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CMA No.2518 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2023

PRONOUNCED ON : 13.02.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2518 of 2022
and
CMP Nos.19599 & 19603 of 2022

Lieutenant Colonel,
Sandeep Dewan (Veteran)

.. Appellant/Petitioner/Plaintiff
Vs.

M/s.Ootacamund Club,
Rep. By its President,
No.179, Club Road,
Ootacamund,
The Nilgiris.

.. Respondent/Respondent/Defendant

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule 1 (r) of Code of Civil Procedure, 1908, to set aside the impugned order dated 31.10.2022 passed in I.A.No.2 of 2022 in O.S.No.65 of 2022 by the learned District Judge, The Nilgiris, Udthagamandalam.

Appellant-in-Person : Lieutenant Colonel
Sandeep Dewan (Veteran)



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For Respondent

: Mr.P.R.Ramakrishnan and
Mrs.K.Shiny
for Mrs.Suhrith Parthasarathy

JUDGMENT

Plaintiff in O.S.No.65 of 2022 on the file of the learned District Judge, The Nilgiris, is the appellant herein.

2. This Civil Miscellaneous Appeal is filed against the order of refusal to grant injunction, made in I.A.No.2 of 2002 in O.S.No.65 of 2022 dated 31.10.2022, by the learned District Judge, The Nilgiris.

3. For the sake of convenience, the parties are referred to as per their litigative status in the suit.

4. The short facts that are necessary for determination of this appeal is that:

(i) Petitioner/plaintiff is the permanent member of the respondent



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Club, since 17.10.2016. On payment of necessary membership subscription, he has been inducted and the respondent club, is a registered club under Section 8 of the Companies Act, 2013.

(ii) The respondent Club is functioning to provide its members' social recreation like indoor games, health club, literary activities, bar, dining and entertainment. The petitioner stood for election to the Managing Committee in September, 2021 and raised various issues pertaining to the governance of the club, especially the non-compliance of Section 105(1) of the Companies Act, 2013. The same issues have been raised by various other members viz., Mr.N.Ram and Mr.Hariram Sastri in the Annual General Body Meeting (AGM) of the club held on 30.09.2021.

(iii) The petitioner has sent a letter dated 29.12.2021 that the President observation is contrary to the Articles of the Association to allow the proxies. The petitioner also pin pointed the discrepancy in scrutinising the proxy Register of the Club.



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(iv) Further, certain complaints between the petitioner/plaintiff and two members of the club viz., Mr.R.V.D.Rozario and Mr.P.D.Ganapathy, has resulted in the police complaint and it is alleged that based upon false motivated complaints from the very same persons, against whom the petitioner has complained, the Management Committee with malicious and vindictive attitude, has conspired to suspend the petitioner and planned to terminate the petitioner from the membership of the Club and issued show cause notice on 26.04.2022, under Clause 23 of the Bye-laws of the Club.

(v) In that show cause notice, the petitioner was accused that he is interfering with the ordinary day-to-day operation and management of the Club, harassment to Mr.Preetham Philip during his tenure as President for using the title as “Captain” despite charges against Mr.Preetham Philip supported by strong letter by the Army Authorities and State Government. Interim reply was sent to the show cause notice on 27.04.2022.

(vi) When things be so, the petitioner also filed O.S.No.52 of 2022 before the Vacation Court and subsequently renumbered as O.S.No.68 of



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2022 on the file of the Munsif Court, Nilgiris, to declare the show cause notice dated 26.04.2022 as null and void. After conducting of the enquiry, the Management Committee has issued the main suspension order and hence the appellant has filed the above O.S.No.65 of 2022 before the learned District Judge, Ooty, to declare the suspension order as null and void. Pending suit, he sought for interim relief in I.A.No.02 of 2020, which was dismissed by an order dated 31.10.2022.

(vii) Aggrieved against the rejection of the interim relief, the plaintiff has preferred the present Civil Miscellaneous Appeal.

5.(a) Pending appeal, he has moved CMP No.19599 of 2022, for interim stay of the impugned order dated 31.10.2022 passed by the learned District Judge, The Nilgiris in I.A.No.02 of 2022 in O.S.No.65 of 2022. Further, CMP No.19603 of 2022, was also filed to stay the operation and effect of the Suspension Order dated 02.06.2022.

(b) Record reveals that by an order dated 30.11.2022, there was an order of interim stay.



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6. The matter is listed before this Court and by consent of both the parties, main case is taken up for final disposal.

7. As the counsel for the appellant/plaintiff withdrew his appearance, the party appeared in person and subject to his personal convenience, hearing date was adjusted and he made his submission as party-in-person. Learned counsel for the respondent Club was also heard and records perused.

8. The point for consideration that arises in the Civil Miscellaneous Appeal is whether the suspension order dated 02.06.2022 is to be suspended pending suit.

9. The appellant/plaintiff has raised various issues pertaining to the governance of respondent club and the matters relating to Bye-laws of the Club. The specific allegation is that non-compliance of Section 105(1) of Companies Act in the General Body Meeting and also Rule 19(2) of the Companies (Amendment and Administration) Rules 2014.



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10. Record reveals that the appellant/plaintiff filed a complaint on 05.02.2022 to register the case against two members viz., Mr.R.V.D.Rozario and Mr.P.D.Ganapathy. The respondent club received a reply on the complaint from the said persons and a show cause notice dated 26.04.2022 was issued to the appellant/plaintiff, as per Clause 23 of the Bye-laws of the club. It appears that the appellant/plaintiff sent an interim reply and subsequently, gave the final reply. In the meanwhile as against issuance of show cause notice dated 26.04.2022, as stated supra, he has filed O.S.No.68 of 2022. However, no interim order was granted by the Court.

11. During the enquiry, in the interlocutory application i.e. I.A.No.2 of 2022 in O.S.No.65 of 2022, before the District Court, The Nilgiris, Udthagamandalam, the appellant/plaintiff, as a petitioner has marked Ex.P1 to Ex.P17 and the respondent Club has marked Ex.R1 to Ex.R49. As per the bye-laws of the respondent club, the petitioner is a member and therefore pleadings with regard to the membership are not denied.



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12. It is the specific allegation of the appellant/plaintiff that since he has questioned various activities of the present Management Committee, they have received a false complaint from the above stated two persons and placed him under suspension.

13. After hearing the parties, my attention was drawn to Ex.P4, Ex.P5 and Ex.P6, i.e. the show cause notice, the reply therefor by the petitioner/plaintiff and the reply of the respondent, respectively. So also Ex.P16-Reply to the Show Cause Notice and Ex.P17- Suspension Order.

14. In respect of respondent side documents, Ex.R42-Enquiry Finding Report, Ex.R43-Closure report in CRS No.43 of 2022 and Ex.R44-Closure Report in CRS No.58 of 22 by the local police, were marked. These are the private complaints given by the appellant/plaintiff, against the above said two persons viz., Mr.R.V.D.Rozario and Mr.P.D.Ganapathy.



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15. After going through Ex.R42-Enquiry Finding Report in the typed set of papers, I find that necessary averments made by the appellant were taken note of and the bye-laws of the respondent club, is also taken note of and placed the appellant/petitioner, under suspension.

16. After going through the documents referred above, I find that *prima facie* there is no violation of principles of natural justice, as alleged. In all, the action appears to have been taken based upon the show cause notice and other documents supplied to them.

17. The appellant/plaintiff could contend that the Enquiry Finding Report marked as Ex.R42, is not supplied to the petitioner along with the suspension order.

18(a). The appellant/plaintiff is the member of the Club. The Bye-laws of the club is equally applicable to all including the appellant's membership. As per Clause 23 of the Bye-laws, a show cause notice has to be issued before taking any disciplinary action upon a member. In the



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instant case, one such show cause notice was issued to the appellant/plaintiff viz., Ex.P4 and reply was received from the appellant/plaintiff [Ex.P5] and respondent [Ex.P6].

(b) Further, based upon Ex.P4, Ex.P5 and Ex.P6, the show cause notice and replies therefor, having found not satisfactory, an enquiry committee was constituted and enquiry was conducted in a fair manner. Thereafter, a decision was arrived therein. In the matters of this kind of voluntary association, like the defendant club and based upon the bye-laws therein, necessary action has been taken keeping in mind the public image of the Club as well as the internal management of the Club. Hence, a Civil Court should not act like an appellate Court to re-appreciate the evidence and to arrive at a conclusion independently.

(c) In short, in the matters of this nature, when a suspension order is passed by the Club against the member, suspending his membership, then the point that has to be considered by the Court before granting any interim order is whether a fair play is done or not?



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19. In this regard, the learned counsel for the respondent club also cited foreign jurisprudence of Privy Council decision in *Lennox Attur Patrick O' Reilly & Ors Vs. Cyril Cuthbert Gittens in Privy Council Appeal No.96 of 1946, dated 14.07.1949* wherein the 5 Lords of Privy Council had dealt with various issues about the domestic enquiries of the club with regard to fair enquiry, wherein the said Privy Council by referring its earlier decision held that “there must be due enquiry and the accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived, as if, he has had a full opportunity of being heard”.

20. In yet another decision of this Court in *R.Lakshmipathy Vs. Madras Gymkhana Club, reported in 1997 (1) CTC 77*, it is held that if the rule of club provides for automatic cessation of membership on failure to pay amounts due to club after receipt of demand notice, no further hearing is necessary before cessation of membership for non payment of dues after receipt of demand notice. The non payment of due is consequence of



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cessation of member and to that facts of this case, no fair hearing can be claimed by the member.

21. After going through Ex.R1 to Ex.R49, the documents filed by the respondent club, this Court finds that though the appellant/plaintiff is a member of the Club, he is supposed to attend the club activities for recreation and the benefit of the club. But the complaint in those documents appear to be that he is not behaving properly with the club members and making unnecessary complaints to the various authorities viz., police authorities, Registrar of Companies and causing nuisance to the club.

22. The decisions of this Court in *K.Leela Kumar v. Government of India*, reported in 1997 (2) LW 832, *Chennai Kancheepuram Tiruvallore District Film Distributors Association vs. Chinthamani S.Murugesan*, reported in 2001 (3) LW 514 and *R.Muthuveerappan vs. Government of Tamil Nadu*, reported in 1996 (1) LW 140, are applied by the learned District Judge, to hold that voluntary associations such as Clubs are not to be held at the same standard as that of Courts/tribunals and have a wide



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latitude, that in disciplinary enquiries, strict proof of legal evidence, finding etc., are not relevant and that clubs are entitled under private law to take steps to maintain internal discipline and protect their fair image and status.

23. The learned trial Judge correctly appreciated the position of law in *TP Daver v. Lodge Victoria* (1964) 1 SCR 1: *Lennox Attur Patrick O'Reilly v. Cyril Cuthbert Gittends*, Privy Council Appeal No.96 of 1946 (14.07.1949); *R.Lakshmipathy v Madras Gymkhana Club*, 1997(1) CTC 77 and held that the managing committee of clubs have sufficient attitude to initiate disciplinary proceedings against their members and that the standard for these proceedings are not the same as that applicable to proceedings before courts / in the judicial system. The learned Judge has correctly appreciated that as long as the club/association acts within the powers defined in its bye-laws, Court will not interfere with the same.

24. Therefore, in view of the settled position of law and also taking note of the fact that a fair procedure has been followed and after going through the documents stated supra, I find that voluntary associations,



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cannot be put on par with the Court or tribunal, when dealing with the disciplinary matters concerning the membership of the petitioner, as held in the following decisions.

1. *Chennai Kancheepuram Tiruvallore District Film Distributors Association vs. Chinthamani S.Murugesan*, reported in 2001 (3) LW 514
2. *R.Muthuveerappan vs. Government of Tamil Nadu*, reported in 1996 (1) LW 140
3. *Pravin Kumar Vs. Union of India & Ors*, [C.A.No.6270 of 2012 dated 10.09.2020]
4. *K.Leela Kumar v. Government of India*, reported in 1997 (2) LW 832

25. Hence, after perusing Ex.P4-show cause notice, Ex.P5-reply letter of the petitioner, Ex.P6-reply letter of the respondent, Ex.P14-copy of the reply letter via email, Ex.P17-Suspension order and Ex.P42-Enquiry Finding Report and also applying the provisions of the law as stated supra, I find that the order passed by the learned District Judge, Udthagamandalam, is just and proper and he has properly appreciated the merits of the case in



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proper angle and there is no illegality or irregularity in the impugned order, so as to warrant interference at this appellate stage.

26. Further, the committee had observed broad fairness and acted in accordance with its own rules and the plea of violation of principles of natural justice, on factual matrix as discussed in paragraph Nos.13, 14, 16 and 18, is rejected, since it is clear that the petitioner/plaintiff, being a member of the voluntary association, is bound by rules framed by such association and is also bound by the actions taken by those in whom power is vested under such rules.

27. Accordingly, the order dated 31.10.2022, passed by the learned District Judge, The Nilgiris, Udthagamandalam, in I.A.No.02 of 2022 in O.S.No.65 of 2022, is hereby confirmed and the **Civil Miscellaneous Appeal stands dismissed**. No costs. Consequently, **the interim order granted in CMP Nos.19599 & 19603 of 2022, stands vacated**.

28. Since the order of suspension is amount to expire in the month



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of June, 2023 the learned District Judge, The Nilgiris, Udhagamandalam, is hereby directed to list the case and dispose of the same, within a period of three months from the date of receipt of a copy of this judgment.

13.02.2023

Index : Yes/No

Neutral Citation : Yes/No.

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To

The District Judge,

The Nilgiris, Udhagamandalam.

RMT.TEEKAA RAMAN,J.,

After delivering the judgment, Lieutenant Colonel Sandeep Dewan (Veteran) / appellant, filed a memo to keep the judgment made in this Civil Miscellaneous Appeal, in abeyance, till filing an appeal in a court of relevant jurisdiction. He was also heard.

2. After going through the records and in view of the findings at



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Paragraph Nos.18,19 and 21, I am not inclined to hold so, in view of the issue involved in this appeal and the oral request made by the appellant viz., Lieutenant Colonel Sandeep Dewan (Veteran), stands negatived.

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RMT.TEEKAA RAMAN,J.,
ars

Pre-delivery Judgment in
CMA No.2518 of 2022
and CMP Nos.19599 & 19603 of 2022

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