

Vinod Kumar Vs. All India Blind Relief Society (Regd) and ors.

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Court : Delhi

Decided On : Sep-04-2013

Judge : P.K.Bhasin

Appellant : Vinod Kumar

Respondent : All India Blind Relief Society (Regd) and ors.

Advocate for Def. : Mr. Anil Sapra, Mr. Gajinder Kumar, Mr. Chandra Shekhar, Mr. Jayant Tripathi, Ms. Ruchi Jain, Mr. Sudhir Nandrajog, Mr. Arvind Pandey, Mr. O.P. Sisodia

Advocate for Pet/Ap. : Mr. Naresh Thanai

Judgement :

* % IN THE HIGH COURT OF DELHI AT NEW DELHI I.A. Nos.9182/2011 & 10355/2012 in CS(OS) 1383/2011 Date of Decision:

4. h September, 2013 + # ! VINOD KUMAR Plaintiff Through: Mr. Naresh Thanai, Advocate versus \$ * ALL INDIA BLIND RELIEF SOCIETY (REGD) & ORS. Defendants Through: Mr. Anil Sapra, Senior Advocate with Mr. Gajinder Kumar and Mr. Chandra Shekhar, Advocates for defendant Nos.1, 6 to 10 and 12 to 14 Mr. Jayant Tripathi & Ms. Ruchi Jain, Advocates for D-2 Mr. Sudhir Nandrajog, Senior Advocate with Mr. Arvind Pandey, Advocate for defendant Nos.3 & 4 Mr. O.P. Sisodia, defendant No.5 in person CORAM: HON'BLE MR. JUSTICE P.K.BHASIN ORDER P.K. B HASIN, J: In this suit the plaintiff is

primarily challenging his removal as the President of defendant no.1 Society(to be referred as the Society hereinafter), which position he was admittedly holding since 15 th November, 2009, and induction of defendant no.3 in the Governing Body of the Society in his place as the President w.e.f. 28th March, 2011 even though his tenure was for a period of five years expiring in November,2014. The plaintiff also challenged the removal of defendant no.2 as the General Secretary of the Society alongwith him and appointment of defendant no.4 in his place.

2. The plaintiff had felt aggrieved by the said decision of the Society taken on 16th March, 2011 and so he filed the present suit and made the following prayers in the plaint: (a) Pass a decree of declaration declaring the presidentship of defendant no.3 illegal being without any proper elections by the General Body and appointment of defendant no.4 as General Secretary illegal he being not even member of defendant no.1 on 16.3.2011. (b) That during the pendency of the present suit defendants 3 and 4 may be restrained from operating the bank account of defendant no.1 and from functioning as President and General Secretary of defendant no.1. (c) Pass a decree of permanent injunction restraining the illegally appointed president defendant no.3 and defendant no.4 General Secretary functioning as members of the governing body of defendant no.1 or taking any decision in respect of working and functioning of defendant no.1 society and (d) Pass a decree of mandatory injunction for holding fresh elections of defendant no.1 under the supervision of Local Commissioner appointed by the Honble High Court and (e) 3. pass such other or further order(s) as this Honble Court may deem fit and proper in the facts and circumstances of the case. Alongwith the plaint the plaintiff had also filed an application Under Order XXXIX Rules 1 and 2 C.P.C. in which the following ad interim directions were also sought: i. Order restraining defendants 3 and 4 to function as President and General Secretary of defendant no. 1 till the general elections are held and during the pendency of the present suit and not to enroll any new member of the defendant no. 1 society; ii. Defendants 3 and 4 may be restrained from operating the bank account of defendant no. 1 with defendant no. 22 and may also be restrained from opening any other bank account in the name of defendant no. 1 without the permission of the Honble Court during the pendency of the present suit. iii. Defendant no. 3, 4 and 25, may be ordered by the Honble Court to produce the

record of the resolution passed by the governing body of defendant no. 1 whereby the signatories for operating the bank account have been changed and defendant no. 22 may be ordered to produce the bank statement w.e.f. 16.3.2011 upto date.

iv. Honble Court may kindly be pleased to order for immediate elections of defendant no. 1 under the supervision of a Local Commissioner appointed by the Honble Court and till the elections are held plaintiff and defendant no. 2 who were elected as President herein the plaintiff and General Secretary herein defendant no. 2 of defendant no. 1 may be permitted to run the affairs of defendant no.

1. v. Any other relief the Honble Court deems fit in the circumstances of the present case.

4. It is admitted case of the parties that the plaintiff was the President of the Society and defendant no. 2 was its General Secretary and their tenure was for a period of 5 years which also admittedly has not expired so far. The plaintiffs case is that he had been acting as the President ever since November, 2009. However, when on 7th May, 2011 he went to the Societys bank for collecting bank statement he was informed by the bank Manager that the same could not be supplied to him as he was no longer the President of the Society since the Society had appointed someone else as the President w.e.f. 28th March,2011 pursuant to some resolution passed on 16th March, 2011 after accepting his resignation and also that even the General Secretary, defendant no. 3 Shri Naresh Kumar had also been replaced by defendant no. 4 Shri Laxman Kumar Sagar since he had also resigned. The plaintiffs main case in the plaint as well as at the time of hearing was that neither he nor Shri Naresh Kumar had resigned on 16th March, 2011 and, therefore, there was no occasion for the Governing Body of the Society to appoint defendant no. 2 as the President and defendant no. 4 as the General Secretary who in any case was not even a member of the Society on 16 th March,12011. The plaintiff alleges in the plaint that the so called resolution of the Governing Body of the Society passed on 16th March,2011 when his resignation and that of defendant no.2 were allegedly tendered and accepted is illegal and without any authority. In fact, he has also pleaded, no such resolution was passed on that date nor the resignation of the plaintiff was in the agenda of the meeting of that date.

5. This suit is being contested by defendant nos. 1, 3, 4 as also defendant no.5, who is the Secretary of the Society. Defendant no.2, whose removal as the General Secretary was also being challenged by the plaintiff, is not contesting the suit.

6. The defence of the contesting defendants is that in the meeting of the Governing Body of the Society held on 16 th March, 2011 the plaintiff had insisted upon the acceptance of his resignation which he had tendered earlier on 28th December, 2009 and on the same date defendant no. 2 had also tendered his resignation and accordingly resignations of both of them were accepted. It is also their case since the plaintiff had not only resigned as the President of the Society but he had also given up his life membership and consequently he ceased to have any kind of association or interest in the Society with effect from 16th March, 2011 and, therefore, he has no locus standi to file a suit of the present nature challenging the appointment of defendant nos. 3 and 4 as the President and Secretary respectively of the Society. It is alleged by these contesting defendants that the plaintiff had concealed from this Court the material fact that he had already tendered his resignation on 28th December, 2009 and so for that reason alone not only the injunction application but even the suit itself is liable to be dismissed straightaway.

7. In the replications to the written statements of these defendants the plaintiff admitted the fact that he had tendered his resignation earlier on 28th December, 2009 but his stand is that that resignation was never acted upon or accepted by the Society at any time and not only that he had been acting as the President of the Society thereafter also till 16th March, 2011. It is his case that on that date there was neither any item in the agenda of the meeting of that date for consideration of the earlier tendered resignation by him or for appointment of new President and General Secretary and these two defendants in collusion with each other had forged a resolution purporting to have been passed on 16 th March, 2011 accepting the resignation dated 28 th December, 2009 tendered by him as also the resignation allegedly tendered by defendant no. 2 on 16 th March, 2011(defendant no. 2 is not contesting the suit). Acceptance of resignation of the plaintiff and defendant no. 2 is also being challenged as illegal on the ground that

the same had in any case not been accepted by the newly appointed President Shri Ashok Lakhani, defendant no. 3 as was evident from a perusal of the resignation letters which do not show his signatures thereon in token of acceptance of the resignations. Besides the aforesaid stand taken by the plaintiff, it is also his grievance that the newly appointed President and General Secretary of the Society have not even called any General Body meeting after their taking over and they were indulging into illegal activities in connection with the affairs of the Society and therefore, this Court should order holding of fresh elections for the constituting a new Governing Body of the Society.

8. After taking the aforesaid stand in the replications the plaintiff moved I.A.No.10355/2012 seeking permission to amend the plaint for including the challenge to the legality of the resolution dated 16 th March,2011 placed on record and being relied upon by the Society and other three contesting defendants. That application was also opposed by the contesting defendants.

9. In my view the application under Order XXXIX Rules 1 & 2 C.P.C. as well as under Order VI Rule 17 C.P.C. are liable to be rejected.

10. The plaintiff had admittedly tendered his resignation on 28 th December,2009 but that material fact was suppressed by him by not even referring to that fact in the plaint. This suppression of a very material fact by the plaintiff is by itself sufficient to deny any ad interim relief to him. The plaintiffs case being set up now during the hearing and as was also stated in the plaintiffs brief written submissions dated 14th January,2013 , is that his resignation was not accepted and in fact the resignation letter was returned to him by defendant no.5 in May,2010 but subsequently it was noticed by him that the document returned to him was a photo copy and not the original resignation letter. This plea, prima facie, is too improbable to be accepted particularly considering the fact that the plaintiff is an advocate. In fact, this kind of a stand introduces further weakness in his case. In any case, even if that was so the plaintiff should have mentioned all these facts in the plaint. Since the plaintiff himself had decided to resign as the President and also to surrender his membership of the Society he, prima facie, is estopped also from contending that his resignation having not been accepted immediately on

being tendered could not have been accepted on 16 th March,2011 and in any case he cannot claim ad interim injunction against the newly appointed President and General Secretary and a direction for holding of fresh elections on the ground that his resignation had not been accepted immediately and so could not be accepted on 16 th March,2011. He has no prima facie case in his favour nor is the balance of convenience in his favour. And since he himself had decided to resign as President and to surrender his primary membership of the Society there is no question of his suffering any loss, much less irreparable one, in case his application for ad interim injunction is dismissed.

11. As far as the amendment application is concerned, the plaintiff now wants to take the stand that he had tendered his resignation under pressure of the Secretary of the Society, defendant no.4. This is totally contrary to the plea already taken in the plaint that he had never tendered resignation and the proposed amendment thus introduces altogether a new case which cannot be permitted by way of amendment in the plaint. Amendment application is also liable to be rejected since the amendment sought for is a mala fide attempt of the plaintiff to wash off the effect of concealment of material facts by the plaintiff in the existing plaint, after that concealment was highlighted by the contesting defendants in their written statements, and so for that reason also the amendment application is liable to be rejected.

12. So, the two applications filed by the plaintiff are dismissed but with the observation that the dismissal of injunction application is only on a prima facie view of the matter and there is no final expression of opinion on the merits of the case. P.K.BHASIN, J SEPTEMBER 4 2013

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