
(2014) 11 KL CK 0216

In the High Court Of Kerala

Case No : R.P. No. 890 of 2014 in R.S.A. No. 333/2011

K.P. Haridas

APPELLANT

Vs

K. Vijayan

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 14(iii)

Citation : (2014) 11 KL CK 0216

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

Bench : Single Bench

Advocate : S. Sreekumar, Sr. and Prakash P. George, Advocate for the Appellant; P.B. Sahasranaman, Senior Advocate and S.A. Saju, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—This review petition is filed by certain persons who are not parties to the second appeal.

2. The second appeal was filed challenging the decree and judgment dated 6.9.2010 in A.S No. 93 of 2009 on the files of the District Court, Ernakulam reversing the judgment dated 23.5.2009 of the Munsiff's Court, Ernakulam in O.S No. 1380 of 2007. The suit was filed for a decree declaring that the amendments made to the Constitution of Dakshina Bharat Hindi Prachar Sabha (Kerala) in the special meeting of the Vyavasthapika Samithi held on 4.11.2007 is null and void.

3. The contention raised by the appellants was that the present provision in the existing bye-laws of the Sabha regarding quorum of the meeting is incorrect due to a mistake happened while drafting the Constitution. As per the existing Article, the quorum for such a meeting should be 50% of the total number of members of the Vyavasthapika Samithi who have been elected as Mandal delegates. According to the appellants, the quorum for such a meeting shall be 50% of the total number of members of the Vyavasthapika Samithi, including those who have been elected by the District Mandal delegates.

4. This Court by judgment dated 4.11.2014 allowed the second appeal and decreed the suit. The review petitioners are the newly elected members of the Vyvashapika Samithi (General Body) of the Dakshina Bharat Hindi Prachar Sabha (Kerala), in the election held in the year 2014. They allege that the suit filed by the appellants is not maintainable as the remedy is to institute a suit under Section 25 of the Kerala Act 12 of 1955 for framing a scheme and the existing bye-law cannot be interpreted as wrong, especially when Article 14 is unambiguous and clear.

5. They would further allege that from the year 2011 onwards, the administration of the 3rd respondent Sabha is being done by the Advisory Committee of the Central Sabha and the Special Officer is in charge of the Sabha. This arrangement was intended to continue till an elected general body assumes charge and the election to the Vyavasthapika Samithi (General Body) was completed and the result was also declared.

6. It is alleged that as per the Election Rules published by the Election Officer, the newly elected members should have taken charge on 5.11.2014. However, because of the impugned judgment, the ceremony of handing over the charge is adjourned. It is with this background, the review petitioners have come up before this Court.

7. I have heard the learned Senior Counsel for the review petitioners and the learned Senior Counsel for the appellants and the learned counsel for the respondents in the appeal.

8. The learned Senior Counsel for the review petitioners made a frontal attack on the impugned judgment pointing out that no substantial question of law has been framed by this Court. This is patently erroneous. This Court by order dated 17.03.2011 while admitting the appeal formulated the following substantial question of law:

"Whether the interpretation of the quorum provided under Article 14(iii) of Ext. B2 constitution by the First Appellate Court is legal and sustainable and if so, whether the finding that the meeting conducted on 4/11/2007 is not legal and valid and the decisions taken in that meeting not binding on the society is sustainable?"

9. On this question of law, notice has been issued to the respondents. At the time of hearing, both sides were at this substantial question law and arguments have been addressed. It is true that this question of law has not been re-stated in the judgment. However, the said question of law was considered and analysed in the light of the arguments advanced by the learned counsel on both sides. Therefore, the prayer for a review on the ground that no substantial question of law has been raised or considered will not stand.

10. It was further argued by the learned Senior Counsel for the review petitioners that new office bearers were necessary parties to the second appeal

and the judgment without them on the array of parties is bad in law. It is crucial to note that in the original suit, the Sabha was represented by the then President Mr. M.S. Muraleedharan as well as the then Secretary. Had there been any subsequent change, it was open to the persons who stepped into the shoes of the President and the Secretary to get themselves impleaded at the proper time. The appeal was heard on 9.10.2014 and the judgment was pronounced on 4.11.2014. The present office bearers were elected only on 20.10.2014. As there was proper representation of the Sabha throughout the proceedings, the contentions now taken up by the review petitioners cannot be countenanced.

11. It was strenuously argued by the learned Senior Counsel for the review petitioners that the provisions relating to the quorum of the meeting for amending the bye-law of the Sabha are clear and, therefore, an interpretation as given by this Court in the judgment is unwarranted. It was also argued that it was for the members of the Sabha to decide whether a particular amendment has to be made or not. There cannot be any quarrel against the proposition that it is up to the members to propose the amendments. It has to be noted that the very purpose of convening the meeting on 29.1.2006 was to simplify the provisions in the constitution pertaining to the amendment. In Ext. B1 notice issued by the Sabha it was 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 participate. 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 necessary to simplify the provisions in the constitution.

12. The aforesaid aspect was considered by this Court in granting the decree to the appellants/respondents as prayed for. For amending the bye-laws, the procedure prescribed by the existing bye-laws are to be followed. Ext. A1 marked before the trial court is the copy of the bye-laws. Clause 14 of bye-laws of the society contains the provision for effecting amendments to the bye-law. According to the bye-laws, the quorum of such a meeting shall be 50% of the total members of the Vyavasthapika Samithi who have been elected as members of the district mandals. The appellants pointed 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, a reading of the bye-law would show that there is no question of the members of Vyavasthapika Samithi getting elected as members of district mandal and the position is just the other way. District mandals elect the delegates of Vyavasthapika Samithi. Therefore, according to the appellants, the provisions with respect to the quorum in the bye-laws have to be read as 50% of the total members of Vyavasthapika Samithi, including the delegates who have been elected by the District mandals.

13. This Court found that unless the aforesaid interpretation pointed out by the appellants are not accepted, it would lead to undesirable results. If it is interpreted otherwise, the same would not advance the object sought to be

achieved by the constitution. As the literal interpretation would lead to absurdity, purposive interpretation as adopted by the trial court could be resorted to; so found this Court in the judgment.

14. It was further argued by the learned Senior Counsel for the review petitioner that the proper course open to the appellants was to file a scheme suit under Section 25 of the Kerala Act 12 of 1955 under which the Sabha was registered. It has to be born in mind that the dispute in the case is with respect to the validity of the general body meeting held on 4.11.2007 to incorporate the amendments in the bye-law. The appellants succeeded in establishing their case. Therefore, they were given the decree as prayed for. If there is any stale mate in the management of the Sabha, Section 25 of Act 12 of 1955 can be invoked by any members interested in doing so.

On a consideration of the rival submission, this Court is of the view that the review petitioners failed to point out any error apparent on the face of record calling for an interference by this Court. Therefore, the review petition fails and accordingly, it is dismissed. No costs.