

(2021) 01 KL CK 0597

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28478 Of 2020

Santhosh Karunakaran

APPELLANT

Vs

Ombudsman Cum Ethics Officer And Ors

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Tranvancore Cochin Literary, Scientific And Charitable Societies Registration Act, 1955
— Section 22

Citation : (2021) 01 KL CK 0597

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : Rajit, K.N. Abhilash, Sunil Nair Palakkat

Final Decision : Dismissed

Judgement

1. The Writ Petition is filed challenging Exts.P11 and P13 order passed by the Ombudsman cum Ethics Officer of the Kerala Cricket Association.

2. The petitioner claims to be a former Ranji Trophy Cricketer, who continues to be actively involved in the game of cricket in various capacities. He

along with one Adv.P.J.Thomas had filed Ext.P1 O.A.No.10/2019 before the 1st respondent seeking the following reliefs:

â??a. Frame a model byelaw to be implemented in all the Districts of the State in terms of the model Byelaw recommended by the Lodha Committee

and adopted by the Board of Control for Cricket in India;

b. Direct the Kerala Cricket Association to implement the Byelaw as framed by this Hon'ble Forum in all the District units under the Kerala Cricket

Association.

c. Direct the Kerala Cricket Association to conduct elections by ensuring representation from each district under the Kerala Cricket Association

strictly in conformity with the byelaws framed by this Hon'ble Forum.

d. Grant such other reliefs deemed fit to this Hon'ble Ombudsman.â??

3. It is stated that the Kerala Cricket Association ('KCA' for short) raised a preliminary objection with respect to non joinder of parties and requested

for a hearing on the same. It is stated that as per Ext.P2 order dated 02.08.2019, the 1st respondent rejected the said objection observing the following:

â??2. If all the District Associations in the State were to be impleaded after notice to them, it may entail unnecessary delay. Hence, it was suggested

to the learned counsel for the KCA that the KCA can give through their websites to all District Associations in the form of the Amended Bye Law of

the BCCI (as given by the applicants in this O.A) and the existing Common Bye Law as appended to the former Bye Law of the KCA found in the

Blue Book and invite their suggestions/views to be furnished on or before 16.09.2019 and thereafter, the KCA can submit before this forum in a

tabular form incorporating the suggestions/views of the District Associations as also of the KCA so as to enable this Forum to finalise the Model

Common Bye Laws uniformly applicable to all District Cricket Associations. Advance copy of the tabular form shall be furnished by the KCA to the

applicants before filing the same. Call on 20.09.2019 at 2pm for further hearing.â??

4. It is stated that on 20.09.2019, it was adjourned to 30.09.2019 since the counsel for the KCA was not ready. By another proceedings Ext.P4 of the

very same date, it is stated that the counsel for the KCA requested for a fortnight's time to collect the views of the District Associations and the clubs

under them in view of the forthcoming annual general body meeting scheduled on 11.10.2019. The case was thereafter posted to 29.10.2019. While

so, there was a change in the office of the Ombudsman and the matter was listed thereafter before the new Ombudsman on 13.02.2020, 25.02.2020

and 10.03.2020 respectively. The petitioner submits that on 13.02.2020 and on 25.2.2020, the matter was adjourned due to nonavailability of the

counsel for the petitioner and that on 10.03.2020, the Ombudsman adjourned the matter in order to study the file. It is the further case of the petitioner

that the applicant had been sending reminders thereafter from 25.5.2020 to 28.9.2020 for taking up the matter through video conferencing as the

elections were due for the District Cricket Associations and the recommendations of the Lodha Committee were to be made applicable before that. It

is stated that Exts.P6, P7 and P8 e-mails were sent requesting for the same and finally as per Ext.P9 e-mail, the petitioner was informed from the

office of the Ombudsman that the matter was listed for final hearing on 3.10.2020. The Ombudsman dismissed the O.A on that day as per Ext.P11

order stating that petitioners did not take any steps to implead the affected parties despite directions in the orders dated 13.02.2020, 25.02.2020 and

10.03.2020. The petitioner has stated the following in paragraph (ix) of the writ petition, regarding the hearing held on 03.10.2020:

(ix) On 03.10.2020, when the matter was taken up through videoconferencing, the Counsel appearing for the Applicant had joined the via the video

link at 10:58 AM only to be disconnected/removed from the video link within a minute of the sitting even before the matter was taken up. Soon

thereafter, the Ld. Ombudsman proceeded to dismiss the matter stating that it was defective. When the Petitioner protested, he was informed that

detailed Order will be communicated later, and the Petitioner was removed from the video link. The Order was communicated to the Petitioner only

on 04.10.2020.

After the hearing, the Petitioner herein wrote a detailed email expressing his shock and surprise over the manner in which hearing was held. xxx

5. The contention of the petitioner is that he came to know about the direction to implead all the District Cricket Associations in the previous orders

only after Ext.P11 order was passed by the Ombudsman on 03.10.2020. It is stated that thereafter he sent Exts.P12 & P13 e-mails on 19.10.2020 and

28.10.2020, requesting for copy of the proceedings. Thereupon as per Ext.P14 e-mail dated 05.11.2020, the Ombudsman informed that the

proceedings cannot be issued since Original Application is already disposed of and Ombudsmen is only a persona designata and not a court of record.

The writ petition is filed challenging the orders Exts.P10 and P11. Petitioner also points out that the Ombudsman of Andhra Cricket Association has as

per Ext.P15 order dated 10.11.2020 directed implementation of the reforms in all the District Associations and other cricketing clubs.

6. The 2nd respondent has filed a preliminary counter affidavit raising objection to the locus standi of the petitioner to file the writ petition pointing out

that he is not a member of the 2nd respondent or any of its affiliated District Cricket Associations. It is further stated that as per Section 22 of the Tranvancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, when any amendment is made in the provisions of the memorandum or the rules and regulations of a Society, a copy of the resolution effecting the amendment, certified to be a correct copy by not less than three members of the governing body shall be filed with the Registrar within fourteen days of the General meeting at which the resolution was passed. It is stated that the bye law of the 2nd respondent was already amended and it was also registered as per the directions of the Honourable Supreme Court. It is their further contention that amendments and repeal shall be passed and adopted by a $\frac{3}{4}$ th majority of the members present and entitled to vote at a Special General Meeting of the General body of the KCA for the purpose or at the Annual General Body Meeting and such amendment will not be given effect to without the leave of the Honourable Supreme Court. It is stated that the District Cricket Associations, which are affiliated units of the Kerala Cricket Association, are governed by a common bye law adopted by the District Cricket Association in the year 2006 and the procedure and amendment of those bye laws is governed by clause 37, as per which, it can be made only in a General Body Meeting of the State Association passed by at least $\frac{3}{4}$ th of its members present and voting. It is stated that clause 37(ii) provides that proposal for any change in the rules shall be made by at least $\frac{1}{3}$ rd of the total number of clubs and must reach the Honourable Secretary, 15 days before the General Body Meeting at which they are to be considered. Such proposals shall be circulated to the members as part of the agenda of the meeting with copy to Kerala Cricket Association. The Kerala Cricket Association is having the powers to accept, reject or modify the proposal for amendment and such decision shall be final and binding. Therefore it is stated that only members of the Association can initiate the amendment procedure of the bye laws and petitioner, who is not a member of the Association, does not have the locus standi to file the application. The 2nd respondent has produced various judgments based on which, it had amended the bye law in accordance with the instructions issued by the Committee of Administrators (CoA) consequent to the various judgments of the Apex Court. It is stated that the Committee of Administrators had as per Ext.R2(8) e-mail dated

14.11.2018 informed the 2nd respondent that it had complied with all the recommendations in the Justice R.M.Lodha Commission report. It is further

stated that since the Registrar of Society refused to register the amended bye law, the 2nd respondent had approached the Apex Court in W.P.(C)

No.79/2019 and that the bye law was registered thereafter on the basis of direction of the Hon'ble Supreme Court in Ext.R2(9) order dated

14.03.2019 in it to the Registrar of Society. It is further stated that election to the Office bearers of KCA and of the member of the Apex council was

completed under the supervision of the Committee of Administrators appointed by the Honorable Supreme court. The election was conducted on

07.09.2019 and Office Bearers were elected as per Exts.R2(10) and R2(11) status report. It is stated that in the O.A filed by the petitioner, 2nd

respondent had filed Ext.R2(12) preliminary counter, challenging the maintainability of the said application. It is stated that this writ petition is filed

suppressing the said fact. It is further stated that the petitioner did not take steps for impleading the District Associations as directed by the 1st

respondent. According to the 2nd respondent, even now, the matter is pending before the Honourable Supreme Court.

7. I heard Sri. Rejit, the learned counsel for the petitioner and Sri. K.N.Abhilash, the learned Standing Counsel appearing for the 2nd respondent.

8. It is seen that the petitioner did not take any steps for impleading the District Associations even after the 1st respondent issued a direction on

13.02.2020 and continued to direct the petitioner since then granting him further time. The Ombudsman had stated that the issue as to whether District

Associations' presence was required, was heard in detail on 20.10.2020 and order was passed on that day. Ombudsman found that the presence of the

District Association was necessary for a proper adjudication of the issue arising in the case. Such an order was passed taking note of the earlier order

passed in the OA, to the effect that publication in the website would be sufficient. Ombudsman found that the new bye law has been brought into

effect as per the direction of Justice R.M.Lodha Commission report and impleadment of the District Associations are necessary. Order dated

13.02.2020, reads as follows:

â??As per last proceedings it can be seen that the District Associations are not a party and whether they have to be impleaded has to be considered

by this Ombudsman and a detailed hearing was ordered. Learned counsel for the applicant submitted before this Forum that the prior byelaw is also

dealing with the District Associations. Surely now, new byelaw has been brought into effect as per the directions of the Lodha Committee, in respect

of KCA. The stand of the learned counsel for the applicant is that an earlier order will show that a web site publication of the proceedings by KCA

will be sufficient. But

I feel that when the matter goes to the root of the structure of the District Association, direction for issue of notice is necessary. Surely counsel for

the applicant also brought to my notice Rule 37(2) of the earlier bye-law. Even after going through the same, I feel that notice is necessary. Notice to

the District Associations are necessary as it will materially affect them. Implead the District Associations by the applicant and give notice. Call on

25.2.2020 for consideration of the impleading and issuing notice.â??

9. When the matter came up on 25.2.2020, the Ombudsman noticed that no steps were taken for impleading. On 10.03.2020, the matter was

adjourned to 24.03.2020 directing that impleading petitions shall be filed positively before the posting date. The 1st respondent has dismissed the O.A

in the aforesaid circumstances, when the petitioner refused to take any steps as directed and insisted for hearing the matter.

10. The contention of the petitioner in this case is that there was no such order either on 13.02.2020 or on 25.02.2020 or on 10.03.2020. Though there

is no reason to disbelieve the statement in Ext.P11 order of the Ombudsman, I called for the records from the Ombudsman and perused the same and

found that no steps were taken by the petitioners in the O.A to implead the parties despite the orders passed by the Ombudsman. It is also relevant to

note the following statement of the Ombudsman in paragraph 3 as to the manner in which communications were made by the 2nd petitioner:

â??xxx But when the files perused it is seen that no steps taken by the applicants as ordered on 10.3.2020. Under such circumstances, the case was

not posted for hearing. Now a letter dated 19.9.2020 received from Advocate P.J.Thomas, the 2nd applicant herein. After going through the letter, it is

decided to post the case even though application is defective. No purpose will be served by hearing a matter where necessary parties are not

impleaded. But the letter says as follows: â??And decide the matter in

OA.10/2019 at the earliest and then proceed with election as a uniform manner failing which we will be initiating Civil and Criminal proceedings against your office corrupt practice.â? Thus it can be seen that there is no

other option, but to post the case. The 2nd applicant is none other than an Advocate. xxxâ??

Records would reveal that petitioner has not approached this Court with clean hands. Redressal of grievance against the dismissal of an order is not to

be sought by accusing the author of the order raising baseless allegations. In the circumstances of the case, Therefore I am of the considered view

that petitioner does not deserve any relief from this Court under Article 226 of the Constitution of India. The question of validity of the subsequent

order Ext.P13 also do not deserve consideration for the very same reason.

Accordingly, the writ petition is dismissed.