

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

**CM No. 3548/2020 in
FAO no. 6/2020**

Reserved on: 15.09.2020
Order pronounced on: 18.09.2020

Kashmir Chamber of Commerce and others ...Appellant(s)

Through:- Mr Z. A. Shah, Sr. Advocate with
Mr Manzoor Ahmad Dar, Advocate
(via video call from residence)

v.

Zubair Mahajan and others ...Respondent(s)

Through:- Mr Syed Faisal Qadri, Advocate
(via video call from residence)

Coram:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

ORDER

1. After hearing learned counsel for the parties on 15.09.2020, this Court has given its thought to the matter in context of the overall factual and circumstantial scenario. From the respective pleadings of the parties, the professed and ostensible primary object of the present litigation, as becomes axiomatic from the conduct of the parties and as has been expressed by the learned counsel for the parties during the course of arguments, the sole and keen concern of the parties to the *lis* seems to be about safeguarding the interests of the Company, the Kashmir Chamber of Commerce and Industries (KCCI).

2. The Court appreciates the fact that when this appeal was taken up for hearing on 15.09.2020, Mr. Z. A. Shah, learned senior counsel, for the appellants, at the very outset submitted that the object of the litigation surrounds the conduct of elections for the new elected Administrative or Executive Body, called Committee, for the KCCI, and that the appellants were not against the said course in any way. He,

however, expressed that on account of Covid-19 Pandemic, the appellants are unable to conduct the elections as there are as many as 1300 members who are required to assemble and vote for the purpose. He submitted that if the elections are facilitated by the Government on the directions of this Court, the appellants, following the SOPs, would gladly participate in the elections. He submitted that, however, till such time the affairs of the Company cannot be kept on standstill; therefore, the impugned order deserves to be stayed in the first instance.

3. Mr Syed Faisal Qadri, learned counsel for the caveators/respondents, submitted that the respondents are in essence litigating for the conduct of elections only, therefore, are not averse to the idea of holding elections as proposed by the learned senior counsel.

4. In light of the above expressions and statements made by the learned counsel for the parties, this Court is of the view that it would be in the larger interests of the Company that elections to its Administrative / Executive Body, termed as Committee, for running its affairs are got held immediately. However, there are certain difficulties as enumerated below, which need to be overcome.

5. The first being the Government's SOP against large gatherings. This, however, can be overcome by issuance of appropriate directions to the Deputy Commissioner, Srinagar, keeping in view the fact that NEET Examination of lakhs of candidates was conducted at all India level on 13.09.2020, and that the Parliament has also started its Monsoon Session. Viewing thus, there should be no impediment in holding elections to the Administrative / Executive Body of the Company which has just 1300 members and the elections are required to be conducted by ballot, not by raising hands. Cooperation of the Deputy Commissioner, Srinagar, in this behalf can be sought by this Court.

6. Second is about nomination and constitution of various Sub-committees in terms of Article 18 and its various clauses of the Articles of Association of the Company for conduct of the elections

and completion of different processes in relation thereto. For instance, Clause (a) of Article 18 says that a three-member scrutiny Sub-committee with General Secretary as its Convener shall be nominated by the Executive Body. Then for the conduct of polling, Clause (d) of Article 18 says that the Committee shall constitute Polling Sub-committee of 07 members with one member as its Chairman, the minimum requirement of quorum being of 04 members. Then in terms of Clause (d) of Article 18, there has to be a counting Sub-committee. Furthermore, in terms of various other Clauses of Article 18, there are also certain tasks assigned to the General Secretary and Treasurer of the Company to be performed in connection with the elections.

7. Having regard to the fact that the respondents-plaintiffs' basic plea is that the Committee constituted consequent to the 2018 elections has elapsed, and that there exists an extreme mistrust between the parties, coupled with the fact that after completion of one year's prescribed term by the said Committee on 28.09.2019, yet another year, say the extended period of one year, is expiring within next 10 days, some via media needs to be worked out to perform these tasks for the conduct of the elections in question. This Court is of the view that it would be advantageous for both the parties and in the interests of the Company to agree on nomination of the requisite Committees by this Court from amongst the members of the Company who have remained its office bearers in any capacity in the past, excluding the appellant-defendants and the plaintiff-respondents. In this regard, each of the parties, i.e., the appellants and the respondents, shall furnish and provide to the Court names of eight such members with all their particulars, including the positions held by them in the Company in the past, who, according to them, would be suitable to be members of such Committees, to enable the Court to nominate and constitute the requisite Committees for the conduct of the elections and completion of various tasks in relation thereto as envisaged by the Articles of Association of the Company.

8. However, to remove any apprehension of mischief by any of such Committees or any of such members, that any of the parties to this *lis*, or any member or members of the Company or voter, may have or may entertain about such nominated committees, this Court, with a view to ensuring that all tasks are performed honestly and in a fair and transparent manner, proposes to nominate the Deputy Commissioner, Srinagar, as an overall supervising Officer to oversee the performance of all these tasks by the said committees, with the assistance of two retired Judicial Officers of the rank of Principal District Judge, namely, Mr. Javed Ahmad Kawoos and Mr. Abdul Wahid, who shall have to be paid such amounts as their charges as may be determined by the Court out of the funds of the Company for rendering such assistance. This, according to the opinion of this Court, is the most viable way out to overcome the difficulty and to ensure speedy, real and substantial justice in the case; otherwise the fundamental object of the parties for the conduct of elections to elect the Committee in question may not immediately be realized.

9. So, this Court acting *ex debito justitiae* requires the parties to give their consent to what has been said above and to furnish names with particulars of eight members of the Company each by Tuesday, 22.09.2020, to enable this Court to pass appropriate orders in that regard. This shall be done by the parties in writing separately, supported by affidavits.

10. This Court makes it clear beforehand that in the event the parties give their consent as sought from them, and furnish the names of members, as said above, this Court tentatively proposes to direct issue of the election notification by the concerned committee on 28.09.2020 and complete the requisite processes of filing of nominations on 05.10.2020; last date for withdrawal of nomination on 08.10.2020; dispatch of candidates list alongwith voter identification card on 15.10.2020; polling date on 22.10.2020 and AGM on 25.10.2020, so that the whole process is completed before it is time for those of the members of the Company who go out of the Valley during winters to

do so. Keeping in view the tight time schedule, the Court is of the opinion that two of the steps as had been provided in the last calendar for conduct of elections, viz. resolution if received from members and to circulate such resolution among the members, can be skipped.

11. Furthermore, the Court also makes it clear beforehand that in the event the above is agreeable to the parties, the interim arrangement for operation of the accounts for the limited purpose ordered by the trial court and for meeting the expenses in connection with the elections to be so conducted, shall continue till the date and time the AGM of the elected body of the company is held on 25.10.2020. Consequently, the Committee elected in 2018, which had of its own extended its term for another year, which too is coming to an end by 28.09.2020, shall be ordered to cease to exist with effect from the evening of 27.09.2020.

12. If the parties have any suggestions in regard to the above tentative proposals, aimed at achieving the requisite objective of immediate conduct of elections, they would be free to put forth the same through their respective counsel.

13. Registry to forthwith mail, fax or WhatsApp this order to the learned counsel for the parties for their information.

14. Since the appeal stands heard and the judgment has been reserved on 15.09.2020, it will continue to remain so. However, for the aforesaid limited purposes, it shall be listed in a supplementary cause list on 22.09.2020 before this Court under the caption "For feedback from parties".

(Ali Mohammad Magrey)
Judge

Srinagar
18.09.2020
Syed Ayaz Hussain, Secy