

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

%

Date of decision: 16th March, 2012

+

LPA NO.522/2011

CHANDRA PRAKASH KAUSHIK

..... Appellant

Through: Mr. Jayant Bhushan, Sr. Adv. with
Mr. Atul Chaubey, Adv.

Versus

ELECTION COMMISSION OF INDIA & ANR.

..... Respondents

Through: Mr. P.R. Chopra, Adv. for R-1.
Dr. Indira Tiwari, Attorney for R-2.
Mr. B.S. Billowaria & Mr. Vijay
Pratap Singh, Advs. for Intervenor /
Applicant.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The challenge in this Intra-Court appeal is to the judgment dated 02.05.2011 allowing W.P.(C) No.704/2011 preferred by the respondent No.2 Swami Chakrapani, by quashing the “order dated 14.01.2011 of the respondent No.1 Election Commission of India (ECI).” Notice of this appeal was issued and vide interim order dated 27.09.2011 “*status quo* existing as on today” was directed to be maintained till the next date of hearing. The said interim order was made absolute on 13.10.2011. CM

No.18167/2011 was preferred by one Dr. Santosh Rai for and on behalf of one Sh. Kamlesh Tiwari [claiming to be the duly elected President of the Uchchadhikar Samiti (High Power Committee) of Akhil Bharat Hindu Mahasabha] for intervention. He was allowed to so intervene and his counsel has also been heard along with counsel for the parties.

2. Akhil Bharat Hindu Mahasabha (ABHM) is stated, to have been organized as far back in the year 1907 and registered as a Society under the Societies Registration Act, 1860 in the year 1917; it participated in the elections held in the year 1926 to Provincial Legislatures and in the year 1930 in the elections for the Central Assembly; it became a political party in the year 1937 and enjoys the status of a registered political party within the meaning of Section 29A of the Representation of the People Act, 1951, though not recognized.

3. The letter dated 14.01.2011 of the respondent No.1 ECI and impugning which the writ petition from which this appeal arises was filed *inter alia* records:

- (i) that during the year 2004-06 several communications from different factions of ABHM claiming themselves to be the authorized office bearers of the party were received by the ECI;
- (ii) on the basis of the aforesaid communications, respondent No.1 ECI was of the opinion that there were internal disputes within the party and accordingly respondent No.1 ECI vide its letter dated 14.01.2004 intimated to all those approaching it that the internal disputes of ABHM had to be settled by them either amicably within the party or through a competent Court of Law;
- (iii) subsequently vide letters dated 06.07.2007 and 09.07.2007, the respondent No.1 ECI was informed that the disputes within the party had been settled;
- (iv) the respondent no.1 ECI vide its letter dated 07.08.2007 informed ABHM that ECI had taken on its record the list of office bearers of ABHM as informed by ABHM vide its letter dated 06.09.2006;

- (v) however, respondent No.1 ECI was subsequently informed of filing of CS(OS) No.837/2007 in this Court impugning the claims of a) respondent No.2 Swami Chakrapani, b) Sh. Dinesh Chandra Tyagi (not a party to this proceeding), and of the appellant herein of being the office bearers of ABHM;
- (vi) accordingly the respondent No.1 ECI vide its letter dated 21.08.2007 withdrew the decision communicated by it vide its earlier letter dated 07.08.2007 (supra) and further clarified that nobody would be recognized as the authorized office bearers of ABHM and the future course of action regarding office bearers of ABHM would depend upon the decision in the said suit;
- (vii) the respondent no.1 ECI was in May, 2010 informed of the dismissal of the said suit for non prosecution on 22.03.2010 and the ECI was called upon to revive the acceptance granted to the office bearers vide letter dated 07.08.2007 (supra); the respondent No.1 ECI was also informed of election of the respondent No.2 Swami Chakrapani as the President of ABHM

for the year 2008-10 and 2010-12 and was requested to take the same along with the list of office bearers for the year 2008-10 and 2010-12 on record;

(viii) though another two groups led by Sh. Munna Kumar Sharma and Sh. Nand Kishore Mishra also staked their claim of being office bearers of ABHM but were unable to submit any documentary proof thereof;

(ix) accordingly, the respondent No.1 ECI vide its letter dated 08.10.2010 revived its letter dated 07.08.2007 (supra) and the position as prevailing before the filing of the suit which had since been dismissed; one Dr. Indira Tiwari who was corresponding on behalf of the respondent No.2 Swami Chakrapani with the respondent No.1 ECI was also called upon to furnish the list of office bearers which was so furnished along with documentary evidence and on the basis whereof the respondent no.1 ECI vide its letter dated 11.11.2010 took the same on record;

- (x) however the respondent No.1 ECI since then had received various communications from different persons raising objections and disputes qua the claim of respondent No.2 Swami Chakrapani of being the office bearer and further claiming that respondent no.2 Swami Chakrapani and his group had rather been expelled from ABHM;
- (xi) the respondent No.1 ECI on the basis of the aforesaid fresh representations received by it concluded that the internal disputes of ABHM had not been resolved and persisted;
- (xii) the respondent No.1 ECI itself did not inquire into disputes within unrecognized political parties;

The respondent no.1 ECI thus vide letter dated 14.01.2011 impugned in the writ petition, withdrew the earlier letter dated 11.11.2010 taking on record the respondent No.2 Swami Chakrapani as the President of ABHM.

4. It was the contention of the respondent No.2 Swami Chakrapani before the learned Single Judge that there was no basis whatsoever for the respondent No.1 ECI to have reversed its decision of taking on record respondent No.2 Swami Chakrapani as the President of ABHM; that the same could not be done on mere representations and anyone disputing his claim as the President and the list of office bearers submitted by him, ought to have approached the Civil Court. The appellant though was not impleaded as a party to the writ petition, intervened and supported the decision of the respondent No.1 ECI. It was his contention that any other decision of the respondent No.1 ECI (than the decision communicated vide letter dated 14.1.2011) would tantamount to recognizing the respondent No.2 Swami Chakrapani as the President and which was beyond the jurisdiction of respondent No.1 ECI. It was the contention of respondent No.1 ECI before the learned Single Judge that the decision communicated vide letter dated 14.01.2011 was of administrative nature and not determinative of the rights of the respective claimants to be office bearers of ABHM and such a decision was reviewable depending upon the developments from time to time.

5. The learned Single Judge in the judgment impugned before us, has observed / held:

- (i) that the decision of respondent No.1 ECI communicated vide letter dated 21.08.2007 to recall the decision dated 7.8.2007 was on account of the then pendency of the civil suit and was subject to the outcome of the civil suit;
- (ii) consequently, with the dismissal of the civil suit, the legal challenge to the claim of respondent No.2 Swami Chakrapani failed and the respondent No.1 ECI had vide its letter dated 11.11.2010 rightly revived the letter dated 07.08.2007 and there was no justification to on 14.01.2011 reverse the said decision.

The writ petition was accordingly allowed granting liberty to all those claiming adversely to the respondent No.2 Swami Chakrapani, to avail the appropriate remedy and granting liberty to respondent No.1 ECI also to vary its decision depending upon the order if any of Civil Court in proceedings to be so initiated by the adversaries of respondent No.2 Swami Chakrapani.

6. Neither is there any provision in the Act nor have any of the counsels controverted that the respondent No.1 ECI has no jurisdiction or mechanism to adjudicate rival claims of unrecognized political parties registered with it.

The only question which thus falls for adjudication is of validity of the decision dated 14.01.2011 of the respondent no.1 ECI, recalling the 'recognition' granted vide letter dated 11.11.2010 to respondent no.2 Swami Chakrapani as President and to others as per the list submitted by respondent no.2 Swami Chakrapani as office bearers, of ABHM. The learned Single Judge has held the decision dated 14.01.2011 to be invalid and ECI not entitled to take, in the absence of any order of Court of law.

7. What we however find is that the disputes as to the management of ABHM were pending since the year 2004-06 and owing whereto the respondent No.1 ECI had decided not to recognize or deal with any of the rival groups all of whom were claiming to be in management of ABHM. There is nothing to show that ABHM had before accepting the respondent No.2 Swami Chakrapani as office bearer of ABHM on 07.08.2007 conducted any inquiry. However on learning of the filing of the civil suit aforesaid, such decision was also kept in abeyance. After the suit was dismissed for non prosecution, again even though there were rival claims but respondent No.2 Swami Chakrapani was again accepted as President only for the reason of some documents on his behalf having been submitted while

no such documents were submitted on behalf of his rival groups. Accordingly, the communication dated 11.11.2010 recognizing respondent No.2 Swami Chakrapani as office bearer was issued. However, the respondent No.1 ECI continued to receive representations/complaints against recognition so accorded to respondent No.2 Swami Chakrapani as the President/office bearer of ABHM, which resulted in the ECI, on 14.01.2011 withdrawing such recognition.

8. It is this ambivalent attitude of respondent No.1 ECI which has weighed with the learned Single Judge in quashing the letter dated 14.01.2011. We may however notice that even the learned Single Judge has not returned any finding as to the correctness of the decision dated 11.11.2010 of respondent No.1 ECI recognizing respondent No.2 Swami Chakrapani as President/office bearer of ABHM. We are of the view that in the face of disputes since the year 2004, the recognition in the year 2010 of respondent No.2 Swami Chakrapani as the President/office bearer, notwithstanding the dismissal of the civil suit for non prosecution, could not have been accorded without it being established before the respondent No.1 ECI, i) as to who all were the members of ABHM; ii) whether the elections

as prescribed in the Rules and Regulations of ABHM had been held or not; and iii) whether the respondent No.2 Swami Chakrapani had so been elected as the office bearer/President. There was no such material before the respondent No.1 ECI. It cannot also be lost sight of that even as on 11.11.2010, the respondent No.1 ECI was continuing to receive opposition to the claims of respondent No.2 Swami Chakrapani. The said opposition however appears to have been disregarded by the respondent No.1 ECI only for the reason of being without any substantiating documents. However when respondent No.1 ECI continued to receive objections to the claim of respondent No.2 Swami Chakrapani, it undoubtedly reviewed its decision dated 11.11.2010.

9. We differ from the opinion of the learned Single Judge that the respondent No.1 ECI could not have so reviewed its decision without an order of a competent Court of law. That would have been the position had the recognition earlier accorded to the respondent No.2 Swami Chakrapani been with the consent of all concerned or had the communication of his election as President/office bearer been a unanimous one. It could then have been said that subsequent objection thereto was an afterthought and ECI

would then have been justified in refusing to revoke the recognition without Court order of the earlier unanimous intimation being no longer valid. However the respondent No.1 ECI on 14.01.2011 appears to have felt that its earlier decision dated 11.11.2010 was erroneous. The learned Single judge has held that the respondent no.1 ECI could not have so corrected its decision. We are however of the view that this Court in exercise of powers of judicial review ought not to interfere with a decision of a body such as the respondent No.1 ECI which decision is otherwise found to be correct in law. Such a decision cannot be quashed / set aside merely for the reason that earlier an erroneous decision had been taken. We are further of the view that in the face of such challenges, it is for the person who is wanting to exercise rights as President/office bearer to seek a declaration to such office and he cannot be allowed to hold office or to exercise powers thereof merely for the reason of the others having not approached the Court of law. We may however clarify that we have so concluded in view of there being no unequivocal document before us of the election of the respondent No.2 Swami Chakrapani as office bearer of ABHM in accordance with its constitution. Rather what is before us is, material to show that there have been disputes since the year 2004 as to the internal management of ABHM

and which do not appear to have been resolved at any point of time. Merely because the persons who had filed the suit chose not to pursue the same cannot confer any legitimacy to the respondent No.2 Swami Chakrapani when a large number of other persons concerned with ABHM are continuing to dispute the claim of respondent No.2 Swami Chakrapani. We have also perused the written statement filed by the respondent No.2 Swami Chakrapani in the suit aforesaid and from which also we are unable to cull out any clarity on the matter. Moreover the said suit was filed in the year 2007 while what was for consideration in the year 2010 was the election of the respondent No.2 for the period 2010-12.

10. ABHM as aforesaid is not a recognized political party. Though the term “recognized political party” is not defined in the Act but the Explanation to Section 52 thereof provides that “recognized political party” means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party, to after taking into account all the available facts and circumstances and hearing

representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of ECI is made binding on all such rival sections or groups. However the said Clause does not apply to unrecognized political parties as ABHM is. ECI was/is thus not empowered to in the face of rival claims of respondent no.2 Swami Chakrapani and others take any decision as to whose claim was correct. That being the position, ECI could not have on 11.11.2010 recognized respondent no.2 Swami Chakrapani as the President/office bearer of ABHM. We are thus of the view that the decision dated 11.11.2010 of ECI of preferring the claim of respondent no.2 Swami Chakrapani over that of others was clearly beyond the powers/jurisdiction of ECI. Axiomatically the corrective action of ECI on 14.01.2011 is found to be in accordance with law and thus cannot be faulted with. We may mention that the Supreme Court in ***Janata Dal (Samajwadi) Vs. Election Commission of India*** (1996) 1 SCC 235 has held the ECI empowered to rescind its orders even in the absence of any specific power therefor. It was held that Section 21 of the General Clauses Act, 1897 applies. ECI was thus empowered to, on 14.01.2011 rescind the earlier order dated 11.11.2010 which as aforesaid was beyond its powers/jurisdiction.

11. We are further of the view that in the absence of ECI being empowered to decide such *inter se* disputes of an unrecognized political party, the decision dated 11.11.2010 was an administrative decision, not taken in exercise of any quasi judicial powers. The Supreme Court in ***R.R. Verma Vs. UOI*** (1980) 3 SCC 402, has held that decisions in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.

12. We have opted to pass a speaking judgment even though the term 2010-12 for which the respondent no.2 Swami Chakrapani claims to be President/office bearer is expiring, to clarify the position since respondent No.1 ECI may be faced with communication by respondent No.2 Swami Chakrapani with respect to subsequent years and further since we deem it proper to clarify the position as respondent No.1 ECI may face such issues qua other political parties also.

13. We may further record that the appellant had filed CM No.1119/2012 seeking clarification that the interim order of *status quo* in this appeal be not read as authorizing respondent No.2 Swami Chakrapani to use of the

election symbol allotted to ABHM in the election then scheduled in the State of Uttar Pradesh. No orders were made on this application since the election process had already begun and we had heard arguments finally in the appeal. We now clarify that the order allowing this appeal shall have no bearing to the outcome of the elections in the State of Uttar Pradesh.

14. The appeal is accordingly allowed and the judgment of the learned Single Judge is set aside; axiomatically, the letter dated 14.01.2011 of the respondent No.1 ECI is held to be valid and the writ petition filed by the respondent no.2 Swami Chakrapani is dismissed.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 16, 2012

‘gsr’..