

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.05.2018

Pronounced on: 01.06.2018

+ **FAO (OS) 260/2017, C.M. APPL.35229/2017 & 35231/2017**

SALMAN KHURSHID

..... Appellant

Through: Sh. Imtiaz Ahmed, Ms. Sakshi Kotiyal and Sh. Vikramaditya Singh, Advocates, with the appellant – Sh. Salman Khurshid in person.

versus

DELHI PUBLIC SCHOOL SOCIETY

..... Respondent

Through: Sh. Puneet Mittal, Sr. Advocate with Sh. Bhuwan Gugnani and Sh. Puspendra Pratap Singh and Ms. Vasudha Bajaj, Advocates, for Respondent Nos. 1 and 2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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1. This is a plaintiff's appeal, challenging the rejection of his application for *ad interim* injunction, suspending operation of his expulsion from the Delhi Public School, Mathura Road, New Delhi (the first respondent, hereafter "the society"). The appellant (hereafter "the plaintiff" was President of the society for three terms, and was its life member, and had been associated with various committees including the high-level Dispute Resolution Committee comprising of three members, constituted to inquire into allegations of wrongdoing and theft of a crucial vote during the last elections to the post of the Chairman of the society.

2. The society has established 11 core schools by the name of Delhi Public School and runs over 190 “Franchise schools”, across the country and overseas, in collaboration with various public, private sector undertakings and individual entrepreneurs. The Memorandum of Association of the society regulates administration of all its schools in it. The second respondent (i.e. the second defendant) is the current chairman of the society.

3. The facts are that the appellant along with Dr. Sharada Nayak visited the society’s office in the capacity of a life member during the office hours. This resulted in a first information report (FIR bearing No. 421/2015) being registered on behalf of the society in the Amar Colony Police Station against Dr. Sharada Nayak for allegedly trespassing inside the Chairperson’s office and declaring herself the Chairperson. In the July 2015 a colleague asked the plaintiff – a practicing senior counsel to take up and advise in a civil case filed by Dr. Sharada Nayak against the society; the plaintiff agreed to the request. The plaintiff thereupon received a show cause notice dated 24.05.2015 by respondent society to explain the act of trespass. That letter further called for explanation why the plaintiff appeared as the counsel for Dr. Sharada Nayak. A termination notice was issued to the plaintiff, asking him to cease from membership of the society. The plaintiff, contending that the action was an expulsion, not justified in law, challenged it in the suit filed before this Court; he sought interim relief of stay of expulsion and further that no life member should be inducted in the resultant vacancy.

4. The learned single judge held that *no prima facie* case existed in favour of the plaintiff as-

- i. The plaintiff has failed to prove any nullity in Rule II (7) because (a) the case of *Sarabjit Singh and Ors. v. All India Fine Arts and Crafts Society & Ors.* (1989) ILR 2 Delhi 585 has neither binding nor persuasive effect as the fate of the similar rule mentioned in the *Sarabjit Singh (supra)* was not

finally decided. The dispute amongst the parties was compromised when the Supreme Court took the same up for consideration. (b) The plaintiff actively supported the validity of Rule II (7) when proceedings were initiated against B. K Raizada. The Court gave no interim relief in the case to Mr. B.K. Raizada.

- ii. Secondly, the society issued a notice to the plaintiff containing all the accusations against him; he denied none of which. Rather an explanation was provided justifying the act. Additionally, the plaintiff represented a member against whom the society has launched proceedings while he was himself a part of society does not inspire confidence in the statement that the plaintiff was working in the interest of the society. Contrary to the object of the society the plaintiff also floated a parallel school, which is accused, of cashing upon the goodwill of the school by bearing the name and logo of DPS School is also a strong ground for expulsion. These points together present a picture in which the plaintiff is not working in the interest of the society and thus he has failed to present a legal right in his favour.
- iii. The society was honest in its dealing as it is only after issuing a show cause notice to plaintiff and considering his reply to the same the society has decided to discontinue the membership of the plaintiff.

5. Mr. Salman Khurshid, the plaintiff, who represented himself, argued that the application under Order XXXIX Rules 1 and 2 of Civil Procedure Code (hereinafter referred to as CPC) seeking interim injunction against his expulsion from the membership of defendant society pursuant to notice dated 17.09.2015 urged that the society had 18 life members out of which two had been inducted unlawfully. As per the Memorandum of Association (MOA), the Working Committee had to be constituted according to the Rules and Regulations of the Society which shall be its Governing Body and is responsible for the policy

decisions for running the schools including academic and administrative matters. The Working Committee consists of Chairpersons or Members of the Managing Committee of the Society School as well as the so-called franchise schools. Relying on Rule VII of the Rules and Regulations of the Delhi Public School Society (hereinafter called the DPSS), it is contended that these rules ensure democratic functioning. It was argued that the plaintiff is a respected member of the society and his visit to the society office was within his rights but he was in no manner associated with the acts initiated at the behest of Ms. Sharada Nayak. The FIR lodged against Dr. Nayak did not contain any alleged wrongdoing by plaintiff. His decision to represent Dr. Nayak was because of his duty as an officer of the court and because he was bound by the Advocates Act, 1860. A letter dated 24.07.2015 was received by the plaintiff/appellant, calling upon to explain the events of 30.03.2015.

6. Mr. Khurshid contended that the letter was a nullity and illegal as it was issued under Rule II(7) which did not provide him reasonable opportunity of being heard. The plaintiff has challenged Rule II (7) of MOA of the Society as invalid and *non-est* in view of the judgment of this Court in *Sarabjit Singh and Ors. v. All India Fine Arts and Crafts Society & Ors.*(1989) ILR 2 Delhi 585. Additionally, the required quorum of the working Committee, according to terms of Rule II (7) were not fulfilled since the Principals, Vice-Principals of the schools of Higher Secondary level were absent. The plaintiff attributed *malafide* on part of the society by contending that the society is hell bound to cancel his life membership as in the year 2008 the second defendant had sent a notice to him under Rule II (7). On that occasion, he had approached this Court when the learned single judge directed the society to offer him opportunity of hearing. The order was challenged before a Division Bench by the society; eventually the second defendant withdrew the notice. The plaintiff also states that while action was taken against him and Dr.

Nayak, the defendant society appointed Narendra Kumar and Ashok Kumar as Chairman Emeritus and Co-Chairman respectively.

7. The plaintiff also contended that the proceedings were initiated at the behest of the second defendant against whom the Disputes Resolution Committee (DRC), of which the plaintiff/appellant is a member, made inquiries of malpractices where he violated the MOA by illegally issuing franchises on taking money and terming it as a maintenance fee. The plaintiff claimed that the DPS World Foundation was an independent initiative of DPS alumni of which he was the former president and current patron. The allegation of illegally earning from the society is false and baseless.

8. Mr. Khurshid argued that the notice sent by the society was an afterthought and counterblast to his action, fulfilling his moral and statutory obligations as set out under the Advocates Act, 1960 by appearing before this Court on behalf of Dr. Nayak. This was an attempt of the second defendant to silence any or all voices of honest dissent against patent wrongdoings in the society.

9. It was argued that the Rule II (7) of the Working Committee does not provide an opportunity to be heard. Additionally, the plaintiff/appellant also avers that as per section 15 of the Societies Registration Act, 1860 no rule of automatic expulsion is applicable since the section only bars a person from voting in a meeting. All his other rights as a member of the society do not disappear. The plaintiff infers that Section 15 of the Societies Registration Act stipulates that once a person becomes a member of the society he continues to be the member of the society.

10. Mr. Khurshid also argued that the letter dated 24.07.2015 has been issued to him by the second respondent without the consultation of working group as prescribed by Rule II (7) of the Rules and Regulations of society. Previously, the Rule II (7) was used in the year 2008 to oust the plaintiff from the society but the notice was withdrawn when the Division Bench of this Court refused to stay the

Rule II (7) notice in favour of the appellant/plaintiff. In that proceeding the society succeeded before the learned single judge by stating that the plaintiff did seek an opportunity of hearing. Consequently, the society was compelled to grant a post decisional hearing. In the present case when the appellant/ plaintiff sought a hearing the Respondent society denied the hearing on the ground that opportunity to reply to the notice was a substitute for a hearing. It was argued that the case of *Sarabjit Singh (supra)* is in his favour as a Division Bench of Delhi High Court stayed the application of a similar rule in the case. The plaintiff argues that the *Sarabjit case (supra)* was followed as a precedent in *Babasaheb Wasade v. Manohar Gangadhar Muddeshwar* 2017 SCC Online Bom 6609. The plaintiff argues that the balance of convenience lies in his favour because if the interim relief is not provided then the society may appoint any other person in his stead.

11. The defendants claimed that as the plaintiff concealed the fact that he had started another school in the name and style of DPS World Foundation across India and has also given franchise of such school to various people he should not be given any discretionary relief under sub-section (i) of Section 41 of the Specific Relief Act, 1963. The defendants contended that the act of plaintiff/appellant in running a parallel school and cashing upon the goodwill of the school by misusing the school's name and logo shows that the steps taken by him were not in the best interest of the society. It was also argued that plaintiff ceased to be a member of the society with effect from 17.10.2015 in terms of notice dated 17.09.2015, as such, he can no longer claim any relief.

12. The defendants also claimed that the plaintiff along with Dr. Sharada Nayak entered the premises forcibly and occupied the office of the second defendant by breaking the locks. Following this, Dr. Nayak declared herself as the chairman in presence of the plaintiff and other members of the society. She then proceeded to issue certain orders in the presence of these members, which were then emailed by hacking the email id of the Secretary. On plaintiff's claim that he learned about

such acts from the newspapers, the defendant pointed out that the police report was filed at 10:15 AM the next morning making it impossible for the plaintiff/appellant to read it in the news.

13. The defendant urged that the plaintiff was not acting in the best interest of the society as he represented Dr. Sharada Nayak by appearing in the court of law. The respondent also claims the same violated Rule 9 of the "Rules of Advocates Duty Towards Court" which bars an Advocate to appear before any judicial authority for or against any establishment if he is in the management of that establishment and the only exception is to appear as an amicus curiae or without a fee on behalf of the Bar Council, Incorporated Law Society or a Bar Association. The respondents contend that the plaintiff/appellant's act also violated Section 35 of the Advocates Act, 1961. It was contended by the defendants that the Working Committee did consult before sending the letter and minutes of meetings dated 22.07.15 was filed in the court. The defendant submitted that over the time the practice of calling Principals, Vice-Principals and teachers to constitute Working Committee has lost its relevance. So only the Principals of the schools were asked to join the meeting of the Working Committee. The rule has not been followed in its entirety for the last 15 years and in some of these meeting the plaintiff/appellant was also party to the decisions made. The respondent also argued that the plaintiff/appellant invoked this rule to take action against late Shri B.K. Raizada and now he cannot take a different stand.

14. On the plaintiff's claim that the society did not provide him an opportunity of hearing, the respondent contends that during the 2008 proceedings the society did provide the plaintiff/appellant with a post decisional hearing. The respondents further contended that the respondent never asked for an opportunity of hearing, which as per the order of the Court was to be provided when asked by the plaintiff. It was next argued that the decision of learned single judge in *Sarabjit Singh (supra)* that Rule II(7) was *ultra-vires* is only an interlocutory order and not the

final order. The Division Bench had stayed the order and hence the reliance of the parties on the same is misplaced. The defendants further contended that the plaintiff/appellant is trustee of another institution named DPS World Foundation and his wife is the Chairman of the same. The new society is also using the name and logo of the respondent society.

15. It was argued by the respondent that in terms of the decision in *Ch. Hoshiar Singh Mann and Ors. vs. Charan Singh and Ors.* 162(2009) DLT 208 (para 21) the rules/Articles of Association of Society are in the nature of contract between the Society and its member and, therefore, the Court does not sit in appeal over the expulsion order. The society also argued that it acted in good faith and since the activities of the plaintiff were harming the interest of the society it had to terminate the plaintiff's membership. It is argued that Section 15 of the Societies Registration Act, 1860 does not bar the society from asking its member to withdraw. It was argued that the decision in *Sarabjit Singh (supra)* was an interlocutory order and not a final order. Hence it is not binding on the plaintiff/appellant.

16. The society claims that the plaintiff is estopped from making the grievance that the Working Committee was not duly constituted as the plaintiff/appellant himself presided such meetings without questioning the validity of the same. Further, the Rule provides that "the Chairman of the Society may in consultation with the President and Vice-President or in consultation with the Working Committee at any time by notice in writing require a member to withdraw from the Society". It is submitted that the bare reading of the rule shows that there is no requirement of a Resolution of a Working Committee, let alone of General Body. It speaks only of consultation with the President and Vice-President or with the Working Committee.

Analysis and Conclusions

17. It is evident that the plaintiff's grievance is with the learned single judge's order declining the grant of an *ad interim* injunction. The learned single judge had also held that the notice issued under Rule II(7) of the Memorandum of Association by the defendants to the plaintiff was *prima facie* valid. This Court, after hearing parties had during the proceedings shortened the number of issues from 11 to 5. The following issues were been framed for trial in the suit:

“(i) Whether the final notice dated 17.09.2015 issued by the defendant to the plaintiff was not legal and whether the defendant followed the principles of natural justice in issuing it? Onus on both the parties.

(ii) Is Rule II (7) of the Rules & Regulations of the DPS Society valid and if so, did the defendant act in accordance with law in removing the plaintiff/appellant from its list of life members? Onus on both parties.

(iii) Did the defendant act illegally in any manner whatsoever in treating the plaintiff's life membership as having ceased? Onus on plaintiff.

(iv) Did the plaintiff in any manner misconduct himself with respect to the affairs of the defendant-Society, justifying it to remove him from its roll of life members? Onus on defendant.

(v) Is the plaintiff entitled to relief, if so, its nature and to what effect? Onus on both parties”.

18. The plaintiff's case is that he was not given an opportunity of hearing and that Section 15 of the Societies Registration Act, 1860 was contravened. His argument is that once a person becomes a member of the society he continues to be a member and that no provision of law authorizes expulsion. Therefore, the plaintiff has challenged Rule II (7) and sought a declaration that the said condition is invalid. The plaintiff, therefore, seeks an interim relief through which the

termination notice is stayed. This relief, in the Court's opinion, cannot be granted as the Court does not possess the right to grant final relief at the interim stage. The principle that final relief should not be handed out in the garb of interim relief was echoed in *State of U.P. and others v. Ram Khelawan & others* JT 1995 (6) SC 305; *Bank of Maharashtra v. Race Shipping and Transport Co. Pvt. Ltd.* AIR 1995 SC 1368 and Division Bench judgment of the Allahabad High Court in *State of U.P. & another v. Smt. Dayavanti Khanna* 1994 (24) ALR 140).

19. The Court also notices that the plaintiff in essence, though not in form, is seeking an *interim mandatory* order, to direct the society to take him back, pending trial of the suit. Such interim mandatory injunctions are granted only in rare and exceptional cases. *Dorab Cawasji Warden v. Coomi Sohrab Warden & others* 1990 (2) SCC 117 is an authority for the proposition that a mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. It was held that if the case is clear and one, which the Court thinks, ought to be decided at once, a mandatory injunction will be granted on an interlocutory application. As to what can be the circumstances, of course, were not spelt out by the Court. However, it is apparent that the Court should conclude that there are "special" circumstances, and the requirement of demonstrating a *prima facie* requirement for the interim order, should be of a higher order. The irreparable nature of the injury to the party seeking the remedy, should, similarly be of a graver nature than in other cases. In the present case, the plaintiff has not established any such *prima facie* compelling reason for entitlement to such relief.

20. To decide an *ad interim* injunction application, a Court is not expected to and cannot conduct a mini-trial to ascertain whether the plaintiff was given an opportunity of hearing and if so it was adequate having regard to the circumstances and Rule II (7). When considering an application under Order XXXIX Rules 1 and 2 CPC, the Court is not expected to conduct a detailed examination on merits of

the case. It can only form a *prima facie* view whether the plaintiff's request for interim relief is merited. This principle has been repeated innumerable times. Therefore, in *S.M. Dyechem Ltd. v. Cadbury (India) Ltd.* (2000) 5 SCC 573 wherein the Court held that:

"Grant of temporary injunction is governed by three basic principles i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction."

Furthermore, if the injunction claimed is granted, there is some merit in the society's position, that the Court would be mandating a contractual relationship between the defendant and the plaintiff *without a trial*. In the context of facts of the present case, that would imply that granting the plaintiff relief would restore the *status quo ante*, i.e acceptance of the plaintiff's case on merit without the advantage of a trial.

21. The plaintiff consciously signed up and became a member of the society after learning about its prevailing rules and regulations of the society. He knowingly bound himself to the existing rules and regulations of the society. The plaintiff has also performed as a chairman and has been on various committees of the society responsible for running the management of the society. It simply goes to show that he had complete knowledge about the working of the society. As a member of society it is the plaintiff— and a past president, at that, was obliged to observe the rules and regulations of the society along with the object with which the society was formed. No doubt, he disputes the factual allegations leveled against him. However, barring the premise of his acting contrary to the society's rules by appearing for Dr. Nayak (which appears to be *prima facie* without any legal foundation) all other facts are disputed and are the subject matter of trial.

22. In any given society the rules and bye-laws of the society are of prime importance. The Supreme Court in *Ishwar Nagar Cooperative Housing Building Society v. Parma Nand Sharma & Ors* (2010) 14 SCC 230, stated that the “bye-laws of the society regulate the management of the society and govern the relationship between the society and members inter se, and the members are bound by it.”

23. In *Zoroastrian Cooperative Housing Society Ltd. v. District Registrar, Coop. Societies (Urban)* (2005) 5 SCC 632, the Court held that:

“if the relevant bye-law of a society places any restriction on a person getting admitted to a cooperative society, that bye-law would be operative against him and no person, or aspiring member, can be heard to say that he will not be bound by that law which prescribes a qualification for his membership. Thus, it is clear that the bye-laws of the society is of paramount importance in regulating the management of the society and also in governing the relationship between the society and its members.”

24. The learned single judge has concluded in the order, that the act of plaintiff/appellant in representing a person who has launched legal proceedings against the respondent society is against the interest of the society. This Court may differ with that *prima facie* observation. However, the other materials considered included the fact that the plaintiff launched a parallel institution called “DPS World Foundation” and participated in a public function on 16.08.2015- as a life trustee of the foundation delivered a speech and also invited members of the society, the Principal and Pro-Vice Principal of all schools associated with DPS. That organization, DPS World Foundation is alleged to be the personal initiative of the plaintiff and it is alleged that it is trying to cash upon the goodwill of the defendant- Society and thereby infringed its intellectual property rights for which separate legal proceedings are pending. The plaintiff, no doubt, explains that initiative to be of DPS alumni, but whether such acts prejudiced the society or not,

is a matter of trial. Certainly, they are serious and can possibly provide justifiable reasons for action against the plaintiff.

25. This Court recollects its limited appellate jurisdiction and is reminded of the seminal ruling of the Supreme Court in *Wander Ltd. v. Antox India*, 1990 Supp SCC 727 and more recently in *Mohammed Mehtab Khan & Ors v Khushnuma Ibrahim Khan & Ors*. 2013 (9) SCC 221. In *Wander (supra)*, it was observed that an

“...appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion”

26. In view of the foregoing reasons, this Court is of opinion that there is no merit in the appeal; it is, therefore, dismissed without order on costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

JUNE 01, 2018