 1595 and Cotton Corporation of India Vs. United Industrial Bank AIR 1983 SC 1272. So law, as laid down by Hon'ble Apex Court in aforementioned case laws is that unless there are exceptional circumstances, courts should refrain from stopping the election processes. The said exceptional circumstances, will vary from case to case and as such, no strait jacket formula can be made, for applicability of said principal. In the light of aforesaid law, I am now proceeding to appreciate and decide the issue, highlighted above, in my subsequent paragraphs.

Grievance of the plaintiff, is that defendants have declared elections of the aforesaid association, vide public notice dated 12.09.2017, without having any right to do so. For appreciating the said contention, my attention is drawn towards the public notice dated 12.09.2017. The said notice declares "Elections 2017, file nominations now for 10 seats of governing council (last dated 21.09.2017). Please check and update your data (e-mail and mobile) by 21st September for casting your vote online, details please visit website dcedtualumni.org, Pramod Adhlakha (Returning Officer)".

The said notification therefore clearly indicates that elections are going to take place with respect to 10 posts only. The by-laws, governing the said elections viz by-law 4 (iv), which is an admitted document mandates that elections to the governing body shall held once in two years. The same will be held by show of hands and/or secret ballot. The said bye-laws, nowhere recognize elections to be conducted online. In fact, after enquiring from counsels for the parties, this court has come to know that such manner of conducting elections online is unprecedented. That seems to be the first illegality in the aforesaid notification.

Moving further, purpose of election, in common parlance, is to involve whole of the members, who are eligible for casting vote. This principal of common law jurisprudence, is based on the right of every eligible member to cast vote, which he can do, only when he knows about the process of election. In this case, it is not the situation, that all the members of the association in question have got their e-mails registered with defendants. It is not the case that defendants have any specific mode of getting receiving of the aforesaid notice dated 12.09.2017 from all the members of the association. The situation is that some members of the association have e-mails and some do not. In such situation, to expect that all the members of the association, eligible to cast vote, are net savy, for the purpose of casting their vote, will be highly improbable. Since civil cases have to be decided on probabilities, so I am foreseeing that possibility, which in a way will lead to non-accomplishment of the ultimate goal of conducting elections. Once members are not able to cast their vote, then whole process of conducting elections, go haywire. That possibility can not be ruled out in this case.

Next comes the fact that notification dated 12.09.2017 talks about elections for 10 seats. Again, the bye-laws, referred by the parties, reflect that elections can be conducted for a minimum posts of 9 and for a maximum posts of 15. Those bye-laws, nowhere specify that elections have to be conducted for specific number of seats, as mentioned in the notification. The said notification, as such nowhere justifies the basis of declaration of elections, precisely for 10 seats only. That again indicates illegality in the said notification.

In addition to aforesaid reasoning, notification dated 12.09.2017, nowhere talks about the details of process of election. For said process, one has to go to the site, referred in the said notification. The net result is that a common man, bereft of his social background and his upbringing, coupled with his knowledge regarding internet, is expected to visit the site, referred in notification dated 12.09.2017, which is too much for an asking. The said manner, of conducting elections, though is not illegal, but it certainly give rise to a situation/probability wherein any member can come up and raise issue, regarding non-receiving of information pertaining to election. The said situation can be seen as a possible situation and not a remote situation. If that is so, then the whole purpose of conducting fair and transparent elections, will be frustrated. Viewed from said perspective, also I find that scheduled elections, will cause prejudice to the rights of the concerned eligible members.

The aforesaid issue, can be seen from flip side also. Let us foresee a situation that this application is dismissed and elections are allowed to be conducted. In such situation, the position will be that this court will be allowing the said elections, knowingly evident shortcomings in the said elections, which will be travesty of justice. The concerned members, in the light of aforesaid possibilities, will raise issue regarding this court, giving green signal to the elections, knowingly aforesaid lacunas in the manner in which elections are going to take place. So it will be improper and illegal on the part of this court to dismiss the application in hand, in the light of aforesaid appreciation.

Further, I am cognizant of the law that for deciding such like applications, three cardinal principals of law viz balance of convenience, prima-facie case and irreparable loss, should be born in mind by the court. In this case, plaintiff is able to show a dispute regarding legality of the proposed elections which create prima-facie case in its favour. Plaintiff, considering the highlighted shortcomings in the election process, will suffer irreparable injury, which can not be compensated in terms of

money, if application is dismissed. Lastly, balance of convenience, lie heavily in favour of plaintiff considering the manner in which elections are going to take place. All the aforesaid principals, at this stage, are invoked in favour of plaintiff.

In addition to aforesaid reasoning, another factor, born in mind by this court is the fact that scheduled elections, are not feasible, considering the fact that all members of association in question are not residents of India. The publication in the news daily in India, by no stretch of imagination can give notice to the persons, residing outside India. It is not the case that defendants have telephonically informed the non-resident Indians members regarding elections in question. So as such, grievance of such like members, can be very well foreseen and appreciated by this court, at this stage.

Lastly, the fact that less than a month time period is given by defendants, for conducting elections in a body, comprising of more than 2500 members by itself speak volume about the degree of care and caution, taken by the defendants for conducting fair and transparent elections.

Based on aforesaid appreciation, application of plaintiff, stands allowed. Election notification dated 12.09.2017, stands stayed till the disposal of this suit. Noting in this order, will tantamount as an expression of final verdict of this case. Parties reserve their right to raise their claims, as per law during trial. Defendants are specifically directed to restrain themselves from proceeding with the elections and notify this order by publication and through internet, for the benefit of the members concerned, in the same manner they had notified about the proposed elections.

At this stage, ld. counsel for defendants have submitted that suit filed by the concerned person is illegal as he has no locus-standi, that plaintiff has not sought the stay of elections on the basis of defect in notification dated 12.09.2017. Submissions noted and as such, they are not tenable for the reason that issue involved in this case is with respect to the stay of elections for which necessary appreciation is done above. It is a reasoned order. This court has the power to give reasons, based on the documents filed by the parties and is not dependent upon the case of each party. It is the substantive rights of the parties, which needs adjudication in the court of law and that adjudication, includes the adjudication, based on the reasoning mentioned above.

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Defendants are directed to give notice of this order, to all the members, precisely with respect to stay of the elections. They have the liberty to not put whole of this order on the media forums as highlighted above. Further, this order be complied with, within 6 days from now.

Defendants are given 30 days time period to file written statement, by supplying advance copy of the same to the plaintiff.

Matter is adjourned. Be listed **on 11.01.2018**.

Copy of order be given dasti to the parties.

At - 20/9/17
D.P.
27/9/17

SD
वरिष्ठ सीनियर जज एवं क्लर्क नियंत्रक
Senior District Judge
[Prashant Sharma]
SCJ-cum-RC: Central District:
Delhi: 27.09.2017