
(1938) 07 BOM CK 0001
In the Bombay High Court
Case No : Second Appeal No. 336 of 1935

Ambalal Sarabhai

APPELLANT

Vs

Phiroz H. Antia

RESPONDENT

Date of Decision : 06-07-1938

Acts Referred:

Citation : AIR 1939 Bom 35 : (1938) 40 BOMLR 1213

Hon'ble Judges : Wassoodew, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Wassoodew J.

1. This second appeal from the decree of the District Judge of Ahmedabad raises the question of the legality of the expulsion of a member from a social club. The plaintiff was one Phiroz Antia who at the date of this action held the appointment of Deputy Superintendent of Police in Gujarat. He became a member of the institution represented by the defendants known as "Gujarat Club" in 1925, and was a continuing member until July, 1930. By a resolution of the General Committee of the Club passed at an extraordinary general meeting of the members on July 13, 1930, the plaintiff was expelled from the club. That resolution is in the following terms :-

That Mr. P. H. Antia be excluded from membership of the Club under Rule 39.

It is the plaintiff's case that the resolution offends against the principles of natural justice and is therefore illegal and ultra vires. He has accordingly claimed a declaration to that effect and also an injunction restraining the members of the Club and its officers from excluding him from the Club premises, or preventing him from the use thereof, or from exercising all the rights and privileges of membership. The defendants have demurred and contended that the civil Court has no jurisdiction to interfere with the affairs of the Club, and that inasmuch as they have acted honestly in accordance with the rules of the Club without malice,

the plaintiff's expulsion is legal.

2. The learned trial Judge came to the conclusion that although the plaintiff had sufficient opportunity to put forward his case, the resolution was passed in bad faith, and that there was malice or ill-will. Consequently he was of the opinion that the Court could review the resolution of the Club and accordingly he passed an order in terms of the prayer in the plaint. That decree was upheld by the learned District Judge in first appeal on the ground that although there was no malice or ill-will and there was complete absence of dishonesty or bad faith, the members contravened the rules of the Club and the rule of natural justice. Against that decree the Club represented by the defendants has filed this appeal.

3. There can be no doubt upon the record that in passing the resolution expelling the plaintiff from the Club the members purported to act under the provisions of Rule 39 of the rules of the Club. That rule is as follows :-

The General Committee may, by a two-thirds majority, for sufficient reasons, exclude any member whose presence in the Club they may consider to be detrimental, to its interest without assigning any particular reason for their so doing, from the membership of the Club, but no such business shall be transacted in a non-quorum general meeting.

It may be noted that in the above, rule the expression " General Committee of the Club" as defined in Rule 3, Sub-rule (vii), means " an ordinary or extraordinary General Meeting of the members of the Club." It is not disputed that the General Committee in this case has passed the resolution in question. The genesis of that resolution as disclosed by the evidence of some of those members who participated in the proceedings at that meeting was this : In pursuance of the Congress policy of non-co-operation and civil disobedience a raid was planned by some members of the Congress on the salt works at Dhara-sana early in May, 1930. One of the police-officers deputed by Government to frustrate that raid was the plaintiff, and he attended the spot where the raid was expected in order to carry out his official orders. His conduct in relation to the measures adopted by the Police force at his disposal was the subject of public comment and he became unpopular with the adherents of the Congress party. On May 25, 1930, about thirty-two members of the Club sent a requisition to the Honorary Secretary of the Club for convening a special General Meeting in which they stated inter alia as follows :-

We shall feel obliged by your convening a General Meeting of the members of the club for the following purposes either on the same day or for each separate day for the transaction of each of the business as soon as possible.

II. That Mr. P. H. Antia a member be excluded from the membership of the club under the provision of Rule No. 39.

That requisition gave no reasons whatsoever for the plaintiff's expulsion. Thereupon an agenda was prepared and circulated among the members on June

1, 1930, in which the 5th item was as follows :-

To consider the requisition to exclude Mr. P. H. Antia from the membership of the Club under rule No. 39, and to pass such resolution as the meeting may deem fit.

A copy of that agenda, which was sent under the heading " For Members only " " Private and Confidential and not for publication " in terms of the resolution of the Managing Committee of June 20, 1930, was addressed to and received by the plaintiff in due course. It is worthy of note that prior thereto there was no correspondence between the, plaintiff and the Managing Committee or the Honorary Secretary or any member of the Club in connection with the behaviour of the plaintiff of which the members of the Club intended to take notice. The plaintiff deliberately abstained from; attending the meeting of July 13, 1930. The proceedings at that meeting are fairly accurately summarised by the learned District Judge in paragraph 6 of his judgment as follows :-

After the resolution to exclude British papers and magazines from the Club was passed without any opposition, the resolution to exclude the plaintiff from membership was taken up. A point of order was raised by a member, but was overruled by the President. An amendment that the requisition be filed was then moved and seconded. Mr. J. v. Desai spoke in favour of the original proposition and the Secretary spoke in favour of the amendment and warned the members against creating an undesirable precedent. After several other speeches on both the sides, votes were taken and the amendment was lost. When the original proposal was put to vote, 112 voted in favour of it, and it was declared as carried (exhibit 69).

It appears from the proceedings that, after the proposition was put before the meeting by one of the members by name Mr. C. P. Broker, one Mr. P. B. Vakil, another member, asked for reasons for the proposed expulsion. The following minute is recorded in the proceedings upon that query :-

The Chair ruled that the Rule 39 does not require reasons to be given.

Mr. R. J. Lakhia raised a point of order whether the proposal is in order

The President ruled that the proposal was in order. Mr. D. C. Karaka moved; the following amendment " that the requisition be filed.

Thereafter the amendment was duly seconded and an explanation given by Mr, J. v. Desai as follows :-

Mr. J. v. Desai spoke in favour of the proposal and said that Mr. Antia was sent the notice of the meeting and had an opportunity of being heard and has asked "nothing in that connection.

4. The complaint of the plaintiff against those proceedings is that the rule providing for the expulsion has not been strictly observed, that although he had notice of the meeting and the proposal to expel him there was no charge whatsoever formulated against him giving reasons for his expulsion, that in

consequence he had no opportunity for explanation, and that according to the record in view of the absence of a charge and the omission to record the reasons in the resolution, the persons voting acted upon conjecture and surmise unmindful of the motive actuating the mover or the requisitionists. It was therefore urged that the members have acted arbitrarily and capriciously and not in the exercise of the power of expulsion conferred by Rule 39 nor in good faith. Accordingly the plaintiff has craved for the Court's interference with the action of the members of the Club.

5. To deprive a gentleman of his position as a member of a Social Club is certainly a very serious and grave measure, it is entirely different where a Club refuses admission without a hearing or without giving reasons to a person-seeking membership, and the analogy of the procedure laid down in the rules in regard to admission cannot be applied to rules providing for expulsion. Undoubtedly a Club is an autonomous institution and a Court of law will not lightly interfere with its action in expelling a member unless it has violated the recognized rules of procedure in that connection or those of natural justice. According to Halsbury, (Laws of England, 2nd edn., Vol. IV, p. 493, paragraph 912), interference by the Court to prevent expulsion would not be justified if the following conditions are satisfied :-

... that the rules providing for expulsion have been strictly observed, that the member expelled has had due notice, and full opportunity of answering the charges made against him, that there has been no want of good faith in the exercise of the power of expulsion, and that the decision arrived at is not manifestly absurd,...

The following observations of Bowen L.J. in *Leeson v. General Council of Medical Education and Registration* (1889) 43 Ch.D. 366 sum up the duties of a Club in the matter of the expulsion of its members (p. 383) :-

There must be due inquiry. 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 at after he has had a full opportunity of being heard. With respect to the charge made, the charge of which he has notice, it is a charge of infamous conduct in some professional respect, and the particulars which should be brought to his attention in order to enable him to meet that charge ought to be particulars of conduct which, if established, is capable of being viewed by honest persons as conduct which is infamous.

Those observations were quoted with approval in *Maclean v. The Workers' Union*. [1929] 1 Ch. 602 They were made in recognition of the rights of an autonomous institution. One of the essential duties is the duty of enquiry. It does not matter that the accuser and the Judges are identical. Due enquiry postulates the necessity of bringing up before the persons charged with that duty something which could raise in the minds of honest persons the inference that objectionable conduct had been established or that there are " sufficient reasons" for the

expulsion contemplated by the rule of the Club. It does not matter on what evidence the charge was based provided there was something upon which a charge could be founded. If that duty is discharged, the Court's power to review the decision of the Club is at an end.

6. The important question in all cases where an institution has purported to act within its powers is whether there has been due enquiry. Recently a bench of this Court had occasion to observe when dealing with the expulsion of a member from a caste (p. 905) :-

... that the general principles applicable to the expulsion of members from a club govern cases of expulsion of persons from caste, and those principles, so far as relevant, involve that the expulsion must be in accordance with the rules of natural justice, which means primarily that the accused must have a fair hearing, and that the expulsion must be in accordance with the rules." (See *Ratansey Virji Vs. Meghji Hirji Jangeali*, .

7. Now, as I have already observed, the rule providing for expulsion is Rule 39 and it requires that there should be a consensus of two-thirds of the majority of the General Committee and that there should be " sufficient reasons " for excluding a member whose presence in the Club they may consider to be detrimental to its interest. Those are indeed very wide powers and the members joining the Club must be taken to have acquiesced in the rule. Therefore, if reasons which impelled the conduct of the requisitionists were placed before the General Committee and considered sufficient by them, the decision could not be open to review by a Court of law. That is what the authorities lay down.

8. The finding of fact is that the members did not act maliciously but acted in good faith. Perhaps it would be difficult for me to say upon the material available that the members did not act according to their own convictions. But is it all that the rule requires ? It requires that the general meeting shall act on " sufficient reasons". The learned District Judge has found as a fact as follows :-

Unfortunately the reasons for the expulsion were not allowed to be discussed, and the members had to imagine the reasons and make up their minds.

If that were so, can it be said that they discharged the duty of enquiry. There is evidence suggesting that although the reasons were not openly discussed or assigned at the meeting itself, there were discussions between some members outside the Club from which they gathered what the underlying motive of the requisitionists was. One of the members Nathalal (exhibit 82) has spoken of the general conversation in the Club relating to this requisition and that the topic of that conversation was the behaviour of the plaintiff at the Dharasana raid. Another witness Chimanlal (exhibit 83) has stated that the information received by him about the plaintiff was that he had practised gross cruelty at Dharasana. That does not cure the defect due to the absence of reasons given in the requisition or in the resolution. According to the record they were not expressed at the meeting, and could not have been expressed then owing to the attitude of

the President. There is the evidence of D. C. Karaka (exhibit 81), a supporter of the plaintiff and mover of the amendment, that no such reasons were given to the members at the meeting. This is what he has stated :-

The case against Mr. Antia I thought was this; in the course of his duties at Dharasana Mr. Antia had belaboured congressites. This was what I thought was in the minds of the members. I said reasons might not be given to Mr, Antia but reasons must be made known to the meeting to those who have to vote.

Knowing then that the President had shut out the speakers from assigning reasons for the resolution, would the fact that the members had gathered according to their individual opinion from the discussion with their fellow members, who were perhaps equally in the dark in the matter, the underlying motive for the action, be sufficient to divest the Court of its right to interfere. The omission I think was: a flagrant abuse of the rule of the Club and constitutes a failure to discharge the duty to make enquiry.

9. The material issue involved is not what the members thought right they should do upon outside gossip without bringing all the related facts into comparison and upon a floating and visionary idea of what might be the reason for the resolution, but whether the person affected by their act or resolution has been in that manner fairly and properly treated. It is true that the rule is explicit that the General Committee has the power to exclude any member whose presence they may consider detrimental to its interest without assigning any particular reason for their so doing. But that rule does not deprive the member of the right to be heard in a fair manner in spite of the bias of his judges. It is argued that Rule 39 if properly interpreted does not require a charge to be framed, for it provides against assignment of reasons ; nor does it provide for disclosure thereof to the members nor for calling upon the member offending to offer an explanation. That interpretation is not correct. As I construe the rule, it does not exclude the statement of the reasons to enable the members to say whether they are sufficient. The omission in that respect therefore is fatal to the defence. If there is lacuna in the rule, such as is contended for, that rule must be supplemented by. rules of natural justice, and upon authority the omission to do so would not debar the member from complaining against the act of expulsion in a Court of law. Counsel for the appellant conceded that theoretically the rule of natural justice has to be followed but he has argued that the plaintiff was not prevented from offering an explanation and the formality of the charge was waived by him by declining to attend the meeting. If the plaintiff's absence were construed as telling the Committee that he would not be a party to their enquiry or refusing to give an explanation, the plaintiff's claim will not be sustained. But in my opinion that interpretation is neither fair nor reasonable in the circumstances of this case. The head-note of the report in *Dawkins v. Antrobus* (1881) 17 Ch.D. 615 runs thus :-

The Court will not interfere against the decision of the members of a club professing to act under their rules, unless it can be shewn either that the rules

are contrary to natural justice, or that what has been done is contrary to the rules....

A rule giving wide powers of expulsion as in this case, if it omits to provide for the requirements of justice and fair play, is contrary to natural justice, and it would be necessary to enquire whether the General Committee has done all that it should have done to render the resolution binding on the member expelled. There is recognizable difference between procedure followed by a Court of justice and that applicable to a General Committee of this kind which is on the footing of a domestic tribunal, and I agree it is not open to a Court of law to attack its conclusions on the ground that it is opposed to the weight of evidence or that it has not pursued the formalities which a Court of justice would not avoid. But the elementary principles of natural justice require as an ordinary person understands them that the person arraigned must know precisely what the charge against him is. The phrase, "the principles of natural justice," is explained by Maugham J. in *Maclean v. The Workers' Union* [1929] 1 Ch. 602 as follows (p. 625):-

The phrase, "the principles of natural justice," can only mean in this connection the principles of fair play so deeply rooted in the minds of modern Englishmen that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation.

The charge may not be formulated in legal language, but still it cannot be left to surmise or speculation as to why the resolution was proposed. The plaintiff in his evidence has stated that he had suspicion as to what the charge against him would be. But that was the result of the mental co-ordination of the facts as he imagined them, one of them being the natural antipathy towards a policeman who was opposed to persons who were avowedly breaking the law. It seems to me what the plaintiff might have suspected or might have learnt upon enquiry from some members would not be sufficient to remit the condemnation of the General Committee for omitting to give clear notice to the plaintiff of what they were called upon to decide. It was wrong to assume that it was not necessary to call upon him to appear and give an explanation which would influence their vote in the matter. It cannot be urged that if he had appeared at the meeting perhaps he could have got an adjournment or obtained reasons underlying the resolution. The notice contained in the agenda was not in my opinion sufficient. The case of *Richardson-Gardner v. Fremantle* (1870) 24 L. T. 81 was decided on its peculiar facts. There the person charged was aware of all the facts leading to his indictment and had disclosed his defence completely. I am satisfied that the action on the part of the members of the Gujarat Club offended against the elementary principles of natural justice and reason and justifies the civil Court's interference. It is, therefore, unnecessary to consider the other aspects of the case.

10. It has been urged that the injunction prayed for is so wide in its terms as to prevent the General Committee from ever taking any steps to exclude the

plaintiff if they were minded to do so in future. That seems to be a reasonable apprehension upon the language of the injunction. The injunction must be restricted in its terms to the act of the defendants in pursuance of the resolution, and it shall be in the following form :-

That the Gujarat Club, Ahmedabad, and its Managing Committee and their servants be restrained from excluding the plaintiff from the club premises or preventing him from the use thereof or from exercising all his rights and privileges of membership in pursuance of the resolution, the subject-matter of this suit which has been declared as illegal and ultra vires.

11. In other respects the decree of the lower Courts is confirmed and this appeal dismissed with costs.