

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

FAO 83/2022 and CM APPL. 16686/2022 (stay)

Reserved on : 01.03.2023

Date of Decision : 26.04.2023

IN THE MATTER OF:

V SOMASKANDAN & ORS.

..... Appellants

Through: Mr. Rajiv K. Garg, Mr. Ashish Garg
and Mr. Ayush Aggarwal, Advocates

Versus

SREE SWAMINATHA SWAMY SEVA SAMAJ REGD & ORS.

..... Respondents

Through: Mr. G. Umapathy, Sr. Advocate with
Ms. Pavitra B. and Ms. S. Kumaran,
Advocates for respondent No.1

Respondent No.5 in person

Respondent No.12 in person

Respondent No.13 in person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. Appellants seek setting aside of the order dated 11.02.2022 passed by the learned ADJ-02, New Delhi District, Patiala House Courts, New Delhi in CS No. 445 of 2021 whereby their application under Order XXXIX Rules 1 & 2 CPC was dismissed.

2. The dispute relates to elections held in the year 2021 for the governing body of *SREE SWAMINATHA SWAMY SEVA SAMAJ REGD* i.e., respondent No.1 (hereinafter, referred to as '*Samaj*') which is managing the affairs of *Sree Swaminatha Swamy Temple* known as "*Malai Mandir*".

3. Mr. Garg learned counsel for the appellants has called in question not only the election results but the entire election process by contending that the elections were held in complete disregard to the Electoral Bye Laws, 2011 of the *Samaj*, and specifically its clause 4 which required that elections be conducted under the superintendence and control of two Election Officers who must be independent and having knowledge of election law and practice. It is contended that the elections were conducted under only one Election Officer as the other Election Officer was not available and Mr. *Selvam* who assisted the Election Officer was employed as a manager with the *Samaj* and thus clearly ineligible under clause 4 of the Electoral By laws. Additionally, it is grieved by the appellant that the members were unfairly denied opportunity to submit their nominations as the time to file the same was arbitrarily curtailed. It was next contended that barring one executive and members, all other office bearers were elected unopposed since all the members of the *Samaj* could not participate and cast their vote as the elections were held in complete disregard to the prohibitive orders dated 13.09.2021 and 14.10.2021 issued by the concerned SDM and Delhi Disaster Management Authority, GNCTD on account of COVID protocol. Lastly, it was contended that after assuming office, the respondents have committed large scale financial irregularities.

4. Mr. G. Umapathy, learned Senior Counsel for respondent No.1, on the other hand, has supported the impugned order. He submitted that on 27.12.2020, an AGM of *Samaj* was held which was attended by 49 members and in the said meeting, a large number of members expressed concern about mismanagement in the affairs of *Samaj* in the absence of timely elections. A proposal was given for holding fresh election in the interest of the affairs of the *Samaj*. Accordingly, a committee headed by Justice K. Ramamoorthy (Retd.) was formed to conduct the elections.

Learned Senior Counsel submitted that the elections were conducted in a free and fair manner and to the knowledge of all the members. He submitted that after the elections were announced, a total 34 nomination forms were collected by the members including by the appellants No.1, 3 and 4. While others submitted their nomination forms, appellants No.1, 3 and 4 failed to submit the same in due time. Replying to the contention that the elections were contested unopposed, learned Senior Counsel submitted that only office bearers were elected unopposed but for the post of members there was a due contest. It was also submitted that Mr. Selvam was appointed to assist the Election Officer. While denying the allegations that the elections were held despite prohibitive orders issued by the concerned authorities, reference was made to the order dated 14.10.2021 issued by the Delhi Disaster Management Authority, GNCTD whereby the religious places were permitted to be opened for visitors/devotees subject to the compliances of the SOP. In this regard, a further reference was made to letter dated 11.10.2021 on which the concerned SDM vide had granted the permission subject to the maintenance of the COVID protocol.

5. While refuting the allegation of financial irregularities, it was stated that all the major financial and administrative decisions taken by the newly appointed committee were placed before the trial court in pursuance of the directions dated 10.11.2021. It was submitted that to ensure transparency, the new management has started online *Sewa*.

Lastly, it was submitted that in the underlying suit, the appellants have failed to make out a specific case that they were stopped from submitting the nominations. It is submitted that the pleadings are vague and general. In support of submissions, reference was made to the decisions in Karpagathachi & Others v. Nagarathinathachi reported as **AIR 1965 SC 1752**, Dalip Singh v. State of U.P. and others reported as **(2010) 2 SCC 114** and Biraji Alias Brijraji & Anr. v. Surya Pratap & Others reported as **(2020) 10 SCC 729**.

6. In rejoinder, learned counsel for the appellants has referred to paragraph 11 and 17 of the plaint to submit that specific pleadings were made on the prejudice caused to the appellants on account of arbitrary curtailing of the last date of filing nominations.

7. The undisputed facts, as available from the record and noted above are that the *Samaj* is a registered body under the Society Registration Act, and is managing the affairs of *Sree Swaminatha Swamy Temple*. The *Samaj* is governed by its Memorandum of Association and Rules and Regulations. As per amended Rules and Regulations 2015, a Board of Management comprising - a President, 5 Vice –Presidents, a Secretary, 2 Joint Secretaries, a Treasurer, a Joint treasurer and 11 members were to be elected in terms of Electoral Bye laws.

8. The previous elections of the *Samaj* were held on 30.12.2018 with a term of 3 years. Apparently, in meeting held on 27.12.2020, the then Board of Management was dissolved and an interim committee was appointed to run and manage the affairs of the *Samaj*. On 23.03.2021, a notice was issued thereby announcing the elections to be held on 25.04.2021. The election schedule announced reads as follows:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Time</i>	<i>Date</i>
1	<i>Commencement of the issue of nomination forms to the contesting candidates</i>	7.00 AM	11.4.2021
2	<i>Closing date for the issue of nomination forms</i>	7.00 PM	16.4.2021
3	<i>Last date for the contesting candidates to drop the forms in the sealed box in the office of the Samaj</i>	8.30 PM	17.4.2021
4	<i>Scrutiny of nomination forms by the Election Officer</i>	6.00 PM	18.4.2021
5	<i>Display of names of the contesting candidates</i>	12.00 Noon	19.4.2021
6	<i>Last date for withdrawal of nominations</i>	12.00 Noon	20.4.2021
7	<i>Display of the list of contesting Candidates</i>	6.00 PM	21.4.2021
8	<i>Date of Poll, if any election is called for any of the Officers of the Board of Management</i>	11.00 AM	25.4.2021

9. On 05.04.2021, two Elections Officers namely, *Sh. S Ramakrishnan* and *Sh. N Ramachandran*, as well as one Observer namely, *Sh. K Govindarajalu* was appointed in terms of the Electoral Bye laws.

10. It is borne out from the records that vide public notice dated 16.04.2021, the elections came to be postponed as a national lockdown was imposed on account of COVID-19. The relevant extract of the said notice reads as under:-

“In view of the lockdown declared by the Government, Scrutiny of nominations fixed on Sunday, 18.4.22021, stands postponed to Wednesday on 21.04.2021 at 11.00 a.m.

This issues with the approval of Election Commissioners.”

11. On 22.09.2021, a fresh election schedule was announced. The same reads as under:-

<i>Scrutiny of nomination Forms by the Election Officers</i>	<i>11.00 A.M.</i>	<i>10.10.2021</i>
<i>Display of names of the contesting candidates</i>	<i>11.00 A.M.</i>	<i>11.10.2021</i>
<i>Last date of withdrawal of nominations</i>	<i>04.00 P.M.</i>	<i>12.10.2021</i>
<i>Display of the list of contesting candidates</i>	<i>6.00 P.M.</i>	<i>13.10.2021</i>
<i>Date of Poll, if any election is called for any of the officers of the Board of Management</i>	<i>11.30 A.M.</i>	<i>17.10.2021</i>

12. The postponement only deferred the steps scheduled after 16.04.2021 to a newly appointed schedule. Now the scrutiny of nomination forms was scheduled on 10.10.2021 as against 18.04.2021 under the original schedule.

13. The postponement notice was issued on 16.04.2021, which was the closing date for issuance of nomination forms on which date the forms could be issued till 7:00 PM. However, before the time could expire at 7:00 PM on 16.04.2021, admittedly the postponement notice came to be issued in the morning of 16.04.2021 itself. It is evident that the time for issuance of nomination forms was curtailed, which is a matter of concern and vitiates the process.

14. The revised election schedule does not provide for compensating for the lost day for issuance of forms. Rather the revised schedule straight away jumps to the next step of scrutiny of nomination forms for which last date was set as 10.10.2021. There is no revised date fixed for submission of nominations forms in the revised schedule-for which the date set originally was 17.04.2021.

15. Not only nearly a day was curtailed for issuing the nomination forms but the entire step of last day of submission of nomination forms too has been skipped over in the revised schedule. The election process ought to have been continued from the stage it was stopped. In the considered opinion of this Court, this has caused serious prejudice to the appellants.

Although respondent has contended that the pleadings on the aspect of prejudice caused to the appellants for not being able to deposit the nomination forms, is vague however, a perusal of the plaint shows

that requisite averments have been made. Accordingly, the respondents' reliance on various decisions is found misplaced.

16. Appellants' another contention that election was vitiated for non-compliance of Electoral Bye-laws also finds favor with the Court. As per Clause 4 of the electoral bye-laws, the elections were to be conducted under the superintendence and control of two Election officers who would be independent and impartial persons of known integrity and knowledge having experience in electoral laws. Additionally, the Election Officers were required to be not eligible to vote or in any way directly or indirectly connected with the affairs of the *Samaj* pecuniary or otherwise. The relevant Electoral Bye-law 4 reads as under:-

"4. Conduct of Elections

(a) Appointment of Election Officer

The elections shall be conducted in a fair, impartial and transparent manner, under the superintendence and control of two independent impartial persons of known integrity and ability having special knowledge of, and experience in problems relating to electoral laws and practice.

(b) Appointment of Observers

If a reasonably sufficient number of members of the General Body eligible to vote so desire, the Board of Management may appoint two independent impartial persons of known integrity and knowledge and experience of electoral laws and experience, as observers to the conduct of elections.

(c) Fulfillment of certain conditions by Election Officers and Observers

No person so appointed by the Board of Management to conduct the elections or to serve as an observer, shall be a member eligible to vote in the elections, nor in any way,

directly or indirectly connected with the affairs of the Samaj, pecuniary or otherwise.

(d) Election through secret ballot in a peaceful manner

The Election Officer shall conduct the election through secret ballot and the Samaj shall provide all possible facilities to him for the smooth conduct of the poll in a peaceful and manner."

17. In light of above, this Court also finds force in the appellants' contention that *Mr. Selvam* was a manager employed with the *Samaj* and could assisted the sole Election Officer in terms of Clause 4 of the Electoral Bye laws .

18. Pertinently, in its aforesaid application filed under Order XXXIX Rules 1 & 2 CPC, the appellants had made following prayers:-

"It is prayed that the Hon'ble Court may be pleased to grant an ad interim ex parte order thereby restraining the defendants 4-26, from in any manner holding/running the office election Samaj-Defendant No.1 and the Receiver and /or the committee appointed on 5.4.2021 be directed to do all functions of the Samaj till the disposal of the suit."

19. In view of the aforesaid discussion, this Court is of the *prima facie* opinion that the election process was vitiated, and thus deems it expedient to direct that the respondent No 4 to 26 are restrained from acting as Board of Management, either collectively or severally in their individual capacities as office bearers of the *Samaj*, till the disposal of the suit. The interim Committee appointed on 05.04.2021 headed by Justice K Ramamoorthy (Retd.) shall carry out the functions of *Samaj* till the disposal of the suit.

20. The appeal stands disposed of in the above terms along with all pending applications.

21. Needless to state that the observations made hereinabove are only *prima facie* and shall not come in the way of the trial court while disposing of the suit.

(MANOJ KUMAR OHRI)
JUDGE

APRIL 26, 2023

na

