

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Nov-14-2016

Judge : M.M. Sundresh

Appeal No. : O.A. No. 974 of 2016 in C.S. No. 822 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. The applicant is a Member of the first respondent. The suit has been laid challenging the order of suspension passed in exercise of the power under Article 13 (iv) of the bye laws of the Club against the applicant pending enquiry. Seeking an order of interim injunction restraining the first respondent/first defendant from giving effect to the said order of suspension, this application has been filed.

2. The applicant is not a paragon of virtue. His history qua with the first respondent is chequered. There are occasions, in which, the applicant was found guilty, resulting in action. This was between the period starting from the year 2005 to 2013. However, the applicant was allowed to continue as a Member.

3. When the election was proposed for the year 2016, the applicant made a complaint against the second respondent on two grounds, qua the qualification. The first is with respect to the conviction suffered and the second being the age barrier having been crossed. On receipt of the said complaint, the first respondent

asked for Expert Opinion and satisfied that the complaint made would be sustained. However, there is no dispute that the factual assertion made by the applicant qua the second respondent with respect to the conviction and the age is correct.

4. Thereafter, the second respondent made a complaint to the first respondent seeking to take action against the applicant. Accordingly, the applicant was issued with the notice dated 20.09.2016 asking to give his explanation. On the very same date, the applicant was informed that taking note of the views of the expert, the nomination of the second respondent was found to be valid and hence, the matter should be closed.

5. The applicant, on receipt of the notice issued by the first respondent, gave a reply stating that he had nothing personal against the second respondent, but only placed the facts on record in the interest of the Club. Incidentally, he had stated that his intention was not to cause any inconvenience, it was done inadvertently and in any case it is regretted. On receipt of the said explanation, it was placed on record by the proceedings dated 18.10.2016 by the first respondent. For the sake of convenience, the said letter is reproduced hereunder.

The above letters on the captioned subject was discussed in the Managing Committee at its meeting held on Monday, October 17, 2016.

The Managing Committee has decided to suspend you from membership pending enquiry in accordance with Article 13(iv) of the Club.

Accordingly, you are suspended from membership with immediate effect. Please note that during period of suspension, you shall not use the club even as a guest of any other member.

Challenging the said communication, the present suit has been filed, in which, an order of injunction is sought for in the application.

6. The learned counsel appearing for the applicant submits that the order of suspension cannot be sustained in the eye of law since neither bye laws 13(i) nor 13(iv) of the Club could be pressed into service to the case on hand. The applicant

has given his explanation, but the same has not been considered in its proper perspective as could be seen from the order under challenge. An order of suspension is not automatic. The applicant is ready and willing to face the enquiry within a reasonable time fixed by this Court. The incident occurred earlier cannot be kept in mind while considering the suspension either by the first respondent or by this Court. Hence, it is prayed that order of suspension has to be kept in abeyance.

7. The learned Senior Counsel appearing for the first respondent submits that so long as power is available with the said respondent coupled with the fact that there is a procedural adhearance, no interference is required. The decision taken has to be seen from the conduct of the applicant as well. Reliance has been made on the following decisions in support of his contentions.

1. T.P.DEVAR V. LODGE VICTORIA NO.363, S.C. BELGAUM AND OTHERS(AIR 1963 Supreme Court 1144),

2. CHENNAI KANCHEEPURAM TIRUVELORE DISTRICT FILM DISTRIBUTORS ASSOCIATION, REP. BY ITS SECRETARY AND ANOTHER V. CHINTHAMANI S. MURUGESAN AND FOUR OTHERS (2001 (3) CTC 349).

8. The learned Senior Counsel appearing for the second respondent submits that the said respondent is only a formal party and therefore, the counter affidavit filed can be taken on record and the submissions made on behalf of the first respondent can be taken as such to be applicable to the second respondent as well.

9. On the question of past conduct of the applicant, it appears that it is the first respondent, who imposed lesser punishment. There is no reference to the past conduct in the order under challenge. Few years have rolled by after the last imposition of punishment. The applicant was allowed to continue thereafter. Therefore, this Court, for the purpose of deciding the application, does not want to go into the past conducts of the applicant.

10. Bye law 13(i) of the Club deals with the power of the Committee to take cognizance. As requested by the learned Senior Counsel appearing for the first respondent, taking note of the limited scope of the suit and the power available to the Committee to initiate action, this Court is not willing to go into the said subject. Bye law 13(iv) of the Club deals with the power of the Committee to suspend the member. Such a discretion has to be exercised in a case where the Committee does not receive any explanation from the offending Member or the explanation offered is not acceptable. We are dealing with the case of non acceptance of explanation. Admittedly, the applicant has given his explanation. As narrated above, there is no dispute about the factual assertion made by the applicant attributed to the second respondent. They are, the conviction suffered and the age. It is not, as if, the first respondent straight away rejected the complaint made. Only on the opinion of the experts, a conscious decision was made, which this Court is not concerned. The explanation of the applicant also reiterated the same. The applicant went on to state that he did not mean to offend the sentiments of the second respondent. The first respondent ought to have taken into consideration of the facts placed. Otherwise, there will not be any difference between a case of no explanation and an explanation given. On a perusal of the order of suspension, there is not even a consideration of the explanation given except noting it in the reference column. This has also to be seen from the fact that the applicant has been a member even after the last of the punishment meted out to him. Therefore, this Court is of the view that bye law 13(iv) of the Club has not been complied with in letter and spirit. The fact that the applicant has not challenged the similar order cannot be a ground to deny the relief to him.

11. The decisions relied upon by the learned counsel appearing for the applicant are not applicable to the case on hand. In T.P.DEVAR V. LODGE VICTORIA NO.363, S.C. BELGAUM AND OTHERS(AIR 1963 Supreme Court 1144), the Apex Court was dealing with the enquiry, which was concluded and findings of the facts have been rendered. Thus, it was held that no interference is required to disallow the findings giving, as Appellate Authority.

12. In CHENNAI KANCHEEPURAM TIRUVELORE DISTRICT FILM DISTRIBUTORS ASSOCIATION, REP. BY ITS SECRETARY AND ANOTHER V.

CHINTHAMANI S. MURUGESAN AND FOUR OTHERS (2001 (3) CTC 349), the Division Bench of this Court was dealing with a case, in which, a decision was given by the appellant based on merit. In fact, even the Division Bench has held that the Court will test a decision on the basis of the general standard of fairness.

13. Thus, this Court is of the view that the test of fairness has not been satisfied in the case on hand inasmuch as the need for suspension has not been indicated by a due consideration of the reply given by the applicant. Accordingly, there shall be an order of interim injunction as prayed for. However, it is made clear that this order will not stand in the way of the first respondent from taking appropriate action if the applicant is found to be guilty of any other misconduct, pending enquiry. This order cannot be construed to have any bearing on the pending enquiry. The applicant shall co-operate with the enquiry. As there is consensus among the counsel for both sides atleast on the conclusion of the enquiry, the same is directed to be concluded within a period of two weeks from today. The applicant/plaintiff shall comply with Order 39 Rule 3(a) C.P.C., within a period of one week.

14. Notice returnable in four weeks. Private notice is also permitted.

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