

(1920) 01 CAL CK 0003
In the Calcutta High Court

Mohamed Kalimuddin

APPELLANT

Vs

A.B. Stewart and Others

RESPONDENT

Date of Decision : 14-01-1920

Acts Referred:

Citation : 56 Ind. Cas. 556

Hon'ble Judges : Ernest Fletcher, J; Asutosh Mookerjee, J

Bench : Division Bench

Judgement

Asutosh Mookerjee, J.—This is an appeal by the plaintiff in a suit for declaration that the proceedings of the committee of the Calcutta Stock Exchange Association expelling him from its membership were void and inoperative. Mr. Justice Rankin has dismissed the suit, on the ground that the plaintiff has failed to establish that the proceedings were vitiated by illegality.

2. The tenth paragraph of the Rules and Regulations of the Association contains the following provisions: "Cessation of membership: A member shall cease to be such, on the happening of any of the following events: (a) Subject to the present existing regulations regarding adjudication on time bargain contrast", on the committee being of the opinion that he has failed to pay in due course for securities delivered or to deliver in due course any difference in respect of any bargain or fail to pay any money due by him in any way arising from any Stock Exchange transaction, either directly or indirectly, or that he has become or been adjudicated a bankrupt: (&) On his being found guilty, in the opinion of the committee, of conduct justifying his expulsion."

3. On the 15th September 1916, Ramkisen Dass Soorajmull reported to the Honrary secretary of the Calcutta Stock Exchange Association that on the 6th September they had purchased from Mahomed Kalimuddin (the present appellant) 100 ordinary Empire Jute Mills shares at Rs. 37-4-0 per share, delivery for one week's time from the date of sale, and that he had failed to deliver the shares due. As this was a matter which could be dealt with by the committee under Clause (a) of rule 10, a meeting of the committee was held on

the 27th September 1916, when the following resolution was recorded: Dealt with a complaint of Ram-kishen Soorajmull against Kalimuddin Khan with regard to an alleged transaction; the committee being of the opinion that the "transaction actually did take place, the Honorary Secretary was instructed to inform Mahomed Kalimuddin that he must deliver the shares to the complainant within 6th October." The matter was next considered at a meeting held on the 2nd December 1916, when the following resolution was recorded: "Further, a letter was received again from Ramkissen Dass Soorajmuli complainant against Mahomed Kalimuddin. It was resolved that the decision of the committee arrived at on the 27th September must be enforced or Mahomed Kalimuddin be expelled." Finally, on the 12th January 1917, the committee recorded the following resolution: ""Received a further complaint from Ramkissen Das Soorajmull against Mahomed Kalimuddin and it was resolved that in view of the decision of the committee arrived at on the 27th September and again confirmed at a committee meeting on December 2nd, at both of which meetings the latter attended, was duly informed of such decision, the Honorary Secretary was instructed to notify him that under the Rules of the Association his membership had ceased and thereby warned not to enter the rooms of the committee." This decision was intimated to the plaintiff on the same day; and he thereafter instituted the present suit on the 7th September 1917.

4. Mr. Justice Rankin states in his judgment that when the case was opened by the plaintiff's Counsel, the only issue offered by him was as follows and this was accepted by both sides: "Whether the action of the committee on 27th September 1916 and 2nd December 1916 or one or other of these dates was contrary to natural justice in respect of the absence of an opportunity to the plaintiff to cross examine or to call witnesses on his behalf." At the trial, however, two further facts were stated as matters of complaint against the conduct of the committee at both meetings, namely, first, that he had no notice or no sufficient notice of the meeting: and secondly, that he never knew, until after the third meeting of the 12th January, that the committee had decided against him at the first meeting and ordered him to make delivery by the 6th October. The learned Judge held that if the plaintiff desired to rely upon these two grounds, the plaint must be amended, and expressed his willingness to grant leave to amend on terms as to costs. The plaintiff, however, elected not to ask for such leave and to go on with the case as it was. Consequently the substantial question in controversy which has been decided is that formulated in the case as opened by the Counsel for the plaintiff. The learned Judge has held that the story of the plaintiff cannot be accepted as true. We have considered the whole evidence which has been placed before us and commented upon by the learned Advocate General, and we have arrived at the conclusion that the decree made by the Court below should not be disturbed.

5. The rules applicable to oases of this character are well settled and are based on the principle that the committee empowered to expel a member must make a fair enquiry into the truth of the alleged facts, after giving notice to the member

concerned that his conduct is about to be enquired into and giving him an opportunity of stating his case to them. The leading decisions on the subject are the judgments of Sir George Jessel in *Labouchere v. Earl of Wharnccliffe* (1880) 13 Ch. D. 346 : 41 L.T. 638 : 28 W.B. 367, *Russell v. Russell* (1880) 14 Ch. D. : 49 L.J. Ch. 268 : 42 L.T. 112 and *Dawkins v. Antrobus* (1881) 17 Ch. D. 615 : 44 L.T. 557 : 29 W.R. 511. The first case emphasizes the importance of fair enquiry after notice to the member concerned and opportunity given to him to meet the charge. In the second case Sir George Jessel referred with approval to the decision of Kelly, C.B., in *Wood v. Woad* (1874) 9 Ex. 190 : 30 L.T. 815 : 22 W.R. 709 and observed as follows " I must say it contains a very valuable statement by the Lord Chief Baron as to his view of the mode of administering justice by persons other than Judges who have judicial functions to perform. The passage I mean is this, referring to a Committee; they are bound in the exercise of their functions, by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

6. In the third case, stress was laid on the aspect that a power of expulsion must be exercised bona fide and not from any indirect or improper motive, and this view was approved by the Court of Appeal. These and other decisions were reviewed by Astbury, J in *Cassell v. Inglis* (1916) 2 Ch. 211 : 85 L.J. Ch. 569 : 114 L.T. 935 : 32 T.L.R. 555, where the rule was stated to be that tribunals which exercise a punitive jurisdiction on an alleged charge of misconduct, whereby a man may be deprived of his property, must act in accordance with the ordinary rules of justice and fairplay and fairly listen to both sides. The essence of the matter thus is that, in order to determine whether a tribunal of this character, in the exercise of quasi-judicial powers, has given a decision which cannot be successfully challenged, the Court has to investigate whether they have observed the rules of natural justice and also the particular statutory or other rule 1, if any, prescribed for their guidance: *Andrews v. Mitchell* (1903) A.C. 78 : 74 L.J.K.B. 333 : 91 L.T. 537. The rules of natural justice demand that a man is not to be removed from office or membership or otherwise dealt with to his disadvantage, without having a fair and sufficient notice of what is alleged against him and an opportunity of making his defence; and that the decision, whatever it is, must be arrived at in good faith with a view to the common interest of the society or institution concerned. If these conditions are satisfied, a Court of justice will not interfere with the decision.

7. Now, in the case before us, the first meeting of the committee was held on the 27th September 1916. There is no doubt upon the evidence that the plaintiff was present on that occasion, brought forward witnesses, and cross examined the witnesses who were produced by his opponent. An objection could have been raised by him that he had no notice or sufficient and precise notice; but that was

not the position taken up by him. He did not complain that he had not such notice and was placed at a disadvantage because he did not know what was alleged against him. On the other hand, the evidence makes it clear that he knew what the case against him was; viz., that the complainant alleged that there had been a breach of the contract entered into with him on the 6th September 1916 for the sale of HO Empire Jute Mills shares to be delivered within a week. He denied the existence of the contract. The committee came to a different conclusion; and thereupon it was within the competence of the committee to make an order forthwith for his expulsion,. This, however, they did not do. They instructed their Honorary Secretary to inform the appellant that he must deliver the shares to the complainant within the 6th October. The Advocate General has contended that by this the committee really made a new contract between the parties and that the plaintiff has been expelled from the association not because of his failure to carry out the original contract, but because of his failure to carry out the order of the committee. We are of opinion that there is no force in this contention, and the action of the committee cannot be successfully impugned on this ground. The order of the committee recorded on the 12th January shows that the plaintiff had attended both the previous meetings and that he had been duly informed of their decision. The oral evidence also shews that the plaintiff was present at the meeting held on the 2nd December 1916. It has been argued, however, there is no satisfactory evidence to show that the decision of the committee, dated the 22nd September, was ever communicated to the plaintiff. But the plaintiff did not take up this position on the 2nd December. He did not urge that he was willing to abide by the decision of the committee and that he had failed to deliver the shares to the complainant on or before the 6th October, because he had no intimation of their order. On the other hand, the evidence shows that he took up a determined attitude not to abide by the decision of the committee. Ultimately, on the 12th January 1917, the committee came to the conclusion that the plaintiff must be expelled. This expulsion in substance was by reason of his failure to carry out his contract with the complainant; and the leniency which the committee had shown to the plaintiff unquestionably did not vitiate the proceedings.

8. The result is that the judgment of Mr. justice Rankin is affirmed and this appeal dismissed with costs.

Fletcher, J.

9. I agree.