

(2009) 10 MAD CK 0112

In the Madras High Court

Case No : C.R.P. (P.D.) No's. 819 and 820 of 2009 and M.P. No's. 1 of 2009

Madras Gymkhana Club

APPELLANT

Vs

K.C. Sukumar

RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 8 MLJ 969

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : P.R. Raman, for the Appellant; G. Rajagopalan for D. Prabhu
Mukunth Arunkumar, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—Summary of allegation in the common affidavit filed by the respondent herein:

1.(a) The petitioner filed suit to declare the order of suspension of the club dated 27.01.2009 as against the Rules and Bye-laws of Madras

Gymkhana Club (hereinafter referred to as ""Club""), null and void and also for permanent injunction restraining the defendants' club, their men etc.,

in any manner interfering with the petitioner's continued membership rights of the Club pursuant to the suspension order dated 27.1.2009. He has

been a member in the Club for the past 22 years. He had impeccable track record in the Club and he had served as member and captain of golf

team of the Club.

1.(b) On 31.12.2008 the Club arranged a New Year eve party in the Club premises. He had casual conversation with Mr. H.M. Belgamwala and

Mr. Abishek Gupta, who are closely associated with the second and third

respondents, both keen snooker players and one Mr. Abishek Gupta who is also a part of the cricket team. During the said conversation, the petitioner expressed his opinion that the Club, instead of spending enormous money on new year party, could have donated some money to the victims of Mumbai bomb blast and to the benefit of Tamil civilians in Sri Lanka. When he made that statement, Abishek Gupta made unwarranted remarks and abuse him in unparliamentary words. It is only a verbal exchange. H.M. Belgamwala had intervened and supported Abishek Gupta. The petitioner did not give importance to the verbal exchange, however, both the said persons preferred complaint against him to the committee of the Club revelling false and vexatious statements against him.

Hence an explanation was called for from him for which he gave reply on 21.01.2009. However, by means of a letter dated 27.01.2009 the Club suspended the petitioner for a period of three months from 27.01.2009. In the said process, principles of natural justice have been violated.

Without even issuing show cause notice, the suspension order was made. The suspension order is highly arbitrary, unjust, without following the rules of the club and vindictive. The penalty is also disproportionate, excessive and arbitrary. The suspension order, if allowed would continuously tarnish the petitioner's image and reputation, that will lead to character assassination and cast a stigma forever. Hence a temporary injunction is prayed for, restraining the respondent's Club, its men, etc., from enforcing or implementing the suspension order dated 27.1.2009.

2. In the counter filed by the petitioners herein the following averments are seen:

2.(a) The petition is not maintainable. Almost 2 months have passed since the suspension took effect and there is no urgency to grant any interim order pending suit. On 31.12.2008 the petitioner had been consuming alcohol from 4.30 p.m. in the Club and was in a highly inebriated state soon after the new year eve program started in the evening. He was abusive to the staff as well as other members and behaving in an uncouth manner.

Around 10 p.m., the petitioner abused and threatened two members. He wanted to drink more and before the bar man could serve him, the petitioner used filthy language at bar man. He asked one of the staff members by name R. Manoharan asking "where the coward Vice-President Thulukkan"" was". He also asked another committee member Mr. Arun Mehra

"where is the terrorist Mirza?". His behaviour was wholly unacceptable and he further involved in unwarranted activities. On receipt of the complaints from Mr. Abishek Gupta and Mr. H.M. Belgamwala, action was taken against him.

2.(b) By laws Rule 12, dealing with members' conduct prejudicial to the club, empowers the committee to suspend such member for upto a period of three months. If the petitioner was of the view of spending money for Mumbai Bomb blast victims and Srilankan Tamil, he could have raised it before the committee since every one knew of the new year eve is celebrated after much expenses.

2.(c) He also threatened Mr. Gupta that he will shoot him with his revolver. He was trying to play up ethnic and religious sentiments to divert the issue and create a record as if he was the sole champion of the Tamil cause and benefactor of innocent terror victims. The decision to suspend him was unanimous. His past records are not good. He has not come to the Court with clean hands. Hence the petitions have to be dismissed.

3. After hearing both sides, the learned XII Assistant Judge, City Civil Court, Chennai allowed both the applications. Aggrieved at the Orders, the petitioners have preferred these revisions before this Court under Article 227 of the Constitution.

4. As pleaded in the affidavits and the counter affidavits, there was a wordy dual between the respondent and two other members by name H.M.

Belgamwala and Abishek Gupta. Even though it is admitted by the the respondent, he says that it was only a verbal exchange between them and

that there was no love-lost nor heated exchange of words among them. However, both the other members preferred a complaint on the same date

i.e., on 31.12.2008 to the Club alleging certain misbehaviour of hurling of abusive language on the part of the respondent. In pursuance of the said

complaint, the respondent was suspended with effect from 27.1.2009 for three months. Concededly, the respondent asked the other members that

inspite of spending enormous money on the new year festivities, the same can be spent for the welfare of the Mumbai Bomb blast victims and

Srilankan Tamils. However, the tone and mood in which he asked is in dispute. It is stated by the petitioner that on the basis of the complaint, it

transpired that the respondent was in an intoxicated condition and apart from

asking both the members as aforesaid, proceeded to cast offensive and insulting language and also threw invectives upon a bar man and other members. It is stated by the petitioner that the past profile of the respondent is also bad. The Court below observed that both parties can vindicate their rights during the trial of the matter.

5. The petition has been filed under Article 227 of the Constitution and the powers of this Court under Article 227 have to be exercised sparingly

when any gross injustice and patent violations of elementary principles of law are discernible from the orders or the attitude of the subordinate

Courts. This Court has got supervisory power over the affairs of the subordinate Courts.

6. In 2002(1) CTC 183 [Roshan Deen v. Preeti Lal] the Supreme Court has held that the very purpose of such constitutional powers being

conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not

merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation

of law. If justice became the by product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting

the error of law.

7. In this connection, if the Subordinate Court transgresses its powers and exceeds beyond its limit and jurisdiction, leading to cause injustice to a

party, the High Court can very well exercise the powers under Article 227 and curtail them. It is not in every case that where any error which

deserves to be corrected by the appellate court, then exercising power under Article 227 can be limited by the High Court.

8. The learned Counsel for the petitioner would place reliance upon a Full Bench decision of the Apex Court in T.P. Daver Vs. Lodge Victoria

No. 363, S.C. Belgaum, wherein Their Lordships have formulated principles after citing earlier decisions of the Privy Council that the jurisdiction

of a civil court is limited, it cannot sit as a court of appeal from decisions of such a body (Masonic Lodge); 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 and that the rules

governing Tribunals and Courts cannot mutatis mutandis be applied to such

bodies as Lodge.

9. Garnering support from the above said principle, the learned Counsel for the petitioners Mr. P.R. Raman would submit that the Club has its own

bye-laws and any action initiated by the Club is definitely governed by the bye-laws, that it is a self contained procedure and there is every

opportunity for the respondent to exhaust the remedy before the committee constituted by virtue of the bye-laws and hence approaching the civil

court is not appropriate. The Honourable Supreme Court observed in the above said decision that the civil court's jurisdiction is limited which

could not sit as a court of appeal from decisions of the body, still it can set aside the order of such body, if such body acts without jurisdiction or

does not act in good faith or acts in violation of the principles of natural justice. If the civil court in the suit is able to find out that any of the above

said circumstances occurs, then it is well within its limits to interfere with the affairs of the body or club.

10. Learned Counsel for the petitioners also cited a decision in 1994 Supp (1) SCC 614 Sathyanarayan M. Sakaria v. Vithaldas Shyamlal Jhaveri

and Anr in which it is held that it is no doubt true that the High Court normally does not enter into the arena of facts but when it finds the judgment

impugned is perverse, it cannot be stated that the High Court commits a legal error in upsetting it. In order to apply this principle, this Court has to

carefully see whether the impugned order is perverse. In the case on hand, the order challenged before this Court does not appear to be perverse,

which is based on the facts contained in the case and no perversity could be inferred in it.

11. Learned Counsel for the petitioners also relied upon Surya Dev Rai Vs. Ram Chander Rai and Others, where the views of the Supreme Court

in various earlier decisions have been referred and it is held that the High Court in exercise of certiorari or supervisory jurisdiction will not convert

itself into a Court of appeal and indulge in reappreciation or evaluation of evidence or correct errors of mere formal or technical character. It is

further observed and concluded as follows:

39. ... The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene

because the error or jurisdiction though committed is yet capable of being taken

care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

12. In an oft-quoted Judgment of the Supreme Court on the said subject in A. Venkatasubbiah Naidu Vs. S. Challappan and Others, the Supreme Court has held that when effective alternative remedy is available to a party he has to exhaust it instead of preferring revision before the High Court under Article 227 of Constitution. The relevant portion of the judgment goes thus: Though no hurdle can be put against the exercise of the constitutional powers of High Court it is a well-recognised principle which gained judicial recognition that the High Court direct the party to avail himself of such remedies one or the other before he resorts to a constitutional remedy. Learned single Judge need not have entertained the revision petition at all and the party affected by the interim ex-parte order should have been directed to resort to one of the other remedies. However, it is idle to embark on that aspect as the High Court had chosen to entertain the revision petition.

13. A Full Bench of the Apex Court in Chandrasekhar Singh and Others Vs. Siya Ram Singh and Others, observed that the scope of interference by the High Court under Article 227 is restricted which has to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors and in a decision in Bhagwan Das Jagdish Chander Vs. Delhi Administration, the Apex Court reiterated a view stated in the earlier decisions referred to and held that the power of superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as the court of appeal and that the High Court cannot in exercise of its jurisdiction under Article 227 convert itself into a court of appeal.

14. In State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, also, it is held that the power under Article 227 is

not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised ""as the cloak of an appeal in

disguise"". It is further held by Their Lordships that the power under Article 227 is a discretionary power and it is difficult to attribute to an order of

the High Court such a source of power, when the High Court itself does not purport to exercise any such discretionary power.

15. In *Sneh Gupta Vs. Devi Sarup and Others*, the Apex Court has held that while exercising jurisdiction under Article 227, the High Court had a

limited role to play and that it is not the function of the High Court while exercising its supervisory jurisdiction to enter into the disputed question of

fact.

16. When the dicta laid down by the Honourable Supreme Court are followed, it has to be held that the power of the High Court under Article

227 have to be exercised sparingly, that the provision cannot be invoked to correct an error which is the duty of appellate Court and that when the

avenue of appeal is open to the party aggrieved, invoking Article 227 has to be discouraged. At the cost of repetition, it is stated that the factual

findings recorded by the Court below need not be interfered with by this Court exercising jurisdiction under Article 227, since error allegedly

available in the order challenged has to be interfered and corrected by the Court of appeal on the questions of fact. It is settled by the Supreme

Court that disputed and contentious facts could not be settled by invoking jurisdiction of High Court under Article 227 of Constitution.

17. The next limb of contention of the learned Counsel for the petitioners is that the proceedings of the suspension was issued on 27.01.2009 and

only on 17.3.2009 the respondent moved the civil Court with a suit for declaration and injunction, he having initiated the legal proceedings after a

quite long time and hence he is not entitled for the equitable relief of injunction. In support of his contention, he placed much reliance upon a

decision reported in *Mandali Ranganna and Others etc. Vs. T. Ramachandra and Others*, in which the Apex Court has held that grant of injunction

is an equitable relief, that a person who had kept quite for a long time and allowed another to deal with the properties exclusively, ordinarily would

not be entitled to an order of injunction and that the Court will not interfere only because the property is a very valuable one.

18. As far as the facts of the present case are concerned, the period of suspension is three months and before the period of suspension expired, he moved the Court and hence even though he did not take steps for about 1 1/2 months, still remaining period of suspension was there and hence it cannot be stated that he knocked at the doors of the Court only at the time of expiry of the period of suspension order. It can also be stated that this circumstance has to be dealt with by the appellate Court, in a regular appeal preferred from the order challenged since correction of mere errors on factual aspects are not coming within the purview of Article 227.

19. In the light of the observations drawn, following the principles laid down by the Supreme Court, it is held that the present dispute is purely on a factual issue which has to be considered and settled by a Court of appeal and this Court cannot sit as an appellate Court by exercising its jurisdiction under Article 227 and it is held that the alternative effective remedy of appeal is very much available to the petitioners. Hence the circumstances do not warrant interference with the orders passed by the Court below and the Civil Revision Petitions are devoid of merits, which deserve to be dismissed.

20. In fine, the Civil Revision Petitions are dismissed. No costs. Connected M.Ps. are also dismissed.