

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5689 & 5510 of 2017

COMMON ORDER:

CRP.No.5689 of 2017

The revision petitioner is the Secretary, Fateh Maidan Club (presently B.Sham Rao and as on the date of main petition filed in 2016 one G.Srinivas Reddy) in O.P.No.2510 of 2016 on the file of XXV Additional Chief Judge, City Civil Court, Hyderabad, which was filed by revision respondent Nos.1 to 3 against the revision respondent No.4 and the revision petitioner as respondent Nos.1 and 2.

2. The main petition was filed under Section 23 of the Societies Registration Act 2001 for the relief to declare the action of respondent Nos.1 & 2 in issuing impugned letters FCM/Admn/2016-17/848, 849 & 850 all the 3 dated 14.11.2016 expelling the petitioners from the membership of the 1st respondent club as malafide and illegal and arbitrary and contrary to the bye laws of the club and consequently to set aside the same and pending disposal of the main petition sought in I.A.No.1786 of 2016 to suspend the said 3 letters supra. The sworn affidavit of the 1st petitioner J.Pruthviraj Reddy are that they are the members of the 1st respondent club (vide registration No.211/1969) vide membership bearing Nos.P-162, S-356 and R-327. The main objects of the club are to improve health and physique of youth through sports and games. The 1st petitioner was the elected chairman of the club for the years 2007-16 (May) and the petitioner Nos.2 & 3 are the members of the elected committee during that period.

3. As directed by the Court on 04.03.2016 in C.C.No.864 of 2014, elections to the club were held on 29.05.2016 and results were declared on 30.05.2016 and Executive Committee was duly appointed therefrom. After assuming charge by the new Executive Committee of the club, the members of the Executive Committee started adopting vindictive attitude against the petitioners and the 2nd respondent Honorary secretary claiming which position is not known in the history of 1st respondent club, started sending letters from June 2016 to November 2016 with false allegations to the petitioners and they suitably replied to it and they were also displayed in notice board of the club, the purport of the said letters with photographs of the petitioners. While so, on 14.11.2016, the petitioners received the impugned 3 letters (expelling them) saying the Executive Committee is of the strong opinion that the actions done by the petitioners considered were endangerous to the harmony and affect the charter and stability and interest of the club and unanimously resolved to expel them from the membership of the club forthwith. The said letters are prima facie illegal, arbitrary and contrary to the bye laws of the club. The mandatory procedure laid down by the bye laws of the club particularly 14(b) not followed, 14 days clear notice before passing any resolution expelling any member, in affording opportunity to give written or oral representation not followed for no such notice given with opportunity of hearing and there is no whisper in the impugned letters of said compliance. Further the allegations in the impugned letters that the petitioners collected huge amounts of admission fee of more than Rs.2/- crores and not accounted for and also not paid service tax

to the Department to a tune of Rs.1 crore which they collected from members, not even found place in the letters issued to them apart from the accounts were properly audited and statutory authorities in the tenure of the petitioners. They averred that the 2nd respondent now claiming as honorary secretary of which post not there was previously refrained from using the facilities of club on serious allegations that he declared a stranger namely Ms. Y.Padmavathi Reddy as his daughter with an evil intention to use the club facilities and subsequently on basis of his declaration, the said lady was given permanent membership of the club as his 3rd daughter though he got only one son and one daughter and a crime was booked against him in FIR No.639 of 2013 under Sections 420, 468 & 471 IPC, however on account of his influence the investigation was not completed. After the new executive committee was formed refrain order was revoked unconditionally and he was made honorary secretary on nonest post. As per bye law 48(a), the executive committee of the 1st respondent consists of members including among them Chairman, Vice Chairman and 7 members of sports authority, Chairman, 5 elected members and 4 nominated members of house sub committee total in 19 members. The quorum for meeting shall be 1/3rd of its members. The impugned letters except saying unanimously resolved did not contain details of members attended and voted. There was absolutely no meeting conducted, nor the Chairman, Vice Chairman and 7 members of the 2nd respondent were informed, leave alone their participation in the alleged meeting. The 4 nominated members not even appointed by 1st respondent club, thereby the conducting of meeting to expel the petitioners from

membership is not duly done and the same is illegal and contrary to bye laws. The chairman of the club circulated news letter in November 2016 informing members of the club that the club decided to conduct extraordinary General Body Meeting on 26.11.2016 at 03.00 PM in the club premises. However on account of the impugned letters, the petitioners could not attend and explained the real and true facts of how the present executive committee is adopting vindictive attitude against them. They filed W.P.No.40453 of 2016 challenging the impugned letters of expulsion of them and the Court by order dated 24.11.2016 disposed of the writ as withdrawn, which made them to file the petition for the reliefs. It is with the affidavit averments which are part of the main petition averments sought for interim suspension.

4. The common counter affidavit including on behalf of the 1st respondent club filed by the Chairman of the club Dr. SVP Reddy is with the averments that the petition for the interim suspension of the expulsion proceedings pending disposal of the main petition is liable to be dismissed in limini for not maintainable either on facts or on law and the petitioners are guilty of suppression of material facts in approaching the Court with unclean hands in seeking the equitable relief. They played fraud upon the club in having illegal and unlawful and immoral gain and the petition is nothing but abuse of process of law. The copy of the alleged bye laws of the 1st respondent society they relied is a fabricated and manipulated and created one. The respondent submits that present executive body was duly elected. Earlier the 1st petitioner was elected in the executive committee

along with others as members only for one year during 2007-08, however he was illegally and high handedly continuing by floating the rules and regulations and bye laws without conducting elections and without even calling for Annual General Body Meetings. They manipulated the bye laws without there being any legal sanctity to the same. G.O.Ms.No.17 dated 25.11.2008 issued as per which respondent No.1 had to revert back to old bye laws, Memorandum and Articles of Association and notice C.No.SAAP/Estates & Legal/5156/2008 issued by the Sports Authority of Andhra Pradesh for which 1st respondent club issued letter No.FMC/ADMN/2008/931, dated 16.12.2008 undertaking and assuring to cooperate and comply in its full spirit. No addition or alteration or amendment of bye laws or rules of the 1st respondent club cannot be made without approval of Sports authority of A.P. and without confirmation of 2/3rd majority of the club entitled to vote and present at the General Body Meeting and it was not done in respect of change sought for by the petitioners and the bye laws filed by them in the Court thereby is not legal and cannot be relied and looked into for any purpose by the Court, in the absence of which their averments in the affidavit and main petition are incorrect and baseless. The main petition itself is thereby not maintainable. The impugned letters issued to them independently dated 14.11.2016 and covered by independent cause of action for each and one petition filed as if a single letter and cause of action by the 3 petitioners is liable to be dismissed. The alleged rule 14(b) of the bye laws in view of what is stated above is not there in the original bye laws and any insertions without legal sanctity for the petitioners to rely cannot

give credence. The petitioners are guilty of several acts of mischief and fraud on the club and its members and despite several notices calling their explanation, they did not submit any explanation clarifying the same and the allegations against them stood proved, thereby expelling them rightly for nothing to interfere. They suppressed by not filing order dated 21.03.2014 in W.P.No.2232 of 2014 directing Vice Chairman of SAAP to conduct elections and the petitioners herein to conduct election to the 1st respondent club by appointing 3 member Committee under the Chairmanship of District Registrar. That despite said orders, the petitioners continued for more than 2 years illegally with no regard to law and truth. It is false to allege that the 1st petitioner was elected as Chairman of 1st respondent club from 2007 to 2016, for he was elected only of the one year tenure and later illegally continued and same is the position with petitioner Nos.2 & 3 as members. It is false to allege that present executive committee of the 1st respondent is adopting any vindictive attitude against them. For several letters addressed on behalf of the 1st respondent club by the Secretary, the 2nd respondent and the replies given by the petitioners are vague, evasive and unanswered on material aspects by any proper explanation to said show cause notice, which made to expel them from the membership of the club by following the procedure as per bye laws after taking into consideration all their replies by the executive committee and their version in the main petition and the affidavit are false thereby also in relying the nonest bye law No.14(b). It is averred that the Secretary of the 1st respondent (2nd respondent) powers are governed by rule 59(c) from 1 to 13

bye laws of the club as its executive officer with forged signature of 1st respondent membership was obtained the 3rd person as his child and it is only at the request of the 2nd respondent complaint lodged with police in which there is no wrong on the part of the 2nd respondent. The impugned orders of expulsion were issued as per the bye laws of the 1st respondent club supported by G.O.Ms.No.17 dated 25.11.2008 reverting the earlier bye laws, Memorandum and Articles of Association vide notice issued by the SAAP to the 1st respondent and 1st respondent issued letters dated 16.12.2008 including and assuring to comply and implement the said GO. The decision to expel the petitioners as per the bye laws of the 1st respondent club was taken unanimously in the meeting of the executing committee and approved by the General Body in the extraordinary General Body Meeting held on 26.11.2016 at 03.00 PM where 147 members attended and given their approval and appreciation for expelling the petitioners. The petitioners have no prima facie case, balance of convenience and none suffer any irreparable injury and not entitled to equitable order of suspension of expulsion proceedings issued to them.

5. The counter affidavit of the 2nd respondent Secretary filed separately is almost with selfsame contentions of the 1st respondent referred supra in saying he is the honorary secretary as per the bye laws and discharging his duties lawfully thereunder. He also sought for dismissal of the petition for interim suspension.

6. The common reply affidavit of the 1st respondent to the said counters is that the 2 applications filed by them in I.A.Nos.1786 & 1787 of 2016 are to suspend the expulsion proceedings and interim injunction to restrain the respondents with their using of the club facilities and their prayers are maintainable and the averments are true and the contra averments in the counter affidavit are false and they are entitled to the interim protection orders sought for.

7. It is pursuant to which the lower Court by order dated 24.08.2017, suspended the expulsion letters Exs.P1 to P3 issued to petitioner Nos.1 to 3 by the 2nd respondent dated 14.11.2016. The order reads that the petitioners are placed reliance on bye law No.14(b) of Ex.P5 bye law of the 1st respondent club which speaks the 14 days prior notice with opportunity to give representation before expulsion and the other procedure. The respondents contended that the said rule 14(b) incorporated in the bye law is not according to the procedure and it has no sanctity and same is also not in consonance with the G.O.Ms.No.17 dated 25.11.2008, thereby they reverted back to the earlier bye laws, Memorandum and Articles of Association from the proceedings of the Sports Authority of A.P. covered by letter of the 1st respondent dated 16.12.2008 undertaking to comply the same in its full spirit as the rules of the club speak without approval of the Sports Authority no amendment can be made and that to it is to be confirmed by the 2/3rd majority of the 1st respondent club entitled to vote present in General Body Meeting and the same was not done to incorporate any such bye law 14(b) much less to rely vide Ex.R2. It is the contention of the

petitioners that the Division Bench of the High Court in W.P.No.10626 of 1989 by order dated 07.04.1997 (Ex.P37) permitted amendment of existing bye laws to reconstitute executive committee with the members of the Sports Authority of India and said order was relied upon by another Bench of this Court in another writ petition-Ex.P35 and single Bench of this Court in another W.P.No.2232 of 2014 (Ex.P44) followed in the judgment of the Division Bench supra and the contention that G.O.Ms.No.17 flouted by the petitioners in amending the bye law incorporating rule 14(b) is not correct. The learned trial Judge observed that he has gone through the proposal of the division bench in Ex.P37 dated 07.04.1997 filed by the 1st respondent club against the Government of A.P. and Sports Authority of A.P. in respect of G.O.Ms.No.219 and the writ petition was disposed of recording the representation of the petitioner therein that the club proposed to amend the existing the bye laws to implement the resolution of executive committee taken on its meeting dated 28.09.1993 for which the Sports Authority expressed no objection. Ex.P35 writ petition orders of another Division Bench of this Court in C.C.No.762 of 2012 dated 05.12.2012 for violation of orders in the earlier W.P.No.10626 of 1989 by closing the case with observation of said order will not effect the rights of parties to seek amendment of bye laws as per order in W.P.No.10626 of 1989 dated 07.04.1997 and Ex.P44 order in W.P.No.2232 of 2014 filed by GS Mohan against the Government of A.P., Sports Authority, the club and the 1st petitioner referring the club in the writ petition issued orders for conducting the elections. It prima facie establishes rule 14(b) of the bye laws of

Ex.P5 of 1st respondent club the conducting of executive committee and the date of passing loosely expelling the petitioners from membership not even mentioned in Exs.P1 to P3, thereby there is prima facie case to suspend the expulsion orders in allowing the interim order petition and interim relief petition. It is the same subject matter impugning of CRP.No.5689 of 2017.

8. Coming to CRP.No.5510 of 2017, it is the 1st respondent Fateh Maidan Club that maintained the revision against the petitioners as respondent Nos.1 to 3 and the 2nd respondent Secretary to the main petition as revision respondent No.4.

9. The grounds urged in both the revisions are almost similar in maintaining the revisions one by the club and the other by the secretary to the club. The grounds of the revision vis-à-vis oral submission of the revision petitioners reiterated their counter contentions. Whereas the learned counsel for the respondent Nos.1 to 3 to the revision who are main petitioners and interim application petitioners before the trial Court supported the orders granting injunction.

10. Heard both sides and perused the material on record.

11. Among Exs.P1 to P73 and Exs.R1 to R20 with reference to the pleadings of the parties discussed supra and the observations of the lower Court impugned in the grounds of revisions supra; according to the petitioners, the 1st petitioner was Chairman and the others are members of the club from 2007. As per the bye laws of the club, the election tenure is for one year to the elected members and fresh election to be

conducted every year. The respondents contend that no elections conducted after the 1st election tenure 2007-08 by the petitioners by unauthorized continued thereafter. Once such is the case, for the petitioners to contend that after 2007-08 they duly elected later for every year, they have to establish by producing the record. It no where shows their continuation by reelection every year from 2007-08 year till 2016 of the election conducted pursuant to the orders of the Court referred in the writ petition from what is discussed supra. Once such is the case, any unauthorized continuance will not enable them to amend bye laws, but for if at all to manage the day to day administration. Thereby the amended bye law in incorporating 14(b) with 14 days clear notice for expulsion contemplated is with no sanctity as rightly contended by the respondents in their counter before the trial Court, that was not properly considered by the learned trial Judge in saying as if the bye law got sanctity and as if it requires 14 days prior notice with opportunity before passing orders in expelling, in suspending the same. Once that is crucial and the amended bye law is not with sanctity relying upon amended bye law to show prima facie case by the petitioners for the Court to grant injunction without even discussing as to how other 2 aspects of balance of convenience and irreparable injury made out apart from no prima facie case. In view of the same, granting of injunction is unsustainable including if at all pursuant to which to continue them particularly appearing to the club and using the facilities in the club.

12. Having regard to the above, the order of the lower Court granting interim suspension of the expulsion proceedings is set

aside by allowing the Civil Revision Petitions with a direction to the trial Court to dispose of the main petition O.P. by commencing the trial within a period of five (05) months from the date of receipt of this order.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 21.12.2017
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