
(1963) 01 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 360 of 1962

Gulabchand Gupta

APPELLANT

Vs

The Hitkarini Sabha and Others

RESPONDENT

Date of Decision : 15-01-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1963 MP 270 : (1964) ILR (MP) 524 : (1963) JLJ 431 : (1963) MPLJ 293

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : S.C. Dubey, for the Appellant; R.S. Dabir and R.P. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This order will also govern the disposal of Misc. Petition No. 409 of 1962.

These two petitions are by persons who claim to be Life Members of the Hitkarini Sabha, Jabalpur (hereinafter referred to as the Sabha), which is a society registered under the Societies Registration Act, 1860 (hereinafter referred to as the Act) and has as its aims and objects, inter alia, the promotion of "moral, social, and intellectual interests and well-being of the people" and the extension and promotion of "literary, technical and other useful knowledge amongst the people ordinarily by maintaining a High School, an Arts College, a Law College." The petitioner Gulabchand in Misc. Petition No. 360 of 1962 challenges the validity of the Ordinary General Meeting of the Sabha held on 29th September 1962 at which 32 persons were enrolled as members of the Sabha and Manmohandas, respondent No. 2 to the petition, was elected as the Chairman of the Sabha. He prays for the issue of a writ of certiorari for quashing the proceedings of the meeting and the decisions taken thereat.

In the other case, the petitioners' complaint is that though they are life members of the Sabha and have been recognized as such and have enjoyed the rights and privileges of life members for years, the respondents through the Secretary of the Sabha issued notices to them on 26th October 1962 informing them that their recognition as life members had been declared to be illegal, void and inoperative. These petitioners allege that the action of the respondents 1 to 4 to their petition was mala fide, illegal and ultra vires the rules of the Sabha. Their prayer is that the respondents be commanded by the issue of a direction or order in the nature of mandamus to treat them as life members of the Sabha and to desist from interfering with their rights, privileges and duties as life members of the Sabha.

The common preliminary question that arises for consideration in both these petitions is whether the writs of directions which the petitioners desire to be issued can at all be issued to the Sabha. Shri Dube, learned counsel appearing for the petitioner Gulabchand, argued that the Sabha was a corporate body, that it had framed bye-laws, rules and regulations for the management of its business; that the Sabha was discharging a public function by running a school and a college; that the Sabha was required to conduct its business in accordance with rules, bye-laws etc., and being a public body discharging public duties, its decisions "affected the rights of the subject"; and that consequently if the Sabha took a decision contrary to its rules or in excess of its powers, then that decision could always be quashed by the issue of a writ of certiorari.

Shri Choubey, learned counsel who appeared for the petitioners in the other case, while supporting Shri Dube's argument with regard to the status, position and nature of the duties of the Sabha, added that as life members of the Sabha the petitioners in Misc. Petition No. 409 of 1962 were holding offices of public nature and, therefore, if the respondents had unlawfully deprived them of those offices then a writ in the nature of mandamus could be issued to the respondents to admit the said petitioners to the offices of life members.

On giving the matter our careful consideration we have formed the view that a writ of certiorari or a writ in the nature of mandamus, which the petitioners pray for, cannot be issued to the opponents. The essential features and conditions under which a writ of certiorari can be issued have been pointed out by the Supreme Court in *Province of Bombay Vs. Kusaldas S. Advani and Others*, ; *T.C. Basappa Vs. T. Nagappa and Another*, and *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, and several other cases.

The basic principle laid down in these cases is: "whenever any body of persons having legal authority to determine questions affecting rights of subjects and having the duty to act judicially act in excess of their legal authority, a writ of certiorari may issue." Accordingly it has been held by the Supreme Court in *T.C. Basappa Vs. T. Nagappa and Another*, that one of the fundamental principles in regard to the issuing of a writ of certiorari is that a writ can be availed of only to remove or adjudicate on the validity of judicial acts; and that the expression

"judicial acts" includes the exercise of quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with, what are purely ministerial acts. In this case the basic principle stated above and enunciated by Atkin L.J. in *Rex v. Electricity Commissioners* (1924) 1 KB 171 was again reiterated by the Supreme Court.

In *(S) Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, it was said that with regard to the issue of a writ of certiorari the following propositions may be taken as established:

"(1) "Certiorari" will be issued for correcting errors of Jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) "Certiorari" will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The Court issuing a writ of "certiorari" acts in exercise of a supervisory and not appellate jurisdiction."

It was also stated in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, that a writ of certiorari could be issued to correct an error of law manifest on the face of the record.

It is thus clear from these authorities that unless the body or authority or person against whom a writ of certiorari is sought for sending up his records for being quashed has legal authority to determine questions affecting the rights of subjects and is required to act judicially in that determination, a writ of certiorari cannot be issued for quashing its decision or determination. Now, the Sabha is clearly not a body exercising judicial or quasi-judicial functions. It has no doubt framed rules, bye-laws and regulations for the management of its business, election of members, conduct of meetings etc., and the Sabha is expected to act and conduct itself in accordance with those rules, bye-laws etc., but merely because such rules and regulations have been framed, the Sabha does not become a judicial or a quasi-judicial authority required to act judicially in the discharge of its functions. It also does not determine any questions affecting the rights of the subject. The Sabha may be running a college or a school and doing much for promoting moral, social, educational and intellectual well-being of the people; but that does not mean that a duty is cast on it under a statute to take decisions affecting the rights of the subject and to act judicially in taking those decisions.

Shri Dube laid stress on the fact that the Sabha was a society registered under the Act. The registration of the society under the Act only gives to the Sabha the status of a legal entity. It does not confer on the Sabha the authority to take decisions and determine questions affecting the rights of subjects or impose on the Sabha the duty to act judicially in deciding such questions. As is evident from

the Act, it is meant for the registration of literary, scientific and charitable societies and its object is to make provision for improving the legal condition of societies established for the promotion of literature, science, or for the diffusion of useful knowledge or for charitable purposes. The Sabha is only an association of individuals which is neither a corporation nor a partnership. If it had not been registered under the Act, it would have had the character of a club or other association which could not sue or be sued except in the name of all members of the association or other members of the governing body on their own behalf and on behalf of the other members of the association under Order 1, rule 8 of the Code of Civil Procedure. But by reason of the provisions of the Act if the society is registered, then it enjoys the status of a legal entity apart from the members constituting the same and is capable of suing or being sued.

Learned counsel referred us to Section 9 of the Act which gives to a registered society the power to recover any penalty under the bye-laws by filing a suit against the person liable to pay the same, to support the contention that the Sabha was a body having the authority to determine questions affecting the rights of the subject. But we fail to see how this position follows from the provision which does nothing more than to make a penalty imposed under a bye-law recoverable by filing a suit. The provision only makes a bye-law enforceable in a Court of law. In any case it cannot be argued on the strength of Section 9 that in taking decisions that it did at the General Meeting on 29th September 1962 the Sabha did something which affected the rights of the subject.

Learned counsel referred us to certain observations of a Division Bench of this Court in *Shrikant Mukerji v. Council of Management, Hitkarini Sabha*, L.P.A. 48 of 1954 D/- 28th July, 1955 (MB). In that case Shrikant Mukerji and three other persons challenged by filing an application under Article 226 of the Constitution the decision of the Sabha removing Mukerji from the office of the Secretary of the Sabha. The application was dismissed by the learned Single Judge who heard it and in Letters Patent Appeal against that decision of dismissal Hidayatullah C. J. (as he then was) while dismissing that appeal made the following observations:

"The term of the present Secretary would have expired in September but for his removal now, and for the remainder of the term to determine an important question of constitutional law is hardly necessary. Suffice it to say that the interference with the internal affairs of a corporation or a society is not the rule but the exception, and even in those cases where interference has been made it is mainly because of some public purpose and in view of a glaring non-observance of the rules. It is not shown that the provisions of Act XXI of 1860 are infringed so as to give rise to a question of public importance."

The learned Chief Justice then referred to the following passages from Bailey on Jurisdiction (Special Remedies), Vol. II:

"The visitorial or superintending power of the state over corporations created by the legislature will always be exercised in proper cases, through the medium of

the Court of the state, to keep those corporations within the limits of their lawful powers and to correct and punish abuses of their franchises. To this end the Courts will issue writs of quo warranto, mandamus or injunction, as the exigences of the particular case may require; will inquire into the grievance complained of; and if the same is found to exist will apply such remedy as the law prescribes. Every corporation of the state, whether public or private, civil or municipal, is subject to this superintending control, although in its exercise different rules may be applied to different classes of corporations."

(Section 802, page 999)

"With respect to purely private corporation it is a recognized rule that the Courts will not interfere with their internal regulations in regard to the enforcement of their rules. If members have grievances, the law ordinarily furnishes an adequate remedy by action. It cannot be said that this rule is absolute. In cases of manifest wrong, resulting in substantial injury, the Courts, under the general supervisory power of the state exercised through them, will interfere."

(Section 852, Page 1031).

He then said-

"But a very strong case will have to be made out to warrant interference at the hands of this Court. In our opinion, the present is not such an important case."

It was urged that these observations of Hidayatullah C. J. indicated that a writ of certiorari could be issued for quashing any decision of the Sabha. We do not think that the observations are of much assistance to the petitioner Gulabchand. In Mukerji's case, L.P.A. No. 48 of 1954, D/- 28-7-1955 (MB) (supra) the question whether a writ of certiorari could be issued for quashing a decision of the Sabha was not specifically raised for determination. Again, the Sabha is neither a public nor a private corporation; and as pointed out earlier, the act under which it has been registered does not give it the status of a corporation against which a writ of certiorari can be issued on the principles laid down by the Supreme Court. The rules, bye-laws and regulations framed by the Sabha for its management are not any statutory rules. That being so, if the Sabha has acted contrary to the rules, the act cannot be questioned by a petition for the issue of a writ of certiorari.

Shri Dube also relied on *Fisher v. Keane* (1878) 11 Ch. D. 353 and *Dawkins v. Antrobus* (1881) 17 Ch. D. 615. In the first case it was held that the committee of a club, being a quasi-judicial tribunal, were bound, in proceeding under their rules against a member of the club for alleged misconduct, to act according to the ordinary principles of justice, and could not expel him from the club without giving him due notice of their intention to proceed against him and affording him an opportunity of defending or palliating his conduct. In the other case, it was ruled that a Court will not interfere against the decision of the members of a club professing to act under their rules unless it can be shown that the rules are

contrary to natural justice, or that what has been done is contrary to the rules, or that there has been mala fides or malice in arriving at the decision. Both these decisions are distinguishable by the important fact that they were given in suits and not in proceedings for the issue of writs of certiorari. It is no doubt true that a club has to act according to its rules and not contrary to it; and that in that sense it may be said that the club is required to act in a quasi-judicial manner in taking disciplinary action against a member. But from this it does not follow that the club has the power to determine questions affecting the rights of the subjects.

In this connection it would be pertinent to refer to a decision Of a Division Bench of the Madras High Court in *In Re: Gadea Nagabhushana Reddi and Another*, where a writ of prohibition was sought against the Election Sub-Committee of the All India Congress Committee, the Presidents of the Provincial Congress Committee and the District Congress Committee and other Sub-congress committees prohibiting them from holding primary Congress Panchayat elections in the district of Guntur. The Division Bench held that no writ could be issued to bodies of the type named above. Rajamannar C. J. delivering the judgment of the Court said :

"The application in question purports to be for the issue of a writ of prohibition. Ordinarily, this writ is available only against inferior Courts and Tribunals and to dies entrusted by the law of the land with powers to affect the rights of parties. No case has been brought to our notice in which this writ has issued to a private organisation, however widespread and powerful it may be. Mr. Pattabhiram stated that the respondents against whom" the writ was sought were officers of the Congress party. We do not think that the Congress party could be held in law to be a public body. It may be a very powerful, if not the most powerful, political party in the land and the members of the Governments of the various States are persons belonging to that party. Nevertheless, in law it cannot be held to be a public body entrusted by the law of the land with powers and duties relating to the rights of people.

If, therefore a writ of prohibition in the strict sense of that term cannot issue in this case, can we say that Article 226 gives us. the power to issue directions to a private association, because certain irregularities are alleged to have been committed in the conduct of election to the various branches of that organisation? Or should the aggrieved persons be left to pursue the ordinary remedy by way of suit and injunction? In our opinion, the general rule applied to the case of writs like mandamus, prohibition and certiorari, namely, that these writs will not issue if there is another adequate remedy, should apply to the issue of direction, order or writ under Article 226(1) in spite of the apparently wide language employed."

The Madras decision supports the view we have taken.

A reference may also be made to a decision of Lord Goddard C. J. in *R. V. Disputes Committee of Dental Technicians* (1953) 1 All ER 327 rejecting a motion

for an order of certiorari for quashing a decision of the Disputes Committee of the National Joint Council for the Craft of Dental Technicians -- a body of arbitrators appointed under an ordinary submission to arbitration contained in an indenture of apprenticeship. Lord Goddard C. J. said:

"The bodies to which in modern times the remedies of these prerogative writs have been applied are all statutory bodies on whom Parliament has conferred statutory powers and duties the exercise of which may lead to the detriment of subjects as, for instance, where a statute gives a certain body power for the compulsory acquisition of land and an arbitrator is set up by Parliament to assess the compensation, and it is essential that the Courts should be able to control the exercise of the statutory jurisdiction, within the limits imposed by Parliament. There is no instance of which I know in the books where certiorari or prohibition has gone to any arbitrator except a statutory arbitrator, and a statutory arbitrator is a person to whom, by statute, the parties may resort. It would be an enormous departure from the law relating to prerogative writs if we were to apply these remedies to an ordinary arbitrator, whether he be a single arbitrator or a body of gentlemen called a committee or a council, and I am of opinion that we must dismiss these applications on the ground that they are wholly misconceived."

In that case Croom-Johnson J. observed that the Disputes Committee of the National Joint Council for We Craft of Dental Technicians was in no sense a public body and that its authority did not depend on any statutory jurisdiction. The position is no different here. The Sabha is in no sense a public body deriving its authority and power under any statute,

What we have said above is sufficient to dispose of the other petition viz., Misc. Petition No. 409 of 1962. If the Sabha is not a public body constituted by or under a statute, then the respondents cannot be said to be persons holding a public office who are required to do or forbear from doing any act under a statutory provision. The petitioners in that case, if they are life members of the Sabha, also do not become holders of public office. That being so, no writ of mandamus can be issued to compel the respondents to restore to the petitioners their status of life members. An order of mandamus no doubt lies to compel the restoration of a person to an office or franchise, of which he has been wrongfully dispossessed; but the office or franchise must be of a public nature. Learned counsel drew our attention to the statements contained in paragraphs 162 and 163 of Halsbury's Laws of England, Vol. 11, page 87 (Simonds Edition), and to the decision in *Queen v. Government Stock Investment Co.* (1878) 3 QBD 442. The passages in Halsbury's Laws of England relied on by the learned counsel deal with restoration and admission to office of a public nature. The decision in (1878) 3 QBD 442 (supra) that a mandamus can be granted to admit to the directorship the candidate elected by a show of hands also proceeded on the basis that the directorship of a company constituted and registered under the Companies Act, 1862, was an office of a public nature. Here, the office which the

petitioners claim as life members of the Sabha is not of a public nature. It must be noted that in paragraph 163 of the Halsbury's Laws of England cited by learned counsel there is a statement that when, However, the office in question is neither a corporate office nor a permanent one, but one which merely depends upon the will of a fluctuating body, no mandamus will lie to restore or admit thereto. In support of this statement the decision in *Evans v. Hearts of Oak Benefit Society* (1866) 12 JUR NS 163 has been referred to where it was held that the secretaryship of the society was not an office in respect of which mandamus would lie, the office being a precarious office depending on the will of a fluctuating body and the appellant's tenure of office being precarious. The office which the petitioners claim as life members is not a corporate office. It also depends on the will of a fluctuating body, namely, the Sabha.

On this point also, there is a decision of a Division Bench of the Madras High Court reported in *Ganapathy v. Tiffin's B.A. and P. Ltd.* AIR 1954 Mad 555. In that case it was held that a petition for mandamus by the duly elected directors of a company for an order directing the respondents to deliver to them all the records, documents, vouchers and other properties of the company in their possession was not maintainable and that the proper remedy of the aggrieved party in such a case was by way of an independent suit. Venkatarama Aiyar J. while dismissing the petition said:

"The question whether the third respondent company have been validly removed from their office as managing agents is in controversy between the parties. If they have been validly removed, as is contended by the appellants, then their possession of the documents and all the properties of the company would be without any title and unlawful. There can then be no question of their being directed to do or forbear from doing anything in their public character. The appropriate remedy of the appellants would in that case be to institute a suit against them as trespassers to recover possession of the properties."

Thus, in the Madras case, the directors of a company, which was a limited company under the Companies Act, were not regarded as persons who were required to do or forbear from doing anything in their public character.

It was also urged on behalf of the petitioners that as under Article 226 a petition for habeas corpus lies not only when a person is detained by the State but also when he is detained by a private individual and a writ of habeas corpus can be issued to a private individual, therefore, a writ of certiorari can be issued for quashing a decision of a private body also. The argument is without any substance. The nature of the writ of habeas corpus and the principles on which it is issued are entirely different from the nature of the writs of certiorari or mandamus and the principles governing them. If, having regard to the nature of the writ of habeas corpus, namely, to secure to the person concerned his freedom from detention, that writ can be issued to a private person under Article 226, the conclusion does not follow that a writ of certiorari or mandamus or prohibition can be issued to private bodies and persons regardless of the

principles governing the issue of those writs.

For all these reasons, our conclusion is that both these petitions are not maintainable under Article 226 of the Constitution. They are, therefore, dismissed. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of the security deposits shall be refunded to the petitioners.