

09.12.2020
Court No. 19
Item No. 27
CP

C.O. 1522 of 2020

Cardiological Society of India & ors.
vs.
Dr. Soumitra Kumar & anr.

(Via Video Conference)

Mr. Abhrajit Mitra
Mr. Debanjan Mandal
Mr. Chayan Gupta
Mr. Sandip Dasgupta
Mr. Ayan De

....for the petitioners.

Mr. Soumya Mazumder

.....for the opposite parties.

This is an application preferred by the Cardiological Society of India, and its erst while office bearers challenging an order dated December 4, 2020, passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah in Title Suit No. 112 of 2020. By the order impugned, the learned Judge allowed an application under Section 151 of the Code of Civil Procedure, filed by the plaintiff/opposite party. By the said application the plaintiff/opposite party prayed for an order upon the petitioners restraining them from proceeding with the CSI Election, 2020. On June 30, 2020, the learned court below passed an order of status quo. The relevant portion of the same is quoted as follows:

“Perused the materials available on record.

It appears that, last date of withdrawal of nomination is 08.07.2020. In this Covid-19 Pandemic if this injunction is not allowed, the plaintiff will suffer irreparable loss and injury.

So, I find a prima facie case in favour of the plaintiff.

Considering the nature of the dispute, this Court finds that the plaintiffs’ prayer should be allowed in the form of status quo.

Hence, it is ordered that, the petition of the plaintiff is hereby allowed in the form of status quo.

Both parties are directed not to change the nature and character of the schedule property as it stands on this day till next date.”

The petitioner filed an application under Order 39 Rule 4 for setting aside of the said order. The opposite party filed an application under Order 39 Rule 2(a) challenging violation of the said order. During the pendency of these two applications, the opposite party filed an application under Section 151 of the Code of Civil Procedure praying for a stay on the election process. The said application was heard and disposed of by the learned court below directing that the defendants, that is, the petitioners herein should not proceed with the election till disposal of the injunction application.

It is on record in the order impugned itself that the election process had begun. The voting by ballots had been completed and the counting was to begin on October 11, 2020. Although the said application was filed praying for stay of the election process, in the injunction application the prayer was with regard to restraining the petitioner no. 4, Dr. Debabrata

Roy, from being nominated for the post of Honorary General Secretary. From the order dated June 30, 2020, the learned court below recorded a prima facie case in favour of the plaintiff and it had also been stated that if an injunction was not allowed, the plaintiff would suffer irreparable loss and injury. However, the court directed both the parties not to change the nature and character of the schedule property. The schedule appearing in the plaint is the building which is the head quarters of the society. At the bottom of page 3 of the order the learned court held that the defendant no. 5 had embarked on a project for expansion of the building and was also involved with the quotation. Thus, protection was necessary to preserve the society specially in the pandemic situation.

According to Mr. Mitra, learned senior advocate for the petitioner, the order clearly indicated that the court had granted status quo with regard to the nature and character of the property in question, meaning thereby, injunction/status quo was only with regard to the building and expansion thereof.

Mr. Mazumder, learned advocate appearing on behalf of the opposite party submitted that, as the court had observed that fixing of a date for filing of the nomination, withdrawal thereof and the decisions to extend the dates for filing the nominations etc. by the society during the pandemic situation was

unnatural and observed that there should be an order of status quo, the correct interpretation of the order would be that the court intended to grant a status quo with regard to the election process as also the extension of the building. He further submitted that the petitioners did not prefer any appeal from the said order and had actually accepted the said order. Mr. Mazumder further submitted that in violation of the said order of status quo, the petitioners continued with the election process and, as such, finding no other alternative, the application under Section 151 of the Code of Civil Procedure was filed by the opposite party/plaintiff to put a restraint on the election process and to prevent the violation of the order of court. Mr. Mazumder submitted that as the petitioners violated the order of injunction, the court in exercise of its inherent power could protect the property as also the party aggrieved and restore status quo ante. According to him, the order impugned did not suffer from any illegality.

By the order of ad interim injunction, the learned court below directed the opposite parties not to change the nature and character of the schedule property. The schedule in the plaint is the headquarters of the petitioner no. 1, society. However, there is also a finding of prima facie case in favour of the plaintiff, but the order of status quo

with regard to the election process was not clearly recorded.

Under such circumstances, the election process continued. Some positions were declared uncontested, namely, vice-president, honorary general secretary, treasurer and associate editor prior to the order of status quo. This appears from the ballot paper which is annexed at page 310 of this application. At page 99 of the revisional application the list of nominations have been annexed. It appears from the said document that even the plaintiff was a president-elect contesting the election and the defendant no. 5 was nominated as the honorary general secretary. Records also reveal that the president-elect i.e., the plaintiff had filled in his assent form and had participated in the election process. In the order impugned the learned court below also records that the election process had been completed at this stage. When the election has already been held, staying an election by exercise of inherent power is contrary to the provisions of law and the decisions of the Apex Court in the matter of *Shaji K. Joseph vs. V. Viswanath and others*, reported in (2016) 4 SCC 429 is referred to.

In any case, the ad interim order is not clear whether the ad interim prayer was with regard to status quo on the entire election process or not. The prayer in the injunction application was with regard

to a restrain order on electing defendant No.5/ petitioner no. 4 as the general secretary. Such order even in ad-interim form was not passed. However, this court cannot embark into deciding the correctness of the order dated June 30, 2020. The same is an appealable order and the petitioners have taken steps for variation or vacating of the same. The opposite party has also taken steps with regard to the violation of the order of status quo. Those applications are pending. When the plaintiff himself has participated in the election process, and when in the order impugned the court has held that the election process was over, the order impugned directing the defendants not to proceed with the election is erroneous and suffers from non-application of mind. If there is violation of the order of ad-interim injunction, the learned court below is free to decide the same in the application under Order 39 Rule 2(a) and pass such orders as provided under the law. Moreover, the application for temporary injunction is still pending.

It is submitted by the petitioner that the declaration of results is awaited and a meeting has been scheduled to be held on December 12, 2020 at Ahmedabad. The said meeting of December 12, 2020 will be held. Results will be declared. The office bearers who are elected may complete the formalities. However the elected members shall not take any

major financial or policy decisions and no publicity shall be made with regard to the assumption of office. They are only permitted to make day-to-day expenses with regard to payment of bills, salaries and maintenance of offices and for other essential services till the disposal of injunction application. If there are any allegations of malfunctioning, the parties are free to point out the same before the learned court below and seek necessary orders. If the elected members feel that certain orders are necessary from the court on an urgent issue, they are free to approach the learned court below for such orders. It is also clarified that the order passed by the learned Judge with regard to the status quo on the building in question will continue in terms thereof. The order impugned is modified to the above extent.

The application for temporary injunction along with the pending applications should be disposed of as expeditiously as possible, preferably within a period of one month from the next date fixed.

The revisional application is, thus, disposed of. There shall be no order as to costs. Parties to act on the basis of server copies of this order.

Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible subject to compliance of all usual formalities.

(Shampa Sarkar, J.)