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

Reserved on: 20th October, 2023

Date of Decision: 04th January, 2024

+ CM(M) 746/2022 & CM APPL. 33189/2022

HINDUSTAN SCOUTS AND GUIDES ASSOCIATION

..... Petitioner

Through: Mr. Vivek Sood, Senior Advocate
with Mr. D.K. Yati and Mr. Sahib
Malhotra, Advocates.

versus

SHRINIWAS SHARMA & ANR.

..... Respondents

Through: Ms. Anjana Gosain, Advocate for R-1
Mr. Kamal Gupta, Mr. Sparsh
Aggarwal, Mr. Manish Vashist and
Ms. Kirti Gupta, Advocates for R-2

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. This petition filed under Article 227 of Constitution of India impugns the order dated 25.05.2022 passed by the ADJ-02, North West District, Rohini Courts, Delhi ('Appellate Court') in MCA DJ No. 22/2019, titled as '**Sh. Shriniwas Sharma and Ors. v. Hindustan Scouts and Guides Association**' whereby the Appellate Court dismissed the appeal filed by the Petitioner herein and set aside the interim order dated 03.05.2019 passed by the JSCC/ASCJ/GJ, North West District, Rohini Courts, Delhi ('Trial



Court') in civil suit bearing CS No. 364/2019.

2. The Trial Court had vide order dated 03.05.2019, inter alia, restrained the Respondent No.1 from participating in management, administration and controlling the affairs of the Petitioner and signing any letter, notice and communication on Petitioner's behalf. The Trial Court further restrained the Petitioner herein from implementing the decision taken by its National Executive Committee vide meeting dated 02.03.2019 in respect of conducting the election of National Body on 05.05.2019 and any other decision taken in the meeting dated 02.03.2019.

3. The Petitioner herein i.e., Hindustan Scouts and Guides Association ('Association') is the plaintiff and is represented through its purported National Secretary i.e., Sh. Vinod Kumar Bidhuri. The Respondent No.1 is the defendant no.1 and Respondent No.2 is the defendant no.3. It is noted that though in the suit there are five (5) defendants, in this petition only defendant nos. 1 and 3 have been impleaded as Respondent Nos. 1 and 2 respectively.

3.1. The Respondent No.1 holds himself out to be the founder and lifetime member of the Association and Respondent No. 2 is presently acting as the President of the Association on the basis of the elections of National Body held on 05.05.2019.

4. Respondent Nos. 1 and 2 have challenged the institution of the suit on 06.03.2019 in the name of the Association by Sh. Vinod Kumar Bidhuri as admittedly Sh. Vinod Kumar Bidhuri was removed from the post of National Secretary earlier i.e., on 21.02.2019.

5. The civil suit along with an application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 ('CPC') was filed by Sh. Vinod



Kumar Bidhuri claiming to be the National Secretary of Association seeking declaration, permanent and mandatory injunction on Petitioner's behalf.

5.1. Sh. Vinod Kumar Bidhuri in the application under Order XXXIX Rule 1 and 2 CPC sought the following reliefs on behalf of the Association:

“i) pass an ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no.4 from officiating and discharging the responsibility of the National Secretary of the plaintiff association and participating in the affairs and administration of the plaintiff association in any manner whatsoever. **(not granted by Trial Court)**

ii) pass an ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no. 1 to 4 from implementing the decision taken in the national executive committee Meeting on 02.03.2019 held at Mount Abu Public School, Sector-5, Rohini, New Delhi-110085 in respect of conducting the election of national body on 05.05.2019 and any other decision taken in the alleged National Executive Committee Meeting. **(granted by Trial Court)**

iii) pass an ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no. 1 from the participating in the management, administration and controlling the affairs of the plaintiff association and signing any letter, notice and communication on behalf of the HSGA. **(granted by Trial Court)**

iv) pass an ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no. 2 to 4 from the participating in the management, administration and controlling the affairs of the plaintiff association and signing any letter, notice and communication on behalf of the HSGA. **(not granted by Trial Court)**

v) pass an ex-parte ad-interim injunction in favour of the plaintiff and against the defendants thereby restraining the defendant no.5 thereby the defendant no. 5 from entertaining any kind of notices /correspondences/letters/representation issued by the defendant no. 1 to 4 in respect of the affair of the plaintiff association and further restrain from recognizing them as office bearers of the HSGA. **(not granted by Trial Court)**

5.2. As noted earlier, the Trial Court vide order dated 03.05.2019 only granted the interim reliefs at prayer nos. (ii) and (iii) to the Association, however, the said order has been set aside by the Appellate Court vide its



impugned order.

Arguments of the Respondents i.e., defendants

6. The arguments in this petition, to begin, were addressed by the Respondents.

7. Mr. Kamal Gupta, learned counsel representing Respondent No.2 states that the civil suit filed on 06.03.2019 in the name of the Association is not validly instituted and therefore, not maintainable.

7.1. He states that in the plaint, Mr. Vinod Kumar Bidhuri has held himself out to be the National Secretary of the Association; whereas he admittedly stood removed from the said post on 21.02.2019. He states that after his removal, the defendant no. 4 i.e., Mr. Champat Singh, stood appointed as the National Secretary on 21.02.2019, which appointment was confirmed by the Association at its National Executive Committee meeting held on 02.03.2019.

7.2. He states that the Trial Court duly noted these facts of removal of Mr. Vinod Kumar Bidhuri as the National Secretary and in view thereof declined the interim reliefs (i) and (iv) vide its order dated 03.05.2019. He states that the reasons recorded by the Trial Court while declining relief nos.(i) and (iv) itself made the grant of the interim relief no.(ii) unsustainable and contrary to law.

7.3. He states that Mr. Vinod Kumar Bidhuri has not challenged his removal as the National Secretary till date despite the provision of appeal against expulsion under Rule 8 the Rules and Regulations of Association ('Rules') or in any appropriate forum. And, therefore, the Trial Court erred in entertaining the suit filed by him in the name of the Association, which as per Rule 39 can only be filed by a National Secretary.



7.4. He states that Mr. Vinod Kumar Bidhuri has not challenged the findings at paragraph 14 and 15 of the of the Trial Court's order dated 03.05.2019 declining the reliefs nos. (i), (iv) and (v). He states that Mr. Champat Singh, i.e., defendant no.4 has been acting as the National Secretary since 2019-2023 (till date) and therefore, no cause for restraint at this belated stage is made out. He states for the said reason additionally, the present petition cannot be maintained.

7.5. He states that the elections of the National Body of the Association were held on 05.05.2019 and Respondent No.2 was elected as the President. He states that rest of the members were elected unopposed. He states that the elected members (i.e., the officer bearers) have been arrayed as defendants and the suit has been instituted in the name of the Association by a person who no longer holds the post of an office bearer; and therefore, the suit filed in the name of the Association is contrary to Section 6 of the Societies Registration Act, 1860 ('Act of 1860').

7.6. He states that on the date of the filing of the suit i.e., 06.03.2019, Mr. Vinod Kumar Bidhuri, having ceased to be the National Secretary (as on 21.02.2019), he was not authorised to file a suit on behalf of and in the name of the Association.

8. Ms. Anjana Gosain, learned counsel for Respondent No.1 (i.e., defendant no.1) states that Respondent No.1 is the founding member of the Association and as per the Rules, he is a lifetime member of said association.

9. The learned counsels state that the impugned order of the Appellate Court setting aside the Trial Court's order dated 03.05.2019 is reasoned and the said reasons are recorded at paragraph 7 and 8 of the said order.



9.1. The learned counsels state that the office bearers of the Association elected on 05.05.2019 have been continuing to manage the affairs of the said Association and any order of restraint in the year 2023 will cause disruptions; especially since the elections held on 05.05.2019 have not been challenged in the present proceedings.

Arguments of the Petitioner i.e., the plaintiff

10. In reply, Mr. Vivek Sood, learned senior counsel for the Petitioner states that the impugned order dated 25.05.2022 passed by the Appellate Court is unreasoned as noted by the Predecessor Bench in its order dated 27.10.2022. He states on the other hand the Trial Court's order dated 03.05.2019 was well reasoned and merited no interference.

10.1. He states that the Show Cause Notice dated 14.02.2019 ('SCN') issued to Mr. Vinod Kumar Bidhuri and his removal on 21.02.2019 are a subject matter of trial. He states that the said SCN is not valid.

10.2. He states that on merits the notice dated 09.02.2019 issued by defendant no.2, Dr. Atul Kumar, calling for the National Executive Committee meeting on 02.03.2019 itself is invalid since as per Rule 22(d) of the Rules, the notice could only have been issued by defendant no.2 in the absence and with the consultation of National Secretary, which at time of issuance of notice was Sh. Vinod Kumar Bidhuri. He states that the defendants have not proved anything on record to show that Sh. Vinod Kumar Bidhuri was absent from the Association and was not attending his duties.

10.3. He states that thus, the resolutions passed at the said meeting held on 02.03.2019 are invalid. He states that in these circumstances the suit was rightly instituted for seeking restraint on holding of elections of National Body scheduled for 05.05.2019.



Analysis and findings

11. This Court has considered the submissions of the learned counsels for the parties and perused the record.

12. To begin with, it needs to be noted that this suit was filed on 06.03.2019 seeking stay of the elections of National Body on 05.05.2019. It has come on record that during the pendency of the suit, the elections were conducted on 05.05.2019 and the officer bearers, who stood elected on the said date have been conducting and managing the affairs of the Association uninterruptedly till date (i.e., past four years).

12.1. As per the Rules, the term of the National Body is three (3) years and the term of the National Executive Committee is co-terminus. Thus, the term of the office bearers who were elected on 05.05.2019 in ordinary course would have come to an end in three (3) years; however, due to the pendency of this litigation, the said office bearers are continuing to manage the affairs of the Association.

12.2. Keeping in view the aforesaid facts, this Court is proceeding to adjudicate the rival pleas of the parties.

13. The suit was filed by Mr. Vinod Kumar Bidhuri in the name of the Association. In the cause title it was stated that the suit is being instituted through its National Secretary, however, admittedly, Mr. Vinod Kumar Bidhuri had been served with a SCN on 14.02.2019 and consequently, expelled from his post on 21.02.2019.

13.1. Though, it is contended that the said order of removal is illegal, it is a matter of record that the said order dated 21.02.2019 has not been assailed by Mr. Vinod Kumar Bidhuri in terms of provision of appeal against expulsion set out in Rule 8 of the Rules or before any legal forum including the suit from



which the present proceedings emanate.

13.2. Therefore, the institution of the suit by Mr. Vinod Kumar Bidhuri in the name of the Association (as on 06.03.2019) after his removal on 21.02.2019 itself was impermissible in terms of Rule 39 of the Rules as well as Section 6 of the Act of 1860. Mr. Vinod Kumar Bidhuri while filing the suit himself relied upon Rule 39 of the Rules, which is *pari materia* to Section 6 of the Act of 1860. Thus, once these facts were brought before the Trial Court which evidenced the non-maintainability of the suit at the instance of Mr. Vinod Kumar Bidhuri, the Trial Court could not have entertained the suit and the application under Order XXXIX Rule 1 and 2 CPC seeking interim reliefs.

14. The aforesaid fact is also what weighed with the Appellate Court while passing the impugned order dated 25.05.2022 setting aside the Trial Court's order dated 03.05.2019. It is matter of record that Mr. Vinod Kumar Bidhuri till date has not challenged his removal from the post of National Secretary on 21.02.2019. This Court, therefore, finds no infirmity in this reason which weighed with the Appellate Court while vacating the stay. This Court is also of the view that the reasons which weighed with the Appellate Court while passing the impugned order are discernible from paragraph nos. 7 and 8; and are sufficient.

15. With respect to the elections scheduled on 05.05.2019, it has come on record that despite the restraint order issued by the Trial Court on 03.05.2019, the Association has proceeded to hold the election on 05.05.2019 and the elected body which came into existence on 05.05.2019 has been managing the affairs of the Association since then.

16. This Court expresses its disapproval on the aforesaid event as clearly the elections held on 05.05.2019 were in teeth of the Trial Court's order dated



03.05.2019 which was binding on the Association at the relevant time. It is a matter of record that no stay was operating against the Trial Court's order dated 03.05.2019 at that point. As per record, an application under Order XXXIX Rule 2A CPC filed by the Petitioner for violation of the order dated 03.05.2019 is pending.

17. The aforesaid facts of the elections being held in violation of the order dated 03.05.2019 is also noted by the Appellate Court in its orders dated 03.06.2019 and 30.08.2019. However, no consequential orders for the said violation have been sought by the Petitioner either before the Appellate Court or this Court.

18. The act of the Respondents in conducting the elections on 05.05.2019 and/or continuing to manage the affairs of the Association in violation of the Trial Court's order dated 03.05.2019 during its subsistence is unfortunate. The Respondents have shown lack of regard for the authority of the Court. It is trite law that even if the order of the Court is illegal or without jurisdiction, a party is bound by the said order until it is set aside by the appellate court or vacated by the court which has passed the said order (Re: **Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd. & Ors.**¹) However, a party cannot take it upon itself to ignore the binding directions of the Court. The attempt of the Respondents to hold back information from the Court is also evident from the proceedings dated 03.06.2019 and 30.08.2019 recorded by the Appellate Court.

19. Keeping in view the aforesaid conduct of the Respondents, it is clarified that the effect of the Appellate Court's impugned order dated

¹ (1997) 3 SCC 443



25.05.2022 and this order shall not be relied upon by the Respondents as an expression of affirmation of the elections held on 05.05.2019 as legal. The impugned order dated 25.05.2022 and this order has been passed in view of the fact that the institution of the suit by Mr. Vinod Kumar Bidhuri on 06.03.2019 has been found to be non-maintainable.

20. This Court does not condone the conduct of the Respondents in holding the elections on 05.05.2019 in teeth of the Trial Court's order dated 03.05.2019. The defence of the Respondents and other defendants that they were unaware of the said order is prima facie unacceptable considering that the matter was contested before the Trial Court and the said order was passed after hearing the parties. The Petitioner will be at liberty to pursue his application for contempt against the Respondents herein and other defendants in the suit in accordance with law.

21. This Court does not find any infirmity in the impugned order dated 25.05.2022 and the same is correct in law and fact. There is no error of jurisdiction or any other error warranting exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

22. Accordingly, the present petition is dismissed. Pending applications stand disposed of. No order as to costs.

MANMEET PRITAM SINGH ARORA, J

JANUARY 4, 2024/msh/hp/aa