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

+ W.P.(C) 5608/2020

SWAMI CHAKRAPANI, NATIONAL PRESIDENT,
AKHIL BHARAT HINDU MAHASABHA Petitioner

Through Mr. Mukul Gupta, Sr. Adv. with
Mr. Rajesh Raina, Advs.

versus

ELECTION COMMISSION OF INDIA Respondent

Through Mr. Sidhant Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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10.09.2020

This hearing is conducted through Video Conferencing.

1. This Writ Petition is filed by the petitioner seeking a direction to the respondent to recognise the list of Office Bearers under the leadership of Swami Chakrapani Ji Maharaj as National President of the Akhil Bharat Hindu Mahasabha. Other connected reliefs are also sought.

2. The case of the petitioner is that the Akhil Bharat Hindu Mahasabha is a registered political party certified by the Election Commission of India as is one of the oldest political parties of India. It is claimed that the petitioner was first elected as the National President for the said party in 2006. On 11.11.2010 the petitioner was recognised by the respondent as the President of the said party. However, on 14.1.2011 the respondent withdrew the aforesaid recognition. Litigation followed between the parties and the Division Bench upheld the communication of the respondent dated 14.1.2011.

3. I have heard learned counsel for the parties. Learned senior counsel

for the petitioner has stressed that as of today there are no litigations pending with any of the other alleged persons who claim to be office bearers. He submits that litigations are over or have been dismissed in default. He further stresses that it is not for the petitioner to file a suit seeking a declaration *in rem* that he is the President of the said political party. Learned senior counsel for the petitioner also states that all documents based on which the petitioner claims to be elected President of the party are on the record of the respondents.

4. Learned counsel for the respondent has relied upon the judgment of a Division Bench of this court in LPA 522/2011 dated 16.3.2012 titled ***Chandra Prakash Kaushik vs. Election Commission of India*** to plead that under similar circumstances the Division Bench had dismissed the plea of the petitioner and had clearly stated that unless an appropriate declaration is passed by a Civil Court the respondent is not to grant any status to the petitioner. He also points out that on 9.7.2020 the representation of the petitioner was rejected by the respondent where the names of the parties who had filed objections to the claim of the petitioner have been clearly stated and it is for the petitioner to move appropriate suit for declaration against the named parties.

5. Learned senior counsel for the petitioner, however, states that against the aforesaid order of the Division Bench a Review Petition No.403/2012 was also filed which was decided on 13.7.2012.

6. I may look at the aforesaid judgment dated 16.3.2012 in ***Chandra Prakash Kaushik vs. Election Commission of India*** (*supra*) in which the Division Bench had noted as follows:-

"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.

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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.

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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.”

7. Hence, the Division Bench had clearly noted that for a person who is wanting to exercise rights as a President/Office Bearer, it is for him to seek declaration to the said office and he cannot be allowed to hold office or to exercise power merely for the reasons that the others have not approached the court of law. The court further stated that there being no unequivocal document before the court regarding the election of the petitioner herein as an office bearer the petitioner cannot claim such a right. It was further stated that merely because the person who has filed that suit chose not to pursue the case cannot confer any legitimacy on the petitioner herein.

8. Today also learned senior counsel for the petitioner has repeated the same contentions i.e. that all cases regarding the claim of the petitioner to

the post of the President stand disposed off/dismissed in default. Hence, it is pleaded that the respondent should re-consider its decision. The same plea was rejected by the Division Bench stating that it was for the petitioner to seek a Declaration to the said effect i.e. his claim to be the President. In view of the observations of the Division Bench, in my opinion the present petition is misconceived.

9. Regarding the reliance of the learned senior counsel for the petitioner on the order in the Review Petition, I may note that the said Review Petition was simply dismissed without any clarification of the earlier judgment dated 16.3.2012.

10. There is no merit in the present petition and the same is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

SEPTEMBER 10, 2020/n