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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 13th February, 2019
Pronounced on: 18st February, 2019**

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W.P.(C) 11957/2018 & CM APPL No.46864/2018

AKHIL BHARAT HINDU MAHASABHA AND ANR.

..... Petitioner

Through : Mr.Ashok Panigrahi, Mr.Anmol
Tayal, and Mr.S.Vijay Ratnakar,
Advocates.

versus

THE ELECTION COMMISSION OF INDIA

..... Respondent

Through : Mr.Rajeev Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed for a direction to the respondent to comply with Section 29(A)(9) of the Representation of Peoples Act in terms of representation dated 17.10.2018 filed by the petitioners and to recognize petitioner no.2 as a duly elected National President of petitioner no.1, a political party and to include the name of National President as an authorised office bearer of the petitioner no.1 and to permit him to use '*Akhil Bharat Hindu Mahasabha*' (ABHM) party symbol.

2. It is alleged petitioner no.1 was founded in the year 1907 and was registered as a society under the Societies Registration Act 1860 on 19.12.1970 at Lucknow and it participated in the elections to the

Provincial Legislature in the year 1926 and for the Central Assembly in the year 1930.

3. Though the Election Commission of India (ECI)/ respondent de-registered the petitioner no.1 as a political party in the year 1996 but the High Court of Delhi vide its order dated 30.03.1996 in W.P(C) 4390/1993 set aside the order of de-registration hence the respondent was granted the provisional registration on 02.04.1996 and then was issued a registration certificate under Section 29(A) of the Act on 12.08.1997.

4. The facts relevant for this petition are as under:

“(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 ECI was of the opinion that there were internal disputes within the party and accordingly respondent 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 ECI was informed that the disputes within the party had been settled;

(iv) the respondent 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 ECI was subsequently informed of filing of CS(OS) No.837/2007 in this Court impugning the claims of a) Swami Chakrapani, b) Sh. Dinesh Chandra Tyagi, and of Chander Prakash Kaushik of being the office bearers of ABHM;

(vi) accordingly the respondent 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 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 ECI was also informed of election 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 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 Swami Chakrapani with the respondent 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 ECI vide its letter dated 11.11.2010 took the same on record;

(x) however the respondent ECI since then had received various communications from different persons raising objections and disputes qua the claim of Swami Chakrapani of being the office bearer and further claiming that Swami Chakrapani and his group had rather been expelled from ABHM;

(xi) the respondent 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 ECI itself did not inquire into disputes within unrecognized political parties;

(xiii) The respondent thus vide letter dated 14.01.2011 withdrew its earlier letter dated 11.11.2010 taking on record Swami Chakrapani as President of ABHM;

(xiv) This letter dated 14.01.2011 was challenged WP(C) No.704/2011. The learned Single Judge held as under:

(i) that the decision of respondent ECI communicated vide letter dated 21.08.2007 to recall the decision dated 07.08.2007 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.
(xv) matter went in Division Bench in LPA No.522/2011.”

5. The procedure for registration of a political party is given under Section 29(A) of the Representation of People Act as under:

“29 A. Registration with the Election Commission of associations and bodies as political parties.

(1) to (3) xxxx.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) to (8) xxxx.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.”

6. It was submitted by the learned counsel for petitioner no.2, that petitioner no.2 is an elected president of the Akhil Bhartiya Hindu Mahasabha, the election being carried under the Constitution of petitioner no.1 and per Section 29(A)(9), the respondent is bound to include his name as an elected office bearer in its register. It is alleged simply on the

basis of complaints filed by some miscreants to whom due notice for elections was served and were given a chance to contest such elections but did not come forward, now have no right to agitate their cause and the respondent thus cannot refuse to recognize petitioner no.2 as the President of Petitioner no.1; the respondent being a statutory authority is obliged to give a hearing to the petitioner no.2 and to such other person in case of complaints and to pass a reasoned order if not including the name of petitioner no.2 as President of petitioner no.1.

7. Admittedly in an earlier litigation in which this very petitioner (No.1) was a party has challenged a letter dated 14.01.2011 issued by the respondent herein, and the Division Bench of this Court in LPA 522/2011 held as under:

*“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.”

8. This decision in LPA No.522/2011 was challenged in SLP (CC) No.9116-9118/2013, but the same was dismissed on 06.05.2013. Now, since the Division Bench in LPA 522/2011 has held the respondent can only interfere in disputes of recognised parties and the, *disputes amongst its office bearers of unrecognized parties need to be either settled amongst its members or the rival claims need be tested in Court of Law*, thus no directions, as sought for to adjudicate the claims by the respondent, when there exist no mechanism under the Act to settle such disputes of unrecognized parties, could be given. The petition has no merit and it is dismissed. Pending application is also dismissed.

YOGESH KHANNA, J.

FEBRUARY 18, 2019/DV