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

% Date of Decision: 14.11.2018

+ CS(OS) 533/2018 & IA 14457/2018
PANDIT RESTAURANT (UPVAN) & ORS. Plaintiffs
Through Mr.Ashish Mohan, Mr.Chetan Rai
Wahi and Mr.Akshit Mago,
Advocates.

versus

HOTEL & RESTAURANT ASSOCIATION OF NORTHERN
INDIA (HRANI) & ORS. Defendants
Through Mr.Sameer Parekh, Mr.Sumit Goel,
Ms.Sonal Gupta and Ms.Tanya
Chaudhary, Advs. for M/s Parekh &
Co.

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J.(Oral)

IA No.14457/2018

1. This application is filed under Order 39 Rules 1 and 2 CPC seeking ad-interim, ex-parte injunction in favour of the plaintiffs and against the defendants restraining the defendants from giving effect to the minutes of meeting dated 14.07.2018 and subsequent letter dated 20.07.2018.
2. The present suit is filed seeking a decree of declaration declaring the minutes of the meeting dated 14.07.2018 of defendant No.1 association and the subsequent letter dated 20.07.2018 as illegal & null and void.

3. The case of the plaintiffs is that plaintiff No.6 served as a unanimously elected President of defendant No.1 association for the years 2009-2010, as Hony. Secretary for the years 2007 to 2008. He has also held the post of Joint Secretary for the years 2005-2006.

4. The election for the years 2018-2020 were to be held in this year. On 15.05.2018, plaintiff No.6 issued a letter requesting that list of all eligible voters may be circulated in time, so that the elections are held in free and fair manner. This request was repeated again on 21.05.2018 and 22.05.2018. On 02.06.2018, the then President of defendant No.1 association served a show cause notice on plaintiff No.6. On 14.06.2018 plaintiff No.6 gave a detailed reply. On 20.07.2018, a communication was sent to the plaintiffs terminating the plaintiffs' membership of defendant No.1 association. Hence, the present suit has been filed.

5. I have heard the learned counsel for the parties.

6. A perusal of the show cause notice dated 02.06.2018 would show that allegations are made against plaintiff No.6 with regard to his conduct before a former returning officer in last election and other occasions. The relevant part of the show cause notice reads as follows:

You'r deliberately maligned a former Returning Officer with the view to obstruct election-

“1. It is very clear that neither do you command any support over the members, nor have you been interested in meaningfully contributing to the working of the Association or participating in elections. Your sole interest seems to be in preventing the elections from being held in a free and fair manner by making false allegations towards neutral returning officers who are appointed to conduct elections.

2. In this regard, we would wish to mention, that the returning

officer on 21 July 2016 had written to you seeking a clarification regarding the spelling of your name [ANNEXURE I]. In the said letter the returning officer had mentioned that your name in the nomination form is spelt as "Vijay Pande" whereas as in the copy of the records with the Association, your name is spelt as "Vijai Kumar Pande". It was an innocuous query. Furthermore, the clarification was a genuine one and the returning officer had merely asked you to send supporting documents pertaining to your real name and identity. Clearly, there was prima facie case that you were using dual/false identity as the records did not match with your nomination form. It seems that you got alarmed that your unethical and illegal practice of using two names had been brought to light by a returning officer who had very carefully scrutinised the records. Instead of giving the clarification, as a defence mechanism, you wanted to put a lid on this controversy that highlighted your perversity and illegality.

3. Instead of clarifying on the above query, you made derogatory and personal remarks against a neutral returning officer and refused to answer the query on merits. You chose to malign the returning officer and attribute motives. The returning officer was greatly pained by this conduct. The returning officer, by an email on 12 August 2016, [ANNEXURE 2] clarified that after the clarifications are received, a balanced view is always taken on factual and legal position and preferably always in favour of the member, to provide an opportunity to the member to serve the Association in the best possible manner.

4. The returning officer also clarified that besides you, there were other members as well, from whom clarifications regarding change of name or variation of name was sought and all of them had replied within time-limit. Only you failed to do so. The returning officer had to single out that only your acts were obstructing the election process as you were refusing to answer legitimate queries. When every other member had answered the query, there was no reason for you to not answer the same, within the time, limit. All members are equal but you wanted special treatment in violation of the rules and regulations of the Association.

5. The returning officer was so shocked by your conduct that the returning officer actually had to remind you that whilst it is expected of you to set an example for the others to follow, given that you are a senior member, in your inability to even submit a reply within the

stipulated time period, you showed gross indiscipline and contempt. A member of this Association being reprimanded by an independent and neutral person; has shocked all of us. You have painted a very grim and nasty picture of this Association in front of an outsider and neutral person. You have also painted a picture before a neutral outsider that this Association permits indiscipline and derogatory conduct from, its members. We are deeply disappointed because of your acts. It is clear that you have no regard for a neutral and fair election process and you only raise objections that are aimed at stultifying the election process. You do not meaningfully want to participate nor contribute and yet you make baseless allegations that are defamatory, libellous, scandalous, unworthy of a member of this Association.

Brazen violation of Rules in submitting nomination papers

6. Furthermore, in the email dated 12 August 2016, the returning officer also brought to your notice that your conduct in every election process has been equally appalling. The returning officer had to remind you that even in an earlier election, your nomination paper was received after fixed date and time limit, for receiving nominations. It seems, from the language of the returning officer, that even a neutral person like the returning officer, thought that you have no regard for the rules. The returning officer had to admonish you that you ought to realise that the returning officer is bound by rules and has to take decisions in a time bound manner. We are indeed shocked and pained to, note that you had to be reprimanded by an outsider and you had to be reminded of the rules and regulations as you were openly flouting them. You are merely interested in creating an ugly scene every time the elections are held. Either you raise perfunctory issues to stall elections or refuse to answer queries or fail to abide by time limits or do something else that is aimed at frustrating the election process.

7. Your conduct shows that you have always wanted to obstruct the process, of elections. Your conduct further shows that you have always put a spanner in the works of the returning officer. Your conduct also shows that you have no regard for the constitution of the Association. Your conduct also shows that you submit nomination papers after fixed date and time limit which is not permissible under rules. Your conduct also shows that instead of explaining legitimate

doubts that are raised about your identity, you refuse to answer these queries. Your conduct further shows that you are not disciplined. Your conduct also shows that you're not interested in free and fair elections.

8. The association' will remind you that the returning officer is neither a member of the managing committee nor an employee of the Association. Therefore, to attribute motives to the returning officer, is gross disregard towards the process of free and fair elections. It seems that you do not intend to let the election process go on. It is very clear that you want to browbeat an independent, reputed, neutral person who is appointed to conduct elections.

9. Through these acts, you have caused deep distress to the members of the. Association and tried to create a crisis by affecting the process of free and fair elections. Such acts constitute gross prejudice that you have caused to the Association.

.....

11. In the report of &e returning officer dated. 14 September 2016 [ANNEXURE 3], it is very clear that you made undesirable and the derogatory remarks against the returning officer at the annual general meeting without even caring to ascertain the facts. Your conduct has completely destroyed the dignity of the Association; it destroyed the decorum of the meeting, and was libellous and defamatory towards the returning officer as well as towards the association and its members.

12. Your conduct at the AGM towards the returning officer, who is a neutral third party and has nothing to do with the members except for being engaged for purposes of conducting free and fair elections, shows that you are totally uninterested in the process of free and fair elections. It is expected that every member of the Association will make statements after verifying facts. This Association does not believe in the policy of 'shoot and scoot'. This Association also does not engage' in casual defamation and does not expect that its members will engage in such casual defamation. Yet, what you have done is exactly that. It is clear that you, besides breaking the decorum of the meeting, you said things that were untrue and you did so knowing very well that you had not ascertained the facts. Through these acts you have caused great prejudice to this Association.

.....”

7. On 14.06.2018 plaintiff No.1 sent a reply, which reads as follows:

“Dt. 14.6.2018

To,
Dear Shri Sanjay Sood,
President,
H.R.A.N.I.
406/75-76, Manisha Building,
Nehru Place, New Delhi-110019.

Sir,

.....

A person who had been so active in UPHRA/HRANI/ FHRAI since last 30 years and held vital posts of President/Secretary and filed his nomination on the scheduled date, although his nomination remained in transit between Post Office and HRANI office for several days and because of which his nomination came to be cancelled on the ground that It came late from the post office, although a copy of the same had been sent through e-mail also. All this amply demonstrates a deep conspiracy. It is pertinent to note that it is a settled law that date of posting a mail is deemed to be the date of receipt by the receiver.

Turning of a minor dispute into a big war in the name of Vijai Pande, vijay Kumar Pande, Vijay Pande in the elections of the next year (2016-18) whose father's name is same and who had been President and Hony. Secretary of the organization for upto 2 years and whose name had been written on board of Presidents, is nothing but a pre-planned conspiracy. Sir, I want to bring to your notice that office bearers who are representative of the people, are always addressed/referred to by their 1st name or surname and as the persons becomes older, though his name becomes smaller but his respect grows. For example, Gandhi Ji, Atal Ji, Modi Ji etc. There is never any ill-will or ill-motive behind such things. The most surprising aspect is that elections on this Issue were held in July, 2016 and this issue was again raised in June, 2018 although process for next elections are yet to start (2018-20) and now you have been again raising it after 2 years. Although position in this regard has already been clarified. I had sought a list of the Members of the organization and names of the Authorized signatories from the previous President

at the time of elections. But they were not provided and despite that 97 votes were received. Doesn't it indicate that members have faith on me and on our working system? Even if a member loses in election, it doesn't mean that he has lost his rights in the organization.

Language of your letter dated 31st May, 2018 towards our Ex-President /Hony. Secretary is not only degrading but is also unparliamentarily and defamatory. It appears that you have neither read the proforma of that letter nor this letter has been got approved from the working committee of HRANL.

I am hope and request from you in my capacity as a Senior Member and Ex-President that you will uphold and keep alive the dignity of our organization like all of us because you have worked with me for many years. Tenure and Reputation of a President is always taken to be a reputation of organization and each irregularity/mistake/shortcomings during his tenure are presumed to be his personal consents. I am sure, after holding talks with you, that you will consider these issues.

.....

Please do place my this letter in the next annual general meeting of the HRANI and in case the organization decides that my acts are hurting values of organization, then please treat my this letter as my resignation and also please treat it as termination of membership of all organizations.

I will always remember mutual trust and warmth of members and their family as my golden period during my tenure in UPHRA/HRANI/FHRAI and not the controversies and disputes.

I again reiterate that organization is the topmost and not me or you.

With regards,
Yours
Sd/- Vijay Pandey”

8. On 20.07.2018, the following communication was sent to the plaintiffs:

“July 20, 2018:
Pandit Restaurant(Upvan)

Near Murry Co; Katahari Bagh Cantt.,
Kanpur, Uttar Pradesh- 208004
Membership No.1768

Pursuant to the Meeting of Managing Committee of HRANI held on July 14, 2018 at 12:30 hrs at Park Plaza, Ludhiana, I would like to convey you that the following resolution has been unanimously passed by the Committee:

“Resolved that in terms of the provision of Article 14(g) in the AOA of Association of the Company, the Managing Committee of HRANI hereby unanimously consents to and approves the termination of membership of four units i.e. PANDIT RESTAURANT(UPVAN), Near Murry Co., Katahari Bagh Cantt., Kanpur; ORIENT HOTEL, 127, The Mall, Cantt., Kanpur, PANDIT RESTAURANT, Lajpat Nagar, Kanpur and Hotel Pandit, 49/7, General Ganj, Kanpur. All the units cease as Member of HRANI with immediate effect.

Further resolved that Mr.Vijay Pande shall not be entitled for nomination for and on behalf of any Hotel/Restaurant for representation in HRANI.”

9. The grievance of the plaintiffs is that firstly these allegations are vague and frivolous and cannot be a ground to terminate the membership of the plaintiffs. Subsequently, reliance is placed on clause 14 of the Memorandum and Article of Association to contend that no such power is given to the association to terminate the membership of the plaintiffs. It is pointed out that clause 14(g) of the Article of Association provides that in the event of any member found acting prejudicial to the interest of the Association and or working against the interest of the Association, he shall be liable to be terminated and ceased as member of the Association. It is pointed out that there is no finding recorded by the Association to show that plaintiffs were acting in a manner prejudicial to the interest to the

Association.

10. The learned counsel appearing for defendant No.1 has denied the said contention of the plaintiffs. He has pointed out that plaintiff No.6 has been creating nuisance in each of the elections held earlier in 2014 and again in 2016. He has misbehaved with the returning officer, who is a neutral third party and caused harm to the reputation of defendant No.1 association. It is also pointed out that returning officer for the year 2014-2016 clearly referred to the said conduct of plaintiff No.6. Further other instances of alleged nuisance being created by plaintiff No.6 has been adhered to.

11. He has further pleaded that the next election to defendant No.1 association will take place in 2020 and no prejudice is caused to plaintiff No.6 and hence there is no occasion for this court to pass any interim injunction in favour of the plaintiffs.

12. A perusal of the allegations made by defendant No.1 association shows that in the particular facts and circumstances, the same can be termed as grave. The issues raised may require further investigation. In any case, in my opinion, this is not a fit case to grant any interim order in favour of the plaintiffs.

13. I may note that the injunction order that is now sought in the present application if granted would actually tantamount to allowing the Suit itself. The Hon'ble Supreme Court while dealing with the case of the Writ Petitioner in the case of ***Bank of Maharashtra versus Race Shipping & Transport Co.Pvt.Ltd. and Another***, (1995) 3 SCC 257 in para11 held as follows:-

“Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief

sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations.”

14. Reference may also be had to the judgment of this court in the case of ***Deepak R.Mehtra & Ors. versus National Sports Club of India, MANU/DE/1686/2009***. This Court noted the legal position pertaining to Management of Clubs. Paragraph 11 of the said judgment reads as under:-

“11.The Apex Court in T.P.Daver v.Lodge Victoria MANU/SC/0018/1962: AIR 1963 SC 1144 held that jurisdiction of a civil court in such matters is rather limited; it cannot obviously sit as a court of appeal from decisions of such body; it can set aside the order of such a body, if the body acts without jurisdiction or does not act in good faith or acts in violation of principles of natural justice. The Apex Court again in B.C.C.I.v.Netaji Cricket Club MANU/SC/0019/2005: AIR 2005 SC 592, in para 82 of the judgment held that an association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative. Necessarily, the office bearer in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner. In Kalyan Kumar Dutta Gupta v. B.M.Verma MANU/WB/0024/1995: AIR 1995 Cal.140(DB), the civil court was held to have jurisdiction where allegation was that the club had followed a procedure not warranted by the Rules of the Club.”

15. In my view prima facie plaintiff has not been able to show that defendant No.1 has no jurisdiction or has not acted in good faith or has violated any of the principles of natural justice.

16. In view of the above, in my opinion, the plaintiffs have not been able to make a prima facie case. Balance of convenience is also not in favour of

the plaintiffs. I see no reason to grant any interim injunction in favour of the plaintiffs as sought in the present application. The application is accordingly dismissed.

IA No.15482/2018

17. For the reasons stated in the application, the same is allowed.

CS(OS) 533/2018

18. List before the Joint Registrar for completion of pleadings and admission-denial of documents on 18.12.2018.

JAYANT NATH, J.

NOVEMBER 14, 2018/v