
(2010) 10 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeal No. 10319 of 201 (Arising out of SLP (C) No. 19040 of 2009)

M. Sudakar

APPELLANT

Vs

V. Manoharan and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 10 SC CK 0046

Hon'ble Judges : H. S. Bedi, J;Chandramauli Kumar Prasad, J

Bench : Division Bench

Advocate : P.S. Patwalia, Prasanth P., Uma Shankar, Aman Preet Singh and K.V. Bharathi Upadhyaya, for the Appellant; Soli J. Sorabjee and G.R. Swaminiathan, G. Balaji, Mahalakshmi Pavani, Parthasarathy for Mahalakshmi Balaji and Co., R. Nedumaran and Vimal Dubey, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—Petitioner happens to be a member of Aruppukkottai Nadarkal Uravinmurai Pothu Abiruthi Trust and elected as its President for two terms i.e. 2003-2006 and 2006-2009. By a resolution of the General Body dated 7th January, 2007 he was debarred from holding any post in Aruppukkottai Nadarkal Uravinmurai Pothu Abiruthi Trust (hereinafter referred to as the `Trust') for a period of 10 years. The aforesaid resolution was sent to the Secretary to the Government, Revenue and Registration Department, for its registration. Aggrieved by the same Petitioner filed Writ Petition (MD) No. 3414 of 2009 before the Madurai Bench of Madras High Court, inter alia, praying to restrain the Respondent from registering the same. Petitioner further filed Writ Petition (MD) No. 3657 of 2009 for a direction to the third Respondent in the writ petition to enquire into the affairs of the Trust according to the provisions of the Tamil Nadu Societies Registration Act, 1975, in the light of the representations dated 5th May, 2008 and 28th September, 2008. Petitioner filed another writ application bearing W.P.(MD) No. 4269 of 2009 for a direction to the third

Respondent to consider his representation dated 22nd December, 2008. In the representations dated 5th May, 2008 and 28th September, 2008 referred to above the Petitioner questioned the resolution passed by the General Body on 7th January, 2007 and as also the authority of Respondent Nos. 6 and 7 of the writ petition to pass the resolution. In the representation dated 22nd December, 2008, the Petitioner questioned the validity of the Governing Body itself.

2. All the writ petitions were heard together and while questioning the validity of the resolution dated 7th January, 2007 debarring the Petitioner from holding any post in the Trust for a period of 10 years, it was contended before the learned Single Judge that the Trust is governed by bye-laws and it does not empower either the General Body or Governing Body to debar any person from holding any post for a stipulated period. As observed earlier the prayer of the Petitioner was to restrain the Respondents from registering the resolution dated 7th January, 2007 but even before the writ petition was filed the same was registered on 5th December, 2008. Accordingly, the learned Single Judge was of the view that the said prayer has become in fructuous but it proceeded to mould the relief sought for by the Petitioner and held that the resolution dated 7th January, 2007 "debarring the Petitioner for a period of 10 years is patently illegal, the fact that the resolution had been filed on 5th December, 2008 will not have any legal sanction and the Petitioner continues to be the member of the Trust". While granting the aforesaid relief the learned Single Judge found that there is no provision in the bye-laws of the Trust to debar any person from holding any post. Relevant portion of the judgment of the learned Single Judge in this regard reads as follows:

As stated supra, there is no provision in the bye-laws of the Trust enabling General Body or Governing Body to debar any person from holding any post. Therefore, when the bye-laws are silent about the power of the Trust to debar any person from holding any post, the resolution passed on 07.01.2007 debarring the Petitioner from holding any post for a period of 10 years is patently illegal and therefore, even though the resolution has been registered by the District Registrar, the resolution has no legal sanction and it is not legal.

3. Aggrieved by the same Respondent Nos. 4 to 7 in the writ petition preferred Writ Appeal No. 366 of 2009. The Division Bench of the High Court set aside the order of the learned Single Judge on its finding that the Petitioner filed representation to the Registrar on 5th May, 2008, that is after 16 months from the date of the resolution i.e. 7th January, 2007 and further having not approached the High Court or the Civil Court the writ petition filed in April, 2009 after 27 months of the resolution deserves to be dismissed. The Division Bench further observed that the learned Single Judge having held the writ petition as in fructuous ought not to have moulded the relief and set aside the resolution being contrary to bye-laws. It further observed that the issue ought not to have been decided in the writ petition and the Petitioner ought to have been relegated to the remedy of civil suit. The observation of the Division Bench in this regard

reads as follows:

But unfortunately, the Petitioner made a representation to the Registrar after 16 months of the said resolution. The first representation was dated 05.05.2008. Even after the said representation, the first Respondent neither came to this Court nor went to a Civil Court. He waited till April, 2009 to move a Writ Petition seeking to forbear the District Registrar from recording Form No. VII. At the time when the first Respondent filed the Writ Petition in April, 2009 seeking to restrain the District Registrar from recording the resolution, a full period of about 27 months had passed. During this period of 27 months, the first Respondent went into a slumber and did not come to this Court challenging the resolution. Therefore, we are of the considered view that the learned Judge was not right in adjudicating a question which was not actually before him. When the very prayer of the first Respondent not to register the resolution was doubtful of being entertained, in view of the efflux of about 27 months, the first Respondent would not have been entitled to the relief of setting aside the very resolution as being contrary to the bye-laws.

4. The Petitioner assails the aforesaid order in this petition.

5. Leave granted.

6. Mr. P.S. Patwalia, learned Senior Counsel, appearing on behalf of the Appellant submits that the Division Bench of the High Court ought not to have set aside the order of the learned Single Judge on the ground that the Appellant had approached the High Court belatedly. He points out that the resolution dated 7th January, 2007 debarred the Appellant from holding any post of the Trust for a period of 10 years and, therefore, it had adverse effect on the day the writ petition was filed and even continues till date. He submits that the Appellant had filed the writ petition to restrain the authority to register the resolution and taking into account the fact that the resolution has already been registered, the learned Single Judge moulded the relief, which Courts having the power to issue prerogative writs always possess. He further submits that the registration of the resolution in the opinion of the learned Single Judge rendered the writ petition in fruituous and in the background of the fact that the effect of the resolution was to continue for 10 years it moulded the relief and the same ought not to have interfered in appeal.

7. Mr. Soli J. Sorabjee, learned Senior Counsel, appearing on behalf of the Respondents, however, submits that once the learned Single Judge held the writ petition to be in fruituous it ought not to have gone into the merit of the case and held the resolution to be bad. He further points out that inordinate delay in filing the writ petition also disentitled the Appellant to the relief granted and, therefore, the Division Bench rightly set aside the said order. Reliance has been placed on a decision of this Court in the case of *State of Haryana and Others Vs Krishna Rice Mills* (1981) 4 SCC 148 , in which it has been held as follows:

The High Court noted the assurance and on that observed that the writ petition

would become in fructuous. But the High Court did not stop there. It proceeded to consider the question on the merits whether the aforesaid transactions constituted a sale for the purpose of the Haryana General Sales Tax held that they did not Act and the Central Sales Tax Act. The High Court. Hence this appeal.

After hearing learned Counsel for the parties, it seems to us that the High Court should not have proceeded beyond recording the assurance that the State Government would withdraw the instructions and holding that therefore the writ petition had become in fructuous. In our opinion, no further question arose for consideration by the High Court.

8. Mr. Sorabjee further points out that the General Body resolved to debar the Appellant from holding any office of the Trust for 10 years because of the serious charges of financial impropriety and removing 526 members of the Trust in block and they could regain their membership by bringing an action in the Court and, therefore, the Appellant was not entitled to the discretionary relief under Article 226 of the Constitution.

9. We have bestowed our serious consideration to the submissions advanced and we are of the opinion that the Division Bench of the High Court erred in setting aside the order of the learned Single Judge. It is an admitted position that the bye-laws which governs the Trust do not provide for debarring any member of the Trust from holding a post for specified period. Bye-laws provide for removal of the membership in accordance with the procedure prescribed therein in case a member is found to be indulging in activities prejudicial to the Trust. The power to remove the member in our opinion shall not include power to debar the member from holding an office of the Trust. As the resolution of the Governing Body debarring the Appellant from holding the office of the Trust was valid and operative when the matter was pending before the learned Single Judge, he did not err in quashing the resolution. The power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case. In the facts of a given case a writ Petitioner may not be entitled to the specific relief claimed by him but this itself will not preclude the Writ Court to grant such other relief which he is otherwise entitled. Further delay and latches does not bar the jurisdiction of the Court. It is a matter of discretion and not of jurisdiction. The learned Single Judge had taken note of the relevant facts and declined to dismiss the writ petition on the ground of delay and latches.

10. True it is that the learned Single Judge had observed that the writ petition had become in fructuous and still proceeded to grant relief to the Appellant. In our opinion, the learned Single Judge may not be absolutely right in observing that the writ petition had become in fructuous as the resolution debarring the Appellant was still operative. In our opinion a writ petition broadly speaking is held in fructuous when the relief sought for by the Petitioner is already granted or because of certain events, there may not be necessity to decide the issue involved in the writ petition. Here in the present case the resolution of the

Governing Body was still holding the field when the writ petition was heard and in fact was to operate for a further period, hence it can not be said that the relief claimed by the Appellant had become in fructuous. In any view of the matter, as the effect of the order continued, the learned Single Judge was right in moulding the relief. The act of the Appellant in removing a large number of members and financial impropriety will not clothe the General Body to pass resolution debarring the Appellant from holding the post for 10 years, as no such power is conferred by the bye-laws. The action being patently illegal, the learned Single Judge could not have declined the relief taking into account the alleged action.

11. As regards the decision of this Court in the case of Krishna Rice Mills (supra) relied on by Mr. Sorabjee, the same has no bearing in the facts and circumstances of the case. In the said case the instruction issued by the Government was challenged and when the matter was taken up it was conceded by the State that the State Government would withdraw the instruction. In view of the aforesaid the High Court observed that the writ petition has become infurctuous and in that background this Court observed that the High court ought not to have gone into the merit of the case. In the present case the resolution debarring the Appellant was and still in force and, therefore, the learned Single Judge rightly gone into its validity. Hence, the judgment relied on in no way supports the contention of the Respondents.

12. For all these reasons the impugned order of the Division Bench cannot be sustained and it is set aside and that of the Single Judge is restored. However, this will not preclude the Respondents from proceeding against the Appellant for removal of his membership in accordance with law.

13. In the result, the appeal is allowed the impugned order of the Division Bench is set aside and that of the learned Single Judge restored. In the facts and circumstances of the case, there shall be no order as to costs.