

(2015) 12 DEL CK 0250

In the Delhi High Court

Case No : I.A. No. 19355/2015 in CS(OS) 2805/2015

Siddarth Gupta

APPELLANT

Vs

The Delhi Golf Club Limited and Others

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 4, Order 6 Rule 17

Citation : (2015) 12 DEL CK 0250

Hon'ble Judges : Manmohan Singh, J.

Bench : Single Bench

Advocate : Sunil Magon, Chaitanya Safaya, Shruti Garg and Sanjay Abbot, Advocates, for the Appellant; Karun Mehta and Suveni Bhagat, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.—The plaintiff has filed the present suit seeking declaration that he is entitled to continue as a member of the defendant Company and that the decisions made by defendant Nos. 1 and 2 are bad in law and illegal, seeking permanent injunction against removal/revocation of plaintiff's membership with the defendants.

2. Brief facts as per the plaint are that the plaintiff is a business man who plays golf and has a keen interest in the game. Defendant No. 1 is a company registered under the Companies Act, 1956. It runs a club popularly known as "Delhi Golf Club" where its members are provided with facilities such as use of a 18 hole golf course, dining etc.

3. The plaintiff admittedly applied to the defendant No. 1 on 7th August, 2009 along with a cheque of Rs. 44,120/- however no decision was taken for a long time. On 16th April, 2014 the plaintiff received a communication from defendant No. 2 approving nomination of "Out of Turn" regular membership. Upon the receipt of the said communication, the plaintiff applied afresh to defendant No. 1

on 21st April, 2014 along with a cheque of Rs. 67,416/-. Defendant No. 1 vide a communication dated 3rd June, 2014 informed the plaintiff of being duly elected as an associate "C" member and was instructed to pay the balance fees. The letter also stated that the plaintiff will be entitled to all the rights and privileges of a member of the club as per the Articles of Association.

4. Plaintiff has been availing these facilities since he became a member on 3rd June, 2014. Defendant No. 2 is the Ministry of Urban Land and Development, Govt. of India, who allotted 179 acres for the promotion of golf, fair and equitable access to sport facilities including to some of its employees. Defendant No. 2 exercises some control over defendant No. 1 including nomination of members to the club.

5. Plaintiff vide letter dated 23rd July, 2014 sought refund of Rs. 44,120/- deposited in 2009 which was returned by defendant No. 1 with covering letter dated 14th August, 2014. The plaintiff states that he learnt from a well-wisher on 8th September, 2015 who is a member of defendant No. 1, that a resolution was passed by the general committee of defendant No. 1 to revoke his membership on 10th August, 2015. On receipt of this information the plaintiff logged onto the member's area of defendant No. 1's website to peruse the minutes of the meeting on 10th August, 2015. The minutes revealed that membership of the plaintiff was decided to be revoked at the behest of defendant No. 2 who decided to cancel his nomination as it was found to be in contravention of the rules and regulations/established procedures of the Govt. of India.

6. The plaintiff alleges that the rules that have been violated have not been mentioned, explained or detailed. Further no notice has been communicated proposing/threatening, cancellation/revocation of membership nor even the resolution to revoke his membership. The plaintiff submits that he till date continues to be a member and has abided by all regulations and by-laws including regular payment of fees. The plaintiff apprehends that defendant No. 1 may at any moment terminate/revoke his membership on the basis of said resolution.

7. The plaintiff avers that the resolution passed was arbitrary and violative of principles of natural justice as no notice was issued nor opportunity to be heard was given, as is provided in the Memorandum and Articles of Association. The plaintiff alleges that defendant No. 2 has only the right to nominate and not revoke its nomination. Removal of a member can only be as per the provisions of the Memorandum and Articles of Association.

8. In the interim application, plaintiff seeks interim ex-parte order restraining defendant from taking any steps pursuant to general committee meeting dated 10th August, 2015. Including cancellation/ revoking membership or any form of restraint on plaintiff from using defendant No. 1's facilities.

9. The plaintiff is of the apprehension that defendant No. 1 is likely to cancel his membership at any moment. He alleges that this is violative of principles of

natural justice and without following the procedure stipulated in the memorandum and articles of association.

10. The plaintiff states that he has always abided by the rules and regulations of the club including regular payment of dues. Further he submits that he has not infringed/violated any of the conditions mentioned in article 34 of the Articles of Association nor has defendant No. 1 alleged any such infringement/violation by the plaintiff.

11. The plaintiff prays for staying the decision by defendant No. 1 of revoking the membership of the plaintiff and staying the resolution to the same effect dated 10th August, 2015. Further a restraint on defendant No. 1 and its officials from interfering with the right of the plaintiff to enjoy facilities provided by defendant No. 1.

12. In the written statement filed on behalf of the defendant No. 1, it is stated that the plaintiff was nominated for "out of turn" regular membership of the Delhi Golf Club Limited by the defendant No. 2 vide its letter dated 16th April 2014. The plaintiff was enrolled as a "C" Member of the answering defendant on the basis of his nomination. The said nomination by defendant No. 2 is in terms of the quota of nominations available with the defendant No. 2 for nominating members as per the terms of the Lease Deed executed between the defendant No. 2 and defendant No. 1.

13. The plaintiff has no vested or legal right to seek continuation of his membership with the defendant No. 1, once his nomination, which was the sole basis of his "out of turn" membership, has been declared as illegal and invalid by the defendant No. 2. Once the defendant No. 2 has held the nomination of the plaintiff to be in violation of the rules and regulations of the defendant No. 2, the nomination itself became void and automatically the membership of the plaintiff with defendant No. 1 as well.

14. The plaintiff ought to have challenged the letter dated 15th January, 2015 issued by the defendant No. 2. As the plaintiff having not challenged the said decision of the defendant No. 2, the present suit is not maintainable.

15. It is also submitted that the General Committee of the defendant No. 1 passed the resolution on 10th August, 2015 revoking the membership of the plaintiff on the basis of decision of the defendant No. 2, cancelling the nomination of the plaintiff being invalid, for being in contravention of the rules and regulations and even the defendant No. 1 was well within its right to revoke the membership of the plaintiff as the nomination was held to be invalid by the defendant No. 2 itself, resulting in the membership based on such nomination being automatically invalid.

16. Written statement on behalf of defendant No. 2 has also been filed. In addition to the written statement filed by defendant No. 1, it is stated that the plaintiff's membership is only subject to the terms and conditions and discretion

of the defendant. The nomination of the plaintiff as a member on "out of turn" basis was found to be irregular and in violation of the Rules/Model code of conduct as it was given after the declaration of General Elections, 2014 and hence cancelled. Similar cancellations of nominations were done in case of three other individuals for Delhi Golf Club and another eight individuals for India Habitat Centre on the same ground.

17. After filing of the written statement on behalf of both the defendants as well as fresh documents, the plaintiff has filed I.A. No. 23425/2015 under Order VI Rule 17 . The plaintiff seeks to amend the plaint and also to incorporate a challenge to the letter dated 15th January, 2015. Further he seeks to challenge letter dated 19th September, 2015 which was issued to the plaintiff during the pendency of the suit. The plaintiff states that the letter dated 15th January, 2015 issued by defendant No. 2 regarding withdrawal of the nomination of plaintiff was produced before the court on 17th September, 2015 by defendant No. 1 for the first time. For the same reason plaintiff could not make the letter as part of his plaint as he was not aware of its existence prior to 19th September, 2015. Plaintiff submits he never received the letter dated 15th January, 2015 because it was admittedly issued to a wrong address. It is also mentioned in the application that during the pendency of the suit a letter dated 15th September, 2015 was issued to him by defendant No. 1 for cancellation of the plaintiff's membership. The plaintiff has concealed the fact that his recommendation for membership was cancelled vide letter dated 15th January, 2015 issued by the defendant through speed post which was received by the plaintiff, hence the present suit is liable to be dismissed.

18. It is submitted on behalf of the plaintiff that when the present suit was listed before this Court on 17th September, 2015, the learned counsel appearing for defendant No. 1, for the first time produced a letter dated 15th January, 2015 issued by defendant No. 2 regarding the cancellation/ withdrawal of nomination of the plaintiff. A copy of the letter dated 15th January, 2015 (handed over to the plaintiff on 17th September, 2015) issued by the Ministry of Urban Development is filled as "ANNEXURE A-1".

The said letter could not be made a part of the plaint previously, as the plaintiff had not received it and the plaintiff was not aware of its existence till 17th September, 2015 when it was handed over to the counsel for the plaintiff. Through the said letter, the defendant No. 2 had purportedly informed defendant No. 1 that "the procedure for nomination of persons for membership of Delhi Golf Club has been reviewed". It is claimed that the nomination of certain persons (including the plaintiff) was ""in contravention of rules and regulations established procedure of the Government of India". The name of the plaintiff was mentioned at Serial No. 1 under the heading of "Out of Turn" Regular Membership.

19. It is submitted that the plaintiff never received the said letter dated 15th January, 2015 because it was admittedly issued to a wrong address. A perusal of

the letter shows that the residential address of the plaintiff has been wrongly mentioned as "5, Golf Links" instead of "50, Golf Links". It appears that the impugned decision dated 10th August, 2015 by defendant No. 1, which was challenged by the plaintiff in the suit, was purportedly taken in furtherance of letter dated 15th January, 2015. Since the plaintiff is seeking a declaration inter alia that he continues to hold the membership of defendant No. 1 it also becomes necessary for the plaintiff to challenge the letter dated 15th January, 2015 in terms of which the impugned decision dated 10th August, 2015 is said to have been taken.

20. It is alleged by the plaintiff that during the pendency of the suit a letter dated 19th September, 2015 was issued to the plaintiff by defendant No. 1. The said letter was received by the plaintiff on 23rd September, 2015. The letter was issued for cancellation of the plaintiff's membership and had been issued in furtherance of a letter dated 24th March, 2015 issued by defendant No. 2, a copy of which till date has not been made available to the plaintiff. The letter dated 19th September, 2015 recorded that ""the MoUD has since informed us that the nominations made by them were in contravention of rules and regulations/ established procedures of the Government of India." The plaintiff submits that even this letter does not assign any reason for the cancellation of the plaintiff's membership apart from saying that it was in contravention of rules and regulations/ established procedures of the Government of India. Hence, this letter is bad in law, illegal and ought to be set aside.

A copy of the letter dated 19th September, 2015 (received on 23rd September, 2015) issued by defendant No. 1 has been filled as Annexure "A-2".

In view of the above, the plaintiff seeks to challenge the purported decision of the Ministry of Urban Development contained in the letter dated 15th January, 2015 and the letter dated 19th September, 2015 issued by the defendant No. 1 by amending the plaint by incorporating paras 11A, 19A and 13A and prayer(aa) of the plaint. The amended plaint has also been filed. Notice in application is yet to be issued. No reply has been filed and the said documents have been filed after filing of the suit so is the application for amendment.

21. The present suit was admittedly filed on 14th September, 2015. It is the admitted position that on the date of filing of the suit, no notice or letter was issued by the Club for cancellation of plaintiff's membership. The said letter for cancellation of membership was dated 19th September, 2015 issued by the defendant No. 1. The same was allegedly received by the plaintiff on 23rd September, 2015 i.e. after the filing of the suit. In the said letter, it was informed to the plaintiff that his nomination was made in contravention of Rules and Regulations/established procedure.

22. Admittedly, the defendant No. 1 vide its communication dated 3rd June, 2014 informed the plaintiff about being duly elected as an Associate "C" Member and instructed that upon paying the balance fees together with applicable taxes,

amounting to a total of Rs. 6,26,183/- as stipulated in the said letter and signing of certain documents. The plaintiff accordingly made the requisite payments and provided/ signed the documents and was accordingly made an Associate Member of the defendant No. 1. The plaintiff further vide letter dated 23rd July, 2014 sought refund of Rs. 44,120/- deposited by him in the year 2009 at the time of application, which was returned by the defendant No. 1 under the cover of letter dated 14th August, 2014.

23. The plaintiff as also his wife and daughter, have been using the facilities provided by the defendant No. 1 to its members and he has been duly paying his dues from time to time. The spouse and dependents of a member are also entitled to use the facilities of the defendant No. 1 Club.

24. As alleged in the plaint, the plaintiff learnt from his well-wisher, a member of the defendant No. 1 on 8th September, 2015 that a resolution has been passed by the General Committee of the defendant on 10th August, 2015 to revoke his membership, which is uploaded on the website of defendant No. 1 and upon such information, the plaintiff logged onto the members" area of the website of the defendant No. 1 on www.delhigolfciub.org and discovered the Minutes of the General Committee held on 10th August, 2015. A perusal of the said Minutes showed that the aforesaid information was correct and that it had been decided by the General Committee of the defendant on 10th August, 2015 to revoke the membership of the plaintiff, allegedly at the behest of the defendant No. 2, which had decided to cancel the nomination, because these nominations were allegedly found to be in contravention of rules and regulations/established procedures of the Government of India.

25. The General Committee of the defendant No. 1 passed the resolution in the Extraordinary General Meeting on 10th August, 2015 without any notice giving of hearing to the plaintiff.

26. The plaintiff has alleged that the decision dated 10th August, 2015, which is only of the General Committee, is further illegal, since it has not been taken by the extraordinary general meeting of the club. The minimum quorum of 45 members has also not been met. It is also not clear as to whether any extraordinary general meeting of the "club" was ever called for. For this reason also, the impugned decision deserves to be set aside.

27. It is contended by the plaintiff that from the Minutes of the Extraordinary General Meeting dated 10th August, 2015 that the decision is taken with mala-fide intent as it was taken only against two members including the plaintiff and that it was decided that such revocation of membership shall not be treated as a precedent. The decision is politically motivated, arbitrary, vindictive, untenable and smacks of mala-fides as it has been purportedly taken under instructions of the incumbent Government revoking the decision of earlier Government.

28. The plaintiff also submitted that the decision of the defendant No. 2 is also bad in as much as to the extent deducible from the minutes dated 10th August,

2015, it would be apparent that there is no specification by the defendant No. 2 of which laws, rules or regulations have allegedly been violated. The decision of the defendant No. 2, therefore, in addition to being violative of principles of natural justice and therefore void, is also bad in law for being vague, unreasoned, and bereft of particulars.

29. A person who joins the club is governed by Rules under which he may also be expelled and if he is expelled without following the Rules, in an unfair and unjust manner and the principles of natural justice and fair play have not been applied, it is necessary that he must be given his chance of defence and explanation.

30. Admittedly, the plaintiff has paid the requisite fee and having waited for 5 years for being a member and having been granted membership, has a legitimate right that he would be entitled to continue as a member as per the rules and Memorandum of Articles of Association and that he could be removed only as per the terms stipulated in the Articles of Association.

31. It is the admitted position that the defendant No. 1 has not granted an opportunity of hearing before passing any adverse orders as per the Memorandum and Articles of Association. The decision of the defendant No. 2, referred to in the minutes of the meeting dated 10th August, 2015, has been taken without issuing any notice to the Petitioner. The same was taken at the back of the plaintiff. The defendant No. 1 is club if the club is exploiting its member, atleast the member must be apprised with. In case the Article 34 and 35 are read in meaningful manner, it is clear that before expelling a member the conditions and rules laid down have to be complied with whether those are mandatory or directory.

32. Article 34 of the Memorandum and Articles of Association of the defendant No. 1 provides the circumstances/reasons in/for which any membership can be revoked/cancelled. None of the conditions mentioned therein arise in the present case. Article 34 of the Memorandum of Articles of Association of the defendant No. 1 reads as under:

"34 In addition to the case provided for in Article 31, a Member shall cease to be a Member of the Club in any of the following ways:-

(a) If he voluntarily resigns from a prospective date by letter addressed to the Secretary.

(b) If, being a subject of Foreign State, war shall be declared between India and the State of which he is a subject.

(c) If he is adjudicated bankrupt or insolvent.

(d) If he does not pay his Club bills as herein after provided.

(e) If he is convicted by a competent tribunal of any offence involving in the opinion of the committee gross misconduct or moral turpitude.

(f) If he is expelled from the Club under Article 35 thereof."

33. Article 35 of the Memorandum and Articles of Association, which mandates that before action is taken against any member, he/she must be given notice of such proposed action and also an opportunity to explain his/her alleged misconduct. Article 35 reads as under:

"35. If any Member is guilty of gross misconduct or of any conduct likely to affect the character and good name of the Club, or of conduct likely to cause annoyance to other Members, or of persistent infraction of the Article or Byelaws of the Club, the Committee may enquire into the manner and may call an Extraordinary General Meeting of the Club to consider the matter, and such Member may be expelled by the vote of not less than two-thirds of the Members present at such Extraordinary General Meeting voting in favour of his expulsion. For the purpose of such Meeting, forty five members present in person shall be a quorum" provided nevertheless that not less than 21 days before the notices convening the Meeting shall be sent out, a note shall be given to such Member that is proposed to call such an Extraordinary General Meeting to consider a resolution to expel him for reasons to be therein specified, so that he may have an opportunity of explaining his conduct or withdrawing from the club. The Committee may prohibit any Member or Members whose conduct shall form the subject of an enquiry under this Article from using the Club pending the decision of the Committee, or of the Extraordinary General Meeting referred to, as the case may be."

34. It is expressed by the Calcutta High Court in *Ezra v. Mahendra Nath Banerji*, ILR (1946) 2 Cal 88, 109 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."

35. In the present case, no opportunity of hearing was granted to him. Even no notice for cancellation of his membership was given. It was given after filing of the suit and even the plaintiff has challenged the same by filing of application for amendment of plaint. At least both defendant Nos. 1 and 2 ought to have put the plaintiff to notice and granted him an opportunity of hearing before passing any adverse orders. Prima facie on the face of it, rule of natural justice has been violated by the club in a discriminatory manner in violation of the fundamental rights of the plaintiff guaranteed under the Constitution of India.

The plaintiff has also challenged the locus of the defendant No. 2 by stating that once a person is nominated and admitted/elected as a member he can be removed only as per the provision of Memorandum and Articles of Association.

36. In view of above said reasons, the Court is of the view that defendant No. 1 could have, if necessary, revoked the membership only in accordance with the procedure laid down in the Articles of Association. The plaintiff is entitled to

continue as member unless he is disqualified in terms of Article 34 and 35 of the defendant No. 1.

37. After serving the notice of cancellation of membership, the plaintiff has filed the application for amendment of plaint along with the amended plaint. The pleadings in the amendment of application are yet to be completed. Therefore, interim order already granted is to be continued by disposing of the application for injunction as due process has not been followed by the defendant No. 1 before passing the order as the Court felt that decision was taken against the plaintiff behind his back.

38. Once a person becomes the member of the club, who has enjoyed its facility whether he becomes a member in its ordinary course or out of turn, it is the duty of the club to follow the due process as prescribed under Regulations. The membership cannot be terminated without due process of procedure and regulations.

39. In case of Mr. Charles Mantosh and others Vs. Mr. Dalhousie Institute and others, , it was contended that terminating membership without even giving an opportunity of hearing is not permissible. It was emphatically mentioned that member has prima facie case for grant of temporary injunction restraining authority of club from giving effect to its decision to remove. Similarly in the case of T.P. Daver Vs. Lodge Victoria No. 363, S.C. Belgaum, , S.V Belgaum, it was contended on behalf of the respondents that expulsion of a member no doubt demands strict compliance of the rules and it is to be done in good faith and in fairness.

40. In the present case, due process of Articles 34 and 35 has not been followed. The application of the plaintiff is accordingly allowed by passing the interim at this stage in favour of the plaintiff and against the defendants restraining the defendants from interfering with the enjoyment of the rights and facilities available to the members of defendant No. 1 by the plaintiff, his spouse and dependents.

41. The defendants are always at liberty to follow the prescribed procedure as per the Regulations. The plaintiff under those circumstances would be entitled to raise his plea and the decision is to be taken by the defendant No. 1 as per the Regulations. In case the decision is passed against the plaintiff after due process is followed, it is always open to the defendant(s) to file the application for vacation of the interim order in view of change of circumstances under Order XXXIX Rule 4 CPC. Under these circumstances, the plaintiff would be entitled to contest the same on merits. However, at this stage the defendants prayer for dismissing the injunction application cannot be allowed in view of the reasons explained above.

42. The application is accordingly disposed of.

CS(OS) 2805/2015 and I.A. No. 23425/2015 (Order VI Rule 17)

Issue notice in I.A. No. 23425/2015. Reply be filed within four weeks. Rejoinder if any, be filed two weeks thereafter. List on 10th February, 2016 before Court for consideration.