

(2016) 08 KL CK 0047
In the High Court Of Kerala
Case No : WP(C). No. 24122 of 2016 (M)

Sunil C. Kurien

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Red Cross Act, 1920 — Section 4

Citation : (2016) 4 KerLJ 399 : (2016) 4 KLT 197

Hon'ble Judges : Mr. P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Sri. George Poonthottam, Advocate, for the Petitioner; Sri. N. Nagaresh, Assistant Solicitor General, for the Respondent No. 1; Sri. Gikku Jacob by Government Pleader and Sri. C.P. Sudhakaraprasad General Advocate, for the Respondent Nos. 2 to 7; Sri. Ben

Final Decision : Allowed

Judgement

Mr. P.B. Suresh Kumar, J.—When this writ petition came up for admission on 1.8.2016, the learned Assistant Solicitor General took notice on behalf of respondents 1 and 8 and the learned Advocate General took notice on behalf of respondents 2 to 7. It was also pointed out that a counter affidavit had been filed in the matter on behalf of the second respondent. The learned counsel appearing for the petitioners were also ready to argue the writ petition finally. In the circumstances, the writ petition was heard.

2. Ext.P1 order by which the State Government have removed the Chairman of the Kerala State Branch of the Indian Red Cross Society (hereinafter referred to as "the Society") and dissolved its Executive Committee and District Committees, is under challenge in this writ petition. Petitioners 1 and 2 are the Chairman and General Secretary, respectively of the Kerala State Branch of the Society and petitioners 3 to 6 are the Secretaries of four District Branches of the Society. As per Ext.P1, the Government have appointed the District Collector,

Thiruvananthapuram as the administrator of the State Branch and the District Collectors concerned as administrators of the District Branches. The Government also ordered in Ext.P1 that the assets of the Society and its records shall be taken over by the administrators forthwith.

3. The Society was formed by virtue of the provisions contained in the Indian Red Cross Society Act, 1920 (hereinafter referred to as "the Act"), with a view to continue the work carried on by the Indian Branch of the Joint War Committee of the Order of the St. John of Jerusalem in England and the British Red Cross Society. The President of India is the President of the Society. The case of the petitioners is that the State Government have nothing to do with the Society and as such, it cannot pass an order in the nature of Ext.P1 on any ground whatsoever.

4. A detailed counter affidavit had been filed by the State Government in this matter. It is stated in the counter affidavit that one of the elected members of the Managing Committee of the State Branch of the Society namely, C. Bhaskaran preferred a complaint to the President of India, pointing out the financial irregularities of its Chairman and the said complaint was forwarded by the Secretariat of the President of India to the Ministry of Health and Family Welfare of Government of India for appropriate action. It is stated that the said Ministry has, in turn, forwarded the complaint to the Secretary General of the Society requesting him to take appropriate action in the matter and the Secretary General of the Society, in turn, forwarded the complaint for appropriate action to the Governor of the State, who is the Ex-officio President of the State Branch of the Society. It is stated that the Secretary to Governor, in turn, forwarded the complaint for appropriate consideration and report to the State Government and on receipt of the request of the Governor, the State Government ordered a quick verification into the matter by the Vigilance Department. It is stated that on the basis of the recommendations made by the Vigilance Department, the State Government have decided to conduct a Crime Branch investigation into the affairs of the State Branch of the Society. It is stated that the State Government have removed the Chairman, its Executive Committee as also its District Committees, for the purpose of conducting an effective Crime Branch investigation. It is specifically stated in the counter affidavit filed by the State Government that Ext.P1 order was passed with the approval of the Governor. As regards the contention raised by the petitioners that the State Government have no authority to pass an order in the nature of Ext.P1, it is stated in the counter affidavit that the Government of Kerala cannot be a mute spectator to the grave allegations of corruption and nepotism in an organisation under the patronage of the Governor and hence the Government had to step in for the cause of justice to protect the larger public interest at stake. The counter affidavit filed by the State contains elaborate averments concerning the alleged financial irregularities, instances of corruption and nepotism etc., found in the course of the quick verification conducted by the Vigilance department of the State Government.

5. The Society which is impleaded as the eighth respondent has not filed any counter affidavit in the matter.

6. Sri. C.Bhaskaran, who preferred the complaint against the petitioners and others before the President of India got himself impleaded as additional ninth respondent in the writ petition. In the affidavit filed in support of the impleading petition, the additional ninth respondent has supported the impugned action of the State Government.

7. The learned counsel for the petitioners reiterated the contention that the State Government have no authority to meddle with the affairs of the State Branch of the Society. Per Contra, the learned Advocate General elaborated on the various irregularities found in the course of the quick verification of the Vigilance Department of the State Government and contended that in a situation of this nature, the State Government is obliged by the scheme of our Constitution to act in the cause of justice to protect the larger public interest at stake. The learned Advocate General has, however, conceded that the Act does not confer any authority on the State Government to pass an order in the nature of Ext.P1. But according to him, orders of this nature will be saved by the doctrine of necessity. Relying on the decisions of the Apex Court in *Election Commission of India v. Dr. Subramaniam Swamy* (1996) 4 SCC 104) and *Lalit Kumar Modi v. Board of Control for Cricket in India* (2011) 10 SCC 106), the learned Advocate General contended that in case of necessity, law permits orders in the nature of one impugned in the writ petition, which may not countenance on the touchstone of judicial propriety also. It was also contended by the learned Advocate General, relying on the decisions of the Apex Court in *Mohammad Swalleh v. Third Addl. District Judge, Meerut* (1988)1 SCC 40) and *Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar* (1999)8 SCC 16) that, at any rate, this Court shall not interfere with an order in the nature of Ext.P1, for, the interference would result in resurrection of grave injustice in the facts of the present case.

8. The learned Assistant Solicitor General appearing for the Union of India as also the eighth respondent, pointed out that going by the scheme of the Act, the State Government has no authority to supersede the State and District Branches of the Society as done in Ext.P1 order. According to the Assistant Solicitor General, powers in the nature of one exercised by the State can be exercised only by the Managing Body of the Society.

9. I have considered the rival contentions advanced by the learned counsel for the parties. In order to resolve the issues in dispute between the parties, it is necessary to examine the scheme of the Act. As noted above, the President of India is functioning as the President of the Society as provided for under Section 4A of the Act. Section 4B of the Act provides that the Society shall be managed by a body consisting of its Chairman nominated by the President, six members nominated by the President and twelve members elected by its State Branches. Section 4C of the Act deals with the appointment of the Secretary General and the Treasurer of the Society. Section 4D of the Act deals with the powers and

functions of the Chairman and Vice-chairman of the Society. Section 4E of the Act provides that if, at any time, the President is of the opinion that there had been gross failure in the management of the affairs of the Society by the Managing Body; or that the Managing Body is acting in a manner which is prejudicial to the objectives of the Society, the President may, by order in writing, supersede the Managing Body after following the procedure mentioned therein. Section 5 of the Act authorises the Managing Body of the Society to make rules with the approval of the President for the management, functions, control and procedure of the Society. Section 5(1) of the Act clarifies that the rules under the said Section may provide, among others, the procedure of election of members by the State Branch Committees as also the powers exercisable by the Managing Body in supervising the activities of the State Branches of the Society. Section 6 of the Act, among others, provides that all property, movable or immovable, belonging to the Committee shall vest in the Society and shall be applied by the Managing Body to the objects and purposes of the Society. Section 8 of the Act empowers the Managing Body of the Society to distribute the income of the property vested in the Society to its State Branches in the proportion shown in the second schedule to the Act. The Rules framed by the Managing Committee of the Society under Section 5 of the Act for the State/District Branches (hereinafter called "the Rules") was made available to me by the counsel for the parties at the time of hearing. The Rules provide that the Governor of the State shall be the President of the State Branch. The Rules also provide that the President shall preside over the annual general meetings of the State Branch, approve the minutes of the general meetings of the State Branch and exercise other powers provided under the Rules.

10. Ours is a country governed by rule of law. Its primary meaning is that everything must be done according to law. Applied to the powers of the Government, this requires that every Government which does some act which would otherwise be a wrong, must be able to justify its action as authorised by law. Every act of Governmental power must be shown to have a strictly legal pedigree. As indicated above, there is no provision in the Act or in the Rules conferring authority on the State Government to supersede the State and District branches of the Society as done in Ext.P1 order for any reason whatsoever. As such, the question is as to whether the contentions raised by the State to support the impugned order are sustainable. As noticed above, the contentions of the State are two fold. The first contention is that the impugned order was passed with the concurrence of the Governor, who is the ex officio President of the Kerala Branch of the Society and the second contention is that the doctrine of necessity saves orders in the nature of one impugned in the writ petition.

11. Coming to the first contention, of course, the Governor is the ex officio President of the State Branch by virtue of the provisions contained in the Rules. The Rules, however, do not confer any power on the Governor to supersede the State and District branches of the Society. As per the provisions of the Act, only the President of the Society is conferred with the power to supersede the

Managing Body of the Society. It is possible to contend that in exercise of the said power, the President of the Society has the power to supersede the State and District branches of the Society as well. But, the said power cannot be exercised by the Governor in the absence of any power conferred on him by the statute or the Rules made thereunder. If the Governor does not have the authority to supersede the State and District branches of the Society, even if the impugned order is passed with the concurrence of the Governor, according to me, it is of no consequence. The first contention of the State, in the circumstances, fails.

12. To deal with the second contention, the doctrine of necessity needs to be understood. The doctrine of necessity is a common law doctrine. It is applied to tide over situations of difficulty, for, law does not contemplate a vacuum. The doctrine permits certain things to be done as a matter of necessity which would not otherwise countenance on the touchstone of judicial propriety. In other words, the doctrine of necessity makes it imperative for the authorities to do certain things and considerations of judicial propriety must yield. It applies to both judicial and administrative matters. It is often invoked in judicial matters in cases of bias. If there is no judge to decide a matter except one who is likely to be biased, then the doctrine permits that judge to decide the matter. The logic is that if the doctrine of necessity is not pressed into service in situations of this nature, it would impede the course of justice itself and the defaulting party would be benefitted therefrom. As far as the present case is concerned, as noted above, sub-section (1) of Section 5 of the Act confers on the Managing Body of the Society the power to make rules not only for the management of the Society, but also for the control of the Society. The said sub-section clarifies that the said power includes the power to make rules laying down the procedure of election of members by State Branch committees as also the powers exercisable by the Managing Body in supervising the activities of State Branch committees. There is nothing on record to indicate as to whether the Managing Body of the Society has made rules as regards the powers exercisable by the Managing Body in supervising the activities of State Branch committees. Be that as it may, the fact that power is conferred by the statute on the Managing Body of the Society to frame rules concerning the powers exercisable by the Managing Body in supervising the activities of the State Branch committees is sufficient to hold that the State Branch committees of the Society are under the control and supervision of the Managing Body of the Society. If the State and District branches of the Society are under the control of the Managing Body of the Society, it is for the Managing Body of the Society to take appropriate action against the State and District branches of the Society on a complaint in the nature of one referred to in Ext.P1. When the statute contemplates that complaints in the nature of one referred to in Ext.P1 are to be dealt with by the Managing Body of the Society, there is no vacuum for the State Government to press into service the doctrine of necessity to pass an order in the nature of Ext.P1 on the basis of the said complaint. In the said view of the matter, the

second contention of the State also fails.

13. It is now settled that if interference in a matter by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, for want of jurisdiction of the inferior tribunal or authority would amount to revival of an invalid order, the High Court may not exercise its discretionary jurisdiction to set aside the order of the inferior tribunal or authority. But, the said principle cannot be relied on by the State to sustain an original order passed without jurisdiction. The argument advanced by the learned Advocate General on the basis of the decisions of the Apex Court in Mohammad Swalleh (supra) and Maharaja Chintamani Saran Nath Shahdeo (supra) also, in the circumstances, fails.

14. In the result, the writ petition is allowed, Ext.P1 order of the Government is set aside and respondents 2 to 7 are directed to return the records of the State and District branches of the Society forthwith to the petitioners.