

(2009) 03 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 283 of 2009 and M.F.A. No. 220 of 2009

S. Suresh Rao Sathe and Others

APPELLANT

Vs

The Karnataka Kshatriya Maratha Parishath

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151

Citation : (2009) 03 KAR CK 0047

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

Bench : Single Bench

Advocate : Shantharaj for H.N. Shashidhara, for the Appellant; Ravivarma Kumar for Krishna Murthy. V, for C/R-1 and 2 Respondents 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—In the writ petition, petitioners are challenging the order dated 01.01.2009 passed by the learned City Civil Judge, Bangalore City dismissing I.A. No. 2 filed in O.S. No. 7624/2008.

2. The Miscellaneous First Appeal is preferred against the order passed on I.A. No. 3 filed under Order 39 Rules 1 & 2 CPC.

3. Petitioners are the plaintiffs in the Court below. They have filed the suit seeking declaration that the communication dated 12.11.2008 issued by the 2nd defendant - President of the Karnataka Kshatriya Maratha Parishath, Bangalore, as null and void. Among other reliefs, they have sought for a declaration that the said 2nd defendant had no power to remove the plaintiffs from the membership of the Central Executive Committee or from the primary membership of the Parishath. It is alleged in the suit that by a resolution dated 08.11.2008, the plaintiffs have sought to be removed both from the primary membership of the Parishath and also from the membership of the Central Executive Committee of the 1st defendant -Parishath. Though the plaintiffs have not produced the said

resolution, a communication dated 12.11.2008 issued pursuant to the said resolution is sought to be declared as null and void.

4. Along with the suit the plaintiffs filed two applications I.A. II was filed u/s 151 CPC seeking stay of the communication dated 12.11.2008 issued by the 2nd respondent and I.A. III was filed under Order 39 Rules 1 & 2 CPC to restrain the 2nd defendant from preventing the plaintiffs in participating in the Central Executive Committee meetings and other meetings, pending disposal of the suit. The Court below having heard both the applications has rejected both of them by a common order dated 01.01.2009. Aggrieved by the rejection of the application I.A. No. II filed u/s 151 CPC this writ petition is filed.

5. The main contention of the learned Senior Counsel Sri. Shantharaj appearing for the petitioners is that the subject regarding removal of the petitioners from the Central Executive Committee or for that matter from the primary membership of the Parishath was not at all the subject matter of agenda which was to be taken up for discussion in the meeting and therefore the alleged decision taken by the Committee is illegal and untenable. He has further contended that as per the bye-laws of the Parishath, it is the Central Executive Committee which is authorised to remove the members and that in the absence of any resolution passed with 2/3rd majority of the members in the meeting the communication issued informing the petitioners that they were removed from the membership is illegal and void. It is also contended by him that the petitioners were not informed of the findings if any recorded against them by the Enquiry Committee and they were not heard before the decision to expel them was taken. He has placed reliance on the decision in the case of *Ambalal Sarabhai Vs. Phiroz H. Antia*, to contend that if the member of a club, an autonomous institution, is expelled from the membership without providing him an opportunity of being heard, the same can be interfered by the Civil Court. In the said case on a suit brought by an expelled member the Civil Court had declared that the resolution passed was illegal as the action was against the elementary principles of natural justice. The High Court upheld the judgment passed by the Civil Court holding that interference by the Civil Court was justified as there was violation of principles of natural justice.

6. Learned Senior Counsel Sri. Ravivarma Kumar appearing for the respondent-Parishath has strongly refuted the contentions urged by the petitioners. He has mainly submitted that the suit was filed on 18.11.2008, whereas after expelling the petitioners, new members were nominated in their place on 14.11.2008 itself and therefore question of staying the resolution did not arise. He further contended that in the absence of any relief sought in the plaint regarding the resolution passed expelling the petitioners and nominating the new members the suit itself was not maintainable. He has also contended that in the absence of the new members being impleaded as party-defendants to the suit the petitioners were not entitled for the relief sought. In this regard, he has drawn the attention of the Court to the affidavits filed by the seven newly inducted members. He has

further contended that the report of the sub-committee which had conducted enquiry into the allegations of misconduct against the petitioners was in fact considered in the meeting and resolution was passed. He has also urged the fact that the petitioners were given due opportunity by the Committee and the report of the committee was also furnished to them requiring them to have their say in the matter. Drawing the attention of the Court to the judgment in the case of Dr. Ganapathi Narayan Sabhahit and Ors. v. Shivaram Narayan Bhat and Ors. 1996 (3) Kar.L.J. 58 referred to and relied upon by the Trial Court, he contends that as the petitioners are already removed from the membership, by an interim order they cannot be reinstated.

7. Having heard the learned Counsel for the parties and on careful perusal of the materials on record, it is seen that the Court below had taken note of the facts such as removal of the plaintiffs from the membership of the Central Executive Committee and also from the primary membership of the Parishath on 08.11.2008 which was communicated to the plaintiffs by the 2nd defendant as per the letter dated 12.11.2008. The resolution passed by the Parishath dated 08.11.2008 placed before the Court by defendants-1 and 2 and the copies of the letter addressed by eight members who are nominated to the Central Executive Committee in the place of the expelled members are also taken note of. In fact, it is seen from the materials on record that the newly nominated persons have filed affidavit stating about the expulsion of the plaintiffs from the Parishath and the fact that they were nominated in their place. It is in this background that the Court below has come to the conclusion that the plaintiffs cannot be ordered to be reinstated as members of the Parishath because as on the date of filing of the suit the plaintiffs were not the members of the Central Executive Committee or the Parishath and in their place already other members were nominated. Though the plaintiffs have made allegations stating that their expulsion/removal from the membership of the Central Executive Committee and also from the Parishath is in violation of the principles of natural justice and therefore the action itself is bad in law and hence the impugned order cannot be taken note of to deny the benefit of the interim order to the petitioners. In view of the rival contentions taken in the pleadings and the denial of the defendant - Parishath that the action was taken without affording an opportunity of being heard, as rightly held by the Court below this is a matter that is required to be looked into at the stage of trial. Likewise, the contentions urged by the petitioners that the resolution is passed in violation of the bye-law No. 7(b) and that records were created to show that such a resolution was passed with the required majority only in order to expel the petitioners from the membership of the Parishath cannot also be gone into at this stage as the same will have to be considered at the stage of trial by taking note of the evidence to be adduced by the respective parties.

8. The plaintiffs have sought for grant of temporary injunction to restrain the defendants from preventing them from discharging their duties as members of the Parishath and of the Central Executive Committee.

9. Learned Senior Counsel for the petitioners Sri Shantharaj draws the attention of the Court to the findings recorded by the Court below that there is a serious question to be tried in the suit. His contention is that having held so the Court below ought to have granted an order of temporary injunction to safeguard the interest of the petitioners. Though it is true that the Trial Court had found that there is a serious question to be tried in the suit, the denial of relief of temporary injunction is mainly due to the fact that before the filing of the suit the plaintiffs were expelled from the membership and in their place other persons were nominated to the Central Executive Committee. The Court below has also taken note of the fact that newly nominated persons had in fact filed their affidavits before the Court and they were not made parties to the suit. Under such circumstances, the Court below has found that the balance of convenience did not lie in favour of the plaintiffs for grant of temporary injunction. I do not find any illegality or perversity in the findings so arrived at by the Court below.

10. For the reasons stated above, both the Writ Petition and the Miscellaneous First Appeal filed challenging the order passed on I.A. Nos. 2 and 3 being devoid of merits are dismissed. However, having due regard to the fact that the expulsion of the plaintiffs from the membership of the Parishath and also the Central Executive Committee on the allegations made against them does have a serious consequence on their reputation and standing in the society and keeping in mind the fact that their interest are not protected by any interim order due to the factors mentioned herein above, I deem it appropriate to direct the Court below to make all endeavour to dispose of the suit within a period of six months from the date of receipt of a copy of the order. Ordered accordingly.