
(2015) 08 KL CK 0030

In the High Court Of Kerala

Case No : O.P.(C) Nos. 175 of 2015 (O), 176, 292 and 1146 of 2015

N.T. Mohammed Shereef and Others

APPELLANT

Vs

Association for Welfare of the Handicapped and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Citation : (2015) 08 KL CK 0030

Hon'ble Judges : B. Kemal Pasha, J.

Bench : Single Bench

Advocate : V.V. Surendran and P.A. Harish, Advocates, for the Appellant; Biju Abraham and B.G. Bhaskar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

B. Kemal Pasha, J.—The matter relates to an association called Association for the Welfare of the Handicapped(for short "AWH"). In the Executive Committee of the Association there were 13 members. A factional feud arose in the Association among the members of the Executive Committee. Seven persons under the leadership of the President formed the "President's group" and the remaining six members under the leadership of the Secretary formed "the Secretary's group".

2. In the year 2008, two General Bodies were allegedly convened, one by the President's faction and the other by the Secretary's faction. One of such General Body was allegedly convened on 14.05.2006 and the other on 26.07.2001. Members were inducted by both the factions.

3. Subsequently, a dispute has arisen as to the number of the valid members of the Association. Consequently, five suits were filed as O.S. No. 187 of 2008, O.S. No. 226 of 2008, O.S. No. 365 of 2008, O.S. No. 368 of 2008 and O.S. No. 537 of 2008. The learned Principal Munsiff, Kozhikode passed common judgment dated 23-12-2009, whereby O.S. No. 187 of 2008, O.S. No. 226 of 2008 and O.S. No. 365 of 2008 were dismissed. O.S. No. 537 of 2008 was decreed in the following lines:

"In the result, O.S. 187/08, O.S. 226/08 and O.S. 365/08 are dismissed, however, without cost.

O.S. 537/08 is decreed without cost as below:--

1. It is hereby declared that the decision taken by the Registrar of Societies(General), Kozhikode on 4.4.2008 approving the list of members of the governing body consisting of defendants 1 to 5 and 7 to 12 is illegal and improper since there was no legal election on 12.3.2008. It is further declared that the expulsion of the plaintiff from the executive committee of AWH on 24.06.2008 and his removal from general body of AWH on 20.2.2008 are illegal and contrary to the bye-laws of AWH. It is hereby declared that the plaintiff continues to be the member of AWH. It is further declared that the meetings alleged to have been conducted by defendant Nos. 1 to 5 and 7 to 12 on the basis of their alleged election to the governing body on 12.3.2008 are illegal, improper and null and void.

2. Defendants 1 to 5 and 7 to 12 are restrained by a prohibitory injunction from functioning as the office bearers of the governing body of AWH for the period 2008-2011."

4. Further, a preliminary decree was passed in O.S. No. 368 of 2008 with the following reliefs.

"1. The election to the executive committee of AWH alleged to have held on 12.03.2008 and 24.03.2008 by the rival groups are declared as invalid.

2. Expulsion of three members M/S. Dr. Fakrudheen, Dr. Ayisha Kalliyath and K. Abdul Rahiman from the executive committee on 24.06.2007 is declared invalid.

3. Expulsion of the aforesaid three members from the general body of AWH on 20.02.2008 is also declared invalid.

4. Admission of 21 members by the alleged executive committee headed by P.W. 1, on 26.11.2007 into the general body of AWH is also declared invalid.

5. Inclusion of members by the executive committee headed by D.W. 2, after 1.4.2008 and expulsion of some of the members after 1.4.2008 is also held invalid.

6. It is hereby declared that, as on 1.4.2008, AWH was having 41 legally enrolled members. A commissioner shall be appointed by the court for supervising the general body meeting of the members of AWH and for the election of executive committee members consisting of 13 members including the office bearers. The general body meeting and election shall be conducted strictly in accordance with the provisions of Ext. A5 bye-laws, after giving notice to all the aforesaid 41 members. The commissioner appointed by the court shall act as the Returning Officer in the election. The entire process of election shall be completed within a period of two months from this date."

5. The parties have taken up the matter in appeal through A.S. No. 23 of 2010, A.S. No. 24 of 2010, A.S. No. 30 of 2010, A.S. No. 31 of 2010 and A.S. No. 32 of 2010. The Principal Subordinate Judge's Court, Kozhikode has disposed of the appeals through the common judgment dated 14.10.2010 in the following lines:

"In the result, these appeals are disposed of as follows:

A) It is hereby ordered and decreed that A.S. 30/10, A.S. 31/10, A.S. 24/2010 and A.S. 32/2010 are dismissed and the judgment and decree passed by the trial court in O.S. 187/08, 226/08, 537/08 and 365/08 are confirmed.

B) And it is hereby further ordered and decreed that A.S. 23/2010 is allowed in part and the judgment and decree passed by the trial court in O.S. 368/08 is set aside in part. The finding of the trial court that election is to be conducted to the executive committee of AWH is confirmed. But, the finding of the trial court regarding the number of valid members of AWH is set aside and the suit is remanded to the trial court for taking a decision regarding the number of valid members afresh. Both sides shall be given opportunity to adduce evidence regarding this aspect. Additional parties, if any, sought for, may be allowed to be impleaded.

C) And it is hereby further ordered and decreed that the cross objection filed by the respondent in A.S. 23/2010 is dismissed.

(D) And it is hereby further ordered and decreed that the Receiver appointed by the Hon'ble High Court of Kerala will continue to manage the affairs of AWH till the conduct of election in terms of the direction of the trial court.

(E) And it is hereby further ordered and decreed that the parties shall bear the costs of the appeals respectively.

(F) And it is hereby further ordered and decreed that since OS 368/08 is remanded to the trial court, the entire court fee paid by the appellant in AS 23/2010 will be refunded.

(G) Since the dispute is such as to affect the management of the affairs of a series of institutions directly, the trial court shall make every endeavor to dispose of the suit as early as possible by giving utmost priority and by taking due care to limit the duration between the adjournments to the minimum. The parties shall appear before the trial court on 20.11.2010."

6. The parties have taken up the matter by way of two FAOs and two RSAs before this Court. This Court, through a common judgment dated 14.03.2013, dismissed both the RSAs. and FAOs.

7. In the present matters, the petitioners before this Court had approached the court below on the strength of the appellate judgment as well as this Court's judgment for getting themselves impleaded in the suit, through I.A. Nos. 2101/2014, 2229/2014, 2386/2014, 2387/2014, 2388/2014, 2389/2014, 2623/2014, 2830/2014, 2831/2014, 2832/2014, 2833/2014 & 3539/2014 in OS

667/2010 claiming that they are members of AWH and therefore, they are entitled to participate in the proceedings to get the matters in controversy settled. The court below through Ext. P11 common order produced in OP 176 of 2015, has chosen to dismiss all the IAs. Ext. P11 order produced in OP 176 of 2015 is under challenge in all these OPs.

8. According to the learned Senior Counsel and other counsel for the petitioners, the court below ought not to have dismissed those IAs and ought to have permitted those persons to come on record as additional defendants in the suit before the court below.

9. Per contra, the learned counsel appearing for respondents 1 to 3 has canvassed an argument that firstly, the parties to the suit have to agitate the matter relating to the number of valid members of the Association and only after that, such persons, who could be reckoned as valid members, can come on record. The learned counsel for respondents 1 to 3 has vehemently supported the impugned common order passed by the court below.

10. It is a fact that Ext. B2, by which members were allegedly enrolled to the Association, is manifestly manipulated, as repeatedly found by the appellate court as well as this Court. Therefore, Ext. B2 is of no use at all to conclude the question as to who all are the valid members of the Association. The appellate court has dismissed A.S. Nos. 30 of 2010, 31 of 2010, 24 of 2010 and 32 of 2010 thereby confirming the judgment and decree of the trial court in O.S. No. 187 of 2008, O.S. No. 226 of 2008, O.S. No. 537 of 2008 and O.S. No. 365 of 2008. The appellate court has allowed A.S. 23 of 2010 in part thereby setting aside the decree passed by the court below in O.S. No. 368 of 2008 in part. The appellate court has confirmed the decision taken by the court below to have the election conducted to the executive committee of AWH. The findings entered by the court below regarding the number of valid members of AWH were set aside. The suit was remanded to the court below for taking a decision regarding the number of valid members afresh. It was further held, "both sides shall be given opportunity to adduce evidence regarding this aspect. Additional parties, if any, sought for, may be allowed to be impleaded." The present dispute centres around the interpretation of the aforesaid findings entered by the appellate court.

11. According to the learned Senior Counsel and other counsel for the petitioners, those persons, who are claiming to be members with receipts showing the payment of contribution to the said Association ought to have been impleaded in the suit on their request, and it was then only the court below could permit the parties including those persons coming on record, to agitate the question regarding the number of valid members of the Association. According to the learned counsel for the respondents 1 to 3, the existing parties to the suit alone have to agitate the question with regard to the number of valid members of the Association and then only the persons who are proved to be valid members can come on record.

12. This Court had occasion to interpret the decision taken by the appellate court in the matter, in the common judgment in the RSAs and the FAOs, where this Court has held that it is not possible to hold that a proper meeting was held either on 14.05.2006 or on 26.01.2007 and that Ext. B2 minutes cannot be relied upon. In paragraph 27, this Court has held:

"Any decision on the acceptability of such persons as members of the committee may be against the interest of other members who are not parties to the suit. Therefore, in order to have a proper adjudication regarding the number of valid members of AWH a proper consideration should be had for which the persons who are not parties to the suit can also be brought on record, is the view taken by the lower appellate court."

13. Therefore, this Court has concluded the said matter and it is no more open to challenge. This Court has held that the decision as to the number of valid members of the Association can only be taken after such persons who are claiming to be members of the Association are brought on record. At any stretch of imagination, it cannot be said that the validity of membership of a person, who is not a party at present, can be adjudicated by the present parties alone when the appellate court has permitted "additional parties, if any, sought for, may be allowed to be impleaded."

14. It has to be construed in such a way that the persons, who can show prima facie that they are members of the Association, have to be permitted to come on record as parties. When the court below is directed by the appellate court to take a decision regarding the number of valid members afresh, such persons, who are coming on record, should also get an opportunity to agitate the said question. Justice demands their participation also in such an adjudication. If they are not permitted to come on record, it would result in negation of justice.

15. From the discussions made above, it has come out that the impugned common order passed by the court below is illegal and without jurisdiction. There is jurisdictional error in the impugned order, when the court below has travelled outside the contours of the remand order passed by the appellate court through the appellate judgment, subsequently confirmed by this Court in the RSAs and FAOs. Matters being so, the impugned common order is liable to be set aside.

In the result, all these Original Petitions are allowed and the impugned common order is set aside. All the impleading applications in question, which are the IAs submitted by the present original petitioners, stand allowed. The court below is directed to implead them as additional defendants in O.S. No. 368 of 2008, which is presently pending as O.S. No. 667/2010 before the court below. The petitioners in all the IAs., who are impleaded as additional defendants, shall be given an opportunity to file written statement in the suit.

It is made clear that this Court has not entered a finding that the present additional defendants, who are impleaded, are valid members of the Association. The said question has to be decided by the court below as directed by the

appellate court and this Court. By merely impleading these persons, they will not acquire the rights of a valid member, unless and until it is proved that they are valid members of the Association. It is also made clear that any person other than the petitioners in the above IAs. shall not be permitted to come on record as it will continue as a non-ending procedure. The court below shall make every endeavour to dispose of the suit expeditiously, as the suit was originally filed in the year 2008.