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

+ **CM(M) 229/2019**

NATIONAL SPORTS CLUB

..... Appellant

Through

Mr. Gopal Jain, Sr. Adv. with Mr.
Jayant Mehta, Mr. Hasan Murtaza,
Ms. Bushra Waseem, Advs.

versus

GOVIND ROHATGI & ANR

..... Respondent

Through

Mr. Anurag Narayan Parashar, Adv.
for R1.

Mr. Satya Ranjan Sain, Mr. Sushil
Kumar Pandey, Mr. Sahaj Garg, Ms.
Neha Shrama, Advs. for R2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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08.02.2019

CAV 122/19

Learned counsel for the respondent no. 1 / caveator is present. The
caveat stands discharged.

CM APPL. 6255/2019

Exemption allowed subject to all just exceptions.

Application is disposed of.

CM(M) 229 of 2019 & CM APPL. 6254/2019

Vide the present petition, the petitioner assails the impugned order
dated 05.02.2019 of the learned ADJ-01, Patiala House Courts, New Delhi
in MCA No. 31/18 vide which the order dated 12.11.2018 of the learned
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Trial Court in RC No. 1291/2018 was set aside with directions to the effect that : -

“11.1 At the same time I am trying to limit my order by putting a time line inasmuch as this dispute should not become a festering wound. I have been informed that the club elections are going on and this order may affect the same as well. Considering the totality of facts and circumstances the following order is passed in the larger interest of justice;

(i) The membership rights of the plaintiff requires to be protected. As a corollary his seat in the 60 member council which has been declared as vacant on account of his expulsion qua the same I order that his rights with regard to the said seat be kept in abeyance. Let the election process conclude and within a period of three months from today the newly elected Executive Council can take a fresh call as to the need for inflicting any punishment upon the plaintiff, if any as per the rules of the club. I am giving 3 months time from today as some time may be required for the purposes of constitution of the new committee post the elections.

(ii) The elections have been notified for 6 seats for Delhi Zone. The result of the 6th seat will not be declared until the issue of the plaintiff as directed in terms of point no. (i) above is decided / the matter concluded. In the event if the club decides adverse to the plaintiff the result would be declared or

otherwise as per the rules one person who ought to have retired during this period his vacancy should be notified as per rules.

(iii) I clarify that this Court has not passed any directions qua point no. (ii) and it is left to the absolute wisdom and discretion of the executive of the club to take a fresh call.

(iv) Plaintiff in the meanwhile shall be entitled to exercise his right to vote in the forthcoming election but to maintain cordially or not precipitate the issue he shall not be allowed to visit the club for three months from today except as a guest upon being invited to any special function to be held in the club.”

Through the application under Order 39 Rule 1 & 2 of the CPC, the prayers made were to the effect : -

“I). grant ad-interim, ex-parte stay of the operation of the impugned termination letter dated 21.09.2018; ref no. NSCI/ECM-3/11-9-2018/GR..Expl/-2018 issued by the defendant no. 1 and restore full membership rights of the plaintiff as on 21.9.2018, till the final disposal of the present suit.

II) restrain defendant no. 1, his employees and defendant no. 2 from taking any illegal and coercive action against the plaintiff during the pendency of the present suit;

III) any other and further order which may be deemed fit & proper in the facts and circumstance of this case.”

The respondent no. 1 i.e. the plaintiff of the said suit thus sought a declaration that the expelling of the respondent no. 1 i.e. the plaintiff of the said suit from membership of the petitioner was illegal, null and void and that the plaintiff of the said suit i.e. the respondent no. 1 be allowed to contest in the election for the Central Council contending *inter alia* to the effect that the termination of the plaintiff of the said suit was clearly illegal and violates the principle of natural justice and was politically motivated and that there was also no 2/3rd votes which had essentially to be obtained that had been cast and there had been forged and fabricated record filed in the minutes of meeting of the Executive Committee on 11.09.2018.

Vide the order dated 12.11.2018, the learned Trial Court had observed to the effect : -

“12. In the present case, it is not disputed that a show cause notice dt. 26.07.2016 alongwith the copy of Inquiry report dt. 02.06.2016 was served upon the plaintiff. This fact is even otherwise substantiated by the fact that the plaintiff had filed a suit against the said show cause notice before the Ld. District Judge, Gautam Budh Nagar, UP . Despite being served with the said show cause notice, no reply to the said show cause notice was filed by the plaintiff inspite of being given repeated opportunities. Further, the plaintiff has claimed that the resolution terminating his membership was not passed by 2/3rd members present and voting as required by Rules and Regulations of the club and that the defendant has failed to

mention the members who were present and had supported the resolution.

13. Perusal of the minutes of meeting of Executive Committee held on 11.09.2018 clearly shows that the agenda no. 10 of the said meeting was in relation to the plaintiff's matter and it has been clearly stated in the said resolution that only 7 out of 23 members of the Executive Committee have descended at the voting by show of hands for the motion to expel the plaintiff. Thus, from the perusal of the said minutes of meeting, it is prima facie clear that 2/3rd members were present and voted and had favoured the resolution for terminating the plaintiff from the defendant club. Further, the plaintiff despite being given repeated opportunities had failed to file reply to the show cause notice dt. 26.07.2016, nor had given any oral explanation against his termination. In fact the plaintiff has nowhere challenged the findings of the inquiry report dt. 02.06.2016. Further, the plaintiff's contention that the termination letter dt. 21.06.2018 was passed arbitrarily without following the Rules and Bye-laws of the club can be tested only at trial wherein the parties are given appropriate opportunity of leading evidence."

and that the Court cannot could not conduct a mini trial to establish the veracity of the plaintiffs claim that 2/3rd members present at the Executive Committee meeting dt. 11.09.2018 had not voted in favour

of the resolution regarding the expulsion of the plaintiff from the defendant club and that the plaintiff has failed to discharge the burden of proof of a prima facie case of higher order in his favour for the grant of ad-interim injunction and that even otherwise the plaintiff had failed to show that irreparable loss of graver nature would be caused to him if ad-interim relief is not given to him at this stage and that the balance of convenience as well as prima facie case at that stage was in favour of the defendant who prima facie had shown that the principles of natural justice and Rules and Regulations of the defendant club were followed while passing the resolution of expulsion of the plaintiff from the defendant club.

It has been the contention of the respondent no. 1 that he has been discharging his duty as an elected representative of the members of the club i.e. the petitioner herein and grave prejudice and humiliation would be caused to him if the relief sought by him is not granted.

The First Appellate Court vide the impugned order dated 05.02.2019 *inter alia* observed to the effect : -

“10.1 At best in my opinion the member of the Enquiry committee could only have informed about their report or place the report for perusal / consideration of the executive committee for discussion but could not have voted or participated in the resolution at all. Maybe in the need to rush through the resolution all the safeguards were thrown to wind.

10.2 Dehors the aforesaid Rule 19. (b)(i) of the club mandates

that there has to be a clear 14 days notice to be given with regard to the resolution by which a member is to be expelled. As noted above there was no such specific agenda in the meeting dated 11.07.2018. The agenda no. 10 only had referred to a, letter dated 25.07.2018 which was received from Sh. Hasan Murtaza, Advocate to the club pertaining to the case of Govind Rohtagi with a view to give an overview and to update the said case. The said letter was formed the basis of rushing through the agenda inasmuch as it is stated "in lieu of the said letter received Mr. Govind Rohtagi's matter has been kept for discussion". Meaning thereby the issue of expulsion of Govind Rohtagi / plaintiff was not in the initial agenda. As such there cannot be any compliance of the rule of there being 14 days clear notice.

10.3 Apart thereof the written note which was prepared by Mr. Krishnaswamy, CEO was also not circulated prior to the meeting. There is no such explanation that if such a note was ready then why it was not circulated 14 days prior so that all members could have been made aware of.

10.4 Expulsion is the last resort Expulsion is humiliating but also stigmatic. The bond or relation between the club and the member ceases upon a member being expelled. Harshest punishment warrants that the delinquent must be given an opportunity to explain his stand or otherwise to reply to the

conclusions against him reached-by the Enquiry committee so as to enable him to explain his stand. Not only such an opportunity was not given to the applicant / plaintiff on the date of meeting i.e. on 11.09.2018 neither more importantly the advance notice of the resolution / agenda qua him was given to the members so that his issue could have been discussed threadbare particularly in the light of the findings of the Enquiry Committee.

10.5 I note herein that I am not going into the controversy as to where the majority lie or which side had the brute majority, the disputed or vexed question which has been agitated by the plaintiff that the minutes of 11.09.2018 have not been correctly recorded Inasmuch as 10 members had voted in his favour and against the resolution whereas only 7 have been shown as voted against him. Qua the said aspect plaintiff had also relied upon a letter dated 11.09.2018 addressed to the Secretary General, NSCI which is signed by 10 members whereby they had requested not to take any action in the matter related to Govind Rohatgi. Furthermore, plaintiff had relied upon two affidavits given to him by Mr. Abbas Contractor as well as Ms. Bhavna Bafna members who were present on 11.09.2018 and have contended that the minutes of 11.09.2018 were not correctly drafted depicting the real factual position.

To my mind there is no need to get into the said cesspool of mud and dirt for the reasons stated herein above which have irretrievably tainted the proceedings Undertaken on 11.09.2018 qua the plaintiff. Apart whereof such kind of exercise would only result in completely eroding the trust inter se the members / the faith which ordinary members repose in the Executive Committee and would lead to paralysis of the club functioning. The same should be scrupulously avoided.

10.6 One aspect which has been raised by Ld counsel for defendant no.1 that the minutes dated 11.09.2018 have been ratified in meeting dated 15.12.2018 on the said aspect may note that on the first hearing of the suit i.e. 13.12.2018 I had passed the order that whatever shall be outcome of decision qua the plaintiff shall be subject to the outcome of the appeal. As such there is no meaning of the approval of the agenda or minutes on 15.12.2018 as the matter was sub-judice.”

and thus directed as observed hereinabove vide paras 11.1 to 11.4 of the impugned order.

Reliance is placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in *Wander Ltd. and Another Vs. Antox India (P) Ltd. (1991 – PTC – 1)* to contend that the directions and guidelines therein in relation to the scope and nature of the appeals before it and the limitations on the powers of the Appellate Court that can be exercised which cannot

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substitute its own in an appeal preferred against a discretionary order have been violated vide the impugned order of the Appellate Court is in as much as in an appeal preferred against a discretionary order by the Trial Court, the Appellate Court cannot 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 and that 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 and that 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 except where its discretion has been shown to have been exercised arbitrarily, or capriciously or perverse or where the court had ignored the settled principles of law regarding grant or refusal of interlocutory injunction.

It has been submitted on behalf of the respondent no. 1 that this is the aspect which has been ignored by the Trial Court and thus the order as made by the first Appellate Court with directions therein in as much as the principles of natural justice had been violated by the petitioner and the respondent no. 2,- cannot be faulted.

Reliance was placed on behalf of the petitioner on the verdict of Hon'ble Supreme Court in *Mohd. Mehtab Khan and Others Vs. Khushnuma Ibrahim Khan (2013) 9 SCC 221* wherein the principles laid
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down in *Wander Ltd. and Another Vs. Antox India (P) Ltd. (supra)* were reiterated observing to the effect that the appellate court should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion and that such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order even if the Appellate Court may not be wrong in its conclusions, nevertheless, where the view that has been taken by the Trial Court was a possible view the Appellate Court ought not have interfered with the same.

On a consideration of the rival submissions that have been made on behalf of either side and taking into account the factum that the prayers made in the suit made by the plaintiff i.e. the respondent no. 1 adverted to hereinabove have virtually been granted by the First Appellate Court through its impugned order dated 05.02.2019 and taking into account the factum that the exercise of the discretion of the learned Trial Court cannot be held to be capricious, arbitrary or perverse and taking into account the factum that election process has already commenced, which could not be interfered with and also the observations of this Court in *Ashok Kumar & Anr. Vs. SBI Officers Association (Delhi Circle) & Anr.* and *Ashok Kumar & Anr. Vs. SBI Officers Association (Delhi Circle) through General Secretary & Anr.* 2013 SCC OnLine Del 1631 : (2013) 201 DLT 433 with reference made to the observations of the Hon'ble High Court of Madras in *S.Krishnaswamy and others vs. South India Film Chamber of*
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Commerce and others reported in AIR 1969 MADRAS 42 which read to the effect : -

“14. On the question of the balance of convenience and the threatened mischief or injury irreparable or otherwise, regard must be had to the nature of the suit and the particular right asserted like suits against Government, Public Corporations, Municipal Corporation, Statutory bodies, Social clubs and its members, Societies registered under the Societies Registration Act and its members distinguished from litigation between private individuals. In the case of clubs and Societies registered under the Societies Registration Act, the general principles governing the right of suit of an individual share holder or a member of the Company would apply and ordinarily the Court will not interfere with the internal management of the Society at the instance of one or some only of the members of the Society subject to well recognized exceptions (1) where the impugned act is ultra vires of the Society, (2) the act complained of constitutes fraud or (3) whether the impugned action is illegal. The Rules are made by the Society itself for the convenience of its members for regulating their own conduct as members and for regulating the affairs of the Society as an entity. A breach of any Rule made by the Society would not give rise to a cause of action for any member to rush to

Court, it must be a case of manifest illegality or where the act of omission or commission is something which goes to the root of the matter. All the members would be bound by the decision taken by the general body though there may be some violation of some Rules provided it is something which could well be condoned and ignored by the general body (Vide Shridhar Misra v. Jaihandra, AIR 1959 All 598; Satyavart Sidhantalankar v. Arya Samaj, Bombay, AIR 1946 Bom 516 and Nagappa v. Madras Race Club, ILR (1949) Mad 808 at pp. 821 to 823 = (AIR 1951 Mad 831 (2) at pp. 835-836).”

with it having been observed vide para - 27 of the verdict of this Court referred to hereinabove that the same are holding the field till date and had been reiterated in the case of *Dr.A.C. Muthiah vs The Board Of Control for Cricket* decided on 13th July, 2009 and *Salman Khurshid vs. Delhi Public School Society &Anr. in 166 (2010) DLT 153*, that it would be unwise and inappropriate to bring the functioning of the petitioner to a stand still by interference in the election process and thus in the facts and circumstances of the case, the impugned order of the First Appellate Court is set aside.

The petition is disposed of.

Copy of the order be given Dasti under the signatures of the Court Master.

ANU MALHOTRA, J

FEBRUARY 08, 2019/MK

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