

IN THE HIGH COURT AT CALCUTTA
In appeal from its
ORDINARY ORIGINAL CIVIL JURISDICTION
CIVIL APPELLATE JURISDICTION

IA No. GA 1 of 2023
APOT No. 335 of 2023

with
CS No. 173 of 2023
Dipankar Hazra
Versus
Rajat Singh & Ors.

APOT No. 337 of 2023
with

CS No. 173 of 2023
Dalhousie Athletic Club & Ors.
Versus
Rajat Kumar Singh & Ors.

Before:

The Hon'ble Justice I. P. MUKERJI

And

The Hon'ble Justice BISWAROOP CHOWDHURY

Date: 21st September 2023

Appearance:

Mr. Abhrajit Mitra, Sr. Advocate
Mr. Arik Banerjee, Advocate
Mr. Buddhadeb Ghosh, Advocate
for the appellant

Mr. Suman Dutt, Advocate
Mr. Krishna Raj Thaker, Advocate
Mr. Ayan Kr. Boral, Advocate
Ms. Monica Jaiswal, Advocate
for respondent no.1

Mr. Anuj Singh, Advocate
Mr. Pranit Bag, Advocate
Mr. Debabrata Das, Advocate
Mr. Saptarshi Mukherjee, Advocate
Mr. Samriddha Sen, Advocate
for respondent no. 2 in APOT 300/2023 &
appellant in APOT 322/2023

Mr. Tanmoy Mukherjee, Advocate
Ms. Paromita Moitra, Advocate
Mr. Souvik Das, Advocate
for respondent nos. 3,4,6 & 10

The Court: Two points regarding maintainability of the suit have been taken by Mr. Abhrajit Mitra, learned senior advocate, appearing for the appellant and Mr. Anuj Singh, learned advocate, appearing for the respondent no.2. The points are as follows:

- (a) The respondent no.1/defendant is an unincorporated association and the suit against such association is incompetent considering the ratio in the case of Rajendra Nath Tikoo vs. Royal Calcutta Turf Club reported in AIR 1964 Cal 57.
- (b) There was an earlier suit between the parties on the self-same cause of action which was withdrawn but no leave was taken from the court by the respondent no.1/plaintiff to institute a fresh suit on the self-same cause of action. For this reason also this suit is incompetent.

The first point does not seem to have been taken before the learned single judge. The second point was taken but was prima facie not accepted by the court.

We keep both the points open to be decided at the time of consideration of the interlocutory application on affidavits.

The election of the Dalhousie Athletic Club is scheduled to be held on 24th September 2023.

By the impugned judgment and order dated 14th September 2023 the expulsion of the respondent no.1 by the letter dated 8th August 2023 was stayed till 22nd December 2023. In the meantime, affidavits have been directed to be exchanged.

Around 2017-2018 the first respondent was the president of the club. Thereafter, he was expelled on 10th August 2019. On 27th September 2022 this expulsion was revoked on the condition that the first respondent would not proceed with the cases instituted by him against the club or its functionaries.

Mr. Abhrajit Mitra argues that the above revocation of expulsion was conditional upon the first respondent withdrawing the said proceedings. The said respondent not having withdrawn the pending cases the revocation of expulsion did not de facto take effect and was

reiterated in July, 2023 with a fresh order of expulsion made against him.

Mr. Suman Dutt, learned advocate appearing for the first respondent submitted that all steps have been taken by his client to withdraw the pending cases.

At any rate, no steps have been taken by his client to proceed with the cases. This process of withdrawal took some time and could not be completed by the stipulated date. On that ground his client was expelled from the membership of the club in July, 2023. This expulsion has been made without compliance with the club rules.

The election of the club which is stated to be held on 24th September 2023 are for various posts in the club. The respondent no.1 is a candidate for the post of secretary for which there are three candidates.

The legality or validity of the expulsion order of July, 2023 can be fully assessed on filing of affidavits in the interim application or on filing of written statement and trial of the suit. But it does appear that while withdrawing the expulsion of respondent no.1 made on 10th August 2019, on 27th September 2022 it was recorded by the appellant, as shown to us by Mr. Suman Dutt that there was no allegation of misappropriation of funds by the respondent no.1 but only dereliction of duty on his part. Having considered the long period of expulsion it was being revoked subject to the said respondent not prosecuting the pending cases.

However, there was a turnaround in July, 2023 when on the ground of non-withdrawal of the cases within time, the respondent no.1 was served another order of expulsion, which was malicious and wrongful, as submitted.

Now according to the official records of the club, the July 2023 expulsion order is in force, subject to evaluation of its validity and legality by this court at a later stage. The election is due to be held on

Sunday, 24th September 2023. The interim application after filing of affidavits is to be heard on November, 2023.

Considering all these facts, balance of convenience and the question of irreparable injury, we direct as follows:-

- (i) The election of the club can take place as scheduled on 24th September 2023 with the respondent no.1 as candidate.
- (ii) The result of the election can also be declared.
- (iii) If in the election the respondent no.1 is successfully elected as secretary, till 1st December 2023 or until further orders he shall not discharge the function of the Secretary but the said function shall be discharged by the secretary immediately preceding him. This will be subject to the final order to be passed by the learned interlocutory court in the interim application.
- (iv) If in the election the respondent no.1 is not successful, the elected secretary can function under the club rules.
- (v) The learned interlocutory court is requested to decide the interim application as expeditiously as possible preferably by 1.12.2023.

We also observe that should in the interim application the court holds the expulsion of the respondent no.1 to be prima facie invalid and the respondent no.1 succeeds in the election, the officiating Secretary shall forthwith demit office and hand over the charge to the respondent no.1. If that is not the case, then the second successful candidate or the officiating Secretary will hold the office according to the orders to be passed by the learned first court.

All points not decided above are kept open before the learned single judge. The impugned judgment and order is modified to the above extent.

Nothing remains of these appeals. The appeals and the interim application are disposed of, dispensing with all formalities.

As affidavits were not invited, allegations contained in the interim application are deemed to have been not admitted.

(I. P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

R. Bose