
(1996) 07 MAD CK 0029
In the Madras High Court
Case No : C.M.A. No. 375 of 1996

R. Lakshmipathy	Vs	APPELLANT
Madras Gymkhana Club		RESPONDENT

Date of Decision : 19-07-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Specific Relief Act, 1963 — Section 39

Citation : (1997) 1 CTC 77 : (1996) 2 MLJ 573

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S. Soundararajan, for the Appellant; R. Sankaranarayanan, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—This C.M.A. is filed by the plaintiff in O.S.No. 8572 of 1995 (petitioner in I.A.No. 17184 of 1995), pending before

the Second Assistant Judge, City Civil Court, Madras. The suit was originally filed before this Court and numbered as C.S.No. 1756 of 1995, but

in view of amendment regarding jurisdiction of courts, the same was transferred to the City Civil Court, Madras.

2. The suit filed by plaintiff is to declare Rule XI(f) of the Rules and Bye-laws of the Madras Gymkhana Club to the effect that "In any event, no

reinstatement will be permissible before the expiry of six months from the date of such posted member settling his outstandings" as contrary to law,

not valid and binding on the plaintiff, and also for a declaration that the letter dated 24.10.1995 of the said Club addressed to plaintiff is illegal,

contrary to Rules, not valid and binding on the plaintiff, and for a consequential injunction directing the defendant to restore the membership of the

plaintiff and confer all benefits available to a member of the defendant-Club, and for costs of suit.

3. The material averments as seen in the plaint are that the plaintiff is a member of the defendant-Club and he is an Institutional Member, and he

had been in enjoyment of the Membership for the last 17 to 18 years. It is said that the defendant is a registered Society under the Societies

Registration Act, 1860 and it is governed by its own Rules and Regulations and Bye-laws. Rule 11 deals with payment of membership fee and the

consequence of default. A procedure is also provided as to how the membership will cease and the conditions on which a defaulted member shall

cease to be a member till reinstatement. It is further said that the plaintiff has got a very good status in society. He is the publisher of a leading Tamil

newspaper "Dina Malar" and he is also the President of various Educational Institutions. It is further said that the plaintiff, from the very inception of

the Club, became a Member, and he has been very regular in paying the Bills, etc. Plaintiff has further said that on an average, he was paying Rs.

4,000 to Rs. 5,000 per month to the Club. It is said that the bill for the month of August, 1995 aggregating to Rs. 629 fell due, which the plaintiff

came to know only in the last week of October, 1995, According to the plaintiff, the accounting period is from 21st of each month to 20th of next,

and if it is not settled as per Rule XI (c), a demand shall be made on the member, on or after the last date of the month for payment of dues within

seven days, and the demand is to be made by registered post, and in the event of non-payment by that date, the Committee may post such

member as a defaulter from such date, in some conspicuous place in the club in which case his name shall automatically be removed from the list of

members and the fact notified by registered post. However, the member can request for reinstatement after payment of all his outstandings. At the

discretion of the General Committee, the reinstatement of the member can be made, but in any event, no reinstatement will be permitted before the

expiry of six months from the date of such posted member settling his outstandings. According to the plaintiff, he was out of India from 30.9.1995

to 20.10.1995, and he checked in on 20.10.1995 in the night and stayed in the Club and left for Madurai on 21.10.1995, after paying one day

accommodation charges. It is said that he was not aware of the outstanding bill pertaining to the month of August, 1995, nor was he aware of any

notice having been given by the defendant. There was communication lapse on the part of the staff of the plaintiff which resulted in non-payment.

This is due to inadvertence and cannot be attributed to negligence on the part of the plaintiff. It is said that the Club issued a letter dated

24.10.1995 that in terms of Rule XI (C) of the Club, plaintiff is not entitled to make use of the Club or avail of the facilities of the Club with

immediate effect. It is further stated that immediately after receipt of such a notice, he paid the entire amount due to the club and also made a

representation on 30.10.1995 explaining the circumstances and requesting reinstatement. The defendant has not sent any reply so far. It is further

said that the Rule XI (f) which provides that no reinstatement will be made before the expiry of six months even after settlement of the bills, is

arbitrary. Necessary safeguards have been made for the payment of the outstandings, and a procedure has been followed for removal of the

membership, and, therefore, the above provision for automatic removal without any power in the General Committee to exercise its discretion to

meet an extreme situation, is against justice and fairplay. Plaintiff further says that the clause relating to reinstatement after six months is one-sided,

against all principles of equity, justice, and to harsh a penalty not valid under the Contract Act. It is said that the plaintiff had also proposed certain

amendments to the Bye-laws, and they have not been considered. He says that the notice dated 24.10.1995 is not valid. According to him, the

defendant had notified that the arrears are to paid by 24.10.1995, and hence he was entitled to pay the amount at any time on 24.10.1995, and

the defendant, however, without waiting for the time to expire, issued the notice dated 24.10.1995, which is illegal, contrary to the rules and hence

not binding on the plaintiff. According to plaintiff, it is a mala fide attempt on the part of the defendant, putting the plaintiff to mental agony, lowering

his reputation in the estimation of other Members. For these reasons, plaintiff has filed the above suit for the aforementioned reliefs.

4. Along with the suit, he also moved for an interim relief in the nature of a mandatory injunction to restore the membership of the plaintiff and

confer all benefits available to a member of the defendant-Club.

5. A detailed counter was filed by respondent/defendant, wherein it said that as per Rules and Bye-laws, it is for the plaintiff to verify whether there

are arrears, and when the same is not paid in time, the procedure is followed as per Rules. In so far as the plaintiff is concerned, on the basis of the said procedure, by a notice a demand was made, and, in spite of the same, payment was not made and, therefore, on the expiry of the period, he automatically ceased to be a Member, which fact was communicated on 24.10.1995.

6. Defendant also contended that the rule providing for reinstatement of a defaulted member is in accordance with law, and there is no illegality, nor could the same be considered as a penalty. It is further said that the plaintiff who volunteers to become a member of the Club, has to agree with the terms and conditions of the Club, and only on such consent, he becomes a member. It is also said that if at all there was any communication lapse, that was only between the plaintiff and his employees, and, so far as the defendant is concerned, it has taken all precautions and has acted in accordance with law. It is said that there is no scope for issuing any mandatory injunction, and if any such relief is granted, it will amount to decreeing the suit itself.

7. The court below, as per the impugned Order, dismissed the application. It is against the said Order, the present C.M.A. is filed.

8. Before going to the merits of the case, let us consider the scope of Rule 11 of the Bye-laws of the defendant-Club. Relevant portion of Rule 11

reads thus:-

(c) A member shall settle his account with the Club by the end of the month following that in which it was incurred. The accounting period for this

purpose shall be the 21st of each month to the 20th of the next, unless changed by the Committee. If a member fails to settle his account with the

Club as above, demand shall be made on him on or after the last date of the month for payment of dues within seven days, by the Honorary

Treasurer and such demand shall be sent by Registered Post and the cost of postage so involved shall be borne by the member concerned and in

the event of non-payment by the date the Committee may post such member as defaulter from such date, in some conspicuous place in the Club, in

which case his name shall automatically be removed from the list of members and the fact notified to him by Registered Post.

(f) Reinstatement of a Member who has been posted and has subsequently met

all his outstandings shall be at the sole discretion of the General

Committee and only on being proposed and seconded by two Resident Members and on his giving firm assurance regarding prompt payment of

his bills in future. In any event, no reinstatement will be permissible before the expiry of six months from the date of such posted member settling his

outstandings

9. It is not the case of the plaintiff that he paid the amount due for the month of August, 1995. Admittedly, the amount was paid only after receipt

of the notice dated 24.10.1995, whereby he was declared or communicated that he ceased to be a member. According to his own showing,

plaintiff has violated Rule 11 (c) of the Bye-laws of the Madras Gymkhana Club. When he himself is a defaulter and the payment was made only

after a declaration that he is a defaulter, the question of granting a mandatory injunction will not arise. Plaintiff only questions the validity of Sub-rule

(f) of Rule 11. He has no case or grievance against the procedure contemplated under Rule 11 (c) (extracted above).

10. Plaintiff has also not asserted anywhere in the plaint or in the affidavit filed in support of the application for mandatory injunction that no notice

demanding payment was sent to him. What he says is that there was a communication gap between him and his staff and, therefore, he could not

pay the dues in time. The demand is only to intimate the default, but, going by the Rules, it is clear that the payment has to be made voluntarily even

before demand is made. When he himself admits that he is a defaulter, he should not have waited for a demand.

11. When the plaintiff also is not asserting that the demand notice was not received by him, and in spite of the same, the amount is not paid, the

legal consequence follow. A further hearing in that regard is unnecessary. The Rule itself provides automatic seizure of the membership. The

procedure of sending a letter under Rule 11(c) is only an intimation that he ceased to be a member. When the legal consequences also are

provided in the Rule, plaintiff cannot insist on a fair hearing thereafter.

12. Learned counsel stated that now that he has paid the amount and has made a representation on 30.10.1995, asking him to wait for more than

six months to get him reinstated, is really a penalty. According to him, once the dues are paid, reinstatement ought to have been ordered without

asking to wait for a period. According to me, the said submission also cannot legally stand. No person has got a right much less a legal right to be a

member of the Club. Only if he agrees to the terms and conditions and Bye-laws of the Club, his name could be considered for membership, and

only when the General Committee agrees that he may be given the membership. His request for membership by itself is not enough, unless consent

is obtained from others. Once there is no legal right to become a member of the Club which has its own bye-laws, a condition that a defaulted

member has to wait for six months to get himself reinstated, according to me, is only reasonable, and again, there is a procedure for enrolment of

the Institutional Members. Rule 7(b) of the Bye-laws provided for the same. From a reading of Rule 4(a) to (h) of the Bye-laws, it is clear that the

enrolment of a member is not automatic on request. So, plaintiff has to show that he has got a legal right to be a member of the defendant-club.

13. When I asked the learned counsel for the appellant (plaintiff) to explain under what circumstances, the plaintiff could be considered as having a

legal right, his answer was evasive. He only said that at present days, to be a member of a Club is a status, and removal therefrom is a matter of

loss of reputation.

14. While considering the question of power of court in interfering with the right of restoration of Members, the decision reported in T.P. Daver

Vs. Lodge Victoria No. 363, S.C. Belgaum, is an answer. Before expelling a member, the only requirement is that there must be strict compliance

of the Rules, and the principle of natural justice should not be overruled. If these two are complied with, the power of the court to interfere with the

decision of the Club cannot be had. While considering the same, the Supreme Court held thus:-

The source of the power of associations like clubs and lodges to expel their members is the contract on the basis of which they become members.

This principle has been reacted by Lord Morton in *Bonsor v. Musicians' Union*, 1956 A.C. 104. There, one Bonsor, who became a member of a

trade union, was expelled. In that context Lord Morton observed:

When Mr. Bonsor applied to join the respondent union, and his application was accepted, a contract came into existence between Mr. Bonsor

and the respondent, whereby Mr. Bonsor agreed to abide by the rules of the

respondent union, and the union impliedly agreed that Mr. Bonsor would not be excluded by the union or its officers otherwise than in accordance with the rules.

This contractual origin of the rule of expulsion has its corollary in the cognate rule that in expelling a member the conditions laid down in the rules

must be strictly complied with. In *Maclean v. Workers Union*, 1929 1 Ch.602 the contractual foundation of the power is described thus: "In such a

case as the present, where the tribunal is the result of rules adopted by persons who have formed the association known as a trade union, it seems

to me reasonably clear that the rights of the plaintiff against the defendants must depend simply on the contract and that material terms of the

contract must be found in the rules".

Proceeding on that basis, the learned Judge observed:

It is certain, therefore, that a domestic tribunal is bound to act strictly according to its rules and is under an obligation to act honestly and in good

faith.

The same idea was expressed by the Calcutta High Court in *Ezra v. Mahendra Nath Banerji*, ILR 1946 (2) Cal 88 thus:

...Where the rule provides in any particular respect that some condition must be fulfilled, then that condition must be strictly complied with, since

the power of expulsion is itself dependent on the terms of the rule.

The next question is whether the doctrine of strict compliance with rules implies that every minute deviation from the rules, whether substantial or

not, would render the act of such a body void. The answer to this question will depend upon the nature of the rule infringed; whether a rule is

mandatory or directory depends upon each rule, the purpose for which it is made and the setting in which it appears. We shall consider this aspect

of the doctrine when we deal with the argument of the learned counsel that in the present case the rules have not been complied with.

The scope of the jurisdiction of a civil court vis-a-vis the decisions of tribunals is also well settled. In *Maclean v. Workers Union*, 1929 1 Ch.

60233, Maugham, J., observed:

It appears to me that we have no power to review the evidence any more than have a power to say whether the tribunal came to a right

conclusion.

Much to the same effect the Judicial Committee observed in *Lennox Arthur Patrick O'Reilly v. Cyril Cuthbert Gittens*. 1949 (2) M.L.J.688 : AIR

1949 P.C. 313:

...It is important to bear in mind that neither the learned Judge nor their Lordships' Board is entitled to sit as a court of appeal from the decisions

of a domestic tribunal such as the Stewards of the Tribunal Turf Club.

Later on, the Privy Council stated at p. 317":

All these matters, however, are essentially matters for the domestic tribunal to decide as it thinks right. Provided that the tribunal does not exceed

its jurisdiction and acts honestly and in good faith, the Court cannot intervene, even if it thinks that the penalty is severe or that a very strict

standard has been applied.

Another aspect which may also be noticed is how far and to what extent the doctrine of bias may be invoked in the case of domestic tribunals of

Maugham, J. in *Maclean's case*, 1929 1 Ch.602 in this context may be noticed. The learned Judge observed in that case thus:

A person who joins an association governed by rules under which he may be expelled, has... in my judgment no legal right of redress if he be

expelled according to the rules, however unfair and unjust the rules or the action of the expelling tribunal may be, provided that it acts in good faith.

The phrase, "the principles of natural justice." can only mean in this connection the principles of fair play so deeply rooted in the minds of modern

Englishmen that a provision for an inquiry necessarily imports that the accused should be given his chance of defence and explanation. On that point

there is no difficulty. Nor do I doubt that in most cases, it is a reasonable inference from the rules that if there is anything of the nature of a lis

between two persons, neither of them should sit on the tribunal

Another difficulty that one is confronted with in proceedings held by committees constituted by clubs is to demarcate precisely the line between the

prosecutor and the Judge. *Maugham, J.* noticed this difficulty and observed in *Maclean's case*, (1929) 1 Ch.602 thus:-

In many cases the tribunal is necessarily entrusted with the duty of appearing to act as prosecutors as well as that of judges; for there is no one else

to prosecute. For example, in a case where a council is charged with the duty of considering the conduct of any member, whose conduct is disgraceful and of expelling him if found guilty of such an offence, it constantly occurs that the matter is brought to the attention of the council by a report of legal proceedings in the press. The member is summoned to appear before the council. The council's duty is to cause him to appear and to explain his conduct. It may be that in so acting the council are the prosecutors. In one sense they are; but if the regulations show that the council is bound to act as I have mentioned and to that extent to act as prosecutors, it seems to be clear that the council is not disqualified from taking the further steps which the rules require".

Though it is advisable for a club to frame rules to avoid conflict of duties, if the rules sanction such a procedure, the party, who has bound himself by those rules, cannot complain, unless the enquiry held pursuant to such rules discloses mala fides or unfair treatment.

The following principles may be gathered from the above discussion. (1) A member of a masonic lodge is bound to abide by the rules of the lodge; and if the rules provide for expulsion, he shall be expelled only in the manner provided by the rules. (2) The lodge is bound to act strictly according to the rules; whether a particular rule is mandatory or directory falls to be decided in each case, having regard to the well settled rules of construction in that regard (3) The jurisdiction of a civil court is rather limited; it cannot obviously sit as a court of appeal from decisions 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 as explained in the decisions cited supra.

15. As I have said earlier, plaintiff has not case that the procedure has not been complied with, and principle of natural justice has also been taken away in view of a provision, namely, Rule 11 (c) of the Bye-laws. Once a demand is made, and if the amount is not paid by the time mentioned in the demand, expulsion is automatic. In this case, the default is admitted. That there was a demand, is also not in dispute. The only case that is put-forward by plaintiff is, as stated earlier, there was a communication lapse between him and his staff. So, the plaintiff cannot have a grievance that the Rules have not been strictly complied with. If so, plaintiff himself is at fault.

16. While granting an injunction of mandatory character, Section 39 of the Specific Relief Act will have to be considered. Section 39 of the said

Act reads as follows:-

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the

court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

To get a mandatory injunction, whether permanent or temporary, plaintiff should be specific that there was a breach of obligation, and certain acts

are necessary to restore the status quo. Learned counsel for the appellant was at pains to substantiate his case that there was an obligation on the

part of the defendant-Club, towards the plaintiff. If there is no obligation, the question of granting any mandatory injunction also does not arise.

17. Recently, the Supreme Court had occasion to consider the principles under which an injunction could be granted under Order 39, Rules 1 and

2, C.P.C. Their Lordships held in *M/s. Gujarat Bottling Co. Ltd. and others Vs. Coca Cola Company and others*, that one of the essential

conditions for the grant of injunction is, that the person who seeks the assistance of court must be free from blame, and his conduct must be fair

and honest. I have already said that the plaintiff alone is responsible for the present state of affairs.

18. Learned counsel for the appellant relied on the following decisions:-

AIR 1950 81 (Privy Council); *Raghunath Thakur Vs. State of Bihar and Others*, ; *M.R.S. Rathnavelusami Chettiar v. M.R.S. Manickavelu*

Chettiar and Ors., 40 1951 CompCas 93; *Hiles v. Amalgamated Society of Woodworkers*, (1967) 3 All. E.R. 70; *Baker v. Jones and Ors.*,

1954 All ER 553(Queen's Bench Division) and (7) *Lawlor and Ors. v. Union of Post Office Workers*, (1965) 2 W.L.R. 579 (Chancery Division)

19. In so far as the first two cases are concerned, their Lordships said that a civil suit is maintainable if the Rules or principles of natural justice are

violated.

20. I have already said that both these requirements have been complied with in this case. At present, we are not concerned with the

maintainability of the suit. We are concerned with the only question whether the plaintiff is entitled to get an interim relief. In both the cases cited,

principles of natural justice were violated. Therefore, those decisions have no application to the case on hand.

21. In so far as the passages cited from the Halsbury's Laws of England, nothing turns on them, for the simple reason that they also do not go

against the decision reported in T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, . In the paragraphs cited, it is only said that before

removing a Member, the Rules should be strictly observed. According to me, even though the wordings in Rule 11 (c) are that "shall automatically

be removed", it only means that he "shall cease to be a member". The question of removal will not arise, if there is a default and the demand has

not been complied with by the date mentioned in the demand. Otherwise, the words "shall automatically be removed" will have no meaning.

22. At this juncture, learned counsel also submitted that the notice was issued on 24.10.1995 and he had time till 24.10.1995, and the removal on

24.10.1995 itself was not proper. I cannot appreciate that argument for the simple reason that the demand was made to plaintiff, to pay the dues

by 24.10.1995. As per Rule 11(c), payment will have to be made by that date, and the rule provides that the effect of default will follow from the

date.

23. The principle of clear notice may not be strictly applicable. The defendant can only show that by 24.10.1995, the amount was not paid. In this

case, the payment was made only on 26.10.1995.

24. The other English decisions relied on by learned counsel also will have no relevance. They also enunciate only the principle that civil suit is

maintainable, but the court's jurisdiction will be to consider how far the principles of natural justice or the relevant Rules have been violated, and

not the power of the Club or Association to take disciplinary proceedings or to expel the member. I do not find any merit in this appeal.

Consequently, the civil miscellaneous appeal is dismissed with costs.