
(1999) 12 KAR CK 0028

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 470 of 1998

Basagoudappa

APPELLANT

Vs

Gurugouda

RESPONDENT

Date of Decision : 17-12-1999

Acts Referred:

Bombay Public Trust Act, 1950 — Section 22, 72 (1), 72 (2)

Citation : (2000) ILR (Kar) 162 : (2001) 2 KarLJ 148 : (2000) 4 KCCR 195 SN

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri M.N. Gadag, for the Appellant; Sri G.S. Visweswara for Sri R.B. Deshpande, for the Respondent

Judgement

M. P. Chinnappa, J.—The brief facts of the case not in dispute are that on 17-1-1991 General Body of the Bijapur Liberal District Educational Association, elected Sri B.D. Jatti as its President and Sri H.B. Patil as the General Secretary for a period of five years ending on 16-11-1996. The said General Body authorised the President to nominate or appoint office bearers as per the Bye-law 12 of the Association. Accordingly, charge report was submitted to the Assistant Charity Commissioner as required u/s 22 of the Bombay Public Trust Act (for short "the Act") and the changes were entered in the register.

2. B.D. Jatti the then President found deadlock in the Association and exercising his power under Bye-law 33(e) superseded the Governing Body and he assumed all the powers of the Governing Body in 1993. Being aggrieved by the President's action, an original suit came to be filed. Ultimately, the matter went up to the Supreme Court and the Hon'ble Supreme Court found that neither the President nor the Secretary has the power to appoint or nominate any members of the Governing Body. Therefore, the Supreme Court appointed the District Judge, Bijapur, as the Returning Officer and directed to hold the election for the post of Vice-President and members of the Governing Body. Accordingly, election was held. After that, B.D. Jatti tendered his resignation on 9-3-1995 addressing

a letter to the Secretary. The Governing Body accepted the resignation on 20-3-1995. One Sri B.S. Patil of Kumta was elected as President for the remaining period as per the Resolution No. 3 dated 20-3-1995 by the Governing Body. On 9-10-1995, the present respondent who is the Treasurer of the Association filed a charge report as contemplated u/s 22 of the Bombay Trust Act to delete the name of B.D. Jatti and to include the name of Sri B.S. Patil, Kumta as the President of the Association.

3. The present appellant who is the member of the Association being a person interested in the welfare of the Association filed objections to the changed report on the ground that it is only the General Body which has to elect the President and can accept the resignation and not the Governing Body. The acceptance of the resignation by the Governing Body on 10-3-1995 is illegal and consequently nominating B.S. Patil as President also is illegal as per the Bye-law 48. Further, it is also contended that the Treasurer had no power to file changed report. The Assistant Charity Commissioner rejected these objections and accepted the changed report in Inquiry No. 776 of 1995 vide order dated 20-3-1996. Subsequently on appeal in Appeal No. 7 of 1996 the Charity Commissioner set aside the order of the Assistant Charity Commissioner Appeal No. 7 of 1996. Thereafter, an appeal was preferred to the District Judge, Bijapur, u/s 72(1) which was registered as Miscellaneous Application No. 60 of 1996. However, the District Judge endorsed the view expressed by the Assistant Charity Commissioner and set aside the order passed by the Charity Commissioner, under the impugned order dated 9-1-1998. Being aggrieved by that order, this appeal is preferred u/s 72(2) of the Act.

4. The main question involved in this appeal is the interpretation of the Bye-law 47 of the Association.

5. Heard the learned Advocates appearing for the respective parties.

6. At the very outset Sri M.N. Gadag submitted that only General Secretary is competent to file changed report as per Bye-law 48. Bye-law 48 refers to the fact that the Secretary shall represent the Association in the suit, in other words, to sue and be sued, the Secretary is empowered. The powers and functions of the General Secretary are enumerated in Bye-laws 42 to 46. Bye-law 44(f) which is relevant in this case reads:

"the General Secretary, subject to the direction of the Governing Body, if any, may delegate any of his duties and powers to any of the members of the staff or to the Joint Secretary".

From the bare reading of this bye-law it is abundantly clear that the Secretary has powers to delegate any of his duties to others. By virtue of this, he had issued authorisation to Sri G.K. Patil, the Treasurer, as per Ex. P. 16 and in turn he had filed the changed report. Hence, the argument of the learned Counsel is without any merit and is liable to be rejected.

7. The learned Counsel for the appellant has vehemently argued that the Governing Body has no authority or power either to accept the resignation or appoint a new President for the remaining period. However, the learned Counsel for the respondent submitted that the reading of Bye-law 47 clearly discloses that it is only the Governing Body which has the power and authority to accept the resignation of the President of the Association and also to appoint a President for the remaining period. In this case, Sri B.S. Patil, Kumta was the first Vice-President of the Association and he was appointed as the President of the association for the remaining period after the acceptance of the resignation of Sri B.D. Jatti with effect from 20-3-1995 till 16-11-1996. In view of this argument, it is now relevant to refer to Bye-law 47 which reads:

"If a place in the Governing Body or any post of any office bearer pertaining hereto falls vacant either by death or resignation or for any other fresh cause, the remaining members, shall have the right of filling the place or post, any other member of the Association in the vacancy thus caused and he shall, thereafter, hold the said office for the unexpired portion of time for which the predecessors had been elected for the same".

As far as the former expression viz., "if a place in the Governing Body" is concerned, there is absolutely no ambiguity or doubt in regard to the power of the Governing Body to fill up the post, but the problem is the expression "any post of any office bearer pertaining thereto". According to the learned Counsel for the appellant this expression is used in the Chapter Miscellaneous to cover the President, Vice-President, General Secretary, etc., of the association and not necessarily in respect of the Governing Body. But in this case, the word "pertaining hereto" has greater significance. "Pertain" means according to Chambers New Edition 20th Century Dictionary; to belong: to relate (with to) pertinent pertaining or related: to the point: fitted for the matter on hand: fitting or appropriate: suitable: apposite. This clearly indicates that anything connected to the Governing Body. Now it is necessary to find out as to whether there is any other committee or sub-committee which can be constituted by the Governing Body. A reference if made to Bye-law 35 makes it clear that:

"The Governing Body may appoint any sub-committee or sub-committees referred to in Bye-law 5 for such purposes as deemed necessary and shall have the power to dissolve them as they deem fit".

This sub-committee or sub-committees are appointed and are directly connected to the Governing Body. The expression "pertaining thereto" as can be understood from Bye-law 47 refers only to the vacancy which occurs in sub-committee or sub-committees which were constituted by the Governing Body. In that view of that matter, I am of the view that the expression "pertaining thereto" used in Bye-law 47 does not mean that the Governing Body has power to accept the resignation of the President and appoint a new President in his place for the remaining period.

8. The learned Counsel for the respondent has vehemently argued that if the Governing Body has no power to accept the resignation and also appoint the President for the remaining period, there would be a deadlock and the General Body Meeting of the Association cannot be called for, at least to elect the President and the administration of the Trust would come to a standstill and therefore, this expression is used in Bye-law 47. This argument though palatable, I have not been persuaded to accept it. Normally in any association or society it is settled. Unless otherwise provided, that in the absence of the President, the Vice-President will function as the President of the Association. But however, the learned Counsel for the respondent contended that as per Bye-laws 13 and 14, the General Body shall ordinarily meet once in every year in the month of April or May at a place and time notified by the President which meeting shall be deemed as the Annual General Meeting of the General Body. The President whenever he thinks fit and shall, upon the written request of the Governing Body or 25 members of the Association stating any motion or proposition, call a special meeting within a month from the receipt of such a request.

9. On the basis of this, he submitted that it is only the President and the President alone who can call for the General Body Meeting and if there is no one to accept the resignation of the President and appoint another President for the remaining period, the General Body Meeting of the Association cannot be called for. Under those circumstances, it is not possible to take up day-to-day transaction of the association and the President cannot be appointed.

10. When once the Vice-President can act as the President, he assumes all the powers, responsibility and duties of the President and he is entitled to call for the meeting of the Association and the Association shall appoint the President for the remaining period without holding an election. This could be gathered if a reference is made to Bye-law 31(c) which reads:

"In the absence of a specific provision to the contrary, the President shall be deemed to delegate all his powers, duties and executive functions to the Vice-President or to the senior most Vice-President so long as he is away from the limits of Bijapur District".

According to the Bye-law 16, in the absence of the President, the Vice-President shall preside over the General Body. Even one of the members present as may be chosen by the General Body can preside over the meeting for that occasion. Therefore, it is clear that necessary provisions are made in the bye-law to continue and carry out the affairs of the association. In the event of death or resignation or the post of the President becoming vacant, the Vice-President shall act as President and the President can be appointed only by the association. If the President is elected as a Chairman of the Governing Body, he may delegate for sufficient reasons any of his executive functions to any of the Vice-President or Chairman of the Governing Body as per Bye-law 31(b). Bye-law 31(c) is a deemed provision so as to say when the President is not in Bijapur District, powers, duties and executive functions shall be deemed to have been delegated

to the Vice-President. The President B.D. Jatti admittedly was away in Bangalore and never resided in Bijapur. Therefore, his powers were delegated or deemed to have been delegated to Sri B.S. Patil Kumta, who was admittedly the Vice-President. Such being the case, the Vice-President continued to be in charge of the President. Whereas, when he received the resignations from Sri B.D. Jatti, he could have called for emergent meeting of the association to accept the resignation and also to appoint a new President for the remaining period. Under those circumstances, there was no President to call for General Body Meeting of the Association and hence, the Governing Body had power to accept the resignation to avoid stalemate etc., cannot be accepted. Bye-law 32 gives wide power to the senior Vice-President to exercise such power exercised either by the President or by the Vice-President in his absence.

11. The learned Counsel for the respondent submitted that subsequently the Association meeting was held and no one objected to the acceptance of the resignation of Sri B.D. Jatti the then President and also in appointing Sri B.S. Patil, Kumta as President. Therefore, he submitted that the General Body is deemed to have accepted the resignation and approved the appointment of Sri B.S. Patil, Kumta. At this stage it is not the question of acceptance of the resignation and the appointment of Sri B.S. Patil, Kumta that is important. What is important is as to whether the Governing Body had the authority or power to accept the resignation and appoint a new President for the remaining period. The act of the General Body in not raising objections may be taken that any action taken, any order passed and any proposal accepted legitimately by Sri B.S. Patil after he assumed the office of the President may not be called in question only on the basis that his appointment was illegal. Having discussed all the relevant bye-laws, I am of the considered view that the Governing Body had no such power. On the other hand, the power rests with the General Body as there is no specific power under the bye-law for acceptance of the resignation and also appointment of a new President in his place for the remaining period.

12. It is no doubt true that the resignation of B.D. Jatti was accepted on 20-3-1995 and on the same day Sri B.S. Patil, Kumta was appointed and he worked as the President for the remaining period from 20-3-1995 to 16-11-1996. In actual fact, right from the beginning, B.D. Jatti was residing in Bangalore and all the affairs of the Association were attended to by the Vice-President B.S. Patil under the deemed provisions of the bye-laws. Therefore, the question is only academic as far as this appeal is concerned. Under those circumstances, any action taken by Sri B.S. Patil even though irregular is saved under Bye-law No. 51 of the Association.

13. But before parting with this order, I feel it is just, and proper to issue a guideline so as to enable the association to strictly follow in future in regard to the acceptance of the resignation of the President and also appointment of a new President for the remaining period which is as follows:

That if resignation is tendered by the President, the first Vice-President or in his

absence the senior most Vice-President shall call for meeting of the Association, place the same for acceptance and if it is accepted also propose the appointment of the President for the remaining period. In the light of this observation and in view of the fact that no consequential relief could be granted in this appeal, I proceed to pass the following:

ORDER

The appeal is allowed. The order dated 9-1-1998 in Miscellaneous Application No. 60 of 1996 passed by the I Additional District Judge is set aside and the order of the Charity Commissioner dated 4-9-1996 in Appeal No. 7 of 1996 is confirmed in the light of the observations made above.