
(2013) 11 DEL CK 0158

In the Delhi High Court

Case No : IA No. 11525 of 2012 (u/O 39 R 1 and 2) in CS (OS) 1848 of 2012

Kailash Chand Bansal

APPELLANT

Vs

Punjabi Bagh Club and Others

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2013) 11 DEL CK 0158

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Siddharth Bambha and Mr. Shyam D. Nandan, for the Appellant; P.D. Gupta, Advocate for D-1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Nath, J.

IA No. 11525/2012(u/O 39 R 1 & 2)

1. The present Suit has been filed by the plaintiff seeking a decree declaring Enquiry Report dated 15.01.2012 and the consequent expulsion letter dated 21.5.2012 suspending the plaintiff's primary membership of the defendant No. 1 to be null and void. Alongwith the Suit the present application is filed seeking stay of the operation of letter dated 21.5.2012. The brief facts as narrated in the plaint are that the plaintiff is stated to be a member of defendant No. 1 Club. Defendant No. 1 Club is registered under the Society Registration Act, 1860. Defendants No. 2 and 3 are the President and Secretary of the Club and are stated to be responsible for the day to day affairs. The plaintiff was elected and has been serving as the General Secretary of the Club since the year 2008. Elections were held on 27.3.2011 when the plaintiff lost in the elections to defendant No. 3 with a margin of 250 votes. It is stated that the defendants with mala fide intention to settle their personal grudges and to conceal their illegal activities issued a letter dated 16.6.2011 to the plaintiff suspending his membership from defendant No. 1 Club. The plaintiff challenged the said letter in

a suit filed in this High Court being CS(OS)1675/2011. Vide Order dated 26.7.2011 this Court set aside the said letter and directed the defendant to conduct an enquiry against the plaintiff regarding all the allegations levied against him. The enquiry was to be concluded within one month. On 4.8.2011 the defendants issued a letter giving an option to the plaintiff to choose three Committee members of the Club from a list of six members so as to constitute the enquiry panel. The Managing Committee issued a charge sheet to the plaintiff where three different charges were levied. The charges read as follows:-

I That the plaintiff has while functioning as general secretary indulged in embezzlement and misappropriation of the official records thus causing financial loss to club.

II That the plaintiff while functioning as general secretary since 2008 misused his official position by himself indulging in falsification of record and forgery and also influenced and forced his subordinate staff to make false and fictitious entries in the official record for his personal pecuniary benefits.

III That the plaintiff while functioning as general secretary since 2008 cheated the club for his personal pecuniary benefits causing loss of revenue and reputation to the club.

2. It is stated that the plaintiff filed a response to the charge sheet. It is further stated that hearings took place virtually every alternate day and that on 20.10.2011 the Managing Committee decided that as there is no evidence against the plaintiff, the enquiry proceedings be closed. On 5.2.2012 the plaintiff claims that he received a Show Cause Notice issued by defendant No. 3 where it was for the first time informed to the plaintiff that the enquiry proceedings have been concluded and enquiry report was submitted on 15.1.2012 holding the plaintiff guilty of all the charges levelled against the plaintiff. The plaintiff challenged the validity and legality of the Enquiry Report. The plaintiff submitted a written response on 13.2.2012. The plaintiff demanded a personal hearing from the Managing Committee which was afforded to him on 3.4.2012 and 7.5.2012. On 11.5.2012 the plaintiff received another letter calling upon him to deposit Rs. 7.18 lacs within three days. In reply, the plaintiff without admitting any liability is stated to have offered to deposit the money. The plaintiff on 28.5.2012 received a letter dated 21.5.2012 informing the plaintiff that the Managing Committee passed a resolution expelling him from the primary membership of the defendant club. Hence, the present Suit has been filed.

3. The defendants have filed their written statement. The defendants have stated that the plaintiff as General Secretary of the Club misappropriated the official funds and caused loss to the Club to the extent of Rs. 6,62,050/-. It is further stated that he misused his official position by committing falsification of record and forgery and influencing the supporting staff. It is stated that the said amount was received by the plaintiff on account of membership fee in cash from three persons who were enrolled as members. No receipts were issued to the said

three persons. No entries were made in the Club Records about the money received. The contention of the plaintiff that the said amount received was paid in front of the President of the Club to Mr. Chopra to settle some MCD issues is denied. It is stated that this is only an afterthought to justify non deposit of money admittedly received by the plaintiff. It is further pointed out that the Enquiry Committee has after giving full opportunity to the plaintiff submitted its report pointing out the said forgery, falsification and manipulation of records and financial loss caused to the club. It is further stated that the defence put up by the plaintiff is absolutely sham and moonshine. It is stated that the charges are grave, serious and of financial embezzlement and hence the present Suit and the present application are liable to be dismissed.

4. I have heard learned counsel for the parties.

5. Learned counsel for the plaintiff has relied upon Clause 11(c) of the Rules of the defendant club, which stipulate that a member is liable to be expelled by a resolution of the Managing Committee provided not less than 2/3rd of the members of the Managing Committee are present. The said Clause reads as follows:-

11...

(c) If any member refuses or neglects to comply with any of the bye-laws, Rules and Regulations and directions and is guilty of such conduct as in the opinion of the Managing Committee is likely to endanger the harmony or in its opinion prejudicially affects the character or stability or interests of the club, such member shall be liable to be expelled by a resolution of the Managing Committee provided that not less than 2/3rd of the members of the Managing Committee present at the meeting shall have voted in favour of the same and provided also that at least 7 days notice of the meeting is given at which such resolution for his expulsion is intended to be moved and that he shall at such meeting and before the passing of such resolution have had an opportunity of giving such defence as he may think fit. It shall be in the power of the Managing Committee to exclude such member from the club till such resolution has either been passed or rejected. The Managing Committee shall give or post to him by registered post a letter containing a notification of the said resolution. On the passing of such resolution the member shall forthwith cease to be a member of the club and shall not have any claim against the Managing Committee or the club. Any fees or subscription paid in advance after adjusting the same towards the dues by him shall be refundable. Quorum at such meeting shall be ten members instead of five members of the Managing Committee. No appeal shall lie from the decision of the Managing Committee.

6. It is stated that in terms of the above Clause no notice of meeting was given when such resolution of expulsion was moved and no hearing was given to the plaintiff when such resolution was considered by the Managing Committee.

7. Reliance is also placed on the Order of the High Court dated 26.7.2011 which

was a consent order whereby defendants had agreed to revoke the suspension order and conduct an Enquiry against the plaintiff and to conclude the same within one month. It is stated that the enquiry that has been conducted was not in accordance with the said order of this Court. Hence, it is stated that expulsion of the plaintiff is not in accordance with Clause 11(c) of the Rules of the Club and the Order passed by this Court dated 26.7.2011. Hence, it is contended that the present application is liable to be allowed and an injunction order is liable to be passed staying the operation of the letter dated 21.5.2012 expelling the defendant from membership of the plaintiff.

8. Learned counsel for the plaintiff has further submitted that his clients are ready to deposit the sum of Rs. 7 lacs which is the amount said to have been taken by the plaintiff in Court. He also submits that the expulsion order dated 21.5.2012 wrongly relies on a communication to state that the plaintiff has admitted his liability. Learned counsel for the plaintiff has also relied upon the judgments in Shri Deepak R. Mehtra and Others Vs. National Sports Club of India and Others to contend that this Court has powers to grant injunction as sought for.

9. On the other hand, learned counsel for the defendant has submitted that the applicable clause for expulsion of the plaintiff is not Clause 11(c) but Clause 11(a) where the Managing Committee can suspend or expel a member by a resolution of the Committee to be passed by 3/4th members present at the meeting. Reliance is also placed on the Show Cause Notice issued by defendant No. 1 on 4.2.2012 to which Reply was filed by the plaintiff. Reliance is also placed on letter sent by the plaintiff where he is stated to have agreed to deposit Rs. 7,18,335/- by arranging cheques from three members which were due from them. It is stressed that serious charges of embezzlement and fraud have been duly proved by a duly constituted Enquiry Committee. The Enquiry Committee has also been constituted in accordance with the order of this High Court dated 26.7.2011. It is further stated that since an Order has already been passed expelling the defendant from membership of the Club on 21.5.2012, no purpose will be served now in October 2013 by staying the said order. It is further stated that the defendants are ready in case a Court Commissioner is appointed to record evidence so that evidence is concluded and the matter can be expeditiously disposed of.

10. Prima facie it appears that the applicable Clause for expulsion of the plaintiff of the Rules of the defendant club is 11(c) of the Rules of the defendant Club which requires that a member can be expelled on the grounds as stated in the said Clause only after giving seven days' notice of the meeting in which such resolution for expulsion is intended to be moved and at such meeting before passing such resolution the member must have an opportunity of giving such defence as he may think fit.

11. In paragraph 28 of the plaint a specific averment has been made by the plaintiff that in terms of Rule 11(c) of the bye-laws the Managing Committee did

not follow the procedure. The written statement in the corresponding paragraph does not deny that Rule 11(c) of the bye-laws are not applicable to the facts of the present case. Hence, the applicable provision would prima facie be Rule 11(c) of the bye-laws of defendant No. 1 Club. For expulsion of the plaintiff as a member of the defendant No. 1 Club, prima facie the procedure as prescribed in the said clause would have to be followed. The submissions of the learned counsel for the defendant to the contrary do not appear to be correct.

12. A perusal of the record would show that a Show Cause Notice has been given to the plaintiff on 4.2.2012 whereby he was asked to show cause as to why his membership be not terminated in the light of findings of the enquiry panel holding him guilty of the charges levelled by the Managing Committee. Admittedly, a hearing was also given to the plaintiff as admitted by the plaintiff himself in paragraph 22 of the plaint where it is stated that the Managing Committee heard him on 03.04.2012 and 7.5.2012 where he made oral as well as written representations. It is true that on 3.4.2012 or 7.5.2012 the Managing Committee did not pass the resolution expelling the plaintiff from the Membership of the Club. This appears to have been done by the Managing Committee in its meeting held on 21.5.2012. The contention of the plaintiff that a hearing ought to have been given to the plaintiff also on 21.5.2012 when the resolution was passed by the Managing Committee expelling the plaintiff from the membership of the club prima facie does not appear to be correct. The essence of Clause 11(c) of the Rules of the Club is that before expulsion of a member, he must be given adequate opportunity of explaining himself. Hence, before such a resolution is passed by the Managing Committee, seven days' notice of the meeting is to be given if a resolution of expulsion is intended to be moved and at such meeting an opportunity of giving his defence should also be given to the member intended to be expelled. In the present case there is no dispute that the notice was received and the Managing Committee heard the plaintiff. Hence, prima facie the Managing Committee of defendant club gave full opportunity to the plaintiff to give his version and also gave him an oral hearing. Hence, prima facie Clause 11(c) of the Club Regulations was complied with. It is not possible to accept that after the plaintiff has been fully heard, if the meeting is adjourned in an adjourned meeting also the plaintiff must be present and heard all over again. The contention of the plaintiff to the said extent does not appear correct.

13. One must also take into account the fact that the resolution of defendant No. 1's Managing Committee was passed based on the report of an enquiry Committee. The Enquiry Committee had been appointed pursuant to a consent order passed by this Court on 26.7.2011. Subsequently, the plaintiff filed an application for clarification of the said order dated 16.07.2011 on 18.8.2011. The application was disposed of whereby some changes were made in the composition of the Enquiry Committee by the defendant. Learned Senior counsel who appeared for the plaintiff on instructions from the plaintiff had submitted in the Court hearing on 18.08.2011 that the offer of defendants that they were

willing to replace Mr. Bhupesh Ahuja with Mr. Kuldip Singh Channa as a Member of the Enquiry Committee was acceptable to the plaintiff. Hence, the plaintiff had accepted the composition of the Enquiry Committee. This Enquiry Committee has after detailed enquiry found the plaintiff guilty of all the charges levelled against him.

14. I may also note that the injunction order that is now sought in the present application if granted would actually tantamount to allowing the Suit itself. The Hon'ble Supreme Court while dealing with the case of the Writ Petitioner in the case of Bank of Maharashtra Vs. Race Shipping and Transport Co. Pvt. Ltd. and another, held as follows:-

Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations.

15. Reference may also be had to the judgment relied upon by learned counsel for the plaintiff. In the case of Deepak R. Mehtra & Ors. versus National Sports Club of India, (supra) this Court noted the legal position pertaining to Management of Clubs. Paragraph 11 of the said judgment reads as under:-

11. The Apex Court in T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, held that jurisdiction of a civil court in such matters is rather limited; it cannot obviously sit as a court of appeal from decisions of such body; it can set aside the order of such a body, if the body acts without jurisdiction or does not act in good faith or acts in violation of principles of natural justice. The Apex Court again in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, of the judgment held that an association or a club which has framed its rules are bound thereby. The strict implementation of such rules is imperative. Necessarily, the office bearer in terms of the Memorandum and Articles of Association must not only act within the four corners thereof but exercise their respective powers in an honest and fair manner. In Kalyan Kumar Dutta Gupta Vs. B.M. Verma and others, the civil court was held to have jurisdiction where allegation was that the club had followed a procedure not warranted by the Rules of the Club.

16. In my view prima facie plaintiff has not been able to show that defendant no. 1 has no jurisdiction or has not acted in good faith or has violated any of the principles of natural justice.

17. Keeping in view the above facts the plaintiff has failed to make out a prima facie case. Balance of convenience is also not in favour of the plaintiff. Directions have already been passed for appointment of a Court Commissioner who has been directed to endeavour to complete the recording of evidence of the parties within three months from today. It would not be appropriate, at this stage on the facts of this case, to stay the expulsion of the plaintiff from membership of

defendant No. 1 Club. The present application is accordingly dismissed.

18. It is clarified that the views expressed herein are for the purpose of disposal of this application. Parties are free to raise their contention at the time of final adjudication of the suit.

19. It is, further clarified that in case there is needless delay in completion of evidence by the defendants, the plaintiff would have liberty to approach this Court again for appropriate orders/directions to expedite the trial/restoration of his membership.

CS(OS) 1848/2012

List the matter before Joint Registrar on 03.02.2014 for further proceedings.