

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.27399 & 27397 OF 2016

COMMON ORDER:

These two writ petitions *viz.*, WP No.27399 of 2016 by Bharat Cricket Club, Hyderabad and WP No.27397 of 2016 by Acrylic Cricket Club, Hyderabad, are filed represented by its respective Secretaries to declare the action of the 3rd respondent-District Registrar, Registration and Stamps Department, Hyderabad, in recording the resolution made by way of 16th amendment dated 29-06-2016 to the memorandum, rules and regulations of 5th respondent-Hyderabad Cricket Association (HCA), Hyderabad, submitted by the 4th respondent-Executive Committee as being *malafide*, arbitrary, capricious, unconstitutional and against the basic structure of memorandum, rules and regulations of 5th respondent-HCA, more particularly violative of Chapter-III ii, iv, v, Chapter-V i, viii, Chapter-V 3 to 8 and 11 of memorandum, rules and regulations of 5th respondent-HCA (for short, 'the Bye-laws') and Sections 2(0), 8(4), 8 (5), 14 (1), 14 (2) & 20 (1) and 20 (2) of AP Societies Registration Act, 2001, (for short, 'the Act') and consequently declare the impugned resolution adopted by way of 16th amendment dated 29-06-

2016 to the memorandum, rules and regulations of 5th respondent-Hyderabad Cricket Association (HCA), ought not have been passed and taken on record by the 3rd respondent-District Registrar, Hyderabad.

2. The case of the petitioners-Cricket Clubs is as per Chapter-V of the Bye-laws, annual general meeting shall be held on the last Sunday of May every year, and as per clause viii, Rule 1 of Chapter-V, office bearers of the executive committee shall be elected at the end of the respective terms, which is two years as Rule 2, clause v of Chapter-IV of the Bye-laws. That the Executive Committee *i.e.* 4th respondent herein was elected on 07-09-2014 and two years period of their term comes to end by 06-09-2016 and a new Executive Committee is required to be elected for the period 2016-18.

3. The grievance of the petitioners is that though Rule 2, Chapter-V of the Bye-laws postulates for election of members of the Executive Committee, and the Committee for that purpose shall appoint Returning Officer, 30 days prior to AGM, but the members of the Executive Committee of 4th respondent, instead of so doing,

particularly, the Secretary, issued notice dated 14-05-2016 and fixed the date of annual general meeting on 29-05-2016 wherein with a *malafide* intention failed to include the item with regard to conduct of election to the 5th respondent-HCA. But in the said annual general meeting, the members of the 4th respondent-Executive Committee passed resolution as under:

"Resolved by an overwhelming majority that the elections to the Executive Committee would be held on the last Sunday of May 2017 as a one time correction by amending the Memorandum, Rules & Regulations".

4. The petitioners state that the said resolution passed in the annual general body meeting is not valid in the eye of law and it is not binding for the reasons that it was not part of one of the agenda items detailed in notice dated 14-05-2016. That in the absence of not listing it as one of the agenda items, the general body was not authorized to bring the amendment to the Bye-laws and forward such amendment dated 29-05-2016 to the 3rd respondent-District Registrar for recording such a resolution postponing the election to the last Sunday of May, 2017. That it is against the basic structure of the Bye-laws besides violative of

Sections 2(0), 8(4), 8 (5), 14 (1), 14 (2) & 20 (1) and 20 (2) of the Act.

5. Petitioner in WP No.27399 of 2016 also filed OP No.5 of 2016 on (renumbered as OP No.531 of 2016) on the file of Vacation Judge, Ranga Reddy District (now made over to III Addl. District Judge, Ranga Reddy District) wherein in an interlocutory application being IA No.355 of 2016, filed under Order 39, Rules 1 &2, r/w. Section 23 of the Act, for injunction and IA No.356 of 2016, filed under Order 26, Rule 10-B CPC for appointment of Commissioner to conduct elections were allowed but the said order is impugned in revisions being CRP Nos.3435 of 2016 & 3436 of 2016 and the revisions are pending.

6. In the circumstances, the petitioners state that the claim of 4th respondent-Executive Committee that the annual general body has extended the term of the Committee for the period 2014-2016 till May, 2017 is not valid and binding and, such illegal resolution of the 4th respondent-Executive Committee ought not to have been recorded by the 3rd respondent-District Registrar. Hence, the writ petitions.

7. Counter affidavit is filed by the respondents 4 and 5 denying the averments in the affidavit filed in support of the writ petitions. It is

stated that the 5th respondent-Hyderabad Cricket Association is a registered society under the A.P (Telangana Area) Public Societies Registration Act, 1350 Fasli, vide certificate of Registration bearing No.207 of 1961, dated 28-12-1961. That 5th respondent is affiliated to the Board of Control for Cricket in India (BCCI), which is formed to promote the game of Cricket in India; that the 5th respondent is managed, governed and controlled by the Executive Committee elected by the general body as envisaged under Chapter IV of the Bye-laws. That the 5th respondent-HCA convened the 82nd annual general meeting ('AGM') on 29-05-2016 vide notice dated 14-05-2016. It is stated that previous Executive Committees of the HCA failed to conduct the AGMs as stipulated in the Bye-laws. In order to contest for the post of the Office Bearer of the HCA, it is mandatory that a person shall be a member of the Executive Committee for a period of two years. The conduct of the elections on the last Sunday of May of the relevant year would deprive the members of the Executive Committee from contesting for the post of Office Bearers, since they would not have completed the period of two years of their holding office as an Executive Committee member of the HCA. That they received letters of motion from the majority of the general body members seeking one time correction of the anomaly by postponing the

elections to the last Sunday of May, 2017. It is stated that the AGM was duly held on 29-05-2016 being the last Sunday of May, 2016 and all the agenda items were duly considered and passed. The motion for postponement of elections received from 133 members of the general body, out of 216 members was also listed in the agenda items. The recommendations of the Executive Committee which formed part of the agenda also suggested that a one time correction be made by suitably amending the Bye-laws to conduct the elections in May, 2017. That only in consonance with the suggestions of the members, a resolution was passed by the general body. That the resolution passed by the general body is valid, proper and in accordance with the Bye-laws of the 5th respondent-HCA. That only two members viz., Ranga Reddy District Cricket Association represented by N.Shivlal Yadav and Evergreen Cricket Club represented by Prakash Chand Jain, recorded their dissent out of total of 171 members who attended the AGM.

8. The term of the Executive Committee of the HCA would expire on 07-09-2016 and not on the last Sunday of May, 2016, therefore, a resolution was put up before the General Body and the General Body resolved to amend the Bye-laws as a one time measure to conduct elections in May, 2017. It is also stated that writ petitions

are not maintainable as the petitioners challenge the action which relates to functioning of a private body and that the District Court alone has jurisdiction to deal with the dispute and, therefore, are liable to be dismissed.

9. Sri KS Murthy & Sri Mir Masood Khan, learned counsel for the petitioners strenuously contended that to amend the Bye-laws a procedure is prescribed under Section 8 of the Act and on being satisfied that the procedure contemplated is complied and not opposed to public policy, the 3rd respondent ought not to have recorded the amendment brought to the Bye-laws of the 5th respondent-HCA. Learned counsel further contends that for amendment of any Bye-laws, there is procedure prescribed under Chapter V of the Bye-laws which contemplates convening of a special general meeting of the members, resorting any other mode is not valid in the eye of law. It is also contended that amendment to Bye-laws of the HCA was not in the notified vide notice dated 14-05-2016 and the Secretary of the 5th respondent-HCA has no power to delete or omit agenda against the mandate of Chapter V of the By-laws at their whims and fancies.

10. Sri Vedula Venkata Ramana, learned senior counsel appearing for Sri V. Ramchander Goud, learned counsel for respondents 4 and 5, on the

other hand, contended that the 5th respondent-HCA convened annual general meeting on 29-05-2016 on the specified date i.e. on the last Sunday of May, 2016, but as the term of office of the members of the 4th respondent-Executive Committee, which is two years as per the By-laws of HCA, and it is mandatory for a member to hold office for a period of two years to contest for the post of Office Bearer of the 5th respondent-HCA, if elections are conducted on 29-05-2016, the members of the Executive Committee would fall short of two years term as Committee members and if the period is not extended, they would be deprived to contest for the post of Office Bearers of 5th respondent-HCA, in the light of letters of motion received from majority of the general body members seeking one time correction of the anomaly by postponing the election to the Executive Committee to the last Sunday of May, 2017, a resolution was passed to amend the By-laws as a one time measure, and also to see that henceforth, the members of the Executive Committee completes two years term from May, 2017 onwards. Learned senior counsel further submits that this contingency has arisen as the previous Committee did not conduct elections on time, as prescribed in the By-laws on the last Sunday of May every succeeding year. Learned counsel further submitted that disputed questions of fact cannot be gone into by this Court in exercise of

jurisdiction under Article 266 of the Constitution and petitioners have alternative remedy under Section 23 of the Act. It is also contended that elections and electoral processes of all the State associations have been directed to be put on hold and a communication to that effect was received from the Secretary, Supreme Court Committee.

11. The challenge in this writ petition is to the action of the 3rd respondent-District Registrar in taking on record the amendment to the memorandum, rules and regulations of the 5th respondent-HCA by resolution dated 29-05-2016 passed in the general body meeting. The contention of the petitioners is that said resolution ought not to have been recorded without satisfying that it is passed in accordance with the Bye-laws and the provisions of the Act governing the field.

12. Section 8 of the Act speaks amendment of memorandum and Bye-laws, which reads thus:

“Amendment of memorandum and Bye-laws:-

(1)

(2) Subject to the provisions of this Act, and the conditions contained in its memorandum, a society may, by an ordinary resolution passed by not less than 1/2 (half) of the members present and voting alter its bye-laws.

(3) Any alteration of the memorandum of the society shall not be valid unless such alteration is registered under this Act.

(4) If any alteration of the memorandum is filed with the Registrar and if they are not contrary to the provisions of this Act, he shall register the same and shall certify the registration of such alteration under his hand

and seal within thirty days from the date of receipt of the resolution. The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the certification thereof have been complied with and henceforth the memorandum as so altered shall be the memorandum of the society.

(5) Every alteration in the bye-laws of the society should be sent to the Registrar and he shall take it on record if it is not contrary to the provisions of this Act.”

13. The issue which the petitioners are canvassing that the 3rd respondent-District Registrar, under Section 8 of the Act, has to satisfy himself before recording the amendment to the Bye-laws is no longer *res-integra* as an identical issue fell for consideration in the case P. SHIVARAJ SAMPATHY vs. COMMISSIONER & INSPECTOR GENERAL, STAMPS & REGISTRATION, HYDERABAD, AP (2010 (6) ALT 202) wherein this Court in the penultimate paras concluded in the following terms:

“A plain reading of sub-sections (3) and (5) of Section 8 of the Act would show that any amendment/alteration of byelaws made by the Society (that is to say, the general body of the Society) in accordance with the procedure laid down in the bye-laws shall not be valid and enforceable unless it is registered by the Registrar of the Societies. When a Special Resolution is passed by the general body of the Society in accordance with Section 8(2) of the Act under relevant bye-laws proposing amendments/alterations to the memorandum or bye-laws they have to be submitted to the Registrar who “shall take it on record, if it is not contrary to the provisions of the Act.” While doing so how the Registrar has to

proceed with the legislative guidance is provided by Section 8(4) of the Act. A reading of sub-sections (4) and (5) of Section 8 of the Act would show that the Registrar of Societies cannot refuse to take it on record unless such amendments are contrary to the provisions of the Act. The mere dispute between the Society and its members or a dispute with regard to the question whether some of the members submitted resignations or not is not a ground on which the Registrar can refuse registration. Further, even if there are criminal cases pending, which are filed by the minority members against majority, if a Special Resolution is passed by the majority of the members, the Registrar is precluded from refusing the registration, that is to say, taking the amendments on record.”

14. The language used in the sub-Section (4) of Section 8 of the Act is in clear terms which clarified that if any alteration of the memorandum is filed with the Registrar and if it is not contrary to the provisions of this Act, he shall register the same and shall certify the registration of such alteration under his hand and seal within thirty days from the date of receipt of the resolution. A combined reading of sub-Sections (4) and (5) of Section 8 of the Act would show that the 3rd respondent-District Registrar cannot refuse to take it on record unless such amendments are contrary to the provisions of the Act or it is opposed to public policy. In yet another decision of this Court in KHAN ABDUL GAFFAR KHAN MEMORIAL EDUCATIONAL SOCIETY REP. BY ITS GENERAL SECRETARY-CUM-

CORRESPONDENT vs. DISTRICT REGISTRAR OF SOCIETIES, NELLORE (2007 (6) ALT 16), the question that arose for consideration was whether the District Registrar is conferred with the power to adjudicate the internal disputes and declare the validity or otherwise of a resolution passed by a Society. While referring to Section 23 of the Act, it was held that District Registrar is not conferred with power to deal with the validity of resolution passed or power to resolve the internal disputes of the Society, or among its members and his role is restricted to the one of registering the societies and thereafter to register the amendments to the Bye-laws and any disputes between the Society and its members, or members *inter se*, touching upon the management and administration of the Society have to be resolved by filing a petition under Section 23 of the Act, in the District Court within whose jurisdiction the Society operates.

15. In the instant case, from the factual matrix, from out of the 171 members who attended the annual general meeting, except two petitioners, of which one of them is facing disciplinary proceedings at the hands of the 4th respondent for allegedly for its misbehaviour actions and in maligning the reputation of the HCA, there was no

grievance from any other quarter in bringing the amendment to postpone the election to May, 2017. The action of the 3rd respondent-District Registrar cannot be found fault with in the facts and circumstances of the case as within the framework of the Act he is obliged to record the amendment, with two exceptions, viz., if it is contrary to the provisions of the Act or opposed to public policy, neither of the exceptions appears to have been offended considering the averments of amendment brought in by the 4th respondent.

16. The questions whether there is violation of Rule 2 of Chapter-V of the Bye-laws and whether the Secretary of HCA is authorized to issue notice not listing the postponement of the election to the 5th respondent-HCA as one of the agenda items and conduct election every two years as per Rule 1 of Chapter V of the Bye-laws, whether the Bye-laws prescribe a separate procedure for amendment of the Bye-laws as contained in Chapter V of the Bye-laws, whether the motion was moved by majority members and whether there was quorum to pass such a resolution, whether there is any object sought to be achieved as contended by the 4th respondent-Executive Committee in postponing the election to May, 2017 to avoid future contingencies to enable the members to contest to the post of office

bearers of the 4th respondent-Executive Committee involves calling for material particulars from the 4th and 5th respondents and requires examination of details which cannot be resorted by this Court in exercise of jurisdiction under Article 226 of the Constitution, moreso in the light of availability of efficacious alternative forum provided for under Section 23 of the Act. Hence, without much hesitation, it is to be held that petitioners can approach the District Court having jurisdiction to question the correctness or otherwise of the amendment brought by the 4th respondent to the Bye-laws of the 5th respondent-HCA, if so advised. In the light of the above facts and circumstances, the other citations quoted by the learned counsel on both sides are not required to be adverted to.

17. In the circumstances of the case, there is no merit in the writ petitions and they accordingly dismissed, however, reserving liberty to the petitioners to approach the District Court under Section 23 of the Act. As a sequel thereto, miscellaneous petitions, if any, pending in these writ petitions, shall also stand dismissed. There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 27-09-2016
NRG

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.27399 & 27397 OF 2016



//WEB//

NRG

