

(2008) 08 KAR CK 0053

In the Karnataka High Court

Case No : Regular Second Appeal No. 5003 of 2008

Mohammed Bashu

APPELLANT

Vs

Hospet Bar Association, President Shivanand Kinnal. and
Present Secretary.

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Citation : (2011) 4 KCCR 2859

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—The Appellant in this second appeal is a practicing advocate at Hospet who has challenged the judgment and Decree passed in O.S. No. 107/2005 dated 11.10.2007 passed by the Additional Civil Judge (Jr. Dn), Hospet and the judgment and Decree in R.A. No. 99/2007 dated 21.6.2008 passed by the Prl. Civil Judge (Sr. Dn), confirming the judgment and Decree of the trial court.

2. For the sake of convenience, the parties shall be referred to in terms of their status before the trial court.

3. According to the Appellant who is the Plaintiff, he is a life member of Hospet Bar Association, hereinafter referred to as the "Defendant Bar Association" to whom on 26.3.2005, he had presented a complaint, stating that in O.S. No. 62/2002 on the file of the Prl. Civil Judge (Jr. Dn), Hospet, one Sri. Sagar Krishna, Advocate had argued before the said court without filing his vakalath and in the said complaint allegations were made against Sri. Kiran Kini, Prl. Civil Judge (Jr. Dn), Hospet, in respect of whom the Defendant bar association was requested to take action.

4. On receipt of the said complaint the office bearers of the Defendant Bar

Association issued a circular dated and called an urgent General Body Meeting on 30.3.2005 to decide on the conduct of the Plaintiff who was in the habit of making reckless allegations against Judicial Officers and to take suitable action against the Plaintiff. The said circular was served on the Plaintiff on 28.3.2005 and a general body meeting was conducted on 30.3.2005 at 2. p.m. in which the Plaintiff was present but walked out in protest even without signing the attendance register and in the said meeting it was resolved to expel the Plaintiff from the membership of the Defendant bar association without observing the norms prescribed for a lawful meeting and being against the principles of natural justice, the resolution passed had no force of law. Thereafter on 20.4.2005 the President and Secretary of the Defendant Bar Association had jointly issued a notice to the Plaintiff stating that he should not use the bar association. Contending that no resolution was passed for expelling the Plaintiff's membership from the Defendant Bar Association and that being a life member Plaintiff could not be removed from the membership of the Defendant Bar Association as there was no bar to expel a life member, the suit was filed seeking permanent injunction against the Defendant not to cause obstruction to the free movement and interference in court practice of the Plaintiff and to declare the notice dated 28.3.2005 and resolution dated 30.3.2005 as void and for damages of Rs. 15,000/- on account of defamation caused to the Plaintiff.

5. On receipt of suit summons from the trial Court, the Secretary of Defendant Bar Association filed a written statement denying the allegations made in the plaint and stating that the conduct of the Plaintiff was not conducive to the healthy and peaceful environment of the Defendant bar association and therefore, it was resolved to expel the Plaintiff from membership by observing all prescribed norms in as much as the Plaintiff was in the habit of submitting complaints against Judicial Officers and he had also been warned in criminal contempt proceedings initiated by this Court and despite assuring that there would be no recurrence of such conduct the Plaintiff continued making reckless allegations and therefore the Defendant Bar Association deckled to expel him from membership and therefore, sought for dismissal of the suit with costs.

6. Based on the above pleadings the trial court framed the following issues:

1. Whether the Plaintiff proves that the resolution dated 30.3.2005 passed by the Defendants-Bar Association is against to the registered byelaws and in violation of principles of natural justice?
2. Whether the Plaintiff proves the alleged interference by the Members of the Defendants-Bar Association to his free movement and routine practice?
3. Whether the Plaintiff further proves the alleged injury to his reputation by the acts of Members of Defendants-Bar Association?
4. Whether the Plaintiff is entitled to the reliefs as prayed?
5. What order or decree?

7. In support of his case the Plaintiff examined himself as PW. 1 and produced 36 documents as Ex.P1 to P36 and on behalf of the Defendants DW.1 to 3 were examined and Exs. D1 to D3 and Ex.P37 marked on the side of the Defendants. The trial court on consideration of the material on record answered issue No. 1 to 4 in the negative and dismissed the suit of the Plaintiff. Aggrieved by the said judgment the Plaintiff preferred RA. No. 99/2007.

8. The First Appellate Court formulated the following points for its consideration:

1. Whether the finding of the trial court that the resolution passed by the Defendants-Bar Association is valid under law is correct?

2. Whether finding of the trial court that, Plaintiff has failed to prove interference and damages is correct?

3. Whether judgment of the trial court calls for interference?

4. What order?

9. After hearing both sides the first appellate Court answered point No. 1 and 2 in the affirmative and point No. 3 in the negative and dismissed the appeal with costs. Challenging the concurrent findings of the court below the Appellant has filed this second appeal by raising certain substantial questions of law,

10. I have heard the Appellant as party in person on admission of the appeal. He has submitted that the Defendant Bar Association while passing resolution dated 30.3.2005 did not follow the principles of natural justice in as much as he was not given a hearing before terminating him from his life membership and hence the same being a contrary to the bye laws of the Defendant Bar Association and in violation of the principles of natural justice, the resolution dated 30.3.2005 ought to be declared as null and void and that his membership of the association must be restored and the Defendants must be restrained from interfering with his free movement in court not to obstruct his right as a life member of the Defendant Bar Association.

11. According to the Appellant the Bar Association has not conducted itself in a responsible manner but has treated him in an unfair manner and as a result his image has suffered and he therefore, request this Court to reverse the findings of the courts below and grant the prayers made in the suit by decreeing the suit. In the alternative he submits that he continues to be a member of the Bar Association and therefore, the resolution dated 30.3.2005 has not been acted upon.

12. Ex.P1 is the complaint filed by the Plaintiff on 26.3.2005 and Ex.P32 is the resolution passed by the Bar Association. Ex.P4 is the subsequent notice issued to the Plaintiff.

13. Under Rule 9(2) of the Memorandum of Association of the Defendant Bar Association which is at Ex.P20 except as provided by these Rules and Regulations any question submitted to the General Body shall be decided by a majority and

President or Chairman having casting vote in the event of equality of votes. The trial court has found that there are no provisions in the Memorandum of Association to expel life member from the membership and the general body can decide such an issue under Clause 9 Sub-clause (ii) of the bye laws. The trial court has also found that the Plaintiff has not highlighted any violations of provisions of Ex.P20 while expelling the Plaintiff from membership from the Defendant Bar Association. The first appellate court has also occurred with the finding of the trial court on this aspect.

14. As regards the contention that the Plaintiff was removed from the Defendant Bar Association without prior notice and when a specific agenda to that effect which has resulted in violation of principles of natural justice is concerned, it is to be noted that the special general body meeting was convened by the Defendant Bar Association to deliberate on the conduct of the Plaintiff in making reckless allegations against Judicial Officers, colleague advocates and staff of the court and the basis for convening the special meeting was the complaint given by the Plaintiff against his advocate colleague and against the Judicial Officer which is marked at Ex.P1 and keeping in mind the antecedent behavior of the Plaintiff, the special general body meeting was convened on 30.3.2005. Therefore, the object and purpose of the special general body meeting held on 30.3.2005 was to consider the conduct of the Plaintiff and Ex.P2-notice and Ex.P3-circular were issued to the Plaintiff on 28.3.2005 regarding the urgent general body meeting to be conducted on 30.3.2005 at 2.00 p.m. at the Bar Association premises, Hospet wherein the Plaintiff was directed to attend the meeting as he was the subject of the deliberation to be held. The trial court has extracted Ex.P3 circular which stated that:

A complaint is received from Sri. Mohammed Bashu advocate, Hospet making reckless allegations against some brother advocates and also against a judicial officer, looking into his regular part behavior, office bearers have taken serious note of his conduct and decides to call urgent general body meeting on 30.3.2005 at 2 p.m. at Bar Association to discuss and to take suitable decision on this subject.

15. In fact these documents marked as Ex.P2 and P3 are produced by the Plaintiff himself which would go to show that he was served with prior notice before conducting the General Body Meeting held on 30.3.2005 and the agenda of the said meeting was also stated and in fact he attended the said meeting but walked out from there before passing of the resolution in question. Hence the contention of the Plaintiff that there was no prior notice of the meeting and nor was the agenda known to the Plaintiff or that he did not participate in the meeting cannot be accepted. The trial court has in fact recorded that the Plaintiff has not denied the contents of Ex. P32 which is a resolution passed in the general body meeting held on 30.3.2005. Therefore, it has to be held that the Plaintiff was given a reasonable opportunity to have his say about the allegations leveled against him. Therefore, in my opinion it cannot be said that there is

violation of principles of natural justice and specifically Audi-alterem- partem.

16. The principle of audi alteram partem which is an important principle of natural justice and fair procedure and no doubt mandatory in judicial and quasi-judicial proceedings has also been extended to administrative acts in certain cases. However, it is not possible to lay down rigid rules in a straight jacket or enunciate the circumstances when principles of natural justice would apply nor its scope as it depends upon the subject matter under consideration. The application of the doctrine of audi alteram partem is also based on statutory implication and is also a statutory right. But in its application what is sought to be achieved is fair play in action which a flexible concept. There are cases where urgent action may be necessary on grounds of public health or safety where rule of audi alteram partem cannot be followed. Even in cases not involving urgency, no hearing is required in certain cases. In a sense, the principle has to be followed by statutory bodies judicial or quasi judicial authority and in certain spheres of administrative action.

17. But in the instant case the contention of the Appellant is that he was not heard before being removed from the life membership of the Defendant Bar Association. It is necessary to distinguish that the Defendant Bar Association is not a statutory body, but one registered under the Societies Registration Act and a voluntary organization governed by its own bye laws and therefore, the Appellant cannot insist that there had to be a full fledged hearing before he was removed from the life membership. Even otherwise it is necessary to re-iterate that in the instant case the Appellant was served with a notice of the meeting to be held on 30.3.2005 along with the agenda and he also attended the meeting and Appellant was the subject matter of the discussion, but he walked out midway of the meeting and the resolution passed was also communicated to him. Therefore, in my view, assuming that the principles of natural justice had to be followed in the instant case, there has been compliance with the same and therefore, the Appellant's contention does not have any force.

18. In fact the Plaintiff himself has admitted that he received notice from the Defendant Bar Association as per Ex.P3 which explicitly stated that a circular was issued to discuss about the complaint given by the Plaintiff and the reckless allegations made against brother advocates and against Judicial Officers. Therefore, the agenda for the discussion of the emergency general body meeting held on 30.3.2005 was also known to the Plaintiff who also participated in the said meeting on 30.3.2005. Hence suffice and reasonable notice and hearing was given to the Plaintiff and therefore, in my opinion, the principles of natural justice were in fact complied with in the instant case.

19. At this stage it is relevant to state that the genesis and the cause for the Plaintiff's expulsion is the Plaintiff himself who gave a complaint against another advocate to the Bar Association and also against the Presiding Officer which ultimately led to his expulsion from the Defendant Bar Association. Any professional mis-conduct by an advocate has to be complained by persons who

have the locus standi to complain against the said misconduct and the Bar Council of the State is a statutory authority empowered to enquire into any misconduct of an advocate and pass appropriate orders and a member of the Bar has no locus standi to complain about any other member of the bar in the realm of professional misconduct unless the said member of the bar is a litigant himself.

20. It is obvious that in the instant case the Plaintiff invited trouble for himself by complaining against another advocate and the Judicial Officer and taking into account the antecedent behavior of the Plaintiff and the fact that there would be a threat to the members in so far as their professional conduct is concerned, a special general body meeting was called to discuss about the Plaintiff's conduct in which he was present on receiving notices and subsequently the resolution was passed. The Plaintiff could not take upon himself the role of the State Bar Council or act as a moral police and file complaints against fellow members of the bar to the Defendant Bar Association which is an organization having a voluntary membership with the object of working for the welfare of its members who are practicing advocates. The complaint filed by the Plaintiff to the Defendant Bar Association was therefore, wholly misconceived as the Defendant Bar Association was in no way empowered to take action against a member of the Bar Association in respect of an alleged professional misconduct on the complaint filed by the member of the Association.

21. The further contention of the Appellant is that he is being prevented from using the Bar Association premises as a member by virtue of Ex. P4-notice and it has come in the way of his profession and conducting cases. The said allegation is baseless in as much as the mere restriction of entry of the Plaintiff to the bar association premises cannot be termed as interference with his profession work. The Plaintiff is in no way debarred in appearing in cases before the courts and the only restriction that is placed on him is that he cannot utilize the facilities of the Defendant Bar Association as a life member. The free movement of the Plaintiff in the courts is not restricted and the Plaintiff would be entitled to utilize the facility of Typist and also contact the notary public irrespective of whether he is life member of the Defendant Bar Association or not.

22. The trial court has categorically recorded that the Plaintiff himself has admitted that he is entering the Bar Association premises to contact the notary public or the typist who are available inside the premises and also for the purpose of dressing and therefore, this would not come in the way of his professional work. However, he may not be entitled to utilize other facilities such as the library etc., which are meant only for the members and the Plaintiff being an expelled member and whose expulsion has been upheld by the courts below, he would not be entitled to such facilities unless the Defendant Bar Association suo moto revokes the resolution passed against the Plaintiff.

23. According to the Defendant, Plaintiff was strictly warned by this Court in a contempt proceeding in the year 1997 and in spite of the warning given to him, he has continued to behave in a manner which is not convenient to the

atmosphere in a Bar Association. The Plaintiff is in the habit of making reckless allegations against the members of the bar, staff of the court and also presiding officers. Based on the previous antecedents of the Plaintiff including the reprimand by the Fast Track Court in Crl. R.P. No. 26/2006 at Hospet, the Bar Association took the stringent action of passing resolution to expel the Plaintiff from the association.

24. Both the courts below have gone into the legality of the action taken by the Defendant Bar Association in removing the Plaintiff from its membership under the scope of the bye laws as well as under the principles of natural justice and have concurrently concluded that the resolution dated 30.3.2005 is valid and in accordance with law. For the aforesaid reasons, I find no justifiable ground to interfere in the Judgments of the courts below.

Accordingly, this Regular Second Appeal is rejected at the stage of admission.