

SUPREME COURT OF INDIA

Varinder Partap Singh Sandhu

Vs.

Pritam Singh Sarinh

C.A.Nos.3400-3401 of 2010

(R.V.Raveendran and R.M.Lodha JJ.)

12.04.2010

ORDER

1. Leave granted in SLP [C] Nos. 5885-5886/2010. Heard learned Counsel for the parties.

2. Two colleges known as Guru Nanak National College for Men and Guru Nanak National College for Women at Nakodar District Jalandhar, are run by a Society known as College Council Nakodar (third respondent herein, for short 'the Society'). The first respondent claims to be the President and second respondent claims to be the Secretary of the said Society.

3. The appellant (Varinder Pratap Singh Sandhu) is the son of Ajit Singh, a life member of the said society. The said Ajit Singh filed a suit in the year 2004 seeking permanent injunction to restrain the first respondent from either representing to be the President of the Managing Committee of the College Council, Nakodar running the two colleges or from interfering with the affairs of the said institutions.

4. In the said suit, an application for temporary injunction was filed by Ajit Singh. The trial court after hearing parties made an order dated 17.1.2005 granting an interim injunction restraining the first respondent from acting as the President of the society. The trial court appointed the Additional Deputy Commissioner, Jalandhar as the Receiver to run both the institutions with the assistance of the Principal of Guru Nanak National College for Men, Nakodar, the Sub-Divisional Magistrate, Nakodar and Sub-Divisional Magistrate, Shahkot as Ex-officio members till the disposal of the suit or till the election of the Managing Committee, whichever was earlier. The trial court also directed the Additional Deputy Commissioner to explore the possibility of early election of the Managing Committee in accordance with the constitution. The said interim order was challenged by the first respondent by filing an appeal before the Additional District Judge, Jalandhar. The Appellate Court by its judgment dated 11.9.2006 allowed the Miscellaneous Civil Appeal, set aside the order of the trial court and directed expeditious disposal of the suit. It was of the view that it would be in the interest of the colleges and the students if the first respondent was allowed to

continue as President and the balance of convenience was also in his favour as he was associated with the Colleges for about 30 years back.

5. The said judgment of the Appellate court was challenged by the appellant (his father having died in the meanwhile), by filing a revision before the High Court on 10.11.2006. On 18.9.2007, the revision petition was admitted and judgment of the Appellate court was stayed with a direction that the order dated 17.1.2005 passed by the trial court will revive and be operational. Thereafter, on 18.8.2009, a learned Single Judge of the High court heard the revision filed by the appellant and allowed it with an observation that detailed order would be dictated later on.

6. However, on the same day the High Court made an order that while dictating the judgment it came across some compromise which showed that the first respondent was elected as President in the year 1998 and therefore the matter should be re-heard. After re-hearing, learned Single Judge disposed of the revision petition by order dated 10.9.2009. During the hearing, a purported copy of the "constitution of Guru National Colleges (Men & Women), Nakodar" was made available to the court. He referred to the four categories of persons who should be the members of the society, who should be members of the Executive Committee and the Managing Committee, the 15 persons who were found to be the land donors and the list of 10 of the land donors who were alive. He also noted the submission of appellant that the first respondent was continuing as President without any election for more than a decade. Without any discussion relating to the merits of the case and without recording any finding on the disputed issues, the learned Single Judge proceeded to dispose of the revision petition. The relevant portion is extracted below:

“To constitute the Executive Committee two members are to be elected from the land donors. The constitution prescribes the Managing Committee to be consisting of founder members or their nominees. The founder members as per the constitution are:

(1) Sardami Prabhjot Kaur

(2) Jathedar Pritam Singh

(3) Ch. Darshan Singh

(S. Umrao Singh and S. Resham are stated to be dead).

It is the duty of the Managing Committee to fill up vacancy which may occur in the Managing Committee and Executive Committee and therefore it will be open to these persons to nominate a member of the Managing Committee in place of S. Umrao Singh and S. Resham Singh.

Record produced shows that except for the members of the Managing Committee and few donors of agricultural land who are still alive there are no other person who has

been accepted by the Managing Committee by paying donation as fixed by the Managing Committee from time to time nor the eminent educationalists have been nominated so far. The Managing Committee shall, therefore, take steps to nominate two eminent educationalists to be the members of the Managing Committee.

The members of the Managing Committee for the time being are directed to invite donations from the public for functioning of the Society and enroll at least 100 persons out of the persons who apply and offer the maximum donations. These members so enrolled would constitute the General Council along with the members of the Managing Committee and donors of agricultural land who are alive along with eminent educationalists. The Managing Committee thereafter shall elect two persons from the land donors who are alive and two persons from other members i.e. out of 100 who are enrolled to be the members of the Executive Committee along with the members of the Managing Committee. This process of enrolment and constitution of Executive Committee be completed within one month of receipt of certified copy of this order by the founder members referred to above.

On the constitution of the Executive Committee the Managing Committee thereafter shall elect the President, Vice President, Secretary and also appoint suitable person as Joint Secretary.

Jathedar Pritam Singh son of S. Pal Singh resident of village Sarinh, Tehsil Nakodar District Jalandhar is appointed as Election Officer as also the Executor of this order. He shall be at liberty to convene the meeting of the Managing Committee for the purpose of nomination of the members in place of deceased S. Umarao Singh and S. Resham Singh. He shall also be responsible for inviting donations from public for being included in the general council and thereafter constitute Executive Committee and hold election of the President, Vice President and Secretary along with assistance of other members of the Managing Committee.

It is however, made clear that after the constitution of body as per constitution it shall be open to the Managing Committee thereafter to enroll members in the general council as per the constitution. Limit of 100 fixed in this order is only for the purpose of constituting the body for the present.

The interim order passed by the learned trial Court is vacated. Old Managing Committee shall resume its functioning. The President or other members shall be entitled to carry on day to day functioning but will not be entitled to take any major decision regarding appointment and termination of staff members who are functioning at present.

Revision disposed of in the above terms with the consent of the parties.”

7. The appellant filed an application for recalling the said order dated 10.9.2009 stating that he had not consented to the order that was passed. The relevant portions of the review petition are extracted below:

“That this Court, after hearing the parties on merits, allowed the revision petition by order pronounced orally on 18.08.2009. The case was again listed for rehearing. During the course of arguments on 08.09.2009 parties agreed to the passing of a consent order that election to the Managing Committee will be held within one month and election officer will be appointed by this Court after draw of lots from the names of members. In all fairness names of parties to the litigation could not be added to the box from which lot was to be drawn in order to avoid giving unfair advantage to any one. This consent order agreed to by the parties on 08.09.2009 was neither written down nor signed by any one.

5. That thereafter order dated 10.09.2009 was passed by this Court which is not as per the consent order agreed on 8.09.2009. Neither the order consented to by the parties nor it is stated if lots were drawn as agreed and in the lot drawn name of Sh. Pritam Singh Sarinh was written. This is not so stated because lots were obviously not drawn. The petitioner never consented to the order passed by this Court on 10.09.2009. The petitioner never consented to the holding of election as per constitution propounded by respondent Sh. Sarinh. Admittedly the original constitution as framed in the year 1969 was not disputed by Sh. Sarinh in the case filed by Principal Balwant Singh and on the basis of the said constitution it was held by the Court in the said suit that Sh. Sarinh is not a member of the Managing Committee - that finding was upheld in appeal and revision in this Court. The said constitution is on the file of this case. It has neither been revoked to date by the General Council nor any new constitution has been framed in its place. Election ordered to be held by compromise order dated 7.09.1974 (P-3 with the revision petition) was to be held as per the constitution brought on record by the petitioner.

6. That a perusal of the order passed by this Court shows that a carte blanche has been given to Sh. Pritam Singh to do whatever he likes and assume control of the College Council in which effort he failed time and again. The petitioner never agreed to giving of a carte blanche to Sh. Pritam Singh Sarinh nor any such thing was even remotely hinted at while stating the consent order proposed to be passed. The petitioner could not agree to passing of such an order because he was fighting against usurping of management of the colleges by Sh. Pritam Singh Sarinh - he never consented to the passing of order passed on 10.09.2009.

7. That in view of the matters stated above the petitioner respectfully prays that order passed by this Court dated 10.09.2009 may kindly be recalled and order as consented to by the parties on 08.09.2009 may kindly be passed or alternatively the revision petition may kindly be disposed off on merits and not on the basis of consent as noted in order dated 08.09.2009.”

8. The learned Single Judge dismissed the review petition by order dated 15.10.2009 by levying costs of Rs. 20,000/-, observing as follows:

“The application is based on wrong averments that no consent was given. The plea is totally misconceived and figment of imagination of the applicant. It was also not a compromise between the parties, which was required to be signed by the parties. The consent was given by the parties to pass an order in consonance with the Constitution, to hold the election in order to avoid personal disputes, in interest of smooth running of the college, It has also been wrongly mentioned that order is not as per the consent given. It is also wrongly mentioned that no draw of lot was done. As already observed, it was left to the Court to select any person out of the founder members.”

9. The said orders dated 10.9.2009 and 15.10.2009 are challenged in these appeals by special leave. The appellant raised among others, the following contentions:

“(i) The learned Judge having allowed the revision petition by an order dated 18.8.2009, ought not to have recalled the order on the ground that subsequently he found some material on the basis of which the matter required to be reheard.

(ii) The consent given by appellant was for a direction to hold elections within one month in accordance with the constitution of the third respondent society (produced as Annexure P1 before this Court). But the High Court had acted on a constitution (produced as Ann; P11 before this Court) which was neither authenticated nor the real constitution and issued several directions to which he had not consented.

(iii) When he filed a review petition setting out what was consented to by him, the High Court dismissed the petition by observing that he had filed the review petition denying having given the consent.”

10. There is no dispute that the society was registered in the year 1969. When the matters came up for consideration before this Court on 15.3.2010, this Court noted the contention of the appellant that the High Court has relied upon a wrong constitution of the society; that the appellant's claim was that the constitution of the society was as per Annexure P.1, whereas according to the respondents, the constitution of the society was as per Annexure P.11; and that the appellant had submitted that if the constitution of the society was as per Annexure P.1, the first respondent would be ineligible to be an. office bearer of the society. As there was a serious dispute as to whether the constitution relied upon by the High Court was really the constitution of the society, this Court directed the appellants and respondents to produce certified copies of the constitution issued by the concerned Registrar of Societies in State of Punjab.

11. In pursuance of it, the appellant produced an attested copy of the constitution (a copy of which was already produced by him as Annexure P1 to the special leave petition) stating that

he has secured the attested copy from Guru Nanak Dev University and the Director of Public Instructions, Punjab. The copy produced is attested by the University authorities. This copy is different from what was relied upon by the High Court and supports the contention of the appellant. The appellant also submitted that the Registrar of Societies had not furnished the certified copy of the constitution on the ground that the old records had to be searched (sic) it is not yet traced. The relevant portions of the said constitution are extracted below:

“4. MEMBERSHIP - All these persons or their nominees who have donated land for the college site shall be the founder members and shall continue as such for their lives. Their nominees will continue as members after their death.

(b) PATRONS - (i) Any person who pays Rs. 25,000/- or more or donate any property of the same value or collect Rs. Fifty thousand will be patron for his life.

(ii) A nominee of the patron shall be member after his death and will continue as member during his life.

(c) PERMANENT MEMBERS - (i) Any person on payment of Rs. One thousand to the college council shall be a Donor member of the council. He will be entitled to nominate his successors of life.

(d) REPRESENTATIVE MEMBERS

A village or any institution or society shall have the right to send representative member for contributing at least 5000 rupees to the council funds. The Sarpanch or President of the Institution shall be such members.

(e) ORDINARY MEMBERS

Any person on payment of Rs. 100/- shall become an ordinary member of the college council for five years. He will avail all rights of membership that he will not be entitled to vote. If and when he completes payment of one thousand, he shall have right to vote.

7. MANAGING COMMITTEE

The college council shall have a managing committee, consisting of not more than 27 members. The managing committee shall be constituted in the following manner:

a) Nine members shall be elected by founder-members from amongst themselves.

b) 17 members shall be elected by life-and representative member; of the college council by a single non-transferable vote.

c) The Principal shall be ex-officio member.

d) The patron shall in so fact be a member of managing committee in addition to 27 members above mentioned.

8. OFFICE BEARERS

The managing committee shall elect a president, a vice-president, Hony. Secretary and a treasurer for five years from amongst the committee members.”

12. On the other hand, the first respondent has filed an affidavit stating that the third respondent was registered as No. 75 of 1969-70 on 10.10.1969 under the Societies Registration Act, 1860; that the issue as to which of the constitutions is genuine (Ann. P1 or Ann. P11) does not affect his eligibility to be an office bearer of the third respondent; that the constitution that was relied upon by the High Court (Annexure P11) was not produced by him, but was produced during hearing by the Joint Secretary of the Managing Committee of the Society; and that the constitution relied on by the High Court was not the original constitution, but a constitution adopted by the then Managing Committee on 14.9.2002. He also confirmed that the copy of the constitution which was with the University, was what was produced by the appellants.

13. It is thus clear that the 'constitution' relied on by the High Court was not the constitution of the society. Therefore only thing that requires to be done is to ascertain whether Annexure P1 produced by the appellants (from the records of the University) is the real constitution of the society. But, neither party has produced the certified copy issued by the Registrar of Societies which would be the authentic constitution. Appellants relies upon a copy furnished by the University. The copy relied upon by the High Court was not the constitution of the society at all. We are of the view that the learned Single Judge ought not to have received a constitution which was not filed with an affidavit and which was not part of the record and which stated that it was prepared by the alleged Managing Committee on 14.9.2002. He committed a serious error in proceeding to decide the entire matter on the basis of such constitution. The appellants admitted that he had consented to revision being disposed of by directing an election in terms of the constitution, that is the original constitution. As the entire order is based on the said constitution which is admittedly not the constitution of the society, we are of the view that the order of the learned Single Judge of the High Court cannot be sustained.

14. There is no dispute that both sides had agreed before the High Court that an election should be held. Necessarily the election should be as per the constitution of the society. We therefore consider that the appropriate course would be to direct the Registrar of Societies to identify the constitution of the society and on the basis of such constitution, hold elections. In view of the foregoing we dispose of these appeals with the following directions:

“(i) The order of the High court is set aside.

(ii) The Registrar of firms and Societies in Punjab is directed to identify and authenticate the constitution of the College Council, Nakodar.

(iii) The Registrar of Firms and Societies shall thereafter take necessary steps to hold elections in accordance with such constitution with six months.

(iv) Till such elections are held, the Committee constitution by the trial court consisting of the Additional Deputy Commissioner, Jalandhar, Principal of the Guru Nanak National College for Men and the sub-Divisional Magistrate, Nakodar and Sub-Divisional Magistrate, Shahkot, as ex-officio members shall be incharge of the day to day' management and affairs of the society and the colleges.

(v) We hereby make it clear that nothing stated in this order shall be treated or casting any aspersions about the functioning of the first respondent when he was acting as the 'President'. These appeals have been decided only with reference to the dispute relating to the constitution.

The Registry is directed to send a copy of the order to the Registrar of Firms and Societies, State of Punjab, Sector-17, Chandigarh, so as to enable him to implement the above directions.

(SLP. ...CC 5818-5819/2010)

In view of the order in the civil appeals filed by Varinder Partap Singh Sandhu, it is unnecessary to entertain these special leave petitions which have been filed by non-parties claiming to be the members of the society. If they have any grievance, they are entitled to ventilate the same before the appropriate forum. These special leave petitions and the various applications filed therewith are dismissed.”