

Civil Revision
Present: The Hon'ble Justice Jyotirmay Bhattacharya

Judgment On :18-05-2010.

C.O. No. 640 of 2010

Deb Kumar Karan
-Vs-
Criminal Bar Association & Ors.

Point:

ELECTION, INJUNCTION: The election of the office bearer has already been completed- The democratic process for selection of office bearers by election whether be stopped by way of injunction after publication of the election schedule- Code of Civil Procedure, 1908 O39 R 1& 2

Facts

The petitioner participated in the proceeding before the Court of the learned Additional Chief Judicial Magistrate at Contai on 19th September, 2009 in disregard of the resolution adopted by the said Bar Association in an extraordinary General Meeting held on 12th August, 2009 for boycott of the ezhash of the Court of the Additional Chief Judicial Magistrate at Contai on and from 17th August, 2009, the membership of the petitioner in the said Bar Association was cancelled for life Long thereafter when an election programme for election of the office bearers of the said Bar Association was published, the plaintiff/petitioner filed a suit challenging the legality of the said resolution dated 19th September, 2009 and applied for interim order of injunction for restraining the defendants from giving effect to or further effect to the impugned resolution dated 19th September, 2009 and the communication letter dated 27th October, 2009 so that the petitioner may file his

nomination paper and take part in the election of the office bearer of the managing committee of the said Bar Association. The petitioner's prayer for ad-interim injunction was rejected by the learned Trial Judge. Being aggrieved by the said order, the petitioner preferred the aforesaid miscellaneous appeal before the learned Appeal Court. After admission of the said appeal under Order 41 Rule 11 of the Code of Civil Procedure, an application for injunction claiming similar relief during the pendency of the said appeal was prayed for by the petitioner. The learned Appeal Court rejected the petitioner's prayer for such interim relief. Challenging the aforesaid order, the petitioner prefers this instant application.

Held:

The democratic process for selection of office bearers by election cannot be stopped by way of injunction after publication of the election schedule. The election of the office bearer has already been completed. There is no any urgent necessity for granting an interim injunction at this stage, particularly when the appeal itself is fixed for hearing before the learned Appeal Court. **Para-9**

As such, for protecting the petitioner from any interference from the opposite parties, in carrying on the petitioner's profession in the said Court, this Court restrains the opposite parties from causing any obstruction and/or interference in carrying on the professional work of the petitioner in the Criminal Court at Contai. Since the petitioner's membership has been cancelled by the said Bar Association, the petitioner cannot be compelled to purchase the printed Vokalatnama and/or release from and/or jamin i.e. (bond and bail bond) from the said Bar Association. The petitioner is, thus, permitted to carry on his professional work in the said Court by utilizing Vokalatnama, printed

forms of bonds and bail bonds to be procured by him from elsewhere. This arrangement will continue till the disposal of the said appeal. **Para-10**

For the Petitioner : **Mr. Jiban Ratan Chatterjee,**
Mr. Soumen Kumar Dutta,
Mr. Subhas Jana,
Mr. Gautam Shaw.

For the Opposite Parties : **Mr. Aniruddha Chatterjee.**

The Court:

This application under Article 227 of the Constitution of India is directed against an order passed by the learned Additional District and Sessions Judge, Contai on 4th February, 2010 in Misc. Appeal No.1 of 2010 by which the appellant's prayer for interim injunction during the pendency of the said appeal, was rejected on contest. The plaintiff/appellant is the petitioner before this Court.

2. Heard Mr. Jiban Ratan Chatterjee, learned Senior Counsel appearing for the petitioner and Mr. Aniruddha Chatterjee, learned Advocate appearing for the opposite party. Considered the materials on record including the order impugned.

3. Let me now consider as to how far the learned Appeal Court was justified in passing the impugned order in the facts of the instant case.

4. The petitioner who is a lawyer, is ordinarily practicing in the Criminal Court at Contai. He was a member of Criminal Bar Association of Contai.

5. Since the petitioner participated in the proceeding before the Court of the learned Additional Chief Judicial Magistrate at Contai on 19th September, 2009 in disregard of the resolution adopted by the said Bar Association in an extraordinary General Meeting held on 12th August, 2009 for boycott of the ezlash of the Court of the Additional Chief Judicial Magistrate at Contai on and from 17th August, 2009, the membership of the petitioner in the said Bar Association was cancelled for life by an unanimous resolution adopted by the members of the said Bar Association on 19th September, 2009. The text of the said resolution was communicated to the petitioner on 27th October, 2009. Long thereafter when an election programme for election of the office bearers of the said Bar Association was published, the plaintiff/petitioner filed a suit challenging the legality of the said resolution dated 19th September, 2009 and applied for interim order of injunction for restraining the defendants from giving effect to or further effect to the impugned resolution dated 19th September, 2009 and the communication letter dated 27th October, 2009 so that the petitioner may file his nomination paper and take part in the election of the office bearer of the managing committee of the said Bar Association which was scheduled to be held on 5th February, 2010.

6. The petitioner's prayer for ad-interim injunction was rejected by the learned Trial Judge primarily on the ground of delay as the petitioner applied for such ad-interim injunction on 25th January, 2010 though the cause of action for such relief arose on 27th October, 2009.

7. Being aggrieved by the said order, the petitioner preferred the aforesaid miscellaneous appeal before the learned Appeal Court. After admission of the said appeal under Order 41 Rule 11 of the Code of Civil Procedure, an application for injunction claiming similar relief during the pendency of the said appeal was prayed for by the petitioner. The learned Appeal Court rejected the petitioner's prayer for such interim relief by considering the balance of convenience and inconvenience of the parties, which according to the learned Appeal Court, was against grant of such injunction in favour of the petitioner.

8. The learned Appeal Court was, however, pleased to fix the hearing of the said appeal on 9th March, 2010. The said appeal is still pending for consideration before the Appeal Court. The instant revisional application is directed against the aforesaid order of the learned Appeal Court.

9. On consideration of the submission of the Counsel of the respective parties, this Court is of the prima facie view that the plaintiff was not at all diligent in pursuing his relief for injunction promptly. The plaintiff applied for the ad-interim order of injunction on 25th January, 2010 though the cause of action for such relief arose on 27th October, 2009. That apart, the democratic process for selection of office bearers by election cannot be stopped by way of injunction after publication of the election schedule. The election of the office bearer has already been completed. As such, this Court does not find any urgent necessity for granting an interim injunction at this stage, particularly when the appeal itself is fixed for hearing before the learned Appeal Court.

10. Thus, though this Court does not find any reason to interfere with the impugned order at this stage, but at the same time, this Court cannot ignore the petitioner's right to continue his

independent practice in the said Court and as such, for protecting the petitioner from any interference from the opposite parties, in carrying on the petitioner's profession in the said Court, this Court restrains the opposite parties from causing any obstruction and/or interference in carrying on the professional work of the petitioner in the Criminal Court at Contai. It is also clarified herein that since the petitioner's membership has been cancelled by the said Bar Association, the petitioner cannot be compelled to purchase the printed Vokatnama and/or release from and/or jamin i.e. (bond and bail bond) from the said Bar Association. The petitioner is, thus, permitted to carry on his professional work in the said Court by utilizing Vokatnama, printed forms of bonds and bail bonds to be procured by him from elsewhere. This arrangement will continue till the disposal of the said appeal.

11. The learned Appeal Court is requested to dispose of the said appeal as early as possible without granting any unnecessary adjournment to any of the parties. It is made clear that while considering the said appeal, the learned Appeal Court is absolutely free to take his own decision on the merit of the said appeal without being influenced by any of the observations made hereinabove.

12. The application is, thus, disposed of.

Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

(Jyotirmay Bhattacharya,J.)

