

(2010) 12 BOM CK 0007
In the Bombay High Court
Case No : First Appeal No. 50 of 2005

Gomantak Marathi Shikshan Parishad	Vs	APPELLANT
The State of Goa and Others		RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2010) 12 BOM CK 0007

Hon'ble Judges : N.A. Britto, J

Bench : Single Bench

Advocate : D. Pangam, for the Appellant; G. Shirodkar, Government Advocate and I. Agha, for the Respondent

Final Decision : Dismissed

Judgement

N.A. Britto, J.—Heard.

2. This appeal is directed against judgment dated 14/12/2004 of the learned Adhoc Additional District Judge, Panaji by which the suit filed by the Plaintiff, inter alia, for declaration that the executive committee of the Plaintiff elected on 24/04/1994 be declared as legally elected, has been dismissed.

3. The Plaintiff-Society was registered on 11/09/1969 under Societies Registration Act, 1860. It is managed by a committee of nine members. The first executive committee, inter alia, consisted of Shri D.B. Wagh as chairman, Shri Mohan Ranade as General Secretary and advocate Shri Tamba as treasurer and they managed the Plaintiff-Society till 29/06/1977 when another Executive Committee came to be elected with Dr. Shripad Cuncolienkar (Defendant No. 3) as Chairman, Shri Nanda D. Borkar, as General Secretary and Mohan Ranade as treasurer.

4. The dispute in the management of the Plaintiff-Society appears to have surfaced in the year 1993 between the groups led by the said Shri Mohan Ranade supported by Shri N.D. Borker and Dr. Shripad Cuncolienkar (Defendant No. 3) respectively.

5. The suit was filed by the Society through Shri Nanda D. Borkar, as General Secretary. The Plaintiff had examined the said Shri Nanda D. Borkar in support of its claim. The Defendants examined Defendant No. 7 in support of the defence and according to them the said Shri Nanda D. Borkar was removed from the post of General Secretary on 8/10/1993 and from primary membership from 21/11/1993.

6. The learned Trial Court after considering the evidence produced by the parties came to the conclusion that the Plaintiff had miserably failed to prove that the Committee headed by Mohan Ranade was lawfully constituted, as the Plaintiff did not produce any records to show who were the members who had attended the meeting held on 3/10/1993, in as much as, the Plaintiff had produced no proof to show whether the members were duly informed about the said meeting held on 3/10/1993. The learned Trial Court also held that although the Plaintiff claimed to have expelled Defendant No. 3 Dr. Cuncolienkar from the chairmanship of primary membership of the said Society there was no proof that proper procedure was adopted as required under the bye laws of the Society and that it was the admitted fact that the Committee headed by Defendant No. 3 Dr. Cuncolienkar was managing and looking after the affairs of the school. The learned Trial Court also held that the proceedings of the meeting held on 3/10/1993 was an unilateral act on the part of the Plaintiff and few members, and the same did not enjoy the support of the majority of the members and, therefore, the learned Trial Court proceeded to dismiss the suit.

7. Here, it may be stated that according to the Plaintiff, on 3/10/1993, a new Committee was elected with Shri Mohan Ranade as Chairman for the period up to 31/03/1994 and on 19/12/1993 the membership of Defendant No. 3 Dr. Cuncolienkar was terminated and on 24/04/1994 a new Executive Committee was elected for a period of three years with Shri Mohan Ranade as President and Shri Nanda D. Borkar as General Secretary. The plaint did not mention as to who was the treasurer or the other members of the said executive committee, elected on 3/10/1993.

8. Be that as it may, Shri Pangam, the learned Counsel appearing on behalf of the Appellant/Plaintiff submits that Defendant No. 3 Dr. Cuncolienkar did not step in the witness box who was otherwise removed from the post of chairmanship of the said Society, and though it was pleaded that Defendant No. 3 was removed from the primary membership of the Society it was conceded later that he continued to be a member of the said Society. Learned Counsel submits that the learned Trial Court has not marshalled the evidence produced and has not considered the pleadings of the parties and, therefore, the case needs to be remanded for fresh findings. Learned Counsel submits that Defendant No. 3 Dr. Cuncolienkar held a meeting on 17/04/1994 and prior to that they had no records to produce, as all the records were with the Committee elected on 24/04/1994 with Shri Mohan Ranade as a Chairman and Shri Nanda D. Borkar as the General Secretary.

9. Admittedly, until 2/10/1993 at least Defendant No. 3 and Shri N.D. Borkar had continued to be the President and Secretary, respectively, of the Plaintiff-Society and if that be so, the records of Society were bound to be with the said Secretary Shri N.D. Borkar. An executive committee can be elected only by the general body. The general body had 51 life members. The minutes of meeting Exhibit PW1/J show that six members got together on 3/10/1993 and elected Shri Mohan Ranade as the President, Shri Nanda D. Borkar to be the General Secretary and Shri Vinayak Naik to be the treasurer. Not even 9 members were present which were required to form an executive committee. It may be noted here that the said minutes do not even reflect that all the 9 existing executive committee members were notified of the said meeting, much less 51 life members which the said Society is stated to have had. The meeting held on 19/12/1993 was no different and in this meeting in fact only five members appeared including the said Shri Mohan Ranade and Shri Nanda D. Borkar and this meeting was called by Shri Nanda D. Borkar after he was removed by the other group of Dr. Cuncolienkar, not only as General Secretary, but also as primary member of the said Society. As said before, this meeting also does not show that a notice was sent to all the members of the Society. Minutes of meeting dated 24/04/1994 also do not show that all members were duly notified of the said meeting, though it shows that 23 members attended the said meeting. It may also be stated that no corroborative evidence has been produced by the said Shri N.D. Borkar; and therefore such a self appointed executive committee could not have been given any legal status for it was not elected after all the members of the Society were duly notified. That apart, the position which emerges today is that all those who seek the declaration that they are legally elected are not before the Court. The term of office for which they were elected itself came to an end after 3 years from 24/04/1994 and as conceded by the learned Counsel appearing on behalf of the parties it is neither the group led by the said Shri Mohan Ranade supported by the said Shri Nanda D. Borkar nor the group led by Defendant No. 3 Dr. Cuncolienkar is in charge of the affairs of the said Society and the affairs of the Society are being managed by some other members. It is for this reason probably that none of the Respondents (except Respondents Nos. 1,2 and 12) have contested the present appeal, and Respondent No. 3 inspite of a separate notice served upon him. Such a self styled and self appointed committee without notice to the members of the Society could not have any legitimacy and if at all it was not recognised by the Directorate of Education, it was precisely for that reason and not because Defendant No. 3 Dr. Cuncolienkar was an influential person.

10. It is well settled that grant or refusal of relief of declaration is discretionary. The Plaintiff cannot claim the relief as of right. It has to be granted according to sound principles of law and ex debito justitia. As the Plaintiff-Society is being run by some other members, and for reasons stated above, no useful purpose would be served by granting the declaration sought by the Society.

11. In the circumstances, therefore, no fault can be found with the judgment of

the learned Trial Court.

12. There is no merit in this appeal and, consequently, the same is hereby dismissed.