

**(2013) 11 MAD CK 0118**

**In the Madras High Court**

**Case No : C.R.P. (PD.) No. 4084 of 2013 and M.P. No. 1 of 2013**

D. Prandhaman

APPELLANT

Vs

The Towers Club

RESPONDENT

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**Date of Decision : 06-11-2013**

**Acts Referred:**

**Citation : (2014) 1 CTC 32 : (2014) 1 LW 37**

**Hon'ble Judges : S. Tamilvanan, J**

**Bench : Single Bench**

**Advocate : Venkatachalapathy, for Mr. M. Sriram, for the Appellant; R. Sankara Subbu, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

S. Tamilvanan, J.—The Civil Revision has been preferred under Article 227 of the Constitution of India, challenging the order dated 23.10.2013 made in I.A. No. 15319 of 2013 in the suit in O.S. No. 5691 of 2013 on the file of the XVII Assistant Judge, City Civil Court, Chennai. The petitioner herein is the plaintiff in the suit. Challenging the suspension order dated 18.10.2013, he filed the suit in O.S. No. 5691 of 2013, seeking declaration of the suspension order passed by the respondent, dated 18.10.2013 as null and void, on the ground that the same is against the bye-laws of the Defendant club and also sought consequential injunction.

2. In the aforesaid suit, Interlocutory Application in I.A. No. 15319 of 2013 was filed by the petitioner/plaintiff seeking interim injunction restraining the respondent/defendant, their men, officials and agents etc., from implementing the suspension order till the disposal of the suit.

3. Mr. M. Venkatachalapathy, learned Senior Counsel appearing for the petitioner/plaintiff submitted that the petitioner is a past President and also an active member of the respondent Club. He was suspended by the respondent without following the bye-laws of the club and also against principles of natural justice

and hence, the order itself is against law. The petitioner/plaintiff filed the suit challenging the suspension order and also filed the Interlocutory Application seeking interim injunction as stated above. However, the Court below simply adjourn the matter for filing vakalat and counter to 06.11.2013, without granting interim injunction.

4. Learned Senior Counsel appearing for the petitioner/plaintiff submitted that it has been established that there is a prima facie case made out and the balance of convenience is also in favour of the petitioner/plaintiff and if injunction is not granted, the petitioner/plaintiff would be put to irreparable loss and hardship. Though the same has been established before the Court below, based on the bye-laws and the admitted documents, as required under Order 39 Rule 1 and 2 of the Code of Civil Procedure, the Interlocutory Application filed by the petitioner was simply adjourned to 06.11.2013, which necessitated to file this revision, invoking Article 227 of the Constitution of India.

5. Per contra, Mr. R. Sankara Subbu, learned counsel appearing for the respondent submitted that the Towers Club represented by its Honorary Secretary, the respondent herein is empowered to suspend the petitioner, a member of the Club, as per Rule 18(b) of bye-laws, on account of his misconduct. Hence, the petitioner was suspended by the respondent, hence, the revision preferred by the petitioner is not legally sustainable.

6. It is not in dispute that as per Section 9 of the Code of Civil Procedure, Civil Court has got jurisdiction to try all suits of civil nature, except the suits, which are either expressly or impliedly barred by any law, hence, the Court below has got jurisdiction to try the suit. In that suit, I.A. No. 15319 of 2013 was filed by the petitioner/plaintiff under Order 39 Rule 1 and 2 CPC.

7. In the instant case, it is not in dispute that the petitioner/plaintiff was the past president and an active member of the respondent Towers Club and now he is now under suspension, in view of the impugned order passed by the respondent. The point for determination is whether the revision preferred by the petitioner has to be allowed or not, on the grounds raised and accordingly, the scope of the Revision is limited to that extent.

8. As contended by Mr. M. Venkatachalapathy, learned Senior counsel appearing for the petitioner, the relief sought for in the suit relates to the civil right of the petitioner, which is not expressly or impliedly barred by any law. According to the learned Senior counsel for the petitioner, the impugned order has been passed against the bye-laws of the club, without following principles of natural justice. However, the same was not considered in its letter and spirit by the Court below, which necessitated in preferring the Revision, under Article 227 of the Constitution.

9. Mr. R. Sankara Subbu, learned counsel appearing for the respondent has not disputed that the suit is not barred by any statute. The case of the petitioner/plaintiff is that he was suspended by the respondent from the club against the

bye-law, without following principles of natural justice.

10. In the Interlocutory Application in I.A. No. 15319 of 2013, the petitioner/plaintiff has sought interim injunction against the suspension order passed by the respondent, on the ground that the same is not sustainable in law, under Order 39 Rule 1 and 2 of the Code of Civil Procedure, however, the matter was adjourned for filing counter.

11. Mr. R. Sankara Subbu, learned counsel appearing for the respondent contended that the respondent-club is empowered to suspend the petitioner, on account of the misconduct of the petitioner herein, who had blasted crackers at the club premises. Considering the serious misconduct, he was suspended by the respondent, hence, the Court below has not granted interim injunction against the suspension order.

12. Learned Senior counsel appearing for the petitioner has not disputed that the petitioner herein had blasted crackers, at the club premises, however, according to him, it was the practice of some of the members of the club, hence, it cannot be construed as misconduct to suspend the petitioner from the club and he further submitted that some other members had also blasted crackers, however, no serious action was taken against them by the respondent and their explanation expressing "regret" or "sorry" was accepted by the club. However, due to personal animosity and to victimise the petitioner, as he was a former President and a defeated candidate of the other group in the election of the club, the impugned suspension order was passed against law by the respondent.

13. Learned Senior counsel drew the attention of this Court to Rule 28 (c) of the Bye-laws. As per this rule, a minimum of three days notice shall be given for every meeting of the Executive Committee and an agenda of the meeting shall be furnished along with the note. The copy of the bye-laws of the respondent-club is also available in the typed set of papers, filed by the petitioner, which is not disputed by the respondent.

14. As per rule 18(b) of the bye-laws, suspension of membership and curtailment of privileges has been prescribed, which reads as follows:

In extraordinary circumstances, the Secretary or in his absence the Joint Secretary is empowered to suspend a member in concurrence with the President or the Vice-President in the absence of President for misconduct within the Club premises subject to ratification by the Executive Committee at its next meeting. No such suspension shall be in force shall be in force beyond 15 days. Unless in the meanwhile the Executive Committee otherwise decides.

15. Learned counsel appearing for the respondent submitted that as per the said provisions of the bye-laws, in extraordinary circumstances, the Secretary or in his absence, the Joint Secretary is empowered to suspend a member in concurrence with the President or the Vice-President in the absence of President for misconduct within the Club premises, subject to ratification by the Executive

Committee at its next meeting. It is made crystal clear that such suspension shall not be in force beyond 15 days, unless in the meanwhile the Executive Committee approves the order of suspension.

16. It is seen that as per the notice, dated 24.09.2013, the Honorary Joint Secretary of the Towers Club, the respondent herein had issued notice to the petitioner, stating that the Executive Committee on 23.09.2013, resolved to issue a show cause notice, as to why disciplinary action should not be taken against the petitioner for his misbehaviour concerning the incident that had taken place on 22.09.2013 at 8.00 p.m. at the club premises and also for the violation of car entry and exit regulation and called for an explanation from him within five days from the date of receipt of the notice. It was also informed that if there is no explanation from the petitioner, further action would be taken under Rule 18 of the Bye-law. By letter, dated 30.09.2013, the petitioner herein has sent his reply denying the allegation levelled against him and sought 15 days time for submitting his explanation and by a communication sent by the Hony. Secretary, 5 days time was granted for submitting his explanation. Subsequently, as per order, dated 18.10.2013, the petitioner herein was suspended by the Honorary Secretary, with immediate effect from 19.10.2013 till the enquiry is over by the Disciplinary Committee. Subsequently, by another order passed by the Honorary Secretary, dated 01.11.2013, the suspension order was extended from 01.11.2013 pending enquiry by the Disciplinary Committee. In this order, the Honorary Secretary of the respondent-club, has stated that the suspension order is extended till the enquiry.

17. Mr. R. Sankara Subbu, learned counsel appearing for the respondent submitted that this second order of suspension, dated 01.11.2013 and the said order was passed on fresh cause of action. However, the order reads that in continuation of the suspension order from 19.10.2013 for the misconduct, alleged therein and further, the suspension order was extended from 01.11.2013, pending enquiry by the Disciplinary Committee, hence, it cannot be said that the second order is based on any fresh cause of action.

18. A bare reading of the suspension order, dated 01.11.2013, would show that it is only a continuation of the earlier order and not based on any fresh cause of action.

19. As contended by the learned Senior counsel appearing for the revision petitioner, as per rule 28(c) of the Bye-laws, a minimum of three days notice was not given and a copy of the agenda of the meeting was also not furnished, in order to provide reasonable opportunity to the petitioner, who is admittedly a member of the club under suspension, hence, it has to be construed as a violation of principles of natural justice, since there was no reasonable opportunity for the petitioner.

20. As per the bye-law 18(b), of the club, it is made clear that only in an extraordinary circumstance, the Secretary or in his absence the Joint Secretary is

empowered to suspend a member in concurrence with the President or the Vice-President in the absence of President for misconduct within the Club premises subject to ratification by the Executive Committee at its next meeting and no such suspension shall be in force beyond 15 days, unless the same is ratified.

21. Here in the instant case, as per the order, dated 18.10.2013, the petitioner was suspended by the Honorary Secretary of the respondent-club with effect from 19.10.2013. It is seen that the mandatory provisions of rule 28(c) of the Bye-laws was not complied with by the respondent, as stipulated in the provision of law.

22. It is seen that Rule 18(b) of the Bye-laws of the club specifically stipulates that the Secretary or in his absence the Joint Secretary is empowered to suspend a member in concurrence with the President or the Vice-President in the absence of President for misconduct within the Club premises subject to ratification by the Executive Committee at its next meeting. In the order of suspension, there is no reference that the suspension was ordered in concurrence with the President or Vice-President in the absence of the President. As the provision, Rule 18(b) of the bye-laws, specifically stipulates the condition, it could have been specifically stated about the concurrence of the President or in his absence, the Vice-President and that the concurrence cannot be ratified by the President or Vice-President.

23. It is not in dispute that there was no Enquiry Committee constituted by the respondent club till date and the copy of the proceeding of the Disciplinary Committee was also not furnished to the petitioner. It is strange to note that further order, dated 01.11.2013 was also passed by the respondent, which reads as if it is a fresh suspension order but the order is only a continuation of the earlier order, as per the averments therein. Though the order was passed subsequently on 01.11.2013, it is an admitted fact that no enquiry was initiated against the petitioner, in order to follow principles of natural justice. As contended by the learned Senior counsel for the petitioner, copy of the resolution passed in the meeting and other material papers were not furnished. Without appointing any Enquiry Officer or Enquiry Committee, the respondent cannot extend the suspension order, stating that the order of suspension is extended, in view of Rule 18(b) of the bye-laws of the club, pending enquiry by the Disciplinary Committee.

24. The plea of the respondent is that the Towers Club represented by its Secretary is empowered to take action against the petitioner, a member of the Club. The plea of the petitioner is that by way of passing the impugned order, the right of the petitioner, a member of the club has been curtailed and the impugned order was passed against the bye-laws of the club. The respondent/defendant is empowered to take action against any member of the club, only as per bye-laws, the administration of the Club. Similarly, the petitioner, as a member of the club is entitled to certain rights, as per the bye-laws. When there is a violation of any rule relating to the bye-laws, the petitioner, being a member

is entitled to raise his legal plea, by way of approaching the civil Court. The infringement of the right of a member cannot be justified by the administration of the Club, merely saying that they are empowered to take action against the petitioner.

25. It is also pertinent to note that in similar cases, relating to one N.R. Madurakavi and K.V. Santhanakrishnan, for blasting crackers at the club premises, their reply was accepted by the respondent. It is seen that similar allegation was raised against other members, N.R. Madurakavi and K.V. Santhanakrishnan, however, they replied by way of "regret" for blasting the crackers, at the premises of the club, that was accepted by the respondent. The aforesaid factum is not disputed by the respondent.

26. On the aforesaid circumstances, the act of the petitioner blasting crackers alone could not be construed as a serious misconduct by the respondent, since in similar cases, accepting the reply submitted by Madurakavi and Santhanakrishnan, either "regret" or "sorry" was accepted and dropped the actions against the said members of the club.

27. The bye-laws of the club clearly stipulates that in extraordinary circumstances, the Secretary or in his absence the Joint Secretary of the club is empowered to suspend a member of the club, in concurrence with the President or the Vice-President in the absence of President for misconduct within the Club premises subject to ratification by the Executive Committee at its next meeting. Here, it cannot be said that there is an extraordinary circumstances and further, there is no reference for the concurrence of the President or the Vice-President in the absence of President for the order of suspension of the petitioner and principles of natural justice was not followed by the respondent. As contended by the learned Senior counsel appearing for the petitioner, this Court is of the view that there is a prima facie case made out in favour of the petitioner.

28. In similar cases, the respondent has accepted the "sorry" or "regret" made by the other similarly placed members of the club and therefore, the alleged occurrence of blasting of crackers in the club premises by the petitioner alone cannot be treated as a serious misconduct, warranting any severe punishment. It is also not in dispute that by the suspension order, the petitioner has been prevented from entering into the club since 19.10.2013 till date, in view of blasting of crackers at the premises.

29. Mr. R. Sankara Subbu, learned counsel appearing for the respondent contended that the petitioner herein be directed to tender regret or apology, so as to revoke the suspension order. The said view of the respondent expressed through his counsel would show that the allegation against the petitioner is not a serious misconduct but only based on the ego of both the parties, which cannot be encouraged by the Court.

30. According to the learned Senior counsel for the petitioner, the petitioner has suffered for about two weeks, as he was prevented from entering into the

premises of the club. As per the order passed by the respondent, the petitioner was not only suspended from his membership in the club but also restrained from entering into the club premises, even as a guest of any other member, he could not enter into the premises of the club. As per the suspension order, the petitioner could not enter into the club, even as a guest of any other member. Learned Senior counsel for the petitioner submitted that any member can bring his guest into the club, that is the right and privilege of such member, however, the said right of the other members is taken away by the impugned order.

31. It is not in dispute that even other members cannot treat him as guest of the club, which is an interference in the rights of the other members. He was prevented from entering into the premises of the club, since 19.10.2013, without conducting any enquiry and without furnishing copies of material papers along with the suspension order. It cannot be disputed that without following rules 18(b) and 28(c) of the Bye-laws, rights of any member of the club cannot be tampered with by the respondent. Action could be taken against any member, only as per the bye-laws, following principles of natural justice. In the present case, it was not followed and further, for more than two weeks, the petitioner has been prevented from entering into the club premises and as per the subsequent order passed on 01.11.2013, the suspension period was extended further, pending enquiry by the Disciplinary Committee, even without initiating any Domestic enquiry, though in the other similar cases relating to other member, only lenient view was taken by the respondent.

32. Mr. R. Sankara Subbu, learned counsel appearing for the respondent submitted that the revision petitioner is not entitled to maintain the revision petition, under Article 227 of the Constitution of India, as there is appeal provision available against the order passed by the Court below. On the other hand, Mr. Venkatachalapathy, learned Senior counsel appearing for the petitioner submitted that the petitioner has established that there is prima facie case made out and balance of convenience is also in favour of the petitioner and if interim injunction is not granted, that would cause irreparable injury or loss to the petitioner and further, the respondent herein has passed the order against the bye-laws of the Club, violating principles of natural justice and therefore, to prevent the abuse of process by the respondent and to meet the ends of justice, the petitioner is entitled to approach this Court and prefer the revision under Article 227 of the Constitution of India.

33. In this regard, it is relevant to refer the decisions rendered by the Hon''ble Apex Court. In M. Supraschand and Others Vs. C. Dhandapani and Others, , the Hon''ble Apex Court has held that while deciding a petition filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure, apart from prima facie case, the Court has to consider the balance of convenience, whereby the Hon''ble Apex Court has held as follows:

The construction of the building has already been completed. Hence, the balance of convenience would lie in permitting the appellants to sell/mortgage/lease the

property subject to the decision of the suit and further appeals.

34. While deciding the balance of convenience, the Court has to consider the consequence, if interim injunction is granted or otherwise to the parties. Learned Senior counsel appearing for the petitioner submitted that other members, who blasted crackers at the premises of the club were treated liberally, by accepting their regret in writing, whereas the petitioner herein was suspended without following mandatory provisions of the bye-laws and principles of natural justice. Though the order could not be extended beyond 15 days without the concurrence of the Executive Committee, the suspension order was also extended, without following the procedure. On the said circumstances, permitting the petitioner to act as a member of the club would not prejudice the administration of the club. If he is prevented from functioning as a member, even entering into the club, in view of the suspension order, even if subsequently the suit is decided in favour of the petitioner, such rights cannot be given back with retrospective effect and therefore, balance of convenience is in favour of the petitioner. It is further argued by the learned Senior counsel that the petitioner was the former president of the club and also a rival candidate, hence, only a vindictive action has been taken against the petitioner, though other members, who had also blasted crackers were considered liberally by the respondent.

35. In *Midas Hygiene Industries P. Ltd. and Another Vs. Sudhir Bhatia and Others*, , the Hon''ble Apex Court, while dealing with the scope of Order 39 Rule 1 and 2 CPC, in a matter relating to infringement of trademark or copyright, has held that if there is any infringement of trademark or copyright, interim injunction normally shall follow and mere delay in bringing the action is not sufficient to defeat grant of injunction in such cases. The Apex Court further observed in the decision that the grant of injunction becomes necessary, if it prima facie appears that the adoption of the trademark itself is dishonest, under the Copyright Act, 1957 and as per Section 135 of Trade Marks Act, 1999. The aforesaid analogy is applicable to the present case.

36. It has been made clear by the Hon''ble Apex Court that to meet the ends of justice, based on the prima facie case and balance of convenience being established, the Court has to grant interim injunction, to meet the ends of justice. The Hon''ble Apex Court in this regard in *Anand Prasad Agarwalla Vs. Tarkeshwar Prasad and Others*, has held thus:

6. It may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction. As noticed by the Division Bench that there are two documents which indicated that there was prima facie case to be investigated. Unless the sale certificate is set aside or declared to be a nullity, the same has legal validity and force. It cannot be said that no right could be derived from such certificate. Secondly, when the contesting respondents were in possession as evidenced by the record of rights, it cannot be said that such possession is by a trespasser. The claim of the contesting respondents is in their own right....



37. In Ravi Yashwant Bhoir Vs. District Collector, Raigad and Others, , the Hon''ble Supreme Court has held as follows:

The democratic set-up of the country has always been recognised as a basic feature of the Constitution, like other features e.g., supremacy of the Constitution, rule of law, principle of separation of powers, power of judicial review under Articles 32, 226 and 227 of the Constitution, etc. "Basic" means the basis of a thing on which it stands, and on the failure of which it falls. In democracy all citizens have equal political rights. Democracy mean actual, active and effective exercise of power by the people in this regard. It means political participation of the people in running the administration of the Government. It conveys the state of affairs in which each citizen is assured of the right of equal participation in the polity.

38. The Hon''ble Apex Court has categorically ruled that the democratic set up of our country has always been recognised as basic feature of the Constitution. When there are elected members in an Association or Club, though the winning candidates could become office bearers to run the association or club, they should not forget that they are representing not only the persons, who cast their votes in their favour but also the other members, who have not casted their votes in favour of such office bearers and the rivals, who contested and could not succeed in the Election. In fact the elected office bearers like President, Vice-president, Secretary etc., should discharge their function impartially and they cannot act against the bye-laws, without following principles of natural justice, in order to respect the democratic ideology of the Club or Association.

39. In the instant case, it is clear that the ego is the predominant factor, hence, leniency was shown to the similarly placed persons by the respondent and their regret in writing was accepted to drop the proceeding against them, though their action was of blasting crackers at the club premises. However, in the case of the petitioner, it was taken by the respondent as an extraordinary circumstance, which warrants suspension of membership under rule 18(b) of the bye-laws of the respondent-club, however, the mandatory provisions, as contemplated under rule 18(b) of the bye-laws of the club was not complied with by the respondent.

40. Mr. R. Sankara Subbu, learned counsel appearing for the respondent submitted that if the revision is allowed, the suit will become infructuous and the respondent would loose his right of appeal. Here, the dispute relating to the revision is with regard to the rights of the petitioner, being a member of the club and the empowerment of the respondent as the administration of the club. Taking action against any member, the club has no right but it is a power to be exercised, according to law. In such circumstances, the respondent cannot say that disposal of the suit or revision would affect right of appeal. In fact, right of a member in a club or association should be safeguarded and action should be taken only for violation by the Club or Association, only in accordance with law.

41. In the light of various decisions rendered by the Hon''ble Apex Court, it is

crystal clear that the respondent has taken a liberal view, so far as N.R. Madurakavi and K.V. Santhanakrishnan, other members of the club, whereas the petitioner is concerned, a serious view has been taken by the respondent, hence, he was suspended, without following procedures, without furnishing the material papers and mechanically the order of suspension was also extended by the another order, dated 11.11.2013, so as to extend the suspension beyond 15 days.

42. The Court below, without considering the fact that there is a prima facie case made out and balance of convenience is also in favour of the petitioner and as contended by the learned Senior counsel appearing for the petitioner, as interim injunction was not granted, it may cause irreparable injury, since he cannot avail the concession or benefit for the period of suspension, even if the suit is decided in his favour later on. It is the duty of any authority to pass appropriate orders, to meet the ends of justice. As the violation of bye-laws and non-compliance of principles of natural justice has established, based on the admitted facts, this Court is of the view that it is a fit case to invoke Article 227 of the Constitution of India and pass appropriate orders, to meet the ends of justice.

43. Having considered the facts and circumstances, this Court is of the view that the suspension orders passed against the petitioner is against bye-laws and principles of natural justice. It has been made clear that there is prima facie case made out and balance of convenience is also in favour of the petitioner. As contended by the learned Senior counsel appearing for the petitioner, if interim injunction is not granted, the orders of suspension, preventing the petitioner from entering into the premises of the club, either as member or guest of other members, would cause irreparable loss and even if the suspension order against the petitioner is revoked later on, the past dates cannot be brought back again, in order to provide concession to the petitioner. As contemplated under Order 39 Rule 1 and 2 CPC, the petitioner has established his right to get interim injunction, based on the admitted facts and the violation of the mandatory provisions of the Bye-laws by the respondent, as discussed above, however, the Court below has not granted interim injunction. Therefore, I am of the view that it is a fit case to invoke Article 227 of the Constitution of India and allow the revision preferred by the petitioner. In the result, this Civil Revision Petition is allowed and consequently, I.A. No. 15319 of 2013 is allowed and accordingly, interim injunction is granted in favour of the petitioner as prayed for till the disposal of the suit. The Court below is directed to dispose the suit, as early as possible, solely on merits, as per law, uninfluenced by the findings, if any, in this order. Consequently, connected miscellaneous petition is closed. No costs.