
(2010) 06 KAR CK 0081
In the Karnataka High Court
Case No : M.F.A. No. 4684 of 2010

Bangalore Golf Club

APPELLANT

Vs

M.R. Doraiswamy Iyengar

RESPONDENT

Date of Decision : 07-06-2010

Acts Referred:

Bangalore Golf Club Rules — Rule 10.3.1, 19.2, 19.3, 19.7

Citation : (2010) 3 KCCR 2207

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Ananth Mandgi, for V. Sanjay Krishna, for the Appellant; Ravi B. Naik, for Ravi B. Naik Associates, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—In this appeal, Bangalore Golf Club calls in question the justification of the trial Court staying the, order of suspension pending enquiry, issued by the appellant-club.

2. Briefly stated, respondent-plaintiff being a member of appellant-club, was issued with a show-cause notice dated 23.2.2010 in which it was stated that the membership of the respondent had stood suspended with immediate effect for a period of three months or till the committee takes appropriate decision with regard to charge of misconduct levelled against respondent-plaintiff in the show-cause notice issued on 15.12.2009 to him. This order of suspension formed the basis for the respondent's suit for declaration, that the said order of suspension is ultra vires, illegal, and unenforceable and show cause notice issued to him on 15.12.2009 was also null and void and for other reliefs. I.A. No. 1 was filled during the pendency of the said suit for an order of temporary injunction seeking staying of the operation of the suspension order dated 23.2.2010, After hearing both sides, the trial Court by its impugned order allowed the said I.A. and stayed the operation of the order of suspension, thereby driving the Golf club to approach this Court in this appeal.

3. Learned Sr. Counsel Shri Ananth Mandagi for the appellant, submitted at the outset that the suspension order issued to the respondent was an order issued pending enquiry and it was not an order issued post enquiry. Referring to the Club's rules, it is submitted that Rule 19.3 empowers the Club Committee to order suspension of a member if there is a prima facie case against the concerned member and in accordance with the said Rule 19.3, the order dated 23.2.2010 was issued. Referring to the Rules 19.1,- 19.2 and 19.7.3, the submission made is that if the Club Committee is satisfied that there is a prima-facie case against a member, the committee by invoking Rule 19.3 has every right to suspend a member pending enquiry. It is submitted that the appellant was subjected to continuous harassment, by way of respondent seeking various information and despite the respondent being informed to go over to the club's office and verify the documents, respondent continued to write to the club on various aspects and apart from this, in the show cause notice dated 15.12.2009 issued under Rule 19.2 of the club rules, various acts of misconduct were mentioned and the respondent was called upon to show cause within seven days as to why action should not be taken against him. Said show cause notice was also accompanied by the proceedings of the Managing Committee dated 10.12,2009 with regard to certain allegations of misconduct against respondent member. The acts alleged against the respondent fall within the acts which are prohibited under the by-laws and in this connection, learned Counsel referred to by-law 4 of the by-laws and also to other by-laws. Though the suspension was for a period of three months, the respondent kept quiet for two months and thereafter approached the civil court with the suit and the order of suspension is now put on hold by virtue of the said order granted by the trial Court.

4. Learned Sr. Counsel Shri Anant Mandagi apart from referring to the aforesaid Rules and by-laws contended that the trial court could not have stayed the operation of the suspension order when the enquiry itself is yet to be conducted and observations of the trial court indicates that the trial court has already decided the merits of the case and further more, the trial Court has observed that the entire material should have been placed by the club in support of the suspension order and this goes to show that the trial court expects the entire evidence even before an enquiry is actually held. Drawing distinction between suspension before enquiry and suspension after enquiry, submission made is that the former does not fall within punitive nature and it is only after full-fledged enquiry that the decision can be taken as per Rule 19.7. Under these circumstances, the entire reasoning of the trial court is perverse and contrary to the Rules and by-laws of the club. Referring to the decisions reported in 1975 KLJ 428 in respect of Bangalore Turf club and also another decision wherein Sadashivanagar Club was involved, reported in Sadashivanagar Club, Bangalore Vs. Nataraj, , learned Sr. Counsel argued that the trial Court lost sight of the fact that Club Committee has got the power to suspend the respondent-plaintiff pending enquiry and the trial court ought to have abstained from interfering with

the order of suspension and being an internal affair of the club, Court should have refrained from staying the order of suspension, more so, when it is an order of suspension pending enquiry. If the trial Court is allowed to stay the operation of the suspension order of the present nature, it would be impossible for the club to function if further submission made by the learned Counsel. Therefore, the impugned order of the trial court be set aside by allowing this appeal.

5. On the other hand, learned Sr. Counsel Shri Ravi B. Naik for the respondent-plaintiff referring to Rule 10.3.1 contended that said Rule provides that members are entitled to all the rights of using the club, participation in joint meeting, management of the club, etc., and therefore, the request made by the respondent through various letters to the club seeking certain information only goes to show that the respondent has got a right to have a say in the management of the club and the management does not mean mismanagement. As the club is intending to put up a new club house, the respondent sought certain information and according to the respondent, without obtaining any sanction from the concerned authorities, the club has gone on to take steps like issuing tender notification, etc., and therefore, being a member of the club for over three decades, the respondent is very much interested in seeing that there is no mismanagement in the functioning of the club. Under these circumstances, mere asking for certain information from the officials cannot be a serious misconduct so as to get suspension from a membership of the club. The period of three months is already over and the allegations made against the respondent as could be seen from the show cause notice also have no basis because the respondent had stopped playing golf at the club about two years back and as such, committing certain misconduct and involving caddies does not arise. In support of all the above submissions, learned Sr. Counsel also placed reliance on the decisions reported in *Deoraj Vs. State of Maharashtra and Others*, and *Nagri Pracharini Sabha and Another Vs. Vth Additional District and Sessions Judge, Varanasi and Others*, . Therefore, it is contended that when the show-cause notice is bereft of particulars of the misconduct committed, the order of suspension cannot be maintained in law. Under these circumstances, the trial court was justified in staying the operation of the suspension order.

6. In the light of the aforesaid submission put forward, whether the impugned order of the court below staying operation of the suspension order calls for interference is the question that is to be answered at this juncture.

7. A careful perusal of the reasoning given by the trial court reveals that the trial court has gone on to base its conclusion on the footing that the appellant club had no subjective satisfaction of a prima-facie material to substantiate the allegations made by the plaintiff and seeking information by the plaintiff does not amount to interference in the work of office bearers of appellant-club and therefore, the trial court went on to observe that keeping the plaintiff under suspension does not survive and the same has no legal sanctity. It also went on to observe further that suspension order is oppressively acting against plaintiff

only because, he being a member, sought information of the activities of the defendant club.

8. Such an observation by the trial court as rightly argued by the learned Sr. Counsel Shri Ananth Mandagi gives an indication that the trial court has gone-on to make certain observations touching upon the merits of the suit itself at the stage of disposing of the I.A. In this connection, it is useful to refer to the observations of this Court in the case of Krishna Moorthy v. Bangalore Turf Club 1975 KLJ 428.

The traditional theory underlying the grant or refusal of interlocutory injunctions has always been that the Court abstains from expressing any opinion upon the merits of the case until the hearing, but acts merely to minimise the sum total of irreparable damage to the litigants, However, in recent times, the tendency has been to adopt a more robust attitude and to be guided more and more by the apparent strength or otherwise of the plaintiff's case as revealed by the affidavits. Though this procedure has been commonly followed, and has become popular, the court, however, should guard itself from deciding the case on motion. Such practice is wholly undesirable.

The plaintiff's case may not be frivolous or vexatious, and might appear stronger on the balance of probabilities. But that by itself is no ground for any Court to issue injunction. What matter is the balance of convenience. A man who seeks the aid of the Court by way of interlocutory injunction must, as a rule, be able to satisfy the Court that its interference is necessary to protect him from that species of injury which the Court calls irreparable, before the legal right can be established upon trial. Last but not the least the Court, always must look to the conduct of the plaintiff and will refuse to interfere even in cases where it acknowledges his right unless his conduct in the matter has been fair and honest and in particular without acquiescence or delay.

9. The order of suspension dated 23.2.2010 reads as under.

This is to inform you that the Managing Committee, in its meeting held on 22.2.2010, has resolved to suspend your membership with immediate effect for a period of three months or till the committee takes appropriate decision with regard to the charges of misconduct leveled against you in the show cause notice dated 11.12.2009, whichever is earlier

The extract of the proceedings dated 22.2.2010 is herewith enclosed. Please note that no club facilities will be extended to you during the above suspension period.

This is for your information.

10. Proceeding the order of suspension, respondent was issued with a show cause notice under Rule 19.2 of the club rules. It is therefore pertinent to refer to Rule 19.2 and also 19.3. They read as under:

19.2- The committee shall send a notice in writing to the person concerned by

registered post to his/her last known address or serve personally, setting out the charges against him/her and call upon him/her to show cause, within a stipulated time, as to why action/proceedings should not be taken/ initiated for the alleged misconduct.

19.3- If the Committee is satisfied that there is a prima-facie case against the concerned member/ associate, it may order suspension of the concerned member/associate for a period not exceeding three months or till the Committee takes appropriate decision, whichever is earlier.

11. Rule 19.7 of the Rules dealing with the conduct of members under the general heading Rule 19, provides that if after considering the report of the Enquiry Committee, the Committee finds that charges against the member/ associate is prima- facie established, then the Committee may take any of the actions which are indicated in Rule 19.7.1 to 19.8.3. It is therefore clear from the aforesaid Rules of the club that the committee is empowered to order suspension of a member if there is prima-facie case against the member and if after the enquiry committee's report, the charges are found to be established, then the other punishments which have been referred to at Rule 19.7.1 to 19.8.3 can get attracted.

12. In the case on hand, the order of suspension was preceded by a show-cause notice and in the show cause notice dated 11.12.2009, the respondent was charged with the following acts of misconduct.

1. Violating the club rule (Rule 5.3.5) for the benefit of third parties.
2. Abusing and misbehaving with the staff of Touche which is in charge of time sheet management.
3. For abusing the caddies using indecent language.
4. For interfering with the work of office bearers in violation of Bye-law 4.1 of the BG Bye-laws.

13. Said show cause notice was also accompanied, by the proceedings of the Managing Committee dated 10.12.2009. It is therefore, clear from these material that the allegations against the respondent was not only that he asked certain information but there are other allegations made against him. When the enquiry itself is yet to be conducted and when the Rules of the club permits suspension of a member pending enquiry, it is not open for the court to sit in judgment over the show cause notice or the order of suspension more so, when the matter is at the preliminary stage and the trial court in my opinion failed to draw the distinction between suspension during enquiry and a punitive suspension This Court in the case of Sadashivanagar Club, Bangalore Vs. Nataraj, , dealing with similar Rules of Sadashivanagar club, namely Rule 7 and Rule 15, observed that there is a vide difference between suspension during enquiry and punitive suspension and when the suspension is ordered on the administrative grounds in contemplation of a disciplinary enquiry and pending disciplinary enquiry, it is

obvious that such a suspension is not punitive. Learned Judge of the trial Court did not therefore take note of the two types of suspension that are provided in Rule 19 of the club Rules.

14. I am therefore of the view that the order of the trial court cannot be sustained in law and when the suspension order is issued pending enquiry, the trial court could not have gone on to make the observations as has been made by it in the course of its order. How to manage its internal affairs is left to the club and if the club Rules empowers the club committee to take certain steps, the court below could not have interfered with the order of suspension issued by the club.

15. The trial court also lost sight of the fact that the basic requirement or the essential condition for grant of an order of injunction is existence of a prima facie case. The Apex Court has held that, where there is no prima facie case, the question of granting injunction does not arise. In the instant case, when the Rules of the club provide for suspension of a member pending enquiry and when the suspension order is also supported by show cause notice and the proceedings wherein the details of the misconduct alleged are narrated, the trial court could not have ignored this material and granting an order of injunction where there is no prima facie case made out, is nothing but denying justice under the guise of invoking the discretionary power vested in the court in the matter of grant of injunction.

16. No doubt, Order 39 Rules 1 and 2 empowers the court to grant an order of injunction. But, where a party does not make out a prima facie case in his favour, the court should not grant an order of injunction and the present case is one such instance where the trial court failed to keep in view the above position in law and thereby the order of staying the operation of the suspension order cannot be said to be an order passed in the interest of justice. The courts should also have to keep in view that justice is to be rendered in the case before it and the case obviously implies that there will be atleast a minimum of two parties in every case and the order of the court should ensure that no injustice is caused to either of the parties and in this endeavour, the guiding star in the matters of grant or refusing the injunction is the existence of a prima facie case. Therefore, if a prima facie case is not made out, the question of an order of injunction being granted in favour of the person seeking it would amount to doing injustice to the other party. The trial court should keep the above factors in mind every time an application for grant of temporary injunction is filed before it.

17. As far as the submission made by the learned Sr. Counsel Shri Ravi. B. Naik for the respondents that the suspension period of three months has already been over is concerned, the order of the trial Court was passed staying the operation of the suspension order and therefore, the period of three months cannot be said to have elapsed as the trial Court's order has come in the way of period of three months getting over and as such, I do not see any force in the above submission made by the learned Sr. Counsel for the respondent and the decisions referred to

by him are also not applicable to the instant case as the facts of the two cases referred to by the learned Counsel are entirely different. Therefore, the period of suspension, which was not completed by the respondent, by virtue of the order of stay of the trial court, obviously will have be completed by him.

In the result, the appeal is allowed and the impugned order of the trial court is set-aside. It is also made clear that observations made herein above shall not in any way come in the way of the suit being disposed of by the trial Court on merits.