
(1999) 03 MP CK 0021

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3368 of 1998

Sujit Kumar Banerjee

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 33(4)

Citation : AIR 2000 MP 44 : (2001) ILR (MP) 452

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Advocate : R.D. Hundikar, for the Appellant; P.D. Gupta and A. Mukhopadhyaya, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks the relief that by appropriate writ or direction the respondents be directed not to admit new members to the roll of Siddhi Bala Bose Library Association, Jabalpur and the respondents should hold the elections with the members who were on the roll of the association on the date of supersession.

2. The details of the case are not necessary as the controversy is very short. Undisputedly, the Siddhi Bala Bose Library Association (Association for short) is a regis-fered society under the provisions of the M. P. Societies Registrikaran Adhiniyam, 1973. The society is governed by its bye-laws and the provisions of the 1973 Adhiniyam. It appears that some time back the council of the society was superseded and an administrator was appointed. The administrator while holding the office, started admitting new members in the roll of the society therefore, the petitioner filed writ petition No. 2327/98 which was disposed of by this Court on 17-7-98 giving opportunity to the petitioner that he can approach to the authority who shall decide the representation made by the petitioner in accordance with law and the said authority/Registrar shall also pass a speaking order. It appears that after disposal of that petition, the Registrar could pass the

final order on 5-9-98, which is available on record as Annexure P-4. This petition appears to have been filed somewhere in August. 1998 much before the Registrar could pass the order.

3. According to the petitioner, an administrator appointed under the provisions of Section 33 is not entitled to induct new members but has only to look into the affairs and management of the society and has to take care of the interest of the society. The petitioner submits that in view of the language of Section 33(4) of 1973 Adhiniyam, the administrator has no authority or power to induct new members but has to hold the elections with the members who were on roll on the date of the supersession.

4. Respondents Nos. 1 and 4 submit that in view of the language of Section 33(4) of 1973 Adhiniyam, the Registrar has fullest power of the governing body/ council therefore, and as the bye-laws of the society authorise the council to induct ordinary members, the administrator could induct the members. The respondents Nos. 2 and 3 in their return have submitted that in view of the language of Section 33(4) of 1973 Adhiniyam and also in view of the directions given by the Registrar of the Societies, the administrator was entitled to admit the members on roll and such action of the administrator cannot be condemned. It is submitted on behalf of the respondents Nos. 2 and 3 that as alternative and efficacious remedy of an appeal u/s 40 of 1973 Adhiniyam is available to the petitioner, this Court should not interfere in the matter at this stage.

5. Learned counsel for the petitioner in reply, referring to the language of Karnataka Co-operative Societies Act which was under consideration before the Supreme Court submits that the language of the said section is part materia with the language of Section 33(4) of 1973 Adhiniyam therefore, the petitioner is entitled to the relief prayed for.

6. I have heard the parties at length.

7. According to bye-law No. 8 of the bye-laws framed and adopted by association, the Library Association in general meeting of its members shall have powers to recognise and enlist persons as patrons, sympathisers, life and honorary members. According to the said bye-law the general body is not require to recognise or enlist ordinary member or confer membership on an ordinary member. According to bye-law No. 8(b) any person on his application in the prescribed form and on his paying the stipulated fees may become ordinary member unless otherwise his membership is disqualified by the council or management at its meeting, for adverse reasons. From the perusal of bye-law No. 8(b) it would clearly appear that the power to grant an ordinary membership vests in the council. According to bye-law No. 4 the affairs of the library association are to be governed by the council of management elected once in every three years. Council of management shall consists of following persons; (a) President; (b) Vice-president (not exceeding two); (c) Secretary; (d) Joint Secretaries (not exceeding two); (e) Treasurer (one); (f) one representative of

each of patrons, life members, if any nominated by them and one ex-officio member each from subsidiary organisation; (g) and at least six ordinary members. This council of management is entitled to confer ordinary membership on the applicant. Section 3(a) of 1973 Adhiniyam provides that governing body of a society means the Governors, Council, Directors, Committee, Trustees or other body by whatever name called to whom by the regulations of the society, management of its affairs is entrusted. The council of management constituted and created under bye-law No. 4 of the society would be deemed to be governing body of society. Section 33(4) of the 1973 Adhiniyam provides that person or persons (administrator or number of persons) so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the governing body or of any officer of the society, and to take all such actions as may be required in the interest of the society.

8. According to Shri Mukhoupadhyaya as the powers of the governing body are vested in the administrator who is subject to the control of the Registrar, such an administrator is entitled to admit people to membership and confer ordinary membership upon them. At the first glance the arguments appears to be lucrative and justifiable but when the same is examined in the light Of the judgment of the Supreme Court in the matter of K. Shantharaj and another Vs. M.L. Nagaraja and others, , it would appear to be contrary to the provisions of law. In the matter of K. Shantharaj the question posed for consideration before the Supreme Court was as to whether an administrator appointed u/s 30 of Karnataka Co-operative Societies Act, 1959 had power, jurisdiction or authority to enroll new members of the society. Considering the language of Section 30, Sub-section (2) of the said Act, the Supreme Court observed that the administrator appointed u/s 30 or a special officer appointed u/s 30A would have no powers to enroll new members to the society. Sub-section (2) of Section 30 of the Karnataka Co-operative Societies Act reads as under :--

"(2) The administrator so appointed shall, subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the committee or of any officer of the cooperative society and take such action as he may consider necessary in the interest of the society."

Sub-section (3) of Section 30A of Karnataka Co-operative Societies Act, 1959 reads as under:--

"(3) The Special Officer shall, subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society or any officer of the cooperative society and take all such actions as may be required in the interest of the cooperative society."

9. When these two provisions of Karnataka Act are compared with Sub-section (4) of Section 33 of the 1973 Adhiniyam, without any hesitation it can be held

that the language of the provisions is *pari materia*.

10. In the matter of K. Shantharaj the administrator so appointed was subject to the control of the Registrar and such instructions as Registrar may give time to time to exercise all or any of the functions of the committee or any officer of the co-operative society and take such action as he might consider necessary in the interest of the society. According to Sub-section (4) of Section 33 of the 1973 Adhiniyam the administrator (person or persons) so appointed shall be subject to the control of Registrar and to such instructions as Registrar may from time to time give, have power to exercise all or any of the functions of the governing body or of any officer of the society, and to take all such actions as may be required in the interest of the society. The Supreme Court in para 5 of the judgment has observed as under :--

"It would be clear from the language of these provisions Administrator or special officer, subject to control of any of the functions of the society, and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society."

11. An association of a society may be created or constituted by the pioneers for variety of the reasons some people may make an association for betterment of a particular class or a particular trade, gain, business etc. A society may also be formed for a particular act. It may also be constituted for achieving a particular object. While awarding membership, the governing body/ the council would always consider the aims and objects for which the association/society has been constituted. If such aims and objects are ignored and the membership is awarded to public at large without taking into consideration the effect and impact of grant of such membership, a society may suffer unnecessarily and in some case may suffer the death blow. It is always for the governing body or the council of the registered society to consider whether membership should be granted to the applicant before it or not. If the society through its governing body after considering the application comes to the conclusion that it is not required to grant membership to such an applicant that may be end of the matter at society level unless such applicant challenges the order passed by the governing body of the society. It cannot be lost sight of that the founder members, patrons, life members and even the ordinary members not only bring into existence an association/ society but nurse it and make it workable. They feed it with their utmost sincerity and infuse life in it by their efforts. They know for what the society has been constituted and what objects are to be achieved through the society. In such a context, if the right of the society is considered it certainly would have a right to grant or not grant the membership to an applicant before it, provided the discretion is exercised by the governing body in accordance with law. An Administrator is virtually an outsider who does not know

anything about the society. He appears on the stage under the instructions and directions of the Registrar, without knowing that for what particular aims and objects the society has been constituted. If he starts giving membership indiscreetly to every applicant before it, it may create number of problems for the society. If membership is made absolutely open and hundreds of the members are awarded membership then it may lead to a situation where the society may not be in a position to work properly and may have to suffer a lot. An Administrator is required to manage the affairs and working of the society. It has to conduct the elections in accordance with law. He cannot be allowed to interfere with the basic constitution of the society nor can he be permitted to induct members, according to his own whim or choice. A society through its governing body has to admit the members. If the administrator awards membership then the possibility of non-application of mind or non-appreciation of the aims and objects for which the society has been constituted can-not absolutely be ruled out if the administrator starts conferring membership to the applicant/applicants before it he is likely to go contrary to the bye-laws. This must be the reason to hold that the administrator would have no right, authority or jurisdiction to induct new members or confer membership upon them.

12. In para 8 of the judgment the Supreme Court further observed that :--

"We find that there is no force in the contention. The power of Administrator given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, rules and bye-laws. The Division Bench has minutely and carefully gone into all questions and agreed with the learned single Judge that the Administrator has no power to enroll new members but he has the power to organise election process in accordance with the provisions of the Act, the rules and bye-laws of the Society."

13. The judgment of the Supreme Court in the matter of K. Shantharaj applies with full force. I have no hesitation in holding that the administrator appointed by the Registrar of Societies has no Jurisdiction or authority to enrol new members. He can exercise the power of governing body under the control of the Registrar but cannot induct new members nor confer membership upon such persons. The administrator has to hold the elections on strength of the membership which were available with the society on the date of the supersession.

14. The Registrar is directed to issue instructions to the administrator to hold elections at the earliest. The election must be held within a period of two months from today.

15. The petition is allowed. There shall be no order as to costs.