

(2023) 06 KL CK 0332

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30202 Of 2022

Kerala Wushu Association

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (2023) 06 KL CK 0332

Hon'ble Judges : Viju Abraham, J

Bench : Single Bench

Advocate : Jamsheed Hafiz, Martin Jose P, T.S.Sreekutty, B.Ashok Shenoy, Aneesh James, P.Prijith, Thomas P.Kuruvilla, R.Githesh, Manjunath Menon, Sachin Jacob Ambat, Anna Linda V.J, Harikrishnan S., S.Sreekumar, S.Manu

Final Decision : Disposed Of

Judgement

Viju Abraham , J

1. The above writ petition is filed seeking the following prayers:

(i) to issue a Writ of Certiorari or such other appropriate writ, order or direction quashing Ext.P9 letter No.158/WAI/2022-23 dated 18-09-2022 issued by the 2nd respondent as it is arbitrary and illegal;

(ii) to issue a Writ of Mandamus or order or direction to the 2nd respondent to allow the present committee duly elected to continue in office until their successor is elected in accordance with the bye-law of the Kerala Wushu Association;

(iii) to declare that the present elected committee is not liable to be dissolved for any of the reasons referred in Ext.P9;

(iv) to issue such other appropriate writ, order or direction as is deemed just and necessary in the circumstances of the case.

2. Brief facts of the case is as follows: Petitioner is the General Secretary of Kerala Wushu Association, which is recognised by Kerala State Sports Council as well as affiliated to the Wushu Association of India and the Olympic Association. As per the bye-law of the Kerala Wushu Association, an elected committee can continue in office for a minimum period of four years, which is to be elected at the general body meeting of the representatives of each District Committee and each District Committee can sent two nominees to attend the general body meeting. The last general body meeting was held on 29.10.2018 at

Thiruvananthapuram and in the said meeting, Sri.Binoy Joseph was elected as the President and Sri.S.S.Sunil as the General Secretary as is evident from Ext.P1 minutes of the meeting held on 29.10.2018. The present elected committee was recognised by the Wushu Association of India, the 2nd respondent herein as per Ext.P4 and by the Kerala State Sports Council, the third respondent herein by Ext.P5 and the Kerala Olympic Association as per Ext.P6 certificate dated 6.3.2019. The election to the committee of the Kerala Wushu Association was challenged by one P.Raveendran before this Court filing of WP(C) No.4012 of 2019 and the said writ petition was disposed of as per Ext.P7 judgment directing the Secretary of the 3rd respondent to consider the rival claims and declare the eligible office bearers. Pursuant to Ext.P7 judgment the Secretary of the 2nd respondent as per Ext.P8 proceedings declared that the new body is the legally elected office bearers. After the issuance of Ext.P8 the elected committee is organising the games in Wushu at various levels. To the surprise of the petitioner the 2nd respondent has now issued Ext.P9 communication to the 3rd respondent intimating that the present elected committee of Kerala Wushu Association is dissolved, and to conduct a free and fair election to the committee. An adhoc committee is constituted to look into the day to day affairs of Kerala Wushu Association, till fresh elections are held. The said decision is under challenge in this writ petition and the petitioner has also sought for a direction to the 2nd respondent to allow the present committee to continue in office until their successor is elected in accordance with the bye-law of the Kerala Wushu Association.

3. The main contentions raised in support of the challenge against Ext.P9 order is that the same is issued even without notice to them and without hearing any of the affected parties, and therefore, Ext.P9 violates all principles of natural justice. The 2nd respondent has no authority to dissolve a duly elected committee and therefore, Ext.P9 is arbitrary and violative of Article 14 of the Constitution of India. No valid reasons have been stated in Ext.P9 to dissolve the elected committee. The present committee has been actively involved and encouraging Wushu Sports and Kerala Wushu Association has secured 85 medals during the tenure of the present committee. Petitioner submits that while the writ petition was pending consideration the election to the Kerala Wushu Association was scheduled as per Ext.P10 election notification and the elections were scheduled to be held on 15.3.2023. Petitioner took a contention that before deciding on to the challenge against Ext.P9, the election to the Wushu

Association shall not be permitted to be conducted and the petitioner has filed I.A.No.2 of 2023 in the present writ petition seeking stay of all further proceedings of the proposed election scheduled to be held on 15.3.2023. The 6th respondent, who is the General Secretary of the Kerala Wushu Association sought for impleadment as additional 6th respondent and this Court as per order dated 29.5.2023 impleaded the said respondent as additional 6th respondent in the present writ petition.

4. The 2nd respondent, the Wushu Association of India has filed a detailed counter affidavit wherein it is contended that the 2nd petitioner has no right to represent the 1st petitioner in as much as the executive committee of the 1st petitioner was dissolved on allegation of mismanagement and lack of good governance. The Executive Committee of the 1st petitioner failed to promote the sports of Wushu in Kerala and as a result, no players from Kerala had participated in the official events conducted by the International Wushu Federation and Wushu Federation of Asia. Further the 2nd respondent has been receiving complaints about the executive committee of the 1st petitioner regarding their negligence. It is thereupon that a decision was taken to dissolve the executive committee of the 1st petitioner association which was intimated to the 3rd respondent as per Ext.P9. An Adhoc Committee has been constituted to look after the day to day affairs of the Kerala Wushu Association till fresh elections are held. The 2nd respondent is empowered as per Ext.P12 Memorandum of Association and Rules and Regulations of the Wushu Association of India to disaffiliate and de-recognise or suspend the State Unit for non-observance of directives and not holding elections after the completion of normal tenure, after issuing a show cause notice seeking for their explanation. The President/Secretary of the 1st petitioner was issued with a notice dated 4.7.2022 by the 2nd respondent, which is produced as Ext.R2(a), seeking for an explanation as there was several complaints regarding the activities of the 1st petitioner and the District Associations and sports persons have complained that the Kerala Wushu Association does not hold regular meetings, selection championships are not conducted in a transparent manner, there is financial corruption and that the grant due to Wushu Sports person from the 3rd respondent have not yet been made available. Though Ext.R2(a) was accepted by the then President Mr.Binoy Joseph, there was no response. Since Ext.R2(a) evoked no response from the 1st petitioner, the 2nd respondent issued a reminder dated 25.07.2022, which is produced as Ext.R2(b) and the same was also received, but there was no response. It is after issuing these two notices which are produced as Exts.R2(a) and R2(b) that the decision mentioned in Ext.P9 to dissolve the executive committee of the 1st petitioner was taken by the 2nd respondent. Therefore, the contention of the petitioner that no show cause notice was served on the petitioner and therefore, the dissolution of the Executive Committee is in violation of the principles of natural justice, is without any basis. The 2nd respondent in the counter affidavit has taken a further contention that Article 19 of Ext.P13 Bye-law provides that all unresolved

disputes arising within the affiliated member units or between the affiliated member units of the 2nd respondent shall be referred to the Arbitration Commission and that the arbitration proceedings shall be carried out in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and therefore it was contended that the dissolved Executive committee of the 1st petitioner has an alternative and efficacious remedy, which has not availed of and in view of the alternate remedy available to the petitioner the above writ petition is not maintainable. The Adhoc committee assumed charge and they were entrusted to discharge the functions of the executive committee till such time fresh elections are held to the executive committee of the 1st petitioner. Subsequently, the Adhoc committee of the 1st petitioner issued election notification and Ext.P11 notice of special general body meeting was issued scheduling the election to the Executive Committee of the 1st petitioner on 15.3.2023. In pursuance of the notification and notice issued, the 3rd respondent Sports Council as per Ext.R2(c) nominated a member as observer for the election and thereafter, the election to the Executive Committee of the 1st petitioner was conducted in the Special General Body meeting held on 15.3.2023 which was attended by representatives of 13 districts in Kerala, as is evident from Ext.R2(d), minutes of the meeting held on 15.3.2023. Subsequently, the 2nd respondent issued Ext.R2(e) letter dated 16.3.2023 to the 3rd respondent certifying that the 1st petitioner is the affiliated unit of the 2nd respondent comprising of the newly elected members. This Court as per order dated 14.3.2022 though permitted the conduct of the election, directed that the office bearers shall take charge only after obtaining further orders from this Court and in view of the said interim order the Adhoc Committee is continuing until further orders. It is further stated that as per Ext.R2(f) bye-laws, the election to the Executive Committee shall be conducted every two years in the Annual General Body meeting and the contention of the petitioner that the elected committee is for a period of four years is absolutely incorrect. Therefore, they sought for dismissal of the writ petition.

5. I have heard the contentions of the parties appearing on both sides.

6. Let me first consider the challenge against Ext.P9. The main contention raised by the petitioner is that the decision taken by the 2nd respondent to dissolve the present committee is without affording an opportunity of being heard and without any notice to the committee and therefore, Ext.P9 is issued in violation of the principles of natural justice. In the counter affidavit filed by the 2nd respondent it is contended that notices were issued as Exts.R2(a) and R2(b) and the said notices were duly received by the then President of the 1st petitioner Association but there was no response. Therefore, taking into consideration the allegations against the Executive Committee of the 1st petitioner Association a decision was taken to dissolve the executive committee of the 1st petitioner. Petitioners have filed a reply affidavit and contented that Exts.R2(a) and R2(b) are fabricated and concocted document and that the same has been served on one Mr.Binoy Joseph, who was the President of the 1st petitioner Association is

false and incorrect. It is also urged by the petitioners that the former President who has allegedly endorsed receipt of Exts.R2(a) and R2(b) has resigned from the 1st petitioner Association on 6.8.2022. Even going by the averments of the petitioners the president who was received Exts.R2(a) and R2(b) has resigned from the Association only on 6.8.2022 whereas Exts.R2(a) and R2(b) notices are dated 4.7.2022 and 25.7.2022. Therefore, the contention of the petitioners that the dissolution of the executive committee of the 1st petitioner was without notice to them is without any basis.

7. The second relief sought for by the petitioners is to permit the present committee to continue in office until their successor is elected in accordance with the bye-law of the Kerala Wushu Association. In Ext.P9 communication itself it was intimated to the 3rd respondent that the present committee of the 1st petitioner is dissolved and an Adhoc committee has been appointed till fresh elections are conducted to the Executive committee of the 1st petitioner. In the counter affidavit it is specifically stated that the executive committee has conducted an election in the Special General Body meeting scheduled on 15.3.2023 and the said election was done in the presence of an observer from the 3rd respondent Sports Council. Ext.R2(d) is the minutes of the meeting wherein election to the new executive committee was conducted. Subsequently, the 2nd respondent have issued Ext.R2(e) letter to the 3rd respondent certifying that the 1st petitioner is an affiliated unit of the 2nd respondent comprising of the newly elected members. So on the basis of Ext.R2(e) letter addressed to the 3rd respondent, the 2nd respondent has recognised the 1st petitioner as the affiliated unit of the 2nd respondent comprising of the newly elected members. It is also the case of the 2nd respondent that going by Article 19 of Ext.P13 bye-law, all unresolved disputes arising within the affiliated unit members or between affiliated member units of the 2nd respondent shall be referred to the Arbitration Commission and Arbitration Proceedings shall be carried out in accordance with the provisions of the Arbitration and Conciliation Act, 1996. I have already held that the dissolution of the 1st petitioner committee by the 2nd respondent is after issuing show cause notice to them seeking their explanation. Subsequently election to the executive committee of the 1st petitioner was duly conducted in the general body meeting held on 15.3.2023 and therefore the 2nd prayer of the petitioners that they may be permitted to continue in office till a new elected committee is elected in accordance with the law, cannot be granted.

8. This Court as per order dated 14.3.2023, though permitted to conduct election to the executive committee of the 1st petitioner Association, however enjoined the taking charge of the office bearers till further orders are issued from this Court. In view of the fact that the elections have been conducted and that the new committee has been approved by the 2nd respondent, as is evident from Ext.R2(e) letter addressed to the 3rd respondent, the interim order dated 14.3.2023 injuncting the office bearers who were elected in the General Body Meeting held on 15.3.2023, is hereby vacated.

With the above said directions, the above writ petition is disposed of.