

**(2015) 08 KAR CK 0270**

**In the Karnataka High Court**

**Case No :** Miscellaneous First Appeal No. 2898 of 2015

N. Prathima

APPELLANT

Vs

Karnataka Reddy Jana Sangh and Others

RESPONDENT

**Date of Decision :** 06-08-2015

**Acts Referred:**

**Citation :** (2015) 08 KAR CK 0270

**Hon'ble Judges :** B.S. Patil, J

**Bench :** Single Bench

**Advocate :** G. Krishnamurthy, Senior Counsel for Purushotham R., for the Appellant; Jayakumar S. Patil, Sr. Counsel for Malla Reddy B.V., Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

B.S. Patil, J—Plaintiff in O.S. No. 6333/2013 has filed this Miscellaneous First Appeal challenging the order dated 14.01.2015 passed by the City Civil Judge, Bengaluru City, rejecting I.A. No. 1 filed by her seeking an order of temporary injunction restraining the defendants from giving effect to the letter of suspension dated 02.08.2013 issued by the 3rd defendant/3rd respondent herein.

2. Plaintiff claims to be the life member of Karnataka Reddy Jana Sangha, a society registered under the provisions of the Mysore Societies Act. According to the plaint averments, the Sangha has been established with various objectives mainly to provide facilities for students in schools, colleges and hostels run by the Sangha; to establish colleges, technical institutions, hostels, P.G. centres, etc., and to give encouragement to youth belonging to Reddy community for their educational, managerial, physical and intellectual development.

3. Plaintiff claims that she is a permanent resident of Bengaluru; has completed her engineering degree and has been pursuing post graduation in Urban Designing. It is urged by the plaintiff that the Managing Committee of the Sangha failed to discharge its duties as per law, in as much as, there were

several illegalities and irregularities committed by them and the plaintiff pointed out the said illegalities by protesting the same. It is also contended by her that she approached the Registrar of Societies seeking a direction to the Managing Committee to conduct the election; a writ petition was also filed in W.P. No. 4477-79/2011 seeking appointment of an arbitrator to the respondent-Sangha; at her instance, the District Registrar took action and advised the defendant-Sangha to commence the election process as the tenure of the present committee ended on 04.07.2013. She claims to have highlighted the illegal continuance of the committee without authority of law after the expiry of the term.

4. Though the Sangha asserted its right to continue in office by sending an explanation to the District Registrar, a direction was issued by the District Registrar on 27.07.2013 to conduct election in accordance with law. It is urged by the plaintiff that embarrassed by the plaintiff's acts in highlighting the illegalities and irregularities committed by the committee in the day today affairs of the committee and in view, of the legal steps taken by her by approaching this Court and the District Registrar forcing the defendant to conduct the elections, the defendants sent a letter dated 02.08.2013 to the plaintiff stating that she had made several allegations against them and had approached the court of law and that as she was staying in Tamilnadu, they were constrained to suspend her from membership of the Sangha pending final decision to be taken to remove her from the membership. She has also contended that the main reason for such an action being taken against her by the Sangha was the effort made by the plaintiff to highlight the misappropriation of funds of the Sangha.

5. It is her case that she is a permanent resident of Bengaluru and has not committed any illegal activities which disentitles her from holding the membership, and therefore, the action taken to suspend her was illegal. It is also urged that before resorting to such an action, no opportunity was given to her and that the action taken was without authority of law as the managing committee had no right or authority either to suspend or dismiss the plaintiff especially when the tenure of the committee had already expired, because the present managing committee was functioning as a care taker for holding election to the new managing committee. It is also urged by her that plaintiff was contemplating to contest the ensuing election and the action to suspend her and eventually to remove her from membership has been designed to prevent the plaintiff from contesting the ensuing election.

6. Defendants filed written statement denying the averments made in the plaint with regard to the various allegations made. They have urged that her permanent address is at Hosur in the State of Tamilnadu and her admission as a member was either by mistake or by way of inadvertence; without any basis plaintiff has made several allegations against the Sangha by filing writ petition before this Court and also by giving representations to the District Registrar; a show cause notice had been issued pursuant to the decision taken by the Executive Committee in its meeting held on 28.07.2012; an opportunity was

given to the plaintiff to give her reply within three days; plaintiff did not give any reply, hence, the Managing Committee in its meeting held on 30.07.2013 unanimously resolved to hold an inquiry and take suitable action against the plaintiff and till the inquiry was completed to suspend the membership of the plaintiff; the Managing Committee has got power and authority to take such an action. Therefore, the defendant sought for dismissal of the suit.

7. Application filed for temporary injunction was also resisted based on the same contentions.

8. The court below has found that the plaintiff has failed to make out a prima facie case and balance of convenience did not lie in her favour. In paragraph 10 of the order, the only reason assigned by the court below for rejecting the application is, that inquiry was yet to be conducted, and therefore, there was no final suspension order passed by the defendants; the suspension order was passed by the defendants pending inquiry to be conducted; in such circumstances, it was not a final decision; the plaintiff would get cause of action only after completion of inquiry against her, and therefore, at the initial stage the court could not entertain the application for grant of temporary injunction. It has placed reliance on the judgment of this Court in the case of Bangalore Golf Club Vs. M.R. Doraiswamy Iyengar, (2010) 3 KCCR 2207 . Aggrieved by this order, the present appeal is filed.

9. Mr. G. Krishnamurthy, learned Senior Counsel appearing for the appellant has raised the following contentions:

(i) Admittedly the term of the Governing Committee was upto 04.07.2013, hence, the order of suspension passed on 02.08.2014 was without authority;

(ii) Under bye-law No. 23B, the Managing Committee has no authority or jurisdiction to suspend a member. Indeed, the bye-laws do not provide for power to keep a member under suspension and even as regards removal of a member as contemplated under bye-law No. 23B, the same will come into effect only after it is accepted by the General Body;

(iii) The Government has appointed an Administrator to the Sangha, election process has commenced; the order of suspension if given effect to would deprive the appellant of an opportunity to contest the election;

(iv) That the court below has not applied its mind to the pleadings and to the documents placed on record while passing the impugned order. The judgment rendered by this Court in the Bangalore Golf Club's case has no application to the present case, as the bye-law in the said case provided for suspension of a member;

(v) That the court below has not examined the contents of the suspension order nor considered the motive behind passing such an order only to silence the voice of the plaintiff against mismanagement of the affairs of the Sangha. It is urged by him that though the plaintiff has been suspended on 02.08.2013, no inquiry

has been commenced, which clearly disclosed that defendants were interested in only continuing the plaintiff as a suspended member.

10. Mr. Jayakumar S. Patil, learned Senior Counsel appearing for the defendants contends that the present Managing Committee is entitled to discharge its duties until the new committee is elected in terms of bye-law No. 14H; that as per the amended bye-law extending the term of the managing committee, at the time when the decision was taken to place the plaintiff under suspension, term of the committee was still on, although suspension order was passed, there was an interim order till January 2015, hence no action could be taken to complete the inquiry; that there was no necessity to issue notice before suspending a member or initiating inquiry; when the managing committee has power to dismiss the power to suspend is inherent.

11. He has further pointed out that indeed election had been held and a new body had been elected on 10.08.2014, but the plaintiff made a complaint stating that it was not a valid election, therefore the Registrar passed an order to conduct election hence, elections were being conducted. He has urged that the order of suspension had nothing to do with the election. He has placed reliance on the judgment in the case of Lakshminarasimhiah and Others Vs. Yalakki Gowda, AIR 1965 Kar 310 : (1965) 1 MysLJ 370 , high lighting the power of the Appellate Court which is confined to find out whether the Trial Court had unexercised its discretion properly while granting or refusing to grant temporary injunction. To the same effect he has placed reliance on the decision of the Apex Court in the case of The Printers (Mysore) Private Ltd. Vs. Pothan Joseph, AIR 1960 SC 1156 : (1960) 3 SCR 713 .

12. Having heard the learned Counsel for both parties, the only point that arises for consideration is,

whether the order passed by the court below rejecting the prayer for grant of temporary injunction suffers from any illegality and the discretion exercised is based on materials on record in the form of pleadings and documents?

13. At the outset, it has to be stated that the order passed by the court below is not a reasoned order. It does not refer to the various contentions raised by the plaintiff, both factual and legal, nor has it dealt with the contentions urged by the defendants. It has only stated that the order of suspension was pending inquiry, and therefore, the court could not entertain the application for granting temporary injunction. To support this finding, it has placed reliance on Bangalore Golf Club's case. As can be seen from the said decision, the rules therein provided for suspension of a member pending inquiry and the suspension order was preceded by a show cause notice and the proceedings, wherein the details of misconduct alleged had been narrated. In that background, this Court observed that the Trial Court could not have ignored the material while granting an order of injunction because there was no prima facie case made out.

14. In the instant case, the Sangha is governed by the bye-laws framed and bye-

law No. 23B states that the Managing Committee of the Sangha shall have power to remove any person from membership, if his interest proved detrimental to the aims and objectives of the Sangha. The decision of the Managing Committee in that regard shall be valid provided it is approved by the General Body. It is thus clear that the Managing Committee has power to take a decision to remove any person from his membership, provided his interest proved - detrimental to the aims and objectives of the Sangha and such decision of the Managing Committee would be valid only if it is approved by the General Body.

15. There is no provision in the bye-law providing for suspension of a member, pending inquiry by the Managing Committee. Bye-law 23B does not clothe the managing committee with the power to either suspend the member or remove him on its own. There is mention of the power to suspend and the reference to power to remove is clothed by the condition that such decision taken by the Managing Committee will be valid only after it is approved by the General Body. Therefore, it is *prima facie* clear that there is serious doubt regarding the power of the managing committee to place the plaintiff under suspension.

16. It is also necessary to notice here that the plaintiff has made several allegations against the members of the Managing Committee. She has filed writ petitions before this Court, made allegations before the Registrar, indeed actions have been initiated at her instance against the managing committee. It is at her instance that the Registrar has directed the members of the Managing Committee to conduct election stating that their term had already expired. In such circumstances, the materials *prima facie* disclose that the managing committee has taken action of suspending the plaintiff as a penal measure because, of the allegations made by the plaintiff.

17. Indeed, letter of suspension also makes this aspect very clear that because of the allegations made by the plaintiff, action deserved to be taken against her. The question whether plaintiff has suppressed any fact regarding her permanent residence at Bengaluru or that she was ineligible to become a member is a disputed question. On their own showing, the defendants have admitted the plaintiff as member either by mistake or due to inadvertence as stated in the written statement. Whether it is so, is a matter of trial. At this stage, it is clear that plaintiff has made out a *prima facie* case. She has also shown that balance of convenience lies in her favour as elections have been declared, calendar of events have been published and indeed she wants to file nomination. If no interim order is granted, it will certainly affect her interest as she would be denied of her right to participate in the election process. On the other hand, no injury or prejudice would be caused to the defendants if they are prevented from causing interference in the discharge of her duties as a member and in exercising her rights as such, pending disposal of the suit.

18. The judgments on which learned Counsel for the defendants has relied pertained to a case where discretion had been exercised in accordance with law by the Trial Court, in which event; the Appellate Court will not be justified in

substituting its discretion. In the instant case, as already held above, there is no consideration of the facts involved, the pleadings, the documents and the legal questions raised based on the bye-laws, by the Trial Court. The Trial Court has not passed a reasoned order. Therefore, the discretion exercised by the court below is illegal and deserved to be interfered with.

19. Hence, this appeal is allowed. Impugned order is set aside. Application filed in IA-1 before the court below is allowed. An order of temporary injunction restraining the defendants from giving effect to the suspension order dated 02.08.2013 is issued, till the disposal of the suit.