

(2002) 07 BOM CK 0111

In the Bombay High Court

Case No : Appeal From Order No. 502 of 2002

Institute of Mechanical Engineers (India) and Others

APPELLANT

Vs

R.N. Engineer

RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2003) 4 ALLMR 183 : (2003) 2 BomCR 330

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : V.A. Thorat and A.V. Bajaj, instructed by Dhruve Liladhar and Co, for the Appellant; R.V. Govilkar and Rustoor Pardiwalla, instructed by Mulla and Mulla and CBC, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Admit. Heard forthwith, by consent.

2. The appellants challenge the order dated 6th April, 2002 passed by the City Civil Court, Mumbai dismissing the Notice of Motion No. 3573 of 2000 in Short Cause Suit No. 4945 of 2000. The notice of motion was sought to be taken out seeking relief of temporary injunction to restrain the respondent-defendant from holding out or acting as President of the Institution of Mechanical Engineers (India), a registered society under the Maharashtra Co-operative Societies Act, 1960 as well as a trust registered under the Bombay Public Trusts Act, 1950 (hereinafter called as "the institution") and further from conveying any meeting of the general body of the institution, as also from holding an extra ordinary general meeting which was proposed to be held on 26th August, 2000 or on any other day and lastly from addressing and/or issuing any correspondence or circular as the President of the Institution.

3. Pending the hearing and disposal of the Notice of Motion, the appellants had also prayed for ad interim relief. However, the trial Court by its order dated 24th August, 2000, had granted limited relief in the nature of permitting the

respondent to hold extra-ordinary general body meeting subject to that any Resolution passed therein was not be given effect until further order of the trial Court. The Court below dismissed Notice of Motion by the impugned order and alongwith it has also vacated the said ad interim relief granted on 24th August, 2000. Hence, the present appeal.

4. The appellants herein have filed the said Short Cause Suit No. 4945/2000 seeking the relief in the nature of declaration that the respondent has ceased to be the President of the institution since 30th August, 1999 and, therefore, is not entitled to convene or hold meeting of the institution and particularly the extra-ordinary general body meeting which was proposed to be held on 27th August, 2000 or any other day in any manner whatsoever and for the declaration that the conduct of the respondent in holding out as President of the institution and convening extra-ordinary general meeting is illegal and bad in law and void, and that the respondent is not entitled to address or issue any circular or letter as the President or Member of the Council of the institution and further for declaration that the extra ordinary general meeting which was proposed to be held on 27th August, 2000 to be illegal and bad in law and Resolutions if passed therein to be void and not binding upon the institution and its members and for consequential relief of permanent injunction restraining the respondent from holding out and acting as President of the institution, convening or holding any meeting of the general body of the institution including the extra-ordinary general meeting and addressing or issuing correspondence or circular as the President of the institution. Pending the disposal of the said suit, the above referred Notice of Motion was sought to be taken out without any success as stated above.

5. It is the case of the appellants that in the annual general meeting held on 30th August, 1999, the appointment of the respondent as the President for the year 1999-2000 was discontinued by the Resolution passed in the said meeting, and therefore, the respondent ceased to be the President of the institution from the said day. It is their further case that in spite of the said Resolution, the respondent is professing to be the President of the institution and has proceeded to convene the extra ordinary general meeting alleging the same to be on account of requisition of more than 30 members of the institution, and that since he had ceased to be the President is not entitled to convene any such meeting, and any resolution passed in any such meeting cannot have legal sanctity and, therefore, is to be held as void, and hence the meeting sought to be convened and held on 27th August, 2000 and resolution if any therein relating to the institution are also required to be declared as void. It is their further case that though attempt was made to challenge the annual general meeting dated 30th August, 1999 and the resolution passed therein, the appellants have not been able to secure any favourable order in that regard and on the contrary, in view of the pronouncement by the Court below that the meeting had been convened lawfully and there being no decision of any Court setting aside the resolution passed in the said meeting terminating the Presidentship of the respondent, the

respondent has ceased to be the President since 30th August, 1999, and all his acts consequent thereto claiming to be the President of the Institution are without authority. It is their further case that the letter dated 27th August, 1999 based on which the respondent claims to have continued as the President of the institution was issued prior to the meeting held on 30th August, 1999 and, therefore, in view of the decision of the general body meeting of the institution subsequent to such letter, the respondent is not entitled to claim to be the President of the institution after the said decision of the general body of the institution. It was further sought to be contended that the respondent himself is not certain as to whether he can claim to be the President or the Past President of the institution and that is apparent from the pleadings of the respondent in another suit, wherein the respondent has claimed the right to receive the notice of all the proceeding of the institution either as the President or as the Past President and further has sought to restrain the appellants from obstructing the respondent from receiving communication and from attending the meeting as a member of the Council.

6. On the other hand, it is the case of the respondent that by letter dated 27th August, 1999, the Honorary Secretary of the institution had informed the respondent that all the Council members had unanimously agreed that he having been elected as the President of the institution for the year 1999-2000 and communication of the fact of the election of the respondent as the President of the institution, there had been no annual general meeting, at or on expiry of the year 1999-2000, and therefore, he continues to be the President of the Institution in terms of Article 4 of the Constitution of the Institution. It is his further case that none of the order passed by the Court has confirmed the validity of the resolution stated to have been passed in the annual general meeting held on 30th August, 1999 allegedly terminating the Presidentship of the respondent and the election of the President being required to be done by the Council and not by the general body meeting of the institution, no such resolution passed in annual general body meeting can dislodge the respondent from the post of the Presidentship of the institution. It is his further case that after the election of the respondent as the President for the year 1999-2000 and communicated to him by letter dated 27th August, 1999, there has been no annual general meeting of the institution after or before the expire of the said period. According to the respondent, no materials have been placed on record disclosing that he ceased to be the President of the institution till this day. The locus standi of the Nos. 2 and 3 to file the suit on behalf of the institution is also sought to be disputed by the respondent while contending that there is no prima facie case made out for the grant of relief prayed for.

7. It was also sought to be contended on behalf of the appellants that the meetings of the institution are to be held at headquarters and apparently the meeting dated 27th August, 2000 was not held at the headquarters, but in a hotel and, therefore, in terms of Article 39 of the Constitution such a meeting cannot be held to be validly convened and held and on resolution passed therein

can be given effect to. On the other hand, it was submitted that the headquarters of the institution referred to in Article 39 refers to the place of city or town and not to any building as such and further under Article 2 of the Constitution defines the headquarters of the institution to be situated in Bombay and that clarifies that it can be in any building anywhere in the city of Bombay.

8. It was also sought to be contended that the respondent has no essential qualification to claim himself to be an eminent engineer which is the basic requirement for a person to be chosen as the President. On the other hand, it was submitted that the fact that the respondent was unanimously chosen as the President by the Council and considering his qualification there is little scope for the appellants to dispute about the respondent being an eminent engineer for being elected as a President of the institution. It was also submitted that person having no engineering qualifications were also elected in the past as the President of the institution. On behalf of the respondent, it was also sought to be contended that the challenge in the earlier suit in relation to the meeting which was convened to be held on 30th August, 1999 was on account of lack of validity to convene such meeting to the person, who had convened the meeting and secondly because the audited accounts and reports were made not available prior to such meeting which is otherwise required for holding such meeting in terms of Articles of the Constitution. Undoubtedly, those challenges were thrown out by the trial Court and the appeal against the same is pending before this Court. However, the subject matter relating to illegality and validity of resolution relating the termination of the petitioner as President in the meeting held on 30th August, 1999 was not the subject matter of the challenge in the said suit.

9. Upon hearing the learned Advocates for parties and on perusal of the records and considering that the matter relates to the claim of relief of temporary injunction during the pendency of the suit, it is necessary to ascertain as to whether the appellants-plaintiffs have made out prima facie case for grant of relief prayed for; whether the balance of convenience lies in favour of the plaintiffs-appellants; and whether refusal to grant the relief prayed for would result in irreparable loss to the appellants. In order to ascertain the same, it is necessary to consider the following points:

1. Whether the appellants have been able to prima facie disclose that the respondent ceased to be the President of the Institution with effect from 30th August, 1999?
2. Whether the appellants have been able to prima facie establish that the meeting dated 27th August, 2000 was convened contrary to the provisions of constitution of institution?
3. Whether the appellants have been able to make out prima facie case regarding conduct of the respondent as the President of the institution has been prejudicial to the institution?

10. There is no dispute between the parties that by the letter dated 27th August,

1999, the respondent was communicated by the honorary Secretary of the Institution that pursuant to unanimous agreement between the members of the Council of the institution for continuation of the utilization of services of the respondent for the institution, that he was elected as the President for the year 1999-2000. The letter also confirms the fact that the election of a person to the post of the institution has to be done by the Council of the institution. Even otherwise, the provisions contained in the constitution of the institution and more particularly in Article 4 discloses that the President of the Institute has to be chosen by the Council of the institution at least one month prior to the annual general meeting of the institution. It is nobody's case that the intimation under letter dated 27th August, 1999 was not pursuant to the election of the respondent as the President of the Institution by the Council or meeting of the Council was not held prior to one month of the annual general meeting of the year 1999. Admittedly, as per the contention of the appellant themselves, the annual general meeting for the year 1999 was held on 30th August, 1999. Apparently, therefore, the letter of communication which is dated 27th August, 1999 was prior to the said meeting. The letter on the face of it, does not disclose when the such meeting of the Council was held, but it must have also been held prior to 27th August, 1999. In the absence of any dispute regarding the period of one month in relation to such meeting, on the face of the letter itself, therefore, it cannot be disputed that the said letter confirms the election of the respondent as the President of the Institution, and indeed that has not been seriously disputed by the appellants. The contention which is sought to be raised is that such selection was put to an end by the resolution in the meeting held on 30th August, 1999.

11. It was strenuously argued on behalf of the appellants that in the previous litigation relating to the meeting dated 30th August, 1999, the judicial pronouncement discloses that the resolution passed in the annual general meeting held on 30th August, 1999 was neither held to be bad in law nor to be ultra virus provisions of the constitution of the institution and, therefore, for all purposes it is to be held that the institution has terminated the Presidentship of the respondent with effect from 30th August, 1999. On the other hand, it is the contention of the respondent that the subject matter of the proposed litigation was restricted to the conveying the meeting and not in relation to the proceedings in the meeting and, therefore, the judicial pronouncements in earlier suit are strictly in relation to the validity of the entitlement of convening the meeting and not regarding the proceeding in the meeting itself and hence there was no occasion for the Court to adjudicate regarding the validity of any such resolution. Undoubtedly, the appellants are not able to point out any clear finding by the Court in any of the decision in the earlier litigation to the effect that resolution terminating the election of the respondent to the post of President of the institution having been held to be valid or lawful. Being so, contention on behalf of the appellants that earlier judicial pronouncement discloses confirmation of the resolution putting an end to the term of the respondent as

the President of the Institution is to be rejected as being devoid of substance.

12. Perusal of the Article 4 of the Constitution of institution discloses that the President of the Institution shall be an engineer of eminence chosen by the Council at least one month previous to the annual general meeting of the institution and the person so chosen shall preside annual general meeting and shall continue in the office as President till next annual general meeting. In other words, an engineer once chosen by the Council as the President of the Institution, one month prior to the annual general meeting of the institution continues to be the President of the institution till the next annual general meeting of the institution. Bearing in mind this provision contained in the constitution of the institution, the records prima facie disclose that the respondent was chosen by the Council as the President of the Institution prior to the annual general meeting held on 30th August, 1999 and after such annual general meeting, till this date there has not been any annual general meeting held by the institution. This will apparently show that the respondent in terms of the provisions contained in Article 4 of the Constitution continues to be the President of the Institution till this day. As records nowhere disclose any annual general meeting of the institution having been held after 30th August, 1999 and considering the provisions of the Article 4 of the Constitution, therefore, prima facie it is to be held that the contention of the appellants that the respondent has ceased to be the President is to be rejected.

13. As regards the resolution in the meeting held on 30th August, 1999, it is the contention of the respondent that the annual general body of the institution has no such authority to decide and, therefore, no value can be attached to the alleged resolution, besides that the election of the person to the post of President of the Institution is exclusively within the jurisdiction of the Council of the institution. There is no doubt in terms of Article 4, the election of the President of the Institution has to be by the Council of the institution. Perusal of various provisions of the constitution of the institution, nowhere reveal any power having been vested in the annual general body of the members of the institution to dislodge any person elected as the President of the Institution. There being specific provision in the constitution empowering the Council to select the President and there being no provision regarding power of the annual general body of the institution to terminate the Presidentship of the person so elected by the Council, prima facie, the contention of the respondent needs to be accepted. Besides, undisputedly the institution is also registered as the trust under the Bombay Public Trust Act, 1950. The change report in relation to the committee of the institution has to be filed with the Charity Commissioner in terms of section 22 of the said Act and the provisions of the Act apparently disclose wide scope for inquiry by the Charity Commissioner for the purposes of protection of the interest of the institution and to take appropriate action in case of any illegality. Considering those provisions, therefore, at this stage, it is difficult to accept the contention on behalf of the appellants that merely by resolution passed in annual general meeting of the institution, it can put to an end to the tenure by the

respondent, who was chosen as the President of the Institution by the Council and was communicated to him by letter dated 27th August, 1999. The contention regarding that the respondent ceased to be the President with effect from 30th August, 1999 is, therefore, to be rejected as the appellants have failed to make out prima facie case in that regard.

14. As regards the meeting which is stated to have been convened and held on 27th August, 2000 on being requisitioned by more than 30 members, it cannot be disputed that extra ordinary general meeting can be convened pursuant to the written requisition signed by not less than 30 members of the institution. The ground of challenge on behalf of the appellant to the said meeting is that same was not convened at the headquarters, as is otherwise required under Article 39 of the Constitution. The contention is that the meeting ought to have been held at the Head Office of the institution which is its headquarters and cannot be held elsewhere. As rightly submitted by the learned Advocate for the respondent that the headquarters of institution has been specified under Article 2 of the Constitution of institution to be at Bombay. The expression does not relate to any building as such, but it refers to place where the Head Office of the institution is situated. It refers to the city or town wherein the institution has its main office of administration. Undisputedly, the headquarter of the institution is in Mumbai and the meeting was also held within the territorial limits of Mumbai and, therefore, merely because it was held in a building different than where the Head Office of the institution is situated, it cannot be termed as a meeting held contrary to the provisions of Article 39 of the Constitution.

15. Next ground of challenge pertains to the authority of the respondent to convene such meeting. Undoubtedly, the provisions in the constitution nowhere prescribes the mode of convening the meeting consequent to written requisition for the same by the members of the institution. The provisions in respect thereof are certainly vague. Being so, it would be necessary to consider this aspect in detail by allowing the parties to lead necessary evidence on that issue and only thereafter to arrive at any conclusion as regards the validity of the meeting convened by the respondent as well as the proceedings in such meeting. But drawing any conclusion as regard the authority of the President of the Institution, to convene the meeting would be premature at this stage, and it is for the Court below to adjudicate the said point by allowing evidence to be led in that regard. In case of any mismanagement of the institution of the committee, the powers of the Commissioner under Bombay Public Trusts Act, 1950 are not curtailed to take appropriate action and can be invoked at the instance of any member of the institution.

16. It is difficult at this stage to arrive at any conclusion about legality or illegality pertaining to the meeting dated 27th August, 2000 and the resolution passed therein. In this state of affairs, therefore, it would be certainly in the fitness of the case to direct the parties to maintain status quo in relation to whatever that had transpired in the meeting and the resolution passed therein

and not to give any effect to resolution till the disposal of the suit.

17. As regards the third point, undisputedly apart from the mere allegation the appellants have not been able to place on record any material disclosing the conduct of the respondent being prejudicial to the interest of the institution. Merely issuance of notice or entering into the correspondence with the different persons or firms or public authority on behalf of the institution as the President by the respondent cannot be said to be prejudicial to the interest of the institution. In order to arrive at any conclusion in that regard, it was necessary for the appellants to disclose the facts constituting the conduct of the respondent to be prejudicial to the interest of the institution and the appellants having failed to do so, are not entitled to any interim relief in their favour.

18. Considering the fact that the matter pertains to the relief of temporary injunction, and taking into consideration of the facts disclosed from the materials on record, it is also premature to decide about the locus standi of the appellant Nos. 2 and 3 in the matter. Certainly the respondent is entitled to raise the said issue in the written statement and the Court below will have to adjudicate upon the same in the suit. In the result, therefore, all the three points for consideration formulated above are to be answered in the negatived and it is necessary to direct the parties not to give effect to any resolution passed in the meeting held on 27th August, 2000.

19. The appeal, therefore, partly succeeds. The impugned order to the extent it dismisses the Notice of Motion and refuses the relief of temporary injunction to restrain to give effect to the resolution passed in the meeting held on 27th August, 2000 is hereby set aside and the parties are directed not to give effect to the resolution passed in the annual general meeting held on 27th August, 2000, till the disposal of the Short Cause Suit No. 4945 of 2000. It is made clear that apart from the said direction, the impugned order is not interfered with and the order dismissing Notice of Motion seeking all other reliefs is hereby confirmed. Appeal is accordingly disposed of with no order as to costs.

20. Needless to say that the observations herein made are prima facie observations for the purpose of disposal of the appeal arising from the notice of motion in relation to the application for interim relief and the Court below shall not be influenced by the same while deciding the suit on merits.

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Appeal partly succeeds.