

(2014) 11 KL CK 0186
In the High Court Of Kerala
Case No : R.S.A. No. 333 of 2011

K. Vijayan

APPELLANT

Vs

Dakshina Bharatha Hindi Prachara Sabha (Kerala)

RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Citation : (2014) 4 KHC 911

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : C. Dilip, Saju S.A. and K.C. Kiran, Advocate for the Appellant; Vivek Vargbhes P.J., Adv., P.B. Sahasranaman, (Senior Advocate), T.S. Harikumar, K. Jagadeesh and Raajesh S. Subrahmanian, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—The plaintiffs are the appellants.

2. The dispute in this case is with respect to the validity of the general body meeting of the 1st respondent society said to have been held on 04.11.2007 to incorporate certain amendments to the bye-laws of the society. The plaintiffs/appellants, who are the members of the society, contended that the general body meeting was not properly convened and there was no quorum for the same. Therefore, they would allege that the decisions taken in the aforesaid meeting are invalid and not binding on the society. They sought for a relief in the suit for declaring that the aforesaid meeting was not a properly convened meeting and the decisions taken in that meeting are not binding on the society. There was a consequential prayer for injunction also.

3. The trial court, accepting the case of the appellants, decreed the suit. However, the appeal filed by the respondents/defendants challenging the decree before the lower appellate court was allowed reversing the decree dismissing the suit. It is with this background, the appellants have come up before this Court.

4. I have heard the learned senior counsel for the appellants and the learned counsel for the respondents.

5. As stated at the outset, the dispute relates to the validity of a general meeting convened by the 1st respondent society on 04.11.2007, in which certain amendments to the bye-laws of the society were said to have been passed. The 1st respondent society is registered under the Travancore Literary Scientific and Charitable Societies Act, 1945; and it is formed as a branch of Dakshina Bharatha Hindi Prachara Sabha, Madras, which was established by the Father of our Nation to propagate and develop the language of Hindi. Later, it was recognized as an institution of national importance by Central Act 14 of 1964. Admittedly, the plaintiffs are the life members of the 1st respondent society. The general body of the society is called as "Vyavasthapika Samithi" and the executive committee is called as "Kariyakarini Samithi". There is a provision in the bye-laws for constituting District Mandals for all the revenue districts in Kerala. The appellants/plaintiffs point out that the said mandals are not constituted in all the districts. According to them, there are about 4000 members in the said society, out of which, the majority of the members were concentrated in the cities of Thiruvananthapuram, Kochi and Kozhikode; and about 1500 members are from these cities. As per the bye-laws of the society, the "Vyavasthapika Samithi" consists of life members of the society and delegates elected from the district mandal. Ext. A1 is the copy of the bye-laws. Clause 14 of the bye-laws of the society contains the provision for effecting amendments to the bye-law. According to the bye-law, the quorum of such a meeting shall be "50% of the total members of the Vyavasthapika Samithi, who have been elected as members of district mandals". The appellants/plaintiffs point out that this is a mistake, because, quorum cannot be fixed excluding the life members, who form the majority of the "Vyavasthapika Samithi". Apart from that, it was further pointed out that a reading of the bye-law would show that there is no question of members of "Vyavasthapika Samithi" getting elected as members of district mandal and the position is just the other way. District mandals elect the delegates to "Vyavasthapika Samithi". Therefore, according to the appellants/plaintiffs, the provisions with respect to the quorum in the bye-law has to be read as "50% of the total members of the Vyavasthapika Samithi including the delegates, who have been elected by District mandals". They would further argue that the delegates elected by the district mandals come into the "Vyavasthapika Samithi" only by virtue of such election. They are not entitled to the privileges of life members.

6. The proposed amendment shall stand passed on 3/4th majority of the members present in the meeting, voting in favour of that. As per Article 16 of Ext. A1, for the purpose of administrative convenience and election of the district delegates, the Kerala Sabha divided as per revenue districts declared by the State Government. Each mandal shall be entitled to send as its delegates to the "Vyavasthapika Samithi", 1/10 of the members of the 10 rupee members of the Central Sabha residing within the jurisdiction of the Mandal Sabha to a maximum of 10. It has to be noted that the general body consists of life members and ordinary members; and these ordinary members are persons, who pay

subscription of not less than 10 to the Central Sabha every year for becoming members thereof and residing in Kerala. According to the appellants, 50% made mention of in Article 14(3) is 50% of the total number of members of the "Vyavasthapika Samithi" including the district mandal delegates. However, the respondents/defendants contend that if 50% of the district mandal delegates only are present, the amendment could be passed.

7. If the interpretation intended by the respondents/defendants is accepted, attendance of 50 members of the district mandal delegates is sufficient for getting an amendment passed. That would lead to a situation, where even in the absence of life members, attendance of 50% of district delegates would constitute the forum for amending the constitution. The trial court found that such an interpretation would not be appropriate at all and the only interpretation that would be appropriate is the interpretation as contended by the appellants/plaintiffs. Otherwise, the same would defeat the object of the interpretation of the admission of life members.; so observed the trial court.

8. Ext. B1 is the notice issued by the Sabha for convening the general body meeting on 29.01.2006, wherein it is specified that as per the present clause in the constitution, for passing an amendment, 50% of the total number of members of "Vyavasthapika Samithi" should be participated. The Sabha was of the view that it is an impossible condition and so long as this clause in the constitution is there, the development of the Sabha cannot take place. Therefore, it was felt that it is necessary to simplify the provisions in a constitution pertaining to amendment. It was for that purpose, the meeting was called. As this document is admitted by the respondents/defendants, the same would indicate that they were also aware as to the difficulty in amending the constitution in the light of the existing clause. As rightly pointed out by the trial court, had the interpretation now projected by the respondents were in their mind at the time of Ext. B1, there was no reason for issuing Ext. B1 notice. Therefore, it was found by the trial court that the quorum of the meeting must be 50% of the total members of "Vyavasthapika Samithi" including the district mandal delegates.

9. The lower appellate court reversed the said finding on the ground that if at all there was mistake in the constitution, the same cannot be corrected in a suit and the same can be only on the basis of an amendment. Following the rules of literal interpretation, the lower appellate court found that the interpretation given by the appellants/plaintiffs, which gained the acceptance of the trial court has no legal force. However, this Court is of the definite view that the interpretation pointed out by the respondents/defendants will not advance the object sought to be achieved by the constitution of the society. If the literal interpretation leads to absurdity, purposive interpretation as adopted by the trial court can be resorted to. Viewed in that profile, the findings of the trial court has to be upheld.

10. The another dispute in this case is with respect to the quorum for the meeting of the "Vyavasthapika Samithi" conducted on 04.11.2007 to incorporate

certain amendments to the constitution of the society. The appellants/plaintiffs would contend that there was no proper quorum for the meeting; and hence, it was not a properly convened meeting. They would also contend that the decision taken in such a meeting is null and void. They would also contend that the members present in the meeting, who opposed the amendments, were not given an opportunity to place their views before the general body as the entire meeting was conducted in a shabby manner.

11. The learned counsel for the respondents/defendants, per contra, would contend that even if only 50% of the members of "Vyavasthapika Samithi" are necessary for amending the constitution, considering the past history of the Sabha, it is not possible to achieve even that attendance. Therefore, the court cannot insist to do an impossible act; it was argued. It was pointed out that the amendment of the constitution is a dream as far as the Sabha is concerned in the present set up. According to the learned counsel for the respondents, new amendments are brought in with an intention to give more effect to the objectives of the Sabha in order to avoid conflicts in the elections and to provide equal representation for the entire district mandals. That is not a sufficient reason to give an interpretation to the bye-laws, which does not appear to be logical. As this Court is of the definite view that the interpretation as regard to the quorum, as alleged by the appellants/plaintiffs, has to be accepted, it has to be found that the meeting held on 04.11.2007 was without sufficient attendance. As it is seen from the records [Exts. B3 and B3(a)], which are the certified copies of the attendance register, about 200 members attended the meeting. As the term, "quorum", denotes the number of members of the society required to be present to transact its business legally, the insufficiency of quorum would lead to the conclusion that no legal business has been transacted in the meeting held on 04.11.2007. The argument advanced by the respondents/defendants that the impossibility to secure attendance of 50% of the members in an annual general body meeting would lead to deadlock of the society, does not inspire confidence at all.

12. As rightly pointed out by the trial court, 1st respondent is a registered society under Kerala Act 12 of 1955; and as per Section 25 of the Act, a suit could be filed for framing a scheme for the proper and efficient management of the society before a principal civil court. Having bestowed my anxious consideration on the entire facts and records of the case, I have no hesitation to hold that the appellants/plaintiffs are entitled to succeed.

Therefore, the appeal is allowed.

The judgment of the lower appellate court reversing the decree of the trial court is set aside, and the decree and judgment passed by the trial court is upheld.

The parties shall suffer their costs.