

(2013) 10 DEL CK 0100

Delhi High Court

Case No: CS (OS) 2263 of 2010

Rajinder Kumar Gupta

APPELLANT

Vs

Brig(Retd.) S.S. Patwal

RESPONDENT

Date of Decision: Oct. 30, 2013**Hon'ble Judges:** Jayant Nath, J**Bench:** Single Bench**Advocate:** Neha Gupta, for the Appellant; Virendra Rawat, for the Respondent

Judgement

Jayant Nath, J.

The present dispute relates to the post of President of Winter Games Federation of India (WGFI) which is stated to be a sports federation registered under the Societies Act 1860. The plaintiff was stated to be elected as the Secretary of the WGFI in 2002 and 2006. On 18.08.2010 elections took place for the post of office-bearers including, the post of President of WGFI. These elections were conducted at D.S.O.I. Club, New Delhi and were also attended by the representative of Indian Olympic Association (I.O.A.) as an Observer. The units which are affiliated to WGFI have voting rights and have a right to vote at every general assembly meeting. Each State and Union Territory Winter Games Association and All-India association with voting rights have a right to vote. Each institutional member and ice-skating club/association with voting rights has one vote. It is stated that for the post of President, there were only two candidates, namely, the plaintiff and the defendant. The plaintiff was representing, the Ski Association of Delhi being its Secretary and the defendant was representing Winter Games Association of Uttarakhand (WGAU). Reliance is placed on Article 20(d) (vi) of the Rules and Regulations of WGFI to claim that the defendant could not be a candidate for the election of the office bearer. The relevant portion of the said Rule reads as follows:-

No office-bearer of a unit shall be eligible to be office-bearer simultaneously of any other unit excepting the WGFI, otherwise those units will not have voting rights.

2. It is stated that the two affiliated units of WGFI, namely, WGAU and Garwal Mandal Vikas Nigam Limited (GMVN Ltd.) were not eligible to exercise their votes because Sh. Pradeep Rawat who was the Secretary of WGAU was also the Senior Manager (Skiing) of GMVN Ltd. simultaneously. Accordingly, in terms of Article 20 (d) (vi) of the Rules of Regulations of WGFI he was ineligible being an office bearer of two units. Hence, both the units did not have any voting right as per above stated clause 20(d) (vi).

3. It is further stated that the plaintiff at the beginning of the election process raised the above objections. It is further stated that the Returning Officer and the Observer deputed by the Indian Olympic Association agreed with the said proposition of the plaintiff and disqualified Mr. Pradeep Rawat for voting in the elections as a representative of GMVN. However, the defendant was stated to have been allowed illegally to vote on behalf of WGFI in violation of Article 20(d) (vi) of the Rules and Regulations.

4. Reliance is also placed on Article 20 (e) of the Rules and Regulations of WGFI which reads as follows:-

The General Assembly shall elect its office-bearers and members of the Executive Council only among the members, having voting rights present in that meeting.

Accordingly, it is stated that as WGAU was not eligible to vote, the defendant could not have been a candidate for the elections of office bearer of the WGFI in terms of the above rules i.e. Article 20(e). Hence it is submitted that despite not being eligible, defendant was allowed to contest for the post of the President.

5. Elections were held on scheduled date i.e. 18.08.2010. The defendant secured 11 votes as against the 7 votes secured by the plaintiff. There were only two candidates for the post of President. Accordingly, the Returning Officer despite objections from the plaintiff declared the defendant as elected to the post of President of WGFI. Hence the present suit is filed by the plaintiff seeking a decree of declaration that election of the defendant as President of WGFI held on 18.8.2010 are null and void and consequently declaring the plaintiff as elected.

6. The defendant has filed his written statement. The defendant has pointed out that his unit WGAU was not disqualified. Mr. Pradeep Rawat is the Secretary of WGAU. However, he is stated to be a salaried employee of GMVN Ltd. and not an office bearer. Hence, it cannot be said that Mr. Pradeep Rawat was holding the post of two units. It is pointed out that the said GMVN Ltd. is a Government organization and merely being an employee of the same would not mean that the said Mr. Pradeep Rawat was holding any post. He is not on the Board of Directors of the said GMVN Ltd. and cannot be said to be an office bearer. Hence, it is stated that the provisions of Article 20(d)(vi) of the Rules of Regulation of WGFI are not applicable. It is further stated that elections were held on 18.08.2010 and the objections of the plaintiff were rejected by the Returning Officer. The defendant has won the election by a

handsome margin. Hence it is stated that the present suit is frivolous.

7. Two preliminary objections are also raised in the written statement, namely, that the present suit is bad for non-joinder of necessary parties inasmuch as Mr. Pradeep Rawat and the Returning Officer were not made parties to the suit. It is further stated that after the objections of the plaintiff were rejected by the Returning Officer, the plaintiff still participated in the elections. Having lost the elections, he has now filed the present suit. Hence, it is stated that the plaintiff is estopped now from challenging the elections on the same grounds which were rejected by the Returning Officer prior to the elections.

8. On 26.04.2011, this Court has framed the following issues:-

1. Whether Winter Games Association of Uttarakhand, Dehradun and Garhwal Mandal Vikas Nigam Ltd. were not eligible to exercise their vote in the election held on 18th August, 2010? If so, to what effect? OPP

2. Whether the suit is barred by estoppel, as alleged in the written statement? OPD

3. Whether the suit is bad for misjoinder of parties? OPD

4. Whether the election of the defendant in the elections held on 18th August, 2010 is illegal? OPP.

5. Relief.

9. The parties have led their evidence. The plaintiff has filed his evidence by way of affidavit as PW1. Three witnesses have appeared for the defendant, namely, the defendant himself as DW1, Sh. S.S. Pangtey, the last President of WGFI from 2006 to 2010 as DW2 and Mr. Roshan Lal Thakur, DW 3 who was elected as a Secretary on 18.08.2010.

10. I have heard learned counsel for the parties.

11. Learned counsel appearing for the plaintiff has strenuously urged that the elections took place on 18.08.2010 for the post of office bearers who have a tenure of four years. It is strongly urged that Mr. Pradeep Rawat was an office bearer of GMVN Ltd. i.e. Garwal Mandal Vikas Nigam Ltd. and of Winter Games Association of Uttarakhand (WGAU). Hence, he was representing two units. He had been authorized to vote on behalf of GMVN Ltd. and was also Secretary of WGAU. It is stated that as he had a right to vote for GMVN Ltd., it is ipso facto implied that he was an office bearer of the same organization. Hence, in terms of Article 20(d)(vi) of the Rules and Regulations of the Winter Games of Federation of India (WGFI), two units which were represented by Mr. Pradeep Rawat, namely, Winter Games Association of Uttarakhand (WGAU) and GMVN Ltd. are disqualified to vote. It is further urged that as the defendant was the President of Winter Games Association of Uttarakhand (WGAU), which was disqualified to vote as stated above, in terms of Article 20(e) of the Rules and Regulations of WGFI, he was ineligible to be elected as his unit did not

have any voting right. Reliance is also placed on certain documents received under the RTI to contend that the Rules and Regulations placed on record by the plaintiff, namely, Ex. PW 1/1 are authentic documents and that the amendment as elaborated in Article 20(d)(vi) was duly carried out and is an integral part of the said Rules and Regulations. This submission was made as the defendant in the course of admission/denial of documents has denied this document, namely, Ex. PW1/1. Reliance is placed on cross-examination of DW1 whereby DW1 has stated that all employees associated with Skiing are office bearers of the Skiing institute. Reliance is also placed on a communication dated 24.07.2010 issued by GMVN Ltd. which authorizes Mr. Pradeep Rawat, Senior Manager Skiing Centre to vote on behalf of the said Institute.

12. Learned counsel appearing for the defendant has strenuously urged that Mr. Pradeep Rawat was not an office bearer of GMVN Ltd. He is a paid employee of a Government Organization. The office bearer of the said Company could be someone who is holding the post of director and an employee of the said Company, it is argued, is not an office bearer. It is further stated that in view thereof, the provisions of Article 20(d) (vi) of the Rules and Regulations would have no application whatsoever. Reliance is also placed on the minutes of the election meeting held on 18.08.2010. Reference is made to Clause (iv) at page 2 of the minutes which states that two associations are there from Uttrakhand i.e. Winter Games Association of Uttrakhand (WGAU) and Uttrakhand Winter Games Association (UWGA). Reliance is placed on the declaration that the Winter Games Association of Uttrakhand headed by the defendant is the legitimate Member. It is stated that the plaintiff has never raised any protest at that time. The plaintiff also protested that no names of voting members had been received from WGAU. Hence, a decision was taken that under Rule 20(c)(ii) of the Rules and Regulations of WGFI, if no names were received 10 days prior to the holding of elections, only the president/head would cast the vote. The objections of the plaintiff was accepted and the nominee of WGAU Capt.(Retd.) Paramvir Singh was asked to leave the room. Hence, the defendant who is the President of WGFAU in terms of Rules and Regulations casted the vote on behalf of WGAU. It is also stressed that objection of the plaintiff was duly taken care of and a decision was taken that Sh. Pradeep Rawat will not have a right to vote and was asked to leave the room.

It is further strenuously urged that the reliance of the plaintiff on the Article 20(d)(vi) of the Rule of Regulations of WGFI is misplaced as the said clause never really become operational. It is stated that the Minutes of the General Body Meeting which was held on 26.12.2006 which is stated to have approved the said Article 20(d) (vi) is not available as it seems that the plaintiff has manipulated the records. Reliance is also placed on some enquiry reports to claim that such amendment was never carried out.

It was urged that the plaintiff participated in the voting process. He lost the elections by having secured only 7 votes against 11 votes secured by the defendant. Hence, it is stated that the plaintiff is estopped from now challenging the elections. It is further stated that the Winter Games Federation of India (WGAI) is also necessary and proper party because in the absence of the same party, any order passed in favour of the plaintiff cannot be implemented.

13. I will now first deal with issues No. 1 and 4 which were framed on 26.04.2011 which read as follows:-

1. Whether Winter Games Association of Uttarakhand, Dehradun and Garhwal Mandal Vikas Nigam Ltd. were not eligible to exercise their vote in the election held on 18th August, 2010? If so, to what effect? OPP

4. Whether the election of the defendant in the elections held on 18th August, 2010 is illegal? OPP.

14. A reference may be had to the minutes of the meeting in which voting took place on 18.8.2010. The minutes are stated to have been signed by Mr. Roshal Lal, the new Secretary and the plaintiff. The objections pertaining to the eligibility of the WGAU to vote were recorded and the objection of the plaintiff was rejected. The relevant portion of the minutes reads as follows:

Shri R.K. Gupta further pointed out that Shri Pradeep Rawat of G.M.V.N. Ltd. is also not eligible to cast vote under WGFI Rule 20(d)(vi) as he happens to be Secretary of WGAU and also Senior Manager, Skiing Centre Auli simultaneously.

WGFI Rule 20(d)(vi) states, "No office bearer of a unit shall be eligible to be office bearer simultaneously of any other unit excepting the WGFI, otherwise those units will not have voting rights.

Shri Harish Sharma, Observer IOA saw the logic in the proposition of Shri R.K. Gupta and thus disqualified Shri Pradeep Rawat of G.M.V.N. Ltd. from voting. Shri Pradeep Rawat was requested to leave the room. Shri Harish Sharma and Returning Officer allowed the votes of W.G.A.U. saying that Mr. R.K. Gupta cannot object at this time; he should have objected earlier when name of W.G.A.U. was announced. But Mr. R.K. Gupta objected to this decision.

Hence, one contention of the plaintiff was accepted and Sh. Pradeep Rawat was disqualified and not allowed to vote for G.M.V.N. and also for WGAU. He was asked to leave the room. However, the objection of the plaintiff about the right of WGAU to vote was rejected by the Observer of Indian Olympic Association and the Returning Officer.

15. The basic dispute pertains to the interpretation of Article 20(d)(vi) of the Rules and Regulation of WGFI. The said rules read as follows:-

No office-bearer of a unit shall be eligible to be office-bearer simultaneously of any other unit excepting the WGFI, otherwise those units will not have voting rights.

16. I may, at this stage, first deal with one of the contentions of the learned counsel for the defendant. He has in the course of arguments strenuously argued that the Rule as stated above was never introduced in the Rules and Regulations of WGFI and that the plaintiff has manipulated the minutes and got this Article implanted in the Rules and Regulations of WGFI. Similar submissions are made by the witnesses of defendant in their evidence by way of affidavit. However, this argument of the defendant is rejected outright inasmuch as no such plea has been raised by the defendant in the written statement. In the written statement, the only plea is that despite existence of this Article, the defendant was not disqualified from contesting the elections. In fact, para 5 of the plaint reproduces the relevant portion of Article 20(d)(vi) of the Rules and Regulations of WGFI. In the written statement (termed as written submissions by the defendant) in para 5, there is no denial about the said Rule. In fact the para itself states that content of para 5 of the plaint is admitted to the extent that Rule 20(d)(vi) of the Rules and Regulations of WGFI provides an embargo that an office bearer of a unit cannot become office bearer of another unit simultaneously excepting an office bearer of WGFI. Accordingly, the said plea of the defendant cannot be considered as there are no pleadings to the said effect and even no issue to the said effect has been framed.

17. The basic dispute is whether Mr. Pradeep Rawat can be said to be an office bearer of two separate units. There is no dispute that he was the secretary of Winter Games Association of Uttarakhand. The dispute is what was his status in the GMVN Ltd. The plaintiff has relied heavily on the communication dated 24.7.2010 which authorized Mr. Pradeep Rawat to cast his vote to claim that Mr. Pradeep Rawat was an office bearer of GMVN. The said communication reads as follows:-

The President

Winter Games Federation of India

7/19, Ansari Road, Daryaganj

New Delhi-110002

Sub: Authorised to vote in the election of Winter Games Federation of India (WGFI) on 18 Aug. 2010

Sir,

Sh. Pradeep Rawat, Senior Manager, Skiing Central, Auli is nominated to vote on behalf of Garhwal Mandal Vikas Nigam an Institutional member of WGFI in the elections being held on 18 Aug. 2010.

18. This letter has been written by the Managing Director of GMVN Ltd. and addressed to the President of the Winter Games Federation of India. It shows that

Mr. Pradeep Rawat is the Senior Manager Skiing Centre Auli. He was only authorized to vote in the election to be held on 18.08.2010. The letter does not show that Mr. Pradeep Rawat was a person with whom management of GMVN vests. This document does not and cannot lead to a conclusion that the said Pradeep Rawat was an office bearer of GMVN Ltd.

19. The question is who would be an office bearer, as elaborated in Article 20(d) (vi) of the Rules and Regulations. No arguments to this effect have been made by learned counsel for the parties. The Rules and Regulations do not define the term "office bearer". The definition clause i.e. Article 4 is silent on this.

20. Reference may be had to a judgment of the Bombay High Court in Writ Petition No. 4220 of 2011 titled Babasaheb vs. The Additional Division Commissioner and Ors dated 01.06.2011. In para 13 it is stated as follows:-

13. In general parlance the "office bearers" are the persons with whom the management vests. Office bearers are the persons who are involved in the decision making process and every day management of the institution.

21. The plaintiff has not been able to show that Mr. Pradeep Rawat was a part of any Body or person vested with the management of GMVN. No evidence to this effect has been led. The plaintiff has not placed on record the official hierarchy of GMVN. There is nothing on record to show what was the management structure of GMVN or what powers of management Mr. Pradeep Rawat exercised. It was for the plaintiff to prove his case. In the absence of any evidence, the only conclusion possible is that Mr. Pradeep Rawat was only an employee of GMVN Ltd.

22. Reliance of the learned counsel for the plaintiff on the cross-examination of DW-1 is mis-conceived. The relevant part of the said cross-examination relied upon by the plaintiff reads as follows:-

(Witness is put to Para no. 11 of his affidavit). Sh. Pradeep Rawat was not an office bearer of Garhwal Mandal Vikas Nigam Ltd.

I have also seen annexure R1 to the replication. It is correct that Sh. Pradeep Rawat was an employee of Garhwal Mandal Vikas Nigam Ltd. (Vol. All the employees associated with the skiing are office bearers of the skiing institute)....

23. The said answer does not in any way prove that Sh. Pradeep Rawat was an office bearer of GMVN Ltd. or was vested with any power of management of GMVN. It merely states that the said Pradeep Rawat is a Senior Manager of Skiing institute which appears to a unit of GMVN Limited.

Hence I hold that Mr. Pradeep Rawat was not an officer bearer of GMVN.

24. For the reasons stated above I hold that the disqualification as stipulated under Article 20(d)(vi) of the Rules and Regulations of WGFI is not attracted and the Association, namely, Winter Games Association of Uttarakhand (WGAU) was eligible

to exercise its vote at the elections held on 18.08.2010.

25. The only ground urged by the learned counsel for the plaintiff to hold that the election of the defendant in the elections held on 18.8.2010 is illegal, is violation of the above noted Article 20(d)(vi) of the Rules and Regulations of WGFI. Apart from the above ground, no other ground has been urged. As already held, there is no violation of Article 20(d)(vi) of the Rules and Regulations. I hold that election of the defendant in the elections held on 18.8.2010 is not illegal.

26. The next issue which is to be decided is Issue No. 2 which reads as follows:-

3. Whether the suit is barred by estoppel, as alleged in the written statement? OPD"

27. The argument raised by the learned counsel for the defendant is that the suit is barred by estoppel as a decision was taken not to let Mr. Pradeep Rawat Vote. The said Pradeep Rawat was accordingly asked to leave the room but the Winter Games Association of Uttrakhand was allowed to vote. Hence, it is argued that the plaintiff having participated in the elections, having lost the elections cannot now resile and challenge the process of election. This argument is misplaced. The objections were raised by the plaintiff just before the elections. He has filed the present suit immediately after elections have taken place. It is not as if he had sufficient time to approach the court at that stage when his objection was raised. It was hardly possible for him to walk out of the Election. The argument has no merit and is rejected.

28. The last issue is issue no. 3 i.e. whether the suit is bad for misjoinder of parties. The defendant has not been able to prove in any manner as to how Mr. Pradeep Rawat or the election Observer was a necessary and proper party. The present issue is accordingly decided in favour of the plaintiff. In view of the above decision on issue nos. 1 to 4, the present suit is without merit and is dismissed. No orders as to cost.

CCP 30/2011

List for directions on 07.11.2013.