

(2017) 04 MP CK 0046
MADHYA PRADESH HIGH COURT
Case No: 1487 of 2016

Zahir Mohammad

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 4, 2017

Hon'ble Judges: S.C. Sharma

Bench: Single Bench

Advocate: Shekhar Bhargava, Ritu Bhargava, Pushyamitra Bhargava, B. L. Pandya

Judgement

1. Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this Court. Facts of Writ Petition No.1487/2016 are narrated hereunder.

02. The present petition has been filed by the petitioner being aggrieved by order dated 29/01/2016 passed by Deputy Secretary, Government of Madhya Pradesh, Department of Commerce, Industries and Employment, Government of Madhya Pradesh, Bhopal (Annex.-P/3).

03. The facts of the case are having a chequered history. The petitioner No.2 ? Science Forum and Rural Development and Research is a society which was registered on 10/11/1994 having registration No.26200. On 10/07/1998, the Assistant Registrar, Firms and Society, Ujjain conducted an inspection and filed a report inter-alia pointing out irregularities in the management and operation of the society.

04. On 17/09/2001, the Registrar, Firms and Society passed an order holding that no executive committee is in existence and directed the Assistant Registrar to conduct election amongst founder members of the society. The petitioner No.1 ? Dr. Ganasan V. filed an appeal before the State Government against order dated

17/09/2001 on 10/10/2001. The appellate authority of the State Government passed an order on 24/07/2002 remanding the matter back to the Registrar directing him to decide the matter afresh. The Registrar, Firms and Society thereafter, passed a fresh order on 19/12/2002 directing the Assistant Registrar to conduct an enquiry about the constitution, working and financial conditions of the society in question.

05. On 23/04/2003, the Registrar, Firms and Society noticed twenty six illegalities in conducting operation of the society and directed the Assistant Registrar to conduct election within a period of one month. The petitioner No.1 ? Dr. Ganasan filed an appeal before the State Government against order dated 23/04/2003. Thereafter, as the appeal was not being decided a writ petition was preferred i.e. Writ Petition No.771/2003 before this Court and this Court by an order dated 07/08/2003 directed the appellate authority to decide the appeal within a period of two months.

06. On 07/08/2003, the Assistant Registrar, Firms and Society issued a notice for holding election in compliance of the order dated 23/04/2003 passed by the Registrar.

07. The petitioner No.1 ? Dr. Ganasan also filed a writ petition i.e. Writ Petition No.4140/2003 before this Court against order dated 23/04/2003 passed by the respondent ? Registrar. Another writ petition was also preferred i.e. Writ Petition No.4150/2003 against the notice dated 07/08/2003 of the Assistant Registrar by which he has issued notice for holding elections.

08. This Court by an order dated 12/11/2003 decided three writ petitions i.e. Writ Petitions No.702/2003, 4140/2003 and 4150/2003 directing the appellate authority of the State Government to conduct an enquiry in respect of constitution, working and financial condition of the society within six months. On 19/01/2004, the appellate authority directed the Registrar to decide the matter relating to proper functioning of the society and on 31/01/2007, the appellate authority passed an order in respect of appeal filed by Dr. Ganasan ? petitioner No.1 and others against order dated 23/04/2003 upholding the finding of the Registrar about the membership of the founder members of the Society and directed the Collector, Ujjain to conduct the election through its subordinate officers.

09. While all this was going on the Secretary of the Society issued an order regarding termination of the membership of certain members. It is pertinent to note that another writ petition was preferred i.e. Writ Petition No.5194/2007 filed by Dr. Krishna Murari Gupta in the matter of holding of elections by the collector. Not only this, on 03/10/2007 the appeals were preferred by the respondents against the order of termination of membership of certain members.

10. The Collector, Ujjain conducted elections as per order dated 24/07/2002 passed

by the appellate authority, however, the Assistant Registrar, Firms and Society protested against the election which took place on 08/12/2007 conducted by the Collector, Ujjain. The Registrar, Firms and Society on 14/02/2008 passed an order in respect of the appeals filed by the respondents No.5 and 6 in respect of the termination of the membership and held that the order terminating the membership of respondents No.5 and 6 is bad in law.

11. The petitioner No.1 ? Dr. Ganasan being aggrieved by the order passed by the Registrar dated 14/02/2008 preferred an appeal before the State Government. Thereafter, on 08/05/2008, the State Government passed an order directing the Collector, Ujjain and respondent No.2 Registrar to conduct election of the Society in coordination of each other in compliance of the order dated 31/01/2007. The Registrar in compliance of order of the State Government on 13/06/2008 forwarded a list of founder members of the petitioner No.2 ? Society to respondent no.4 Collector, Ujjain containing the name of respondent No.5 also. The petitioner No.1 ? Dr. Ganasan being aggrieved by letter dated 13/06/2008 filed an appeal before the State Government.

12. It is pertinent to note that against the order of Registrar dated 14/02/2008 holding the termination of the membership of respondents No.5 and 6, the petitioner No.1 ? Dr. Ganasan has preferred an appeal as stated earlier and the appeal filed by the petitioner No.1 was dismissed upholding the order of Registrar. Not only this, the appeal filed by the petitioner No.1 against the letter / order dated 13/06/2008 of the Registrar was also rejected. Thereafter, on 29/03/2011 the Collector, Ujjain passed an order in respect of voter list of the petitioner Society and thereafter, elections were held on 03/04/2011. The respondent No.5 thereafter, preferred an appeal against the election which took place on 03/04/2011 and also submitted additional representation on 27/02/2012.

13. On 01/10/2014, the Additional Secretary, Department of Commerce, Industries and Employment passed an order in respect of appeal dated 16/05/2011 and being aggrieved by the said order dated 01/10/2014 a writ petition was preferred before this Court i.e. Writ Petition No.2832/2015. This Court by an order dated 18/08/2015 directed the respondent No.1 to decide the appeal dated 16/05/2011 and 27/02/2012 within a period of two months.

14. Finally an order has been passed on 29/01/2016 by the appellate authority declaring the order dated 29/03/2011 of the Collector as illegal and dismissing the declaration of election result dated 03/04/2011 and order dated 01/10/2014 has also been held illegal. The present petition has been filed against order dated 29/01/2016. The aforesaid facts made it very clear that in spite of an order passed by the State Government, the petitioner as well as private respondents are not permitting holding of fresh election of the Society and on some pretext or the other

the matter is being dragged to this Court.

15. The order dated 26/01/2016 passed by the State Government is on record as Annex.-P/6 at page No.52 in Writ Petition No.2029/2016. The order of the State Government reveals that the membership of certain members was illegally terminated and the prescribed procedure for terminating the membership was not followed.

16. In the considered opinion of this Court, the finding of fact arrived at by the State Government (appellate authority) in the matter of termination of membership by the Society of two of its members, does not warrant any interference. The order also reveals that the State Government by an order dated 08/05/2008 has directed the authorities to ensure that free and impartial elections are conducted. The Election Officer was forwarded with the list of valid members of the Society and on the contrary the Election Officer included certain new members and has held the elections and in those circumstances, the State Government arrived at a conclusion that the elections which took place on 03/04/2011 were not valid elections.

17. The State Government after quashing the election dated 03/04/2011 has directed holding of fresh elections by taking into account 16 members of the Society. The Collector has been directed accordingly to ensure the elections are held in the matter. In fact the Collector has been directed to held elections by taking in to account the 15 valid members of the Society.

18. This Court again for the reasons assigned by the appellate authority (Deputy Secretary), is of the opinion that the findings of fact arrived at by the appellate authority do not warrant any interference. The order passed by the appellate authority has been passed in consonance with the statutory provisions after granting proper opportunity of hearing to the parties and this Court does not find any reason to interfere with the order passed by the learned Deputy Secretary.

19. Resultantly, the writ petition is dismissed and the Collector is directed to ensure that elections of the Society are conducted in consonance with the order dated 29/01/2016 within a period of 60 days from the date of receipt of certified copy of this order. The net result is that both the writ petitions stand dismissed. No order as to costs. Certified Copy as per rules.