

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 1st February, 2010*
Judgment Delivered on: 8th February, 2010

+ **FAO (OS) No.602/2009**

REVD DR. VALSON THAMPU Appellant
Through: Mr.Rajiv Nayar, Sr. Adv. with
Mr.P.C.Sen, Advocate

Versus

AJAY P. SINGHA & ORS. Respondents
Through: Mr.U Hazarika, Mr. Dharitra Phookan,
Advocates for R-1.
M.Shoeb Alam, Advocate for R-5.
Mr.Rajeev Sharma, Ms.Asha
Sharma,Mr.Abhishek Birthray, Avocates
for Respondent Nos.3,4,6,7,10 &11
Mr.Vijay Hansaria,Sr.Adv. with Mr.Sanjay
Patra, Advocate for R-18.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. CS(OS) No.2274/2009 was listed before the learned Single Judge for admission on 2.12.2009 and along therewith an application numbered as I.A.No.15562/2009

was listed seeking ad-interim injunction to restrain Dr.S.Y.Qureshi, defendant No.5, from acting as the nominee of the Principal on the governing body of Saint Stephens College Society. Ajay P.Singha, respondent No.1 in the instant appeal, was the plaintiff.

2. Having prior knowledge of the suit being filed but without there being any caveat lodged, some of the defendants appeared at the first hearing to oppose the injunction prayed for. In particular, the appellant who was impleaded as respondent No.4 seriously opposed the grant of an ad-interim injunction. It is apparent that the application seeking grant of ad-interim injunction was argued before the learned Single Judge without any pleadings on behalf of the defendants and on oral submissions made by the contesting defendants.

3. On the same day itself i.e. on 02.12.2009, after hearing the contesting parties, the learned Single Judge granted relief to the plaintiff, in that, Dr.S.Y.Qureshi was enjoined from participating in the meetings of the governing body of the college.

4. As noted by the learned Single Judge in the order dated 02.12.2009, a position conceded by learned counsel appearing before him and before us in the appeal, as per the constitution of Saint Stephens College Society, vide

Rule 1, the composition of the governing body of the Society has been provided for and as per Clause 'f' of Rule 1, the Principal of the College is empowered to appoint one person to the governing body of the College Society.

5. Rule 2 stipulates that all elected or appointed members on the governing body shall serve for a period of three years and shall be eligible for re-election and that casual vacancies shall be filled up by the Authority which elected or appointed the person filling the casual vacancy shall remain a member for the residue of the term.

6. As per respondent No.1 i.e. the plaintiff, the Principal of the College, in exercise of the power conferred upon the Principal by Clause 'f' of Rule 1, appointed him to the governing body of the College w.e.f. 01.08.2007 and thus in terms of the mandate of Rule 2, his term was for a period of three years and notwithstanding the letter of appointment stating that he stood appointed by the Principal of the College to the governing body for a period of one year, he was entitled to function as a member of the governing body of the College for three years notwithstanding the fact that vide another letter dated 01.08.2008, his term was further extended for another one year. Grievance was to the Principal of the College appointing Dr.S.Y.Qureshi as a member on the governing

body of the Society, which knowledge, Ajay P.Singha claims was gained by him in September, 2009 when the website of the College did not show his name in the list of members of the governing body of the College and instead showed the name of Dr.S.Y.Qureshi.

7. To put it in simple terms, as per Ajay P.Singha, the power of the Principal of the College under Clause 'f' of Rule 1 is to appoint one person to the governing body of the College Society and the tenure of the said member is fixed by the constitution of the College Society; vide Rule 2 being for a period of three years. Thus, as per Ajay P.Singha his term would end on 31.07.2010.

8. We note that in the plaint Ajay P.Singha claims that his term would end on 31.07.2011, but Sh.U.Hazarika, learned counsel for Ajay P.Singha conceded during arguments in the appeal that his client could not claim a tenure beyond 31.07.2010.

9. There being no pleadings before the learned Single Judge, the stand of the appellant while opposing the injunction application has to be culled out from the impugned order, as per which according to the appellant the Principal had appointed Sh.Naveen Chawla to the governing body of the College on 18.08.2006 and had renewed the appointment somewhere in August, 2007

specifically writing in the two letters that his term would be for one year and that Mr.Naveen Chawla tendered his resignation on 10.07.2007. As per the appellant the casual vacancy occasioned by the resignation of Mr.Naveen Chawla was filled up by appointing Ajay P.Singha on the governing body of the College. Since the term of the person appointed on the governing body of the College by the Principal under Rule 1 'f' was three years and in case of a casual vacancy being filled up the term of the person filling up the vacancy was for the remainder for the three year period, Ajay P.Singha could not claim a right to be on the governing body of the Society for a period of three years.

10. The aforesaid stand taken by the appellant before the learned Single Judge is apparent from the second contention noted by the learned Single Judge and as advanced by Sh.Rajiv Nayar, learned senior counsel for the appellant. The learned Single Judge has noted as under:-

“Mr.Nayar who appears for defendant No.4 has made the following submissions:-

(i) his first submission is that the plaintiff had, in the first instance, filed a writ petition. An order purportedly impacting the interest of defendant No.4 was passed by the learned single Judge which defendant No.4 carried in appeal to the Division Bench. By an order dated 16.11.2009, the

writ petition was dismissed as withdrawn and the interim order passed in favour of the plaintiff/writ petitioner was dissolved. Therefore, it is his submission there is no need to entertain the request of the plaintiff at this juncture of grant of an interim order.

(ii) the plaintiff was appointed against a casual vacancy of Mr.Navin Chawla whose term came to an end in August, 2009, therefore the plaintiff cannot in any event continue beyond August, 2009. I may only note that it is not disputed that Mr.Navin Chawla's appointment commenced with effect from 18.08.2006, which was for a period of three years and hence, would come to an end on 17.08.2009. As a matter of fact Mr.Nayar took the stand before me that the term of Mr.Navin Chawla was for a period of three years. However, it is to be noted that the Governing Body's minutes dated 05.10.2006 categorically approved, in the first instance the appointment of Mr.Navin Chawla, for a period of **one year** w.e.f 18.08.2006 (See document at Pages 80 &81)

It is also pertinent to refer to the fact, which is also not disputed, that Mr.Navin Chawla tendered his resignation on 10.07.2007.

In continuation of his submission recorded hereinabove, Mr.Nayar elaborated that the plaintiff was appointed against the casual vacancy of Mr.Navin Chawla, which occurred on account of his resignation on 10.07.2007; therefore, the term of the plaintiff could only run till the unexpired term of Mr.Navin Chawla, which ordinarily would come to an end on 18.08.2009

(iii) Dr.S.Y.Qureshi, who has been appointed in place of plaintiff, has already participated in the general body meeting and hence, the court ought not to intercede in the matter at this juncture."

11. The learned Single Judge has dealt with the
aforenoted submission by reasoning as under:-

"I have heard the learned counsel for the parties. What has come through at this stage is that the appointment letters issued to the plaintiff did not indicate that his appointment was to fill up a "casual vacancy". It is necessary to appreciate that Clause 1(f) of the constitution has two limbs. Under both the limbs the principal is empowered to appoint his nominee. The first limb allows him untrammelled (should read un-trampled) right to appoint his nominee for a period of three years. The second limb of Clause 1(f) of the constitution allows the principal to appoint a person on account of an eventuality occurring, which would fall under the expression 'casual vacancy'. The constitution curiously does not define the expression 'casual vacancy'. Therefore, the submission of Mr.Nayar, which is that the plaintiff was appointed against a casual vacancy of Mr.Navin Chawla, if accepted, then as argued by the plaintiff and the supporting defendants, in particular, Mr.Dogra, the casual vacancy would have run its course on 17.08.2007 which is when, according to the Governing Body's minutes dated 05.10.2006, Mr.Navin Chawla's tenure would have come to an end. It may be pertinent here to quote the portion of Governing Body's minutes dated 05.10.2006:-

- 2(a) Under Rule 1(f), Mr.Navin Chawla has been re-appointed member of the Governing Body for **one year** with effect from 18 August, 2006.....'

This was obviously not so which is quite clear from a perusal of letter dated 17.09.2008 whereby the plaintiff's term was renewed with effect from 01.08.2008 by principal in exercise of his powers under Clause 1(f) for a period of one year. While it may be true that the plaintiff was appointed on account of vacancy having arisen with the resignation of Mr.Navin Chawla, what the letter seems to indicate is that this is in exercise of the powers of the principal under the first limb of Clause 1(f), and not to fill up a casual vacancy as was vociferously submitted by Mr.Nayar. I am not inclined to accept this submission. If that is the position, at least prima facie, the plaintiff's term in accordance with the provisions of the constitution and past practice adverted to both by the counsel

for plaintiff and defendant no.3 should ordinarily run for three years. The plaintiff's term in that situation would come to an end in August, 2010. The principal's response to the plaintiff's letter dated 24.09.2009 does not deal with this grievance."

12. Thus, the learned Single Judge has decided the issue with reference to the question whether Ajay P.Singha was appointed against a casual vacancy or not. Holding that Ajay P.Singha was not appointed against any casual vacancy, the stand of the appellants being negated, the injunction prayed for has been granted.

13. Wider issues were sought to be urged without pleadings in the appeal and since the written statement has yet to be considered by the learned Single Judge and prima facie opinion has yet to be formed on the basis of the pleadings and the application seeking interim injunction has yet to be decided, we are performing the delicate tasks of deciding an appeal against an order granting an ad-interim injunction and not an interim injunction and therefore lay down the rule of the game i.e. what governs our jurisdiction while hearing an appeal against an order granting ad-interim injunction. We are guided by the decision of the Supreme Court reported as 1990 (2) ALR 399 Wander Limited & Anr. Vs. Antox India (P) Ltd. in which the Rule of law pertaining to exercise of Appellate jurisdiction in such

cases was laid down in the following words: *the appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion by the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised either arbitrarily, or capriciously or perversely or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle.* (Emphasis supplied)

14. A perusal of the impugned order does not reveal that the attention of the learned Single Judge was drawn to the principles of grant or refusal of interim injunctions; being to firstly consider whether the plaintiff had a prima facie case, secondly to consider where did the balance of convenience lie, and thirdly whether irreparable loss which cannot be compensated by money would be caused to the plaintiff if injunction was refused. It appears that the attention of the learned Single Judge was also not drawn to the principle that interim injunctions are normally granted to maintain status quo and not to restore status quo ante i.e. to restore the parties to the position which existed at the time when the offending act was committed to disturb the same, which

can only be done by grant of a mandatory injunction. We find no such discussion in the impugned order.

15. This normally happens in a situation of docket explosion; as in India. With counsel breathing down the neck of the Judge who is overburdened with work, unless the counsel point out, which from hindsight appears to be the obvious, slip-ups occur.

16. In a dispute relating to a non pecuniary office we see hardly any scope to apply the last limb of the trinity of the principles relating to grant of interim injunction. Obviously, nobody suffers a monetary loss if injunction is granted or refused. But, the first two principles have to apply.

17. On the issue of the application of the first principle i.e. the plaintiff showing a prima facie case, as argued before the learned Single Judge and as reasoned by him, the issue which was debated was whether the plaintiff was appointed against the casual vacancy caused when Sh.Navin Chawla resigned in July, 2007. An ancillary issue pertaining to the term of office of the members was also debated. Since the learned Single Judge has not dealt with it, we presume that no argument was advanced before him that Ajay P.Singha having accepted appointments from time to time under letters which clearly told him that his appointment was for a period of one year, could not urge to the contrary.

18. Thus, as argued before the learned Single Judge without any pleadings, it cannot be said that the discretion exercised by the learned Single Judge is arbitrary, capricious or perverse in so far as the issue of prima facie case was debated.

19. But, we find an error in not considering the issue of balance of convenience, which relates to a principle of law governing grant of interim injunction.

20. Probably for the reason, nobody drew the attention of the learned Single Judge, the error has crept in, but since it relates to a principle of law governing jurisdiction of the Court of first instance while granting or refusing ad-interim injunction, irrespective of the counsel drawing attention of the Court, the same has to be dealt with; we do so in appeal.

21. The suit was filed on 01.12.2009 and as per documents filed, Dr.S.Y.Qureshi was nominated by the Principal to the governing body of the College on 27.07.2009 who accepted the same vide his letter dated 28.07.2009 and the same was conveyed to the Vice Chancellor of the University on 31.07.2009 and that Dr.S.Y.Qureshi had even attended meetings of the governing body of the College when the suit was filed. We note that before the suit was filed, Ajay P.Singha had filed a

writ petition in September, 2009 claiming the same relief and the learned Single Judge hearing the writ petition had granted an ex-parte ad-interim restraint order which was challenged by way of a Letters Patent Appeal and before the Division Bench, Ajay P.Singha consented to withdraw the writ petition and filed a suit. We further note that Dr.S.Y.Qureshi had attended the meetings of the governing body prior to when the writ petition was filed.

22. Thus, while considering balance of convenience it requires to be considered whether under the circumstances, restraining Dr.S.Y.Qureshi to participate in the meetings of governing body would amount to ousting him i.e. would it be a case of ordering status quo ante to be restored akin to granting a mandatory interim injunction. We feel it would. The reason is obvious. Dr.S.Y.Qureshi who was nominated in July, 2009 accepted the nomination and even participated in the meetings of the governing body in which Ajay P.Singha was absent. Granting an injunction would mean to oust him and restore status quo ante as of August 2009.

23. We hasten to add that our aforesaid finding is with reference to what needs to be considered at the stage of granting an ad-interim injunction and need not be treated as a conclusive and an authoritative expression on the issue of balance of convenience to be discussed at the stage of

granting an interim injunction after pleadings are completed and parties are heard. For, at that stage if mala-fide is shown or it is shown that the plaintiff was tricked into or deliberately kept in the dark and that the defendants have taken an undue advantage, while weighing the balance of convenience, the learned Single Judge would give due weight to said material.

24. To conclude, we simply note that the ad-interim injunction granted by the learned Single Judge was only till the next date of hearing which is 16.02.2010 and that before us in appeal Ajay P.Singha had consented that pending hearing of the appeal he would not insist on the order of the learned Single Judge being implemented. We thus direct that till the learned Single Judge decides the application seeking interim injunction, Dr.S.Y.Qureshi would be permitted to participate in the meetings of the governing body of the College Society.

25. We restate the usual mantra. Nothing said, noted or expressed by us would be treated an expression on the merits of the controversy. Any observation made by us would be treated as a mere opinion and not a finding and would be limited to the present order. The learned Single Judge would decide the application under Order 39 Rules 1&2 CPC uninfluenced by any observation made by us in

the present order. The appeal stands disposed of in terms of para 23 above.

26. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 08, 2010
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