

(2012) 08 KAR CK 0240

In the Karnataka High Court

Case No : Writ Petition No. 33737 of 2010 (GM-RES)

M. Nagaraj

APPELLANT

Vs

The Institution of Engineers (India)

RESPONDENT

Date of Decision : 10-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0240

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Ajay Kumar Patil, for the Appellant; B.M. Arun, for the Respondent

Judgement

Mohan Shantanagoudar

1. Petitioner has sought for quashing the order passed by the 1st respondent dated 28.9.2010 vide Annexure-AA by which he is informed that he is expelled as a Corporate Member from the roll of the Institution of Engineers (India) {"IEI" for short} with immediate effect and consequently by the said order, he would cease to have any connection with the said Institution. In the very order, it is made clear that the petitioner is not entitled to extend his services as "Chartered Engineer" anywhere and shall not have right to use "FIE" after his name. The 1st respondent has further directed the petitioner by the impugned order to return the Diploma of Membership, Fellowship and Chartered Engineer Certificate issued to him by the IEI.

The direction is also sought for by the petitioner to direct the 1st respondent not to take any action against him on the basis of the letter dated 13.3.2009 of the 1st respondent vide Annexure-O and on the basis of the report of the Ethics Control Board vide Annexure-U. The brief facts leading to the writ petition are as under:

(a) IEI was initially incorporated under the provisions of the Indian Companies Act, 1913. Pursuant to the petition filed on its behalf, a Royal Charter of Incorporation was granted on 9th September 1935 at The Court at Buckingham

Palace of His Majesty King & Emperor George V. The Corporate Members of the Institution have right to use the title "Chartered Engineer" after their names. Notwithstanding the changes in the Indian Constitutional Structure following declaration of India as the Republic on 26th January 1950, IEI continued to be a Body Corporate in the eye of law. In terms of the mandate under the Royal Charter, it has framed its Bye-laws and Regulations, which are amended from time to time. There are several classes of membership on the rolls of the Institution and a Code of Ethics for Corporate Members is also prescribed.

(b) The objects and purposes for which the 1st respondent is constituted, are to promote the general advancement of engineering/engineering science and their application in India and to facilitate the exchange of information and ideas on those subjects among Members and persons attached to the Institution, as set out in Clause-2 of the Royal Charter (Annexure-A). The 1st respondent started its non-formal engineering education programme, successful completion of which is officially recognized as equivalent to Degree of Engineering by the Government of India as well various States including State of Karnataka. In view of the same, large number of students running into several thousands, have completed the course/programme and have either successfully pursued their professional career or are still pursuing the same. All the members of the Institution shall have to abide by and comply with the bye-laws, Regulations etc., framed in terms of the Royal Charter.

(c) Mr. H.N. Biradar, a Fellow of the 1st respondent Institution addressed a letter dated 10th March 2009 (as per Annexure-R4 filed alongwith the statement of objections of the 1st respondent) to the 2nd respondent, who is the Chairman of the Karnataka State Centre of the 1st respondent bringing to the notice of the 2nd respondent that the petitioner herein and one Mr. A.M. Shivashankar {President and General Secretary of Karnataka Government Graduate Engineers Association ("KGGEA" for short) respectively} had addressed letter dated 26.12.2008 (Annexure-J) to the Prl. Secretary, Public Works Department, Government of Karnataka; The said letter was typed in the letter head of KGGEA. By the said letter, the KGGEA has suggested certain amendments to Cadre & Recruitment Rules of the Public Works Department. One of such amendments sought for by the KGGEA is that the persons with AMIE qualification should not be preferred for the post of Assistant Engineer (Civil). A similar letter was addressed by KGGEA as per Annexure-G dated 16.10.2003 in which it was suggested by KGGEA that persons with AMIE qualification should not be preferred for the post Assistant Engineer (Civil). The petitioner was the President of KGGEA not only on 16.10.2003 but also subsequently i.e. on 26.12.2008. Since Sri H.N. Biradar felt that such letters dated 16.10.2003 and 26.12.2008 are against the principles and Code of Ethics issued by the 1st respondent, he suggested for initiating action against the petitioner and Mr. A.N. Shivashankar, who were President and General Secretary of KGGEA respectively. According to Mr. Biradar, the petitioner and Mr. A.N. Shivashankar have degraded A.M.I.E training offered by the 1st respondent. The said letter was forwarded by the 2nd

respondent to the 1st respondent for further action.

(d) No action was taken against the petitioner or anybody pursuant to the letter dated 16.10.2003 vide Annexure-G. However, the action was decided to be taken pursuant to the subsequent letter Annexure-J dated 26.12.2008 of KGGEA inasmuch as the Institution felt that the said letter injures the professional reputation of the members of the 1st respondent institution. The matter was referred to Ethics Control Board. The explanation was sought by the 1st respondent from the petitioner by issuing the letters dated 1.4.2009 and 18.5.2009 vide Annexures-P and Q respectively. The petitioner tendered his reply on 6.6.2009 as per Annexure-R. Thereafter the Ethics Control Board issued notice to the petitioner to appear before it on 21.1.2010 and an enquiry was held. After considering the entire matter, the Ethics Control Board found that the petitioner was guilty of violating Clause 2.11 of the Code of Ethics and accordingly, recommended the matter to the Council of the 1st respondent for proceeding under bye-law Nos. 74 and 75, as is clear from Annexure-U. The petitioner was also intimated about the same as per Annexure-V.

The petitioner replied on 28.6.2010 as per Annexure-W contending that he has addressed letter Annexure-J dated 26.12.2008 in his official capacity as President of KGGEA and not in his individual capacity; that the notice issued is actuated by malafides and is vitiated inasmuch as the same has been issued for extraneous reasons and considerations. It is also stated by the petitioner in his reply vide Annexure-W that Sri D.V. Nagabhushan, Member of the Ethics Control Board is biased against him merely because he is the son-in-law of Sri D.K. Gowda, who was allegedly responsible for the defeat of D.V. Nagabhushan in the Council elections. It is relevant to note here itself that during the pendency of the matter before the Council, resolution came to be passed by KGGEA under the chairmanship of the petitioner on 2.9.2010 as per Annexure-Z to withdraw the suggestion made by KGGEA on 26.12.2008 vide Annexure-J for amendment of Cadre & Recruitment Rules. Thereafter a letter came to be addressed by the petitioner as per Annexure-Y dated 5.9.2010 to the Secretary and Director General of the 1st respondent intimating the resolution passed by KGGEA relating to withdrawal of its suggestion to PWD for amendment of Cadre & Recruitment Rules.

In its 658th Meeting held on 20-21st March 2010, the Council of the 1st respondent considered the recommendations of the Ethics Control Board and the statement of objections filed by the petitioner and resolved to convene a Special Meeting of the Council. The petitioner was afforded an opportunity to appear in person before the Council at its specially convened 659th meeting held on 3.7.2010 for defending his case. However, on the request of the petitioner, the matter was adjourned to next meeting of the Council. Thereafter the matter came up before the 659th (Special) Council Meeting held on 25.9.2010. After hearing the petitioner and after due deliberation/discussion, it was unanimously held that the petitioner was guilty of violation of Code of Ethics and consequently

decided to expel him from the roll of the 1st respondent Copy of the Minutes and Attendance are produced by the 1st respondent at Annexures-R6 and R7 alongwith the statement of objections. The decision was communicated to the petitioner by the Secretary and Director General of the 1st respondent by his letter dated 7.8.9.2010 vide Annexure-AA, which is impugned in this writ petition.

2. At the outset, it is to be mentioned that the decision making process by the 1st respondent either before the Ethics Control Board or before the Council is not questioned by the petitioner. What is under question is the decision taken by the 1st respondent.

3. The sum and substance of the contentions of, petitioner's advocate Shri Ajay Kumar Patil is that the suggestion was made by KGGEA through the letter dated 26.12.2008 vide Annexure-J and not by the petitioner in his individual capacity; the petitioner in his individual capacity has not taken decision to suggest amendment to the Cadre & Recruitment Rules of the Public Works Department; the petitioner has signed the said letter only as a President of KGGEA; no action is taken against Sri A.M. Shivashankar though he was also the signatory to the very letter as a General Secretary of KGGEA; the 1st respondent was bent upon to take action against the petitioner merely because he is the son-in-law of Sri D.K. Gowda, who was allegedly responsible for the defeat of Mr. D.V. Nagabhushan in the council elections; Mr. D.V. Nagabhushan is also one of the members of the Ethics Control Board and that the Ethics Control Board was influenced by Sri D.V. Nagabhushan for taking disciplinary action against the petitioner; Since the Government did not take any action to amend the Cadre & Recruitment Rules based on the suggestion made by KGGEA till this date and as the said letter/suggestion Annexure-J dated 26.12.2008 is subsequently withdrawn by the KGGEA, no action should have been taken against the petitioner.

The writ petition is opposed by the 1st respondent by filing the statement of objections alongwith certain documents. Shri B.M. Arun learned advocate appearing on behalf of first respondent submitted that the allegations made by the petitioner such as malafide action, action based on extraneous circumstances, influence etc., are all false and frivolous.

4. Before proceeding further, it is beneficial to note relevant bye-laws, Regulations and code of ethics for Corporate Members framed by the 1st respondent, which read thus:

BYE-LAWS:

Bye-law No. 16:

The decisions of the Council on all matters dealt with by it in accordance with the provisions of the Charter, the Bye-Laws and the Regulations, and such Resolutions of General Meetings of Corporate Members as aforesaid, shall be final and binding on all classes of members.

Bye-law No. 44:

MEMBERSHIP: The Institution shall consist of members in the following orders: Honorary, Corporate and Non-Corporate. The Honorary Member shall comprise the classes of Honorary Fellows and Honorary Life Fellows. Corporate Members shall comprise the classes of Fellows, Members, Associate Members and Non-Corporate Members shall comprise the classes of Associates, Affiliate Members, Member Technologists, Associate Member Technologists, Senior Technician Members, Technician Members, Institutional Members and Donor Members. The names and addresses of all members shall be entered on the Roll of the Institution.

Bye-law No. 74:

EXPULSION AND DISCIPLINARY ACTION

(i) The Council shall have the right to expel from the Institution any member who shall have, in the opinion of the Council, wilfully acted in contravention of the Charter, the Bye-Laws, the Regulations or Rules from time to time in force under the Bye-Laws, or who, in the opinion of the Council, shall have been guilty of violation of the Code of Ethics as framed by the Council under the provision of Regulation 29 or such conduct as shall render him unfit to remain a member of the Institution, provided that:

(a) The meeting of the Council at which the resolution shall be passed shall be specially convened for the purpose, and the person concerned shall have been given clear thirty days" notice that his conduct is to be enquired into, and is given an opportunity of stating his case to the Council, in person.

(b) The resolution shall be passed by a majority of two-thirds of those present.

(ii) Upon the resolution of expulsion being passed, the name of the person concerned shall be removed from the Roll and he shall cease to have any connection with the Institution. Neither the Council collectively nor any member of the Council individually shall be made liable for anything done under this Bye-Law. Every candidate applying for election to the Institution shall be deemed in so applying to agree to accept as final any decision of the Council under this Bye-Law

(iii) Every person who has ceased to belong to the Institution shall be called upon by the Secretary and Director General to return immediately his Diploma or Certificate to the Secretary and Director General, and he shall not be entitled any longer to make use of any designation implying past connection with the Institution.

Bye-law No. 75:

The Council shall also have the right to take any disciplinary action against any member who shall have, in the opinion of the Council, acted in such a manner as to warrant disciplinary action, but not expulsion. The procedure laid down in the

Bye-Law 74 shall be followed in such cases also, and the decision of the Council shall be final and binding upon the member concerned.

Bye-law No. 99:

ENGINEERING STAFF COLLEGE OF INDIA

The Engineering Staff College of India (ESCI), established by the Institution as its autonomous organ, shall operate under the control of the Institution and shall play a dominant role in advancement of learning, continuing education and training in engineering including emerging technologies at national and international levels. ESCI shall be accountable to the Council and shall play supplemental role in attaining objectives and purposes of the Institution.

The Council shall frame Rules for its effective functioning as may be appropriate from time to time.

Bye-law No. 101:

EDUCATION, EXAMINATIONS AND ACCREDITATION:

(i) The Council shall cause the Institution Examinations in Sections A and B to be held for election as a Corporate Member of any class or Associate.

(ii) Further, the Council may also cause other programmers including post-graduate studies to be conducted.

REGULATIONS:

PROFESSIONAL CONDUCT:

29. Corporate Members shall be guided by the Code of Ethics for Corporate Members as may be framed by the Council. The Council shall have the power to revise or modify this Code from time to time as they deem fit.

CODE OF ETHICS FOR CORPORATE MEMBERS:

2.0 The Tenets of the Code of Ethics

xxx xxx

xxx xxx

2.11 : A Corporate Member shall not act in any manner which may injure the reputation of the Institution or which may cause any damage to the Institution financially or otherwise.

5. From the aforesaid bye-laws and Regulations, it is clear that the 1st respondent has framed its own bye-laws and Regulations for the purpose of running the institution in an orderly manner. The decisions of the Council on all matters are dealt with by it in accordance with the provisions of the Charter, the Bye-Laws and the Regulations. The Resolutions of the General Meetings of Corporate Members shall be final and binding on all the classes of members. The

Council is having right to expel from the institution any member who in the opinion of the Council has wilfully acted in contravention of the Charter, bye-laws, regulations and the rules framed from time to time. The person who is stated to be guilty of violation of code of ethics as framed by the Council under the Regulation-29 will render him unfit to remain as member of the institution. Under bye-law No. 75, the Council has got right to take any disciplinary action against member other than action relating to expulsion, also. The aforementioned regulations further make it clear that the Engineering Staff College of India (ESCI) established by the 1st respondent institution as its autonomous organ, operates under the control of the Institution and plays a dominant role in advancement of learning, continuing education and training in engineering including emerging technologies at national and international levels. The Council also holds Institution Examinations in Sections A and B for election as a Corporate Member of any class or Associate. The Council may also cause other programmers including post-graduate studies to be conducted. Thus it is clear that the educational institution run by the 1st respondent also imparts education and offers programmers. If such programme is successfully completed by a candidate, the same is treated on par with the engineering degree of University of the State. Corporate Members shall be guided by the Code of Ethics for Corporate Members as may be framed by the Council under Regulation No. 29 of the Regulations. The Code of Ethics prescribed for Corporate Members clearly reveal that a Corporate Member shall not act in any manner which may injure the reputation of the institution or which may cause any damage to the institution financially or otherwise.

6. In the matter on hand, as aforementioned, the decision making process is not disputed by the petitioner. Even otherwise, this Court finds that the petitioner was notified and was heard by Ethics Control Board. After considering the entire matter, the Ethics Control Board found that the petitioner was guilty of violating Clause 2.11 of Code of Ethics and accordingly recommended the matter to the Council of the 1st respondent for proceeding under Bye-laws 74 and 75. Thereafter meetings were held by the Council of the 1st respondent for consideration of the recommendations of the Ethics Control Board. After hearing the petitioner personally, after following due procedure and after discussion, it was unanimously held that the petitioner was guilty of violation of Code of Ethics and it was decided to expel the petitioner from the roll of the 1st respondent.

From the above, it is clear that the petitioner is given adequate opportunity of being heard and thereafter he was expelled. Hence the decision making process adopted by the 1st respondent is just and proper.

7. The petitioner has not disputed the averments made in the statement of objections of the 1st respondent to the effect that the Council consists of large spectrum of individuals who had held or holding very high offices in various fields and one of them is a recipient of Padmashree by the Government of India and many are of the rank of Chief Engineers and above, Senior Army Officers

including Lieutenant Generals, Secretary to the Government of India and State Governments, Vice-Chancellors, Professors, Managing Directors of Corporations etc.,

8. As is clear from the order Annexure-R6 dated 25.9.2010 passed in the 659th Special (adjourned) meeting, the petitioner has admitted during the cross-examination by the Council members that he did not oppose the decision of KGGEA about excluding the AMIE candidates and passed a resolution as per Annexure-H dated 19.10.2008 concurring with its earlier resolution dated 16.10.2003 to the effect that persons with AMIE qualification should not be preferred for the post of Assistant Engineer (civil) in view of opening of 130 Engineering Colleges in the Karnataka State. After passing of the said resolution, the KGGEA has sent the said resolution to the State of Karnataka for amending Cadre and Recruitment Rules of PWD accordingly. Thus it is clear that the KGGEA wanted the Cadre and Recruitment Rules of PWD to be amended in order to exclude students with AMIE qualification for the posts of Assistant Engineer (Civil). The petitioner being the member of the 1st respondent ought to have protested for such resolution being passed or ought to have given his note of dissent in the said meeting for passing such a resolution. However, neither did he protest nor gave note of dissent. There is nothing on record to show that he was unwilling to be a party to such a resolution. However, he has signed the said resolution as the President of the Association. The case of the petitioner is that he did write letter as President of the Association. Merely because the petitioner is the President of KGGEA, he is not debarred or precluded from giving his note of dissent for passing the aforesaid resolution by KGGEA. Being a responsible member of the 1st respondent Council, he ought to have realised that such a resolution would adversely affect the career of thousands of AMIE passed candidates. Consequently, such resolution passed by KGGEA to which petitioner is a party would damage the reputation and status of the institution. The resolution passed by KGGEA impliedly means that the training offered by AMIE is inferior to the training imparted by State Engineering Colleges in Bachelor Degree. It is no doubt true that during the pendency of matter relating to disciplinary action before the 1st respondent, the KGGEA has passed a resolution as per Annexure-Z dated 2.9.2010 requesting the Government not to consider the representations earlier submitted by KGGEA vide Annexures-G and H while amending Cadre & Recruitment Rules of PWD. But the same would not wash off the effect of the damage done by the petitioner being a party to the letters Annexures - G and H. Moreover Annexure-Z itself makes it amply clear that such a letter was written by KGGEA on" 2.9.2010 solely because of the disciplinary action taken against the petitioner by the 1st respondent. Thus it is clear that had the disciplinary action not been taken against the petitioner, he would have continued to indulge in such activities to damage the reputation and status of the 1st respondent institution i.e., I.E.I. Hence this Court concludes that the 1st respondent's council is justified in holding that the petitioner has committed misconduct within the meaning of regulation 2.11 of the Regulations and hence

the disciplinary action taken against him is just and proper.

However, under the facts and circumstances of this case, the punishment of expulsion imposed on the petitioner appears to be too harsh. Hence the portion of the impugned order relating to imposition of penalty of expulsion needs to be modified. Bye-law No. 75 framed by the 1st respondent empowers the 1st respondent to take any other disciplinary action against any member other than the punishment of expulsion. The resolution was passed by KGGEA as far back as in the year 2003 and reiterated in the year 2008. The 1st respondent Council has resolved to expel the petitioner as per Annexure-R6 on 25.9.2010. During the pendency of this writ petition, the interim order is granted by this Court. There are no allegations regarding misconduct against the petitioner by the 1st respondent from 2009 onwards till this date. He is working as Executive Engineer in Public Works Department. Having regard to the fact that the earlier letter written by KGGEA for amendment of Cadre & Recruitment Rules for the purpose of exclusion of AMIE students to the posts of Assistant Engineers (civil) is withdrawn on 2.9.2010 as per Annexure-Z and as the said letter is also signed by the petitioner, this Court is of the opinion that the resolution relating expulsion of the petitioner from the roll of IEI as Corporate Member is too harsh and shockingly disproportionate under the facts and circumstances of the case. The punishment has to be commensurate with gravity of mis-conduct. In my considered opinion, under the facts and circumstances of this case, interest of justice will be met with if the petitioner's Corporate Membership is suspended for a period of six years from the date of expulsion i.e. 26th September 2010. Hence the following order is made:

(a) The conclusion of the first respondent that the petitioner has committed misconduct is upheld.

(b) The Resolution passed in the 659th Special (adjourned) Council Meeting as per Annexure-R6 dated 25.9.2010 (fixing the date of expulsion on 26.9.2010) and consequently the communication Annexure-AA dated 28.9.2010, insofar as they relate to expulsion of the petitioner as a Corporate Member from the roll of the Institution of Engineers (India) are set aside. However, the petitioner's Corporate Membership shall remain suspended w.e.f. 26th September 2010 for a period of six years. Necessary consequences flowing pursuant to the order of suspension for six years will follow.

Writ Petition is disposed of accordingly.