

C.M.P.No.8544 of 2020
in O.S.A.No.59 of 2020

M.M.SUNDRESH,J.
AND
KRISHNAN RAMASAMY,J.

Krishnan Ramasamy,J.

This Civil Miscellaneous Petition has been filed before this Court, seeking to rectify/clarify the alleged error in Paragraph 16 of the order, dated 18.02.2020, passed in C.M.P.Nos.3364, 3338, 3506 and 3507 of 2020 in O.S.A.No.59 of 2020.

2. Paragraph 16 of the order reads as under :

"16. Hence, as a consequence, we set aside all the proceedings of the Returning Officer subsequent to the returning of the nominations, dated 05.02.2020, including the rejection of nomination and the declaration of the elected candidates. We may note, that both the parties were represented through the counsels earlier and even now. Thus, there is no need for any individual hearing especially when things happened on a misconception. Further, nobody can take advantage of any consequence resulting in a not correct understanding of an order passed by this Court to set right the issues between the parties and that too by consent."

3. Referring to the above Paragraph 16 of the order, Mr.P.S.Raman, learned Senior Counsel, appearing for the petitioner has submitted that by taking advantage of the inadvertent error crept therein and by misinterpreting the order, in spite of being aware that the election process has started and this Hon'ble Court is monitoring the election, the first respondent, along with his supporters, conducted an illegal meeting via Video Conferencing on 22.04.2020, when law does not provide for the same, to tamper with the Electoral College finalised by the erstwhile Returning Officer, dated 06.02.2020, and passed several resolutions, disaffiliating the Five Member Association, which is not in support of the first respondent, and also illegally suspended the key Office Bearers to the All India Chess Federation, without any power and authority whatsoever, in order to make them not to contest in the election. Accordingly, he seeks to clarify the said Paragraph.

4. On the other hand, Mr.Sanjay Chadha, learned counsel for the first respondent, would strongly oppose the argument advanced by the learned Senior Counsel for the petitioner, stating that the order passed by this Court on 18.02.2020 was perfectly in order and this Court, only after careful analysis of the matter, passed the detailed order, setting aside the entire proceedings of the Returning Officer subsequent to 05.02.2020, and,

by so setting aside, in Paragraph 17, directed the Returning Officer to convene the Special General Body Meeting of AICF and conduct fresh election.

5. Paragraph 17 of the order reads as follows :

"17. While setting aside the proceedings of the Returning Officer, we request the Returning Officer to convene the Special General Body Meeting of AICF for conducting fresh election, by sending fresh notices for all the members along with date, time and place of the meeting and also to fix the date for filing nomination. Notwithstanding anything contained in the bye-laws, the candidate shall file his/her nomination before the Returning Officer only in person by duly complying the provisions of the Sports Code. We believe, this would set at rest the controversy. Accordingly, the order dated 03.02.2020 is clarified with the direction to conduct a fresh collection for AICF in the manner stated above. Connected Civil Miscellaneous Petitions are closed."

6. Relying upon Paragraph 17 of the order, learned counsel for the first respondent, would submit that a conjoint reading of Paragraphs 16 and 17 would show that the entire proceedings of the Returning Officer subsequent to 05.02.2020 were set aside and, therefore, there is no prohibition for the first respondent to prepare the new Electoral College.

Accordingly, he prayed that there is no necessity for this Court to either rectify or clarify the order in Paragraph 16 of the order, dated 18.02.2020.

7. Mr.Sanjay Chadha, learned counsel for the first respondent, has further submitted that the order, dated 18.02.2020, had attained finality and the same was confirmed by the Hon'ble Supreme Court in S.L.P.(Civil) Diary No.7032 of 2020 on 03.03.2020.

8. For the said submission, in reply, Mr.P.S.Raman, learned Senior Counsel for the petitioner, submitted that the question of merger of the order of the Hon'ble Supreme Court with the order of this Court dated 18.02.2020 does not arise due to the reason that the Special Leave Petition was dismissed.

9. We have heard the learned counsel for the parties and also perused the material available on record.

10. It is fundamental in our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each party has an opportunity of responding to the points raised by the other, and the function of a Judge, in the course of his/her decision making process, is to adjudicate on those issues alone.

11. In the case on hand, for whatever the issue that was raised and argued before us, we had given a clear-cut finding in our order, dated

18.02.2020. Any finding of this Court cannot be interpreted beyond the scope of the issue raised and argued. In other words, the order/judgment of the Court cannot be interpreted as a statute. Therefore, we are of the considered view, that, by no stretch of imagination, this order is applicable to the issues which are not raised before this Court. Also, the issue relating to the Electoral College was not at all raised and argued before us. When an issue was not raised and argued before us, our order would be strictly construed only in respect of the issues that had been raised and argued before us.

12. In fact, a conjoint reading of Paragraphs 16 and 17 of the order, dated 18.02.2020, would reveal that we have directed the Returning Officer to convene the Special General Body Meeting of AICF to conduct fresh election, by sending notices to all the Members along with date, time and place of the meeting and also to fix the date for filing nominations. This would only mean that the direction was only for convening the Special General Body Meeting and we had not issued any direction for finalising the Electoral College.

13. The Hon'ble Supreme Court, in a catena of decisions, on the point of 'law of merger', held that the dismissal order of the Special Leave Petition will not have merger with the order of this Court. Further, in the

present case, even the plea raised for merger will not apply to the issues that had arisen for argument before this Court and the Hon'ble Supreme Court, as they are one and the same. The present issue raised is relating to the Electoral College and the same was not an issue raised and argued before this Court, when the order was passed by this Court on 18.02.2020, and also before the Hon'ble Supreme Court on 03.03.2020. Therefore, the order of the Hon'ble Supreme Court will not have the effect of merger to the order of this Court, dated 18.02.2020.

14. For the reasons stated above, we hold that there is no need for any clarification or rectification of the order, dated 18.02.2020, as contended by the petitioner.

15. Civil Miscellaneous Petition is accordingly disposed of.

dixit

(M.M.S.,J.) (K.R.,J.)
28-09-2020

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