

(2012) 07 CAL CK 0131

In the Calcutta High Court

Case No : G.A. No. 1128 of 2012, G.A. No. 1340 of 2012, G.A. No. 1519 of 2012
and C.S. No. 133 of 2012

Leila Passah

APPELLANT

Vs

Ms. Margaret Madeira and Others

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : (2012) 4 CHN 692

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : Pratap Chatterjee, Mr. Raja Basu Choudhury and Mr. R.N. Bhattacharya, for the Appellant; Ranjan Bachawat, Advocate, Mr. Debnath Ghosh, Bimalendu Das, Ms. S. Das, Advocates For the Defendants Nos. 1, 2, 3, 6 and 8, Mr. Basudeb Biswas, Advocate and Mr. Partha Mukherjee, Advocate For Defendant Nos. 9, 10 and 11, for the Respondent

Judgement

I.P. MUKERJI, J.—As all the relevant papers were available with the Court at the New Motion stage, by consent of the parties, the interlocutory application made by the plaintiff, the application for vacation of the interim order, made by the first, second, third, sixth and eighth defendants (hereafter "the above defendants") and the other application made by the first defendant were taken up for hearing, dispensing with filing of further affidavits. Young Women's Christian Association is a very familiar organisation. It is more popularly known as YWCA. YWCA, Calcutta is a registered society. It is a very old association, dating back to the 19th Century. The national association, Young Women's Christian Association of India was founded in 1896 in Calcutta. Both these associations were registered as societies. YWCA, Calcutta became an affiliate of YWCA, India. At the time of their conception, these associations were for the betterment of christian women. With the passage of time YWCA broadened its field of activity to cater to betterment of women as a whole. They call this concept "empowerment" of women

Now, there are several such organisations all over India. A kind of federation of these associations came into being. YWCA, India has its office at 10, Parliament Street, New Delhi- 1. In 1998 YWCA India adopted a new constitution and byelaws which were endorsed by them in 2006. A convention was to be held of the national body along with its affiliates in 2010.

Article 4 of the 2006 Constitution and byelaws is about membership. Section I relates to affiliate associations. Section I (a) is as follows:

a) Affiliated Associations shall be those Associations which are organised in accordance with Article II and III above in places where no affiliated Association exists.

Section 2 relates to supersession. Section 2 (2) is in the following terms:

2) In the event of any member Association acting in manner prejudicial to the YWCA movement or mismanaging its affairs or failing to function effectively in accordance with its Constitution and Bye-Laws relating to the management of affairs, the National Executive shall have the power to supersede the management of the Association, dissolve all or any of its committees and/or subcommittees including its Officers and Board of management and run the affairs of such an Association by appointing Ad hoc Committees.

Therefore, the national association has the right to supersede the management of an affiliate if it works contrary to the purposes of the national association or is mismanaging its affairs. On 3rd February, 2012 the plaintiff sent a letter to YWCA, Calcutta. Various wrongful acts, were pointed out in that letter, which were alleged to have been committed by those in management of YWCA, Calcutta. For example, it was stated that the property of YWCA, Calcutta was leased out to Patterson Day School without approval of YWCA, India. Various contracts were awarded beyond the budget and without obtaining any sanction from the national board. Family members of the Calcutta functionaries derived financial benefits from the funds of the Calcutta organisation or out of contracts awarded to them. YWCA, Calcutta was asked to respond to the letter within 15 days. On 6th February, 2012 the President of YWCA, Calcutta replied to the letter by email by denying the allegations and by proposing to send a detailed reply later. This was followed by correspondence made by the parent body by email dated 7th February, 2012 and replied to, by YWCA, Calcutta on 10th and 22nd February, 2012. By their reply, YWCA, Calcutta welcomed the proposed visit of the President of YWCA India. Now, arises the dispute. On 27th March, 2012, there was a meeting of the National Executive Committee of YWCA, India at their place of operation at 10, Parliament Street, New Delhi - 1. The following charges were levelled against YWCA, Calcutta. They were still following the 1983 constitution. They had not endorsed the amended Constitution and byelaws of YWCA, India. YWCA, Calcutta did not prepare budgets, did not furnish information on fixed deposits, a contract was signed with Patterson Day School without the authority of the national body. Financial irregularities were pointed

out. Involvement of family members of the local committee of management and their getting benefit out of the contracts were alleged. The national executive committee recommended that to dissolve the current local board would invite "legal implications". The current board should be strengthened with an advisory committee of three persons comprising of two previous board members and one current board member to oversee the functions of the association. However, the resolution that was taken on 27th March, 2012 at 4 p.m. did not entirely adopt these recommendations. The executive committee resolved that the management of YWCA, Calcutta would be superseded in accordance with Article V Section 2 (2) of the constitution of YWCA, India. The national general secretary would be sent to Calcutta with proper authorization to take charge of the affairs of YWCA, Calcutta and to appoint an ad hoc committee.

2. In exercise of that power the ninth, tenth and eleventh defendants were appointed members of the ad hoc committee. Immediately, after the resolution of 27th March, 2012, the plaintiff flew down to Kolkata. She was accompanied by the national vice president and their legal advisor. On 28th March, 2012, the plaintiff met the first, second and third defendants. They did not accept the resolution of the national body. According to the plaintiff they refused to make over charge. The plaintiff promptly lodged a complaint with the police. According to the plaintiff the first three defendants locked the office room of YWCA, Calcutta by three padlocks. She alleges that the current documents along with the office equipments and accessories like the computer and office records are lying in that office. Furthermore, it is alleged that the first defendant, on 9th April, 2012 opened the padlock and started removing the records.

3. Shortly, thereafter, this suit was filed. A declaration was claimed that the first defendant had no authority as president of YWCA, Calcutta and that the first three defendants did not comprise its board, which stood dissolved. An injunction was sought from this Court to restrain these defendants from carrying on any activity in YWCA, Calcutta. A declaration was also sought that the plaintiff was entitled to manage the affairs of YWCA, Calcutta along with the ad hoc committee that had been appointed, comprising of the ninth, tenth and eleventh defendants.

4. Contemporaneously this interim application was moved before me to grant reliefs in aid of the claims made in the plaint. Urgent circumstances were cited to obtain leave from me to move the application on 11th April, 2012 at 2 p.m. The application was moved ex parte on the ground that if notice of the application was given to the first eight defendants they would intermeddle irreversibly with the affairs of YWCA, Calcutta. In those circumstances by an order passed on that day, a Special Officer was appointed to make an inventory of the office of YWCA, Calcutta at 134, S.N. Banerjee Road, Calcutta and to take symbolic possession thereof. It was recorded in the order that YWCA, India was operating the bank account of YWCA, Calcutta. But there was an apprehension that the above defendants, may have surreptitiously opened other accounts in the name of

YWCA, Calcutta. An injunction was granted restraining them from operating any bank account and to disclose their details to this Court.

5. On 7th May, 2012 in the presence of all parties the report of the Special Officer dated 19th April, 2012 was considered. It appeared that the computer was missing from the accounts room. The above defendants were directed to reinstall the computer therein. An embargo was also placed by an order passed on that day restraining the above defendants from carrying out any financial transaction without accompanying documents being initialled by the Special Officer. They were permitted to enter and leave the above room with the permission of the Special Officer. They were also permitted to retain the keys of the padlocks. By a further order made on 7th May, 2012, the activities of YWCA, Calcutta were directed to be carried on under the Special Officer. No withdrawal from any bank account was permitted without the authority of the Special Officer. The day to day administration was also entrusted with him. Any income and expense had to be authorised by the Special Officer and accounts had to be checked and confirmed by him. The first appointed Special Officer was discharged due to his personal difficulty. Mr. Dipak Kumar Deb, Bar-at-Law and Senior Advocate was appointed as the Special Officer on the same terms and conditions.

6. On 12th June, 2012 an application (G.A. No. 1340), for discharge of the above interim order was filed by the first, second, third, sixth and eight defendants.
CONTENTIONS AND DISCUSSION:

7. The plaintiff asserts that YWCA, Calcutta is an affiliate of YWCA, India and is subject to its constitution and byelaws. According to the above defendants, YWCA, Calcutta is an affiliate of YWCA, India and adopted its constitution and byelaws at the time of its affiliation. The disciplinary enquiry which YWCA, India had initiated against YWCA, Calcutta was under its 2006 constitution and byelaws. YWCA, Calcutta had retained the 1983 constitution and was not subject to any action under the 2006 constitution and byelaws.

8. First of all this contention has to be examined. It was rightly pointed out by Mr. Pratap Chatterjee, learned Senior Advocate for the plaintiff that after receiving the letter dated 3rd February, 2012 from YWCA, India, YWCA, Calcutta replied to it by their email of 6th February, 2012 which was followed by a series of emails exchanged between New Delhi and Calcutta. In reply to the charges levelled against YWCA, Calcutta, they never said that they were not an affiliate of YWCA, India or that they were not bound by its constitution. They simply denied the charges as malicious and asked YCWA, India not to interfere with their management. This dispute about YWCA, Calcutta not being bound by the constitution and byelaws of YWCA, India was raised for the first time in the application for discharge of the interim order.

9. In my judgment YWCA, Calcutta was clinging to its 1983 constitution. All that YWCA India told them was that they should amend their constitution on the

model of the 2006 constitution of the national body. Now, it should not be forgotten that these YWCAs are a kind of a federation. Each is a separate registered society and a member of YWCA, India, which again is a registered society. When membership of YWCA, India was taken, YWCA, Calcutta became bound by the constitution of the national body, which included the constitution of 2006. The old constitution of YWCA, Calcutta remains for administering its internal affairs only. Therefore, YWCA, India told them to change their constitution and bring it at par with the constitution of the national body. In fact by an undated declaration at page 176 of the interim application YWCA, Calcutta accepted the 1998 and 2006 constitution and byelaws of the national body. Therefore, the argument that YWCA, Calcutta is not bound by the constitution and byelaws of the national body is not correct and is rejected. The other contentions of Mr. Bachawat had the following points: herself and the members of YWCA, Calcutta. Such leave was refused by the Court. Hence, the plaintiff cannot be said to be suing for the members of YWCA, Calcutta.

i). The alternative submission was that Section 2 of Article V of the constitution and byelaws of 2006 of YWCA, India provided that supersession should be made by the national executive by a quorum which was provided in Section 5 of Article IX. That quorum was not present. The presence part of the resolution was blank.

ii). Furthermore, Section 2 of Article V relating to supersession provided that no action thereunder would be taken without giving an opportunity of being heard. This opportunity was not given to the above defendants.

iii). Leave under Order 1 Rule 8 of the CPC was sought by the plaintiff at the time of institution of the suit to sue in a representative character for

iv). YWCA, Calcutta had filed a suit before the learned Judge VI Bench (Title Suit No. 597 of 2012) before the Learned City Civil Court, Calcutta. In that suit an order of status quo was passed directing the parties to maintain status quo. That status quo was continuing.

The case of T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, cited by Mr. Bachawat tells us that a society or association is to act according to its rules. The Court could set aside an action if the body acted without jurisdiction or in bad faith or in violation of the principles of natural justice. I read a passage from Justice Subba Rao's judgment which was the judgment of the Supreme Court:

9. The following principles may be gathered from the above discussion. (1) A member of a Masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules; whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard. (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions of such a body; it can set aside the order of such a body, if the said body acts without jurisdiction or does not act in good faith or

acts in violation of the principles of natural justice as explained in the decisions cited supra.

Nobody can also dispute the principles enunciated by the Supreme Court in the case of *The Punjab University, Chandigarh Vs. Vijay Singh Lamba and Others*, also cited by Mr. Bachawat, that a meeting can be lawful if there was quorum.

10. Now, the point about the absence of a quorum in the meeting of the national executive committee. The minutes of their meeting held on 27th March, 2012 show that they were signed by several persons. So is the resolution of the same date. It prima facie appears that there was quorum.

11. The only point of Mr. Bachawat which appeared to me to be substantial was that the order of supersession was passed apparently without giving any opportunity to the above defendants to counter the charges or to be heard. There was an exchange of correspondence where YWCA, Calcutta, was asked to respond to the charges against the above defendants. The charges were attempted to be answered by them. No opportunity of hearing as provided in the rules relating to supersession, was given to them, in my prima facie opinion. Therefore, the ratio of *T.P. Daver Vs. Lodge Victoria No. 363*, *T.P. Daver Vs. Lodge Victoria No. 363*, *S.C. Belgaum*, that there must be compliance with the principles of natural justice, comes to the aid of Mr. Bachawat. I have prima facie held that YWCA, Calcutta is an affiliate of YWCA, India. The decision to supersede the management of YWCA, Calcutta was taken at a properly constituted meeting on 27th March, 2012. Whether there was compliance with the rules of natural justice or not has to be established at the trial, although prima facie principles of natural justice do not seem to have been complied with. But after all private bodies are involved. Their internal constitution and byelaws are involved. Noncompliance with the rules of natural justice would certainly be very material at the time of final disposal of the suit, according to the decision of the Supreme Court in the case of *T.P. Daver Vs. Lodge Victoria No. 363*, *T.P. Daver Vs. Lodge Victoria No. 363*, *S.C. Belgaum*. At the interim stage, in appropriate facts and circumstances, the Court should be very slow in not enforcing an action of a society, which otherwise seems to be sound, on the ground of noncompliance with the rules of natural justice provided in its constitution and byelaws. This is one such case. YWCA, Calcutta has not been able to properly answer the charges against its committee of management or some members of it, which mainly are benefit to relatives and financial irregularities arising therefrom and award of contracts without obtaining proper authorisation from the national body which also carry financial implications. Therefore, at this stage I am not minded to disturb the decision of YWCA, India, except to the extent indicated below.

12. The ad hoc committee of management appointed by the national body comprising of the ninth, tenth and eleventh defendants should function, according to the resolution of YWCA, India taken on 27th March, 2012 but under the supervision of Joint Administrators appointed by this order. Mr. Dipak Kumar

Deb, senior advocate and bar-at-law will continue as the Administrator. He will be aided by Mr. Pallav Banerjee, Advocate of Bar Library Club as Joint Administrator. The Joint Administrators will be paid a monthly remuneration of 600 GMs. each by YWCA, India. The ad hoc committee of management will be responsible for the entire administration of YWCA, Calcutta but under the guidance and supervision of the Joint Administrators who will make periodic visits, and check the records of all activities and file a report in this Court every three months. Any complaint against the ad hoc committee may be made to the Joint Administrators who will try to resolve it as expeditiously as possible in consultation with the ad hoc committee. All the applications are accordingly disposed of by this judgment and order. Urgent certified photocopy of this judgment/ order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

I.P. MUKERJI, J.

Later: Stay of this judgment and order is prayed for. Considering the circumstances discussed in the above judgment and order such prayer is considered and refused. All parties concerned are to act on a signed photocopy of this order on the usual undertakings.