

(2007) 10 OHC CK 0029
In the Orissa High Court
Case No : FAO No. 305 of 2007

Utkal Chemists and Druggists' Association and Others	APPELLANT
Vs	
Cuttack District Chemists and Druggists Assn. Ors.	RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 151

Citation : (2007) 2 OLR 1101 Supp

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : B.H. Mohanty, S.C. Mohanty, R.K. Nayak, S.P. Sarangi, P.P. Mohanty and P.K. Dash, in FAO No. 305 of 2007, for the Appellant; Bidyadhar Mishra, D.P. Mishra and S. Satpathy, in FAO No. 305 of 2007, for the Respondent

Judgement

A.S. Naidu, J.—The order dated 22nd August, 2007 passed by the learned Civil Judge (SD), 1st Court, Cuttack in I.A. No. 269 of 2007 arising out of C.S. No. 250 of 2007 is assailed in both these appeals filed under Order 43, Rule 1(r) of the Code of Civil Procedure. The facts and points of law involved in both the appeals being the same, the same were heard together.

2. Respondents 1 to 3 in both the FAOs, as Plaintiffs, have filed C.S. No. 250 of 2007 before the Court of the learned Civil Judge (SD), 1st Court, Cuttack inter alia praying as follows:

(a) to pass a preliminary decree directing Defendants 1 and 3 in the said suit to render accounts relating to Utkal Chemists and Druggists' Association (for short "UCDA") with regard to collection and expenditure of funds during the last two terms, i.e. for the years 2001-2004 and 2004 to 2007;

(b) to pass a decree of permanent injunction restraining Defendants 2 and 3 from passing any restrictive orders and withdrawing the same unilaterally without any decision of the Executive Committee of the Association and/or from

interfering with the internal affairs/ management of all District Associations of the State in general, and Plaintiff No. 1 Association in particular;

(c) to declare the alleged Resolution passed in a meeting held on 18.5.2007 including the alleged order of de-affiliation of Plaintiff No. 1 Association under the Presidentship and Secretaryship of Plaintiff Nos. 2 and 3 respectively and the alleged suspension of Plaintiff Nos. 2 and 3 and appointment of Defendant Nos. 4 and 8 illegal, without any authority of law, void and non est in the eye of law;

(d) to declare the alleged Notice dated 3.6.2007 as well the meeting allegedly held on 17.4.2007 illegal, without any authority of law, non est in the eye of law, void and invalid;

(e) to declare that Plaintiff Nos. 2 and 3 having been lawfully elected as the President and Secretary of Plaintiff No. 1 Association in a legally and validly convened Annual General Meeting of Plaintiff No. 1 held on 24.6.2007 they are the only legally authorised office-bearers of Plaintiff No. 1 and competent to represent Plaintiff No. 1; and

(f) last but not the least, to pass a decree of permanent injunction restraining Defendant Nos. 1 to 8 from interfering with the day to day affairs, funds, assets- both movable and immovable belonging to Plaintiff No. 1 or with the functions of the Plaintiffs in any manner whatsoever.

Alongwith the plaint, a petition was filed under Order 39, Rules 1 and 2 read with Section 151 CPC which was registered as I.A. No. 269 of 2007 with a prayer to pass interim order temporarily restraining the Defendants from giving effect to and/or acting in terms of the alleged order of de-affiliation of Plaintiff No. 1 Association; the alleged order of suspension of Petitioner Nos. 2 and 3; the alleged order of appointment of opposite party Nos. 4 to 8 as office-bearers of Plaintiff No. 1 pursuant to the alleged Resolution dated 18.5.2007 and from interfering with the day to day affairs of management, functioning, funds, assets both movable and immovable belonging to Plaintiff No. 1 Association; or interfering with the powers and functions of Petitioner Nos. 2 and 3 in any manner; with a further prayer to direct maintenance of status quo ante as was prevalent on 17.5.2007 until disposal of the Civil Suit.

3. To appreciate the inter se disputes among the parties, it would be prudent to refer to some of the admitted facts:

To organize all pharmaceutical traders of the country and for the benefit of trade and traders and to take necessary steps to safeguard the interest of public in all possible ways, particularly against mis-branded, sub-standard and/or spurious drugs and medicines and to help initiating legal action in such matters, singly or in co-operation of others, All-India Chemists and Druggists's Association was formed. With the same objects, in each State of the country State Associations were also formed. The UCDA is one of such Associations having jurisdiction in the entire State of Orissa. Similarly in every district, District Associations have been

formed and Plaintiff No. 1 - Cuttack District Chemists and Druggists" Association (for short "CDCDA") is one such. Plaintiff Nos. 2 and 3 claim to be the President and Secretary of CDCDA. It is stated that all the District Associations are affiliated with the State Association and all the State Associations are affiliated with the All-India Association of Chemists and Druggists. Thus, a three-tier system is prevailing. All the wholesalers and retailers who have obtained drugs licences and are active in pharmaceutical trade and business are eligible to be members of the Association paying prescribed fees fixed by the Executive Committee of the Association from time to time. Certain dissension having cropped up among UCDA and CDCDA on issuance of restrictive orders by Plaintiff Nos. 2 and 3, the President and Secretary of CDCDA respectively, with regard to products of some medicine companies. Consequent upon issuance of such restrictive order, and arriving at the conclusion that the same was not proper, UCDA by Resolution dated 18.5.2007 withdrew affiliation of CDCDA from it and also suspended Plaintiff Nos. 2 and 3 from their primary membership and further appointed an ad hoc body comprising of Defendant Nos. 4 to 8 manage the day to day affairs of CDCDA. Being aggrieved by such action of UCDA, the aforesaid Civil Suit has been filed seeking afore-mentioned reliefs. In the Interim Application the Plaintiffs prayed for issuance of temporary injunction restraining CDCDA from acting in the manner as stated above.

4. After receiving notice some of the Defendants who were made parties to the said Interim Application appeared before the Court below and filed their objection denying the averments/allegations of the Plaintiffs and inter alia taking the stand that the said application was not maintainable mainly because the All-India Organisation of Chemists and Druggists, though a necessary party to the I.A., was not impleaded as such. It was further averred in the objection that Plaintiff Nos. 2 and 3 had no locus standi to file the suit or the I.A. as they were not authorised to represent CDCDA. They also averred that as the primary membership of Plaintiff Nos. 2 and 3 had been cancelled they no longer continued to represent either CDCDA or UCDA. According to the Defendant-opposite parties, all members of CDCDA being life members of UCDA and the so-called registration of CDCDA having been done on 18.6.2007 which was after commencement of the disputes, the same should be ignored. CDCDA is directly under the control of UCDA and the members of CDCDA being life members of UCDA, the latter has administrative control over its members. According to the Defendant-opposite parties, a number of allegations were received against Plaintiff" Nos. 2 and 3 while acting as President and Secretary of CDCDA with regard to issuance of notices and other overt-acts committed by them besides various malfeasance and misfeasance for which a General Body Meeting of UCDA was convened in which Plaintiff Nos. 2 and 3 were present. In the said Meeting, the matter was discussed threadbare and finally, decision was taken by the members to de-affiliate CDCDA from UCDA and to cancel the primary membership of Plaintiffs No. 2 and 3. Such decision having been taken after observing all paraphernalia and complying with the provisions of the bye-laws of

UCDA as also the principles of natural justice and equity, an interim injunction as prayed for by the Plaintiff would create a dent in the day to day management of CDCDA. It was further averred that after suspension of membership of Plaintiff Nos. 2 and 3, UCDA had taken steps for day to day management of CDCDA by appointing Defendant Nos. 4 to 8 who were smoothly managing the same and therefore any interference by Court could not be just and proper.

5. After hearing the learned Counsel for the parties at length and perusing the laws and voluminous materials produced before it, the Court below by a well-discussed order consisting of twenty-five pages passed in the I.A. held that prima facie the action taken by UCDA appeared to be illegal. Further, there was no document to show that any extraordinary Executive Committee Meeting had been called for the purpose or opportunity of being heard was afforded to Plaintiff Nos. 2 and 3. Therefore, the order of suspension of their membership was illegal. The Court below also held that CDCDA was registered on 18.6.2007, i.e., much prior to passing of the aforesaid suspension order by UCDA and since Plaintiff Nos. 2 and 3 were the elected representatives of CDCDA, suspension of their membership prima facie appeared to be not justified. On the basis of such conclusion, the Court below allowed the Interim Application and restrained the Defendant-opposite parties temporarily from giving effect to or acting in terms of the orders of de-affiliation of CDCDA, suspension of Plaintiff Nos. 2 and 3 and appointment of Defendants 4 to 8 as office bearers of CDCDA pursuant to Resolution dated 16.5.2007 or from interfering with the day to day management/functioning/funds/assets-both movable and immovable, belonging to CDCDA or from interfering with the power and functions of Plaintiff Nos. 2 and 3 in any manner in future and directed to maintain status quo ante as was prevalent on 17.5.2007 till disposal of the Civil Suit. Being aggrieved by the aforesaid order of the Court below, the Defendant-opposite parties have filed these two appeals, one by UCDA represented by its President and Secretary, and the other by Defendant Nos. 4 to 8 who have been appointed by UCDA to perform the day to day management of CDCDA.

6. Mr. B.H. Mohanty, learned Senior Advocate and Mr. R.K. Mohanty appearing for the Appellants in the two appeal and Mr. Bidyadhar Misra appearing for the Respondents in both the appeals argued the matters in extenso by placing reliance on several documents.

According to Mr. B.H. Mohanty, the management and control of CDCDA is directly under UCDA. The latter as per the bye-laws exercise control/authority over CDCDA and such other District Associations in the State. Thus the members of CDCDA do not have any independent existence, they being life members of UCDA. He submitted, rather emphatically, that action by any member of a District Association if found contrary to the aims and objects sought to be achieved or derogative to the bye-laws, he has to be controlled by UCDA and the said action has to be curtailed by taking necessary steps. A number of allegations were received by AIOCD and UCDA against Plaintiff Nos. 2 and 3 as to the illegal

orders passed by them. The matter being serious, the same was placed before a General Body Meeting of UCDA on 18.5.2007 in which the President of AIOCD was also present and so also Plaintiff Nos. 2 and 3. After discussion in the meeting, unanimous decision was taken to suspend Plaintiff Nos. 2 and 3 and to entrust the management of CDCDA to Defendant Nos. 4 to 8. Referring to the prayer made in the plaint and the relief sought in the Interim Application, Mr. B.H. Mohanty submitted that the prayer being the same, the relief sought in the Interim Application could not be granted, but the said cardinal principle was not kept in mind by the Court below. Assailing the order of the Court below, he further submitted that the Court below in fact dealt with the matter as if it was hearing the suit for final disposal and therefore the observations made and conclusions arrived at by the Court below in the impugned order unless varied will highly prejudiced the Defendants.

Mr. Bidyadhar Mishra, learned Counsel for the Respondents in both the appeals, on the other hand, referring to the impugned order, submitted that the Court below did consider all the submissions made before it and on being satisfied that the Plaintiffs had a prima facie case and the balance of convenience tilted in their favour and unless an interim restraint order was passed irreparable loss would be caused to the Plaintiffs, has passed the said order. According to Mr. Mishra, CDCDA is completely an independent Association. It has its own bye-laws. It has its own members and UCDA has absolutely no control over it excepting that the said District Association is affiliated to the State Association. He further submitted that in the given circumstances, if the Court below was satisfied that unless an interim restraint order was passed the Plaintiff would be subjected to unsurmountable hardship, it had the power to pass such interim order in spite of the fact that the same was also one of the reliefs prayed for in the suit. He strenuously took this Court through a number of materials, such as, Resolutions, Bye-laws, etc to substantiate his submission that the order of suspension of membership of Plaintiffs Nos. 2 and 3 and de-affiliation of CDCDA by UCDA was unjust, illegal, contrary to the provisions of the bye-laws and the same violated the principles of natural justice and equity. He further submitted that as the Court below has considered all the facts and circumstances, an ultimate relief prayed for in the suit should not be granted an interim relief, it is a fit case where the appeals may be dismissed in limine.

7. With regard to the submission that grant of interim relief should not be the same as final relief in the lis, law is well settled that situations may emerge where grant of interim relief may tantamount to grant of final relief itself. There may also be converse cases where withholding of interim relief may tantamount to dismissal of the main petition itself, inasmuch as by the time the main matter comes up for hearing; there would be nothing left to be allowed as relief to the Petitioner though all the findings may be in his favour. In other words the relief sought becomes infructuous by efflux of time. In such cases, if the Court feels that there is a very strong prima facie case of a standard much higher than the just prima facie case and is satisfied that balance of convenience and irreparable

injury heavily tilts in favour of granting interim relief, though it may amount to grant of final relief itself, the Court can pass such order to meet the ends of justice. But then granting such interim relief should be with utmost caution and only in cases where Court is satisfied that not passing such order would prick the conscience of Court and cause injustice to a party which cannot be mitigated in course of hearing or in the decree. Obviously such order should be passed in rare cases accompanied by compelling circumstances where the injury complained of is imminent and pressing and would cause extreme hardship. The conduct of parties shall also have to be kept in mind and the Court may put the parties to such terms as may be just and prudent. This view of mine finds support from the decision of the Supreme Court in the case of *Deoraj v. State of Maharashtra* reported in 2004 (I) OLR (SC) 632.

8. Though learned Counsel for the parties persuaded this Court to enter into the merit of dispute, as the suit is not yet ripe for hearing, this Court feels that doing that may amount to pre-judging the issues and prejudicing either party. This Court therefore confines the case only to the facts relevant for the present purpose. As stated earlier, to organize all pharmaceutical Traders for the benefit of trade and Traders vis-a-vis consumers, and to keep co-ordination with the Drug Control Department, Health Directorate and all connected Departments of the State and Central Government, and to keep a check on spurious or sub-standard drugs, AIOCD has been formed. Similarly, in each State and in each district, Associations have been formed, thus creating a three-tier system. It is an admitted fact that District Associations are affiliated to the State Association and the State Association to the All-India Organisation. Thus, the AIOCD is the Apex authority.

9. Mr. Mishra strenuously submitted that CDCDA which is a District Association is an independent body and it has its own Bye-laws to govern it and the State forum does not have any administrative control over it. In support of such submission, he refers to the Memorandum of Articles of CDCDA as well as its Bye-laws.

Clause 1(b) of the said Memorandum of Articles of CDCDA reads as follows:

The Association since its inception has received affiliation from UCDA. However it is expressly made clear that all along the Association maintains its independent status, and shall continue to maintain its independent status in future.

The words "the Association since its inception has received affiliation from UCDA" prima facie raises a doubt with regard to the submission raised by Mr. Mishra that CDCDA was constituted earlier than UCDA. But then this issue has to be decided in the suit itself. From the averments of the parties it clearly appears that some allegations were there against Plaintiff Nos. 2 and 3 with regard to their issuing directions and orders without intimation to UCDA. According to Mr. B.H. Mohanty, the said allegations were received by the Apex Body as well as the State body. To resolve such problems as it was felt that the directions/orders issued by Plaintiffs

2 and 3 were frustrating the aims and objects for which the Associations were formed, a General Body Meeting was convened. In the meeting held by the President of the Apex Organization was present and so also Plaintiff Nos. 2 and 3. After discussing about the allegations, a decision was taken to de-affiliate CDCDA from UCDA and to suspend the membership of Plaintiff Nos. 2 and 3 and to entrust the management of CDCDA to Defendant Nos. 4 to 8. If in fact CDCDA was de-affiliated from UCDA, this Court fails to understand as to how UCDA entrusted the management of CDCDA to Defendant Nos. 4 to 8. On consideration of all these facts and circumstances as also the material produced leads to an irresistible conclusion that the dispute is between UCDA and Plaintiff Nos. 2 and 3 rather than UCDA and CDCDA. Admittedly membership of Plaintiff Nos. 2 and 3 has been suspended. The validly/legal sanction of such suspension has been questioned in the suit and the Court below after perusing the pleadings and evidence to be led has to decide the same. Law is well settled that an order of suspension takes effect immediately from the date the party concerned knows about the same. The Trial Court, as would be evident from the impugned order has directed the parties to maintain status quo prevailing on 17.5.2007. But then the suit was filed on 6.7.2007. According to Mr. Mohanty, a Court has no authority to traverse beyond the date of filing of the suit. Relying upon the judgment of this Court in the case of Registrar, Co-operative Societies, Orissa, Bhubaneswar Vs. Bhuban Behari Sahoo and others, , it is submitted that the Trial Court had no jurisdiction to direct the parteis to maintain status quo as was prior to filing of the suit. The main purpose of an interim order is to protect the lis during lis pendens so as to prevent future injury to any party. Except in extremely rare cases a Court should not pass an interim order disturbing or changing the situation prevailing on the date of passing of the order or on the date of initiation of the lis. Law is also well settled that a stay order or an order of injunction is not to be granted disturbing status quo. It is no doubt granted to restore the status quo. It is never granted to establish a new state of things different from the state that existed at the date the proceeding was initiated. (See AIR 1976 MP 14 Drug Transport Co. (Pvt.) Ltd. v. RTA, Raipur).

10. Considering the facts and circumstances of the present case in the touch-stone of the ratio of the decisions referred to above, this Court feels that unless CDCDA is permitted to function, the entire purpose for which the pharmaceutical Associations, a three-tier system is created,would be frustrated. This Court further feels that allowing the warring groups to carry on the management of CDCDA, would not be in the interest of the pharmaceutical Associations or that of the public in general. Judging from all angles, this Court confirms the portion of the impugned order temporarily restraining the Appellants from giving effect to and/or acting on the order of de-affiliation of CDCDA and the appointment or Defendant Nos. 4 to 8 as office-bearers of CDCDA pursuant to Resolution dated 18.5.2007 and/or interfering with its day to day affairs, management, functioning, funds and assets - both movable and immovable. The order so far as suspension of Plaintiff Nos. 2 and 3 is not interfered with and the same shall

continue till a final decision is arrived at in the suit. I further direct AIOCD to nominate the names of two suitable persons to manage the day to day affairs of CDCDA which arrangement shall continue till disposal of the suit. Such nomination shall be made within three weeks hence.

With the aforesaid modification of the impugned order both the FAOs are disposed of.

A copy of this judgment be communicated to the apex Organisation at the cost of the Appellants requisites for which shall be filed within three days.