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

% *Date of Decision: 06th September, 2021*

+ LPA 363/2020

SWAMI CHAKRAPANI

..... Appellant

Through

Mr. Vikas Singh, Senior Advocate
with Mr. Rajesh Raina, Ms. Deepika
Singh & Mr. Mayank Sharma,
Advocates

versus

ELECTION COMMISSION OF INDIA

..... Respondent

Through

Mr. Sidhant Kumar & Ms. Manyaa
Chandok, Advocates for ECI
Mr. Barun K. Sinha, Advocate for
Applicant in CM No. 34412/2020
Ms. Divya Upadhyay, Advocate for
Applicant in CM No. 11804/2021

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE(ORAL)

Proceedings have been conducted through video conferencing.

CM APPL. 30724/2020 (Delay)

Present Application has been preferred seeking condonation of delay of 38 days in filing the present Appeal.

We have heard learned Senior Counsel appearing on behalf of the Appellant and learned counsel for the Respondent and looked into the

reasons stated in the Application. In our view, the Appellant has made out a sufficient cause for condonation of delay. Accordingly, delay of 38 days in filing the appeal is condoned.

Application is allowed and disposed of.

LPA 363/2020 & CM APPLS. 34412/2020 (Impleadment), 34413/2020 (Exemption), 8427/2021 (Directions), 9397/2021 (Directions), 10295/2021 (Additional affidavit on b/o of Appellant), 11804/2021 (Impleadment), 14676/2021 (to take on record Additional Affidavit on b/o of Appellant), 14677/2021 (Exemption)

1. Being aggrieved and feeling dissatisfied with the impugned order dated **10.09.2020**, passed in **W.P. (C) No. 5608/2020** (Annexure P-1 to the memo of this appeal), original Petitioner has preferred the present Letters Patent Appeal.

2. **Factual Matrix**

- a. Appellant herein claims to be the first elected National President of Akhil Bharat Hindu Mahasabha (hereinafter referred to as **ABHM**), in the year 2006 as well as elected subsequently also from time to time.
- b. It is claimed by the Appellant that the Appellant and his office bearers were recognized in the year 2008 for 2008-2010 and the Appellant was again elected as National President of ABHM in the year 2012 for a period of five years upto 2017. Subsequently, again in the year 2017, he was elected as the National President on 13.04.2017 for a period of five years i.e. upto 2022.
- c. It is averred by the Appellant that after the election of the Appellant in 2010, he and his office bearers were taken on record of the Election Commission of India (hereinafter referred to as **'ECI'**) and vide a

letter dated 11.11.2010, issued by ECI, they were recognized as President and office bearers of ABHM.

- d. However, vide letter dated 14.01.2011, ECI withdrew the recognition accorded earlier, which constrained the Appellant to file a writ petition before this Court being W.P.(C) No. 704/2011. Vide judgment dated 02.05.2011, the learned Single Judge allowed the writ petition setting aside the impugned communication dated 14.01.2011 and restored the recognition of the office bearers of the Appellant.
- e. Being aggrieved and feeling dissatisfied by the said judgment dated 02.05.2011, passed in W.P. (C) No. 704/2011, a third party, after seeking leave to prefer an appeal, preferred a Letters Patent Appeal being LPA No.522/2011, before the Division Bench of this Court, titled: ***Chander Prakash Kaushik vs. Election Commission of India and Anr.***
- f. LPA No. 522/2011 was allowed by the Division Bench vide judgment dated 16.03.2012 (Annexure P-11 to the memo of this appeal) and the judgment dated 02.05.2011 was set aside holding that the letter dated 14.01.2011 issued by ECI was valid. The Court also observed that since ABHM was an unrecognized registered political party, ECI was not empowered to decide the disputes between its factions and gave liberty to the aggrieved party to approach the Court in accordance with law to challenge the presidentship of the Appellant.
- g. Appellant herein preferred a Review Petition bearing No. 403/2012 in LPA 522/2011, which was dismissed by the Division Bench, vide order dated 13.07.2012 holding that the *inter se* internal disputes have

to be resolved by way of a civil suit and if the Appellant claimed himself to be the President, it was for him to seek declaration to that effect. However, in case the Appellant felt that his claim was beyond doubt, it may be for the faction to approach the Court of Law. Appellant approached the Supreme Court in CC No.9116-9118/2013, which was dismissed *in limine* vide order dated 06.05.2013.

- h. Once again, an application was preferred by the Appellant on 15.01.2018 seeking recognition of the Appellant as the National President of ABHM with immediate effect alongwith its newly constituted National Working Committee, in wake of what he claimed were unsuccessful 'challenges' by others claiming to be Presidents of ABHM in the meantime. Reference was given to several litigations including suits, writ petition and appeal between the various claimants.
- i. Appellant thereafter received a letter dated 03/05.04.2018 from ECI seeking comments, which were sent vide letter dated 09.04.2018. Receiving no response from ECI, Appellant sent a legal notice dated 18.05.2018 followed by another legal notice dated 13.02.2020, requesting for recognition but there has been no response.
- j. Appellant thereafter received a reply of ECI dated 17.03.2020 (Annexure P-24 to the memo of this appeal) wherein it was stated that the internal disputes in the party were yet to be settled as number of groups were claiming to be genuinely elected party President.
- k. As per the Appellant, a reply was sent to the said communication addressing the issues raised by the ECI, in detail and explaining the

status of the alleged claimants vis-a-vis the Appellant. Getting no relief from ECI, Appellant filed W.P.(C) 5608/2020 seeking a direction to ECI to recognize the list of office bearers under the leadership of the Appellant as National President of ABHM and in the meantime to allow the Appellant and his office bearers to participate in the Assembly Elections in Bihar and West Bengal. The writ petition was dismissed by the learned Single Judge and it is the said judgment dated 10.09.2020, which is assailed by the Appellant, before this Court.

1. It is relevant to mention at this stage that intervention applications have been filed in the present appeal. CM Appl. No.11804/2021 is filed on behalf of Sh. Pandit Nand Kishore Mishra, alleging to be the President of ABHM, while CM Appl. No.34412/2020 has been filed on behalf of Sh. Munna Kumar Sharma claiming to be the National General Secretary of ABHM asserting that Sh. Chander Prakash Kaushik has been the National President since 2004 and was lastly elected in the year 2018.
3. **Arguments canvassed by learned Senior Counsel for the Appellant (Original Petitioner)**
 - (a) Learned Senior Counsel appearing for the Appellant submits that ABHM is a registered political party, having participated in elections even before the independence of India and is governed by its Constitution as amended from time to time. As per the Constitution, a procedure has been laid down for elections to the Central Working Committee, including the National President of the party. In

accordance with the democratic procedure of election, Appellant was elected as a National President for 2006-2008 and again for 2008-2010. Yet again, the Appellant was elected for a period of five years from 2012-2017 and subsequently, on 13.04.2017 for five years. On both the occasions, list of office bearers was duly intimated to ECI and there was no objection / intimation of any dispute or challenge. By a letter dated 11.11.2020, ECI took on record the list of office bearers and recognized the Appellant and his faction as the genuine President and office bearers of ABHM, indicating that after verification ECI was satisfied of the claim of the Appellant. In fact, a reserved symbol was also given to the Appellant to contest elections from 2006-2012. Appellant had taken part in the forefront of the Ram Janam Bhoomi Movement and was also one of the Appellants before the Hon'ble Supreme Court in Civil Appeal bearing No.2636/2011.

- (b) It is contended that the learned Single Judge erred in appreciating that while various suits, writ petitions, etc. were filed by different persons claiming themselves to be the office bearers of ABHM before this Court as well as other Courts, but all of them had been dismissed. Civil Suit bearing CS (OS) No.837/2007, titled: ***Bhai Paramjit Singh and Ors. Vs. Swamy Chakrapani and Ors.*** challenging the presidentship of the Appellant was dismissed due to deliberate non-prosecution. Another Civil Suit being CS(OS) 745/2014, titled as: ***Baba Nand Kishore Mishra vs. Dinesh Chandra Tyagi and Ors.*** was filed assailing the presidentship wherein Appellant was one of the defendants and the suit was dismissed as withdrawn. Learned Senior

Counsel contends that a list of cases filed by various claimants has been furnished in the body of the appeal and was also placed before the learned Single Judge, but the ECI and the learned Single Judge failed to appreciate that when the fresh application was filed by the Appellant on 01.01.2018, no cases were pending against the Appellant.

- (c) It is further contended that non-recognition of the office bearers of ABHM under the National Presidentship of Appellant is violative of Article 14 of the Constitution of India as it violates the right of the Members to conduct the affairs of a recognized political party and also contest elections.

4. **Arguments canvassed by the Interveners**

- (a) Learned counsels appearing for the Applicants/interveners, in their own rights, separately submit that they may be permitted to intervene and assist the Court as they are the rightful Presidents of ABHM. Both the counsels support the stand of the ECI and contend that no error has been committed by the learned Single Judge in passing the impugned judgment and in relegating the Appellant to the remedy of a civil suit for seeking a declaration to the effect that he is the National President of ABHM.

5. **Arguments canvassed by learned counsel for Respondent No. 1 (Election Commission of India)**

- (a) Learned counsel appearing on behalf of Respondent No.1 submits that

no error has been committed by the learned Single Judge while deciding W.P.(C) 5608/2020, primarily for the reason that the issue raised by the Appellant in the writ petition, stood decided and crystalised by the Division Bench of this Court in LPA No.522/2011, vide judgment dated 16.03.2012, especially in paragraphs 8 to 11 thereof. It is pointed out that the Division Bench has clearly held that there have been disputes since the year 2004 as to the internal management of ABHM, which were never resolved. There was no unequivocal document before the Division Bench showing the election of the Appellant herein as office bearer in accordance with the Constitution of ABHM. Rather the material showed pending disputes and merely because the persons who filed the suits chose not to pursue them did not confer legitimacy to the Appellant, when several persons were disputing the claim of the Appellant. The Division Bench has clearly observed that it was for the person who wanted to exercise his rights as President / office bearer to seek a declaration to such office.

- (b) It is further contended that the decision rendered in LPA 522/2011 was affirmed by the Division Bench by dismissing the Review Petition bearing No.403/2012 filed by the Appellant. Against the said order, the Special Leave Petition being CC No.9116-9118/2013, filed by the Appellant was dismissed by the Hon'ble Supreme Court, vide order dated 06.05.2013.
- (c) In view of the aforesaid concurrent decisions, no error can be said to be committed by ECI in rejecting the application preferred by the

Appellant for recognition or by the learned Single Judge in dismissing the writ petition.

- (d) It is further submitted by learned counsel for Respondent No.1 that in a communication dated 17.03.2020 sent by ECI to the Appellant (Annexure P-24 to the memo of this appeal), it has been intimated by ECI that vide earlier communications dated 12.09.2018 and 22.02.2019, it had informed all the rival groups, being six in number, that the internal disputes in the party were yet to be settled. Since various rival groups were claiming to be the National Presidents of ABHM, it was beyond the power, jurisdiction and authority of ECI under the Representation of the People Act, 1951, to enter into and decide the *inter se* disputes.
- (e) It is further submitted by learned counsel for Respondent No. 1 that as on date, there are two Civil Suits pending before the Trial Courts regarding the aforementioned disputes viz. : Civil Suit No. 344/2020 in Tis Hazari Courts, Delhi and Civil Suit No. 147/2021, pending before the Additional District Judge, Patiala House Courts, New Delhi. It is pointed out that two criminal complaints bearing Nos.18831/2016 and 20918/2016 are also pending, which have nexus with the controversy in question and will have a bearing on the claims of the Appellant. In view of these submissions, it is prayed that the present appeal be dismissed.

6. **Analysis and Findings**

Having heard learned Senior Counsel appearing on behalf of the Appellant and learned counsels for ECI and interveners respectively, we see

no reason to entertain the present appeal for the following facts and reasons:-

- (i) The claim by the Appellant that he is the National President of ABHM is in dispute. Communication dated 17.03.2020 sent by ECI to the Appellant reveals that there are as many as five other groups who are claiming to be genuinely elected party President.
- (ii) From the record, it is evident that in the earlier round of litigation, Appellant had filed a writ petition before this Court being W.P. (C) No. 704/2011, which was allowed by the learned Single Judge vide judgment dated 02.05.2011, setting aside the letter dated 14.01.2011 issued by ECI withdrawing the recognition of the Appellant and restoring the recognition. However, on an appeal filed by a third party, being LPA No. 522/2011, the Division Bench of this Court set aside the order of the learned Single Judge, vide judgment dated 16.03.2012. The observations of the Division Bench are extremely relevant and have a direct bearing on the issue raised by the Appellant in this appeal. Relevant paras of the judgment of the Division Bench are as follows :-

“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.”

(Emphasis Supplied)

- (iii) It is again a matter of record that against the aforesaid decision of the Division Bench, Appellant preferred a Review Petition being No. 403/2012, which was dismissed by the Division Bench, vide order dated 13.07.2012 and the relevant part of the same reads as under:-

“2. In our opinion we have nowhere stated as to whether it is Swami Chakrapani or somebody else who is the President of the ABHM. The only question of law which is decided is to the effect that since ABHM is an unrecognized political party any internal dispute in the said party is not to be decided by the Election Commission of India (ECI). This position is made abundantly clear in para 11 of the judgement. If Swami Chakrapani claims that he continues to be the President and further faction within the said political party which is disputed the said claim of Shri Chakrapani i.e. the inter se internal disputes has to be resolved by Civil Court. Because of this reason we made it clear that if Swami Chakrapani claims himself to be the President it is for him to seek a declaration to this effect. However in case Swami Chakrapani feels that his claim to the Presidentship of ABHM is beyond the pale, it may be for the faction to approach Court of Law.

3. We reiterate that in so far as the subject matter of writ petition or LPA is concerned, the same was limited to the powers of the ECI where it was held that ECI did not have any power to exercise any quasi-judicial powers and decide these issues pertaining to unrecognized political party. In support of this conclusion we had referred the judgment of Supreme Court in R.R. Verma

vs. UOI (1980) 3 SCC 402 wherein it is held that decision in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.”

(Emphasis Supplied)

- (iv) Challenge to the orders of the Division Bench was unsuccessful and the SLP was dismissed *in limine* on 06.05.2013. Reading of the order of the Division Bench leads to an inevitable conclusion that the only remedy available to the Appellant is to seek a declaration in a civil suit with regard to his claim to be a National President of ABHM. The Division Bench clearly observed that it was beyond the powers and jurisdiction of ECI to recognize the Appellant as the President, more so, in view of the *inter se* disputes, where several rival persons were claiming to be the party President. It was also observed that notwithstanding the dismissal of the civil suit for non-prosecution, filed by one of the rival groups, Appellant could not be recognized as the National President, in the absence of any material to show that he was the elected President and especially in face of the material on record, showing internal disputes in the Management since 2004. The Division Bench also held that in case any person wanted to exercise his or her rights as President / office bearer, it was for him to seek a declaration to that effect and he cannot be allowed to hold office merely for the reason that the others have not approached the Court of Law.
- (v) It may also be useful at this stage to allude to the order of the Division Bench dated 13.07.2012, passed in the Review Petition, wherein it was held that the *inter se* disputes have to be resolved in a civil suit

and if the Appellant claimed himself to be the President, it was for him to seek a declaration to that effect. It was reiterated that the ECI does not have the power to exercise any quasi-judicial powers and decide the *inter se* disputes pertaining to unrecognized political party.

- (vi) The learned Single Judge in the impugned judgment has taken note of the orders passed by the Division Bench and noted that despite the said orders, the Appellant has yet again raised the same contentions. Having so observed, the learned Single Judge, in our view, rightly rejected the plea raised by the Appellant on the ground that once the said plea was rejected by the Division Bench and the order was upheld by Hon'ble the Supreme Court, the only remedy available to the Appellant was to seek a declaration, in case he desires to stake a claim to the presidency of ABHM.
- (vii) Moreover, as brought out by the Interveners, in the applications being CM Appls.34412/2020 and 11804/2021, there are two suits presently pending bearing Civil Suit No. 344/2020 and Civil Suit No. 147/2021 before the Trial Courts at Delhi and the *inter se* disputes between different groups are yet to be resolved. It is also pointed out that that two criminal complaints, bearing Nos. 18831/2016 and 20918/2016 which have a nexus with the present issue are also pending.
- (viii) In view of the aforesaid aspects of the matter and the judgments aforementioned, this Court disagrees with the Appellant that his claim of being the National President is undisputed and that there are no rival claims to the said position. As held by the Division Bench, it is not for the ECI to resolve the said disputes and in case the Appellant

desires, he is at liberty to take recourse to filing a declaratory suit or any other appropriate civil remedy to claim the National presidency of ABHM. Thus, in our view, no direction can be issued to the ECI by this Court to recognize the Appellant as a National President of ABHM, in the wake of disputes pending in that regard and no infirmity can be found by the impugned judgment passed by the learned Single Judge.

- (ix) Aforesaid aspects of the matter have been properly appreciated by the learned Single Judge while deciding W.P. (C) No.5608/2020 by judgment and order dated 10.09.2020. No error has been committed by learned Single Judge while deciding the writ petition. We are in full agreement with the reasoning given by the learned Single Judge in the judgment dated 10.09.2020 rendered in W.P.(C) No.5608/2020.

7. Accordingly, we find no merit in the appeal and the same is accordingly dismissed alongwith all pending applications except CM Appl. Nos.34412/2020 and 11804/2021, for intervention, which are allowed.

CHIEF JUSTICE

JYOTI SINGH, J

SEPTEMBER 06, 2021
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