

(1993) 03 KAR CK 0005
In the Karnataka High Court
Case No : M.F.A. No. 510 of 1991

Dr. K.T. Shivaiah

APPELLANT

Vs

G. Puttaswamy Gowda

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Constitution of India, 1950 — Article 126, 226
Karnataka State T.B. Association Rules — Rule 10D, 12, 19

Citation : (1993) ILR (Kar) 1564 : (1994) 3 KarLJ 360

Hon'ble Judges : N.D.V. Bhat, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; P. Vishwanatha Shetty, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

N.D.V. Bhat, J

1. This Appeal is preferred against the order dated 18.2.1993 passed by the IV Additional City Civil Judge, Bangalore on I.As. III and V in O.S.No. 6342/1992. By the said order, the lower Court dismissed the application filed by the plaintiff at I.A.III and I.A.V filed by the proposed defendant-2 was allowed. The lower Court vacated the temporary injunction granted earlier by the same order.

2. Since Dr. Shivaiah and Sri Vishwanatha Shetty submitted to the Court that the matter be disposed of on merits, the matter has been taken up for final disposal at the stage of admission itself.

3. I have heard Dr. Shivaiah in person and Sri Vishwanatha Shetty, the learned Counsel appearing for the respondent.

4. The facts relevant for the disposal of this appeal briefly stated are as under:

Karnataka State T.B.Association, Bangalore, is a Society registered under the Karnataka Societies Registration Act. The Society for the purpose of carrying out

its affairs, is governed by its Rules and Regulations as also by its Bye-laws.

5. Dr. Shivaiah, the appellant in the instant Appeal was appointed as the Honorary Secretary of the said Association on 13.1.1992. He was so appointed by a notification dated 13.1.1992 issued by the President of the said Association, who it appears was also the Minister for Health and Family Welfare at that point of time. His appointment as Secretary by the President of the Society appears to have been ratified by the Central Committee by its resolution dated 30.4.1992. It is seen from Rule 19(b) of the "Rules and Regulations" of the Association, that Honorary Secretary will hold the office for a period of 3 years. It may be noted here that the term of office earlier was for 2 years and by a subsequent amendment, the period is extended to 3 years. It also appears that the said Rule was enacted with an objective to see that the continuity of the activities of the Association could be maintained, in fact that is what is actually stated in Rule 19(b) of the said Rule.

6. When this was so, the services of Dr. Shivaiah were terminated by another notification dated 25.9.1992 by the President of the said Association. It appears that the same was ratified by the resolution dated 12.10.1992 by the Executive Committee. Sri Vishwanatha Shetty, has also produced a xerox copy of the emergency meeting of the Central Committee also to show that even the termination of services of Dr. Shivaiah has been approved by the Central Committee. It is not necessary at this stage to go into the details with reference to this aspect and that the same can be conveniently considered at a later stage.

7. Having regard to the fact that his services as Secretary were terminated in the way and manner as indicated above, Dr. Shivaiah has filed the suit at O.S.No. 6342/1992 praying for a declaration that the impugned order (notification) dated 25.9.1992 of the defendant is null and void and to allow the plaintiff to continue till the expiration of the term prescribed under Rule 19(b) of the "Rules and Regulations". In the course of the said suit, plaintiff filed an application for temporary injunction praying for the issue of an interim injunction restraining the defendant and his agent from interfering with the peaceful functioning of the plaintiff as Secretary of the aforesaid Association till the disposal of the suit.

8. The suit of the plaintiff and the application for temporary injunction was resisted by the defendants. Defendants asserted that the termination of the services of the plaintiff was properly done. They also took up the other contentions, which are reflected in the affidavit accompanying the application praying for temporary injunction. In substance, defendants prayed for dismissal of the application for temporary injunction.

9. It is seen that in the first instance, the lower Court dismissed the application for temporary injunction. Being aggrieved by the same, the instant appellant on the earlier occasion preferred Miscellaneous First Appeal 2698/1992. This Court by its order dated 22.12.1992 dismissed the Appeal summarily with certain observations reflected in para No. 10 of its Judgment. This Court while dismissing

the Appeal summarily, among other things observed as under:

"I think it would meet the ends of justice if the appeal is dismissed with liberty to the plaintiff to apply afresh for interim relief after producing such material which is in his possession to show that even after 25.9.1992 he has continued to function as Honorary Secretary of the Association. If such motion were to be made by the plaintiff, the learned trial Judge shall determine the same on the basis of the material produced before him and after hearing both the side without being influenced or affected in any manner by the conclusion reached by him while passing orders on I.A.No. 1. It is ordered accordingly."

10. Thereafter, it is seen that the instant appellant filed I.A.No. III before the lower Court reviving his claim for temporary injunction in the context of the observations made by this Court. The same was opposed by the other side.

11. The other Court by its impugned order, took the view that plaintiff has no prima facie case and the balance of convenience also not in his favour. In the result, the application filed by the instant appellant at I.A. III came to be dismissed by the lower Court. Hence, the instant appeal.

12. The point for consideration is as to whether the order passed by the lower Court is not sustainable.?

13. There is no dispute that plaintiff was appointed as the Secretary of the Karnataka T.B.Association, Bangalore. It is also clear that plaintiff was appointed by the President of the Association. It is further seen that the appointment of the plaintiff as the Secretary by the President was subsequently ratified by the Central Committee. It is further seen that the appellant's services as Secretary of the Association were terminated by the President of the Association. It is further seen that the same was subsequently ratified by the Executive Committee. According to Sri Vishwanatha Shetty, the same was also ratified by the Central Committee and he has produced a xerox copy of the resolution of the emergency meeting of the Central Committee held on 12.10.1992.

14. At this juncture, it would be indeed convenient to make a reference to the "Rules and Regulations" of the Association relevant for consideration. The Rule relevant for consideration in this context is Rule 19 of the "Rules and Regulations" of the T.B. Association. The said Rule relates to the appointment of Secretary and also relates to the term of the office of Secretary. It reads as under:

"19. (a) The Central Committee shall appoint an Honorary Secretary who shall be responsible for the proper keeping of the accounts and for discharge of such duties as may from time to time be entrusted to him by the Central Committee,

(b) The Honorary Secretary will hold Office for three years, so that continuity of activities of the Association could be maintained."

15. At this juncture, it would be indeed in fitness of things to make a reference to

Rule 12 of the "Rules and Regulations" also. The said Rule relates to the powers of the Executive Committee, as also the other functions relating to Executive Committee. Clause (a) and (b) of Rule 12 are relevant for the purpose of resolving the question in controversy and that therefore it will suffice if only the said clauses of Rule 12 are culled out. They read as under:

"12. (a) At the first meeting after the Annual General Meeting each year, the Central Committee shall appoint from amongst its members an Executive Committee for the transaction of the current duties of the Association.

(b) The Executive Committee will exercise all the powers of the Central Committee save and except the powers mentioned in 10(d), (e) and (f).

(c) to (f) xxx xxx xxx"

16. On a perusal of the Rules culled out hereinabove it becomes clear that it is the Central Committee, which is competent to appoint the Secretary of the Association, It is also clear that the term of the office of the Secretary is 3 years, It is further clear that the Executive Committee can also exercise the powers of the Central Committee except of course in relation to the powers of the Central Committee pertaining to Rule 10(d), (e) and (f). It is necessary to notice here that Rule 10(d) deals with framing of bye-laws and Rule 10(e) deals with altering or amending the Regulation and Rule 10(f) deals with the matter relating to the passing of the accounts. It is therefore clear that except with reference to these items, the Executive Committee in terms of the powers conferred upon it under Rule 12 of the Rules can exercise all the powers of the Central Committee.

17. It is seen in the instant case, that the appellant was appointed as Secretary as pointed out earlier on 13.1.1992 and that his services were terminated on 25.9.1992. The submissions made by Dr. Shivaiah with reference to the termination of his services as Secretary are two-fold. In the first place Dr. Shivaiah contended that the termination of his services as Secretary is in violation of Rule 19(b) of the "Rules and Regulations", in that, his services are terminated even before the expiration of the period prescribed by the said Rule. His second contention in this behalf is that the termination of his services as Secretary is done by a person, who has no power to terminate his service. In addition to these two contentions the third contention raised by Dr. Shivaiah is that the finding given by the lower Court with reference to the question as to whether he continued as an officiating Secretary. Each of these contentions raised by Dr. Shivaiah has been repudiated by Sri Vishwanatha Shetty, the learned Counsel appearing for the respondent.

18. The submission made by Dr. Shivaiah on the one hand and the submissions made by Sri Vishwanatha Shetty, the learned Counsel appearing for the respondent on the other, will have to be considered in the context of the totality of the facts of this case alluded to earlier and in the context of the Decisions cited at the Bar on either side. The Decisions cited at the Bar on behalf of the appellant, are the Decisions in EXECUTIVE COMMITTEE OF VAISH DEGREE

COLLEGE, SHAMLI AND ORS. v. LAKSHMI NARAIN AND ORS. AIR 1976 SC 88 and the Decision in The Asansol Electric Supply Co. and Others Vs. Chunnilal Daw, .

19. On the other hand, the learned Counsel appearing for the respondent, apart from depending upon certain observations made by the Supreme Court in the very Decisions cited by Dr. Shivaiah, has also relied on the Decisions in Indian Airlines Corporation Vs. Sukhdeo Rai, and the Decision in Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and another Vs. N. Seetharama Raju, Bhutkun Jha and Another Vs. Vice-Chancellor and Others, .

20. In the Decision in Vaish Degree College's case the Supreme Court (majority view) among other things has pointed out that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. It is further pointed out that the said Rule, however, is subject to three well recognised exceptions. The said exceptions are:

(i) Where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India.

(ii) Where a worker is sought to be reinstated on being dismissed under the Industrial Law; and

(iii) Where a statutory body acts in breach or violation of the mandatory provisions of the statute.

21. In Indian Airlines Corporation's Case, the Supreme Court at para No. 12 of its judgment has among other things observed as under:

"12. Nor can Counsel derive any aid from the decision in Dr. Indramani Pyarelal Gupta Vs. W.R. Nathu and Others, where the Court was dealing with a bye-law made by the Central Government under powers conferred on it by the Forward Contracts (Regulation) Act, 1952 which compulsorily amended the bye-laws of the association recognized under the Act and which vested certain powers on authorities external to the association. The bye-law in question was not limited in its application to the members of the association but to all those who entered into forward contracts and were governed by its bye-laws. But all rules and regulations made by authorities in pursuance of a power under a statute do not necessarily have the force of law. In Kruse V. Johnson (1898) 2 QB 91 at P.96 while considering the validity of a bye-law made by a county council, Lord Russell described a bye-law having the force of law as one affecting the public or some section of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. If validly made such a bye-law has the force of law within the sphere of its legitimate operation. The function of such bye-laws is to supplement the general law by which the legislature delegates its

own power to make them. In *Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others*, where this Court held the Board, set up under the Electricity (Supply) Act, 54 of 1948, as a State within the meaning of Article 126 of the Constitution against which mandamus could issue under Article 226, emphasised the fact that the Act contained provisions which empowered the Board to issue directions, the disobedience of which was punishable as a penal offence. As observed earlier, under Sections 8(2) and 20, the appellant-Corporation has been given the power to employ its own officers and other employees to the extent it thinks necessary on terms and conditions provided by it in regulations made u/s 45. The regulations contain the terms and conditions which govern the relationship between the Corporation and its employees. Though made under the power conferred by the statute, they merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them. That being so, and the Corporation having undoubtedly the power to dismiss its employees, the dismissal of the respondent was with jurisdiction, and although it was wrongful in the sense of its being in breach of the terms and conditions which governed the relationship between the Corporation and the respondent it did subsist. The present case, therefore, did not fall under any of the three well recognized exceptions, and therefore, the respondent was only entitled to damages and not to the declaration that his dismissal was null and void."

22. In the *Asansol Electric Supply Co.'s Case* among other things it is pointed out that the relationship between master and servant is often a matter of contract and if such contract is wrongfully terminated, the remedy of the aggrieved party lies in an action for damages and the Court will not grant a declaration that a contract of service still subsists and that such a declaration will amount to an order for specific performance of personal service which is practically forbidden in law. It is further pointed out that the position, however, will be different when a statute intervenes in the relationship of master and servant and the employee is given a statutory status. It is held that if there is a violation of the provisions of the statute in terminating the service of such an employee he will be eligible for a declaration that the order terminating the service is a nullity.

23. In the Decision in *Bhutkun Jha and Another Vs. Vice-Chancellor and Others*, the Patna High Court has reiterated the point that the principles of natural justice should be followed by the Courts of Law by giving a notice.

24. In *Sri Konaseema Co-operative Central Bank Ltd.'s Case* among other things, the Andhra Pradesh High Court has pointed out that the bye-laws made by a Co-operative society registered under the A.P. Co-operative Societies Act do not have the force of law, and that they are in the nature of a contract, the terms of contract being between the society and its employees or between the society and its members as the case may be.

25. I have carefully gone through the totality of the Decisions referred to hereinabove. The ratio laid down in the totality of the aforesaid Decisions would clearly go to show that the "Rules and Regulations" framed by a society like the one under consideration are not statutory provisions as such. But, they are in the nature of a contract between the members and members, and members and the society. In other words, the Rules and Regulations of such a society or association cannot be construed as statutory provisions. In fact, Dr. Shivaiah the appellant in this case, has particularly drawn the attention of this Court to the observations made by His Lordship Hon''ble Sri Justice P.N. Bhagwati in Vaish Degree College's case, in support of his contentions, that the rules framed by the society like the one under consideration are enforceable in the way and manner as he has sought to enforce in this case. At this juncture, it would be indeed in fitness of things to see as to what is the gist of the observations made by His Lordship in that behalf. In fact, in the said Decision, the gist of the observation is correctly crystallised in the Head Note. In the said case, it is summarised as under:

"Where, the termination is outside the powers of a statutory body either because the statutory body has no power to terminate the employment or because the termination is effected in breach of a mandatory obligation imposed by law which prescribes that the termination shall be effected only in a particular manner and no other, it would be a nullity and the employee would be entitled to ignore it and ask for being treated as still in service."

26. A careful perusal of the observation made by His Lordship does not leave any doubt as regards as to what is meant by His Lordship in making the aforesaid observation. It is significant to notice here that the observation of His Lordship, the gist of which is culled out hereinabove, is made with reference to a statutory body. It is needless to say that a society framed or formed with reference to the provisions of the Societies Registration Act, cannot be a statutory body. A statutory body is an organisation created under the statute itself. For Example, a Municipality, The Bangalore Development Authority and the like are statutory bodies, because they are incorporated in the statute. However, such is not a situation when a Society is formed by a Memorandum of Association in furtherance of the provisions made in the Societies Registration Act Further, it is necessary to point out here that the Rules or for that matter, the bye-laws framed by such societies cannot be construed as statutory provisions. They are in the nature of a contract between the different persons involved in the said society. In fact, the Full Bench Decision of the Andhra Pradesh High Court in the Decision referred to earlier has stated that the bye-laws of the co-operative societies are not at all statutory provisions and they do not have the force of law. I hasten to add here that this Court is not dealing with co-operative society in the instant case. This Court is dealing with the society registered under the Societies Registration Act. However, the ratio laid down in my view, in the said Decision by the Andhra Pradesh High Court, would apply to the Bye-laws or the Rules created by the Society under the Societies Registration Act also. Further,

para No. 12 of the Judgment of the Supreme Court in Indian Airlines case does not leave any doubt whatsoever with reference to this aspect and it is not at all necessary for this Court to dwell further on this aspect. Under these circumstances, I am not impressed by the submission made by Dr. Shivaiah that these Rules are enforceable in a Court of law. It is needless to say that Article 311 of the Constitution of India cannot be invoked in a situation like the one in hand, having regard to the fact the Society in question is not a statutory body and also having regard to the fact that the Rules framed by the said society are in the nature of a contract. In that view of the matter, it would also follow that the Decisions pressed into service by Dr. Shivaiah also are not of any assistance to him.

27. Dr. Shivaiah, however, as pointed out earlier contended that the President of the society has no power to terminate his service. In fact, Dr. Shivaiah, has as pointed out earlier relied upon Rule 19(a) to contend that only the Central Committee and Central Committee alone, which has power to terminate his service. It is necessary to point out here that Rule 19(a) does not speak of termination. It speaks of appointment. However, what Dr. Shivaiah would like to contend is, that it is only authority which is competent to appoint a person that is competent to dismiss him. He therefore, contends that if at all, it is the Central Committee of the Association, which could have terminated his services and the President of the Association did not have any such power. The submission made by Dr. Shivaiah requires little discussion. It is significant to notice here that Dr. Shivaiah was appointed by a notification by the President only. However, it is seen that his appointment by the President in the first instance was subsequently ratified by the Central Committee as pointed out earlier. In the same way, it is seen that the services of Dr. Shivaiah have been terminated by a notification of the President and the same has been ratified by the Executive Committee. The fact that it was ratified by the Executive Committee does not appear to be a fact in controversy.

However, Dr. Shivaiah has asserted that his termination of service is not ratified by the Central Committee at all and the Executive Committee has no power to ratify his termination. As pointed out earlier, Sri Vishwanatha Shetty has produced a xerox copy of the emergency meeting of the Central Committee, which goes to show that it has ratified the action of the Executive Committee. Further, it is seen particularly with reference to Rule 12(a) and (b) that the Executive Committee is empowered to exercise all the powers of the Central Committee except of course the powers under Rule 10(d), (e) and (f). Rule 10(d), (e) and (f) are not the powers relating to the appointment of the Secretary and they are the powers relating to other items referred to earlier. Under these circumstances, it is clear that the power of the Central Committee with reference to the appointment also is delegated to the Executive Committee in terms of Rule 12(a) and (b). In that view of the matter, even assuming for the time being that the termination of service of Dr. Shivaiah is not ratified by the Central Committee, but is only ratified by the Executive Committee, the same

will have to be construed as having been ratified by the Central Committee also having regard to the power delegated to the Executive Committee. It is needless to say that two standards cannot be adopted with reference to the appointment and with reference to termination of service. If a particular modus operandi is adopted with reference to the appointment of the Secretary and the same modus operandi is adopted in relation to the termination of service, in my view, the same cannot be found fault with and two standards cannot be applied while examining the correctness or otherwise of the two situations, namely, the situation relating to appointment and the situation relating to the termination of service. If the appointment was ratified subsequently and that therefore it is good, the termination of the services, which is also ratified subsequently should also be good. Under these circumstances, I am not impressed by the submissions made by Dr. Shivaiah, that the powers of termination of service cannot be delegated to anybody. Infact, the framers of the Rules in their wisdom have thought it necessary to delegate the power by a Rule itself and having regard to the fact that the said Rule is not challenged, it is not necessary for this Court to go into the details with reference to that aspect. It will suffice if it is observed at this stage with reference to this case that the Rules of the Executive Committee are framed so as to exercise the powers of the Central Committee. Under these circumstances, I am of the view that the fact that the termination of service was effected by the President of the Association cannot be held to be a point in favour of the plaintiff that the termination is void.

28. Dr. Shivaiah, however, challenged the finding given by the Court below with reference to the question as to whether he continued to be an Officiating Secretary? This aspect is dealt with by the lower Court at para No. 12 of its judgment. In order to have a clear idea as regards as to what has been observed by the learned Judge, with reference to this aspect, it would be convenient to cull out the said para. It reads as under:

12. I have carefully perused the documents produced by the plaintiff. On perusal of these document it appears that these documents do not bear the seal of the Hon.Secretary of Karnataka State T.B. Association, Bangalore, and that the letters do not bear any letter numbers of the Office. In my considered view, the letter addressed by the plaintiff to the Canara Bank appears to be in his individual capacity. He has produced three acknowledgments issue by the Police and they are in his favour. The copy of the complaint dated 30.9.1990 is also in his individual capacity. The acknowledgment is issued to him by the Police on 30.9.1992. On perusal of the complaint - P.C.R.206/92, the complainant himself has stated that Kum.Shoba has taken over the cash book along with cash from the complainant on 17.3.1992 and she has refused to hand over the same to him and on the other hand, she has handed over the same to the defendant. The document at Annexure - G also does not bear the office seal and letter number of the Officer. On perusal of the affidavit of the plaintiff dated 8.1.1993, the plaintiff has asserted that he is in physical possession of the keys of the said association as Hon. Secretary except the duplicate keys which have been stolen. He has

further asserted in his evidence that he has signed the attendance register of the association, which is stolen. The plaintiff appears to have not taken any action against these matters. In my considered view, the above said documents are not very clear to presume that the plaintiff has acted as Hon.Secretary on 25.9.1992. In the instant case the plaintiff has sought for declaration that the impugned order bearing No. MHFW/h/N/8258/92 dated 25.9.1992 of the defendant as null and void and the plaintiff be allowed to continue in his appointment till his term expires. The plaintiff has not sought for any relief of permanent injunction in the plaint. On the other hand, the defendants have produced the resolutions of the Executive Committee Meeting held on 12.10.1992, 29.11.1992 and Office memo dated 24.11.1992 and charge list, which clearly go to show that the termination of the plaintiff was ratified by the executive Committee and one Sri Sundareshwar was appointed as Hon.Secretary of the Karnataka State T.B. Association and accordingly, the said Sundareshwara was continued to act as Hon.Secretary of the Karnataka State T.B. Association since then."

29. The observation made by the learned Judge in para 12 is there as it is. At this juncture, it is necessary to point out here that this Court while sitting in judgment of an order passed under Order 43 Rule 1(r) CPC. will not disturb the finding given by the Court below, unless this Court reaches a conclusion that the finding in that behalf is either perverse, absurd or unreasonable. Further, it is also well settled that even if it is possible for the appellate Court to take a view different from the one taken by the Court below, the same will not be ground to interfere with the finding given by the Court below, unless this Court reaches a conclusion that the finding in that behalf is absurd. In my view, it is not at all possible to say that the finding given by the Court below is either absurd or unjust. Further, I am of the view that having regard to the fact that plaintiff has no prima facie case, this aspect should not really arise for consideration. However, it is seen that this Court on an earlier occasion while disposing the Miscellaneous First Appeal referred to above had directed the Lower Court to consider the question relating to point No. 3 and in fact, liberty was reserved for the plaintiff to revive the application and accordingly, plaintiff has filed the application at I.A.III. In my view, even the finding in that behalf given by the Court below cannot be said to be either absurd or unreasonable. Looked at from that point of view also, I am of the view that the finding given by the lower Court in that behalf cannot be found fault with. Further, it is seen that the office held by the plaintiff though is described as Honorary, It is seen that the said office carries a sum of Rs. 1,000/- per month as Honorarium and Rs. 500/- as conveyance allowance, as can be seen from Clause (f) and agenda No. 8 of the resolution of the Central Committee (Annexure "C"). It is therefore clear that even if plaintiff ultimately succeeds in the suit, it is not as if plaintiff cannot be compensated by way of damages or by way of compensation. Further, looked at from this point of view also, I am of the opinion that it is possible to say that the balance of convenience is in favour of the plaintiff.

30. From what is stated hereinabove, it is clear that the plaintiff has no prima

facie case and balance of convenience is also not in his favour. The lower Court has reached the same conclusion and I have no hesitation whatsoever in concurring with the finding given by the Court below.

31. For the reasons stated hereinabove, the Appeal is dismissed.