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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 14872 of 2023

Bengal Amateur Kabadi Association & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Santanu Das
...for the petitioners

Mr. Tanoy Chakroborty,
Ms. Mousumi Banerjee
... for the respondent authorities

Mr. Mani Sankar Chattopadhyay
...for the intervenor

Learned counsel appearing for the petitioners submits that the petitioners applied in the year of 2011, for change the address of the petitioner no. 1-association and deposited due costs, as well as complied with all formalities for getting such change. However, the respondent-authorities did not act in terms of such application.

Learned counsel appearing for the petitioners places reliance on the annexure at page 16 of the writ petition, which is purportedly a receipt regarding permission for alteration in the Memorandum of Association, and indicates that, with reference to the Form No. V of the West Bengal Societies Registration Rules, 1963 (for short "Rules of 1963) submitted to the office of the Registrar of Firms, Societies and Non-trading Corporations,

West Bengal on December 29, 2011, the signatory accorded the petitioner no. 1 the permission to alter the Memorandum of Association, as applied for.

However, it was further mentioned therein that an application for recording of alteration in Form No. IV with requisite fees was to be filed within six months from the date of issue of the letter, failing which it would be treated to be cancelled.

Learned counsel also places reliance on page 18 of the writ petition, which is a photocopy of a purported duplicate carbon receipt book, indicating cheque receipt no. 34971 dated March 28, 2012 received from the petitioner no. 1-association for an amount of Rs.50/-.

It is contended that, as such, the petitioner no.1 was entitled to a change of address at that point of time. However, subsequently, the petitioners discovered, at the time of seeking renewal, that the change of address had not been effected, for which a fresh application was made, which, being declined by the respondent-authorities, the present writ petition has been filed.

Mr. Mani Sankar Chattopadhyay, learned advocate, submits that he has instruction to appear on behalf of a rival Kabadi Association operating in West Bengal. It is contended that a dispute between the respective associations is sub-judice at present in the Supreme Court. It is also submitted

that the said Kabadi Association represented by Mr. Chattopadhyay is a necessary/proper party to the present writ petition, since the rights of its members would be affected by the outcome of the present writ petition.

However, the scope of the present writ petition is extremely limited, to the extent that the petitioners submit that they are aggrieved by the respondent-authorities' inaction on their application for change of address in the Memorandum of Association. Even if any rights of the rival associations are tangentially affected on such change, there is no scope under the West Bengal Societies Registration Act, 1961, (for short "the Act of 1961) for any hearing being given to a third party while effecting such change by the registrar.

Hence, the prayer for intervention is refused.

Learned counsel appearing for the respondent-authorities submits that the petitioners never complied with the requirements of the Act of 1961 and the corresponding Rules of 1963. By placing reliance on Section 8 of the Act of 1961, it is submitted that the Association applying for permission under Section 5, with regard to Memorandum of Association, had to comply with the said provisions.

Under Section 9(1), a copy of every alteration of the Memorandum and of the Regulation shall be filed with the Registrar within thirty days of such alteration. Section 9(2), it is submitted, mandates that the Registrar shall, except for special reasons to be recorded by him in writing within thirty days from the date of such receipt, record the alteration and send an intimation of the fact to the society or communicate to the society his objections to such alteration.

In the present case, it is submitted, such stage did not arrive at all, since the petitioners did not comply with the provision of the Act of 1961 and the Rules of 1963, insofar as Rule 9 of the 1963 Rules provides that whenever a society alters the Memorandum of Regulations, a separate statement showing the previous provisions and the altered one shall be filed with the Registrar in Form IV along with a copy of every alteration of the Memorandum or the Regulations as required under sub-section (1) of Section 9 or sub-section (2) of Section 20. The same was not done.

Hence, it is submitted that the petitioners are not entitled to an alteration of the Memorandum at all, either on the ground of change of address or otherwise.

Upon a bare perusal of the writ petition, it is seen that the cause of action for the petitioners arose as long back as in the year 2012.

The reason for the petitioners' extraordinarily long wait of about 11 years, prior to preferring the instant writ petition in the year 2023, has not been explained at all in the writ petition.

The respondent-authorities have correctly submitted that the detection of the error, as alleged by the petitioner, could only have happened at the stage of updating the records of the petitioners. However, nothing prevented the petitioners from detecting the alleged inaction on the part of the respondents with regard to the vital matter of change of address of the petitioner no. 1-association for the long 11 years which elapsed inbetween.

Hence, the petitioners have not come with clean hands.

That part, even on merits, the respondent-authorities are justified in submitting that the petitioners have not complied with due formalities, particularly having not filed the necessary Form IV, along with copy of alteration of the Memorandum or Regulation, as required by law. Hence, in any event, the petitioners have no cause of action for preferring the instant writ petition.

Accordingly, W.P.A. No. 14872 of 2023 is dismissed, with liberty to the petitioner, however, to

make a fresh application for alteration of the Memorandum of Association of the petitioner no. 1, upon compliance of due formalities.

The respondent-authorities shall process such application, if filed, within a reasonable time.

It is clarified that this Court has not gone into the merits of the entitlement of the petitioners to have an alteration of the Memorandum, as proposed by the petitioners.

Further, nothing in this order shall affect the rights and contentions of any third party to the writ petition.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)