

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Second Appeal No.340 of 2016

Between:

Capt.D.K.Giri.

... Appellant

And

Secunderabad Club

Represented by its Secretary,

Picket, Secunderabad.

and 4 others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **05.12.2017**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgments? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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! Counsel for Appellant : Sri Milind G.Gokhale

^ Counsel for Respondent No.1 : Sri Adnan Mahmood

^ Counsel for Respondent No.2 : Sri Zeeshan Adnan Mahmood

^ Counsel for Respondent No.3 to 5 : ----

< Gist:

> Head Note:

? Cases referred:

1) AIR 1997 SC 2364

2) AIR 1963 SC 1144

3) AIR 2015 Gauhati 179 = 2016 (1) GLT 356

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

SECOND APPEAL No.340 of 2016

JUDGMENT:

This Second Appeal does not take much of this Court's time to decide, as the same can be disposed of at the admission stage since the Second Appeal is bereft of involving any substantial questions of law to adjudicate upon.

2) The plaintiff, who lost his suit before both the Courts below, which concurrently rejected his suit for declaration that he is a permanent member of the 1st defendant club and that his termination of the Mess membership is illegal and for a consequential perpetual injunction restraining the 1st defendant from interfering with the use of facilities as a Mess member is, before this Court in this Second Appeal.

3) Plaintiff's case in nutshell is that he was an ex-captain from the Brigade of Gorkha and was released from Armed Forces in the year 1977; he was a member in the 5th defendant club. On 23.04.1990, the plaintiff made an application for permanent membership in the 1st defendant club through 5th defendant. Till his application was considered, he was granted temporary membership and put on probation period for 4 months. He paid the due charges. While-so on 12.07.2006, it was intimated to the plaintiff that permanent membership in the 1st defendant club was refused to him as he was not elected. Plaintiff's case is that the rejection of his permanent membership is illegal and contrary to the rules of the 1st defendant club, as the said club has failed to assign any reasons for his

rejection. Hence the rejection is against the principles of natural justice and the letter is liable to be set aside for assigning no reason.

4) Defendant No.5 remained *ex parte*.

5) Defendant Nos.1 to 4 put up their written statements *inter alia* contending that the 1st defendant is one of the most elite clubs in the country and has restructural arrangements with most of other elite clubs in the country and it was affiliated to clubs in the United Kingdom and United Arab Emirates and it was unregistered voluntary organization of like minded persons. It was governed by its own rules, bylaws and the managing committee of the 1st defendant comprising of 2nd and 3rd defendants and 6 other committee members were duly elected by the general body of the members for a period of 2 years. The applicants, who are admitted as temporary members, were asked to pay Rs.37,500/- and the said amount was collected from plaintiff also. However, payment of the said amount does not constitute any special privilege for the plaintiff and plaintiff was made a temporary member of the 1st defendant for a period of 4 months subject to the ballot. During the said period of 4 months, a temporary membership was given to the plaintiff creating an opportunity to him to meet the managing committee and also other members wherein it could be assessed whether his temporary membership could be made permanent or not. The managing committee in its meeting held on 12.07.2006, rejected the application of the plaintiff for permanent membership. The managing committee was vested with the right to admit or reject the application as per its rules. It's a voluntary association of like

minded persons. The managing committee need not set out the reasons for rejecting an application for membership. Therefore, the rejection of the plaintiff's application can by no stretch of imagination be harped as against the principles of natural justice. On the other hand, during the four months period of temporary membership to use to the facilities of the club, he was given ample opportunity to meet the members of the managing committee in order to prove his credentials to be elected as permanent membership. There was absolutely no reason for rejection of application for permanent membership to be set aside. There is no cause of action for the plaintiff.

6) Both the Courts below rejected plaintiff's suit on the main finding that a decision to reject his application for permanent membership was made by following the due procedure and in that regard, there was no violation of principles of natural justice. The Trial Court in Para 13 of its judgment, has, specifically observed that election of a permanent member is a discretion of the managing committee and ballot was also held in which plaintiff lost his case. Though no reasons were given by the 1st defendant for rejection of the permanent membership to the plaintiff, it cannot be said to be against the principles of natural justice or violation of the rights of the plaintiff. Like any other member, he was given temporary membership and after interview was conducted, ballot was taken and as such there was no material on record to show that principles of natural justice was not followed or that a reasonable opportunity was not given to the plaintiff. On this observation the Trial Court dismissed the suit.

7) Then the lower Appellate Court in its judgment observed that the defendant club is not a registered body and it is only an association governed by its bylaws and rules and the plaintiff did not show single incident that the defendant club acted arbitrarily against the rules and bylaws. When he failed to show the same, he cannot say that the act of the defendants is arbitrary or capricious and against the principles of natural justice.

8) Thus as noted supra, both the Courts have concurrently held that there was no violation of principles of natural justice in the matter of rejecting the application of the plaintiff for permanent membership. Aggrieved, the plaintiff preferred the instant Second Appeal and embossed the following questions dubbing them as substantial questions of law:

- 1) Whether the judicial Courts would have the subject matter jurisdiction over any decision taken by an association?*
- 2) Whether the rules, regulations and bylaws of an unregistered association of likeminded people can be put for the scrutiny of judicial Courts and can be examined by the Courts and struck down the rule as arbitrary upon the touch stone of Articles 14, 16, 19 and 21 of the Constitution of India?*

9) Heard arguments of Sri Milind G.Gokhale, learned counsel for appellant/plaintiff and Sri Venu Gopal, learned Senior counsel representing for Sri Adnan Mahmood, learned counsel for respondent No.1/defendant No.1 on the aspect of admissibility of the Second Appeal. Both the counsel agreed that their arguments may be treated as arguments

in the final hearing, in case the Court holds there existed substantial questions of law for adjudication.

10) Arguing on the substantial questions of law projected by the appellant, learned counsel for appellant/plaintiff would submit, merely because an organization is a private organization or a club as in the instant case, the Civil Court will not slough off its jurisdiction to test the validity of its decision. When its decision is arbitrary or capricious or in violative of the principles of the natural justice, the Court can certainly declare such action to be illegal. He would vehemently argue that in the instant case the defendants have not assigned any reason, muchless valid reason for denying the permanent membership to the plaintiff, who was a member of the Mess in 5th defendant club for more than a decade. The Courts below failed to exercise jurisdiction in granting the reliefs sought for by the plaintiff. He thus prayed to admit the appeal and allow the same.

11) Per contra, while supporting the impugned judgments Sri Venu Gopal, learned Senior Counsel for 1st respondent would argue that both the Courts have concurrently held that there was no violation of principles of natural justice and in view of a concurrent finding on the question of fact, there involves no substantial questions of law and therefore, the appeal is liable to be dismissed in limini.

12) I bestowed my anxious consideration to the above arguments. The trite law as laid under Section 9 of Code of Civil Procedure is that Civil Courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly barred. Such

exclusion is not to be readily inferred, the rule of construction being that every presumption should be made in favour of the existence rather than the exclusion of the jurisdiction of the Civil Courts. In ***M.P. Electricity Board, Jabalpur vs. M/s. Vijaya Timber Co.***¹, the Apex Court held as follows:

“It is well settled that the exclusion of jurisdiction of civil court cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded.”

Therefore, unless by express mode or by necessary implication barred, Court’s jurisdiction permeates into every civil matter including that of the private organizations, association and even clubs. There can be no demur on this legal aspect. However the question is, in the matter of administration of the affairs of the private organizations, associations and clubs, what is the operative sphere of the jurisdiction of the Civil Courts. In my considered view, when such private institutions, organizations, associations and clubs etc., are governed by any statute, the Courts have to test the validity of their actions on the touch stone of such statute. On the other hand, if the aforesaid bodies are not governed by any legislated statutes but being administered by their own rules, bylaws etc., their impugned actions shall be tested in the light of those rules to know whether their acts were in conformity with those rules and bylaws and also in conformity with the principles of natural justice.

¹ AIR 1997 SC 2364

a) On this aspect we can gainfully refer to the decision in *T.P.Daver vs. Lodge Victoria No.363 Belgaum and others*², wherein the appellant was a member of the Lodge Victoria since 1948. The Grand Lodge of Scotland was governed by its own written Constitution and laws. While-so, the appellant was imputed of committing several Masonic offences and hence was served with notices to submit his explanation and thereafter, each of the charge was put to vote and the members present unanimously held that every one of the charges leveled against the appellant was established. They passed a resolution excluding the appellant from the Lodge until the exclusion was confirmed by the district grand lodge under Law 199 of the Constitution. The appeal filed by him was also dismissed. Thereafter, it appears, he filed a civil suit before the Civil Judge, Senior Division, Belgaun for a declaration that the resolution of the Victoria Lodge was illegal and void and that he continued to be a member of the lodge despite the resolution and for a consequential injunction to restrain the officers and servants of the lodge from preventing him from exercising his rights therein. The suit was contested. The Court dismissed the suit. The appeal filed by the appellant was also dismissed by the High Court of Mysore. He preferred appeal before the Apex Court. In that context, the Apex Court after referring various decisions on the aspect of the scope of the jurisdiction of Civil Courts in the matters relating to clubs and lodges had noted thus:

“Para 8: The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by

² AIR 1963 SC 1144

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.”

b) In ***Arunachal Pradesh Congress Committee (APCC), Arunachal Pradesh and others vs. Kalikho Pul***³, the petitioners therein challenged the maintainability of the suit and sought for quashing the proceedings of the title suit filed by the respondent on the plea that Civil Court had no jurisdiction. The facts briefly were that respondent was a sitting MLA in Arunachal Pradesh belonging to Indian National Congress (INC). For certain reasons, he was expelled from the said political party for a period of 6 years. Challenging the same, he filed the title suit before the Civil Judge, Senior Division, Capital Complex, Yupia for a declaration that the said order of expulsion was invalid and for further declaration that the plaintiff continued to remain as a member of INC and for other reliefs. He also obtained an *ex parte* interim injunction against the expulsion order. The petitioners challenged the maintainability of the suit before the High Court of Gauhati. In that context, a learned Judge of the said High Court tested the jurisdiction of the Trial Court in the light of Section 9 CPC. Referring various judgments of Apex Court, he gave a finding that the

³ AIR 2015 Gauhati 179 = 2016 (1) GLT 356

Civil Court has the jurisdiction to examine whether the decision and the action of the petitioners in taking the impugned punitive action of expelling the plaintiff from INC was in good faith, inconformity with the Constitution of the petitioners' party in question and the disciplinary rules incorporated therein and the established principles of law and natural justice.

c) In the instant case on hand, the 1st defendant is not governed by any legislated statute but admittedly administered by a set of rules called Rules of Secunderabad Club. Therefore, the Civil Court would have jurisdiction to determine whether the action of the respondents/defendants in denying the permanent membership to the appellant/plaintiff, is in conformity with the aforesaid rules and whether principles of natural justice were indeed followed.

13) At this juncture it must be made clear that in fact the Courts below dismissed the suit of the plaintiff not on the ground that Civil Court had had no jurisdiction but on the finding that the plaintiff failed to prove any infraction of the rules governing the club or the principles of natural justice. It is also pertinent to mention that in fact the Trial Court did not frame any issue touching the jurisdiction of the Civil Court. It was nobody's case that the Trial Court had no jurisdiction to entertain the suit. In that view, the first substantial question of law framed does not require any adjudication because, as already stated supra, jurisdictional issue was not a question at all before the Courts below. Perhaps, this question is conveniently framed by the appellant to get the Second Appeal admitted.

Therefore, what is germane in the light of judgments of the Courts below is whether in rejecting the permanent membership, respondents had acted in conformity with the rules and principles of natural justice or not. In this context, certain rules need to be perused. Rule V of Secunderabad Club reads thus:

“V) Permanent Members:

Permanent Members shall consist of those persons whose applications for Membership have been duly considered and approved after balloting by the Managing Committee as per the Rules herein (AGM 31.7.13)

(1) xx xx

(2) xx xx”

The above rule would thus show, a temporary member can be admitted as permanent member after balloting by the managing committee as per the rules. The Appellant admittedly applied for permanent membership.

a) Then coming to the method of voting, Rule XI (1) lays down as follows:

“XI) Balloting Committee:

(1) All candidates for all categories of Membership except Hony, Mess, LTT, STT and Affiliate must be permanent residents of the Greater Hyderabad –Secunderabad Area and except Hony, STT, Associate Member (Widow/Widower) and Affiliate also be subject to secret ballot and three negative votes be deemed as rejection. Such a rejected candidate may be allowed to reapply after one year. However, if rejected again such a candidate and his / her spouse cannot be considered again. The Club Committee shall consider each application openly in Committee. Election

shall be by ballot by the Club Committee. Three or more black balls shall disqualify. A person so disqualified shall not, subject to Rule XIII, be introduced as a guest until he becomes eligible to reapply for Membership.

(2) xx xx

(3) xx xx....”

The above rule would show that all candidates for all categories of Membership are subject to secret ballot and three negative votes would be deemed as rejection. Ofcourse, such a rejected candidate may be allowed to reapply after one year but if rejected again, such a candidate cannot be considered again. It further laid down that the Club Committee shall consider each application openly in Committee and Election shall be by the ballot by the Club Committee. Three or more black balls shall disqualify. Thus this rule would show that a member can be admitted as permanent member through election process and three black balls or three negative votes by the Club Committee will disqualify him from being elected as a permanent member. Admittedly, in the case of appellant, ballot procedure was followed and he could not get elected. Therefore, he cannot complain of procedural violation. His case, however, is that the defendants have not disclosed reasons for not admitting him into permanent membership. This contention is quite preposterous and untenable. It should be reminded that his is a case of election but not selection. In an election procedure, a candidate will be declared elected only on securing the majority of votes or certain number of votes. In the instant case also, secret balloting was conducted wherein the appellant could not be elected. Therefore, he cannot seek the reasons for his non-

election. As rightly contended by the respondents, they do not owe, nor do they oblige to offer, any explanation for not admitting him into a permanent club membership. So the first substantial question of law projected by the appellant is concerned, at the first instance it can be said, the said question does not arise at all, for, jurisdiction of the Civil Court was not an issue throughout and the same cannot be at the Second Appellate Stage. So far as violation of principles of natural justice is concerned, absolutely no such violation of either rules or principles of natural justice.

14) The second substantial question of law projected by the appellant is concerned, the same is also not maintainable. The appellant must note that he has not sought for declaration before the Trial Court that the relevant rules of Secunderabad Club are arbitrary or illegal. Therefore, he cannot now conveniently raise in the Second Appeal. Even otherwise, I do not find any rule as arbitrary, capricious or unjust.

15) So on a conspectus, both the substantial questions of law projected by the appellant are not maintainable and consequently, the Second Appeal is dismissed at the admission stage. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 05.12.2017

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