

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

RSA.No. 1102 of 2014 (F)

AS 136/2013 of II ADDL. DISTRICT COURT, KOZHIKODE

OS 347/2004 of II ADDL.SUB COURT,KOZHIKODE

APPELLANT(S)/RESPONDENS 1 AND 2/DEFENDANTS 1 & 2 :

1. THE CALICUT COSMOPOLITAN CLUB
(A SOCIETY REGISTERED UNDER THE SOCIETIES REGISTRATIOIN ACT
1986), REPRESENTED BY ITS SECRETARY, 8/360
BEACH ROAD, CALICUT - 673 002.

2. THE PRESIDENT,
CALICUT COSMOPOLITAN CLUB, 8/360, BEACH ROAD
CALICUT - 673 002.

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA

RESPONDENT(S)/APPELLANTS 1 - 5 AND R3 - R11/PLAINTIFFS 1 TO 14 :

1. JOY VARGHESE M., AGED 49 YEARS
S/O.M.C. VARGHESE, JOGI, CHALAPPURAM P.O.
CALICUT - 673 002.

2. RAMESH R.K., AGED 60 YRS.,
S/O. LATE R. KARUNAKARAN, NO. 17
JAYANTHI NAGAR COLONY, P.T.USHA ROAD
CALICUT - 673 002.

3. MOHANDAS V.P., AGED 55 YRS.,
S/. LATE V.P. KARUNAKARAN, CHEROOTY NAGAR
P.O. PUTHIYARA, CALICUT- 673 004.

4. SATHISH CHARLEY, AGED 48 YEARS,
S/O.C.G. CHARLEY, G-6, HEMA APARTMENTS
JAYANTHI NAGAR COLONY, P.T. USHA ROAD
CALICUT - 673 002.

5. VRIJA KISHORE K., AGED 53 YEARS
S/O. LATE K.K. NAIR, BAGIRATI, PALAZHI ROAD
NELLIKODE, CALICUT – 673 016.
 6. AJITH K.T., AGED 48 YEARS
S/O.K.T. PURUSHOTHAMAN, POOJA, 38/1196 C,
EDAKKAD, CALICUT – 673 005.
 7. BRINDH KUMAR , AGED 50 YEARS
S/O. LATE R. BALAN, RAROTH HOUSE, ELATHUR P.O.
CALICUT.
 8. FRANCIS A.V., AGED 50 YEARS,
S/O. LATE R BALAN, ALUKKA HOUSE, KOTTOLI P.O.
CALICUT – 673 016.
 9. GANGADHARAN P.V., AGED 61 YEARS
S/O.LATE P.V. SAMI, KERALA KALA, ACHAVATTOM
CALICUT – 673 007.
 10. NAMBIAR M.N., AGED 58 YEARS
S/O. LATE NARAYANAN NAMBIAR, 5/775, MEENAKSHI
RARICHAN ROAD, ERANHIPALAM, CALICUT-06.
 11. PREMKUMAR P.A., AGED 48 YEARS
S/O. P.A. BHASKARAN, 'AUM', 4/343 A
GANDHI ROAD, CALICUT.
 12. RAGHUVVEERAN D., AGED 50 YEARS,
S/O. DANODARA BALIGA, JEEVANA, ZCHS NORTH ROAD
CALICUT – 673 002.
 13. SUNDERDAS P., AGED 59 YEARS
S/O. LATE P. KRISHNAN, 'KRISHNA', WEST HILL
CALICUT – 05.
 14. THOMAS C.I., AGED 56 YEARS
S/O. LATE LUKOSE THOMAS, 5/1965, CHELLAM COTTAGE
S.V. COLONY, CALICUT – 673 006.
- R1 TO R5 BY ADV. SAJU S.A.
R2 BY ADV. SRI.K.A.SALIL NARAYANAN
R3 BY ADV. SRI.T.KRISHNAN UNNI (SR.)

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 15-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.S.A. No.1102 OF 2014

Dated 15th June, 2015.

J U D G M E N T

Defendants 1 and 2 in a suit for declaration and mandatory injunction are the appellants in this appeal. Respondents are the plaintiffs in the suit.

2. The first defendant, hereinafter referred to as 'the club' for short, is a society registered under the Societies Registration Act, 1960. The plaintiffs were members of the club and among them, plaintiffs 1 to 5 were the office bearers and the remaining plaintiffs were the members of the managing committee of the club during the year 2003-2004. During the tenure of the plaintiffs as office bearers and the members of the managing committee of the club, the club was renovated with the financial assistance obtained from a Bank. In the matter of availing the financial assistance, the plaintiffs had mortgaged the properties of the club. In course of time, certain members of the club raised objections against the conduct of the plaintiffs

in renovating the club without the prior approval of the general body and in mortgaging the properties of the club for availing financial assistance from the Bank. They have also demanded the club to initiate disciplinary action against the plaintiffs. In view of the objections aforesaid, the extra ordinary general body meeting of the club held on 17.6.2004 constituted an inspection committee to submit a report as to the allegations levelled against the plaintiffs. The inspection committee, after examining the accounts and documents of the club, submitted their report to the general body held on 14.9.2004 and on the basis of the report of the inspection committee, the said general body decided to initiate disciplinary action against the plaintiffs and constituted a disciplinary committee for the said purpose. It was also decided to suspend the plaintiffs from the primary membership of the club. The suit was filed at that point of time challenging, among others, the decision of the general body to initiate disciplinary action against the plaintiffs. During the pendency of the suit, the disciplinary committee, after issuing a memo of charges to the plaintiffs, recommended

to the managing committee to expel plaintiffs 1 to 5 from the primary membership of the club and to impose fine on the remaining plaintiffs and on the basis of the said recommendation, the managing committee of the club in its meeting held on 6.1.2005, decided to expel plaintiffs 1 to 5 from the primary membership of the club. As recommended by the disciplinary committee, the remaining plaintiffs were let off after imposing a fine. In the light of the said developments after the institution of the suit, the plaint was amended and a prayer to declare the decision taken by the managing committee on 6.1.2005 as illegal and void and a prayer for mandatory injunction directing the defendants to reinstate the plaintiffs as members of the club were incorporated.

3. The defendants contested the suit. They justified the decision to expel plaintiffs 1 to 5 from the primary membership of the club, in the written statement filed by them. According to them, the allegations levelled against the plaintiffs were found to be correct in the disciplinary enquiry and the misconducts established against the plaintiffs are sufficient to

expel the plaintiffs from the primary membership of the society as per the bye-laws of the club.

4. The trial court dismissed the suit and the appellate court reversed the decision of the trial court and decreed the suit declaring that the decision of the managing committee of the club to expel plaintiffs 1 to 5 from the primary membership of the club is void and inoperative. The appellate court also issued a mandatory injunction directing the defendants to reinstate plaintiffs 1 to 5 as members of the club. The club is aggrieved by the said decision of the appellate court and hence this appeal.

5. Heard Senior Counsel Sri.T.Sethumadhavan for the defendants and Senior Counsel Sri.T.Krishnan Unni and Sri.Salil Narayanan for the plaintiffs.

6. It is seen that in the light of the developments after the institution of the suit, the only reliefs pressed at the time of hearing were the reliefs incorporated by way of amendment in the plaint. As such, the issue arises for consideration is whether the decision of the club in expelling

plaintiffs 1 to 5 is in accordance with law. There cannot be any dispute to the proposition that a member of a club is bound by its rules and if the rules provide for expulsion, the member can be expelled in the manner provided for in the rules. Ext.A1 is the bye-law of the club. Ext.A1 provides for expulsion of the members of the club. Clause 10(1) of Ext.A1 bye-law dealing with the expulsion of members reads thus :

“Any member who wilfully violates any of the rules and/or Bye-laws of the club or indulges in any conduct so as to cause injury to the prestige of the club or does anything to disturb the harmony and peaceful atmosphere of the club or brings to or entertains in the club any person expelled from the membership of the club or any member under suspension under this rule or uses abusive or filthy language or physical force against any person or persons or uses the club premises for immoral or illegal acts shall be reprimanded, suspended and/or expelled from the membership of the club as provided hereunder.”

It is evident from clause 10(1) of the bye-law that a member who wilfully violates any of the rules of the club or indulges in any conduct so as to cause injury to the prestige of the club or does anything to disturb the harmony and peaceful atmosphere of the club is liable to be expelled. It is seen that the lower

appellate court found that the main charge against the plaintiffs that they have availed a loan of Rs.30,00,000/- from the State Bank of Travancore by mortgaging the landed properties of the club without the prior approval of the general body would not come within the scope of clause 10(1) of the bye-law of the club. The lower appellate court also found that the findings rendered by the disciplinary committee on the remaining charges levelled against the plaintiffs also would not come within the scope of clause 10(1) of the bye-law. It is on the aforesaid findings, the lower appellate court came to the conclusion that the decision of the managing committee to expel the plaintiffs from the primary membership of the society was ultra vires of the bye-law of the club and as such, void and illegal.

7. The learned Senior Counsel for the appellants contended, relying on Ext.B4(b) memo of charges, that the charges levelled against the plaintiffs in the memo of charges were not adverted to by the lower appellate court and that the impugned decision was rendered solely on a perusal of the

decision of the disciplinary committee. According to the learned Senior Counsel, the charges in Ext.B4(b) memo of charges as found by the disciplinary committee would squarely fall under clause 10(1) of the bye-law of the club.

8. True, Ext.B4(b) contains various charges including charges which would constitute a cause for expulsion from the primary membership, if established in accordance with the bye-law of the club. It is seen that as per Ext.B4(b), the plaintiffs were called upon to submit their explanation to the charges to the Chairman of the disciplinary committee on or before 5.10.2004. On receipt of Ext.B4(b), the plaintiffs sought time to furnish explanation and requested for copies of some of the documents relied on in the memo of charges, as per their letter dated 3.10.2004. It is also seen that in response to the request made by the plaintiffs, on 7.10.2004, they were given a communication to furnish the particulars of the documents required by them. Ext.A17 indicates that later, on 18.10.2004, they were given a further communication stating that since they have not furnished the list of documents required, they are

given time upto 28.10.2004 to furnish explanation to the memo of charges. It seems that the plaintiffs have sought further time to submit explanation to the memo of charges and they have been granted time till 2.12.2004. Ext.A17 is the explanation submitted by the second plaintiff on 6.12.2004. Ext.A17 deals with each and every charge levelled against the plaintiffs elaborately. Ext.B3 is the decision taken by the disciplinary committee on 10.12.2004. It is seen that since Ext.A17 was submitted beyond 2.12.2004, the elaborate explanations offered by the second plaintiff are not seen considered in Ext.B3. Ext.B3 recites that explanations from plaintiffs 1, 2, 3 and 4 have been received and examined with reference to the report of the inspection committee and found that the explanations are evasive. Ext.B3 does not refer to the explanations offered by the aforesaid persons. There is no finding in Ext.B3 that the misconducts established would come within the ambit of clause 10(1) of the bye-law of the club. Ext.B2 is the decision of the managing committee. Ext.B2 also does not refer to the charges levelled against the plaintiffs nor

does it refer to the findings rendered by the disciplinary committee. Ext.B2 merely accepts the recommendations of the disciplinary committee.

9. In **T.P. Daver v. Lodge Victoria No. 363, S.C. Belgaum** (AIR 1963 SC 1144), the Apex Court, on an elaborate consideration of the scope of the jurisdiction of the civil courts in relation to matters concerning the affairs of clubs, held that the civil court can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice. Paragraph 9 of the judgment reads thus :

“9. The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules, whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or acts in violation of the principles of natural justice as

explained in the decisions cited supra.”

10. It is clear from the said decision of the Apex Court that in a case where the civil court finds that a body like the first defendant acts in violation of the principles of natural justice, its decisions can be interfered with. In the instant case, the bye-law does provide for the procedure to be followed by the disciplinary committee. The bye-law does not also provide for the time to be granted to the persons against whom disciplinary actions are initiated. It is beyond dispute that the expulsion from the club is the harshest penalty that could be imposed on a member. Reasonable opportunity is, therefore, to be given to the members against whom disciplinary action is initiated to offer explanations to the charges levelled against them. It is all the more so, since the members of the disciplinary committee are only members of the club who are representing the club. On a perusal of the records of this case, I do not find that reasonable opportunity was given to the plaintiffs to offer explanations to the various charges levelled against them. Ext.B4(b) is the memo of charges. It is a

document running to several pages. It refers to various documents. True, the plaintiffs have sought time to furnish explanation to the charges levelled against them in the show cause notice. They have also sought permission to peruse the documents relied on in the memo of charges. It is seen that they were not permitted to peruse the documents relied on in the memo of charges. Instead, they were asked to submit a list of documents required by them. It is not clear from the materials on record as to whether plaintiffs have submitted any list of documents and they have been given permission by the club to peruse the same. Ext.A17 indicates that the second plaintiff has submitted a detailed explanation to the various charges levelled against him in the memo of charges on 6.12.2004. The disciplinary committee considered the matter only on 10.12.2004. Nevertheless, they did not consider Ext.A17 explanation submitted by the second plaintiff on 6.12.2004 on the technical ground that the same was not submitted before 2.12.2004. As noticed above, Ext.B3 decision of the disciplinary committee does not refer to any of the

charges or the explanations submitted by the plaintiffs. It only recites that explanations received from plaintiffs 1, 2, 3 and 4 were examined with reference to the report of the inspection committee and found to be evasive and incorrect. Ext.B3 does not refer to the explanations offered by the aforesaid persons. There is no finding in Ext.B3 that the misconducts established would come within the ambit of clause 10(1) of the bye-law of the club. Likewise, Ext.B2 also does not refer to the charges levelled against the plaintiffs nor does it refer to the findings rendered by the disciplinary committee. Ext.B2 merely accepts the recommendations of the disciplinary committee. In the aforesaid circumstances, I am of the view that the principles of natural justice have not been complied with by the club while expelling the plaintiffs from the primary membership of the club. In the said circumstances, the impugned decision of the lower appellate court is confirmed with the modification that the club is at liberty to issue a fresh notice to the plaintiffs 1 to 5, calling for their explanations to Ext.B4(b) memo of charges and take a final decision in the matter in accordance with the

bye-law of the club, after affording them a reasonable and fair opportunity to offer their explanations, after perusing the records of the club.

The appeal is disposed of as above. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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