
(2013) 08 MP CK 0205

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5027 of 2013

Rotary Club Birla Nagar and Others

APPELLANT

Vs

Rotary International

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Companies Act, 1956 — Section 25

Constitution of India, 1950 — Article 12, 21, 226, 32

Citation : (2013) ILR (MP) 1913 : (2013) 5 MPHT 396 : (2013) 4 MPLJ 185

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : V.K. Bharadwaj, Assisted by Mr. M.P. Mangal, for the Appellant;
Prashant Sharma, Advocate for Respondent No. 1 and None, for the Respondent

Final Decision : Dismissed

Judgement

Sujoy Paul, J.—By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner Rotary Club, Birla Nagar through its President Rajkumar Tamotiya and petitioner No. 2 Deependra Kumar Tamotia have prayed for the following reliefs:-

- i) That, the present petition filed by the petitioners may kindly be allowed;
- ii) That, the order Annexure P/1 dated 16.7.2013 issued by the respondent no. 1 may kindly be directed to be quashed.
- iii) That, any other just, suitable and proper relief, which this Hon"ble Court deems fit, may also kindly be granted to the petitioners. Costs be also awarded in favour of the petitioners.

When this matter was taken up, a preliminary objection was taken by the other side contending that this writ petition is not maintainable against Annexure P-1. Thus, with the consent, the parties were heard only on the question of maintainability of the petition.

2. Shri V.K. Bharadwaj, learned senior counsel assisted by Shri M.P. Mangal submits that the respondent-Rotary International is amenable to the writ jurisdiction of this Court under Article 12 of the Constitution. It is "State" within the meaning of Article 12 and if it is not State, it must be treated as "other authority" within the meaning of Article 12 of the Constitution. To elaborate this submission, the learned senior counsel for the petitioner submits that the Rotary International, South Asia Office is registered u/s 25 of the Companies Act. The aim, object and nature of activity of the Rotary Club is for common welfare of the people. Thus, it should be treated as extended arm of the State. In addition, it is submitted that the Rotary Club is engaged in the activities of public welfare and, therefore, it can be held to be a "State" or "authority".

3. Learned senior counsel submits that the welfare activities which are being undertaken by the Government are also performed by the Rotary Club and, therefore, it can be safely concluded that the Rotary Club is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. To bolster this submission with legal authorities, reliance is placed on the judgment of this Court reported in *Anirudh Dwivedi Vs. The State Chief Commissioner, Bharat Scout and Guide and Another*, . In addition, heavy reliance is placed on the judgment of Apex Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, . The learned senior counsel submits that Binny Ltd. was a private company and it was neither an authority nor an instrumentality of the State. It was not even performing any public function or duty nor it was bound by rules and regulations, yet the Apex Court considered the meaning of the word "Public Function" and opined that when a body seeks to achieve some collective benefit for the public and is accepted by public having authority to do so or where the body is intervening or performing any social or economic affairs in public interest, it would be performing a public function.

4. By placing reliance on *Tamil Nadu Electricity Board Vs. Sumathi and Others*, it is contended that even in case of tortuous liability and when Article 21 of the Constitution is infringed, a writ petition under Article 226 of the Constitution is maintainable. The learned senior counsel lastly submits that the petitioner's right to live with dignity is taken away by issuance of the impugned order Annexure P-1. He submits that his fundamental right of contesting election is sought to be taken away by Annexure P-1. For this he relied on *A.K. Gopalan Vs. The State of Madras*, . Shri Bharadwaj also relied on constitution Bench judgment of Supreme Court reported in *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*,

5. Per contra, Shri Prashant Sharma, learned counsel for respondent No. 1 submits that this petition is not maintainable. The impugned order Annexure P-1 is an E-Mail issued from United States (Headquarter of Rotary International). It is issued by John. P. Hewko, General Secretary, Rotary International and the said authority has not been impleaded by giving correct address. To elaborate, it is submitted that Annexure P-1 is issued by Rotary International. U.S. and its

address is One Rotary Centre, 1560, Sherman Avenue Evanston Blinals, 60261-3698, USA. He submits that neither the said authority is properly implemented as a respondent, nor any writ would lie against this private person/body, which is situated beyond the territory of India.

6. Apart from this, it is stated that the petitioner No. 1 cannot be represented by Shri Rajkumar Tamotiya in the capacity of President. By relying on para 5.1 of the petition, it is contended that as per the pleading of writ petition itself, it is clear that the term of Rajkumar Tamotiya as elected President was only upto 30.6.2013. This petition is filed after that and, therefore, the Rotary Club cannot be represented by Shri Rajkumar Tamotiya. Secondly, it is stated that the order Annexure P-1 is issued against Shri Anil K. Sharma and Anuj K. Agrawal. The directions are issued against Dr. Deependra Kumar Tamotia in Annexure P-1. None of these persons have chosen to file this petition. The petitioner No. 2, as contended, has no locus standi and cannot be treated to be a "person aggrieved".

7. I have bestowed my anxious consideration on the rival contentions advanced at bar by the parties and perused the record.

8. In the considered opinion of this Court, to determine whether a body falls within the definition of "State" or any "other authority" as mentioned in Article 12, it is necessary for the petitioner to file complete data and relevant documents to show the aim & object, nature of constitution of the body, element of Government control over it (if any), source of finance, nature and territory of activity etc. In absence thereof, no presumption can be drawn that a body is "State" or "authority". The petitioners have not placed any documents to show the constitution of the Rotary Club, its nature, activity, aim object and aforesaid relevant factors to enable this Court to examine whether the necessary ingredients to treat it as "State" or "authority" are available. The reliance was placed by the learned senior counsel on a judgment of Supreme Court in In Re: Noise Pollution - Implementation of the Laws for restricting use of loudspeakers and high volume producing sound systems, wherein the Apex Court in para 168 observed that awareness can be created through service clubs such as Rotary International and Lions International and societies engaged in preventing noise pollution.....

9. In the opinion of this Court, the aforesaid observation alone, by no stretch of imagination, can bring the Rotary Club within the ambit of State/authority as contemplated in Article 12 of the Constitution. At the cost of repetition, in my opinion, whenever it is submitted that a body is "State" or its "instrumentality" or an "authority", the burden is on the petitioner to establish it by placing adequate material that the said body falls within the ambit of Article 12 of the Constitution. In absence of basic material, no definite opinion can be formed by the Court in this regard.

10. The matter may be examined from yet another angle. The stand of learned senior counsel is that in Binni (supra), admittedly, the industry was neither the

State nor its instrumentality or authority yet interference was made. Therefore, interference can be made in this petition also against Rotary International. In addition, it is contended that since the Rotary International is a registered Company u/s 25, it is amenable to the writ jurisdiction of this Court.

11. Generally speaking a writ petition is maintainable against:-(i) Government; (ii) An authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging a public duty or positive obligation of a public nature; and (viii) a person or a body under a liability to discharge any function under any statute to perform such statutory function, (see *Federal Bank Ltd. Vs. Sagar Thomas and Others*, . In the said case the Apex Court further opined (after considering the judgment in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvana Jayanti Mahotsav Smarak Trust vs. V.R. Rudani*) that the private institution or a company carrying on any statutory or public duty may be amenable to the writ jurisdiction. A private body or a person is amenable to the writ jurisdiction only where it is necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. (para 33). Thus, even assuming that the writ is amenable against respondents, a writ can be issued only for aforesaid purpose. Interestingly, even in *Binni* (supra), which is heavily relied upon by the petitioners, the Apex Court opined as under:-

Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and the decision sought to be corrected or enforced must be in discharge of a public function.

(Emphasis Supplied)

12. Even in *Zee Telefilms*, the argument was considered by the majority that some of the functions of BCCI have the element of public duties or State actions, yet they would not fall within the parameters laid down by the Supreme Court in *Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others*, , it is further opined that assuming that there is some element of public duty involved in discharge of Board functions even then as per *Biswas* (supra) that by itself would not suffice in bringing the body within the ambit of "other authorities" for the purpose of Article 12 of the Constitution. It is apt to quote the following portion from para 29 of the judgment:-

Assuming that the above mentioned functions of the Board do amount to public duties or State functions, the question for our consideration is: would this be sufficient the Board to be a State for the purpose of Article 12? While considering this aspect of the argument of the petitioner, it should be borne in mind that the State/Union has not chosen the Board to perform these duties nor has it legally

authorized the Board to carry out these functions under any law or agreement. It has chosen to leave the activities of cricket to be controlled by private bodies out of such bodies' own volition (self-arrogated). In such circumstances when the actions of the Board are not actions as an authorized representative of the State, can it be said that the Board is discharging State functions? The answer should be no. In the absence of any authorization, if a private body chooses to discharge any such function which is not prohibited by law then it would be incorrect to hold that such action of the body would make it an instrumentality of the State.

13. This is trite that whereas power under Article 32 can be exercised only for enforcement of fundamental rights conferred by part III of the Constitution, the right conferred by Article 226 can be exercised for enforcement of fundamental, statutory and other legal rights also. It can be enforced "for any other purpose". Scope for "any other purpose" is considered by Apex Court as for enforcement of any legal writ conferred by statute etc. In *State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others*, (para 57) and in *Federal Bank (supra)*, the Apex Court opined that no writ would lie against private body except whether it has some obligation to discharge which is statutory or of public character.

On the basis of aforesaid analysis, it is clear that the petitioner had failed to file adequate material to establish that respondent-Rotary International is a "State", "authority" or "instrumentality" under Article 12 of the Constitution. Secondly, it is not established that by issuing Annexure P-1 the respondents have failed to perform any statutory obligation or discharge any statutory or public duty. It is apt to quote the impugned order:-

ROTARY

John P. Hewko General Secretary, Rotary International

VIA E-MAIL (anilnaidunia@gmail.com; shri ram ayurved9@yahoo.co.in)

16 July 2013 Dr. Anil K Sharma H. No. 3/72, New Colony Birla Nagar, Gwalior (M.P.) INDIA Anuj K Agrawal H-121/2, Adityapuram Airport Road, Gwalior(MP) INDIA

Re: Election Litigation in District 3053

Dear Club President Anil and Club Secretary Anuj:

At its June 2013 meeting, the Rotary International Board recognized that RC Birlanagar violated RI Bylaws by failing to follow and complete RI's election review procedures before filing a lawsuit against RI in connection with election complaint allegations.

Accordingly, pursuant to a directive of the RI Board, I am sending you this letter, which serves as notice that, unless RC Birlanagar withdrawn or dismisses its election litigation against all defendants within 15 business days. Dr. Deependra

Kumar Tamotia will be disqualified from the election in question and from contesting any elected officer of RI for five years and RC Birlanagar will be deemed as failing to function and will be deemed terminated by the Board immediately upon the expiration of such 15 days period.

Documents establishing that RC Birlanagar has withdrawn or dismissed its lawsuit against all defendants may be sent to Prasanta Sahu, Manager Legal, RI South Asia Office at prasanta.sahu@rotary.org.

One Rotary Center 1560 Sherman Avenue Evanston Blinals, 60201-3698, USA.
TEL. 8478663000

FAX 847328 8554 www.rotary.org.

Sincerely, John P...Hewko

cc: P.T. Prabhakar, Director, RI

Radhe Shyam Rathi, Governor, District 3053, RI

Prasanta Sahu, Manager legal South Asia Office, RI

This is totally an in-house dispute of election amongst the members/office bearers of private club. So far the contention of Shri Bharadwaj regarding violation of Article 21 is concerned, in my opinion, the said contention is misconceived. In A.K. Gopalan (supra), the Habeas Corpus petition was filed under Article 32 of the Constitution against the illegal detention of Shri Gopalan in Madras jail. The petitioner therein contended that his fundamental right and right to live with liberty and dignity is taken away which is flowing from Article 21 of the Constitution. The judgment is based on the aforesaid factual backdrop. In my opinion, the judgment of A.K. Gopalan (supra) cannot be stretched to apply it on an in-house election of a private body. Contesting and winning the election of a private club may be a feather in the cap of a citizen but by no stretch of imagination, such contest of election has any nexus with Article 21 of the Constitution. This contention, being merit-less, is also rejected. Even otherwise, as held in Supreme Court Bar Association and Others Vs. B.D. Kaushik,) and Jitu Patnaik Vs. Sanatan Mohakud and Others, contesting election is neither a fundamental right nor a common law right. The impugned order has nothing to do with discharge of public function nor it is related with any public function on the part of the respondents. It has nothing to do with any statutory violation, nor has any thread relation with the alleged public duties which is allegedly performed by the Rotary Club. Thus, in this factual backdrop, I am unable to hold that the writ petition is maintainable. In addition, I find force in the argument of the other side that the petition is not filed by the persons who are adversely affected by Annexure P-1. For these reasons also this petition cannot be entertained. For the aforesaid cumulative reasons, I find no justification to entertain this petition. Writ petition is not maintainable and is hereby dismissed. No cost.